



## Legal Challenges: Islamic Medical Charities And The Body in Indonesia, Thailand, and South Africa, 1920 - 2009

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This paper engages with issues inextricably linked to the body, sexuality and the law which have provided particular challenges for faith based and more specifically Muslim organisations. In particular, it reflects upon responses to the HIV/AIDS epidemics and female genital mutilation (FGM) amongst Muslim communities in Indonesia and Thailand. Although on the surface unconnected to each other, both these issues are matters of vigorous debate amongst Islamic scholars and wider Muslim communities across the globe, in the case of HIV/AIDS largely because of an enduring if misplaced connection with homosexuality.

There is widespread agreement, for instance, that FGM under the *Shari'a* is neither a religious requirement nor an obligation for Muslims, with many instances of *fatwa* to this effect from leading scholars. However, it remains the case that other religious leaders defend the practice of FGM generally on the basis of certain *hadith* (lacking authenticity) and/or as legally 'permissible', even *mandoob* (better doing it than not doing it), while associating FGM with chastity, cleanliness and marriageability. There are similar, perhaps even more polarised, positions on HIV/AIDS. In dealing with Aids we are only concerned indirectly with sexual behaviour. Deuraseh (2008) adopts a common stance that unquestionably in Islam *al-liwat*, which is deemed synonymous with homosexuality, is a sin and a crime not merely against an individual but against society, going on to proffer a role for Islamic criminal law in the prevention of HIV/AIDS. al-Haqq Kugle (2010) focusing on Islamic scripture as texts of transformation, resistance to oppression and liberation, the importance of interpretation of 'oblique' references to homosexuality in the *Qur'an* and emphasizing the diverse assessments of *hadith*, ultimately reflects that 'what matters is the ethical nature of the relationship one has within the constraints of one's internal disposition'. As to HIV/AIDS, in accordance with international bodies, activists and NGOs worldwide, he decouples the epidemic from sexual promiscuity in particular, arguing that it is unsafe and coerced sexual acts in general which cause transmission of the HIV virus. Such debates serve to demonstrate that despite its agreed salient features and principles, Islamic law is a contested zone, pluralistic and non-homogenous.

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Not only is there no one 'Islamic law' or one 'Islam', but as Bowen (2003) has so eloquently put it, 'Islamic jurisprudence (*fiqh*) is ... a human effort to solve disputes [which is] as imbricate in social and cultural life as is Anglo-American law'. In Indonesia and Thailand, Islam is embedded with inheritances which are not only religious but also cultural and we have to emphasise that attitudes to the body and sexuality are constituted locally. Both countries share political programs of modernisation, with highly functionalised participation of women in the State. In these contexts, shifting cultural constructions, a matter of internal dialogue as Muslim, Hindu and Buddhist teachings brush against one another, (although in Indonesia the Islamic ethos predominates), give rise to (sometimes shared) ideologies of sexuality and gender stressing tolerance and change that in turn shape responses to HIV/AIDS and FGM.

We also discuss sharia and customary law towards issues of organ transplants and postmortems to resolve medical disputes.