

Serial Working Paper on Legal Pluralism in Indonesia

# The Study Of Law And Punishment In Islam

The Ideal Concept of *Hudūd*  
and Its Practices

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KOMISI NASIONAL ANTI KEKERASAN TERHADAP PEREMPUAN

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# The Study Of Law And Punishment In Islam

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**The Study Of Law And Punishment In Islam:  
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*Authors*

Dr. Nur Rofiah, Bil. Uzm.  
Imam Nahe'i, M.H. I.

*Final English Editing*

Nina Nurmila  
Dahlia Madanah

*Managing Team*

Andy Yentriyani  
K.H. Husein Muhammad  
Kunthi Tridewiyanti

*Translator*

Asep Muhammad Iqbal

*Discussants*

Azriana  
Khariroh Ali  
Nina Nurmila  
Indraswari  
Dahlia Madanah  
Pera Sopariyanti  
Muhamad Daerobi  
Rita Fortuna

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Tlp: 021 3903963  
Fax: 021 3903922  
E-mail: [mail@komnasperempuan.go.id](mailto:mail@komnasperempuan.go.id)  
Website: [www.komnasperempuan.go.id](http://www.komnasperempuan.go.id)

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## Preface

This book, *The Study of Law and Punishment in Islam: the Ideal Concept of Hudūd and Its Practices*, was written by two experts in *fiqh* (Islamic jurisprudence) and *tafsir* (Quranic interpretation), Dr. Nur Rofi'ah and Imam Nakhe'i, M.H.I.

This book is part of the serial working paper on Legal Pluralism in Indonesia, initiated by Komnas Perempuan in responding to the problem of legal pluralism in Indonesia and its challenges in standing for justice for women and humanity. It argues for Islamic legal theory from the perspective of Islamic theology, particularly about the contextualization of Islamic law in accordance with diverse situations in Indonesia. It also describes the contexts of the application of Islamic law at the time of Prophet Muhammad (the beginning of Islamic law), in the period of the Prophet's Companions and their followers, at the time of the codification of Islamic law, and the period when Islam spread to various parts of the world, including Indonesia.

This book tries to present a theological view of Islamic law and to explain that the reality of Islamic law is not monolithic. The diversity of opinions on the implementation of Islamic law which cannot be reduced into a single form makes it very important to be known by public and the state officials amidst the emergence of strong aspiration to implement the Islamic criminal law as a 'positive law' in Indonesia. In particular, this book explains in depth the theory of *hudud*, the purpose of punishment in Islam, and the implementation of flogging in the context of Islamic studies, which would help bring justice and prosperity for people.

Komnas Perempuan believes that it is important to support this study as an effort to maintain the integrity of national legal system and to encourage the elimination of all forms of violence, inhumanity and humiliation against human values. With the enactment of Law No. 11 of 2006 on Aceh, the Indonesian government has provided room for the enactment of punishments other than those that are ruled in the Criminal Justice Act. This opportunity was then used by the Provincial Government



of Aceh to implement *hukum cambuk* (flogging) in Aceh, which has drawn criticism and condemnation from international community and a number of parties in the country. Through this book, Komnas Perempuan tries to provide public with the enriched knowledge of the context of the punishment in Islam and expand the space for more constructive dialogue among various parties in the framework of ensuring the fulfilment of the constitutional rights of citizens in the implementation of the Special Autonomy and Regional Autonomy.

In its process of writing, this book received feedbacks from a number of scholars in Islamic law, criminal law, constitutional law, anthropology of law, sociology of law, human rights and gender studies through two sessions of Focus Group Discussion. Some of the feedbacks are attached to the end of this book.

Finally, Komnas Perempuan would like to thank *Ibu* Dr. Nur Rofi'ah and *Bapak* Imam Nakhe'i, M.H.I. for writing this book full-heartedly in the midst of their packed activities. Our gratitude also goes to the scholars who gave feedbacks, improvements and suggestions to enhance the quality of this book. In particular, we would also like to thank *Bapak* K.H. Husein Muhammad, *Ibu* Andy Yentriyani and *Ibu* Kunthi Tridewi (the commissioners of Komnas Perempuan 2010-2014) for initiating this book and involving in the review process of the book and the Commissioners and the staffs of *Gugus Kerja Perempuan dalam Konstitusi dan Hukum Nasional* [Task Force of Women in Constitution and National Law] of Komnas Perempuan for helping the review process and the writing of this book. We hope that this book benefits society, especially jurisprudents and government officials and state officials, in giving adequate responses to the growing aspiration of implementing Islamic criminal law as 'positive law' in Indonesia.

Jakarta, 22 December 2016

Chairperson, Komnas Perempuan



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