

The Veil Practice of Ustazah Dayah Jeumala Amal in Terms of the Theory of Social and Legal Change

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Abstract

The COVID-19 pandemic has made big changes in the world including Indonesia, Dayah Jeumala Amal which is in Indonesia also has an influence, one of which is the behavior of using the veil of her ustazah. This research is descriptive analytic with mixed types whose sources are obtained from the field and literature. There are two scientific questions, the first is the cause of the use of the veil and the second is the relationship between the use of the veil and changes in the law. The results of the study show that the use of the veil is based on religion and a change in law is the right time to use it.

Keywords

veil; change of law



I. Introduction

Dayah Jeumala Amal is an integrated dayah located in Gampong Keude Lueng Putu Pidie Jaya. This Dayah has been around for a long time, so many teachers and employees work in it. Among the teachers who teach at Jeumala are the female teacher councils called Ustazah. Ustazah at Dayah Jeumala Amal wear standard shari'a clothing in general, this is because of their status as educators and also the rules of Dayah. Of the 50 ustazah and employees of Dayah Jeumala amal, none of them wear the veil, they only wear the hijab. However, this situation changed during the corona virus pandemic in which there were several clerics who wore the veil. This change is an interesting thing to study, because it is a new thing in dayah jeumala amal and is a realization of the concept of changing circumstances. For this reason, two scientific questions were rise, first, why does Ustazah Dayah Jeumala amal use the veil, and second, what is the relationship between the use of the veil and the theory of legal change?

This paper belongs to the study of sociology of law which will examine the normative and empirical. The normative object will explore fiqh books related to the veil and social material in the use of the veil. Meanwhile, the empirical object will examine the answers of Dayah Jeumala Amal's ustazahs who use the veil as respondents by means of interviews. The approach used is qualitative with a combination of literature and field.

II. Review of Literature

The veil which in Arabic is called the niqab is cloth covering a woman's face other than her eyes. In Indonesian it is also called the *cadar*. In the Arabic-Indonesian Dictionary written by Mahmud Yunus, it is stated that the niqab is a woman's face covering. Lois Ma'luf, in the Al-Munjid Dictionary as mentioned by Haikal in his dissertation that the niqab is a head covering that women put on the tip of their nose and cover their face with it.

The use of the niqab in Islam has been seen before Islam as stated by Abdul Halim Abu Syuqqah in *An-Niqab fi Syariat al-Islam* that the niqab is part of one type of clothing

used by some women in the Jahiliyyah period. Then this clothing model lasted until the Islamic era. The Prophet did not question the dress model, but also did not oblige, encourage or practice the niqab for women. This is different from the ummahat al-mukminin (the wives of the Prophet). Has a difference where they are specified for the obligation to wear the hijab inside the house and cover all the body and face when leaving the house.

Veil According to Fiqh Scholars

Islam as a religion that brings mercy to all nature has teachings and rules of law which are always oriented to the benefit of humans. Every law that is prescribed must contain the value of benefits returned to humans, it's just that the value of benefits is sometimes not found after reasoning. But generally, in the applied laws can be found the value of benefits which is also called the wisdom of the law or the philosophical basis of law (Helmi, 2019). Al-Quran is a rule that determines the basic attitude of human life, and requires more detailed explanations, because today there are many complex problems, and certainly not the same as the problems that existed at the time of the Prophet Muhammad (Hasbullah, 2019).

The fiqh opinion referred to in this study is the Syafii school of thought, the reason is that the people of Aceh, which is the domicile of Ustazah Dayah Jeumala Amal, belong to the Syafii school. According to the Shafi'i school of thought, a woman's nakedness in front of an ajnabi man (not a mahram) is the whole body. So they oblige women to wear the veil in front of ajnabi men. This is the opinion of the mu'tamad of the Shafi'i madhhab. Al-Syarwani said, "Women have three types of genitalia, first, in prayer, as has been explained, namely the whole body except the face and the palms, and the second is the aurat from the gaze of the ajnabi man, namely the whole body, including the face and palms, according to the opinion that is acceptable to you tamad, the three genitalia when together with the mahram, are the same as men, that is, between the navel and the thigh."

إن لها ثلاث عورات : عورة في الصلاة ، وهو ما تقدم - أي كل بدنها ما سوى الوجه والكفين . وعورة بالنسبة لنظر الأجانب إليها : جميع بدنها حتى الوجه والكفين على المعتمد وعورة في الخلوة وعند المحارم : كعورة الرجل « اهـ - أي ما بين السرة والركبة

Muhammad Qasim al-Ghazi also mentioned that a woman's nakedness in prayer is the whole body except the face and palms, while outside of prayer her nakedness is the whole body.

Taqiuddin Al Hushni in the book Kifaayatul Akhyaar explains that it is makruh for women who pray to wear pictorial clothing or paintings to wear the niqab in prayer. However, if the condition of the mosque is difficult to maintain from the eyes of the ajnabi man and is worried about causing harm, then the niqab must be used.

ويُكره أن يصلي في ثوب فيه صورة وتمثيل ، والمرأة متتقبة إلا أن تكون في مسجد وهناك أجنب لا يحترزون عن النظر ، فإن خيف من النظر إليها ما يجر إلى الفساد حرم عليها رفع النقاب

Contemporary school of thought scholars are not much different in their views with previous scholars, such as Wahbah Zuhaili. Wahbah's response to the problem of using the veil is now returned to the user himself, if the use of the veil gives a sense of security then it is better for him, but on the other hand if he does not use the veil and does not give a sense of worry or slander, then there is nothing wrong with opening his face. Wahbah Zuhaili saw that the veil was not an obligation or a recommendation, but an obligation.

Furthermore, Abdulhalim Abu Syuqqah explained that the niqab is part of the Shari'a where the law of its use is permissible. He did not see the niqab as a sunnah or obligatory act.

Quraish Shihab saw that wearing closed clothes, including the niqab, was not clothing that came from Arabia and was not their monopoly right. He saw that the veil can be used or not by a Muslim woman. Buya Hamka in his Azhar interpretation sees that the face is not aurat that must be covered with the niqab. However, the use of khimar is a command of Allah that must be obeyed by a Muslim. Furthermore, he added that the Koran does not determine the model or form of clothing. But the clothes that the Qur'an wants are clothes that show faith in Allah, clothes that show modesty, not to show body shape or show men.

III. Results and Discussion

3.1 Veil Practice of Ustazah Dayah Jeumala Amal

Jeumala Amal Dayah is an integrated dayah that was established in 1987. This dayah is located in Keude Lueng Putu, Bandar Baru District, Pidie Jaya Regency, Aceh Province, Indonesia. Entering a young age, Dayah Jeumala Amal has produced thousands of alumni and has employed hundreds of teachers and employees. Among the employees there are female employees which consist of employees and teachers. The female teacher called ustazah (hereinafter referred to as ustazah) at Dayah Jeumala Amal teaches at two levels of education, the first is uztah who teaches at Madrasah tsanawiyah and ustazah who teaches at Madrasah Aliyah.

Ustazah who are the object of study or respondents in this study are ustazahs who teach at madrasahs, both in Aliyah and in Tsanawiyah who use the veil. While the ustazah who did not use the veil did not become a respondent because there was no change in behavior with the change in circumstances. The respondents selected were six people consisting of three levels of Aliyah and three levels of Tsanawiyah.

A respondent with the initials Esaid that he had been motivated to use the actual veil before the warning to wear a mask during the pandemic, but during the warning to use a mask it was the right time to wear a veil. Take advantage of the opportunity to change circumstances because government policies are the right time to migrate. The behavior of using the veil of ustazah E is motivated by religious reasons but social influences which in this case government policies are also the cause. This becomes interesting, because as Haikal said in his dissertation, one of the changes in the law is the existence of government policies. This government policy can make a big difference, especially in covering one's mouth with the veil. People who cover their faces with a veil and are influenced by the value of monotheism will get two benefits, firstly, worldly benefits by obeying government rules and ukhrawi benefits by getting rewards all respondents used this condition as a basis for starting the veil.

Government policy is something that has a big influence on people's lives, because government policies are decided based on considerations of maslahah and common interests. Viewed from the point of view of the problem, using the veil also gives more positives than masks, because it fulfills two elements, namely religion and government. Furthermore, another respondent with the initials Sgiving answers to the researcher's questions, he wishes to remain consistent in using the veil. This answer was followed by all other respondents. The reason for this desire is because these ustazah are aware of and understand the concept of the veil, and are also influenced by religious knowledge and advice from their husbands.

3.2 Theory of Legal and Social Change

Law is a product that cannot be separated from socio-cultural, community conditions and places. The law regulates people's behavior, and also the habits that apply in society are also part of legal considerations. Fiqh can be viewed from several points of view. First, from the point of view of its elaboration, Fiqh is an elaboration of the texts of the Qur'an and Sunnah. In this case, Fiqh remains the same and will not change as long as there is no change in the meaning of the texts. Second, from the point of view of *ijtihad*, fiqh is the result of the *ijtihad* of scholars who always interact with society and the environment during their respective lifetimes. This means that in giving birth to *ijtihad*, the scholars are influenced by their *ijtihad* by social factors. Because of this, the mass and environmental factors are more or less a consideration for a mujtahid or a scholar or a mufti or nowadays it is known as a fatwa institution in formulating fiqh law, strengthening among opinions that are considered contradictory, and choosing the most appropriate for a situation and the place of some of the existing opinions.

The above is the basis for consideration, where a Fiqh law, strengthening Fiqh, and efforts to select certain opinions may change due to differences in the environment, time, and social conditions of the community. Legal and social changes are basically fundamental changes in the order of life in terms of culture, community structure, habits, and social behavior throughout the year. Due to differences in time and place, a law that is deemed most appropriate to be applied to a particular time or place may be deemed inappropriate in other times or places. Differences of opinion like this are considered normal in Fiqh, because the demands for a change are sometimes unavoidable.

In fact, the view of changes in law due to changes in time can be found in a number of expressions of the previous scholars. Imam Malik bin Anas (d. 179 H.) for example, as quoted by Ibn Hajar al-Haytami (d. 974 H.) once said:

يُحَدِّثُ لِلنَّاسِ فُتَاوَى بِقَدَرِ مَا أَحْدَثُوا مِنَ الْفُجُورِ.

"The fatwas on the law can be renewed and changed, according to changes in human behavior and morals."

Ibn H{ajar himself when asked about the legal status of the attitude of women at that time who went out of the house to attend the recitation assembly and worship at the mosque with an appearance that attracted the attention of men, where this was allowed at the time of the Prophet Muhammad, he replied that for the present (Ibn Hajar's time this is no longer allowed for the following reasons:

لَأَنَّ الْأَحْكَامَ تَتَغَيَّرُ بِتَغْيِيرِ أَهْلِ الزَّمَانِ

"The laws can change because of changes in humans who live at a time."

Ibn Qayyim al-Jauziyyah (d. 751 H) developed a rule about changing the law by saying:

تَغْيِيرُ الْفُتَوَى بِحَسَبِ تَغْيِيرِ الْأُزْمَنِ وَالْأَمْكِنَةِ وَالْأَحْوَالِ وَالنِّيَّاتِ وَالْعَوَائِدِ.

"The fatwa can change due to changes in time, place, circumstances, intentions, and habits."

This rule was made by Ibn Qayyim as a systematic theory, so that many experts think that the theory was initiated by Ibn Qayyim, even though the foundations for this theory have existed long before, as stated by Imam Malik bin Anas.

According to Yusuf al-Qaradawi, changes in fiqh law are not only caused by the five factors mentioned by Ibn Qayyim above, but fiqh laws can also change due to changes in syar'i knowledge and syar'i gairu, changes in human needs, changes in human abilities, political change and thought change.

Regarding changes in syar'i knowledge, al-Qardawi explained that sometimes a fiqh expert builds a law or fatwa based on certain arguments, such as a hadith. But then he found that the hadith was da'if, so finally he changed his previous fatwa, or it could be the other way around. Al-Qaradawi gives an example of a legal change in this section by changing al-Shafi'i's fatwa from qaul qadim to qaul Jadid, where when he settled in Egypt he discovered new things that had never been found before in Iraq and in the Hejaz, including: authentic traditions quoted from the students of Imam al-Lais bin Sa'ad (d. 175 H).

Differences of opinion between the scholars of the school of thought and the Imam of their school are also inseparable from the various factors that encourage it. The cause may be rooted in the use of propositions, both normative and methodological arguments, perspectives in interpreting the arguments, or even differences in time or place between the two. As is known, the books containing authentic hadiths generally only started to be compiled in the middle of the third century Hijriah. In the history of hadith writing, the period of the third century Hijri is stated as a period of purification and refinement of the books of hadith. After the books of authentic hadith have been compiled, it may be easier for mazhab followers to find authentic hadiths that are sometimes not considered valid by their imam. This is a small sample of the differences between those driven by the demands of change.

It should be underlined here that not all Fiqh laws can change due to differences in time or place. Therefore, as-Subki (d. 756 H), as quoted by as-Sayyid'Alwi al-Saqaf said that statements about changes in law due to differences in time and place should not be interpreted in a general and free manner. Other scholars more explicitly set limits, that the laws that can change due to differences in time and place are only laws that originate from maslahat (Arabic: mas}lah}ah) and 'uruf (Arabic: 'urf), or are built on the basis of consider both at the same time. In addition, people who have the competence to make changes are of course people who have the capacity for ijtihad in various forms.

Today, there is an opinion which states that in fact the main factor that causes changes to the law is the situation or in Arabic it is called al-sura al-hadisah. Actually this statement is the essence of the statement of Ibn Hajar, Qardawi, and Ibn Qayyim. Because if we look more deeply, then we will understand that the era was the same. The time of the Prophet and the companions was the same, there was no change because the time remained twenty-four hours a day and night, while what changed was the situation at that time. For example, nowadays it is allowed not to perform Friday prayers in certain areas by world scholars because of the corona outbreak. The basis of this permissibility has been explained by Ibn Hajar al-Haitami in al-Fatawa al-Kubra

"أَنَّ سَبَبَ الْمُنْعِ فِي نَحْوِ الْمَجْدُومِ خَشْيَةُ ضَرَرِهِ وَجَبْنِيذٌ فَيَكُونُ الْمُنْعُ وَاجِبًا فِيهِ

Because the prohibition for people with diseases such as leprosy is fear of suffering for them, then this prohibition becomes obligatory.

When mentioning the fatwa, Ibn Hajar based his fatwa on the opinion of Qad{i Iyad which mentions quoting from the opinion of scholars

وَنَقَلَ الْقَاضِي عِيَّاضٌ عَنِ الْعُلَمَاءِ أَنَّ الْأَخْذَ وَالْأَبْرَصَ يُمْنَعَانِ مِنَ الْمَسْجِدِ وَمِنَ الْجُمُعَةِ وَمِنْ اخْتِلَاطِهِمَا بِالنَّاسِ...
لِيُحْتَرَزَ مِنْهُ وَيُنْبَغِيَ لِلسُّلْطَانِ مَنَعُهُ مِنْ مَخَالِطَةِ النَّاسِ وَيَأْمُرُهُ بِالزُّومِ بَيْنَهُ...

The purpose of this legal change is tahqiq al-manat. In this case the author Indonesianizes it with the term solving the problem of the variable. This is the main foundation that must be considered by Islamic thinkers. Every time solving legal problems, there must be benefits in order to solve the problem.

IV. Conclusion

The use of the veil at Dayah Jeumala Amal is based on religious advice, but its use only occurred during the pandemic because of the government's policy to use masks. The use of this cadre clearly has a relationship with legal and social changes, because political or government policies are one of the causes of legal changes, in this case the behavior of ustazah Dayah Jeumala Amal.

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