MY DEEN IN THE METRO

COPING STYLES OF FILIPINO MUSLIM YOUTH

ANNA TAJMINAH S. BASMAN

MY *DEEN* IN THE METRO:

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Asian Resource Foundation

1 Arabic term, meaning 'religion or faith'

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to
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FOREWORD

Thailand has had a long relationship with the Muslim world which can be dated back over five hundred years, since Ayutthaya kingdom. Apart from the continuous interaction with Melayu and Arab civilizations, Muslim culture has become an integral and essential component entrenched in Thai society. Muslim comm nities had played significant role in the nation building and socio-economic, cultural and political development. Today, there are over four million Muslim populations in Thailand. Despite political violence in the southern frontier provinces, Muslims along with Thai citizens of other faiths continue to live side by side in harmony and peace. Begin situated in Southeast Asia and serving as an active member of the Association of South East Asian Nations or ASEAN, whose majority of the members are Muslims, Thailand strives to better understand Islam and the reality of complexity in the contemporary Southeast Asia This serves as a foundation for the integration and mobilization of human as well as diverse cultural and religious resources in the region for the attainment of collective prosperity and peace.

In this pursuit, Thailand Research Fund is pleased to be a partner with the Asian Resource Foundation and supported its research initiative titled "Islam in Southeast Asia: Views from Within". This research program is unique as it supports and encourager young Muslim scholars in Southeast Asia, aged below 40 to

undertake research studies pertaining to Islam in Southeast Asia from the internal perspectives. Research being carried out by the insiders and body of knowledge developed will enhance and enrich the understanding of the realities of Muslims in contemporary Southeast Asia. The outstanding themes this reach has tackled encompasses areas such as popular Islam, globalization and identity politics, gender realities, economic activities and social responsibility. The end products of the research studies have become the cutting edge which offers the new research perspectives contributory to studies in the field of Islam and Muslim in Southeast Asia.

The Thailand Research Fund strongly believes this publication will benefit academic and professional communities as well as wider public to gain insight into the realities and complexity of the modern Muslim world in the context of contemporary multicultural and multi-religious Southeast Asia. It is hoped that the findings can be further utilized and translated into concrete strategic remedies to the existing challenges both at policy and implementation levels.

Prof. Dr. Suthipun Jitpimolmard MD FRCP
Director of Thailand Research Fund (TRF)

FOREWORD

Problematizing Views from within "Islam(s)" in Southeast Asia

In 1953 the late Gustav von Grunebaum organized conference of-leading European scholars of Islam, the first to undertake a historical and critical self-understanding of "Islamic studies." The conference examined relationships among Muslims, and between Islam and various cultures. It found that the assumptions and methods used in fields of study like Islamic history lagged a century behind those used in European history. One year later Bernard Lewis remarked that the history of the Arabs had been written primarily in Europe by historians with no knowledge of Arabic and Arabists with no knowledge of history.[1]

Half a century later, research on the subject has changed. There is an increasing number of studies on Islam written by Muslims who know the faith, the cultures, and the practices in different contexts-the works by Akbar Ahmad, Mahmoud Mumdani, Chandra Muzaffar, and Nurcholish Madjid are just a few examples among many. Also changed is the global context itself. Now perhaps more than ever, "Islam" is more than just a description of a fifteen-century-old faith shared by one-and-a-half billion people. The word has strong emotive qualities for those both within and outside the faith. Two decades ago the late Edward Said wrote, "For the right, Islam represents barbarism; for the left, medieval theocracy; for the

center, a kind of distasteful exoticism. In all camps, however, there is agreement that even though little enough is known about the Islamic world there is not much to be approved of there."[2] It is therefore important to understand, from their own perspectives, the contemporary problems that Muslims are facing.

Works in this series, Islam in Southeast Asia: Views from Within, join many other writings on Islam by authors at the periphery of scholarship, using assumptions and methods that may no longer differ from those used in the centers of learning. But if such is the case, how is this series different from the other writings on Islam that are presently flooding the popular and academic landscapes?

To state the obvious, this series addresses Islam in Southeast Asia. In relation to the Islamic world, where the sacred geography, history, and language of the Middle East seems to have established that region as the center, Southeast Asia is clearly seen as the periphery. But it is misleading to conceptualize Southeast Asia as a single sociocultural entity. As is true elsewhere in the world, societies in Southeast Asia are heterogeneous. Muslims in Indonesia and Malaysia, for example, lead lives that differ from those in Thailand and the Philippines because of the different realities facing majority and minority populations in the respective countries. Furthermore, whether Muslims constitute a minority or a majority, their lives differ again when seen in contexts influenced by Javanese culture, British colonialism, Filipino Catholicism, or Theravada Buddhism, among other things. In short, the cultural topography of Southeast Asia is a rich multiplicity.

Consequently, Islam as believed in and practiced by people in the diverse worlds of Southeast Asia is not necessarily singular, since there could be as many Islams as the various contexts that constitute them.[3] The problems

facing Muslims in Southeast Asia will therefore vary. Those portrayed by researchers in this series are unusual, and their analysis is at times groundbreaking, but what they underscore is that Southeast Asian Muslims struggle with multiple identities in sociocultural contexts destabilized by globalizing forces. In addition, the fact that this research is carried out by young Muslim scholars is important; the "new generation" factor could explain both the distinctive set of problems these researchers are interested in and the fresh approaches they use.

The "views from within" approach, however, is not without its own potential problems. To engage in studies claiming to be "views from within" is in some ways to guard against the study of "others" as the study of one's own self, because in such a situation writers face other types of realities that are possibly distorted in some other ways. It is therefore important for readers to appreciate the effort researchers make to situate themselves at a distance that gives them a better perspective on the social realities of their subject while retaining their sensitivity towards, and ability to relate to, the people they are studying.[4]

At a time when Islamophobia is on the rise,[5] it is essential to find fresh perspectives that will allow us to understand the new problems and tensions facing Muslims in contemporary Southeast Asian societies, and to articulate the ways in which they negotiate their lives as members of communities of faith in a fast-changing world. This series of studies by young Muslim scholars of Southeast Asia is an important step in this direction.

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NOTES

1. Azim Nanji, ed., *Mapping Islamic Studies: Genealogy, Continuity and Change* (Berlin and New York: Mouton de Gruyter, 1997), xii.
2. Edward Said, *Covering Islam* (New York: Pantheon, 1981), xv.
3. Aziz Al-Azmeh, *Islams and Modernities* (London and New York: Verso, 1996).
4. I have discussed the problem of alterity in conducting research on Muslim studies in Chaiwat Satha-Anand, *The life to this World: Negotiated Muslim Lives in Thai Society* (Singapore and New York: Marshall Cavendish, 2005), 25-26.
5. Akbar S. Ahmad, *Islam under Siege: Living Dangerously in a Post-Honor World* (Cambridge: Polity Press, 2004), 36-39.

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INTRODUCTION

Left and right, we hear stories that subliminally bring Muslims into a bad light. News of violence and terrorism, that coincidentally involve followers of Islam, consequently prime the mainstream to view Muslims, in general, negatively. In the Philippines, most of the Muslims are found in Mindanao. However, due to the fact that nearly all opportunities—in terms of career, education, and technology—are in Manila, many of them are forced to move to said region in the hopes of taking advantage of these chances. Consequently, such a move makes them a minority in Manila. Hence, more chances of exposure to stereotypes and prejudices.

Like in any other circumstances, minorities are expected to mingle and build a good bond with the members of the majority group to attain peaceful coexistence. Because it is inevitable for both groups to manifest certain differences in cultural and general traditions, one group always has to compromise. In such cases, it is always the minority who 'adjusts' and adapts to the mainstream.

Muslims in Manila, particularly the students and young professionals, are faced with this kind of situation. Even though the Philippine Law clearly emphasizes the separation of the Church and the State, problems still exist because this provision is not strictly observed by most members of the society. In fact, in most government schools, activities like praying the rosary, reading verses from the Bible (as a form of invocation), holding Christian-based class

retreats, conducting Christian Living Education classes, and observing baccalaureate mass before graduation ceremonies are practiced. These give Muslim students a hard time fitting in to this supposedly 'non-sectarian' environment.

Similarly, celebration of Christmas and observation of other rituals (i.e. putting 'stations of the cross' before the Lenten season, holding mass every first Friday of the month, and the likes) are also practiced in some workplaces in the metro. Because such activities are considered part of office and school norms, some Muslim students and young professionals are left with no choice but to adjust. According to Shweder, Goodnow, Hatano, Levine, Markus, and Miller (1997), one's environment indeed influences oneself for it provides specific experiences and practices that consequently affect an individual. If a Muslim lives in a non-Muslim society, it is inevitable for him or her to be affected by his or her community. Thus, there is a possibility that practicing certain activities that are not in the fold of Islam is manifested by them. Because he or she is from the minority group, celebrating such events seemed to be just part of the norm. Given the said scenario, the goal of this study is to probe how Muslim students and young professionals cope in a non-Muslim society.

It must be noted though that having the same belief system does not guarantee comparable manner of coping. Two Muslim students who live in Manila may not exhibit parallel way of facing a problem. The general rule of individual differences still applies here. Simply put, manifestation of religion varies across individuals. There are people who can easily be identified as Muslims just by looking at them or observing their practices like wearing *hijab* (head scarf), growing beard, performing *salah* (ritual prayer), celebrating *'Eid*s (festivals), and the likes. On the other hand, there are those who are in touch with their belief

through covert or unobservable practices like believing in the Hereafter, refraining from backbiting (as it is viewed negatively in Islam), believing in angels and *jinns*, and the likes. Hence, after recognizing utter differences in coping in the light of religious manifestation, another goal of this study is to identify Muslim youth's religiosity styles and how these influence their coping style.

RESEARCH OBJECTIVES

Given the above rationale, the primary objectives of this research are as follows:

1. to provide a demographic profile of Muslim youth who participated in this study in terms of:
   a. Gender
   b. Age
   c. Civil Status
   d. Educational Attainment
2. to determine their dominant religiosity and coping styles (in terms of *focus* and *method*) and the nature of their relationship
3. to assess the impact of demographics on their religiosity and coping style as they live in a non-Muslim society.

CHAPTER I
FRAMEWORK OF THE STUDY

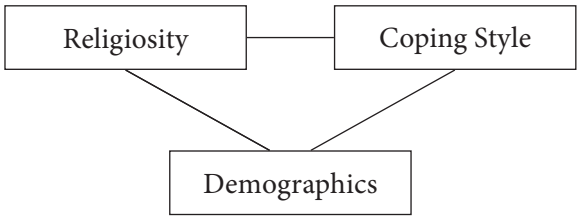
The bulk of studies about *coping* sprouted after the '9/11' incident in the United States. From these studies, various types of coping methods were used to help make sense of the way Muslims dealt with inevitable stereotypes and prejudice they encounter after the said event. In this study, coping is defined as the 'mechanism an individual employs in dealing with problems'. Factors used by Rudolf H. Moos, Ph.D. in his Coping Responses Inventory-Adult Form (CRI-Adult) (1993) were adapted in this research. In CRI-Adult, Moos (1993) classified one's manner of facing a problem in terms of orientation or *focus* of coping (approach or avoidance) and *method* of coping (cognitive or behavioral). If one manifests *approach coping style*, he or she is problem-focused. This style of coping also entails confronting the problem as a means of getting through the situation. On the other hand, one uses *avoidance coping style* if he or she is emotion-focused. People who employ avoidance coping tend to find ways to get rid of facing the problematic situation. In other words, when faced with problems, an individual may cope by either confronting it or escaping from it. In CRI-Adult, both focuses of coping (approach and avoidance) reflect cognitive and behavioral efforts in dealing with the problem.

As mentioned earlier, this study aims to also relate Muslim youth's coping styles with religiosity. In order to

carry this out, Go, Gonzalez, Ocampo, Medina, Basman & Arandia's GOMBA Religiosity Questionnaire (GRQ) (2012) was used. In GRQ, religiosity is defined as the 'individual's perception of one's religion in the conduct of his/her daily life, both in personal and relational aspects'. In this instrument, Go et al (2012) further suggested two major religiosity domains every individual may manifest: *extrinsic* and *intrinsic*. In the *intrinsic* religiosity domain, a person exhibits his or her religiosity by manifesting *unobservable* practices of religion like living by the values and beliefs taught in his or her faith. *Extrinsic*, on the other hand, refers to one's display of religiosity through *observable* acts such as wearing *hijab* (veil), performing *salah* (ritual prayer), fasting during the month of *Ramadan* and etc.

Finally, aside from Muslim youth's coping style and religiosity, demographics were also explored to further emphasize the relationship of these three variables. One's coping style and religiosity may vary depending on one's maturity. An individual might be more inclined to use approach rather than avoidance, cognitive over behavioral, and intrinsic instead of extrinsic depending on his or her maturity. In this study, age was used to gauge one's maturity. Since old age does not completely guarantee one's maturity, educational attainment was also included in an attempt to at least gauge cognitive maturity. Aside from maturity, gender was also incorporated together with civil status to determine whether one's ability of coping and manifestation of religiosity is gender-related and is influenced by companionship. Choices given in gender are male and female while in civil status, single, widow, divorced, and married were roped in. Hence, for the purpose of this study, demographics was only limited to the respondents' age, gender, civil status, and educational attainment.

Therefore, this research aimed to identify the relationship between religiosity, coping style, and demography.



CHAPTER II
REVIEW OF THE LITERATURE

Religion is a very sensitive topic to many, particularly in Southeast Asia where people are of diverse backgrounds. In the midst of such plurality, some individuals remain intolerant of other people's beliefs and practices. Despite the collective efforts being done by certain institutions—religious and non-religious—to promote interfaith awareness, most people still remain clueless on how to interact with individuals whose religion is different from theirs.

A. RELIGION

Religion and Spirituality

Religion is often used interchangeably with spirituality. Thus, before delving deeper into the relationship of religiosity, coping and demography, we will first discuss the definition of religiosity as used in this study and how it differs, if at all, from spirituality.

According to Corbett (1990), religion generally refers to a 'combined set of beliefs and activities of an individual'. On the other hand, May (1982) proposed that spirituality is the 'significance one gets from life experiences and this may or may not be theistic in nature' (Richards & Bergin, 1997; Shafranske & Gorsuch, 1984). Thus, *religion* is more focused on faith and activities based on one's chosen principle (i.e.

belief in God) while *spirituality* is centred on how one gives meaning to life based on one's experience. Stoll (1989) further suggests that a belief in a higher power (i.e. God) can be integrated with meaningful life experiences but a person can still have spiritual and meaningful life experience even without being theistic.

Religion in the Philippines

Muslims were once a leading group in the Philippines (Bara, 2011). According to Bara (2011), they even have 500 years of political history in the country. However, after the 2000 census, three religions were reported to have dominated the Philippines—Catholicism (82.9%), Islam (5%), and Iglesia Ni Kristo (2.3%) (Central Intelligence Agency, 2013). From this data, it is very apparent that Islam is still one of the major religions but, statistically, Muslims are a minority in the country. Despite such transition, Bara (2011) asserts that Muslims have a lasting contribution to the country's body politic. In fact, in his article, he explains that Filipino historians like Dr. Renato Constantino believes that Philippine history cannot be complete without learning about the development of Muslims in the country.

History of Muslims in the Philippines

Long before the advent of Christianity in the country, Islam was already a flourishing religion through the efforts of Muslim traders (Dolan, 1991). However, in 1500s, Ferdinand Magellan, a Portuguese explorer, unexpectedly sailed to the shores of the Philippines under the flag of Spain in search of a Western route to the East Indies where spices are traded. When he and his men landed on the shores of Cebu, most communities were observed to be without centralized

authority, with the exception of the Muslim sultanates in Sulu and other parts of Mindanao.

Due to the absence of centralized power, Spaniards, under Magellan's leadership, were able to convert a large number of Filipinos residing in politically autonomous units of the country. Despite the Spaniards' intense efforts to convert all inhabitants of the Philippines, Magellan and his men failed to do so in most Muslim sultanates. In fact, wars were staged between the two opposing parties and these lasted throughout the 300-year Spanish colonial rule. (Dolan, 1991)

Magellan's first attempt in changing the religion of Filipino Muslims was in Cebu where Magellan met with Raja Humabon, the locality head. It is said that Humabon's grandson was ill when Magellan (or one of his men) cured the young boy. In gratitude, Humabon allowed 800 of his followers to be 'baptized' Christian in a mass baptism. After this success, Magellan was later killed by Lapu-lapu, Humabon's cousin. After his death, another Christian explorer was sent to the Philippines in the person of Legaspi, who conquered a Muslim Filipino settlement in Manila in 1570. (Dolan, 1991)

B. COPING

Hundreds of years after the Spanish invasion, the Philippine government realized that there was a need for the establishment of an agency that specifically deals with the large Muslim minority. Hence, the Commission for National Integration was organized in 1957. This was later reorganized into the Office of Muslim Affairs and Cultural Communities (OMA). In 2010, the name of said office was changed to National Commission for Muslim Filipinos (NCMF). Due to the establishment of such office, respect towards the Muslim

religion and customs is institutionalized. Muslims are now exempt from the Philippine laws prohibiting polygamy and divorce, and in 1977, the government attempted to codify Muslim law on personal relationships and harmonize Muslim customary law with Philippine law. A significant break from past practice happened in 1990, when the Autonomous Region in Muslim Mindanao (ARMM) was established, giving Muslims in the region control over some aspects of governance in specific territories where they are the majority (Dolan, 1991).

Despite these adjustments observed by the Philippine government to accommodate Muslims in the country, differences between them and the non-Muslim majority still exist. Hence, various coping strategies on the part of the Muslim minority are still expected. One's social circumstances of import to the development of the self. As this changes, so does the self (Singelis, 1994). Those who were born and raised in a Muslim society for a considerable length of time but eventually transferred to Manila (a non-Muslim society) may obviously manifest a change in his or her way of life. Humans are social beings. It is therefore normal for them to display even a slightest hint of change. As mentioned, changes need not be grand. This just implies that a change in environment makes one's ways more varied and fluid.

Definition of Coping

Moos (2004) defines coping as an 'individual's orientation and activity in response to a stressor'. According to him, a person may either deal with the problem and initiate efforts to resolve it or try to avoid the source of dilemma and just focus mainly on the emotions associated with it. Thus, using Moos' argument, a Muslim experiencing discrimination as

he or she lives in a non-Muslim society may either face the problem or try to direct his or her attention to other things just so he or she can delay or avoid dealing with his or her problems.

Coping and Demography

Generally, there are few relationships between demography and individual's coping strategies except for gender, age, education, and socio-economic status (Jones, 2002; Lugo-Stalker, 2002). This means that these demographic variables are related to one's manifestation of coping.

The civil status of an individual is deemed important in identifying one's coping style because companionship has an influence on his/her dealing with the problem. According to Gore & Margione (1983), civil status and amount of household income are significantly associated with coping. Moreover, those who are not married or are divorced tend to manifest *avoidance* coping style compared with those who are married (Fernandes & Perez-Ramos, 2002; Wegerle, 1997). This means that those who are not in a committed relationship have the tendency to find ways to get rid of the problems that come their way more so than those who are married.

Gender also plays a role in coping. In fact, girls have the tendency to use both approach and avoidance coping styles compared to boys (Cooper et al, 1997; Griffith et al, 2000; Zanini, 2003; Barker-Collo, 2001; Bogdonoff, 2002; Patterson, 2001). Specifically, girls tend to seek more guidance and support (Schwartz & Stone, 1993; Thomas, 1998; Kao, 2000) in problem-solving (Thomas, 1998). Hence, in facing life's challenges, women have higher tendency to use both coping strategies and they prefer seeking assistance from others than rationalizing the situation on their own. Aside from this,

women also use distraction and relaxation more than men do as forms of coping (Schwartz & Stone, 1993). Hence, from these studies, we can imply that girls have a higher tendency to both confront and avoid the problem than do boys and their more favored manners of coping are also both social or interpersonal (seeking guidance and support) interpersonal (relaxation and sometimes, distraction).

In terms of maturity, positive reappraisal and problem solving (both approach coping styles) are useful in helping adults face life stressors successfully. This means that restructuring a problem in a positive way, while still accepting the reality of the situation and attempting to take action in dealing directly with the problem, help adults manage life stressors. On the other hand, adults who rely on cognitive avoidance and resigned acceptance (both avoidance coping) are less likely to resolve stressors successfully (Rijavec & Donevski, 1994). This implies that adults who are attempting to think realistically about the problem and are reacting to a problem by accepting it are less likely to resolve life stressors successfully. It can thus be implied that approach coping assists an individual better in dealing with life problems. In fact, according to Martin et al (1992), those who are 100 years and older generally tend to depend more on cognitive approach coping style than those who are in their 80s (Martin et al, 1992). Thus, this is also an implication that chronological maturity is associated with one's coping particularly in making sense of the situation logically.

As mentioned earlier, education also has a link with coping. For example, those who come from dual-income families, and have higher level of education and work use reframing as a coping strategy (Alampay, 2001). Specifically, highly-educated individuals are reported to use problem-solving strategies as ways of coping (Billings & Moos, 1984). Conversely, those who have low educational attainment

and income are more inclined to adapting passive coping behavior (Alampay, 2001). Thus, these studies further affirm that coping indeed is associated with one's educational attainment.

Coping and Religiosity

Aside from demography, various studies also proved that religion and coping really have a significant relationship. According to Pargament et al (1990), factors under approach coping such as positive reappraisal, seeking (guidance and) support and problem solving are related to spiritually-based coping. This means that construing a problem in a positive way while still accepting the reality of the situation and taking action in dealing directly with the problem are related to one's manner of coping spiritually. Aside from that, spiritually-based coping is also associated with an individual's attempt to seek information, guidance and support first as a way of approaching the problem. This manifests itself in people who pray for guidance first before making any move toward solving the problem. On top of that, these approach copings were also associated with doing good deeds and having religious support. Similarly, more application of these and less avoidance was correlated with better religious outcome and mental health (Richards & Bergin, 1997; Pargament et al. 1998; Koeing, 2001; Pargament, 1997; Pargament et al, 1990; Myers & Diener, 1995; Crawford et al, 1989; Bergin et al., 1994; Richards & Potts, 1995). This means that those who employ approach coping more frequently have higher tendency to manifest better practices in religion and are more mentally fit to adapt to stressful situations.

According to Ross, Handal, Clark & Vander (2008), greater levels of religiosity and religious coping influence both positive and negative psychological adjustment. If an

individual is more inclined to his or her religion, there is a tendency to include God in his or her coping (Ross, Handal, Clark & Vander, 2008). On the other hand, individuals who do not have positive spiritual identity lack purpose and meaning in life and do not feel God's love (Bergin et al., 1994; Richards & Potts, 1995).

In the coping process, religion plays many roles. These include providing meaning to life, providing a greater sense of control over one's situations, and building higher self-esteem (Spilka, Shaver, & Kirkpatrick, 1985). Thus, religion has a huge impact on an individual's life. According to Hammond (1988), religion provides a sense of identity to a person which guides him/her in dealing with any problem (Hathaway & Pargament, 1992). In fact, Belavich (1995) cited that prayer and faith in God are the two most common coping responses. Other coping responses include guidance from the churchmen and conversing with God in prayer about how to deal with a particular problem (Belavich, 1995).

C. RELIGIOSITY AND DEMOGRAPHY

Many studies on religiosity were done across countries and many of which focus on religiosity's relationship with demography. In terms of civil status, some researchers suggest that religiosity is related to being unmarried or widowed. According to Imamura (2009), one's manifestation of religion is linked with whether a person is married or widowed. Aside from that, perception of social support also influences one's religious manifestation—being *in a relationship* affects one's perception of 'receiving support from others'. Thus, this further implies the effect of civil status to one's religion.

Gender also influences one's religiosity. In fact, religiosity was associated with conventional gender roles

(Abouchedid, 2007). Imamura (2009) further added that between men and women, women have higher tendency to be religious.

Like gender, age also impacts one's religiosity. Studies show that as one gets older, the more religious one becomes (Imamura, 2009). Similarly, another study suggests that the younger generation is less likely to be religious than the older ones (2008 Pew Religious Landscape Survey).

Many studies linking religiosity and education are also done. In fact, studies revealed that religious involvement and formal education are negatively related (Mukhopadhyay, 2011; Albrecht & Heaton, 1984; Photiadis & Biggar, 1962). This means that the more educated one gets, the less religious he or she becomes. Aside from this, researchers further suggest that educational attainment influences one's moral attitudes (Scheepers, TeGrotenhuis & Van der Silk, 2002). It must be noted though that this effect on moral attitudes only becomes high when educational attainment is linked to parental and individual religiosity.

CHAPTER III
METHODOLOGY

A. PARTICIPANTS AND RESEARCH LOCALE

My Deen in the Metro study is an attempt to discuss how Muslims manifest their religiosity as they cope in a non-Muslim society. Since this started out as an exploratory study, the result of this research shall serve as the *phase one* of the series of studies the researcher aim to accomplish. Hence, the output of this *phase* is merely descriptive in nature.

In this study, 'Muslim youth' is defined as *Muslim individuals who are 15-40 years old*. Since this research aims to focus on those who are living in a non-Muslim society, target participants were initially limited to those who are presently residing in the National Capital Region. However, due to limitations in terms of resources, time and availability of participants, final samples for this study were eventually refined to those who are from the City of Manila—one of the largest cities in the Philippines which is also a melting pot of different religions.

Participants were identified by tapping various Muslim youth organizations that are Manila-based. These organizations became the researcher's co-organizers in holding a seminar-workshop on coping styles of Muslim youth where the research instruments were distributed. As the co-organizer, they were expected to help the researcher gather or invite participants to partake in the event. The

seminar-workshop was entitled, "My *Deen*[1] in the Metro: Coping Styles of Filipino Muslim Youth".

The researcher during the pilot study of *My Deen in the Metro: Coping Styles of Muslim Youth*

Of the five organizations tapped, only three responded: Nur Factory (Quezon City), Markaz Dar At-Tazkiyyah (City of Manila) and Mujadiddaat (City of Manila). These groups are regularly organizing seminars or events for Muslim youth in their respective localities. Their usual attendees ranged from students to young professionals. From these three, the first organization to confirm partnership with the researcher was *Nur Factory*. Hence, attendees from the event co-organized with them served as the participants for the *pilot study*. This meant that attendees from the seminars the researcher co-organized with the remaining two groups (*Markaz Dar At-Tazkiyyah* and *Mujadiddaat*) became the actual participants for the research. Coincidentally, these two were based in the City of Manila. Thus, from National Capital Region, research locale was eventually redefined to *Manila*. The new research locale still fits into the scope of the study since it is still a non-Muslim society.

1 *Deen* is an Arabic term which means 'religion' in English

Pilot study with *Nur Factory* held in Quezon City

Actual data-gathering with *Markaz Dar At-Tazkiyyah* (left) & *Mujadiddaat* (right) on two separate occasions in the City of Manila

B. PROCEDURE

As mentioned, data gathering was integrated with the seminar-workshop. Hence, the actual event was divided into two parts: (1) Islamic lecture spearheaded by the partner organization and (2) lecture series on religiosity and coping styles led by the researcher and her co-facilitator.

In the lecture series portion, program flow was organized into two parts: (1) lecture on religiosity and (2) lecture on coping styles. On the *religiosity* part, GOMBA Religiosity Questionnaire (GRQ) was administered to the

participants. With careful guidance, participants checked their own papers to know their score on the test. After knowing their test profile, the meaning of their scores was then discussed with them. Before taking the next test, they were given a few minutes to take a break. It was done so to avoid burn out on the part of the participants. After their break, Coping Responses Inventory-Adult (CRI-Adult) was then administered to them. Compared to GRQ, CRI-Adult is more complicated to self-check especially if one does not have enough background on testing. Thus, the researcher and her co-facilitator just discussed with them each of the coping style proposed by the instrument author. This aided the participants in identifying their possible coping styles.

C. INSTRUMENTS

GRQ

GOMBA Religiosity Questionnaire (GRQ) is a test by Go, Gonzalez, Ocampo, Medina, Basman and Arandia (2012) that measures an individual's manifestation of religiosity. In this test, religiosity is divided into two domains--*intrinsic* and *extrinsic*. *Intrinsic* refers to non-observable manifestation of religion while *extrinsic* focuses on the observable.

Intrinsic religiosity measures three factors in GRQ: *beliefs*, *values*, and *religious experience*. A person is more inclined to manifest *belief* if he or she is in touch with his or her religion due to the 'effect of religiosity to his or her thoughts and perception'. *Values*, on the other hand, refer to the 'effect of a person's religiosity in how he or she lives life'. Lastly, *religious experience* refers to the 'effect of a person's religiosity on his or her well-being'.

On the other hand, *extrinsic* religiosity measures two factors: *organized religious rituals* and *personal rituals*.

Religion is observed through *organized religious rituals* if a person becomes more identified with his or her religion through 'practices involved in being a member of a public religious institution'. *Personal rituals*, on the other hand, are used if he or she observes his or her religion, through 'individual religious practices that are not necessarily required by public religious institution that one is a member of'.

The cronbach alpha of GRQ is 0.927. This means that the result obtained from this test is highly reliable.

CRI-Adult

Coping Responses Inventory-Adult Form (CRI-Adult) is an instrument by Moos (1993) that measures eight coping styles an individual may manifest in stressful situations. These coping styles include: logical analysis, positive reappraisal, seeking guidance and support, problem solving, cognitive avoidance, acceptance or resignation, seeking alternative rewards, and emotional discharge. According to Moos (1993), in each focus of coping (*approach* or *avoidance*), there are four factors that can specifically describe one's way of confronting a dilemma.

In the *approach* coping style, an individual may display *positive reappraisal*, *seeking guidance and support*, *logical analysis*, and *problem solving*. In *positive reappraisal*, an individual attempts to construe and restructure a problem in a positive way while still accepting the reality of the situation. One uses *seeking guidance and support* as a way to approach the problem if he or she attempts to seek information, guidance, or support first. *Logical analysis* is applied if one attempts to understand and prepare mentally for a stressor and its consequences. Lastly, an individual utilizes *problem solving* if he or she attempts to take action in dealing

directly with the problem. Of these factors, *logical analysis* and *positive reappraisal* are classified as *cognitive* methods of coping while *seeking guidance and support* and *problem solving* are *behavioral*.

In the *avoidance* coping style, factors include *cognitive avoidance*, *emotional discharge*, *acceptance* or *resignation*, and *seeking alternative rewards*. *Cognitive avoidance* is used when an individual attempts to avoid thinking realistically about a problem. One employs *emotional discharge* if he or she attempts to reduce tension by expressing negative feelings. A person uses *acceptance* or *resignation* if he or she attempts to react to the problem by accepting it. Lastly, *seeking alternative rewards* is applied if he or she attempts to get involved in substitute activities and create new sources of satisfaction. Of these *avoidance* coping factors, *cognitive avoidance* and *acceptance* or *resignation* are classified as *cognitive* methods of coping while *emotional discharge* and *seeking alternative rewards* are *behavioral*.

The cronbach alpha of CRI-Adult is 0.45 (men) and 0.47 (women). This means that the result obtained from this test is highly reliable.

D. ANALYSIS

The data gathered in this study was analyzed using the descriptive statistics, *t-test*, and *Pearson r* correlation.

In terms of descriptive analysis, data only on mean and standard deviation were gathered. In this manner, average scores per instrument, demography and factors are known. This analysis is also useful in identifying the variability of the participants' scores which is helpful in data evaluation.

T-test was used to compare means of the variables. In this study, means compared were the variables in religiosity

styles (intrinsic and extrinsic), coping styles (approach and avoidance; cognitive and behavioral), and demography (gender, age, civil status, and educational attainment). This process is helpful in knowing more about the data by comparing their average scores.

Pearson r correlation was also utilized in this study to know the strength and relationship across variables: *religiosity* variables and *coping* variables and *demography*.

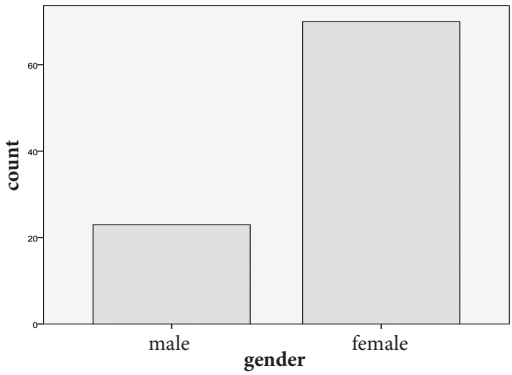
CHAPTER IV
RESULTS AND DISCUSSION

As mentioned earlier, from the three sets of data collected, only research data obtained from the latter two workshops—workshops from *Markaz Dar At-Tazkiyyah* and *Mujadiddaat*—were included in the analysis since the first set was the pilot run of the proposed data-gathering technique. From the remaining two sets, data was further screened by checking for respondents who failed to finish the test. Inputs from these respondents were removed from the data set. Thus, from the initial 131 total participants of the study, only 93 remained for data analysis.

A. DEMOGRAPHIC PROFILE OF THE PARTICIPANTS

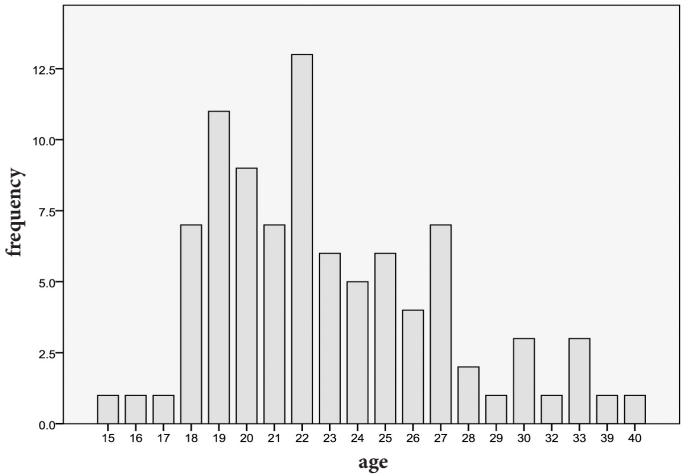
Gender

According to Cooper et al (1997), girls are more inclined to rely both on approach and avoidance coping than boys. Thus, gender influences one's coping style. From the final data set, a majority of the respondents are females (75.3%). Because the distribution is highly disproportionate and males are not well-represented, data will not be analyzed by making comparisons between the two genders.



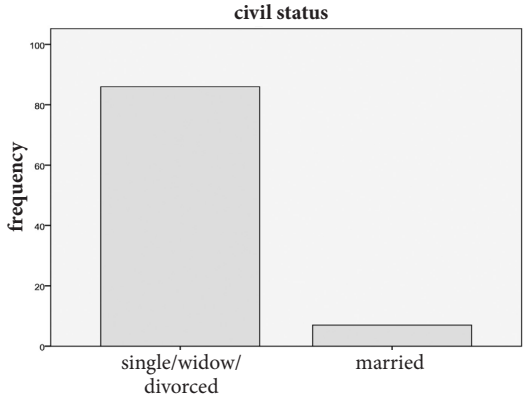
Age

Aside from gender, it was also hypothesized that age influences one's manifestation of religiosity and his or her ways of coping with a problem. The age of the respondents who participated in the study fall between 15 and 40 years old. Participants invited to partake in this study are those who are college students and young professionals. In the Philippines, such group of individuals fall around the said bracket. Hence, distribution of scores in terms of age is widely dispersed. It is to be noted that 23 is the average age and the most common age is 22. From this information, it can readily be seen that most participants of this research are young adults.



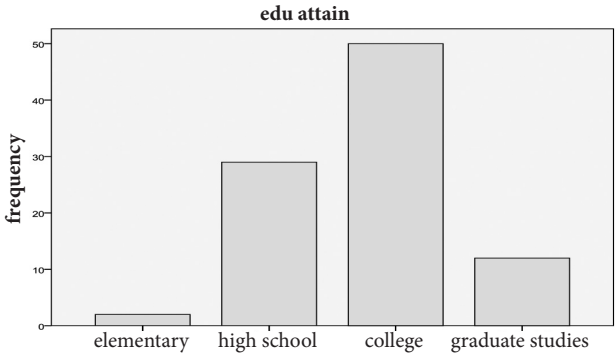
Civil Status

Companionship is an important factor to determine how an individual copes in an environment where he or she is a minority. Thus, civil status was used as an indicator of one's exposure to having a company. From the pool of respondents, it was found out that majority of them (92.5%) were either single, widow, or divorced. Out of this data, it was automatically inferred that such a data will have an influence on the group profile in terms of religiosity and coping styles.



Educational Attainment

Aside from age, one's educational attainment can also determine one's level of maturity in terms of facing challenges as he or she lives in a society where he or she is not part of the common group. Data suggests that majority of the members of the group (53.8%) already finished their college education. Because many of the participants are still college students at the time of data collection, population of high school graduates (31.2%) came in next. This further suggests that the sample group are students and young professionals.



B. RELIGIOSITY AND COPING STYLES OF THE PARTICIPANTS

General Relationship of the Major Variables

Relationship of Intrinsic Variables

In this group of respondents, the intrinsic manifestation of their religiosity is mostly through their beliefs[1], followed by religious experience[2] and lastly, values[3]. This means that, intrinsically, the impact of *Islam* to them is more emphasized in their thoughts and perceptions (*beliefs*). In living their lives, Muslims from this group manifest their religiosity through thoughts and their perceptions. These beliefs are guided by Islam, hence, in giving meaning to life, their attachment to religion is more apparent in how they think and perceive things or events. It is also clear that despite having the relatively lowest average, *values* has the most widely dispersed scores[4] while *beliefs* has the least heterogeneous scores[5]. In other words, it is in the *beliefs* where relatively least varied scores are found. Since it also has the highest average of scores, it is possible that respondents have almost similar answers to questions under this sub-domain.

In terms of correlation, all of the intrinsic sub-domains have strong, positive, and significant relationship with each other. It is interesting to note that *beliefs* and *values* have the highest degree of association[6]. Thus, as one's score in each of the sub-domains (*beliefs, values* or *religious experience*)

1 mean=4.69

2 mean=4.53

3 mean=4.49

4 Standard Deviation=.47

5 Standard Deviation=.33

6 (r=0.715; sig=.000, significant at 0.01 level, 2-tailed)

increases, his or her score in the rest of the sub-domains also increases and vice versa. If one is high in *values*, he or she is also high in *beliefs* and *religious experience* and vice versa. If a person is highly influenced by *Islam* in the way he or she lives his or her life (*values*), it follows that he or she is also highly influenced by religion in the way he or she thinks and perceives events (*beliefs*) and in his or her well-being (*religious experience*) and vice versa.

Data also shows that *beliefs* accounts for 51.12% of the variability in the *values*. Thus, the effect of religiosity in an individual's thoughts and perception (*belief*) can predict the effect of a person's religiosity on how he or she lives life (*values*) by more than 50%. A person's belief in the *Yawmul Qiyamah* (Day of Judgment) can predict how he or she lives his or her life. He or she may manifest actions that are favorable to the teachings of *Islam* because he or she believes that he or she will be accountable for his or her every act on *Yawmul Qiyamah*. The data consequently suggests that each sub-domain is highly related to each other.

Relationship of Extrinsic Variables

In this group of respondents, the extrinsic manifestation of their religiosity is more on their personal rituals[7] than by organized religious rituals[8]. This means that this group of respondents are relatively more shaped by their individual religious practices (*personal rituals*) than by the religious rituals observed by the religious institution they belong to (*organized religious rituals*). There are Muslims who manifest their religiosity more often through certain rituals they personally practice. These include reciting *Ayatul Kursi* (the

7 mean=4.33

8 mean=4.28

Verse of the Throne) before going to sleep, offering *sadaqa or zakat* (charity), fasting during the month of *Ramadan*, and the like. These Muslims practice their religion in these manners better than getting involved with group activities such as performing *taraweeh* in the month of *Ramadan* and *jum'ah* every Friday in congregation because they find these personal rituals most effective for them. It is also clear that the same extrinsic sub-domain (*personal rituals*) relatively has more widely dispersed scores[9] while *organized religious rituals* have lesser heterogeneous scores[10]. In other words, it is in the *organized religious rituals* where relatively lesser varied scores are found. Since it also has the higher average of scores, it is possible that respondents have almost similar answers to questions under this sub-domain.

The extrinsic sub-domains have strong, positive, and significant relationship[11] with each other. This means that as one's score in *organized religious rituals* increases, his or her scores in *personal rituals* also increase and vice versa. Thus, data suggests that if a person is more involved in religious institutional activities such as attending *Islamic* schools on weekends (*organized religious rituals*), there is a likelihood that he or she is also involved in personal religious practices such as reading the *Qur'an* (Holy Book) at home (*personal* rituals) and vice versa.

Data also shows that *organized religious rituals* account for 45.29% of the variability in the *personal rituals*. Thus, one's practice that involved in being a member of a public religious institution (*organized religious rituals*) can predict his or her religious practices that are not necessarily required by public religious institution that one is a member of (*personal*

9 Standard Deviation=.483

10 Standard Deviation=.480

11 (r=0.673; sig=.000, significant at 0.01 level, 2-tailed)

rituals) by almost 50%. One's involvement in *masjid* or *Islam*-related activities can predict his or her manifestation of religious personal rituals by 50%. It may be that he or she learned these rituals on his or her own like reciting *Ayatul Kursi* before going to sleep through his or her involvement in such institutional activities.

Relationship of Intrinsic and Extrinsic

In terms of religiosity, participants are more inclined to adapting intrinsic or non-observable manifestations of their religion than extrinsic. This means that participants have more inclination to practicing their religion in ways that are not directly observed by other people. It is interesting to note that participants in this study are from organized Muslim groups in Manila. Hence, this result clearly states that their attendance or participation in such events or activities are motivated intrinsically (because of their *beliefs*, *values*, and *religious experience*) and not merely because of *rituals* that they have become accustomed to doing because of their membership in such a group. Compared to intrinsic[12], however, answers to the questions that fall under the extrinsic domain are more widely dispersed[13]. This means that responses to such questions are more varied.

After testing the relationship of the two religiosity domains, it was found that their association is a strong, positive one[14]. This means that as one's intrinsic religiosity increases, his or her extrinsic religiosity also increases and vice versa. Because the relationship is strong, it is inferred that if one has high unobservable manifestations of

12 Standard Deviation=.37

13 Standard Deviation=.45

14 (r=0.729; sig=.000, significant at 0.01 level, 2-tailed)

religiosity, this automatically means that his or her extrinsic religious behavior are also apparent. Although this might not always be the case, data suggests that the more one observes intrinsic manifestation of religiosity (i.e. perceiving things or events based on the teachings of *Islam*), the more he or she also observes extrinsic religiosity (i.e. involvement with certain Islamic rituals such as performing pilgrimage or *hajj*, reciting supplications or *du'a*s, etc.) and vice versa.

Data also shows that intrinsic domain of religiosity accounts for 53.14% of the variability in the extrinsic domain. Thus, one's non-observable manifestations of religiosity (intrinsic) can predict his or her extrinsic manifestations of religiosity by more than 50%.

Relationship of Approach Coping Variables

In this group of respondents, the approach coping style that is mostly employed is *positive reappraisal*[15], followed by *problem solving*[16], *logical analysis*[17], and *seeking guidance and support*[18]. This means that in observing approach coping, participants are mostly inclined to confronting the problem by attempting to restructure it in a positive way while still accepting its reality (*positive reappraisal*). A *hijabi*[19] who experiences discrimination may cope with such a problem by looking at the situation in a positive way ('*maybe I will be rewarded for this trial*') while accepting the reality ('*it still does not feel good being marginalized*'). It is also clear that aside from obtaining the highest average, *positive reappraisal*

15 mean=12.83

16 mean=12.13

17 mean=10.94

18 mean=10.91

19 a girl who wears head scarf

also has the most widely dispersed scores[20]. In other words, it is in this sub-domain where relatively the most varied scores are found. Even if it also has the highest average of scores, data suggests that respondents have the most varied answers to questions under this sub-domain.

All of the approach coping style sub-domains have positive and significant relationship with each other. It is interesting to note that *problem solving* and *positive reappraisal* have the highest degree of association[21]. Thus, as one's score in each of the sub-domains (*problem solving, logical analysis, positive reappraisal* or *seeking guidance and support*) increases, his or her score in the rest of the sub-domains also increases and vice versa.

Data also shows that *problem solving* accounts for 51.84% of the variability in the *positive reappraisal*. Thus, finding ways to deal directly with the problem such as knowing how to respond the next time one encounters such discrimination can predict one's attempts to restructure a problem in a positive way while still accepting the reality of the situation by 51-52%.

Relationship of Avoidance Coping Variables

The avoidance coping style that is mostly employed is through *seeking alternative rewards*[22], followed by *cognitive avoidance*[23], *acceptance or resignation*[24], and *emotional discharge*[25]. This means that in observing avoidance coping,

20 Standard Deviation=.3.52

21 (r=0.720, sig=.000, significant at 0.01 level, 2-tailed)

22 mean=11.19

23 mean=10.53

24 mean=10.25

25 mean=8.98

participants are mostly inclined to avoiding the problem by attempting to get involved in substitute activities and create new sources of satisfaction (*seeking alternative rewards*). A Muslim male who usually gets teased by his friends for not drinking alcohol may avoid the problem by joining other peer groups whose activities are permissible to his religion such as engagement to sports. In such an instance, he gets to avoid the source of the problem and still gets satisfied with the substitute activity he then chosen. It is also clear that aside from obtaining the highest average, *seeking alternative rewards* also has the most widely dispersed scores[26].

All of the avoidance coping style sub-domains have positive and significant relationship with one another. It is interesting to note that *acceptance or resignation* and *cognitive avoidance* have the highest degree of association[27]. Thus, as one's score in each of the sub-domains (*problem solving, logical analysis, positive reappraisal* or *seeking guidance and support*) increases, his or her score in the rest of the sub-domains also increases and vice versa.

Data also shows that *acceptance or resignation* accounts for 33.99% of the variability in the *cognitive avoidance*. Thus, attempts to react to the problem by accepting the fact that he will continuously get teased for not drinking alcohol while in the company of this particular peer group can predict his attempts to avoid thinking realistically about such a problem by 33-34%. The data consequently suggests that each sub-domain is related each other.

26 Standard Deviation=3.23

27 (r=0.583, sig=.000, significant at 0.01 level, 2-tailed)

Relationship of Approach and Avoidance

In terms of coping styles, participants have higher average score in approach coping than in avoidant. Thus, research data proves that when faced with problems, participants are more confrontational than avoidant. This means that they are more inclined to meet challenges head-on than opting to move away from these in many possible ways. And also, compared to avoidance[28], answers to the questions that fall under the approach coping style are more widely dispersed[29]. This means that responses to such questions are more varied.

Relationship between Cognitive and Behavioral Coping

In terms of domains of coping, participants have higher average scores in cognitive coping than behavioral. This means that participants are more inclined to operating on the cognitive level when faced with problems than focusing on emotions associated with the problem. A Muslim girl who gets reprimanded by her teacher for refusing to remove her *hijab* for an inter-school competition may cope more by spending time thinking about the possible reasons why her teacher wants her to remove the piece of cloth than by investing efforts to feel bad about the situation. And also, compared to behavioral[30], answers to the questions that fall under the cognitive coping domain are more widely dispersed[31]. This means that responses to such questions are more varied.

28 Standard Deviation= 2.32

29 Standard Deviation=2.69

30 Standard Deviation= 2.35

31 Standard Deviation=2.49

Relationship of Intrinsic Religiosity and Approach Coping

Compared to intrinsic[32], scores under approach coping style[33] are more widely dispersed. This means that answers in the said coping style are more varied than the ones in intrinsic. Despite such difference, a weak, positive relationship between the two[34]was computed. This means that as one's intrinsic domain of religiosity increases, his or her approach coping style also increases and vice versa. The more one exudes non-observable manifestations of religiosity, the more he or she becomes more confrontational of his or her problems. If one is in touch with his or her religion because of his or her beliefs, values and religious experience, there is high likelihood that he or she makes efforts to solve whatever problems he or she encounters. A professional Muslim lady who encounters problems at work and is more inclined to manifesting her practice of Islam through her beliefs, the way she lives her life and her well-being is more likely to cope with her problems by confronting them.

Data also shows that intrinsic domain of religiosity accounts for 7% of the variability in the approach coping style. Thus, one's non-observable manifestations of religiosity (intrinsic) can predict his or her confrontation of a problem by 7%. Thus, even if intrinsic religiosity can predict the tendency of a person to confront a problem, it cannot largely account for it. Other factors may play a role in determining whether one will deal the problem or will simply find ways of avoiding it.

32 Standard Deviation=.37

33 Standard Deviation=2.69

34 (r=0.265; sig=.010; significant at 0.05 level, 2-tailed)

Relationship of Extrinsic Religiosity and Approach Coping

Compared to extrinsic[35], scores under approach coping style[36] are more widely dispersed. This means that answers in the said coping style are more varied than the ones in extrinsic. In addition to such difference, it was found that there is no significant relationship between the two. This means that one's extrinsic religiosity does not have a direct relationship with one's manifestation of approach coping style. One's observable manifestations of religiosity do not have a link with the way one confronts his or her problems. If a Muslim male student is in touch with his religion through his religious rituals, it does not necessarily follow that he makes efforts to solve whatever problems he encounters at school like getting failing grades in one of his major subjects. He may be coping with his problems in other ways like busying himself with other school activities just so that he can avoid facing such a problem.

Relationship of Intrinsic Religiosity and Avoidance Coping

Compared to intrinsic[37], scores under avoidance coping style[38] are more widely dispersed. This means that answers in the said coping style are more varied than the ones in intrinsic. In addition to such difference, it was found out that there is no correlation between the two. This means that one's intrinsic religiosity does not have a direct relationship with his or her manifestation of avoidant coping style. One's

35 Standard Deviation=.44

36 Standard Deviation=2.69

37 Standard Deviation=.368

38 Standard Deviation=2.32

non-observable manifestations of religiosity do not have a connection with the way one avoids problems. If a Muslim female professional is in touch with her religion because of her beliefs, values, and religious experience, it does not necessarily follow that she makes efforts to avoid whatever problems she encounters at work or wherever she may be. She may be coping with her problem by actually confronting it or finding ways to solve it like consulting colleagues in order to solve such a problem.

Relationship of Extrinsic Religiosity and Avoidant Coping

Compared to extrinsic[39], scores under avoidance coping style[40] are more widely dispersed. This means that answers in the said coping style are more varied than the ones in extrinsic. In addition to such difference, it was found that there is no correlation between the two. This means that one's extrinsic religiosity does not have a direct relationship with one's manifestation of avoidant coping style. One's observable manifestations of religiosity do not have a link with the way one avoids his or her problems. If a Muslim male nurse is in touch with his religion because of his religious rituals, it does not necessarily follow that he makes efforts to avoid whatever problems he encounters in the hospital like being summoned by the head nurse due to his multiple cases of tardiness in his duties. He may be using his extrinsic manifestation of religion to confront the problem by talking to his workmates about it.

39 Standard Deviation=.44

40 Standard Deviation=2.32

Relationship of Intrinsic Religiosity and Cognitive Coping

Compared to intrinsic[41], scores under cognitive coping domain[42] are more widely dispersed. This means that answers in the said coping domain are more varied than the ones in intrinsic. Despite such difference, a weak, positive relationship between the two[43] was computed. This means that as one's intrinsic religiosity increases, his or her cognitive coping also increases and vice versa. The more one exudes non-observable manifestations of religiosity, the more he or she becomes more rational in dealing with his or her problems. If a Muslim female teacher is in touch with her religion because of her beliefs, values and religious experience, there is likelihood that she makes cognitive efforts to respond to her problems like discussing these problems with her colleagues in the university where she is working.

Data also shows that intrinsic domain of religiosity accounts for 5.62% of the variability in the cognitive coping domain. Thus, one's non-observable manifestations of religiosity (intrinsic) can predict his or her rational response to a problem by more than 5-6%. Thus, even if intrinsic religiosity can predict one's tendency to rationalize his or her problems, it cannot largely account for it. Other factors may play a role in predicting one's tendency to use cognitive coping.

41 Standard Deviation=.37

42 Standard Deviation=2.49

43 (r=0.237; sig=.022; significant at 0.05 level, 2-tailed)

Relationship of Extrinsic Religiosity and Cognitive Coping

Compared to extrinsic[44], scores under cognitive coping domain[45] are more widely dispersed. This means that answers in the said coping domain are more varied than the ones in extrinsic. In addition to such difference, it was found out that there is no correlation between the two. This means that one's extrinsic religiosity does not have a direct relationship with his or her manifestation of cognitive coping. One's observable manifestations of religiosity do not have a link with the way one confronts problems cognitively. If a male Muslim student who experiences homesickness as he lives away from his family is in touch with his religion because of his religious rituals, it does not necessarily follow that he makes cognitive efforts to solve such a problem. He may be focusing on the emotions associated with it like openly showing his loneliness brought by this homesickness which encourages him to deal with his problem.

Relationship of Intrinsic Religiosity and Behavioral Coping

Compared to intrinsic[46], scores under behavioral coping domain[47] are more widely dispersed. This means that answers in the said coping domain are more varied than the ones in intrinsic. In addition to such difference, it was found out that there is no correlation between the two. This means that one's intrinsic religiosity does not have a direct relationship with the manifestation of behavioral coping domain. One's

44 Standard Deviation=.44

45 Standard Deviation=2.49

46 Standard Deviation=.368

47 Standard Deviation=2.35

non-observable manifestations of religiosity do not have a link with the way one manages problems with emotions associated with it. If a Muslim male athlete who is having problems with his performance in competitions is in touch with his religion because of his beliefs, values, and religious experience, it does not necessarily follow that he makes behavioral efforts to solve whatever problems he encounters like focusing on the social pressure coming from his coach which consequently forces him to do something about his problem.

Relationship of Extrinsic Religiosity and Behavioral Coping

Compared to extrinsic[48], scores under behavioral coping domain[49] are more widely dispersed. This means that answers in the said coping domain are more varied than the ones in extrinsic. In addition to such difference, it was found out that there is no correlation between the two. This means that one's extrinsic religiosity does not have a direct relationship with the manifestation of behavioral coping. One's observable manifestations of religiosity do not have a link with the way one manages problems behaviorally. If a Muslim female architect who is having problems talking to males in her workplace is in touch with her religion because of her religious rituals, it does not necessarily follow that she uses these feelings of discomfort to help her solve the problem. She may be dealing with such a problem by focusing more on the reasons behind it.

48 Standard Deviation=.44

49 Standard Deviation=2.35

C. IMPACT OF DEMOGRAPHY ON RELIGIOSITY AND COPING STYLES

Gender

Gender and Intrinsic Sub-Domains of Religiosity

Of all the intrinsic sub-domains, *beliefs* has the highest average score[50] followed by *religious experience*[51] and lastly, *values*[52]. After running correlation analysis, it appeared that *beliefs*[53], *values*[54], and *religious experience*[55] are significantly related to gender. This means that a Muslim student's manifestation of religion through beliefs, way of life, and well-being is related to whether one is a boy or a girl. Because the sign of the coefficient is completely dependent on which category to which code (i.e. 0=male, 1=female) it was assigned, all information about the direction of the relationship will be ignored. However, data still suggests that gender accounts for 5% of the variability in score in *beliefs*, 7% in *values*, and 3% in *religious experience*. This means that although gender can predict one's manifestation of religion through the individual's beliefs, way of life or well-being, gender still has a low predictive power. Thus, while it is said that the Muslim student's manner of displaying his or her *beliefs*, *values*, or *religious experience* depends on his or her gender, such a factor cannot be the sole basis because its predictive power is still low.

50 mean=4.69

51 mean=4.53

52 mean=4.49

53 (r=-.226)

54 (r=-.264)

55 (r=-.166)

Gender and Intrinsic Religiosity

Compared to intrinsic religiosity domain[56], the gender[57] of the respondents is less dispersed. This makes sense because data in gender is a discrete dichotomy—possible answer is either 'male' or 'female'. In spite of such difference, it was found that there is correlation between the two[58]. This means that gender does have a relationship with the manifestation of intrinsic religiosity domain. One's gender does have a link with one's non-observable manifestations of religion.

Data also shows that gender accounts for approximately 6% of the variability in the intrinsic religiosity domain. Thus, like the sub-domains of intrinsic religiosity, gender's predictive power on his or her overall intrinsic manifestations of religiosity is also low. While gender can predict a Muslim's manifestation of intrinsic religiosity, it cannot largely account for it.

Gender and Extrinsic Sub-Domains of Religiosity

Of the two extrinsic sub-domains, *personal rituals* showed higher average score[59] than *organized religious rituals*[60]. After running correlation analysis, it appeared that *personal rituals*[61] and *organized religious rituals*[62] are significantly related to gender. This means that a Muslim professional's manifestation of religion through personal rituals and rituals observed by the Muslim religious group one belongs

56 Standard Deviation=.37

57 Standard Deviation=.43

58 (r=-.245; sig=.018, significant at 0.05 level, 2-tailed)

59 mean=4.33

60 mean=4.28

61 (r=-.301)

62 (r=-.294)

to is related to whether he or she is a boy or a girl. Thus, gender is associated with one's inclination to *personal* and *organized religious rituals*. Data also suggests that gender can predict one's score in *personal rituals* by 9% and in *organized religious rituals* by 8.6%. Thus, while it is said that a Muslim's manner of displaying *personal rituals* or *organized religious rituals* depends on one's gender, such a factor cannot be the sole basis because its predictive power is still low.

Gender and Extrinsic Religiosity

After running correlation analysis between gender and extrinsic religiosity, it was found out that there is a significant relationship between the two[63]. This means that gender has a relationship with the manifestation of extrinsic religiosity.

Data also shows that gender accounts for 10.6% of the variability in the extrinsic religiosity domain. Thus, like the sub-domains of extrinsic religiosity, gender's predictive power on the overall extrinsic manifestations of religiosity is also low. Although gender can predict a male Muslim engineer's manifestation of extrinsic religiosity while in the field or wherever he may be, it cannot largely account for it.

Gender and Approach Coping Sub-Domains

Of all the approach coping sub-domains, *positive reappraisal* has the highest average score[64] followed by *problem solving*[65], *logical analysis*[66], and *seeking guidance and support*[67]. After

63 (r=-.326; sig=.001, significant at 0.01 level, 2-tailed)

64 mean=12.83

65 mean=12.13

66 mean=10.94

67 mean=10.91

running correlation analysis, it appeared that none of the sub-domains are significantly related to gender. Thus, one's manifestation of these sub-domains is not associated with one's gender. A Muslim female student's specific way of confronting a problem with her school activities is not in any way related to her being a female.

Gender and Approach Coping

After running correlation analysis, it was found that there is no correlation between approach coping and gender. This means that gender does not have a relationship with the manifestation of approach coping style. A Muslim male driver's overall way of confronting his family problem is not in any way related to his being a male.

Gender and Avoidant Coping Sub-Domains

Of all the avoidant coping domains, *seeking alternative rewards* has the highest average score[68] followed by *cognitive avoidance*[69], *acceptance or resignation*[70], and *emotional discharge*[71]. After running correlation analysis, it appeared that only *emotional discharge*[72] have a relationship with gender. In fact, data suggests that gender accounts for 4.2% of one's inclination to *emotional discharge* as a coping style. A Muslim male working student's way of avoiding a problem with his finances by expressing negative feelings is related to his being a male. Similarly, a Muslim girl professional's way

68 mean=11.19

69 mean=10.53

70 mean=10.25

71 mean=8.98

72 (r=.205; sig=.049, significant at 0.05 level, 2-tailed)

of expressing negative feelings to reduce tension brought by her problems at work is related to her being a girl. It must be noted, though, that gender cannot largely account for the manifestation of *emotional discharge* because its predictive power is low. As mentioned earlier, there will be no comparison between the two genders in interpreting data since males are underrepresented in this study.

Gender and Avoidant Coping

After running correlation analysis between gender and avoidant coping, it was found out that there is no correlation between the two. This means that gender does not have a relationship with the manifestation of avoidant coping style. A Muslim male high school student's overall way of avoiding problem with his friends is not in any way related to his being a male.

Gender and Cognitive Coping

After running correlation analysis between gender and cognitive coping, it was found out that there is a correlation between the two[73]. This means that gender does have a relationship with the manifestation of cognitive coping domain. A Muslim female college student's use of reason in dealing with her problem is related to her being a female. Data also suggests that gender accounts for 4% of an individual's use of cognitive coping. Thus, even if this student's use of reason in dealing with her problem is related to her gender, her being a female cannot largely predict her use of this method of coping.

73 (r=.204; sig=.049, significant at 0.05 level, 2-tailed)

Gender and Behavioral Coping

After running correlation analysis between gender and behavior coping, it was found out that there is no correlation between the two. This means that gender does not have a relationship with the manifestation of behavioral method of coping. A Muslim female entrepreneur's use of emotions as a way of dealing with her business problem is not in any way related to her being a female.

Age

Age and Intrinsic Sub-Domains of Religiosity

Of all the intrinsic sub-domains, *beliefs* have the highest average score[74] followed by *religious experience*[75], and *values*[76]. After running correlation analysis, it appeared that *beliefs*[77], *values*[78], and *religious experience*[79] are not significantly related to age. A Muslim male soldier's specific way of manifesting his intrinsic religiosity is not in any way related to his age.

Age and Intrinsic Religiosity

Compared to intrinsic religiosity domain[80], age[81] of the respondents are more widely dispersed. This means that data on age are more varied compared to the scores in intrinsic religiosity domain. In addition to such difference, it was

74 mean=4.69

75 mean=4.53

76 mean=4.49

77 (r=.061)

78 (r=.091)

79 (r=.109)

80 Standard Deviation=.37

81 Standard Deviation=4.69

found out that there is no correlation between the two. This means that age does not have a direct relationship with the manifestation of intrinsic religiosity. One's chronological maturity does not have a link with one's non-observable manifestations of religion. If male Muslim engineer is younger, it does not necessarily follow that he has higher tendency to manifest his religiosity through his beliefs, values, and religious experience, compared to the ones who are older and vice versa.

Age and Extrinsic Sub-Domains of Religiosity

Of the two extrinsic sub-domains, *personal rituals* showed higher average score[82] than *organized religious rituals*[83]. After running correlation analysis, it appeared that *personal rituals*[84] are significantly related to age. Thus, as a female Muslim gets older, her tendency to manifest religiosity through personal rituals also increases and vice versa. Data also suggests that age can predict one's score in *personal rituals* by 7.29%. Thus, even if her specific ways of manifesting extrinsic religiosity is related to her age, her chronological maturity cannot largely predict such expressions of extrinsic religiosity.

Age and Extrinsic Religiosity

Compared to extrinsic religiosity domain[85], ages[86] of the respondents are more widely dispersed. This means that data on age are more varied compared to the scores in extrinsic

82 mean=4.33

83 mean=4.28

84 (r=.270; sig=.010, significant at 0.05 level, 2-tailed)

85 Standard Deviation=.44

86 Standard Deviation=4.69

religiosity domain. Despite such difference, it was found out that there is weak, positive correlation between the two[87]. This means that age does have a direct relationship with the manifestation of extrinsic religiosity. One's chronological maturity does have a link with one's observable manifestations of religion. As a one gets older, his or her tendency to manifest religiosity through general religious rituals also increases. This fact is evident to those who say that they will wear *hijab* (head scarf) or start performing *salah* (obligatory prayer), or perform *hajj* (pilgrimage) when they get older.

Data also shows that age accounts for 5.02% of the variability in the extrinsic religiosity domain. Thus, even if a Muslim male's overall ways of manifesting extrinsic religiosity is related to his age, his chronological maturity cannot largely predict such expressions of extrinsic religiosity.

Age and Approach Coping Sub-Domains

Of all the approach coping domains, *positive reappraisal* has the highest average score[88] followed by *problem solving*[89], *logical analysis*[90], and *seeking guidance and support*[91]. After running correlation analysis, it appeared that *logical analysis*[92], *positive reappraisal*[93], *seeking guidance and*

87 (r=0.224; sig=.034, significant at 0.05 level, 2-tailed)

88 mean=12.83

89 mean=12.13

90 mean=10.94

91 mean=10.91

92 (r=-.064)

93 (r=-.049)

support[94], and *problem solving*[95] are not significantly related to age. A Muslim female's specific ways of confronting her problems are not in any way related to her age.

Age and Approach Coping

Compared to approach coping style[96], the age[97] of the respondents are more widely dispersed. This means that data in age are more varied compared to the scores in approach coping style. In addition to such difference, it was found out that there is no correlation between the two. This means that age does not have a direct relationship with the manifestation of approach coping style. A Muslimah[98]'s chronological maturity does not have a link with the way she confronts her problems. If she is older, it does not necessarily follow that she has higher tendency to confront her problems, compared to the ones who are younger and vice versa.

Age and Avoidant Coping Sub-Domains

Of all the avoidant coping domains, *seeking alternative rewards* has the highest average score[99] followed by *cognitive avoidance*[100], *acceptance or resignation*[101], and *emotional discharge*[102]. After running correlation analysis, it appeared

94 (r=.145)

95 (r=.047)

96 Standard Deviation=2.69

97 Standard Deviation=4.69

98 female Muslim

99 mean=11.19

100 mean=10.53

101 mean=10.25

102 mean=8.98

that *cognitive avoidance*[103], *acceptance or resignation*[104], *seeking alternative rewards*[105], and *emotional discharge*[106] are not significantly related to age. A Muslim male's specific ways of avoiding his problems are not in any way related to his age.

Age and Avoidant Coping

Compared to avoidant coping style[107], ages[108] of the respondents are more widely dispersed. This means that data in age are more varied compared to the scores in avoidant coping style. In addition to such difference, it was found out that there is no correlation between the two. This means that age does not have a direct relationship with the manifestation of avoidant coping style. A young *Muslimah*'s chronological maturity does not have a link with the way she avoids her problems. If she is younger, it does not necessarily follow that she has higher tendency to escape from her problems, compared to the ones who are older and vice versa.

Age and Cognitive Coping

Compared to cognitive coping domain[109], ages[110] of the respondents are more widely dispersed. This means that data on age are more varied compared to the scores in cognitive coping domain. In addition to such difference, it was found out that there is no correlation between the two. This

103 (r=.044)

104 (r=.139)

105 (r=-.008)

106 (r=.022)

107 Standard Deviation=2.32

108 Standard Deviation=4.69

109 Standard Deviation=2.49

110 Standard Deviation=4.69

means that age does not have a direct relationship with the manifestation of cognitive coping. A male Muslim lawyer's chronological maturity does not have a link with the way he rationalizes his problems in dealing with cases and vice versa. If he were younger, it does not necessarily follow that he has higher tendency to rationalize his problems, compared to the ones who are older than him and vice versa.

Age and Behavioral Coping

Compared to behavioral coping domain[111], ages[112] of the respondents are more widely dispersed. This means that data on age are more varied compared to the scores in behavioral coping domain. In addition to such difference, it was found out that there is no correlation between the two. This means that age does not have a direct relationship with the manifestation of behavioral method of coping. A Muslim male medicine student's chronological maturity does not have a link with the way he focuses on the emotions associated with his problems in maintaining his academic grades. If he is younger, it does not necessarily follow that he has higher tendency to deal with his problems behaviorally, compared to the ones who are older than him and vice versa.

Civil Status

Civil Status and Intrinsic Sub-Domains of Religiosity

Of all the intrinsic sub-domains, *beliefs* have the highest average score[113] followed by *religious experience*[114], and

111 Standard Deviation=2.35

112 Standard Deviation=4.69

113 mean=4.69

114 mean=4.53

values[115]. After running correlation analysis, it appeared that none of the sub-domains are significantly correlated with civil status. This implies that being in a companionate relationship is not associated with one's inclination to these sub-domains. If a *Muslimah* nurse is married, it does not necessarily follow that she has higher tendency to manifest specific ways of intrinsic religiosity, compared to the ones who are not in a committed relationship and vice versa.

Civil Status and Intrinsic Religiosity

Compared to intrinsic religiosity domain[116], the civil status[117] of the respondents is less dispersed. This makes sense because data in civil status is a discrete dichotomy—possible answer is either 'married' or 'single/divorced/widow'. In addition to such difference, it was found out that there is no correlation between the two. This means that a Muslim male's civil status does not have a relationship with his overall manifestation of intrinsic religiosity domain.

Civil Status and Extrinsic Sub-Domains of Religiosity

Of the two extrinsic sub-domains, *personal rituals* showed higher average score[118] than *organized religious rituals*[119]. When correlation analysis was run, it appeared that *personal rituals*[120] is significantly related to civil status. Thus, civil status is associated with one's inclination to *personal rituals*. Data also suggests that civil status can predict one's score

115 mean=4.49

116 Standard Deviation=.37

117 Standard Deviation=.265

118 mean=4.33

119 mean=4.28

120 (r=.256, sig=.013 p<.05, 2-tailed)

in *personal rituals* by 6.6%. This means that a Muslim male professional's manifestation of religion through his personal rituals is related to whether he is in a committed relationship or not. Thus, even if his practice of personal religious ritual is related to his being married or not, his civil status cannot largely predict such an expression of extrinsic religiosity.

Civil Status and Extrinsic Religiosity

After running correlation analysis between civil status and extrinsic religiosity, it was found out that there is a significant relationship between the two[121]. This means that civil status does have a relationship with the manifestation of extrinsic religiosity domain. One's civil status does have a link with one's observable manifestations of religion.

Data also shows that civil status accounts for 4.7% of the variability in the extrinsic religiosity domain. Thus, one's civil status can predict the extrinsic manifestations of religiosity by 4.7%. Thus, like the sub-domain *personal rituals* of extrinsic religiosity, the predictive power of being in a relationship on overall extrinsic manifestations of religiosity is also low. While civil status can predict a Muslim woman's manifestation of extrinsic religiosity, it cannot largely account for it.

Civil Status and Approach Coping Sub-Domains

Of all the approach coping sub-domains, *positive reappraisal* has the highest average score[122] followed by *problem solving*[123],

121 (r=.217; sig=.037, significant at 0.05 level, 2-tailed)

122 mean=12.83

123 mean=12.13

logical analysis[124], and *seeking guidance and support*[125]. After running correlation analysis, it appeared that none of the sub-domains are significantly related to civil status. Thus, one's manifestation of these sub-domains is not associated with one's civil status. A Muslim male chef's specific ways of confronting his problems with his restaurant are not in any way related to his being single, widower, or married.

Civil Status and Approach Coping

After running correlation analysis, it was found out that there is no correlation between approach coping and civil status. This means that civil status does not have a relationship with the manifestation of approach coping style. A *Muslimah* store owner's being in a marital relationship does not have a link with the way she confronts her problems with her business. Her being married does not necessarily imply that she has higher tendency to confront her problems, compared to those who are single and vice versa.

Civil Status and Avoidant Coping Sub-Domains

Of all the avoidant coping domains, *seeking alternative rewards* has the highest average score[126] followed by *cognitive avoidance*[127], *acceptance or resignation*[128], and *emotional discharge*[129]. After running correlation analysis, it appeared that none of these sub-domains are correlated with civil

124 mean=10.94

125 mean=10.91

126 mean=11.19

127 mean=10.53

128 mean=10.25

129 mean=8.98

status. A Muslim female's specific ways of avoiding her problems are not in any way related to her civil status.

Civil Status and Avoidant Coping

After running correlation analysis between civil status and avoidant coping, it was found out that there is no correlation between the two. This means that civil status does not have a relationship with the manifestation of avoidant coping style. A young professional *Muslimah*'s civil status does not have a link with the way she generally avoids her problems. Her being single does not necessarily imply that she has higher tendency to escape from her problems, compared to the ones who are married or widowed and vice versa.

Civil Status and Cognitive Coping

After running correlation analysis between civil status and cognitive coping, it was found out that there is no correlation between the two. This means that civil status does not have a relationship with the manifestation of cognitive coping. A male Muslim surgeon's civil status does not have a link with the way he rationalizes his problems in dealing with stressful cases in the hospital and vice versa. His being single does not necessarily imply that he has higher tendency to rationalize his problems, compared to the ones who are married and vice versa.

Civil Status and Behavioural Coping

After running correlation analysis between civil status and behavior coping, it was found out that there is no correlation between the two. This means that civil status does not have a relationship with the manifestation of behavioral method of

coping. A Muslim male police's use of his emotions as a way of dealing with his work-related problems is not in any way related to his being in a companionate relationship.

Educational Attainment

Educational Attainment and Intrinsic Sub-Domains of Religiosity

Of all the intrinsic sub-domains, *beliefs* have the highest average score[130] followed by *religious experience*[131], and *values*[132]. After running correlation analysis, it appeared that *beliefs*[133], *values*[134], and *religious experience*[135] are not significantly related to educational attainment. A Muslim female's specific way of manifesting her intrinsic religiosity is not in any way related to her educational attainment.

Educational Attainment and Intrinsic Religiosity Domain

Compared to intrinsic religiosity domain[136], educational attainment[137] of the respondents is more widely dispersed. This means that data on educational attainment are more varied compared to the scores in intrinsic religiosity domain. In addition to such difference, it was found out that there was no correlation between the two. This means that

130 mean=4.69

131 mean=4.53

132 mean=4.49

133 (r=.064)

134 (r=.057)

135 (r=.032)

136 Standard Deviation=.39

137 Standard Deviation=.69

educational attainment does not have a direct relationship with the manifestation of intrinsic religiosity. One's academic background does not have a link with one's non-observable manifestations of religion. If a male Muslim professional has higher educational attainment, it does not necessarily follow that he has higher tendency to manifest his religiosity through his *beliefs, values*, and *religious experience*, compared to the ones who has lower than him and vice versa.

Educational Attainment and Extrinsic Sub-Domains of Religiosity

Of the two extrinsic sub-domains, *personal rituals* showed higher average score[138] than *organized religious rituals*[139]. After running correlation analysis, it appeared that *personal rituals*[140] and *organized religious rituals*[141] are not significantly related to educational attainment. A Muslim male's specific way of manifesting his extrinsic religiosity is not in any way related to his educational attainment.

Educational Attainment and Extrinsic Religiosity Domain

Compared to extrinsic religiosity domain[142], educational attainment[143] of the respondents is more widely dispersed. This means that data on educational attainment are more varied compared to the scores in extrinsic religiosity domain.

138 mean=4.33

139 mean=4.28

140 (r=.162)

141 (r=.128)

142 Standard Deviation=.44

143 Standard Deviation=.69

Despite such difference, it was found out that there is no correlation between the two[144]. This means that educational attainment does not have a direct relationship with the manifestation of extrinsic religiosity. A *Muslimah*'s academic background does not have a link with her observable manifestations of religion.

Educational Attainment and Approach Coping Sub-Domain

Of all the approach coping domains, *positive reappraisal* has the highest average score[145] followed by *problem solving*[146], *logical analysis*[147], and *seeking guidance and support*[148]. After running correlation analysis, it appeared that *logical analysis*[149], *positive reappraisal*[150], *seeking guidance and support*[151], and *problem solving*[152] are not significantly related to educational attainment. A Muslim male businessman's specific ways of confronting problems with properties are not in any way related to his academic achievement.

144 (r=.158)
145 mean=12.83
146 mean=12.13
147 mean=10.94
148 mean=10.91
149 (r=-.094)
150 (r=-.163)
151 (r=.029)
152 (r=-.110)

Educational Attainment and Approach Coping Style

Compared to educational attainment[153], the approach coping style[154] of the respondents are more widely dispersed. This means that data on approach coping style are more varied compared to the scores in educational attainment. In addition to such difference, it was found out that there was no correlation between the two. This means that educational attainment does not have a direct relationship with the manifestation of approach coping style. One's academic background does not have a link with the way one confronts problems. A Muslim male judge's higher educational attainment does not necessarily imply that he has higher tendency to confront problems at home, compared to the ones who have lower and vice versa.

Educational Attainment and Avoidant Coping Sub-Domain

Of all the avoidant coping domains, *seeking alternative rewards* has the highest average score[155] followed by *cognitive avoidance*[156], *acceptance or resignation*[157], and, *emotional discharge*[158]. After running correlation analysis, it appeared that *cognitive avoidance*[159], *seeking alternative rewards*[160], and *emotional discharge* (r=-.173) are not significantly related to educational attainment. However, *acceptance or resignation*

153 Standard Deviation=.69

154 Standard Deviation=2.69

155 mean=11.19

156 mean=10.53

157 mean=10.25

158 mean=8.98

159 (r=-.164)

160 (r=-.165)

and educational attainment showed a negative correlation[161]. This means that as a *Muslimah* professor's academic background advances, her manifestation of acceptance or resignation as a way of avoiding the problem lessens and vice versa. Data also shows that educational attainment can predict one's tendency to manifest *acceptance or resignation* as a coping response by 6.55%. Thus, even if this professor's use of acceptance or resignation in avoiding her problem is related to her educational attainment, her being a degree holder cannot largely predict the use of this method of coping.

Educational Attainment and Avoidant Coping Style

Compared to educational attainment[162], the avoidant coping style[163] of the respondents are more widely dispersed. This means that data on avoidant coping style are more varied compared to the scores in educational attainment. In addition to such difference, it was found out that there was a negative correlation[164] between the two. This means that educational attainment has an inverse relationship with manifestation of avoidant coping style. One's academic background does have a link with the way oneavoids problems. If a young Muslim male contractor has higher educational attainment, it follows that he has lesser tendency to escape from his problems, compared to the ones who have lower and vice versa. Data also suggests that educational attainment can predict one's tendency to manifest avoidant coping style by 6.86%. Thus, even if his educational attainment can predict his tendency

161 (r=-.256)

162 Standard Deviation=.69

163 Standard Deviation=2.32

164 (r=-.262, sig=.011, significant at the 0.05 level, 2-tailed)

to avoid problems, his academic background cannot largely account for it.

Educational Attainment and Cognitive Coping Domain

Compared to educational attainment[165], the cognitive coping domain[166] of the respondents are more widely dispersed. This means that data on cognitive coping domain are more varied compared to the scores in educational attainment. In addition to such difference, it was found out that there was a negative correlation[167] between the two. This means that educational attainment has an inverse relationship with the manifestation of cognitive coping. One's academic background has a link with the way one rationalizes problems. If a *Muslimah* is better educated, it follows that she has lesser tendency to rationalize her problems, compared to the ones who have lower educational attainment than her and vice versa. Data also suggests that educational attainment can predict one's tendency to employ cognitive coping domain by 4.75%. Thus, even if her academic background can predict her tendency to rationalize her problem as a way of dealing with it, such a background cannot largely account for it.

Educational Attainment and Behavioral Coping Domain

Compared to educational attainment[168], the behavioral coping domain[169] of the respondents are more widely dispersed. This means that data on behavioral coping domain are more

165 Standard Deviation=.69

166 Standard Deviation=2.49

167 (r=-.218, sig=.036, significant at the 0.05 level, 2-tailed)

168 Standard Deviation=.69

169 Standard Deviation=2.35

varied compared to the scores in educational attainment. In addition to such difference, it was found out that there was no correlation between the two. This means that educational attainment does not have a direct relationship with one's manifestation of behavior coping. A male Muslim pilot's academic background does not have a link with the way he focuses on his emotions associated with his problems in managing sleep. If he has lower educational attainment, it does not necessarily follow that he has higher tendency to deal with his problems behaviorally, compared to the ones who have higher educational attainment and vice versa.

CHAPTER V

SUMMARY, CONCLUSIONS AND RECOMMENDATIONS

A. SUMMARY & CONCLUSIONS

Participants gathered for this study are generally young, mostly females and finished college, and majority were either single, widowed or divorced. Islam's influence to their intrinsic religiosity is typically through their beliefs like believing in Divine Preordainment or *Qad'r*, in the teachings of the *Holy Qur'an*, and many others. Extrinsically, they are largely influenced by their religion in terms of individual religious practices like offering *tahajjud* (night prayer) when praying for something to happen. Lastly, more participants are in the religion not because of mere affiliation but because of religious experience, beliefs, and values they manifest brought by Islam to them.

They are also generally inclined to confronting their problems by looking at them in a positive way while still understanding the effects of the issue realistically. As mentioned earlier, a *Muslimah* can deal with problems of discrimination in a positive way but this does not mean that she fails to see the realistic component of it. Even though she accepts the situation she is in, it is possible that she recognizes the fact that it is still hurtful to be treated in such a way. On the other hand, their usually way of escaping from

the problem is to seek alternative rewards. As mentioned earlier, this implies that a Muslim guy who gets pressured to drinking alcohol may opt to avoid the problem by choosing to seek alternative rewards like finding a new peer group who does activities that are permissible to Islam while at the same time, he gets satisfaction from such activities. All in all, most prefer confronting the problem than escaping from it. Aside from that, they are more inclined to rationalizing problems that come their way than focusing on the emotion associated with it.

One's manifestation of intrinsic religiosity and practice of personal and organized religious rituals are associated with one's gender. In a nutshell, religiosity, be it intrinsic or extrinsic, is associated with being a male or a female. In addition to that, one's attempt to reduce tension caused by the problem by expressing negative feelings is related to one's being a male or a female. In addition to that, one's tendency to use reason in dealing with the problem is related to gender.

Age also has an impact on one's practice of religion. In fact, as one gets older, his or her manifesting of religion through observable ways becomes more visible.

Civil status influences one's religiosity. In fact, one's practice of religion based on personal rituals is associated with one's having a partner. Similarly, outward manifestation of religiosity is also related to one's romantic involvement.

Lastly, In terms of education, the higher one's educational attainment is, the lesser tendency one has in escaping from the problem and vice versa. Another interesting result indicates that the higher one's educational attainment is, the lesser one's tendency to rationalize problems that come one's way. It may be that better educated individuals only operate on the cognitive level in matters related to their education and career but not in dealing with personal problems.

B. RECOMMENDATIONS

More related studies

After the conduct of this study, it is suggested that future researchers conduct a study on how Muslims cope and manifest religiosity in a Muslim society. A similar study to this one may be conducted as well, but with middle adults as participants to see the difference. Since the results in this study indicate that age is associated with religion and coping, it would also be interesting to give attention to middle adults and see how they differ, if any, with the young adults as shown in this research. Research locale may also be changed in order to see the influence it makes in terms of religiosity and coping if one lives in a Muslim society or a Muslim country. One of the limitations of this study is the exclusion of socio-economic status (SES) in the demography. Thus, future researchers who would like to make a parallel study on this may include SES. Lastly, in order to get more generalized results, it is recommended for researchers to have more respondents with equal distribution in terms of educational attainment, gender, and civil status.

Cultural Orientation Program

Since the result showed that most participants use approach coping style and cognitive method of coping, guidance counsellors (in school setting) and human resource specialists (in the workplace) may conduct a cultural orientation program that will serve as a guide to Muslims and non-Muslims alike on how to deal with Muslims, especially when they are in the adjustment phase (i.e. new at work, newcomer in school, just arrived in Manila or any non-Muslim society, celebrating a non-Muslim or Muslim events, etc.).

Develop a Manual on Muslim Coping Strategies in a Non-Muslim Society

Lastly, after knowing how Muslims manifest religiosity and how this is associated with coping, specialists from government offices or non-government organizations concerned may draft a manual on Muslim coping strategies especially now that population of Muslims in a non-Muslim society is growing. These manuals may be distributed to schools, offices, hospitals, and other public institution that inevitably cater to the needs of Muslims.

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RECENT POLEMICS ON THE STATUS OF WOMEN AND CHILDREN OUTSIDE REGISTERED MARRIAGE IN INDONESIA:

MUSLIM RESPONSES TOWARDS MK's Decision NO. 46/PUU-VIII/2010

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Nabiela Naily

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ACKNOWLEDGMENT

Let me use this section to thank the Asian Muslim Action Network and the Asian Resource Foundation for the precious opportunity to share some recent development in Islamic family law in Indonesia. The topic revolves around the ruling of the Constitutional Court in which a mother and a son requested judicial review on certain aspects of marriage law, especially those related to marriage registration and the status of children outside marriage. The research is a combination of library research and field research. The importance of field research in this study is to measure the acceptance or the lack of it by stakeholders on the present 'resolution' of the issue. This is done through a combined examination of the perceptions of the stakeholders of the state's role in legislating Islam in Indonesia.

The session by AMAN/ARF in Bangkok pointed out the importance of this topic. Professors and reviewers at the session were supportive and have guided my research in the right direction, both in terms of method and content. I am very thankful for their insights. In addition, since it covers two places, the research took more time than was initially planned. The availability and commitment, and hard work of research assistants are absolutely significant in the completion of this research. Therefore, I have to thank my research assistants, especially my colleague Achmad Kemal Riza of the Islamic Law Faculty at the Islamic University of Sunan Ampel. His persistence has made all this possible.

I know that field research has always been challenging, especially when all interviewees of this research are busy people. The art to negotiate time and be flexible to the demands of the interviews is of most importance. My colleagues are also assigned with teaching and other duties on campus which made this research finish only at the last minute of its deadline.

FOREWORD

Thailand has had a long relationship with the Muslim world which can be dated back over five hundred years, since Ayutthaya kingdom. Apart from the continuous interaction with Melayu and Arab civilizations, Muslim culture has become an integral and essential component entrenched in Thai society. Muslim comm nities had played significant role in the nation building and socio-economic, cultural and political development. Today, there are over four million Muslim populations in Thailand. Despite political violence in the southern frontier provinces, Muslims along with Thai citizens of other faiths continue to live side by side in harmony and peace. Begin situated in Southeast Asia and serving as an active member of the Association of South East Asian Nations or ASEAN, whose majority of the members are Muslims, Thailand strives to better understand Islam and the reality of complexity in the contemporary Southeast Asia This serves as a foundation for the integration and mobilization of human as well as diverse cultural and religious resources in the region for the attainment of collective prosperity and peace.

In this pursuit, Thailand Research Fund is pleased to be a partner with the Asian Resource Foundation and supported its research initiative titled "Islam in Southeast Asia: Views from Within". This research program is unique as it supports and encourager young Muslim scholars in Southeast Asia, aged below 40 to

undertake research studies pertaining to Islam in Southeast Asia from the internal perspectives. Research being carried out by the insiders and body of knowledge developed will enhance and enrich the understanding of the realities of Muslims in contemporary Southeast Asia. The outstanding themes this reach has tackled encompasses areas such as popular Islam, globalization and identity politics, gender realities, economic activities and social responsibility. The end products of the research studies have become the cutting edge which offers the new research perspectives contributory to studies in the field of Islam and Muslim in Southeast Asia.

The Thailand Research Fund strongly believes this publication will benefit academic and professional communities as well as wider public to gain insight into the realities and complexity of the modern Muslim world in the context of contemporary multicultural and multi-religious Southeast Asia. It is hoped that the findings can be further utilized and translated into concrete strategic remedies to the existing challenges both at policy and implementation levels.

Prof. Dr. Suthipun Jitpimolmard MD FRCP
Director of Thailand Research Fund (TRF)

FOREWORD

Problematizing Views from within "Islam(s)" in Southeast Asia

In 1953 the late Gustav von Grunebaum organized conference of-leading European scholars of Islam, the first to undertake a historical and critical self-understanding of "Islamic studies." The conference examined relationships among Muslims, and between Islam and various cultures. It found that the assumptions and methods used in fields of study like Islamic history lagged a century behind those used in European history. One year later Bernard Lewis remarked that the history of the Arabs had been written primarily in Europe by historians with no knowledge of Arabic and Arabists with no knowledge of history.1

Half a century later, research on the subject has changed. There is an increasing number of studies on Islam written by Muslims who know the faith, the cultures, and the practices in different contexts-the works by Akbar Ahmad, Mahmoud Mumdani, Chandra Muzaffar, and Nurcholish Madjid are just a few examples among many. Also changed is the global context itself. Now perhaps more than ever, "Islam" is more than just a description of a fifteen-century-old faith shared by one-and-a-half billion people. The word has strong emotive qualities for those both within and outside the faith. Two decades ago the late Edward Said wrote, "For the right, Islam represents barbarism; for the left, medieval theocracy; for the

center, a kind of distasteful exoticism. In all camps, however, there is agreement that even though little enough is known about the Islamic world there is not much to be approved of there."2 It is therefore important to understand, from their own perspectives, the contemporary problems that Muslims are facing.

Works in this series, Islam in Southeast Asia: Views from Within, join many other writings on Islam by authors at the periphery of scholarship, using assumptions and methods that may no longer differ from those used in the centers of learning. But if such is the case, how is this series different from the other writings on Islam that are presently flooding the popular and academic landscapes?

To state the obvious, this series addresses Islam in Southeast Asia. In relation to the Islamic world, where the sacred geography, history, and language of the Middle East seems to have established that region as the center, Southeast Asia is clearly seen as the periphery. But it is misleading to conceptualize Southeast Asia as a single sociocultural entity. As is true elsewhere in the world, societies in Southeast Asia are heterogeneous. Muslims in Indonesia and Malaysia, for example, lead lives that differ from those in Thailand and the Philippines because of the different realities facing majority and minority populations in the respective countries. Furthermore, whether Muslims constitute a minority or a majority, their lives differ again when seen in contexts influenced by Javanese culture, British colonialism, Filipino Catholicism, or Theravada Buddhism, among other things. In short, the cultural topography of Southeast Asia is a rich multiplicity.

Consequently, Islam as believed in and practiced by people in the diverse worlds of Southeast Asia is not necessarily singular, since there could be as many Islams as the various contexts that constitute them.3 The problems

facing Muslims in Southeast Asia will therefore vary. Those portrayed by researchers in this series are unusual, and their analysis is at times groundbreaking, but what they underscore is that Southeast Asian Muslims struggle with multiple identities in sociocultural contexts destabilized by globalizing forces. In addition, the fact that this research is carried out by young Muslim scholars is important; the "new generation" factor could explain both the distinctive set of problems these researchers are interested in and the fresh approaches they use.

The "views from within" approach, however, is not without its own potential problems. To engage in studies claiming to be "views from within" is in some ways to guard against the study of "others" as the study of one's own self, because in such a situation writers face other types of realities that are possibly distorted in some other ways. It is therefore important for readers to appreciate the effort researchers make to situate themselves at a distance that gives them a better perspective on the social realities of their subject while retaining their sensitivity towards, and ability to relate to, the people they are studying.4

At a time when Islamophobia is on the rise,5 it is essential to find fresh perspectives that will allow us to understand the new problems and tensions facing Muslims in contemporary Southeast Asian societies, and to articulate the ways in which they negotiate their lives as members of communities of faith in a fast-changing world. This series of studies by young Muslim scholars of Southeast Asia is an important step in this direction.

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NOTES:

1. Azim Nanji, ed., Mapping Islamic Studies: Genealogy, Continuity and Change (Berlin and New York: Mouton de Gruyter, 1997), xii.
2. Edward Said, Covering Islam (New York: Pantheon, 1981), xv.
3. Aziz Al-Azmeh, Islams and Modernities (London and New York: Verso, 1996).
4. I have discussed the problem of alterity in conducting research on Muslim studies in Chaiwat Satha-Anand, The life to this World: Negotiated Muslim Lives in Thai Society (Singapore and New York: Marshall Cavendish, 2005), 25-26.
5. Akbar S. Ahmad, Islam under Siege: Living Dangerously in a Post-Honor World (Cambridge: Polity Press, 2004), 36-39

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GLOSSARY

Anak Luar Nikah	Children outside marriage. from the state's perspective, the children are those who are born in an unregistered marriage as well as those who are born from adultery (*zina*)
Burgerlijk Wetboek (BW)	The Dutch Civil Code which was applied to Indonesia. Since the enactment of Law No 1/1974 on Marriage, the section of Book I of BW is no longer in force.
Fatayat	Islamic organization for young women affiliated to Nahdlatul Ulama
Hadiyat Wajibah	Obligatory grant. This grant originates from the opinion in the Hanafite school of law which acknowledges parental relationship between children from adultery and their biological father. This grant must be allocated to children from adultery by their biological father. The amount of the grant is limited compared to maintenance and other rights of legitimate children.
Isbat nikah	A procedure in religious courts to obtain marriage legitimacy in case of a missing marriage certificate, unregistered marriage, etc.

Kantor Urusan Agama (KUA)	Office of Religious Affairs. Its main function is to conduct marriage registration.
Kompilasi Hukum Islam (KHI)	Compilation of Islamic Law of 1991. It consists of three books; (marriage, inheritance and *waqf*) which are eclectically derived from opinions of various schools of law. It was originally intended to be enacted as an Act, but due to political and ideological issues it was only a Presidential Instruction which is less binding.
Mahkamah Agung (MA)	Supreme Court, the highest judicial authority in Indonesia.
Mahkamah Konstitusi (MK)	Constitutional Court of Indonesia, the court in charge of hearing judicial reviews of laws in Indonesia
Mahram	Familial relationships which result in prohibition to marry each other
Majelis Ulama Indoenesia (MUI)	Indonesian Council of Ulama. The council is state-sponsored and has several functions, notably fatwa issuance and halal certification.
Mazhab	School of law in Islamic jurisprudence. In Sunnite tradition, there are four authorized schools; Hanafite, Malikite, Shafi'ite and Hanbalite. The Ja'farite school of law is affiliated to Shiite tradition.

Mufti	Muslim jurists who issue *fatwa* (legal opinion on Islamic jurisprudence). It is not binding except for the mufti and the inquirer (the person who ask for the fatwa).
Muhammadiyah	A modern Islamic organization established in 1908. In the area of Islamic jurisprudence, it employs *ijtihad* (independent legal reasoning) by directly referring to primary textual sources (the Holy Qur'an and Prophet tradition)
Muslimat	Islamic organization for mature women affiliated to Nahdlatul Ulama
Nafkah or *nafaqah*	Maintenance. Maintenance of legitimate children covers food, clothing and shelter.
Nahdlatul Ulama (NU)	A traditional Islamic organization established in 1926. In the area of Islamic jurisprudence, it is committed to adherence to four schools of law in Sunni tradition although in practice the Shafiite opinions are mostly referred to.
Nasab	Consanguinity, the strongest parent relationship with the children which causes rights and responsibilities between parent and children. Nasab is caused by legitimate marriage.
Nikah siri	Unregistered marriage, also known as *nikah di bawah tangan*. The marriage is contract based only on Islamic jurisprudence without proper official registration.

Pengadilan Agama (PA)	Religious Court. The court hears cases related to Islamic marriage, such as divorce, polygamy application, *isbat nikah*, inheritance dispute, etc. since 2006; it also hears cases on shari'a economy.
Syuriah	A consultative body of Nahdlatul Ulama. Among its functions is to issue fatwa.
Wali Nikah	Marriage guardian for women. Islamic jurisprudence, except Hanafite school of law, requires the consent and the presence of *wali nikah* in marriage ceremony. Father, grandfather, brother and uncle (brother of father) are *wali nikah*
Wasiyat Wajibah	Obligatory bequest. This bequest is actually adopted from an opinion within Shiite school of law. It is used by Islamic legal reformers to bestow share of wealth for grandsons and granddaughters in case of the absence of their parents. In Islamic law of inheritance, they do not get any share of inheritance from their grandfather and/or grandmother if their father/mother is deceased because of the existence of their uncles and aunties.
Zina	Adultery, defined as sexual relationship between a man and a woman without marriage. It is a major sin in Islam and the doer is liable of stoning to death

CHAPTER I
INTRODUCTION

A. PROBLEM BACKGROUND

Children are innocent regardless of whoever their parents are and whatever their parents do. Perceived from various perspectives, human rights and the fact that they are the future generation of humanity and civilization of the state and the world, it is just not right to give them the burdens and make them suffer from things they are not guilty of. In Indonesia, issues concerning children's rights are not satisfactorily resolved. Among the issues are problems related to children born outside marriage being it from *nikah siri* (unregistered marriage) or adultery which has reached an alarming level where the state should intervene. Mahkamah Konstitusi (MK) or the constitutional court of Indonesia adjudicated a ruling on that issue based on judicial review by a woman (named Machicha (or Aisyah) Mochtar) and her son (Muhammad Iqbal Ramadhan). Unfortunately, the MK ruling that actually is a breakthrough in the vacuum of the existing law and regulation related to children born outside registered marriage is problematic and potentially ineffective since many relevant people resist the idea or part of the idea. Ironically, the resistance is partly due to the confusion caused by the ruling itself. At the end, the principle and spirit of child protection can be guarded through a variety of ways. The state hard stick is always dependable although sometimes causes controversy at first.

This is the main argument of the present study. The MK ruling issued on February 27th, 2012 has been debated so sharply in Indonesia and provokes people with many surprising facts and questions at the same time. To begin with, issues surrounding women and children are not new in Indonesia. There are many levels and varieties of the problems related to women and children. Trafficking, domestic violence, child labor, poverty and marginalization are some of the problems[1]. Data has shown that, for example, violence against women and children keeps happening even though legal protection has been deployed since 2004. Issues of women and children in fact have been given special attention by the government. As one example, Indonesia has a ministry on women's empowerment that has been changed to ministry of women's empowerment and child protection since 1983.[2] The ministry is established with a spirit toper form the state's role in protecting children and promoting gender empowerment.[3] Unfortunately many issues related to women as well as children are still occurring.

This research is intended to explore the recent controversy on the legal status of children outside marriage in Indonesia. This issue has been a controversy in Indonesia

1 See for example statistic compiled by an NGO in http://www.humantrafficking.org/countries/indonesia. It reports that millions of Indonesians are under threat of trafficking and child labor. Victims of domestic violence are also not significantly reduced after the enactment of anti-domestic violence law in 2004. See, for instance, data by Mitra Peremepuan, a women crisis center in Jakarta on http://perempuan.or.id/statistik-catatan-tahunan/2012/01/03/tahun-2011-statistik-kekerasan-terhadap-perempuan-mitra-perempuan-wcc/

2 The ministry of women's empowerment was first established in 1983. Starting 2009, the ministry expanded its scope to include protection of children. see for instance http://id.wikipedia.org/wiki/Kementerian_Pemberdayaan_Perempuan_dan_Perlindungan_Anak_Indonesia

3 http://www.menegpp.go.id/v2/index.php/tentangkami/tugasdanfungsi/kementerian

especially since the Constitutional Court in a statement dated on March 7th, 2012 states that every child, no matter whether born within or outside a marriage, has the constitutional right to have a legal relation with the biological father and mother. This ruling of the Constitutional Court has surprised people in Indonesia. The ruling raises a hot debate and becomes controversial for several reasons.

One reason is that it makes changes in the law and regulations regarding marriage and family affairs particularly in the aspect of legal status of children of unregistered marriages. It changes the way that the *anak luar kawin* (children outside marriage) is perceived legally in Indonesia. Law No.1 of 1974 regarding marriage states in Article 43 (1) that children outside marriage by law only have a civil relationship with their mother and her family. Civil relationship is automatically obtained by the children outside marriage without having to pass through certain legal processes. In addition, according to Article 100 of the Compilation of Islamic Law, which de facto has become the law for the Religious Court in Indonesia, the relationship between the child and the mother and her family covers all aspects of consanguinity, maintenance, custody and inheritance.

In Indonesia, Children outside marriage can be defined as those who are born from adultery but also can be defined as those who are born within the *nikah siri* (unregistered marriage). In Indonesia, marriage is considered legal by the state law if it is conducted in accordance to the regulations and law of the religion. In addition to that, every marriage must be registered. These two conditions are stated in the 1974 marriage law. KHI or compilation of Islamic law even sets out clearly that a marriage can only be proven by an official marriage certificate issued by the state. For a long time, unregistered marriage has not been considered legal

and therefore the wives and children within such marriage are also illegitimate under the state law. The history of marriage registration for Muslims in Indonesia started in 1895 during the Dutch Colonial period. At the time marriage registration was not compulsory although husbands who did not report their *talaq* (divorce) nor *ruju'* (reconciliation) were liable to fine. This registration was by no means instrumental in determining the validity of the marriage. Therefore, unregistered marriages were considered valid if they were performed based on the requirements of Islamic law. After independence, this condition continued by the enactment of Law No. 22 year 1946. Offices of marriage registration were established throughout the country under auspices of the Ministry of Religious Affairs. However, Islamic marriages without registration continued taking place.

The situation started to change when the government in 1973 proposed a very 'un-Islamic' bill on marriage to the legislative assembly. The bill among other things proposed marriage registration as a requirement of marriage which ignited fierce disapproval from Muslims. Finally, the marriage law enacted in 1974 emphasized that the validity of a marriage depended on religious grounds, and ambiguously stated that marriages should be registered without further clarification. Meanwhile, marriage registration is also bolstered by other civil administration regimen deployed by the state. This, in turn, strengthens the position of marriage registration and the number of unregistered marriage reduced; although it cannot be fully eliminated. It is in this context that in 2004 and 2008 the Ministry of Religious Affairs initiated a bill on the legal Material of the Religious Court and Counter Legal Draft on Islamic Jurisprudence Compilation respectively. Several of the articles of these two drafts necessitate marriage registration, which means that an unregistered marriage, although it is valid in Islamic law, is

considered void. Again, although not as massive as happened on the eve of the Marriage law bill in 1973, resistance from certain Muslim groups did occur, and forced the government to pull back the bill.

So, after decades without any changes in the existing law and regulation on marriage and family even though unregistered marriages have been a problem for a long time, the MK ruling came along. It is granted only a part, of the answer to the petition by Machica Mochtar, who is married in an unregistered marriage with a former minister of the Indonesian government and her son is denied by the father. So, the MK ruling can be said to be a surprising breakthrough in the history of laws and regulations regarding marriage and family affairs.

Another reason why the ruling invites such sharp debate is related to the use of the term "*anak luar kawin*" or children outside marriage that can be defined as children from unregistered marriage as well as children from adultery. This is why sharp resistance and criticism has come from religious figures. In fact, many opposing positions also are the standpoint of religion-based mass organizations such as NU and others. In line with this, on March the 20th, 2012, the MUI (majlis ulama Indonesia/ Council of Indonesian Ulama) issued a fatwa number 11/2012 concerning the child of adultery and affirms their stand point that child from adultery only has a legal relation with the child (MUI, 2012). Nasaruddin Umar, Deputy Minister of the ministry of religious affairs, also agrees with this view of the MUI and encourages dialogue between the MUI and MK (JPNN, 28/03/2012). This resistance is mainly due to the open door for multi-interpretations of the ruling. The children outside marriage in the ruling can be understood as also to include a child born from adultery. Meanwhile, fiqih or Islamic jurisprudence is quite firm in stating that a child from

adultery has only consanguinity with the mother and her family.

Another reason that explains why the ruling is so controversial is the fact that it relates to the classic problem of the rights of children outside marriage born from either adultery or an unregistered marriage. The ruling is issued as a decision to answer the judicial review requested by Machica Mukhtar whose son, Muhammad Iqbal Ramadhan, is not acknowledged by the biological father, Moerdiono and his family. This case is one of the many similar cases in Indonesia. Although registering marriage is the norm in Indonesia, there are still many unregistered marriages in Indonesia and this causes an illegitimate position for the child.[4] In addition, the occurrence of adultery, which later give birth to children, is numerous. The indication is justified by statements from some activists who actively fight for the rights of children, coming from both government agencies such as the National Commission for Child Protection and NGOs. Aris Merdeka Sirait, KPAI (Komisi Perlindungan Anak Indonesia/ Indonesian Commission for Children Protection) spokesperson, reported that there are 3,896 reports related to the separation of unregistered marriages in 2011 alone that result in 421 children reported as illegitimate (Metro news, 04/03/2012). Many women, along with the children, are trapped in an unregistered marriage for various reasons (NU Online, 12/03/2012).

Despite the fact that the ruling is perceived by some people as providing a legal framework towards a promising future for the protection of the child, it is also perceived problematic by others. The ruling, in their point of view, is

4 According to a report, the number of unregistered marriage is about 5 million cases. See for instance http://www.nonstop-online.com/2013/04/49-juta-pria-nikah-sirri/

a violation of Islamic law since it covers the child from *zina* (adultery). Moreover, it is also seen as endorsing adultery among society. Furthermore, some also argue that even though, for example, the ruling concern children from the unregistered marriages, the ruling is still problematic since it reduces the legal position of registered marriage. They argue that it makes registered marriage weakened and at the end endorses the occurrence of unregistered marriages. The restriction of polygamy, which has been fought for tirelessly by women activists, is under threat because husbands who take second wives conduct many of these unregistered marriages.

This controversy also raises resistance among the related parties including the judicial apparatus of religious court. Some of them still stick to the existing regulation regarding children born outside marriage in the marriage law (law No. 1/1974) and compilation of Islamic law (Presidential instruction No. 1/1991) that children from an unregistered marriage or even from adultery only have a civil relation with the mother and her family). As the controversy is not sharp enough, the government of Indonesia, in this case the MA (Mahkamah Agung/ Supreme Court) of the republic of Indonesia has recently issued a decision supporting the MK ruling. In the summary of the decision of the National Meeting of the Board of the Supreme Court in a circular letter No. 7/2012 MA stated that a man should be responsible for his biological child. Furthermore, with the decision, ruling of MK can be applied in all the courts throughout Indonesia. The MA spokesperson states that if a man denies his obligation, his wife can institute a civil action the religious court. The MA decision also states the right of the child to receive a living allowance, and even some amount from the inheritance through the concept of

wasiyat wajibah (obligatory bequest).[5] The Court employed the opinion of the Hanafite School of Law that allows the child, even though from adultery, to have the right to a living allowance and inheritance from the father. The MA decision is very recent, issued on January 4th, 2013 and has already raised sharp controversy. One resistance has been voiced out loud by a piece of writing by Abd Salam, vice of the chief of the religious court of Sidoarjo who argued that, similar to previous reasons for resisting the MK ruling, it potentially harms the religious beliefs held by a majority of Muslims in Indonesia.[6]

Is this because this majority of Indonesian Muslims uphold the Shafiitee School of law that firmly states that the child from adultery only has civil relation with the mother and her family? What does the MA decision address actually, children from *nikah siri* only or also children from adultery? How does the MA decision affect the implementation of the MK ruling in the courts and what legal changes have been made here? What are the standpoints of people related to the issue namely the apparatus of the religion courts? Does the resistance from this judge represent the standpoint of other judges in the religious courts in Indonesia? Is the resistance also the voice of religious figures in the community? What is the position of human rights activists who fight for women, gender and children's rights? How might the controversy affect the implementation of the ruling related to the status of children outside marriage? What are the dynamics related to the issue of the rights of children with regard to this recent

5 JND Anderson, 'Modern Trends in Islam Legal Reform and Modernization in the Middle East', International and Comparative Law Quarterly, 20:1, 1971. p. 10.

6 Abd. Salam, Gugatan Anak Zina Kepada Ayah Biologis Dan Keluarganya Kewenangan Siapa?, http://www.badilag.net/artikel/14366-123.html

development? Are there other suggestions from various aspirations about whether the law is the best potential way to deal with the problem or whether there is any other way and strategy to deal with the problem better than state intervention?

All these questions are important and need to be answered and that is why we need to research this issue. So, the research objective is mainly to study and research the true aspirations of the relevant people towards the MK ruling and at the same time the problem of children of an unregistered marriage and, possibly, children outside marriage. This way, the research questions are arranged to address one main research question, namely whether state intervention here (meaning the MK ruling) is the best way to deal with the problem. This can be assessed and examined from people's responses and aspirations towards the ruling and the problem as well. Here, the main issue can be classified by questioning the background of the issuance of the MK ruling and the logic behind the policy; the legal changes resulting from the ruling affecting children and women, the analysis of the ruling from relevant disciplines: legal, Islamic law, and gender; and finally the standpoint and responses of the relevant people towards the MK ruling and the problem based on their understanding of the ruling as well as their reflection as to their context.

B. HISTORICAL ASPECT OF LAW AND SOCIAL CHANGE IN MUSLIM COUNTRIES

Among all the roles of legislation, one is to facilitate social change. Law scholars have identified several functions of law. In a modern state, law is not considered as an end itself, but is a mean to an end. The end here is social justice. Almost all theorists agree that law is an instrument of securing justice.

There are several functions of the law and one of them is to facilitate social change. Facilitating social change here means that the law can play a role as a medium to bring the desired change within society in a gradual way.[7]

Historically, in Muslim countries, the change has been made by implanting western law. To be noted, the western law adoption in Muslim countries is not applied in the area of Islamic family law. While Muslims readily accepted implementation of non-Islamic law in all legal aspects, they insisted that family law should remain governed by Islamic law. For centuries, family law is highly connected to their identity as Muslim. Islamic family law is always meticulously applied based on the Qur'an and the practice of the Prophet. Thus, all efforts to make changes in this area of law must be done by using mechanisms acceptable to Muslims. This simply means any changes have to be religiously justified. The process of this change, some call it modernization, dated back from the early part of the last century when the Ottoman Caliphate in Turkey first introduced reform in family law. Many Muslim countries followed the step of the Turkish after they gained independence from their colonial masters in the latter period of that century. Most of the modernization effort was conducted to improve the condition of wives who, when governed by Islamic jurisprudence, are always in an unfortunate position vis-à-vis their husbands.[8]

The modernization involved the state as the central actor and took place in the form of codified legislation. Previously,

7 See for example http://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=5&ved=0CEoQFjAE&url=http%3A%2F%2Fwww.auburn.edu%2F~faupece%2FCR450%2FPowerpoint%2FLecture%25206-Functions%2520of%2520Law.ppt&ei=jA5oU7HvCoaKrQf6lIHgDg&usg= AFQjCNFXUhe1wsnHQ4dGzakXKIvvp7Awow

8 JND. Anderson, 'Modern trends in Islamic Legal Reform', International and Comparative law Quarterly, vol 20, p. 5.

law was based on opinions of schools of law scattered and not codified in jurisprudence books. The fact that the state took an active role in this modernization, and not the jurists who traditionally assumed control of the judicial system in the traditional legal system, displays a shift toward the increasing authority of the state over its citizen. Moreover, as An-Naim points out, the lack of democracy in Muslim countries and minimal public consultation in the process of modernization of Islamic family law has smoothened the implementation of the modernized version of Islamic family law. At the time, since rulers of Muslim countries were autocratic, be it in the form of kingdom or military regimes, they could impose the change regardless of dissenting opinions in the process.[9] However, the state was careful in conducting this endeavor. They continued to employ Islamic jurisprudence, although they did so by eclectic choice between variant views in the schools of law in Islamic legal tradition. While in the past the employment of opinion was always consistent in applying dominant views within one school of law, the modernization effort tended to employ views of other schools of law or use weaker views in own school of law as long as the main purpose of modernization, which is improving the status of wives, was achieved. After implementation in Turkey, the law then was adopted in Syria, Jordan, Lebanon and Israel, all of which were under the authority of the Ottoman Empire at the time. Similar reform spread in Egypt during the 1920s. After independence, Jordan and Syria replaced the Ottoman law with their own family law in 1951 and 1953 respectively. Subsequently, there followed the Tunisian code of personal status 1956; the Morocco code of personal statute in 1958

9 Abdullahi Ahmed Annaim, 'Shari'a in the Secular State: A Paradox of Separation and Conflation', in Peri Bearman, Wolfhart Heinrichs, Bernard G. Weiss (eds), The Law Applied: Contextualizing the Islamic shari'a, New York, IB Tauris, 2008, p. 324.

and the Iraqi law of personal status in 1959; also followed by Pakistan who reformed family law by enacting the family law ordinance in 1961. Similar reform also took place in Iran by promulgation of the Family Protection Act in 1967.[10] Indonesia followed suit in 1974 with the enactment of Family Law (Law No 1/1974).

As mentioned before, the improvement of the condition of wives is the main purpose of this modernization. Under traditional Islamic jurisprudence a wife virtually cannot dissolve her marriage, now after the reform a wife can get a judicial divorce for several reasons that vary from country to country. Another aspect of reform is to limit the right of Muslim husbands to repudiate his wife. Usually, the reformed law requires judicial hearing or at least registration of repudiation to ensure the fulfillment of the wife's rights by the husband. Child marriage is also the subject of reform. This is conducted by setting certain marital age which was previously absent in Islamic jurisprudence. The restriction of child marriage is also companied by preventing the guardians from forcing their daughter or granddaughter into marriage. As to the polygamy issue, it has been reformed in many ways. Some countries have absolutely banned polygamy, and some have put restrictions on it by requiring certain conditions for the husband wishing to take another wife.[11] The usual restriction concerns judicial hearing which is aimed at ensuring the ability of the husband to support wives and families. Some also require existing wife's permission in the process. Another important reform is the administrative aspect of marriage, which is marriage registration. As part of modern imperatives, registration also implies that a marriage is not only a religious ritual, but also a legal action.

10 JND. Anderson, 'Modern trends in Islamic Legal Reform', p. 6-7

11 Ibid., p. 8

This should be recorded properly to avoid confusion and abuse of law. This administrative side is also to ensure the proper implementation of the modern legal system. In practice, many Muslim countries require registration as an administrative requirement which does not impair the validity of marriage. Still, a few countries moved forward and consider that registration of marriage determines the legality of marriage. This means that without proper registration and certification, a marriage will not have legal force if issues are raised before the court. Thus, an unregistered marriage would be valid so long as it does not give rise to issues that require determination by a judicial authority.[12]

Nonetheless, having surveyed the success of legislating and modernizing Muslim family law, there is weakness in these state-enacted laws. Virtually all of these laws were drafted and designed by Muslim reformers who aided authoritarian Muslim rulers at the time. The state then enacted the law without public consultation and debate. In other words, the enactment of the reformed family law did not always involve the Muslim community at large, especially traditional Muslim clerics at grass root level whose opinion are still adhered to by lay Muslims at large. In many countries, these clerics would protest and demanded certain aspects of the newly- reformed law to be amended to accommodate their conservative views. When the pressure is strong enough, the state has no option but to back down and amend the law.[13] This is the case in Pakistan, Syria, Malaysia, and other states. If the state is strong enough and ignored the

12 Fazlur Rahman, 'A Survey of Modernization of Muslim Family Law', International Journal of Middle East Studies, 11(4), July 1980, p. 456

13 Abdullahi Ahmed Annaim, 'Shari'a in the Secular State: A Paradox of Separation and Conflaton', in Peri Bearman, Wolfhart Heinrichs, Bernard G. Weiss (eds), The Law Applied: Contextualizing the Islamic shari'a, New York, IB Tauris, 2008, p. 324-8

demand, many Muslim clerics would tell their congregation that the reformed law is not Islamic and therefore not binding. Subsequently, they will continue to apply the conservative version of Islamic jurisprudence in parallel to the state-sponsored laws. This situation results in legal pluralism across the Muslim world.[14] The notable issues on this conflicting law are numerous in all aspects of marriage, notably registration, repudiation, and polygamy.

This legal pluralism is one of many stumbling blocks for initiatives towards legal change in the area of family law in Muslim countries. Indonesia is not an exception to this phenomenon. In Indonesia, a series of efforts to improve the position of women and children in family law which have been launched in recent years have not always been successful. The failure of the Counter Legal draft to the Compilation of Islamic Law and legal draft of Islamic court are examples.[15] This research aims at, among other things, investigating the reasons for Muslim resistance towards such changes which are far from being univocal. The decision by the Constitutional court might face a similar fate to previous legislative efforts due to its controversial nature. This research will contribute to two ways, as a result. It will communicate the decision to the Muslim community. In doing so, it will also gain more understanding concerning their true

14 Arskal Salim, 'Dynamic Legal Pluralism in Modern Indonesia: The State and the Sharia (Court) in the Changing Constellations of Aceh,' First International Conference of Aceh and Indian Ocean Studies, Organized by Asia Research Institute, National University of Singapore & Rehabilitation and Construction Executing Agency for Aceh and Nias (BRR), Banda Aceh, Indonesia, p. 2-3

15 See for instance; Marzuki Wahid, Counter Legal Draft Kompilasi Hukum Islam (CLD-KHI) from the Perspective of Politics of Law in Indonesia, a paper presented at the 4th Annual Islamic Studies Post Graduate Conference, The University of Melbourne, 17-18 November 2008.

aspirations on the issue. At the academic level, this will be the freshest, first-hand account concerning the controversy caused by the constitutional court decision which was later endorsed by the Supreme Court.

C. RESEARCH METHOD

Issues surrounding children outside marriage remain problematic in Indonesia, which in legal aspects is pluralistic even though the Constitutional Court has issued its decision on the issue in 2012. Since then, plenty of research has been conducted on the topic. An abundance of articles, especially written by religious court judges have appeared.[16] Another research report focused on the opinions of ordinary housewives on the issue and found that their views were not supportive of this decision. Similar tone was heard from research findings by the same researchers that inquired as to the opinions of Muslim clerics, and judges of the Islamic court in Jember, East Java. On the other hand, views of women activists and victims (women who got a child from adultery or from an unregistered marriage) welcomed this decision. Such research is admittedly similar to this research. Furthermore, it will be a valuable starting point for this research. However, this research has leverage in many ways. This research was conducted after the Supreme Court (February 5th, 2013) issued a Circular Letter for judges of Islamic Courts that endorsed the decision of the Constitutional Court and ordered judges of Islamic courts to hear cases on children outside marriage. In other words, this research will give the most recent development concerning the status of children outside marriage. In addition, this research will be conducted in two regions in order to expose

16 Articles by A. Mukti Arto and Chatib Rasyid are among the examples. They both are judges of religious court

broader views on the issue: Jombang, East Java is known as a strong Islamic region, whereas Surabaya is a big city in East Java. It is expected that this vast difference will provide rich material for this research.

As a qualitative research, data of this research comprises opinions of certain personalities on the Constitutional Court and Supreme Court about the parental status and rights of children outside marriage. Questions were asked to determine their knowledge about this decision, their knowledge about Islamic jurisprudence concerning the issue, and their agreement or disagreement with the decision of the Constitutional court and Circular Letter of Supreme Court regarding parental status and rights of children outside marriage. In addition, questions about possible alternate solutions to deal with the problem of children of unregistered marriages were also asked. For that purpose, interviews were conducted. The people interviewed and invited to the focus group discussions includes Muslim leaders (namely from the Local council of Ulama and Muslim organizations such as Muhammadiyah and Nahdlatul Ulama), judges of the Islamic court, Marriage registrars, and gender activists. These are the persons that will exercise the decision, get advantage from it, and/or be harmed from it. Furthermore, the ones who are also relevant and potentially affected by the policy were also interviewed including children and women both who are from unregistered marriages and registered marriages. The research location was Jombang and Surabaya for the reasons outlined before. As a qualitative research, the use of interview has uncovered more information and revealed opinions and arguments beyond confines of a questionnaire or quantitative approach. The constraint of availability and reluctance for interviews has proven to be concern for the research. As a result, some planned interviews were cancelled and replaced

by other, equally-concerned people. The data has been categorized as pros and cons for each region along with their arguments to reflect the similarities and differences between the two places. The results confirmed support for the effort to provide legal protection for children.

The MK ruling is praised for that intention. But, there are many different arguments and reasoning before arriving to that conclusion. More importantly, these arguments and reasoning show that the MK ruling still needs discussion and consultation among the concerned parties to achieve its intended objective of ensuring children's rights. This is partly because the ruling has challenged some regulations of existing marriage law in Indonesia. It also has disturbed widely held opinion among Muslims concerning children rights, especially for the issue surrounding children born from adultery. The lack of clarity from the side of the ruling as well as inconsistent explanation by constitutional judges on the issue further sparked the debates. As a result, the position of the state, as represented by the Constitutional Court, in this matter is admittedly at stake. Its effort to provide protection and equal treatment for all citizens has been curtailed by values of certain elements of its citizens. However, the state has the authority and should not back down. Moreover, the role of law to facilitate social change is a good entry point to discuss this issue.

This report will be arranged firstly by sketching the historical background of family law in Indonesia which has been regulated by Islamic law yet heavily influenced by other legal values, such as customary law and Dutch law. Special portion is dedicated to discuss the issue of children's status in the law. The discussion is followed by providing a narrative surrounding the MK ruling and promptly continued by outlining different perspectives; Islamic law, positive

law, gender analysis and children protection. The report continues by showing the opinions of Muslims stakeholders from the two regions (Surabaya and Jombang) on the ruling. The report is wrapped up by reflecting on some key issues, especially in positioning the role of the state in legislation for a legally pluralistic society such as Indonesia.

CHAPTER II

FAMILY LAW IN INDONESIA AND THE STATUS OF CHILDREN

A. LEGAL SYSTEM IN INDONESIA

Issues surrounding unregistered marriage and illegitimate children are deeply anchored in legal pluralism that has been happening in Indonesia. It is not only the positive law that is applied in the country, but also what people believe about the law. Although what happens on the ground shows that many women seriously suffer injustice and many children cannot enjoy their rights because of the insufficient legal framework. Amending the existing law to be supportive to women and children's rights is not an easy feat. There are at least three laws which until today play roles, although differently, in Indonesia. They are ad at law, Islamic law and Dutch law.[1] In addition to that, the contemporary human rights regimen and the international conventions on women and children's rights also play an active role in coloring the legislation on aspects surrounding marriage. To start with, the chapter will begin by illustrating Islamic law which is applied and widely held by the Muslim community in Indonesia. In a subsequent section Dutch laws will also be described, especially those concerning the validity of marriage and the

1 Hilman Hadikusuma, Hukum Perkawinan Islam Menurut Perundangan, Hukum Adat dan Hukum Agama, Bandung:Mandar Maju, 1990.

status of children. The subsequent section of the chapter will discuss Indonesian family law, with special reference to marriage validity and the status of children. The final section wills shows how the issue of marriage validity and status of children has been affected by the ruling on the issue by the Constitutional Court in 2012.

Islamic Family Law

As with other world religions, Islam regulates marriage. The Holy Qur'an and Prophet Muhammad's tradition are the points of reference for all Muslim life. Islam adopts some Arab practices of pre-Islamic marriage, but it certainly revised many pre-Islamic Arab aspects of marriage. For a start, marriage in Islam is defined in the Holy Book of Qur'an as a peaceful and compassionate relationship that is grounded in love (Qur'an 30:21).[2] By describing spouses as "garments" for one another, Islam promotes supportive, protective, and nurturing relationships between husbands and wives.[3] Marriage creates a unit of society that mutually accepts God as an integral part of every situation and decision, and recognizes the mutual rights and obligations between spouses. Through marriage, couples commit to a lifelong bond that is based upon mutual mental, spiritual, and physical gratification. Such a home promotes and insures equity and harmony, and is a source of shelter filled with peace, comfort, security, and continuity.[4]

Marriage in Islam has the element of being a contract and a religious sacrament. As a religious ritual, marriage

2 The Holy Qur'an, 30:31

3 The Holy Qur'an, 2:187

4 Abdul Rahman I. Doi, Perkawinan dalam Syariat Islam, translated by Basri Iba Asghary, Jakarta: Rineka Cipta, 1996, p. 1-5

is a divine institution. This is seen in a Prophetic tradition narrated by Anas saying that when a man marries he has fulfilled half of his religion, so let him fear Allah in the remaining half. On the other hand, marriage is a solemn covenant between these parties themselves. Before the contract can be a valid one, certain conditions must be met. Some of these conditions concern the contract itself, whereas some concern the personality of the contracting parties. In Islamic law, the validity of a marriage contract determines the legality of consummation. The conditions that make a marriage contract valid in Islamic law are seen as one of the preliminaries of marriage.[5]

A valid marriage in Islamic law necessitates fulfillment of its essential principles. Although there are different terminologies among schools of law, a sort of agreement is reached concerning these principles. There are five principles in an Islamic marriage, they are *aqd* or contract, the groom, the bride, the guardian (except in the Hanafi school of law), and two male witnesses (with variation in Maliki and Hanafi schools of law).[6] In practice, in the process of contracting a marriage, the groom must perform the contract with the guardian who acts on behalf of the bride. During the process, the guardian usually is the first party to offer the marriage to the groom. Promptly, the groom must respond to the offer with acceptance. The offer is called *ijab*, whereas the acceptance is called *qabul*. The usual wording of *ijab* is: "I marry my daughter to you with this amount of dowry". Usually, the groom will respond: "I accept marrying your daughter with the agreed dowry". The whole process within

5 Sayyid Sabiq, Fiqh al-Sunnah, vol.2, p. 52

6 Muhammad Jawwad Mughniyyah, Al-Fiqh Ala al-Madzahib al-Khamsah, Kairo: Maktabah al-Shuruq al-Dawliyyah, 2007

the marriage must be witnessed by at least two witnesses.[7] In addition, each marriage should be celebrated in a *walimah al-ursy* (wedding party) to announce to society that a valid marriage between a man and a woman has taken place.

Although the whole process seems simple, Islamic marriage is a result of long process of examination and negotiation between the two families. Family members play a significant role during the process because throughout Islamic history families have been regarded as the bedrock of society. Family provides the necessary physical and moral support to create healthy nuclear and extended families. Many marriages in Islam are preceded by engagement. Prior the *aqd al-nikah* proceeding, the talk between the groom, and the bride and their families, surrounding the date of *aqd al-nikah*, the amount of *mahr* (dowry) also takes place.[8] The observance of local tradition and ritual also plays a crucial role in marriages in Islam. In addition, each marriage principal must fulfill certain requirements. For instance, the *aqd al-nikah* or marriage contract must be performed in a prescribed way so that its validity is unquestioned. The *ijab* and the *qabul* must use the word of *nikah* (literally means: marriage) or *zawaj* (literally means wedding).[9] Likewise, there must be an initial examination in regard to the origin of the groom and the bride to prevent marriage among relatives. Too, the guardian of the bride must be the closest male relative, usually her father, grandfather, uncle or brother. In terms of witnesses, they must be Muslims, males with religiously good reputation (*'adil*).[10]

7 Sayyid Sabiq, Fiqh al-Sunnah, p. 34

8 Wahbah al-Zuhaili, Al-Fiqh al-Islami wa Adillatuhu, vol 7, Damascus: Dar al-Fikr, 1985, p.9

9 Hans Wehr, A Dictionary of Modern Written Arabic, Ithaca: Spoken Language Service, 1976, p. 385, 997

10 Sayyid Sabiq, Fiqh al-Sunnah, p. 49

The existence of guardian for women in marriage is because they have a more limited legal status than men in Islamic law. Islamic law differs significantly on the degree of choice and autonomy given to a woman on issue of marriage issue because of limitations. This limitation is determined firstly by the woman's physical maturity. Physical maturity of the woman is marked by menstruation which marks their adulthood. Then there comes the issue of marriage age. Besides being marked by menstruation, Muslim jurists are aware that there is no clear injunction on this matter in the Qur'an and Prophet Tradition. The closest verse on this matter only state that a woman should be *salih* and *rushd* when contracting marriage.[11] Salih means those who are ready for marriage because of physical and mental adulthood, whereas *rushd* refers to the capability of a person to properly handle his/her property. On the other hand, the Prophet Muhammad's marriage with Aisha when she was 9 years old and consummated at the age of 15 is another precedent to be taken into account.[12] Thus, the Shafii and Hanbali schools of law considered the age of 15 as age of maturity for woman, whereas Hanafi and Maliki schools concluded 17 years old. However, this age does not necessarily mean the marriage age because there are other limitations that apply to women.[13]

A second limit is physical condition which differentiates between virgin (*bikr*) and women who have had sexual relationship (*thayyib*). Third is mental state which divides between competent (*'aqil*) and incompetent (*majnun*). In practice, an incompetent woman must always be in the

11 Helmi Karim, 'Kedewasaan Untuk Menikah', in Chuzaimah T. Yanggo ad A. Hafiz Anshary (eds), Problematika Hukum Islam Kontemporer, Jakarta: PUstaka Firdaus, 1994, p. 69-70

12 Ibid., p. 70-71

13 Muhammad Jawwad Mughniyyah, Al-Fiqh Ala al-Madzahib al-Khamsah, p. 252

authority of the guardian for her marriage. The majority of schools of law give full authority to father and grandfather as guardian over a virgin, competent and adult woman in marriage. If the guardian is not father or grandfather, he must ask for consent from her, for marriage. Or, if the woman is an adult, competent and *thayyib*, her consent is a necessity. However, this distinction between *thayyib* and *bikr* does not apply in the Hanafi School of law that states that consent of the woman is necessity for any marriage. In fact, the hanafites give full authority to an adult woman to contract marriage herself, provided that the husband is from the same status as her. The guardians are the agnates of the ward. The authority of guardians is based on their proximity to the ward. The nearest guardians are father and grandfather who have the right to force marriage upon the ward. If a guardian is unsuitable or dead, the guardianship passes on to the next in line. The order of guardians differs from one school of law to another. In case of no agnates, the governor or whoever is appointed will act as guardian. In Indonesia, this is called *wali hakim*.[14]

Another feature of Islamic marriage is polygamy. As a matter of fact, polygamy is one of the most controversial issues being criticized widely regarding Islam and marriage. Admittedly, polygamy is not exclusively allowed in Islam. In fact, Islam actually applies some limitations to the practice.[15] The first limitation as prescribed by the holy verse concerns the number of wives with four as the maximum. Another limitation relates to the conditions of (especially husband) in polygamous marriage. He must have financial capacity to support his wives and treat them justly in term of

14 Muhammad Jawwad Mughniyyah, Al-Fiqh Ala al-Madzahib al-Khamsah, h.

15 Abdurrahman I. Do'I, Perkawinan dalam Syari'at Islam, p.

maintenance and visit.[16] So, a husband practicing polygamy must provide virtually identical food, clothing, and place of living for wives. Likewise, he also has to divide his days equally among the wives.[17] However, polygamy persists among Muslim communities when other (mainly western) communities have prohibited the practice. Contemporary Muslim jurists started to perceive polygamy differently. Muhammad Abduh, for instance, allows polygamy in emergency situations, such as wartime.[18] Others, such as Fazlur Rahman, even agree with the banning the practice altogether because this practice will injure social weal and be harmful for children born from a polygamous marriage.[19]

Marriage is a strong bond in Islam that God highly values. However, separation does happen. Under conservative Islamic jurisprudence, virtually all normal separation belongs exclusively to the husband. This is called *talaq* (repudiation).[20] A husband may repudiate his wife at his own will, with or without her presence up to three times. The first and second is *raj'i* (revocable) and the third is *bain* (irrevocable/definite). He does not need to have any reason for repudiation nor present his case in front of judges. Each repudiation entails *iddah* (waiting period) of the wife, usually three menstrual periods (three months for menopause women) and until delivery for a pregnant wife. During this period, the husband has the option to unilaterally withdraw his revocable repudiation. If the husband divorces his wife for the third time, he cannot withdraw it, except if the wife

16 Sayyid Sabiq, Fiqh Sunnah, vol.2, p. 134

17 Ibid.

18 Muhammad Abduh, Tafsir al-Manaar, vol 5, Beirut: Dar al-Fikr, 1958.p. 143

19 Fazlur Rahman, 'A Survey of Modernization of Muslim Family Law, International Journal of Middle East Studies, 11:4. 451-465

20 Sayyid Sabiq, Fiqh Sunnah, vol.2, p. 210

has remarried another man, consummate that marriage, and has been divorced by that second husband.[21] Other forms of separation include *khul*', in which a wife redeems herself from the marriage for a consideration. This method of separation is up to the willingness of the husband. Another form is *ila*, a dissolution of the matrimonial community by the oath of the husband to abstain from marital intercourse for four months. After that period, the husband has the option to keep the oath, and therefore it has the effect of a definite repudiation. Otherwise, he has to perform *kaffara* (self-imposed penalty). *Li'an* is another form of marriage dissolution. It is in the domain of Islamic penal law since it relates to accusation of adultery by the husband of his wife.[22]

When Islam came to the Southeast Asian archipelago, people had their own way of living. They were animistic, Hindus and Buddhists. Some people remained as they were while many converted to Islam. Since Islam came mainly by peaceful means, the process of islamization was gradual and involved accommodation and assimilation. Marriage was one aspect in this process.[23] The result was intriguingly unique. While these newly converted Muslims applied nearly all Islamic marriage requirements, pre-Islamic practices also persisted as long as they are arguably not contradictory to Islamic law. These local practices were later called as *adat* or custom. For a few communities who did not convert to Islam, such as Balinese Hindus and Baduy of Pasundan, their *adat,* which usually different to each other, were purely unaltered. Thus, it is safe to say that Islamic marriage was

21 Ibid., p. 230

22 Ibid, p. 265-273

23 Merle C. Ricklefs, Sejarah Modern Indonesia, translated into Indonesia, Yogyakarta: UGM Press, 1990, p. 3

widely observed in Indonesia with minor exception.[24] Religious courts called *Pengadilan serambi* to hear marriage cases were also set up with jurisprudence books of the Shafii School of law as legal reference.[25]

As to the importance of witnesses, their presence is simply to establish proof of the existence of a marriage contract between a man and woman. There is no further proof or additional formalities such as the intervention of a representative of the secular or religious authorities. Furthermore, this verbal contract does not have to be recorded in the form of a document according to traditional Islamic schools of law. However, starting on the early twentieth Century CE, some open-minded jurists supports the application of government registration in Muslim marriages. Among those jurists are Mahmoud Shaltout and Muhammad Jad al-Haq, two grand sheikhs of al-Azhar in Cairo from different periods. Shaltout supported marriage registration and stated that it was a good thing from religious perspective since there were many abuses in marriage in Egypt. Some irresponsible people denied the occurrence of marriage, others made up marriage and paid fake witnesses, and others concealed their marriages. The sheikh was afraid that these practices would result in denied rights and fatherless children. Still, he acknowledged that marriage registration was not instrumental in determining the validity of marriage.[26] Similarly, as reported by Zein, Muhammad Jad al-Haq, also endorsed marriage registration even further. In

24 Ratno Lukito, Pergumulan Antara Hukum Islam dan Adat di Indonesia, Leiden: INIS, 1998, p. 27

25 R. Tresna, Peradilan di Indonesia Dari Abad ke Abad, Jakarta: NV V Versluys, 1961, p. 59

26 Al-Imam Al-Akbar Mahmud Syaltut, Al-Fatawa: Dirasah li Musykilat al-Muslim al-Mu'ashir fi hayatih al-yawmiyah al-'Ammah, Kairo: Dar al-Syuruq, 1968, h. 270-271

so doing, his line of argument started by proposing that the validity of marriage depended on two sets of requirements. The first set comprises religious requirements, and the second evidential requirements. Religious requirements consist of the presence of the guardian, witnesses, groom, and offer-acceptance in the marriage ceremony, whereas evidential requirements include marriage registration and other administrative demands.[27] If the process of marriage proceeding has fulfilled all essential principles and requirements, the marriage is considered valid.

According to conventional Islamic law, a valid marriage will result in several legal effects such as:

1. Permission for the newly- wed husband and wife to have sexual relationship.
2. Movement limitation of the wife beyond the designated residence unless with the permission of the husband.
3. Obligation of the husband to give dowry to the wife
4. Obligation of the husband to provide maintenance to the wife in term of food, clothing and shelter.
5. Affinity between the two families of husband and wife which also includes prohibition to marry each other (*musahara*).
6. Establishment of legitimacy of children born from the marriage as children of the husband and wife or consanguinity (*nasab*)
7. Establishment of inheritance relationship between husband and wife as well as their legitimate children

27 Satria Efendi M. Zein, Problematika Hukum Keluarga Islam Kontemporer: Analisis yurisprudensi dengan pendekatan ushuliyah, Jakarta: Kencana, 2010, p. 33-34

8. Obligation of the husband to treat wives justly, in case the husband is having more than one wife.
9. Obligation of the wife to obey her husband in sexual relationship
10. Right of the husband to educate his wife in religious affairs
11. Obligation of both husband and wife to treat each other in a good manner [28]

In case of the absence of one or several requirements of marriage essential principles, a marriage is considered void (*fasid* or *batil* in Islamic legal term). As a result, the aforementioned legal effects or part of them are ineffective. Furthermore, the doers may be subject to punishment for adultery depending on their case. Among examples of void marriages are contracting temporary marriage, marriage of Muslim women with non-Muslims, marriage with close relative (*muhrim*), and marriage without the presence of witnesses.[29] Consequently, these marriages do not oblige the husband to pay dowry and maintenance to wives. Likewise, there are not parental and inheritance relationships between husbands and wives. An example is mistake of contract» (*aqd shubhat*), an expression used to describe sexual intercourse between a man and a woman under the false impression that they are legally married, such as marriage among close relatives unknowingly. If the mistake is discovered, the marriage is dissolved. Another example is mistake in having sex (*wat'i shubhat*). The illustration is when a man living in a house with sisters of his wife mistakenly conducted sexual relationship with one of the sisters. In both situations, if /

28 Wahbah al-Zuhaily, Al-Fiqh al-Islami, p. 98-106

29 Ibid., p. 109-112

children were born out of the relationship, the consanguinity is established between father and children.[30]

Any sexual relationship other than marital relationship is considered illegal sexual intercourse. In Islam this is termed *zina* or adultery which is a major sin. Therefore, it is considered a criminal offence with maximum penalty of stoning to death.[31] If children are born from such illicit relationships, the biological father will be denied its paternity as a punitive measure for his illegal action. It may also be seen as a punishment to the mother for her part in the illicit act. In this case, the child will only be ascribed to its mother's descent because her maternal right is not questioned. Thus, since the consanguinity is not established between a biological father and his child born from adultery, the father is not responsible for providing maintenance and protection. There are also no inheritance rights between them. However, Muslim jurists differ in opinion when talking about the extent of the nonexistence of relationship between a biological father and his child. Whenever there is no legal relationship whatsoever between both, then they are foreign (*muhrim*) to each other. Thus, according to Shafii and Maliki School of law, there is no prohibition for the father to marry his biological child, in case of a girl. Likewise, she has no legal impediment in marrying sons of her biological father.[32] On the other hand, the Ja'fari, Hanafi and Hanbali School of law prohibit such marriages. The only way to avoid such ill fates is if the biological father marries his pregnant adulterous partner at least six months before the birth of the child. In this case, paternal rights between father and child

30 Ibid.

31 Sayyid Sabiq, Fiqh al-Sunnah, Vol.3, p. 340

32 Cut Aswar, 'Manikahi Wanita Hamil Akibat Zinah, in Chuzaimah T. Yanggo ad A. Hafiz Anshary (eds), Problematika Hukum Islam Kontemporer, Jakarta: Pustaka Firdaus, 1994, p. 53-56

are established because Islamic jurisprudence acknowledges six months as the minimum period of pregnancy.[33] Having said so, it cannot erase the sin of adultery. If the marriage of the adulterous partner took place less than six months before the birth or there is no marriage at all, there is no relationship between the man and the child.[34]

All marriage disputes are tried in an Islamic court called *qadla*. Historically speaking, the judicial aspect of Islamic law is performed by various judicial entities, namely Qadla, Madhalim, and Hisbah. While the Madhalim deals with heavy criminal cases and disputes over state authority, the Hisbah covers small dispute cases among litigants. The Qadla takes care of the rest.[35] This covers the rest of civil aspects of the law, including family-related matters. Since Islamic law is a jurist law, the role of Muslim jurists in crucial in determining the cause of law.[36] The only limitation on the judges is the very words of the revealed texts. After the passing away of the Prophet Muhammad, the Muslim jurists of the *fuqaha* are the sole interpreters of the legal aspect of Islam. Not even the caliphs or the sultans could interfere with the authority of the fuqaha. The fuqaha, with the vehicle of legal association called the *madzhab* (Islamic school of law) dictates the law.[37]

Since its consolidation in the III Century of the Muslim calendar, there are finally four schools of law in Islam

33 Ibid.

34 Ibid.

35 Abdurrahman Nashir As-Sa'di, Peradilan dan Tata Negara Dalam Islam, Jakarta: Pustaka Ar-Rayyan, 2009. p.34

36 Rudoph Peters, Rudolph Peters, "From Jurists' Law to Statute Law or What Happens When the Shari'a is Codified,"Mediterranean Politics, London: Frank Cass 7, 2002, p. 87

37 Rudoph Peters, "From Jurists' Law to Statute Law or What Happens When the Shari'a is Codified, p. 84

(Hanafi, Maliki, Shafii and Hanbali).[38] Although there are minor differences, the main body of Islamic law is relatively similar among the schools of law. This is due to numerous consensuses reached between them. The paramountancy of the consensus is their commitment to revealed texts as the main reference in Islamic law. Any defiance from the texts would be considered unorthodox. The employment of human reason in this legal endeavor is therefore limited. Ijtihad, in form of qiyas (*analogy*), which is considered an intellectual exercise in the Islamic legal tradition, is permitted only because of its strong connection to the revealed texts in one way or another. Other mechanisms which have vaguer reference to the texts, such as *istihsan* and *maslahah mursalah*, are only applied by some schools of law while they are rejected by the others. This legal theory is shared among the schools of law and has resulted in a similarity of the product i.e. Islamic jurisprudence.[39]

Lay men would be expected to adhere to one of the authoritative schools of law to guide their lives in the light of Islamic teaching. They would connect to the fuqaha in certain ways to ensure their adherence to Islamic law. The fuqaha in this association produces jurisprudence as scholarly works, *fatwa* (non-binding legal opinion), and *qadla* (court decision). The association then selects among their associates to become judges in *qadla* (Islamic court). As part of loyalty to their school of law, those Muslim jurists would only use the authoritative opinion which flourished in their school of

38 These four schools are in Sunni Islam. See for example Wael B. Hallaq, A History of Islamic Legal Theories: An Introduction to Sunni Usul al-fiqh, Cambridge, Cambridge University Press, 1987, p. 31.

39 Wael B. Hallaq, A History of Islamic Legal Theories: An Introduction to Sunni Usul al-fiqh, p. 32-35

law as legal reference and rarely find the law independently.[40] This jurisprudence and its mechanism persisted for centuries and many Muslims still hold on to this *madzhab* institution until now, including the aspect of marriage. The situation in which Islamic family law was applicable and religious courts were instituted was the case in the archipelago until the coming of the Dutch in the XVII century.

Dutch Civil Family Law

Especially starting the XIX Century CE, when the Dutch Royal kingdom took over the East Indies from the East Indies Company, the Dutch started to administer law and order in the archipelago. Considering plurality of legal subjects in the area of civil law in the region they called the East Indies, especially marriage, the Dutch divided them into four groups; Indigenous Muslims, Indigenous non-Muslims, Europeans, and Eastern foreigners. Each group had its own law. For indigenous who were not Muslims, the law that apply to them is *adat* law. For indigenous Muslims, Islamic law applied as long as it had been received by *adat* law. Europeans applied Dutch law namely the Civil Code which they called Burgerlijk Wetboek which basically originated from the French civil law of the Code Napoleon.[41] Aside from marriage law, all aspects of civil law would follow this Code for all four groups.[42]

40 Ibid., p. 54

41 Taufiqurrohman Syahuri, Legislasi Hukum Perkawinan di Indonesia: Pro-Kontra pembentukannya hingga putusan Mahkamah Konstitusi, Jakarta: Kencana, 2013, h. 63.

42 To enforce the law, the Dutch trained indigenous people in Dutch law schools both in the Netherlands and later in East Indies to become mainly judges in this colonial territory. Law schools in East Indies later became Faculties of law in Indonesian universities after independence in 1945. The Dutch court of justice heard civil

The family aspect of the law is regulated in Book I of the Code. According to the code; marriage is a legal union between a man and a woman to form an eternal union. A marriage is valid if it fulfills both substantive and administrative requirements. The substantive requirements include consent of both parties (article 28). The code also strictly observes the principle of monogamy. No man under any circumstances can have more than one wife under this Code since it is prohibited and made punishable by article 27. The Code also sets the minimum age of marriage, 18 years for males and 15 years for females. In article 250, the Code states that a valid marriage gives birth to legitimate children. Thus, the husband is the father of the children. Since the Code considers marriage as a legal action, the administrative legality of a marriage is paramount. It means that administration and registration determine the validity of a marriage. Otherwise, it will not have any legal effect. Article 50 insists that every marriage has to be registered in the civil registry office. Thus, any marriage without registration is void. The children born from an unregistered marriage are considered illegitimate children.

The code differentiates between two familial relationships, the first is based on blood relation and the second is based on marriage relation. Blood relation is closely related to consanguinity, which is a relationship between parent and children. The code differentiates between legitimate children and illegitimate children. The former are

and penal issues except marriage cases of Muslims. Religious court, which was already established before colonial period, heard family cases for Muslims. The authority of this court, however, was severely curtailed by the Dutch in many ways as part of Dutch policy to maintain law and order. See for instance, Euis Nurlaelawati, Modernization, Tradition and Identity: The Kompilasi Hukum Islam and Legal Practice in the Indonesian Religious Court, Amsterdam, Amsterdam University Press, 2010, p. 48-49

those born within a valid marriage based on article 250 of the Code.[43] These children are called legitimate children or offspring. They are born from a valid marriage of their father and mother.

In contrast, illegitimate children (or natural children in the Code) are those who are not based on a valid marriage. They include children outside marriage, children born from adultery, and incestuous children. The code defines children outside marriage as those who are born from a sexual relationship without marriage between a man and a woman who are not prohibited to marry each other. Children born from adultery are children who are born from a sexual relationship between a man and a woman in which both or one of whom are already married to another person. And incestuous children are those who are born from a sexual relationship between a man and a woman who are prohibited to marry each other (based on article 31 of the Code).[44] The differentiation is necessary because only children born outside marriage can have relationship with the parent, whereas the latter two cannot have relationship with the parent.

A mother becomes mother of children outside marriage upon giving birth. A father of children outside marriage can only have limited civil relationship with the children outside

43 It states: 'every child who was born and raised within a marriage necessitates the husband as father'.

44 It states: a marriage is also forbidden: (1) between in laws, valid or not, except if the husband or the wife which causes the in law relationship has died or if based on absence of the husband or the wife has been granted by the judge to perform another marriage; (2) between uncle and/or the uncle of parent with female nephew, as well as between aunt or the aunt of the parent with legitimate or illegitimate male nephew. If there are important reasons, president by giving dispensation, is authorized to abolish the prohibition of this article.

marriage through legal action called admission. If the court approves this admission, the children will get the right of maintenance from the parent. Still, this admission does not change the label as children born outside marriage. So, the children are children outside marriage of the mother (and father). In terms of inheritance, these children only become heir of their father, not the family of the father. In addition, they inherit the deceased after the absence of the rest of heirs.[45] In addition, the parent (father and/or mother) will not be the guardian of the children, but the state will be so.

Islamic Marriage in Indonesia

Shortly after independence, many felt the pressing need for unifying law, including marriage law. However, a series of effort failed because the two opposing groups, the Muslim group and the secular group, could not agree on main issues. The Muslim group, who channeled their influence through the Ministry of Religious affairs as well as Muslim representatives in the Parliament, insisted that the new marriage law should not be contradictory to Islamic law. In contrast, the secular group, consisting of graduates of Dutch law schools in the Ministry of Justice, non-Muslims, and women activists, demanded a different type of law.[46] The legislature was also sharply divided on this issue. This situation took place during the early period after independence. The effort for national legislation on family law was sluggish given the plurality of existing law on marriage. Thus, as the prospect of unification

45 The article 873 of the Code states: "*If a member of family is dead without leaving family members who are entitled to inherit and without leaving husband or wife, children outside marriage who have been admitted has a right to inherit all inheritance before the state*".

46 Taufiqurrohman Syahuri, Legislasi Hukum Perkawinan di Indonesia, p. 102-104

of family law was slim, the effort was primarily directed to make legislation for particular groups. For the Muslim group, this meant that they pushed forward legislation for themselves. Therefore, in 1946 the law on marriage issues, a law on registration of marriage, *talaq* (repudiation) and *rujuk* (reconciliation) for Muslims, was enacted.[47] This law was in fact mainly a legitimating of the Dutch initiated policy prior the independence. Likewise, the ministry of religious affairs essentially proposed two drafts of family law; a draft of family law for non-Muslims citizens in 1952 and another draft in 1954 for Muslims after a long process to produce a unified draft proved to be fruitless. The two drafts were divided into three parts. The first part consisted of general provision that applied to all citizens, the second part contain 'organic' provisions which regulated marriage issues based on religions in Indonesia (Muslims, Catholics, Protestants, Buddhists, Hindus), and the third part of the draft was for those who were not affiliated to any religion.[48] However, until the fall of Sukarno's Old Order in 1965, the draft was never put on the table of the legislative assembly.

The quest for family law continued in the New Order period. The journey began by enactment in 1970 of a law on judicial system which recognized religious courts dealing with marriage-related cases for Muslims. As to marriage law, the process started after the general election in 1971. The process began by a very secular bill in 1973 proposed by the Ministry of Justice. It is considered secular by many Muslims because several stipulations in the draft were considered to have deviated from Islamic law. For instance,

47 Adriaan Bedner and Stijn Van Huis, 'Plurality of marriage law and marriage registration for Muslims in Indonesia: a plea for pragmatism', Utrecht Law Review, 6:2, 2010, p.178

48 Taufiqurrohman Syahuri, Legislasi Hukum Perkawinan di Indonesia, p. 103-104

the validity of marriage is determined only by official registration.[49] Observance of the marriage to religious injunction was deemed unnecessary. Likewise, the draft also allowed interreligious marriages while Islamic law put severe restrictions on the matter.[50] The draft opened the possibility of illegitimate children being acknowledged as legitimate children.[51] This stipulation is, admittedly, a copy-paste from Burgerlijk Wetboek, Dutch Civil Code which is still studied and applied in Indonesia until now.

After fierce debate in the parliament and consequently with considerable revision, it was only in 1974 that the opposing groups achieved compromise and passed the bill on marriage law to become a unifying law on marriage for all Indonesian citizens.[52] However, the compromising nature of the law indeed left unresolved issues in certain aspects of the law. At least, the law accommodated Muslim groups and seculars in many ways. In late 1980s, the Muslim group again pushed forward a more Islamic family law which was partially successful. The draft was intended to provide legal reference to judges of the religious court which, at the time, still relied on books of Islamic jurisprudence written by Muslims jurists as legal reference. The draft never became a law, but the president saved it and stamped it as a presidential

49 The draft in article 2(1) stated: a marriage is valid if performed before marriage registrar, registered in the official and performed under this law and/or regulations which are not contradictory to this law".

50 The draft in article 11(2) stated: "Difference of nationality, tribe, country of origin, place of origin, religion/belief and descent, are not impediment of marriage".

51 The draft in article 49(1) stated: "children born outside wedlock has only civil relationship with the mother and family of the mother." Article 49(2) stated: "these children can be acknowledged as the children of the father".

52 Taufiqurrohman Syahuri, Legislasi Hukum Perkawinan di Indonesia, p. 109

instruction in 1991. Although this so-called 'Compilation of Islamic Law' it is less binding, its presence can be seen as a partial success of Islamic legislation.[53] Both legal documents, Law 1/1974 on Marriage and Presidential Instruction 1/1991 on Compilation of Islamic Law become instrumental legal codes for the religious court.[54]

The law No. 7/1989 on Religious Court indicated that the religious court has become a separate entity and independent from other authorities. Previously, all verdicts of the religious court had to be authorized by the civil court to be legally binding and executable. The law also stated that the court is under the auspices of the Ministry of Religious Affairs in terms of administration and judgeship. This status is historically related to the origin of the religious court as an Islamic institution even before the independence of Indonesia. In term of procedure and legal aspects, the court is under the tutelage of the Supreme Court. This dual-identity of the religious court ended in 2003 when the religious court became fully under the administration of Supreme Court. Judges of the religious court pay allegiance only to the Supreme Court from then on. The Ministry of Religious Affairs has no more authority or influence upon the religious court except in terms of emotion and history.[55] Admittedly, a majority of judges in religious court are well-versed in Islamic jurisprudence. Still, their affinity to the Ministry of Religious Affairs has gradually diminished. Fortunately, the chamber of religious court in the Supreme Court prevents the religious court from becoming fully secularized. The chamber is chaired by judges whose commitment to preserve Islamic law in the religious court remains intact.

53 Euis Nurlaelawati, Modernization, Tradition and Identity, p. 21

54 Ibid., 24

55 Euis Nurlaelawati, Modernization, Tradition and Identity.

This commitment is reflected in the decisions of Religious Court. As inferred by Nurlaelawati, the employment of Islamic jurisprudence opinions is still widely detected in the religious court's decisions. These opinions are cited alongside stipulations of marriage law and the Compilation of Islamic Law.[56]

The law Number 1/1974 (in subsequent reference will be attributed as 'the law') on marriage states in the first article that marriage is a physical and spiritual union between a man and a woman as husband and wife with the purpose of forming a happy and everlasting family based on the conviction to God. The Compilation of Islamic law (later will be stated as 'the compilation') further asserts in article 2 that wedlock in Islam is *mitsaqan ghalidza* (solemn covenant) and performed for the sake of obedience to God's command and therefore it is a ritual.[57] The compilation states that the purpose of Islamic marriage is to form a happy family full of love and compassion.

In article 2, the law prescribes the validity of marriage. In sub-article 1, the law indicates that validity of a marriage is based on the observance of religious law. While the law does not provide details of religious law, the compilation sets out the details. In Chapter four (articles 14 to 29), the compilation explains essential elements and the requirements of Islamic marriage. Basically, the compilation lists them in accordance with Islamic jurisprudence, especially of the Shafii School. This means that in the marriage ceremony the guardian must represent his ward in marriage in all situations and that the two witnesses must be male. In addition, both groom and bride must explicitly state their consent. Their age must also reflect adulthood, which according to the marriage law are

56 Euis Nurlaelawati, Modernization, Tradition and Identity, p. 159-160

57 Mitsaqan ghalidza is derived from the Qur'an (4:21)

19 years old for groom and 16 for the bride. Provision for marriage below minimum age is subject to judicial discretion and parental consent. If the person is under 21 years old, the parent should give permission. The law states that conditions and procedures of marriage will be governed by different regulations.[58]

The law asserts in article 3 that a marriage should be monogamous.[59] Nonetheless, it also allows polygamy for the husband up to four wives, as is allowed in Islamic law in certain conditions, but with several restrictions. Article 4 of the law lists three conditions in which husband may take another wife; if the wife (1) could not perform her duties as wife, (2) is sick, or (3) barren. If a husband finds his wife in one of these conditions, he could take another wife. For that matter, he; (1) must get permission from the existing wife/ves; (2) must have the ability to support his wives and children; and (3) must be able to equally treat the wives. If a husband wants to take another wife, he must request formal permission from the religious court. The hearing on a polygamy request usually takes up to six months before a court decision is issued. If he can fulfill the necessary requirements, the judges will grant permission to take another wife in addition to the existing wife/ves. The compilation adds in article 56 that any polygamous marriage which is performed without court permission is not legally binding. Thus, it can be inferred that the law and compilation severely restrict the practice of polygamy.

If the practice of polygamy is still allowed, *talaq,* which is in Islam an exclusive right of husbands, is no longer

58 Law No. 1/1974 on Marriage Law, Chapter II on Conditions of Marriage (article 6-11)

59 It states; (1) in essence a man can only have one wife. A woman can only have one husband; (2) the court may give permission to a husband to have more than a wife if it is wished by concerned parties.

applicable in Indonesia. Virtually, only judicial divorce is the way out of wedlock. Interestingly, when divorce is initiated by the husband, it is termed *talaq*.[60] The Implementing regulation to Marriage law, which later was restated by the compilation, stated that a husband or wife may apply for divorce on several grounds; adultery, alcoholism, addiction to narcotics, gambling or "any other vice that is difficult to cure"; abandonment for two years without valid reason; cruelty or mistreatment endangering life; physical disfigurement or malady preventing performance of marital duties; sentencing to a prison term of five years or more; and constant disputes without hope of resolution.[61] In addition, the Implementing regulation as well as the compilation also state that the divorce is legally in force starting from the date it is decided by the court.[62] Thus, extra judicial *talaq* which takes place before the decision of the court is not recognized.

Aside from these requirements, the most notable feature is marriage registration. This aspect relates not only to validity of marriage but also to legitimacy of the children. The marriage law article 2 in sub article 2 states that each marriage is to be registered according to the law.[63] However, at the first glance, the nature of unsettled compromise is apparent in this sub-article and therefore it is profoundly ambiguous. Although registration is sanctioned, it is unclear whether it is a determinant of the validity of marriage. In addition, registration is located in a different sub-article. The compilation is clearer on the issue. In article 4, it says that the validity of marriage depends on the observance of

60 The compilation article 129.

61 Implementing Regulation No. 9/1975 on Marriage Law especially article 19.

62 Ibid.,

63 Article 2 (2) of the law states: 'every marriage is registered according to the regulation'

Islamic law as sanctioned in the article 2 (1) of the law of marriage. In a subsequent article, the compilation considers marriage registration as a necessity to ensure law and order. Furthermore, this registration should be performed by the official marriage registrar. Otherwise, the marriage is not legally binding.[64] Yet, the word 'not legally binding' is a vague term. To some people, it does not necessarily mean invalid or void in Islamic law. Therefore, this cannot prevent controversy surrounding marriage registration.

Seemingly, this controversy originates from the debates between Muslims and the seculars during the drafting of the law. While the Muslim groups only recognize religious law as the sole requirement in determining the validity of marriage, the seculars insist that a marriage should be officially registered. In reading this article, legal scholars and practitioners are divided. Muslims scholars and the Muslim community at large believe that registration is not instrumental in marriage. It is only administrative in nature. They believe that a marriage is valid if all religious requirements are fulfilled, nothing more. Therefore, even if the marriage without official registration is not legally binding, it is valid from the perspective of Islamic law. In contrast, secular legal scholars and legal practitioners argue that a valid marriage must fulfill religious requirements and be formally registered. Failure to fulfill one of which means the marriage is void. The debate is best illustrated in books written by authors from the two camps.[65]

64 Abdul Mannan, Aneka Masalah Hukum Perdata Islam di Indonesia, Jakarta: Kencana, 2008. p. xx-xxi

65 Muslim intellectulas usually tend to consider registration as administrative requirements, see Abdul Mannan, Aneka Masalah Hukum Perdata Islam di Indonesia, p. xx-xxi, Sayuti Thalib, Hukum Kekeluaraan Indonesia, Jakarta: UIPress, 2009. p 71, Neng Djubaidah, Pencatatan Perkawinan dan Perkawinan Tidak Dicatat,

Amidst this controversy, the state, however, gradually has enforced the latter interpretation. Regimens of civil registration and legal administration are deployed that drive people to follow the procedure of marriage registration since a marriage certificate as a result of marriage registration is instrumental. In addition, the religious court, which hears cases on family affairs such as divorce and inheritance disputes, refuses to hear cases of married couples if their marriage is not registered in the first place. If a marriage is not registered, it legally means there no marriage has taken place and so there are no consequences coming out of it. Surely, the status of marriage is a big issue for the legality of the marriage as well as the status of children.[66]

The marriage law indicates in article 42 that legitimate children are those who are born from a valid marriage. From the perspective of state apparatus, such as judges of the religious court and marriage registrars, it means children who are born in a religiously valid marriage and officially registered in the designated method and office. In their birth certificate, the name of the father and mother will appear as legitimate parents. Furthermore, the compilation in article 103 adds that the legitimacy of a child can only be proven by a birth certificate or other binding evidence. In contrast, if it is a religiously valid marriage but not registered in the designated method and office, the marriage is not valid. In their birth certificate, only the name of the mother would

Jakrta: SInar Grafika, 2009. p. 214. On the other side, women and gender activists as well as legal practitioners insist that marriage registration is a must. See for instance Siti Musdah Mulia, Toward Just marital Law: Empowering Indonesian Women, p. 46-48 and Marzuki Wahid, Counter Legal Draft Kompilasi Hukum Islam (CLD-KHI) From the Perspective of Politics of Law in Indonesia.

66 Interviews with judges of religious court (on July 2013 in Surabaya and Jombang) certainly affirm this statement.

appear as legitimate parent. Thus, if children were born in an unregistered marriage, the status of children is illegitimate from the state's point of view. The law in article 43 (1) and the compilation article 100 state that these children will only have parental relationship with their mother, but not with the father. The law in article 43 (2) states that the status of children outside marriage will be regulated by the implementing regulation which turned out to be silent about this issue.[67]

To rectify the vacuum of law, the compilation in article 103 gives the opportunity for illegitimate children to appeal for a court decree on their status. The court would examine evidence and determine whether to grant or refuse the appeal. Upon grant, the court will issue a decision for children determining their status. However, not all children have this opportunity. On many occasions, the appeal for children's status is closely related to the status of marriage of their parents. Therefore, article 7 of the compilation concerning *itsbat nikah* (court decision to grant marriage validity) applies. The article states that *itsbat nikah* will only be granted for a couple who got married without registration and who want to divorce, the missing of marriage certificate, the uncertainty surrounding validity of a marriage, the marriage happening before the enactment of law 1/1974 on marriage, and for any marriage which is not violating the law No. 1/1974. Thus, marriage registration is crucial, if not necessary.

In the situation in which marriage registration is important, a majority of Muslims indeed follow the procedure of marriage registration, although they might not consider it as religiously imperative. Still, there are some

67 The Implementing Regulation for the Marriage Law No. 1/1974 is Implmennting Regulation No. 1/1975.

Muslims who do not bother with marriage registration for several reasons. The first issue concerns the cost of marriage registration. Although the official charge for marriage registration is reasonably low, unofficial expenses have proven to be burdensome for low income people. In addition, local tradition may be involved in this process.[68] Another issue is ignorance and poverty. Many people, especially women in rural areas, willingly involve in marriage without registration because they simply do not know the consequences of not registering their marriage on their family life and children.[69] The fact that they are poor also contributes to this practice. They see marriage as a relief to the burden of life because they assume that their husband would feed them, take care of them and their children, and be responsible to them.

Another issue which prevents registering a marriage is inability of the married couple to fulfill the requirements of marriage registration. This happens for at least two reasons. The first is because there was no marriage whatsoever in the first place. Put bluntly, the relationship was not marriage, but adultery or religiously unlawful sexual relationship. Another reason is polygamous marriage which is not in accordance with the procedure.[70] On many occasion, these polygamous marriages happen with ignorant and poor women as wives who do not know the regulation of polygamous marriage. The situation on this ground is staggering. Many women who are involved in marriage without registration suffer

68 In some places, registering marriage simply necessitates the family to shower wedding party. This is expensive for poor families. So, the only option to avoid cultural obligation of wedding party is informally get married.

69 Widiastuti, 'Beberapa Faktor Penyebab Pasangan Suami-Istri Melakukan Penikahan di Bawah Tangan, Eksplorasi, 20(1), 2008, p. 88

70 Ibid.

legal, social and economic problems. The second cause of illegitimate children, that is adultery or temporary marriage, is also increasing. In total, the national commission of children protection estimated that the number of children without legal status is 50 million.[71]

Attempting to rectify the unfortunate situation of the aforesaid women and children caused by indecisiveness on marriage registration regulation and vacuum of legal support for illegitimate children, the government proposed bills to amend several aspects of marriage law. At the same time, the gender movement and CEDAW (Convention on the Elimination of All Forms of Discrimination against Women), also joined in the effort. The most notable effort culminated in Counter legal draft of the Compilation of Islamic law in 2004. There were two purposes of this draft; the first is to provide religious law with a binding and imperative provision for the religious court, because the practiced compilation was a presidential degree, not an act. The second is to replace certain insensitive gender articles of the compilation with those supporting equality and upholding human rights. Among the suggestions were: marriage is defined as merely a legal contract,[72] guardian for bride is not necessary,[73] marriage registration is a necessity,[74] women may become

71 Tim KPAI, KPAI: 50 Juta Anak Indonesia Tak Punya Akta Lahir, http://www.kpai.go.id/berita/kpai-50-juta-anak-indonesia-tak-punya-akta-lahir/, accessed on October 5th, 2013.

72 Article 2: "Marriage is a solemn contract (mitsaaqan ghaliidzan) which is conducted with full awareness by a man and a woman to form a family and conducted based on consent and agreement of both parties."

73 Article 6: "A marriage is valid with the following requirements: groom, bride, witness, ijab qabul (contract), and registration.

74 Article 6 as above.

witness of marriage ceremony,[75] marriage age is minimum 19 years old for males and females,[76] husband is no longer head of family,[77] inheritance relationship of children outside wedlock is established between mother and the man who caused her pregnancy,[78] inter-religious marriage is allowed,[79] and polygamy is prohibited.[80]

However, this effort failed for several flaws. Predictably, conservatives opposed the liberal nature of the draft.[81] Moreover, many know that the Working group of Gender Mainstreaming of the Indonesian Ministry of Religious Affairs which prepared the draft was partly funded by foreign donors. The old accusation that the campaign was a part of the western secularizing agenda resurfaced.[82]

After the failure of that project, the ministry of religious affairs in 2008 proposed another bill named the draft of material law for religious court. This bill is reasonably more moderate compared to the counter legal draft. The bill proposed to increase of age of marriage to become 21 for

75 Article 11 (1): "Men and Women are in the same position in becoming witness of marriage contract"

76 Article 7 (1): "the minimum age for marriage is 19 years old for men and women."

77 Article 49 (1): "the position, rights and duties of husband and wife is equal in the family and in living with community".

78 Article 16 (of Book Two on Inheritance): "Children born outside marriage whose biological father is determined by the court have the right to inherit their biological fathers."

79 Article 54: (1): "Marriage with non-Muslim is allowed

80 Article 3 (1): the principle of marriage is monogamy. (2) Any marriage conducted beyond the principle is legally void.

81 Marzuki Wahid, Counter Legal Draft Kompilasi Hukum Islam (CLD-KHI) From the Perspective of Politics of Law in Indonesia, A paper presented at The 4th Annual Islamic Studies Postgraduate Conference, The University of Melbourne, 17-18 November 2008, p.47-48

82 Ibid., p. 46

male and 18 for female. In addition, it is equipped with a full regimen of punishment which was absent in the marriage law. The punishment is applicable for many violations, namely husbands who divorce their wives without court hearing,[83] those who intentionally contract marriage without registration,[84] those who take a second wife or more without court permission,[85] and those who act as marriage registrar without official authority, marriage registrars who violate their authority.[86] The punishments are imprisonment up to 6 months or fine up to 5 million rupiahs. This effort too, failed simply because some eloquent hardliners opposed some dictums of the draft. They opposed mainly the punishment for not registering marriage arguing that those dictums which are punishable in the bill are actually allowed in Islamic law. Those who oppose said that the government should address adultery and prostitution which are clearly a major sin in Islam and therefore prohibited[87]. In addition, some gender activists argue that punishment will create more problems for women involved in an unregistered marriage because

83 Article 145 of the bill: "Any person who conduct marriage with a second, third, fourth wife without prior permission from the court as sanctioned in article 52 (1) will be punished by fine up to IDR 6.000.000 or imprisonment up to 6 (six) months".

84 Article 143 of the bill: "Any person who intentionally conduct marriage no in front of official marriage registrar as sanctioned in article 5(1) will be punished by fine up to IDR 6.000.000 or imprisonment up to 6 (six) months.

85 Article 144 of the bill: "Any person who conduct temporary marriage will be punished by imprisonment up to 3 (three) years and the marriage is cancelled to to violation of the law."

86 Article 146 of the bill: "Any person who divorce his wife not in front of judicial process as sanctioned in article 110 will be punished by fine up to IDR 6.000.000 or imprisonment up to 6 (six) months.

87 See for example, Hizbut Tahrir Indonesia, "Hukum Islam Tentang Nikah Siri", http://hizbut-tahrir.or.id/2009/03/14/hukum-islam-tentang-nikah-siri/, accessed on October 6th, 2013

they are liable to punishment.[88] However, the government has inserted the bill yet again in the legislation project 2010-2014. The prospect of success for this bill depends on the legislating process in the legislative assembly.

Meanwhile, it was in this status quo that the judicial review of marriage law was requested from the Constitutional Court in 2010. A woman who had been contracted in an unregistered marriage and got a son from that marriage stood up against the injustice that she and her son experience regarding the regulation concerning marriage registration and children status.

88 For example, Ratna Batara Munti, an activist, states that this sanction will expose women to further misfortune. See, antaranews March 10th, 2010 "Sanksi Nikah Siri Rugikan Perempuan", http://www.antaranews.com/print/177157/, accessed on Octoer 6th, 2013.

CHAPTER III

THE MACHICA CASE AND THE CONSTITUTIONAL COURT RULING

In the previous section, the issues on children out of wedlock have been explored thoroughly. As illustrated there, the negative impacts have been suffered by both the children and the mothers. Several efforts to change the condition have been made but very limited improvement has resulted and barely any change occurred. Until finally, one case has brought people's attention back to the issue and even more, the result has been quite a shock for many Indonesian Muslims. Finally, someone spoke up loudly and the struggle has resulted in a goal.

The status of Machica's son from her unregistered marriage is precisely what triggered the emergence of the judicial review application of Law No. 1/1974 on Marriage to the Constitutional Court by Hj. Aisha binti H. Mochtar Ibrahim alias Machica Mochtar (Applicant 1) and Muhammad Iqbal Ramadhan bin Moerdiono (Applicant 2). Muhammad Iqbal Ramadan is the son of Hj. Aisyah Mochtar from her marriage not registered with Moerdiono.

A. THE STORY OF MACHICA; WHERE IT ALL BEGUN

Photo Machica

Photo Moerdiono

Photo Machica and son

Photo Moerdiono dan Machicha

As explained in the MK ruling, marriage between Machica, whose surname is Aisyah Mochtar with Moerdiono took place on December the 20th, 1993 in Jakarta. The *Ijab-qabul*, of the marriage was performed between Moerdiono as a bridegroom and the father of Machica named Mochtar Ibrahim, as the *wali* (guardian) of Machica. There are two witnesses for that ceremony; Yusuf Usman and Risman. The dowry given by Moerdiono at the marriage consisted of a set of prayer equipment, money in amount of 2,000 Riyal (Saudi Arabia's currency), and a set of gold and diamond jewelry paid in cash.[1] The MK ruling also reveals that, as an unregistered marriage usually is, there is no officer of

1 Mahkamah Konstitusi Republik Indonesia, Putusan Nomor 46/PUU-VIII/2010

marriage registration from the local KUA (Office of Religious Affairs that is in charge of marriage registration) present at the procession of *Ijab qabul*. It is also explained that the couple also did not make an effort to register their marriage afterward. This is why such marriage is categorized as *nikah siri* or unregistered marriage.

It is commonly known that unregistered marriages always have some reasons behind it. In case of Machica and Moerdiono, the primary reason of the marriage being not registered was the fact that Moerdiono already had a wife. News of Machica's marriage to Moerdiono could be widespread in the media. It is not clear why Moerdiono did not take the normal procedure to ask for court permission to conduct polygamy. It might be due to the fact that Moerdiono was a state official who was bound to the state's stricter rules and limitations in case of polygamy. It is worth mentioning that in Indonesia, there are specific regulations for state officials and civil servants and the military. The regulations mainly offer stricter limitations for cases such as polygamy and divorce.[2]

Reportedly, the marriage that started in 1993 ended in 1998. From that marriage, Machica has a son named Muhammad Iqbal Ramadan. However, Moerdiono as well as his family, notably his first wife, did not acknowledge him as Moerdiono's son. Since the separation, Machica started an endless journey full of struggle to fight for the rights of her son. This is quite a sad story; Machica often attacked Moerdiono, asking for responsibility as the father of her son. In addition, she also faced threats in keeping on fighting for the status of the marriage and of her son. In accordance with

2 The regulation is Government Regulation No. 10/1983 on Permission of Marriage and Divorce of Civil servant, which later amended by Government Regulation No. 45/1990 on Amendment of the aforesaid regulation.

state law, Machica's son will only be recognized when the marriage is considered legal and valid. In doing so, the only way possible is to apply for judicial validation of the marriage by asking the religious court to acknowledge the status of the marriage. This procedure is called *isbat nikah*.[3]

In 2008, Machica applied the *isbat* for her marriage with Moerdiono to the Religious Court of Tigaraksa Banten. As predicted, the Court did not grant the application for *isbat* through the decision number 46/Pdt.P/2008/PA.Tgrs Dated June 18, 2008. The main reason was that the marriage did not fulfill the requirements set by the Marriage law related to polygamy.[4] Machica was married by Moerdiono in a polygamous marriage and therefore it required the first wife's permission. Moreover, Moerdiono is a state official who is bound with extra regulations before committing polygamy.

Due to the absence of the first wife's permission and other requirements, the court did not accept the application. However, she did not despair and finally found the momentum to apply for judicial review to the Constitutional Court under several sections in the 1974 marriage law. She argued that certain articles of the Marriage law were contradictory to the newly-amended Constitution. Using the 1945 Constitution of the Republic of Indonesia as the basis for her argument, she demanded for judicial review relying on article 2 (2) on marriage registration and article 43 (1)

3 Itsbat nikah is a procedure which requires court hearing to determine the validity of a marriage. according to the Compilation in article 7, Istbat nikah is requested when divorce is applied, the missing of marriage certificate, the marriage conducted prior to the enactment of Marriage law No. 1/1974 on marriage. This procedure is applicable as long as not contradictory to the law.

4 Nur Mujib, Akhir Perjuangan Seorang Machica Mukhtar, Koran Peduli, Tuesday, February 28th, 2012, accessed on September 21st, 2013

on the status of children outside marriage. She maintained that those articles have led to discriminatory treatment towards children born out of wedlock and causes them to suffer. These articles had denied them their rights as citizens of Indonesia.

Machica's struggle in MK has caught wide attention both from the media and the people of Indonesia. This is due to many reasons. Firstly, for so very long, there have been a few efforts taking place change the marriage related policy. The regulations related to marriage in Indonesia are the law no 22 year 1946 junto law number 32 year 1954 regarding the marriage registration, the law number 1 year 1974 regarding marriage and its implementing regulation Number 11, year 1975, and the compilation of Islamic law that is the presidential decree, year 1991. For so long, not any changes have been made on any aspects of the regulations. Admittedly, as explained in the previous section, there are several attempts, which have been made to offer such change. Counter Legal Draft of Kompilasi Hukum Islam (CLD-KHI), Draft of Religious Court Law (RUU HMPA) are examples. None of the two bills passed the initial process of legislation because the public were heavily divided on the two drafts for the reasons outlined in the previous section. In this context, the Machica case took over.

B. THE CONTENT OF THE MK RULING

Arguments from the petitioners (Machica and the son)

In order to have a clear understanding of the MK ruling and what it actually regulates it is necessary to explore the content of the ruling. There are several important aspects of

the ruling; related to the issue and other additional data that is relevant to support comprehensive understanding.

For a person to be able to apply for a judicial review by the MK, they must prove that they actually have the right to apply for the judicial review. As required by Article 51 of Law No. 24/2003 on the Constitutional Court, to apply for judicial review, an applicant must fulfill several aspects. First, the applicant must have legal status *(legal standing). Second,* the applicant must be able to prove that rights and or constitutional rights are disadvantaged by enactment of a particular legislation. The Constitutional rights here refer to the rights listed in the Constitution of 1945. In Machica and Iqbal's case, the laws that have damaged their rights are several parts of the law No. 1/ 1974 on Marriage. The applicants argue that there are certain parts of the Law number 1/1974 that contradict the 1945 Constitution and this has damaged their right in terms of their marriage legal status and the status of children.[5]

Based on the petition submitted by the applicant, two articles in marriage law Number 1/1974 have been detrimental to the right for the legal status of marriage. And, this is also why the two articles contradict some part of the Constitution. The first article being protested by the applicants is article 2 (2) of Marriage Law Number 1 year 1974 that reads: *"Every marriage is registered in accordance to regulation "*. According to the petitioners, this clause has violated their constitutional right. Specifically, this clause contradicts Article 28 section B paragraph 1 of the Constitution that says: *"Everyone has the right to form a family and continue generation through a valid marriage"*.[6] Here, the applicant believes that marriage between her and

5 The constitional court ruling, p. 6

6 Ibid.

Moerdiono is valid because it is in line with the state law and the religious rules (Islam) that she believes. They argue that the validity of the marriage according to the state law depends on its observance of religious rules as confirmed by article 2 (1) of Marriage Law number 1/1974: *"The marriage is valid, if it is conducted in accordance with the laws/rules within a person's religion and belief"*. So, the first protest and demand from the petitioners is the status of the marriage itself. Here, Machica demands the revision of article 2 of sub article 2 of the 1974 marriage law so that her marriage with Moerdiono can gain a valid status before the state law.

The second section of the 1974 marriage law that is subjected to the judicial review by the petitioner is article 43 sub article 1 stating: *"A child who is born outside the marriage only has a civil relationship with his/her mother and his/her mother's family"*. According to the petition of the petitioners, this article is clearly a contradiction to the 1945 Constitution's article 2 sub article 28 B stating: *"Every child has the right to live, grow, and develop as well as the right for protection from violence and discrimination"*.

In addition, article 43 (1) of the 1974 Marriage law is also contrary to subsection D, article1 article 28 of the Indonesian Constitution of 1945 that states: *"Everyone has the right to recognition, security, protection, and fair legal certainty with also the equal treatment in front of the law"*. In the petitioner's explanation, the statement above should be read as a unified argument.

Based on the arguments above, the petitioners argue that article 2 (2) and article 43 (1) of the 1974 Marriage law have put them in an unfortunate condition because it causes them disadvantages in terms of legal certainty. Supposedly, based on the Constitution, which is the highest legal foundation in Indonesia, the petitioner and her son have a constitutional

right to get the endorsement of marriage and the legal status of the petitioner's son because the petitioner's marriage is legal and valid in accordance with the Islamic norms that she believes. However, the regulation within 1974 marriage law has damaged the constitutional rights possessed by the petitioner. The rule of law is clearly unjust and detrimental to the petitioner. The regulation regarding the marriage registration has affected the validity of the marriage that was performed according to the religious norms. The later consequence is the child's status of the Petitioner, being considered a child out of wedlock. So, it can be concluded here that certain sections in the 1974 marriage law have caused damage to the constitutional rights of the petitioners.

Since the second petitioner (Muhammad Iqbal Ramadan) was a child born in an unregistered marriage, he has received discriminatory treatment that is the denial of his right to have acknowledgment of his origin. In this case, the petitioner cannot have the name of his religiously valid father in his birth certificate. Moreover, the state has also removed the rights of the child Iqbal, to have an optimal support for his life, growth, and development by limiting his civil relation only with the mother and the mother's family. This is due to that fact that the state has denied the father's obligation to provide maintenance for the child's life. As a result, the first petitioner (Machica Mochtar) has suffered material or financial loss as she must bear the financial cost for her own life as well as the care and maintenance of the second petitioner, her son. She also cannot claim her rights from the husband's duty to provide support and care as well as maintenance of her son because of the provision of the Marriage Law above.[7] In order to strengthen the argument of her petition, Machica invited an expert witness. The expert

7 Ibid., p. 8

declared that there are contradictions between some articles in the Marriage Law with the Constitution.

In addition to material loss covering the educational cost and health cost, both petitioners also suffer psychological loss; stigmatized by the community. All these problems are due to the unjust and discriminatory regulations mentioned above. Ideally, the Child who was born out of wedlock should still have the right to both the father and mother. Moreover, there is no explicit statement in *fiqh* (Islamic jurisprudence) that a marriage should be registered even though there is a command for Muslim people to obey *ulil amri* (the authority) in the Qur'an Surah an-Nisa (in this case that law illustrated as the product of *ulil amri)*.[8]

In addition, Machica in her arguments quotes several experts among them a Dutch legal theorist, Van Kan, who states as follows: "If the implementation of the norms of the law is impossible to do, then the legal system forces the other way to be able to achieve the nearest way to the goal of the norms of the law and/or eliminates the consequences of the breach of the law."[9] According to the petitioners, the birth of the second petitioner (the first petitioner's son) is not without a cause. The child's birth to the world is a result of the love relation between the father and the mother. However, the marriage law particularly the article 43 (1) has led to uncertainty in term of the kinship status with the father. This has undoubtedly caused negative feelings including insecurity, uneasy and uncomfortable feelings, and even trauma to engage in the society like others do. In sum, the marriage law has denied the right of the petitioners to have

8 Ibid., p. 10

9 Van Kan, Pengantar Ilmu Hukum (introduction to law) (translated from Incleiding tot de Rechtswetenshap oleh Mr. Moh. O. Masduki), Jakarta: PT. Pembangunan, 1960, p. 9-11

safety, security, and freedom from discrimination within the society. Furthermore, the petitioners also quote another Dutch legal philosopher Van Apeldoorn from his book entitled "Incleiding tot de Rechtswetenschap" in asserting that the purpose of law is to manage life in a peaceful way because the ultimate goal of the law itself is peace. The law protected civilization and people's basic rights covering dignity, freedom, soul, wealth and other rights from any potential harm. Since the nature of the interests of people tend to have potential conflict between one and another, the law comes to manage them in order to create peace and keep the balance between various interests and people where every person is entitled the right to receive his/her right.[10].

Among the constitutional norms, that inspired the Indonesian Constitution is the norm concerning the purpose of law. The purpose of law can be viewed from ethics theory which says that law merely aims at creating justice. The weakness is that there is no law that can regulate all people and all cases. Law therefore, is made in general norms which are abstract as well as hypothetical. Thus, law cannot always deliver justice. On the other hand, based on the utility theory, law has the aim to create what is beneficial. Thus, the objective of law is to ensure as much happiness for as many people as possible. The weakness of this theory is that it only covers general terms and is too individualistic so that it cannot be satisfactorily just. The subsequent theory is a combination of both theories which is proposed by Bellefroid. He asserts that the content of the law must be determined by two principles; justice and benefit. Utrecht, another legal theorist, stated that law must ensure legal

10 Van Apeldoorn, Pengantar Ilmu Hukum (Introduction to law) (translated from terjemahan Incleiding tot de Studie van Het Nederlandse Recht oleh Mr. Oetarid Sadino), Jakarta: Noordhoff-kalff N.V, 1958, p. 13

certainty in human interaction. From this role, law must ensure justice and benefit. In those two roles, there is also a third role of the law as police. The law guards society to ensure that no one takes the law into his/her own hands. Another legal theorist, Wirjono Prodjodikoro argues that the aim of law is to ensure happiness, survival and order of society. Based on those arguments, certain legal norms of the marriage law have contravened the constitutional rights of the petitioners.

In addition, the petitioners also presented an expert who offered perspectives from religious points of view. The petitioners' expert witness Nurul Irfan is an academic of Islamic law from the State Islamic University of Syarif Hidayatullah. He states that Article 2(2) of the marriage law is problematic. It states that the validity of marriage is solely determined by observance of religious law as sanctioned by article 2(1), but article 2(2) which urges the registration of marriage has blurred the validity of marriage. This article is further empowered by article 43(1) which states that children outside marriage only have legal relationship with their mothers. As a result, many people who did not register their marriage are legally in a weak position. Consequently, children of unregistered marriages suffer many injustices, unfair treatment, financial loss, social stigma, and psychological problems. This certainly violates several aspects of Islamic values. The first is the innocence of any born child as sanctioned by a Prophet tradition. In addition, Islam does not recognize original sin. A Muslim does not bear the sin of other Muslims, including his/her parents.[11] After all, the

11 The Holy Quran 17: 15: "Who receiveth guidance, receiveth it for his own benefit: who goeth astray doth so to his own loss :(2190) No bearer of burdens can bear the burden (2191) of another: nor would We visit with Our Wrath until We had sent a messenger (to give warning)." Similar injunction is also found in Holy Qur'an; 6:164;

petitioner's marital status is clearly valid in the eye of Islam as her religion. She did not commit any sin of adultery. In addition, when referring to adoption law in Islamic law, it is known that any legal action cannot erase consanguinity of children with their biological parents. Moreover, there is no quotation in the Qur'an or in the Prophet tradition which requires registering marriage. Thus, the policy of marriage registration is about delivering benefit and legal order, but it creates *dlarar* (problems) as well, such as the problems faced by the petitioners. However, the problems caused by this law are far greater than its benefit since the law has denied proper rights and privileges as valid wife and legitimate child. Therefore, as Islamic legal principles suggest, article 2(2) and article 43(1) of the marriage law should be dropped. [12]

So, on the basis of the arguments above, the petitioners demanded a judicial review. The provision of the marriage law has caused unequal treatment by the state law and created discriminatory treatment. Hence, it is considered as contradictory to the provisions of Article 28B paragraph (1) and paragraph (2) and Article 28D paragraph (1) of the Constitution.

The Explanation of the Government and the House of Representatives of the Republic of Indonesia to the Petition

Before the decision regarding the petition was made, the Constitutional Court heard the explanation of the Government and the Legislature in order to hear their views on the petition. In their response, the Government maintained that the problem that occurred to the Petitioners

35:18; 39:7; and 53:38;

12 Mahkamah Konstitusi Republik Indonesia, p. 13 14

is not caused by the 1974 marriage law but is caused more by the negligence on the part of particularly the first petitioner to obey the existing regulations related to marriage registration. In addition, the government also maintains that there are no contradictions between the existing law on marriage and the constitution. Also the government argue was that the negligence and disobedience towards the law has been conducted consciously. Logically, they are fully aware of the risk of legal consequences from breaking the law.

So, it is not correct to argue that article 2 (2) of the 1974 marriage law has damaged the petitioner's constitutional rights. Moreover, the constitutional rights ensured by the state are not given freely, with any conditions and or exceptions namely by breaking and or damaging the constitutional rights of others. Therefore, the implementation or the arrangement of the constitutional rights is regulated in other sections. The arrangement is regulated in article 28J (2) of the1945 Constitution stating "*In exercising his/her rights and freedom, everyone must obey to the restrictions that are set with law by the sole purpose of ensuring the recognition and to respect on the rights and freedoms of others and to supply the fair demands that are appropriate to the moral considerations , religious values , security and public order in a democratic society* ".

In this case, even though certain aspects of the 1974 marriage law contain norms or material that can be deemed as limiting or even denying the constitutional rights of a person, it is actually part of the efforts made by the state in order to protect Indonesian citizens, to promote public order, welfare, to educate the nation, and so forth. As a matter of fact, the government argues that the provisions contained in the 1974 marriage law are the embodiment of the constitutional right of implementation itself, especially the rights to establish a family and to have offspring. Admittedly, the provision

indeed causes indirect restriction of the implementation of constitutional rights in certain conditions. However, there is no other purpose other than to protect the citizens from careless people breaking others' rights. At the end, that restriction in such conditions is aimed at the creation of a prosperous and equitable society, as aspired in the opening of the 1945 Constitution.[13]

The government also argues that even though the law relates the validity of marriage with religious beliefs, the marriage also has to be recorded and registered in order for the marriage to be considered valid. As explained, in article 2 (2) marriage registration is necessary to ensure certainty and protection in terms of the status of legitimate husbands, wives and children. The legal certainty provides assurance and protection of rights related to marriage such as inheritance rights, the right to obtain birth certificates, and others. In brief, the government argued that article 2 (2) does not contradict article 28B of the 1945 Constitution. In addition, the Government also revealed the fact that the applicant's marriage was a polygamous marriage. The Government believes that Marriage law in Indonesia adheres to the monogamous principle, although it does not forbid a man to take more than one wife (polygamy). But, there are some regulations and procedures that every Indonesian citizen should obey when a man wants to conduct polygamy. The regulations are provided in article 2 article 3, 4 and 5 as well as PP (Implementing Regulation) No 9/1975.[14]

If a polygamous marriage is not conducted based on these requirements and the necessary procedure, the marriage cannot be registered at the Office of Religious Affairs (KUA). Presumably, people know the legal consequences; not having

13 Ibid., p.18

14 This Implementing Regulation is for the Law No. 1/1974 of Marriage.

legitimacy in terms of marital status in front of the state is not having a status of inheritance rights. Furthermore, the government ended its argument here by stating that the provisions regarding the requirements and procedures in the polygamous marriage are valid for every citizen of Indonesia and do not provide discriminatory treatment against any person or certain groups, including the applicant. In sum, there is no conflict between the marriage law and the constitution.[15]

After explaining their arguments, the government then firmly states that it is not correct to say that the regulations under review by the petitioners, related to marriage registration raise constitutional issues that need to be revised. In relation to the petition on article 43 of the 1974 marriage law, the government argues that the aim of the provision actually is to provide protection and legal certainty for the civil relationship between the child and his mother as well as his mother's family. This logic can only be achieved on the understanding that an unregistered marriage cannot be considered as legitimate, and does not exist in front of the state.

Therefore, with such provision, the child's status, that is the civil relation with the mother who gives birth to him/her and the mother's family, is ensured. According to the government's point of view, it is illogical if the law ensures a civil relation of a child who was born from a woman, with a man who is not legally married. Thus, the government concludes that there is no conflict between article 43 of the 1974 marriage law regarding the status of children out of wedlock and the 1945 constitution particularly article 28B of paragraph 1 and 2 as well article 28D of paragraph 1. This is simply because the provision is ensuring the status of

15 Ibid., p. 21

the child that is born in a relation that is not conducted in accordance with the existing regulations.[16]

After the government responses, the spokesperson of the House of Representatives offered some remarks in line with the government's way of thinking. After admitting the applicant's legal position with some additional statements, that, the petitioners have to prove their constitutional rights really have been damaged. Yet, they agree with the MK in relation to this formal aspect of law. Concerning the material aspect, the House of Representatives puts an emphasis on the importance of a comprehensive and holistic way of understanding the marriage law and the purpose of certain provisions protested by the petitioners.

It stresses the purpose of the marriage and that this aspect is closely correlated with the formal and procedural law that is marriage registration. Even though acknowledging that a marriage that is conducted in accordance with religious rules is valid in front of God, it also stresses the point that marriage recording and registration is crucial in order to achieve the purpose of marriage that is establishing a happy and prosperous family along with the descent of the husband and wife.

The importance of marriage registration is related to the fact that marriage is not a merely religious deed but also a legal action that has legal consequences; civil rights and civil obligations. So, registration of marriage is obliged by the state in order to guarantee civil rights because the state must provide legal certainty and legal protection to the involved parties within the marriage. Authentic proof of the marriage is the only way to ensure legal certainty and hence the petitioner's argument that article 2 (2) of the marriage law contradicts the 1945 constitution is illogical.

16 Ibid., p. 22

In addition, the House of Representatives also rejects the petitioners' argument that she cannot record and register her marriage since the principle of the marriage law is monogamous. The House of Representatives argue that the marriage law allows a person to conduct polygamy and set regulations for a person who wishes to do so. The petitioner failed to comply with the regulations and the requirements set in the law. So, it is not true that the provisions and regulations about polygamy are contradictory to the Indonesian constitution. As a matter of fact, the provisions are aimed at protecting the involved parties within polygamous marriages so that the exercise of the rights and obligations within it is ensured.

The Content of the MK ruling

From the explanations above, it is clear that the judicial review on this issue had become a long process consisting of people offering their argumentations and responses from various, not to say conflicting, points of views. After two years, the decisions of the Constitutional Court on the judicial review of the two articles in the marriage law No. 1/1974 were finally presented in the decision on February the 13th in 2012.

At the beginning, the Constitutional Court (MK) confirmed that the applicants (Machica and the son) have legal standing to file the petition of judicial review of the Marriage Act. According to MK, there is definite proof that the petitioners' constitutional rights have been damaged and there is a clear correlation between that condition and certain provisions within the marriage law under review. All these decision are stated in the decision No. 46/PUU-VIII/2010 of the Constitutional Court.[17]

17 Ibid., p. 36-37

In relation to the demands of the petitioners, MK reacted differently towards each of the demands. The first demand of the petitioners is judicial revision of article 2 (2) of the 1974 marriage law regarding marriage registration. MK rejects the demand giving several reasons and considerations. One of them is their view that marriage registration is actually related to a legal issue. The ruling states its understanding and standpoint upon the position of marriage registration; whether it defines a marriage's validity or merely is an administrative obligation. MK stresses the importance of the marriage registration and that it is not problematic because it is just like recording important events in one's life, such as birth, death and others. Still, the factor determining the validity of marriage, according to MK, is whether the marriage has fulfilled the conditions determined by the religion of each bride. The demand of the petitioners regarding article 2 (2) cannot be accepted due to the significance of marriage registration.

The way MK views marriage registration is that there are many positive and crucial functions served by such registration. Underlining the arguments of the government and the House of Representatives, MK argue that recording is required in order to assure protection, promotion, enforcement and fulfillment of the rights and obligations of the people involved in the marriage. And even if marriage registration has a limitative function, it is also not contradictory to the constitution since it is aimed at managing people's rights so that they do not conflict with other people's rights. [Vide Article 28J (2) UUD 1945] .

MK emphasizes the importance of authentic proof of marriage so that the state can play its function to ensure that the certainty and the rights arising from the marriage are protected and served well. The authentic proof that is the marriage act/ certificate will ease everything, not like a long

and complex verification process that takes time, money, energy, and thought. The verification process of proof on the origin of the child in Article 55 of Law1/1974 stipulates that the court and judge can determine the status of a child's origin when it is unknown. So, the conclusion is that the MK does not accept the first demand of the petitioners since there is no conflict between article 2 (2) of the marriage law and the constitution.

However, MK granted the second demand of the petitioners that is judicial review of article 43 (1) of the 1974 marriage law. MK does not delete the article because it will counter-productively worsen the legal certainty of the status of children out of wedlock. They basically are in line with the point of the government's statement that the article 43 actually tried to give protection for the children to have a civil relation with the mother. The logic is that if there is no provision at all in the law, there is no party, even the mother and the mother's family, given the responsibility by the state. Nevertheless, different from the government and the House of Representatives, the MK thinks that the article is still unfair to some extent and needs to be revised by adding some rules. The article 43 (1) that is originally written as follows: "Children born out of wedlock only have a civil relationship with her mother and her mother's family" should be read as follows, "Children who are born outside marriage have a civil relationship with the mother and the mother's family as well as with the man as the father who can be proven by science and technology and / or other evidence under the law that they have blood relations, including civil relationship with his family". In doing so the Constitutional court has extended the relationship of children born out of wedlock not only with the mother and her family but also with the father and his family.[18]

18 Ibid., p. 37

Several reasons and considerations underlie the MK ruling. It states that it is common knowledge that, naturally, it is not possible for a pregnancy to occur without the meeting between the ovum and spermatozoa either through sexual intercourse (coitus) or through other means based on the development of technologies that lead to conception. Therefore, according to MK, it is not right and not fair when the law stipulates that a child born of a pregnancy due to sexual relations outside of marriage only has a relationship with the woman as his/her mother. Furthermore, it also states that it is not right and not fair or just if the law frees the man who commits sexual intercourse that leads to the pregnancy and the birth from his responsibilities as a father. It, at the same time, also negates and denies the legal rights of the children against the man as his father. Moreover, if it can be proved that the child is the biological child of a man based on medical science technology, then that man is a legal father of that child.

MK firmly suggests that there are legal consequences following the occurrence of pregnancy and the birth of a child, which was preceded by sexual intercourse between a woman and a man. The legal consequence is a civil relation containing rights and obligations that are reciprocal. So, in the ruling, MK urges that the child's relationship with a man as the father is not solely because of the marriage relation between the father and the mother. It can be due to the proof that there is a blood relationship between the child and the man as the father. In addition, the ruling states firmly that the child deserves legal protection regardless of whether the marriage registration exists or is absent. Thus, apart from the matter of procedures / administration, children born should get legal protection. If the state does not provide legal protection, then the children born out of wedlock will suffer burdens that they are not guilty of. Children who are

born without a clear status of the father often receive unfair treatment and stigma in society. Here, the law should provide protection and legal certainty of the status of children along with their rights and this includes children from a relation that is still disputed.

C. LEGAL CHANGES AS THE IMPACTS

The changes after the MK ruling; Opening the door for liberty

The main content of the MK ruling number 46/ PUU-VIII/2010 basically is the revision of article 43 (1) of the 1974 marriage law. The following are the comparisons before revision and after revision:

Article 43 (1) before judicial review	Article 43 (1) after judicial review
A child born outside wedlock (marriage) only has a civil relation with the mother and the mother's family"	*"A child who is born out of wedlock (marriage) has a civil relation with the mother and the mother's family as well as with a man as the father that can be proved, using science and technological basis and or another evidence, that establishes a blood relation including with the father's family"*

There are at least two key main points from the MK ruling need to be given attention. They are the term children out of wedlock and the term civil relation.

Legal change and implication of MK ruling

This ruling has potentially created plenty of legal change, the establishment of consanguinity in the form of a civil relationship between a child with his/her biological father regardless of the marital relationship between the father and the mother. This is clearly stated in the ruling as it states that children outside marriage have a civil relationship with the mother, the father and their families. This establishment expands the consanguinity of the children to include those with the father. In addition, the ruling does not explicitly qualify the term children outside marriage. This, in turn, will cover both categories of children outside marriage; children of an unregistered marriage and children born from an adulterous relationship. Both categories have their own implications. Establishing consanguinity between a child and his/her father in an unregistered marriage seems to be zero-risk. Many children under this category will now have the tool to rehabilitate their status and get their rights fulfilled. This ruling simply fills the vacuum of law on this issue. And this is the main objective of the ruling.

Still, it needs time, energy and certainly money. Since this is not a birth in a legal marriage, extra-legal effort to establish consanguinity is required. It needs the child or his/her family to request this legal status in court. After that, the process has to be continued in the civil registry office to get the birth certificate which means additional time, energy and money. Thus, given complexity of the procedure, not all children will have the capacity to undergo such a procedure. The fact that many women involved in an unregistered marriage live in rural areas with low education level and are stricken by poverty, the likeliness of this ruling becoming a solution to their problem, is not easily foreseeable.

Things get very delicate if the child of an unregistered marriage is born from a marriage with a father who has already married a woman other than his/her mother. Simply put, the mother is a second, third, or fourth wife. And the very reason for not registering the marriage is the lack of wife's permission for the husband to take another wife as prescribed by the law and/or the husband deliberately conceals the marriage from his existing wife/ves. The occurrence of this kind of marriage is plentiful. Therefore, the application of this ruling will send a wrong message to the effort by the law to restrict polygamy. Men who wish to take an additional wife will easily convince their future wives to agree with the proposal even without permission from existing wife/ves and without registering the marriage. This is because at the end, the children that will be born in the marriage will enjoy the rights as legitimate children by requesting such rights as bestowed by this ruling. Up to now, restriction of polygamy by the law has reasonably reduced the occurrence of polygamous marriage. The law states that the man has to establish that his existing wife is barren, physically sick, or unable to perform her duty as a wife. More importantly, he also has to show his ability to treat co-wives justly and to provide livelihood for co-wives. Finally, the existing wife/ves must give permission to the husband to take an additional wife, in a court session.[19]

Therefore, this MK ruling, which gives legal status to children born outside marriage, goes against the spirit of reducing polygamy, although the ruling talks only about children's basic rights. Without clear explanation concerning the scope and clarification of certain terms, the ruling remains problematic. Alternatively, amendment to polygamy restriction should be made to accommodate the ruling. This

19 See article 4 and 5 of Law no. 1/1974 on Marriage.

option is certainly not a choice since it will make polygamy easier. Without clarification of terms and/or amendment to polygamy regulation, legal practitioners, especially judges in religious courts, will be put in a dilemmatic position whether to grant parental status for the children of unregistered marriages or insist on upholding the strict regulation of polygamy as sanctioned by the law.

In addition to potentially establish consanguinity for children of an unregistered marriage, this ruling also will provide legal status for a second category of children born outside marriage, namely those born from adultery. From a legal perspective, the legal relationship between children born from adultery and their biological father cannot be established before this ruling. The law simply ignores their status because sexual relationship outside marriage is unlawful. Thus, children born from an unlawful relationship are considered nonexistent. The marriage law, which drew considerably from Islamic law, only considers the relationship between the children with their mother and her family. This status applies to two categories of adultery; adultery by a single couple and adultery by a married couple.

From the perspective of children's rights and human rights in general, establishing consanguinity between the children and their fathers as sanctioned by this ruling means a lot. In addition, this will reduce the occurrence of adultery in society. Couples, especially men, will think twice before committing an illicit relationship because if a child is born from that relationship, the men may become legitimate father of the child under this ruling. This ruling will potentially reduce the occurrence of abortion, which is illegal in Indonesia but its occurrence is arguably more than 2 million

in a single year.[20] Similarly, this ruling also will mitigate the number of abandonment of babies by their mothers.[21]

Usually, unwanted pregnancy which happens among unmarried women whose spouses are not responsible will result in abortion or abandonment of babies. However, many conservative Muslims disagree for two reasons. The first is that this ruling is against Islamic law as previously mentioned. Moreover, they argue that this ruling will encourage adultery, instead. Couples will undermine undergoing laborious marriage procedure and spending money in the process if at the end their relationship can be legalized by the law and any child born from the relationship may be legalized as their legitimate children.

This last point brings us to the second legal change caused by the ruling. This ruling creates legal acknowledgement that a child born outside marriage has a civil relationship with his/her father equivalent the relationship with the mother which in turn puts a liability on the man toward a child whose birth is caused by that man although the child is born outside marriage. After the establishment of consanguinity between children outside marriage with their fathers, the subsequent questions relate to the rights bestowed by this status. On that matter, the term 'civil relationship' becomes the crux of the issue. The conventional meaning of the term covers all aspects of civil relationship which include kinship (bearing the father's name), guardianship, maintenance, and inheritance. Thus, a child outside marriage could potentially have identical rights and duties as those legitimate children. This entitlement will certainly erase all miseries of children

20 http://health.detik.com/read/2012/05/30/124811/1928339/775/remaja-putri-pelaku-aborsi-paling-banyak-di-indonesia

21 http://internasional.kompas.com/read/2012/12/21/16001462/162.Bayi.Dibuang.143.Diculik.Pelaku.Tak.Terungkap

outside marriage. From the perspective of child protection and human rights, those children deserve all. This will end all unfair treatment of the law that cause them to be stigmatized, denied from basic rights such as survival, education and inheritance.

Nonetheless, the issue is not that simple as many people express their divergent opinions on the matter. At first glance, it can be discerned that what is meant by children outside marriage in article 43 (1) of marriage law and its revision in the ruling by the constitutional Court are those who are born from relationship outside wedlock from religious and/or legal perspective. In other words, children outside marriage are those born from a couple who are not married to each other. Thus, they are children of adultery whose existence is not legitimate from the Islamic law perspective. This understanding originates from the fact that in Islamic jurisprudence there is no explicit opinion that requires marriage registration. As a result, each born child who does not originate from a marriage relationship is considered a child outside marriage or child of adultery. This is a widely held perception in Muslim society. Therefore, the ruling by MK on this issue which tends to give legal status for this kind of children faces strong disagreement.

The Indonesian Council of Ulama (MUI) is among the earliest to reject this ruling because they consider the court of having generalized the term of 'children outside marriage' to include children outside marriage for Islamic jurisprudence, while they insist that the term children outside marriage in this ruling should only refer to children of an unregistered marriage. In short, the council argues that this ruling legalizes children born from adultery which simply means legalizes the act of adultery. This polemic between the council and the court was so fierce that the spokesperson of the council, KH. Ma'ruf Amin accused the court of having

given a ruling beyond the request of judicial reviewer and more importantly has gone against syariah, Islamic law. He accused the court of having acted like a god.[22] In response to this ruling, the council issued a fatwa (non-binding opinion on Islamic legal issues) on children born from adultery who had no any relationship whatsoever with their biological fathers.[23] This fatwa is simply a pressure for not including these categories of children outside marriage in the ruling of MK.

In line with the council that focused on the aspect of MK ruling which may encourage adultery, the Ministry of Religious Affairs did not accept the ruling as well, but tended to be cautious in making a statement about the ruling. By using the council of ulama's statement, Nasaruddin Umar, the vice minister who is actually an expert of Islam and gender issues, stated that there should a discussion between the court and the council to build common understanding about the ruling. He further complained that his ministry is in a difficult position in implementing the ruling stating that the ruling is undermining Islamic law and that the court and the council had been on two opposing sides on the matter.[24] In an effort to clarify the position of his ministry, Bahrul Hayat, the secretary general of the ministry of religious affairs acknowledged positive and negative sides of the ruling. The positive side concerned the legal status of children of unregistered marriage and the negative side is if the court expanded its ruling to also include children of adultery.[25]

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22 http://www.jpnn.com/read/2012/03/21/121342/MUI-:-MK-Sudah-Seperti-Tuhan-Kedua-

23 Fatwa MUI Nomor 11 Tahun 2012 tentang Kedudukan Anak Zina dan Perlakuan Terhadapnya

24 http://www.jpnn.com/read/2012/03/28/122284/Polemik-Anak-Haram,-Kemenag-Mediasi-MK-MUI-

25 http://www.jpnn.com/read/2012/03/01/119178/Kemenag:-Ada-Beda-

However, it should be acknowledged that different interpretations exist of the term 'children outside marriage' in that article. Many legal experts said that the term 'children outside marriage' could be acceptable to the Muslim community in Indonesia. Abdul Manan, a Supreme Court judge for the religious court chamber considered article 2(1) and (2) as one entity, which means that, a religiously valid marriage should also be registered to furnish its validity.[26] This opinion seems to be shared among judges of religious courts across the country. Chatib Rasyid, a judge of the high religious court of Central Java divided the children into three categories:[27] The first is legitimate children as described by article 42 of the marriage law that says that legitimate children are those who are born in or as a result of valid marriage. The legitimacy of these children is reached by fulfilling the requirement of article 2(1) which means the marriage must be religiously valid, and the requirement of article 2(2) which means the religiously valid marriage is properly registered. If at least one of the two requirements is not fulfilled, the children could not be considered legitimate children.

The second is children outside valid marriage. This category refers to children who are born from a valid marriage from religious perspective. Thus it has fulfilled article 2(1) of the law. but, the validity of the marriage is limited to religious law because the marriage is not yet registered as to

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Penafsiran-Soal-Status-Anak-

26 Abdul Manan, Aneka Masalah Hukum Peradilan Islam di Indonesia, Jakarta: Kencana, 2006, h. 48-49

27 Chatib Rasyid, Anak Lahir diluar Nikah (secara hukum)berbeda dengan anak hasil zina: Kajian Yuridis Terhadap Putusan MK NO. 46/PUU-VII/2012, Makalah disampaikan pada Seminar Status Anak Di Luar Nikah dan Hak Keperdataan lainnya, pada tanggal 10 April 2012, di IAIN Walisongo Semarang.

the administrative and legal formal requirement in the state appointed office as sanctioned by the article 2 (2) of the law. Therefore, this marriage is not legal in the perspective of the marriage law. Legally speaking, the marriage has fulfilled material requirement (because the marriage is valid in religious law) but not formal requirement (because it is not yet properly registered). The third is children who are born out of wedlock. Children born in adultery are included in this category. The children are born only through the natural process (sex, conception, pregnancy and birth) without valid marriage.

The subsequent question to be clarified, though, is which interpretation has the constitutional court used in its ruling? Slightly after the issuance of the ruling, on February 2012, some constitutional judges insisted that what they meant by children outside marriage are children born from adultery. This argument is in line with article 43 (1) which states that children outside marriage only have legal relationship with their mother. From the Islamic jurisprudence perspective, children who only have legal relationship with the mother are children born from adultery. As quoted by Hukumonline a few days after the court adjudicated the ruling, Mahfud Md, then the chairman of the constitutional court, wrote in Sindo daily stating that "in principal, whoever has sexual relationship with a woman and gets a baby from her, he will have a civil relationship with the child born by that woman'. From this statement, it can be inferred that that the ruling emphasizes children outside marriage (including children born from adultery) have civil relationship with the mother and the father as well. Mahfud MD continued, as quoted by Hukumonline from Sindo daily, that this rule does not only concern those who conduct *nikah siri* (unregistered

marriage), but also those who are involved in temporary marriages (if any) and those who commit adultery.[28]

Similar statements are also heard from other constitutional judges. Ahmad Sodiki, vice chairman of the court shares the opinion of his colleague by citing a prophet tradition showing the innocence of any born child. He stated that this ruling will force the biological father to take responsibility in taking care of his child if all the evidence is showing that he is the father of that child.[29] Akil Muchtar, another constitutional court judge also gave a statement that led to the understanding that children from adultery are included in the term of children outside marriage in the ruling concerning article 43 (1) of marriage law. He further stated that the biological father must be responsible forproviding maintenance for his biological child. Still, he acknowledged that it is different with maintenance of legitimate children. Likewise, children outside marriage also have the right of inheritance, but different to those of legitimate children, using the scheme of obligatory bequest (*wasiyat wajiba*) for instance.[30]

In its official statement, the constitutional court insisted that what it means by children outside marriage

28 http://www.hukumonline.com/berita/baca/lt4f633ebb2ec36/pro-kontra-status-anak-luar-kawin (pro-contra regarding the status of children outside registered marriage)

29 http://www.akilmochtar.com/2012/02/19/mk-sahkan-status-anak-di-luar-nikah-resmi/

30 In Islamic law of succession, the orphaned grandchildren are totally excluded from any share in their grandparents' estate if a son of such grandparents also survives. To solve this issue, the reformers use the term of wasiyat wajiba. This took the form of requiring grandparents to make a bequest, in favor of such orphaned grandchildren as would otherwise be excluded from any share in their estate, provided this does not exceed that third of the estate regarded as the maximum over which a testator has control. See JND. Anderson, Modern Trends in Islam's Legal Reform and Modernization in the Middle East, p. 9-10.

in article 43 (1) of the marriage law also includes children born from adultery. In that statement, the court insisted that those children should be included for the sake of civil protection for children as long as all evidence, legal and/or medical, establishes biological relationship between the child and the father. The court bolstered its statement by citing the aforesaid prophet tradition on the innocence of child regardless of marital status of his/her mother and father to show that its decision had been in line with religious (read: Islamic) teaching. At the end of its statement, the court asserted its commitment to religious teaching on marriage as reflected in article 2 (1) of the marriage law which emphasizes centrality of religious law in determining the validity of marriage. Thus, the court clearly underlined that it did not have any intention to legalize adultery.[31] From this statement, and from personal statements by the judges, it can be inferred that the court definition of child outside marriage includes children of unregistered marriage and children born from adultery.

Nonetheless, after strong reaction from various people who oppose this ruling, the court started to back down. Some judges even stated that the ruling only concerned cases involving children of unregistered marriage as it is initially the judicial review case on the marriage law. Several statements by constitutional judges in mass media coverage also affirmed this notion. Mahfud MD for instance, made a statement that what the ruling meant by children outside marriage are children in unregistered marriage, not children born in adultery.[32] He regretted that the Council of Ulama

31 http://www.nu.or.id/a,public-m,dinamic-s,detail-ids,1-id,36796-lang,id-c,warta-t,Penjelasan+Resmi+MK++Kami+Tidak+Melegalkan+Zina-.phpx

32 http://www.nu.or.id/a,public-m,dinamic-s,detail-ids,1-id,36796-lang,id-c,warta-t,Penjelasan+Resmi+MK++Kami+Tidak+Melegalka

had accused the court of having encouraged adultery.[33] In line with this statement, Akil Muchtar also stated that the context of the ruling is the judicial review requested by Aisyah Mochtar whose unregistered marriage with Moerdiono had resulted in the birth of a son.[34] The marriage and the son are denied by Moerdiono's family. Akil Muchtar further explicated that the ruling did not discuss adultery nor legalized it. Adultery remained unlawful after the issuance of this ruling. Thus, after undergoing fierce debates, the constitutional court changed its interpretation of the ruling. However, as in any legal case, what matters is what is written in the binding document, not the interpretation of judges. So, the definition of children outside marriage will evolve over the time.

Regardless of the controversy that surrounds the ruling, the ruling admittedly has filled the vacuum of legal foundation concerning the status of children outside marriage as sanctioned by article 43 (2) of marriage law. Nevertheless, the ruling has undermined certain aspects of the law, namely registration of marriage. The background of marriage registration in the marriage law is the principle of legal protection for people within marriage, especially wives and children. This position is strengthened by legal practitioners in Indonesia, especially religious courts' judges who consider the validity of marriage is based on both religious observance and registration as sanctioned by article 2 of the law. If marriage registration can be done at a later time, even with extra effort of judicial process, this in turn will reduce the authority of marriage registration

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33 http://news.detik.com/read/2012/03/28/162308/1879155/10/soal-putusan-status-anak-di-luar-nikah-ketua-mk-nilai-mui-tak-paham

34 http://www.akilmochtar.com/2012/02/19/mk-sahkan-status-anak-di-luar-nikah-resmi/

and legal assumption that has been built around marriage administration in Indonesia.

In addition to the issue surrounding the definition of 'children outside marriage', further explanation is needed to determine the scope of civil rights and civil relationship in the amended article of 42 of marriage law. Initially, when the court still insisted that children outside marriage including children born from adultery, some constitutional court judges proposed several alternatives on the issue of 'civil relationship'. Akil Muchtar, as quoted by Irma Devita, for instance, proposed that judicial hearing would decide the extent of this 'civil relationship'. This also applied to the sum of maintenance and inheritance which should not be equivalent to rights enjoyed by legitimate children.[35]

The right of maintenance, like that enjoyed by legitimate children, can be replaced by punishment to the biological father by a paying sum of money for basic cost of life and education until the maturity of children. And wasiat wajiba may replace inheritance rights. Likewise, Mahfud MD also emphasized the difference between civil relationship from consanguinity and inheritance. He further stated that civil relationship between children from adultery and their biological father does not include consanguinity and inheritance. Instead, it can be in form of a school fee and the like.[36]

However, after the constitutional court started to change the definition of children outside marriage to cover only children of unregistered marriage, the definition of civil relationship also changed. This relationship returned

35 http://irmadevita.com/2012/pengertian-anak-luar-kawin-dalam-putusan-mk

36 http://www.jpnn.com/read/2012/03/22/121538/Tolak-Hak-Perdata-Anak,-PPP-Ajukan-Uji-Materi-

to its original meaning which include (1) consanguinity; (2) *mahram* (familial relationship which result in prohibition to marry each other); (3) mutual rights and duties; (4) inheritance; and (5) marriage guardianship if the child happens to be a girl.[37] This understanding is based on the assumption that children as meant by the ruling are those born from an unregistered marriage as experienced by the petitioner. The marriage of the petitioner with her husband was valid from the perspective of Islamic law, and therefore all legal consequences follow.

Among the practitioners, namely judges of religious courts, the prevailing opinion is that the children outside marriage cover only unregistered marriage. For activists of gender and children's rights, the ruling must cover all children outside marriage, including those who are born from adultery. Each interpretation has its own legal implications as explained. Now, it is time to describe the opinion on the ground as represented by several personalities in Surabaya and Jombang.

37 A. Mukti Arto, Diskusi Hukum Putusan Mahkamah Konstitusi R.I. Nomor 46/PUU-VIII/2010 Tanggal 17 Februari 2012 tentang Pengubahan Pasal 43 UUP tentang Hubungan Perdata Anak dengan Ayah Biologisnya, Bahan diskusi hukum hakim PTA Ambon dan PA Ambon bersama Pejabat Kepaniteraan pada tanggal 16 Maret 2012 di Auditorium PTA Ambon.

CHAPTER IV

THE CONSTITUTIONAL COURT RULING FROM GENDER AND CHILD PROTECTION PERSPECTIVES

A. MK RULING AND CHILD PROTECTION

Since the MK ruling is related to many aspects; gender, children's issue as well as the fiqih or Islamic law, it is very important to analyze the ruling using those perspectives. So, this chapter will explore the MK ruling from various perspectives; from the perspective of gender and child protection. In addition, an unusual perspective of Islamic law and positive law is also proposed at the end of the Chapter. It cannot be denied that the issue regarding children and their protection in Indonesia or elsewhere is also the problem of women and gender. This is due to the fact that socially and culturally, children are attached to their mothers and hence, the problems of children directly and indirectly influence the women. Actually, some ulama even suggest that one of the reasons why Islam really puts emphasis on men to exercise their duties relating to their children is due to the fact that women are automatically and naturally more responsible on their children and much more attached psychologically. In short, the issue of children out of wedlock is also an issue for women.

There are many problems suffered by women and children. Among them is trafficking, violence,

exploitation and many other kinds of problems that require comprehensive solution. One of the problems that also call for attention is the children negligence and the unclear status of the children from any form of relationship outside the registered marriage is from *nikah siri*, adultery and also incest. Interestingly, there have been many international conventions adopted in Indonesia that intend to promote child protection. The following sub chapter will show how the ruling is in line with such policies.

Indonesia has ratified the UN convention regarding the rights of the child *(Convention on the Rights of the Child)* in 1989. As a legal consequence, once the convention is ratified, the convention is legally binding on all Indonesian citizens.[1] Following the ratification, Indonesia enacted the law on human rights that also regulated the rights of child in 1999. The law No. 39/1999 has several articles that specifically ensure child rights. Additionally, in 2002, the Indonesian government enacted another law that is specific on child protection, the law No. 23/2002 on the protection on children.[2]

From an international context, the position of child rights is quite strong as it is an integral part of the convention on the rights of the child in addition to being an integral part of the international classification of human rights. What the convention on the rights of children contains are actually the universal principles and legal norms regarding the rights of children. These rights are parts of the international treaty that combines and unifies the elements of the civil, political, economical, social and cultural rights.[3]

1 Rika Saraswati, Hukum Perlindungan Anak di Indonesia (Bandung: PT Citra Aditya Bakti, 2009), 15.

2 Ibid.

3 Ibid., p. 15-16.

The general principles of the convention on the rights of children are:[4] non discrimination (article 2); the child's interest (article 3); the right to live, the right to sustainable life, and development (article 6); and the right to receive respect for their opinion (article 12).

The rights of the child are grouped into five groupings: the civil rights and liberty; the rights for family and liberty; the rights for family environment and custody; the right for health and basic wealth, education, leisure and recreational time and culture and the right for Special Protection Measures in ensuring the rights of the children. One of the rights, the Civil Rights and liberty also consists of the right to identity, the right to maintain identity, freedom of expression, freedom of thought, consciousness and religion, freedom of association and peaceful assembly, protection of private life (privacy), and the right to be free from torture and fear.[5] So, a key child right is the right to identity.

The ruling of MK speaks, among other rights, about this right of identity. Before the ruling, the right of children out of wedlock had been violated. By state law, children's rights to know as well as state their identity in terms of who the father is has been denied. In addition, they are not protected in terms of the right to receive support, maintenance as well as protection from their biological father. Not only has the state denied the protection of children's rights, the state actually also hinders their rights by limiting the civil relations of children out of wedlock only to the mother and the mother's family. In addition, cases show that the religious court, representing the state, denied granting civil relation for children even though the father is willing to do so.

4 Ibid., 18.

5 Ibid., p. 18.

This means that the state not only limits but also denies the right of children to have a civil relation with the father even if the father wants to establish it. Admittedly, cases like this only occur in polygamous marriages because, as mentioned previously, such marriages will not be granted *isbat nikah* except with the permission of the existing wife/ves of the husband. Consequently, the child cannot also get the father's name in his/her birth certificate.

Birth certificate does play an important function; the age of a person including children can be known for certain through the birth certificate, and this can prevent unwanted crimes such as the age falsification that often occurs in human trafficking be it in migrant workers, child prostitution, and child trafficking and child marriage.[6] Ironically, based on the results of the 2004 National survey, more than half of children under five in Indonesia (58.41%) in Indonesia are known to not have birth certificates and only 27.97% have a birth certificate and can show it as proof.[7]

According to the provisions of Article 28 of Law Number 3 year 2002 on Child Protection, the administration of birth certificates should be organized by the government and must be free of charge. In addition, it should be given no later than thirty days from the date of filing the petition. In relation to the implementation of free application for birth certificate, the district government already has a district level policy to support it. Previously, the procedure made it difficult for poor people to apply for a birth certificate. But, this certificate is extremely important for various legal and civil purposes, such as school enrolment, seeking a job, claiming inheritance and others.[8] Previously, birth registration or application to

6 Ibid., p. 40.

7 Ibid.

8 Ibid., p. 41.

get birth certificate is not free of charge, thereby inhibiting citizens who cannot afford it. To support the international convention, Indonesia has enacted several policies in ensuring those civil rights:[9] (1) Law Number 9/1999 on Human Rights; (2) Law Number 3/2002 on the Protection of Children. In addition, there are also other policies that regulate issues related to identity such as Law Number 12/2006 on Citizenship of the Republic of Indonesia, and Law Number 23/2006 concerning the administration of citizenship.[10] There are some specific principles that underlie the basis of the Law on Citizenship in Indonesia. They are: the principle of national interest, the principle of maximum protection, the principle of equality before the law and the state, the principle of substantive truth, the principle of non-discrimination, the principle of recognition and respect for human rights, the principle of openness, and the principle of right to publicity

Here, the MK ruling definitely embraces the above principles and changes the feature of 'discrimination' within the existing law concerning children in relation to civil relations. Previously, the 1974 marriage law has been criticized as discriminating against children born out of wedlock since it distinguishes the right to have a civil relation between the children from a legitimate marriage and those from an unregistered marriage or other relations.[11] This ruling frees the child from discrimination that is ironically endorsed by the state. Nevertheless, if the ruling only covers children from unregistered marriage and excludes the children from adultery then it can be criticized as remaining discriminatory. So, if the ruling, is understood by many

9 Ibid., p. 43.

10 Ibid., p. 43.

11 See for instance Muhamad Isna Wahyudi, Beberapa Hal yang perlu dipikirkan terkait Perlindungan Anak, in www.badilag.com, accessed on May 3rd, 2014.

parties to be covering all children both from unregistered marriages and adultery, then the ruling is in line with the CRC (convention of rights of children)and the Law number 23 year 2002 regarding the Protection of Children

To be noted, the issue of children born out of wedlock is not merely an issue of birth certificate. As a matter of fact, the problem related to the birth certificate is one small part of a much bigger problem. The real problem is related to issues of life and human primary needs; maintenance for food, clothing and shelter. As explored in the previous chapters, children out of wedlock have been suffering from negligence perpetuated by the absence of their biological fathers. So, as a simple comment from Machica on that day of the issuance of the ruling "this ruling has lifted off the burden from me, Iqbal deserves all the things and support that he has been denied so far".

Realizing that the rights of the children are much more than the birth certificate, government actually also created obligations to provide protection, recognition, as well as personal and legal need fulfillment of a child since he/she was born.[12] And, law number 22/2003 regarding child protection has set relatively detailed sections concerning the rights of children for maintenance along with the parties responsible for it. In Chapter 3 article 4 for example, it is stated clearly that every child, means that there is no exception and no discrimination against some children, to have the right to live, to grow and develop free from any kind of violence. Included in violence actually is negligence from parties who are responsible for the maintenance of the children. The law states as follows:

12 Mahkamah Kostitusi Indonesia, Putusan Nomor 46/PUU-VIII/2010, p. 41.

Chapter III
Child rights and obligations

Article 4: Every child has the right to live, grow, develop, and participate fairly in accordance with human dignity, as well as protection from violence and discrimination.

Article 5: Every child has the right to a name as their identity and citizenship status.

Article 6: Every child has the right to worship according to his religion, thought, and expression in accordance with the level of intelligence and age, the parental guidance

Article7: (1) Every child has the right to know their parents, and to be taken care of and be raised by his own parents. (2) If, for some reason their parents can't guarantee the development of the child, or there is a neglected child, the child is entitled to be raised as foster children or adopted child by another person in accordance with the provisions of the legislation which apply.

Article 14: Every child has the right to be raised by his own parents unless there is a reason and/or valid law that urges separation is in the best interests of the child and is a final option.[13]

From the above explanations on several relevant articles within law number 22/ 2003 regarding the protection for children, it is clear that the spirit of the state policy on child protection is to promote, not only to allow, children the right to have their parent take care of them, love them and educate them. So, it also can be argued that the existing regulation regarding children out of wedlock that denies their right

13 Act number 23 year 2002 regarding children protection.

to obtain the mentioned rights (namely to obtain identity of the parent, to be taken care of and be supported by his/her own parent) is not in line with other law regarding child protection.

It can be said that the MK ruling is clearly a progressive advancement in terms of breaking the vacuum of law on the issue of children outside marriage of the existing 1974 marriage law. The ruling also eliminates the gap or the conflicting principles between those in the marriage law and the children protection law. Some of the newly introduced advantages within the ruling are anti-discriminatory policy and protection of children. Moreover, the ruling also ensures the child's rights to be taken care of or at least to be supported by their own parent. The choice of the term parent in the children protection law of course is not without legal consideration. The term parent is specified clearly in the law because the law aims to give the responsibility to both the father and mother upon the life of the children covering the right for health, maintenance and so forth.

In sum, perceived from child protection perspectives, it is clear that the MK ruling is not only in line with the existing policy concerning the protection of children but also is a representation of the spirit to protect children. The ruling does liberate Indonesian children from the past discrimination that, ironically, is perpetuated by the state that is supposedly to perform the protection. As explained in the previous chapter, the state law and regulation, before the MK ruling, has discriminated against the children who are born outside of wedlock. The children who are not born within a registered marriage cannot have any civil relation with the father and the father's family. The children will only have civil relation with the mother and the mother's family. This has caused not only unjust conditions as they are discriminated, just because they cannot choose to be born in

which form of relation or marriage the parent are, but also has caused tremendous negative impacts.

From the illustration of the problems and the sufferings, it is undeniable that the MK ruling has opened the door for a better future for the children by granting them the right to have a civil relation with their fathers. This right also will allow opportunity for the children to receive financial support from the father and the father's family in their life, ranging from living allowance, educational support, to inheritance regardless the form or the term for this last support. Some might argue that financial support can be given by the father to the children with no need for such ruling or force from the state. This is also the main argument of those who tend to disagree with the ruling in cases where the children are born from adultery. Yet, the reality shows the sad situation that is contradictory to their presumption that the fathers naturally and automatically will be responsible to the children. Many of the children indeed do not have a birth certificate.[14]

Many of the children only are taken care of by the mother and the mother's family. The taking care here does not merely mean guardianship and daily maintenance; it also refers to financial support. It is sad but true that many cases show that financial support for children in cases of unregistered marriage moreover in adultery cases is mainly from the mother or the mother's family.[15] The Machica case, the Melinda case, and other cases that are exposed in the mass media are only a tip of a really massive and sad iceberg throughout the country data raised from a seminar

14 KPAI, KPAI: 50 Juta Anak Indonesia Tak Punya Akta Lahir, http://www.kpai.go.id/berita/kpai-50-juta-anak-indonesia-tak-punya-akta-lahir/, Accessed on May 3rd, 2014

15 NU online, Nasib Nasab Nikah Sirri, http://www.nu.or.id/a,public-m,dinamic-s,detail-ids,1-id,36839-lang,id-c,warta-t,Nasib+Nasab+Nikah+Sirri-.phpx, Accessed on April 12th, 2012.

on women and children trafficking (held by the gender study center of IAIN Sunan Ampel Surabaya in cooperation with the Hotline) also reveals the same sad fact.[16] Yoris, from hotline Surabaya gives one story like this:

> "Many of the children trapped in trafficking in the last decades are entering the trap willingly or at least are aware, not abducted, the way some people might think. No, it is usually the kids who are not receiving enough love and care from the mothers. The mothers are forced to leave the house to work since they are the sole breadwinner for the children. They usually leave the children in the hands of the grandmothers. What happens usually is that the kids are seeking better conditions and getting trapped in the 'modern' trafficking scenario"

Another story is revealed by another source person in the seminar who also pioneers the elimination of human trafficking. He shares an ironic story on human trafficking in Indonesia. He studies from an informal research that some of the women who work in massage parlors are forced to do so because they need jobs to support their family; they are the sole breadwinner for their children because their husbands left them. Ironically, some of those women send their children to Islamic boarding schools in the hope that the children will become 'good and pious Muslims'.[17] Many other stories also are shared by religious figures that are trusted by many people for consultation on their private issues and problems. Ahmad Zahro and Saiful Anam firmly suggest that fact. Some activists of LBH (legal aid office) also reveal the same trend. This is the real problem that exists within the society. One respondent from Jember even suggests that marriage registration should be regarded as a

16 Round table Seminar to prevent human trafficking" conducted by PSG and Women Hotline Surabaya on 27 of May 2012,

17 Ibid.

primary requirement (*rukun nikah*) in Indonesia because there are already so many sad stories, so many unfortunate women and the children of unregistered marriages who seek a solution after being neglected by the husband.[18] One living story also is shared by the neighbor of a respondent, Sri Wigati. She and her daughter have to suffer from being abandoned by the biological father. The suffering is not only materially but also morally namely when the daughter needs a guardian to get married. She then has to ask for *wali hakim* (state official as marriage guardian) and feel so ashamed to be reminded one more time at the way society looks at her as a child of adultery.[19]

The above illustrations and many unrevealed others are more than enough for us to say firmly that it is time to end such a dark and satanic circle. It is time for both father and mother to be responsible for the sake of the children and for the sake of justice and fairness. The MK ruling has broken one of the sources of this unfair condition. With the ruling, the state not only has removed the discriminatory attitude that was previously enforced through article 43 of the marriage law and article 99-100 of the Kompilasi. It also actively promotes child protection by ensuring their rights since it gives the responsibility to the father and the father's family, inluding in respect of children being labeled as illegitimate children. The expectation of course is that the positive impact of the MK ruling will be benefited by recent cases and certainly possible cases in the future.

18 Nabiela Naily, Polemik Putusan Mahlamah Konstitusi Nomor 46/ Puu-Viii/2010 Tentang Status Anak Di Luar Kawin Dalam Pandangan Hakim Pengadilan Agama, Tokoh Agama Dan Pihak-Pihak Terkait Di Jember Jawa Timur, Research Report, 2012, p. 67.

19 Sri Wigati, interview on 21 October 2013

B. THE MK RULING FROM GENDER PERSPECTIVES

Although the ruling definitely marks very positive progress in term of child protection in Indonesia, the question regarding the policy impact on women remains. One of the main flaws of the MK ruling is the failure to recognize gender problems related to the issue of the children out of wedlock. The ruling speaks only about the children and there is no consideration whatsoever of the rights of the women. Meanwhile, the issues of children out of wedlock are closely related to issues of women as well. This is due to the fact that unregistered marriages and other unlawful relations often leave the women, as well as the children, unprotected and unsupported. Admittedly, the MK ruling also has, to one extent, contributed to supporting and promoting the protection of women who are the mothers of the children. With the ruling, the responsibility and duty including that of financial support must be borne by the father after the civil relation granted to the child. Yet, the ruling actually does not directly aim to answer the problems of women arising from unregistered marriages and adultery.

Currently, the term gender is a relatively familiar term, often discussed in a variety of forums; academia, NGOs and community organizations. Admittedly, gender becomes increasingly a global issue since a number of international conventions and agreements on gender such as Beijing and CEDAW have been enacted. Nonetheless, there are still many misunderstandings or misperceptions about what exactly gender is, particularly in relation to the difference between gender and sex. Sex is male-female and the differences between them that are biological, natural, given by God, permanent, unchangeable and not interchangeable, and do not differ or vary between places, people, and cultures

because they are universal.[20] The fact that women give birth, breastfeed, and have menstruation is part of sex identity. Meanwhile, gender is differences between men and women that are formed or constructed by many factors such as culture, social, political and/or religious interpretations.[21] Therefore, gender can vary between places, interchangeable, and can be changed. The norm that women are more patient and soft in taking care of the children and the weak, that women are emotional, that men are strong, that men are rational and women are less rational; men are for the public realm and women are for the domestic realm; all are gender not sex.

Actually, the labeling, the expectations, the differentiations that are explained above are not problematic in their own nature or automatically unjust. Many women activists assert that the problems start when the differentiations place one party, mostly females, in a disadvantaged position leading to their oppression, mostly by males

There are many kinds of gender inequality which can generally be classified into marginalization (exclusion), subordination, stereotyping (negative labeling of women), violence (specifically gender-based violence), and double-burdens (multiple loads of work). Speaking about gender, reality shows that there is a very unequal relation and unjust condition between men and women. There are still many unresolved and undiminished gender based practices of discrimination occurring over the world.[22]

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20 Emily Esplen and Susi Jolly, Gender and Sex: A sample of definition, Brighton: Institute of Development Studies, 2006.

21 Ibid.

22 Rasyidah, dkk. Potret Kesetaraan Gender di Kampus (Aceh : IAIN Ar-Raniry Darussalam Banda Aceh, 2008),11

One of the issues and problems suffered by women in Indonesia are related to the *nikah siri* or unregistered marriages. As the data shows, the occurrence of *nikah siri* is still high in Indonesia.[23] Many reasons are behind such phenomenon. Culture, lack of knowledge and awareness, some unique and special circumstances such as polygamous marriage or family disputes are some of the common reasons behind unregistered marriages. Even though not all unregistered marriages have such negative and sad endings; reality shows that many of the unregistered marriages do have very negative impacts on the woman. This has been affirmed in the literature, many reports, as well as stories shared by the interviewees in this study.

Realizing the unfair situation suffered by women throughout the world, many movements usually called feminism start and take a variety of approaches. Many movements and strategies to promote women's protection and gender equality have undergone long years of struggle. Women in development, women and development, gender and development, and gender in development are some of the strategies used all over the world in order to achieve the goals and the changes of the different strategies based on many considerations.[24] The latest strategy is gender mainstreaming that tries to integrate gender into all aspects of life and development in every country including Indonesia. Gender mainstreaming (in Indonesia translated as PUG or pengarus utamaan gender) is a strategy to systemically integrate gender

23 Harian Rakyat Merdeka, 25 Persen masyarakat Indonesia melakukan nikah siri, http://m.merdeka.com/peristiwa/25-persen-masyarakat-indonesia-melakukan-nikah-siri.html, Accessed on May 3rd, 2014.

24 Arab Naz, et. al, A Paradigm Shift in Women's Movement and Gender Reforms in Pakistan (A Historical Overview), Global Journal of HUMAN SOCIAL SCIENCE, 13:1, 2013

in to all systems and structures, including policies, programs, processes and projects, and organizational culture.[25]

Simply put, the purpose of gender mainstreaming includes developing mechanisms for policy formulation and gender responsive programs, giving special attention to groups who experience marginalization because of gender bias. One of the important points to be drawn from the above explanation is that gender is also supposedly integrated into the state policies included here, namely family law or marriage laws. In order to asses a policy from gender perspective; whether it has been supportive of gender or vice versa, there are a set of analytical tools.

These tools are used to analyze and identify the problem as well as the policies. The tools are crucial because sometimes it is not that easy to identify the existence of gender problems within a particular phenomenon, society or even policy.[26] Admittedly, there are certain issues that are so explicit and clear and hence very easy to be identified. One such example is cases of violence or discrimination that are highly visible, namely denying women's right to vote in elections.

Gender analysis can be defined as the process of analyzing data and information systematically about the condition of men and women to identify position, functions, roles, and responsibilities of both parties in the development process along with the factors that influence it. The well-known tool of analysis in Indonesia that is also formally

25 Herien Puspitawati, Pengarusutamaan Gender (PUG) Bidang Pendidikan dalm Menyongsong Era Globalisasi, conference paper presented at workshop on Gender mainstreaming, Bogor September 10th, 2007.

26 United Nations Development Programme, Gender In Development Programme: Learning & Information Pack Gender Analysis, January, 2001

used by the ministry of women's empowerment and child protection is the APKM (akses, partisipasi, kontrol dan manfaat/access, participation, control, and benefit). APKM can also be used to identify potential discrimination within a policy; and there are other analytical tools that are specifically designed to assess a policy.[27]

Types of policies from gender perspectives

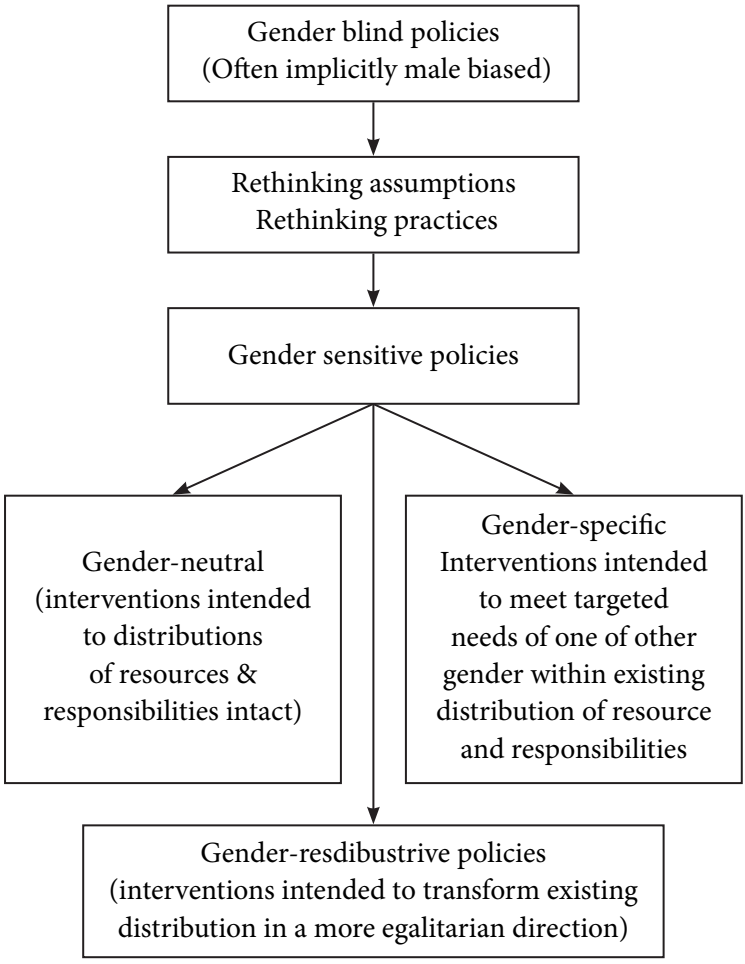
Discourse on policy analysis from gender perspective is plentiful. Some scholars divide the policies in to three categories; Gender-blind policy, Gender-neutral policy, and gender- responsive policy. Other scholars also use other categories such as gender-bias policy, and gender aware/ sensitive policy. Other scholars such as Nailaa Kabeer make other classifications.[28] Furthermore, Rianto Nugroho also tried to modify other policy classifications.[29]

27 See for instance, joint program between Ministry of General Works and Ministry of Women empowerment and Children Protection entitled 'Panduan Pengintegrasian Aspek Gender dalam Perencanaan Program dan Penganggaran Kementrian Pekerjaan Umum', 2009.

28 Naila kabeer, Reversed Realities : Gender, Hierarchies in development Thought, (London : Verso, 1994), 241

29 Riant Nugroho, Gender Dan Administrasi Publik: Studi Tentang Kualitas Kesetaraan Gender dalam Administrasi Publik Indonesia Pasca Reformasi 1998-2002 (Jogjakarta : Pustaka Pelajar, 2008), 242

Naila Kabeer Review model[30]



The categories used in this study are gender blind, gender neutral and last is the gender responsive.[31] The first type,

30 Naila Kabeer, Reversed Realities: Gender, Hierarchies in Development Thought, (London: Verso, 1994), 307.

31 Katrin Schneider, Manual Training of Gender Responsive Budgeting,

gender blind policy, is policy that explicitly discriminates against one of the sexes; males or females. The second type, the gender-neutral policy is the policy that seems to be a fair and just policy and gives equal opportunities for both males and females. This kind of policy is seen as neutral and does not perpetuate any form of discrimination against one of the sexes.

However, this type of policy also fails to consider the existing inequality and differences between males and females that cause the need for affirmative action for females. Historically, women have suffered from marginalization and subordination without considering their condition and need. The policy actually has played the role of indirect discrimination because it failed to serve the ends of justice and equality in the process to reach the equity. Consequently, women are indirectly disadvantaged by this gender neutral policy. The third type (in this study it will be referred as a gender responsive policy) is policy that recognizes and takes into consideration the existing and potential circumstances and constraints faced by women. So, the policy is formulated with careful consideration and is aimed intentionally to support women. Ideally, the result of such policy is a positive impact on women's empowerment or protection or gender equality.[32]

In addition to the above classifications, there are also other ways of analyzing gender policies. There are three approaches which are commonly used in the review and analysis of the law from gender perspectives: the first is protectionism. Scholars who endorse this approach have reinforced an essentialist understanding of gender difference,

Eschborn: GTZ, 2006

32 Taken from a course on gender and policy, Sharon Bessell, policy and governance depertmenet, (Australian National University), 2006

assuming those women are naturally weaker than men. For example, in a chapter entitled 'the weaker sex' an author named J.P. Atray notes: "This positions of helplessness is so much visible among woman in general."[33] A second and perhaps more familiar approach to gender justice in the literature is one that promotes gender equality. Experts within this approach tend to emphasize problems in unfair male-female relations and existing legal provisions governing women's equality rights. A third approach focuses on gender justice and therefore law is enacted in order to challenge the patriarchal assumptions.

If we analyze the MK ruling, it is clear that the ruling is actually a child-responsive policy. In fact, it is specifically designed to answer issues on children out of wedlock. Unfortunately, using the above theoretical framework, the ruling cannot be categorized as a gender responsive policy, let alone a gender specific policy. The policy, the ruling in this context, does not attempt intentionally and or specifically to address and solve women and gender issues. As a matter of fact, if we look at the first ruling in regard to the two judicial reviews made by the petitioners, the ruling actually denies that there are many real problems suffered by women in many kinds of relations, particularly unregistered marriages. The ruling denies the demand of the petitioner to revise the existing law regarding marriage registration, giving several reasons.

The reason that registration is related to the legal meaning and that registration does not mean denial of someone's right is also stated in the ruling. In addition, as is stated in the ruling, the two persons, both the man and the woman committing the unregistered marriage are adult and, logically, both of them are aware of the consequences

33 J.P.Atray, Crimes Against Women, New Delhi:Vikas, 1988. p. 17

from doing the unregistered marriage.[34] Therefore, the ruling is neutral in positioning both men and women as adults and does not promote any protection whatsoever for the women. In this case, the ruling can be categorized as a gender neutral policy. It does not discriminate against women but also does not address any issue related to women.

Nevertheless, the ruling, just like any other gender neutral policy, fails to consider that there are some other factors and there are historical aspects that already put men and women in imbalanced situations. There are admittedly some cases where the women of unregistered marriages are supposedly aware of the consequences especially those who conduct polygamous marriage. However, there are also many other women who are likely not aware of the consequences for many reasons. Just like Dzuhayatin asserted, education can be one of the factors.[35] In addition, there are many reasons behind unregistered marriages and not all of them to evade the state regulations on polygamy. From previous research conducted by the researcher, there are also some societies where the culture really allows and even contributes to the high occurrence of *nikah siri* or unregistered marriages.

Madura ethnics who live in many places in Indonesia tend to marry their children (here the daughters are the most prone to such situation) at a very young age and put them in unregistered marriages.[36] They argue that *nikah siri* is an ideal form to prevent adultery and free sex between the teenagers that are so highly frequent an occurrence lately. They argue that marriage does not necessarily mean that the couple

34 Mahkamah Konstitusi Indonesia, Putusan Nomor 46/PUU-VIII/2010, p. 3

35 Siti Ruhaini Dzuhayatin et al, Rekonstruksi Metodologis Wacana Kesetaraan Gender dalam Islam, Yogyakarta: PSW UIN Sunan Kalijaga, McGill-CIDA dan Pustaka Pelajar, 2002

36 Penelitian RUU HMPA dan nikah siri, jember 2010

will live together as a husband and wife. In their argument, both of them are still limited to act like an engaged couple but will be prevented from sin if they have to go together or hold the couple's hand. In addition to culture, there are also many other cases where unregistered marriages are so common and the women are sometimes also still under the age of consent.

In addition, in some cases, the girls are also in an agreement towards the marriage; this is possible since the Shafi'ite school of law still allows for *ijbar* (the right of the father to 'force' the daughter to get married without her consent).[37] In short, to assume that all women who perform *nikah siri* are adult enough to be aware and or educated enough or in such a situation where the woman intends to ruin another person's family; is not sensible.

Reality shows that there are variations and some women are not fully aware or even mature enough to be aware of the potential consequences and negative impacts of unregistered marriages. This is one of the flaws of the ruling. Admittedly, the answer and decision from MK is not wrong as well. MK rejects the demand of the petitioner to grant the unregistered marriage to be able to be considered as valid and or to lessen the function of the marriage registration. Still, just like the ruling regarding the children that actually answers more than was demanded (usually defined as ultra petita) and addresses issues of all children out of wedlock; both from *nikah siri* and adultery, MK should have or could have given similar treatment to the issue of women and *nikah siri*.

Moreover, culturally and socially, most women in Indonesia are still prone to have many other gender-based problems related to *nikah siri* such labelling (as divorced will be seen less in value compared to the man), women are still

37 Wahbah al-Zuhaili, Al-fiqh al-Islami…, p. 191

economically dependent. Therefore, they need protection and the MK ruling fails to consider that need.

Meanwhile, with regard to the second ruling that revises article 2 of chapter 43 of the 1974 marriage law, the MK ruling is relatively unique to be analyzed.

As a matter of fact, the ruling also actually has potential to be A gender responsive policy even though not specifically SO. This is due to the fact that in the reasoning and considerations of the ruling it is stated that it is not fair to limit the civil relation of the children out of wedlock only with the mother as the occurrence of pregnancy is definitely a result of two persons; the mother and the father.[38] It responded indirectly to the unfair provision that only puts the burden of a civil relation (which covers financial support and others) on women to be shared together with the men who can be proven with the existing technology as the biological father. What makes it more interesting to be analyzed is the fact that the MK ruling also does not state clearly that the maintenance, including that of financial support, is the sole responsibility of the father. Thus, it can said that the ruling actually assumed that the legal consequences that come with a civil relation including financial support is also the responsibility of the father and his family equally shared with the mother and her family. To some extent, such order can be categorized as a gender redistributive policy.

It redistributes the role divisions between man and women; between father and mother that are commonly believed and held.[39] As a matter of fact, if we see the Compilation of Islamic law in article 80 then it is clear that the duty to support the maintenance financially is the father's

38 Mahkamah Konstitusi Indonesia, Putusan…, p. 34

39 United Nations Development Programme, Gender In Development Programme:…, p. 62

such spirit of equality, is positive under some conditions. One of the most important conditions is the social and cultural setting that allows such roles division to run well and just. Unfortunately, the conditions in Indonesia so far are not ready yet for such radical division of roles as many women are still put as subordinate even if there are many women who are economically independent and hence can financially contribute for their families. In short, what we need here are implementing regulations that are more detailed and wisely consider all other factors and aspects.

One of the aspects that might be forgotten by the ruling is the position of the wives and children from legitimate marriages if the cases are polygamous, just like Machica's case. One of the biggest critiques including from several respondents or interviewees is that the ruling is actually not fair to the women and children within registered marriages. In cases of relations that only involve two parties; one man and one woman (of course with the children) the dilemma is not complex. Yet, in polygamous marriages, or in adultery cases where one party is already married, there is a big dilemma. On the one hand, the ruling is potentially positive for the women with children out of wedlock. On the other hand, this also is a nightmare for those who are being betrayed.

For the women and children in the legitimate marriage, as argued by many interviewees and expressed in some articles, the ruling can be counterproductive and unfair.[40] This is the part where the uniqueness and the dilemma stand. There are many questions that remain unanswered especially because the ruling up to now is not supported by any implementing regulation. Ideally, there should be some

40 Detail information of interviews is in the following chapter.

distinctions between cases of non-polygamous marriages and cases of polygamous marriages.

This is surely not to discriminate against the children but more to promote justice and protection for the existing wives and children. One solution offered by Burgrlijk Wetboek (Dutch Civil Code) in article 954 is to grant only one third of the wealth of the biological father to the children from the affair outside a legitimate marriage. Another possible strategy is to really secure the wealth division between the legitimate husband-wife so that there is no loss suffered by the existing wives and children. This is also the strategy supposedly used in cases of legitimated and registered marriages according to article 50 of the compilation. Admittedly, there is no perfect answer. Careful assessment on each case is crucial. Still, the most important thing is to minimize that the possibility that any party, especially innocent ones, suffer from any loss or any unfair and discriminatory treatment. The main principle is to not let the men, who are supposed to be responsible, to run away freely from the responsibility and cause loss to the women and children out of wedlock.

C. MK RULING AND ISLAMIC LEGAL ARGUMENT, AN ALTERNATIVE ARGUMENT

As elaborated quite thoroughly in Chapter Three, the MK ruling has divided Indonesian Muslims jurists between those who oppose, those who support, and those who are in between. From the perspective of traditional Islamic jurisprudence, the ruling is simply an affirmation of the legality of children of unregistered marriages, and at the same time the confirmation of illegitimate children born from adultery. This point of view is based on the assumption that Indonesian Muslims adhere to the Shafi'ite School of

Law that puts heavy emphasis on the sanctity of the marriage contract.

The marriage contract is the sole determining factor of the legitimacy of children who are born from the womb of Muslim women. If the birth of children is within a valid marriage, the children are legitimate children of their mother and father. On the contrary, if the birth of children is outside religiously valid marriages, they only are considered valid children of their mother.[41] The contrasting opinion supports the possible implementation of the ruling to include children born from adultery. It resorts to another method of reasoning. The methods involve the employment of Hanafite Schools of Law, reinterpretation of related sacred sources (the injunction of the Holy Qur'an and/or Prophet Tradition) or a combination of the both methods. Compared to traditional Islamic jurisprudence that is simply textual legal interpretation, this second opinion considers the unfortunate conditions of children outside marriage and their mothers as the main concern in constructing a response toward this MK ruling. After all, Islamic law aims to uphold justice and deliver benefits for all Muslims, regardless of their status of origin.

An example of this second group that support the inclusion of children born from adultery in this MK ruling is the opinion of A. Mukti Arto, a judge of the religious Court for appeal in Ambon, Maluku.[42] Certainly, he begins by citing the most referred quotation from the prophet tradition

41 Muhammad Jawwad Mughniyah, al-Fiqh Ala al-Madzahib al-Khamsah, Kairo: Maktabah al-Syuruq al-Dawliyah, 2007, p. 310

42 A. Mukti Arto, Diskusi Hukum Putusan Mahkamah Konstitusi R.I. Nomor 46/PUU-VIII/2010, 27 Februari 2012 Tentang Pengubahan Pasal 43 UUP Tentang Hubungan Perdata Anak Dengan Ayah Biologisnya, paper presented at legal discussion of High religious court in Ambon on 16 March 2012 at Auditorium PTA Ambon.

that stresses the innocence of any born child. The opinion of the Hanafite School of Law on the issue is also resorted to. In response to the amendment of article 43 (1) of the marriage law, he suggests that basic values of Islamic law, its principles and legal theory should be put forward, especially key words surrounding the status of children, blood relation, and father's responsibility towards his children.

He argues that in everyday life, we will deal with facts or occurrences. Facts can be divided into two types, namely events and actions. Each event happens based on natural law, or in Islamic term sunnatullah, whereas actions happen because they are performed by a competent human being, which in Islamic legal terms is called *mukallaf* (legally competent person). Since all events are free from the order of law, they are not bound with legal status: obligatory, recommended, lawful, unlawful, valid or void. Events which cause legal effect are called legal action. Legal action is always bound by legal order such as conditions, requirements and specific legal procedures which in turn also bound by legal status such as obligatory, recommended, lawful, unlawful, valid or void.[43]

He further elucidates that in understanding this issue, there are two legal facts; legal action and legal event. *Aqd nikah* (marriage contract) is a legal action which is bound by legal order, such as conditions, requirements as well as certain legal procedure which makes it bound by legal status of obligatory, recommended, lawful, unlawful, valid and void. On the other hand, conception, pregnancy and the birth of a child are natural event which is not bound by legal order because they occur in accordance with natural law so that they are free from any legal status. Because the birth of a child has legal effect, it becomes a legal event. Sexual relationship

43 Ibid., p. 14

in a valid marriage is religiously rewarded, whereas sexual intercourse without marriage is a grave sin. The birth of a human being is a legal event that is free from legal status and therefore any born child is not bound by legal status of valid and void, or sin and reward.

In Hanafite School of Law, a mere sexual intercourse even without marriage has created *mahram* relationship.[44] It simply means the establishment of the prohibition to marry between the child and the mother and father as well as their immediate families. This opinion is based on the interpretation of Hanafite jurists of the chapter 4 verse 22 which says: "And marry not women whom your fathers married, - except what is past: It was shameful and odious, - an abominable custom indeed. Abu Hanifah, the eponym of the School interprets the word "*nikah*" (marry) in the verse as sexual intercourse.

Therefore, a son is prohibited to marry a woman once had sexual relationship with his father. That mother simply has become his step mother.[45] In line with that verse is the subsequent verse which says: "Prohibited to you (For marriage) are:- Your mothers, daughters, sisters; father's sisters, Mother's sisters; brother's daughters, sister's daughters; foster-mothers (Who gave you suck), foster-sisters; your wives' mothers; your step-daughters under your guardianship, born of your wives to whom ye have gone in,- no prohibition if ye have not gone in;- (Those who have been) wives of your sons proceeding from your loins; and two sisters in wedlock at one and the same time, except for what is past; for Allah is Most-forgiving, Most Merciful;- "in this verse, God has determined that sexual relationship between the father and his wife has result in the *mahram*

44 Wahbah al-Zuhaili, Al-Fiqh al-Islami…, p. 135

45 Wahbah al-Zuhaili, Al-Fiqh al-Islami…, p. 135

relationship between the father and his step daughter (in case the wife already has daughter/s with previous husband).[46]

So, even if there has been marriage contract between the husband and the wife, it has not established *mahram* relationship whenever no sexual relationship between them. Thus, it is the sexual relationship that causes the establishment of *mahram* relationship. In the very verse, it is stated that "…and it is prohibited to marry wives of your children…" it should understood that the meaning of "children" in this verse are those born from the father's sperm. This becomes the foundation for the establishment of consanguinity between the children and their biological father so that the fathers are prohibited to marry with the wives of their sons.

Analogous with that Abu Hanifah opinion, the blood relationship is the basis of civil relationship that covers consanguinity, *mahram*, rights and duties relationship, inheritance, and marriage guardianship for daughters. Since Islam considers children as God's gift as well as mandate from Him, there is no one should escape from responsibility by abandonment, unfair treatment and other treatment that put children into unfavorable position. This is proportional responsibility of the parents, society and the state. The aforementioned Quranic verse should become moral foundation of the implementation of comprehensive children protection.

The birth of a child is an event which happens through natural law (*sunnatullah*). The blood relationship between the child and the father and mother is natural law as well. It cannot be denied, abrogated, covered up by any authority, including legal authority. In fact, law must protect this relationship. Another verses of the Holy Qur'an also asserts:

46 Ibid., p. 129

"That He did create in pairs,- male and female, From a seed when lodged (in its place); That He hath promised a Second Creation (Raising of the Dead); That it is He Who give the wealth and satisfaction"[47]. The Blood relationship as described by these verses creates a legal relationship as well as rights and duties relationship based on natural law. Thus, legal stipulation must not contradict *sunnatullah*, let alone denies it. Another illustration concerns the rule of adoption in Islam which must not break consanguinity between the child and his/her biological parents. If the adopted child's origin is unknown, he or she should be considered brother in Islam or step child. He or she cannot be treated as own offspring. Again, blood relationship becomes the basis of consanguinity and *mahram*. Thus, establishing consanguinity of a child to his/her biological mother protects blood relationship with the mother. This is the logic of *sunnatullah*. Likewise, establishing a child to his/her biological father means protecting blood relationship based on *sunnatullah* as well.

Blood relationship is the basis of civil relationship between the child and his/her both parents (father and mother). This civil relationship is one way of protecting the child's survival. Civil relationship becomes the basis of the obligation of the mother and the father to take care of their child. The father is obliged to ensure the wellbeing his child's religion, survival, intellect and properties. The fact that the parents' marriages failed, unregistered, or even no marriage whatsoever, does not erase the obligation of the father to perform his obligation towards his child. This is the reason that the prophet tradition saying "the child belong to the owner of the bed should be understood that the born child belongs to the man who caused her pregnancy. In addition,

47 The Holy Quran 53: 45-48

every child is born innocent regardless the marital status of his/her parents as reflected in another prophet tradition. innocence (*fitrah*) is not only about being free from sins and burden but also means the child has basic rights endowed by Islamic law. One of the purposes of Islamic law is protection of offspring. Father and mother as parent who naturally cause the birth of the child are responsible for their child, regardless of his/her status. If the parents commit sin and cause the birth of a child, the sin should not put the child into unfortunate situation or burdened by. In Islam, children do not carry the sins of the parents as God has states: "Say: "Shall I seek for (my) Cherisher other than Allah, when He is the Cherisher of all things (that exist)? Every soul draws the meed of its acts on none but itself: no bearer of burdens can bear the burden of another. Your goal in the end is towards Allah. He will tell you the truth of the things wherein ye disputed."[48]

The rights of children persist even if the parents commit sins or perform erroneous deeds. Sins and mistake of the parents do not erase the obligation of the parent to their children. The same sins and mistake also cannot erase the obligation of parents towards their children. Thus, even the marriage is dissolved, the marriage was not registered, or there was no marriage, the father remains obliged to his children because this is part of *sunnatullah*. Blood relation as *sunnatullah* has becomes the basis of legal relation which includes consanguinity, *mahram*, rights and duties, inheritance, and marriage guardianship. Marriage contract as legal action becomes the basis of wedlock, marital duties and rights, marital property, and inheritance relationship between husband and wife. The dissolution of marriage does not erase the rights and duties between husband and wife

48 The Holy Quran, 6: 164

and marital property. Yet, the absence of a marriage becomes the basis of the absence of inheritance relationship between husband and wife. By using this line of argument, Mukti Arto believes that the ruling of constitutional court can be justified in Islamic law. Not only that, it also will grant all rights belong to children outside marriage.

CHAPTER V

OPINIONS OF STAKEHOLDERS ON THE CONSTITUTIONAL COURT'S RULING

After sketching the constitutional court's ruling on judicial review concerning children outside marriage, this chapter is dedicated to narrate the opinions of stakeholders on that ruling. The stakeholders originate from two different places in East Java, namely Surabaya and Jombang. The main argument for the selection of these two places is the assumption of vast difference between two places. Surabaya is a big city and Jombang is small city. While Surabaya is known as a modern city in which traditional values start to crumble, Jombang is a religious town with many *pesantren* (traditional Islamic boarding school). It is expected that the difference will give rich responses to the ruling.

A. OPINIONS OF STAKE HOLDERS IN SURABAYA

Surabaya, as the capital city of East java Province is dense in its population. There are 3 million people living in the city.[1] Indonesia's majority population is Muslims. That is also the case in Surabaya. However, Surabaya is a metropolitan city that is relatively different from Jombang. It is an industrial

1 http://dispendukcapil.surabaya.go.id/index.php.

city and economic hub of East Java. It is more heterogeneous in terms of culture, people's religiosity and so forth. In fact, Surabaya is considered as the second largest metropolitan city after Jakarta in Indonesia. Hence, issues related to marriage as well as unlawful relationships are also more common. That is the reason why the city is very relevant in picturing the issue of children out of wedlock.

In gathering people's aspirations, there are many people, the relevant ones, being interviewed in this research. The classification, as explained in the previous chapter are the representatives from the government side, the representatives from Religious figures, and the representatives from those who are affected either directly or indirectly such as the women who have undergone nikah siri , household wives and even the people in general. The variation is needed since the main objective of this study is to have a picture of people's opinions and attitudes towards the MK ruling regarding the children outside marriage. At the end, the picture of people's attitudes and aspirations also will be analyzed on assessing whether the ruling is potentially effective or in contrast will be potentially an obstacle to implementation. From the government party, there are representatives from KUA (the marriage registration office) and also judges from the religious courts. Meanwhile, there are also other representatives from activists and personalities from Muslim organizations dealing with Islamic contemporary issues in the community.

Briefly speaking, data that has been collected from the interviews shows that there is a relatively uniform trend of responses towards some aspects of the issue but also a variety of trends in some other aspects. With regard to child protection within the MK ruling, most of the interviewees gave relatively similar responses; they relatively support and agree with the ruling. As stated within the ruling, the principle

and logic behind the MK ruling is children protection and stopping anti-discriminatory treatment towards the children as citizens of Indonesia. So here, basically, most of the interviewees show sympathy to the problem of children of unregistered marriages or those born in *zina* (adultery). They also agree that children are not guilty and therefore are not the parties who should suffer from abandonment from the father. However, it cannot be denied that there are some slight yet significant differences of responses between discussing the children of *nikah siri* (unregistered in the state law but legal in Islam) and discussing the children of *zina* (adultery). Interviewees seem to feel more comfortable in supporting the protection of children of *nikah siri* rather than those from *zina*. Religious reasons do play an important role in shaping their attitudes. Yet, most of them still agree that children should be protected even though they do have diverse opinions on how the protection should be accomplished; in particular whether state intervention is a good approach or not.

Because they have diverse opinions on the ways to solve the issue of children born out of wedlock, responses towards the MK ruling are relatively varied. The variety so far can be categorized into three categories. The first is those who agree with the MK ruling on some condition related to different treatment or at least legal consequences for the children of *nikah siri* and children of *zina*. The second category is those who agree and support the MK ruling with no conditions. The third category is those who tend to disagree with the MK ruling. Many arguments and reasons lie behind each attitude as will be explored in this chapter. To give the illustration on how people feel with regards to the MK ruling, each of the interviewees will be explained.

One of the most important persons to be interviewed in this study is the judge of the religious court. The courts

in Indonesia are divided into two; civil court and religious court. The civil court deal with all cases except family issue cases by Muslims. The religious court deals with Muslim affairs in several aspects of family life and sharia economy. Cases of unregistered marriages that are being legalized through *isbat*[2] and cases of determination of children's status are also conducted in the religious courts. They are also the ones that are mostly affected by the ruling of MK and in fact the decree of the Supreme Court states explicitly that the ruling should be accepted and implemented within the religious courts. Here, their standpoint is definitely crucial not only as a discourse but also as an indicator whether the ruling, which is actually binding as a legal product, will be effectively implemented at the grassroot level and or in the religious courts.

In Surabaya, the religious court is extremely busy. There are many cases that the judges have to deal with. Most of the cases are divorces and many of them are requested by the wives. When the interviews took place, the court was fully crowded by the people who are applying for *isbat* and they got the *isbat* for free due to the support of the municipal program to give marriage certificates for the long married couples whose marriages are unregistered. This is also an illustration on how the occurrence of unregistered marriages is still high even in a big city like Surabaya. Here, the interview is with Sulaiman, the judge as well as the public relation officer of the court. So, he is appointed by the head of the court to respond officially towards the ruling.

With regard to the knowledge of the ruling, compared to other interviewees, Sulaiman and other judges have a

2 Isbat is a legal action by parent to request for legitimacy of their children because the marriage is unregistered or the marriage conducted before the enforcement of law No. 1 1974 on marriage.

privilege to have access to the information and hence have a better understanding about the ruling. They do not base their understanding on the media like most of the interviewees do but also from the upper level of offices within the Supreme Court.

What he understands from the ruling is that the ruling covers all children born out of wedlock both from adultery and from an unregistered marriage. He also believes that the term civil relation is the same as *nasab* (consanguinity). Here, he states firmly his disagreement towards what Mahfud MD, the chairperson and judge of the Constitutional Court that lead to the hearing in this judicial review, has once said in a forum that civil relation is different from *nasab*. He argues that civil relation covers all the things covered in *nasab* and hence they are the same thing. Therefore, he understands the reason behind people's resistance, and in fact the opposition from the MUI (Indonesian Council of Ulama), that the ruling contradicts Islamic law because it will grant civil relation, which is the *nasab* itself, to the children from adultery.

Sulaiman himself does not agree with the MK ruling. Interestingly, he does not concern himself heavily with religious reasons for his disagreement. He mentions several arguments behind the disagreement. One of the most important reasons is the fact that the ruling of the MK, to Sulaiman and other judges in the religious court, is not in line with the principle of justice and fairness. In addition, it also contradicts the existing law and regulations not only the ones revised by the MK ruling (the one about the status of children and their civil relation with the parent) but also other crucially sensitive regulations such as those about polygamy, marriage registration and so forth. To be noted, his opinion also reflects the attitude of other judges in the court. He said as follows;

> *"Saya di sini, ya juga saya percaya mewakili para hakim lainnya di lingkungan pengadilan ini, tidak setuju dengan putusan ini. Banyak alasan ya, ini akan melemahkan aturan dan system hokum yang sudah ada dan jalan. Pencatatan, poligami, semua akan terkena. Coba bayangkan, semua orang bias dating ke pengadilan minta anak mereka diakui, ga tau status hubungannya apa, bias dibayangkan ke depan jadinya gimana"*
>
> ("..I speak on behalf of myself as a judge but also I represent the judges here in the religous court of Surabaya, we do not agree with the ruling. We do not agree because of many reasons. It definitely will weaken the existing regulations about the registration of marriage; it also contradicts the principle of polygamy limitation. You can imagine what will happen in the future when people with whatever the status of the relation can go to the court with children and ask for the court to give the legal relation for the children without considering the legality of the marriage.") [3]

Furthermore, Sulaiman feels disappointed by the fact that the MK ruling itself originated from a case that actually involves a breach of the law; a polygamous unregistered marriage. He suggests that the case like that should not be given the solution (the ruling of the MK). Moreover, he argues, the solution or the MK ruling amends and revises part of the existing law, the 1974 marriage law and KHI on children out of wedlock, article 43 and 100 respectively. This seems as a double mistake to him.

Sulaiman also uses a legal point of view to support his opposition. Different from the procedural law which has consequence on legal certainty; Sulaiman explains that material law is more related to the effort to establish justice and fairness, one of the main functions of the law, to all the parties. Therefore, this (material law) is not rigid, and applied uniformly like the procedural aspect of the law. Hence, there

3 Interview with Sulaiman, the Judge of Religious court, Surabaya.

should be no generalization on all cases since every case has its own uniqueness in conditions and other aspects. Here, he believes that the ruling is not relevant to be accepted as a general principle applied in all cases related to children outside marriage. This is because the ruling will eventually end up in unfairness because it grants the same rights for children in various cases.

Arguing with those reasons, Sulaiman, again speaks on behalf of the religious court of Surabaya in general, and states blatantly that he and other judges will not apply the MK ruling in their religious courts. When confronted that the MK ruling is a legal rule and is a binding legal decision, he responds as follows:

> *"Kita mengerti bahwa putuan MK itu final dan mengikat. Tapi, kenyataanya (menunjukkan bahwa) banyak yang akhirnya ga dilaksanakan juga. Anda tau putusan MK baru baru ini soal wakil menteri. Katanya kan wakil menteri itu salah tidak ada dalam aturan, tapi apa yang terjadi? Tetap aja kan berlalu, pemerintah tidak memperdulikan dan wakil menteri tetap ada bekerja di kantornya. Putusan lainya soal pengacara. Itu kan menetapkan setiap alumni hukum bisa langsung praktik di pengadilan menjadi pengacara tanpa melalui izin dari asosiasi advokat. Itu kan, menurut saya, juga menggelikan. Dan tidak heran akhirnya tidak dipraktikkan. Yah anda bisa lihat dilemanya kan?"*
>
> "..We do understand that MK ruling is final and binding. However, reality shows that many other MK rulings are also not applied in practices. You know the MK ruling about the vice-minister. It states that the position of vice-minister does not exist in the existing regulation, but what happens? The government ignores it and vice ministers now are still in their offices. Another ruling that is also not being taken seriously by the people is the ruling about advocates and legal practice in the court. MK rules that, different from the previous existing regulation, all people who are graduated from law faculty and are capable can practice as an advocate in the

> court room regardless of whether they have got a license from the advocate association or not. This is also, in my opinion, very ridiculous and careless. No wonder that the ruling is also not applied in practice. So, you can see the dilemma"

Sulaiman and his opinions offer very interesting points. On the one hand, he does put himself as the state apparatus who advocates the state law. This is illustrated in his firm statement that an unregistered marriage is not legitimate. What makes him even tougher than the other interviewees is the fact that he also denies the legitimacy of unregistered marriages not only from the state's view but also from religious perspectives. However, on the other hand, he resisted the MK ruling, arguing all the mentioned reasons above. Furthermore, he even dares to explicitly state his disagreement and his unwillingness to implement the ruling that he admits to be final and legally binding. His very strict opinion seems to stem from his respect towards the existing regulations and he perceived them as the best.

Meanwhile, his unique opinion regarding unregistered marriage or *nikah siri* is also worth discussing. He considers unregistered marriage not only illegitimate from the state legal point of view but also illegitimate even from the religious perspective. He does not agree with the common understanding that is held by many Indonesian Muslims perceiving the unregistered marriage as valid religiously but not legally. He laughed and said provocatively;

> *"Kata siapa nikah siri sah? Sah menurut siapa? Menurut agama sah? Benar ta? Ya gak lah, namanya juga siri yang ga sah. Coba liat deh pandangan ulama. Apa itu siri, pendapat umar, kan ga sah. Jadi tetap (tidak sah: red)"*
>
> "..Who said that nikah siri is legitimate? Nikah siri is also not legitimate even when you use religious point of view".[4]

4 Ibid

This opinion clearly differs from a predominantly held opinion among the Indonesian muslims and ulama. Nevertheless, he admits that *nikah siri* in Islamic jurisprudence is valid from some views of ulama (religious scholars) particularly Shafi'ite school of law. Yet, he stresses his preference towards other views to deem it illegitimate or not valid. He quoted Umar who, in his perspective, sees the *nikah siri* as not valid. This is because he believes that people who perform *nikah siri* aim and have intention to 'hide' the marriage from the public. Therefore, he argues that from Umar's perspective, such marriage can be considered as an unlawful relation. He again states his belief that *I'lan* or announcement to public about the marriage is necessary and that failure to do so can render the marriage batil or void. This is admittedly a rather strong standpoint. It seems that he goes deep to the *illah* or ratio legist behind Umar's view and finds similarity with the reason behind people who do *nikah siri* in Indonesia.

In line with that, his opinion about the status of children outside registered marriage is also firm. He believes that when it comes to legal issues, then both children from *nikah siri* and unlawful relation (*zina*) do not have legal relation whatsoever since both of the relations cannot be considered legitimate. However, he also allows more privilege to cases of *nikah siri* arguing that the existing law allows a room for *isbat*. In addition, they also can ask for a court decision on the children's status after the court granted their *isbat*. This procedure is not applicable for cases of adultery.

Furthermore, Sulaiman argues that many things are sometimes ambiguous when it comes to the implementation of law in Indonesia. He pointed at the crowd of people who were in the court at thet time the interview took place. They all were asking for *isbat*. He said that this is actually also an act of 'breaking the law' because isbat according to the law

actually can only be granted when the marriage took place before the enactment of the 1974 marriage law. He does not agree with other opinions that allow such *isbat* granted as long as the marriage fulfilled all Islamic requirements and does not contradict the law. On this issue, he regrets that sometimes politics also intervenes in the way the law is interpreted and implemented. He said as follows:

> *"Coba lihat orang orang itu, mereka dibiayai oleh pemkot, supaya isbat ga ada lagi yg ga punya akta nikah. Mereka pasangan2 lama dari daerah daerah di surabaya, biasanya madura. Maksudnya sih bagus, tapi ya akhirnya gak gitu. Kan harusnya tidak boleh yang setelah 74. Tapi, ya taulah, negeri kita hukum sama politik kadang bergesekan atau mempengaruhi. Ya, banyak masalah jadinya kalau orang orang di politik mempengaruhi"*
>
> " ..Look at the people; they are facilitated by the local government to do isbat here in this court. The intention is good, but the implication actually is not good. First it actually is not in line with law, even though some might have other opinions. But, sometimes the way politics works and what the people with power want and interpret often also influence how the law is implemented and formulated in Indonesia"[5]

Even though Sulaiman and, according to him, his colleagues disagree with the ruling, he actually acknowledges the issues and problems of children out of wedlock and actually agrees with the principle of protection. He acknowledges that children are innocent and therefore should be protected. However, he does not agree with the way the state intervenes. He is more comfortable to go with the fatwa from MUI number 11 year 2012 that the biological father should be punished with *ta'zir* and is obliged to provide financial support for their biological children. Here, he does not differentiate between those from unlawful relation and those from *nikah siri*.

5 ibid

When confronted by the fact that fatwa of MUI does not have a binding power like the state rule, He seems confused but still sticks to his opinion. He again argued passionately that the ruling of MK is not in line with the principle of justice and fairness. He asked provocatively

> *'Gimana anda pikirkan, nikah resmi sah, sakral dibuat sama posisinya sama hubungan lainnya yang tidak jelas. Lagipula, jadinya ada kerancuan dengan aturan yang sudah ada dan mapan lama. Kalau pasal soal anak direvisi MK jadinya apa bedanya anak sah dengan lainnya. Rancu. Tidak adil. Dan aturan poligami misalnya juga jadi tidak relevan lagi"*
>
> "..How do you feel when a sacred legitimate and registered marriage is being put in a same position of other relations, which are illegal? In addition, if the related rules and certain article (of the law) about the children are revised by this MK ruling, what is the difference then between children from one legal relation with other forms of relations? So it is not fair. In addition, it will ruin other regulations, such as the regulation on polygamy (compare with the condition that is bat for polygamous marriages)"[6]

Sulaiman shows his reasonable anxiety regarding the ruin of the norms within the law and society with the emergence of the MK ruling, that, he supports in principle, but not in implementation.

Marfai, another state authority, who is the head of the KUA (office of religious affairs which is in charge of marriage registration), has an almost similar concern regarding the impact of the MK ruling. Yet, his attitude towards the ruling is slightly different. As a graduate from IAIN (State Institute of Islamic Studies) Sunan Ampel Surabaya with a strong religious background, Marfai tends to agree with some ideas within the ruling but disagree with implementation for many reasons. His background as a graduate of a traditional

6 ibid

Islamic boarding school makes him a conservative Muslim. This seems to have significantly influenced his point of view.

In the beginning, Marfai seems a bit confused and is in a dilemmatic position between agreement and disagreement towards the ruling. His knowledge and understanding about what the ruling actually is about, plays a significant role in shaping his opinion. At the end, he agrees partly with the ruling while not supporting it for application. Among the interviewees in the study, Marfai is the only person who believes that the MK ruling only covers children from *nikah siri*. He knows the MK ruling from the media and states his disappointment towards the fact that there is no update session from the government whatsoever to the related mechanisms at the grassroots level.

The way he understood the ruling was that the term children outside marriage was only limited to those from *nikah siri*. He said so because he knew Mahfud MD, the constitutional judge behind the ruling, as a religious and pious person (*santri* in his word). Thus, he believed that it was impossible that a pious *santri* like him made a policy that contradicts Islamic jurisprudence. However, when the researcher tried to argue that many people understand this MK as covering both children from *nikah siri* and *zina*, he admitted that he was also confused with hot debate and controversy which he read and saw in the mass media in relation to the term *anak luar kawin* within the ruling. Here, he urged that MK should have made a clear definition and coverage of the ruling and made them explicit. Having said so, he still insisted on his understanding and said as follows:

> *"...Ponakan saya asisten dia (Mahfud MD), dia sering dimintai tolong nyari-nyari di kita kitab, ya kitab b arab langusng itu, ya mungkin untuk dia biar tau dalam islam tentang isu isu tertentu. Jadi ya kok kayak ga mungkin ya dia mutusin gitu (kalau yang dimaksud anak zina juga). Ya tapi inilah*

> *problemnya putusan MK. Harusnya dibuat jelas dan detil penjelasannya, apa yang dimaksud. Sampai sekarang ga ada penjelasan resmi setau saya*"
>
> "...My nephew works as his private assistant (Mahfud MD's assistant), and he is frequently asked to review some issues from fiqih (Islamic jurisprudence) perspectives and analyse them directly from the kitab kuning (collection of traditional islamic jurisprudence)… So it is hard to believe that he also means children from Zina. Well, this is why the ruling is problematic; there should be detailed and clear explanation about the scope and definition"[7]

Meanwhile, he understands the terms civil relation in the MK ruling as being the same as *nasab* (consanguinity). This is particularly so because the term civil relation in that article definitely covers all rights that are covered by *nasab*.

With such understanding, Marfai initially did not show any resistance to idea of the ruling. He, differs from Sulaiman, and believed that *nikah siri* or unregistered marriage was legitimate from religious perspective and therefore the children are also legitimate children. This is quite an interesting opinion considering the fact that he actually works as the head of KUA (office of religious affairs) that actually deals with marriage registration. It seems that in the area of personal beliefs, he is still heavily influenced by his religious education background. Nevertheless, serving a long time as the head of KUA, he has a rather different point of view in relation to the MK ruling when it comes to implementation. He actually agreed when the ruling of MK is related to children from *nikah siri* but he also worried the unintended consequence of the ruling. He simply foresaw higher occurrence of unregistered marriages. He worried that the MK ruling will not result in a positive impact but even worsen the situation. He said as follows;

7 Interview with Marfai, the marriage registrar and the head of KUA (office of religious affairs)

> "...I surely agree with the ruling when it is, as I believed, about children from nikah siri. A father should be responsible to support the children and this is the same with the children from registered marriage. However, with the state regulation like this, certain people will think that there is no difference between registered marriage and the unregistered ones. Up to now, the only thing that makes people register their marriage is the legality issue. So, if unregistered marriage will get similar legality, why will they bother registering their marriage. "

If the fear towards the impact is the reason behind his disagreement with the MK ruling in cases of unregistered marriages, his religious belief that adultery is a major sin is his reason behind his strong rejection when the ruling covers children from adultery. He said as follows;

> "...But, when this ruling also covers children from zina, of course I oppose that. Those people who argue with the Hanafite School of law will say that an-nikah is al wath'u; (marriage is the sexual relation itself), it is not that. Even from Hanafite opinion, there should be father's acknowledgment of the status of his child. They also do not understand that this ruling is in fact not in line with the hanafiite principle that is maslaha. How can maslaha are achieved when it will be misunderstood as a legitimating or encouragement toward zina. The father should be morally responsible but without coercion whatsoever from the state"[8]

Just like those who tend to disagree with the ruling to be implemented, Marfai also seems confused when confronted with the question about the innocence of the children who suffer in this condition. He admits that was problematic but still argued that it should be a moral obligation that is not facilitated by the state. His logic was that people would no longer fear the consequences of adultery when the state ensures the possibility for a civil relation between the

8 ibid

children and the father. He really thinks that such suffering for the woman and her family is a shock therapy so that they do not fall easily into such great sin.

Woman: is the MK ruling supporting the children but not the women?

Marfai's concern is also shared by some other interviewees. One of them is Faridatul Hanum, the head of Fatayat of East Java province, a women's organization affiliated to Nahdlatul Ulama. She has served a long time as the head of Fatayat at the Provincial level of East Java. Just like other interviewees, she also never received formal update about the ruling be it from the government or other institutions. So, her understanding is mostly based on the news from media, printed and electronic. Interestingly, the way she understands it is that the MK ruling has offered two things; first allowing unregistered marriage to have legal status from the state and second allowing the children born out of wedlock to have the name of the father in the birth certificate. This is a rather confusing understanding. Machica's case is an unregistered marriage and indeed she demanded two things in her judicial review. However, while her second demand is granted, the first is not. MK did not approve her first demand to give legal status to her polygamous unregistered marriage. Hanum's view, Marfai's view, and other confusing views clearly show the need for some clarification. When a significant legal change such as this ruling is enacted, the clarity of the language that eases people's understanding and/or an update of the regulation to the society is actually crucial. This is important particularly when the ruling or new regulation is related to a sensitive issue such as the MK ruling on children outside marriage.

Working in Fatayat allows Farida a great deal of experience and close correlation with women's issues. The organization is active in women's protection and empowerment. Yet, she turns out to offer a little surprise as she opposes this ruling. Some of the reasons are based on her belief in Islamic jurisprudence regulating the status of children from adultery. Some other reasons are due to her view that this ruling actually does not protect women. She is more confident with the state law that really supports the women. When confronted by the fact that it might help women since it will 'force' the father to support the children and lift the burden from the women, she shifts her argument that this ruling actually hurts the feelings of legitimate wives within their registered marriage. She said as follows;

> *"...Ini putusan saya rasa bahaya ya, meski tadi katanya gak melegalkan nikah siri seperti saya kira, tapi tetap gak. Ya kan kalau anaknya diberi hubungan perdata ya sama dengan memberi hak buat anak istri hasil affair ya. Itu kan nyakiti sekali utnuk istri sah, anak sah"*
>
> "...This ruling is dangerous because it will give legality for adultery. It is like legalizing the affair of the woman and the husband and that will of course hurt the feeling of legitimate wives"[9]

Her point of view is very logical and actually represents the voices of many other women. The MK ruling has a potential in encouraging adultery. She said that love affairs also include adultery. When it comes to the issue of adultery, Farida has nothing more to say apart from rejecting the ruling. It simply contradicts the Islamic jurisprudence. Furthermore, she also argues the danger because it will promote adultery.

Furthermore, Farida warns passionately that even in issues of unregistered marriage, the ruling is still very

9 Interview with the head of Fatayat, Faridatul Hanum, Surabaya, 2012

problematic. This is because, according to her knowledge and experience, unregistered marriage is often used as an avenue for covering the practice of unlawful relationships. She explains as follows;

> *"...Kita harus hati hati dengan nikah siri. Banyak yang menyalahgunakan. Banyak orang ngakunya sudah nikah , nikah siri, tapi sebenarnya beum dan mereka berzina. Mereka berdosa besar tapi bersembunyi di balik kedok nikah siri. Buktinya, ketika dicari saksi nikah siri ternyata tidak ada, atau lebih buruk, saksinya ternyata dipalsukan. Satu kejadian terjadi di masjid agung Surabaya. Orang mengaku dia dipaksa jadi saksi nikah siri karena nyataya dia tidak pernah menjadi saksi nikah itu. Ini sangat berbahaya karena nikah siri konsekwensi hukumnya sangat beda dengan zina. Ayah tidak bisa jadi wali. Kalau itu terjadi maka pernikahannya tidak sah dan akan berakibat pada zina lagi, begit terus begitu terus seperti lingkaran, orang orang benar luar biasa ; mereka tidak takut dosa. Jadi, putusan MK ini bahaya".*
>
> "...We have to be careful with nikah siri. This practice is often abused and misused by irresponsible parties. Many claim that they are already married in nikah siri, but the truth is that they are in an unlawful relation. It is a major sin but then they hide behind the claim that they are already married but in siri . However, when we try to find the witnesses (the requirements in marriage) it turns out that there are no witnesses. Even worse, sometimes the witnesses are made up. One incident happened in the Grand Mosque of Surabaya. One witness admitted that he was forced to pretend to be a witness of an unregistered marriage. In reality he never acted as a witness of any marriage happening between the couple. This is very dangerous because adultery will have different consequences from the real nikah siri. The father actually cannot be the wali (marriage guardian) for them when they are married. If that happens then the marriage of the daughters are not valid and then it will be adultery again, over and over, people now are unbelievable. They are not afraid of the sin. This MK ruling is dangerous."

Another strong opposition also comes from a very prominent religious figure, Kiai Abdurrahman Navis, a prominent figure from Nahdlatul Ulama who is also the head of the fatwa commission in MUI of East Java. The first response given to the case is that the MK ruling is as follows:

> "...DNA is only to test the possible blood or biological relation between children and parent. This is only that. There is no relation with the status moreover the legal status or relation between the child and the father. In Islam, there are nutfah mashru'ah (legal seed) and nuthfah ghoiru mashru'ah (illegal seed). So, the non mashru'ah, children from adultery cannot have any relation whatsoever with the father. Well, even though the father wants to give any material, then it is considered as sadaqah or charity, not obligatory maintenance. Thus, the man cannot be forced to do so".[10]

His opinion is actually not surprising, as he was well known for being relatively conservative in viewing contemporary religious issues. He insists that polygamy should not be restricted as it is now because it causes people to resort to unregistered marriage or even adultery. As to the inheritance rights of children outside marriage after this ruling, he simply maintains that Islamic inheritance does not acknowledge it. In addition, *wasiyat wajiba* is not known in *the Shafi'ite* school of law, the school of the majority of Indonesian Muslim people.

In addition,even though he agrees that a father can be asked to provide maintenance for his biological child, he opposes the idea that this maintenance becomes an obligation and moreover is being forced by the state. He said as follows

10 Interview with Abdurrahman Navis, head of fatwa commission of MUI (council of Indonesian religious scholars). In addition, he is also a very famous Islamic figure that is consulted by many

> "...If a father wants to give maintenance to the children from adultery, it is fine. But, this cannot be forced; those are merely gift (hibah), and cannot be considered as maintenance (nafaqoh) as he is not obliged to do so."

This opinion from kiai Navis is not surprising. There is, indeed, a trend that people from a strong conservative religious background such as Kiai Navis have a rather conservative opinion on how the family law should be applied in Indonesia. His conservativeness even goes to other aspects related to the MK ruling one of those is the issue on polygamy. He argued that poligamy is not supposed to be regulated so firmly and allowed only with some conditions. He argues that this quite strict regulation has, to some extent, encouraged people to perform nikah siri or unregistered marriage when their polygamy is not allowed by the state. This is why Kiai Navis and other conservative religious figures prefer the state to give more room for people who want to perform it and not hinder or makes the procedures difficult. This does not mean that they are against the state law. This is more because they have witnessed so many cases where the polygamy is performed in *nikah siri* since the formal procedures are difficult. And, they then argue further that this also contributes to the problem of women and child protection.

In contrast to previous opinions, there are other interviewees who indeed offer different opinions and arguments. One of them is Ahmad Zahro from MUI of East Java and a *mufti* (a muslim jurist who issues legal opinions on Islamic law) in the Grand mosque, Ahmad Saiful Anam from Muhammadiyah and Hasan Ubaidillah from a legal aid office. In relation to the concern towards the possible wider spread of the unregistered marriages and adultery, these two persons in fact believe that the MK ruling will have a very positive impact in the long run; for exactly the opposite

reasons than those put forward byt Hanum, Sulaiman, and other persons. They claim that the ruling will end or at least contribute to end the high occurrence of unregistered marriages and of adultery. This is because the ruling will force males to be responsible for the children's life, something that is not an obligation enforced by the state upon them before.

Ahmad Saiful Anam, a professor in Islamic family law, is one of the few interviewees who strongly supports the ruling. He states that the problem of children outside marriage is a latent problem that should have been settled by the state a long time ago. He argued that it is so unfair to see many children and women having suffered from men who are irresponsible both from unlawful relation (adultery) and the unregistered marriage. He further states that the state is actually already a bit late in responding to the problems. The issue is quite controversial, he said, and he has been discussing about this issue with his colleagues both in the campus and in Muhammadiyah, the religious mass organization where he is actively involved. However, Muhammadiyah has not yet issued any formal statement. There are, however, some informal statements that have resulted from discussion within the branch level of Muhammadiyah like the one in Gresik.

Anam shows his concern in a more comprehensive picture; the problem of children out of wedlock and also the root of that; the problem of *nikah siri*. He pointed out that many of the unregistered marriages in Indonesia turn to be, or actually were already intended to be, a way out for many irresponsible men to run from their responsibility. He is very disappointed by the fact that many people still do not see any problem with the institution of unregistered marriage. Meanwhile, there is overwhelming data showing convincingly that the unregistered marriage has become more than merely the issue of lack of registration in marriages but

also involves issues of abandonment of children and women. Acknowledging that such problems exist, Anam really puts his firm belief in supporting the ruling. He believes that the children regardless of the status of the parents' relation have the rights to have a civil relation with the fathers and enjoy support from them covering the financial support or maintenance, education, and even to have the relation with father and the father's family for inheritance. The civil relation here also covers the name of the father in the birth certificate and public acknowledgement of their status with the father.

Yet, he still gives differentiation for the children from the adultery. He argues that, for them, there only will be the support and the maintenance not the consanguinity (*nasab*). So, there will be no granting of the father's name to the children. In addition, the inheritance may only take the form of *wasiyat wajiba* (obligatory bequest). This is because the regulation about children from adultery has been set in Islam and this is included in the revealed texts that leave no room for interpretation. This is because the issue is clearly set in the Qur'an. Consanguinity here also has consequences as to the issue of *mahram* and guardianship or *walayah* for marriage of the female daughters. This means that the MK ruling does not change the way the *wali* is regulated and practiced so far, among Indonesian Muslims. Never has the biological father of children from adultery had the right to become *wali* for the daughter's marriage. He quotes a verse in the Qur'an as the basis for his argument which commands Muslims to address children based on their fathers.[11]

He is aware that this point of view might be seen as discriminatory or as against human rights and egalitarianism. This is similar to the case of interfaith marriages. However,

11 The Holy Qur'an, 33:5

he believes that every religion has its own authority and once a person commits to profess that religion, he or she is bound to accept the principles and regulations within the respective religion. Besides, he argued that the goal to protect children can still be achieved through some strategies namely changing the right to inherit to *wasiyat wajibah*.

However, since it relates to the legal consequences, Saiful Anam warns that careful checking and observation is crucial in ensuring whether it is an unregistered marriage or adultery. This is even more crucial in the issue of the marriage guardian for the daughter's marriage. To give an illustration, the dominant school of law perceives *wali* as a *rukn*, a necessary aspect of marriage ceremony so that the marriage can be deemed valid. So, if a girl from the adultery case is married, then the *wali* should not be the biological father. If the biological father becomes the wali, the the marriage is void from Islamic perspective and so are the children born from that marriage. The problem gets more complex in cases of adultery camoflaged as an unregistered marriage as has been pointed out by Farida Hanum. Anam then argues that this is exactly why the existence of witnesses is crucial. Using this issue as an illustration, Anam argues that marriage registration which is aimed at preventing such illicit practices from occurring, is vital and should be made a requirement that determines the legitimacy of marriage. He is disappointed by the fact that many still perceive it as an administrative aspect. He said as follows

> "...You can see that even though the law requires marriage registration, people still undermine that. The occurrence of nikah siri is still high. It should be sanctioned with punishment like proposed in the marriage bill (RUU HMPA). This is because marriage registration is seen only as a formal

> law that does not affect the status of the marriage. This is because of the absence of sanction"[12]

Here, Anam suggests that penal sanction is one important factor that is considerably effective in shaping people's behavior in family affairs. He asserts that punishment is the most effective way in law enforcement. In this sense, he suggests that the MK ruling actually also serves a similar function, the sanction.

> "...With the ruling, people will think twice before being carelessly irresponsible in cases of unregistered marriages and unlawful relations. This ruling, not like most people think, in fact discourages people to commit any form of unlawful relation and unregistered marriage and then run away from the obligations to support the children. This is what is happening so far. With the ruling, they will not be able to do that anymore. So, the long term impact is very positive, solving and answering a deep concern of people"[13]

Similar to Saiful Anam, Hasan Ubaidillah also believes that the MK ruling in fact will discourage people from committing unlawful relations and unregistered marriages in the long run. Hasan Ubaidillah's work is closely related to women and issues of marriages and legal advocacy related to family matters. He is a lecturer in Syariah faculty, an advocate in the LBH (Lembaga Bantuan Hukum or Legal Aid Office) who often assists people having problems with legal issues in the courts, especially in the area of family law.

His office is providing pro bono legal assistance for people who cannot afford to hire a professional lawyer. As a matter of fact, most of the clients he helped are women who are seeking divorce and they need assistance with the legal

12 Interview with Saiful Anam, Muhammadiyah leader and a professor in Islamic law of UIn Sunan Ampel Surabaya

13 ibid

process in the court but they are financially incapable of have professional legal aid. In addition to that, he is also active in Nahdlatul Ulama at the East Java level.

From his years of experience working with many issues, he states that there are several cases related to unregistered marriages as well as women and children's rights. This fact might be one of the factors why Ubaidillah is one of a few interviewees who strongly support the ruling. He claimed to have held discussions with his colleagues, a significant number of whom support it. One important finding from interviewing him is the fact that his heavy religious background particularly in Islamic jurisprudence does not lead him to be conservative. In contrast, it brings him to confidence in stating that the MK ruling does not contravene Islamic jurisprudence or Islamic teaching in general. He has no objection to the idea of the MK ruling covering children from *zina* or unlawful relation. He goes even further by positioning the children from both unregistered marriages and adultery as having the same legal consequences. This opinion is clearly different from the dominant point of view that perceives adultery as a factor that denies consanguinity between children born from adultery and their biological father. He stated as follows:

> "...I never heard the habit stating clearly that the child from Zina cannot have consanguinity (nasab) or legal or civil relation with the father. All I know is that the saying that "al-waladu li firosyi ummiha" is a maqolah (people's saying, not a prophet saying). Nevertheless, even though it is a hadith, I think it is the ultimate goal of the syariah to deliver maslahah (benefit) for all Muslims. This should be considered as the main consideration in Islamic jurisprudence. I think Islamic jurisprudence should be adjusted with the reality that surrounds Muslims nowadays, otherwise it will be difficult to achieve its main goal".[14]

14 Interview with Hasan Ubaidillah, the activist if legal aid office in

This way of thinking definitely is surprising. It is also rarely found among the interviewees in this study. From the explanations above, there are a very few who agree with the MK ruling when it comes to the children from adultery and the isue of *nasab*. Here, Ubaidillah argues that civil relation means *nasab* and covers all the rights including inheritance and even guardianship for the daughter in the marriage.

Another professor in Islamic jurisprudence, Professor Ahmad Zahro also offers a unique opinion on this issue. He perceives the issue of children out of wedlock as not only a legal and fiqih issue but also a humanitarian issue. This is because he places himself as the Islamic jurist, being a very well known *mufti* in East Java, but also he places himself as a person who is frequently consulted about the issues. He feels so sorry for those disadvantaged children and women. He basically supports the MK ruling for both the children from the unregistered marriage as well as adultery.

However, just like Saiful Anam, he also still believes that there should be differentiation between the children from unregistered marriages and adultery. Again, this is also due to his belief that *nasab* cannot be granted to the children from adultery even if the DNA test approve blood relation. He does not agree with the statement of Sodiki, one of the constitutional judges, who argues that the issue of *nasab* is the *ijtihadi* (product of Muslim jurists' reasoning) area, which is relative and disagreement over its interpretation is allowed. This rule, according to Ahmad Zahro, is textual and therefore cannot be interpreted differently. For the children from adultery, their rights can, and should, be granted to them, which cover the maintenance, the financial support for education and other aspects even the right for certain portion of the deceased father's wealth. However, the inheritance

Surabaya.

for them takes the form of *wasiyat wajiba*. Ahmad Zahro actually offers an interesting standpoint.

Overall, he does support the ruling. Actually, he has done some efforts to protect the children, even though, not financially but psycologically. He shares some stories where he advocates for people to protect the children from adultery from being humiliated. He does not agree with the term 'anak *zina*' literally means "child of the adultery" as it will stigmatize the children by such a negative labelling. They, according to him, will suffer the bullying, the humiliation, and shame. They should not be blamed, negatively lablled and if possible not even knowing if they are children from adultery. He shared the story as follows

> "...I often get many sad cases. One of them is when a parent came to me sharing the story of their daughter who fainted because she heard from the marriage registrar that her father cannot be the guardian because she was born before the marriage and therefore she is categorized as anak zina or child from adultery. I directly contacted the marriage registrar, who happens to be my student, and gave him advice, a strong one. I urge all other people to avoid telling a child even if she is already adult that she or he is a child from adultery. They should seek other ways to set the guardian not from the father. The point is that the welfare of the child should come first."[15]
>
> In addition to this, Prof Zahro even suggests an interesting idea that is paying compensation to the children from adultery. He agrees with the fact that, in fiqih, a child from adultery cannot have inheritance from the father. Yet, he suggests the wasiyat wajibah as the solution so that a father can give some of his wealth to his biological child. What is interesting from him is his belief that there should be more

15 Interview with Ahmad Zahro, a mufti of great Mosque of Surabaya. He is professor in Islam law and is one the biggest mufti in East java. Many people consult to him in many legal issues and ask his fatwa from Fiqih point of view.

> portion of wealth given to the child from adultery as the biological father owes him or her so much. Of course, this is only expressing the extent of Ahmad Zahro's concern with the unfortunate fate of children from adultery.

Meanwhile, Muflichatul Choiroh, a woman activist from the Center of Gender Studies differs from most of the rest of the interviewees. She argues that the ruling is like a knife with two blades, one positive and another negative. Therefore, some conditions must be applied in implementing this ruling so that the negative side will be minimized and the positive side will be optimized. She proposes a clear, comprehensive and careful classification in the ruling before it is applied in practice. Her conditions are based on her understanding that the ruling covers both the children from unregistered marriages and unlawful relations. But, different from other interviewee's who propose different treatment given to children from unregistered marriage and between those from adultery, Muflichah proposes differentiation between those from the valid and registered marriage and those from any relationship outside the registered marriage. Surprisingly, Muflichah does not distinguish between the rights of children from unregistered marriage and those from adultery.

In this case, she has the same opinion as Hasan Ubaidillah. Yet, the difference is that she maintained that the rights of children from any relation outside the registered marriage should be different and here, this means less than, from the right of children from valid and registered marriages.[16]

There are several reasons behind her unique standpoint. First, she believes that the MK ruling has a potential negative side that is state recognition of relations outside registered

16 Interview with Muflichatul Choiroh, Activist in Gender study center of UIN Sunan Ampel Surabaya.

marriage, be it the unregistered marriage or adultery, and this is dangerous. The recognition will weaken the established position of registered marriages, something that should not be caused by the state. However, she also understands that the rights of innocent children should be put as the priority especially in cases that have already happened. Thus, the only way possible is to make a differentiation between the status and the rights of the children from the registered marriage and the children from outside that.

Second, similar to Sulaiman, she does not see the *nikah siri* or unregistered marriage as valid or legal even from the religious perspective. Therefore, the status and position of children and women within it are just the same as those within adultery. She said as follows:

> "...I don't agree with people saying that nikah siri is valid from religious perspective. Nikah siri is not valid both from the state view and Islam. I go with Imam Malik here (one of the schools of law of Sunnite Islamic jurisprudence). Now, let's look at the era of the Prophet. The prophet that time served the role as the head of religion but also head of government. Back then, every companion of the prophet always came and reported their marriage to the Prophet whenever they are married. So, it is like the marriage registration function nowadays right? So, nikah siri, moreover they are usually covered up from the public knowledge, to me, is not legal even from Islamic perspective."[17]

She acknowledges that the development of technology can be taken into consideration on how Islamic jurisprudence is developed as well. She said that Shafiite's opinion on the status of children from adultery and their limited relation to the biological father is actually reasonable. It sees the relation from what can be seen from outside. She cites a prophet

17 Ibid

tradition saying that human judged what is seen and only god has the power over what is concealed

It is interesting to see how some interviewees with religious background turn out to be not as conservative as they are assumed; Ahmad Saiful Anam, Ahmad Zahro, and Hasan Ubaidillah. Of course, some of them still have some constraints which result in different proposals for those children from unregistered marriage and adultery. Yet, in general they show supporting attitude towards the ruling and that it is a good sign for the discourse of aligning and contextualizing the Islamic thinking with the reality and real issues within the society.

Polygamy in the light (darkness) of the issues of children born out of wedlock

One of the consequences of the ruling by Constitutional Court is is the issue of polygamy. As far as the interviewees are concerned, they actually agree that the state intervene in family affairs as long as the interferences do not contradict Islamic law or put people in such a difficult position that makes them seek 'a way out'. Some of them in fact state their difficult position that where on the one hand they really support the state law but on the other hand they saw many problems have been encountered by many people also because of the state law. Here, Ahmad Zahro also asserts that the problem of polygamy is dilemmatic. He does believe that polygamy is a purely *halal* practice that is not supposed to be problematic and moreover to be banned. However, he also acknowledges the potential misuse of this ruling by irresponsible people mistreating women and performing polygamy easily. He also suggests that before the state blame the people who are doing *nikah siri*, it should make the requirements and procedures related to this problem simpler

and more friendly to people. Government should really consider the reality if they want to solve the problems of children and women outside the registered marriage.

Sri Wigati, a lecturer of Islamic economy who actually has a non religious background of education and who is also a mother of two children, said that she heard about the MK decision since it was debated quite sharply at the time of the issuance. She acknowledges clearly that the decision is problematic since the term '*anak luar kawin*' seems to cover both children from *nikah siri* and those from adultery. She said that it is problematic for many people since it is related to the issue of inheritance for the children of adultery. She understands what many Muslim people feel and think that the MK decision has contravened *fiqh* (Islamic jurisprudence). She also feels uncomfortable with that as she believes that the state law should also consider and respect religious teaching of its citizens. On the other hand, she sees many innocent children who suffer from the father's negligence. Their interest should be put at priority above other considerations even if the consideration embodies potential unfairness and injustice to the wives and children within the registered marriage. She puts emphasis only on maintenance and does not really concern what term is used. Additionally, she also does not demand the right to guardianship for the female daughters from adultery.

Solution to the problem

Besides the discussion about people's understandings and their opinions related to MK ruling, the study also tries to gather people's aspirations on the alternative possible solutions and or other related suggestions. Some interesting ideas are gathered from the interviewees from various sectors; state apparatus, religious figures, personalities of

religious mass organization, activists of women organization and some others.

Many interviewees state the importance of education in efforts to reduce the problem of children out of wedlock. They argue that this problem actually is an impact from its root; the existing problems of unregistered marriage and the adultery. They then argue that the solution should take the form of prevention rather than correction like in the form of MK ruling. In short, it is better to prevent the cancer rather than curing it. Marfai, the head of KUA, for example argues that the morals of the society indeed are the very area where the solution chain should start. Once the moral is guarded, he believes that the problem, even though not totally diminished, will be significantly reduced. He really expects that the occurrence of unlawful relation will be reduced. In addition, he also proposes a pragmatic solution for those who are pregnant before the marriage that they should get married right away and should register their marriage to the KUA. This will make the child legitimately related to the father both in accordance with the state law and the Islamic jurisprudence.

Similar to the first solution is proposed by many women activists such as Faridatul Hanum and Muflichah. They argue that women nowadays are still unaware of some important things related to marriage regulation and its consequences; among them are the risks of the unregistered marriage and unlawful relation. As illustrated by Farida:

> "...It is so sad that many women still want to get married in nikah siri. Even sadder is how many women, usually female teenagers still are so innocent that they are persuaded by their lovers to engage in an unlawful relation. They are the ones who suffer from the consequence. In this case, it is even more unfortunate to see how low the government attention is to really educate the society or the women. So, rather than

> coping with the problem like this (using the ruling of MK) it is better to prevent the incidence at the first place".

Another possible approach to deal with the problem is proposed by some of the academics, prominent figures, and the judges. Saiful Anam form Muhammadiyah for example argues that a more firm regulation from the state accompanied with punishment will be effective in preventing people from creating the problem of children out of wedlock. He argues that Indonesia is actually left behind in terms of sanctions for marriage related issues. He gives examples that there are several Muslim populated countries that have imposed punishment for those who are married in polygamy without court permission. Another issue is registration of marriage where he also believes that the law should be more firm in making the registration as more than an administrative requirement. He believes that, even though he also supports the MK ruling, many other approaches should also be there in order to solve the problem bigger than the problem of children born out of wedlock.

B. OPINIONS OF SEVERAL STAKEHOLDERS IN JOMBANG

The second location for interviews is Jombang, about 70 kilometers to the west of Surabaya. Compared to Surabaya which is a big city, Jombang is much smaller town with about 1,2 million people. Jombang is known as an Islamic town because there are thousands of *pesantren* (Islamic traditional boarding schools) in Jombang. Many Muslims in Jombang are affiliated with Nahdlatul Ulama, a traditional Muslim organization established in 1926. The characteristic of Islamic law adhered by Nahdlatul Ulama is its commitment to Shafiite School of Law which is taught in *pesantren*. The

background of interviewees also reflects this, many of whom once attended *pesantren*. Some of whom now are actively engage in activities related to Nahdlatul Ulama. However, although they bear traditional attribute their opinion of the ruling not necessarily conservative.

The interviewees were conducted based on several considerations. The main consideration is that the interviewees are those who will be directly or indirectly affected by this ruling. The most immediate interviewees affected by this ruling are judges of the religious court, and officers of marriage registration to a lesser extent. Since family law in Indonesia is mainly based on Islamic law and its jurisprudence, Muslim leaders are also important interest groups on the matter. Similarly, women's organization and activists who are working for children rights are on the same level of importance.

The judge of religious court, the court hearing cases of family matters for Muslims in Indonesia, who is interviewed in this research happened to be cautious and a woman as well. Munhidlotul Ummah, a judge of religious court in Jombang, calls this ruling as Machica case. Although she is a judge of a court that eventually will be deeply affected by the ruling, her attitude toward this ruling is quite cautious. She said that there was still no instruction whatsoever from the Supreme Court to ratify the ruling. Unless such an instruction is issued, the ruling will not be executable.

She seemed to restrain herself from getting involved in the controversy and polemics surrounding this ruling. Her cautious attitude seems to stem from her disagreement with the ruling. Other interviewees in many respects know about the ruling reasonably well. On the other hand, Lutfi Ridho, one of marriage registrars in Jombang seems to have plenty of opinions about this ruling. His experience as marriage

registrar for several years has enabled him to have many things to say about this issue.

In addition to those two interviewees, other personalities are interviewed because they are spokespersons of the organizations they represent. Their knowledge about this ruling is a certainty, but this does not guarantee univocal opinion on the matter. The interviewee from Nahdlatul Ulama is Ma'shum Zen. He is a lecturer of Islamic law in an Islamic university in Jombang. Like other Nahdlatul Ulama *syuriah* members, he graduated from a traditional pesantren (Islamic boarding school) along with its conservative outlook towards legal aspects of life. Nahdlatul Ulama of Jombang appointed him to speak about the issue for several reasons. Beside the fact that he is considered a local *mufti* (Muslim jurist) in Jombang, he is a prolific writer of Islamic legal issues. More importantly, he has experience in dealing with cases of *siri* marriages. In fact, he occasionally facilitates *siri* marriages for many couples who wish to get married in absence of formal marriage registration.

In contrast, Junaidi Hidayat speaks about this issue as personal opinion. He is also a Nahdlatul Ulama member by training, is a functionary of the Indonesian council of Ulama in Jombang. Similarly, Muhson, of Muhammadiyah organization, is a teacher of Islam in Islamic high school, and was a marriage registrar in his early career. As a head of *tarjih* board of Muhammadiyah in Jombang he has the authority to speak on behalf of Muhammadiyah. Nonetheless, he refused to consider his opinion as an official opinion of Muhammadiyah. Rather, he considers what he says on the issues surrounding this Constitutional court ruling as his personal opinion. Muhson is the only interviewee in Jombang who comes from Muhammadiyah, a modernist Islamic organization in Indonesia. Compared to Nahdlatul Ulama, which is a traditional organization, Muhammadiyah

is not committed to any traditional school of law because Muhammadiyah derives directly from the Qur'an and Prophet Muhammad in solving contemporary legal issues.

Aside from the judge of religious court, there were several women interviewed. Ainaul Mardliyah, senior activist in Fatayat organization, a wing organization for young women of Nahdlatul Ulama, is also aware of the ruling and cautiously supports the ruling as well. Less cautious is Fifi Ekawati, an activist of the Indonesian Coalition of Women. Being aware of having limited understanding in Islamic teaching, she does not give any contested view on the issue. Interestingly, Aisyah Muhammad, a representative from Muslimat, a women's organization affiliated to the conservative organization of Nahdlatul Ulama, does have an unconventional opinion on this issue.

In terms of their opinion on this ruling, there are a few common opinions in addition to several differences. They are all aware that the consideration of this ruling is morally correct. Children, regardless of relationship status of their parents, are innocent. More importantly, they carry human basic rights as human beings. This is the standpoint of Constitutional judges all along. Children outside wedlock are those children of unregistered marriage or children born from adultery have rights as human being identical to those born in registered marriages. The judges based the ruling on article 28B (2) of the Constitution saying that all children are entitled to life, growth, protection from violence and discrimination. However, this is virtually the only agreement among the people interviewed. The rest is disagreement in one way or another.

The prompt disagreement concerns the scope of the ruling. As mentioned before, the Constitutional court ruling gives parental relationship between children outside

of wedlock and their biological fathers. However, the term of children born outside wedlock in Indonesia is a multi-interpretable. For practitioners of Islamic family law in Indonesia, such as judges of religious affairs and marriage registrars, children outside wedlock refer two different children. They are those who are born from valid Islamic marriage bur not registered in the office of religious issues (known as *siri* marriage in Indonesia) and those who are born from islamically unlawful relationship (known as *anak zina*), usually adultery. When those practitioners speak about children outside wedlock, they refer to these two categories. This understanding originates from article 2 of the Law No. 1/1974 on Marriage which necessitates marriage registration. It means valid marriage not only must be based on religious belief but also officially registered. Muslim personalities, including those who are interviewed in this research, only acknowledge children outside wedlock as those who resulted from unlawful relationship from the perspective of Islamic law; that is adultery. With the ruling of the Constitutional court which amended article 43 (2) of the Law No. 1/1974 on Marriage, which means regardless of the status of relationship between the parents, children will get rights merely because they are innocent children, this differentiation is less substantial so far as the rights of children are concerned.

In Jombang, Munhidlotul Ummah, a judge of the religious court, certainly believes that children outside wedlock refer to those two aforementioned categories. Her role as a judge simply necessitates her to be so. She is bound to obey the law, which she deals with on a daily basis. The fact that many people involved in unregistered marriages come to her chamber only to secure inheritance has convinced her about the unlawfulness of unregistered marriages even though her training as a jurist of Islamic

law would say otherwise.[18] The argument of children's rights and humanitarian argument is not strong enough if it is not enforced by the law. In this case, the amendment of article 43 (2) of Law No. 1/1974 on Marriage by the Constitutional Court has given civil rights for children outside of wedlock through their biological fathers. Thus, children of unregistered marriage and children of unlawful relationship can enjoy these civil rights after evidence showing such parental relationship. Still, even if both categories are covered in this ruling, she considers the children of unregistered marriages should get more rights than children of unlawful relationships. Another state official, Lutfi Ridho of Religious Affairs Office, also reflects a similar dilemma. He must obey this ruling as a state official although he certainly has a similar view with Munhidlotul Ummah who differentiates rights of children from two categories.

The opinion that children of unlawful relationship should only get fewer rights is shared by the majority of interviewees. Muhson for instance states:

> *"...Tidak ada salahnya jika hanya dikaitkan dengan masalah nafkah. Jadi, katakanlah seorang laki-laki yang telah menyemaikan bibit ke perempuan yang bukan istrinya sampai mengandung dan melahirkn anak. Itu jangan sampai lari dari tanggungjawab, paling tidak memberi nafkah anak hasil*

18 Among the relative competence of religious court is giving legalization of past unregistered marriages. Many people come to religious court to make their unregistered marriages legalized only to secure inheritance. By having legalization from religious court, they would have strong case in a dispute over inheritance, usually of a deceased husband or father. In addition, as happened elsewhere in Indonesia, among the reasons of *siri* marriage, like the case of Machica Mochtar herself, is polygamy. Many couples resorted to *siri* marriage because they cannot fulfill all requirements of polygamy in Indonesia, notably the permission of existing wife/ves. Later, as Machica Mochtar did too, they came to religious court to make their polygamous marriage legalized.

> *hubungan biologisnya walaupun bukan sebagai seorang bapak. Sedangkan untuk wali,tidak bisa jika anak itu perempuan, supaya tidak bertentangan dengan hukum Islam*".
>
> "...It (this MK ruling) is okay if only concern nafkah (for children outside marriage). So, let say a man has grown seed into a woman which is not his wife until she is pregnant and gives birth to a child. he must not run away from responsibility, at least he should provide maintenance for his biological child although he is not the legitimate father. As to become marriage guardian (in case of the child is a girl), it is impossible. This is to prevent contradiction to Islamic law"

However, they do make differentiation between children of unregistered marriage and children of unlawful relationship. They clearly consider children of unregistered marriage as legitimate children because those children are born in a valid Islamic marriage, although not officially registered. Therefore, they do not feel comfortable to consider those children as children outside wedlock. The case is different with children of unlawful relationship that is from adultery. Children of this category are not legitimate children in Islam. As a result, even if their biological fathers must be asked responsibility, it should be limited to certain aspects.

In addition to these two opinions, the third opinion reflects the conservative nature of Islamic law. Ma'shum Zen, a *Shuriah* member of Nahdlatul Ulama, even though he agrees that this ruling is for both categories, he underlines his agreement as part of obeying state regulation, but not observing Islamic law. When Islamic law is concerned, he emphasizes that this ruling must only apply for children of unregistered marriage. Children of unlawful relationship must not be included in this ruling because they are illegitimate children in Islam which only have parental relationship with their mothers. Consequently, there is neither relationship nor obligation whatsoever that can

be asked from their biological fathers. Moreover, if the children happen to be girls and grow to become women, their biological fathers are not their marriage guardian. In fact, the fathers are allowed to take them as wives. Beside from Islamic legal aspect, his insistence that this ruling is only applied to children of unregistered marriages is based on his reading of the ruling. As he understands, the ruling necessitates two types of evidence; the first is evidence of medical examination, and the second is evidence of witnesses and records. At the time being he acknowledges that DNA is the most accurate test for this purpose. And what he means by witnesses and records are people who attend the marriage ceremony as marriage guardian for bride or witnesses for the ceremony. For him, both evidences must be presented before the court. Therefore, although children of unlawful relationship will be able to present medical result which shows biological relationship, they will not be able to present witnesses and records between their mothers and their fathers because there was no marriage at the first place.

The consequence of this difference is reflected in the nature of rights for children outside wedlock as sanctioned by this constitutional court. The key word is to determine what this ruling means with 'civil relationship'. For a start, all interviewees agree that children of unregistered marriage should be entitled to all rights of children of registered children from their fathers. The rights include *nasab* (consanguinity), *mahram* (familial relationship which result in prohibition to marry each other), *wilayah* (guardianship, especially for marriage in the child happen to be a gilrl), *nafaqah* (maintenance), protection, inheritance, and all kinds of civil relationship that result from valid marriages. The reason is simply because these children are born from valid marriages from the perspective of Islamic law although not registered in the official registry.

However, there are some details entailing this statement. Junaidi Hidayat of MUI for instance, adds that although children of unregistered marriages are entitled to full rights, their parents (men and women doing these unregistered marriages) should be punished. He proposes 1 year of imprisonment changeable to fine and considers the punishment in a bill of the Religious Court (RUU HMPA) too lenient. He says:

> "...This ruling is correct from the perspective of religious law because the marriage has fulfilled all requirements and upheld human rights, although such marriages are contradictory to the state law… the state is in a correct position (in enacting law which does not fully accommodate religious law) because the state is obliged to provide protection to its citizens. There should be no party in a marriage that suffers. However, I do think that the state should not delegitimize unregistered marriage. the state only needs to revise the law so that it will state that those who do not register their marriage will be imprisoned for several months, even though their marriages remains valid. I do think one year in prison is enough for such violations."

In addition, there are two people that say that children are entitled to such rights not because they are born from a valid marriage, but because they are human beings and innocent regardless the causes of their birth. Thus, children of unregistered marriages and of unlawful relationship share identical rights as those children of valid marriages. Aisyah Muhammad, the head of Muslimat organization in Jombang, and Fifi Ekawati, an activist of women rights, who express this opinion, also say that children of unlawful relationships are entitled to such full rights. The reasons are that no children wish to be born in such unfortunate conditions, that all children are born innocent since there is no original sin in Islam, that those children are human beings that carry basic rights, and so forth. In detail Aisyah Muhammad states:

> *"...nek secara haknya anak saya sangat setuju karena pada dasarnya setiap pribadi, setiap anak itu berhak mendapatkan pengakuan, akte. terleps dari terlahir dari perkawinan yang resmi, siri, atau bahkan yang lahir di luar nikah... jadi menurut saya, laki-laki itu harus bertanggungjawab sepenuhnya atas apa yang diperbuatnya, baik itu resmi atau tidak resmi, sirri atau tidak bahkan zina pun harus itu, wajib hukumnya, termasuk juga hak waris, sama antara sumua jenis anak karena waris adalah hak anak. Dan kalo putusan MK ini benar-benar berlaku, laki-laki akan berpikir dua kali untuk nikah siri atau brzina."*
>
> "...If it concerns children rights, I extremely agree (with the ruling) because in essence, all persons, every child is entitled to get acknowledgment, birth certificate, regardless of the status of their parents; married, unregistered or even from outside marriage… So, in my opinion, a man must be fully responsible for anything he does, be it official marriage, unregistered marriage, even adultery. That is a must from Islamic perspectives. And this must include inheritance rights from the estate of his/her father. If this ruling is fully applied, men will think twice to marry without registration or commit adultery."

The opinion that gives children of unlawful relationships full rights is certainly contradictory to the majority of interviewees. They say that children of unlawful relationships are entitled to fewer rights although they name the rights differently. Munhidlotul Ummah, for instance, calls these rights hibah *wajibah* or obligatory bequest for daily maintenance and education. This term actually is not derived from the Shafi'I school of law, but from Hanafi School of law. She comfortably resorts to Hanafi School of law. The amount of this bequest should not exceed one third of the biological father's property. Aside from this bequest, children of unlawful relationships are not entitled to anything in terms of parental relationship, guardianship, and inheritance. Likewise, Lutfi Ridho of the Office of Religious

Affairs suggests that those biological must be responsible to their biological children except for *nasab*, *mahram*, and inheritance. On that note, he says:

> *"...Putusan MK in untuk semua anak di luar nikah (baik anak nikah sirri atau anak hasil zina . Anak kan tidak ingin dilahirkan sebagai anak presiden, anak petani. Dengan putusan MK itu, anak supaya mendapat haknya untuk sekolah, dst. nasab tidak bisa masuk ke sini karena benturannya sangat berat dengan syariah. Syariah tidak bisa mentolerir itu. Hukumnya manusia banyak toleransi tergantung kondisi sosial yang berkembang tapi kalo hukumnya gusti allah pakem. Nek arep ngenyang, berarti ngenyang gusti allah."*
>
> "...This ruling of MK is for all children (children of unregistered marriage and those born from adultery). Children cannot wish to be born as children of a president or of a farmer. With this ruling, children will get their rights for education and daily needs. However, nasab is another thing. It cannot be enjoyed by children outside marriage. the contradiction with religious law is too sharp. Admittedly, human's law is full of tolerance by considering social conditions. Yet, God's law is permanent. There is no bargain."

In sum, all fathers must be financially responsible for their biological children in maintenance and education. In similar fashion, Muhson of Muhammadiyah also agrees that fathers must provide *nafaqah*. In addition, they are also asked to give away up to one third of their property to their biological children in replacement of inheritance. This is called *wasiyat wajiba*.

In the same token, Junaidi Hidayat of the Indonesian Council of Ulama agrees that biological fathers are subject to financial obligation to their biological children as part of punishment, not *nafaqah* (maintenance). This is simply because unlawful sexual relationship does not produce rights and responsibilities because such a relationship is *haram* (unlawful), and, therefore, forbidden. It only produces

punishment. Besides, the idea of obliging biological fathers to *nafaqah* for the children will send wrong message to the offenders. They will be eager to offend this law because at the end they might think that the result between marriage and adultery is the same. He says that this punishment is similar to the concept of *ta'zir* in Islamic criminal law.

This punishment is important to discourage people from lawful sexual relationships as well as to emphasize the difference between the highly praised relationship in marriage and extremely abhorred relationship of adultery. Therefore, in addition to this financial punishment, he suggests to punish the people who commit adultery with heavy penalty to discourage others. This punishment, he says, is allowed since it is part of obeying the government, and Islam commands Muslims to obey government. He further differentiates between the obligation to religion (read: Islam) and obligation to government. He acknowledges that from Islamic jurisprudence perspectives biological fathers of children of unlawful relationship do not have any relationship with the children. However, government can regulate otherwise, and Muslims must obey their government. Therefore, to avoid confusion between obligation to religion and to government, financial support given to children of unlawful relationship is not *nafaqah*, but punishment. In addition to that, the ruling of the constitutional court that enables the determination of parental relationship through medical examination should be seen as the state's regulation to create legal certainty and order among citizens and the state's effort to give protection to all citizens without discrimination. This worldly regulation should not be confused with religious conviction.

Among all interviewees, only Ma'shum Zen of Nahdlatul Ulama denies any kind of obligation of the biological father to their biological children. He is perfectly aware of the ruling as well as and the process of conception. He dismisses

them. His reason is evidently because any unlawful sexual relationship will not create good things except condemnation from God. He states this position as adherent of Shafi'I mazhab although he knows that in Hanafi school of law such obligation, although limited, is acknowledged. Besides, he has his own practical solution for this problem.

It is undeniable that this ruling by the Constitutional Court was triggered by a case of unregistered marriage which happened in polygamous marriages. Machica Mochtar was the second wife of Moerdiono in a marriage which was unregistered. The very reason of not registering their marriage was because the first wife of Moerdiono did not give permission to Moerdiono to marry another woman as co-wife as required by the law. The similar cases in Indonesia are aptly described as a tip of an iceberg phenomenon.

Some interviewees, such as Munhidlotul Ummah of the Religious court and Junaidi Hidayat of Indonesian Ulama Council, states that this ruling would undermine the restriction regimen of polygamy that has taken place in Indonesia since 1974 and this is not good for two reasons. The first is because it will dismiss reform efforts of women's rights in marriage. Certain men would take second, third, and even fourth co-wives easier because they do not have to provide difficult procedure and requirement which are hard to fulfill. They only need to involve in unregistered marriage and after the birth of a child or children they can easily gain status of their marriage and children based on this ruling.

In addition, this will potentially create disharmony among polygamous families which in turn increases the cases of inheritance disputes in courts. As she points out elsewhere, polygamy will only end up in quarrels among wives and children over inheritance of the deceased husband and father respectively. This apprehension is also shared by

Ma'shum Zen of Nahdlatul Ulama who stated that polygamy should be restricted and even prohibited because it never created harmony among people involving in polygamy, especially on the issue of inheritance. Even if the families enjoy harmonious relationship, it will not last forever. Quarrels over inheritance will eventually take place after the death of the husband. Yet, it can be mitigated by using pre-nuptial agreements concerning assets and properties among parties involved notably the husband and his latest wife.

Similar to Ma'sum Zen, Muhson of Muhammadiyah expresses his complaint against polygamy practices nowadays. While the prophet Muhammad married old and undesirable widows to provide maintenance and protection, nowadays men marry co-wives who are much younger and attractive. Therefore, polygamy should only be performed only in emergency situations, such as wartime and famine. In the same argument, Junaidi Hidayat of the Indonesian Council of Ulama also agrees with this restriction upon polygamy. He acknowledges that restriction is somewhat contradictory to his belief, but government regulation on this issue is also justifiable. First is because Islam urges Muslims to obey government. In a situation when not many responsible men are around, polygamy should be made difficult. When having one wife does not made men fulfill her rights, as is the case occasionally, they should be prevented from taking a second wife or more. It is a matter of applying the correct policy on the issue, rather than about choosing between religion and the state. Both have pluses and minuses, but restriction policy has the potential of lesser harm.

Interestingly, some women in this research do not agree with this polygamy restriction. Polygamy is allowed in Islam and therefore should not be made difficult. Aisyah Muhammad of Muslimat, for instance, prefers to make polygamy more accessible to men to avoid unregistered

marriage or worse than that, namely adultery and prostitution. Moreover, if a man has an intention to take another wife, he will take any necessary means to make his goal into reality.

These three 'illegal' practices are more harmful to women and children, let alone hereafter consequences. Even if some men fail to equally treat co-wives, at least the relationship is lawful in Islam and legal protection is guaranteed. For Aisyah Muhammad, the idea of women's rights and equality are not yet on the table simply because she witnesses plenty of cases of unregistered marriage around her and the damages that are created by such marriages. In addition to that, Fifi Ekawati of the Indonesian Coalition for Women also states that certain men would do anything to marry additional wife/ves regardless of government restriction or even prohibition.

This is simply because polygamy is allowed in Islam. Besides, it should be noted that the majority of men are monogamous. Only a handful of men might have needs that a wife cannot fulfill it. So, they might take another wife/ves. Therefore, when religion provides a lawful channel to release that need through taking additional wife/ves, no one should take this option away from them. In the same vein, Lutfi Ridho of the Office of Religious Affairs states that the procedure of polygamy should be made easier to prevent adultery and prostitution, but at the same time procedure of divorce should be made difficult. He witnesses practices of unlawful sexual relationship everywhere and this should be mitigated if not eliminated altogether. Polygamy should be one of many solutions for this.

In line with her insistence that polygamy should not be restricted, Aisyah Muhammad of Muslimat agrees that this ruling will eventually reduce the rate of unlawful sexual

relationship. She states that this ruling will discourage men from adultery because they will be held responsible for their wrongdoings, especially in term of children's rights. Before this ruling, men easily escape from their wrongdoings because law only acknowledges relationship between mothers and children born of unlawful relationships. As to biological fathers, they are let off.

In sum, she believes that this ruling will at least protect the rights of children of unlawful relationship and their mothers, if it fails to reduce adultery. And this is important from women's perspective. She does not deny that the ruling would be understood in the opposite way, meaning that it will encourage men and women to commit adultery and other forms of unlawful sexual relationship. But such a tendency is a matter of personal and moral issue. Any law will not prevent such people to go against the purpose of the law because the problem is not the law, but the people. A similar statement is also expressed by Junaidi Hidayat of the Indonesian Council Ulama. Although cautiously expressed, he says that with the burden of responsibility towards the children, this ruling should discourage people from committing unlawful sexual relationships. For that to happen, heavy penalty should also be imposed. The opinion that it is the people who determine the course of this ruling is shared by a few more interviewees as well, such as Munhidlotul Ummah and Fifi Ekawati.

However, other interviewees are on the opinion that this ruling will encourage people to commit unlawful sexual relationships. The logic is that if unlawful sexual relationship provides a sort of legitimacy for wives and children like valid marriages do, people will start to undermine marriage. Lutfi Ridlo of Religious Affairs Office is clearly worried that this ruling will encourage young couples, especially whose parents do not approve relationships, to resort to avenues other than marriage.

According to Ma'shum Zen, even if this ruling is legally imposed, it cannot instantly works as it is meant to. He compares this ruling with religious court verdicts in divorce cases. Verdicts which order ex-husbands to pay maintenance and education expenses for their children living with their mothers are always difficult to execute. This regulation is sanctioned by the state as well as religion, whereas the Constitutional court ruling is controversial in nature.

It is contested among jurists and lawyers, and it is contradictory to conventional Islamic jurisprudence. Thus, people will have plenty of reasons for not observing it. Thus, the flaws of this ruling are twofold. It not only undermines well-established marriage procedure and registration imposed by the state, but also fundamentally facilitates people to commit adultery which is a major sin in Islam. This apparently is the voice of majority on the issue. Therefore, an alternative solution must be sought to provide protection for all-born children regardless of their parents' status and relationship.

Predictably, the initial suggestion for solution is prevention in nature. This prevention regime includes campaigns on the risks and consequences of notably unregistered marriage and non-marital sexual relationships. The targets are mainly female adolescents, parents and the community at large.

The campaign can be in the form of insertion of the issue in curriculum, topic of talk in religious gatherings, seminars, radio talk-show, and the like. In fact, the interviewees have done this too. Aisyah Muhammad of Muslimat for example, always speaks to her audiences in regular meetings with Muslimat members about the issue of unregistered marriages and pre-marital sexual relationship as well as the consequences with the children. The audiences

are members of Muslimat who are women aged about 40 to 60 years old. Aisyah Muhammad hopes that the message will be conveyed that it will eventually prevent mothers from recklessly treating their daughters. Junaidi Hidayat of the local council of ulama also conducts similar programs, but the audiences are men. In the programs, he collaborates with local marriage registrars and sometimes with religious judges in campaigning against the practice of unregistered marriage in the villages. Munhidlotul Ummah was one of the judges that was involved in this campaign. In addition, she also conducted a radio talk show on the issue in which she finally concluded that the practice of unregistered marriage is still at large.

However, interviewees are far from consensus when speaking about practical solutions for children outside marriage. Some, such as Aisyah Muhammad and Fifi Ekawati see that this ruling by the Constitutional court is the perfect solution. For them, this is the most awaited breakthrough after several years of no solution. The argument of the ruling which rests upon protection of children and humanitarian reasons transcends any other argument and therefore should be categorically welcomed. Others, such as Junaidi Hidayat, Lutfi Ridlo, and Muhson who partially agree with the ruling, propose additional legal regimen for this ruling to be effective in reducing the birth of children outside marriage. Muhson, for instance, suggests that the definition of valid marriage in article 2 of marriage law should be revised. At present, the definition of a valid marriage and registration requirement are separated in two different sub articles of article 2. While sub article 1 necessitates the observance of religious law, the sub article 2 affirms the marriage registration.

As mentioned elsewhere, this article has become the source of debate on the status of marriage registration as administration demand or determinant of validity of

marriage. To avoid prolonged debate surrounding the position of marriage registration, it should be inserted in the same sub article which simply means that the validity of marriage depends not only on observance of religion but also on registration as well. Consequently, it will trigger yet another controversy but it will certainly remove multi-interpretation surrounding the validity of marriage.

Similar to Muhson in suggesting legal modification, Junaidi Hidayat and Lutfi Ridho also suggest that this ruling should be backed up with penalty for both not registering marriage and especially committing adultery. As mentioned before, Junaidi Hidayat suggests punishment for people involved in unregistered marriages; husbands, parents, and wives. In addition and more importantly, much heavier penalty should also be imposed upon those who commit adultery and whoever facilitates this wrong doing. Both of them are even at the same table in asserting that this punishment for adulterers should not be identical with the prescription of Islamic jurisprudence of lashing and stoning to death.

Nonetheless, such punishments should be enough to make a lesson so that they will think twice about committing adultery. Lutfi Ridho even praises the practice of such a punishment for an adulterer in Acheh province with a few lashes in public. He points out an example for his proposal. When he was appointed as marriage registrar in the sub district of Mojoagung, there was a village that had a regulation to punish those who commit adultery by making them marry at once. If the couple or one of them was already married, the village elders would make them divorce first before facing their 'punishment'. Lutfi Ridho considers this an effective way to reduce the occurrence of adultery and unregistered marriages as well.

As explained elsewhere, he also proposes making the procedures of polygamy easier so that people will not have to resort to unregistered marriages. By these measures, adultery and unregistered marriages will be minimized, and finally the problems surrounding children born outside marriage will also be alleviated. Apparently, his radical solution originates from his reflection on the community surrounding him. He complains about the values and traditions of certain communities which undermine the sanctity of marriage. He witnessed once in a region in which Islamic teaching is nominally observed that engaged couples are allowed to have sexual relationship. This is certainly contradictory to Islamic law in which no sexual relationship is allowed before marriage. He reflects that such practices have been a pre-Islamic tradition which survives even after they become Muslims.

Moreover, Lutfi Ridho also regrets the loose supervision of parents over their adolescent children because they feel that the children are mature enough to know the consequence of what they do. However, with cell phones, television and internet around, the occurrence of sexual relationships among adolescents, notably students of high schools and junior high schools, is high. A considerable number of cases also end up in pregnancy. Therefore, strict regulation should be imposed to minimize this practice.

In contrast to Lutfi Ridho and the rest of interviewees, Ma'shum Zen has his own version of solution. Where polygamy is concerned, he proposes the use of a legally binding pre-nuptial agreement between the parties involved; the husband, existing wife/ves and future wife. The agreement should say that the future wife and her future children will enjoy limited rights from the husband, namely fewer visits from the husband and limited inheritance which must not exceed one third of the husband's property.

In addition, during his life the husband will also be responsible for the maintenance of co-wife/wes and children too. For children, this responsibility will also include education. The amount of this responsibility is also to be determined in advance and stated in the agreement. If these points are agreed, it will be less difficult from the side of the existing wife/ves to grant permission for the husband to re-marry. This solution will enable families with two wives or more to live in harmony and peace.

Moreover, it is much better than witnessing families quarrel over inheritance which often occurs in polygamous marriages. More importantly, according to him, this does not violate Islamic law. Ma'shum Zen then draws a precedent from the prophet Muhammad practice to justify his suggestion, when Saudaa, one of the wives of the Prophet Muhammad once gave away the right of visit to Aisha, another wife of the prophet. This precedent indicates that such a right is negotiable among human beings because marriage is a contract between a man and a woman, after all. Similarly, inheritance is about property, not ritual. Thus, certain degrees of modification on distribution among heirs are tolerated.

On the issue of unlawful sexual relationship, Ma'shum zen also has his unique yet bold solution. In his context, he has facilitated the marriages of many young couples without formal authority and certainly without valid marriage registration. Although Jombang is a small city there are some universities with students coming from different places in Indonesia, sometimes from distant islands. Some students eventually fall in love with each other and are afraid to involve themselves in an unlawful relationship. They want to get married. Under normal procedure, they must fulfill administration in their hometown. This needs time and money, yet they have to study. They consult Ma'shum Zen

as a Muslim jurist in town. He suggests to them that they should marry instantly, to avoid the grave sin of adultery. Ma'shum Zen does not only provide legal opinion, but also solution. He performs as agency and facilitates the marriage for them. In his own words, Ma'shum Zen states:

> "...I myself experience such cases when I perform marriage ceremony for some couples. So, people who ask me to perform marriage ceremony will sign on a paper with stamp. They will later bring the paper to the Office of Religious Affairs to properly register their marriage. In that way, it is legal."

As indicated elsewhere, the most crucial part of marriage ceremony in Islam is the approval and the presence of the male guardian of the bride. In this case, the guardian is absent, but he can express his approval through mail of phone call, and he can appoint another male as agent for him in this matter. In such case, Ma'shum Zen will perform as agent for the bride after he knows of the approval of the marriage by the guardian and the latter gives agency authority to the former. This marriage is recorded on a legally binding stamped document and signed by all parties; husband, wife, agent of the bride guardian, and two male witnesses. Having said so, Ma'shum Zen is aware of the importance of formal registration and is obliged to obey the regulation. Therefore, in the document of marriage he publishes for the couples, he always states that the document is temporary in nature and will be promptly followed up by formal marriage registration whenever both husband and wife are ready. He stresses that the document is not a replacement for the formal marriage registration, but a mere provisional proof which states that a marriage has taken place in accordance with Islamic law.

C. COMPARISON BETWEEN OPINIONS FROM TWO PLACES

From even a quick scan, it can be discerned that the difference in geographical location does not result in different opinions. The problems faced by big city and quiet town are identical in this matter. Unregistered marriages are at large, adultery is easily practiced, and children born from such relationships face similar fate. In addition, the interviewees of the both regions are from similar backgrounds as well.

Their educations and exposure to issues of children outside marriage are identical. Accordingly, these similarities are reflected in their similar response to the questions surrounding the constitutional court on children born outside marriage. Even so, there are some distinct opinions found in each region. These differences usually relate to several small details. So far as the education background of interviewees is concerned, there are more academics in Surabaya than in Jombang.

From Surabaya, Muflikhatul Khoiroh, Ahmad Zahro, Ahmad Saiful Anam and Sri Wigati are academics in Islamic studies. In contrast, Ma'shum Zen is the only academic from Jombang interviewed in this research. Many interviewees from both regions also are graduates of traditional Islamic boarding schools. This factor may contribute to the conservative nature of the responses. Profession experience and exposure to cases which deal with children born outside wedlock also influence their response to the questions surrounding this issue. For example, the opinion of the two judges is mainly legalistic, leaving no room for innovation and breakthrough.

To begin with, the interviews have shown that all interviewees agree on the protection of all children regardless of the marital status of their mother and father. The idea of

children's rights, both as sanctioned by the religion and the state's constitution are not alien to them. Even with the ruling of the constitutional court, they fully aware of the dilemma faced by government and the court.

Children of this kind are numerous, in fact, millions. Something must be done and the momentum of judicial review is an apt opportunity. This opinion is shared by all interviewed in Surabaya, from the most conservative to the other side of the continuum. The conservative Abdurrahman Navis of Nahdlatul Ulama agrees with this, although at a very minimal agreement. On the other hand, Hasan Ubaidillah of the legal aid office supports this ruling to the utmost extent of making no difference at all between legitimate children and illegitimate children in granting full civil rights. Between them, there are some people, for instance, Ahmad Zahro who argue that this is a humanitarian issue, less a legal issue. He agrees to give financial and psychological support for children born from adultery, although not full civil rights and not labeled as maintenance.

In Jombang, the case is also not much different. For Aisyah Muhammad who deals with mothers in her organization, she could not agree more with the ruling. She knows what problems might be faced by these mothers and their daughters. Fifi Ekayanti also feels the same. Munhidlotul Ummah and Ainaul Mardliyah also even men in the interview also acknowledge this gravity of child rights issues in Indonesia with different points of view. Some focus on prevention using legal arrangements as expressed by Muhson and Lutfi Ridho. They also state that education is vital in reducing the occurrence of pregnancy outside marriage, unregistered marriage, abandonment of wife and children and related problems.

However, although they virtually agree on the gravity of the problem, they are in disagreement over the solution

instigated by the constitutional court. Sulaiman of the religious court in Surabaya is very cautious in responding the ruling. He carefully states that this ruling should not disturb the existing law, especially in the administration, restriction and regulation of polygamy. Likewise, Marfai argues that the treatment of children born from adultery should be different from legitimate children. Ahmad Zahro too, dismisses the possibility of children born from adultery to get inheritance from their biological fathers. Abdurrahman Navis also simply denies any possibility of children born from adultery to be included in this ruling. In Jombang, Ma'shum Zen and Munhidlotul Ummah, both are well-versed in Islamic law with a professional bond with Islamic law, and both reflect their opposition to certain aspects of the ruling for legal reasons. Simply put, any solution to the problem surrounding children and women rights must not breach the principles of Islamic law as practiced in Indonesia. Munhidlotul Ummah remains undecided in applying the ruling because of its incompatibility with polygamy regulation in Indonesia. Similarly, Ma'shum Zen has been acting as the law himself to ensure the application of Islamic law after reflecting the massiveness of pregnancy outside marriage. In sum, the role of government in implementing the law for its Muslim citizens is a big discussion among interviewees.

Admittedly, a modern nation-state like Indonesia has considerably more authority over its citizens than traditional Islamic political entities. In Surabaya, Ahmad Saiful Anam even supports the implementation of punishment by the state for violation against marriage registration and polygamy.

Likewise, Hasan Ubaidillah insists that the promotion of benefit for all is the main goal of Islamic law. the state has responsibility to create that for its Muslim subjects, even if it might contravene certain words of the religious authorities. In Jombang however, the tone towards the state initiave in

legislating Islamic law is more positively supportive. For instance, Junaidi Hidayat acknowledges this and accepts that obedience to state's authority is part of religious duty. Obedience to temporal authority does not contradict religious commitment although some state policies seem to have gone against the principles of religious values. Considering the fact that the problem of children outside marriage has been so rampant, the state should act.

Even if the act is not religiously ideal, that is temporarily enough. If the state applies policies that seem to be contradictory to one's belief, that policy should be somehow justified from religious perspectives. Thus, if this ruling potentially gives civil entitlement to children outside marriage, such entitlement must be justified in such a way that is not contradictory to Islamic law. For Junaidi Hidayat, obedience to the state should not be confused with one's commitment to life as Muslims. While obedience to the state is part of civil duties, performing religious duties is part of submission to God. In reflection, Nahdlatul Ulama, the organization to which he is affiliated, perceives the state as having provided security and protection for Muslims to live as Muslims. Thus, Muslims must obey the state's policies.

However, there are always persons like Abdurrahman Navis, Munhidlotul Ummah and Ma'shum Zen whose commitment to legal principles is stern. Abdurrahman Navis in Surabaya strictly limits the role of the state in legislating Islamic law. The state must consult Islamic law and be in accordance with the stipulation of Islamic law. The state must not regulate aspects which relate closely to the religious values of its Muslim citizens. This ruling in a sense is a breach of that principle. While in Jombang Munhidlotul Ummah is bound by her profession as a religious court judge, Ma'shum Zen is still conservative in his commitment to observe the principles of Islamic law. Being a lowest-level judge in a

Continental legal tradition in Indonesia virtually leaves no room for Munhidlotul Ummah but to say what the law has prescribed for her.[19] Her personal opinion could not be translated into the court room if it were contradictory to the written law. Ma'shum Zen's conservatism originates from his educational background in pesantren as well as his scholarly activities. Nonetheless, experience also made him depart from his conservatism, such as his insistence that polygamy creates more harms than benefits for Indonesian Muslim families, especially when related to the issue of inheritance after the death of husband.

19 The situation is different from religious court judges of the Supreme Court who have greater authority to interpret the law. The example is the Supreme Court adjudication to grant inheritance for non-Muslim.

CHAPTER VI
CONCLUDING REMARKS

The Ruling of the Constitutional Court indeed has shaken the Muslim community in Indonesia. Not only big personalities but also local stake holders at grassroots level have reflected their opinions which sometimes conflict with each other. This is because the ruling has deviated from widely the held standpoint of Islamic law adhered to in Indonesia concerning marriage registration and especially on children born outside marriage. In addition, the ruling also potentially creates inconsistencies concerning Islamic family law as practiced in Indonesia especially in the area of marriage registration, polygamy and rights of children. However, such risks should be tolerated because the fate of millions of children is at stake. The state, as represented by the constitutional court has made a wise ruling in protecting the rights of million innocent children in Indonesia. The decisive role of the state as bestowed by the Constitution is necessary in this case regardless of differing opinions on the ground as reflected both by prominent figures such as the mufti of the Indonesian Council of Ulama, the high official of the Ministry of Religious affairs, activists of children and women rights, and stake holders at grassroots levels who face the problems on a daily basis in their community.

The interviews have shown almost absolute agreement with this ruling. Almost all of them agree that this ruling will give a solution for many legal and social problems relating to

the issue of children outside marriage. Nonetheless, there are disagreements in important details concerning this ruling. The first is whether this ruling includes both categories of children outside marriage, namely children of unregistered marriages and children born from adultery relationships. On this issue, it has been concluded that the ruling must cover both categories. The second is about the coverage of civil relationship as stated in the ruling. For this issue, there are further disagreements.

All agreed that it should cover all rights of children when related to children of unregistered marriage, but limited rights for children born from adulterous relationships (for those who agree that the ruling covers this category of children). The minority who insist that this ruling should only cover children of unregistered marriage are certainly of the opinion that those children should not be entitled to a thing from their biological fathers. If so, it should be minimal and cannot be considered as acknowledgement of parental relationship between them and their fathers. The Constitutional Court tends to apply its ruling to both categories. This should be supported with all its legal consequences. The most important aspect, though, is the confidence of the Constitutional Court as an agency of the state to boldly issue such a ruling that potentially disturbs the status quo in Islamic law relating to the issue of children born out of adultery.

In reflecting on this ruling and the responses of interviewees on the ruling, there are several aspects that can be put forward. The ruling shows the prevalent legal pluralism in Indonesia, especially between Islamic law and state-initiated law. In addition, the ruling is also considered a breakthrough of legal reform in Indonesia if the ruling is viewed from the perspective of Islamic law. In the perspective of legal pluralism, what happened in Indonesia is considered

as one of such cases. Legal pluralism is defined as legal arrangement in which the authority uses different laws for various group in the community (Griffith 1986) as reported by Salim.[1] The case of MK ruling is considered weak legal pluralism because the state accommodates legal norms and values which are held by community.[2] In similar vein Hooker also reflects legal pluralism as a situation in countries where two or more living laws interact in the program of legal modernization of a state.[3] In both definitions, is implied the superiority and dominant role of the state in legal arrangements of a modern nation-state. This is called as legal centralism. According the proponents of legal centralism, legal pluralism is tolerated whenever all non-state law is accommodated in the framework of state law. Otherwise, legal pluralism will only threaten and undermine the authority and sovereignty of the state.[4]

With the establishment of Indonesia as a modern nation-state, all laws should be initiated and applied by the state. The situation is different in the context of Muslim states prior to the establishment of a western style modern nation state. Under traditional Muslim states, be it caliphate

1 Arskal Salim, 'Dynamic Legal Pluralism in Modern Indonesia: The State and the Sharia (Court) in the Changing Constellations of Aceh,' First International Conference of Aceh and Indian Ocean Studies, Organized by Asia Research Institute, National University of Singapore & Rehabilitation and Construction Executing Agency for Aceh and Nias (BRR), Banda Aceh, Indonesia, p. 3-4

2 This situation is different from situation to prior the enactment of Marriage law in 1974 where the Indonesian citizens had different marriage law applied for them. This is called strong legal pluralism.

3 Arskal Salim, 'Dynamic Legal Pluralism in Modern Indonesia: The State and the Sharia (Court) in the Changing Constellations of Aceh,' p.

4 Sherman A. Jackson, 'Legal Pluralism Between Islam and the Nation-State: Romantic Medievalism or Pragmatic Modernity?', Fordham International Law Journal, 30(1), 2006 Article 5

or sultanate, the role of the state is minimal. In that context, the role of Islamic law is prevalent when Muslim jurists hold a central position as lawmaker and judge independent from state control. After the independence of Indonesia as a secular state, Islamic law gradually diminished as living law and has only become a law under the arrangement of state law. In such a situation, Annaim argues that if Islamic law has become state law which is enforceable, it is no longer considered Islamic law. The reason is simply because Islamic law is a religious expression and therefore the basic nature of Islamic law is voluntary and private.[5] In explaining this arrangement, Mahfud MD explains that Islamic law is only one of several sources of law in Indonesia. Other sources include *adat* law, Dutch law, international conventions and agreements.[6]

This MK ruling shows that the state chose not to employ strict traditional Islamic law for in the area which is conventionally the domain of Islamic law in Indonesia, family law. This means the state; the Constitutional Court in this case, uses other sources of law. In the discipline of legal pluralism, this scenario happens. As reported by Salim, Yilmas anticipates fives scenarios of legal pluralism.[7] The first is when state law destroys other laws and introduces new concepts and legal solutions. Second is whenever non-state laws grow and community observes them and regard the state law as irrelevant. The third is whenever state law and non-state laws live side by side and community may choose

5 Abdullahi Ahmed Annaim, 'Shari'a in the Secular State: A Paradox of Separation and Conflation', in Peri Bearman, Wolfhart Heinrichs, and Bernard G. Weiss (eds), The Law Applied: Contextualizing the Islamic shari'a, New York, IB Tauris, 2008, p. 321-341.

6 Mahfud MD, 'Politik Hukum Dalam Perda Berbasis Syariah', Jurnal Hukum 1:(14), 2007. 1-21

7 Arskal Salim, 'Dynamic Legal Pluralism in Modern Indonesia: The State and the Sharia (Court) in the Changing Constellations of Aceh,'

to use one of them. The fourth is the division of authority between state law and non-state law. Finally, the fifth is when the state law regulates previously unwritten non-state laws to be used in the official court.[8] Thus, the state chose to ignore traditional Islamic law which does not recognize the parental relationship between children born from adultery with their father. Although the state rightfully exercises its power as lawmaker for its citizens, this ruling is certainly a bold step by the state considering the fact that it has contradicted to the widely held Islamic family law.

Islamic law is the main expression in Islam. After ritual aspects of the law, family law is the main expression. While Muslims gave up other aspects of law, such as criminal law and contract law, Muslims remain committed to apply Islamic family law. The phenomenon is not exclusive to handful Muslim countries, but prevalent in the Muslim world. Thus, it is the reason why Muslims always try to justify all legal aspects from the perspective of Islamic law. This Constitutional court ruling is not an exception. Traditional Islamic law clearly asserts that children born from adultery only have parental relationship with their mothers. However, since the state has decided contrary to this dictum, some Muslims remain committed to justify it from Islamic law tools. Otherwise, having a non-Islamic dictum on marriage law, on which Muslims hold tightly until today, is simply unacceptable. In addition, there is a conceptual shift among Muslims nowadays which force them to abandon traditional Islamic values on this matter.

The willingness to depart from traditional Islamic law to accommodate new values such as human rights, equality and welfare is an indicator of reform. Thus, from the perspective of Islamic law reform, the MK ruling is a test.

8 Ibid.,

As recommended by Annaim, Islamic law must undergo reform to become positive law of a modern nation state.[9] In the area of Islamic family law, this reform must entail the dislodgment of certain aspects and principles of traditional Islamic family law. Among the principles is the superiority of men over women in marriage relationship. This principle is apparent in Islamic family law in many aspects, such as marriage guardianship, unequal rights and duties of husband and wife family, the right of divorce and inheritance.

According to Layish, the mechanism of reform can be launched in four avenues.[10] Three of which are relevant to the discussion of the status of children born outside adultery. The first avenue is reinterpretation of main sources of Islamic law (the Holy Qur'an and the Prophet tradition). In this regard, several Muslims who support the MK ruling exercise new interpretation of certain Prophet traditions. Instead of employing a prophet tradition stating unfortunate status of children born out of adultery relation,[11] they employ other prophet tradition showing the purity and innocence of all born babies from any sin regardless the marital status of their parents.[12] This latter prophet tradition was conventionally not employed as textual legal reference by Muslim jurists in the past when dealing with children born out of adultery

9 Abdullahi Ahmed Annaim, 'Shari'a in the Secular State: A Paradox of Separation and Conflation', p.

10 Aharon Layish, 'The Contribution of the Modernists to the Secularization of Islamic Law', Middle East Studies, 1978, 14 :(2), p. 63-77.

11 This tradition is narrated by al-Bukhari and Muslim. It says: "A child belongs to the owner of bed (husband), the adulterer deserves stoning". Another tradition narrated by Turmudzi says: no inheritance relationship between children born out of adultery and their fathers.

12 This tradition is narrated by al-Bukhari. It says: "every child is born as pure and innocent. And the parents are those who make the child a Jew, Christian, or Zoroastrian."

because it is a general meaning. The former prophet tradition is considered specific in addressing the issue. The second is the eclectic employment of jurisprudential opinion across schools of law. In this regard, some Muslims who agree with this ruling seek the opinion of the Hanafi School of law which considers marriage as merely a civil contract. As a result, the status of children is reasonably relaxed, compared to the Shafii School of law that is prevalent in Indonesia.[13] The third is the employment of unauthorized jurisprudential opinion within a school of law. The fourth is observance of administrative regulation of the state.

As prescribed by Islam, obedience to political rulers (*ulil amr* in Islamic term) is a religious obligation.[14] The state in return has the obligation to protect Muslim citizens and provide welfare for them. Most Indonesian Muslims are of the opinion that the state has delivered that. Therefore, they must respect and obey state regulation. This ruling should not be an exception, although it seems contradictory to widely held Islamic law.

However, banking on the fact that the state has delivered security and welfare might be not enough for Muslims if Islamic law is not recognized. The question remains about the limit of the state's 'intervention' to religious beliefs of its citizens. Does the state have a strong case when it decides to apply regulations that contravene to Islamic teaching?

From different perspective, it is the limit of Muslim citizens' obedience to the government policies and actions.

13 For instance, while Shafii and rest of schools allow the marriage of a pregnant women to any man, the Hanafi School allows the marriage only with the man who causes that pregnancy. This Hanafi legal opinion is employed in Indoesian Kompilasi as well. See article 53 of Kompilasi Hukum Islam.

14 This obligation is among other things is derived from The Holy Qur'an

When should Muslims obey the state? And when do they have the option to disagree with the state? From the side of the state, it must have a strong case to deal with issues that closely relate to widely held Islamic values and norms.

Indeed, in this case the state has done that. Its answer to that question is threefold. The state must provide the logic that Muslims can accept. Alternatively, the state can justify with a totally different approach. Alternatively, the state can use both arguments to make the case.

The Constitutional Court turned out using all arguments. It certainly emphasizes the dominance of state law over non-state law. It also shows the emergency situation experienced by children outside marriage and their mothers caused by the absence of sufficient legal protection. Finally, it also carefully selects religious justification of its ruling.

Although this ruling is triggered by a solitary case of judicial review on the status of children outside marriage, it represents an iceberg phenomenon as mentioned before. This case and other similar cases have exposed children outside marriage to unfair treatment and prevented them from enjoying their basic rights. Their parental status is not clear. So, their biological fathers cannot be legally held responsibility, which caused further misfortunes.

In most cases, fathers do not fully support their children. In some cases, the fathers abandon their wives and children after certain times. This situation has been happening for years because there was no state law regulating this issue. Islamic law, on the other hand, clearly does not provide a solution that can ease the life of children born from adultery.

As a modern nation state, Indonesia has an overarching responsibility to provide legal protection to its citizen regardless of ethnicity, race, culture and religion. In addition, the state has the role to exercise legislative change whenever

necessary.[15] This exercise has been done with the enactment of Marriage Law in 1974. While maintaining the vast aspects of traditional Islamic law, the law introduced substantial changes, such judicial divorce and limitation on polygyny. The consideration at the time was to minimize social impact of *talaq* (repudiation) and improve the condition of wives and children respectively.

After more than 30 years, people start to realize the importance of those changes. The law has changed people's understanding of family law in Indonesia. Many researchers have shown the growing awareness of people as to the benefit of minimum age for marriage, judicial divorce and limitation of polygamy.[16]

Now, similar social issues caused by the lack of legal protection to children outside marriage have been so rampant. Traditional Islamic marriage law does not have an applicable solution. In fact, it becomes a part of the problem. Therefore, the state must take action based on empirical evidence as represented by Machica Mochtar and Muhammad Iqbal Ramadan. Using the authority of the modern nation state as legal initiator and executor, the

15 Among the proponent of legislative change is Roscoe Pond, a legal sociologist who said that the state judicative role should not only exercise the traditional passive role of judicative or follow the taught legal tradition. Instead, it must boldly embark on a program of essentially legislative change that would eventually order modifications of state law. the example this in American context are the law prohibiting racial segregation and the law prohibiting states from outlawing abortion, See generally for example a review on his work in Lili Rasjidi,

16 See generally in, Mack Cammack, Lawrence A. Young and Tim Heaton, 'Legislating Social Change in an Islamic Society-Indonesia's Marriage Law, The American Journal of Comparative Law, 44, 1996, and Tim B. Heaton, Mark Cammack and Larry Young, 'Why is the Divorce Rate Declining in Indonesia?', Journal of Marriage and Family, 63, 2001.

Constitutional Court made yet another legislative change by setting aside certain norms of non-state law (read: traditional Islamic law).

Moreover, the court based its ruling on the basic rights and equality among citizens as mandated by the Constitution which the court aims to uphold. Furthermore, the court exploited Islamic reference as well which makes the ruling more acceptable. Instead of using traditional dictum of Islamic jurisprudence, the court employed the philosophical base of Islamic law stating that the ultimate objective of Islamic law is justice and welfare for Muslim community.[17] If observance of the dictum of traditional Islamic jurisprudence is proven to prevent the fulfillment of justice and welfare for children born from adultery, then there must be something wrong. Therefore, it becomes the subject of change by employing a more philosophical framework. At the end, the court cited the Prophet tradition that insists upon the purity and innocence of every born child to make its case.[18] Unsurprisingly, a year and half after that adjudication, most of interviewees who have been witnessing and dealing with real issues concerning children born from adultery agree with it and support it in varying degrees. This just cannot be tolerated anymore. This last point is further confirmation that the Constitutional Court has been correct in its ruling. In addition, it has been reasonably successful in making a rare milestone for legislative change in family law in Indonesia.

17 According to Hallaq's analysis, this form of reform is called as Islamic utilitarianism. He equates the theory of Maslahah (welfare) in Islamic legal theory with the champion of legal utilitarianism of Jeremy Bentham. See Wael B. Hallaq, A History of Islamic Legal Theories, Cambridge: Cambridge University Press, 1997

18 See Supra note 12.

POST SCRIPT

On December 24th, 2013, the government of Indonesia issued a new law No 24/2013 on Amendment to Law 23/2006 on Civil Administration. The amendments were made to accommodate several developments, such as the newly launched electronic ID card and the issuance of birth certificate. This amended law accommodates the ruling of the Constitutional Court in its own terms. In article 49, the amended law states that parents (both mother and father) of unregistered marriage may apply for legal testimony. Article 50 states that this testimony is applicable only for those who are married either in only religiously valid marriage or in validly registered marriage[1]. In another words, parents of children in unregistered marriage are allowed to apply for a birth certificate. In doing so, the civil registry office will determine the establishment of marriage by requiring the presence and testimony of father, mother, and the priest who facilitated the marriage[2]. Thus, the name of father and mother will appear in the certificate. Previously, for such an application, especially for Indonesian citizens, was only possible if the marriage was validly registered. Otherwise, the birth certificate would only contain the name of the mother.

1 Government of Indonesia, Law No 24/2013 on Amendment of Law No 23/2006 on Civil Administration.

2 Jawa Pos National Network, Nikah Siri, Anak Dapat Akta, http://www.jpnn.com/read/2014/02/03/214614/Nikah-Siri,-Anak-Dapat-Akta-, accessed on May 1st, 2014.

The enactment of this amended law clear some issues concerning the application of the MK ruling. It is clear that from the perspective of the civil registry office, unregistered marriage is acknowledged, at least in the publication of birth certificate. In contrast, the law indicates that children born from adultery are still not accommodated. They are still considered illegitimate children without legal relationship with their father. On the other hand, there is no response from the side of the Ministry of Religious Affairs who oversee the Office of Religious Affairs to accommodate the ruling of Constitutional Court so far. In fact, local offices of religious affairs along with local Muslim communities in some regions insist that only a registered marriage has legal status.

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THE SEEDS OF ISLAMIC NEO FUNDAMENTALISM IN JAKARTA OFFICE MOSQUES

RIDWAN

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Ridwan

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FOREWORD

Thailand has had a long relationship with the Muslim world which can be dated back over five hundred years, since Ayutthaya kingdom. Apart from the continuous interaction with Melayu and Arab civilizations, Muslim culture has become an integral and essential component entrenched in Thai society. Muslim comm nities had played significant role in the nation building and socio-economic, cultural and political development. Today, there are over four million Muslim populations in Thailand. Despite political violence in the southern frontier provinces, Muslims along with Thai citizens of other faiths continue to live side by side in harmony and peace. Begin situated in Southeast Asia and serving as an active member of the Association of South East Asian Nations or ASEAN, whose majority of the members are Muslims, Thailand strives to better understand Islam and the reality of complexity in the contemporary Southeast Asia This serves as a foundation for the integration and mobilization of human as well as diverse cultural and religious resources in the region for the attainment of collective prosperity and peace.

In this pursuit, Thailand Research Fund is pleased to be a partner with the Asian Resource Foundation and supported its research initiative titled "Islam in Southeast Asia: Views from Within". This research program is unique as it supports and encourager young Muslim scholars in Southeast Asia, aged below 40 to

undertake research studies pertaining to Islam in Southeast Asia from the internal perspectives. Research being carried out by the insiders and body of knowledge developed will enhance and enrich the understanding of the realities of Muslims in contemporary Southeast Asia. The outstanding themes this reach has tackled encompasses areas such as popular Islam, globalization and identity politics, gender realities, economic activities and social responsibility. The end products of the research studies have become the cutting edge which offers the new research perspectives contributory to studies in the field of Islam and Muslim in Southeast Asia.

The Thailand Research Fund strongly believes this publication will benefit academic and professional communities as well as wider public to gain insight into the realities and complexity of the modern Muslim world in the context of contemporary multicultural and multi-religious Southeast Asia. It is hoped that the findings can be further utilized and translated into concrete strategic remedies to the existing challenges both at policy and implementation levels.

Prof. Dr. Suthipun Jitpimolmard MD FRCP
Director of Thailand Research Fund (TRF)

FOREWORD

Problematizing Views from within "Islam(s)" in Southeast Asia

In 1953 the late Gustav von Grunebaum organized conference of-leading European scholars of Islam, the first to undertake a historical and critical self-understanding of "Islamic studies." The conference examined relationships among Muslims, and between Islam and various cultures. It found that the assumptions and methods used in fields of study like Islamic history lagged a century behind those used in European history. One year later Bernard Lewis remarked that the history of the Arabs had been written primarily in Europe by historians with no knowledge of Arabic and Arabists with no knowledge of history.[1]

Half a century later, research on the subject has changed. There is an increasing number of studies on Islam written by Muslims who know the faith, the cultures, and the practices in different contexts-the works by Akbar Ahmad, Mahmoud Mumdani, Chandra Muzaffar, and Nurcholish Madjid are just a few examples among many. Also changed is the global context itself. Now perhaps more than ever, "Islam" is more than just a description of a fifteen-century-old faith shared by one-and-a-half billion people. The word has strong emotive qualities for those both within and outside the faith. Two decades ago the late Edward Said wrote, "For the right, Islam represents barbarism; for the left, medieval theocracy; for the

center, a kind of distasteful exoticism. In all camps, however, there is agreement that even though little enough is known about the Islamic world there is not much to be approved of there."[2] It is therefore important to understand, from their own perspectives, the contemporary problems that Muslims are facing.

Works in this series, Islam in Southeast Asia: Views from Within, join many other writings on Islam by authors at the periphery of scholarship, using assumptions and methods that may no longer differ from those used in the centers of learning. But if such is the case, how is this series different from the other writings on Islam that are presently flooding the popular and academic landscapes?

To state the obvious, this series addresses Islam in Southeast Asia. In relation to the Islamic world, where the sacred geography, history, and language of the Middle East seems to have established that region as the center, Southeast Asia is clearly seen as the periphery. But it is misleading to conceptualize Southeast Asia as a single sociocultural entity. As is true elsewhere in the world, societies in Southeast Asia are heterogeneous. Muslims in Indonesia and Malaysia, for example, lead lives that differ from those in Thailand and the Philippines because of the different realities facing majority and minority populations in the respective countries. Furthermore, whether Muslims constitute a minority or a majority, their lives differ again when seen in contexts influenced by Javanese culture, British colonialism, Filipino Catholicism, or Theravada Buddhism, among other things. In short, the cultural topography of Southeast Asia is a rich multiplicity.

Consequently, Islam as believed in and practiced by people in the diverse worlds of Southeast Asia is not necessarily singular, since there could be as many Islams as the various contexts that constitute them.[3] The problems

facing Muslims in Southeast Asia will therefore vary. Those portrayed by researchers in this series are unusual, and their analysis is at times groundbreaking, but what they underscore is that Southeast Asian Muslims struggle with multiple identities in sociocultural contexts destabilized by globalizing forces. In addition, the fact that this research is carried out by young Muslim scholars is important; the "new generation" factor could explain both the distinctive set of problems these researchers are interested in and the fresh approaches they use.

The "views from within" approach, however, is not without its own potential problems. To engage in studies claiming to be "views from within" is in some ways to guard against the study of "others" as the study of one's own self, because in such a situation writers face other types of realities that are possibly distorted in some other ways. It is therefore important for readers to appreciate the effort researchers make to situate themselves at a distance that gives them a better perspective on the social realities of their subject while retaining their sensitivity towards, and ability to relate to, the people they are studying.[4]

At a time when Islamophobia is on the rise,[5] it is essential to find fresh perspectives that will allow us to understand the new problems and tensions facing Muslims in contemporary Southeast Asian societies, and to articulate the ways in which they negotiate their lives as members of communities of faith in a fast-changing world. This series of studies by young Muslim scholars of Southeast Asia is an important step in this direction.

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NOTES

1. Azim Nanji, ed., *Mapping Islamic Studies: Genealogy, Continuity and Change* (Berlin and New York: Mouton de Gruyter, 1997), xii.
2. Edward Said, *Covering Islam* (New York: Pantheon, 1981), xv.
3. Aziz Al-Azmeh, *Islams and Modernities* (London and New York: Verso, 1996).
4. I have discussed the problem of alterity in conducting research on Muslim studies in Chaiwat Satha-Anand, *The life to this World: Negotiated Muslim Lives in Thai Society* (Singapore and New York: Marshall Cavendish, 2005), 25-26.
5. Akbar S. Ahmad, *Islam under Siege: Living Dangerously in a Post-Honor World* (Cambridge: Polity Press, 2004), 36-39.

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CHAPTER I
INTRODUCTION

A. BACKGROUND

Indonesia has witnessed many significant changes, especially religious radicalization following the collapse of the Soeharto regime. This can be seen through the fact that the Indonesian political atmosphere in the post-New Order has been signaled by the euphoria of democracy and the liberalization of politics.[1] Such liberalization has allowed some radical Islamic groups, which were dormant during the New Order era, to come alive and echo their voices and ideologies.

Basically, the extreme Islamic movement has been cradled by Middle Eastern ideologies which they believe to be the authentic ones. In terms of religious thought, they are influenced by radical Salafism and Wahabism. This radical movement aims at the establishment of a single universal Islamic Caliphate for the world's Muslims.[2] Therefore, the ideology that stimulates this group seems to be Islamic teachings that legitimize all types of their movements and activities; such an ideology becomes the motivation and

1 Bachtiar Effendi, 'Enforcement of Shari'ah in Indonesia: Challenges and Prospects' in: *Islam and Democracy*, Singapore: Konrad-Adenauer-Stiftung Singapore, 2004, p. 75.

2 Azyumardi Azra, "Islam in Southeast Asia: Tolerance and Radicalism", paper presented at the Mieguyah Public Lecture, the University of Melbourne, Wednesday 6 April, 2005.

direction through which this group develops. It can be said that their ultimate project is to Islamize all humankind.

According to Greg Fealy[3], radical Islamic groups in Indonesia can be divided into four types; (1) political, educational and intellectual (2) vigilante, being community groups formed to prevent wrongdoing and immorality, particularly those which law enforcement agencies are not concerned with, (3) paramilitary; and (4) terrorists. The first category comprises groups which do not use violence in their efforts for radical Islamic change, such as Hizbut Tahrir in Indonesia. In the vigilante category is the Front Pembela Islam (FPI – Islamic Defenders Front) and the paramilitary group includes Laskar Jihad Forum Komunikasi Ahlus Sunnah wal Jama'ah (LJ FKAWJ). Terrorists are those who use violence in the name of religion.

Generally speaking, the emergence of the radical Islamic movement does not have any connection whatsoever to other Indonesian Islamic mass organizations, such as *Muhammadiyah* and *Nahdlatul Ulama* which are known as the mainstream of Islam in the Archipelago. Robert W. Hefner is of the opinion that moderate Islamic communities remain the majority in Indonesia compared to their counterparts of radical Islamic supporters. However, the moderate communities are not well organized and structured.[4]

In a later development, the Islamic radical movement has implanted its ideology in mosques that are commonly under the auspices of the two biggest Islamic organizations: *Nahdhatul Ulama* (NU) and *Muhammadiyah*. In light of this,

3 Greg Fealy, *Local jihad: Radical Islam and Terrorism in Indonesia*, Australia: ASPI, 2005, p. 13.

4 Robert W. Hefner, "Political Islam in Southeast Asia: Assessing the Trends" (keynote Address), in conference *Political Islam in Southeast Asia*, 25 March 2003, Washington DC.

the general chairman of NU, Hasyim Muzadi, has warned all Moslim communities to be fully vigilant with regard to the emergence of what has been called transnational ideology. For him, such an ideology is at odds with Indonesian mainstreamIslam, which has been renowned for its tolerant and moderate character. Hence, this ideology must be rejected.[5]

Moreover, the Central Committee of NU saw it necessary to protect NU's mosques from the inflitration of the radical movement. In October 2007, at Pondok Pesantren (Islamic boarding school) Zainul Hasan Genggong, Probolinggo, East Java, the NU central committee held a Bahtsul Masa'il (discussion on contemporary issues) which issued an edict on the certification of NU's mosques in order to keep them safe from the influence of,and possible takeover by this movement. Similarly, the Central Chair of Muhammadiyah also issued decree No.149/December 2006 that aims to protect Muhammadiyah's properties, such as mosques, schools, orphanages, hospitals, and universities from the influence and takeover by this radical group, whose world-view is very different from that of Muhammadiyah.

B. PREVIOUS RESEARCH

Research on religious radicalism within the setting of mosques is still limited. There has been little research into religious radicalism by Indonesian scholars. However two previous research reports that shed light on this issue are: *"Ilusi Negara Islam: Ekspansi Gerakan Islam Transnasional di Indonesia"* (The Illusion of the Islamic State: the Expansion of the Transnational Movement in Indonesia), published in

5 "PBNU Desak Pemerintah Cegah Ideologi Transnasional", lihat www.nu.or.id, diakses 9 Februari 2009 pk. 13.20.

a book by the Wahid Institute, Gerakan Bhineka Tunggal Ika and Maarif (2009); and research conducted by the Center for the Study of Religion and Culture (CSRC) UIN Jakarta (2009), published in "Benih-Benih Islam Radikal di Masjid" (The Seeds of Radical Islam in Mosques).

This publication (based on my research) fills an academic gap between these two previous studies, since no specific investigation has been made of the radical Islamic movement in office mosques. In other words, I focused my work to investigate office mosques deeply in order to comprehend the nature and the Islamic streams that grow in office mosques. The research on *Ilusi Negara Islam* has adequately investigated the origin of radical ideologies, and the way this movement has them in Indonesia. In addition, this research also explored the influence of the radical movement in Islamic institutions and organizations such *Muhammadiyah, Nahdhatul Ulama, Indonesian Ulama Council*, and education and government institutions.

In the same line, CSRC's research successfully mapped the ideological orientation of mosque managers in DKI Jakarta. It found that the majority of mosques in DKI Jakarta promulgated a moderate Islam. However, there was a systematic tendency towards an even stronger radical Islam by certain Islamic groups with a variety of agendas and ideologies, such as the transnational ideology of the Caliphate. Hence, strategic steps are needed to curb further development of religious radicalism in the mosques.

These two research findings successfully provided a comprehensive picture of how radical ideology has penetrated the soil of Indonesia. However, there has been a relative lack of analysis and discussion on the phenomena of mosques, and particularly office mosques as the arena of ideological contestation.

C. REASONS FOR THE RESEARCH

This research has four main objectives.

1. To date, research on this topic has not been available focusing on the infiltration of radical ideology in office mosques. This has been a major concern among Muslim moderate groups. Unfortunately, this concern is confined only to limited forums or discussion rooms. Therefore, there is a need to conduct such research on this pivotal issue.
2. It is assumed that office mosques do not usually have any affiliation with a particular religious organization. Thus mosque managers (*takmir*) are free to select the preachers or teachers of Islamic materials in their mosques. When these mosques are taken over by takmir whose schools of thought are radical, they can change and radicalize the form of religious propagation. Based on rough observation and little information, the discourse of the Islamic caliphate has become the material of Friday sermons at these mosques. The situation is more pronounced where the takmir allow only their ideological compradors to act as preachers, while moderate preachers are effectively excluded (see "Ilusi Negara Islam", p. 215-216).
3. It is assumed that the communities of these mosques have secular educational backgrounds and have less basic religious knowledge. Because of this, their worldview can be easily influenced by radical paradigms if the contents of the teaching materials are mainly about radicalism.
4. It is assumed that these mosques can become one of the centers of Islamic radical dissemination unless

moderate Muslims take action to anticipate this potential danger. In addition, this research can be a reference to formulate tactical strategies to counter the development of this ideology that might grow in some Indonesian mosques.

D. RESEARCH PROBLEMS

The main focus of this research is the ideology and agenda of radical Islamic movements in mosques located at offices. Therefore, this research attempts to answer the following questions:

1. To what extent is the infiltration of transnational Islamic ideology taking place in the office mosques?
2. How is Islamic education conducted by mosque managers?. This will be determened by looking at the preachers, their educational background, the materials they use , and their teaching methods.
3. How do the mosques managers in office mosques perceive ideas about the governmental system, the implementation of shari'a by law, jihad, gender equity and pluralism?

E. OPERATIONAL DEFINITION

This research uses some terms that should be given their operational definition. Some key terms used are office mosques (*masjid perkantoran*), moderate Islam, radical Islam.

Office mosques: The prayer room or building that is provided for staff working in some offices. Generally, they pray there and become their regular attendants. Moreover, the public also use this facility to pray. This is not a public

facility, for it is built in one spot of office buildings and is not located on the main road.

Moderate Islam: I define moderate Islam as one of the sects or groups in Islam. The concept of moderate Islam is tolerance supported by rational interpretation and contextual understanding of Islamic teachings. In practice, the protagonists of this group tend to look at the substance of a teaching rather than its textual- scriptural formality. In the context of governance system, this group also supports the unity of the Indonesian Republic and agrees with the democracy system.

Radical Islam: I define Radical Islam as groups or sects in Islam that understand Islamic teachings scripturally and are adamant not to interpret Al-Qur'an and Hadis rationally and contextually. The supporters of this group seem to be intolerant towards other groups whose concept is different from theirs. The term Radical Islam is often used interchangeably with fundamentalism. This group also fights for true Islam and claims to be the true Muslims who can face modern challenges. In doing so, some people of this group tend to be anarchic in imposing their interest and mission. In the context of governance system, they always demand for the establishment of an Islamic state and the caliphate system. They also support the formalization of *Islamic Shari'a* through state policies.

F. AIMS AND BENEFITS OF RESEARCH

Academically, this study is to find, show, and investigate the infiltration of radical Islamic ideology at mosques located at offices. It will also analyse the institutional structure of mosques (such as the founder, the affiliation, assets, mosque management, independence and the preaching management system) and the perceptions of their stakeholders (mosque

managers, preachers and the conggregants or attendants) on five main issues: government system (democracy and Islamic caliphate), formalization of Islamic shari'ah, jihad, gender equity, and pluralism. In addition, this research will elaborateon the activities and agents of Islamic hard-linemovements at these mosques.

Practically, it is hoped this research can offer findings of benefit to the public interest, including local government, the Ministry of Religious Affairs, religious mass organizations, such as Muhammadiyah, Nahdhatul Ulama and other moderate organizations, and non government organizations (NGO's) concerned about the latent emergence of radical ideology in the heart of Indonesian Islam. The data gleaned from this study can be a basis for formulating effective strategies that strengthen moderate Islam and at the same time weaken radical Islam in Indonesia.

G. RESEARCH METHODOLOGY

This research employed qualitative methods to describe the phenomenon. I chose two office mosques, that is Plaza Mandiri Mosque and Al-Ihsan Mosque, because of their influence as well as their being pioneers of the existence of office mosque in Jakarta and other areas. In addition, they appear to have a radical character based on my initial observation and their strategic position should allow the researcher to obtain an understanding of the mosque community's ideas concerning ideological issues. The results of the research and its conclusion thus can be utilized as a general picture in talking and examining Jakarta office mosques as a whole. Although I argue that my research conclusion cannot be generalized to look at other office mosques, because every research based on qualitative methods has a unique position and is different from others.

The qualitative methodology used in this research was field study and participatory observation. I added the library research as a theoretical framework for the issue. Meanwhile, the field study collected the data needed. The data collection tools were in-depth interviews following structured guidelines. In addition to this, participant observation was employed to gather data in a systematic and unobtrusive way, and to enrich the analysis.

CHAPTER II

UNDERSTANDING CONTEMPORARY ISLAMISM: A THEORETICAL FRAMEWORK

The tragedy that struck the United States on September 11 2001 focused the spotlight of international attention on the discourse of Islam. Coming after a history of terrorist bombing attacks in Africa and Asia over the past three decades, it gripped the Christian majority of many non-Muslim countries with a xenophobia for Islam.[1]

This section aims to briefly present a theoretical description of Islam in the Islamic world, especially in the Middle East and Indonesia. In particular it will examine the meanings of Islamic fundamentalism, Islamism and "neo-fundamentalism", the social basis and development of Islamism in Indonesia. This research needs such a theoretical framework to closely examine the development of office-mosques in Indonesia, and it should also provide a useful start to examining the same phenomenon in other countries.

1 Mark Juergensmeyer, *Terror in the Mind of God the Global Rise of Religious Violence*, (Los Angeles: University of California Press, 2003),

A. ISLAMIC FUNDAMENTALISM

Although the language of fundamentalism originated in a Western socio-religious context, particularly that of conservative Protestant fundamentalists as a miltant group[2], in fact fundamentalism is a global phenomenon which can be found in the traditions of all the major religions of the world.[3] The following exploration shows the tendency for religious fundamentalism, emerging in the wake of the collapse of socialism, frequently identified with Islam. The West continues to make this identification, concurrently with the strengthening currents of radical Islam in the Muslim world. The Western World sees this not only as a natural development in the world of Islam, but also articulates it as a threat to the future of Western civilization.[4]

The former Secretary General of NATO, Willy Claes, openly displayed his animosity to the growth of Islamic fundamentalism, even accusing it of being the major threat to Western civilization. The present perception held by Western groups of Islamic fundamentalism as a direct threat to Western civilization has little foundation. However the way fundamentalist Islamic groups express themselves, which tends towards an "Anti-Western" rhetoric of resistance to and criticism of the political agenda and culture of the West, makes it easy to understand the prevailing anxieties of the West.[5] Moreover, according to Olivier Roy, the

2 Gabriel A. Almond, R. Scott Appleby, and Emmanuel Sivan, *Strong Religion, the Rise of Fundamentalism around the World*, (USA: Chicago Press, 2003), p.1-2.

3 Bassam Tibbi, *Ancaman Fundamentalisme Rajutan Islam Politik dan Kekacauan Dunia Baru,* (Yogyakarta: Tiara Wacana, 2000), p.23.

4 For the purposes of this discussion, the Western World is treated as an single, monlithic entity, however there is obviously a wide variety of Western societies, cultures and civilizations.

5 Bassam Tibbi, *Ancaman Fundamentalisme*, p.5.

majority of Western people see the last century as being marked by the emergence of an era of "Islam as a threat."[6] A prestigious Jefferson Lecture by Bernard Lewis[7] entitled "Islamic fundamentalism", delivered in 1990 and thus well before the tragedy of 11 September 2001, claimed that Muslims are militant fundamentalists who remain a constant threat. We should also note Samuel P. Huntington's "clash of civilizations" thesis, which presents Islam as a civilization which menaces the West.[8]

After the success of the Iranian Revolution reached its peak in 1979, the term "Islamic fundamentalism" suddenly became popular, with the emergent strength of radical, fanatical Muslim Shi'ism ready to oppose to the death "the great Satan", the United States of America. However it is clearly a distorting simplification to generalize the diverse Islamic movements within Islamic revival as subscribing to "fundamentalist Islam". The Islamic revival generally takes the form of an intensification of the deep acceptance and experience of Islam, accompanied by a search for Islamic identity in all aspects of life.[9]

The discourse of Islamic fundamentalism is often linked with the context of the Middle East. A first description of the resurgence of Islamic fundamentalism can be found in Daniel Lerner's *The Passing of Traditional Society*,[10] about the failed

6 Olivier Roy, T*he Failure of Political Islam*, (USA: Harvard University Press, 1996), p.1

7 John L.Esposito, *Ancaman Islam Mitos Atau Realitas?*, (Bandung: Mizan, 1992), p.193-194.

8 Samuel P. Huntington, *The Clash of Civilizations and the Remaking of World Order*, (New York: Simon &Schuster, 1996) p.110

9 Azyumardi Azra, *Pergolakan Politik Islam* (Jakarta: Paramadina, 1996), p.107.

10 Daniel Lerner cited in Roxanne L. Euben, *Enemy in the Mirror (Islamic Fundamentalism and the Limits of Modern Rationalism, A*

process of modernization in the Middle East. According to Lerner, this failure resulted from tensions between a hierarchical model of governance, a patrimonial patriarchy of limited capabilities, and high public expectations of prosperity.

Thus the emergence of fundamentalist sub-groups was prompted by frustration, depression, unemployment and illiteracy which directed resistance towards what Lerner described as:

> …the extreme of political action, attracted toward the instrument of propaganda, agitation and violence, by which they hope to disrupt the settled order and to speed their way toward a more satisfying way of life.[11]

The *Ihkwanul Muslimin* (the "Muslim Brotherhood") movement in Egypt is one instance of the "extremist factions" which emerged to express the socio-economic dissatisfaction of their people. Hamid Enayat[12] noted that the *Ikhwanul Muslimin* movement pioneered the Islamic fundamentalist movement, which was then taken up in different forms by fundamentalist movements throughout the Islamic world – especially in Egypt, Syria, Iran, Pakistan, Indonesia and Malaysia. Their character and style was determined by the strategies and preconditions of national struggle in each country, be it for independence, democracy, or endeavors to recover a lost national cultural identity.

Michael Fisher, in his work *Islam and the Revolt of the Petit Bourgeoisie*,[13] offered a class analysis of contemporary

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Work of Comparative Political Theory, (USA: Princeton University, 1999), p.26.

11 Daniel Lerner cited in Roxanne L. Euben, *Enemy in the Mirror,* p.26.

12 Hamid Enayat, *Modern Islamic Political Thought*, (Austin: University of Texas, 1982), p. 3.

13 Michael Fisher cited in Roxanne L. Euben, *Enemy in the Mirror*

Islamic fundamentalism which appraises Lerner's image of Islamic fundamentalism. According to Fisher, in order to understand Islamic fundamentalism it is necessary to closely examine the "structural problems of mass society, the combined impact of urbanization, expanded education and the world economy; on Middle Eastern politics." In particular, Fisher portrays traditional Islam as dynamically located between an urban lifestyle which tends to become scriptural, individualist, unitary and puritan, and a rural lifestyle characterized by mediation, ritual hierarchies and devotional excess.

Islamic fundamentalism is also often seen as a resistance to modernity, and a reaction to the inability of Middle Eastern countries to provide for their people's wellbeing. Fundamentalist groups may even feel excluded from the ongoing process of modernisation, becoming marginalised and frustrated to the extent that they seek protection in Islam by making it an ideology of opposition to the injustice they feel. This reality is portrayed by both Emmanuel Sivan and Manuel Castell (below).

Emmanuel Sivan, in his book *Radical Islam*,[14] said that Islamic fundamentalism can be understood as a reaction to modernity, and the failure of liberal, socialist and nationalist regimes to resolve the social and economic problems of a number of Middle Eastern countries in the contemporary world. In short, Sivan's view is that the appearance of Islamic

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(Islamic Fundamentalism and the limits of modern Rationalism, A work of Comparative Political Theory), (USA: Princenton University, 1999), p. 7-28.

14 Emmanuel Sivan cited in Roxanne L. Euben, *Enemy in the Mirror (Islamic Fundamentalism and the limits of modern Rationalism, A work of Comparative Political Theory*), (USA: Princenton University, 1999), p. 29.

fundamentalism is a reflection of the failure of the intellectual left and progressive regimes to build a just world order.

Manuel Castell[15] explains the resurgence of fundamentalism in the Middle East as resulting from the interelations between the exclusion of the Muslim world, which perceives itself a collective entity in the processes of globalisation, nationalism, and the nation-state principles of global organisation. The explosion of Islamic movements in fact appears to be linked with the disruption (breaking-up) of traditional communities (including the diminishing strength of tradition ulama), and the failure of the nation-states created by nationalist movements to enhance modernisation, build economies, and distribute economic progress to the bulk of the people. Thus Islamic identity is reconstructed as opposition to captialism, socialism and nationalism.

B. ISLAMISM

Apart from the commonly used concept of Islamic fundamentalism as reflecting the international phenomenon of Islamic resurgence (as discussed above), recently the term "Islamism" has been much used to convey the more comprehensive meaning that radical Islamic groups are not the monolithic entity often stereotyped in Western eyes as fundamentalist, radical Islam that threatens the West.[16] In order to explain this further, two concepts of Islamism will be used, as developed by Olivier Roy in his book *The Failure*

15 Manuel Castells,*The Information Age: Economy, Society and Culture Vol II, The Power of Identity*, (USA: Blackwell 1997), p. 17.

16 Crises Group Middle East and North Africa Report N 37, *Understanding Islamism*, March 2005, p. 2.

of Political Islam[17], and the International Crisis Group (ICG) in its working paper entitled *Understanding Islamism*.[18]

In essence, the vocabulary of Islamism is by nature religious; however it contains the strength to express a variety of political goals and social tensions.[19]The International Crisis Group (ICG) defines Islamism as synonomous with "Islamic activism", being "…the active assertion and promotion of beliefs, prescriptions, law, or policies that are held to be Islamic in character".[20] More than this, ICG identifies three main currents of Sunni activism: political Islamism, proselytizing, and Jihadist activism, a brief explanation of which follows below.

Political Islamism

The political Islam movement fundamentally aims to attain political power. According to Dale F. Eickelman and James Piscatori[21], any political system, Muslim or otherwise, will inevitably become involved in managing competition, opposition and a variety of interests. More broadly, politics can be conceptualized as a battle to seize control of the meaning of symbols. What the Islamists are currently fighting

17 Olivier Roy, T*he Failure of Political Islam*, (USA: Harvard University Press, 1996), p. 28-48

18 Crises Group Middle East and North Africa Report N 37, *Understanding Islamism*, March 2005, p. 2

19 Gilles Kepel, "Islamism Reconsidered" in *Islam and Globalization: Critical Concepts In Islamic Studies*, (Edited by Shahram Akbarzadeh) (USA: Routledge, 2006), p. 251.

20 Crises Group Middle East and North Africa Report N 37, *Understanding Islamism*, March 2005, p. 2

21 Dale F. Eickelman and James Piscatori, *Muslim Politics*, (UK: Princeton University Press, 1996), p.7-9.

for can be seen as "a struggle about people's imagination". These writers propose that the Islamists in this struggle are those who imagine the formation of a national order based on Islam.

To varying extents efforts to achieve this have been made in different Muslim countries. This movement has made strong efforts in Egypt, through the *Ikhwanul Muslimin* movement. As well as this, efforts have also been made in several other countries including Algeria, Jordan, Kuwait, Palestine and Sudan. There are also local movements in several countries, such as *Adaletve Kalkinma Partist* (The Development and Justice Party) and *Parti pour la Justice et le Developpment* (PJD - the Party for Justice and Development) in Morocco. One exception within the political Islam movement does not accept non-violence; HAMAS in Palestine works through armed opposition.[22]

Proselytizing Islam

The Islamist groups gathered in the proselytizing movement are mainly revivalist and fundamentalist. They essentially refrain from political activism and ambition and from describing themselves as a political party. The primary focus of this group is *dakwah* – spreading and strengthening the faith. The contemporary form of the proselytizing movement is represented by the Salafist group, originating from the Arab world, however a further example of it is the *Jemaah Tabligh* movement which originated in India in 1926.[23]

22 Crises Group Middle East and North Africa Report N 37, *Understanding Islamism*, March 2005, p. 2

23 Crises Group Middle East and North Africa Report N 37, *Understanding Islamism*, March 2005, p. 2

The Jihadist Movement

This group has a commitment to violence, because they perceive the present situation of the Muslim community as one of opposition by unbelievers to establishing *Dar al-Islam*, the Islamic State. There are two main currents in this group. *Firstly*, the Salafiyah "Jihadi" group (al-Salafiyya al-jihadiyya), which comprises people with Salafist views who have departed from non-violent activism and have become radicalized to join with the forces of jihad or holy war. *Secondly*, there are the adherents of Quthbis (al-Quthubiyah), who are influenced by the Egyptian thinker SayyidQuthb (1906-1966). The most recent development of this is Osama bin Laden's network, which represents a synthesis of *Jihadi Salafiyah* and the *Jihadi* of Sayyid Quthb.[24]

Olivier Roy defined Islamism as Islam conceived as an ideology whose traditional Islam tenets have been expanded by Islamists to become a complete religion for the modern world.[25] In his book *The Failure of Political* Islam,[26] Roy proposed that Islamists in general have adopted Salafist theologies which preach a return to the Koran, Sunnah and Sharia, and reject the four well known Islamic philosophies and denominations of Syafi'i, Maliki, Hambali and Hanafi.

Roy further says that Islamists believe that people can only be brought to Islam by social and political action, which means Islamists must emerge from the mosques and act as a movement which involves itself directly in political life. Stated briefly, political Islamism started to achieve success in

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24 Crises Group Middle East and North Africa Report N 37, *Understanding Islamism*, March 2005, p. 2

25 Olivier Roy, *Globalized Islam the Search for a New Ummah*, (New York: Columbia University Press, 2004), p. 2.

26 Olivier Roy, T*he Failure of Political Islam*, (USA: Harvard University Press, 1996), p. 28-48

the 1960s, and sees itself as a socio-political movement with Islam as its foundational political ideology.

Roy also gives space to discussion of how an Islamic population can be created. Debate of this issue reveals the disputes between radical and moderate Islamists over achieving their political goal of an Islamic State, as discussed below.

Moderate and Radical Islamism

Moderate Islamists, according to Roy, are partisans who strive for the project of re-Islamisation from the bottom up, especially by proselytising and founding social cultural movements, while applying pressure to leaders (through political alliances) to urge Islamisation from the top by pressing for the implementation of Islamic sharia by legislation.

Concurrently with this, but from the other side, radical Islamism has determined not to take the road of compromise, to the extent of endorsing the concept of revolution in order to achieve the goal of an Islamic State. Their concept is developed from the teachings of Sayyid Quthb, the *Ikhwanul Muslimin* activist and ideologist who was executed in 1966. His two main concepts were *Jahiliyya* and *Tafkir.*[27]

As a conclusion, Roy's view is that moderate Islamists defend a reformist position, while radical Islamists uphold the way of revolution to replace ruling regimes with regimes of a different ideology, namely that of Islam.

27 The concept of *Jahiliyyah* holds the meaning of Muslims existing in a state of ignorance, as in pre-Islamic times. Islamists label the condition of Muslims today as *Jahiliyyah*. The meaning contained by the concept of *tafkir* is the view of governance that is not based on Islam, and thus infidel and able to be attacked.

C. "NEO-FUNDAMENTALISM"

Islamism is not a single, unitary concept, because Islamists themselves are made up of various groupings with different strategies to achieve the goal of an Islamic State. The view of Anthony Bubalo and Greg Fealay[28] is that the scope of Islamism is not to embrace the diversity of Islamic activists as one consolidated whole. In this regard it should be understood that not all Islamic activists have made Islam the political ideology of their efforts to build an Islamic State. Thus it is important to examine Olivier Roy's term "neo-fundamentalism", because not all Islamists can be clumped together in the fold of Islamism. IGC has also given attention to the variant forms that exist in Islamism, as noted above.

According to Olivier Roy, neo-fundamentalism is a conservative, scriptural perspective, closed to Islam which promotes *ummah*, or an international Muslim community based on Islamic shariah.[29]

As regards basic teachings, neo-fundamentalists, especially Salafists, highlight the concept of the absolute oneness of God (*tauhid*), and reject all forms of innovation in Islam (*bid'ah*), polytheism (*syirk*), and reject blindly following new doctrines *(taqlid*). Hence they give strong emphasis to literal readings of the Koran and Sunnah. Further, neo-fundamentalists defend the implementation of shariah law. They are convinced that there is nothing of value to be borrowed from the West, and that it is pointless having discussions with Jews or Christians except to draw

28 Anthony Bubbalo and Greg Fealy, *Between The global and the local: Islamism, the Middle East and Indonesia*, (USA: the Saban Center for Middle East Policy at The Brooking Institution, 2005), p. 9.

29 Olivier Roy, *Globalized Islam the Search for a New Ummah*, (New York: Columbia University Press, 2004), p.1.

them into the arms of Islam.[30] The writer sees this as showing that literal understandings of the Koran and Sunnah have made neo-fundamentalists groups extremely intolerant of external groups which do not embrace Islam. There is an anti-pluralist view which asserts that the one and only true religion is Islam.

Neo-fundamentalism encompasses individuals and groups who broadly follow literalist and conservative approaches to Islam. They are fundamentalist because they call for a return to the purity of religious teachings, using scriptural understandings. According to Roy, what makes fundamentalism new (or "neo") is its relationship with a new situation in which religion itself is "de-territorialised".[31] One of the consequences of globalization is that contemporary Islam is less tied to any particular region or territory. The majority of world Muslims live outside traditionally Muslims countries. However Roy suggests that de-territorialisation can also be felt by Muslims who have not emigrated, as "westernization" of their home population leaves the feeling that they are now in the minority.

It is important to understand that neo-fundamentalism is neither a structured organization nor an explicit school of thought. Roy maintains that it is more a trend, a state of mind, and a dogmatic relationship with core fundaments of religion.[32] This is why neo-fundamentalism could form *Ikhwanul Muslimin, Jema'ah Tabligh* and *Wahabi*. The major trend is that of Salafi, also incorporating the Wahabi of Saudi Arabia. Classified with this Salafi cluster are militant

30 Olivier Roy, *Globalized Islam the Search for a New Ummah,* p. 243-245.

31 Olivier Roy, *Globalized Islam the Search for a New Ummah,* p. 233-234.

32 Olivier Roy, *Globalized Islam the Search for a New Ummah,* p. 244-245.

groups like the Taliban of Afghanistan and the *Ahlul Hadits* of Pakistan. As well as these, there are the conservative, tightly integrated groups such as *Ahlus-Sunnahwal Jama'ah* in the UK and USA. The other groups which should not be neglected are the neo-fundamentalist, politically radical groups like the *Quthb* movement of the 1970s, the Algerian GIA, *Al-Qaeda* and several radical Pakistani groups like *Jayash-e-Muhammad* and *Sipah-e-Sabaha*. These see jihad as a task for individuals, who can more accurately be called "*jihadi salafiyah*". According to Bubbalo and Fealy, the forms of activism coming from neo-fundamentalism aim to defend the purity of Islam, and in the case of *Jihadi Salafiyah*, to oppose the physical threats faced by the global Muslim community.[33] In the context of Indonesia, this writer's view is that the actions of the Salafi group *Laskar Jihad - Forum Komunikasi Ahlus-Sunnah Wal-Jama'ah (LJ-FKAWJ)* in the arena of Christian-Islam conflict in Ambon, to a large degree reflects and confirms the statements of Bubbalo and Fealay cited above.

The last part of this section briefly addresses the differences between neo-fundamentalists and Islamists. What really distinguishes Islamists from neo-fundamentalists? Roy believes that the major difference between them is their perceptions of State and politics.[34] Neo-fundamentalists reject all forms of political struggle to form an Islamic State. They hold that an Islamic State should come from re-Islamisation of the broad Muslim community, and they are not an instrument of that re-Islamisation. Neo-fundamentalists furthermore reject political activism, democracy, and basic human rights and freedoms. On the

33 Anthony Bubbalo and Greg Fealy, *Between The global and the local: Islamism, the Middle East and Indonesia*, p. 10.

34 Olivier Roy, *Globalized Islam the Search for a New Ummah,* p. 247-248.

other hand, Islamists strive to show how Islam represents the best form of democracy, through communal deliberation (*shura*), and provides the best protection of the rights of women. In brief, the writer sees neo-fundamentalism as an apolitical movement which directs its efforts towards religious perfection, while Islamists emphasize the need to use political parties as a vehicle by following democratic procedures to strive for establishing an Islamic State. As noted above, Islamists, much more than neo-fundamentalists, comprise both radicals and moderates.

D. THE BASIS OF SOCIAL ISLAMISM

Alongside these groups, many of social Islam's supporters come from the younger generation which has grown up in the middle of metropolitan cities. According to Gilles Kepel, their emergence is a result of the post war demographic explosion in the third world, and the mass exodus from rural areas. He explains that although they are gripped by poverty, this urban youth clearly has access to good education. In addition, members of this group also include young people of middle class birth. They include doctors, business people, and engineers who have discovered the ideals of Islam in response to feelings of despair, and reflections on their hopes and dreams. Kepel finds that it is not surprising that the majority of this group's members are young intellectuals, especially young graduates from faculties of science and engineering.[35]In the same vein, Susan Waltz, who studied Islamic movements in Tunisia, believes that, "*Liberal arts students studying Western ideas are exposed to the evolution of those ideas and to weaknesses of Western culture, whereas*

35 Gilles Kepel, *Jihad: The Trail of Political Islam,* (Harvard University Press: Cambridge 2002), p. 6.

students in sciences and technology are more apt to see western cultures as monolithic and properly hegemonic".[36]

E. THE RESURGENCE OF ISLAMISM IN MODERN INDONESIA

Indonesia's contemporary radical Islamic movements emerged in the era of national reformation, signaled by the collapse of Soeharto's New Order regime. Soeharto's government successfully repressed radical Islamic movements by imposing authoritarian government to ensure stability and sustained economic growth, at the cost of progressively mounting social tensions.[37] There can be no doubt that its authoritarian, centralistic and militaristic policies did ensure impressive social, political and economic stability, however an acute moral crisis in the bureaucracy, legal discrimination and breaches of human rights gave rise to frustrations and distrust of the government and the law.

Under reformation, previously marginalized Islamic groups arose in common support of communalism, evidenced by strenuous efforts to defend their existence from foreign threats to their identity, something which Manuel Castells called "the ego of authenticity".[38]One form taken by the rise of communalism was the birth of new parties and mass organizations, which adopted such primal symbols of joint identity as religion, ethnicity and group. These symbols

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36 Susan Waltz cited in Valerie J. Hofman, "Muslim Fundamentalists: Psychosocial Profiles" in *Fundamentalism Comprehended*, (ed. Martin E. Marty dan R. Scott Appleby), Chicago: University of Chicago Press, 1995), p. 210.

37 Manuel Castells,*The Information Age: Economy, Society and Culture Vol II, The Power of Identity*, (USA: Blackwell, 1997), p. 18-19.

38 Manuel Castells,*The Information Age: Economy, Society and Culture,* p. 12-20.

were commonly activated and manipulated to actively ensure group solidarity.[39]

Reformation also stimulated the birth of radical Islamic movements. Islamic movements adopted a wide variety of political opinions, depending on their individual interests, however the general aim of these Islamic movements was to "secure their interests, frequently by efforts to return to the unique and authentic teachings of religion, ethics, identity and ideology."[40]

Overall the era of reformation brought two varieties of Islamic movement. Firstly there are open and loosely organized movements. These movements are easily recognized by their clearly identified leadership, membership and centers of activity. Furthermore, the way they recruit members is open for all to see. These movements fall into two sub-types. The first of these comprises Islamic groups originating from within the country, such as *Laskar Jihad - Forum Komunikasi Ahlus-Sunnah Wal-Jama'ah (LJ-FKAWJ), Front Pembela Islam (FPI)*, and *Majelis Mujahidin Indonesia (MMI)*, as well as a number of smaller militant groups. It also includes radical groups affiliated with Islamic groups in the Middle East, such as *Jama'ah Ikhwanul Muslimin (JAMI)*, which is affiliated with *Ikhwanul Muslimin* in Egypt, and *Hizbut Tahrir*, formed in Jordan by Syaikh Taqiyuddin Nahbani in the 1950s.[41]

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39 Parsudi Suparlan, unpublished paper, "Ethnicity and Its Potential for Social Disintegration in Indonesia", a paper presented to the International Workshop on Ethno-religious Conflicts in Indonesia Today, Pusat Bahasa dan Budaya IAIN Jakarta, Jakarta, 25-27 September 2001.

40 Research Team, Pusat Bahasa dan Budaya IAIN Jakarta, unpublished report "Radikalisme Agama", (Jakarta: PBB and Pemda DKI Jakarta, 2000), p. 89.

41 There is much primary data about these groups. Among others, see

The second type comprises covert Islamic movements, usually labeled as underground organizations. These movements cannot easily be identified, and their recruitment processes are conducted secretly. Jama'ah Islamiyah (JI) is included in this type of movement. An ICG report has alleged that JI is an underground movement with a commitment to establish an Islamic state or revitalize an Islamic caliphate by jihad.It conjectures that JI was founded in 1994-95 by Abdullah Sungkar and Abu Bakar Ba'asyir.[42]

In the interests of this research, the following section will address the influence of the *Ikhwanul Muslimin* on the Tabiyah movement in this country, on the premise that it is closely linked with the research subject, namely a study of Islamist influences on office mosques in DKI Jakarta region.

F. THE INFLUENCE OF *IKHWANUL MUSLIMIN* IN INDONESIA

Ikhwanul Muslimin was founded in 1928 in Egypt by Hasan Al-Bana. Among its objectives were opposition to colonization, and a halt to the decline of Islamic civilization. In its struggles, *Ikhwan* adopted the ideology and system used by the fascist and communist movements. For this

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Chaider S Bamualimet. al, "Gerakan Islam Radikal Kontemporer di Indonesia: Front Pembela Islam (FPI) dan Laskar Jihad (FKAWJ), Research by PBB UIN Syahid Jakarta, 2001. Azyumardi Azra, "Anthony Bubbalo and Greg Fealy, *Between The global and the local: Islamism, the Middle East and Indonesia*,Militant Islamic Movements in Southeast Asia: Socio-political and Historical Context", in Kultur, Volume 3, Number 1, 2003, p. 22. "Gerakan Salafi Radikal di Indonesia (Eds. Jamhari and Jajang Jahroni), Rajawali Press, 2004, etc.

42 International Crises Group, Recycling Militants in Indonesia: Darul Islam and the Australian Embassy Bombing," *Asia Report* No. 92, 22 February 2005, p.22.

reason *Ikhwan* was accused of Islamo-fascism, being a political movement which derives its goal of seizing absolute power from the doctrines of the Koran.[43]

Ikhwan's Articles of Association state that the organization's objectives are to spread the word of true Islam, unite the communities of the followers of Islam, safeguard the nation's wealth for the welfare of its people, increase social justice, and raise the standard of living of the people. At the same time, *Ikhwan*'s agenda included a proselytizing movement through the mass media, preparing delegations and envoys for inside and outside the country, and educating its members in the systems and principles of *Ikhwan* (using study groups/training).[44]

From the outset *Ikhwan*'s partisans came from the lower levels of society and the poor. Over time it attracted the interest of intellectuals and a number of leaders with strong influence. This trend cannot be separated from the figure of Hasan al-Banna, who was both a skilled orator and a capable organizer.

Under Hasan al-Banna's leadership, the movement attracted the interest of millions of well organized members with a sound understanding of religion and politics. It also became firmly rooted in university student associations, youth groups and among professionals such as academic staff, lawyers, business people and artists. *Ikhwan* also had *nizhamkhas*, a secret armed unit skilled at conducting covert missions.[45]

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43 See, *Ilusi Negara Islam Ekspansi Gerakan Islam Transnasional di Indonesia* (Editor: K.H. Abdurrahman Wahid), p. 210-215.

44 M. Imdadun Rahmat, *Ideologi Politik PKS Dari Masjid Kampus ke Gedung Parlemen*, Yogyakarta: LKIS, 2008), p. 99.

45 M. Imdadun Rahmat, *Ideologi Politik PKS Dari Masjid Kampus ke Gedung Parlemen*, p. 100.

According to Al-Banna[46], in the 1920s and 30's the Muslim world was in decline because it was subject to Western governance and laws, and particularly to the separation of religious and political authority. Thus a return to Islam was a precondition for the establishment of an Islamic State. In this respect it should be noted that to achieve this goal Al-Banna had a staged strategy by which the formation of an Islamic State would be a consequence of Islamization of the people. In fighting for its goals, *Ikhwan* developed a system of *nizam al-usar* (cells, or families), each comprising ten members under the direction a leader. Each cell was a tough, closely cohesive and fiercely loyal unit in *Ikhwan*'s overall chain of command. Their principal role was education (*tarbiyah*). This *Tarbiyah* movement, which was also adopted in Indonesia, will be discussed more fully below.

In the early years of its development, *Ikhwan*'s political goals and militant activism were directed towards, among other things, pushing for reform of Egypt's Constitution, fighting corruption in the government, sending volunteers to Palestine in 1936-39 and to the Arab-Israeli war in 1948, leading and carrying out demonstrations and strikes, and conducting acts of terror and political assassination. Violent confrontation between *Ikhwan* and the Egyptian government in the closing years of the 1940s finally led to Hasan Al-Banna's death.

For some years after his death *Ikhwan* officially remained an illegal organization, but continued to operate. Its existence has been both tolerated and suppressed by successive governments holding power in Egypt. Since the 1960s, *Ikhwan* has largely abandoned the path of violence of its early formative years. It devotes most of its attention

46 Anthony Bubbalo and Greg Fealy, *Between The global and the local: Islamism, the Middle East and Indonesia*, p. 3.

to spiritual dimensions and intellectual reform, while continuing its efforts to create political room for itself, for example by nominating independent candidates in Egypt's parliamentary elections and winning control of various professional associations and organizations. Today *Ikhwan* remains the strongest opposition movement in Egypt.[47] Its influence is not confined to the Arab regions, but extends to and has taken root in many parts of the world, including Southeast Asia.

G. THE *TARBIYAH* MOVEMENT'S RAPID OUTGROWTH IN INDONESIA

In Indonesia the emergence of the *Tarbiyah* movement represented "a series of re-awakenings of ideological or political Islamist groups at the time of national reform."[48]

Within *Ikhwan*'s concept of "*Tarbiyah*" was the idea of "the ideal way of interaction with the human religious impulse, both directly (in words) and indirectly (by example, following particular systems and ways), to generate inner human change towards a better life."[49]

Seen more closely, the emergence of the *Tarbiyah* movement in Indonesia cannot be separated from the dynamics of the lively campus Islam movement from the 1970s to the 1990s. It had sociological impetus in the reform era of 1998, however the momentum of its emergence and transmission dates from the preceding New Order era, and coincided with the momentum created by the success of the

47 Anthony Bubbalo and Greg Fealy, *Between The global and the local: Islamism, the Middle East and Indonesia*, p.4.

48 Haedar Nashir, *Manifestasi Gerakan Tarbiyah Bagaimanakah Sikap Muhammadiyah?*, (Yogyakarta:Suara Muhammadiyah, 2007) p. 3.

49 Haedar Nashir, *Manifestasi Gerakan Tarbiyah Bagaimanakah Sikap Muhammadiyah?*, p. 8.

Iranian revolution in 1979. This movement started in the campus mosques of Indonesia's most renowned universities. The dynamics of this are also linked to the Dewan Dakwah Islam Indonesia (DDII – the Indonesian Council for Islamic Proselytism), which was established by Muhammad Natsir as a proselytizing organization with a political orientation, after failed attempts to rehabilitate Masyumi (Majelis Syuro Muslimin Indonesia – a proscribed Islamic political party) at the beginning of the New Order regime. In brief, DDII concentrated on proselytizing, including sending Muslim missionaries to curb the Christianisation of outlying areas. Masyumi itself gave birth to the Bulan Bintang (Crescent Moon and Star) Party, but this party did not push itself into proselytizing.[50]

The development of the *Tarbiyah* movement can be reckoned as very rapid. In only ten years, since the 1980s, it spread to all Indonesia's best known universities: UI, IPB, ITB, UGM, Unair, Unibraw, Unhas[51] and others. As well as this, its magazines *Ummi* and *Sabili*, voicing *Ikhwan*'s ideas and reporting on Afghanistan's politics and discrimination against the Muslim world, became increasingly successful in attracting loyal partisans and members. In the late 1990s this writer had the opportunity to experience the atmosphere in the study groups centered around the Gadjah Mada University campus during Ramadan every year. The imaginations of a number of friends in the same student

50 Haedar Nashir, *Manifestasi Gerakan Tarbiyah Bagaimanakah Sikap Muhammadiyah?*, p.20-21.

51 UI, Universitas Indonesia (University of Indonesia); IPB, Institute Pertanian Bogor (Bogor Agricultural Institute); ITB, Institut Teknologi Bandung, (Bandung Institute of Technology); UGM, Universitas Gadjah Mada (Gadjah Mada University, in Yogyakarta); Unair, Universitas Airlangga (Airlangga University, in Surabaya); Unibraw, Universitas Brawijaya, in Malang); Unhas, Universitas Hasanuddin, (Hasanuddin University, in Makassar).

year-group were fired by the concept of complete Islam, to be instituted by an Islamic state, or at least by implementing shariah law through legislation.

In Indonesia the *Tarbiyah* concept was vigorously developed by the Partai Keadilan Sejahtera (PKS – the Prosperous Justice Party). The rise of this party was seen as a political miracle. Its formation was announced in August 1998, and in the 1999 general elections it won 1,436,565 votes, putting seven of its representatives in Parliament. Moreover, in the 2004 general elections, its franchise expanded rapidly, attracting 8,325,020 votes and giving 45 of its representatives seats in parliament. However, the party was seen as having a hidden Islamist agenda. It also cornered some of the proceeds of Muhammadiyah's charitable initiatives, causing that organization to issue a directive (SKKP Muhammadiyah No. 149/Kep/I.0/B/2006)[52] aimed at protecting its interests.[53] Although of interest, this is peripheral to the research topic and will not be further discussed here.

H. CONCLUSION

This discussion has outlined a theoretical framework of contemporary Islamism and its development in Indonesia. More specifically, it has located the Tarbiyah movement within this framework. The writer's thesis is that after the *Tarbiyah* movement activists from prominent campuses graduated, many of them found work in various offices in Jakarta. They brought the spirit of *Tarbiyah* with them, and this colors their proselytizing activities in a variety of office mosques today.

52 SKPP, Surat Keputusan Pimpinan Pusat; Notice of Decision by the Central Leadership of Muhammadiyah.

53 M. Imdadun Rahmat, *Ideologi Politik PKS Dari Masjid Kampus ke Gedung Parlemen*, p. 3-4.

CHAPTER III

ISLAMIC TEACHING PRACTICES IN OFFICE MOSQUES AND STAKEHOLDER PERCEPTIONS OF IDEOLOGICAL ISSUES

With great enthusiasm, the mosque preacher for a Friday afternoon said that "the real terrorists are the Jews and the Christians". The main content of his sermon was dedicated to name-calling and mockery of these two Abrahamic religions. To legitimize his sermon the preacher frequently cited and misquoted verses from the Koran, among them the ones saying, "The Jews and Christians will not be content until you (Muslims) follow their religions." Another was, "For Allah, the most exalted religion is Islam."[1]

This sermon provoked considerable anxiety in the writer; what are the actual religious teaching practices used in office mosques, and does this religious teaching proclaim and appeal to the values of Islamic neo-fundamentalism? These questions guided the writer in looking into Islamic religious teaching practices in the Al-Ihsan and Plaza Mandiri mosques.

1 Observed by the writer at a Jakarta office mosque, July 2010.

A. A HISTORY OF OFFICE MOSQUES IN JAKARTA

Before starting this research, the writer had already been to Friday worship in office mosques in Jakarta. The mosque congregations, who were mostly white-collar workers, seemed to take part enthusiastically. It appeared that the congregation comprised not only these office workers, but also visitors from outside and people who had business in these offices. Worship and other activities, such as religious study and discussion groups and the communal five daily prayers, had apparently become or were becoming routine activities for a section of the Muslim office-worker personnel.

These days almost all offices, spread right across greater Jakarta, have mosques. If we look at this more closely, the industrial and trading belt of the MT Haryono, Gatot Subroto, Semanggi, Kuningan and Sudirman areas, for example, are full of mosques and prayer rooms. According to one informant, Jakarta's office mosques number in the hundreds. This number may even be in the thousands if mosques outside greater Jakarta are included.[2] There is reliable data showing that 250 office mosques have combined in FORSIMPTA (Forum Silaturahmi Masjid Perkantoran/ The Networking Forum of Office Mosques).[3]

FORSIMPTA was basically established to strengthen the bonds of mutual fellowship (*silaturahmi*), and to shape office mosques as centers of religious education for the Muslim professional community. The first working meeting, which became the foundation of FORSIMPTA's creation, was attended by ten representatives of office mosques, prayer rooms and women's Islamic study groups in the Gatot

2 Interview with C, July 2010, in the BKPM (Capital Investment Co-ordination Body) offices.

3 http://forsimpta.multiply.com/, last accessed 25 August 2010.

Subroto and Sudirman area on 18 – 20 May 2001, at Wisma Mandiri, Ciawi and West Java.

On 9 June 2001 (7 Rabi'ulAkhir 1422H), at Jakarta's Plaza Mandiri Mosque, the formation of a Jakarta-wide office mosque forum was declared by 14 founders, representing mosques, prayer rooms and women's Islamic study groups in the Gatot Subroto and Sudirman area.

Overall, based on initial information from FORSIMPTA website, religious activities in office mosques are blooming, from daily prayers, religious study groups, education, mobilizing *zakat* (charitable donation) funds, faith training and executive prayer retreats, through to activities during Ramadan, (the fasting month). In short, office mosques are able to satisfy spiritual longings; in the midst of the hustle and bustle of daily life they provide a place for spiritual catharsis and relief from the high stress levels felt by these Muslim office workers.

In their shape and form, these office mosques show great variation. Some take the usual form of mosques, with their own building complete with a dome, minaret and permanent, purpose-built space. Examples of these are the al-Ihsan Mosque of the Capital Investment Co-ordination Body (BKPM) and the mosque of the Ministry of Public Works. However there are also mosques consisting of only one large (or even small) room, on one floor of an often multi-storey office building. For example, the mosque of the Ministry of Public Housing (Kemenpera) is on the second floor, and is spacious enough to accommodate its congregation numbering in the hundreds. On the other hand, some office basement car parks are converted into mosques on Fridays. After prayers they revert to their function as parking areas. There are also mosques in office auditoriums or meeting rooms, which are borrowed to function as mosques every

Friday. However, in this study I define the office mosque is the common mosque everywhere but belongs to mosque. I did not include 'prayer room' and temporary prayer space.

The reasons for establishing office mosques are very diverse.[4] *Firstly* there are mosques established at the volition of an office's Muslim community, who want a mosque so they can conduct communal worship. *Secondly*, some mosques are established by the office management, factoring in the efficiency of personnel going to Friday worship in an office mosque and thus reducing the effective loss of working time. *Thirdly*, office management could take a political approach, particularly in the years 1980 – 2000 when there were only three political parties; Golkar (the Functional Group) with its yellow flag, PPP (United Development Party) with a green flag, and PDI (Indonesian Democracy Party). Jakarta was almost if not completely 'greened' by PPP. Golkar, noted as the party of the Government, worked to defeat PPP in the Jakarta region with three strategies; firstly by building mosques in every office complex, secondly by working to have every employee join a congregation for Friday worship, especially in offices, and thirdly by screening preachers and sermon material so that they did not conflict with official policy, or oppose or damage those in power.

In Muslim offices, attendance at the office mosque may be seen as influenced by the religious faith of the manager. One senior official and informant at the Capital Investment Co-ordination Body[5] said that if a non-Muslim became manager, then the religious activities which flourished were those of that manager's religion. In the situation where the manager was Muslim, those staff most dedicated to spiritual

4 Interview with KY, 30 July 2010.

5 Informal discussion with an official and informant at the BKPM mosque, after midday (*zuhur*) prayers, July 2010.

activities usually tried to use the opportunity for the glory of Islam. The writer formed the opinion that there remains a sort of veiled competition between the followers of different religions in the way they demonstrably observe and display their religious activities. Moreover, this can produce fragmentation between office workers of different religions.

B. A BRIEF PROFILE OF THE AL-IHSAN AND PLAZA MANDIRI MOSQUES

In 2004 the Vice-President of Indonesia, Hamzah Haz, officially opened the al-Ihsan Mosque at the Capital Investment Co-ordination Body (BKPM), located in Jalan Gatot Subroto. Thus the establishment of this mosque cannot be separated historically from the significant favor and contributions of Hamzah Haz, especially when he held the position of head of the BKPM and Vice-President of the Republic of Indonesia.

According to the historical record, initially the Muslim community at BKPM used its auditorium as its place or worship. While Hamzah Haz was head of BKPM he held discussions with a religious teacher about what he could contribute to the Muslim community. The teacher suggested that he build a mosque, for which he would be always be remembered, and rewarded by God on the last day. So the mosque construction began with the blessing of Hamzah Haz. During the building process, another of the contributors who favored the construction of this mosque was a philanthropist from Yemen.[6]

Today the al-Ihsan mosque is not only a place of prayer for the Muslims from that office, but is also open to others, be they staff from other offices around BKPM, visitors, or

6 Interview with KY on 14 July 2010.

outsiders who drop in to pray, rest, and take a break for a few moments.[7] At certain times even the nation's leaders join in praying here. These have included the Minister for Youth and Sport (Andi Alfian Mallarangeng), the Minister for Education (M. Nuh), the Chairman of the Constitutional Court (Mahfud MD), and the former Minister for Finance and current Director of the World Bank, Sri Mulyani Indrawati.[8]

The Plaza Mandiri Mosque has been operating since 1995, since the Plaza Mandiri building (then the Exim Bank building) has been in operation. The Exim Bank merged with several other banks to become the Mandiri Bank, and consequently in 1999 the Exim Bank building changed its name to become the Mandiri Plaza. The mosque was renamed following this change.[9] Using the designer Lian Sahar[10], the main space of the mosque was fitted out with calligraphy from the Koran on the upper part of all its walls. While the technological equipment of mosques is commonly limited to loudspeakers only, the Plaza Mandiri mosque is also equipped with other technology, which includes a recording system. This equipment is used every time prayers take place and for sermons and religious studies, as a convenience for office workers in their religious devotions. Senior managers, who often experience stress and tension from their workload, find this particularly convenient and do not listen to talk about any shortcomings of such services.[11]

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7 Researcher's observations, 4 – 18 June and 7 – 14 July (and other times) at the BKPM al-Ihsan Mosque, at midday prayers (zuhur) until late afternoon prayers (ashar).

8 Interview with SAJ and K on 14 July 2010.

9 Interview with K, 20 August 2010.

10 Interview with K, 20 August 2010.

11 Interview with AL, 20 August 2010.

Located in the basement of the Plaza Bank Mandiri building, this mosque was built to facilitate heightened spirituality in the staff of the Muslim Mandiri Bank, and so improve their work performance.[12] For this reason there are various discussion and study group activities apart from the required daily prayers and communal Friday prayers, both private and open to the public. Apart from this, the Plaza Mandiri Mosque is noted as a pioneer of the Jakarta-wide office mosque fellowship forum FORSIMPTA, already noted above. In 2005 one of the mosque's managers was appointed as the chairman of this forum.

C. A BRIEF PROFILE OF THE MOSQUE CONGREGATION, PREACHER AND MANAGERS.

Generally speaking, the congregation who routinely take part in the mosque's religious activities are Muslim office staff. As well as this, a small part of the congregation comes from outside. All of the mosque managers come from within the offices with which it is connected. However at the al-Ihsan mosque, some of the managers are retirees from the BKPM office. The mosque managers most usually have a national (public) tertiary institution educational background, especially from the general faculties, and few of them have had any contact with Islamic studies. One influential manager of the al-Ihsan mosque is a graduate of one of the country's leading universities, and completed further studies in Japan. The manager referred to, while not being recognized as a supporter of the party, has a wide network within the Prosperous Justice Party (*Partai Keadilan Sejahtera* PKS), which is strongly Islamic-influenced. Informal discussions

12 Interview with AD, 13 July 2010.

and researcher observations of internal mosque manager meetings gave hints of this. The congregation and managers can be said to have adequate financial means, as they comprise white-collar staff with good incomes. Interviews showed that the political affiliations or orientations of the congregation and managers tend towards the Islamic political parties which strive for the establishment of Islamic sharia law.

Based on the researcher's interviews and observations, some preachers with responsibilities at the two mosques have a background in religious organizations, among them NU and Muhammadiyah. Both these Islamic organizations represent moderate Islam. Thus the religious studies and sermons they deliver consistently contain moderate elements. However there are also preachers who come from organizations with significantly heavier Islamic overtones. An individual who stands out for this is a lecturer from Ma'had Al-Hikmah (located in Jl. Bangka III, Mampang South Jakarta). As well as this there are several Prosperous Justice Party (PKS) activists, who are also PKS members of the East Jakarta regional parliament (DPRD). Indeed, speakers from PKS circles seem to be strongly dominant in the discussion groups conducted. The preachers' political affiliations are also closer to the Islamic political parties who struggle for the implementation of sharia law by the intervention of authority.

D. ISLAMIC TEACHING PRACTICES

Types of activities and their intensity

The following section will set out the various routine religious activities held by the two mosques studied. In the opinion of the writer, to some extent the religious activities

at these two mosques also occur in a similar form in other office mosques, and also generally in mosques throughout the country.

The Five Daily Prayers (Rawatib)

Mosques wherever, including in Indonesia, are generally dedicated places of ritual, namely for the five daily individual prayers and the communal Friday prayers. The al-Ihsan BKPM and the Plaza Mandiri mosques are also used for these needs. However, if most big mosques always have crowds of worshipers for the five daily prayers, in these two mosques sizeable numbers of worshipers are only seen for the midday (Dzuhur) and late afternoon (Asar) prayers, and for Friday worship. This is because these mosques in fact cater to office workers with working hours from morning until late afternoon, hours which encompass the Dzuhur and Ashar prayer times.

At these two mosques the number of worshipers for Dzuhur and Ashar can reach 150. Particularly at the the al-Ihasan mosque, the five daily prayers are not limited to the Dzuhur and Asar. According to the manager of this mosque, every workday there can be up to 60 people at Sunset (*Magrib*) prayers, because some workers do not go home as soon as working hours are over. Some of them do overtime, and some delay going home to avoid the traffic jams which often occur in Jakarta. However for *Isya* prayers (at around 8.00 pm) there are approximately 50 people, and only 8 to 10 for dawn *Subuh* prayers.

Friday Prayer

Not all the mosques and prayer rooms in office buildings are used for Friday prayers, however the Plaza Mandiri and

al-Ihsan mosques are among those where Friday prayers are regularly conducted. Not surprisingly, every Friday at midday hundreds of Mandiri Bank staff crowd onto the escalators to go down to the mosque for Friday prayers. The congregation for Friday prayers comes not only from the Mandiri Bank; many of them are from office buildings in the vicinity of Plaza Mandiri. Going into the building at Friday prayer time, many (male) workers other than Mandiri bank staff can be seen entering and queuing in the lobby for ID cards, and then heading down to the mosque located in the basement. The 200 visitor ID cards available in the lobby usually run out in the approach to Friday prayers.[13] At the al-Ihsan mosque both BKPM staff and visitors are free to come into the mosque for Friday prayers without having to queue for ID cards.

The Friday sermon at both mosques is delivered by a preacher invited by the mosque. From the writer's observations, a different preacher delivers the sermon every Friday, and this is consistent with the mosque manager's explanation that the schedule of preachers is determined in advance.[14] Preachers include Drs. Ahmad Fauzi Lubis, MA, Ust. Hasan Dali, MA, and Dr. KH. Anwar Sanusi. The content of the sermon is left to the discretion of the preacher.

The subject material delivered through the sermon is general in nature. Some of the topics are concerned about the meaning of justice for human life, time use and religious conviction, the laws of Allah SWT and raising religious devotion, elucidating chapters (*surat*) of the Koran, such as the surat al-Ashr and surat Al-Zalzalah, verses 7 and 8. Apart from sermon material with a moderate content, some Friday sermons convey the religious understandings of Islamist

13 Interview with AL, 20 August 2010.

14 Interview with AD, 13 July 2010.

groups. For example, sermons about the moral degeneration of Jews and Christians, and about America and Israel as truly terrorist nations.[15]

Ramadan Activities

Ramadan activities at the two mosques are usually consolidated with various other activities, such as ritual spiritual cleansing when midday (*dzuhur*) and afternoon (*asar*) prayers are observed, otherwise regular religious studies continue as normal. As well as this, there is a communal fast-breaking gathering for those who stay to observe sunset prayers (*magrib*) together. During Ramadan the mosque provides 200 portions of *takjil* – a sweet food traditionally eaten to break the fast – and these are usually quickly and enthusiastically consumed by the people breaking their fast at the end of the day.[16]

Charitable Support Activities for Orphans and the Victims of Disasters.

Support for orphans is a social service activity conducted by the Zakat and Infak (philanthropic donations) section of the Mandiri Bank's BAPEKIS (Body for Fostering Islamic Spirituality). Support money is taken from the charitable donations (ZIS) fund, and donations to this are deducted from staff salaries. The al-Ihsan mosque is quite active in helping natural disaster victims, for example those in various parts of Jakarta.

15 Observation from participating in Friday prayers at the office mosque under study.

16 Interview with AD,13 July 2010.

Religious Study Groups

Apart from Friday prayers, the most common mosque activity is religious study groups. Several kinds of these are part of the mosque routine, and these are discussed below.

Religious Studies following Midday Prayer (Zuhur)

These studies take place regularly every Tuesday and Friday. They are aimed at office staff and the general public. According to the manager of the al-Ihsan mosque, the person delivering them is usually from inside mosque circles. Outside speakers can propose themselves to lead this study, however on certain days there is a regular study speaker. I observed one religious leader named D. who graduated in Egypt, explain with great enthusiasm the excellence of Islam and the weaknesses of other religions. He spoke with great pride about some priests who had embraced Islam.

Generally, however, not all speakers were like the religious leader D. Some of them, more often, gave commentaries on what being ethical is, according to Islam.

Regular Evening Study every Monday

According to the Plaza Mandiri mosque manager, these studies are to facilitate mosque members/ Mandiri Bank staff who want to learn reading the Koran, or improve their reading. The study group is intended for both male and female staff.

Regular Midday Study every Tuesday

Regular midday study every Tuesday is only for female members of the congregation. The Plaza Mandiri mosque

manager said that this takes place after the congregation's midday *dzuhur* prayers. Its venue is the women's rows of the mosque, an area about 8 x 6 meters, directly behind the men's rows. The study group participants are usually female Mandiri Bank personnel who take the opportunity in the break from office work to listen to spiritually cleansing words after midday prayers. Study group participants normally number from 40 to 60 people.

The material used is normally an exegesis of the Koran and Hadith. Each session usually takes from five to seven verses of the Koran and studies their meaning and interpretation. When the researcher joined this group the verses discussed were from Juz 29, *Surat Al-Mursalat*. Discussion of this chapter was targeted to end in the approach to the month of Ramadan.

The teaching method used for this study was a lecture. Usually each participant had a copy of the Koran, and opened it at the chapter/verse for discussion. The group manager also distributed a small booklet to each person, which addressed the text under discussion. The teacher explained the meaning and interpretation of the text verse by verse, and then went into this more deeply by presenting various actual issues related to the text. From time to time participants would ask questions or respond directly to the teacher's discussion if they did not fully understand, or wanted to know more about the commentary given. At the end of the analysis the teacher usually opened the topic for general discussion. These gatherings normally ended towards 1.00 p.m., when office work starts again.

The presence of the religious leader in these study sessions was not only to teach the Islamic material, but also to create a space where personal issues could be discussed, or where study group members could express their feelings.

This usually happened after the session finished, and was done individually. These members often felt close to the religious leader, and were usually themselves the managers of women's study groups who were used to communicating with him.

Midday Studies on Wednesdays

This study is for male and female members of the congregation, and takes place after midday prayers (*Zuhur*). A different lecture is presented every week. The name of the speaker is normally decided in advance, on an annual schedule, although if a scheduled lecturer is unable to attend he is replaced by a substitute.

The mosque manager does not involve himself in selection of the material to be presented for study.[17] He only provides initial guidelines, so that the material is not too rigorous or radical, does not offend issues of ethnicity, race or intergroup relations, takes into account the mixture of people in the congregation, and does not create conflict which may later impact on the work performance of the company's staff. Based on information given to the researcher by the mosque manager and congregation, a variety of themes are used for study, ranging from commentary, the Hadith and Islamic law, to community issues.

On one occasion when the researcher was part of the study group, the speaker also discussed a celebrity case that was currently in the news. As well as making the study situation flow more easily, the case was used as an example of the topic presented. This session also discussed issues about the jilbab (women's head covering).[18]

17 Interview with AD, mosque manager, 13 July 2010.

18 Statements from the congregation, interview with Y, a regular member

In this study session, time did not allow room for discussion or questions and answers. As well as this, on several occasions when the researcher was making observations, the speaker was often in a hurry to leave the mosque for other business.

A considerable number of the congregation came to these study sessions. Almost the entire congregation took part in the midday gatherings. The space in the mosque measures about 10 x 15 meters, and it was usually filled with study group participants.

Study Material

The Islamic study material usually revolved around commentary, the Hadith, law and responses to current affairs. As touched on above, the speaker or preacher is usually given the freedom to present any material that is not ethnically/racially offensive and is not too rigorous. Thus in using literature, the book referred to is usually made available to each person by the speaker. He generally addressed only the core issues of the books used. Apart from this, the sessions were also conditioned by the limited time its participants had to follow intensive studies.

Funds

The managers of both mosques advised that the operational funds for the mosques came entirely from donations (*infak and sedekah*), both from the collection box provided by the mosque and from collections at Friday prayers. Particularly at the al-Ihsan mosque there are some frequent contributors, including managers from BKPM, who donate such things

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of the congregation (female) on 14 July 2010.

as carpets and prayer mats as well as money. Receipts and payments are usually reported when announcements are made after Friday prayers.

Criteria for Religious Teachers

The mosque managers said that there are no special criteria for who should fill the positions of teacher or preacher at the mosque. The main thing is that they are considered to have expert religious knowledge. Neither of the mosque managers was greatly concerned about the proselytizer's background or organization, be it Muhammadiyah or NU. One al-Ihsan manager said that the preacher/speaker was in fact selected by the senior mosque manager. However a manager could propose a preacher to be given the opportunity to speak in front of the congregation. If the congregation seemed to like the content of the sermon, the preacher would be invited to preach again, or head the next study group.[19]

The writer's direct observations by joining Friday prayer study groups showed that those preachers / teachers whose orientation was somewhat towards Islamism were called upon most frequently. Once it was proposed to invite a speaker from the Liberal Islam Network (*Jaringan Islam Liberal* - JIL), however this was strongly opposed by another of the mosque's managers, because according to the senior manager, that "Plaza Mandiri mosque manager is really quite a fanatic."[20]

A number of fairly well known people have regularly and actively filled the positions of study group speaker and mosque preacher. Among these are Dr. Usman Assegaf, Dr. Uthman Umar Shihab, Dr. Didin Hafiduddin, and K.H.

19 Interview with SAJ, 17 July 2010.

20 Interview with AD, 13 July 2010.

Arifin Ilham, who was well known before this for gracing television screens.[21]Arifin Ilham was in fact scheduled as a regular study group leader every Wednesday mid-day. However because their commitments such as overseas travel and religious community development were steadily increasing, eventually they were seldom available for preaching or teaching at the Mandiri Mosque. The mosque managers apparently looked for replacements whose profiles were similar to these people's, although they were not directly recognized by the senior mosque manager. This was evident from the organizational affiliations of the people chosen, which leant heavily towards an Islamist orientation. One example was a lecturer from Ma'had Al-Hikmah (in Jalan Bangka III, Mampang, South Jakarta), who has very strong Islamist inclinations. Another one was a Prosperous Justice Party (PKS) activist who was also a PKS member for East Jakarta in the regional parliament (DPRD). They are both graduates of universities in Pakistan.

E. OFFICE MOSQUE STAKEHOLDER VIEWS OF IDEOLOGICAL ISSUES

The section will describe the views held by office mosque stakeholders, consisting of mosque managers, preachers and communities, concerning the ideological issues of the system of government, formalizing sharia law, jihad, gender equality and pluralism. Their views were ascertained by in-depth interviews and informal discussions held by the researchers to ensure the accuracy of the data. These were compiled into a description which can be taken as giving a preliminary picture of the actual ideological orientation of office mosque stakeholders in DKI Jakarta.

21 Interview with AD, 13 July 2010.

System of Government: Democracy and an Islamic Caliphate

In the Muslim world, including Indonesia, there is heated and ongoing debate over which model of government should be implemented in civic and national life. Proponents of radical Islam defend the viewpoint that the best form of government for the followers of Islam should be based on the laws of God, which leads to the concept of striving to establish an Islamic caliphate or an Islamic nation. According to this group, in this respect the democratic system is a man-made artifact and its use is not appropriate in the Muslim world, including Indonesia.

Thus, "theological influences" occur when Islam is linked with democracy. On the one hand there is the certainty that Islam is divinely revealed by God, making it the perfect, flawless religion, whereas democracy is seen as a human product, making it relative and consequently imperfect. On the other hand, Islam and Islamic culture are seen as being not consistent with democracy.[22]

As the antithesis of the concept of democracy, trust is placed in an Islamic caliphate as the alternative to the various multidimensional crises afflicting Indonesia. HizbutTahrir is a group which is trying to resurrect the discourse of establishing an Islamic caliphate, and promoting it as an Islamic system in opposition to the domination of Western democracy. According to Taqiyuddin an-Nabhani, followers of Islam should return to an Islamic caliphate system because it is the only system blessed by God and able to ensure the welfare of humankind. Conversely, all ideologies and faiths

22 S. Yunanto, et al, *Gerakan Militan Islam di Indonesia dan di Asia Tenggara*, Jakarta (the Ridep Institute, 2003), p. 51-52.

outside Islam, such as capitalism, secularism or Judaism, are infidel.[23]

In general, almost every informant interviewed stated their support for establishing an Islamic caliphate, although at the time some informants accepted the practice of the system of democracy. Apart from this, it needs to be noted that those who gave support to establishing a caliphate acknowledged that the idea of an Islamic caliphate was conceptually unclear, and would not be easy to put in place at this time.

Of the three component office mosque groups interviewed, the mosque managers, mosque preachers and mosque members, two of the members[24] were noted as strongly stating their support for establishing an Islamic caliphate, although they had little understanding of what an Islamic caliphate would mean. In their opinion the unity of the Islamic community would be more solid if it was under the aegis of Islamic authority, meaning a caliphate. They said that the establishment of an Islamic caliphate, or at least an Islamic state, would hold all the significance of founding a new nation. Their conclusion was that if a caliphate was established, it would bring about insurrection which could harm national unity.[25]

The mosque managers interviewed were uncertain about the mechanism for implementing a caliphate system.

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23 Taqiyuddinn an-Nabhani, *Piagam Umat Islam* (Bogor: PTI, 2003), p. 31.

24 Interview with SN (43 y.o.), occasional mosque member (Islamic finance employee) and Y (35 tahun), regular mosque member (Mandiri Bank employee), on 14 July 2010.

25 Interview with HP, regular mosque member and Mandiri Bank employee, on 20 July 2010.

They considered that caliphates were the concern and product of times past (long ago), and would be hard to establish today because their structure is not clear. As well as this, in the future, the system of authority and who would hold it would become complex problems, as each Islamic nation has its own individual problems. They worried that if the leaders came from another country they would favor their own country, while Indonesia would derive no benefit from this caliphate system.[26]

For mosque preachers, if the Muslim community is well formed the question of establishing a caliphate will resolve itself. One preacher, S.F., appeared reluctant to talk about the caliphate question, and considered that discussion of a caliphate was still a long way off. He thought that the main concern was how to make the people prosperous now.[27] The preacher A.F. was of the same mind, believing that if the Muslim population is properly composed, a caliphate will come about automatically.[28] K.Y., who is acknowledged as a senior preacher in office mosques throughout Jakarta, also agreed with the concept of a caliphate. However his view was that if people have well-developed personal spiritual growth, such as comes through proper family and community life, then individuals will spontaneously want an Islamic caliphate, and it will happen by itself.[29] So certainly not all the informants interviewed accepted the concept of democracy.

Among the informants interviewed were some who acknowledged that the democracy currently operating in the country was not a problem. According to A.D., "today's democracy is good, because it had given people the freedom

26 Interview with AD, Mosque manager, 13 July 2010.

27 Interview with SF, Mosque preacher, 20 July 2010.

28 Interview with AF, Mosque preacher, 16 August 2010.

29 Interview with KY, Mosque preacher, 21 August, 2010.

to engage in politics".[30] At the same time, for A.F. democracy can be likened to a tool like a knife; what it is used for depends on the person holding it. If it is a good person, it can be used can be used for good, but the converse also applies. According to him, "the effects of the democracy now practiced in the nation are being felt already".[31]

However some informants said very firmly that they did not believe in the concept of democracy, and pointed to the practice of democracy as the source of problems in the country. Two full time office mosque teachers blamed the results of democracy for various policies that had not brought benefit to the people. One of them had no faith in the practice of democracy through representatives of the people in parliament. When these two informants took part in elections, they said they supported the Islamist parties that speak out most strongly for the interests of Muslims.[32]

Formalizing Islamic Sharia

In the era of reformation, when the tap of liberalization has been opened wide, proponents of radical Islam have been very loud in speaking for the idea of formalizing Islamic sharia. This idea has gained momentum since the multi-dimensional national crisis of 1997, which made supporters of Islamic hard-line groups question the existence of the nation state, while turning to the idea of Islamic sharia as a panacea for all the problems and major crises gripping the country. The findings show that to some extent a proportion of the mosque managers accept the idea of formalizing sharia law. Regulating Islamic dress codes is one example of this.

30 Interview with AD, Mosque manager, 13 July 2010.

31 Interview with AF, Mosque preacher, 16 August 2010.

32 Interview with C and S, office-mosque teachers.

If some informants were still uncertain about the application of an Islamic caliphate or State in Indonesia, almost all informants agreed with the application of sharia law, including its derivatives in the form of Provincial regulations (*perda*), and forming institutions such as sharia-based banks.

The mosque members interviewed said that they fully agreed with putting Islamic sharia into effect in the form of sharia-influenced regulations. According to these informants, it was very fitting for Indonesia, as a nation with a majority Muslim population, to apply sharia law. One person from a different mosque said that he fully supported the introduction of sharia banking. This person even said quite explicitly that he did not feel comfortable working in a conventional bank, and wanted to move immediately to the sharia banking sector. According to him, "now that there is a sharia banking system, why do we have to stay with conventional banking which itself contravenes the teachings of the sharia".[33]

The views of the mosque manager, A.D., and of T.M.A., who runs a women's Islamic study group (TMA), were not far removed from those of the mosque member discussed above. A.D. was adamant that the coming of Provincial sharia regulations was the common aspiration of all Muslims, to create a prosperous, just and peaceful public social order. His opinion was that sharia not only made Provincial regulations in written form possible, but that these would be truly and tangibly enacted, such that *amar ma'ruf nahi munkar*, doing good and avoiding evil, would be put into practice according to the wishes of the Muslim people and the teachings of Islam. A.D. went on to say that

33 Interview with Y, regular mosque member and Mandiri Bank employee, 14 July 2010.

"it would be very good if Provincial sharia regulations were put into force in Jakarta, because its population is extremely diverse".[34] T.M.A. spoke more about the question of sharia banking, saying that Indonesia has been left far behind by other countries such as Malaysia and Singapore. In these two countries sharia banking has developed rapidly and is attracting the interest of many investors, including non-Muslims. He said that "Indonesia was one of the pioneers of sharia banking, but its development here was not as fast as in other countries. Watching this made him very concerned about the development of sharia banking in Indonesia".[35]

The views of the mosque preachers about this issue were in accord with those of the stakeholders discussed above, namely that Islamic sharia in the form of provincial regulations must be applied. According to S.F., the Muslim people in fact already enact Islamic sharia in their daily lives, such as the expression of greetings and the way they receive guests. Thus, the introduction of Provincial shariah regulations should not cause concern, because these mainly deal with matters of moral character. According to him, until now people have had too much of a phobia about the Provincial sharia regulations, and been too narrow minded in their view that sharia will give rise to discrimination against different parties. He further said that "the introduction of Provincial shariah regulations would not discriminate against non-Muslims".[36] At the same time A.D. (the mosque manager) took the view that Provincial sharia regulations presented no threat to non-Muslims, because they really only applied specially to Muslims, and were not binding on non-

34 Interview with AD, Mosque manager, 13 July 2010.

35 Interview with TMA, women's religious study group organiser, 14 July 2010.

36 Interview with SF, Mosque preacher, 20 July 2010.

Muslims. A.D. added "that if the regulations promulgated were good, they would certainly be well received".[37]

According to all respondents, it appears that the introduction of Provincial sharia regulations would have a positive impact, because this is part of religious teachings. Everything that comes out of religious teachings and regulation will always have a positive impact on Muslim people, and will not produce any excesses at all, especially for non-Muslims.

Jihad

In some parts of the West there is a deeply held assumption that Islam is a religion of terror, or one that shows the face of violence and is sustained by way of jihad. To some extent a similar view is still present in the thinking of Indonesian communities. The pejorative view that Islam takes the jihad route to achieve its religious and political objectives is reinforced by the occurrence of the September 11 attacks in the US (WTC and the Pentagon), the first and second Bali bombings, suicide bomb explosions in various parts of the world such as in Spain, and more recently the Mujahidin terrorist attacks in Mumbai, India.

Informants from each of the three categories (mosque members, mosque managers and mosque preachers) held the view that jihad could be differentially understood as jihad *an-nafs* or jihad *qital*, or war. In the case of the war in Palestine, informants (like Y) would fully agree with initiatives for jihad to help the Palestinians.[38] S.F. believed that although the true meaning of jihad is war, it had to be

37 Interview with AD (Mosque manager), on 13 July 2010.

38 Interview with Y, Mosque member, Mandiri Bank employee, 14 July 2010.

re-examined in context. In the Indonesian context it was not correct to see jihad as war, because unlike Palestine, today's Indonesia is not in a state of war. In Palestine people practice jihad by making war because conditions demand it.[39] A.F. concurred that the Palestinians' choice to wage war was a result of the conditions they experience. However he also said that under normal conditions the meaning of jihad was hard, dedicated work. He added further that jihad as war was justified for self defense, in the way that the Palestinians fight to defend themselves.[40] In his view self defense is a human characteristic, and this is what Islam proposes. The mosque manager, A.D., saw the meaning of jihad as contributing with body and soul, while war was the last alternative.[41]

On the issue of terrorism, AF did not say definitely whether he agreed or disagreed. He reiterated that it would be better to ask directly to the people that do it. It's quite possible that a teacher of terrorists would adopt a different emphasis. According to A.F., "the point is that jihad and terrorism should be meant as ways to defend your self".[42]

Gender Equality

These days the struggle for gender equality has been reasonably successful in Indonesia. For example, participation of women in the public sector, open access to education and women's involvement in politics are expanding, and this is a clear indicator of the success of the gender equality agenda. Despite this, the patriarchal culture deeply rooted in Muslim society still presents a number of challenges to the full implementation of gender equality.

39 Interview with SF, Mosque preacher, 20 July 2010.

40 Interview with AF, Mosque preacher, 16 August 2010.

41 Interview with AD, Mosque manager, 13 July 2010.

42 Interview with AF, Mosque preacher, 16 August 2010.

With regard to gender equality, some of the informants interviewed stressed that women could not become leaders, especially leaders of the State. For example A.F. said that "women could not become State leaders, and that this had already been proven in the time of Megawati who failed as a national leader"[43]. He likened the State to a household where most certainly a woman could not become her husband's superior. He went on to say that truly Allah swt had lightened women's burden so they wouldn't have to seek their own livelihood, because women are already fully occupied by childbearing and household management. A stronger opinion came from S.N. who said that if a woman became a national leader, then that nation would be destroyed.[44] This point of view appears similar to the commonly taught doctrine of state leadership, which says that "Allah destroys countries where women become leaders." This doctrine was also much used to reject the previous presidential candidacy of Megawati.

Pluralism

All informants in the study said that they had no problems in their relations with non-Muslims. However viewpoints like this only represent a relationship of co-existence, a type of relationship which would in fact be accepted by the majority of Muslims and non-Muslims in this country. However there were informants who said that they had no non-Muslim neighbors and seldom interacted with non-Muslims, and thus they had no problems with people of other faiths.[45]

Informant opinions were divided over non-Muslim leadership. According to A.D and T.M.A., having non-

43 Interview with AF, on 16 August 2010.

44 Interview with SN, occasional mosque member, on 14 July 2010.

45 Interview with AD, mosque manager, on 13 July 2010.

Muslim leaders was not an issue for them. It is better to have a non-Muslim leader who brings benefit than a Muslim leader who does not.[46] T.M.A. recounted his experience at the Mandiri Bank when it had Muslim and non-Muslim management. He said that "the non-Muslim took better care of the employees, was more thoughtful, less penny-pinching, and more concerned for employee welfare. The Muslim was just the opposite".[47] However they all agreed that other things being equal, the leader should be Muslim.

S.B.N. and Y said that a non-Muslim could not become the Head of State, because the majority of Indonesians are Muslim. A number of these informants appeared to have concerns that if a non-Muslim was leading the country, it would have an effect on the number of nominal Muslims in the country, and end up with discrimination against Muslims.[48] H.P. said "that relations between Muslims and non-Muslims should be on the basis of mutual tolerance, because both had the same rights, however he preferred Muslim leadership". A.F. was of the same opinion, Muslims have a different way of life from non-Muslims, and they should have different leadership. In religious issues there should be links between the way the different faiths are managed, however for business matters, transactions and other worldly affairs, non-Muslims could be the leaders of Muslims.[49]

46 Interview with AD, Mosque manager, on 13 July 2010.

47 Interview with TMA, women's religious study group organiser, Mandiri Bank employee, on 14 July 2010.

48 Interview with SN, occasional mosque member, on 14 July 2010.

49 Interview with AF, Mosque preacher on 16 August 2010.

F. CONCLUSION

The above description of religious teaching practices and office mosque stakeholder perceptions gives the initial picture obtained by the writer, that office mosques have become the arena for the growth of Islamic neo-fundamentalism and are strongly influenced by the *Tarbiyah* movement. More particular discussion and analysis of this appears in the following chapter.

CHAPTER IV

ISLAMIC NEO-FUNDAMENTALISM AND *TARBIYAH* MOVEMENT IN OFFICE MOSQUES

The preacher's rostrum for Friday prayer, and the various religious study groups held in the two mosques studied and in other office mosques observed during data collection, have already become or are becoming sites for the proliferation of radical Islamic ideologies. Concepts of Jews and Christians as "the real terrorists", for example, are often expounded by the person tasked with the sermon, as noted in the preceding chapter. At the same time, the perceptions of some of the mosque managers, teachers and preachers who were interviewed tend towards the radical. For example, a part of this group rejects the concept of democracy, and is more in agreement with implementing an Islamic caliphate as the system of government. They also agree with the imposition of sharia law by the authority of the State. These realities illustrate that office mosques today have already been utilized as vehicles for spreading radical views and ideas.

This section addresses the phenomena which are actually taking place in office mosques, and the extent to which these threaten the continuity of the moderate Islamic views and ideas subscribed to by most of Indonesia's Muslim community. By combining insights from the literature

on neo-fundamentalism (following Olivier Roy[1]) and other literature, this section draws back the curtain on the phenomenon of "Islamism" enacted by some Islamic groups that use the preacher's rostrum to voice radical Islamic views.

Two arguments will be used to throw light on the phenomena of Islam in these office mosques. *First* it is my view that neo-fundamentalist influences have already been widely propagated in office mosques. *Secondly* I take the view that to some extent the *Tarbiyah* Movement – a movement of traditionalist (doctrinaire) religious instruction - has played and is now playing a significant role in spreading the ideas of Islamic fundamentalism in office mosques.

In brief, this section will analyze Islamic neo-fundamentalism and the *Tarbiyah* Movement in office mosques, to provide a wider understanding of the dynamics of Islamic identity in the office mosques of greater Jakarta.

A. THE STRENGTHENING OF ISLAMIC NEO-FUNDAMENTALISM

As discussed in chapter 2 of this research report, Islamism is not a single, unitary concept, because Islamists themselves are made up of various groupings with different strategies to achieve the goal of an Islamic State. The view of Anthony Bubalo and Greg Fealy[2] is that the scope of Islamism is not to embrace the diversity of Islamic activists as one consolidated whole. In this regard it should be understood that not all Islamic activists have made Islam the political ideology of their efforts to build an Islamic State. Thus it is important to

1 See further the conceptual framework in chapter 2 of this report, especially concerning the expression 'neo-fundamentalism'.

2 Anthony Bubbalo and Greg Fealy, *Between The global and the local: Islamism, the Middle East and Indonesia*, (USA: the Saban Center for Middle East Policy at The Brooking Institution, 2005), p. 9.

examine Olivier Roy's term "neo-fundamentalism", because not all Islamists can be clumped together in the fold of Islamism.

According to Oliver Roy[3], neo-fundamentalism comprises many different hues of individuals and groups who commonly develop a literalist, scriptural approach in understanding Islam. As well as this, neo-fundamentalism covers a wide range of activities, which for the large part tend to stress religiosity and piety. Activism of this type is often associated with the Salafist group.[4]

The concept of Salafism itself attracted little attention in the academic world and media until the tragic events of 11 September 2001 in the United States, causing an uproar in the international world. Stated differently, prior to the horror of 11 September very few scholars studied Salafism. It was not the same with the discussion of "fundamentalism", which had become a topic of study since the killing of Anwar Sadat in 1981. Most generally, Salafism and Wahabism were studied in discussions about Saudi Arabia, as part of its history. Since Salafism spread to Europe in the 1990s it has attracted wide academic interest. However the scope of Salafi studies was very wide, and most of it was tied to radicalism.[5]

In Indonesia, Salafism has seized the interest of many parties since the collapse of the Soeharto regime in mid-May 1998, with the birth of radical Islamic groups like Laskar Jihad, Front Pembela Islam (FPI - the Islamic Defenders Front), Majelis Mujahidin Indonesia (MMI - The

3 Olivier Roy, *Globalized Islam the Search for a New Ummah*, (New York: Columbia University Press, 2004), p.1.

4 Anthony Bubbalo and Greg Fealy, *Between The global and the local: Islamism, the Middle East and Indonesia*, (USA: the Saban Center for Middle East Policy at The Brooking Institution, 2005), p. 11.

5 Roel Meijr, *Global Salafism Islam's New Religious Movement*, (UK: C.Hurst& Co, 2009) p. 2.

Holy Warriors Council of Indonesia) and others. Although different in their tactics and strategies, these movements are often referential of wholly doctrinal, textual and legal-formal Islamic groups with tendencies towards puritan religion. *Salaf* literally means "something in the past", the opposite of *khalaf* meaning "recent". *Manhaj salafi* in its true meaning is the attempt to find an ideal Islamic model of society from the historical experience of the classical Islam community. In its subsequent development, *salaf* is understood as the heterogeneous and historical experiences of times past which are seen as most authoritative in the history of Islam, especially during the time of *Khulafâ' al-Râshidîn*. This development is influenced by convictions that *salaf* society is the most ideal model for Islam to implement, as a true reflection of understandings of the Koran and Sunnah[6].

The name *Salafism* makes reference to the *Ahl al-Hadith* who lived in the time of Kekhalifahan Abbasiyah. These were people who concentrated on studying the hadith, with the objective of cleansing Islam of non-Muslim accretions. To build the purity of Islam, Salafism teaches the study of the foundational sources of Islam, being the Koran and the hadiths, and rejects unquestioning acceptance of the four schools of Islamic jurisprudential interpretation, and therefore although it follows a hard line it accepts carefully studied and reasoned exegesis.[7]

In the subsequent development of the history of Islam, use of the word *Salaf* suggested an Islamic movement or group. *Salafiyah* was understood as those who identified their thinking with the thinking the Salaf. At the same time the Salafiyah Movement wanted to develop the religion of

6 Nurcholish Madjid, *Islam, Doktrin dan Peradaban*, Jakarta, Yayasan Paramadina, 1992.

7 Roel Meijr , *Global Salafism Islam's New Religious Movement*, p.4.

Islam towards the purity of its sources, namely the Koran and the Sunnah of the prophet.[8]

This strengthening of neo-fundamentalism can be seen in several issues: an intensification of scriptural/literal understandings: the importance of enforcing Islamic sharia and a rejection of democracy; a hatred of Jews and Christians; and the significant role of Muslim youth as the agency of neo-fundamentalism. A fuller description of these four issues follows.

Intensification of Scriptural/Textual understandings

What are the Islamic teaching practices in mosques? Based on the findings in this study, as was reported in previous chapter, the practices of Islamic instruction in office mosques show that a large part of the lectures forming the substance of religious study groups stress textual conceptions (*harfiah*). In the al-Ihsan mosque, for example, the study group lectures of one preacher routinely comprised a literal verse-by-verse textual interpretation for the participants. Similarly, the writer observed a number of other preachers doing the same thing. As well as this, the study group model that is commonly used is unidirectional – a monologue. This kind of model facilitates an indoctrinization process by the preacher.

Looking closely at the Islamic instruction practices taking place in mosques, the writer believes (in Olivier Roy's words) that Islamic neo-fundamentalism is well developed. According to Roy, neo-fundamentalism "is a conservative, scriptural perspective, closed to the Islam which promotes *ummah*, or an international Muslim community based on Islamic sharia."[9]

8 Haedar Nashir, *Gerakan Islam Syariat: Reproduksi Salafiyah Ideologis di Indonesia*, Jakarta: PSAP & AMBOOKS, 2007, p.121.

9 Olivier Roy, *Globalized Islam the Search for a New Ummah*, (New

Furthermore, the Islamic teachings of these preachers lead to the concepts and ideas of the Salafist group, those of religious purification. In other words, on one hand the preachers strongly emphasize the purity and supremacy of Islam, and on the other they vehemently expound the failings of other religions. On one occasion the writer attended a mosque procession for a *muallaf,* a new convert to Islam. In his speech of welcome, the religious teacher leading the convert's entry spoke of the importance of acknowledging the oneness of God. This (he said) is not found or is different in other religions, for example in Christianity which believes in the Trinity.

Practices such as these appear to have the same form as the basic teachings developed by neo-fundamentalists, especially Salafists, which highlight the concept of the absolute oneness of God (*tauhid*), and reject all forms of innovation in Islam (*bid'ah*), polytheism (*syirk*), and blindly following new doctrines *(taqlid*). Hence they give strong emphasis to literal readings of the Koran and Sunnah.

Scriptural teaching practices as described above are fairly common in mosques spread across DKI Jakarta. This phenomenon is clearly expressed in the book *Benih-Benih Islam Radikal di Masjid*[10]. The majority of those tasked as preachers in the mosques tend to ignore contemporary developments. Reference to all things must be sought in the classical texts and by a literal understanding. Things of a theological nature cannot be problematic. However approaching every question through the classical texts, even modern developments like banking, democracy, human rights or medical technology, is no longer relevant.

York: Columbia University Press, 2004), p.1.

10 *Benih-Benih Islam Radikal di masjid Studi Kasus Jakarta dan Solo* (edited by Ridwan al-Makassary and Ahmad Gaus AF), Jakarta: CSRC UIN Jakarta, 2010, p. 57-58.

The Importance of Enforcing Islamic Sharia and Rejecting Democracy

Neo-fundamentalist groups defend the certainty of implementing sharia law without making any concessions to laws made by humans.[11] The theoretical arguments above may well have informed a number of viewpoints displayed by office mosque stakeholders, as set out in the preceding chapters.

Along with this, most mosque stakeholders held the view that the formalization of sharia law is of critical importance. An example of this is the Islamic dress code. Moreover, they agree with the institution of derivative sharia law in the form of provincial regulations (*perda*), as well as the formation of other Islamic institutions such as sharia-based banks. These facts appear consistent with what Roy demonstrates – that neo-fundamentalists defend the implementation of sharia law.

Some of the mosque managers who were interviewed stated that they did not agree with the concept of democracy now embraced by Indonesia. They also pointed to various political decisions issued by Indonesia's parliament as being invalid. Additionally, even if they take part in elections, they give their vote to an Islamic party, especially one which voices their aspirations to enforce Islamic sharia.

The results of CSRC's survey of DKI Jakarta mosque managers in regard to the formalization of sharia are something that requires further examination. For example, in relation to the government's authority to regulate dress codes, as many as 60% of them agreed. Similarly as many as 41% of mosque managers agreed that the state should have authority to regulate issues of worship by law.

11 Olivier Roy, *Globalized Islam the Search for a New Ummah,* p. 245

This struggle to impose sharia law, including views expressed by office mosque stakeholders, is one of the most important trends in the Islamic neo-fundamentalist movement, as Roy has stated above. Perhaps we can say that the neo-fundamentalist group's perceptions of enforcing sharia law, borrowing from Manuel Castells, really represent the effort to reconstruct identity which he talks about as "*the ego of authenticity*".[12]

According to Castells, identity reconstruction with an emphasis on authenticity, is supported by Islamic neo-fundamentalist groups (apparently started in the 1990s in a variety of social and institutional contexts) which always reflected the dynamics of social exclusion and nation-states in crisis. Thus the social segregation, discrimination and terrible unemployment which struck the Muslim world (including Indonesia in the 1970s) triggered the shaping of a new Islamic identity among disappointed and frustrated youth, coinciding with the dramatic appearance of radical Islamic movements in the Muslim world which was marginalized by comparison with the more advanced West.[13]

Several nations have worked to implement Islamic sharia, in their own ways. According to Olivier Roy[14], there were three different ways in which nations strove to answer issues of Islamic sharia: *Firstly*, limiting sharia to the personal sphere, family law and everything to do with morality; *secondly*, implementing sharia totally, as done by the Taliban

12 Manuel Castells,*The Information Age: Economy, Society and Culture Vol II, The Power of Identity*, (USA: Blacwell Publisher, 1997), pp.12-20

13 Manuel Castells,*The Information Age: Economy, Society and Culture Vol II, The Power of Identity*, p.20

14 Olivier Roy, *The Politics of Chaos in The Middle East*, (New York: Columbia University, 2008), p. 64.

in Afghanistan, and *thirdly* implementing political principles in the place of sharia, as occurred in Iran.

The situation until now in Indonesia is an approach by the first of these three methods. Examples of this are the existence of the Compilation of Islamic Law (KHI – Kompilasi Hukum Islam) and acceptance of the democratic system as the nation's choice while still allowing religion room to grow. However it needs to be noted that, particularly after the fall of the Soeharto's regime, the phenomenon of mainstreaming the enforcement of sharia law echoes strongly. In other words, the current trend is coming closer to the third trend above, although to a lesser degree, namely efforts to apply sharia-based regulations at district level. Thus we are witnessing a phenomenon of passing a variety of religiously-influenced provincial regulations (*perda*) in various Provinces, which is disturbing. For example, the CSRC research gave adequate reports that the implementation of provincial sharia regulations already threatens freedom of religion, the rights of non-Muslims and the rights of women.[15] Another example was in Tangerang, a region in West Java, there was a wrongful arrest when a woman was waiting for her husband and *Satpol PP* (officers) arrested her as an alleged whore. The same happened in Tasikmalaya when hair of a woman had been cut because it was alleged that she was a whore as well[16].

Hatred of Jews and Christians

A further argument strengthening the writer's suspicions about the growth of Islamic neo-fundamentalism in mosques concerns the sermons of mosque preachers, who give free

15 *Syari'ah Islam dan Hak Asasi Manusia*, edited by Sukron Kamil dan Chaider S. Bamualim, Jakarta: CSRC UIN Jakarta, 2007.

16 Ibid,.

rein to their hatred of the West, especially followers of Judaism and Christianity. This hatred is often seen in Friday sermons asserting that both Jews and Christians are "the real terrorists". This is consistent with Roy, who holds that those who are neo-fundamentalists believe that there is nothing of value to be borrowed from the West, and that it is pointless having discussions with Jews or Christians except to draw them into the arms of Islam.[17]

For this reason, and to this degree, anti-pluralist attitudes are growing in office mosque stakeholder circles. For example, the dismissive view of non-Muslims held by important leaders in the office-mosques studied.

According to Abdullahi Ahmed An-Na'im, if a social community defines itself as different from others then they close their eyes and ears to the views and ideas of outside groups who try to try to define or challenge their doctrines, normative regulations and religious activities. This has certainly been a constant problem in religious communities throughout history, what they view as critical voices carrying the risk of delegitimization by attacking what they – the exclusive community – are convinced are their eternal religious mandate and credentials.[18]

Moreover, An-Na'im gives the example of the impossibility of Muslims seriously supporting Islamic reform moves from a non-Muslim or from certain Muslims. People who make challenges intended to reform Islam are often seen as having become heretics and apostates, because their critiques are too far and too different from the general understanding of Islam. In the course of discrediting their

17 Olivier Roy, *Globalized Islam the Search for a New Ummah,* pp. 243-245.

18 Abdullahi A. An-Na'im, "Human Rights, Religion and Secularism: Does it have to be a Choice?", (article pending publication) p. 1-26.

views, conservatives often highlight questions arising with regard to piety, authenticity and personal loyalty. The dilemma facing religious reformers is how to maintain credibility as internal agents of change, critical of the religious beliefs and practices of their communities.[19]

Muslim Youth as an Important Neo-fundamentalist Actor

Who are these neo-fundamentalists? This section will discuss the actors playing roles in spreading the concepts and ideas of Islamic neo-fundamentalism.

With reference to Olivier Roy, neo-fundamentalists can be individuals or groups, thus covering Jema'ah Tabligh and extending to Jema'ah Islamiyyah. It is important to understand that neo-fundamentalism is neither a structured organization nor an explicit school of thought. Roy maintains that it is more a trend, a state of mind, and a dogmatic relationship with the core fundaments of religion.[20]

The major trend is that of Salafi, also incorporating the Wahabi of Saudi Arabia. Classified with this Salafi cluster are militant groups like the Taliban of Afghanistan and the *Ahlul Hadits* of Pakistan. As well as these, there are the conservative, tightly integrated groups such as *Ahlus-Sunnah wal Jama'ah* in the UK and USA. The other groups which should not be neglected are the neo-fundamentalist, politically radical groups like the *Quthb* movement of the 1970s, the Algerian GIA, *Al-Qaeda* and several radical Pakistani groups like *Jayash-e-Muhammad* and *Sipah-e-Sabaha*.[21]

19 Abdullahi A. An-Na'im, "Human Rights, Religion and Secularisme: Does it have to be a Choice?",.

20 Olivier Roy, *Globalized Islam the Search for a New Ummah,* p. 244-245.

21 Olivier Roy, *Globalized Islam the Search for a New Ummah,* p. 244-

One interesting finding from the observations deserving of examination is the past and current decisive role of youth associated with mosque management. These are individuals who are young in years, who are usually graduates of public universities and thus do not come from a background of religious education. One of the strongly influential leaders of a mosque under study is a graduate of a leading university in the country, who continued his studies overseas. These Muslim youth, according to the mosque manager SAJ, form the backbone of Islamic proselytizing in the mosque.[22] Through participatory observation, the writer saw the predominant role of youth in a meeting to determine Ramadan activities for 2010, in which these youth steered the course of the meeting.

In his book *Being Young and Muslim*, Asep Bayat[23] says that although there are differences in the way they behave towards radical Islam, young Muslim people from wherever, are connected by a common sentiment by which they form "Muslim Youth", an identity which is bolstered by a variety of international processes like "Islamophobia" or the oppression of Palestine.

According to Gilles Kepel, in a macro sense the post-war demographic growth of these Muslim youth has been explosive in the third world, accompanied by a mass exodus from rural areas. Although gripped by poverty, this urban youth actually has access to good education. Apart from this, supporters of this group come from the ranks of youth originating from the middle classes. Among them are

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22 Interview with SAS in an office mosque, August 2010.

23 Asep Bayat, "Introduction: Being Young and Muslim in Neoliberal Times" in *Being Young and Muslim: New Cultural Politics in the Global South and North*, New York: Oxford, 2010, p.16.

doctors, businessmen and engineers who who discover that the ideals of Islamic politics echo their feelings of despair, and reflect their hopes and dreams. It is not surprising that a major part of the groups' champions are young intellectuals, especially young graduates from faculties of science and engineering.[24]

Some scholars also indentify supporters of this Islamic group as a "revolt of the young", reflecting certain anxieties which drive efforts to find identity in a secular world filled with confusing options. The most acute identity issues are in the realm of culture, where the impact of Western culture is most strongly felt in cities and universities, arguably and more specifically arising in science faculties that that fully follow Western teaching. As Susan Waltz, who studied Islamic movements in Tunisia, has commented, "*Liberal arts students studying Western ideas are exposed to the evolution of those ideas and to weaknesses of Western culture, whereas students in sciences and technology are more apt to see western cultures as monolithic and properly hegemonic*".[25]

The writer believes that oppression of Muslims in a number of regions is a major concern of the youth associated with the management of mosques. Moreover, it is probable that these youth are the clear product of the burgeoning phenomenon of Islam on Indonesia's campuses. The flourishing phenomenon of campus Islam is closely interwoven with messages of a global resurgence. In contemporary times students on campus are led by a strong desire to return to the purity of Islam as represented by Salafist ways. Beyond this, a variety of campuses have witnessed

24 Gilles Kepel, *Jihad: The Trail of Political Islam,* (Harvard University Press: Cambridge 2002), p. 6.

25 Valerie J. Hopman, Fundamentalism Comprehended, The Fundamentalist Project, Vol 5, California: University of Chicago Press, 1995, p. 210.

signs of Islamisation, such as are seen in the predominant use of the head scarf (*jilbab*) by female university students, and the proliferation of books written by Islamists (both Sunni and Shi'a), such as Hasan al-Banna, Abu 'Ala al-Mawdudi, Sayyid Qutb, Mustafa al-Siba'i, Ayatollah Khomeini, Murtada Mutahhari, and Ali Shari'ati. This situation has undoubtedly conditioned the spread of transnational Islamic thinking, including that of Ikhwanul Muslimin, Hizbut-Tahrir and Jema'ah Tabligh.[26]

The writer believes that when the alumni of these campuses take up opportunities to work in offices, they bring with them their Islamist-influenced religious experiences. Office mosques become an arena for spreading their radical religious ideas.

To conclude, the writer argues that the majority of takmir in Jakarta office mosques that have not adequate Islamic teaching, usually were facing admiration toward indoctrination by several groups with radical tendencies in their universities, in particular *Tarbiyah* movement. I will elaborate this a bit more below.

B. TRACES OF THE *TARBIYAH* MOVEMENT'S INFLUENCE

The writer argues that some of the youth actively involved in reviving religious activities are, to a significant degree, alumni of the doctrinaire *Tarbiyah* Movement, which in reality has made campuses into arenas for spreading the doctrines of *Ikhwanul Muslimin*.

26 Noorhaidi Hasan, "The Drama of Jihad: The Emergence of Salafy Youth in Indonesia", in *Being Young and Muslim: New Cultural Politics in the Global South and North*, New York: Oxford, 2010, p. 52.

As discussed in the conceptual framework in chapter 2, the development of the *Tarbiyah* movement can be reckoned as very rapid; in only ten years, starting in the 1980s, it spread to all Indonesia's best known universities: UI, IPB, ITB, UGM, Unair, Unibraw, Unhas[27] and others. As well as this its magazines *Ummi* and *Sabili*, voicing *Ikhwan*'s ideas and reporting on Afghanistan's politics and discrimination against the Muslim world, became increasingly successful in attracting loyal partisans and members. These *Tarbiyah* members have apparently become proponents of religious activities in mosques.

Furthermore, the trail of *Tarbiyah* in office mosque activities is felt in the *haloqoh* teaching system (used in traditional pesantren) which is regularly used in study groups, especially those run by mosque managers. Apart from this, some of those presenting study materials are affiliated with the Prosperous Justice Party (PKS), which is noted as an organization supported by *Tarbiyah* activists. Additionally, there are mosque managers who openly admit to being part of PKS. From instances like these the writer would argue that traces of *Tarbiyah* can be found behind the stridency of Islamic teaching in mosques.

Finding the footprints of *Tarbiyah* religious leaders in office mosques, in effect, is nothing new. Alumni of the *Tarbiyah* Movement were initially study group activists on campus, and after graduation many were absorbed into offices. Through these study group networks, concepts

27 UI, Universitas Indonesia (University of Indonesia); IPB, Institute Pertanian Bogor (Bogor Agricultural Institute); ITB, Institut Teknologi Bandung, (Bandung Institute of Technology); UGM, Universitas Gadjah Mada (Gadjah Mada University, in Yogyakarta); Unair, Universitas Airlangga (Airlangga University, in Surabaya); Unibraw, Universitas Brawijaya, in Malang); Unhas, Universitas Hasanuddin, (Hasanuddin University, in Makassar).

of radical religion have been readily taught to mosque congregations.[28]

Going further, perhaps we can ask "what is the essential coloring of this *Tarbiyah* group's teachings?" One source (with the initials BT) stated that very often the sermons delivered by preachers at his work place tend towards the extreme, and carry political and jihadist overtones. The preacher is even quite happy to ridicule other groups who he sees as being different.[29]

Control of Religious Teachers

I make reference here to the explanation of a mosque leader, that if there are preachers from outside who want to use study materials, then they are given the chance to do so. In fact, apart from regularly scheduled preachers, space is given to unscheduled preachers for this. Preachers are also given preaching opportunities on the recommendation of the mosque manager.[30]

The writer's view is that weak control of study group preachers promotes the growth of radical Islamic concepts. This situation in fact allows the infiltration of ideas which occurs in mosques. The history of Dani Dwi Permasna, who became a suicide bomber at the JW Marriot Hotel, provides a valuable lesson. Dani was a study group member recruited by Saefuddin Jaelanai at the As-Surur mosque in the Telaga Kahuripan housing complex at Bogor, West Java. Further,

28 Ali Said Damanik, *Fenomena Partai Keadilan: Transformasi 20 Tahun Gerakan Tarbiyah di Indonesia*, Jakarta: Teraju, 2002, p. 216.

29 *Ilusi Negara Islam: Ekspansi Gerakan Islam Transnasional di Indonesia* (Editor: K.H. Abdurrahman Wahid), Jakarta: the Wahid Institute, 2009, p. 216.

30 Statement of an office mosque manager.

on a certain scale, a mosque study group may become an "incubator of Jihadism".[31]

However it is apparent that not all office mosques make their rostrums available to outside preachers, or preachers of the same orientation. There are mosques which do not give sermons to preachers who are seen as having a moderate orientation.

The book *Ilusi Negara Islam: Ekspansi Gerakan Islam Transnasional di Indonesia*[32] (The Illusion of the Islamic State: Expansion of the Transnational Islamic Movement in Indonesia), provides very clear signs. For example, the Body for Islamic Spiritual Development (*Badan Pembinaan Rohani Islam*, or *Binroh*) at one office studied was dominated by the *Tarbiyah* Movement (PKS). This is something endured by the senior cleric, AR, a graduate of al-Azhar University in Egypt and a person of moderate views. Since his return to Indonesia, and particularly since 2002, AR has largely conducted the office mosque's study groups. However since 2004 AR has no longer been permitted to preach in office mosques in Jakarta. As another example, BM, who has frequently conducted religious study groups in office mosques, had to swallow the bitter pill of being disallowed by them from holding study groups. Apparently after investigation, the office's *Binroh* was taken over by the *Tarbiyah* Group's network. In the long term, the spread and proliferation of the radical Islamic concepts by alumni of the *Tarbiyah* Movement is a threat to the face of peaceful Islam.

31 Ken Ward, "Indonesian Terrorism: From Jihad to Dakwah", in Greg Fealy and Sally White (eds.), Expressing Islam, Religious Life and Politics in Indonesia, Singapore, Iseas, 2008, p. 216.

32 *Ilusi Negara Islam*, p. 215.

C. CONCLUSION

The above description of the Islamic teaching practices and stakeholder perceptions of ideological issues gives a clear illustration that office mosques now and in the past express the concepts of radical Islam. The writer argues that neo-fundamentalism is a disturbing phenomenon which is finding ground in office mosques, particularly its tendency to use a scriptural/literalist approach to understanding the Koran and the Sunnah. Because neo-fundamentalism comprises a variety of Islamic groups carrying its ideologies forward, based on interviews and the literature, a robust *Tarbiyah* Movement is tightening its grip on office mosques.

CHAPTER V
CONCLUSION

To date, the ongoing Islamic teaching practices, such as preachings (khutbahs) that promulgate radical ideas in office mosques are viewed to be among the most serious of radical Islam in Indonesia. Put differently, there are growing phenomenon of neo-fundamentalism in Jakarta office mosques and their surroundings.

The two offices mosques studied, provide an entry point to look at the dynamic of radical Islamic ideas through a neo-fundamentalism lens and the narrative description of the real quality of the mosques studied, especially the Islamic teaching practices reveal views of ideological issues. There is much evidence to show that the office mosques are more than mere worshipping places and serve as a vehicle for voicing radical ideas.

The analysis and results of this research on office Mosques clearly point to the conclusion that the phenomenon of Islamism, specifically neo-fundamentalism, is represented in the Mosques studied. My recommendations are directed to relevant parties such as the ministry of religious affairs to take the issue seriously and prevent the spreading of radical ideas through the pulpit of the office mosques. All in all, I conclude that the office Mosques studied represent more conservative and extreme viewpoints than moderate tendencies.

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FOREWORD

Thailand has had a long relationship with the Muslim world which can be dated back over five hundred years, since Ayutthaya kingdom. Apart from the continuous interaction with Melayu and Arab civilizations, Muslim culture has become an integral and essential component entrenched in Thai society. Muslim comm nities had played significant role in the nation building and socio-economic, cultural and political development. Today, there are over four million Muslim populations in Thailand. Despite political violence in the southern frontier provinces, Muslims along with Thai citizens of other faiths continue to live side by side in harmony and peace. Begin situated in Southeast Asia and serving as an active member of the Association of South East Asian Nations or ASEAN, whose majority of the members are Muslims, Thailand strives to better understand Islam and the reality of complexity in the contemporary Southeast Asia This serves as a foundation for the integration and mobilization of human as well as diverse cultural and religious resources in the region for the attainment of collective prosperity and peace.

In this pursuit, Thailand Research Fund is pleased to be a partner with the Asian Resource Foundation and supported its research initiative titled "Islam in Southeast Asia: Views from Within". This research program is unique as it supports and encourager young Muslim scholars in Southeast Asia, aged below 40 to

undertake research studies pertaining to Islam in Southeast Asia from the internal perspectives. Research being carried out by the insiders and body of knowledge developed will enhance and enrich the understanding of the realities of Muslims in contemporary Southeast Asia. The outstanding themes this reach has tackled encompasses areas such as popular Islam, globalization and identity politics, gender realities, economic activities and social responsibility. The end products of the research studies have become the cutting edge which offers the new research perspectives contributory to studies in the field of Islam and Muslim in Southeast Asia.

The Thailand Research Fund strongly believes this publication will benefit academic and professional communities as well as wider public to gain insight into the realities and complexity of the modern Muslim world in the context of contemporary multicultural and multi-religious Southeast Asia. It is hoped that the findings can be further utilized and translated into concrete strategic remedies to the existing challenges both at policy and implementation levels.

Prof. Dr. Suthipun Jitpimolmard MD FRCP
Director of Thailand Research Fund (TRF)

FOREWORD

Problematizing Views from within "Islam(s)" in Southeast Asia

In 1953 the late Gustav von Grunebaum organized conference of-leading European scholars of Islam, the first to undertake a historical and critical self-understanding of "Islamic studies." The conference examined relationships among Muslims, and between Islam and various cultures. It found that the assumptions and methods used in fields of study like Islamic history lagged a century behind those used in European history. One year later Bernard Lewis remarked that the history of the Arabs had been written primarily in Europe by historians with no knowledge of Arabic and Arabists with no knowledge of history.[1]

Half a century later, research on the subject has changed. There is an increasing number of studies on Islam written by Muslims who know the faith, the cultures, and the practices in different contexts-the works by Akbar Ahmad, Mahmoud Mumdani, Chandra Muzaffar, and Nurcholish Madjid are just a few examples among many. Also changed is the global context itself. Now perhaps more than ever, "Islam" is more than just a description of a fifteen-century-old faith shared by one-and-a-half billion people. The word has strong emotive qualities for those both within and outside the faith. Two decades ago the late Edward Said wrote, "For the right, Islam represents barbarism; for the left, medieval theocracy; for the

center, a kind of distasteful exoticism. In all camps, however, there is agreement that even though little enough is known about the Islamic world there is not much to be approved of there."[2] It is therefore important to understand, from their own perspectives, the contemporary problems that Muslims are facing.

Works in this series, Islam in Southeast Asia: Views from Within, join many other writings on Islam by authors at the periphery of scholarship, using assumptions and methods that may no longer differ from those used in the centers of learning. But if such is the case, how is this series different from the other writings on Islam that are presently flooding the popular and academic landscapes?

To state the obvious, this series addresses Islam in Southeast Asia. In relation to the Islamic world, where the sacred geography, history, and language of the Middle East seems to have established that region as the center, Southeast Asia is clearly seen as the periphery. But it is misleading to conceptualize Southeast Asia as a single sociocultural entity. As is true elsewhere in the world, societies in Southeast Asia are heterogeneous. Muslims in Indonesia and Malaysia, for example, lead lives that differ from those in Thailand and the Philippines because of the different realities facing majority and minority populations in the respective countries. Furthermore, whether Muslims constitute a minority or a majority, their lives differ again when seen in contexts influenced by Javanese culture, British colonialism, Filipino Catholicism, or Theravada Buddhism, among other things. In short, the cultural topography of Southeast Asia is a rich multiplicity.

Consequently, Islam as believed in and practiced by people in the diverse worlds of Southeast Asia is not necessarily singular, since there could be as many Islams as the various contexts that constitute them.[3] The problems

facing Muslims in Southeast Asia will therefore vary. Those portrayed by researchers in this series are unusual, and their analysis is at times groundbreaking, but what they underscore is that Southeast Asian Muslims struggle with multiple identities in sociocultural contexts destabilized by globalizing forces. In addition, the fact that this research is carried out by young Muslim scholars is important; the "new generation" factor could explain both the distinctive set of problems these researchers are interested in and the fresh approaches they use.

The "views from within" approach, however, is not without its own potential problems. To engage in studies claiming to be "views from within" is in some ways to guard against the study of "others" as the study of one's own self, because in such a situation writers face other types of realities that are possibly distorted in some other ways. It is therefore important for readers to appreciate the effort researchers make to situate themselves at a distance that gives them a better perspective on the social realities of their subject while retaining their sensitivity towards, and ability to relate to, the people they are studying.[4]

At a time when Islamophobia is on the rise,[5] it is essential to find fresh perspectives that will allow us to understand the new problems and tensions facing Muslims in contemporary Southeast Asian societies, and to articulate the ways in which they negotiate their lives as members of communities of faith in a fast-changing world. This series of studies by young Muslim scholars of Southeast Asia is an important step in this direction.

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NOTES

1. Azim Nanji, ed., *Mapping Islamic Studies: Genealogy, Continuity and Change* (Berlin and New York: Mouton de Gruyter, 1997), xii.
2. Edward Said, *Covering Islam* (New York: Pantheon, 1981), xv.
3. Aziz Al-Azmeh, *Islams and Modernities* (London and New York: Verso, 1996).
4. I have discussed the problem of alterity in conducting research on Muslim studies in Chaiwat Satha-Anand, *The life to this World: Negotiated Muslim Lives in Thai Society* (Singapore and New York: Marshall Cavendish, 2005), 25-26.
5. Akbar S. Ahmad, *Islam under Siege: Living Dangerously in a Post-Honor World* (Cambridge: Polity Press, 2004), 36-39.

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GLOSSARY OF SPECIAL TERMS

anak jalanan	: street child or 'street kid'
jalanan	: of the street or having the character of the streets
reformation era	: term for the 'reform era' that gained momentum leading into president Soeharto's downfall in 1998; *reformasi* and *krismon* (krisis moneter, financial crisis) were key terms used across Indonesian society in efforts to characterize and institute social and political change during the early-post Soeharto years
santri	: an Aliran social grouping based on market and purest-Islamic features (Geertz 1960), more recently set in contrast to kejawen (Javanism) (Beatty 1999)
uin jakarta	: Universitas Islam Negeri (Islamic State University) Syarif Hidayatullah, jakarta
zakat	: Zakat (thanksgiving) is one of the Islamic principles which obligates all Muslim to fulfill it in specific times and requirements.

nasyid underground	: special Punk Muslim music genre which illustrates underground music collaborated with Islamic lyrics.
punk	: referring to young street boys with *Mohawk* hairstyle, very aggressive action and hard rock music genre.
pengajian	: learning Islam together or in a group
pesantren	: Islamic boarding school
dakwah	: an invitation to Islam includes missionary

CHAPTER I
INTRODUCTION

In 2011, I saw the uncommon phenomena of Muslim youth street protest when I visited Jakarta. It staged a protest of youth group to defend their Muslim brothers in Palestine. They claimed their group as "Punk Muslim" referring to young street boys with *mohawk* hairstyle, very aggressive action and hard rock music genre. This group attempted to support other Muslim communities, particularly Muslim Palestine, and put a curse on Israel. They performed hard rock music at Jakarta streets that was closely related to Islamic sense. The lyrics of music propagated that Prophet Muhammad is a great idol for all human beings.

After looking at their street protest action, I was curious to seek more information on this uncommon young Muslim group. Generally, the name of Punk—without Islam or Muslim—could be used to describe a young person or group who is already a criminal and very aggressive (in attitudes), violent, and can mean someone who listens to a kind of hard music or with their hair in a *mohawk* with color of pink and green highlights. But this group has different action compared to other punks because they endeavored to practice Islamic teaching either in private or public spheres. In some different moments, they promoted the importance of practicing Islamic tenets such as *sholat* (prayers) and Ramadhan fasting during the street protest at Hotel Indonesia circle in Jakarta

(Detik.com, 24 July 2011) during Ramadhan month. Other punk groups did not do this kind of street protest anymore.

Religious expression of Punk Muslim group through the street protest action has shown their struggling to negotiate with a common perspective of Indonesian people which have viewed them as naughty people, jobless and ragtag. It can mean that their existence is unwanted by society around them in general. As part of Indonesian citizens, the group considers their culture and environment of Islam because Indonesia is a predominantly Muslim society. Expressing Islamic tenets can predictably decrease negative stereotypes of this unwanted group. Besides, it also probably enhances their social status from the "alien" group to Muslim youth community. They claim that their efforts to deal with Islam are not only considering social status but also regarding private spiritual need. One of members said that being punkers as well as Muslims is difficult because both of them are contradicting each other (Nurhayati 2011: 45-46). It means that the idea of punk emphasizes full freedom of expression without any limitations such as their ethic of "Do It Yourself", while Islamic teaching emphasizes some responsibilities such as five daily prayers and religious respect for cleanliness and piety.

Punk culture has unique lifestyles that actively resist mainstream society, often out of traditional norms and values. Punk community usually relates to hard and fast music genre as well as its rebellion toward the political environment. The community desires to express a culture of freedom through hard rock music, using dark t-shirt with an offensive slogan, unique or multicolored hair styles, tattoos, and anti-governmental rules. As a subculture, the community is characterized by a do-it-yourself ethic and is often disengaged from mainstream society (Traber, 2001). Following O'Connor's (2002) statement, punk styles or

movements are not single and static because the movement always considers the local scene and its specific locations. In the Indonesian New Order regime, the punk community struggled against political authoritarianism. Most of the groups paid more attention to political issues because of the oppression and injustice of the Soeharto government (Wallach 2008: 101).

In contrast to punk's ethics and expressions, Indonesian Islam teaches structured values and norms. Is it possible for Punk Muslim to deal with Islamic tenets? In the Islamic teaching, there are five times obligatory prayers a day, an engagement in one's faith, and the requirement to pay obligatory *zakat maal* (Islamic tax) and *fitrah* (tithe in rice or money paid on the last day of Ramadhan fasting). These obligations mean that all Muslims have to do with those teachings. Both punk and Islam place faith in their own rules and cultures as opposed to other cultures. However, in the Indonesian Reformation era, punk groups seemed more focused on their identity formation, community development and even religious expression than either political resistance or the appropriation of the Western culture (Timahayati 2003; Murniati 2007; Blauch 2007; Nurhayati 2011). This occurrence shows the dynamic of punk culture in response to social change in the society. Punk Muslim group becomes the example of how Punk culture criticizes their previous ideology and tries to negotiate a new identity.

In line with their new identity as punkers and Muslims, the emergence of Punk Muslims also describes the influence of dynamic Islam in Indonesia within the Reformation era. Several studies on Indonesian Islam, for example Beatty (1999), Gibson (2000), Howel (2001), Hefner (2002), Hanneman and Schulte Nordholt (2004), Muzakki (2005), have explained about social change and transformation and its effects on expressions of Islam. A wide range of the

various expressions on Islamic ideology has been espoused by not only different individuals but also by Muslim groups. Furthermore, some of the ideologies have been adopted by particular individuals or groups from global ideology through transnational networks. Here, I argue that the rise of Punk Muslim is not merely inspired by local understanding but also affected by global punk Islam movements. *The Taqwacore*, a transnational diasporic Muslim punk subculture, has become an example of this. Their ideology of anti-establishment in accordance with Islam has spread widely through printed and digital media, especially internet media such as the social media of facebook and twitter. Therefore, the diaspora of transnational movement ideology is obviously possible to be an inspiration of Indonesian young Muslims such as Punk Muslim.

As a group of Punk as well as Muslim, it is very interesting to look into Punk Muslim's social identity which reflects their efforts to embrace Islam. The creation of the punk subculture has allowed individuals who seek an alternative lifestyle to thrive (Moran, 2010). Islam in the Indonesian context might become a potential ideology to amalgamate with punk. However, this research attempts to reassert the significance of religious expressions in this unique community. Beside their punk activities, they have actively engaged in Islamic study or *pengajian* (discussing some life's problems from Islamic perspective) to cope with spiritual need. This kind of Islamic *pengajian* is usually exclusive only for their members. As coping strategies for surviving in society, they have independent record labels and the Muslim punk silk-screening. Commonly, Muslim punk venues are what have kept the Muslim punk subculture alive.

The Muslim punk record labels and independent pressing systems have created a social network that allows for punk music and ideologies to be distributed. In 2011,

this group has several community networks in Indonesia such as in Medan, Bandung, Yogyakarta and Surabaya. Their social networking allows them to travel from one district to other districts. In addition, the availability of internet access has given them an easy way to disseminate ideas and communicate with networks. Facebook, You Tube, and blogs, for example, have become effective media to communicate what they believe, think, and respond to the particular problem. Almost everything about their opinions or exceptional activities has been published in those media. We can find their musical performance and protest action in You Tube by simply clicking "Punk Muslim" keyword as well as updating other activities and opinions in their facebook account.

A. WHY PUNK MUSLIM?

Punk Muslim is a new group name given by themselves that endeavors to integrate culture of punk and Islamic tenets. The members of the group are very distinctive because they are not totally punk and not fully Muslim. Alternatively, they are truly punk and perfectly Muslim. Whatever we assume and define about their existence, the group is obviously present as part of Indonesian Muslim people and Indonesian society.

I believe that the emergence of this group is not only given by someone or something but influenced by various processes of life. It is based on the founder history which attempted to return to his parent religion after involving in criminal and street boy activities. My intention here is not to address their distinctive uniqueness but to look at their practices and expressions dealing with Islam and cultural identity. The process of being Muslim and punk is not separated from their social life and cultural milieu. Hence, I prefer to look at their engagement in the Indonesian Islam

context in term of the transnational movement after the falling of the New Order era.

It is not surprising that some Islamic new movements have risen in the Reformation era. Hizbut Tahrir Indonesia (HTI), Ikhwan al-Muslimin (IM), and Jama'ah Islamiyyah (JI) movements are examples. Those movements have been considered by some scholars as an important group in the dynamic of Indonesian Islam especially after the 9/11 tragedy in the United States. Many of the members are Muslim youth who considered as radical, militant, extremist, and terrorist Muslims. Several studies have paid attention to those movements because of their extreme actions and networks abroad or mostly in Middle East countries. However, the studies have ignored other Muslim youth actions such as Punk Muslim. In essence, Indonesian Muslim youth movements have similar character which has tried to respond to global phenomena into their community.

The lack of attention to the Punk Muslim movement encourages my interest to scrutinize the group's activities. In my point of view, studying Islam and its society should also consider peripheral groups that remain a social problem within the society. Punk Muslim becomes a new dynamic of Indonesian Islam because it remains a reflection of other global movements such as *The Taqwacore* networks in the United State, Europe, and Middle East.

On the other hand, some studies of Punk groups or communities—without Muslim or Islam—in Indonesia have merely focused on their radical/political movements or subculture. For example, Michael Bodden (2005), Blauch (2007), and Wallach (2008) considered punk and metal group as a form of resistance to the social and political issues. The engagement of punk members to their official religion—Indonesian citizens officially have to follow a particular

religion—has been ignored by them. Religious aspects of Punk members are a hidden expression or very personal thing. In Indonesia, even though punk members express free manners, their knowledge and memory has not separated them from childhood memory in which their parents and school taught religion. Additionally, the members are mostly young and potentially will be back to their society and culture when they would be old. Consequently, their culture and society is closely related to religion. This standpoint wants to argue that religious aspects and expression of punk members as Indonesian remain important aspect in the study of Indonesian punk. Hence, this study will focus on individuals who have made Punk Muslim a life choice rather than people who do not necessarily support punk Muslim aspect of this subculture. This research also attempts to show how various individuals have created as well as survived in the punk Muslim subculture and will be conducted through interviews with informants who have specific roles in the punk community and extensive knowledge of the subculture.

Most previous studies of punk communities and its variant in Indonesia have focused on the social organization itself. Michael Bodden (2005) argued that the emergence of musical genres such as rap and punk throughout 1990s became alternative for Indonesian youth, derived from North American and European commercial culture. The specific historical development of Punk community in Jakarta has also been studied by Jeremy Wallach (2008). Wallach found that the story of Punks in Jakarta provides one illustration of how Western-derived music has become a fundamental component of generational identity for youth around the world. Both of them made a success of describing Punk community. The issue of religion or religious expression did not appear as a significant problem at that time and place. In the 2000's, Dorcinda Celiena Knauth (2010) attempted

to sketch the emergence of Indonesian youth popular music as a new Islamic movement. The research focused on the availability of Sufi aspects in the lyrics. However, the Islamic movement expressed by radical youth movement such as Punk Muslim has lacked attention.

B. METHODOLOGY

My way to conduct this research is based on classical ethnography, particularly in the way of Spradley's idea (1979). As a result, it requires in-depth interviews with participants who are currently active in the punk Muslim community to examine the core values of the punk Muslim movement itself. I believe that the core values that individuals hold based on punk Muslim ethics, ultimately sustains the punk subculture. It means that the observation of punk Muslim and activities relate to religious expression. In doing so, Islamic expressions of punk Muslim are explored through symbolic theory. This theory portrays certain Islamic expression including *nasyid underground* music genre. Additionally, I employ Victor Turner's framework to see Punk Muslim activities as a social movement.

To deal with such framework, I employed three common stages of ethnographic research:

1. Preparation: I prepared some field work needs such as mapping research site, making clear contact, booking room for lodging, preparing recorder, camera and other research equipments, and studying basic local language;
2. Data collection: I decided on certain key informants, to interview, observe and participate on activities related to religious expressions of daily life including body language as a system of

symbol, making ethnographic notes, and classifying documents, archives, files and pictures;

3. Analysis: It describes semantic relationship toward symbols in the data, finds elements in a domain, describes power relations between Punk Muslim and local government agencies and societies, describes religious elements both in perspectives and activities and interprets those description.

However, those classical ways of conducting field research could not reveal the personal views of punk Muslim member's. I found a very important way which was concerned with personal perspectives of members when responding to certain social issues. It was the digital field. My attention on this new way of doing ethnography was based on the experiences which did not cover the most important moment of the group. I found almost every important moment of the group in the digital area that I did not find in the real everyday life practices. Facebook account of Punk Muslim, You Tube, and blogs were pivotal aspects to explore punk Muslim activities. This area of research showed the significant history of their activities and movements even far before conducting research.

C. OUTLINE OF CHAPTERS

This research opens with a chapter discussing the background research information from my personal reflection toward the Punk Muslim phenomenon. It provides an overview of Punk Muslim religious differences as well as studies on it. I discuss the punk culture and Muslim society which lead Punk Muslim to be Muslim and still accommodate punk culture. The research method and theoretical background is described as well in this chapter. Chapter two provides

a general review of current studies of Islamic Punk. This chapter informs the tension of Indonesian Muslim research from the periods of Indonesian history. To know the current research this chapter tries to locate the research among other research dealing with Islamic punk in predominantly Muslim countries and predominantly Islamic charity. Chapter three considers the inception of Punk Muslim Indonesia. This chapter portrays the activities of Punk Muslim regarding routine and incidental activities. Those two types describe many kinds of Punk Muslim activities. Chapter four deals with social movement of Punk Muslim and how they make the relationship with their society. In addition, this chapter is also inspired by Victor Turner's frame of thought. Chapter five is an essential part of this research because this chapter attempts to narrate the making of Punk Muslim new music genre or *nasyid underground* as a strong character of new music genre. It represents the punk culture on one side, and Islamic teaching on another side. The last chapter is chapter six which concludes the entire part of the research.

CHAPTER II
STUDIES ON ISLAMIC PUNK

Numerous excellent studies have been conducted about Islam and social change in Indonesia. There have been studies on social structure of Indonesian Muslim society, for example Geertz (1960, 1984), Nakamura (1983), Peacock (1978), Bowen (1993) Beatty (1999), Woodward (1999), Kim (1996), Budiwanti (2000), Mulkhan (2000), Dhofier (1994), Turmudzi (2006). Other studies have been concerned with processes of social transformation and change in Indonesia and how they affect expressions of Islam, for example Brenner (1996), Gibson (2000), Hanneman and Schulte Nordholt (2004), Hefner (1987, 1993, 1999, 2002), Howell (2001), Hudson (1986), Van Dijk (1997), Woodward (1989) and many others.

Most of those works have however no concern with current social phenomena which entangle social media such as Facebook, Twitter, and blog as resources of social change. These new media in Indonesia become an important in contemporary society, especially Indonesian Muslim youth. In general, research on the current situation of Indonesian Islam must consider the role of new media. In so doing, this work aims to portray a new tension of social issue in Indonesia that concerns new Muslim youth movement.

Furthermore many studies do not take into account the global noise phenomena that link to the Indonesian

context. Although Islamic noise or Islamic music is not an Indonesian Islam mainstream because most scholars have placed it as a forbidden practice, we can easily find Islamic music or even hard rock music that have Islamic lyrics, in particular to young Muslim. Indeed, there are numerous factors that encourage new Indonesian youth movements. Those factors can be seen from the views of politics, culture, and economics that I do not discuss deeply here for my research concentration reason.

The studies of punk culture as part of global noise have mostly been concerned with political and identity perspectives. Many studies describe how this subculture copes with mainstream politics and culture. However, there are only a few studies which portray how punkers and its variants such as rappers and hip-hop groups tried to adjust their ideology as Do It Yourself to society's mainstream ideology. Most of the research, which is described below, reported the resistance of them. Empirically, there are punk groups who try to make acculturation between punk and society's culture in order to make them survive and independent in economic needs.

The most current global phenomena on punk culture are acculturation between punk and religious culture. The practice of these phenomena perhaps is not new but studies on these issues are still exceptional. I present here some studies on Islam and global noise which relate new trend of punk culture adaptation toward their society's culture. Then I focus on a new trend of punk movement which integrates their ideology to Islamic ideology of both non-Muslim and Muslim countries and, later, in the Southeast Asian context.

A. STUDIES OF ISLAMIC PUNK IN A NON-MUSLIM COUNTRY

Studies on punk and Islam in predominantly non-Muslim countries have flourished. Since the publication of the Taqwacore novel written by Michael Muhammad Knight in 2003/2004 in the US, some scholars have portrayed the group as a unique punk sub-culture which comes together with Islam in real life. It remains that great attention is based on the contradiction between punk culture and Islam. The first culture and its musical style actively resist mainstream society that characterized by punk's ethic of Do It Yourself. On the other hand, the second culture of Islam is structured religion which emphasizes responsibility of believers, devotion, and personal belief in God of Allah.

The phenomenon of the Taqwacore inspires scholars to depict its new movement and culture. The questions on the identity of the Taqwacore in the United States and members everyday life practices toward their paradoxical identity, for example, have been addressed by Sarah Siltanen Hosman. In the thesis entitled Muslim Punk Rock in the United States: A Social History of the Taqwacores (2009), Hosman argues that the group is conceptualized as an expression of a dual frustration toward the United States and Islam for members. It also serves as a form of resistance to this dual frustration (Hosman, 2009). The study of Muslim American Youth of punk written by Copp has a similar idea that young American Muslims have frustration to the environment. They tried to negotiate their own culture with religious culture to get more public attention (Copp, 2011).

By employing theories of subculture and identity, Actor-Network Theory and discourse analysis, Anderson, A. et al. describe that the Taqwacore has duality of Muslim and punk identity which triggers perceptions and categorization

from others. They have made it an imagined community in itself as well. Through giving name to themselves they have gained a cultural space among their community (Anderson, et al, 2010).

Based on ethnographic research, Hsu's work becomes empirical evidence of the dynamic relationship between Asian and American ethnic identity through the case of the Taqwacore. He explores the social and musical life of new generation Asian American musicians who engaged in independent rock music performances. Hsu's work has investigated the performance, ideology, and social networks of such musicians. Then, it argues that the musicians perform with a dynamic of ambivalence, covering, and uncovering ethnic and racial traits associated with Asian identities. This dynamic in effect contests racialization (Hsu, 2011).

On the other hand, there is a study on the Taqwacore which states that rather than offline, this group has actively been more expressive online to negotiate their identity as Muslim in America. It is because of the difficulty to access many public spaces to perform their expression. The internet becomes real media to create national and later transnational subculture movement (Murthy, 2010). Similarly, Inka Rantakallio's work provides meaningful finding on Islam and hip hop culture on the internet. This research has found that Muslim and hip-hop identity which contradicts each other is negotiated. Even though the study has portrayed hip-hop culture, but it gives similar trend and tension of current Muslim youth expression in the streets like the Taqwacore (Rantakallio, 2011). However, Taqwacore is not the first subculture to combine Islam and heavy metal or punk rock. Several studies (Shahabi, 2006) of the intersection of metal or punk and Islam have been published.

Other than Rantakallio's work on Muslim hip-hop, Suad Abdul Khabeer argues that through Muslim Cool, various ethnic American Muslims construct a religious identity that engages the boundaries of race and class in the broader project of American Islam. Religious practice of young Chicago Muslim activists is informed by hip hop's preoccupations with race and place, and establishing connections as well to particular notions of blackness and the 'hood become important techniques in configuring a sense of American Muslim identity' (Khabeer, 2011).

B. STUDIES OF ISLAMIC PUNK IN A MUSLIM COUNTRY

Punk is not restricted to production in the West. There are many case studies of Islamic punk in predominantly Muslim countries. Most of them are in Middle East countries where the religion of Islam has been rooted there. Shahabi's study of punk rock in Iran examines punk rock subcultures and Islamic societies. Shahabi emphasizes the importance of a particular social context for the political implications and consequences of the punk subculture. In Iran, certain youth appropriated a punk rock style but did not engage in open political resistance, however, their actions and styles of dress were taken as very political and in stark contrast to the traditional idea of Iranian youth (Shahabi, 2006).

In accordance with Islamic punk movement, hip hop Islam has remained high in terms of attention, in the Middle East. Mangialardi states that hip hop music in Egypt made an important contribution to encourage the spirit of the Egypt 2011 revolution. Youth generation revolutionary music and hip hop has signed the rise of young generation changes. The study reveals that, through hip hop, Egyptian rappers creatively engage with many of the same discourses

that characterize Egyptian culture more broadly regarding modernity, authenticity, and Egyptian identity (Mangialardi, 2013).

Other studies of hip hop movement in Egypt focus on the locality elements and its response toward global culture. Through linguistic approach, William S. Angela (2009) examine some hip hop communities include MTM, Arabian Knightz, Y-crew, and Asfalt who have unique forms of language and musical styles regarding the process of localization in the Arab hip hop music and culture. Localization means that they use local issue and language convention through the production of rap music to change local tradition. The communities try to criticize social imbalance through language massages in the lyrics of hip hop. It also happens not only in Egypt but also in other Arab countries like Algeria, Lebanese, and Palestine (Abbas, 2005).

Beside the Middle East phenomenon as representative of Muslim country, Southeast Asian Muslim countries such as Indonesia and Malaysia have important change of Muslim youth generation. There are some studies on the Islamic street music and punk studies without any relation to Islam. But it cannot be denied that Indonesian context is culturally close to Islamic culture. Many researches on punk community and its movement have conducted by foreign scholars like Michael Bodden (2005), Jeremy Wallach (2008), and Dorcinda Celiena Knauth (2010). Previously, in the first chapter, I have mentioned some studies on punk in Indonesia. In comparison to the studies of punk in non-Muslim countries, punk studies in Muslim countries are still rare in numbers. This reason also encourages my attention to do this preliminary research on that issue.

CHAPTER III
THE EMERGENCE OF PUNK MUSLIM

Since the overthrow of the Suharto dictatorship (in power since 1966) in 1998, the punk movement has been emerging in Indonesia, mostly in urban cities such as Jakarta. Even though there were some underground music performances criticizing the oppression and injustice of the Suharto regime during the period, the expression of punk movements in public spheres occurred freely at the beginning of the reformation era. The movements expressed through wall media where they sprayed a special graffiti, made anarchy and peace symbols both in stickers and t-shirts, and recorded special lyrics for their community. Freedom of expression is stressed in their slogan "Do It Yourself". It became a popular identity referring to independence community, anti-establishment, and counter-culture. Physically, they also had antique attributes of Mohawk and colorful hair styles and tattoos. It was very interesting for Indonesian young generation because shortly after their expression in Indonesian public spaces, the punk movement had great responses and networks in many cities throughout Indonesia. Punk group, for example Superman Is Dead, signed a contract with Sony music to release their album in 2003 because of the popularity of punk culture for the Indonesian young generation.

Identically, punk groups create their own lyric and music because it represents their agreement or disagreement

toward certain issues. The most common type of punk movement music genre is hard rock music. This kind of music shows their brutality and extreme expression to draw attention of listeners. However, some groups show a different musical type and expression. There are many punk groups including underground tawhid, one finger underground movement, ghuraba (militant tawhid) and Punk Muslim who have different musical type and expression. Punk Muslim group is the only group expressing not only hard music type but also religious activities in everyday life. Moreover, they promote religious obligation such as five times prayers in a day, fasting in Ramadhan month, and fulfilling zakat (thanksgiving) in a public space of Hotel Indonesia circle in Jakarta to introduce their identity as a new punk movement.

Punk Muslim and its activities have drawn my attention because they often held a street protest regarding Islamic tenets and other related Islamic issues, while punk commonly rejects religion or religious aspects in their movement. Promoting Islamic tenets for lifestyles is what they wrote in a banner "gak sholat gak gaul" (without prayers is not friendly). In 2013, they distributed some food and drink to the people surrounding their area in Jakarta during the fasting/Ramadhan month. They also did a similar activity in both 2011 and 2012. They often held a street protest at Jakarta square for achieving public attention. The group also protested the holocaust by military of Egypt toward civilians regarding the falling of Muhammad Mursi. In the name of humanity, the group recommended that the Indonesian president back Muslim adherents in Egypt.

Within the last three years, Punk Muslim has become the popular punk group in Indonesia. Some electronic and print media interviewed and discussed the existence of Punk Muslim. In the electronic media, for instance television, this group became a special guest several times

on various channels. We can trace some records of Punk Muslim performance, for example at SCTV, Trans7 and MetroTv channels through You Tube media. It is very easy to find the records of the group by simply typing keywords "Punk Muslim" in the You Tube search box. If we browse those keywords, there are hundreds of punk Muslim records which were uploaded by their fans, television channels, and themselves (accessed 26 August 2013). MetroTv record on You Tube showed 19,439 views and twenty comments. Surprisingly, this group has been invited by the higher rated TV program called "empat mata" hosted by popular artist, Tukul. This program has increased Punk Muslim popularity.

Beside electronic media, print media also stood behind the popularity of Punk Muslim through several editions and publications. One of the biggest Islamic newspapers in Indonesia, Republika, published some features regarding Punk Muslim's Islamic activities. This newspaper attempts to link punk culture and Islamic culture. Similarly, the popular Islamic magazine Hidayatullah has published this group many times (www.hidayatullah.com/tag/punk-muslim). A very good feature or journalistic report published in Jawa Pos daily news written by Agus Wirawan (21 May 2010) has inspired a study on Punk Muslim as Yeti Nurhayati's work (2011). Those media reports on Punk Muslim indicate that this group is an interesting subject to be discussed.

A. PUNK MUSLIM BIRTH

"Sampaikanlah walau hanya satu ayat. Saling ingat mengingatkanlah kalian dalam kebaikan."

(please call although only one verse. Please remind each other in the goodness)

"Yang dulunya lima botol, sekarang jadi tiga botol."

(previously five bottles but now three bottles)

(Ahmad Zaki)

Historically, Punk Muslim is a name which is given by people near Warung Udix Band, an embryo of Punk Muslim. The founder of Warung Udix band is Muhammad Budi Khoironi called Buche, a punker and a street musician in Pulogadung Jakarta. After contemplating for several times about his future life in 2002, he concluded that punkers are also human beings who live life normally like other people: getting married, having kids, having a house, having certain jobs, communicating and interacting with other people, and spirituality. Being street musician and punkers for several years made him rethink to gain established life that contradicts his previous punk ideology namely anti-establishment. Starting to reformulate his future life as a punker as well as a human being, he set up Warung Udix Band as a new space for him to express what he wanted to be punk and normal people. In this band group, he tried to fulfill the lack of religious spirituality by holding an Islamic study group (pengajian Islam) which invited some punker friends to join. Thus, people who saw this study called them as Punk Muslim. After several months, the membership of the Islamic study group has increased to a high number.

The Islamic study group is held every Thursday night after conducting their primary work as a street musician. The study took place at Budi's warung (meal/coffee stall) at midnight. Unlike common pengajian in Indonesia, the study was an informal discussion related to Islamic teaching and punk culture. Budi is an Islamic boarding school (pesantren) alumni who then often became a primary teacher at that forum. Sometimes, there was a volunteer Muslim preacher (ustadz) who taught about basic Islamic teaching. A year later, the group had a permanent Muslim preacher volunteer to guide them in serious religious discussion. Ahmad Zaki, a young Muslim preacher, dedicates himself to accompany study group members to understand Islam from the beginning. Together with Zaki, Budi tried to integrate the values of Islam into punk culture.

It was definitely difficult to realize Islamic values into punk culture because Islam rejects alcohol, narcotics, anarchy, tattoo, and other negative things. Budi tried to make a good escape by focusing on the humanity aspects of Islamic values. Budi and his friends such as Darma, Asep, Mongxi, and Luthfi are aware that they were sinful people and will realize Islamic teachings as much as they can. Then, the five principles of Islam such as shahada, salat, zakat, shaum, and hajj to Mecca were not practiced entirely because they felt that they have limitations to do. The four principles (excluding hajj to Mecca) was their main target as they discussed in every Islamic study meeting. Those principles brought them to the conclusion that the core of Islam is both spirituality and humanity: shahada and salat as spiritual, and zakat and shaum as humanity.

To achieve the spirituality of Islam, Budi and his friends begun to do five times prayers and did prayers together (jama'ah) at particular moments. The activity leads them into several consequences such as reducing the number of

alcohol drinks and washing several parts of the body every day (usually they wash it once a week or a month). However, they still had tattoo as the punk identity. It was simple Islamic practices that brought them into some lifestyle changing. According to Zaki, it was the implementation of the spirit "Yang dulunya lima botol, sekarang jadi tiga botol" (previously five bottles but now three bottles) as quoted previously at the beginning of this subtitle.

In order to practice humanity aspects of Islamic teachings, Budi and friends attempted to provide thanksgiving to poor people near their area in Pulogadung. The form of thanksgiving was not only material, but also immaterial such as helping people to find job, so on. Besides, they often provided aid for other punkers who were arrested by policemen in certain cases. The aid provided was giving payment to the policemen. After helping other arrested punkers, usually they had new members for joining the pengajian. It is an example of their slogan "Sampaikanlah walau hanya satu ayat. Saling ingat mengingatkanlah kalian dalam kebaikan" (please call although only one verse. Please remind each other in the goodness) as I quoted previously at the beginning of this subtitle.

In 2007, Budi met with an accident and passed away at the hospital. Before his death, Budi instructed Zaki to continue his dakwah to punker community. It was a heavy task for Zaki because he felt alone without Budi, a charismatic and good leader for him. Fortunately, there was other punkers like Darma, Asep, Mongxi, and Luthfi who actively supported their activities. To deal with the existence of the group, they tried to make an independent record of their songs. For promotional purposes, they used the name of Punk Muslim as a name of their band group. It came with protest of other punker groups because punk does not belong to a certain religion only and includes Islam. Some of

them fought Punk Muslim member because their activities opposed the daily activities of others.

One day, Punk Muslim's boarding house or base-camp was taken over by someone. Budi was the only person who knows explicitly about that base-camp, but he was dead. All of the Punk Muslim members were in panic and anxiety because they feared that they cannot gather to hold the pengajian as usual. The absence of a pengajian's place and base-camp were not a serious problem since they could gather on the sidewalk (trotoir) closed to Pulogadung bus station. For several months, the pengajian held in uncertain places such as a public garden and a regular halt but mainly at the bus station area.

The homeless condition of Punk Muslim attracted some non-government organizations (NGO) attention. One of national NGOs on child care issues helped them to rent a dormitory for Punk Muslim base-camp. However, since May 2013, they have their own new base-camp located in Jl. Swadaya 3, Pulogadung Jakarta. This new base-camp was a new spirit for them to engage in understanding Islam (see figure 1.). In this place, all Punk Muslim members learn Islam and learn to read Arabic or Qur'an. They use the base-camp as a house of studying instead of staying because sleeping in the street or bus station is their habit. Here is the place where Punk Muslim members contemplate and rethink about certain social issues. Most discussion is on social topics usually related to Islamic perspectives. For example, if they heard other Muslims in other countries are oppressed by dominant powers or military, they consider defending them through what they call a solidarity action. Within three years (2011-2013), they held street protests related to Islamic issues for instance support to Palestinian Muslim. They held pengajian regularly and other activities dealing with their skills development. In the new base-camp, they produced

an album of their song with Islamic nuance. Zaki, a spiritual leader of Punk Muslim, then became the manager of the Punk Muslim band. He has been promoting a Punk Muslim album to a wide range of society.

Figure 1. Punk Muslim members painted the new camp
(taken from Punk Muslim facebook)

The new camp enables Punk Muslim members to survive. Here they can share knowledge and experiences with each other in order to strengthen other members or new member spirits. Although there is no nameplate or street sign in front of the house, some journalists visited the base-camp to conduct an interview as well as live investigation. When we visited this camp, there were some Punk Muslim symbols showing their character and identity. The first symbol is located in the shelf of books or mini library at living room (see figure 2) and the second is in the front room.

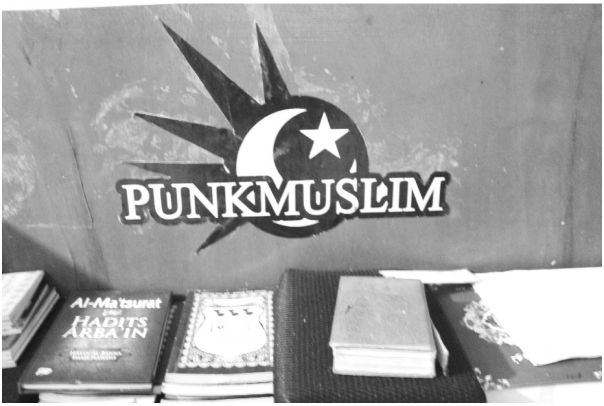

Figure 2. Punk Muslim's symbol
(my personal collection)

The Punk Muslim symbol shows that there are two cultural symbols namely punk and Islam which are integrated into one identity as "PUNK MUSLIM". According to a junior Punk Muslim member, the symbol of black Mohawk hairstyle means identity of punk culture as an anti-establishment movement. It shows that Mohawk style is a pointed hair to criticize the establishment in society. "The criticism always stabs something, so the pointed hair represent the criticism to our target of criticism," one member said. The symbol of the crescent moon and star refer to Islamic symbols which represent the culture (value) of Islam. The symbol means Islamic ideology which is integrated into an anti-establishment action. Punk Muslim convinces me that Islam is an open-minded religion which possibly accommodates the anti-establishment action in case of *maksiat* or wickedness (interview, 19 July 2013). They attempt to integrate both Islam and punk ideology within a new identity called PUNK MUSLIM.

B. ACTIVITIES

Punk Muslim members are street kids and musician who have main activities as street people. They live in the street every day for achieving economic needs by singing a song or selling some meals, snack, or cigarette. Most of the Punk Muslim members are based on this street life. In Jakarta, the phenomena of street kids/children appeared since 1990 which mostly shows economic problems. Punk Muslim members are part of street children who have economic and family problems. They actualize any expression on the sidewalk. The sidewalk becomes crucial for this group as represented in a lyric entitled "Sidewalk Love".

CINTA TROTOAR	SIDEWALK LOVE
Gak perlu kau katakan	It isn't important to say
Tentang sucinya cinta kita	about the purity of our love
Cinta kita lahir di jalan	our love was born in the street
Lurus bukan tak ada hambatan	straight but doesn't mean no obstacles
Biar…biar…biar…biar…	just let…just let…just let…just let
Orang lain mau bilang apa	other people will say something
Jalan mencinta trotoar	the way to love sidewalk
Slamat sampai tujuan	safe until the destination
Cinta…trotoar….	Love…sidewalk…
Cinta…anak jalanan	love…street children

Tuhan gak perlu romantik	God doesn't need romantic
Karena hidup terlalu bengis	because life is too cruel
Jangan jatuhkan air mata	don't cry
Tak ada tempat berkeluh kesah	no places to jeremiad
Aku percaya	I believe
Tuhan bersama kita	God is with us
Walau setan menggoda	although satan tempts
Kita tetap melangkah	we are still stepping
Cinta…Trotoar…	love…sidewalk…
Kasih sayang sepanjang jalan	affection along the street
Kisah cinta trotoar	love story of sidewalk
Kisah cinta anak jalanan	love story of children of the streets
Kisah usang yang terlupakan	forgotten old story
Dari pandangan mata kita	from our outlook
Semoga mereka berbahagia	may they be happy
Rasakan indahnya cinta	feel the beautiful love
Sama seperti kita	same as us
Cinta..trotoar…	love…sidewalk…
Kasih sayang sepanjang jalan	affection along the street
Cinta trotoar	love story of sidewalk
Cinta anak jalanan (2x)	love story of children of the streets (2x)

The lyric of Sidewalk Love shows the close relationship of Punk Muslims to the sidewalk based on their everyday life activities. It also describes Punk Muslim efforts to fight against the cruelty of life as well as against Satan and to reach the love of God. This lyric becomes the track record of their goal to achieve true and beautiful love; namely love of God as well as love of the real-life street children.

When I stayed at Punk Muslim's base camp, I was surprised a bit by the activities of Punk Muslims. Beside their primary work as street musicians at the sidewalk, they have a variety of work such as screening business and motorcycle washing business. Considering some different activities, there are two kinds of activity that are carried out by Punk Muslim: routine activities and incidental activities.

Routine Activities

Routine activities are everyday live performances which they execute daily as their repeated action. This perspective is an important point to look at the meaning behind the new ideology or new movement of Punk Muslims. Here I apply the framework of Victor Turner which attempts to unveil Punk Muslim's main purpose through their everyday life performances. Turner argues that:

> If man is a sapient animal, a tool-making animal, a self-making animal, a symbol-using animal, he is, no less, a performing animal, *Homo performans*, not in the sense, perhaps that a circus animal may be a performing animal, but in the sense that a man is a self-performing animal--his performances are, in a way, *reflexive*. In performing he reveals himself to himself. This can be in two ways: the actor may come to know himself better through acting or enactment; or one set of human beings may come to know themselves better through observing and/or participating in performances

> generated and presented by another set of human beings. (Turner, 1986: 81)

There are some routine activities performed by Punk Muslim members which can lead to organizational mapping of the group. These activities describe their environment as human beings interacting with another set of human beings. In this case, locating Punk Muslim routine activities in terms of performance means scrutinizing their entire activities which link to other activities as an interpretation. My involvement in some activities of the group will lead to achieve a better understanding toward their practices regarding punk culture and Islamic practices.

To be specific, this discussion of Punk Muslim's routine activities wants to depict the general view of the group. The description then indicates the relationship between what they said (idealism) and what they practiced (fact). This aim can be obtained through personal involvement. After sorting data which was collected from various kinds of personal interaction, there are activities include singing on the street, doing silk-screening business, motorcycle washing business, music exercise, jamboree, and visiting Punk Muslim networks. I am going to present those routine activities as follows.

Singing on the streets

As I understood, most of the Punk Muslim songs are of the hard rock music type. Albeit they provide very religious lyrics and content, the music or intonation itself is hard to hear. Is it applicable if they sing that hard rock song on the streets? It is absolutely difficult to do that because they have only a guitar or ukulele rather than drums. The two albums of Punk Muslim include more than ten songs belong to

hard rock music. Only a few songs that can be sung calmly or softly without drums. Thus, they did not apply hard rock music when singing on the street.

Singing in group or seems a better choice for Punk Muslim members to earn money on the streets. During my observation of their performances on the streets, there was no hard rock music that was sung by members of Punk Muslim. Most of the songs are acoustic songs with Islamic lyrics. For example, they often sing a Muhammad Idol and sidewalk love songs with acoustic music when they are singing on the bus and street intersection (*perempatan jalan)*. The choice is made based on the majority listener's taste. So that rational choice and not imposition of Punk Muslim's taste, prevails, because they need money from listeners.

Usually most members work as a street musician starting from afternoon to late night. The reason to do so at that time is listener consideration since most Jakarta people enjoy listening in the afternoon or evening rather than the rush hours of the morning. This reason not only comes from Punk Muslim members but also other street musicians. Azmi, a street musician at Jatinegara crossroad, said that he had more money to sing in the evening. It reaches approximately one hundred thousand rupiahs (USD 10), while his friends who sing at the same street quarters got only ten thousand (USD 1) or less. The peak season and/or weekend usually give them more money. Azmi told that he and his friends can get 200,000 rupiahs (USD 20) to 500,000 rupiahs (USD 50) a day on Friday and Saturday (Interview, 6 September 2013). This also was experienced by Punk Muslim members. Sometimes, they work not only in the streets, bus station or bus but also door to door with the same income.

Collecting money from streets does not mean they can take benefit individually. Commonly they ought to deposit

the money with the group or just share with friends and vice versa. This natural process of togetherness makes them unite in friendship ties. There is no exact rule how much or what percentage they have to deposit, but every musician has his own standard considering the income. In the Punk Muslim group, sometimes they collect their money to buy base camp needs such as soap, detergents for washing, and paints to paint the wall. Cigarette is a primary good to buy in turn because all of them are smokers.

For Punk Muslims, singing on the streets gives them two benefits: money and Islamic dakwah (making an invitation to Islam). The first benefit, money, is clear and becomes the main purpose of this activity. Without any money perhaps they do not sing on the streets. Money also encourages them to be street musicians as they have no other choices. The second benefit, Islamic dakwah, is a secondary purpose. This benefit is executed by Punk Muslim members through Islamic lyrics which contain Islamic beliefs and tenets. The "Menuju-Mu" (head to you) and "Ampunkanlah" (forgiveness) song, for instance, convey the important of taubat (repent and forswear) and consciousness of the existence of God. In the refrain (chorus) of Menuju-Mu, there are sentences "bisakah kita tersenyum bahagia// di antara tangisan mereka//ketika kita mati menuju dunia yang abadi//menutup mata lafalkan//laailaahaillaallahu.. muhammadarrasulullah (can we smile happily//among their crying/when we die heading to eternal world//close eyes and say//there is no God except Allah and Muhammad as a prophet) which lead listeners into confession of Islam. Similarly, the song "Ampunkanlah" includes sentences such as "tak pantas//tak pantas//aku berada di surge-Mu// tak sanggup//tak sanggup//aku berada di neraka-Mu" (No proper//no proper//I am in your heaven//no readiness//no readiness//I am in your hell) which become confession to

the believer's sins. Zaki, an Islamic teacher of Punk Muslim, claims that the lyrics are a form of Islamic dakwah (Sosok, liputan 6 SCTV). He convinces me that singing on the streets as it is done by Punk Muslim members is a media to spread Islamic beliefs and teachings widely and in an unconscious sense.

Silk-screening entrepreneurship

Since the members of Punk Muslim have a new base-camp in Pulogadung, they endeavor to create entrepreneur activities in order to change the habit on the street activity. An idea came to one member to start silk-screening business. This kind of entrepreneurial skill, will hopefully lead to business. But it is difficult to develop business of silk-screening. After two years, this business is still going to develop gradually with the support of independent network business specifically if they receive an order of Punk Muslim t-shirt from their network either in the Jakarta area or outside Jakarta.

In general, these entrepreneurial activities are a temporal activity and depend on the order. Sometimes they got a huge number of orders but normally only a few. Because Punk Muslim activities are not only focused on one kind of job, they subsidize silent sectors of the job such as silk-screening with other sectors such as motorcycle washing service, singing on the streets, and tire repairing. They even provide a free gift, especially t-shirt of Punk Muslim to other punk networks as well as sympathizers or guests who visit the Punk Muslim's base-camp. In their Facebook homepage, they suggest visiting them in order to get a free gift of Punk Muslim t-shirt (see figure 3) which resulted from their own silk-screening and design.

Figure 3. Free own silk-screening t-shirt gift information (taken from Punk Muslim Facebook page)

When I visited the base-camp, a member was giving me a black t-shirt with the Punk Muslim logo. The member said that it is their own creativity to design and do silk screening. In the living room, I saw a silk screening machine which looks very simple. Unfortunately, there was no silk screening activity because no order had come in. In addition to silk-screening t-shirt, there was a special picture which took place on the living room wall. At that time, my eyes also were directed to a big banner in the room. According to the member, it also was their own creativity.

Washing motorcycle services

In a capital city like Jakarta, the opportunity to do motorcycle washing service business is huge. The number of motorcycles slightly increases from year to year. Jakarta Globe newspaper reported that "In the January-September period, motorcycle sales rose to 5.79 million units from 5.33 million units. In September alone, motorcycle sales surged 38 percent to 675,902 units from the 488,983 units sold in August." (Jakarta Globe, 16 October 2013) This report indicates the high use of motorcycle as a favorite vehicle because perhaps there is no other better vehicle. Consequently, there are many owners who need to repair and wash their motorcycle. So, Punk Muslims take the chance to provide washing service for motorcycles.

The idea of the business came from an informal discussion when they meet in the base-camp. There is no one person who comes up with the idea but it is a result of the discussion. However, there are only few members who work as an operator of the washing machine. The machine is quite simple since the operator only makes a syringe to the motorcycle and the other lathers it step by step.

Once when I stayed in the base-camp, there were two members who departed for washing service. It was early morning in the month of Ramadan since most of their customers request to wash the motorcycle in the morning. According to members, most customers are busy in the afternoon and prepare for iftar in the evening during Ramadhan. So, the Punk Muslim members work only in the morning and directly do another work such as singing on the streets, campus, and mall.

The place of washing motorcycle service is close to the base-camp. It is approximately 500 meters from the area of Pulogadung bus station. The place itself is quite crowded and

strategic for inviting customers. They rent it from someone for several months/years depending on the availability of customers. There is no exact period of renting because the payment basis is monthly.

Playing music exercise

The other primary activity of Punk Muslim is the exercise of playing music. If we trace back to the history of the group, Punk Muslim is only the name of punk band group without any organized activities and movements. There were 10 personnel of the punk band group include Buce (founder, Budi Khoironi), Ambon, Asep, Mongxi, Luthfi and other juniors. Playing music is an everyday activity of their profession as street musicians. But the founder wanted to make different music lyrics with other punk bands. He focused on Islamic lyrics which still use punk rock genre. To strengthen their mastery on that music, playing music exercising was held every week. As a result, they were able to popularize the group band name with only a focus as a band group.

When popularity gained, Budi Khoironi was initiating to create a movement, namely Punk Muslim movement which invites other punkers to be Punk Muslim. Although the movement has been a success until now after Budi's death, the music and its routine playing music exercise has become a central activity for them. Recently they exercise to play music only on Thursday night in Ambon's house near Pulogadung area. In the day also they have great activity namely Islamic study group which is arranged before playing music exercise. This activity is held to enrich their capacity as a musician, develop their skill, and transform the skill to junior or new personnel.

The creativity of Punk Muslim when they try to make a new genre of punk song remains criticized by other punk groups. Various mockery is addressed by others to a new song and its group. One of the popular mockeries is the name *nasyid underground* which becomes part of a new genre. The name refers to the spirit of Islamic lyrics covered punk style. The copy of album especially the first album of Soul Revolution sold thousands of copies.

Islamic Pengajian and Punksantren

The study of Islamic teachings (pengajian) is held every Thursday or Tuesday night after conducting primary work such as singing on the streets or other activities. Firstly it is located at Budi's warung (meal/coffee stall) at midnight. Unlike common pengajian in Indonesia, the study was both formal and informal discussion related to Islamic teaching and punk culture. But mostly it is conducted through the informal method. Recently there are permanent teachers of pengajian namely ustadz Ahmad Zaki and ustadz Ismeidas. Both of them are permanent volunteers to teach Punk Muslim members. Some members reported that ustadz Zaki is a very kind person, friendly and chummy, while ustadz Ismeidas is a humorist.

This kind of routine activity is very well-known with the name "Punkajian" (teaching for Punkers). This is the principal activity through which all members can learn more about Islam. This forum brings them towards a basic understanding of spirituality, especially Islamic spirituality. There is no heavy task in this forum. Most of the members can only sit and listen to what the teacher's explanation is (see figure 4). If the audience has a particular problem or question, it can be addressed to the teacher to be discussed in the forum.

Figure 4. Punkajian (taken from jpnn.com)

Pengajian has become the pride activity of Punk Muslim members. This is a symbol of Islamic practices in order to show to the public attention that they have Islamic activity within a culture of punk. Some members claimed that this routine activity brings them to significant changing. In an interview conducted by liputan 6 siang SCTV, Asep, a senior member, said that his life is gradually better in spirituality because he has a meaningful activity of pengajian. He further explains that it is not only listening to the teacher's explanation but also reciting the Qur'an and feedback sessions.

In relation to Asep experience, another member Anggi Setiawan gave different experiences. He found it easier to live and work since he has joined the pengajian of Punk Muslim every week. "I was not able to read Qur'an so I just heard and listened by my ears", he said. After feeling better in manner and attitude, he invites his other punkers to join the pengajian one a week. He remembered his story of first coming to pengajian: "my friend asked me to follow pengajian and I tried to come. Then I was interested in the activities because it was something different for me."

The pengajian forum has decreased gradually since it was held at the first time. In the first phase of pengajian, there are more than 40 people or between 40 to 50 people. Second phase has decreased to 20 people. In the third phase or since 2011, the audience has become higher in number again until 15 to 20 people. The duration of pengajian usually takes between one to two hours with several rests, personal stories and jokes. It starts from 10.00 or 11.00 pm to 00.00 am or more. The time and duration is a bit late because they consider the activities or work of each member.

According to Zaki, there are some subjects which are taught by teachers. The subjects included *tauhid* (unity of God), *akhlaq* (morality), *fiqh* (Islamic law), and *mu'amalah* (Islamic practices). The most favorite subject is about *tawhid*. It is because the discussion explains about basic knowledge namely *takdir* (fate), heaven and hell, livelihood, death, judgment day, and marriage partner or mate. Other subjects are focused on practical understanding such as how to do ritual ablution before prayers (*wudhu*), how to do prayers, fasting, and thanksgiving.

Something interesting in the pengajian are situation and method. In the method of teaching, the teacher reads doa (prayer) and the audiences reread it together. Before starting to give a speech, the teacher recites verses of Qur'an shortly. After that, the teacher gives a speech and continues with discussion and personal story. That method of teaching is done by the special situation. Because all of the audiences are street people, some of them are usually eating, drinking, and smoking during the forum. It is free to do something that is uncommon in the similar forum in Indonesia.

Similarly, Punk Muslim have same activity but hold in a special time and place. It is Punksantren or pesantren punk meaning that they hold pengajian in a full day in the

three days. The subjects are similar to pengajian or Punkajian but it is located in special areas such as in Pisangan, Banten (see figure 5). The reason to locate it in a special place is to achieve spiritual maturity in understanding Islam. It can be achieved through several comprehensive trainings in daily activities such as practicing five times prayers and waking up early in the morning to do fajr prayers.

Figure 5. A location of PunkSantren

As I mentioned above, this event is held in a special moment. It is Ramadhan month because they expect to gain berkah (blessing) of this forgiveness month. Ramadhan month, according to the senior member of Punk Muslim, is a great month to start changing everything especially morals, attitude and character. So, this reason encourages Punk Muslim group to hold PunkSantren every Ramadhan month. Because this routine program is so special, they create a unique design of t-shirt and logo referring to their agenda (see figure 6).

Figure 6. PunkSantren logo

In 2012, for example, the program of Punk Santren invited Ahmad Rosyidin who is well-known as a spiritual teacher of the Opick Islamic group band. The year brings approximately 40 new members of Punk Muslim from street kids. Some of them joined the Punk Santren program to reveal new spirituality. At this event, the most challenging program was tahajjud prayer which showed the effort of each participant to fight against laziness, sleepiness, and freezes. Zaki said that the aim of this program is to recruit new members and introduce Islam to street kids (hidayatullah.com, 16 Agustus 2012).

Jamboree (new member recruitment)

Jamboree is the routine activity to recruit new members of Punk Muslim. This activity is usually held once a year. The term jamboree refers to boy scouts gathering to introduce one and another through several agendas. It usually uses camp method to alienate members from other activities. A similar understanding is also used by Punk Muslim to hold new member recruitment. All participants in this event are alienated or quarantined in a certain quiet place. The

purpose of that place is to follow entire programs and to fully concentrate on the event.

Practically, not all participants are new members of Punk Muslim. There are only few new members and some members from outside Jakarta. However, the focus of the program is the new members. They come from different backgrounds such as street kids of beggars, pick pockets, street musicians, punkers, and a vendor who sells things through the windows of a train coach or bus or by going onto a train or bus when it stops at a station.

In a jamboree program which was held in Puncak, Bogor, there were a majority of new members. They felt proud to be there because they know something about Islam. Most of them promised to join again in the next year's agenda (Nurhayati, 2011: 50). In the program, contemplation and reflection toward the existence of nature are important to understand the existence of God. It is reflected, for example, in the program of natural investigation (see figure 7).

Figure 7. Investigation of nature

Within three to four days, the activities are very close to previous events such as Punkajian, Jambore and PunkSantren. Such programs like midnight prayer (tahajjud), reciting Qur'an, and prayer together are executed in this activity. Indeed, the main priority of this program is to introduce new members to the Islamic tenets from the basic understanding and practices. Understanding Islam from the basics is not enough only on knowing it as knowledge but the very important aspect of that, according to members, is to know how to practice it in everyday life. It refers to Punk Muslim's purpose to be Muslim as well as punkers.

Strengthening networks

To spread the idea of Punk and Islam, Punk Muslim has also built new connections to other punk around Indonesia. There are some areas where Punk Muslims visited to introduce their concept of punk life and Islam as ideology. Indramayu, Makassar, Medan, and Cimahi were visited by Punk Muslim. They offer cooperation to do music parade or even business.

However, there were some local punkers who reject the visitation of Punk Muslim. It is strict to mention the group of punkers who denied Punk Muslim. There were several reasons addressed to Punk Muslim such as the name Islam assumed as an opposite ideology to punk culture and the anti-establishment of punk ideology which contradicts Islamic ideology which has exact rules of establishing, and other symbols such as tattoo.

One of Punk Muslim seniors, Darma, argues that punk culture is essentially freedom to express and to have certain movement. Punk ideology is an open ideology which respects freedom values without any exact rules. "We are punkers who believe Islam, it is our freedom of expression to deal with Islam. And, because punk is a Do It Yourself (DIY) ideology,

we will do what we want to do", Darma said (Nurhayati, 2011: 52). This belief also is introduced to the new members and Punk Muslim networks. In 2009, Luthfi and friends visited punk community in Indramayu to introduce Punk Muslim and its activities (see figure 8). They visited other punkers at midnight by offering new beliefs in punk community.

Figure 8. Visiting other punkers in Indramayu

Incidental Activities

After the description of everyday life performance or routine activities, here I present incidental activities as a description of reactive activities to certain phenomena. This term can simply be defined as any activity built-up in small amounts over the Punk Muslim day as opposed to their exercise session made up all-at-once. So if they do a social protest in response to certain issues or hold a special concert, those are an incidental activity. Incidental activities are those where the group exercises incidentally, with or without purposes.

These types of activities are very important for understanding the movement of Punk Muslim as a social movement (which will be discussed in the next chapter).

As a group which has particular ideology and purposes, all of their activities can be read as part of manifestation of their word views. I located this kind of activities, especially activities relate to social action/movement, as a relational symbol of the group beliefs. There are several activities which I categorized as incidental activities such as street protest or demonstration, concert, distributing zakat, and Ifthar together.

Demonstration

Street protest or what is commonly popular in Indonesia as "demonstration" is an action conducted by a mass or collective group of people in response to certain issues. It sometimes consists of oration, writing protest words in a banner, burning tires on the streets, and so on. Historian Eric Hobsbawm says:

> "Next to sex, the activity combining bodily experience and intense emotion to the highest degree is participation in a mass demonstration at a time of great public exaltation. Unlike sex, which is essentially individual, it is by its nature collective...and it can be prolonged for hours....It implies some physical action--marching, chanting slogans, singing — through which the merger of the individual in the mass, which is the essence of the collective experience, finds expression." (Hosbawm, 2003: 73)

In the Indonesian context, social protest finds its place since the Reformation era where freedom of expression is possible to do. Hosbawm's explanation is true that it is collective rather than individual expression. Some people tend to link street protest to political ideology but it is not necessarily politic. While punk bands have become more overtly political as a whole, not all punk bands share the same political ideology. According to O'Connor, "for some people, punk must have

an oppositional political practice" while "others reject leftist and anarchist politics as an imposition from the outside" (O'Connor, 2002: 226). To me, Punk Muslim here is an example of various punk ideology.

For Punk Muslim, street protest is an incidental activity rather than routine activity. They have no exact program of street protest as other the routine agendas I described previously. For example, in 2011 they protested Indonesian government silence toward a Palestinian Muslim assassination. They urged the President Susilo Bambang Yudhoyono (SBY) and all Muslim Indonesia to give help to Palestinians. Together with other Muslim youth movement networks such as Ghuraba Militant Tauhid, Salam Satu Jari, and Dompet Dhuafa, they criticized the violation of human rights for Palestinian as well as other violations in the world including in Mesuji, South Sumatera (Bening Post, 16 December 2011). The similar action for Palestine also occurred in other regions of Depok. Before they did the action, they instructed their networks to hold a charity concert for Palestine through social media of Punk Muslim facebook (see figure 9).

Figure 9. Charity concert coordination for Palestine

In 2012, they also did a street protest to the US embassy in response to the "Innocent of Muslim" movie. For Punk Muslim, the Innocent of Muslim movie is a humiliation to Muslims. In addition to that, this group assumed that the International Zionist movement becomes the initiator of the movie. They argued that the movie also humiliates Muhammad the prophet. One of members, Anggi, said "Gue nggak punya kosa kata yang lain bang, gue selalu dididik menjaga akhlak di Punk Muslim. Tapi ini Rasulullah diginiin (di hina, red), gue nggak punya bahasa lain untuk Yahudi yang membuat film ini. Selain Anjing dan Iblis!," [I don't have other words, I am always taught to keep my attitudes in Punk Muslim. But this case already humiliates my prophet, I don't have other words to Jews who made this movie, except the word dog and devil!] (undergroundtauhid.com, 27 October 2013). In Indonesian terms, the words dog and devil represent a very rude word to the enemy or hated subject.

Recently, in 2013, they also held a street protest on the human rights violations in Muslim societies such as in Rohingya, Burma, violence in Syria, and military assassination of Muslim Egypt. In that event, they expressed solidarity to all of the victims because of imbalance in the country. One of the Punk Muslim demands to the Indonesian government was to deliver aid to the victims. Again, the protest took place at the Bundaran Hotel Indonesia (HI circle) as the center of Jakarta. They believe that all of the killing action in the world is a form of arrogant element especially in leaders and the military. The writing of "Stop Killing" and "Save Humanity" became their issue to be fight (see figure 10).

Figure 10. Street protest to civil killings

The coordinator of the protest claimed the most dangerous element of society in the world is the military. The Egyptian civil killings were worst lesson for Muslim society. They did the demonstration not as Ikhwan al-Muslimun supporters but as a part of expression towards humanity issues. He

said "*Kita prihatin dengan Mesir bukan berarti kita bagian kelompok Ikhwanul Muslimin. Begitu juga keprihatinan kita dengan pembantaian yang terjadi di Suriah dan Burma. Tapi ini tentang darah yang begitu mudahnya tertumpah oleh kebiadaban penguasa*" (Ous concern about the Egypt issue is not because we are part of Ikhwanul Muslimin. We also did the same protest to the Syria and Burma tragedy. This is about the bloodshed because of barbaric power leaders). Another member, Otoy, gave an oration on the street which emphasized the important actions to stop the killing. He loudly said:

> "*Di Mesir ratusan orang mati dan ribuan orang terluka. Di Suriah ratusan ribu orang telah tewas, dan di Myanmar puluhan ribu etnis Rohingya tewas dan terusir dari tanah kelahirannya. Sampai kapan kita diam dan acuh terhadap saudara-saudara kita yang terbantai?*" (In Egypt, hundreds of people died and thousands of people were injured. In Syria, hundreds died and in Myanmar hundred thousand Rohinya people died or were evicted from their birth land. How long can we are remain silent and irresponsive to our slaughtered brothers?) (www.punkmuslim.co.vu)

Those demonstration activities show that Punk Muslim has a social movement besides their music band activities. The social protest is one of the social movement expressions which tried to respond to issues concerning Islam and humanity. The case of demonstrations against assassinations in Palestine, Myanmar, Syria, and Egypt refer to Islamic ideology as their core struggle. It also illustrates their identity as a new Muslim youth movement within punk culture.

Concerts

Another incidental activity is a concert. This kind of activity is unscheduled and unarranged by the group because they

do a concert based on invitation from certain institutions. In a few cases, they held individual concerts to welcome their guests from other regions such as punkers from Medan, Central Java, and East Java. But this case was very rare.

Punk style, music, band, and concert become essential activities which attach to Punk Muslim identity. The term concert here means showing and presenting their skill in playing music. Concert makes them confident to promote their new identity as well as spread the dakwah. Usually their style of performance (including fashion) is still punk style as other punks although their music lyrics are close to Islamic tenets like nasyid genre. Other punkers call the Punk Muslim music as nasyid underground which illustrates underground music and Islamic lyrics.

Considering their performances, there are two kinds of concert that was held by Punk Muslim. The first concert is an individual concert. This concert is organized by themselves for particular purposes such as charity concert to collect money from public to help, for instance, natural disaster victims and help Muslim Palestine. Previously, I mentioned that they held and arranged a charity concert to help Muslim Palestine (see above figure 9). A similar kind of concert appeared when they had special guests of new Punk Muslim members outside Jakarta. In the first week of October 2012, they held a concert in front of base-camp to welcome new members (see figure 11). On the other hand, they have also individual concert when launching new albums.

Figure 11. Individual concert in front of *Basecamp*

Second concert is invitation concert. This kind of concert and performance usually depend on the event organizer who invites them. In 2013 they were invited by more than twenty inviters or institutions to sing their songs. Special moment came to the group in Ramadhan month because they got many orders to perform their album. At the beginning of Ramadhan, I met some students of Syarif Hidayatullah Islamic State University (UIN Syahid) at Punk Muslim base-camp who invited Punk Muslim to sing their religious songs to a student association program. A day later, there are invitations from Islamic event organizers who have special program at Magga Dua shopping center (mall).

Distributing Zakat

Zakat (thanksgiving) is one of the Islamic principles which obligate all Muslims to fulfill it in specific times and requirements. In case of Punk Muslim activity, zakat fitrah is the most popular for them because it closes their activity in Ramadhan month. This kind of zakat is obligated to all Muslim to fulfill it before the day of Idul Fitri. Zakat must be

given to poor people both poor Muslims and non-Muslims. This teaching leads Muslims in Jakarta to divide their wealth such as rice and money. One of the zakat distribution committees instructed Punk Muslim members to distribute rice and money to poor people near their base-camp in Pulogadung Jakarta.

This year, third generation members like Imam Maulana, Eka, Agus, and Anang visited their poor neighbors to give them rice and money. The distribution of zakat did not cover all of the poor people there, but most of them received it. The limitation of rice and money made it impossible to give them all. There were some grandmothers who expected to receive more zakat. On the other hand, there were also some who did not receive any zakat distribution from Punk Muslim. But few hours later they got it from other zakat committees in the mosque near Pulogadung bus station.

The activity of zakat distribution always happens for Punk Muslim. Almost every year there are some committees of zakat who recommend them to distribute it either to poor neighbors or street children. According to one member, Zakat committee usually sends the zakat to Punk Muslim base-camp a week to two days before idul fitri. Sometimes, Punk Muslim members had to take it from the committee.

CHAPTER IV
PUNK MUSLIM MOVEMENT

A. JAKARTA AND THE STREET MUSICIANS

The area of Jakarta becomes an essential part of Punk Muslim birth. This capital city of Indonesia displays cruel life for many people, especially uneducated and low economic people. However, thousands of people come to Jakarta every year to find real economic opportunities. This metropolis is assumed not only to offer various jobs but also extended networks of business. For this reason, many Indonesians choose to leave their families behind in the village which is more peaceful and safe than Jakarta to gain economic power in Jakarta. Most of Jakarta's residents do not originally come from local people but from other regions in Indonesia. This crowded area is a site from which power flows outward to the periphery (Anderson, 1990: 35-38). In general, there is only one main reason why they come to Jakarta: money. Some of them are a success, while others are failures. What I want to connect to Punk Muslim birth here is part of failed people switching their expected job to *anak jalanan* (street kid) or *pengamen* (street musicians) because they failed to gain a better job and it is difficult to get money, 'unexpected' job like *pengamen* is a reasonable choice for them to survive in Jakarta. Going back to their village or original region is not a solution because they have to bring something related to money to their family. Punk Muslim members are based

on those unlucky people who choose street as their office to collect money for survival.

Life and work on the street is not simple as most people think. If street kids or musicians want to raise money, they have to do very creative actions in their performances. Kotak, a Pulogadung street musician and member of Punk Muslim, said that many people do not care about their efforts to collect money through singing in public transportation such as bus or minibus. Kotak explained that "we do need money for survival. So we do creative things like drawing tattoo to make people scared and give money to us. Also, we create funny lyrics to impress people" (Interview, 18 July 2013). He emphasized that most people in Jakarta view tattoo as a criminal symbol. People who have a tattoo on their body are usually considered as criminal persons. Besides, based on his experience, he believed that criminal performance is not the only effective way to get money in the street but also innovative lyrics and music (Interview, 19 July 2013). All of the street musicians have their creative imaginations and personal intelligence to update the current trend for making impressions. They usually create lyrics related to current trends and issues such as the political elite's corruption, economy, the future of young generations, and religion. Responding to current issues has given them opportunity to raise more money because it often represents most laypeople's opinion.

To many Indonesian young generations, Jakarta is the representative city where contemporary trends are created by either popular artists or public figures. As a young generation, Punk Muslim group adopts current styles which are very close to their surroundings. Their primary place or "office" at bus station is a dynamic public sphere where certain new fashions appear to replace each other. The group witnesses kinds of popular trends changing and adjusts to it

within their own style. The most often trends adopted by the group are popular music style. It obviously relates to their profession as street musician to have special attention to their consumers or listeners. For example, in the 2013 Ramadhan month, Punk Muslim group composed Wali band's song to their own lyrics. Their reason is clear that Wali band's song is very popular Islamic pop music, particularly in Jakarta. Their consumers on the public bus have already known about the melody or tune but probably they will be surprised by the new lyrics that were sung by Punk Muslim. The new lyrics are usually easy to understand for lay people because they contain real daily life in Jakarta.

In line with popular music trends, other contemporary social and political trends are close to Jakarta's young generation. The new governor of Jakarta, for example, has attracted people to be friendly and respect hard rock musicians. Since his campaign in 2012, the new governor of Joko Widodo or popularly known as Jokowi has been welcoming hard rock or metal music and its adherents such as rocker mania and punk group. He personally likes hard rock music. He visited hard rock band groups in Jakarta such as Slank band (popular rock band group) three times or more, for personal reason or building his good image. He even also watched Metallica band group performance with very casual metal t-shirt (www.la-lights.com, accessed on 10 August 2013). As a political elite as well as Jakarta's official, his attitudes towards hard rock music adherents reflected and influenced society's perspectives to rock music groups include Punk. It gradually reduces negative assumptions toward those groups. People who are usually scared by punk music performance on the public bus transportation probably will feel comfortable because their favorite governor also enjoys it.

Regarding Jakarta residents' perceptions toward hard

rock music and its musicians such as street musicians, most of them view punk members as an uncommon (criminal) group. In my experience when I took a bus from central Jakarta to Pulogadung (East Jakarta), for instance, some street musicians were singing rock music. I saw that all of them had tattoos on their shoulder, hand, neck, and leg. I did not see any criminal action after their performance. However, some passengers felt afraid because their vicious performance and street musicians are categorized or stereotyped as a wicked person. Karim (male, 25 old), a passenger next to me told me that not all street musicians are bad but some of them are. His friend's wallet was stolen by one of the street musician two years ago (Interview, 20 June 2013). Some daily newspapers reported that punkers attacked other young people group in Jakarta (www.sindonews.com, 13 Juni 2013) and killed homeless people (www.m.merdeka.com, 1 July 2013). That news unconsciously created negative images for punkers. As a result, one day a Punk Muslim member was beaten up by the mob because they assumed him to be a thief without any evidence (www.hidayatullah.com, 4 February 2013). Sometimes, they did not do criminal actions but policemen and most of people assumed them to be a thief, robbers, and pickpockets. It is common that policemen arrest wrong persons (punkers) as a target of the operation. Some punkers are arrested under the accusation of theft that could not be proved. (www.kompas.com, 16 May 2013). Indeed, street kids and musicians perform uncommon styles and actions forming negative images in a particular society suchas Jakarta and Indonesia in general.

In the view of the Jakarta government, the existence of street people including punk groups remains a difficult problem to be solved. The government, particularly the Ministry of Social Affairs (MoSA), usually catches, arrests, and places them in a special dormitory for street people

or homeless. Unfortunately, the government does not give any special training skills for their survival. Most of the government staff simply send them to jail for several months based on the reason that street people are "*sampah*" (garbage) for the society and "*gembel*" (vagrant). From year to year, official governments did the same thing toward street people. Ironically, the numbers of street people are not decreasing. They have even gradually increased in number from time to time. For example, in 2009 there were 3,274 people, 5,650 people in 2010, and 7,315 people in 2011 (www.kompas.com, 24 Agustus 2011; MoSA data as in PMKS 2007). I personally believe that Ministry of Social Affairs (MoSA) did nothing for street people although the vice-governor of Jakarta stated "Don't catch and arrest them but give them good social services as well as life skills. The government will allocate and propose budget about IDR 140 billion for training" (www.okezone.com, 4 Januari 2013). Street kids, poor urban youth, and street musicians regularly became target of MoSA intervention/operation as part of their annual program.

MoSA staff view street kids and street musicians as crazy people who have to be relocated. Until 2012 or before the new governor of Jokowi's regime, MoSA has annoying programs that endeavor to eliminate street people in Jakarta. Almost every week, they do an inspection of the common street people places such as bus stations, the space beneath bridges, traditional markets, and other particular places to raid and arrest them into their special dormitory. Around 2012, one of Punk Muslim members was arrested by MoSA staffs when he walked around in the space beneath bridges (Figure 12).

Figure 12. MoSA special car and its staff raid street people

In 2012, a number of 'senior' punk members together with Ian Wilson, a researcher of the Punk community in Jakarta, met with the government official at the MoSA and discussed the possibility to give freedom of expression for them (Wilson, 2013). Despite this community explaining that they have an open mind and are free to share values and vision, the officials still fight to eliminate them based on the public safety reason.

B. PUNKS AND PUNK MUSLIM

Most people in Jakarta assume punk community as the street youth group which has not a normal job. All of the punkers, in their understanding, have similar behavior. Even though there are differences between one punk group and other groups, people usually categorize the community into one: street musicians. As my interview result of some permanent residents of Pulogadung Jakarta regarding the existence of Punk Muslim indicates, they did not differentiate between one and other group of punk. "Punk is punk with the Mohawk hair style. There is no good thing about this kind of group. They have the same attitude namely jobless and

beggar. But actually they are young and have potential skills to do something better than being street musicians", said Anas, one of the Pulogadung inhabitants (Interview, 1 August 2013). This statement shows that giving Muslim label in the community did not change society's perspective toward them.

Closely connected to the people's statement, the government locates punkers as people with immorality. The meaning of immorality here refers to common morality which obligates all people to adjust with social norms in particular society. If some people have different behavior or different moral standards, they have to be cast out from that society or they have to be rehabilitated. For example, in 2011, about 65 punk rock fans were raided by local government of Indonesia because they attended a particular concert with a unique/different hair style. The government threw punkers into water for spiritual cleansing, cut their Mohawk hair, and then gave them 'moral rehabilitation' with religious teaching (Metro, 14 December 2011). Thus, is it possible to normalize punk ideology, styles and attitudes with religious tenets such as Islamic teaching?

Dealing with the above government ways of handling punkers, Punk Muslim community in Pulogadung Jakarta endeavors to rehabilitate themselves in combining their ideology, style, and religious practices. This rehabilitation does not mean specific training for achieving religious practices but they try to manifest religious tenets in everyday life. For the community, punk ideology is not static ideology but it must be open ideology because the ideology itself is something that can be reinterpreted by the people embracing it. Punk Muslim has an ideology of punk which is well-known with the term Do It Yourself (DIY) as same as other punk communities. This ideology simply states that everything you want, you can do. They believe that

the ideology implies various actions and activities within punkers' mind and lifestyle. There are no boundaries or strict rules in the DIY ideology because it emphasizes full freedom in their life. From this perspective, Punk Muslim members believe that Islamic practices are the best way to enrich punk movements.

Islamic tenets become significant spiritual choice as well as moral measurement for Punk Muslim because they live in Muslim culture and society. Being part of Muslim society, they cannot abandon Muslim life styles and world views because their knowledge and experience is influenced by that environment. A Punk Muslim member said that even though he is punkers, he has a future expectation namely peaceful life after life (death). By that reason, Punk Muslim promises a good way namely integrating Islamic values and punk life styles. They believe that Islamic religion can bring them into better life rather than acting purely as punkers without any religious belief.

According to the founder of Punk Muslim, Ahmad Zaki, there are significant differences between Punks and Punk Muslim. Being a punker means the members should be radical, youth rebellion, hard rock music sensation, extreme and criminal youth, and anarchy. Instead of defining their self as anarchy, the image is constructed by other people and particularly media reflected from the act of punkers in society. Their hard rock music and awkward hairstyle as well as dress styles built a negative image of their self. The anarchy movement which always appears when they do a social protest in a street becomes evidence of their negative picture. Furthermore, they have a tattoo, drink a strong alcoholic drink in the street at night, and sometimes are claimed to be robbers. The reason why they do those actions is because their disappointment toward government regulation mainly capitalism which discriminates against economically

lower class people. The domination of the government to people's lifestyle such as genres of music they like, dress, and uncommon behavior unconsciously encourage resistant movement of the youth generation by creating punk community. In contrast to the punk community, Punk Muslim defines themselves as a different punk because they endeavor to consider human aspects or normative aspects of society. They do believe that Indonesian people have different culture compared to Western culture which is adapted by other punk groups in Jakarta. Then, Punk Muslim not only adopts the Western culture with its hard rock music but also integrates Islamic tenets as the spirit of hard rock music.

It is quite difficult to distinguish the ideology of punk group and Punk Muslim group in Jakarta because they have identical characters dealing with hard rock music as punk identity. Albeit Punk Muslim belief belongs to Islamic tenets, they use hard rock music genre as the main genre which is similar to other punk groups. In general, the main target of punk movement is the effort to criticize government domination and imbalance of social welfare especially inequality between poor and rich people. Punk Muslim undertakes social protest to the government which focuses on Islamic or moral issues such as the Palestinian issue for humanity. However, both of them have identical spirit to fight against humanity imbalances as their belief from the beginning.

If we look at the history of punk communities in Indonesia, we cannot deny the history of punk rock community in the UK and United States. In the UK, the emergence of punk rock was signed by the decline of economy and high unemployment rates that resulted in social life disintegration as well as youth resistance to the government (Savage, 1991). The similar social background of punk rock occurred in America which encouraged

youth reaction toward government control of the freedom expression of young generations (Bennet, 2001). In Indonesia, the emergence of punk group began with the issue of authoritarianism. In the Soeharto era, punk communities placed their movement as a response to the political situation and struggle against Soeharto who controlled every aspect of citizens' life. There was no freedom to speak and express other ideologies at that time except Soeharto's ideology which used *Pancasila* as the symbol to preserve his power. To deal with the movement, punkers created foreign language lyric in the songs' title to conceal the resistance ideology within the songs. There was an intriguing English language lyric and Slogan such as *Our Lifestyle, Smash Capitalism, Hardcore The Way of Life, Punk Not Dead,* and *We Are not Communist* (Indonesian for Communist) rebelling against the Soeharto regime. We have to consider that most of the punk group members are Muslims even though they propagated communist ideology at the time. Then, after the decline of the Soeharto era and the rising of the reformation era, punk's ideology has been changing gradually because they did not fanatically belong to one ideology (communism and capitalism) but strengthened full freedom ideology.

Punk Muslim members claim that their movements are totally different from the other Jakarta's punk group movements like Anarko Punk, Punk Rock, Skinhead Punk, Street Punk, Punk Anti-Media, and Punk Major Label. If the other punk groups have independent music record and entrepreneur activity, Punk Muslim has religious activity as well as social and entrepreneur activity. Ahmad Luthfi, a leader of Punk Muslim who currently becomes reseller of snacks, described that Punk Muslim has various activities regarding spiritual and material activities. In the spiritual activities, the group has religious teaching camp in particular time to deepen their understanding of Islam. It is

usually called *pesantren* punk which is held annually during Ramadhan month. The other spiritual activity is punk kajian or studying Islamic teaching every Thursday night. Besides, the group has also entrepreneurship program namely motorcycle washing service. Normally, the main activity of this group is singing at the streets or traffic lights. These activities become their argument to other punk groups that they have different or more positive activity than other punk groups in Jakarta.

Moreover, they convince other people that their activity is totally different with other Islamic punk groups such as the Taqwacore in America. When I talked to Punk Muslim regarding the existence of Taqwacore in America, they showed anger in their face and explained that Taqwacore is similar to other punk groups in Jakarta because they drink wine and other alcoholic drinks. Punk Muslim said that Taqwacore manipulate fault in Islam as the rightness because this group uses Islamic symbols (www.punkmuslim.co.vu). In contrast, one of Muslim media in Indonesia, Republika newspaper, reported that Taqwacore is the punk group that tries to reconcile punk culture and Islam as well as Middle East culture (Republika, 23 July 2010). In response to this report, Punk Muslim articulated that Republika should reread the information on Taqwacore activities.

In comparison with other punk groups including Taqwacore, Punk Muslim has unique movement. Almost every year since 2010, this group has been propagating Islamic pillars in the public sphere. This year, 2013, they redistributed some foods and drinks to the people surrounding their area in Jakarta. The year before, they propagated the importance of Ramadhan month for Muslim to perform it with fasting. To spread that propaganda during Ramadhan month, they made a demonstration at the Jakarta square for achieving public attention. Other protest actions to defend what they

call as Muslim brotherhood solidarity are criticize military of Egypt that made assassination to civil protesters. In this case, Punk Muslim talked about the humanity regarding the physical violence that was executed by Egyptian army. The group addressed some recommendation to Indonesian president of Susilo Bambang Yudhoyono to save civil Muslim in Egypt.

C. SOCIAL FACTS ON PUNK MUSLIM

Considering Punk Muslim as a social movement is possible because they engage in social protest as well as social service to show their existence. As a consequence, I present here a brief conceptual term of social movement to understand the characters of Punk Muslim. This is an important aspect to describe the history of the group and its social activities. In addition I will look at the evolution of Punk Muslim in Jakarta, as they are the most formative region in the social history of punk group in Indonesia.

The histories behind specific strands of Punk Muslim in Jakarta are part of a social movement mainly because it creates a space for punkers and Muslim Indonesian youth to negotiate their identities. Even though they did not claim their group as part of social movement I believe that their social activities mainly making protest and propaganda in the lyrics of music are the appropriate reasons. In addition, the musicians or Punk Muslim group I have spoken with do not necessarily consider their music production of punk to encompass the entire category of social movement. Imam Maulana of Punk Muslim suggests that his group do not have the enthusiasm to be part of social activists but they are eager to be right Muslim with punk culture. He said "We don't know what is at movement and I don't care with it. We just do the best we can because we live in society. So we will

express our opinion and not persuade others. We are going to correct ourselves." (Interview, 15 July 2013). The statement attempts to emphasize their movement as free expression not social change.

If we look at the theory of social movement, not every theory fits punk expressions and activities. However, moving from social protest and the spirit of Punk Muslim's music, it is a type of social movement that is often going through some degree of significant change. Basically I want to employ the term movement here as part of changing something to other things, on one side, and the term of social as part of people activities that influence other people to think or act. In order to deepen this discussion on social movement of Punk Muslim, some theories of social movements might be useful to understand these theories as they arose in their historical social contexts before discerning their contemporary cultural relevance.

Before viewing Punk Muslim from the contemporary social context, it will be good to look at the history of Punk Muslim. By doing so, the process of being Punk Muslim is important because their purposes and social background will be exposed. Here I present a brief overview of social movement theory, as this framework will be most conducive to my work here. Looking at the history of the notion of "social movements" will show us that the term itself was not explained in detail by some sociologists in their writings. As we can read some references, the first theories of social movements tended to speak of social class or social organization. Furthermore, the other discussions about the issue related to talk about social identity (Copp, 2011). However, in the current discourse of social movement theory, I quote the writing of Steven Buechler which explained:

"…refers to a diverse array of collective actions that have

> presumably displaced the old social movement of proletarian revolution associated with classical Marxism. Even though new social movement theory is a critical reaction to classical Marxism, some new social movement theorists seek to update and revise conventional Marxist assumptions while others seek to displace and transcend them." (Buechler in Copp, 2011).

Buecher prefers to define social movement as collective actions which are close to social class and its identity. Copp used Buecher's definition to understand the movement of punk rock in 1970s to current punk rock movements in the United States. However, Copp then jumps to the appearance of the theory in the 20th century because he feels this approach can explain the characteristics of punk movement in the sense of historical context. Following Copp's strategy to understand the contemporary punk group movements, I am going to employ the concept of liminality which was devised/ popularized by the cultural anthropologist Victor Turner (Van Gennep as the first) to scrutinize punk activities. The concept itself was used to describe ritual ceremonies of a certain community. But it also deals with social movement especially in the temporal structure of both ritual ceremonies and social movements (Copp, 2011).

According to Turner (via Copp, 2011), there are three-stages of progression through which an individual can experience ritual ceremonies. First, the very beginning stage is separation or the pre-liminal which means condition of unstable or status before the individual or group come to terms with the new phase. This means that the person takes a place in an isolated sphere or disengages from an element of society. Second, the next stage is the ritual process which is named liminal. It is the "in-between condition" of person or particular community. He/she with this categorization is no longer in a dominant group or minority group. It also

refers to the period in which a person or community is between two distinct phases of life. Thirdly, the final stage is post-liminal. When this stage takes place the person or community has opted to belong to a certain new stable group. In general, this stage marks the end of the liminal phase and the reintegration of the person or community involved to their new social roles and identity. These three stages will lead this research to scrutinize the experience of Punk Muslim as social movement.

To begin with, the personal experiences of Punk Muslim members are different. Most of them joined the group because they are interested in being punker and Muslim at the same time. The most interesting one is the experience of the first generation or founder of Punk Muslim. Luthfi, the first generation, indicates that he became a Punk Muslim because he had reached the saturation point of doing wickedness or criminal acts. After his fifth grade of elementary school in Jombang, East Java, he moved to Jakarta to be a street kid and musician with a punk life style. He chose this life because he got in trouble with his family. As a street musician, he definitely became a narcotics consumer as well as distributor. Since his 20 years of age, he joined Punk Muslim under the coordination of Budi, the founder of Punk Muslim. Luthfi told that he feels satisfied with the positive activities of Punk Muslim because it realizes true life without any narcotics and alcohol. He described that he has family and society so it will be better to him to adapt to the positive norms of society (Nurhayati, 2011: 71-72).

From the personal story of Luthfi, we can underline that there are three kinds of processes. The first process is before Luthfi became a street kid or musician or punker. We can claim that something happened which encouraged Luthfi to be a street musician or punker. He told his family he was in trouble finding harmony and he decided to move to Jakarta.

If we compare this process to the pre-liminal stage, which means condition of detached person from his/her social structure, it means that Luthfi was not in this stage because he lived with his family. The second process, when he became a street musician or punker, is the liminal condition because Luthfi detached himself from his family as well as his society. Being a street musician one is commonly separated from normal/common/dominant society. For that reason, the -liminal condition occurred when Luthfi became a punker. The third stage, the post- liminal condition, happened when he chose to be Punk Muslim. The process of his thinking at that time indicates that he was in an in-between condition. This was, perhaps, a very short period and very vital because the result of the condition will determine future. In this last, post-luminal stage, Luthfi attached himself to a certain social structure namely being Punk Muslim. The condition makes him settle because he has become a part of a particular element of society in Jakarta.

The above personal categorization of Luthfi is different if we compare it with the case of the founder of the Punk Muslim community. It is because the historical process of the founder started differently as compared to its members. The group started with the anxiety of the founder, Muhammad Budi Khoironi, well-known as Buche, who looked at the lack of spiritual practices within the punk community in his region of Pulogadung. Most of his friends were street musicians and some of them were narcotic distributors in Jakarta. His life was attached to dangerous activities because he operated an illegal business, involving criminal actions, and sinful acts in the religion. Reflecting on his activities as being a dangerous thing, Budi tried to escape from the problem and looked for a new way of life. When he started to be a good person, he was inspired by the information of particular media that becoming a punker did not always

mean only becoming a punker. It was possible to be both a good Muslim and punker (interview with Hasan, 13 July 2013). After thinking for several times, in 2006, Budi invited his punker friends to hold a routine gathering at which Islamic tenets were discussed. In the beginning, Budi had only four friends to gather routinely in his little coffee shop nearby the bus station, as the base camp. After a year, the members and number of gatherings gradually increased up to 10 people. This was a great chance for him to maintain the program and then he named his group as Punk Muslim because he loved both Punk and Muslim. One strategy to maintain his project was inviting a spiritual guide or *ustadh* (Islamic teacher) to give lectures on Islamic tenets. At that time, he asked Ahmad Zaki, a *pesantern* (Islamic boarding school) alumnus, to teach him and his friends the Islamic teachings and values. The birth of the Punk Muslim group here is closely related to the history of Budi as a founder.

The birth of Punk Muslim cannot be detached from the personal experience of the initiator. Looking at the story of the founder, there are at least three processes in the establishment of Punk Muslim. First is the pre-liminal situation where Budi shaped an anxiety condition. The situation made him aware that illegal business, criminal action, and sinful act in the religion were dangerous for his future life. He personally did not care about that, but after thinking several times, he knew that it was not a good way. In the community context, Budi, and automatically Punk Muslim, had been in the settled situation namely punker. He was definitely aware that punker was unacceptable in society but it was his choice as well as settled situation of his identity. This process encouraged him to jump to the next or second process; the liminal process. As a transitional process, it may be superficial and quick or long lasting and extremely profound, including all the degrees in between.

The extent to which a subject is sucked into a liminal vacuum is entirely a matter of the individual and the degree to which he or she explores and accepts personal change (Copp, 2011). This process is an in between situation where Punk Muslim was not affiliate to punk and not being Punk Muslim yet. At the time, Punk Muslim was in the imagination of the founder whether it should be manifest or not. This is an important process of being Punk Muslim because without passing through this condition, Punk Muslim is not possible to exist today. After making a choice to establish the Punk Muslim group, it meant that the condition shifted from the in- between situation to the certain situation. By this, the identity of Punk Muslim has been formed as both punk and Muslim at the same time.

In my interviews with Zaki, Imam, and Kotak, these processes were automatically run without any preparation or special concept. The most interesting regarding the three processes is to establish when this group found their identity as punk and Muslim. All of the everyday activities such as singing on the buses or streets are adjusted by the community program. The primary program of singing as daily activities shows that the group disseminates their opinion on some cases. Through their song, the message of Islamic values is conveyed smoothly as part of their Islamic *dakwah*. Because it is sung by the members every day in the different busses and routes, so people hearing that song are changed. The communication between the listener and singer goes unconsciously and the listener can make positive conclusion toward the image of Punk Muslim. In a bus routing from Pulogadung to Bekasi, I interviewed a passenger who hears Punk Muslim's song and he said that the song is good and the message is very religious, but he did not like the punker Muslim's tattoo. That case proves my assumption that the song of Punk Muslim can change people's perception toward

negative image of punkers.

On the other case, Punk Muslim also established a new image of street kids in the environment. The board members of mosque (takmir Masjid) near their base camp said that Punk Muslim intensively engage in good manners and attitudes. "Even though they did not attend some Islamic prayers such as *tarawih* and *pengajian* in the mosque, they seem to do *jamaah* (prayer together) at their base camp or dormitory" said Hasan, Dian, and Tirmidzi. After conducting *tarawih* prayer, Hasan told me about the image of Punk Muslim in the area. He said:

> "One of Punk Muslim group members, Mr. (*bang*) Asep, has probably joined Salafi movement because he engages in Salafi's program. I have seen him at the Salafi forum in the central Jakarta region. Last two years, he and Budi (father of Punk Muslim) often joined some activities in our mosque here. But today they have their own activities. I have seen their Islamic activities such as Qur'anic recitation together, inviting Salafi teacher to teach them, and prayer together in their dormitory. Those activities are very good. They even often distribute *zakah* (thanksgiving) to the inhabitants here. They are good Muslims. Besides, currently I witnessed that they have silk-screening business and motorcycle washing business. Unfortunately, they did not join our program here in the mosque. I do hope that they will join with us and change their bad habit such as using dirty clothes everyday and having tattoo. It is forbidden in Islam to have permanent tattoo because it can abolish their *wudhu* (ritual ablution) before prayers. Being Muslim must be clean and pure." (Interview, 20 July 2013)

The image of Punk Muslim at the Pulogadung area definitely becomes better than before. Referring to my informant's statements in the above quotation, people expect that the group can improve entirely their religious practices because they are worried about inconsistency of the Islamic practices.

Hasan, for instance, doubted Punk Muslim's prayers because they still have tattoo on the body. Tattoo becomes sensitive issue in Muslim society as Muslims consider it as dangerous thing toward purity and skin health. Local *ulama* of Pulogadung area, Tirmidzi, argued that "tattoo will erase all of their (Punk Muslim) prayers' rewards. Being Muslim has to do with all Islamic obligations, not just part of it". The statement means that the society partly accepts the existence of Punk Muslim as Muslims but still they did not agree to some cases. Despite the group acquiring a positive image as Muslims, there is hesitancy to accept them as Muslims.

It seems that the existence of Punk Muslim as Muslim is still contested in the society. Although they have an acceptance to live within Muslim society in Jakarta, it does not guarantee that people will support their activities. It was mentioned by Hasan that religious affiliation of Punk Muslim is different from that of the majority Muslim in the area. Hasan claimed Punk Muslim has affiliated with Salafi movement. In Indonesia, it might be dangerous because if they have different understanding toward an issue, conflict will be happen as some religious conflict cases after Soeharto regime. I personally believe that the religious activities of Punk Muslim are part of their searching for identity. They have joined some Islamic schools (*mazhab*) or institutions based on the process of being punker and Muslim. They argue that it is definitely possible to have multiple identity which contradict one and another; Islam as establish norms and punk as anti-establishment.

D. PUNK MUSLIM AS SOCIAL MOVEMENT

The previous discussion has briefly described the categorization of Punk Muslim from the personal and community perspective as well as their image within the

society. To be specific, this sub-chapter title goes to the specific explanation of Punk Muslim as a social movement based on the previous categorization through the thought of liminality which is taken from Turner's idea. In order to gain the general understanding of Punk Muslim as an element of Muslim society in Indonesia, this sub-chapter will address the question: is the Punk Muslim movement a social movement?

Even though the concept of social movement is very well-known in the field of sociology or anthropology, there is little agreement on exactly what it is. Previous researchers studied the social movement phenomena from very different cases ranging from social protest, revolution, reformation, demonstration, and other forms of public display. As we can assume from both terms social and movement, the meaning of social as collective people or something that relates to human interaction and movement as the dynamic action from passive or static situation to active situation is acceptable. Moreover, some actions such as demonstration often involve an element of protest which is usually addressed to power structure or nation states. But I do not want to take that situation as a single definition of social movement because the term probably connects to not only collective protest to nation states or government but also to certain social structure such as society or communities surrounding them.

Following Turner, I prefer to look at the social movement as a liminal phenomena. He argues that all social phenomena or social processes follow structures and anti-structures dialectic. Liminal phenomena or its situation is characterized by *freedom, egalitarianism, communion* and *creativity*. Freedom results from a rejection of the structured society or state rules. Then liminality usually fosters human creativity. Turner notes that myths, symbols, and rituals

are frequently generated under liminal condition. They amount to "reclassification of reality and man's relationship to society, nature, and culture" (Turner, 1969: 128-129). In a simple description, social movements can be understood as a liminal happening in general social process. It detaches its participants from existing social structure. If we look at the Punk Muslim case, this group shows their protest to the government. Their position as different/uncommon punk group and uncommon Muslim describes that they are under liminal condition. In addition, it also detaches its members from existing Muslim society in Jakarta.

Viewing from the first characteristic, freedom, Punk Muslim consistently rejects the rules of government. Freedom of thought and expression are basically the central thought of punk community. This can be seen on the actions such as criticizing Indonesian foreign policy to welcome the US domination and having tattoo that contradicts to the Islamic rules or *syaria*. One of the annual agenda is criticizing the role of Indonesian government on the humanity issue regarding Palestine. They argue that the exact regulation or rule can break the human creativity as what they want. Concerning the issue of Indonesian foreign policy toward the US domination, Punk Muslim criticizes the Indonesian war against terrorism issue that becomes a product of American rule. Punk Muslim expects that Indonesia must be quick to defend its own rule and not to follow foreign imposition for example, from America.

In the other case, Punk Muslim's expression as having tattoo on their body definitely contradicts the Islamic rules. One of *ustadz* namely Hasan in the area of Punk Muslim dormitory said that "it is forbidden in Islam to have permanent tattoo because it can abolish their *wudhu* (ritual ablution) before prayers" (see previous quotation). Being Muslim must be clean and pure". The prominent figure of

ulama in Indonesia, Muhammad Quraish Shihab, wrote in his book that there are huge amounts of *hadith* which forbid tattoo for Muslim. He emphasizes that tattoo can block the entry of water to Muslim skin when practicing *wudhu* (Shihab, 2004: 65). In response to the Islamic rules, Punk Muslim argues that tattoo becomes their identity as punkers who want to express their opinion freely. For them, the more important aspect of Islam is in the values on social life.

The second characteristic of social movement, egalitarianism, describes the reversal of the structural relations between minority class and majority class. As a minority group, Punk Muslim does not discriminate the target of zakat (thanks giving) when they are managing and giving it to the poor people near their dormitory. They gave it not only to Muslim but also to poor non-Muslim as well as poor people who do not affiliate to any religious institution. The other case like social attitudes toward gender, Punk Muslim accommodates the role of Punk Muslim women member to participate in the entire activities.

While egalitarianism stresses the setback of imbalance structure between one social class and another, the next characteristic of social movement, communion, represents a rejection of alienation from the generic bond of humanity. Punk Muslim group has engaged in their Muslim society as Muslims and human beings. By convincing their activities as part of young Muslim aspiration, they also provoke people to accept other punk groups as human beings. They attempt to reject the negative image of punkers as society garbage or people who are not useful.

In the last social movement characteristic, creativity, Turner notes that myths, symbols, rituals, philosophical systems, and works of art are frequently generated under liminal conditions, indicating the extent to which liminal

conditions can nourish creativity. This character brings the Punk Muslim group into a good community because they tried to do something different with one another. Within the liminal condition, Punk Muslim creates new activities namely punk kajian which bring members together in an Islamic discussion forum. The forum is not only discussing several Islamic tenets and its practices but also reciting holy Qur'an for making strength their spirituality. The program is reflected from their condition as an in between group; Islam and punk. Under that condition, they try to connect with Islam because it is very important for the survival of the group.

In the context of their identity, creativity can be understood on two levels. First, it refers to Punk Muslim's creative responses to the material problem. As an independent young Muslim—because they have no parent, they have to look for everyday needs on their own. It means that they sing on the street and busses for survival purposes. To deal with those needs, creating an interesting lyric on the Punk Muslim's album and establishing entrepreneur activity such as motorcycle washing service and silk screening business are creative activity. Second is the creative response to the immaterial or spiritual problem. As I have discussed previously, spiritual aspect plays an important role in the existence of Punk Muslim group. This aspect occurs because they were not satisfied with anarchy and radical punk culture. So, they integrate Islamic teaching to the punk culture. As a result, they held punk kajian program, reciting holy Qur'an together, and creating Islamic lyrics as a new punk music genre. Those spiritual aspects are addressed by the group to set up a new genre or new school of punk in Jakarta and generally in Indonesia.

When Punk Muslim group establish a different group from other punks, they are changing their old identity into

a new one. Before creating the group of Punk Muslim, they attached in the old identity as punk with all of its culture. The old culture here involves sex, drugs, and rock and roll lifestyles. While these negative cultures are associated with punk identity, it has gradually shifted to a new identity of punk with Islamic practice after creating Punk Muslim group. The new identity of Punk Muslim strengthens their social status as one of Muslim young element in Jakarta. Some negative perceptions toward their existence have been changing, particularly because they convince people regarding their new spirit through the music.

The shift of image from negative to positive perception can be witnessed at their activities. In the Ramadhan month this year, I saw some Punk Muslim activities regarding music performances. The performance was not 'illegal' performance but legal performance because they were invited by some Islamic institutions to perform the music. On the first week of Ramadhan month, they sang their own lyrics in front of an audience of hundreds, at the Mangga Dua mall Ramadhan celebration. A week later, they were invited by the Islamic Student Association (HMI) Ciputat at UIN Syarif Hidayatullah Jakarta to perform their music.

CHAPTER V

PUNK MUSLIM'S *NASYID UNDERGROUND* AS A DAKWAH

Aku bersaksi tiada tuhan selain Allah
Bahwa Muhammad adalah utusan Allah
Tetapkanlah imanku
Dan kuatkanlah hatiku
Untuk hanya memujaMU
Agar dapatkan keridhoanMU

Punk Muslim, "*The Story of Muallaf*" Song

For some Muslims, music is a dangerous thing that can lead people to satanic action and expression. It is common to hear that music is a thorny issue in Muslim societies. Some Muslim scholars have different arguments on listening to music which often create tension between scholars and their believers who prohibit it and who accept it with or without any requirements. This controversial issue can be traced to the history of early Islam. However, we can witness most Muslim people listening to various kinds of music, especially young Muslims. In fact, in my area where Muslim are a majority, most Muslim believers listen to specific music as they want. When I visited some Arab countries close to Islam, I saw many people listening to certain genres of

music. One of my Muslim friends from Saudi Arabia, for instance, loves to listen to music from a gadget through her earphones. Similarly, the prominent *ustadz* in Indonesia in the beginning of 2000s namely Abdullah Gymnastiar (Aa Gym) often delivered *pengajian* (sermon) with songs and sometimes accompanied by its music. Some peripheral religious leaders in East Java, where I was born, also often sing when delivering sermons.

From my personal experience, listening to music is common for Muslims even though others claim that it is a prohibited or sinful activity. This issue also happened to Punk Muslim group because they are not only listening to music but also creating music. Even if they are not common creators of music but creators of hard rock music! Most of their songs are hard rock music. It is absolutely controversial if we discuss it under the theme of Islamic law or *syariah*. This work doesn't talk about syariah but is concerned with the empirical fact of Muslim music in Muslim society.

It is undeniable that Punk Muslim songs are close to thorny music genre. Imam Maulana, a junior member, argues that the genre is an identity of punk because they are part of punkers but endeavor to be good Muslim at the same time (interview, 15 July 2013). To cope with that problem, they create a new genre of music which still use hard rock but combine it with Islamic lyrics. My Punk Muslim song quotation in the beginning of this chapter shows that the lyric is close to Islamic beliefs. The sentence *Aku bersaksi tiada tuhan selain Allah* (I testify that there is no God but Allah) and *bahwa Muhammad utusan Allah* (Prophet Muhammad is the messenger of Allah) are basic confession of Islam. Then the next sentences *tetapkanlah imanku…etc* (strengthen my belief) are form of prayers of them. It definitely illustrates the Islamic tenets expression. But if we listen to it as a music, not

only as lyric, we will hear the heavy metal or hard rock music genre.

Remarkably, making justification to heavy metal or underground music as satanic music that would lead young Muslims astray is a problematic matter. In Islam, there are several religious activities which essentially have similar expression to hard rock or underground music. One of popular Shi'i sheikh (religious authority of Muslim) from Iraq says "I don't like heavy metal, not because it's irreligious or against Islam, but because I prefer other styles of music. But you know what? When we get together and pray loudly, with the drums beating fiercely, chanting and pumping our arms in the air, we're doing heavy metal, too" (LeVine, 2008: 15).

A Muslim group of Islam Defender Front (FPI) states that the underground music, especially Punk Muslim, brings Zionist mission. One FPI member, Farid Budi Fahri, said "are these musicians carrying out a Zionist mission? I would say no. The conspiracy is within the music, the lyrics which carry messages and the ideology which would create a lifestyle and counter culture in the end" (The Jakarta Post, 21 March 2011). It is not necessary to discuss at length, the Islamic controversy on heavy metal and Islamic music. In fact, there are some Muslim musicians who have a type of heavy metal music with Islamic messages. Iranian rapper Peyman-Chet, for instance, describes his music as "Eminem inspired by Rumi" (LeVine, 2008: 203). According Morreall, other Muslim musicians of Salman Ahmad from Pakistan calls his "Sufi rock" music his jihad. In Indonesia, *underground tauhid*, *one finger movement*, and *Punk Muslim* have underground music with Islamic messages.

Other punkers argue that the combination of hard rock music and Islamic lyric remain an ambiguous genre. So, they

prefer to call it not punk music but *nasyid underground*. Punk Muslim strongly agree that it is a new genre of *nasyid underground* because it contains Islamic lyrics and underground music.

Originally, according to Matusky and Tan, *nasyid* is derived from the word "nasyada" meaning "to look for" or "to search". The addition of the letter *a* to the beginning of *nasyada* results in "*ansyada*". It means to recite poetry or verses with high and low vocal inflections as if singing zikir. Matusky and Tan further explain:

> Hence, *nasyid* is generally connected with song (or music) resulting from singing serious (or classical) poetry, and with the expression of patriotic sentiment. Originally nasyid was performed informally at home while seated on the floor in a circle formation after studying the Qur'an. The teachers taught while the students sang nasyid. The process of teaching and learning took place by rote method and in call and response style without using any musical instruments. The voices alone carried the song texts and their messages, as the lessons took place from day to day. (Matusky and Tan 2004:262-63)

If we trace back to the history of *nasyid*, it refers to Arab song and rhythms which aim to inculcate good values, morals and habits, and stress the importance of religion and allegiance to nation (Sarkissian, 2005). It seems similar to Punk Muslim expectation that their nasyid underground can lead to good values, morals and habits, Islamic tenets, but not allegiance to nation.

Nasyid underground as a kind of new music genre also reflects the movement of Punk Muslim. Other punkers said that they don't want to be a particular religious believer, while Punk Muslim precisely tend to be Muslim which manifests their Islamic belief in everyday life practices such as prayer together etc. They also believe that the nasyid underground is a dakwah media because it contains Islamic teachings which

hopefully can encourage the Muslim believers, especially young Muslims.

A. *NASYID UNDERGROUND* AND INDONESIAN MUSLIM YOUTH

It is believed that most Indonesian young Muslims love music. In the reformation era, the enormous variety of musical expression has been disseminated through various broadcast and recording media. Growing numbers of music genres from traditional to modern have resurged industrial music in Indonesia. The most popular music in 1990s is rock music. For example, there are long-standing sensational rock group Gigi band, Padi band, Sheila on Seven band, Boomerang band, Dewa 19 band etc. Those groups received great appreciation from Indonesian youth which was indicated by their huge selling copies of albums and, most consumers were young generation.

In 2000s, there has been changing tension of favorite music genre. The very popular music genre for young generation is still pop rock music. However, the favorite lyrics have shifted. Gigi band, for example, create religious Islamic lyrics in its songs. At the same time, the religious group band has emerged significantly. Opic and Wali band, for instance, received huge attention of Indonesian youth. Both of them tend to produce Islamic lyric. Their songs also become soundtrack of several popular movies either serial or Indonesian box office.

On the other hand, the new religious music such as Maher Zain, Lebanese but raised in Sweden, easily becomes popular in Indonesia. One of reasons is Islamic messages in its lyrics. His song can be categorized as *nasyid* or—according to Foley—*nasyid salawat*. Most Indonesian young Muslims love his songs. It can be seen from tens of thousands

of people attending his concert in Jakarta, Bandung and Surabaya in 2011. In 2010, Maher Zain became the first Muslim artist who had a millions fans on Facebook while Indonesia became the second highest number of facebook users in the world (Foley). Perhaps, the reality of Indonesian Muslim youth reception toward Islamic songs stimulate other musicians such as Punk Muslim to produce similar songs.

The taste of Indonesian young generation toward rock band music (Gigi band, Wali band, and Opic band) and nasyid (Maher Zain) is enormous. It inspires Punk Muslim group as well to make an Islamic lyric on their underground music. The huge response of Indonesian young generation, especially Muslim youth, toward rock band music becomes an inspiration to Punk Muslim to change the content of music from social critics to Islamic teachings.

According to Eko Punk Muslim, they are also inspired by the success of Opic band who originally was from their kampong (region) of Pulogadung. "Opic was a hard rock musician. But in the beginning, he did not receive good response from society. After he shifted to Islamic group band, he has been receiving massive fans" Eko said (Interview, 27 July 2013). As Eko's explanation, Punk Muslim expects to have good response to their albums. So, *nasyid underground* becomes a choice of genre which hopefully gets massive Indonesian Muslim youth response.

From 2007 to 2013 they endeavor to perform their song at various events such as student association events, book fair festivals, religious events, and others. This response indicates the acceptance by public Islam of their new genre namely *nasyid underground*. Although this genre is ambivalent, having two faces, hard rock and Islam, Muslim public acceptance, especially Muslim youth, indicates this new music genre will be accepted by Indonesian Muslim youth rather than rejected such as FPI accusing.

B. MAKING *DAKWAH* THROUGH *NASYID UNDERGROUND*

The reasons behind the emergence of Islamic music in Indonesia are numerous. Punk Muslim states that they hope to remind and educate young Muslims about Islamic principles and values while offering a permissible form of music which Muslims and even non-Muslims can find enjoyable as well as morally and spiritually uplifting. It happens as well to other hard rock Muslim musicians such as Peyman-Chet of Iranian, Salman Ahmad of Pakistan, and the Kominas group of America. Before them, there were some street groups which try to express Islamic practices and street cultures such as Chicago-based band al-Thawra, Egyptian Halim al-Dabh, Zarmacore of rachid et Les Ratons, Vote Hexbollah, Al-Thawra, Secret Trial Five, and unique Islamic fashion of hijab designer (Figure 13), the Danish-Turkish Tesnim Sayar (Fiscella, 2012: 257; Murthy, 2013).

Figure 13. Punk hijab of Tesnim Sayar (from www.kristinask.net)

In the previous chapter, I quoted a slogan of Punk Muslim relating to their belief of music as *dakwah*. Several members mention that *nasyid underground* is the effective media to make *dakwah*. By filling lyrics with Islamic references or part of basic Islamic principles, the obligation of dakwah will be done. Their slogan of "*Sampaikanlah walau hanya satu ayat.*" (Please call although only one verse) becomes a stand point of dakwah movement. The slogan is taken from a hadith that encourages the spread widely of Islam to all people. The meanings of dakwah include propaganda or missionary. If they focus on street people's concern to do dakwah movement as physical action, the oral action of dakwah is producing Islamic lyrics.

Some members of Punk Muslim have similar perception on the dakwah strategy. They mention that by filling *nasyid underground* lyrics with Islamic themes, they are hoping to make dakwah which can inform or educate Muslims and non-Muslims about Islam. "Although we are street people, we can still do religious dakwah through my song. It is our way to share Islamic knowledge," one member said. The statement implies that their song is assumed as a way to do religious dakwah. Other members emphasize that their song's lyrics propagate listeners to remember their God and life after death. They believe that it is part of dakwah movement to remind other people to believe in God and judgment day.

Punk Muslim members define *nasyid underground* music as an invitation to listeners to be more close to Allah. They explicitly told that that kind of combination music encourages other punk groups to follow Islamic practices and cultures. It does not mean only punkers who are invited by them but also other Muslim listeners and even non-Muslim believers. One of their lyrics narrates a weakness condition which will be experienced by all people when they

are getting old and face death afterwards. The lyric calls on people to remember the existence of Allah as eternal things who exist in the life after life in the song entitled "*Masihkah*" or "is still".

"MASIHKAH"	"IS IT STILL"
Bila tubuh telah lemah	If bodies have tired
Saat nafas terengah-engah	When breath panted
Masih teguhkah pendirianmu	Is your standpoint still strong
Saat kecerdikan otakmu	When your smart brain
Konsleting termakan usia	Destroyed by the age
Masih teguhkah pemikiranmu	Is your thought still brilliant
Sekarat datang menghantammu	Agony came to pick up you
Menciutkan volume otakmu	Shrunk your brain volume
Masih teguhkah pemikiranmu	Is your thought still brilliant
Maut hentikan detak jantungmu	Death stopped your heart beat
Menghancurkan segala sombongmu	Destroyed totally your arrogance
Masih teguhkah pendirianmu	Is your standpoint still strong
<u>Reff:</u>	<u>Chorus:</u>
Tentang kasualitas diatas segalanya	About causality on everything

Tentang Dia/Allah yang kau anggap tak ada	About him who is assumed absent
Nantikanlah saat itu	Wait that moment
Saat maut menghancurkan otakmu	When death destroyed your brain
Nantikanlah saat itu	Wait that moment
Saat maut menghancurkan sombongmu	When death destroyed your arrogance
Nantikanlah saat itu	Wait that moment
Saat maut membekukan darahmu	When death freezes your blood
Nantikanlah saat itu	Wait that moment
Saat maut membusukkan tubuhmu	When death louse your body

In the first lyric page, it describes the condition of being weak followed by questions regarding our power to deal with that. It starts with the condition of body weakness to the stopped heart beat then following by "is your stand point still strong?" and "is your thought still brilliant?" questions that can be addressed to punker, Muslim, and non-Muslim listeners. Besides, this refers as well to their own spirituality to think more about their future life. The second lyric page answers those questions indirectly by giving future information relating to beliefs after life.

This song's lyric implicitly invites listeners to think and contemplate more about the fact of the human body's weakness. All people understood that our body's power gradually decreases. It is easy to understand for all people who listen to the song. The interesting thing is the answer in the chorus. The answers lead us to the conclusion that there

is an eternal thing namely God/Allah. As a consequence, if people did not believe in Allah, they will know the existence of him when they die. We can easily assume that it relates to the Islamic teaching to believe in the day after death or future life after life.

In Islam, there are six pillars of beliefs namely believe in Allah, in Angels, in holy books, in prophet (messengers), in Judgment day, and in God's rules. From the intertextuality perspective, the text of the "Is it still" song is closely related to judgment day where there is a life after life in the world. Punk Muslim tries to remind listeners and perhaps themselves to remember the existence of life after life in order to do goodness or good deeds.

Other songs closely relate to Islamic basic teachings as well. Two of Punk Muslim albums describe their belief in Allah as expressed through the Arabic terms like "*lailahaillaallah*" and *Aku bersaksi tiada tuhan selain Allah* (I testify that there is no God but Allah) as I quoted in the beginning of this chapter. Indeed, there are some possibilities to interpret Punk Muslim's song pertaining their nasyid underground lyric and action. First interpretation is regarding their personal expression which shows that they have new identity of Islam. They are punkers but engage in Islamic belief. It seems that Punk Muslim want to show to the public that their punk style is also part of Islamic belief. On the other hand, the content of song can be interpret as a dakwah because it invites the listener to believe in God and rethink life. Underlining the important part of Punk Muslim creativity, the dakwah which is widespread to audience is easy to hear because the dakwah method is song form. Most people in the world like music.

By doing this, Punk Muslim identity for Muslims with the help of music becomes a religiously inspired value. The

members emphasize the novelty of their Islamic lifestyle through a narrative, which devalues their former selves and non-Islamic punk music while morally revering Islam; Punk Muslim becomes the genre of those who have found God and abandoned their egos as reflected in the Do It Yourself ethic.

CHAPTER VI
CONCLUSION

Previous studies on Indonesian Islam and punk community in a predominantly Muslim country such as Indonesia is still developed. It is not only because the political atmosphere of new Indonesia (reformation era) but also the new trend of punk culture regarding their identity. The phenomenon of new Islamic movement in Indonesia affects the emergence of new punk group. Punk Muslim is a group of punker who are mostly street people and currently become a phenomenal issue on Islam in Indonesia. Unlike other Islamic movements such as Hizbut Tahrir Indonesia, Jamaah Islamiyah, and Ikhwanul Muslimin network of Indonesia, this group is strong in character because it combines contradictory ideology into one, punk and Islam.

As I presented in chapter three, Punk Muslim and its activities have drawn my attention because they often held street protest regarding Islamic tenets and other related Islamic issues, while punk commonly rejects religion or religious aspects to their movement. Promoting Islamic tenets for lifestyles is what they wrote in a banner "*gak sholat gak gaul*" (without prayers is not friendly). It also is reflected in their activities either routine activities or incidental activities. Routine activities indicate their engagement in punk culture especially singing on the streets as main activity of punkers and other activities as acting of searching Islam.

This kind of movement is typically an individual action to face everyday life needs. On the other hand, they engage in some activities that show a social movement action to attract public attention. Some movements like street protest, concerts, and distributing zakat in Ramadhan month are the form of their communication to Muslim society in Jakarta. Those actions show their efforts to deal with punk and Islamic culture in order to achieve new image perception from the society.

Considering Punk Muslim as a social movement is also possible because they engage in social protest as well as social service to show their existence. As my discussion in chapter four, Punk Muslim members actively engage in social protest regarding issues of Islam either in Indonesia or foreign country. It is usually acted by the community together with other networks. This social action clearly shows that they have mission to gain more public attention, especially youth attention. Other kinds of movements such as distributing zakat, public concerts, and campaign for Islamic teaching through their hard rock music lyrics and social media are closely related to social movement category. Therefore, the movement means that this group has a particular ideology of punk and/or Islam that attempt to be disseminated to the wide range of Indonesian youth society.

In chapter five, an analysis of hard rock music genre of punk designate their contradict identity. In general, Islam rejects hard rock music type while punk culture has anti-establishment culture. Punk Muslim songs contain the Islamic teaching with punk music genre. The integration of this genre produces a new genre called *nasyid underground*. It is not mainstream to only punk or Islam but integrated both punk and Islam. This media of campaign makes them confident to claim that Islam should use any kind of popular media to convince young people about Islamic rightness.

For them, creating *nasyid underground* lyrics with Islamic themes is part of dakwah. They hope that they can strengthen dakwah of Islam which can inform or educate Muslims and non-Muslims about Islam.

This book is a preliminary research on periphery discussion of Muslim youth movement in Indonesia. In my consciousness, this book is still need much improvement in terms of analysis and methodology. I do recommended the linguistic approach on *nasyid underground* music genre for future research. The lyrics of *nasyid underground* is interesting research topic because it is closely related to the ideology as well as practices of Punk Muslim. Another interesting research topic is a comparative study between Punk Muslim movement and other Muslim youth movements or punk groups.

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APPENDIX
LYRICS OF PUNK MUSLIM SONGS

MUHAMMAD IDOL

Dari Aristoteles hingga Washington
Maupun sicerdik Enstein atau siDarwin
Dari nabi Adam sampai nabiku Isa
Nabi Muhammadlah dia sang idola dunia

Ooo wow…!!!

Sungguh sangat mulia semua ucap lakunya
Sholeh jujur amanah dan terpercaya
Hidup sederhana uswatun hasanah
Sosok pribadi yang nggak akan pernah mati

Ooo wow…!!!

Reff:
Nabi Muhammad sang idola dunia
Best of the best Man Muhammad forever
Muhammad My Idol

PUNKMUSLIM
By: NN

PASTI

Jika Engkau melahirkan Engkau pasti seperti kami
Jika Engkau dilahirkan Engkau pasti seperti kami

Jika Engkau membutuhkan Engkau pasti seperti kami
Jika Engkau dapat mati Engkau pasti seperti kami

Reff:
Allah tidak memperanakkan
Allah tidak diperanakkan
Allah tidak membutuhkan
Allah tidak dapat mati

Jika Engkau dilahirkan Engkau pasti seperti kami
Jika Engkau dapat mati Engkau pasti seperti kami

PUNK MUSLIM
By: NN

BUKAN

Ia… Allah yang maha Esa
Dari segala persamaan-persamaan
Ia… Allah yang maha Suci
Suci dari segala imagi-imagi

Proyeksi itu bukan diriNYA
Apa lagi bentuk rupa dari khayalmu

Reff:
Bukan…Bukan apabila Ia ada sama
Bukan…Bukan proyeksi itu bukan diriNYA

Orasi:
Ketika Tuhan kau ilustrasikan maka lahirlah berhala-berhala dan symbol-simbol
Terjebak paganisme dalam khayal dan kenyataan
Tanpa atau kau sadari kau telah menciptakan Tuhan

Dualismemu itu takkan mampu meracuni kami
Dengan pertolonganNYA ketauhidan akan tetap menghujam dalam hati kami
Ingatlah… kami takkan menukarnya dengan "1001 surgamu"

Ini adalah amanah murni dari Tuhan kami
Dari Nabi-nabi kami, Adam, Musa, Isa hingga Nabi Muhammad
Dari kitab suci kami dan agama kami
Sekutu Thagut menyingkirlah dan jangan ganggu kami

PUNK MUSLIM
By: NN

THE STORY OF MUALAF

Banyak jalan didepanku
Satu yang harus kutempuh
Dari jalanku saat ini
Untuk dapatkan kesejatian

Banyak rintangan hambatku
Saat kutentukan pilihan
Tak akan goyah langkahku
Untuk dapatkan/menuju Tuhan yang Satu

Reff:
Aku bersaksi tiada tuhan selain Allah
Bahwa Muhammad adalah utusan Allah

Tetapkanlah imanku
Dan kuatkanlah hatiku
Untuk hanya memujaMU
Agar dapatkan keridhoanMU

PUNK MUSLIM
By: NN

MARS PM

Wahai kawan sejalan mari rapatkan barisan
Menghalau serangan dengan pertebal keyakinan

Wahai kawan sejalan jangan kita dengarkan
Kata manis mereka dengan segala tipu daya darinya

Wahai kawan sejalan mereka takkan senang
Sampai kita ikuti apa yang mereka harapkan

Wahai kawan sejalan mari rapatkan barisan
Menghalau serangan dengan pertebal keyakinan

PUNK MUSLIM
By: NN

MENUJU-MU

Kita menangis dan membuat mereka tersenyum bahagia
Saat ketika kita terlahir dan hadir
Membuka mata sambut dunia

Reff:
Bisakah kita tersenyum bahagia
Diantara tangisan mereka
Ketika kita mati menuju dunia yang abadi
Menutup mata lafadzkan…

Laailaahailallah..Muhammadurrosulullah

PUNK MUSLIM
By: NN

AMPUNKANLAH

Saat ini aku jalani
Sebagian perintahMU sebagian laranganMU
Sungguh hati tak menentu

Semua nanti akan kembali
Hanya kepadaMU hanya kepadaMU
Hanya padaMU itu pasti

Terlalu banyak perintah yang aku tinggalkan
Terlalu banyal larangan yang aku kerjakan
Ya Allah ampunkanlah aku

Reff:
Tak pantas tak pantas
Aku berada diSurgaMU
Tak sanggup tak sanggup
Aku berada diNerakaMU

PUNK MUSLIM
By: NN

CINTA TROTOAR

Gak perlu kau katakan
Tentang sucinya cinta kita
Cinta kita lahir di jalan
Lurus bukantak ada hambatan
Biar…biar…biar…biar…
Orang lain mau bilang apa
Jalan mencinta trotoar
Slamat sampai tujuan
Cinta…trotoar….
Cinta…anak jalanan
Tuhan gak perlu romantic
Karena hidup terlalu bengis
Jangan jatuhkan air mata
Tak ada tempat berkeluh kesah
Aku percaya
Tuhan bersama kita
Walau setan menggoda
Kita tetap melangkah
Cinta…Trotoar…
Kasih saying
Sepanjang Jalan
Kisah cinta trotoar
Kisah cinta anak jalanan
Kisah using yang terlupakan
Dari pandangan mata kita
Semoga mereka berbahagia
Rasakan indahnya cinta
Sama seperti kita

Cinta..trotoar…
Kasih saying sepanjang jalan
Cinta trotoar
Cinta anak jalanan (2x)

UNFOLDING ISLAMIST WOMEN PARTICIPATION AND ISLAMIST MODERATION:

A COMPARATIVE CASE STUDY BETWEEN PAS IN MALAYSIA AND PKS IN INDONESIA

WITRI ELVIANTI

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Witri Elvianti

Asian Resource Foundation

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EXECUTIVE SUMMARY

This study aims at investigating the transformative policy of Islamist parties in Southeast Asia, the PKS in Indonesia and PAS in Malaysia, in approaching the issue of women's participation in wider political contexts both structurally and ideologically. It underscores the changing perception of male party leaders who have dominated the internal party structure towards women's participation inside and outside parties. The analysis in this comparative case study is drawn from interpretation of primary data that resulted from semi-structured interviews. Field research was undertaken in two sites in Indonesia: Jakarta and Yogyakarta, and two other sites in Malaysia: Kuala Lumpur and Kelantan. Based on this research, both parties have adopted shifting standpoints regarding their policy towards women's representation in internal party structures. PAS still rejects political compromise in defining to what extent women are allowed to represent the party in wider political spaces. PKS is more inclined to the new interpretation of women's participation.

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Last but not least, I would like to thank to my family, my lovely mother and father, my brothers and sisters, for their sincere love and support. This is dedicated to mama who always prays for me.

FOREWORD

Thailand has had a long relationship with the Muslim world which can be dated back over five hundred years, since Ayutthaya kingdom. Apart from the continuous interaction with Melayu and Arab civilizations, Muslim culture has become an integral and essential component entrenched in Thai society. Muslim comm nities had played significant role in the nation building and socio-economic, cultural and political development. Today, there are over four million Muslim populations in Thailand. Despite political violence in the southern frontier provinces, Muslims along with Thai citizens of other faiths continue to live side by side in harmony and peace. Begin situated in Southeast Asia and serving as an active member of the Association of South East Asian Nations or ASEAN, whose majority of the members are Muslims, Thailand strives to better understand Islam and the reality of complexity in the contemporary Southeast Asia This serves as a foundation for the integration and mobilization of human as well as diverse cultural and religious resources in the region for the attainment of collective prosperity and peace.

In this pursuit, Thailand Research Fund is pleased to be a partner with the Asian Resource Foundation and supported its research initiative titled "Islam in Southeast Asia: Views from Within". This research program is unique as it supports and encourager young Muslim scholars in Southeast Asia, aged below 40 to

undertake research studies pertaining to Islam in Southeast Asia from the internal perspectives. Research being carried out by the insiders and body of knowledge developed will enhance and enrich the understanding of the realities of Muslims in contemporary Southeast Asia. The outstanding themes this reach has tackled encompasses areas such as popular Islam, globalization and identity politics, gender realities, economic activities and social responsibility. The end products of the research studies have become the cutting edge which offers the new research perspectives contributory to studies in the field of Islam and Muslim in Southeast Asia.

The Thailand Research Fund strongly believes this publication will benefit academic and professional communities as well as wider public to gain insight into the realities and complexity of the modern Muslim world in the context of contemporary multicultural and multi-religious Southeast Asia. It is hoped that the findings can be further utilized and translated into concrete strategic remedies to the existing challenges both at policy and implementation levels.

Prof. Dr. Suthipun Jitpimolmard MD FRCP
Director of Thailand Research Fund (TRF)

FOREWORD

Problematizing Views from within "Islam(s)" in Southeast Asia

In 1953 the late Gustav von Grunebaum organized conference of-leading European scholars of Islam, the first to undertake a historical and critical self-understanding of "Islamic studies." The conference examined relationships among Muslims, and between Islam and various cultures. It found that the assumptions and methods used in fields of study like Islamic history lagged a century behind those used in European history. One year later Bernard Lewis remarked that the history of the Arabs had been written primarily in Europe by historians with no knowledge of Arabic and Arabists with no knowledge of history.[1]

Half a century later, research on the subject has changed. There is an increasing number of studies on Islam written by Muslims who know the faith, the cultures, and the practices in different contexts-the works by Akbar Ahmad, Mahmoud Mumdani, Chandra Muzaffar, and Nurcholish Madjid are just a few examples among many. Also changed is the global context itself. Now perhaps more than ever, "Islam" is more than just a description of a fifteen-century-old faith shared by one-and-a-half billion people. The word has strong emotive qualities for those both within and outside the faith. Two decades ago the late Edward Said wrote, "For the right, Islam represents barbarism; for the left, medieval theocracy; for the

center, a kind of distasteful exoticism. In all camps, however, there is agreement that even though little enough is known about the Islamic world there is not much to be approved of there."[2] It is therefore important to understand, from their own perspectives, the contemporary problems that Muslims are facing.

Works in this series, Islam in Southeast Asia: Views from Within, join many other writings on Islam by authors at the periphery of scholarship, using assumptions and methods that may no longer differ from those used in the centers of learning. But if such is the case, how is this series different from the other writings on Islam that are presently flooding the popular and academic landscapes?

To state the obvious, this series addresses Islam in Southeast Asia. In relation to the Islamic world, where the sacred geography, history, and language of the Middle East seems to have established that region as the center, Southeast Asia is clearly seen as the periphery. But it is misleading to conceptualize Southeast Asia as a single sociocultural entity. As is true elsewhere in the world, societies in Southeast Asia are heterogeneous. Muslims in Indonesia and Malaysia, for example, lead lives that differ from those in Thailand and the Philippines because of the different realities facing majority and minority populations in the respective countries. Furthermore, whether Muslims constitute a minority or a majority, their lives differ again when seen in contexts influenced by Javanese culture, British colonialism, Filipino Catholicism, or Theravada Buddhism, among other things. In short, the cultural topography of Southeast Asia is a rich multiplicity.

Consequently, Islam as believed in and practiced by people in the diverse worlds of Southeast Asia is not necessarily singular, since there could be as many Islams as the various contexts that constitute them.[3] The problems

facing Muslims in Southeast Asia will therefore vary. Those portrayed by researchers in this series are unusual, and their analysis is at times groundbreaking, but what they underscore is that Southeast Asian Muslims struggle with multiple identities in sociocultural contexts destabilized by globalizing forces. In addition, the fact that this research is carried out by young Muslim scholars is important; the "new generation" factor could explain both the distinctive set of problems these researchers are interested in and the fresh approaches they use.

The "views from within" approach, however, is not without its own potential problems. To engage in studies claiming to be "views from within" is in some ways to guard against the study of "others" as the study of one's own self, because in such a situation writers face other types of realities that are possibly distorted in some other ways. It is therefore important for readers to appreciate the effort researchers make to situate themselves at a distance that gives them a better perspective on the social realities of their subject while retaining their sensitivity towards, and ability to relate to, the people they are studying.[4]

At a time when Islamophobia is on the rise,[5] it is essential to find fresh perspectives that will allow us to understand the new problems and tensions facing Muslims in contemporary Southeast Asian societies, and to articulate the ways in which they negotiate their lives as members of communities of faith in a fast-changing world. This series of studies by young Muslim scholars of Southeast Asia is an important step in this direction.

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NOTES

1. Azim Nanji, ed., *Mapping Islamic Studies: Genealogy, Continuity and Change* (Berlin and New York: Mouton de Gruyter, 1997), xii.
2. Edward Said, *Covering Islam* (New York: Pantheon, 1981), xv.
3. Aziz Al-Azmeh, *Islams and Modernities* (London and New York: Verso, 1996).
4. I have discussed the problem of alterity in conducting research on Muslim studies in Chaiwat Satha-Anand, *The life to this World: Negotiated Muslim Lives in Thai Society* (Singapore and New York: Marshall Cavendish, 2005), 25-26.
5. Akbar S. Ahmad, *Islam under Siege: Living Dangerously in a Post-Honor World* (Cambridge: Polity Press, 2004), 36-39

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INTRODUCTION

In 2006, Norani Othman, a Malaysian Muslim women activist and a feminist scholar, delivered her lectures in an ASEAN public lecture series held by the University of the Philippines and expressed her dissenting voices questioning the future's prospect of women emancipation and democratization within Southeast Asia given the on-going project of Islamization particularly in the two largest Muslim population but plural countries in the region, Malaysia and Indonesia. Furthermore, Othman claims there might be disparity in terms of collective awareness among young Muslim women in Malaysia and Indonesia since "in Indonesia …female graduates of state Islamic institutes are at the forefront… but not in Malaysia" (Othman 2006:124). This information indicates that despite the increasing number of women who are actively involved in Islamist parties; their role in electoral politics is not concomitant.

The discussion on the relation between Islam and women's rights in public authorities has been viewed problematic. The installation of Islamic principles in state affairs, such as the implementation of "hudud draft laws by PAS in Kelantan, Malaysia" and the political violence demonstrated by terrorist group, the tragic terrorist attack in Bali (Bali Bombing), has given rise to a negative image in constructing conducive environment between Islam and women's empowerment. With reference to the PAS's version of hudud, it might underline that in Malaysia there has been

chronic "homogenization of political culture…" and thus the state must take a firm stance "…inculcating a common culture among a diverse citizenry" (Hefner 2001: 3).

At the time democratization has been taking place in this region, both Malaysia and Indonesia have been encountering the challenge of *making Islam more public and making the public become more Islamic* through structural, statist, and systematized penetration by various Islamist political parties. Instead of strengthening democratic building of the nations, the Islamists rather deconstructs the bricks and thus, Islamist political parties, either radical or moderate, are perceived as a threat since they could distort the democratization and the development of gender emancipation. Islamist political parties seek to overthrow the existing political regimes and replace them with the establishment of Islamic-law-based government as exemplified by PAS's rules in Kelantan (Ufen 2009). With reference to this example, it is worth noting that the presence of Islamist political parties would consequently lead the on-going democratization, either in Malaysia or Indonesia, into peril (Huntington 1968; Hefner 2001).

In addition to this, the inclusion of Islamist political parties in electoral democracy contest underlines the paradox in democracy. Its interpretation as well as the making of Islamic norms, symbols, and values into public spaces, which is called Islamization, has also worsened, in particular, the western perception on political Islam and women's emancipation (Hefner 2001). The critique and skepticism toward how Islamic principles, promoted by Islamist political parties, are defined based on the ambiguity and gender bias that might be found in the way the Islamic clerics or conservative Muslim scholars interpret the Islamic teachings. With much influences from liberal subjectivism, feminist scholars criticize Islamic scholars and Islamist political parties by saying that instead of perceiving Muslim

women as "agents in the transformation of polity and society…" Islamic scholars and Islamist political parties seem to "address women…and tend to write of women as the objects of (male) Islamist activism…" (Yadav 2010: 1-2).

In addition, Islamist activism is strongly prescribed as the most responsible political force that takes into account gender segregation in public spheres. Islamist political parties seem to isolate Muslim women from upholding their sovereignty to take over formal authorities in public spaces due to 'Islamist presumed circumscription'. They assume that when Muslim women freely enter the political arena and other social habitat they could be influenced by and resemble liberal perspectives, which by and large, contradict to the Islamist beliefs (Yadav 2010: 3). Given the skepticism on the relations between Islamist political parties and women emancipation, it becomes necessary to ask whether or not such skeptical analysis is always true. Against this background, two Islamist political parties in a region as diverse as Southeast Asia, one is PAS the Pan-Malaysian Islamic Party of Malaysia and PKS or Prosperous-and-Justice Party of Indonesia is the other, claim that they have performed significant improvement in women's political participation. Both parties have claimed that they are now more inclusive and open 'for all' members of society regardless of their social and cultural background. The Islamist's 'open-door' policy does not only include multi-ethnic society to become their loyal members but also seeks to address more opportunities for women to be involved in high-level structures of organization.

On the one hand, in Malaysia, in a couple of months prior to the Malaysian general election 2013, Women's Council (Dewan Muslimat) of PAS claimed that the party's performance seems to be more representative in terms of giving opportunities for women to compete in the election than UMNO, the secular nationalist political party. The

chief of the Women's Council of PAS, Siti Zailah Mohd Yusuf assumed that the party's support on gender equality has evidently increased from year to year.[1] Realizing the significance of gaining popular support in order to enable the party winning the election, the women of PAS have attempted to undertake political mobilization (Roslina Ismail & Roslina Rosli 2002). Thus, as argued by Maznah Mohamad (2001), it indicates that "political consciousness" among Muslim women of PAS, which has led them to "cast the vote for the party they preferred", presumably contributing to the success of the Islamists in winning the election (Ministry of Women Development, Family and Society, 2004 quoted in Roslina Ismail 2004:7).

On the other hand, the number of women participating in the Indonesian Islamist party, the PKS, has rocketed from only one female legislator in national parliament during its first appearance in the 1999 general election – the first democratic election ever held since the fall of the authoritarian regime – to 75 women members of parliament at the present, said Anis Matta, the President of PKS. Showing its confidence, the party claims that it can successfully fulfill the minimum 30 percent quota of women in parliament. Hidayat Nur Wahid, the head of PKS's faction as well as ex-president, commented that within two periods of general elections that were in 2004 and 2009 as much as 34 to 35 percent of party's legislators were those gendered as women.[2] In addition to this, facing the upcoming 2014 general election, Ledia Hanifa, the head of the Department

1 See http://muslimat.pas.org.my/v2/index.php?option=com_content&view=article&id=391:tanpa-disedari-umno-ketepikan-wanita&catid=14:kenyataan-rasmiberita&Itemid=91 accessed on June 14, 2013 at 14:32 pm.

2 See http://www.republika.co.id/berita/nasional/politik/13/04/01/mkk6vt-pks-siap-penuhi-keterwakilan-caleg-perempuan

of Women of PKS, pointed out that the women of PKS are ready to fulfill 30% quota of women in the parliament. Only by doing so, the PKS will be able to undertake interest aggregation and political advocacy that will possibly result in better political policies of accommodating and protecting women's rights in Indonesia.[3]

RESEARCH PUZZLE

Therefore, given such empirical information where both Islamist women in PAS and PKS seem to become more active and relevant political actors in democratization, it could be employed in order to generate such a comprehensive elaboration on the question related with whether Islamist political parties would always hinder the development of gender emancipation in Southeast Asia. With reference to the empirical information above where both PKS and PAS have performed the number of women's participation in electoral democracy has significantly increased, this study would argue that the Islamist women would potentially enable the development of Muslim women's empowerment in the political sector in such patriarchal society in Southeast Asia particularly in those two countries where Muslims are the majority. Assuming this is valid, it becomes urgent to question how Islamist parties, PAS and PKS, have transformed their political perspectives on women political participation since a political opening has emerged in the respective countries. Islamist women in PAS Malaysia and PKS Indonesia have currently increasingly been crystallized in such political arena while many male-dominated Islamist perspectives claimed it a taboo. Assuming that they might perform significant contribution to increase women's

3 http://pkskrukut.multiply.com/reviews/item/51?&show_interstitial=1&u=%2Freviews%2Fitem accessed on 20th of July 2012.

participation in political spaces, the question remains why PAS's women's political participation and its consequent impact to the deliberation of gender emancipation in Malaysia, as assumed by some scholars mentioned earlier, seems to be slower than that practiced by PKS women's activism in Indonesia.

Such question brings the discourse of Islamism-women relations into a highly intense debate. It divides the current academic discussions into two mainstreams, affirmative perspective against rejectionist perspective. The rejectionist feminists, with much influence of western subjectivism on what constitutes gender equality, argues that there might be no particular and significant line of cooperation and accommodation between Islamism and women's emancipation. On the contrary, the affirmative feminist perspectives take into account the possibility of examining some features of Islamism and its political affiliation toward women's emancipation. Thus, the affirmatives oppose the rejectionists since, according to them; it does not yield potential development of gender emancipation itself. Assuming the rejectionists are consistent in introducing and disseminating the democratic principle as well as the liberation of women's right, regardless of their religious ideological roots, they should not exclude any feature of Islamist women's political activism in the first place. At the time liberal democracy, embarking roles of civil society and the struggle toward protection of women's rights have developed in many countries since the end of the Cold War, Islamism and its global project of Islamization has massively emerged in Muslim majority countries. Islamism, which will be clearly defined in the next chapter of this study, is perceived to become a new threat to the global democratic order. Claiming to counter American hegemony, as the commando of liberal democracy, global Islamism has sought

to unify Muslim communities into one *ummah* (a universal Muslim community) under the leadership of an Islamic caliphate. Of varied Islamist transnational social movements, Muslim Brotherhood (MB) is claimed to be the largest Islamist movement spread over continents ranging from Algeria to Malaysia and Turkey to Indonesia. The ideology of such a MB-led-Islamist social movement has been translated into various types of non-governmental organizations, social groups and even political parties. The last mentioned variant, even worse, is being embedded within political contestation, in the name of democratization, and thus call for contention. Thus, the emergence of Islamism in the middle of democratization or the making of liberal democracy as a '… normative form of government" has resulted in a deviance that exists within a global democratic regime (Lee 2010: 1).

The implication of the growing Islamist movements, particularly the Muslim Brotherhood, is far reaching as it has not only undermined the secular political regimes in Middle Eastern countries, where it was born, but also challenged the nationalist secular regimes in some countries located in as culturally diverse a region as Southeast Asia. Its emergence in this region has been apparent in two largest Muslim majority countries, Indonesia and Malaysia. PAS, or Pan-Malaysian Islamic Party the largest Islamist political party, and PKS, Prosperous and Justice Party the most dominant Islamist party in Indonesia, have been perceived as a common threat as they have participated and been embodied in electoral democracy respectively. Thus it yields much opposition in respective countries importantly from those who are defending the liberation of women's right and fighting against any forms of gender discrimination and exclusion that later is to be called skeptic western feminists.

The worrying fact that this critical seeks to generate seems to be the acute sociopolitical exclusion and structural

discrimination toward Muslim women in the Arabic world throughout the history (Blaydes and El Tarouty 2010). It presumably gives impetus to the Southeast Asian Islamist political parties to resemble similar sins. Skeptic perception about Islamization is retrieved from consideration that once the Islamization takes place, it could undermine the development of gender reform-based processes and women's emancipation in those countries since, according to some literature, Islamist is rooted on "…a tradition that has historically oppressed women…" (Abdellatif and Ottoway 2007:1). In addition such skeptic perspectives argue that Islamist organization, either situated as a social movement or political party, is generally "the most visible organized force calling for the segregation of men and women…" (Yadav 2010: 3).

The fact to be underscored is that most Muslim women particularly in Middle East had undergone such a 'gender deficit' in national liberation. Although they had influentially generated significant contribution during the making process of national liberation, their accounts for more equal position in public spheres remained underestimated. Taken as an example of Islamist women during the Algerian national war against French occupation, it was evident that their attachment to the war could be seen in various ways. They went to the battlefield as "nurses or fighters … [and] carried the messages, the money and weapons…" and they paid critical roles becoming either technical supporter, such as providing the "…supply and logistic corps of the war…" or performative actors for example occupying the streets to launch its condemnation against the French colonialism (Bouatta 1994: 19). More worryingly, within the period of national reconstruction after the end of the Algerian national war, even though women were more apparently present in "…parliament, mass organizations, and management",

their representations were "…minimal even symbolic…" and thus they were "… very quickly removed from the political sphere…" (Boutta 1994: 23). Boutta's study showed that there was no significant improvement but it rather indicated that "a slow regression of the feminine condition was therefore taking place…" (Boutta 1994: 23). Given such historical narrative, the western feminist school alarms the international community to keep an eye on the development of such Islamism. The potential threat of Islamism to slow or even destroy the process of women emancipation in the socio-political realm could worsen the global effort to change the political regime which has been dominated by patriarchal society, with reference to the Arab culture where women have been subordinated for decades. This perspective by and large assumes that the historical legacy of oppression toward women would also duplicate in Southeast Asian Muslim women where Islamist political activism is alarmingly on the rise.

Assuming the above-mentioned criticism is valid, since it refers to the historical experience that most Muslim women in the Arab world have encountered, recent literature on the Islamist movement show somewhat different pictures. Coinciding with the rise of democratization and political liberalization that has mushroomed in developing and less developed countries, Islamist movements have performed significant improvement from radical to moderation. This feature underlines another lesson that there has been significant improvement within the context of Islamist movements in the Arab world (Clark and Schwedler 2009; Yadav 2010). At a time when Arab women are shaped and structured in such segmented public sectors of life given the strong embodiment of patriarchal society that has led mostly to authoritarian regimes, women who involve themselves in Islamist parties implicitly influence the party's restructuration

(Yadav 2010). Political liberalization in Jordan and Yemen in 1989 and 1990 has led Islamist movements to moderate their political perspective and behavior toward women's representation in their organizational structure since there have been "…women in their highest decision-making bodies…" (Clark and Schwedler 2009: 293).

This phenomenon seems to contradict previous claims that Islamist political parties might become the main constraint on democratization and deliberation of women's rights in Muslim countries. With reference to this case, it is worth noting that, instead of isolating women in "private spaces at home" and making them abide by 'sacred' understanding of Islamic family law, Islamist women in Jordan and Yemen, to this extent, take into account gender equality as inescapable (Owen 2004). In addition to this, Egyptian Islamist women presumably resemble a similar pattern since the Muslim-Brotherhood's political party has officially participated in general elections and provided women a few number of opportunities to "…rally in support of Brotherhood candidates…" and thus "…creates a strong emotional pull for sympathizers to support…" (Blaydes and El Taraouty 2009: 364). Such elaboration indicates that, despite the legacy of traditional Arabic culture where women were structurally, socially and politically oppressed in the public spaces, there has been development in progress where the empowerment of Muslim women and the number of their participation, particularly those who are crystallized in Islamist parties, has apparently flourished.

Nevertheless, given the empirical case of Jordanian and Yemen Islamist women who interestingly increased their participation in Islamist political parties, it becomes urgent to question whether Islamist women who join any Islamist political party would always be given such similar

opportunities to influence their party's decision making process. Situated in such chronic authoritarian regimes and patriarchal society (where women remain highly isolated in private spaces regarding their nature as wife and mother) the Islamist women could be assumed as a strategic actor to disseminate the principle of gender emancipation since they work at multi-layers society where liberal feminist activist could not automatically be able to reach. Assuming this is true; would Islamist women in other countries with different sociopolitical backgrounds be able to perform such functions?

Turning now to the case of Southeast Asian Islamist political parties, the two remaining largest Islamist political parties, PAS (Pan-Malaysian Islamist Political party) of Malaysia and PKS (Prosperous and Justice Party) are situated in different sociopolitical landscapes as explained in the next chapter. Both parties claim that they are now changing their political behavior. The changing path of those Islamist parties can be seen where the parties now open more spaces for women to participate in wider political spaces. Assuming this perception is valid, the question remains why now women of these two Islamist parties are given more opportunities in representing political parties. One major reason exemplifies the internal division between the hardliner and moderate which eventually lead the moderate faction to influence the internal party's decision making process by gradually transforming direction from being exclusively against gender-discourse to moderation in outlining affirmative policy to accommodate its women cadres. The party's moderation is due to the party's participation in electoral democracy.

Nevertheless, although this hypothesis saying that the increasing number of women's participating in Islamist

parties, in this case the PKS and PAS, is due mainly to the party's moderation as a result of their participation in electoral democracy, the case of both PAS and PKS underline different notions. Assuming that a party's participation in democracy would eventually moderate the party's political behavior and thus influence the internal faction creating more opportunities for women to engage with politics at the level of praxis, why does PAS, albeit has been around longer in Malaysia's polity than that PKS in Indonesia, seem to be less responsive and less accommodative to women's participation in wider public and political spaces? This anomaly leads to the next question, which becomes the main problem of this research to what extent are women in Islamist political parties able to influence the party's internal decision making process and participate in political contestation in a wider sense and how far are women in Islamist political parties able to generate the benefits of the development of women's emancipation in respective countries?

PURPOSES AND OUTCOMES

This study seeks to generate both practical and theoretical advantages. The comparative analysis of empirical data which this study exemplifies will enrich scholars' discussions on gender and Islamism particularly the extents to which democratization and moderation would enable Islamist women to be more inclusive in gender-based reform processes in Muslim majority countries. The case selection of this study puts emphasis on these two parties remaining the largest Islamist political parties, either quantitatively or in terms of ideological influence, in their respective countries. Those parties, particularly PAS in Malaysia, have undergone their agenda to institutionalize Islamic laws and this is controversial. By understanding women's political trajectory

and the way they and the male-dominated internal structure perceive gender discourse and women emancipation, the study addresses policy-recommendations for stakeholders at home and abroad since those parties are likely to influence national decision making processes. Moreover, the party's political objectives on women's emancipation would also determine its adoptability and acceptability of pluralist and democratic values.

RESEARCH METHODOLOGY

The discussion that follows examines whether or not Islamist parties participation in electoral democracy, both PAS in Malaysia and PKS in Indonesia, will always bring qualitative changes in women's political participation, both inside and outside the parties. Given this purpose, the study was designed as a qualitative comparative case study. Classifying this study as part of comparative politics, the main emphasis of this study is to explore "…patterns, processes and regularities among political [parties]" (Wiarda 2000: 7). Comparative study enables the researchers to investigate:

> "…similarities and differences between and among political phenomena, including political institutions (such as legislatures, political parties, or political interest groups), political behavior (such as voting, demonstrating, or reading political pamphlets), or political ideas (such as liberalism, conservatism, or Marxism)" (Mahler 2000: 3).

With regards to this study, PAS and PKS were the main concern of comparison because they were similar in some key aspects. Those countries were born in the two largest Muslim majority countries in Southeast Asia. Political Islam in those countries respectively has been alienated due to its conservative paradigm to establish an Islamic state. Both parties have been politically underrepresented due to

repressive and authoritarian regimes. However, the reform era has been launched and thus political opening took place in the mid 1990s. Such a circumstance gave both parties wider opportunities to participate in political contestation nationwide. Internally, the parties also employed similar features by which they have been divided into two factions, the moderate and the hardcore. Despite the parties' denial, internal friction seemed to be apparent since their initiatives to moderate their political ideology remains half-hearted and ambiguous. Among other aspects of Islamist moderation, this study took into account the Islamist stance on women-related political issues. Due to the difference of time periods, PAS has existed in Malaysia since 1950s while the presence of PKS began in 1999 this comparative study focuses on comparing the moderation of PAS and PKS after the break of reform movement in the 1990s.

This comparative study employed qualitative research method due to its relevance. It required the researcher to reach greater degree of understanding of "the notion of *quality* is essential to the nature of things" (Berg 2006: 3). The qualitative research method makes it possible that the qualitative data analysis is derived from subjective meanings of individuals or groups within the Islamist parties respectively. The interaction between individuals or groups shapes the meanings attached within individual's perspectives. Such symbolic interaction results in the construction and perpetuation of particular "emotions, motivations, symbols and their meanings, empathy, beliefs and other subjective aspects" which are influenced by both behaviors and experiences involved (Berg 2006: 14). Berg underlines:

> "…qualitative research properly seeks answers to questions by examining social settings and the individuals who inhabit these settings. Qualitative researchers, then, are

> most interested in how humans arrange themselves and their settings and how inhabitants of these settings make sense of their surroundings through symbols, rituals, social structures, social roles, and so forth…(Berg 2006: 8).

Unlike qualitative research method which emphasizes the importance of understanding the meanings behind any event, the quantitative research method puts emphasis on the quantification and measurement of political phenomena. This method seeks to draw generalizations from empirical cases based on observed and controlled variables. Although the quantitative method pays attention to data reliability, this method, in fact, yields criticism in terms of its subjectivity. Instead of consistently resembling so-called objectivity for its quantification, it rather reduces the meanings and values which exist beyond social events. The quantitative method seems to be "…blind to the relationship between the observer and observed…" and thus "…ignore social and political contexts" (John 2010: 269). Even though quantitative researchers outline their skepticism toward qualitative research methods because qualitative data analysis is unattainable, this study considered the qualitative research method to underscore the meanings beyond the interactions that appeared.

DATA GATHERING AND COLLECTING

Both primary and secondary data were used to construct the main analysis regarding this study. The author used secondary sources such as books, journal articles, policy analysis, newspaper articles, and research report to gain supporting information. The primary data classified as the main source of analysis; which was derived from field study and direct interaction with the observed parties. Gaining this primary data, the study employed qualitative semi-

structured interview as its technique. This study considered this technique was appropriate because

> "This type of interviews involves the implementation of a number of predetermined questions and special topics. These questions are typically asked of each interviewee in a systematic and consistent order, but the interviewers are allowed freedom to digress; that is the interviewers are permitted (in fact, expected) to probe far beyond their answers to their prepared structured questions" (Berg 2007: 95).

Visiting both PAS and PKS, there were a number of phases to be undertaken during the field study. In Indonesia, the first phase was implemented during Ramadan in May 2013 by visiting *posko mudik PKS* or the camp provided by PKS in some locations during this month in order to give commuters free health services in general. The second phase was held by visiting *Gedung Dewan Perwakilan Rakyat Indonesia* or Indonesia's National Parliament in Jakarta. In this phase, the interviews took place. Having visited Jakarta, the last phase aimed at visiting the PKS branch in Yogyakarta. Located in this special province, PKS remains strategic. Very often too, PKS's official policy was based on policy recommendations outlined by PKS's leaders in this province. On the other hand, my visit to Malaysia consisted of two stages. The first stage was to visit Kuala Lumpur meeting up with interviewees. Accompanied by three young female cadres, data gathering started from the visit in Malaysia's National Parliament. Last but not least, the last stage was to visit Kelantan, a federal state where PAS remains powerful and thus imposes Islamic Laws.

Although this visit remained a random activity, the social program held by PKS during this month was a critical source of reflection for this study. The political parties

which participated in the 2014 general election had started their campaign during this month and so did the PKS. The consideration to get this visit done was based on the purpose of seeing how this Islamist party undertook this program and was aimed at looking at the interaction which might emerge between the PKS cadres, both male and female, with the society. Previously, the purpose of any volunteer activities done by PKS was presumably triggered by humanitarian purposes. Serving for poor people, donating living support and giving food for victims of natural disasters in remote areas and conducting other humanitarian program, this party claimed it cares for the people. However, assuming this is true the question remains whether or not this claim was evident in this social service program due to the fact that the party itself was competing for electoral votes. One could then assume the party itself had politicized its social services instead of caring.

First, I visited a PKS camp located in *Terminal Lebak Bulus*, a bus station in Lebak Bulus, South Jakarta. Based on the information I searched, the PKS official website, this social service was conducted for twenty-four hours a day during Ramadan 2013 which meant that, supposedly, they were already there earlier morning. I decided to visit the camp around eight in the morning as I had to save the time of my visit. Unfortunately there was none of them in the camp while there were already a large number of commuters at the station. It seemed to me that the party should have been there much earlier than the fact that I saw at that time. I was waiting for thirty minutes then asking the police there what time the PKS cadres usually reached this area. The policeman gave me rather shocking news as the person in charge usually came to the camp in the afternoon. Considering it would take longer than I expected, I decided to move out of Lebak Bulus station

and went to Pasar Senen, a traditional market in Central Jakarta. Unfortunately, there was no PKS camp there. The last two destinations were Kampung Rambutan and Tanjung Priok. A bus station located in the eastern part of Jakarta, PKS cadres looked busy there. There were two female cadres, one of them is a mother with two children and she left them at home, and who stayed at the camp together with the male cadres. I began my conversation with the ladies. I have been asked by them whether I would take my prayers. Knowing that they were open for discussion, I started the meeting by asking the reasons why they were there.

I collected some data from this interview. My visit continued to Tanjung Priuk, a port located in North Jakarta. This visit made the day because I could see how two women of PKS were mingling with some men who came to their camp. The second phase took place in September 2013. In this visit, I interviewed two members of parliaments from PKS, Mr. Mardani Ali Sera and Mrs. Ledia Hanifa. Both of them are pertinent and involved in the party's decision making process especially in the parliament representing PKS's political interests. Conducting my field research in Yogyakarta was the last phase.

In Yogyakarta, I went to the branch office of PKS in Yogyakarta City, as the capital city of this province, and Bantul District. Although I had my field research here, the interview was completed by phone. On the other hand, this study collected the data from PAS in Malaysia by visiting PAS's headquarter in Kuala Lumpur and its branch office in Kelantan in November 2013. The first step was to visit Kuala Lumpur and interview Mr. Nasrudin, Mr. Nik Aziz Nik Abduh, Mrs. Siti Mariah, and Mrs. Zailah. Although I could interview the main source of PAS I should underline that I should have stayed in Kuala Lumpur and attended its *Muktamar* or assembly held in the next few weeks.

Unfortunately, time constraints and lack of budget allocation made this plan unfeasible.

DATA ANALYSIS AND SUBJECTIVITY AS A MUSLIM RESEARCHER

Knowing that I had an opportunity to undertake a research project questioning whether or not women in an Islamist party can undermine the party's trajectory and whether or not Islamist participation can bring qualitative changes in its perception toward women-related political issues by comparing two Islamist parties, it already seemed to me that the work would not go as smooth as I expected. The main challenge I faced in completing this study was my subjectivity. As a young Muslim woman who was an active member of the *tarbiyah* movement –which then transformed into a political party, named *Partai Keadilan Sejahtera* – when I took my undergraduate degree in Yogyakarta. Indeed, with such close interaction with this movement for about six years, I had experienced the Islamist's efforts to systematically produce and conserve the traditional mode of thought and behavior and the initiative to liberate women to become the avant-garde of Islamists to yield more popular votes in Indonesia's electoral democracy. Therefore I acknowledge that, as the one who even became a cadre of this party, my subjectivity in generating data analysis is involved. With reference to the nature of qualitative research, this study underlines that the researcher's subjectivity remains pertinent.

Despite the above, this study employed interpretivist traditions to analyze both primary and secondary data. With reference to this tradition, the study underscores that 'understanding' is more pertinent than 'explaining'. The interpretivist tradition is defined as "… a systematic study of the respondents' social constructions and clear and effective

reflectivity of the part of the researcher" (Furlong and Mash 2010: 200). This method is criticized due to the observer's subjectivity remains apparent in generating analysis. According to this skepticism, interpretivist merely produces personal opinions or 'subjective judgments' and therefore seems to be invalid. Despite this criticism, such data analysis method helps this study to develop its understanding based on its interpretation on "…the relationship between social phenomena…" (Furlong and Mash 2010: 202).

CHAPTER OUTLINE

The discussion of this study will be divided into several main sections. Conceptual and comparative frameworks will be elaborated in the second chapter. Within this section, the substances of Islamist politics, Islamism and Islamization, political participation and women will be explained. The theoretical dimension of this study will unpack comparative elements that are based on two elements; "democratic participation and the application of religious sources".

According to Clark and Schwedler, the extent to which women in Islamist parties could mobilize themselves from the periphery to the center of the internal political arena can be explained by examining parties' reactions toward two core issues; how accommodative parties' reactions toward democratic participation either at ideological or behavioral level, and how progressive parties' initiative to re-contextualize the traditions of Islamic teachings that has widely been interpreted by male-oriented-religious perspectives. The third chapter will elucidate the dynamic interaction between Islamist political parties, PAS and PKS, with domestic politics and women issues. In the next chapter, this study will reveal the increasing women's political

participation in PAS in Malaysia and PKS in Indonesia. Last but not least, in chapter four, the comparative analysis of parties' internal circumstances and the application of such comparative elements would be performed in this chapter.

CHAPTER I
CONCEPTUAL FRAMEWORK

The main focus of this study is to examine the extent to which women of Islamist parties would be able to increase their participatory roles that influence their party's internal political structure and political trajectory with reference to two cases, PAS in Malaysia and PKS in Indonesia. Given this, the question is on what basis is such comparative analysis to be drawn.

In order to be able to elicit elaboration on such questions the following part of this study will substantiate both conceptual definition of the terms used in this study and the theoretical framework that will be employed to generate comparative analysis. It will first elaborate the current discussion defining the terms "Islamism, Islamist politics and Islamization". The next section of this part will continue the discussion by elucidating theoretical reference of inclusion-moderation hypothesis and the internal divides of Islamist parties which are frequently employed in social movement theories explaining the changing behavior or policies of social movements.

A. CLARIFYING THE CONCEPTUALIZATION OF ISLAMISM, ISLAMIST POLITICS AND ISLAMIZATION

> "Islamist are Muslims who are committed to public action to implement what they regard as an Islamic agenda" (James

> Piscatori), and "Islamism is a commitment to, and the content of, that agenda" (Donald Emerson)

Political Islam, Islamism and Muslim politics are terms to describe the phenomena of a broad spectrum of Muslim behavior expressing their religious view through symbols, practices and political enterprises. The terms sometimes are used interchangeably and sometimes used separately to point to different phenomena in different places. Although there is no single established definition among scholars about the terms, they mostly agree that the terms should not be associated exclusively with pejorative, militant and violence acts. The term Islamism is widely contested with regard to the various manifestations of what constitutes and interpreted as Islamism (Ismail 2003:30). Some scholars consider Islamism as part of a global trend of Islamic fundamentalism, the perspective explicitly opposing Western liberal democracy (Davis 1984:133-47; Armajani 2012: 2), views the term as seeking to underline and manifest sacred interpretation of Islamic texts into national polity by overthrowing the existing political regimes with reference to "two-all embracing concepts, sharia and jihad" (Cox and Marks 2003: 31).

In some regions, ranging from the Islamist revolution in Sudan to the emergence of the revolution in Algeria by Algerian Islamic fundamentalist groups, influenced by the successful Iranian revolution, Islamism has been presumed to be a challenge to the hegemonic power of the US and western society. In Sudan, the Islamist group has claimed to be committed to the widespread of Islamic radicalism given that it has maximized the advocacy of radical means, violence and terror on the one hand signified as the "Islamic civilization project…" and the "…Islamization of Africa" (Burr and Collins 2003: 181). Despite the claim figuring the Islamist group of Sudan radical, on the other hand,

the Islamists accelerate Islamization and other agendas by proactively conducting "seminars and conferences" (ibid. 181). Nevertheless, the approaches taken by Islamists could be varied from time to time but the main goal is however unchanged. It seeks to establish an Islamic state in ways of alienating the western-led secular political regime and "... oppose some aspects of what they see as a Westernized and anti-Islamic modernity" (Moghadam 2009: 10).

Assuming that the perspective saying Islamism could be defined in ways of describing any efforts by organization or movements employing the traditional teachings of Islam in their attempts to counter and deconstruct western hegemony are valid, another example of Malaysian Islamism signs a somewhat different interpretation. In Malaysia, the presence of PAS in national political contestation does not correlate to any rejection of capitalism or closed relationship between Malaysia's government and the US as such. Despite the Islamist PAS, the current governance claims to be secular, under the secular nationalist party of Prime Minister Mahathir. But the efforts of Islamization of Malaysia have been commonplace instead, on some issues such as the proclamation of Islam as the formal religion of the country and the embodiment of Islamic curriculums in public schools for all Malaysians regardless of their religious affiliation. The Islamist politics exhibited by the Islamist group in Malaysia presumably underlines the fact that the issue of Islamization is not always part of Islamist discourses. It rather indicates the rejuvenation of Islamic principles into public spaces that could also be employed by other secular or nationalist political parties seeking public legitimacy from the dominance of Muslim Malays.

Such description appears to show the *problematique* of Islamism. The multivalent Islamist manifestation is not the sole element causing the term Islamism become prone

to break since the term finds other substitutes such as the words "fundamentalism", "jihadism", or "Islamic extremism" (Barber 2001). This has resulted in debates among scholars and influenced "policy decisions and orientations of major political actors around the world" (Martin and Barzegar 2009:2). Although this essay acknowledges the ambiguity and the complexity of conceptualizing the terms Islamism, Islamist, and Islamization and as well as the fact that the semantic intersection between Islamist politics and Muslim politics remains apparent, it is not part of the authorities of this essay to discuss such hermeneutical contestation in the current debates. Although the linguistic boundary of the terms must be clarified it is not the main focus of this writing. Given the fact that where Islamists in Sudan exemplify various approaches to disseminate their Islamization; yet Malaysian Islamization has not necessarily been accommodated by the Islamist alone and some questions can be posed here. First, what does Islamism really imply? Second what makes Islamist politics and Muslim politics differ from one another? Third, in light of the various manifestations, it becomes important to question whether there really is any particular ideal classification or typology among Islamist groups based on their ideological and political manifesto.

Turning now to discussing the definition of Islamism, this term could be understood as terminology to "… encompass both Islamist politics as well as re-Islamization…" (Ismail 2002: 2). Simply speaking, Islamism discusses "… multiple understandings and interpretations of Islam in politics and society…" (Fuller 2003: 14). Hence, Islamist politics compiles "…activities of organizations and movements that mobilize and agitate in the political sphere while deploying signs and symbols from Islamic traditions" (Ismail 2002:2). Considering that Islam must be demonstrated in political spaces, Islamist politics puts

emphasis on the reinvention of Islamic identity in social and economic domains such as "… the wearing of hijab or veil, the consumption of religious literature and other religious commodities, and the publicizing of symbols of religious identity…" (ibid). On the other hand, Eickelman and Piscatori (1996) point out the dimension of Muslim politics that can be defined as the use of symbols by Muslims in expressing their identity. Headscarf is a common symbol that is used by Muslim women in order to affirm their religiosity and at the same time becomes an identity that informs where they come from. It is so common in Western Europe where expressing religiosity sometimes creates difficult situations from both the state and native populace. They then conclude that those are "political in part because they involve challenges to the limits of state authority but also they involve a contest over people's understanding of and wishes of social order". their characterization of Muslim politics engage the Muslim's eagerness toward their self-identification with something they called as Islamic and at the same time cause resistance within the political circumstances in which they live. The adoption of those religious references could be employed as part of Islamists' moral capital to attract public sympathy supporting Islamist preferences in reconstructing ideological society based on a conservative understanding of Islam.

Given this definition then how explain if Islamist politics, in the vein of circulating signs and symbols of Islamic traditions in public domains, could differ from what constitutes Muslim politics. If Islamist politics covers Islamization or making the public become more Islamic, then how explain the case of Islamization introduced by the secular party of Malaysia? Would it be allowed to call the secular UMNO in Malaysia Islamist as it draws the society to become more Islamic? Therefore, the scope and the

definition of the term Islamism must be extended beyond the above-mentioned definition.

Islamism should not only be defined in the cultural context of reinventing Islamic identity in the public or making Islamic sources as the ultimate references in socio economic aspects. The current literature on Islamism seeks to approach Islam as an "…ideology rather than religion or theology…" or "…political activity and popular mobilization in the name of Islam…" and advocate "…a greater role for Islam in the government, economy and society (Ayoob 2008: 2, 6; Hwang 2009: 8).

Moreover, Greg Barton highlights that "Islamism covers a broad spectrum of convictions…" and sheds light on two layers of sociopolitical transformation including first, "… making Islam accorded proper recognition in national life in terms of national symbols…" and second, driving "… radical transformation of society and politics, by whatever means, into an absolute theocracy" (Barton 2005: 28). Graham Fuller defines what constitutes Islamist, as "…one who believes that Islam as a body of faith has something important to say about how politics and society should be ordered in the contemporary Muslim World and who seeks to implement this idea in some fashion" (Fuller 2003: xi). For Islamists, the popularization of Islamic symbols, languages, and other forms of signs – which is then called Islamization – is a way of deconstructing the domination, or hegemony, of secular western culture that has been rooted in and adopted by contemporary Muslim societies for decades as the consequence of the collapse of Muslim's Golden Age (Ayoob 2008: 6-10). Therefore, as noted by Fuller Islamism "…will never fully disappear because its message … is timeless for Muslims" (2003: 13-14).

In this vein, the discursive boundary between Islamist politics and Muslim politics could be drawn.

The manifestation of Islamist politics is apparently much wider than Muslim politics. Unlike Islamist politics that linguistically implies the radical manifestation of establishing an Islamic state as its end, both discourse and praxis of Muslim politics merely focus on the political strategy of the Muslim polity to raise public support to a maximum during and post-electoral contestation. In response to the Malaysian case where Islamization has been commonplace far earlier than the Islamists could be able to reach power over the dominant secular UMNO, such Islamization conducted by the secular leading political regime is presumably partial, pragmatic, transactional and less ideological. Quite often too, Muslim politics may also include the discussion of traditional Muslim who is even ignorant of the Islamization of the national polity. With reference to James Piscatori's definition as written above, Islamists indeed include Muslims, however, not all Muslims who enter politics could be labeled Islamists (Emmerson 2009; Piscatori).

Hence, with reference to the explanation above, this study underlines that the term 'Islamism' "…occupies a prominent place in the Western … public discourse about the relationship between Islam, Muslims, and power" by which it resembles an Islamic agenda promoting systemic transformation approached by a particular group of people who consciously consider Islam not only as a religion but also its ultimate ideology and whose Islamic agenda, ranges from making the public in Muslim majority countries more Islamic and individually pious to popularizing Islamic identities and principles in sociopolitical and economic aspects. The attempt is aimed at deconstructing the existing secular political regime with various alternatives at hand such as establishing an Islamic state, institutionalizing Islamic laws as the main source, or giving more authority for Islam to rule the society. Despite this, it has to be understood that

their interpretation in terms of practicing Islamic tradition and pursuing their long term agenda is diverse (Martin and Barzegar 2010: 9).

Vali Nasr (2005) distinguished Islamism from Muslim democracy. The former rejects participating within the democratic system since it is illegitimate; while the latter takes it apart. If Islamists participate within the democratic system then it is just a way to acquire power so that the system can be changed into an Islamic one. Furthermore Nasr feels that Muslim democrats could make tracks from their Islamic ideas, but at the end as long as they incorporate democracy, those Islamic values will likely becomes political bargains to win the vote. The outcome is not always positive. On that basis, Nasr pinpoints the cases of Jamaat e-Islami in Pakistan, the Justice and Prosperous Party in (PKS) in Indonesia and PAS in Malaysia. Those Islamist parties experienced unsatisfactory results from the election in their countries in which the nationalist parties won the majority of the vote. Therefore, when the Islamist parties face the ballot box, they are likely to be realistic and make significant compromises including coalescing with secular nationalist parties.

Presumably, a more pessimistic point of view on Islamism is Basssam Tibi's illustration (2008). Tibi implies that there is no such a thing as a democrat Islamist, although they win the democratic election such as AKP Turkey. His measurement on that matter is clear. If Islamists are truly democratic then they should also embrace pluralism which means they should tolerate non-Islamist parties and groups. In this sense, even AKP is not tolerant to the Kurd and the secular parties. Tibi concludes that the basic percept of Islamists is driven by the very assumption of the inseparability of religion and state. The Islamist's ideas, whatever the spectrum they occupy, can never leave this assumption. Therefore what is at stake is "they agree to ballots

instead of bullets, but not to the pluralistic political culture of democracy or the type of free and open civil society that goes with it". In this regard Tibi argues that the main goal of every Islamist is to attain power and at the same time to Islamize it. For that reason, they will never be tolerant and so they are undemocratic in essence.

Assuming this explanation is valid, the question remains what makes such Islamism popular in the contemporary Muslim world. Islamism, which is derived from some prominent Muslim thinkers such as Mawdudi who relied on Islamist ideologue – Sayyid Quthb – to reincarnate the Islamist thoughts (Martin and Berzegar 2010), give impetus to the Muslim world to cope with the multifaceted crisis at national level as a result of the failure of the secular political regime to bring prosperity and the benefit of modernization in real existence to the public (Fuller 2003; Hwang 2009:26). In responding to this, Salwa Ismail has underlined that:

> "The crisis of the state is explained in terms of social, economic and national failures which are perceived by opponents as evidence of the bankruptcy of secular ideologies. Islamism thus develops as a counter-ideology appealing to disadvantaged social groups and allowing an expression of political and economic demands" (2002: 13).

Unfolding the bankruptcy of secular regimes in Muslim majority countries, Islamist politics is perceived antithetical to modernity and democracy since it seeks the return of the divine state referring to the sacred source of Islam (Armajani 2012: 23). Given this explanation, it becomes pertinent to ask whether Islamists would undertake diverse approaches to attain such political ends. Political imaginings and assumptions on Islam and the state are the characteristic that almost all Islamist groups share. But then, the way to attain what they imagine as the righteous position of Islam within the social and political landscape remains unstable. Perhaps

what is evident at the surface about Islamist ideologies and discourses is quite similar. But the options that they can take to uphold Islamic concepts and ideas are varied, at least under democratic systems and authoritarian rule. This main feature that the Islamist group shares is not monolithic in the praxis of gaining power.

Ayoob provides the key point to consider the nature of Islamism. Although he shares similar arguments with a majority of the scholars mentioned above that the underlying imagination that sustains their movement is analogous, he goes on to argue that "In practice, no two Islamisms are alike because they are determined by the contexts within which they operate". In this regard, we can consider Oliver Roy argument that there are three characteristics that distinguish Islamism from the fundamentalist Ulama namely political revolution, the sharia, the issue of women. Most of the Ulama based movements are subordinated under the existing regime be it sultanistic or secular-nationalist, and seal the channel for women to participate in public matters.

Nevertheless, despite the various interpretations of the relations between Islamism with democracy and modernity, this study underlines that, with reference to the cases of PAS in Malaysia and PKS in Indonesia, the variant of Islamism, the modernizing Islamists, shows potential collaboration between Islamism and democratic principles with regard to the increasing numbers and the influence of women's representation in the respective parties. With reference to the current literature classifying both PAS and PKS as modernist Islamists, albeit debatable, this study would consider that PAS and PKS are modernizing themselves to generate more liberalist interpretation of Islamism.

Typology of Muslim Tendencies

(From Angel Rabassa, et al., *The Muslim World After 9/11* (Santa Monica: RAND, 2004: 10-1)

Realizing the importance of understanding the political moderation of Islamist organizations for their participation in electoral democracy, they are now turning to substantiate the concept of democracy and the hypothesis of inclusive moderation. Simply speaking, this research underlines the concept of democracy as electoral procedures toward "a system of governance in which rulers are held accountable for their actions in the public realm by citizens, acting indirectly through the competition and cooperation of their elected representative" (Schmitter and Karl 1991: 76). With reference to this very basic but clear definition, this research specifically focuses on Islamist women's involvement in high-level decision making processes within the party prior to their participation in the electoral democratic contest. Thus, it is pertinent to question whether or not the presence of Islamist women in electoral democracy, as a part of gender equity and equality and as the impact of inclusive moderation, will in turn make the Islamist parties true democrats or only 'pseudo-democrats' seeking to hijack the existing democratic governance. Given such explanations, it is pertinent to ask about the relevance of utilizing the inclusive moderation hypothesis in this research.

The hypothesis of inclusive moderation is highly contested. The term inclusive moderation has frequently been employed by many scholars and policy makers to argue whether or not a radical party should be inclusive to the existing institutions through 'democratic processes'. One of the major perspectives that try to conceptualize this hypothesis is the institutionalist perspective. According to the institutionalist perspective, institutional change, led by the ruling elite, is the underlying factor causing the inclusion of Islamist parties, which in turn leads to moderation (O'Donnel and Schmitter 1986; Przeworski 1991; Tezcur 2010:69-70). In this sense, institutional change is understood

as "internal party division along a single moderate-hard liner continuum" (Clark and Schwidler 2003: 295). The inclusive moderation says that giving an entrance for the [potentially] radical Islamist into the electoral system in a democratizing country would gradually transform its radical ideology and violent tactics into moderation. By doing so, it would be more effective to construct a democratic society that upholds democratic values and pluralism since "inclusion produces moderation in behavior, practices, or beliefs" (Clark and Schwedler 2003: 295; Schwedler 2006: 11).

The process of inclusion requires the regime to provide the opposition, the Islamist parties, with constraints and opportunities of participating in the electoral system. The constraints could be the rules of game set up by the regime, as what Huntington calls a "participation-moderation trade-off" (1991: 165-72). Such rules of the game would implicitly force the Islamists to interact with different perspectives and it eventually "reinforces the recognition of multiple worldviews and interpretations" in overcoming the multi-faceted problems (Schwedler 2006: 11). At this stage, the regime will offer particular benefits if the Islamists can participate in the existing institutions that can help the Islamist to achieve its political agenda (Schwedler 2006: 12-14). In a nutshell, this perspective signifies two pivotal factors in explaining why any particular Islamist party tends to moderate its political agenda. The first is institutional change by the regime as it opens the window for Islamists to participate in the existing institutions. Second, the significance of behavioral changes of Islamist parties since it likely accepts the constraints or the rule of game under state-control (Hirshman 1970; Przeworski 1991; Lichbach 1995).

Despite such explanations, institutionalist perspectives do not necessarily construct a more well-established theory of inclusive moderation. They seem to have failed in explaining

to what degree the Islamist would sustain its moderation. With reference only to the behavioral changes within the Islamist, it is pertinent question whether or not it could explain "similar participation producing different degrees of moderation" (Schwedler 2006: 23). Instead of offering a holistic explanation, that perspective tends to reduce the explanatory unit into the institutional level only and thus obscured the importance of larger entities, such as public space. Responding to this contestation, the research will refer to a "process-model approach" by a structuralist perspective arguing the significance of examining "… a variety of factors … [and] multiple dimensions of public political space" to explain the moderation of Islamist parties (Schwedler 2006: 24). According to this model, the Islamists first, however, would give 'shocks' to the regime by challenging the existing political order through radical revolutionary means. At this stage, the regime perceives the Islamists as a real external threat to its power (Robinson 1996; Whitehead 2001). This could cause massive reaction of the regime and cause it to expel the Islamists. Yet, in order to sustain the existing political regime, which is supposedly a democratic or democratizing regime, the state will eventually restructure its political orientation by opening the window, albeit limited, for the Islamists (Przeworski 1991: 51-99). This effect is called 'restructuring the wider public political space' and that covers crucial stages such as introducing "…new forms of political organization or new frameworks for political debate and pluralist political practices", which require holistic restructuration "across a number of dimensions…" (Schwedler 2006: 25).

B. INTERNAL DIVIDES IN ISLAMIST PARTIES AND INCREASING FEATURES OF WOMEN'S PARTICIPATION

The above mentioned sub-section has elucidated the nature of Islamism signifying the call for establishing an Islamic state as an alternative solution for Muslims to counter the backwardness yielded by the existing western political order. It has crafted dramatic implications for the relationship between Islam and modernity as Islamism, which promotes the amalgam of Islam and politics. One of the questions that many western scholars emphasize with regard to this claim is how Islamism approaches the issue of women's right in politics and their participation in other wider public spheres. Women in Islam have far been viewed as illegitimate to be represented in the political arena (Othman 2006).

Turning now to the case of PAS and PKS, where parties decide to increase women's representatives in national parliament through the democratic process in the respective countries, the question is how both parties have changed their point of view regarding women's political representation and participation. To be able to answer this question, this study underscores the urgency to look at the root of both parties. Both PKS and PAS are indigenously rooted within the context of the global Islamist movement and are ideologically interconnected given that they resemble the global political agenda of Muslim Brotherhood, an Egyptian Islamist movement. This study calls for the application of social movement theories particularly that of explaining that the openness and closeness of political structures and liberalization would affect the opportunity of any social movement and its resource of mobilization. This perspective could be applied to explain the more massive women's mobilization and their increasing influence in their

parties respectively. The previous work of research by Jillian Schwedler who examined the increasing participation of women in two Islamist parties in Jordan and Yemen prompts this study to apply such initiative applying the changing political structure of internal Islamist parties to explain the increasing women's mobilization (Clark and Schwedler 2003).

In her research that comparatively examines the increasing features of women in two Islamist parties in Jordan and Yemen, Schwedler puts emphasis on the role of internal divides within the party's internal structure to give Islamist women opportunities to undermine parties' policies toward women-related issues in Islamist politics. In social movement theories, it is widely argued that "the structure of political opportunities can affect resources of mobilization" (Moghadam 2003: 11). The internal divides emerges as a consequence of a party's response to political liberalization. Alongside the celebration of electoral democracy, which sheds light on the "…delegation to representatives who can be controlled only at the moment of election…" (Porta and Diani 2006: 239), Islamist parties must be able to increase their electoral achievement and make sure they would not lose the trust of their constituents which is their main social capital (Uslaner 2003: 172). Hence, any Islamist party would consider any strategic approach to support its democratic participation. The Islamists' decision to be behaviorally and ideologically moderate or terminate their radical political orientation by, for instance, building strategic yet pragmatic political alliances with cross-ideological political parties and accepting non-Muslims to participate in party's activities, albeit limited, has led the members into an ideological bewilderment by which members are, directly or indirectly, situated into bipolarity. Due to its participatory roles during democratic contests, party's leaders are confronted with

particular demands at particular moments to minimize their degree of fundamentalism on some issues such as how strictly they would "…impose sharia, introduce gender segregation, and place limits on acceptable forms of speech" (Schwedler 2006: 9).

This subsequently creates such changing opportunity structures which open windows of opportunity and therefore lead women to empower themselves seizing different understanding among party's leaders toward either related or unrelated women problems. At this stage, Schwedler seeks to deconstruct the current analysis saying that Islamist women would gain opportunities as the moderate party leaders support their potential contribution in the pre-election and post-election program (2003: 294).

According to Clark and Schwedler, with reference to the case of Islamist parties in Yemen and Jordan where they had not importantly designed particular programs for women despite their participation in electoral democracy, the triumphant gain by moderates over the hardliners would not necessarily become the underlying condition of women to increase their level of influence within the internal party structure (2003: 294). Therefore, it underlines that the changing structures give significant incentives to women's mobilization and consequently craft the relations between structure-and-agency- in escalating Islamist women to become elite political actors to change their party's trajectory. The changing opportunity structure is the result of the internal divide over two areas, according to Clark and Schwedler, which are "democratic participation and the application of religious sources" (2003: 295). To sum up, why women's are able to increase their participation and influence the party's trajectory is the line of contention among party leaders on two core issues – how far the party would go in engaging with democratic procedures, which

is called accommodationist, and how "strictly the party adheres to religious texts and teachings… or contextualists" (Clark and Schwedler 2003: 296). Thus such contention would grant women spaces for mobilization. In this vein, it is worth noting that Schwedler sheds more lights on the role of [changing] structures than the politics of pious women's agency to explain the increasing participation and the more influential activism of women in Islamist parties.

Making those as the main comparative elements to be examined, the following will substantiate the 'line of contention' that might appear in internal Islamist party politics. Assuming the contention is there in an Islamist party, the question remains whether there is any particular mechanism to be used to explain the extent to which the Islamist party might shift its stance from one perspective to another. Responding to this, Schwedler emphasizes that:

> "These lines of contention shift when party leaders face concrete problems and must choose among multiple courses of action…. Shifting lines on one issue can potentially redraw other fissures. A prominent legalist who gravitates toward a more contextualist stance may shift the boundaries of the debate. These shifting lines of contention over the level of democratic participation and the reading of religious texts create opportunities to expand women's political participation at particular historical junctures" (2003: 297).

Table 1. Schwedler's scheme on the "Intersection of Two Issues Axes: Application of Religious Texts (Rows) and Democratic Participation (Columns)" (2003: 297).

	Accommodationists: Islamist objectives can be realized through cooperation with non-Islamists; bargaining and compromise are acceptable means of promoting an Islamist agenda within contemporary political processes.	**Non-Accommodationists:** Limited participation in democratic processes is acceptable only if it does not compromise key Islamist goals; bargaining and cooperation with secular and non-Muslim groups is unacceptable.
Contextualists: Application of Islamic teachings must be considered in light of current social and political realities, focus is on the intended spirit of Muhammad's message and not on literal readings	Committed to long term participation in pluralist democratic political institutions as the appropriate contemporary corollary to key Islamist principles such as consultation (*shura*) and consensus (*ijma'*)	Accept the need to interpret Islamic teachings in terms of contemporary situations, but oppose deep democratic participation as entailing too many compromises of key Islamist goals.

Legalists: Application of Islamist teachings must be based on a more literal legalist reading of the Qur'an and the teachings of the Prophet Muhammad: human-made law cannot usurp God's law	Oppose unqualified on-going participation in pluralist, democratic political institutions, but accept limited participation and cooperation on specific issues where there is no ideological compromise	Oppose deep democratic participation as fundamentally un-Islamic according to a strict reading of Islamic teachings.

Such conceptualization implies the diverse political and ideological stances which presumably emerge in Islamist party. Situated in a political cul-de-sac the party must decide whether it would participate in liberal democracy or not and thus induce endogenous criticism from the hardcore members. The internal division is, as a matter of fact, not merely a clash between the moderate and the hardcore members. The disagreement comes also from the intersection of two contentions that eventually falls into four possible blocks (Schwedler 2003). This study breaks the abovementioned axes of contention into the following chart.

Line 1. Debate on Democratic Participation	Line 2. Debate on the Application of religious texts
Accommodationist Non-Accommodationist	Contextualist (2.1) Legalist (2.2)

Given this explanation, the question remains how such contention could give rise to women's political mobilization in its internal political structure. Although Schwedler has noted quite often this division would lead women to channel their thoughts and energies into and determine the party's direction by granting them more spaces for mobilization; she does not specifically discuss whether there might be disagreement or, at least, different reactions among women of the Islamist party toward such contention. Even though the shifting structure is indeed crucial to be explained in understanding women's increased mobilization, it is worth noting that explaining how such structure would impose rigid ideological differentiation among individuals, either male or female, seems to become troublesome since they might not always stick to any constant political stance. Therefore, to this extent, Schwedler seems to shed more light on the changing structure than the politics of women agency to explaining the increase women's participation in Islamist parties. As a consequence, this analytical basis seems to underline that women's mobilization would come after the structure was changed and it obscures the possibility of considering women's intervention, both outside and inside the Islamist party, as the first element enforcing the new direction of the party's trajectory in accordance with their own understanding (Schwedler 2006, Clark and Schwedler 2003).

Given this conceptual consideration, it becomes crucial to ask how this study employs this basis to generate further comparative analysis. Regarding this question, this study will first examine the change of women's participation, on comparative basis, based on several elements which are "support from the male party leadership for women's political participation outside of each party, support from the male party leadership for women's initiatives inside each

party, and the number of women within each party's formal decision making structures…" (Clark and Schwedler 2003: 294). Having explained these, it turns to discuss whether or not the Islamist parties resemble internal division and how both male and female party leaders perceive the dynamic of such contention. It will also highlight how the women undermine the party's decision from one particular point of agreement to another.

CHAPTER II

THE QUEST FOR PEACEFUL COMPATIBILITY BETWEEN [POLITICAL] ISLAM AND DEMOCRATIC PRINCIPLES: THE GORDIAN KNOT?

In mid-2013, the Pew Research Center published its investigation through a global survey of Muslims across countries ranging from Middle East to Southeast Asia, from South Asia to sub-Saharan Africa and Europe, questioning the Muslim aspirations in those regions toward the incorporation of Islam in state affairs in particular the implementation and the enactment of Islamic law or sharia as the state's law. Its results are surprising as to 72 percent Muslim population in Indonesia, 74 percent Egyptian Muslims, and as much as 71 percent of Muslims in Nigeria consider Islamic laws or sharia is relevant and necessary to be "the official law of the land". Although they support Islamic law to be declared as the state's laws, they also urge a tolerant policy to the non-Muslim communities saying that Islamic law is only applicable to the Muslim population. Nevertheless, not surprisingly, the sharia supporters indicate lack of understanding on women empowerment when they were asked about women's domestic roles. According to the survey, "majorities of Muslim women as well as men agree that a wife is always obliged to obey her husband". On the other hand, the Muslim populations surveyed were

also asked whether or not clerics or ulama are crucial to enter the political contest. Based on the survey, most of Muslims in Malaysia, Jordan, and Afghanistan underscore that their religious leaders should be politically influential (Pew research report 2013). Seeing the results of this global survey project, the reliability of its methodology was indeed questionable. Despite this, with reference to this, one might argue that the discursive influence of political Islam and the increasing trend of pious Muslim population is alarmingly escalated among the Muslim population worldwide. The result of this survey could also justify the flourish of Islamism, either radical or moderate, to generate its political influence by using any means available particularly through democratic channels.

The proliferation of political Islam in the contemporary Muslim world can be traced from a small numbers of historical events. Since the end of the Cold War, there were several electoral moments in Muslim majority countries which invited Western reactionaries. In 1979, the Iran revolution has successfully toppled down the secular regime and has "brought to power a conservative and repressive Islamist regime", the next ten years the Sudanese military coup "brought to power a government supported by the National Islamic Front led by Hassan al-Turabi", in the early 1990s an Algerian Islamic Salvation Front (FAS) "… which won 48 percent of the vote … was forced to hand in its electoral victory to the "anti-democratic military coup", and in 1999, in Southeast Asia, a Malaysian Islamist, Pan-Islamic party of Malaysia (PAS) won the general election at the federal level as a result of which it has been in the drivers seat of Kelantan's authority and has incorporated Islamic law (Schwedler 1998: 26). Such evidence seems to indicate that the intertwined relations between Islam and politics have been increasingly evident in the contemporary Islamic

world sharpening the question whether or not Islam is really compatible with liberal democracy and influences the political decision making process.

Picture 1: PAS's flag was attributed to the 2013 General Election showing PAS's influential activism in Malaysia's electoral democracy.

The current widespread contestation questions the relevance of political Islam with the implementation of universal democratic principles of human rights. It gives impetus to the criticism toward the merging behavior of religion and politics. This debate consequently yields a conceptual cul-de-sac where each mainstream defends its own understandings on Islam. It has raised two mainstreams; on the one hand, the rejectionist perspective of those saying that Islam is incompatible with international democratic values which underscore the liberty of individuals and thus any political force introducing the incorporation of Islam into the national polity with political participation in democratization is regarded as a paradox in democracy (Lewis 1990, 1993; Hudson 1991; Kedourie 1992; Kramer 1992, 1993; Roy 1992

1994; Ayubi 1993; Assyaukanie 2004). With reference to the assertion by Montesquieu, about two and a half centuries ago, saying that "Islam had a violent streak that predisposed Muslim societies to authoritarianism", the rejectionist perspective underlines that "Muslim societies are especially prone to political violence" therefore Islam as their guidelines must be separated from the state-structure (Fish 2002: 17).

On the other hand, contrary to this, some perspective seems to be accommodationist to the embodiment of Islam with democracy as Islam itself underlining a similar vein in constructing a democratic and plural society, respectful of the presence of Islamist political forces since it contains democratic potential (Markaz Ibn Khaldun 1992; Al Mahdi 1990). Some might address advocacy to the possible coalition between political Islam and liberal democracy by saying that the existing political orientation of political Islamism does not illustrate the so-called paradox democracy. Given that the increasing participation of Islamism in electoral democracy, 'no one illustrates… an authoritarian regime coming to power through elections', one might argue that such rejectionism could be derived and constructed by a 'fiction' instead of realities (Schwedler 1998).

At the time the skeptic perspective challenges the Islamist discourse, as well as the Islamists political movement which utilizes the accommodative perspective to justify its political mission. The following part of this study will substantiate this debate by questioning whether or not [political] Islam is compatible with democratic principles based on three elements, state or political affairs, minority groups and women's rights.

A. [POLITICAL] ISLAM AND PROTECTION OF HUMAN RIGHTS AND MINORITY GROUPS

With regard to liberal democracy, welfare and a democratic society would only be achieved in a society where individual freedom is fully guaranteed, it is commonly argued that political Islam is deviant of human rights. The Islamist is presumably inherently violating the human right of individuals for its strict political agenda of establishing Islamic law under an Islamic state through which the substance of Islamic teaching is being enforced throughout the society. The institutionalization of Islamic law is the source of controversy among Muslim and non-Muslim scholars, among western and non-western intellectuals since it seems in contradiction with, for example, the most fundamental freedom of women that every Muslim woman is fully encouraged to wear the veil or the headscarf.[1]

Picture 2: PAS's performative action campaigning on how Muslim women dress properly. The picture was taken on September 22, 2013 at As-Syakirin Mosque, one of the mosques which has become the centre of PAS's activism in Kuala Lumpur

1 See Binnaz Toprak, "The State, Politics and Religion in Turkey," in Metin Heper and Ahmet Evin (eds.), State, Democracy and the Military. Turkey in the 1980s, Berlin/New York: Walter de Gruyter, 1988, pp. 119–136.

Responding to this, Islamists quote the accommodative commentaries outlining that in Islam although '…self-governing individuals are "necessary"… individuals [also] have obligations to each other' and it is required for every Muslim to '…protect the rights of others without undermining his or her individual rights' (Reed: 489). Islamists stress collective rights is above all and individuals are equal before the law. Reed further notes the interpretation of accommodative perspectives on Islam and human rights by saying that:

> "under a simplistic, general view, one can categorize human rights into two classes: individual rights and group rights. Individual rights include those that protect a person's individual autonomy and freedom, such as freedom of expression, freedom of conscience, and freedom to engage in ordinary occupations of life. Group rights are those that protect a set of people, such as the right to self-determination and the rights of minority groups" (Reed 489).

Given this explanation, Islamist political parties defend their ideal by claiming that in the establishment of an Islamic state and the implementation of sharia', with reference to the historical narrative of approximately fourteen hundred year ago under the leadership of Prophet Muhammad (PBUH), the rights of minority groups in Islam is indeed protected. Such historical narrative sheds light on the maintenance of sociopolitical stability of society, particularly the Muslim community, as the key importance. The conceptual line of minority groups in Islam is apparently described by the fact that during the Islamic conquest, non-Muslims, including Jews and Christians, excluding pagans, were protected under the 'legal system of *dhimma* which allowed them to practice their religions and follow their own community laws' (Reed 2004: 508). Therefore, Islamists provoke the establishment of the Islamic state notably due to its political basis where the

mediation of individual and collective rights will be taking place. One should underline the main ideas of human right in Islam that is on one hand, to preserve social order and justices, and to respect individual's rights on the other. In order that one could understand how the compatibility between Islam and the state's affairs would take place in the contemporary political order, holistic interpretation and contextualization in reading both historical legacies and Islamic divine texts is indeed necessary. Instead of providing such analytical basis, the existing proving ground of rejectionists is drawn from the paradox within Muslim societies and their partial implementation of Islamic teachings, which are controlled by authoritarian regimes.

The interpretation of fundamental scriptural Islamic texts in the Quran saying that 'a primary goal of Islam is to transcend material distinctions, such as race and politics, and to create an Islamic community that brings all people, equal before God, gives rise to the extensive construction of the discourse and praxis of political Islam (Reed 2004: 509; Ayoob 2008). This highlights the accommodationist perspective regarding the relations between Islam and politics. Islam should not only be understood as a religion per se teaching an individual to worship God and thus putting it to the individual realm. Pertaining to leadership under the Prophet Muhammad (PBUH), it was apparently modeled by the leadership of the Prophet Muhammad (PBUH) that Islam was introduced and delivered though the use of politics in which consent and dissent between the believers and non-believers took place. The political activities during his period was diverse ranging from cadre-recruitment to mass-mobilization, building coalitions to conquer other regions in the Arab peninsula, from negotiation to leading economic and trading activities and eventualy reaching the last end of the establishment of Medina as an Islamic city-

state (Ayoob 2008: 3). Although, there is agreement among Muslim scholars that there is no single statement explaining the obligation of establishing an Islamic state written in the Qur'an, some Muslim scholars believe the historical narrative of the Prophet although derived from the earliest centuries of a simple Islamic community could be used as the legitimate source signifying the intervention of Islam in state formation and governance. According to this perspective, unlike conventional politics that might fulfill individual's political interest, gaining mere sources of power and authority which eventually create spaces of inequality, bankruptcy, and moral degradation; the Islamic interpretation of politics is to perceive politics as a tool to reach the objective which is to create '…a community founded upon God' (Reed 2004: 509).

Although Islamist claim could be acceptable, it appears to be in contradiction with realities. As a matter of fact, human rights activists and related civil society groups found difficulties in investigating the proving ground of the interconnection between political Islam and democracy. Under the banner of Islamic laws, the political regimes of Muslim majority countries could not show evidences, in both praxis and ideas, of the conjuncture between Islam and democracy. Instead of building coexistence and alliance between Islamic and democratic forces, the political regime or any Islamic social movement that is promoting 'a working balance between individual and collective groups;' political Islam is perceived as hypocritical, claiming it is potentially '…democratic' but rather half-hearted in sounding the individual aspirations of its community (Reed 2004: 493). Looking at the examples of Iran and Afghanistan or even Malaysia where an Islamic state or regime is declared and Islamic law for example hudud is being enforced in Kelantan Malaysia, it is vital to question how an Islamic state would accommodate the voices of a minority group who is being

threatened, instead of protected, by its implementation. The appearance of religious texts and its discourses in the face of politics would only give rise to the nuance of religious politicization. The Islamists jargon seems to be irrelevant since in many cases the Islamic political regime seems to have failed to bring democratic principles into practice in society due to its own political interests and eventually turns into an oligarchic tyranny. Instead of claiming the compatibility of Islam, politics and democracy, any political group or social movement promoting the discourses and realities of hybrid democracy with political Islam, it would be better to seek new-found political terminology that suits its historical and moral background. Despite the political activism of Islamist political groups provoking the return to the Golden Age and the reconstruction of an Islamic caliphate is massively mushrooming. One might argue that this cannot necessarily justify the logical construction of the relations between Islam, politics and the state (Reed 2004; Ayoob 2008).

Islamists' persistence toward the relations between Islam and the states could be understood as '…a myth…' rather than objective construction of reality. The Islamist has blown up several religious terminologies to seek justification for Islamists to rule the states against western oppressors (Ayoob 2008: 10). Islamists might campaign on the idiosyncrasies of pluralism in Islam as it contains preservation of individual rights as long as it does not threaten the stability of the whole society. This supposition might eradicate the substance of individual freedom instead. Assuming that the incorporation of Islamic law as a substitute to the existing secular law of Muslim majority countries would not discriminate against the minority group, the question remains why the leaders of Islamic states or Islamist regimes seem to enforce the implementation of Islamic law while other parts of its society do not even believe with the contents of Islamic divine texts.

Pushing the implementation of particular religious doctrines as an obligation to all society is indeed part of discriminatory policy. If the substance of Islamic law is to put the Sharia', or God's law that is derived from the Qur'an and the Prophet Muhammad's example (PBUH) above other human-made legal products, then it seems to be more relevant if the Islamic jurisdiction is merely applicable solely to the Muslim community.

The foundation of sharia is to 'provide guidelines for external and secular acts involving the community, as well as both individual and group religious acts, such as worship, almsgiving and acts involving the other pillars of the Islamic faith' (Reed 2004: 504-5). In Indonesia, Islamic interpretation has intensively influenced legal products as emerged in several provinces. The results of this are diverse; full implementation of Sharia can be seen in Aceh where there are "moral police everywhere to watch over citizens"; the veiling is enforced for the Muslim women so they must wear the jilbab in public spaces in "Pamekasan (Madura), Gowa (South Sulawesi), Cianjur (West Java), and Padang (West Sumatra); there is also a local regulation requiring that "all activities have to stop during the calls for prayer (adzan) in Sinjai (South Sulawesi) and Indramayu (West Java); on the other hand, individual's capacity and proficiency to read the Quran is the main requirement "for promotion for local government employees" in Maros (South Sulawesi) and Solok (West Sumatra) (Budiman 2008: 78). Claiming that an Islamist party could declare Islamic texts as the main source of national jurisdiction, then it could apply Islamic law, for example hudud, to all society either the believers or non-believers. If this really takes place, it is worth noting that Islamists do not consequently take into account the individual right of non-believers which then gives rise to the state's mistreatment (Reed 2004: 504). The national

government of an Islamic state consequently must be held under Muslim leadership as the majority. It causes not only tribal domination but also theocratic authoritarianism which eradicates the voice of the minority.

Nevertheless the Islamist idea seems to be useless or ineffective since it puts emphasis on dichotomy of a society based on religion which might result in sociopolitical disorder. This also produces another question whether or not Islamist groups could generate plausible explanations regarding the reality where within the Muslim world itself there are many contradictions pertaining to the significance of declaring an Islamic state or, at least, constituting Islamic discourse into real-politik. The interpretation that associates Islam with politics is apparently heterogeneous. Given the perception associating the establishment of an Islamic state with Islamic law or sharia, the sharia is inherently 'static' and to be 'discovered rather than created', therefore it requires the participation of 'human agency' to rediscover and reinterpret the meanings beyond such 'unquestionably supreme law' (Reed 2004: 505). Saying that religious superiority is the underlying cause of the Islamists provocative message to establish an Islamic state under its rule, the question remains whether religion per se is really the only reason.

Due to this heterogeneity, it is pertinent for any Muslim scholar, in particular Islamist politicians, to reinvestigate and reinterpret the legacy of Islamic history regarding the relevance of building an Islamic state under the implementation of Islamic law to the pursuit of justice, human rights, and welfare society. The political intrigues or the malfunction of religious authority that hing beneath religious dogmatism was apparent in the history of Muslim world. The malfunction of religious symbolic or authorities was evident when, for example, '…intra-Muslim strife culminated in the massacre at Karbala in 680 CE of Ali's

Son and the Prophet's grandson Hussein (himself a claimant to the caliphate) by forces loyal to the newly established Umayyad dynasty' (Ayoob 2008: 11). This catastrophe was the primary force of the crisis of legitimacy of an Islamic state since according to some scholars it indicated the failure of combining religion with politics. Due to the fact that religion dovetailed with politics in that instance and it failed to protect "'…culture from political "contamination"… [and] safeguard the dignity of religious life'" (Bonotti 2010: 208). With reference to this, the skeptic perspective underscores that the ideas of political Islam and Islamists in order to incorporate Islamic law or Islamic social order within the existing secular political regimes remains lacking legitimacy. The crisis of lack of reference to legitimate idea to establish an Islamic state or caliphate makes the perspective of political Islam and its Islamism utopist.

In responding to criticism by the skeptic perspective on the merging between Islam and politics, the affirmative perspective underlines that some cases of human rights repression had also violated the civil rights of Muslim communities in Muslim majority countries as well as in the countries where Muslim remain minority groups (Rabasa and Larrabee 2008: 53). The discourse and praxis of Islamists underlining the intervention of Islam in the state, or dovetailing political Islam with democracy has massively flourished partly due to the discontent of secularism which failed in accommodating some forms of Muslim civil rights. Taken for example the secular authoritarian and single-party Kemal regime in Turkey which had '…initiated and instituted the secularizing reforms at the cost of democratization…' (Arat 2005: 4; Bonotti 2010). Perceiving secularism as a way of institutionalizing "'Turkey's philosophy of life'", which is written in the Constitutional Court in ways of undertaking impartial secularism "…there is not much

space left for alternative institutional arrangement" (Bonotti 2010: 207). The historical legacy of Turkey remains influential in determining the future of political Islam for its "exceptionalism" (Mardin 2000: 146-147). Turkey was the latest hegemonic symbol and thus the "…center of Muslim political power" and its influence in international relations, under the Ottoman Empire, remained tangible "…into the early years of the 20th century" (Rabasa and Larrabee 2008:4). Prior to the mid 17th century, Ottoman sources of power remained unquestionable. During this period, the experience of the Turkish's Islamic caliphate apparently showed religious ascendancy in wider political realms where "…the religious leadership (the ulama) became steadily more influential, and high-ranking mufti became central actors in Ottoman politics and foreign affairs" (Rabasa and Larrabee 2008: 8). Due to the fact that the Ottoman Empire failed to keep the "balance of political and religious authority" and the majority of Arab leaders perceived it as "…part of a Turkish colonial empire", it gave "liberal reformers" opportunities to give pressure to the "country toward modernization, Western practices and de facto secularization" (Rabasa and Larrabee 2008: 8). At this stage, within the Ottoman theocratic regime there was already an initiative to demobilize religious authority and secularize national polity. Conceiving Ottoman religious ascendancy was unforgivable, a political revolution conducted by Mustafa Kemal Ataturk had successfully implemented separation between religion, Islam, and the state. From this time onwards, Kemal's secularization has led Turkey to be known as a secular yet democratic state, which applies the multiparty system, "a member of NATO… a long standing U.S. ally" and therefore remaining "…pivotal to advance the U.S. and Western Security interests" (Rabasa and Larrabee 2008: 1). Turkish politics has institutionalized secularism and pluralism as the national identity which can

structurally block any initiative of reconstituting potential religious identity with political affairs. It does not only close the opportunity for any religious forces to entering the political arena but also abandons the manifestation of an individual's religious identity.

At this stage, the evidence on the Turkish ground of secularism seems to be antithetical to the skeptic perspective. The skeptic perspective underlines the idea to reintegrate Islam into politics and would only eliminate the substance of Islam since it can be contaminated by political self interests. Thus, incubating religion in the individual's private spaces would bolster political stability since there will be no religious dominance over the rest of the cultural and religious minority groups. Assuming this is valid, it becomes interesting to question that why, as a point of fact, Kemal's secular regime seems to be less tolerant and less plural than its theocratic predecessors. In previous Ottoman governance, Turkey was particularly:

> "…a diverse patchwork of ethnic and religious communities. In the first parliament of the Ottoman Empire, which convened in 1877 during the reign of Abdulhamit II, the elected lower house (Meclis-i Mebusan (Assembly of Representative)), consisted of 69 Muslims and 46 non-Muslims" (Rabasa and Larabee 2008: 9).

Given that the Kemal regime was authoritarian, the separation of religion from political and state's affairs led to dismantling individuals from their freedom of expression. Seen such an assertive secular political regime, which supposedly separated religion teachings in the state's formation and its national polity in the face of national stability and economic development, the secular political regime of Turkey, or elsewhere, should not have violated individual's civil rights. It is widely argued that excluding

politics from religion would enable the state to increase tolerance, pluralism, and protect minority groups. By doing so, the state would be able to create a conducive environment for the pursuit of modernization (Rabasa and Larabee 2008: 34). However, unlike Kemal's predecessor, despite its failure to avoid the maladministration by religious leaders, Kemal's secular regime was less tolerant and unable to accommodate both majority and minority groups. Although secularism has brought Turkey into the center of diplomatic relations with its neighbors, European countries, it has not necessarily resulted in an easy environment to avoid the possibility of ethnic riots and has left the domestic political atmosphere rather unstable. In contemporary Turkish politics, secularism which is rooted in the Turkish constitution is not always successful in preventing the flourishing of both religious and nationalist sentiments of the community. Take for example,

> "…the 2007 murder in Istanbul of Hrant Dink, a prominent Turkish-Armenian journalist and intellectual" underlines this assumption since this murder was "motivated by nationalism not religion" that was intended to discredit the minority groups in Turkey particularly "… Armenians, Greeks and Jews only" (Rabbasa and Larabee 2008: 9).

In addition, there has been partial affirmative policy by the Kemal regime. Maintaining the structured exclusion of religion and state's control in religious affairs Kemal's governance failed to accommodate the interest of the entire religious and minority groups. Contemporary Turkish political management has continued the inherited "mechanism for the monitoring and regulation of religion that had been established by the Ottomans, under the Directorate of Religious Affairs" to particularly "manage the Sunnni branch of Islam… [but] does not serve or organize other branches or other religions… [since] Christianity and Judaism are not managed by a dedicated branch of

government" (Rabasa and Larabee 2008: 12). With reference to this, one then might maintain that there is an anomaly in secularism, in the Turkish version, which by and large gave political Islam, ranging from the Refah party to Saadet and the AKP, opportunities to play its political influence and demand to open more democratic political space in order to escape from the "…political shadows to become the main actor in Turkish politics" undergoing the state's gradual restructuring in the quest for a marriage between Islam, modernity and democracy (Rabasa and Larabee 2008: 31).

Despite Kemal's 'assertive secularism', involving the state endorsement of a secular comprehensive doctrine in the public realm while religion is relegated to the private sphere which has been introduced in 1925, the secular political regime in Turkey had not always been successful in politically isolating political Islam in the country as well as to reduce the increasing nuance of Islamic identity to be manifested in wider public spheres (Rabasa and Larabee 2008; Bonotti 2010: 205). The Islamist perspective considers secularism and modernization as deviant. As a result, the downfall of Kemal's secular political regime and democratization in Turkey '…has provided Turkish Islamists the opportunity to turn symbolic Islamic issues such as wearing of head scarves by women in universities and public offices, into major human rights issues' (Ayoob 2008: 99). Although secularism in Turkey has been strictly implemented and instituted in the constitution, which explicitly prohibits, the expression of religious identity in sociopolitical affairs, such as 'education, family, dress, etc' and requires that the state must always be separated from religion according to Bonotti, the constitution seems to leave "… a less rigid interpretation…" which supposedly could give individuals space for "…the expression of religious partisan identity" (2010: 209). The increasing religious identity, in a particular Muslim community, can be seen from a latest

survey conducted by the Turkish Economic and Social Studies Foundation (TESEV), "in which 1,500 interviews were conducted in 23 provinces, and pointed to a striking increase in the sense of Muslim identity as a component of Turkishness" (Rabasa and Larabee 2008: 23).

Although the evidence outlined above seems to justify the affirmativist approach, however, the political openings would not necessarily nurture political Islam in the right track. Instead of perpetuating the possibility of merging Islamic universal values with universal democratic principles in the current world political order, political Islam with its diverse forms has attempted to resemble the re-Islamization of the national polity. Although there has been the anomaly of secularism and modernization in Turkey in particular and other Muslim majority countries in general, it does not always mean that the acquisition of political Islam into Turkish politics would yield a better political environment. Regarding consistency with upholding democratic principles of contemporary political Islam in Turkey, it is relevant to cite political statements of some AKP leaders for instance by Abdullah Gul in 1966 saying that "…this is the end of the republican period" and Erdogan's statement that 'he was "a servant of shari'a" and the "imam of Istanbul"' (Rabasa and Larabee 2008: 55). Such political statements have indeed widened the conceptual gap between the rejectionist and accomodationist perspective of synthesizing Islam with politics and democratic principles. In addition, against the phenomena of Turkish moderation, the skeptic perspective refers to the development of political Islam, in the Middle Eastern countries. Schwedler notes that many Western scholars question "how can one know which groups are truly committed to pluralist politics?" therefore they assume that the rising struggle promoting the influence of Islam in the

political realm "…might bring power to an anti-democratic regime" (Schwedler 1998: 25).

The contestation eschewed above indicates that the quest for compatibility between Islam, politics and democratic principles is uneasy and dilemmatic, which thus results in heated debates due to the divergence of political orientation among scholars. The criticism by the liberal democratic perspective toward the idea of political Islam has alienated Islamist groups and led them to generate more radical mobilization to struggle against the west, which they perceived as infidels, in their own countries. They presume the ongoing propaganda by the states under the Western coalition has isolated their political ideas and therefore it required them to radically undertake revolutionary changes as happened to Iran in the 1970s. The utopist perspective that puts emphasis on the urgency of political Islam has widely been used by Islamist social movements to generate counterattack through any possible means against the Western secular hegemony. The latest mainstream, liberal democracy, gives rise to the liberal perspective of Islam and provides its scholars space to undertake critical readings and hermeneutic reinterpretation of Islamic divine texts. The modification of religious sources is aimed at searching any possibility for the new contextualization of hierarchical traditions and patriarchal interpretation of Islam in milieu with liberal spirits of democracy. It stands on the secular presumption saying that 'faith only applies when standing individually before God' (Reed 2004:511).

Assuming the criticism from the skeptic perspective is valid the question remains whether or not the idea of political Islam must be excluded from the realities and discourse of democratization. Some might say that the political exclusion of Islam might be "…undesirable in principle" (Schwedler 1998: 25). The exclusion of political

Islam from wider political scope would lead the Islamist itself into a more radical spectrum. To this extent, it requires accommodationist perspectives to bridge the differences between each perspective. The sociopolitical exclusion leading political Islam into more radical degrees would perpetuate Huntington's analysis on clash of civilization, between Islam and the west, by and large diminishing the possibility of marriage between [political] Islam and democracy. Hence, this study argues that the accommodationist and reformist attempt in the discourse of political Islam is indeed influential. With reference to the fact that the notion of tolerance of Islam toward non-Muslims has evolved throughout history to the perspective that democracy must accommodate minority group; this study argues that Islam is accommodative to democratic principles. Establishing a just and welfare society is indeed of paramount importance and requires holistic approach while its achievement is not merely through the establishment or declaration of an Islamic state.

This has indeed been apparent in the contemporary political contest in Turkey where Islamists have long been participating in democratization which eventually resulted in their moderated points of view. It suggests that continuous political participation in democratic contests would lead the Islamist to generate particular consents with its counterparts and to build political coalitions which turn the Islamist to become more inclusive of the varied political world-views. In responding to the question of "how do we know which groups would be committed to pluralist politics", the stretched political contest among party politics, the pay off the secular coalition provides to the Islamist parties or political Islam is likely to be influential in determining the future trajectory of political Islam.

B. [POLITICAL] ISLAM AND WOMEN RELATED ISSUES

The second contention pertaining to the compatibility between Islam and democratic principles is whether or not the establishment of an Islamic state and the institutionalization of Islamic law might harm women's rights and their political participation. In this vein, both rejectionists and accommodationists are taking part in widening the debates. Accommodationist perspective, promoting political Islam compatible with democratic principles, is highly confident that Islam provides an equal point of departure for women to proactively take their responsibility in society as long as it does not obscure their genuine roles as wife and mother. Upholding this responsibility will protect the women's dignity and modesty (Hamzawy 2005; Abdellatif and Ottaway 2007). Against this assumption, the rejectionist perspective underlines a contradictory line of argument by saying that Muslim majority countries are now facilitating the "…process of adherence to" the international declaration in eliminating "any discrimination against women" (Weiss 2003: 581). In addition, the rising influence of "Islamic conservatism and the use of Islam as a source of law and public policy" would enable the installation of Islamic state and Islamic laws, as "part of Muslim culture" which subsequently generate "discriminatory and oppressive impact on women" (Othman 2006: 339). The on-going democratization and political liberalization in Muslim majority countries require a conducive and pluralist community in which women are granted the right to pursue larger political attainment, equal access to education and economic interdependence in order to increase their "social status" (Wilford and Miller 1998: 173).

There has been disagreement among Muslim and non-Muslim women scholars regarding the applicability of Islamic teachings, which were apparently influenced by Arab patriarchal tradition. Allowing political Islam to entering electoral democracy which would grant it electoral seats in parliament and is likely to hinder further struggle of gender equality. The rejectionist perspective highly receives exogenous influence from and performs intensive discursive interaction with western feminist schools of thoughts in reconstructing the meaning of gender in Islam and sound the demand for reinterpreting divine texts. Seen this way, the accommodationist perspective condemns the rejectionist perspectives by claiming that it is "betraying their religious, political and nationalist identities" and non-Islamic ways of thinking (Anwar 2004; Othman 2006; Budiman 2008).

Despite the rejectionist perspective somehow shows its attempts to concomitantly spill out the voices of Muslim women feminists, the accommodationists consider its points of criticisms toward Islamic principles cannot be theologically accepted. On the other hand, although the accommodationist seems to increase its adoptability to some universal democratic values, such as the Islamists continued participation in electoral democracy, its commitment to clean-government, and increasing the mobilization of women in its internal parties (Abdellatif and Ottaway 2007), the rejectionist still underscores that its commitment to gender equality is halfhearted. Despite some plausible improvement in accommodating women's empowerment is evident in the Muslim world, the rejectionist perspective perceive "…a tendency … to view Islam as 'hopelessly misogynist, and Muslim women as oppressed and… needing to be rescued by their Western sisters" (Budiman 2008: 82).

According to the rejectionist perspective, allowing political Islam and Islamist opportunities to establish an

Islamic state and install Islamic laws or sharia is the shortcut to postpone the realization of universal values, gender equality (Weiss 2003; Anwar 2004; Othman 2006). Women's rights are frequently discriminated by male-dominated politics. The political acquisition by Islamists would obscure the current democratization in attempts of accommodating women's emancipation since it would absorb the existing interpretive literatures of Islamic teachings which is merely a "traditionalist, non historicist and discriminative" toward women's human rights (Othman 2006: 339).

The current gender struggle is aimed at deconstructing "…the monopoly of interpretation [and] against the control by patriarchal religious authorities" by creating a gender equilibrium where women are given equal spaces to determine 'what constitutes women's rights, who is to define what these rights are, where responsibility lies for ensuring these rights, and the roles states are playing in articulating and clarifying what is acceptable and unacceptable within a Muslim context' (Weiss 2003: 581). This is indeed a long struggle and uneasy task therefore it requires a pluralist social context and democratic tradition while Muslim society in most of majority countries are still undergoing efforts to bring power to this demand. The existing Muslim tradition is presumably far from the condition which is sufficiently conducive to realize women's empowerment. The male-dominated interpretation and the patriarchal conduct of Islamic texts have obscured the participation and representation of women in public spaces and thus subordinated women's agency. Hence it requires holistic gender reconstruction, from discourse to realities, and from praxis to theories (Othman 2006; Budiman 2008).

The globalization and rapid transformation of information and communication in Muslim majority countries lend the women activists such "an important

political effect" to flourish their demands and to undermine the traditional "habits of thoughts" of Muslim communities (Bourdieu 1988; 1989). The rejectionist perspective is pointed to the struggle to eliminate any form of gender discrimination which has been instituted in the United Nations' Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and signed by all state parties (Weiss 2003). The gender disparity and women's subordination in sociopolitical realms does not only emerge in Muslim Majority countries which possibly underscore the bias and multi-interpretation of Islamic texts. As the World Bank notes that it is hard to find gender equality that is constituted in social and cultural norms in any country in the world (World Bank 2001: 4). In this regard, Muslim majority countries have become the main destination to translate the Convention into forces.

The increasing "relationship between religious knowledge and social agency", sociopolitical activism among feminist activists both Muslim and non-Muslim and western and non-western practitioners, lends this convention such a massive solidarity among Muslim women to developing gender equality in Islamic world (Mandaville 2006: 5). The purpose of transformative social action is to reinterpret the divine texts which are presumably gender-biased and male-dominated. The wave of "…modern mass communications, mass higher education and publishing" has undermined the process of knowledge transfer among Muslim communities (Eikelman and Piscatori 1996: 41). This subsequently leads them to reconsider and question "…the endurance of traditional modalities of authoritative discourse in Islam" particularly relating with the "…raising profound question regarding women's social roles and rights" (Weiss 2003: 582).

Thus, some Muslim women activists in Muslim majority countries have attempted to undermine state's

policies which "…manifests by upon their social norms, values, economy, polity and legal structures" (Weiss 2003: 582). Given that women's emancipation has become an international agenda which every country must comply with and one of the considerations of international donors is the state's compliance to abolish any state's discriminatory attitudes toward women in every sphere of national polity, one then might argue state's political will toward gender equality is indeed influential to bolster national development and democratization (Weiss 2003; Othman 2006). At this stage, it becomes apparent that, according to the rejectionist perspective, gender equality is pertinent to the future of democratization in Muslim majority countries. To this extent, the rejectionist perspectives underscores "…the coming of modernity, secular democracy" in order to achieve such universal purposive actions (Sharabi 1988: 155). Therefore, democratization and the fulfillment of the convention's promises on gender equality require open, democratic and plural society which eliminate the domination of particular religious or ethnic groups.

Given that background, according to the rejectionist perspective, the current trend of Islamization or integrating Islam in political affairs in Muslim majority countries is worrying. The criticisms outlined by Islamist groups to the substance of CEDAW are not few since they perceive that Muslim women activists "are spreading the viruses of Western modernity, secularism and liberalism" which are presumably contradictive of Islamic principles (Budiman 2008: 81). The implementation of sharia and partial understanding of Islam leads fundamentalist Islam to perceive women as inferior and thus limit their roles in wider public spaces (Wilford and Miller 1998: 179). Some commentary on the rights of Muslim women seems to allow women entering the public spaces, undertaking job opportunities and crafting their

careers outside, only if women have fulfilled their domestic responsibilities at home (Weiss 2003: 590). Completing their responsibilities as wife and taking care of the children is the first priority of women's roles and with the permit given by the man, a woman is allowed to work outside (Othman 2006: 342). At this stage, it remains valid to note that the patriarchal tradition of Islamic teachings resorts to "…the drawing of necessary boundaries between areas of activities….obligatory and forbidden" that limits the opportunity of Muslim women in public areas and widens gender inequality (Eickelman and Piscatori 1996: 18). To this extent, the disparity of structural opportunity between men and women in public spaces is obvious which puts women "inferior and secondary" agents and remains the main hindrance of further realization of women's empowerment in Muslim majority countries (Othman 2006: 342).

Although the increasing representation of Muslim women in public spaces has been evident in some regions, according to the rejectionist perspective, political Islam or Islamization would nurture state's regulation on women-related issues that remains biased. The appearance of Islamic traditions in political affairs and the concrete campaign of Islamization would make the "practices… and the sense of thinking of religious beliefs as an objective system becomes explicit" (Eickelman and Piscatori 1996: 42). Indeed, the number of Muslim women's representation in wider public spheres, taking influential parts in work places which have been dominated by men, is growing. For example, the Pakistani government "had increased women's participation by reserving 180 seats for women in the national and provincial assemblies, a third of states had been reserved for women in the local government elections", the implementation of Islamic laws seems to subordinate women into secondary position (Weiss 2003: 594). Pakistan,

which is the first country that declared "its raison d'être to be upholding Islamic culture" and Islamic jurisprudence is apparently influenced by the Hanafi's school of thought, "traditional views toward women's roles in society" has been manifested in every sociopolitical domain of national polity (Jones-Pauly and Tuqan 2011: 214). The controversy regarding state's regulation on women issues can be seen in various evidence ranging from the discursive problematic of "… family law and the guardian" to the issue of inheritance, from the issue of "legal witness" to women's access to power (Eickelman and Piscatori 1996: 18; Weiss 2003: 590). In this vein, the states are the legitimate and crucial actor to overcome those issues and draw the boundaries between national legal systems and Islamic interpretation. With reference to the implementation of Islamic laws in Pakistan, the rejectionist perspective underlines the question of the relevance of political Islam. Protecting the states from the influence of political Islam is the key importance since the states underline "…a special influence, for it is the agent of separation and the defender…" of particular ideas and norms (Walzer 1984: 327).

The issue of guardian and women's marital rights in Islam also overwhelmingly subordinate women in family affairs. In Pakistan, Malaysia, or other Middle-Eastern countries, women have been conceived "inferior, unstable moral beings, sexually active…who cause men to lose their self-control, rationality and succumb to temptation and disorder" due to the "primitively patriarchal conception of women" and partial interpretation of Islamic tenets on women roles (Barlas 2002: 57; Othman 2006: 343). With reference to this conservative point of view, those Islamist movements underlining the guardian or supervision from the male members of a woman's family toward women in public spaces is necessary (Weiss 2003; Othman 2006). At

this stage, the majority of scholar's interpretation regarding the scope of guardianship only allows the men, the father, the son, the brother or the husband, to protect the women, while discrediting the rights of the women to protect themselves or other women as it is their own right in the first place.

The decision that strictly imposes men to protect women in public spaces represents the ambiguity of Islamic teaching to imply that women remain inferior. The ambiguous stance of Islam on the issue of women's guardian is also reflected in the matter of women's marital guardians. It becomes problematic since, with reference to the Sunni schools, "marriage guardians have to be agnates (of the male line)" which obscures the equality between men and women in Islam (Nasir 2009: 49). More worryingly, the concept of guardian in Islam makes the boundary between women and men more evident for "…it is the guardian who has to deal with the marriage contract…or else the judge… [and] marriage guardianship can never pass to the mother, the father's mother or a relative having a common maternal ancestor…" (Nasir 2009: 50). Given this fact, one might assume that Islamic teaching is inherently patriarchal and discriminative. Assuming this is valid, it becomes pertinent to ask the rationale of accommodating political Islam since it is rooted in such patriarchy.

The installation of political Islam in state affairs would consolidate discriminatory policies to Muslim women since it overestimates the male-dominated interpretation of Islamic sources. The use of divine texts as the main source of legal system seems to justify the deep-rooted patriarchal social order which creates ambiguity and disregard the women's rights (Weiss 2003: 591). The marital laws of Pakistan for example made the ambiguity of Islamic law evident since it blended religious teaching with local traditions as a result "… codified traditions are often perceived as religious doctrine"

(Weiss 2003: 592). The concern on the right of women to a marriage was also evidently ambiguous when:

> "it has sometimes ruled in favor of a father who had opposed a daughter's marriage (on the basis that he is her wali, guardian), at other times ruling in favor of the new bride and her husband….in the late 1990s, the ruling was clear: based on Islam, once a child is legally considered to be an adult, the only consent necessary to obtain for a marriage to occur is that of the man and woman entering into the marriage…" (Weiss 2003: 591).

The employment of Islamic preferences in establishing national legislation in some Muslim majority countries perpetuates "...a further consolidation of 'patriarchal tendencies'" and is the main obstacle to the pursuit of women's empowerment (Budiman 2008: 85). The issue of inheritance has also been at main source of contention among women activists due mainly to the Islamic principle, which is clearly written in the Quran remaining 'immutable', saying that "… a male shall inherit twice as much as a female" (Weiss 2003: 591). Given that the Pakistan government, particularly under the authoritarian regime of Zia ul-Haq, employed Islam as its primary source of law, the government justifies such ambiguities since it is "…derived from the Quran that of Sura al-Nisa verse 4:11…" and thus "Pakistani law cannot grant complete equality in inheritance to men and women" (Weiss 2003: 591). The interpretation of hudud is another manifestation of discrimination against women since it limits the 'women's legal rights'. The evidence is clear since the women can become pregnant, while the men do not; so they are easily caught or found at fault of sexual misconduct or fornication such as adultery. The failure to provide four witnesses enables the women to be charged with adultery while, as a matter of fact, "human rights monitors claim that 80 percent of adultery hudud cases are filed without

supporting evidence" (Weiss 2003: 595). In the vein of legal witness, the partial interpretation of Islamic texts which has been embedded within national jurisdiction is also apparent as taken for example:

> "…the verse that is often cited to justify the idea that witnesses of zinna must be four males. This is the case in Pakistani law and the hudud bills of PAS. These laws also enable a woman who accuses a man of raping her and who cannot produce four witnesses to be charged herself with false accusation of zinna. … it is important to know that Arabic is a gendered language. After examining the verse just mentioned in Arabic… that only men who falsely charge women with zinna can be flogged. The interpretation … is flatly wrong" (Lee 2010: 100-101).

Efforts to make the public become authentically Islamic have also come to flourishing in Southeast Asia, with reference to Indonesia and Malaysia. The Islamic social movements, either radical fundamentalist or new Islamist, seek to publicize what they define as Islamic code of conduct and propagate "…what they deem as 'truly Islamic' or 'authentic Islamic values' to women as their main audiences (Othman 2006: 341). At this stage, women are paramount critical to the flourish of political Islam and Islamist missionary agenda for their "valuable political and social capital" so that they are perceived as the main agent in both family and society (Ladbury and Khan 2008: 17). Despite the benevolent contribution women have engineered, they have been merely perceived as an instrument in the pursuit of the Islamist agenda. The existing result of bringing Islam into politics shows the "control of women, their social roles, movements and sexuality" to enhance "… [the] belief that Islam is the solution to all social ills" instead of empowering their rights through democratic channels (Othman 2006: 341).

Moreover, the problematic of the codification of Islamic laws or sharia can also be found in Indonesia since it contains several flaws and inconsistencies which escalate further deterioration of women's human rights (Budiman 2008: 86). Dictating Indonesian necessities with the Middle-Eastern cultural tradition, Indonesia's Islamic legal product fails to accommodate "specific conditions of the local context" (Budiman 2008: 86). The existing establishment of sharia in Indonesia has been constructed by the massive use of "patriarchal readings of Islam" (Budiman 2008: 88). Thus, it gives light to Indonesian women activists to undertake women's empowerment campaigns through the demand of reinterpreting state's formulation of Islamic legal products with regard to gender equality and the values of pluralism. One of the main dilemmatic encounters between the struggle of women's empowerment and the implementation of Islamic laws in Indonesia is the issue of polygamy. The patriarchal conceptual and practical understanding of polygamy in Indonesia seems to be notorious due to the "hegemony of the conservative interpretation" in Muslim communities which obscure the attempts to resist "'structures of political, patriarchal, state and sexual power'" (Budiman 2008: 90). The implementation of Islamic principles in Indonesia's marriage law remains inconsistent since it first acknowledges monogamous marriage as fundamental on the one hand, but, on the other hand, it also rules the conditions that make polygamous marriage applicable (Budiman 2008: 86). Given this background, the rejectionist perspective signifies the urgency to block any potential attempt of intertwining Islam with state affairs which seeks to Islamize the society by "… imposing a collective enforcement of Islamic public morals" (Othman 2006: 341).

The abovementioned narration underlines criticism and skepticism to the idea of merging politics with Islamic

principles since it will nurture discrimination against women. In responding to such criticism, the accommodationist perspective underscores those skepticisms are drawn from the evidence of patriarchal tradition of Muslim communities which have long been influenced by Western colonialism. Social rejection toward Muslim women's representation in public spaces is not mainly due to Islamic teachings. Very often, any individual cites particular verses of the Quran seeking divine justification on the "inappropriateness of women being visible and active in the workforce and other public spaces" (DISS Report 2012: 17). The lack of rationalization elucidating the substance of particular Islamic teaching related with women issues are presumed as the root of such misinterpretation (Barlas 2002). The above critics are also less representative due to insufficient Islamic theological knowledge background of the beholders of the criticisms. Indeed, any newfound interpretation and perspective of Islamic texts is warmly welcome however it does not underline every individual, particularly those with irrelevant knowledge background, is eligible to generate both textual and contextual analysis on the Quran and other belated divine sources. According to the accommodationist perspective, Islam comes to appear to protect women's rights and accommodate the interest of contemporary Muslim women activism through "ijtihad, an independent enquiry into the textual sources, particularly the Quran and hadith, in order to identify an interpretation of the religious texts that are appropriate to the conditions of life at the time" (Karam 1992: 252). Therefore, instead of allowing women to reinterpret the context and the meaning of particular verses of the Quran and hadith, the accommodationist perspective suggests that Muslim women undertake holistic study on the historical legacy of the Prophet's life searching for any

relevant references which could justify the contemporary women's sociopolitical activism.

The religious practice of Muslim societies in the Arab world has frequently been cited as the primary source to reflect and evaluate how Islam rules its believers. Unfortunately, the outsiders seem to blend the substance of Islam with the partial practices of Islamic principles due to acute social ills and old patriarchal system which has long been rooted in Arab cultures. Despite the universality the Quran implies, it "was revealed in seventh century Arabia when the Arabs held certain perceptions and misconceptions about women and were involved in certain specific lewd practices against them that resulted in some injunctions specific to that culture" (Wadud 1999: 9). In the Arab world, women lack access to education and face structural constraints to participate in wider public spaces. The old tribal tradition of Arab societies described women as a "potential threat to family honor and mainly belong in the family and private sphere" which complicated gender segregation and constrained further development of women's empowerment (DIIS report 2012: 21). Ironically, Islamic principles have been widely used to justify such patriarchal traditions, for instance, presumably, the Quran states that it is part of religious obligation of the women to fulfil the primary responsibility which is taking care of their families (DIIS report 2012: 25). As reported by the Danish Institute for International Studies, a political leader of Muslim Brotherhood in Amman clearly states "there is ignorance even among Muslim themselves. Muslims have traditions and customs which go far back. They think they are Islamic but they are not" (2012: 26). Women in the Arab world have been incubated and frozen with partial and static dogmatism which then gives rise to the negative image of Islam describing that Islam might subordinate women. In this vein, it is worth noting that the notorious discrimination

against women in Muslim world is not by Islam per se but "ignorance and wrong interpretation" (ibid, 27).

The accommodationist perspectives underscore that holistic understanding of the Quran, both textual and contextual, and its historical narrative is of key importance to formulate mutual concepts of Islam and women's empowerment (Barlas 2001). Given that the nature of the Quran is to hold "practical needs of the believers" (Versteegh 1993: 65), instead of deteriorating women's right, Islam is "a revolutionary breakthrough for women's liberation and empowerment" (Khan and Ladbury 2008: 6). In pre-Islamic Arab society, the women were subordinated as second class citizens was evident when "female newborns were buried alive… [and] men marrying hundreds or tens of women…, which the Quran forbade or restricted these practices" (Khan and Laburry 2008: 6). Thus, the verse discussing the possibility of polygamy in Islam does not automatically indicate violation against the rights of the first wife in the family. It does resemble concrete protection toward women since the contextual justification of polygamy is "the needs of widows and orphans in time of wars" (Khan and Ladbury 2008: 6).

Regarding the assumption saying that marriage between Islam and politics would hinder further achievement of women's empowerment since Islam prohibits women from participation in wider public spaces and excludes them in family matters, the accommodationist perspectives claim this assumption is misleading since it highlights partial understanding of Islam. In Islam, there is no such gender segregation between men and women regarding their rights and responsibilities in any aspect of life. One verse of the Quran evidently states that:

> "Muslim men and Muslim women, believing men and believing women, devoutly obedient men and devoutly obedient women, truthful men and truthful women, patient men and patient women, humble men and humble women, charitable men and charitable women, men and women who fast, men and women who protect their chastity, and men and women who remember God frequently, for them God has prepared forgiveness and a great reward" (Quran: 33:35).

The egalitarianism in Islam is also reflected in one verse saying that:

> "Never will he suffer to be lost the work of any of you, be ye male or female; ye are members, one of another" (Quran 3: 195).

Many rejectionist observers assume that Islam underscores gender inequality due to uneven distribution of inheritance. It is due to the "…classical interpretation of the law of inheritance" dividing the share between men and women as the man "takes twice as much as a woman" (Jones-Pauly and Tuqan 2011: 72). In response, the accommodationist claims that the verse stated in the Quran regarding this notion, however, emphasizes that "there exists reciprocity between privileges and responsibilities" (Khan and Ladbury 2008: 9). In a report of the Danish Institute for International Studies, an interview with a Muslim Brotherhood-activist in Amman conducted by Jorgensen in 2012, noted that:

> "Women take half. But when you calculate…a young man who wishes to marry needs to provide the dowry, the housing, the rent, the clothing, the doctor…all that concerns the family. Also, if he has an aunt (who needs help) he is obliged to help her ….the woman gets half plus the dowry. And it's her money to keep. To spend as she likes it! (DIIS 2012: 26).

In the Quran, women descendants will only receive half that of men descendants since the men uphold much larger

responsibilities with inheritances than the women. With the inheritances at hand, the women can spend the share according to their likes and interests. On the contrary, the man must take care of the family members, spouse and children (DIIS 2012: 26). Moreover, in the milieu of deciding the women's right to seek divorce, the rejectionist sees the existing implementation of Islamic principles seems to be unfair since women have no power or authority to ask for divorce but the husband does have such power. In this vein, some accommodationist perspectives argue that it is casuistic since the implementation of Islamic laws depends on local tradition. With reference to the historical fact that Tunisian Muslims was under the occupation of the Ottoman Empire and Maliki school of thought was being charged as the main reference of Islamic laws, according to the accommodationist perspective, the rejectionists claim seems to be invalid because "it became possible for wives to seek divorce" (Jones-Pauly and Tuqan 2011: 4). One of the manifestations of women's obedience to God is their good behavior to the husband, it does not mean that women must totally obey the husband. The central idea of worshipping God in Islam implies that either men or women are able to uphold the ultimate obedience to God. In this vein women's obedience to their husband, Islam does regulate that a faithful woman only obey the God which is manifested in the willingness to "refuse the commands of another, including those of a husband, if contrary to equity and justice" (Jones-Pauly and Tuqan 2011: 32). Similar to the past experience of Tunisian women, Muslim women in South-Eastern Africa ranging from South Africa to Zambia, are independent, "… reflected in the saying, 'You marry the body, not the head; the head is ours'", thus it enables the women to enforce equal right to get a divorce when particular conditions are met such as "ill-treatment" or other forms of "mutual consent"

(Jones-Pauly and Tuqan 2011: 182). With reference to these grounds, the accommodationist perspectives urges that the implementation of sharia concomitant with the establishment of an Islamic state cannot always be generalized from one country to another since the praxis of Islamic theology and its legal system is rather pragmatically influenced by local demands.

In order to generate holistic arguments to justify that Islam, and thus political Islam, is compatible with democratic principles, and inter alia women's empowerment, the accommodationist perspective puts emphasis on the historical legacy of the lifetime of previous prophets and women's activism during this period. By doing so, the accommodationist could provide verification to the contemporary Muslim women that the presence of political Islam will not harm the women's agenda eliminating any discriminatory forms of women's rights. Beside the claims that women in Islam are discriminated due to the existing male-dominated interpretation of Islamic texts which relate to several issues such as inheritance, obedience and guardians, one also might criticize Islam since it allows husband to marry more than one woman. The common criticism of Islamic teachings say that Islam fails to provide justice and equality for women seems to be questionable. Given that polygamous marriage is allowed which consequently discredit women's right, the presence of political Islam ruling the state's affairs and incorporating Islamic laws would nurture this discriminatory tradition. Blaming Islam that it is the only religion that allows polygamous marriage needs to be clarified. Although Islam allows polygamy, one must take into account that "it is not only within Islam that marriage to more than one wife has been allowed" as one historical facet shows that "according to the Old Testament of the Christian Bible, prophets had many wives; indeed, King David (the

second king of Israel) had eight" (Nasir 2009: 25). As has been noted earlier, prior to the revelation of Islam, the classical tradition in the Middle East allowed the husband to marry tens or even hundreds of wives which apparently ignored the right of the wives. Thus, one should realize that Islam indeed offers the middle way between providing protection to the women and accommodating the old tradition of Middle-Eastern society, albeit particular conditions are applied. As argued by Nasir,

> "It was under Islam that the number of wives that a man could have became limited to four. Nevertheless, two conditions attached to even this limitation. The first condition is that the man should be able to do justice to all of them, and the second that he should be able to provide maintenance for all of them. Muslim men have since adhered to this stipulation to the extent that if a man were to become a Muslim whilst having more than four wives, he would be asked to choose four of them and release the others from his household" (Nasir 2009: 25).

According to the accommodationist perspective, critics saying that Islam is unjust to the women and incompatible with gender equality seem to be invalid since it is derived from the myths instead of the real substance of Islam. The behavior of Muslims in particular regions, which is indeed influenced by local culture and social ills, cannot always be justified to become the main basis of criticizing Islam. Regarding the issue of polygamy, it is evident that justice is the first basis to determine whether polygamous marriage could become possible. In the Quran it is clearly stated that

> "And if you fear that you shall not be able to deal justly with… marry women of your choice, two or three, or four; but if you fear that you shall not be able to deal justly, then only one… That is nearer to prevent you from doing injustice" (Qur'an 4:3).

Justice as the main basis is also repeated in another verse that "You will never be able to do perfect justice between wives even if it is your ardent desire, so do not incline too much to one of them so as to leave the other hanging…" (Qur'an 129:4). Although it is theoretically true that Islam strictly prohibits the injustice resulting from polygamy, it must also be admitted that the praxis of this verse remains contradictory. It is due to the controversy that emerges among religious leaders who claim that the verse was revealed in order to accommodate the men's right to marry more than one woman. At this stage, assuming this claim is true then it is worth noting that the man's intention to take hold of polygamous marriage is purely "man's right, but by no means…a religious duty" (Nasir 2009: 26). Looking to the context of these verses one could argue that Islam does respect the right of women and take a firm stance against any structural and cultural forces that alienate women. It was obviously recorded throughout the early period of Islam that women were paramount important agents who notably generated widespread influences during the lifetime of the Prophet (PBUH). The Muslim women were excellent for "they were as active in religion as in politics, as courage in war as in the peaceful and persuasive propagation of the teachings of Islam..., to be found in the courts of Islamic jurisprudence [and] in the interpretation of shari'ah…" (Ghadanfar 8).

C. RECONCILING BOTH PERSPECTIVES: THE GORDIAN KNOT?

The abovementioned contestation illuminates such wide level of differences between those perspectives, the accommodationist and rejectionist, questioning the relevance of Islam's influence in state's affairs. The rejectionist

perspective underscores the impossibility of merging Islam with the state as the inherence of Islam is not supportive to the further implementation of democratic principles in Muslim majority countries. On the other hand, the accommodationist confidently gives rise to the continuation of political Islam in Muslim majority countries. Looking at the historical legacy and the context of Islamic teachings which are primarily referred to the Quran and Hadith, according to this perspective, the rejectionist assumption is drawn from myth. Questioning the commitment of any social movements to democracy should not only be addressed to the political Islam or Islamist movements therefore allocating them political opportunity in democratic contest, albeit limited, is significant. By doing so, its consistency on democracy could be tracked and investigated based on the praxis of collaborating Islam with modernity. It also reminds the rejectionist to address more pressure to make political Islam more tolerant, inclusive, and pluralist. To come to this end, it requires internal reform of political Islam, ranging from material to ideational, from theories to praxis, and from realities to discourses. Entering the political arena is indeed the right of political Islam in the first place. Searching the relevancy or suitability between Islamism and democracy is indeed a long process and thus might perform a shifting paradigm in a conundrum. Assuming that Islam can be perceived as an ideology which substitutes the current secular political regime with Islamic government is valid, then this study stresses it is very hard to ask to what point is Islamist standing since "ideology, like history, is less thing than a process".

CHAPTER III

DIFFERENT POLITICAL LANDSCAPE, DIFFERENT FORMS OF ISLAMIZATION

Current literature discussing Islamist social movements and the changing trajectory of their women's political activism has mostly been drawn from the Arab world or Middle-Eastern countries where the contention is centered on "religio-centrism" and ethnolinguistic and cultural diversity remains invariably low (Bayat 2007: 3). On the contrary, both Islamist parties in Malaysia and Indonesia are situated in a different landscape where ethnic, religious, and cultural pluralism within the society is evident (Weiss 2004: 259). Considering Islam is not perceived as a theology per se, for its conduct is indeed influenced by the historical narration and geopolitical circumstances, Southeast Asian [political] Islam should not have been situated in the "Islamic periphery" since it might constitute "the quintessence of peaceful and tolerant Islam" (Hamid 2009: 47). Islamist parties in Southeast Asian countries generally share a common characteristic which is "…none of them is based on a homogenous cultural tradition" (Schefold 1998: 259). Assuming this is true, it becomes crucial in discussing the dynamic of turbulent ethnic politics and social fragmentation in Malaysia and Indonesia since, according to some literature, such element would undermine the relations between the state and society since it presumably

induces civil wars and social conflict, economic disparity and political insurgencies unless the government's efforts to prevent such threats are taking place at the maximum (Barro 1991; Koentjaraningrat 1993; Schefold 1998; Tavares and Wacziarg 2001; Fearon 2003; Montalvo, Jose and Querol, Marta 2005). Indeed it is not the main focus of this study to draw a line of causal relations between the diverse ethnicity and Islamization in both countries. It rather describes the landscape where Islamist parties have emerged respectively. Given the structured installation of Islam in the state's affairs, Islam in Malaysia has been continuously employed as the main tool to nurture the dominance of Malay culture and to perpetuate the political standing of *bumiputera* (Abdullah 2004: 259).

Since the *reformasi* movement that took place in Indonesia and Malaysia which gave rise to political opening in the respective countries, the role of political Islam has been increasingly manifested. In Malaysia, PAS has intensified its political influence by opening its internal political structure, albeit to a limited extent, to non-Muslim cadres realizing its significance to help bolster the party's electoral support. Similar to Malaysia's PAS, in Indonesia, PKS also resembles moderate political orientation by obscuring its intention to establish an Islamic state in Indonesia and opened its internal structure to minority groups particularly non-Muslims. Assuming this evidence is indicative of political moderation some question comes to the fore, first, why did the existence of political Islam remain important in contemporary political contestation in the respective countries? How such political Islam in both Malaysia and Indonesia developed within the on-going democratic transitions respectively?

In this chapter, the study will comparatively discuss the emergence of those Islamist parties and their strategic contribution to democratization. It will first delineate

the sociopolitical landscape of Malaysia and Indonesia in which both parties emerged. With reference to the current literature, this study would argue that the different forms of political regime in Malaysia and Indonesia would determine the opportunity for oppositional force to generate any political maneuver against the ruling elite. The formation of the state in the post-independence period would significantly undermine "the associational life" (Milner 1991) navigating "…how the polity came to be structured and oriented as it is" (Weiss 2006: 53). Unlike Indonesia that is secular yet employing Islamic references in regulating some issues such as inheritance and family law, in Malaysia, Islamic teachings have long influenced the ruling government in drawing up its policies.

Despite different notions in defining the relations between Islam and the state, both Islamist parties have experienced the state's political repression which limited their theocratic influence (Freedman 2000: 60). The different political stages of Malaysia and Indonesia have led the Islamist parties to undertake distinguished political maneuvers where PKS in Indonesia decided to install 'grassroots Islamization' while Malaysia's PAS performed 'Islamization from above'. Moreover, it is also necessary to underline that the length of political existence of PKS and PAS is different. PAS has been in existence far earlier than PKS. Despite this, PKS has shown a larger extent of moderation than PAS. Although PAS has experience in building and nurturing political coalitions with cross-ideological political parties in the context of electoral democracy this study argues that it does not automatically lead PAS to possess a moderate turn of mind.

A. [PSEUDO] DEMOCRACY IN MALAYSIA: FROM THE PRESERVATION OF MALAY'S HEGEMONY TO ISLAMIZATION

> *"Our way is through general elections. If [the people] like us they will elect us. If they don't they can elect someone else"* (Mahathir Mohamad quoted by *New Straits Times* 21 April 2001).

On the one hand, Malaysia, "a fragmented multi-ethnic nation-state", is rich for its multi-racial community that consequently exerts a profound influence onto the state formation (Kheng 2002: 93; Miller 2004). Malaysia, with its current publicity as being 'truly Asia', exhibits ethnic division consisting of indigenous Malay or *bumi putera* means "sons of the soil", Chinese and Indian -- where Indian itself is enriched with different religion affiliations as Indians, either those "Indian, Pakistani or Sri Lankan mother tongues" with "… Hindus, Sikhs, Buddhists, and Christians…" (Hirschman 1987:555). The multiracial political atmosphere was also evident in the anti-colonial struggle and post-colonial periods. In pre-independence era, the multiculturalism and the inter-ethnic solidarity of Malaya could be seen from "the alliance between the All-Malaya Council for Joint Action (AMCJA) and *Pusat Tenaga Rakyat* (PUTERA, or Centre of People's Power)" which resulted in the joint agreement providing for the "elimination of racially discriminatory practices" (Mandal 2004: 53).

Although Malaysia is a "highly ethnicized country" (Freedman 2000:49), Malays obviously dominate over the rest of the ethnic groups which causes collective ethnic solidarity to be fragile. Given that the Malaysian constitution provides a formal definition of what constitutes Malay or Malay people, "a person who was born locally, habitually speaks Malay, follows Malay custom, and professes Islam",

it resulted as a consequence that "… all Malaysian should understand that Islam is the official religion and non-Muslims should accept its importance and dominance of the other religions" (Mohammed Suffian bin Hasjim 1976: 291 cited in Hirschman 1987: 555). The ethnic fragmentation was very much influenced by British occupation in the pre-independence era (Abdullah 2004: 259; Mandal 2004: 50-53). Prior to national independence, Malay nationalism that was accumulated "along communal lines" under UMNO (UMNO stands for United Malays National Organization) sought to protest against the British initiative on 'British Government's post-war Malayan Union Plan' (Freedman 2000: 49). According to this plan, the eradication of "… Malay sovereignty…" in order to support the British campaign on the promotion of "…equal citizenship for both Malays and non-Malays…" was introduced (Kheng 2002: 2). Due partly to increasing opposition forces from Malay nationalists and due partly to chronic impacts deteriorated by ethnic conflict between Malay and Chinese from 1945 to 1946, British officials in Malaya soon took into account the significance of building an accommodative alliance, and even further, national unification, consisted of all three major ethnic groups, Malay, Chinese and Indian. Given the fact that Malays were given privileged rights and there was acute political marginalization of other ethnic groups and the question remained as to how national integrity would appear to the surface and downgrade competitive race politics. In spite of such exclusive position addressed for Malays since "… Malaya was basically, "the country of the Malays"", it was noted that British officials gave a large opportunity for other races to use their own languages either Indian or Chinese on a daily basis (Kheng 2002: 3). The communist insurgency in 1948, an acute accumulation of political tension and racial sentiment between Indigenous Malays and Immigrant

Chinese people, lent the British government to return the control of governance to Malays with some conditions that must be implemented forcefully. The first condition was that Malays of all races must grant the British "…interracial cooperation and unity among the various races…" and constitutional monarchy must be given for the rulers in order to "…safeguard the special position of the Malays…" (ibid.). To this extent, the Malay domination of the rest of the ethnic groups in Malaya at the time of achieving self-government status apparently rooted in the making of national identity defining what Malaya was really like.

Although the influence of Malays as the largest ethnic group, which today reaches 60 percent of total population, was obvious during the state formation, it attempted to consolidate with the rest of the ethnic groups. Behind the Malay's influence, the role of Islam was remarkable influential in determining Malaya's state formation (Miller 2004; Shamsul. A.B. 2001). Given the ways that of Muslim Malays encompassed special rights in the political arena and secured their remaining concessions to gain more economic and political advantages, it could be argued that such special positions led the new-born Malaya to internal political diffusion. As an initial effort to prevent further political deterioration in post-independent Malaya, the National Coalition consisting of UMNO, MCA (Malayan Chinese Association) and MIC (Malayan Indian Congress) was successfully declared to the public in order to eliminate political dichotomy within the newly emerging nation state. British decolonization had managed to craft the culturally-diverse nation state into becoming "a multiethnic regime where communal elites would share power" and thus marked Malaya as a good example of "ethnic accommodation" (Freedman 2000: 50; Lee 1986).

Despite such nationalist and secular coalition being established, equal political opportunity in Malaya was not fully devoted to all societies. The need to preserve the hegemony of Malays culturally and politically was indispensable due to the Muslim Malays' sentiments since "[the] strong feelings of economic insecurity…" resulted in the jealousy regarding the increasing influence of 'entrepreneurial Chinese and Indian communities (Miller 2004: 2). Immigrating to Malays in "the first quarter of the nineteenth century", the Chinese have become the main locomotive to bolster the economic and industrial sector in Malaysia (Mandal 2004: 50; Freedman 2000: 50). Seeing how Chinese immigrants began dominating the monetary aspects and trading activities, the Chinese have been "perceived as a political threat to the indigenous Malays" (Freedman 2000: 50, 61). Given that Malaya was formerly constructed as a multiethnic country where every ethnic group was given space to share the source of power, as a point of fact, ethnic relations remained problematic. The use of Islam as the main cultural and political symbol was maximized in order to justify the Malays' hegemonic power. The turbulent relations between Islam and ethnic politics made efforts to find a consolidative end difficult. At this stage, Islam has become the main tool to enforce the Malays superiority as written by Kamarulnizam Abdullah that:

> "Islam in Malaysia has emerged as the dominant religion and become part of ethnic identification for the Malays… then Islam has been the center of social and cultural activities of the Malays…By the turn of twentieth century, Islam became increasingly not only the symbol of Malay cultural dominance but also a powerful tool of Malay elites in Malay politics" (2004: 259).

Another factor worsened the political situation since the Islamist opposition front was not in a vacuum (Miller

2004). Despite the fact that Malaya's 1957 constitution stated that Malays hold "… special position…" and Malay is "the national language" and Islam is the main official religion, the Islamist opposition's forces instead rejected the existing secular political coalition saying that it failed to realize the real Islamic teachings. Instead of banning the establishment of and closing the state's political structure for an Islamist political party, the Malay's government gave the embryonic Islamist party a political opportunity to participate in the national political arena. Challenging the establishment of Malaya as a pseudo-Islamic state, the Islamists sought to promote their ideas by convincing a few groups of Muslims, particularly those who hold a conservative understanding of Islam, that the Islamist party remained the legitimate political party to bring Islamization to the front.

Under such circumstances the political coalition and the ethnic-based sharing of concessions among elite groups was prone to break. Although, at the top of the Malaysian elites there has been cooperation among elite leaders[1], the

1 The cooperation among the BN's members has fully intended to pursue its long-term political agenda securing the secular political alliance. Taken for example, in 1994 the MCA leaders confidently delivered the campaign on "one heart, one vision" to convince the Chinese to "move away from Chinese exclusivity" and internalize their new-found identity as Malaysians. The identity of becoming Malaysian has been conceived as a middle way to bridge all religious and ethnic sensitivities and thence the UMNO-BN ruling regime believes that 'secular' is the most relevant form of state (Freedman 2000: 60-62; Mandal 2004). The pay-off of this cooperation is clear to devote non-Malays to wider political participation and representation in national decision making process as long as they are willing to accept Malaysian as their sole identity. By doing so, Malaysia's government is able to nurture its political image: a multicultural political regime. The praxis of internalizing the new-found identity is evident in some manifesto such as enforcing the political parties to promote as many agenda as possible to support the proliferation of "transethnic solidarities" and the "everyday *teh tarik* nationalism"

grassroots members somehow perceive that such elite-cooperation only "concentrates power in the hands of a few" (Freedman 2000: 50). Thus, it could be argued that despite the Muslim Malays being predominant in the political aspect the relation among the Muslim polity is not intimately bound together into a solid coalition. As a matter of fact, there has been unintended bipolarity: Muslim political orientation has been fractured into two mainstreams, the emerging Islamist Malays and the 'secularist' Muslim Malays, where each eventually maximizes their approach to politicize Islam as a primary tool to seek the sympathies of Muslim Malay constituencies on the one hand, and to maintain the legitimacy and supremacy of Muslim Malays' special rights on the other (Miller 2004; Weiss 2004,2006). Instead of addressing justice to all societies regardless of primordial background, the agenda to Islamize the national polity by incorporating Islamic principles in the state's affairs would only lead the state into the failure. The main priority of any ruling political elite of Malaysia is "…managing inter-ethnic divisions, tensions and conflict" (Mandal 2004: 50).

The early version of this Islamist political party was the 'Pan-Malayan Islamic Party (PMIP) born in 1951 and later changed its name to PAS in 1973' (Ratnam 1985: 144). The first election ever after Malaya's struggle gained its independence in 1957 was won by the National Coalition led by UMNO. PAS, at that time, considered and put its skepticism regarding UMNO's political orientation that presumably reduced its Islamic principles due its willingness to build an alliance with other ethnic-based political parties, the MCA and MIC (Case 2004: 31). Given this alliance, PAS had presumed that UMNO intended to employ Islamic issues as its currency for

which is symbolic activism performing the cultural merging between Indian's tea and Malays culture (Mandal 2004: 49).

"…selling out Malay interests to the Chinese and Indians in exchange for electoral success…" (Miller 2004: 4). Therefore, the Malaysian Islamist party initiated its efforts to undergo Islamization by infusing its Islamist agenda into the national constitution through maximization of its influences on state structure instead of playing its cards as the agency of influence with the grassroots. Nevertheless, despite the defeat of PAS in the first two elections after the independence declaration in 1959 and 1964 PAS successfully revenged the loss by taking over the control of two federal states, the northern state of Kelantan and the oil-rich Terengganu in 1969[2] and by winning "…almost half of the Malay-Muslim vote" and yielded 13 parliamentary seats at national level due to the UMNO's failure to bring economic recovery which consequently underscored the continuing political competition and marked bipolarity of Muslim Malays getting wide (Case 2004: 31; Miller 2004).

The success of oppositional forces in winning the electoral competition in some federal states yielded two types of consequences. The first condition that emerged was the initiation of producing such a rigid and strict limitation on individual liberty. In order to avoid further influence of PAS, its political activism was obviously controlled by the regime. The second consequence was the production of NEP or New Economic Policy. The failure to maintain the improving economic performance was the underlying factor of UMNO's defeat and thus it led the coalition to improve

2 The 1969 riot between UMNO and Chinese lent opposition groups political victories against the domination of UMNO's Malays. Given the fact t6hat such riot was caused by economic disparity between Muslim Malays and Chinese, it led UMNO to call for consolidation among Malays and thus resulted in such a controversial decision ever, the New Economic Policy (NEP). It was controversy remaining the apparent domination of Malays politics over the rest of ethnic affiliations (Case 2004).

its economic strategy, albeit it remained discriminatory, as argued by William Case:

> "Fortified by greater state power, UMNO penetrated deeply into the economy. UMNO created a range of state enterprises through which to pursue more vigorous policies of import-substitution. It also embarked on a concerted program of affirmative action. Labeled the New Economic Policy (NEP), the new state enterprises that had been erected were staffed with Malays, while ethnic quotas were imposed on private sector employment and equity stakes" (2004: 32).

Given the political competition between UMNO and PAS, where PAS has been the key driver navigating the issue of Islamization into the centre of political contestation, the question remains what might be the result or implications. This reality can be seen as a consequence of structured Islamization by the state since UMNO considered it parsimonious to the electoral maintenance and rejuvenate its alternative political strategy to increasing popular support from Muslim Malay constituencies. Despite the 'pre-emptive' effort which was shown by PAS to override the secularist UMNO, UMNO has "…hegemonized…"Malays polity particularly those in rural areas (Ng et al 2006: 27). It was due to the significant development in multiple sectors ranging from the increasing "registered professions of Malays" to the rocketing number of Malay youth being in top-listed national higher education institutions since the outbreak of UMNO's NEP reforming the economic system where Malays have been allocated maximum advantages such as government subsidies and privileges in the educational sector. The victory reached by PAS in the 1969 election forced the UMNO-led Prime Minister Mahathir to place Islamization by the state as a way of preventing the more proliferating impact of PAS that threatened the legacy of UMNO's power in the domestic political arena. The fact more worryingly was that large

numbers of Malaysian graduates who were the sympathizers of PAS returned from Middle East seemed to favor introducing the changes undertaken by the Iranian revolution into Malaysia. UMNO was paranoid and thus assumed that these fresh-graduates would replace the secular state with an Islamic state. Preventing the threatening Islamist idea of PAS, UMNO decided to take over the agenda of making Malaysia more Islamic. UMNO's stealth Islamization therefore took place and fuelled "the long-standing rivalry between two Malay parties, UMNO and PAS" which consequently have stressed that "the institutionalization of the bureaucratic apparatus overseeing Islamic organizations" in Malaysia has been evident (Hamayotsu 2004: 247).

The explanation above has elucidated that ethnicity and political rivalries in Malaysia influenced the state formation of Malaysia. The decision to apply secularism to the state as well as 'consociational democracy' which is negotiation amongst elite leaders to distribute political resources, the permit to establish sociopolitical organizations to all ethnic groups had a boomerang effect. Instead of perpetuating the dominance of Malay culture and enhancing political stability, the ethnic rivalry has threatened the legitimacy of the Malay political symbol. Therefore, although the ruling UMNO regime has shown its tolerance of the electoral competitiveness, the regime initiated to restrict political liberty of oppositional groups, particularly the Islamist PAS and DAP (Democratic Action Party), by imposing rigid restriction on the use of mass media, broadcasting and paper publication, the establishment of student organization, and the application of the Internal Security Act (ISA) (Case2004). It is worth noting that despite the regime opening the political structure for oppositional forces to participate in electoral competition the Malaysians have witnessed the praxis of

pseudo-democracy due to the single-party dominance of UMNO and its nationalist coalition.

B. THE BREAK OF REFORMASI MOVEMENT AND POLITICAL OPENINGS IN MALAYSIA

Mahathir's New Economic Policy, which seemed to bring economic improvement in Malaysia, eventually failed to prevent the national polity from the 1997 Asian financial crisis and led the instability of UMNO's political hegemony. Since the implementation of the New Economic Policy, Malaysia came to appear to become one of that important countries in Southeast Asia which successfully developed its economic sector by outlining the "state-led policies of modernization" and "transforming Malaysia into an industrialized country" (Embong 2002: 1; Gomez 2004: 1). The successful implementation of this policy generated two forms of transformation in Malaysia. Rapid modernization and the shifting of production from agriculture to industrialization resulted in extensive socioeconomic transformation. The agricultural sector failed to maintain its contribution to GDP and from "31.4 percent in 1970" it dropped to 18.7 percent in 1990, the government shifted its industrial basis to the secondary sector such as "manufacturing, construction, and mining" which successfully contributed to increasing the GDP from 23.3 percent in 1970 to 40.2 percent in 1990" (Embong 2002: 37). By doing so, the Malaysia government became a "second-tier newly industrial economy" (Embong 2002: 37).

Despite such shifting production, economic development also generated social transformation. The government's initiative to enhance the national development program based on the capitalist economic system has caused unequal distribution of the labor force due partly to the

decline of "rural labor" who worked in the agricultural sector from "54 percent in 1970 to 28 percent in 1990" and due partly to the increasing trend of labor urbanization. The labor who migrated from the agricultural sector in rural areas to manufacturing and other non-agricultural forces and thus lived in urban areas rapidly increased from "8.7 percent in 1970 to 19.5 percent in 1990" which signaled the widening gap between the capitalist class, the new middle class (the professionals, technical, administrative and managerial workers) and the lower class (unskilled labors) in Malaysia (Embong 2002: 38-39). Labor distribution in urban and rural areas remains unequal since the central government lacked initiatives to synchronize development in the rural areas. Besides, uneven distribution of wealth among Malays and non-Malays were also apparent. On the one hand, the economic sector was apparently dominated by the Chinese capitalist class and on the other hand Malays strongly influenced the political sources albeit their contribution to economic development remained lacking. This has enhanced the so-called "inter-class and inter-ethnic competition… especially from the mid 1960s" which led the Mahathir's regime to create "a Malay capitalist class" (Embong 2002: 47). As a result, economic growth and massive infrastructure development "contemporary Malaysian society is probably divided more deeply by class than by ethnicity" (Weiss 2006: 184). In addition to this, the increasing feature of manufacturing and mining has given rise to foreign investment as well as modernization which then raised sentiments from the conservative Muslims.

Although Mahathir's regime reached critical economic performances it failed to counter the impacts brought by the Asian financial crisis in 1997. Indeed, prior to the crisis, Malaysia's economy remained unstable as could be seen from the fact that the average rate fell from 7.5 percent in 1970s

to 5.9 percent in 1980s. Realizing the insignificant economic development in 1980s, the Mahathir regime successfully reached its peak in early 1997 as the average rate of economic growth gained 6.7 percent. The 1997 Asian economic and financial crisis, however, caused the economic development to grow slower than was expected in the Seventh Malaysian Plan since the average rate was beneath 3 percent. The fact was even more worrying since the interest rate after the Asian economic crisis toppled from 8 percent to 16 percent (Embong 2002: 38, 107). The crisis did shock Malaysian society particularly the vulnerable Malays bourgeois which consequently gave rise to massive protest demanding total reforms in multifaceted aspects ranging from economic improvement to individual freedom, from religious matters to democracy and civil society enhancement (Gomes 2004: 3).

Nevertheless, in September 1998, responding to the Asian financial crisis and the "controversial dismissal of Anwar Ibrahim as the deputy to the then prime minister Mahathir", a mass mobilization called *reformasi* movement took hold in Malaysia (Gomes 2004: 2). The protest was crystallized as a symbolic movement which signaled that Malaysian society, regardless of primordial sentiments, was presumably ready for the political liberalization and democratization. It was symbolized by the appointment of Wan Azizah, Anwar's wife representing the new-born political party *Partai Keadilan* or Justice Party led by Anwar Ibrahim, to become the leader of the new-formed political coalition, *Barisan Alternatif* or Alternative Coalition, "a multiparty oppositional coalition" to promote "democracy, human rights, justice, women rights and national unity" in Malaysia (Weiss 2006: 135). Established in 1999, the coalition exhaustively targeted total reform in Malaysia which covered multifaceted issues. It critiqued the long standing

authoritarian regime as it indicated the chronic sociopolitical ills such as corruption, cronyism and nepotism (Weiss 2006, 2004; Gomes 2004; Hwang 2003). Assuming the corruption issue was deeply rooted in Mahathir's administration, the *reformasi* movement considered total Islamization as an alternative to install justice and democracy.

Assuming that total reform was indeed crucial to the political maturity of the Malaysian polity, it becomes pertinent to ask whether or not the *reformasi* movement led by Wan Azizah which consisted of various oppositional parties ranging from Malaysia's longest standing – Islamist political party, PAS (Parti Islam seMalaysia), to the socialist-based Democratic Alliance Party (DAP), and "comprised the leading NGO activists" would be capable of meeting such ambitious demands (Gomes 2004: 2). The agenda of total reform promoted by the coalition remained unclear. Instead of providing generous pressure to the authoritarian regime to undertake democratization as soon as possible, the coalition's capacity to pursue the democratic transition was questionable whether the coalition was able to insulate rationalization specifying "what they meant by 'reform'" and defining "concrete, pragmatic objectives once the political crisis matured" (Weiss 2006: 134). In addition to this, it also remains pertinent to ask whether the movement sufficiently represented the multicultural society of Malaysia demanding such total reform and securing individual liberty. The coalition failed to show that it was representative regardless of ethnic and religious background. Instead of representing the interests of all components of Malaysian society, the *reformasi* movement remained homogenous and which consisted of:

> "Young, middle-class Malay men…[and] not nearly so multiracial and egalitarian as its leaders proclaimed. The prototypical *reformasi* activists appeared to be a Malay

> male in his twenties, educated locally (probably through the tertiary level), employed (quite possibly in the public sector), a devout Muslim, based in a city (probably Kuala Lumpur) even if not originally from there, and a fan of Anwar (Weiss 2006: 134).

Responding to the question asking for concrete explanation and strategic approach that the coalition might offer, the coalition clarified by elucidating its concrete goals. Stated in "BA's joint manifesto, the movement insinuated transformation in ideologies and institutions which must be "largely free from communalism and corruption" (Weiss 2006: 180), articulated the ground to "…develop a multiethnic political framework, prioritizing non-communal goals of democracy and individual freedom" (Saravanamuttu 1992: 54-59); "competitive and clean elections, decentralized decision making, elements of direct democracy" (Weiss 2006: 135).

Although the fact showed that the movement was originally heterogeneous since "many were non-Malays, mostly Chinese and Indian, Western-educated NGO activists, labor activists, students and professionals" the *reformasi* movement was short in the existence, and it only lasted for three years. Despite the fact that the opposition capital successfully reached more than 40 percent of the total electoral votes in 1999, the election was an evident ground to verify that the coalition remained invalid as the *reformasi* itself "had passed its peak by 2000 [and] its goals mostly unachieved" (Weiss 2006: 143,183). The internal friction in the Alternative Coalition came to appear at the surface due to the controversy regarding the Islamization agenda promoted by PAS. The coalition would not sufficiently be able to give the ruling elite pressure to uphold democratization since it was "too small a constituency to force a change" (Weiss 2006: 181), DAP decided to withdraw its participation from the coalition.

PAS's Islamist appeal seemed to be failed to accommodate the non-communal politics which consequently led the DAP to cancel its further participation in the coalition (Weiss 2006: 172). Given the fact that in the 1999 general election, "PAS even set up its own shadow cabinet apart from that of the DAP" (Weiss 2006: 195). The *reformasi* movement was then presumed as an anomaly in democracy since it contained an Islamist agenda which replace the current political regime with a new one based on Islamic principles which obscured democratization in Malaysia (Weiss 2006: 139). Thus, the coalition comprises two remaining parties, PAS and PKR (*Parti Keadilan Rakyat* led by Wan Azizah). At this stage, with reference to the explanation above one might argue that the *reformasi* movement in Malaysia was less representative to nurturing the dissemination of individual freedom and other democratic principles (Weiss 2006). Seen the failure performed by PAS and DAP in sustaining its political reconciliation within the coalition, the BA's political trajectory and capacity to nurture democratization and racial harmony in the country was indeed questionable. In addition to this, the attempt to sustain the reform movement was due to "the limited role of the middle class in the struggle for the transition from authoritarianism to democracy" (Gomes 2004: 6).

However, the *reformasi* movement and the Alternative Coalition was a symbolic transformation of Malaysia's politics where there were shifting institutional and ideological stances among the members of society (Gomes 2004). Although political parties have claimed to articulate the interests of particular racial groups, their consistencies to promote clean government and individual liberties as well as pluralist values remains vague. The ideological changes seem to be apparent in the proliferation of gender equality in both formal politics and civil society activism. Furthermore, institutional

transformation would also open more opportunities for the participation of various non-governmental organizations. At this stage, political liberalization giving NGOs chances to disseminate particular ideas which are concomitant with democratic principles is indeed important (Derichs 2004). The interconnectedness between civil society and democratic transition is apparent because civil society is:

> "simultaneously considered an autonomous public sphere where citizens deliberate and exchange ideas and , more importantly, the reservoir of that "stock of social capital" that is necessary to oil the wheels of democracy… Scholars often assume that a successful transition from authoritarianism to democracy will take place in which civil society is not only robust but also in opposition to the state…" (Farouk 2011: 91-92).

The existence of civil society is indeed important to preserve democratic transition. In Malaysia, prior to the birth of the *reformasi* movement, the state has been tolerant of the emerging capitalist class and new business elite groups (Gomes 2004: 5). Ironically, the window for political and civil society to generate their roles to address "counter hegemonic narratives, for instance, for a more liberal democratic and Islamic" state was highly restricted, if not prohibited (Weiss 2004: 61). The *reformasi* movement in Malaysia has mandated that "the transition from authoritarianism to democracy involves many variables.… To play a vital role in democratization, civil society must work with political society… to strengthen or weaken the democratic or authoritarian potential" (Farouk 2011: 92). For decades, civil society in Malaysia has been weakened and unable to fit "the theoretical ideal of democratic, grassroots-oriented, politically transformative organizations" due to the fact that its access to ideational and organizational mobilization remains limited (Weiss and Saliha 2003).

The political opening of Malaysia has given rise to the women empowerment agenda which consequently gives political societies, ranging from secular feminist activists to Islamist party, impetus to eliminate discriminative policies on women and non-women related issues (Weiss 2006: 186-170).Women have now been given wider political opportunity sounding their political voices and criticizing the existing gender segregation.

The establishment of Women's Agenda for Change (WAC) and Women's Candidacy Initiatives was the evidence underlining the increasing manifestation of women's political consciousness in Malaysia. the former was institutionalized in order to generate "…eponymous document listing specific action steps to be taken to address gender inequalities and general problems in eleven areas, such as labor, religion and culture, sexuality, and domestic violence (Weiss 2006: 135). On the other hand, the later was intended to disseminate "women's engagement in contemporary politics… and encourage women and men to support female's candidate (Weiss 2006: 135).

C. UNFOLDING THE GRASSROOTS ISLAMIZATION IN INDONESIA FROM CAMPUSES TO PARLIAMENTS

Turning now to discuss the sociopolitical landscape of Indonesia and the emergence of Islamist parties, the following part of this chapter will substantiate how Indonesia's Islamist party, PKS, has struggled to counter political repression under Suharto's authoritarian regime and disseminated its political agenda through the lens of electoral democracy. Similar to the Malaysian case where the country is culturally and religiously diverse, Indonesia is obviously popular for its cultural diversity and pluralism. In spite of cultural

heterogeneity, unlike Malaysia, such heated interethnic rivalry during the making of the nation and the formation of the state did not exhaustively result in ethnic domination. Elucidating the early root of political Islam(ism) in Indonesia, this study argues that, alongside with continuous participation in electoral contests and liberal democracy, PKS, has been challenged by structured secularization that highly constrained the influence of religious leaders to actively engage with political and state affairs. Given this picture, the Indonesia's PKS, under the *tarbiyah* movement in its early form, took into account Islamization from below or grassroots Islamization.

The political opening and liberalization marked by the fall of Suharto's authoritarian regime, which ended Indonesia's long-standing pseudo-democracy, has given rise to the institutionalization of Islamic forces into electoral democracy. Similar to the PAS of Malaysia, after the emergence of the *reformasi* movement in respective countries, both Islamist parties have experienced strategic mobilization and pragmatic interaction with cross-ideological political parties as well as other forms of civil society activism which considerably transformed their political trajectory from conservative to cooperative. To reach this end, this sub-section will elucidate first, the sociopolitical landscape of the Indonesian Islamist including the ethnic rivalry and the construction of the state, second, the strategic mobilization and grassroots Islamization that took place during the authoritarian regime, and last but not least the political openings and the institutionalization of Islamist forces in Indonesia's national polity in the post Asian financial crisis in 1997. Given this elaboration, the study argues that first, similar to Malaysia, although there was no particular cultural symbol to dominate the ethnic politics, political Islamism in Indonesia has faced turbulent interethnic

relations. Second, unlike the Islamist party in Malaysia, PAS, which has experienced the state's accommodative approach toward other racial and political groups, Indonesia's PKS has been situated within political dominance of the secular nationalist front which restricts and even excludes political Islam(ism) from political contestation. The fact that Malays are the dominant cultural force and are politically influential has enshrined the incorporation of Islamic principles, albeit partially implemented, it becomes pertinent to ask whether similar sociopolitical landscape has potentially perpetuated in Indonesia, the largest Muslim population in the world. Notwithstanding the majority of Indonesian population being Muslim, the state structure obscures the role of religion which is symbolized in its national ideology *Pancasila*. Indonesia's multiculturalism has become the tool used by the government to rejuvenate its public image, albeit questionably so. In 2011, the president of Indonesia was invited by the United Nations Educational, Scientific and Cultural Organizations to deliver a keynote speech. It was due partly to the blessing natural resources and unique cultures and due partly to the successful effort performed by Indonesia's government under Yudhoyono's regime to preserve the country's multicultural atmosphere, UNESCO praised Indonesia as an 'unique example of cultural diversity'.[3]

Indonesia is well-known worldwide for it is a populous home for more than 17 thousand islands, 33 provinces with 223 million people, more than 300 tribes, which 45% is Javanese and thus remains the largest ethnic group and Coastal Malays with 7.5% and 26 per cent are of other

3 See ANTARA News 'UN Officials praises Indonesia's Cultural diversity on http://www.antaranews.com/en/news/77253/un-official-praises-indonesias-cultural-diversity accessed on August 22 2013 at 14:58.

races. Although Bahasa Indonesia is the national language, each tribe uniquely possesses their own languages with a total of 700 local languages which are spoken in different dialects across the archipelago. Besides such ethno-linguistic richness, Indonesia formally acknowledges six world religions, Islam with 85 per cent, Christianity with 11 per cent (both Protestants and Catholics), and the rest is Hindu, Buddhist, Confucian or other traditional faiths.[4] Although Islam is the religion with the biggest number of believers and Indonesia is the largest Muslim population country, unlike its counterpart Malaysia, it is explicit that Indonesia's national constitution does not declare Islam as the official religion.

However, given the fact that Indonesia is inherently diverse in its ethnic and cultural heritages, it is worth questioning how such polity came to integrate under one union and how minority ethnic groups could undermine the potential domination generated by the largest tribe, Javanese. Responding to such questions, this paper argues that the political contestation of Indonesia prior to independence was "fragmented along religious, regional/ethnic" (Liddle 1996: 620; Heiduk 2012: 30). The racial politics came to appear and created a space between nationalist Javanese and Muslim Malay nationalist in the making of the nation. In the middle of the fourteen century, the dominance of Javanese culture was apparent since the greatest power kingdom, Majapahit, centered its development base in Java and "controlled all interinsular commercial traffic in the Archipelago…" and made Java the "island with the best developed infrastructure…" (Schefold 1998:264). In addition to this, under Dutch colonialism, particularly prior to the World War I, a range of educational institutions were established

4 Cited from http://www.embassyofindonesia.org/about/people.htm accessed on August 22, 2013 at 15:10 pm

by some Javanese nationalists to disseminate the demand for gaining independence and nationalism (Heiduk 2012). It signed the birth of Javanese dominance in Indonesia's pre-independence which presumably threatened the unification of pan-Indonesians. On the other hand, in the western part of Sumatera, the Malays, albeit strongly influenced by Islamic teachings, started to develop its influences in the trading system in the whole archipelago and more worryingly tended to perform its tendency to the Islam Diaspora. To this extent, the Muslim Malays traders, who were also the supporters of pan-Indonesia and began to dominate trading activities in the coastal areas of Sumatera, forced other nationalist groups to not use any particular ethnic symbol in pursuing the unification of the new nation-state.

Despite the fact that the Javanese remained the largest ethnic group, the rest of the Indonesian population represented by nationalist groups decided to choose Malay language as their lingua franca. It highlighted strong influence over the nationalist front that sought to maintain national integrity and avoid the "preponderance of the Javanese sector…" which could "…deter other peoples from participating in a union" (Schefold 1998: 265-6). At this stage, it seems to be relevant to stress that within such multifaceted cultural differences and despite the Javanese ethnic experience facilities and development at the time the Javanese culture was less demonstrative because of its political philosophy emphasizing "the signs of power's concentration, not the demonstration of its exercise or use" (Anderson 2007: 13). Although political dissents among ethnic leaders at that time remained unavoidable, one might argue that during the struggle for independence, the ethnic leaders concentrated on "two fundamental ideas … creativity (fertility-prosperity) and harmony (tranquility-order)" in the

pursuit of "order, peace, prosperity, good fortune" (Anderson 2007: 19).

In Indonesia, although the Javanese was and are the largest ethnic group it was not given the privilege to become a dominant cultural symbol as it can be seen from the decision to use Malay language as the Indonesian national language that later was to be called 'Bahasa Indonesia'.[5] Given the fact that there was absence of dominance of the biggest cultural group, quantitatively, to determine the national identity and cultural symbol of Indonesia, the question remains what constitutes Indonesia. In responding to this, with reference to the commentaries stated by Ruth McVey, this study argues that the making of Indonesia put emphasis on formulating "collective Indonesian personality" for "it had no common identity" prior to the "incarnation of the Dutch East Indies colonies" to preserve pan-Indonesian (pp.11-12). At this stage, in light of cultural or ethnic rivalry, the national polity of the archipelago had no particular barriers.

D. THE CHALLENGE OF POLITICAL ISLAM IN THE MAKING OF INDONESIA

Assuming the absence of Javanese symbolic action to demonstrate its cultural dominance was valid the question remains whether or not the contested relations between Islam, as the majority, with politics affairs was an issue during the national independence struggle and the state formation of Indonesia. Although Islam was not formally declared political and cultural symbol of the state, the ideological contention was highly problematic since Islamic fundamentalism came to undermine the process of constructing Indonesia as a

5 Declaration of national language was performed during Indonesia's youth meeting in 1928 (Johns 1967)

nation state (Morfit 1981: 840). Prior to independence, it was clear that there was ideological tension concerning the role of Islam in the making of Indonesia. Assuming Islam could be perceived as the ideological foundation that every Muslim must uphold; it is valid that some Muslim fanatics required and imagined the establishment of an Islamic state in Indonesia. Unlike Malaysian identity which puts emphasis on the superiority of Malay culture and Islamic principles, the state construction of Indonesia did not give wider space to incorporate Islamic attachments, albeit apparently debatable, in political affairs. Hence, it raised criticism and even opposition to struggle against the influence of the nationalist secular front (Liddle 1995).

Given the fact that Islam had provided impetus to Muslim leaders to conduct anti-colonial movements against Western power which contributed to national unification and independence (Moten 2005), one might assume that Islam should be clearly mentioned in the constitution as the formal religion and allocated spaces in the political realm (Ramage 1995; 2). During the independence struggle, Islam in Indonesia made magnificent contributions to the rising anti-colonialism sentiment for it "developed three major political responses which were "traditionalist Sunni Islamic organization, *Nahdlatul Ulama* or Awakening of Ulama, *Masjumi* or Council of Muslim organization the modernist Islamic political party, *Daril Islam* or Abode of Islam the militant Islamist movements and *Tentatra Islam Indonesia* Indonesian Islamic Army" (Carneige 2008: 1). In this vein, prior to independence, many Muslims were engaged with Islamic nationalism perceiving the implementation of Islamic principles holistically in all aspects, ranging from cultural to political-economy, was of key importance to their struggle against the infidel Western power. Given such perception the question remains what factors contributed

to this development. George McTurnan Kahin states in his popular writings in the 1950s that

> "one of the most important factors contributing to the growth of an integrated nationalism was the high degree of religious homogeneity that prevailed in Indonesia, over 90 percent of the population being Mohammedan. As the nationalist movement spread out from its original and principal base on Java to the other islands of the Dutch-controlled portion of the archipelago, the parochial tendencies that might otherwise have become strong among their communities tended to be counteracted because of the solidarity induced by a common religion. …The Mohammedan religion was not just a common bond; it was, indeed, a sort, of in-group symbol as against an alien intruder…" (2003: 38).

Kahin indeed emphasized religion, particularly Islam, injected Indonesian Muslims the conceptual basis to undertake religion-based collective solidarity to counter the missionaries of other religions. Furthermore, with reference to Wertheim, Kahin exemplifies a real example showing how Islam could fuel anti-western or anti-colonialism by saying that "the arrival of Portuguese power in the area …induced a large number of Indonesian princes to embrace the Islamic faith as a political move to counter Christian penetration" (Kahin 2003: 38). Given the Islamic thought fueling the polity of the archipelago to conduct decolonization, Islamic nationalism gave rise to the emergence of integrated nationalism. The transformation of Islamic nationalism to the integrated nationalism was first initiated by Muslim leaders who were elected to join the "*volksraad* or People's Council, the top representative council for all Indonesia" and secretly planed to undertake political education and public literacy to the masses in the archipelago (Kahin 2003: 39). By doing so, the Muslim politicians would be able to provoke and organize nationalism. In addition, with reference to

one of the leading members of the British Indies' Khilafat movement, Maulana Muhammad Ali, "it is a wrong concept of religion that you have, if you exclude politics from it; it is not [just] dogma, it is not [just] ritual" (Formichi 2012: 2), some Muslim political leaders such as Tjokroaminoto, Kartosuwiryo, Agus Salim, perceived the significance to install Islamic principles into the national polity and "condemned Sukarno's secularism" (Formichi 2012: 2). Such fundamentalism gave rise to the political Islamism in Indonesia which subsequently intensified ideological contestation and undermined the struggle for national unification. Islamic nationalism was disseminated by those Muslim leaders who sought to introduce an Islamist agenda of pan-Islamism in Indonesia by saying that

> "may be, then, you don't know that religion embodies rules, rules for this world and the hereafter. Hence, religion is political. Aren't you aware that in the history of Islam there are Islamic empires, Islamic wars, and so forth? Colonial politics itself is founded on religion, especially the Christian religion; there is a policy named *Kersteningspolitiek*, aimed at Christianizing the Indonesian population. Hence religion is an important factor in colonial politics… Clearly this is the noble way to obtain freedom for the people and the motherland in a more encompassing and true sense, liberated from all forms of slavery, humiliation, subjugation, which are still now affecting us Indonesians in general and Muslims in particular" (Kartosuwiryo, 'Kebera'atan ra'iat', *Fadjar Asia*, 27 April 1929 quoted in Formichi 2012: 40).

Despite the fact that the organizations shared similar ideas to undertake anti-western colonialism and struggle for independence by employing Islamic principles as the main basis, the Islamist leaders failed to reconsolidate themselves into one political leadership due to the diverse political understanding. The friction emerged due to the shifting ideological stance among the leaders. At the time the

political hegemony of Islam in the Ottoman Empire ended, Indonesia's political Islamism in the 1920s began seeking for political liberation and independence in order to "bring about a new worldwide Islamic order" (Formichi 2012: 53). Given the radical thoughts brought by some Muslim leaders who were members of *Partai Sarikat Islam Indonesia*, "the conservative Dutch governor general Bonifacius Cornelis de Jonge dramatically reduced the political space…and only openly cooperative organizations and parties were allowed to operate freely in the political sphere" (Formichi 2012: 53). Given this political restriction, some leaders of Sarekat Islam Indonesia decided to transform the institutional platform from seeking to establish an Islamic state to challenging multifaceted aspects such as "press limitations, social legislation, and agrarian reform" (Formichi 2012: 53). At this stage, such political exclusion, however, caused the political mobilization by Kartosuwiryo to become more radical.

The abovementioned narration stresses that political Islam, albeit fragmented between the cooperative and non-cooperative, had emerged prior to national independence which undermined the making of Indonesia. The heated debates over the issue concerning whether Islam should be attached to the making of Indonesia could be seen in the process of formulating "a *dasar negara*" or "philosophical basic of the state" (Ramage 1995: 1). At this stage, among other debatable issues, the line of contention was centered on two core issues, secular constitutional democracy and the Islamists who claimed that Islamic principles would be attached as the main reference in formulating the basic philosophical foundation of the state. Providing an alternative, Sukarno, representing the nationalists, offered "political compromise" which consisted of "five principles – humanitarianism, nationalism or Indonesian unity, Indonesian democracy through consultation and

consensus, social justice, and belief in God – could form a common platform" to mediate ideological clashes among those two groups (Ramage 1995: 2-3). By doing so, Sukarno presumed national unification and the preservation of multicultural society would be achieved. Sukarno, thanks to his "actor's temperament and the cultural expansiveness", had successfully persuaded the "common folk" to accept his point of view (McVey 1996: 14).

Considering the significance of maintaining the unity of the republic, some Muslim modernist leader such as Wahid Hasyim who was the 'head of *Nahdlatul Ulama*" rejected the initiative to enshrine Islamic principles and symbols as the national ideology and symbolism for, according to Buyung Nasution, it "threatened the nascent national unity" (Nasution 1972: 63). Instead of promulgating Islam as a symbol of the state which eventually threatened the Eastern Christian populace and led to disintegration, some Muslim leaders rather sought to realize "the idea of achieving modernity" (McVey 1996: 12). Although anti-colonialism that took place in the archipelago was due mainly to the flourish of Islamic nationalism, the interaction between Muslim leaders and secular nationalist leaders of Indonesia led the radical perspective gradually to lessen its degree of non-cooperative conservatism.

With reference to the explanation above, it becomes pertinent to ask what message it implies. The above mentioned information signals the socio-political landscape of Indonesia in which contemporary political Islamism has emerged. Given the historical legacy which showed that there was always political dichotomy within the Indonesian Muslim community, one might argue that the realization of pan-Islamism in Indonesia is a highly difficult task. Therefore, those who provoke the reincarnation of Indonesia as an Islamic state might be referring not to the [historical]

facts but to utopian idealism. Given that Indonesian Islamism at that time derived its ideals from such utopia, it becomes crucial to question its reliability in establishing an Islamic state since the core concept of nation-state building requires "collective commitment, its impulses are egalitarian…[and] the state presents itself not as ideal but as fact" (McVey 1996: 11).

Assuming this is true, the next question remains whether or not the making of Indonesia, neither Islamic nor secular but a religious country, could prevent the potential development of political Islamism in Indonesia. The debate over "…what…shall be the place of Islam [in Indonesia]..." (Benda 1958: 189) had escalated after the war of independence (McVey 1996:12; Heiduk 2012). The newly-independent Indonesia was also prone to the "regional rebellion" who asked for "separated governance" or federalizing Sumatera or Sulawesi (McVey 1996: 11). Due to the fact that under Sukarno's old regime failed to establish socio-economic and political stability in post-war reconstruction, the Indonesian collective identity remained fragile. The next question to be addressed is how the political Islamism perceived this political circumstance and whether or not such political fragility undermines the political trajectory of Indonesia's political Islam. Thus, the discussion in this sub-section will elucidate the emergence of contemporary political Islamism, the Indonesian PKS.

E. TWO SIDES OF THE SAME COIN: AUTHORITARIAN SUHARTO'S REGIME AND GRASSROOTS ISLAMIZATION IN INDONESIA

Given the fact that the growth of political Islam threatened national unification prior to independence, it becomes

critical to ask how it affected relations between the state and [political] Islam after the collapse of the Sukarno's regime. The state's approach toward Islamic political groups under Suharto's regime, which began taking place in 1965 "after a military coup" (Heiduk 2012: 30; Lev 1972: 272), was like two sides of the same coin. On the one hand, Suharto and his political alliances perceived that Islamic organization could contribute to the preservation of political stability. Seen the fact where political Islam or Islamic organizations were indeed influential in disseminating nationalism to struggle against colonialism, Dutch and Japanese occupations, Suharto conceived that Islamic political organization could be used as a buffer to support his political orientation (Heiduk 2012). In the beginning of the New Order's political regime, Suharto had employed the functional Islamic organizations and their prominent leaders, such as "ex-Masyumi activists who joined with other Muslim groups" in cooperation with "Army Strategic Forces … for the purpose of destroying the Indonesian Communist Party and toppling the left-leaning President Sukarno" (Liddle 1995: 620-621). At this stage, given the cooperative approach of Suharto, some Islamic political activists expected that Suharto would reconcile with Muslim organizations to accommodate Islamic perspectives during his governance (Morfit 1981; Chiara 2012).

Instead of continuing the cooperation, Suharto's authoritarian regime evidently alienated any form of Islamic organization as well as socialist movements. According to Suharto's regime, maintaining the state's cooperative approach toward various political ideologies, particularly Islamism and socialism, and giving them space to redress their political agenda would only become a political boomerang. Although it might accommodate various political articulations from diverse ideological backgrounds, it would nevertheless generate political dichotomy

among the constituents and thus threaten national stability. Suharto's political orientation was constituted two approaches, ideological and institutional restriction. Institutional restriction could be reflected from Suharto's decision to eliminate the existence of the multiparty political system and limit the role of civil society. Constraining the political freedom of every individual, Suharto condensed the electoral participants into only three political parties from 1973 onwards (Diederich 2002: 102). Realizing the political oppositional capital that could be brought by political Islam, Suharto eventually decided to "quickly marginalize" political Islam (Hadiz 2011: 18) through "requiring Islamic groups to conform to the state philosophy, restricting the use of Islamic symbols and language, and limiting the number of Islamic parties" (Heiduk 2012: 30). As a consequence, political isolation took place from 1973 onwards as Suharto restricted the establishment of a multiparty system and thus forced all Islamic parties, however mainstream, "to merge and form the PPP (*Partai Persatuan Pembangunan*, United Development Party)" (Heiduk 2012: 30). Given the fact that Suharto's political regime had to abide by its military wings, it enabled the regime to undertake political repression and violation to dismantle any political movements that opposed the regime (Lev 1972: 272).

Besides, Suharto also restricted the opposition ideologically. Although the previous regime used *Pancasila* to mediate ideological differences among political organizations in the pre-independence days and to unite the national polity under one republic, albeit debatable, Suharto sought to maintain the legitimacy of *Pancasila* to sustain its political regime and to "attack or contain rival political ideologies" (Morfit 1981: 844). Preventing the growth of ideological opposition, Suharto propagated his authoritative political program named P4 which was "Upgrading Course

on the Directives for the Realization and Implementation of *Pancasila*" (Morfit 1981: 839). The original form of *pancasila* was to put nationalism above other ideologies and "synthesize all the main patterns of political orientation in Indonesia" without restricting their growth; the Suharto's regime vacuumed the "political outlook characteristic of Islam" instead (Morfit 1981: 844). Assuming that the rise of political Islam would generate potential barriers to the national development, P4 was the ground of Suharto's effort to "understand again, penetrate, realize and implement ideas concerning the society to which we aspire" which therefore enforced "such ideological indoctrination" (Morfit 11981: 847). With reference to this explanation, it might be argued that the ideological restriction by Suharto's authoritarian regime caused *Pancasila* as the "state philosophy… [which] dominated the official discourse of the government" which eventually hindered the development of any critical thinking and alternative conceptual basis (Diederich 2002: 101).

Any initiative to cooperate with Islamic [political] organizations and allocate more political opportunities for oppositional capital to engage with electoral democracy would give the ruling regime two oppositional impacts. On the one hand it might be employed as Suharto's political buffer at the grassroots. On the other hand it led Suharto into massive dictatorship. Suharto's political repression and human rights violations escalated. Its decision to restrict political freedom was problematic. On one side, it could help the regime to secure political stability, albeit vulnerable. On the other, it seemed to widen the gap between the power holder and the people which eventually raised silent political opposition. Instead of bridging the political diversity of the national polity, Suharto failed to "bridge the gap between the Javanese-aristocratic political orientation and the Islamic entrepreneurial pole" (Morfit 1981: 844; Feith 1962: 368). In

addition, the rocketing level of state repression, "forced many of the more radical Islamist activists into exile… who were later involved in the creation of Jemaah Islamiyah" (Heiduk 2012: 30-31). The latest implication led the radical Islamist to perceive that Suharto's regime was Western espionage to prevent the potential of establishing an Islamic state given the fact that Suharto who was "an effective ally" of the West received "security apparatus and massive support from the West (Heiduk 2012: 31).

Given such political repression, the question remains how Islamization took place and the contemporary Islamist party, particularly the PKS, has been able to disseminate its influence and ideas within such political landscape. The current Islamist party, PKS which this study focused on, is not the sole actor of Islamization in Indonesia. Prior to the establishment of PKS, Islamization had become the project of two largest Muslim organizations, *Muhammadiyah*, the modernist Islam, and the traditionalist *Nahdlatul Ulama*. Although the boundary drawing the limitation between modernism and traditionalism performed by these two organizations remains unclear, both claimed to oppose active engagement with political affairs. Several programs to Islamize the polity were undertaken during the New Order period for instance formulating "Islamic school curricula …" and persuading the government to cooperatively approach Islamic issues which consequently resulted in the "new policies is a more sophisticated government attitude toward Islamic demands…, thousands of private schools, many of which are Islamic, that must use the same core curricula as the state schools" (Liddle 1996: 263-265).

Nevertheless, the PKS was first rooted in the *tarbiyah* (education) movement, "a loosely organized Islamic movement popular among younger Muslims" (Permata 2008: 24), in the 1970s in which its founding fathers were inspired

by the Iranian revolution which "caused widespread interest" to resemble such revolutionary struggle (Bruinessen 2002: 130). Lacking access to any form of political manifestation, unlike PAS in Malaysia, the early type of PKS, the *tarbiyah* movement initiated such grassroots Islamization or Islamization from below, "the Islamization of individuals and society" (Permata 2008: 28). With reference to the political ideas generated by prominent political thinkers of the Muslim Brotherhood, the movement started to undertake its mission at the Salman Mosque in Bandung Institute of Technology, the most prestigious higher education institution in the field of science and technology development (Fox 2004: 9). Political restriction by Suharto's regime, aimed at normalizing the university students and sterilizing campus environments nationwide, the *tarbiyah* movement decided to undertake an underground movement and it conducted regular meetings from one mosque to another, from one campus to another (Diederich 2002: 103) . It did shed light on the proliferation of *dakwah* or "the preaching of Islam" by the *tarbiyah* movement as well as other modernist Islamic organization to disseminate "a double transformation: a transformation of the Muslim community with a corresponding transformation of the world" (Fox 2004: 8). The ultimate goal of this double transformation is to reach an Islamic leadership worldwide. To the pursuit of this radical mission, the establishment of an Islamic state at the national level is highly required. Therefore, prior to the fulfillment of this mission, the *tarbiyah* movement realized that transforming individuals to become more pious and the public become more Islamic is key importance of achieving such radical agenda. Under the leadership of Imaduddin Abdulrahmin, who networked with the international Islamic federation of Student Organization and some other international Muslim youth movements such as "Angkatan Belia Islam Malaysia or Malaysia's Muslim

Youth Movement (ABIM)" , the *tarbiyah* movement started to manifest its Islamic program in various student activities such as "the *Latihan Managemen Dakwah* or *Dakwah* Management Training which was then being transformed into the *Latihan Dakwah Mujahid* or Dakwah Defender Training" (Fox 2004: 9-10; 15). Aiming at disseminating religious and organizational ideas, the training program contained the rigid mechanism of *kaderisasi* or intensive cadre training (regeneration) as it is:

> "focusing on small groups (referred to as *usroh*) of university students who underwent intensive training that concluded with a commitment to the group and its struggle and to an involvement in future mentoring at different levels extending to the junior high school level. The teachers (*murabbi*) for this training were not drawn from Indonesia's *ulama* but were those who had been trained in the same process. Commitment was dependent on group cohesion and to becoming 'complete' or 'total' (*kaffah*) Muslims. …*Tarbiyah* refers to the whole process of education or guidance that is to lead to this personal transformation as a total Muslim" (Fox 2004: 10).

Although Suharto's policies, which were "promotion of personal piety and opposition to the politicization of religion", restricted the political opportunity for Islamic student movements to counteract massive secularization nationwide, it failed to prevent the proliferation of Islamism which penetrated the young Muslim students (Liddle 1996: 621). Suharto's policies on modernization had not always successfully brought the student activists into a vacuum of power. The student activists had articulated political interests and aspirations criticizing the acute secular political regime which, according to them, had generated moral degradation and a corrupt political system. Within the *tarbiyah* movement, the dominant vector which was commonly used

by its cadres to construct the ideal character of such a total Muslim and discuss criticisms against government was its *halaqah* or study circles. By continuously doing such informal discussion, the *tarbiyah* movement would be able to control and discipline the members with reference to the material produced and introduced by the Muslim Brotherhood (Fox 2004).

At the time the political capital of Suharto had significantly weakened in the mid 1990s, some student movements and political coalition were established. In early 1998, the *tarbiyah* movement alongside other Islamic leaders, such as Din Syamsudin, and across-ideological organizations "began questioning Suharto's authority" which was demonstrated in street protests. In the final months of Suharto's leadership the Asian financial crisis took hold in most Southeast Asian countries in mid 1997. However, the crisis made Suharto unable to overcome "economic meltdown… and pressure for *reformasi*" and thus led the regime to fail to maintain its political superiority. Responding to the acute multidimensional crisis in Indonesia, the *reformasi* movement was formulated in the early 1998.

The collapse of Suharto pointed to the political opening in Indonesia which opened the window for Islamist engagement with electoral democracy. Considering this as the right moment to demonstrate the political base of the *tarbiyah* movement it declared the founding of two critical political bodies, a student body named Kesatuan Aksi Mahasiswa Muslim Indonesia or KAMMI – Action Front of Indonesian Muslim Students – in March 1998. Seeing the collapse of the Suharto's regime, the *tarbiyah* movement eventually distributed "no less than 6,000 questionnaires" asking the cadres whether or not the establishment of the political party "could not be resolved in deliberations" for the majority of the cadres initially "perceived politics as a

'dirty business'", which resulted in "68% agreed to create a party" (Permata 2008: 26; Damanik 2002: 233). Realizing the political input from the below, the *tarbiyah* leaders announced the declaration of its new political party *Partai Keadilan* or Justice Party in Jakarta on July 20, 1998. Thus, in 1999, the Justice Party was one of the new-born political parties which competed in the first democratic elections since 1955. Upholding campaign promises on "Islamic moral reform and Islamic solution to guide the country out of economic crisis", PK failed to pass the minimum electoral threshold of 2% as it only "collected 1.7% of the national votes" (Permata 2008: 27). Given this disappointing result, the party's restructuring took hold which resulted in the transformation of the Islamist party from PK to PKS, *Partai Keadilan Sejahtera* – Welfare and Justice Party.

CHAPTER IV

GOOD GIRLS OR BAD GIRLS: UNVEILING THE SHIFTING ISLAMIST POLICIES ON WOMEN'S POLITICAL PARTICIPATION IN INDONESIA (PKS) AND MALAYSIA (PAS)

The *reformasi* movement that emerged in 1998 in both Malaysia and Indonesia signaled the political opening and the end of authoritarianism. In Indonesia, this was the PKS's most-wanted moment for it encapsulated its political ideas, Islamizing the national polity. The electoral democracy marked by the changing electoral system and the more detailed mechanism of electing both legislators and president has given Indonesia's Islamist party, PKS, to opportunity to insulate its Islamist ideas in Indonesia's legislative body. On the other hand, Malaysia's Islamist celebrated the political transformation after the fall of Mahathir, albeit there was no significant structural shift at national elite level, by building an alternative alliance across ideological political parties, such as the socialist based Democratic Alliance Party and the new-established Justice Party. More interestingly, Malaysia's longest standing Islamist party, PAS, had accepted woman's leadership in this alliance since Wan Azizah was elected to lead the coalition. Both parties have witnessed how the political opening reconstructed the opportunity for civil

society to actively disseminate their sociopolitical agenda countering the state's sociopolitical policies. It consequently sheds light on Islamists to undertake more intensive political interaction with wider world views. With regard to this, some literature hypothesizes that the inclusive participation of Islamist parties in democratization would give rise to the party's moderation. The extent to which the party would initiate gradual moderation is influenced, among other factors, by the changing party perspective on women's participation. Assuming this is valid, the main question that this study addresses is how both PAS and PKS have qualitatively changed their policies on women's political participation since democratization and why they have decided to undertake such transformation.

The relation between Islamists, democracy and women's political participation seems to be problematic (Huntington 1993: 40; Ghorashi 1996; Norris and Inglehart 2002; Norris and Inglehart 2003; Spierings, Smits et al 2009: 504). The process and the future of women's participation in and their influences on Islamist parties is indeed different from one country to another and this highlights comparative study as of key importance to understanding such scrutiny. In comparison, the praxis of Islamist parties in Middle-Eastern countries is not always similar to the Southeast Asian Islamists. Islamist parties in Southeast Asia are situated in the rivalry between ethnic and religious identity while the Middle-Eastern Islamists are operated around "…theological lines" (Madjid 1998; Ng Cecilia, et al 2006:84). Pertaining to this, it is widely assumed that although women in Islamist parties, in Southeast Asian Muslim majority countries or elsewhere in the world, are arguably perceived as the main locomotive perpetuating the Islamist agenda, "… a desire to create a moral society governed and guided by the Islamic law…" (Wickham 2004: 205; Wiktorowicz 2004: 16), their

channel to any political manifestation in public realms remains underrepresented.

Nevertheless, alongside Islamist parties' proactive engagement with national democratization in respective countries, according to some scholars, it seems that they resemble progressive moderation and underline potential coalition between Islamic values and democratic principles (Wickham 2004: Wicktorowicz 2004; Clark and Schwedler 2006). In addition, the increasing trend of Muslim women in public spaces who represent Islamist political parties in national parliaments in respective countries, where political openings lend to this transformation, can be identified as an indicator of Islamist moderation which guarantees their commitment to democracy in the longer term. Given this hypothetical statement, the question remains *whether or not, in PAS and PKS, there really is changing perspective and consistent support of Islamist party leaders on women's political participatory roles either inside or outside the party's activity*, *there really is crucial political manifestation of women function in determining the party's future political trajectory*, and *women are situated in the first position of party's internal elite structure*. To that end, this study primarily compares and contrasts such party's transformation at both policy and praxis level.

With reference to Schwedler's analysis on the increase of women's participation in Islamist parties in Yemen and Jordan, there are three forms of direction that might influence Islamist party's strategic stance on this issue (Schwedler 2003). First, on one hand, any Islamist party seems to support women to actively engage in its internal party activism particularly in the face of electoral votes prior to the general elections but it limits the presence of women in wider public spaces on the other. The second direction might give impetus to the party to increase women activism and

open as wide opportunities as possible for Islamist women to become political public figures but strictly impose women to adhere to male-dominated policy that, however, politics remains masculine and therefore any decision making process in national elite level must belong to the male's authority.

The last type of parties' position on the women activism is pertaining to their tendency to internal liberalization to the fullest by increasing number of women in political contestation to winning over the parliament quota, allowing women, those who are inside or outside parties, to enter national political contest for presidential candidatures, and allocating more spaces for women in top-elite structure such as "… parties' consultative councils, their highest elected bodies" (Schwedler 2003: 293-294).

In the case of PAS and PKS, there are two crucial conditions that must be noted. First, in Indonesia, Islamist political activists were part of democratization as they were the actors who ousted the authoritarian regime. Prior to the states political opening, the liberalization of civil society, and the establishment of multiparty system, the women of the Islamist movement have been crucially influent to the movement's trajectory despite their political manifesto remained insignificant. Although the political mobilization of Islamist movement, under the shadow of *tarbiyah* movement, an underground movement who actively recruited its followers in the universities, had resulted in the massive mobilization of the masses in the *reformasi* protest in 1998, its existence in democratic contestation and electoral politics has been relatively new and as young as the on-going democratization itself (Heiduk 2012). At this stage, it is worth noting that the PKS has supposedly detected the upcoming political challenge they might encounter as a result of massive political liberalization through which it

would quickly realize to reduce its conservative principles.

Second, by way in contrast, in Malaysia, the story goes little bit in a different direction. The largest Islamist political party, PAS, has been present in political contestation, as opposed to the UMNO and its nationalist coalition, long before the *reformasi* protest took place in 1998. It has controlled over Kelantan, a federal state, and successfully incorporated Islamic laws in the formal legal institution. In this sense, it could be assumed that PAS has instituted Islamic laws as a social fabric in the federal state where it has been controlling for decades. Pertaining to the degree of women participation in party politics, given the narrative schemed earlier, it underlines that prior to the *reformasi* movement and the collapse of Mahathir, the women political manifestation of PAS was problematic.

Given this circumstance, it becomes crucial asking how PAS and PKS have qualitatively changed its policies on women participation and non-women related issues in post reformation movement. The following part will elucidate this question on comparative basis. Following the break of *reformasi* movement in respective countries, although the degree of transformative policy and praxis of PAS and PKS seems to be slightly different, both parties are now performing qualitative changes in the vein of women political participation. *Both PAS and PKS are inclined to show its accommodative policy however it is in different degree. It would argue that the degree of PAS's changing support toward women at both praxis and policy level is more legalist than the PKS*. Although PKS seems to be more accommodative than PAS, both parties generate ambiguity in the similar vein of perpetuating patriarchal interpretation of the women's political authority. To this end, this study will undertake comparative analysis on the changing policies and perspective of both Islamist parties toward women's

political agency through the analysis on both structural and ideational basis. It will generate comparative analysis examining structural and ideational transformation based on "support from the male party leadership for women's political participation outside of each party, support from the male party leadership for women's initiatives inside each party, and the number of women within each party's formal decision making structures…" (Clark and Schwedler 2003: 294). This study would argue that although parties have supported women participation structurally, it does not automatically yield significant support to women to develop their ideational understanding.

A. STRUCTURAL TRANSFORMATION

Prior to the political openings and the emergence of reformation in 1998 in respective countries, the parties' support toward women political activism inside and outside parties as well as parties' responses on women and non-women related issues remain insignificant. Although PAS has been in existence earlier than the PKS, it did not importantly lead PAS to be able to increase its awareness on women political participation. The Islamist women of both parties have been through structured marginalization. The Islamist structured marginalization of those parties was manifested into two forms, structural and ideational alienation.[1] The women were structurally alienated since they

1 In the existing literature of social movement theorists, the discussion of ideational function determining movement's trajectory has been popular since 1980s. The ideational factor is conceived strategic and functional since it gives spaces to social interaction, meaning and culture to be heatedly contested in the face of movement's mobilization. The social mobilization might not only be fueled by materialist forces but also that ideational basis. Upholding the social interaction between the members and its constituents or stakeholders

were merely incarnated by domestic affairs of party politics, excluded from internal party's structure and were apparently constrained from larger contexts of political manifestation. Prior to the states liberalization which was induced by Asian monetary crisis in the mid 1990s, the women of both parties were domesticated and subordinated into secondary position of internal parties' structure (Robinson 2009). They were also ideationally reductionist since they were injected by grand-philosophies of gender-dichotomy and masculine-hegemony applied by Muslim Brotherhood's political parties worldwide as a result of its patriarchal interpretation on the relation between Islamic teachings and women's political right. This reality had distorted potential capacity of Islamist women to become an ideational fabric for Muslim society. It also arguably narrows the opportunity for women to speak for ideational factors, inter alia, reinvention of religious interpretation and cultural meanings, thus driven women to become Islamist mechanics or robotic social actors.

Under the dominance of authoritarian system, Muslim Malay women have been recruited to Islamist social movements and become the main agents of nurturing the preaching activities. Women of Islamist parties, both in Malaysia and Indonesia, have been considered pivotal to address pressure to the ruling secular political elites for they possess potential contribution in two ways of "…consolidation of a new communitarian identity and mobilization of a mass following inclusive of women, youth and children" (Mohamad and Ng, et al 2006: 85). In deciding to participate in Islamist political parties, women were conscious and rational as their thought was eschewed from both theological and political orientations underscoring that by joining into

would enable the movement to reproduce, rearticulate and redistribute its organizational meanings (Morris and Mueller 1992: Larana et al. 1994; Johnston and Klandermans 1995; Wiktorowicz 2004).

this form of Islamic organization women would increase their religiosity and could be politically "… empowered through it" (Mohamad and Ng et al 2006: 85). In Indonesia, the PKS's women were allowed to undergo fully mobilization to boost party's program, grassroots-Islamization, unfortunately their political capacity was frozen in the private zone. The women of PKS were initially part of underground movement called Tarbiyah movement, which emerged as a consequence of Suharto's policy that systematically restricted Muslims from political mobilization. At this stage, Islamist women of this party did campaign for Islamization from below. Within this movement, both women and men cadres had catapulted their antagonism to Suharto's regime by penetrating the young students through the establishment of youth organization or controlling student's senates in campus campaigning for *da'wah* or Islamic propagation. Its main target was to undermine secularization and social disorder. Its emphasis was placed on the personal piety of members, high academic and professional achievements, social activism, and the creation of a 'total' Islamic system in Indonesia.

Moreover, it was apparent that the politics of agency performed by Islamist women in *tarbiyah* movement between 1980s to the late 1990s was salient contributor to party's participation in the first ever democratic general election in 1999 after the collapse of Suharto's cabinet. The women's militancy of undergoing underground political mobilization of party's resources was critically apparent prior to and post 1998 reform movement. The PKS's women, under the banner of its *halaqah* (study group) program, disseminated Islamist long-term agenda to substituting the current secular national ideology with an Islamic state and thus it becomes relevant to 'enjoy democracy' as an alternative way to gradually transform the national polity. The young women cadres who were at the universities, students or lecturers, must be

able to perform remarkable academic and organizational achievements in order to build trust and credibility in ways of collecting support for their existences at the university level. Campuses have become the main home base of PKS and its cadres to undergo intensive cadre regeneration. In this vein, students became the pivotal segment to increase party's popularity prior to the 1999 general election. The indispensable role of youth wing of PKS also happened to the male cadres. Excellent academic capacity of young PKS cadres at universities would highly assist the party to recruit new followers. This is also confirmed by one of current male party's leaders, Mardani who is now serving as a Member of Parliament of PKS in Indonesia's House of Parliament. According to Mardani, the reason of why he decided to join the *tarbiyah* movement at that time was partly due to personal approach by his senior at campus. At this stage, the PKS's women at the universities would be perceived as "good girl" if they could militantly encourage their colleagues to increase religiosity, such as veiling, reciting the Quran, and wearing the proper Islamic dress-code in front of the public, and consciously mobilized themselves to buffer party's policies. Promoting the right model of the implementation of Islamic principles in the face of family, friends, and publics in order to making the individuals more pious, the women were indeed crucial to the spread of Islamist influences. The responsibilities that PKS's women must be able to cope with are to shift women from "… [an] extensive display of Islamic expressions in public and private lives…" to becoming the main Islamist manufacture of systemic yet gradual transformation in accordance with Islamist guidelines (Mohamad, 2009: 7).

Some women who now become party's leaders or occupy strategic position either as Member of Parliament or member the of party's council were militant cadres during

their undergraduate programs. While they studied they were actively involved in social and philanthropy activities. They did not get involved in any political activities, which was presumably due to the authoritarian government policy that restricted students from any activities in wider political public spheres.[2] As Ledia Hanifa, a woman Member of Parliament of PKS who was also a student activist in one of the elite state universities in the country, confirmed:

> "…prior to my active engagement with party in the present days I was very active in the tarbiyah movement, working with my colleagues at campus conducting some activity such as assisting my friends in their studies and getting involved in any social and voluntary activities helping victims of natural disasters such as floods and earthquakes"

Thus, I visited some cites where PKS was working voluntarily to provide health-care during the Ramadan on August 2013 in order to examine on the ground on how the grassroots mobilization was taking place in order to deliver the PKS's meaning as a clean and caring political party. Despite the 'clean' image of PKS, it is questionable because of some corruption issues that involved some elite members, albeit debatable, the party's image of 'caring' was evident since PKS was the only political party providing such services in Ramadan. By doing so I was able to observe how the performance of PKS's women cadres working at the grassroots mixing with the male cadres. Prior to the political liberalization, women in PKS (in both the *tarbiyah* movement and PK) were exclusive and hardly worked on the same table with the male in public spaces because of the rigid internal mechanism ruling the code of conduct between male and female. However, the picture that I attach below sent a

2 Interview with Ledia Hanifa, PKS's women member of parliament of Indonesia.

message that women are no longer symbolic actors becoming a display of how Muslim women should dress up and behave in public spheres. It rather indicates that Islamist women are now in public. By doing so, PKS has publicized the evidence showing its transformative policy regarding how political Islam(ism) underscores significant contribution to the Islamic preaching activity.

Picture 3. Health care service provided by PKS's grassroots cadres during Ramadan in one of bus terminals in Jakarta

Picture 4: A young female cadre was among the males should have been perceived as a 'good girl' for her volunteer in PKS's health-centre during Ramadan.

Picture 5: A mid-career mother with her daughter, for party's sake as the political agenda of 2014 general election is approaching, was one of PKS's cadres. Becoming a mother is not an obstacle to help party pursuing its sacred goals (the picture on the backdrop speaks that "Indonesia will rise if the law is being enforced equally" with two male party leaders, one on the right is Anis Matta the PKS's president, and one on the left is the cadre.

Based on the aforementioned explanation and the attached pictures, it seems to highlight that the women in PKS have gradually been represented in public spaces under the same roof with the males. Beside, the intensifying feature of women in public spheres is also evident in wider spaces for instance they are now allowed to compete with their male-counterpart in general election at national and provincial level.

Picture 6: in Jember district, one PKS's woman is in the first place of the candidate list. The fact is like one in a million.

Picture 7: one out of four is a female member representing PKS in the lower House of Representatives at the national level.

Similar to the PKS's women, women activist of PAS have also been courted as the agents of Islamizing the national polity. The preaching activities introduced by the male leaders to the women cadres have led women to domesticating their public roles. Women of PAS have been used as a catalyst to promote

the implementation of Islamic principles for examples veiling. In Malaysia, it has been evident that Islamists utilize women to display the male-dominated interpretation of Islamic principles even though:

> "… society at the time did not look kindly on Muslim women's decision to wear the veil, frequently taunting those who did have the courage to do so as *hantu bungkus* (shrouded ghosts) (Khalijah, 1996). But in no time, women's veiling took on the proportion of a 'symbolic capital' for the movement's ascendance around the world (Gole 1996)" (Ng 2006: 85).

Women in PAS were indeed contributory to the successful political infiltration of PAS in winning over the hearts of its constituents. Despite the fact that PAS's Islamist agenda succeeded partly due to the women's political support, the women made little gains instead. In the internal party's structure, the women were positioned complementary to the male political dominance. Since the establishment of PAS's women wing, the PAS *Dewan Muslimat* (Women's Assembly of PAS) in 1953, one year after Haji Zabidi Ali proposed this initiative at the Annual General Meeting of PAS in 1952, the number of women in the party's top elites remained unsatisfactory. It was apparently noted that the goals PAS's women must be able to reach are to 'build a society of high morals in all spheres of human life and to be the upholder of true Islamic teachings…[and to spawn a generation of *mujahidah* (fighters with a cause) as the *da'ie* (preachers) of society, [and] to build an Islamic state in Malaysia through the efforts of Muslim women' (*Mujahidah* 2001 extracted from Ng 2006).

It is also confirmed by Siti Mariah Mahmud that the reason why she decided to participate in PAS is to be able to give significant contribution of *dakwah* Islam or Islamic preaching disseminating the message of Islamic teachings

to the entire country through the maximization of the women's wing of PAS. Mahmud considerably perceived her potential roles would be accommodated by PAS as she has had similar political goals. According to Mahmud, there is only one political party that is purely eligible to undertake the Islamist agenda, Islamization, and that is PAS. Therefore, she consciously admits to putting down her loyalty to this Islamist political party.[3] In similar vein, women political activism of PAS has been critical to regenerate and maintain PAS's political challenge to UMNO as well as to both *Wanita* UMNO and *Puteri* UMNO (a women's wing of UMNO). PAS has initiated an agenda of Islamizing Malaysia's national polity in all aspects including women's domestic roles.

The activism of PAS's women has crafted political rivalry with and criticisms from UMNO's women activists. The male UMNO party leaders have realized the significance of bringing its women cadres into the centre of its political activism. Therefore, UMNO has underscored a policy reforming and strengthening the women's bodies to generate more substantive contribution to help the part in winning the elections. Instead of supporting women's initial idea on maintaining the secular identity of the state, women of UMNO have been reconstructed based on the Islamic principles that dovetail with modernity resembling Mahathir's centralistic political strategy of stealth Islamization. By doing so, UMNO would be able to construct a new image of Muslim Malay women in opposition to the Islamist campaign by PAS's women activists. Observing that Islamist women's political participation in PAS has significantly assisted the party to secure more electoral votes, women of UMNO started to echo their political initiatives

3 Personal interview with Siti Mariah Mahmud at Malaysia's Parliament, Kuala Lumpur

through three main approaches, 'education, service and health, and wellness' in ways of creating "… a society that will have a national administrative system based on the sovereignty of laws based on the Qur'an and *hadith* (Ng 2006: 91). Only by doing so, UMNO's women agents would bolster the party's initiative to show to the Muslim Malay community that UMNO has always been responsible to Islam and Muslim women for instance when:

> "Puteri UMNO uses the Islamic justification (words of the Quran and *Hadith*) to encourage its members to do charity work. Increasingly the party measures its survival by the extent it is able to counter the claims and practices of Islam touted by the Islamic-based opposition party PAS" (Mohamad and Ng et al 2006: 91).

In similar vein of PAS using its women to escalate its electoral gains, the women's political movement of UMNO has also been co-opted by Islamization. It has resulted in inconsistency in its original ideas manifesting women's equity by providing education and health for women in rural areas. The UMNO women decided to transform its political mission from secular-minded women's emancipation to the Islamizing forces of UMNO (Mohamad and Ng et al 2006). In the face of Wanita UMNO, veiling might not have been for religion, it was merely due to the political adoption forced by the male-dominated political structure which seemingly introduced the Islamist agenda as something indispensable. To preventing the flourishing of PAS's Islamist agenda as well as the other opposition political forces[4], Mahathir had

4 Taken as an example where at the time of Reformasi movement emerged in Malaysia, Anwar Ibrahim's wife, Wan Azizah together with her daughter has been a new political icon of women's movement in Malaysia and has given rise to the new-established political party of Anwar Ibrahim, Partai Keadilan or Justice Party. soon after that, Wan Azizah and her daughter become a popular icon of 'mobilizing

released massive budget allocation to the UMNO's women wings "…ranging from direct monetary and social rewards to guarantee future employment…" (Mohamad and Ng et al 2006: 93). To this extent, women and Islam have been politicized to maintain the supremacy of Mahathir's political regime in ways of demolishing the political forces of opposition parties. Realizing the significant impact brought by women's wings, UMNO has allocated them with more space in electoral politics by "…fielding ten women candidates…" in the 2004 general elections (Mohamad and Ng et al 2006: 91). Through this initiative, UMNO and its BN coalition discredit PAS "…as unsupportive of women's right…" (Mohamad and Ng et al 2006: 96).

Seeing the way that PAS, as the largest and the oldest Islamist political party of Malaysia, has catapulted the ruling secular political regime of UMNO by embodying well-educated women in its political struggle, it is by no means to exclude women from party's political decision making process (Ng 2006: 86).The increasing political participation of UMNO's women activists that has been manifested in the larger number of women's quota representing the party in the parliaments has alarmed PAS to reconsider the effectiveness of political manifestation performed by its women. Instead of undergoing internal reform pertaining to women political representation, the women of PAS have been skeptical of the UMNO's women political strategy. PAS has criticized this by claiming that the UMNO's women activists have failed to bring Islamic principles into real practice. Their reform by internalizing Islamic teachings was partial since the women of UMNO have been targeted by the western liberalization project. Women of PAS have consciously been aware of the

young women and women' against the existing corrupt political regime of UMNO (Ng 2006: 93).

partial implementation of Islamic morality performed by UMNO's women and young women.[5] The changing political core of UMNO has challenged PAS to be able to generate real manifestation of protecting women's right. UMNO has realized that it has been easy to throw aside the criticism on this matter since PAS's consistency to accommodate women's political roles has been questionable. It can be seen from the fact that since the establishment of PAS's Women Assembly, for almost 35 years none of the women of PAS were elected to represent the party in general elections at both national and federal level. Instead of accommodating the women political interests, which is indeed substantive to perpetuating the party's long-term agenda and compromising its conservative point of view on women's political role with the changing sociopolitical circumstances, it seems that the male party leaders of PAS have been rather irresponsive. It could indicate that women of both PAS and PKS have been structurally reduced due to the dominance of masculine Islamist politics.

The structural transformation of PAS has opened more opportunities for its women cadres when the political rivalry between PAS's women wing and UMNO's women reached its pinnacle due to UMNO challenged PAS's consistency in providing larger opportunities of women in its internal structure. Responding to the increasing feature of UMNO's women socio-political activism and the rise of the positive political image of Wan Azizah, the head of Justice Party, in 1999 sheds light on PAS's women activists; view that women's political empowerment is of key importance in determining the party's trajectory. There was a common perspective among women cadres of PAS at the height of reformation saying that, in the future, women will become

5 Interview with Zaliah, PAS's women MP in Kuala Lumpur on 23 September 2013

the central political actor for women's issues. Upholding this perspective, it would be listed as a high-political concern among parties and therefore the male party leaders should not underestimate the women political agency. The party's leaders must shift their perception by saying that women were complementary to Islamist politics. From this time onwards women of PAS have decided to give more pressure to the party's leaders that women ought to materialize and concomitantly sound their political aspirations, which are contributive to the party's political struggle.[6]

Under national pressure during the *reformasi* movement, the PAS leaders gave opportunity to PAS's Women Assembly internal restructuring. An initiative to widen the scope of the assembly was taken by expanding its internal structure mediating other PAS's women who have long been marginalized in the periphery of party politics. More significantly, in early 2000, the women's assembly of PAS began to undermine the patriarchal internal structure of PAS. In its initial form, Dewan Muslimat was highly centralistic and dependent on the male party leaders. As a matter of fact it has been parallel and '…to complement the earlier establishment of…' other PAS's units such as '*Dewan Ulama*' or Clerics Assembly and *Dewan Pemuda* or Youth Assembly, the women assembly has had little authority, structurally and financially (Maznah and Ng 2006: 96). In the past, young women were recruited and institutionalized under the banner of PAS's Youth Wing in which the separation between young male and female cadres was evident. At present the women's council of PAS has become independent as it has organized its own strategies, curriculum to recruit new women cadres and enrich them with individual capacity

6 Interview with Dr. Siti Mariah, PAS' s MP in Kuala Lumpur on 23 September 2013

building programs. The women's lobby has crafted crucial changes that benefit women's empowerment of the party. As a result, Dewan Muslimat has been able to expand its units covering young women, professionals, housewives, and politicians. Unlike its old organizational orientation that merely focused on teaching its women how to read the Quran and the provision of Islamic principles controlling Muslim women's responsibilities in their private spheres, as mothers and wife, *Dewan Muslimat* appears to have channeled their intervention to party's sensitive issues, such as party's decision making process. The ideological consent of PAS's women is broadening and manifested into various forms of activities. Building alliance with other women NGOs, in particular those supportive to the agenda brought by PAS's women, Dewan Muslimat undertakes intensive internal discussion, seminal dialogue, and research on both women's and non-related women issues. They are now allowed to address some policy recommendations to the party's leaders particularly those of related to women's issues since there are two good-reputable women cadres to be placed in the party's assembly council, the highest selected unit.[7] To be appointed to becoming part of this elite club, the candidates must possess deep knowledge of Islam and multidimensional issues and their loyalty to the party's platform must also be undoubted.

PAS's transformative policy on women's participation seems to have become more proactive and conducive to encourage women in the legislature seats both at national and federal level. The open recruitment of PAS's women and internal selection process of parliamentary candidates does not require only women with Islamic education background

7 The male party leaders of PAS has kept the identities of the women,who are now placing the elite position, secret therefore their names or initials are not mentioned in this writing.

but also Muslim women who are professionals from other disciplines and '…those educated in the West'. For example 'two women leaders…were medical doctors, Lo' Lo' Mohd Ghazali and Siti Mariah Mahmud… gained prominence in the post-1999 period… who have chosen to empower women through the route of religion'(Mohamad and Ng et al 2006: 97). It has resulted in increasing number of women of this party who were competing for the parliamentary seats where, for example, in the 2004 general election, PAS '… managed to field a total of 9 women candidates as compared to none in the 1999 elections' (Abdullah 108). With more diverse formal educational and social background, PAS's women's wing appears to have disseminated the reformist idea of Islamist women

B. THE SHIFTING FORCES OF IDEAS

At the time women of both parties were marginalized in the internal parties' structure respectively, there was also reduction in ideas and meanings of women's political identity. Although the male parties' leaders admitted potential conceptual roles of women that might take place in the face of Islamizing the national polity in respective countries, but women's conceptual basis was perceived less suitable to the party's demands. This study also argues that women in both PKS and PAS, prior to the state's liberalization, were also conceptually alienated. The party's importance was to prove that, according to Wiktorowicz, with reference to the Middle-Eastern Islamist movements, an Islamist party is not identical with irrationality and political violence. The present global discourse seems to consider Islamist parties as a threatening fact, as the growing trend of the radical Islamic movement seeking to undertake a violent approach to pursuit of its radical purposes. Southeast Asian Islamist parties,

with reference to Indonesian PKS and Malaysian PAS, place primary priority on eradicating the popular image which notoriously connects Islamist with "…irrational, deviant, [and] unpredictable violence…" (Wiktorowicz 2004: 63). Fulfilling this demand, alongside with Islamist movements' decision to establish a political party and fully participate in electoral democracy as the main political vehicle to achieve its long-term political agenda, Islamist parties uphold such a big responsibility to recover their public image.

In Malaysia, although PAS had more experiences of participating in electoral contests than PKS, PAS's social and political interaction with its constituents was very much under control of and limited by the UMNO's regime which potentially threatened women's security. PAS has witnessed and experienced state's reactionaries that violated democratic principles, such as freedom of expression, and distorted political roles performed by women and minority groups.[8] Although Mahathir's cabinet has led the country for decades with its initiative to install Islamic principles into the national polity, it did not necessarily bring political freedom or slightly open the opportunity to any Muslim groups criticizing the government. Given that Mahathir had successfully established the Islamic banking system complementary to the conventional banking system of Malaysia in 1984 in ways of "…Islamizing the economic sector…" Mahathir forced PAS to "…acknowledge its contribution to Malaysia Muslim's community" (Liow 2009: 55). In responding to this, PAS leaders showed their rejection of this propaganda by claiming that the Islamic banking system had been implemented in Kelantan under PAS's administration far earlier, than Mahathir's program.

8 Interview with Nasrudin Hassan At Tantawi at PAS's office in Rajalaut, Kuala Lumpur on 24 September 2013

Mahathir's response to such criticism admitted that PAS had strengthened its opposition to his regime.[9] His reaction to PAS's skepticism highlights his repressive and tyrannical nature since he undertook coercive measures against opponents, ranging from "… any political parties' members, civil society groups, and radical Islamist movements…" (Liow 2009: 56-57). The Malaysia Internal Security Act (ISA) was the main political tool for Mahathir to prevent the proliferation of opposition power. This was evident from Mahathir's *Operation Lalang* that took place in 1987 when one radical Islamist organization, called Al-Arqam that was supposedly a real threat to the political stability was the main target of its draconian operation due partly to its critical commentaries which "…had played up sensitive issues and generated racial tension…" and partly to its latent political agenda to mushroom Islamic fanaticisms, albeit its capacity to generate such threats was questionable. As a result this organization was banned and its political leaders who then became PAS's members were arrested. According to Mahathir's regime, PAS, at that time, was potentially used by Al-Arqam to substantively counteract the regime, with "more than ten thousand male members in hand", disseminating "…potential power base that could pose a threat to national security…" (Liow 2009: 57). Operation Lalang continuously arrested some Islamist political activist who, in 1998, conducted massive demonstrations demanding political reform and unfolding corruption that has emerged under Mahathir's administration.

Other manifestations of Mahathir's political control were multifaceted. The banning not only hit the Islamist political leaders but also other political parties for instance

9 Interview with Nik Azis Nik Abduh in Gedung Parlimen Rakyat Malaysia, Kuala Lumpur on 24 September 2013

'Democratic Action Party deputy chairman Karpal Singh, Democratic Action Party secretary-general Lim Kit Siang, and PAS Youth Chief Halim Arshat'. Realizing their potential to mushroom hostility against the government, Mahathir restrained the fundamental political liberty of civil society by freezing the right to express individual political opinion and '…passing the Printing Press and Publishing Act … and further amendments to the Police Act…'(Liow 2009: 56). Furthermore, under the ISA he also arrested lecturers and politicians who he claimed were religious extremists. The political containment did not only apply to the opposition power coming from radical Islamist groups but also UMNO's coalition. One fact emerged under Mahathir's leadership where the woman leader of UMNO, Khatijah Sidek who advocated larger opportunity for women in parliament and the separation of the women's wing from UMNO, was discharged from the organization in the 1990s (Mohamad and Ng et al 2006).

Mahathir maintained that any religious extremism or any effort to proliferate western-led secular democratic values that potentially threatened national political stability and disunited the Muslim Malay community would be arrested and its political organization must be discharged. It indicates that Mahathir considered protecting the unity of Muslims apriority and thus any potential Islamic fanaticism, showing deviance of Islamic practices performed by either Jamaah Islamiyah or even the minority group of Shiite, was part of protecting national security. Assuming this is true, some questions remain whether the implementation of such a coercive policy of arresting some politicians, academicians, and religious leaders who were indicative of proliferating religious fanaticism and ethnic chauvinism, without trial, therefore violating their right to get access to equality before law, was really intended to protect national security or

merely to sustain Mahathir's authoritarian legitimacy. Thus the International Crisis Group has noted that, according to Mahathir, human rights issues or belated terminologies, are '…a creation of the West that was no of interest to ordinary Malaysia' (International Crisis Group, 2012). This was indeed apparent in Mahathir's in his speech, extracted from the annual report by the International Crisis Group 2012, which underlined his discourse that attempted maintaining its political supremacy instead of opening political structures toward more matured democracy in the country as he argued that:

> "As we all know the pressure to democratize and respect human rights is not due to concern for the well-being of people, but for the benefit of those rich people wishing to reap more profits for themselves in more countries"

Assuming this was intentionally mainly to protect the state's interest, it failed to counter or prevent further proliferation of Islamic extremism not only in Malaysia but also the rest of Southeast Asian countries. Hence, in this vein, Mahathir's rationalization on protecting national security, albeit half-hearted, through violation and coercion against universal liberties, raised skeptic commentaries questioning the holistic of Malaysia's approach in countering Islamic extremists and Muslim militants (Liow 2009: 150).

Mahathir's political legacy has traumatized and been used as an excuse by the Islamist party to terminate its holistic reform in generating accommodative policies towards women's political interests though the political opening and liberalization has been common place. As the head of the youth wing of PAS asserted "women had proactively engaged with party's internal activity but not outside because the political environment was not conducive".[10] In this vein,

10 Interview with Nasruddin in Kuala Lumpur on 24 September 2013

the structural alienation, which had isolated women into domestication of their political interest and hindered them from expanding political careers in the internal party's structure, and this marginalization of PAS toward its women cadres did not emerge by its own. The state's authoritarian regimes that produced a coercive militaristic approach and strictly controlled bureaucratic procedures led to massive deliberate violation of democratic principles, inter alia women's political participation, in the party's internal structure.

Similar to PAS, PKS or the *tarbiyah* movement also faced similar political repression performed by the authoritarian Suharto regime. This circumstance indeed obscured the opportunity for those Islamists to reproduce its religious meanings and reframe the public image. It was also the main hindrance for Islamists to accomplish their ultimate political program disseminating sound criticism toward the authoritarian and corrupt regimes pertaining to the lack of national development, massive poverty, and social injustice. Beneath this heated political environment, the tension and competition among other social movements and the race between Islamist parties and the political regime intensified. Hence, women of both Islamist parties, particularly the Indonesian PKS, must have waited for the right moment to escalate their political participation in both practices and ideas. Prior to the 1999 political opening, due to its "…competitive pressures…", intensifying disputes among diverse social groups and apparent repression conducted by the state (Wiktorowicz 2004: 17), the party leaders saw the political atmosphere was too dark to be encountered by such 'good girls' of Islamist parties.

The alienation of Islamist women by Islamist parties could have stemmed from the fact that Islamist parties had mystified the domestic political realm. The Islamists

underlined that the political constellation at that time perhaps generated social interaction which could erode the nature of Islamist women. This misogynic assumption is embedded within the party's internal structure where the women division has been parallel and separated from the rest of the party's units. It emphasizes that the party's support for women's participatory role remains partial and half-hearted. In responding to this, many Islamist parties including PAS and PKS claim the state's policy in restricting Islamist mobilization has contributed to women's political marginalization nationwide. The Islamists also underscore that the states intervention has generated a so-called 'spiral of encapsulation' a phase where states enforce Islamists to exclusively separate itself from the wider socio-political environment (Della Porta 1995: 12). Thus, Islamists presume its decision to domesticate women's political role was due to the insecurity and its intention to shield women from unexpected reactionaries by the state's repressive regime.[11]

Assuming this is valid, with reference to the Islamist's defensive strategy closing the window of opportunity for women to undergo interaction with other social actors, it seems to be relevant noting that there might be no significant difference between Islamist parties and the authoritarian regime since Islamists implicitly resemble the state's repressive policy toward its women cadres by reproducing a similar 'spiral of encapsulation'. This has perpetuated the notorious meaning of women as second-class actors in political Islam and distorted meaningful contribution that women have crafted. Although the Islamist party, with regard to the PAS in Malaysia, has participated in democratic contestation, its democratic participation remains double-faced. Supposedly, democracy would become an institution

11 Interview with Nasrudin and Nik Aziz in Kuala Lumpur

that functions to give equal opportunity, regardless of gender background, to address individual political perspectives. The women should not have been discouraged from concept and ides, where women could discuss shared meanings amongst them or with cross-ideological women political activists at an underground level in order to reinterpret collective identity and reframe their strategic mobilization representing women's political standpoints in wider contexts. Any political party which is taking part in democratization of the national polity should have understood this circumstance by allocating and opening its political structure for both men and women, on an equal basis, giving the "possibility to change the "rules of the game"' (Spierings and Smits et al 2009: 508).

As a result, the incentive given by Islamist parties to its women cadres to uphold traditions of critical thinking within the internal party's debates questioning the historical contextualization of women's position in Islamic texts has been far below expectation. At this stage, it seems to be valid to draw a line of conclusion that although political openings in Malaysia and Indonesia have taken place, women have been ideationally incubated and discouraged to reformulate their genuine pattern of political participation and mobilization. In any given political formation at domestic level and however rigid the Islamist interpretation on Islamic divine texts on women's roles, women in Islamist parties should be given opportunities to release themselves from "…the manifestations of dogmatism" (Mohamad, Ng et al 2006: 86). Instead of allocating structural opportunities for women to explore their own imagination on what constitutes moderate and modern Muslim women, or good girls and bad girls, at the time women have thrown away their support and loyalty to the Islamist parties, they might have been embedded in the intended reductions in ideas and meanings. The explanation

above has indicated that prior to the political openings and liberalization that emerged in the late 1990s in respective countries, the Islamist parties' support on the manifestation of women's political participation remains lacking due to both structural alienation and ideational reductions.

By way of contrast, in post-political opening, women of Islamist parties have opened their paradigm to become more adoptive and assertive to other perspectives. Such shift was resulted from the intensifying interaction between Islamist women with other women outside parties including feminist activists. When this study was undergone, Ibu Winarni, one female interviewee who runs for the legislative candidacy representing PKS in the next 2014 general election at district level in Yogyakarta unveiled her political experiences. According to her, the support of male party leaders of PKS has significantly been accommodative to give women wider space to develop their ideas and understanding. Although the number of women who gets involved in inter-party's interaction is insufficient, the party's initiative to accommodate individual's right of freedom of expression remains plausible. The early mode of thought of PKS was exclusive which prohibited women to discuss such women and non-women related issues with cross-ideological organizations, but it is "now relatively different".[12] According to this interviewee:

> "I suggested other women members to actively build networking and alliance with other women activists not only from PKS but also outside. …I have joined with other women organizations, such as *Kaukus Perempuan Politik*, in order to share ideas and learn from them. I met with leaders of other institutions and then we discussed many women-related issues. I knew they introduced me about feminism but

12 Interview with Ledia Hanifa in Jakarta on 20 September 2013 and Winarni in Yogyakarta on 16 November 2013

> it is fine because from there, I could learn feminism. I learnt many things from this experience; I have been encouraged to update information and knowledge. They perceived me as modernist PKS. I did not accept all of their thoughts but I managed to find good things of their perception and considered this as a new discourse. They also asked me why PKS discredits its women member. I told them: for PKS, it is not a big problem to be negatively perceived. This is part of our learning process…we were silent but we have done many things to generate social transformation"

Winarni's point of view indicates that ideational interaction is indeed contributive to women's empowerment within the Islamist context. Women in Islamist parties have played crucial roles to help the party increase its electoral votes and disseminate the agendas. Winarni further explained that "women in PKS are more militant than the male cadres". Giving women more spaces to establish discursive relations with other organization would contribute to women's empowerment. Besides, maintaining such interaction Winarni receives some political insights which she cannot find in her party. Seeing this, Winarni remains critical to influence the party's political trajectory with regard to the women-related issues. She stated that

> "political awareness of women in Islamist party is relatively low. They know why politics matters for the successful implementation of the party's agenda but only little is known that women want to enter the political arena. Most of them work in the education field as teachers in Islamic schools, from kindergarten to senior high school, but when they were offered to run as in legislative candidates they ignored it"

Given the fact that Winarni and some other women political activists in PKS are actively involved in building alliances with other organizations, the question remains how the male-party leaders perceived their activism, whether or not they positively construct a good image toward women who

critically speak for women's issues in the party's internal structure. In responding to this question, Winarni admitted that the male party leaders in Yogyakarta, "most of them allow me to go for it. They know my capacity and passion which they cannot restrict. But I must realize that PKS is my home so I must maintain good relations with them so it won't let them to think negatively towards me". Similar positive comment also came out of Ledia Hanifa who said that "in PKS women are encouraged to represent the party as long as they perform high capacity in the related field. My husband also supports me (in fact, when the interview was undertaken her husband accompanied her to her office)". Unlike PKS's women who unveiled such commentaries, Siti Maria, a woman MP of PAS in Malaysia whose education background is in the medical field surprisingly admitted how some male party members in PAS generated unsupportive comments toward her struggle on women equity in internal party politics. Despite her sincerity to join PAS, as she said "I want to do something for Islam. I joined PAS just want to help the ladies I have never had political ambition to become a frontline politician". Furthermore she clarified her statement saying that "I want to help PAS through its women wings" for "women of PAS are low profile… they work quietly according to what the party has delegated". In this vein, it indicates that PAS conceives women inferior as women are treated as second-class political actors. According to Maria, in PAS's constitution the role of women's wings is less visible and therefore it made male cadres consider women as less legitimate to influence the party's trajectory. Moreover, during the Mahathir's regime women of PAS were negatively perceived and women were marginalized in PAS. To this extent, Maria seeks to conduct women's empowerment in PAS. Despite this some negative perception has been addressed to her participation Siti Mariah commented that:

> "I cannot deny that within our internal party there is a perception which is contributive to women's inferiority. Seeing the way we campaign and persuade party leaders to give us more equal opportunities inside and outside party, some of them consider me *tak cukup tarbiyah* or "less educated" in the Islamic sense."

In light of the fact that most women in PAS are from a religious educational background it makes them less confident and considered less capable to enter the political stage, "this is what we must change first" asked Maria. At this stage, PAS's internal structure has limited the construction of meanings and ideas among its women members. Assuming that women with religious educational background are less qualified to run for political contestation is valid, the party should have done several program to empower the women. Instead of increasing the political capacity of women, PAS has rather marginalized and discriminated women's right as a potential political agent. Against this fact, Siti Mariah and her fellows in *Dewan Muslimat* have initiated steps to persuade party leaders, the moderate ones, to reform the party's policy on women's issues. More radically, Mariah claims that "we want to challenge this conventional way of thinking". For years, women in PAS have been less structurally and ideationally empowered as they were asked to do practical things as told by Mariah that "they provided food and drinks… but now we don't want to see any tea ladies anymore… we want equal and separated tables" to discuss similar issues in multidimensional aspects with the male party members. Although the "separated tables" underlines the influence of Islamic dogmatism that women and men must be separated, their challenges to the existing conservative discourse in PAS must be respected.

Assuming that both conceptual and structural changes in PAS and PKS are sufficiently valid to justify parties'

moderation, the question remains whether or not these changes undermine the existing conservative perspective among the male leaders. The conservative point of view showing male-dominated interpretation on the relations between Islam and women is the issue regarding whether women are allowed to become a leader in the national polity. Responding to this, Mardani asserted that "Muslim women are allowed to become a president as long as they are capable". Such statement is indeed a fundamental transformation since in 1998 the PK, the early form of PKS, rejected the acclamation which appointed Megawati Sukarnoputri to replace Habibie's after the collapse of Suharto and supported Abdurrahman Wahid instead. PKS, in the words of Mardani, allows women to become a president leading the nation-state. According to Mardani, president is not equal with caliphate therefore it remains tolerable. Unlike Mardani, Nasrudin, who was the head of the youth wing of PAS and a member of the assembly council (*dewan syuro*), stated, according to *sharia,* Islam does not allow women to lead a national polity for instance prime minister or president. With reference to Nasrudin's point of view, the male party leaders of PAS seem to be dominated by conservative perspectives perceiving women in [political] Islam. Given the aforementioned explanation, the question remains what message this indicates. It shows that within PAS and PKS, after the political opening where Islamists are granted fully participatory rights in electoral democracy and civil society is given more space to undertake social engineering, the parties gradually reform their policies on women's issues. It seems to be evident that the Islamists have changed both their structural and conceptual basis on women's issues. In the structural sector, both parties equally find that women are now allocated a quota in the internal party structure. Although women wings in respective parties are structurally separated from the rest of the party's

units, the women are also given opportunities in the party's decision making process as more women are represented in the party's assembly council (*dewan syuro*).

C. WHEN THE WINDOW OPENS: INTERNAL DIVIDES AND INCREASING WOMEN'S POLITICAL AWARENESS

At this stage, after post-political opening in 1998 Malaysia's long standing Islamist party, which has been in existence in Malaysia's politics since national independence, seems to have become less accommodative. On the other hand, the PKS seems to have become more accommodative than PAS in the context of giving more opportunities to women in public spaces as well as in its internal policy-making process. Given this conclusion, the last question to be discussed in this study is to what extent women would undermine the party's political trajectory. This study contests whether or not Islamist's participation in democracy would lead the party to open more structural opportunities for women to participate in public spaces. However, the case of PAS resembles somewhat different figures with the PKS. This study then highlights the importance of analyzing the internal divides that might appear within the party as a result of its interaction with political liberalization in respective countries.

It indicates that Islamists' participation in democracy, and the moderation that might result in, would not necessarily lead the party to "open the window" for women's participation in wider political contexts. The Islamists would give women admission to enter election campaigns to win seats in the parliaments. But they might reject women from occupying national leadership. What is important to

consider making Islamists willing to open the window fully is the internal contention. As long as the internal contention does not put emphasis on expanding women authorities, the party leaders would not change its conservatism.

CHAPTER V
CONCLUDING REMARKS

The discussion on the relations between political Islamist and women's participation, in theories and practices, is highly contested. The case of Islamist parties and its accommodative policy on women participation is different from one country to another. Here Southeast Asian Islamist is located in such cultural diversity and varied theological line of contention. First, the discussion on whether the existing political regime should open as wide opportunity as possible for Islamist parties raises cul-de-sac theoretically. The justification comes to fore due to some literatures promoting the inclusive moderation that Islamist might demonstrate. The cultural diversity, ethnic rivalry and theological tension as well as the wave of democratization within the region has contributed to the distinct political performance of some Southeast Asian Islamist parties, in particular PAS in Malaysia and PKS in Indonesia.

At the time some inspired-by-western Muslim scholars questioning the compatibility between Islamist participation in electoral democracy with the future of democratization in respective countries, both PKS and PAS perform significant transformation, albeit in such slightly different degree during its inclusive participation in electoral democracy. Instead of underestimating their potential contribution to democracy and women empowerment, with reference to the analytical

outcome based on the interview that took place during this project, this study would argue that political Islamist might be able to generate friendly approach and accommodative policy toward women issues.

Perhaps, Schwedler's question on the relevance of skeptic arguments on Islamism could be plausible. As Schwedler asked in 1990s that if the current literature is allowed to question how long the Islamist parties' commitment on democracy, however contested, would last during its participation in democracy, that literature should also ask similar question to other parties, which are inspired-by-socialist or communist political parties. Assuming that the presence of Islamist parties in electoral democracy resembles a paradox in democracy, the critics should also point to the facts answering whether or not those Islamist parties that came to power through a military coup or violating the principles of free and fair elections. Saying that the existence of Islamist parties in democracy is really constituting a paradox, one might suggest that the conceptual framework of what constitutes a paradox in democracy should also be reconsidered.

As a matter of fact, in respective countries, the political exclusion and bureaucratic limitation generated by (pseudo) democratic government, where a large number of general elections were commonplace, had isolated the Islamist parties into a vacuum of praxis which eventually led them into political resistances, if not to mention radicalism. With reference to this, it seems to lead to a question asking what (positive) contribution such skepticism could generate to enhance democratization in Southeast Asia by criticizing or even prohibiting the presence of Islamist parties in democracy. At this stage, one might argue that the presence of Islamist parties, however complicated its definition would be, is its own rights in the first place. Allowing them to enter

the stage where democratization is in taking place would implicitly force them to lessen and gradually moderate their early conservative thoughts.

Second, despite those positive commentaries and optimist approach toward the compatibility between Islamism and democracy, it also yields massive criticism. This study also cannot deny that, nevertheless, Islamist parties worldwide have performed such discriminatory policies toward the issue of minority groups, individual liberty and women's human rights. Islamist's accommodative approach toward women issues, which is the main concern of this research project, have been problematic and thus perpetuated skeptic analysis. With reference to the sacred interpretation of Islamic texts, ranging from some verses to some controversial *hadith*, the Islamist parties claim that the establishment of an Islamic state remains unavoidable.

Nevertheless, the Islamists seem to forget or ignore the historical legacy indicating that an Islamic state, or global Islamic governance under a caliphate, might not be the most legitimate and valid form of a state that refers to the Quran. Indeed, there is no single statement in the Quran saying that establishing an Islamic state is compulsory or avoiding the presence of any government led by *ulama* is a fault. None of them are succinctly written in the Quran, the most legitimate source and the primary guidelines regulating how Muslims should live their life. Thus, the idea of establishing an Islamic state should always be reconsidered and the divine texts, which are commonly cited by Islamists, must also be reinterpreted.

The idea is relating to specific historical facts where the first Islamic state, albeit debatable, was taking place in Medina which further expanded its territory into most of Arabian lands. Assuming that such historical reference is valid, the

question remains whether or not the substance brought by such historical legacy is still relevant to the contemporary challenges faced by the Muslim world. While the majority of modernist Islamist parties are referred to the ideas of Muslim Brotherhood, the Muslim Brotherhood itself, in its original ideas introduced by Hassan al-Banna, did not necessarily comply with the idea of incorporating Islamic principles into the state. Although it underlines the urgency to uphold clean government it does not mean it underscores the presence of an Islamic state. Moreover, assuming that the premise that Islamist politics is addressed to bringing Islamic principles into force is true, the question remains why have Islamist parties generated policies and practices that discriminate women's human rights. In history, Muslim women were a paramount crucial actor and thus displayed critical agency to the proliferation of Islamic activities. Given the way Islamist parties seem to discredit the political role of women which is contradicted by the Islamic historical legacy, one might note that Islamist politics is rather hypocritical.

Such elaboration indicates the discussion on elaborating discursive relations between [political] Islam(ism) with democracy or democratic values, in particular women's participation, find itself in cul-de-sac. However, pertaining to the principle that democracy might be able to bring equality and individual liberty, the presence of Islamist parties in the on-going democratization cannot be underestimated as long as the rules of the game implies the duties and responsibilities which Islamists must be able to perform. Within these rule of games, the civil society, particularly those which uphold democratic engineering, should be able to enforce that the Islamists obey the procedures. Within the frame of democratic contestation, any Islamist party would learn and interact with other world views which give them lessons either to moderate or to radicalize their political strategy.

Therefore, given that Islamist political trajectory is situated within a conundrum, testing its commitment to democracy remains periodically unpredictable.

Third, both PAS and PKS seem to justify that Islamist parties could demonstrate gradual transformation albeit in different degrees of ideological compromise. Despite the fact that the parties were exclusive and isolated the women cadres from further participation in public spaces, alongside with political liberalization which pressures parties to become more modernist, the parties have generated a more accommodative approach to women issues. Given the two lines of contention, between accommodationist versus non-accommodationist, and between contextualists versus legalist, PAS and PKS resemble different notions. On the one hand, both PAS and PKS could be classified as accommodationist for both parties underline that building alliance with non Islamist parties and enshrining cooperation with non-Muslim parties is of key importance to sustain its presence in democracy.

Both PKS and PAS provide evidence of this hypothesis since they have initiated coalitions to win over general election at both national and district levels. Both parties welcome, albeit limited, non-Muslim constituents to become part of the parties. In Indonesia, PKS underlines non-Muslims to represent the party in the electoral competition to win parliamentary seats. In PAS, the party has institutionalized the non-Muslim constituents to support the party. Within their internal structure, women have been allocated wider spaces. In PAS, women are now more independent in determining the program to undertake gender advocacy, disseminating women empowerment which is in line with Islamic principles. In PKS, the party's structure also allocates wider spaces for women to transform their ideas into actions.

Within both parties, women are allowed to post assembly council, the highest elected body of the party.

Besides, ideational transformation has also been part of consideration of this study. In PKS, the shifting ideational basis among the party leaders on women's issues is obvious. It can be seen from the fact that women of Islamist parties are now used to cope with building discursive interaction and alliance with parties across ideological front. Facing accelerating violations against women in Indonesia, PKS's women realize that they need further assistance from other women's organization including the liberal feminist activists. As long as the women of PKS are able to maintain its ideological foundation, which is manifest by their active engagement with the party by attending *halaqah* or study circle, maintaining contact with *murabbiyah* or teachers (for female, in Arabic terminology) and performing with good consistency on the Islamist agenda, they are perceived a good girl. On the contrary to the PKS, women of PAS have been facing such little discrimination. Those women who bravely speak for women's equity, not equality in the party are partly conceived as bad girls, or *tak cukup tarbiyah* (less educated). It becomes a polemic for women in PAS given the fact that, in comparison to UMNO and the Justice Party, the number of women in PAS is less representative.

However, both parties resemble different notions of interpretations of some Islamic texts. PAS has performed literal readings of Islamic sources which relate with the extent to which women would undermine the party's trajectory. In PAS's constitution, women's political roles have been designed to be secondary to the male cadres. The decision to limit the extent to which women could participate in wider political spaces shows that there is no such ideological compromise within PAS's discursive literature. Woman, according to PAS's interpretation of *sharia*, is not allowed

to lead a nation-state or the post as a president and prime minister. This is different to the PKS's interpretation since it assumes that any capable Muslim woman can be elected as a prime minister or president. Such different interpretations on divine texts indicate that Islamist parties' participation in electoral democracy cannot always guarantee similar outcomes or that every Islamist would generate similar degree of moderation. Although Islamist's transformative policy has quantitatively resulted in increasing the number of women in parliaments and other public spaces, the changes are less qualitative which, therefore, could be dependent on many other factors.

Nevertheless, this research report is indeed indicative of the need for further improvement, both in its comparative analytical content and its methodology. Given that six months of field research remain insufficient to conduct comprehensive analysis therefore it admits to confirm that constructive criticisms, evaluation, commentaries to conceptualization are welcome.

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