

SWINGS AND ROUNDABOUTS ON GENDER ISSUES Lesson from Female Circumcision Fatwa of KUPI and FMPP

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Abstract: Among the contentious issues in contemporary Islamic law are gender related issues in which the progressive group within Nahdlatul Ulama differs sharply from the conservatives. This article discuss the recommendations of KUPI II congress (2nd congress of female Ulama) held in Jepara Central Java in November 2022 on Female Genital Mutilation/Cutting (FGM/C) which was challenged by the 38th FMPP (bahtsul masail forum of pesantren students) held in Kediri East Java in January 2023. Although there is difference in stipulating the term which might complicate the issue, KUPI delegitimizes all forms of dangerous FGM/C without medical reasons which is then sharply opposed by FMPP that insists that female circumcision is obligatory in Shafii maddhab observed by traditionalist Muslims in Indonesia. The two groups belong to Nahdlatul Ulama background, but their opinions are in sharp contrast. KUPI is a continuation of progressive thought within Nahdlatul Ulama which has been nurtured since the 1970s, whereas FMPP is the true traditionalism bearer of Nahdlatul Ulama in many pesantren. Their encounter in various contested issues is predictably still going to happen in the future due to the insistence in holding their views.

Keywords: Gender, Female Genital Mutilation, Nahdlatul Ulama, Indonesian Female Ulama.

Introduction

In contemporary Indonesia, fatwa remains one of few manifestations of Islam. Since there are many typologies of Islam in Indonesia, fatwa contradiction or fatwa pluralism is a norm in Indonesia. The cases of cigarette smoking, bank interest, COVID-19

vaccine, and crypto currency are among the recent fatwas that show this pluralism. Furthermore, Within Nahdlatul Ulama, the largest Muslim traditionalist group, differences among results of bahtsul masail, the fatwa issuing forum in this group, frequently occur. Recently, crypto currency was responded differently by different bahtsul masail forums. Not so long time ago, there was also difference on whether Muslims are allowed to guard churches against possible terrorist attacks. On both bases, the text-oriented jurists tended to invalidate both practices, while the moderates and progressives proposed different propositions. Moreover, since the last decade of the 20th century, progressive thoughts gained audience among younger generation of Nahdlatul ulama under patronage of MA. Sahal Mahfudh, Abdurraman Wahid, Musthofa Bisri and Masdar F. Mas'udi to name a few.¹ The decision in 1992 that accommodated the usage *istinbat* (read: *ijtihad*) was the result of this internal dynamics. Since then, progressive thoughts within Nahdlatul Ulama kept growing, including in the area of gender issues.

Some prominent Islamic feminists in Indonesia originates from Nahdlatul Ulama circle. Many of whom educated in Islamic universities after studying Islam in traditional boarding schools. Some also involve in non-government organizations activities that advocate empowerment and emancipation. They source gender ideas from Islamic texts, which make them stand out because Islamic jurisprudence is conventionally known for its patriarchal position. Some notable women ulama of KUPI are Badriyah Fayyumi, Masriyah Amva² and Nur Rofiah, they are educated in pesantren affiliated to Nahdlatul Ulama. KH. Husein Muhammad and his protégé Faqihuddin Abdul Kodir are the two towering gender activists born from Nahdlatul Ulama milieu.³ In addition to reinterpretation of main sources of Islam, that is al-Qur'an and hadith, they eclectically utilize texts of Islamic jurisprudence, Islamic legal theory and legal maxims to

¹ Martin van Bruinessen, *NU: Tradisi, Relasi-relasi Kuasa, dan Pencarian Makna* (Yogyakarta: LKiS, 1994), 208-216.

² Evi Muafiah, Lutfiana Dwi Mayasari, Anis Hidayatul Imtihanah, Bustanul Yuliani, "Gendered Pesantren in Contemporary Indonesia: Female Agency, Institution, and Everyday Lives," *QIJS (Qudus International Journal of Islamic Studies)* 12, no. 1 (2024), 39-74

³ Iffatin Nur and Reni Puspitasari, "Postgender Fiqh: The Views of MUI's and KUPI's Ulema on Postgenderism from Maqāṣid Shari'ah Perspective," *al-Ihkam: Jurnal Hukum dan Pranata Sosial* 18, no. 1 (2023), 152-176.

promote gender equality. Certainly, the mainstream of *bahtsul masail* jurists within Nahdlatul Ulama, especially those in *pesantren* (traditional madrasa), still employ especially Shafi'i Islamic jurisprudence that very often positioned women not at the par with men.

Kongres Ulama Perempuan Indonesia (KUPI) or Congress of Indonesian Female Ulama is arguably one of many continuations of progressive thoughts within Nahdlatul Ulama. It was initiated by several NGOs that run by some Nahdlatul Ulama activists, such as Rahima, Fahmina and Alimat.⁴ Rahima and Fahmina were founded in 2001 in Jakarta and Cirebon respectively. The former is founded in Jakarta by middle class Nahdlatul Ulama activists, while the latter is founded by *pesantren* family circles, which obviously have strong Nahdlatul Ulama background. Alimat is a consortium of many NGOs working for women issues, many of which are affiliated to Nahdlatul Ulama or personalities with the background of Nahdlatul Ulama.⁵ Meanwhile, text-oriented jurists of Nahdlatul Ulama are trained in *pesantren* to study mainly Shafii jurisprudence. One avenue of the training is Forum Musyawarah Pondok Pesantren (FMPP) or the forum of *pesantren* disputation. In the forum senior students of *pesantren* who are future jurists of Nahdlatul Ulama convene and debate contemporary jurisprudential issues based on the opinions of mainly Shafii jurists.⁶

When the second KUPI was held in November 2022, some of its decisions were fiercely rebuked by FMPP in its convention. The two issue are female genital cutting and abortion by rape victims. The second KUPI decided that dangerous FGM/C without medical reasons is *haram* (unlawful). The 38th FMPP in January 2023 disagreed with the decision of the second KUPI by stating that not all types of genital cutting, which is termed as *kebitan* in Arabic, is dangerous. There are medically safe *kebitan* for women especially those performed by paramedics. This article will further highlight the debate between these two institutions on how the perceive female genital cutting/mutilation,

⁴ Amrin Ma'ruf, et al., "Kongres Ulama Perempuan Indonesia Dalam Wacana Merebut Tafsir Gender Pasca Reformasi: Sebuah Tinjauan Genealogi," *Musawa* 20, no. 2 (2021).

⁵ Ibid.

⁶ Achmad Kemal Riza, *Dinamika Taklid dalam Kajian Fikih: Studi Bahtsul Masail Forum Musyawarah Pondok Pesantren Se-Jawa Madura* (Surabaya: The UINSA Press, 2023), 120-121

how they put forward the argument and how they chose, interpret and employed textual references that led to their conclusion.

Female Genital Mutilation/Cutting (FGM/C)

Female Genital Mutilation/Cutting (FGM/C) has been practiced for long time in many places in the world in many names, such as female circumcision, female genital surgeries, or female genital modification.⁷ The earliest account of FGM/C was Two century BC in Egypt. The reason of doing FGM/C varies from religious, cultural, or medical. It is commonly believed to create better marriage prospects because of beliefs related to morality, hygiene, and aesthetics; FGM/C is also believed to curb sexual urges and maintain virginity.⁸ FGM/C is most often performed on girls between infancy and adolescence. Some women in the West still practiced FGM/C in the 1950s as medical procedure for depression and nymphomania.⁹ However, FGM/C practices occur more in Africa and Asia.

There are many types of FGM/C. Some state there are two, three or four types. Boyle adopts three types of FGM/C. the first is sunna is the least invasive procedure and is most comparable to male circumcision. In sunna cuttings, the prepuce, or hood, of the clitoris is removed. The second type of FGC is “genital excision” or “clitoridectomy.” This category involves the removal of some or all of the clitoris and the labia minora, leaving the labia majora intact. Clitoridectomies vary in their degree of seriousness. This is the most common form of FGC in Africa. The third is “Infibulation,” or “Pharaonic,” cuttings. These are the most extreme form of FGC. These cuttings involve the excision of the clitoris, labia minora, and labia majora, followed by the sewing together of the raw edges of the vulva, leaving only a small hole through which urine and menstrual fluid may pass. Infibulation is common in the horn of Africa region (Somalia, Sudan, Ethiopia, Eritrea, and Djibouti).¹⁰ WHO adds the

⁷ Elizabeth Heger Boyle, *Female Genital Cutting: Cultural Conflict in the Global Community* (Baltimore: The Johns Hopkins University Press, 2002), 24

⁸ Leen Farouki, et al., “The Global Prevalence of Female Genital Mutilation/Cutting: A Systematic Review and Meta-Analysis of National, Regional, Facility, and School-based Studies, *PLoS Med* 19, no. 9 (2022).

⁹ Boyle, *Female Genital Cutting*, 24

¹⁰ Ibid.

fourth which involves any other nonmedical, harmful procedure such as cauterization, pricking, and scraping.¹¹

It is commonly held that the practice of FGM/C is supportive to good marriage prospects because there is wide spread beliefs that FGM/C create better morality, health, and aesthetics. In addition, FGM/C is also believed to limit sexual impulses and preserve virginity. Nonetheless, it is medically proven that the procedure has no health benefits. On the contrary, it has resulted in negative health consequences, including urinary problems, menstrual difficulties, infertility, pregnancy complications, severe pain, infection, septicemia, mental health problems, and even death. Also, FGM/C is also an economic burden for women and girls' life span.¹² In addition to health concern, one of the main objections of feminists is that FGM/C is a threat to a women's right to pleasure.¹³

There are so many studies on the topic of FGM/C. They range from viewing it from health analysis, feminism, culture, media, and certainly religion. They also report from different geographical locations, but mainly Asia and Africa in which FGM/C is still widely practiced among people for cultural and religious motives. Many research on FGM focus on a country without highlighting the debates between the opposing opinions. For instance, Nik Soffiya Nik Mat et al highlights the efforts of Malaysian government civil society organizations' effort to delegitimize the practice of FGM/C through media.¹⁴ Meanwhile, Johannes Beller and Christoph Kröger present the findings of how parents in sub-Saharan Africa countries decide to their daughters FGM/C based on religiosity.¹⁵ Similarly, another research by Sarah R. Hayford and Jenny Trinitapoli also showcases how adherents of different religions (Muslims, Christians, and adherents of indigenous

¹¹ Farouki, et al., "The Global Prevalence of Female Genital Mutilation/Cutting.

¹² Ibid.

¹³ Barbara Morrison, "Feminist Theory and the Practice of Female Genital Mutilation (FGM); See also Lucrezia Catania, et al., "Pleasure and Orgasm in Women with Female Genital Mutilation/Cutting (FGM/C)," *The Journal of Sexual Medicine* 4, no. 6 (2007)

¹⁴ Nik Soffiya Nik Mat, Surinderpal Kaur, and Stefanie Pillai, "Discursive (de)legitimation Strategies in Malaysian News Media Discourse on Female Circumcision (Sunat Perempuan)," *Language, Linguistics, Literature* 29, 3 (2023), 166-179

¹⁵ Johannes Beller and Christoph Kröger, "Differential Effects From Aspects of Religion on Female Genital Mutilation/Cutting," *Psychology of Religion and Spirituality* 13, 4 (2021), 381-389.

religions) in Burkina Faso respond to FGM/C.¹⁶ In the similar vein, Reetika Revathy Subramanian highlights the resistance of Dawoodi Bohra community in India who preserve this religiously embedded FGM/C practice in the face of western feminism which brought the idea of women's autonomy, equality and modernity.¹⁷ Some research on FGM/C in Islam showcases opinions of medieval jurists on the matter, not the contemporary debates on it,¹⁸ while other research highlight contemporary opinion of certain ulama or organization, Muhammadiyah in this case,¹⁹ or critically analyses the established jurisprudential opinion.²⁰ The current research will uncover the debate between two opposing camps that view FGM/C from very different lens, Islam-inspired gender perspective and traditionalist version of Islamic jurisprudence represented by KUPI and FMPP respectively.

The Fatwa of KUPI on FGM/C and its methodology

Kongres Ulama Perempuan Indonesia (KUPI) or Indonesian Congress of Women Ulama is a movement to advance gender equality through reinterpretation of Islamic sources. Its vision rests upon the idea of *rahmatan lil 'alamin* (mercy for all worlds) as according to Faqihuddin Abdul Kodir is emphasized in various verses of the Qur'an and the good deeds of the Prophet Muhammad. While Islam came in the context of patriarchal Arab culture, KUPI tries to interpret using gender perspective. It declares that it has vision of eradicating gender injustice. It recognizes the potential of women, like men, in life. KUPI also invents the term of *ulama perempuan* (women alim), which KUPI says the God fearing ulama, men or women, who voices the interest,

¹⁶ Sarah R. Hayford and Jenny Trinitapoli, "Religious Differences in Female Genital Cutting: A Case Study from Burkina Faso," *Journal of Scientific Study of Religion* 50, no. 1 (2011), 252-271.

¹⁷ Reetika Revathy Subramanian, "'We are Not Like Them': Reinventing Modernity within Tradition in the Debates on Female Khatna/Female Genital Cutting in India" *Feminist Review* 135, no. 1 (2023), 3-24.

¹⁸ Mufliha Wijayati, "Pemetaan Pendapat Ulama Untuk Pencegahan Praktik Pelukaan dan Pemotongan Genitalia Perempuan (P2GP)," *Al-Mizan* 19, no. 1 (2023), 185-206.

¹⁹ Ilham Mundzir and Yulianti Muthmainnah, "The Progressiveness of Quranic Interpretation in the Fatwa of Muhammadiyah on Female Circumcision, Indonesian," *Journal of Islam and Muslim Societies* 12, no. 2 (2022), 285-311.

²⁰ Nurun Sariyah, Abdul Aziz, Aspandi, and Ahmad Fathan Aniq, "Questioning Female Genital Mutilation/Cutting (FGM/C); Between Tradition and Islamic Tenets," *Tribakti: Jurnal Pemikiran Keislaman* 34, no. 1 (2023).

needs, justice, and benefit of not only men, but also women on equal footing.²¹ For that purposes, KUPI develops a paradigm which serves as methodology in its religious deliberation consisting of nine principles, namely *ketauhidan*, *kerahmatan*, *kemaslahatan*, *kesetaraan*, *kesalingan*, *keadilan*, *kebangsaan*, *kemanusiaan*, and *kesemestaan* (monotheism, compassion, benefit, equality, reciprocity, justice, nationalism, humanity and universalism). In short, it translates that God creates universe with His compassion that encompasses all creatures. Therefore, they stand equally before Him and that all benefit should be enjoyed by men and women justly and equally on the basis of humanity in Indonesian context.²²

In fatwa issuance, there are three main concepts that underlie, namely *maslahah* and *ma'ruf*, *mubadalah* (principle of reciprocity by positioning men and women on equal footing) and intrinsic justice for women.²³ These are achieved through reinterpretation of main sources of Islam (al-Qur'an and Sunna), employment of *ijtihad* and *qaidah fiqhiyah*, as well as the citation of of Muslim jurists past and present. KUPI highly cherishes the application of *maqasid al-shari'ah* (the purpose of Islamic law) in fatwa and emphasizes perspective and the knowledge of women in the process of fatwa issues which it views absent in mainstream fatwas.²⁴ For instance, child marriage may be in line with *maqasid al-shari'ah* because it will fulfil (of mainly men's) sexual urge and prevents extra marital sex in the preservation of one's chastity. However, it exposes girls in underage marriages to the risk of maternal death during childbirth, psychological disorder, early divorce and other harmful conditions to women. Consequently, child marriage is not in the benefit for women and therefore, contradictory to *maqasid al-shari'ah*.²⁵

²¹ Ulama Perempuan, [https://kupipedia.id/index.php/Ulama Perempuan](https://kupipedia.id/index.php/Ulama_Perempuan), accessed on 20 August 2024

²² Faqihuddin Abdul Kodir, "Sembilan Nilai Dasar Paradigma KUPI," [https://kupipedia.id/index.php/Sembilan Nilai Dasar Paradigma KUPI](https://kupipedia.id/index.php/Sembilan_Nilai_Dasar_Paradigma_KUPI), accessed on 20 August 2024

²³ Faqihuddin Abdul Kodir, "Metodologi Fatwa KUPI," <https://fahmina.id/metodologi-fatwa-kupi/> accessed on 23 August 2024

²⁴ Faqihuddin Abdul Kodir, *Metodologi Fatwa KUPI: Pokok-Pokok Pikiran Keagamaan Kongres Ulama Perempuan Indonesia* (Cirebon: KUPI, 2021), 34-49.

²⁵ Ngaji Metodologi Fatwa KUPI ke-1 "Pengalaman Perempuan sebagai Basis Fatwa KUPI," <https://youtu.be/8pG7uaxTFjg>, viewed on 15 August 2024

The KUPI fatwa No. 08/MK-KUPI-2/XI/2022 on the protection of women from dangerous female genital mutilation/cutting without medical reasons consists of six parts, namely description, *adillah* (legal basis), analysis, position and religious viewpoint, recommendation, and reference. KUPI starts its fatwa on FGM/C by emphasizing that the procedure of male circumcision serves well for their reproduction function, whereas female FGM/C create harm and may endanger women's lives. Women may suffer from various medical issues as a result of non medical FGM/C especially if performed on clitoris, ranging from severe pain, bleeding to death. KUPI further states that this non medical FGM/C is done with the motive of fashion, religious, culture and tradition, or combination of both. KUPI enlists several research and surveys in Indonesia signifying the danger and negative repercussion of FGM/C. KUPI later cites that Ministry of Health once issued a regulation in 2010 that prescribed the procedure of female circumcision and authorized certain medical professions to perform female circumcision as prescribed in the regulation, but in 2014, the ministry withdrew its 2010 regulation and authorized its Majelis Pertimbangan Kesehatan dan Syara'k (Health and Religious Advisory Body) in issuing a guideline of female circumcision which will ensure safety and health of women as well as guarantee of not performing FGM. On that basis, KUPI attempts to answer three questions, namely the legal status of performing dangerous FGM/C without medical reasons, the people who are asked responsibility to prevent such an action, and the question about the role of religious leaders, paramedics, and family members to protect women from the dangerous FGM/C without medical reasons.²⁶

In responding these questions, KUPI enlists *adillah* (legal foundation) from the Qur'an, hadith, opinions of Muslim jurists, and Indonesian constitution. There are 15 verses quoted in the fatwa ranging from the dignity of the children of Adam (QS. 17:70), prohibition of hurting others (QS. 33: 58), prohibition of tolerating weak generation (QS. 4: 9), the prohibition of self-inflicted destruction (QS. 2:195), the prohibition of plundering others' rights and making destruction (QS. 26: 183), the directive to respectfully treat women (QS. 4: 19), the directive to show empathy to women in their

²⁶ Hasil Musyawarah Keagamaan Kongres Ulama Perempuan Indonesia (KUPI) Ke-2 No. 08/MK-KUPI-2/XI/2022 tentang Perlindungan Perempuan dari Pemoongan dan Pelukaan Genitalia Perempuan (P2GP) Yang Membahayakan Tanpa Alasan Medis.

menstrual period (QS. 2: 222), the command to preserve, safeguard and protect reproductive organ (QS. 33: 35), the command to be thankful to women who endure pain during pregnancy and breastfeeding (QS. 31:14 and QS. 46:15), the instruction to protect oneself and family (QS. 66: 6), the directive to men and women to help and protect each other (QS. 9:71), the directive to consult to the experts (QS. 16:43), the command to act justly to all (QS. 5:2), the directive to use authority justly, and the command to become the best community (QS. 3: 110). As to prophetic traditions, KUPI cites 8 reports, namely the prohibition to inflict harm to oneself and others (al-Muwatta no. 1435), the directive to do good to women's welfare (Sunan Ibn Majah, no. 1924), the directive to protect and take care of daughters (Sahih al-Bukhari, No. 6061), compassion to children as a quality of prophethood (Sunan al-Tirmidhi, No 2043), the prohibition to injure human (Musnad Ahmad, No. 22837), the directive to act responsibly (Sahih al-Bukhari, No 901), support for good leaders who bring kindness (Sahih Muslim, No. 4826), and the prohibition of treachery (Sahih al-Bukhari, No. 33).

In addition to those primary references, KUPI also cites 17 opinions of Muslim legal theorists and jurists, past and contemporary. The citation can be divided into three categories. The first category (5 citations) emphasizes *maqasid al-shari'a* and *maslaha* as foundation of Islamic law and legal maxims signifying the prohibition do inflict harms. Al-Ghazali, al-Suyuti and Ibn al-Qayyim were among the cited authority. The second category (4 citations) consists of opinions of mainly contemporary Muslim jurists and hadith experts stating that there is no valid propethic traditions on female circumcision. Authorities cited in this category include ibn Hajar a-Asqallani, Sayyid Sabiq, and Mahmood Shaloot. The third category (8 citations) cites opinions of contemporary Muslim jurists and intellectuals which stressed on female circumcision as harmful tradition and the prohibition of the government to the practice. Several authorities cited in this category include Majma' al-Buhus al-Islamiyyah, Yusuf al-Qaradhawi, Ali Jum'ah, al-Jundi and fatwas from Dar al-Ifta al-Misriyya, Indonesian Ulama Council and Perlis Fatwa Council. The last category is citation from the Indonesian constitution article 28 dealing with the protection of human rights and equality.

Having enlisted these references, KUPI starts the analysis in the onset by qualifying the fatwa as a fatwa on dangerous FGM/C without

medical reasons. It then proceeds its argument in supporting the prohibition of dangerous FGM/C using the aforementioned *adillah*, ranging from the prohibition to inflict harms, the invalidity of prophetic tradition on it, and that the practice of FGM/C is a matter of tradition not a religious injunction. A statement from Director of Family Health of the Ministry of Health in 2019 on the medically negative impact of FGM/C is also cited. It goes on by reporting that the Egyptian government in 2016 with the full backup of Al-Azhar fatwa has enacted the prohibition of FGM/C along with considerable severe sanctions for its offenders. In agreement with this enactment, KUPI asserts that any government policy should always uphold *maslaha*.

In line with the analysis, KUPI decides that dangerous Female genital mutilation/cutting without medical reasons is haram (unlawful). Family, community leaders, religious leaders, NGOs, government and the media should prevent the occurrence of FGM/C. finally, KUPI suggests that utilizing the authority of held by family, community leaders, religious leaders, NGOs, government and the media to prevent from the danger FGM/C without medical reasons is obligatory. The decision is followed by recommendation on the risks of FGM/C without medical reasons to individuals, family members, community members, paramedics, ulama and religious leaders, government, community organizations and institutions, education institutions, and the media. This decision, regardless its conformity with medical consideration and the definitive benefit of women by no means widely accepted by traditionalist community within Nahdlatul Ulama.

The FMPP fatwa on Female Circumcision and its methods

The voice of traditionalism of Nahdlatul Ulama in Islamic jurisprudence is firmly preserved by community of traditionalist *pesantren* (madrasa). They maintain that any legal issues should be determined by citing opinions of Muslim jurists affiliated to *maddhab* (school of law) within Sunni tradition. As an Islamic education institution, one of many functions of *pesantren*, like other madrasa, is to train future Muslim jurists.²⁷ Santri (students of *pesantren*) study texts of Islamic jurisprudence under tutelage of the teachers who usually are mufti of local chapter of Nahdlatul Ulama. After learning

²⁷ George Makdisi, *The Rise of Humanism in Classical Islam and the Christian West* (Edinburgh: Edinburgh University Press, 1990), 25.

Arabic grammar and basic Islamic jurisprudence, students are exposed to various textual as well as contemporary legal issues and are instructed to find correspondent opinions of Muslim jurists located in the authorized compilations of Islamic jurisprudence. There are numerous pesantren across Indonesia which provide training for becoming mufti in this traditionalist way. While these students study Islamic jurisprudence in this fashion on daily basis in their own pesantren, students from various pesantren which provide similar training convene periodically to solve various legal queries as part of their advance training. The most reputable of such meetings is FMPP (Forum Musyawarah Pondok Pesantren) se Jawa Madura or all Java and Madura Forum of Pesantren disputation.

Since it is organized by pesantrens affiliated to Nahdlatul Ulama, the method, procedure and format of FMPP resembles that of bahtsul masail, the fatwa issuing forum of Nahdlatul Ulama. Instead of issuing fatwa on individual basis, jurists within Nahdlatul Ulama gather and discuss legal queries in this bahtsul masail, which literally means discussing the issues. Pesantren students, selected delegates from various pesantrens gather in this FMPP and imitate that of bahtsul masail. They discuss and debate legal issues, either factual or hypothetical, and come up with answer based on textual references they brought into the forum. The debates of FMPP are supervised by teachers acting as *perumus* and *musahhah* (drafters and correctors). As a norm, Shafii jurisprudence, particularly al-Rafi'i- al-Nawawi period onwards is considered authoritative reference. Reference of other three *maddhabs* are used sparingly in exceptional circumstances. Similarly, opinions of contemporary jurists also viewed with caution, although Wahbah al-Zuhaily's opinions now gradually gains footing. Citation of to the verses of the Qur'an and hadith of the prophet is anomalous. If there is so, it usually originates from Qur'an exegesis (*tafsir*) and hadith commentary (*sharh*). All of these references signify the commitment of observing *maddhab* which is at the stark opposite of *ijtihad*. The hailed answer to the posed legal issued is the answer which is backup by textual reference from jurisprudence of Shafii *maddhab*. The more identical to the text, is the sounder is the answer. Basically, the idea is to find the most identical or the most similar opinions of the jurists of Shafii *maddhab* to the problem in question. Principally, there is no other consideration other than this textual resemblance. Indeed, exception does happen, namely when the legal issue in question is a

well-established practice and in a pressing need for legality. Unfortunately, in refuting KUPI's position on female circumcision, FMPP does not consider it an exceptional case.

In its description of its result in its 38th meeting which responds to KUPI fatwa on female circumcision without medical reasons, FMPP reiterates KUPI's decision that female circumcision, or FGM/C in medical term, without medical reasons as haram (unlawful) and reports KUPI's reasons along with its references and medical consideration.²⁸ FMPP continues by stating that KUPI's position is contradictory to a fatwa by Majelis Ulama Indonesia (MUI), Indonesian council of Ulama in 2008 that consider it a *fitrah* (regulation) and recommended. Upon this description, FMPP lies the question whether KUPI's decision that deems female circumcision is justified. FMPP proceeds with the answer by stating that KUPI's decision is not correct because of two consideration. The first is that not all four types of female circumcision are medically harmful to health. If it is conducted by professional paramedic by slicing or removing clitoric hood, then it is the procedure of female circumcision recommended in Islam. Thus, FMPP expresses its disagreement with KUPI, which according to FMPP, is to have categorized all types of FGM/C as Islamic female circumcision. The second is that the Ministry of Health has prescribed the procedure of safe female circumcision in its regulation No. 1636/Menkes/Per/XI/2010.²⁹ FMPP views that female circumcision in this regulation, which is to scratch hood/column/preputium of clitoris without irritating clitoris is correct definition of female circumcision in Islam. By this regulation, any female circumcision which results in bad health condition is not procedural and therefore considered malpractice.

In supporting this answer, FMPP provides 7 references, all of which are Islamic jurisprudence of mainly Shafi'i *maddhab*, past and present. The first reference is a fatwa of Abd Allah ibn Mahfudh al-Haddad (d. 1996 AD) is cited to assert that female circumcision is obligatory in Shafi'i *maddhab* and recommended in other three Sunni *maddhabs*. Thus, it is a debatable issue, but abandoning the practice would resemble Western women. FMPP also cite an opinion related by

²⁸ Hasil Keputusan Komisi A Bahtsul Masail FMPP Se-Jawa Madura XXXVIII Pon-Pes Al-Falah Ploso Mojo Kediri 21-22 January 2023 M/ 28-29 J. Akhir 1444 H

²⁹ Apparently, FMPP only knows this 2010 decision. The decision of Minister of health in 2014 that abrogates this 2010 decision is not cited by FMPP.

al-Bahuti of Hanbali *maddhab* (d. 1641 AD) which obligates female circumcision. The rest of reference explains the procedure of female circumcision, which although there is disagreement the majority of reference refer to the removing of hood of clitoris, which as those references state, “resembles cockscomb.” It also states the saying of the prophet which is used as *dalil* (evidence) to “cut but not excessively for this would be more conducive to brightness of the face and better for the husband.” The cited Shafi’i authority in succession are al-Nawawi al-Jawi (d. 1898 AD), al-Bujayrami (d. 1805 AD), Ibn al-Rif’a (d. 1310 AD), and al-Nawawi (d. 1277 AD).

Are KUPI and FMPP really Poles Apart?

The two fatwas of KUPI and FMPP on female circumcision seem to be in opposition in many respects, namely the legal recommendation, the method as well as reference. However, before dwelling into the details, the two formulate their question slightly differently. On the onset, KUPI asserts that it deals with the question of legality of dangerous FGM/C without medical reasons. On the other hand, although FMPP clearly states its intention to respond KUPI’s fatwa, it addresses female circumcision without any qualification of danger nor the absence of medical reasons. From this lack of correspondence, stems different argument. While KUPI seems to equate all four types of FGM/C with female circumcision based on the ongoing tradition among Muslim community, FMPP asserts that female circumcision as prescribed in jurisprudence of Shafi’i *maddhab* is no at all FGM/C. Thus, while the former emphasizes the practice of female circumcision, and therefore is dangerous and without medical reasons, the latter focuses on the ideal procedure of female circumcision which is mild and therefore arguably not dangerous. Eventually, this prompts different legal status, the unlawfulness of FGM/C for KUPI and the recommendation of female circumcision for FMPP. Nonetheless, there is hypothetic agreement between KUPI and FMPP on the unlawfulness of FGM/C which is not as prescribed in the jurisprudence of Shafi’i *maddhab*. It seems that KUPI invalidates all types of FGM/C without medical reasons, including those bearing the name of female circumcision because it is dangerous. This assertion is inferred by several references cited by KUPI which ban and criminalize female circumcision. However, in the process of deliberating the case, FMPP seems to disagree with the decision of

KUPI that viewed FGM/C, which include female circumcision, as *haram* (unlawful) because female circumcision is either *wajib* (obligatory) as in Shafii and Hanbali *maddhabs* or *mustahabb* (recommended) in other two *maddhabs*.

On this note, comes the difference of theoretical underpinnings in formulating religious opinions (including fatwa). While KUPI clearly puts heavy emphasis on *maqasid al-shari'a*, *ma'ruf* as well and knowledge and experience of women in formulating fatwa, FMPP relies heavily on textual conformity to Islamic jurisprudence, especially that of Shafii *maddhab*. As a result, the difference of response is unambiguous. Before concluding the status of female circumcision, KUPI determines that based on the knowledge and experience of women it harms them to the extent that it costs their lives as it is practice by Muslim society in various traditions and regions. On that basis, KUPI assumes that the practice of female circumcision is considered as Female Genital Mutilation/Cutting (FGM/C). the practice is both dangerous and without medical reasons. It is mainly practiced as part of cultural, religious or both reasons. Having concluded what it deals with, KUPI relates several *dalil* consist of Qur'anic verses, prophetic traditions, opinions of legal theorists and jurists as well as constitution which led to the unlawfulness of dangerous FGM/C without medical reasons. In contrast, FMPP starts with different step of analysis. After the question is fully clarified, students locate opinions of Shafii jurists on female circumcision. Because it not a novel legal issue, it is easily well specified in Islamic jurisprudence. However, since the spirit of FMPP is to train students in disputation, opposing opinions are not only welcomed but also highly valued. Thus, students try their best to propose alternative answers sourced from various Muslim jurists' treatises. Then they defend their answer by showing that their answer, and therefore reference they put forward, is the most corresponding to the question. In this female circumcision, FMPP finds that all references available in Shafii *maddhab* point to obligatory status. Still, although it has concluded as such, it maintains that FGM/C is a whole different thing, not female circumcision.

Certainly, KUPI and FMPP are different in the way they perceive the issue. KUPI was initiated by women activists of Nahdlatul Ulama and Muhammadiyah in the 1990s and later manifested in several civil society organizations namely Rahima, Fahmina, and Alimat which

affiliated to these two Islamic organizations.³⁰ Since its vision is to realize the vision of justice in the relationship between men and women in the perspective of Islam, the element of feminist perspective is undoubtedly evident. As Bakhshizadeh puts it, Islamic feminists, KUPI in this case, contest the unequal treatment of women as citizens in interpretations of the sacred text as well as in the system of Islamic law³¹ by locating feminism internally in Islam tradition.³² As shown in its argument as well as plenty *dalils* (textual references), like other similar Islamic feminism elsewhere,³³ KUPI is certainly aware of the importance of text for mainstream Islam in shaping and justifying their attitude and conduct.³⁴ Admittedly, the aspect of Islamic law is the frontline of Islamic feminism.³⁵ Second tool of KUPI is the employment of *maqasid al-shari'a* and *maslaha* principle, as it has been used widely to create breakthrough in Islamic law concerning gender issues³⁶ and Islamic family law,³⁷ or Islamic law in general.³⁸ KUPI

³⁰ N. Hidayah, S. Hidayati, and K. Zada, "Islamic feminism in Indonesia: The case of Fiqh an-Nisa program P3M/Rahima (2024) Religion, Education, Science and Technology towards a More Inclusive and Sustainable Future" *Proceedings of the 5th International Colloquium on Interdisciplinary Islamic Studies (ICIS 2022)* (Lombok, Indonesia, 19-20 October 2022), 269.

³¹ Marziyeh Bakhshizadeh, "A Social Psychological Critique on Islamic Feminism," *Religions* 14, no. 2 (2023) art. no. 202, 3

³² Ziba Mir-Hosseini, "Why Do We Need 'Islamic Feminism?'" *Al Raïda Journal* 44 (2020), 85-91.

³³ Muhammad Muqtada et al., "Fiqh Contestation on Women's Public Leadership in Indonesia and Malaysia: Reproducing Qur'anic and Hadith Interpretations," *Al-Ihkam: Jurnal Hukum & Pranata Sosial* 19, no. 1 (2024).

³⁴ Fatema Amijee, "How to Be a Feminist Muslim," *Journal of the American Philosophical Association* 9, no. 2 (2023), 194.

³⁵ Wahyuni Retno Wulandari, "Why Is Indonesian Islam Important In The Entrenchment of Women's Rights?" *Journal Of Indonesian Islam* 17, no. 1 (2023), 169-188.

³⁶ Muh. Sholihuddin, Saiful Jazil, and Syamsun Ni'am, "Remarriage in The 'iddah Perspective of Maqāṣid Al-Ushrah: Study in Wedoro Waru, Sidoarjo, Indonesia," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 8, no. 2 (2024), 726-749.

³⁷ Agus Purnomo, Nor Salam, Mukhammad Zamzami, and Abu Bakar, "Dimensions of Maqāṣid Al-Sharī'ah and Human Rights in the Constitutional Court's Decision on Marriage Age Difference in Indonesia," *Samarah: Jurnal Hukum Keluarga dan Hukum Islam* 7, 3 (2023).

³⁸ N. Solikin & M. Wasik, "The Construction of Family Law in the Compilation of Islamic Law in Indonesia: A Review of John Rawls's Concept of Justice and Jasser Auda's Maqashid al-Shari'a," *Ulumuna* 27, no. 1 (2023), 315-340.

presents its version of *maqasid al-shari'a* oriented of Islamic feminism in terms like “the knowledge and experience of women” and *mubadalab*, the two concepts that entails recognition of women voices as well as equal treatment and value between men and women. Thus, KUPI views female circumcision as practiced in society and experienced by women is no other than a harmful Female Genital Mutilation/Cutting which is executed without medical reasons.

Meanwhile, FMPP relies fully on jurists' opinions of mainly Shafii *maddhab*. Every time students of pesantren in FMPP are posed to legal query, they rush into authoritative jurisprudence treatises which in pesantren and Nahdlatul ulama called *al-kutub al-mu'tabarab*.³⁹ Although it originally means treatises of Shafii *maddhab* of post canonization period,⁴⁰ nowadays it refers to all jurisprudence treatises of Shafii *maddhab* regardless of their period, as well as of non Shafii *maddhab* within Sunni Islam (Hanafi, Maliki and Hanbali).⁴¹ In essence, what it does is a proper taqlid. In this female circumcision case, FMPP provide 7 references from jurisprudence. One of the references is from Hanbalite scholar which seems with the intension of showing the shared opinion of other Sunni *maddhab* on the matter, that is obligatory status of female circumcision. Admittedly a hadith (prophet tradition) was cited, but sought from al-Nawawi's al-Majmu'. The fact that it was not from hadith compilation signifies the reluctance of FMPP as the guardians of *taqlid* from performing *ijtihad*, which is interpretation of religious doctrines in the primary texts of the Qur'an and hadith.⁴² In responding the question about female circumcision, there are steps in the process, namely clarifying the question, brainstorming of the potential answers, debating them, and concluding the prevailing answer. Contrary to other questions in FMPP which require deep deliberation, the question is clearly about female circumcision, which is a well specified in Islamic jurisprudence. So, there is not much difficulty in finding prevailing opinion in jurisprudence treatises of

³⁹ Riza, *Dinamika Taklid dalam Kajian Fikih*, 206-207.

⁴⁰ Norbert Oberauer, “Canonization in Islamic Law: A Case Study based on Shāfi'i Literature,” *Islamic Law and Society* 29, no. 1-2 (2022), 123-208.

⁴¹ Mohd Hafiz Jamaludin, Ahmad Hidayat Buang, and Arip Purkon, “Talfiq as A Method for Legal Solutions in Contemporary Islamic Law,” *Abkam: Jurnal Ilmu Syariah* 24, no. 1 (2024).

⁴² Hyung-Jun Kim, “Purifying the Faith, Acting for Progress: Reinterpreting Muhammadiyah,” *Al-Jami'ah: Journal of Islamic Studies* 62, no. 2 (2024), 246.

Shafi'i *maddhab*. This textual method is called *qamly* because the question and the text of jurisprudence references perfectly correspond.⁴³ The *qamly* method in is the first priority before employing other methods (*ilbaqi* and *manhaji*). Since those references clearly state that female circumcision is obligatory in Shafii maddhab, FMPP cannot conclude but to follow this answer. Thus, there is no other consideration is required, not even the possible risk if the practice is conducted without medical reasons as underscored by KUPI.

For KUPI, this decision is a mix. For KUPI activists with Muhammadiyah background, Muhammadiyah, by citing opinion of Mahmud Shaltut of al-Azhar, has considered the *dalil* concerning female circumcision was not clear, hence it creates many negative impacts for women's health. Thus, female circumcision cannot be recommended, let alone obligatory.⁴⁴ In contrast, for KUPI activists with Nahdlatul Ulama background, the decision to outlaw FGM/C, which includes female circumcision, is a departure from the official fatwa of Nahdlatul Ulama which is always observant of Shafi'i maddhab on the matter. This is further accentuated in its *mandhu'i* (thematic) *bahtsul masail* of the 32nd muktamar (congress) in 2010 as Nahdlatul Ulama has decided, like FMPP does, that female circumcision is a matter of obligation according to Shafii maddhab. However, this 2010 *bahtsul masail* admitted that female circumcision might cause pain to women, but the pain cannot be weighed a valid consideration that changed the doctrine of Shafii maddhab.⁴⁵

Admittedly, KUPI is not an official *bahtsul masail* of Nahdlatul Ulama nor an institution within Nahdlatul Ulama. However, its personalities originate from Nahdlatul Ulama background, study in pesantren, or administrators as well as teachers of pesantren affiliated to Nahdlatul Ulama. It is part or continuation of liberal and progressive thought within Nahdlatul Ulama which has been fostered

⁴³ Syaiful Bahri, Syamsul Anwar, and Mochamad Sodik, "The Reconstruction of Pesantren Nationality Fiqh: An Insight From The Results of Baḥth Al-Masāil Forum Muşawarah Pondok Pesantren (FMPP)," *Justicia Islamica: Jurnal Kajian Hukum dan Sosial* 20, no.1 (2023), 120.

⁴⁴ Majelis Tarjih PP Muhammadiyah, *Tanya Jawab Agama II* (Yogyakarta: Yayasan Penerbit Pers Suara Muhammadiyah, 1991)

⁴⁵ Pengurus Besar Nahdlatul Ulama, *Keputusan Muktamar XXXII Nahdlatul Ulama* (Jakarta: Sekretariat Jendral PBNU, 2010), 232-238.

since the 1980s. In addition to progressive intellectuals of Nahdlatul Ulama, such as Abdurrahan Wahid, Musthofa Bisri, and Masdar F. Mas'udi, there are several organizations, association or groups that campaign progressive thoughts within this traditionalist community. Notable of such groups are P3M (Perhimpunan Pengembangan Pesantren dan Masyarakat) and LKiS (Lembaga Kajian Islam dan Sosial). The activists of these groups are mainly graduates of traditionalist pesantren who later continued their education in Islamic universities. KUPI is in this network where progressive activists of Nahdlatul Ulama background share, exchange, and transmit progressive opinions and thoughts, especially in women issues.

This progressive tendency attracts some pesantren ulama with progressive leaning. A worthy mention of this pesantren is Ma'had Aly in Salafiyah Shafi'iyah Sitobondo in East Java.⁴⁶ Students of this ma'had aly under guidance of progressive teachers like Afifuddin Muhajir and Imam Nahei, formulate many legal opinions not based on application of *usul al-fiqh* (Islamic legal theory) with *maqasid al-shari'a* as its underpinnings. Many of their opinions are in total break from the traditionalist commitment to Islamic jurisprudence of Shafi'i maddhab.⁴⁷ However, the progressive thought faced stiff resistance from the conservative strands within Nahdlatul Ulama. They defend the commitment to Shafii maddhab in bahtsul masail of Nahdlatul Ulama. Their stronghold is traditionalist pesantren which remains the majority of pesantren that provide bahtsul masail training. They are jurists in traditionalist pesantren who teach students Shafii maddhab in which FMPP is one of their training sessions before becoming full jurist in bahtsul masail. The voice of progressive thought and traditionalist leaning within Nahdlatul Ulama often directly or indirectly clash in bahtsul masail of Nahdlatul Ulama. The controversy surround female circumcision and FGM/C between KUPI and FMPP is one of such encounters. Having witnessed this debate and other debates in bahtsul masail,⁴⁸ there will be prospective debates between

⁴⁶ Musahadi, "Elemen Liberal dalam Kajian Fikih di Pesantren: Studi atas Ma'had Aly Salafiyah Syaifiyyah Sukorejo Sitobondo," *Ay-Syir'ab: Jurnal ilmu Syari'ah dan Hukum* 47, no. 1 (2013), 49-82.

⁴⁷ Tanwirul Afkar, *Fikih Rakyat: Pertautan Fikih dengan Kekuasaan* (Yogyakarta: LKiS, 2000).

⁴⁸ Achmad Kemal Riza, "Pergulatan Perumusan Bermazhab Secara Qawli Dan Manhaji Dalam Bahth Al-Masā'il Pada Muktamar Nahdlatul Ulama Ke-33," *Islamica: Jurnal Studi Keislaman* 13, no. 1 (2018), 33-63.

the two opposing camps in the future considering the insistence of both camps in defending their positions.

Conclusion

Women issues always become a hotbed of between progressive and traditionalist perspectives of Islamic law in Indonesia, female circumcision is one of those issues. KUPI insists that as category of dangerous Female Genital Mutilation/Cutting (FGM/C), female circumcision is unlawful. This is in sharp contrast with FMPP that argues it is obligatory as it is clearly prescribed by many jurists of Shafii maddhab. Nonetheless, even though FMPP vows to counter the opinion of KUPI, FMPP uses the term female circumcision, whereas KUPI terms it as dangerous FGM/C without medical reasons. This in turn might result in agreement between KUPI and FMPP in the unlawfulness of harmful FGM/C which FMPP also considered not the instructed procedure of doing female circumcision. Methodology wise, KUPI and FMPP are really poles apart. While KUPI employs methods that emphasizes on the knowledge and experience of women as well as *maqasid al-shari'a* (including the concepts of ma'ruf and mubadala) in understanding the issue and formulating answer, FMPP is strictly relies on the jurisprudence of Shafii maddhab which often centuries old opinions. When applied to this case, the result is stark. Because of it is harmful to women, KUPI views FGM/C is forbidden, yet female circumcision is obligatory because that is the opinion of Shafii maddhab according to FMPP. Within Nahdlatul Ulama, although jurisprudential difference is a common place, the tension between progressives and traditionalists have been going on since late 1970s. Since then, voices of progressiveness spread into Nahdlatul Ulama, including into pesantren and many students. However, this is counter measured by traditionalists of Nahdlatul ulama in many pesantrens. Until now, lively debates between the two groups keep happening without any sign of abating. []

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