

## WOMAN AND SHARI'AH COURT: A STUDY OF MALAYSIA AND INDONESIA

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### Abstract

This paper examines the status of woman as a shari'ah court judge according to the classical Muslim jurists. It begins with the historical background of the status of woman before and after the advent of Islam. In the Holy Qur'an there is a chapter on women which shows that the women have a special place in Shari'ah. However, in the case of a woman judge, there are differing juristic views, but their views are open to interpretation. The paper makes such attempt to justify the notion that a woman can be appointed as a judge of the shari'ah court. The paper also looks into the contemporary situation in Malaysia and Indonesia, where Islam is the religion of the majority of the population, and it is recognized as the religion of these states. The function of the government that looks after the interests of the community in the absence of the original legal rulings in the Divine revelations is also discussed. The paper discusses the importance of Shari'ah Court as an institution to dispense justice regardless of who the judge is. Most of the time, the culture and norms of a certain community are the impediments to the success of each country and not simply of one's belief.

### INTRODUCTION

The function of the judiciary is to dispense justice to the parties involved in cases. So as to ensure justice, the courts must be independent of executive and legislatures so that the decisions are made by them are without fear or favour. The most important element in judicial institution is to give rights to whom it is due without looking at whether the parties involved are rich or poor, adult or child and man or woman.

In Islamic the literature, there are quite a number of discussions pertaining to woman as dispenser of justice; and most of them are pessimistic. In other words, for them, woman is not qualified to hold the post of a judge and to sentence the accused accordingly. There are various reasons given by the classical Muslim jurists. However, their dalil or authority from the sunnah of the Prophet (s.a.w.) is ambiguous, as such open to varying interpretation. The Holy Qur'an is silent on that issue.

This paper attempts to understand the Islamic stand on this issue and to empirically verify the status of women vis-à-vis the court in two Southeast Asian countries, Malaysia and Indonesia. The first part of the paper analyses the status of women pertaining to dispensation of justice based upon the Qur'an, Sunnah and the precedent of the companions of the Prophet (s.a.w.). Next two sections are devoted to the situation in Malaysia and Indonesia. The concluding section summarizes the findings and offers suggestions for future directions.

## STATUS OF WOMEN IN ISLAMIC SOCIETY

In Islam, man and woman are equal in terms of human dignity, reward, accountability of personal conduct and matters pertaining to property rights, morality and religion. However, there is disagreement among scholars pertaining to the woman's participation in public affairs and government.<sup>1</sup> Likewise, there is disagreement among Muslim jurists on the case of woman to be appointed as a judge.<sup>2</sup>

However, one has to take note that the companions of the prophet (saw) were actually the mediators towards the development of Islamic law. The companions of the Prophet were close to him and helped him in making the message of Islam and Islamic law understandable to Muslims and non-Muslims. These people formed the vanguard of Islam whose lives were illuminated directly by that "lamp of that spread light".<sup>3</sup> The companions were not confined to Man but to woman as well. However, women companions can be categorized into two: woman companions and wives of the Prophet (s.a.w.).

The wives of the Prophet (s.a.w.) were the source of narrating the ahadith of the Prophet. Hence, the Muslims and non-Muslims could benefit from them in understanding the Islamic ruling and apply in their daily lives. Prominent among the woman narrators of ahadith are Aishah Binti Abu Bakar, Ummu Salamah, Fatimah Binti Muhammad, Fatimah Binti Qais, Asma' Binti Abu Bakr.

Before the advent of Islam, the status of woman in the period of ignorance (jahiliyyah) was very dismal. Women were treated similar to chattel to the extent that they can be inherited by the heirs of the deceased. The news of birth of a daughter was considered as a great disgrace and shame to her family.<sup>4</sup> However, after the Prophet Muhammad (s.a.w.) was sent to the Arabs, Islam upgraded their status equal to the men.

In the Holy Qur'an, there is one chapter Nisa'.<sup>5</sup> It is interesting to note that in the Holy Qur'an also Allah (s.w.t.) mentioned 57 times the word "al-Nisa"<sup>6</sup> and 57 times the word "Rijal".<sup>7</sup> These signify the fact of

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<sup>1</sup> Mohammad Hashim Kamali, *Freedom, Equality and Justice in Islam*, Ilmiah Publishers, Kuala Lumpur, 2002, p.61.

<sup>2</sup> Najma Moosa, *Women's Eligibility for the Qadiship*, paper presented at II Joseph Schact Conference, Granada, 16-17<sup>th</sup> December 1997, Granada, p.1-2.

<sup>3</sup> Khalid Muhammad Khalid, *Men around the Messenger*, Islamic Book Trust, Kuala Lumpur, 2005, p.xxix.

<sup>4</sup> Rafi Ahmad Fidai, *Concise History of Muslim World*, VOL.1, Kitab Bhava, New Delhi, 2001, p.6.

<sup>5</sup> Surah 4 or Surah al Nisa'.

<sup>6</sup> See Surah al Baqarah (2):222, Surah Al Imran (3): 14, Surah al Nisa (4): 4, Surah al Maidah ( 5): 6 etc. Derivatives such as nisa ukum, nisa ana, nisa ahum etc.

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equal importance of man and woman in Islam and their contribution in development of Islamic law. At the same, it shows that man and woman are equal.

Islam does not lay any restrictions on spiritual, social, economic and political activities of a woman. Both are equal in terms of right and responsibilities by looking into the nature and circumstances of a person. Generally, men by nature is physically strong than a women. By virtue of this, men are not considered superior to women. Both have been granted by Islam more or less equal status. And where ever women have been discriminated, it is for their good. Islam granted women those rights which were not available to them in the rest of the world; they could get it only after a long struggle.

### JUDGE'S QUALIFICATION

The Prophet Muhammad (s.a.w.) was the Chief of Justice during his lifetime as the leader to the Muslim nation and the Messenger of Allah for 23 years. In article 23 of the Constitution of Medina, it was proclaimed that 'the Prophet is the Chief of Justice and an avenue to settle dispute'. Thus, the qualification of the Prophet as the judge was exclusive and cannot be made a benchmark for any man in this world.

In the Prophet's lifetime, many among Muslims of Medina and Mecca had helped him in spreading the teachings of Islam. Muslims, who had lived and met with the prophet (s.a.w.) were know as the prophet's companions. They were those who were the closest to the prophet (s.a.w.). They were actually the quintessence of the Prophet's success in spreading the faith of Islam. They were also those who helped the Prophet in shaping an innovative and positive thinking to the Ummah. These companions of the prophet were also the early judges appointed to carry out the responsibility as an upholder of justice after the Prophet.

Many among the companions were appointed as judges outside the city of Medina. The appointment of the companions as the representatives of the Prophet (s.a.w.) was to safeguard the interest of the Ummah which was ever expanding and was also in line with the development of Islam in that era. The criteria of their selection were based on revelation from Allah<sup>8</sup>. Among the companions, who were appointed as judges, were Muadz Bin Jabal in Yemen, Utman Bin al-Ass in Ta'if, Muhajir Bin Abi Umayyah in San'a and Ataab Bin Asid in Mecca<sup>9</sup>.

It should be noted that the position of a judge is not a ticket to an easy life, nor is it to obtain any privileges. Verily it is a very heavy task which has to be carried by anybody who is entrusted to hold such a position.

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<sup>7</sup> See Surah al Baqarah (2: 282, Surah Al A'raf(7):63, Surah al Mu'minun ( (23): 25 etc. The word al Rijal and its derivatives such as rajulun, rijalukum, Rajulani etc.

<sup>8</sup> Chapter Al-Najm: 3, "Your companion is neither astray nor being misled, nor does he say ( aughta) of ( his own) desire. "

<sup>9</sup> Muhammad Hamidullah, "Administration of Justice in Early Islam", *Islamic Culture*, Vol. 11, 1937, pg. 166

During the period of the Prophet, Khulafa' al-Rashidun, 'Umayyah, and 'Abbasiyyah, the selections were made based on two conditions, which are:

1. Through the utilization of specific knowledge of the caliph himself, for instance, any man who is widely known for his ability and experience in settling cases previously, Such as the appointment of 'Ali Bin 'Abu Talib and Abdullah Ibn Mas'ud.
2. By way of examination and interview in order to assess the capability of the person whom are intended to be appointed<sup>10</sup>.

The above methods are being used in the contemporary period. The first method is seen from the perspective of the experience of the candidate as a judge, a registrar, chief registrar, sharie lawyer, Sulh officer and others. The second method is widely prevalent and is followed in all the employment sectors.

Fundamentally, a judge, according to the majority of fiqh scholars, must be a Muslim, male, major (baligh), sound mind, free, committed to impart justice ('adil). He must not be a handicapped in hearing, sight and speech, and must have knowledge of hukm Sharai. According to Imam al-Mawardi, man is given priority by reason that man has the advantage from the viewpoint of the mind and physical strength<sup>11</sup>.

There are other scholars who have laid down the following conditions of a judge:

1. Muslim,
2. Baligh,
3. Sound mind,
4. Free,
5. Male,
6. 'Adil,
7. Understands the meaning of the verses of the Qur'an and Sunnah,
8. Acquainted with ijma' of ulama and the ikhtilaf between them,
9. Familiar with the Arabic language,
10. Knows the basis of qiyas, and
11. Possess perfect sight and hearing<sup>12</sup>.

Basically, to be a judge, the candidate must be a man with perfect senses in order to ensure the importance of the law of procedure and evidence. There are also who added that the qualifications of a judge are similar to that of a witness. Whilst according to Mazhab Hanafi, male is not an exclusive condition to hold the position of a judge. In other words, Muslim women who are qualified are allowed to hold the top positions in the judicial institution in the Islamic state<sup>13</sup>.

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<sup>10</sup> Mahmud Saedon Awan Othman, "Perlantikan Qadi: Tanggungjawab, Syarat dan Cara-caranya", *Jurnal Hukum*, Vol.3, No.3, 1983, pg. 172-173

<sup>11</sup> Al-Mawardi, *al-Ahkam al-Sultaniyyah*, translated by Asadullah Yate, Ta Ha Publishers, London, 1996, , , p. 72

<sup>12</sup> Haji Daud Bin Muhammad, "Tugas Kehakiman Dalam Mahkamah: Pengalaman dalam Mahkamah Syariah", *Sistem Kehakiman Islam*, ed. Abdul Monir Yaacob, IKIM, Kuala Lumpur, 2001, pg. 23-24

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### VIEWS OF MUSLIM JURISTS

The Muslim jurists' view can be divided into two, the proponents and opponents. A brief of these is as follows:

#### 1. The opponents:

The opponents form jumhur's view or the unanimous view and consist of jurist from Shafie, Hanbal and Maliki schools of thought. They unanimously agree that woman is not allowed to be appointed as a judge in any case including cases involving the admissibility of woman's testimony. If there is any appointment, that will be categorized as void including the decisions made by them.

The authorities which they relied upon are some verses of the Qur'an which say to the effect:

"Men are protectors and Maintainers of Women, because Allah has given the one more strength than the other and because they support them from their means."<sup>14</sup>

The next authority is from the hadith of the Prophet (s.a.w.) which says:

"A nation which entrusts its affairs to a woman will never be prosper"<sup>15</sup>

#### 2. The Proponents

The proponents consist of those belonging to Hanafi School, especially Ibn Jarir and Ibn Hazm. According to one view from Hanafi School of law, it is permissible for a woman to be appointed as judge only in cases other than Hudud and Qisas. There are some of them who oppose and believe they formed part of the jumhur.

According to Ibn Jarir al Tabari, it is permissible for a woman to be appointed as a judge in all cases, but as usual there are some scholars who oppose he said so.

The last Muslim Jurist Ibn Hazm who holds that the ruling on the appointment of a woman as judge in all cases is permissible.<sup>16</sup>

### ANALYSIS OF THE JURISTIC OPINIONS

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<sup>13</sup> Abu al-Hassan al-Mawardi, *Al-Ahkam al-Sultaniyyah*, translated by Asadullah Yate, Taha Publisher, London, 1996, p.98.

<sup>14</sup> Al-Quran Surah Al Nisa' (4): 34.

<sup>15</sup> Narrated by Al Bukhari

<sup>16</sup> Ibn Hazm, *al Muhalla*, Vol.1, n.d. Cairo, 426

Having discussed the views of above authorities pertaining to the issue of woman as a judge, it is quite clear that there is no definite dalil or authority, which forbids woman to be a leader. There is no Qura'nic verse as well that clearly disallowed woman to be a judge. There are a number of verses where Allah commands us to uphold justice without referring to a Muslim man or a Muslim woman.

“ Allah doth command you to render back your trust to those to whom they are due, and when you judge between people that you judge with justice”<sup>17</sup>

In another Qurnaic verse, Allah says to the effect:

“O! Dawuud, We did indeed make you a vicegerent on earth, so judge thou between them in truth and justice”<sup>18</sup>

From the above two verses it is clear that it is a duty of every Muslim, be he a man or a woman, to uphold justice. The verses make no distinction on this issue.

With regards to the hadith mentioned, it is clear that the meaning of the hadith is speculative and open to interpretation. The Prophet (s.a.w.) used a word “no prosperity”, which indicates disapproval or absolute prohibition. Or it can be the ruling of disapproval or prohibition only in the context of leadership of a country but not in the judge's tenure ship.

The Holy Qur'an has put a great emphasis on the equality of the sexes, saying that they only differ in the extent of their piety and righteousness.<sup>19</sup> Man and woman are equal in terms of acquiring property, knowledge and rewards. The most important element in the practical side is how much one puts his sincerity in the given task. However, one also can say that quality does not necessarily mean justice.

## **MALAYSIAN POSITION**

From a perusal of the Malaysian law it can be said that in Malaysia, there is no specific and clear prohibition on the appointment of females as judges. According to the Islamic Administration (Federal Territories) Enactment 1993, the qualifications of a candidate to be a judge are as follows:

1. Must be a Malaysian citizen; and
2. Have experience as a Qadi in a subordinate court or Syari'ah High Court or as a public prosecutor or even a Court Registrar or a person who is knowledgeable in Hukm Syara' (hukum sharai).

The provisions of the Administration of Islamic Law (Selangor) Enactment 2003, section 56 and 58 also mentioned the same criteria for candidates to be appointed as judges of the High Court and the Subordinate Courts. The above provisions state that those who are qualified to be appointed as a judge are:

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<sup>17</sup> Al Quran surah Al Nisa' ( 4): 58

<sup>18</sup> Al Quran Surah Sad ( 38): 26

<sup>19</sup> Al Quran Surah Al Hujurat ( 49): 13

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- a) A citizen; and
- b) For a period of not less than 10 years before appointment have practiced as a Syarie lawyer in any Subordinate Courts or a member of a Syariah (in Malay language, Shar'ah is written as Syariah) Court or possesses expertise in Islamic law.

While provision of section 43(3) of Administration of Islamic Law Enactment 2001 of the state of Pahang mentions about the qualifications for the post of Chief Syarie Judge and High Court Judge are as follows:

- a) He is a man;
- b) He is a citizen; and
- c) For a period of not less than 10 years before appointment he had practiced as a Syarie lawyer in any Syariah Court or a member of Syariah court or possesses expertise in Islamic law.

Only the Pahang state's provisions show that a woman is not qualified to hold the position of a High Court Judge and a Chief Syarie Judge. That provision must have been in accordance with the view of the majority of scholars who agree that women should not hold the position of a judge. Definitely there are those who stress that the above provisions do not deprive women from holding the position of a judge of a subordinate court. But at the same time, if the same reasoning is to be used, one aspect which may be raised is that the provision denies the right of a female judge of a subordinate court to be promoted.

In article 8, the Federal Constitution of Malaysia states that there shall be no discrimination on the ground of race, religion, and lineage or also from the aspect of gender<sup>20</sup>. Thus, it can be understood that if a female who is qualified but not appointed as a judge just because she is a woman, hence the decision is against the Constitution. Similarly, in any provisions of the law which is based on such discrimination as above are void and contrary to the constitutional law. As a result, it can be generally understood that the provision in the state of Pahang is inconsistent with the Malaysian Federal Constitution.

Therefore, it becomes clear that in Malaysia, all the existing laws in Malaysia can be considered as not preventing women from being appointed as judges. Hence, it becomes permissible for qualified Muslim women to hold the position of a Syariah Court judge. The issue of woman to be appointed as a judge came into limelight in 2000 when it was highlighted in the media that there was indeed a need to have more Syariah court judges including female judges<sup>21</sup>

Nevertheless, according to Y.A.A Datuk Abu Naim and Y.A.A Datuk Sheikh Ghazali Abdul Rahman, priority is to be given to male candidates and at the same time, the appointment of existing male judges is due to necessity<sup>22</sup>. Accordingly, the author is of the opinion that it is not prohibited to appoint females to

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<sup>20</sup> (2) Except as expressly authorized by this constitution, there shall be no discrimination against citizens on ground only on religion, race, descent, place of birth or *gender* ( emphasis added) in law or in the appointment of any office or employment under a public authority or in the administration of any law relating to the acquisition, holding or disposition of property or the establishing or carrying on of any trade, business, profession, vocation or employment.

<sup>21</sup> Bernama News Agency, May 2<sup>nd</sup> 2000 and May 5<sup>th</sup> 2000.

be judges in Malaysia. Rather, the Malaysian law encourages appointment of female judges if necessity. Those, who are opposing this move are, in fact acting against the shari'ah and the Malaysian civil law. In the National Usul Fiqh Seminar organized by the International Islamic University College on 15-16 of December 2004, Datuk Sheikh Ghazali<sup>23</sup> was asked about the position of Muslim Women as female judges in the Malaysian Syariah Courts. According to him, a fatwa had already been made back in 1982 giving permissibility to the appointment of females as judges based on the view of Ibn Jarir al-Tabari. However, there are yet to be appointed any females who are truly qualified to sit as a judge in the Syariah Court.<sup>24</sup> However in September 2001, Madam Noorhadina Binti Mohd Zabidi was appointed as the registrar of Shariah court of Federal Territory. One year later in 2002, she was appointed as the chief registrar of the same court. Currently, she is the chief registrar of Syariah High Court of Selangor.<sup>25</sup> Actually, she is one-step ahead of becoming the first female court judge in future.

Datuk Sheikh Ghazali mentioned that so far she is the top choice of becoming the first woman to be a syariah court judge in Malaysia by looking into the experience she has now. However, he said it depends also to her whether she is ready or not to hold the post.<sup>26</sup>

According to the opinion of the recipient of Ma'al Hijrah award for the year 1426 Hijrah, Dr. Uthman El Muhammady, women are allowed to be appointed as judges based on two fundamental aspects: 1. from the view of the need for female expertise in such field; and 2. from the mercy for the Muslim Ummah which is in need of qualified judges including female judges. He also added that Islam had never closed its doors in not allowing a woman to be appointed as a judge. It is however reminded by him to all Muslims to be cautious of the elements of feminism which have been brought from the West which is based on human intellect alone without any consideration for the divinity of Allah's revealed laws.

It is mentioned in the laws that a judge must be a person who is knowledgeable in Islamic law. This phrase is too general to include both male and female. Thus, it may be defined as a person who has an academic qualification in the field of Syariah, including family law, Islamic criminal law, banking and also law of evidence. One of the conditions is that a candidate to be appointed as judge must be qualified to be a mujtahid. Mujtahid is a person who is able to do ijihad. According to the opinion of scholars, it is not necessary that a person who merely knows how to exercise ijihad be categorized as a mujtahid, along with other qualifications he/she must be an alim with amal.

The current situation in Malaysia is that in the Syariah Judicial Department, there are 26 Syariah female officers who could eventually become shari'ah court judges. They are comprised of Sulh Officer<sup>27</sup> ,

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<sup>22</sup>Andek Masnah Andek Kelewa, "Wanita dan Kehakiman di Mahkamah Syariah", *IKIM Law Journal*, Vol. 1, 1997, pp. 60-61.

<sup>23</sup> He was former Director General of Department of Syariah Judiciary of Malaysia and the recipient of Ma'al Hijrah Figure 1428.

<sup>24</sup> In a recent development, Datuk Sheikh Ghazali had made an announcement that, to date, there is one female candidate who is eligible to be appointed as syariah subordinate court in Malaysia. *News Straits Times*, 24<sup>th</sup> April 2006.

<sup>25</sup> A telephone conversation with her on the 24<sup>th</sup> of January 2007.

<sup>26</sup> News Straits Times, 28<sup>th</sup> July 2006

<sup>27</sup> Sulh officer can also act as a judge in Syariah Subordinate court provided that he has been given "Tauliah Hakim"( Judge's Certificate). To date, in the state of Kelantan, there are 3 Female Sulh officers who have been

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Registrar, Chief Registrar, Research Officer, Syariah Lawyer and Syariah Prosecutor.<sup>28</sup> This is an encouraging sign. These people have to be groomed so that they are ready to hold such an onerous task in future.

### INDONESIAN POSITION

In Indonesia, the government took a serious view regarding the qualifications of a candidate for the position of a judge. This was necessitated by the fact that the recruitment of religious court judges was done haphazardly. Thus, in the early 1970s, there were 12 Islamic Court Chairmen in the whole of Indonesia. They were graduates of State Islamic Institute but none of them obtained law school degrees.<sup>29</sup> Consequently, the government cited the selection, promotion and supervision of the judges as needing urgent improvement to elevate and integrate Islamic courts into a national judicial system.

The consequence of such a realisation is the formulation of current government policy to recruit only law graduates for the position of a judge of religious court.<sup>30</sup> Additionally, a candidate must:

- a. Be the citizen of Indonesia;
- b. Be a Muslim;
- c. Be a pious person;
- d. Be loyal to Pancasila<sup>31</sup> and Undang-Undang Dasar (UUD) 1945;<sup>32</sup>
- e. Possess a degree in Shar'ah ;
- f. Be at least 25 years of age;
- g. Be charismatic, honest, just and of good behaviour; and
- h. Must not be a member of any Communist Party or any other organization declared illegal like Gerakan Kontra Revolusi G.30 S/PKI.<sup>33</sup>

The above criteria are the minimum required of all Religious Court judges. However, a candidate aspiring to be promoted to a higher position must fulfil additional requirements. The candidate must be:

- a. At least 40 years of age, and

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given tauliah hakim. See "The theory and practice of *sulh* (mediation) in the Malaysian Shariah courts" by the author in the forthcoming issue of IIUM Law Journal.

<sup>28</sup> Statistic given by Puan Laila Busyra Hassan from Syariah Judicial Department of Malaysia (JKSM) on the 15<sup>th</sup> of January 2007.

<sup>29</sup> Daniel Lev, *Islamic Courts in Indonesia*, p.111.

<sup>30</sup> *Standarisasi Pengadilan Agama dan Pengadilan Tinggi Agama*, Department of Religion, Indonesia, 1983, p.94-95. In an interview, the researcher was informed that a person with no less than 10 year experience as a staff in the Ministry of Religious Affairs can also be chosen for the post of a judge. The chosen candidate, however, have to undergo training like all other candidates.

<sup>31</sup> National ideology.

<sup>32</sup> Indonesia's state constitution.

<sup>33</sup> Article 13 of Religious Court Act No 7 of 1989.

- b. Must have acquired at least 5 year's experience as a Ketua (Chief) or Wakil Ketua (Deputy Chief) Peradilan Agama<sup>34</sup> or 15 years as a judge in Peradilan Agama.

A candidate meeting all the requirements becomes eligible to sit for a written examination prepared by the Supreme Court to test the candidate's knowledge of general civil law and State Ideology as well as Arabic language and Islamic laws.<sup>35</sup>

After passing the written test, the candidates have to undergo a psychological examination conducted by the Department of Psychology of the University of Indonesia and administered by the Supreme Court. Later, they have to take a training course and serve as a clerk for two years before actually assuming responsibility as a judge.<sup>36</sup>

It seems that the policy of Indonesian Government towards the training of judicial members is to familiarise them with the administrative work before they could be appointed as a judge in a Shari'ah Court. This kind of approach is not followed in Malaysia with the exception of the final year students in a higher institution. They are required to do practical internship in a company or an institution for graduation. The Indonesian approach is useful for a judicial institution in that it makes the judge fully aware of administrative responsibilities involved and helps him/her understand the nature and the technical matters of the job.

In Indonesia, there were female judges going as far back as 1964<sup>37</sup>. Up until February 2002, there were 429 female judges in the Pengadilan Agama of Indonesia. Nevertheless, the jurisdiction of females judges are limited to family law which has been the jurisdiction of the Pengadilan Agama according to the Marriage Law 1974.

The appointment of females as judges in the Pengadilan Agama in Indonesia is based on several justifications. Among such is Chapter al-Imran verse 104 of the Qur'an that rules:

"Let there arise out of you a band of people inviting to all that is good, enjoining what is right and forbidding of what is wrong, and they are the ones to attain felicity"

The above verse indicates that it is the common duty of both male and female to enjoin what is good and prevent what is wicked. This is because the above verse did not specify any gender of male or female. Thus, the duty mentioned in the above verse is the duty of all Muslims without any discrimination of man or woman. According to Hamka, the duty to call towards righteousness may be divided into two which are governmental duty and familial duty. For that reason, it is the duty of the leader to call the people towards righteousness, to protect them from any difficulties. Besides, it is also upon the shoulders

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<sup>34</sup> Chief Justice of Islamic Courts.

<sup>35</sup> Mark Cammack, "Islamic Law in Indonesia", *International and Comparative Law Quarterly*, Vol.38, 1989, p.70.

<sup>36</sup> Ibid.

<sup>37</sup> Daniel Lev, *Islamic Courts in Indonesia*, Berkley, University of California Press, 1972, p. 110.

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of the parents as the back bone of the family to ensure that their family lives are articulated according to the tenets of Islam<sup>38</sup>.

### CONCLUSION

From the above discussion, it is clear that the Government of Malaysia is at a preliminary stage of appointing woman as a judge in Syariah Court. Right now, there is no female judge in the shari'ah court system. Hopefully, we will see female shari'ah court judges also. The government of Indonesia on the other hand, had started to appoint female shari'ah court judges after 19 years of their independence. Malaysia should emulate its neighbor and some Middle East countries, where judiciary is not monopolized by males. Author is of the opinion that if there are female judges in the shari'h courts also, the courts will impart justice in a better way. There is no reason to allow women to be judge of civil courts but not of shari'ah courts. We have not done in 50 years of independent Malaysia, does not mean that we should not do it in future.

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<sup>38</sup> Hamka, *Tafsir al-Azhar*, Yayasan Nurul Islam, 1965, Jakarta, pp. 40-41.