

Hudud and Shariah: Politicising Religion in Malaysia

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Hudud and Shariah: Politicising Religion in Malaysia

By Afiqah Binti Zainal and Muhammad Haziq Jani

Synopsis

The impending Himpunan 355 rally tomorrow (18 February 2017) and the current discourse on hudud in Malaysia exemplifies the effects of religious outbidding between UMNO and PAS on the Muslim populace. To prevent Islam from being cast as a radical ideology, hudud must be contextualised to its past and present.

Commentary

UMNO HAS attempted the Islamisation of the Malaysian bureaucracy since the 1970s as part of its political contest with PAS, whose core mission is the implementation of the Islamic penal code or hudud. The Islamisation effort includes since 1984, the gradual increase of the jurisdiction and sentencing power of the Shariah courts. During the period around the 12th and 13th general elections in 2008 and 2013, when an inclusive Malaysian opposition coalition was briefly in ascendant, PAS had tamped down demands for hudud laws. However, the implementation of hudud in Brunei in 2014, and a splintering political opposition have renewed the pressure on PAS to demand for it to maintain its political relevance.

Not wanting to cede control of the Islamising agenda to PAS, UMNO has stymied PAS' demands through its proposal for a joint PAS-UMNO technical committee to deliberate the matter. The committee has since reframed PAS' call for hudud by seeking higher punishments in the Shariah Courts (Criminal Jurisdiction) Act 1965, also known as Act 355. Contrary to official public lines that they are 'not about hudud', elements within PAS have argued that the amendments do actually pave the way for its implementation. PAS has since called for the mobilisation of Muslims in a rally this weekend to support the amendments.

Imagining God's Laws

The pro-hudud supporters in Malaysia are a growing constituency largely nurtured by the Muslim world's politicisation of Islam and Malaysia's communal politics. Indeed the call for the implementation of hudud has been for political Islam, a foremost agenda. Proponents who envision the utopia of an Islamic state argue, on the basis of a decontextualised reading of the Qur'an, that a state could only be truly Islamic if it implements hudud. Contemporary jihadism, political Islam's violent strand, has taken this further through its legitimisation of force and violence against those who oppose its implementation.

For the pro-hudud constituency in Malaysia, the idea of its eventual implementation is a given, a religious unthought which cannot be questioned. UMNO and PAS are now competing to harvest this very unthought that they have helped cultivate in the first place. The only logical extension of the competition is a mainstreaming of political violence. Indeed the Malaysian ISIS member Muhammad Wanndy is on record for having cheered the Mufti of Pahang who cast the opposition DAP as *kafir harbi* (non-Muslims who ought to be fought for opposing Islam) on account of their rejection of hudud.

Is Hudud a Religious Unthought?

There are Muslims who believe that certain penal laws are Islamic simply because they are contained in the Qur'an and Hadith. Yet, penal punishments such as the cutting of hands for theft had existed long before Islam's advent, as a careful reading of the Sunni scholars al-Mawardi (d. 1058) and Ibn Kathir (d. 1373) would show.

Scriptural references to corporal punishments must be read in context, with regard for *tsawabit* (permanent), *mutaghayyirat* (changing) elements, and the *maqasid*, the essential purpose of the message of the Qur'an. In the case of theft, the references in the Qur'an and Hadith are accompanied by explicit notions of deterrence, mercy, justice, incapacitation and retribution. It is these *ends* of morality and not the *form* of punishment, which were introduced by the Qur'an in 7th century Arabia.

In addition, the Prophet Muhammad introduced the notion of *shubhat* (doubt) – over the ingredients of the crime, occurrence of the offence and definition of “perpetrators” -- that forced the stay of punishments. Indeed, the record of implementation of these punishments in Islam's history suggests a strong tendency to avoid hudud punishment on account of *shubhat*.

Shariah's Principle of Doubt and Hudud

It was this notion of doubt that was employed by the former Grand Mufti of Egypt, Sheikh Ali Gomaa, to argue why Egypt, home to the prestigious Al-Azhar University, had not implemented the hudud punishments in the last thousand years. To him, this contemporary era was one of *shubhat*, which effectively rendered hudud stipulations inoperable.

Many do not realise that even the very concept of thieving in the Qur'an (referenced

through the use of the term *Sariq*) raises doubt on what constitute an offence to invite such punishment, be it the frequency of the act of theft or the amount stolen. It is for this reason that the different schools of jurisprudence of Islam in late antiquity had different interpretations regarding who was deserving of the punishments.

The issue of doubt to suspend hudud – a pre-Islamic form of punishment -- is pertinent as the lack of integrity in any criminal justice system may result in gross injustice. Take the case of Pakistan. The *zina* (adultery) component of the 1979 Hudood Ordinance resulted in the increase in imprisonment of women mainly because they failed to prove they were victims of rape. The number of women imprisoned after the Hudood Ordinance increased from about 70 in 1979 to a staggering 6000 in 1988 and by 2004, an estimated 80% of the women consisted of such victims of sexual harassment or assault, accused of adultery or of making false claims.

Hudud and the Path to Radicalisation

The pro-hudud crowd in Malaysia may not be aware of such serious contradictions between the religious utopia promised by a decontextualised reading of the hudud provisions in the Qur'an and the reality of having hudud in place. That reality, with great potential for severe miscarriage of justice, is diametrically opposed to the essential message of the Qur'an.

Perhaps communal politics have caused an anxious Malaysian society to placate hardliners. If so, the politicisation of hudud has made the implementation of hudud seem like a religious obligation for an unsuspecting Muslim community and idealistic Muslims. It is the very expectation of fulfilling this obligation and its ideologisation that will pave the way for greater radicalisation and violence when faced with opposition.

The fight against today's global terrorism -- that has misused Islamic ideas and symbols -- are at the crossroads insofar as its characterisation is concerned. The debate now is on whether the fight ought to be called countering "Islamist extremism" instead of "violent extremism". As long as the implementation of hudud remains a religious unthought, there is a case to be made for calling a spade a spade.

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