

## The Relevance of Gender Mainstreaming in Indonesia to Women's Rights in Islamic Law

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### Abstract

Gender mainstreaming is a government effort in upholding women's rights, because women's rights are an inseparable part of human rights. Protection of human rights is a state guarantee which is given to its citizens as a manifestation of the objectives of the Pancasila legal state as stated in the Preamble to the 1945 Constitution of the Republic of Indonesia. In Indonesia, gender mainstreaming has been established through Presidential Instruction Number 9 of 2000 concerning the Implementation of Gender Mainstreaming (PUG) under construction. This study will focus on gender mainstreaming on the development in Indonesia and the development of justice and gender equality in Islamic studies. Protection of human rights is the main goal in the application of Islamic law, including the protection of women's rights that has always been a major topic in Islamic studies and gender. By using qualitative descriptive method, it will be easy to find Islamic ideas, social activities at the time of the Prophet about women's rights. If examined comprehensively, in pre-Islamic history, namely the period of ignorance, it was a period that greatly demeaned women. At that time, if a baby girl was born, she would be buried alive right away, or if she was allowed to live, she would suffer humiliation. The purpose of this study is to find a conclusion that emphasizes women's rights which have been neglected so far, even though the use of religious arguments often prevents women from obtaining their rights. So with this affirmation, it is hoped that it will be able to control violence against women which has often occurred. Through gender mainstreaming, development is to achieve gender equality and justice (KKG) through integrating the experiences, needs, aspirations of women and men into various policies and programs starting from the planning, budgeting, implementation, and monitoring stages.

## A. Introduction

Gender mainstreaming is the process of incorporating women's experiences as an integral dimension in the formulation design, implementation, and evaluation in any planned action, including laws, policies, or programs to eliminate inequality and achieve gender equality. The way to incorporate women's experiences, eliminate inequality, and achieve gender equality was explained at the Beijing Conference through the involvement of women in the realm of government. In Indonesia, this regulation was first stipulated in Presidential Instruction No. 9/2000 on Gender Mainstreaming in National Development during the reign of President Abdurrahman Wahid.<sup>1</sup>

State protection of women is a necessity in running the government. One of the characteristics of the rule of law is to provide protection for the human rights of its citizens to realize the general welfare, and the arbitrary actions of the authorities. The *Rechtstaats* concept or the Rule of Law place elements of legal protection for human rights side by side with other elements. Because the discussion of human rights is to discuss all dimensions of life.<sup>2</sup>

Gender justice is an important issue in Islam and is closely related to women's rights that must be upheld. Knowledge about justice and gender equality is often studied in the world of formal and non-formal education, but in practice it is still very far away. This is very evident when women enter the household and the public sphere. More and more prominent, in recent years quite a lot of female sexual victims are even underage.

The moral disaster that has occurred recently has deeply affected the Indonesian people, regarding cases of sexual violence against underage women. This matter greatly occupied the public's attention because these cases occurred in Islamic Boarding Schools which are known as trustworthy in educating the nation's children. This is a public concern that requires immediate government attention and action. Homework for the government which is currently urgent to do is handling cases of violence against children. Based on reports on the Online Information System for the Protection of Women and Children (SIMPONI PPA) until June 3, 2021, there were 3,122 cases of violence against children. From these data, the number of sexual violence still dominates. Deputy for Special Child Protection at the Ministry of Women's Empowerment and Child Protection (PPPA) Nahar said that there were still incomplete and not completed handling of cases of violence, and no other follow-up.<sup>3</sup>

We may often hear and read about women's conversations, both in print and in electronic media, especially about gender issues that have not yet been discussed and are even controversial among the Muslim community today, in the book *Perempuan dan Ketidak Adilan Sosial* written by Mahatma Gandhi, stated that women have always been the object of violence and are not seen as human beings, where in social class they are always the object of violence, such as violence in marriage, crime of prostitution, and many widows who are still underage.<sup>4</sup> Surprisingly, with the progress of the times, it did not reduce this violence rate.

Women's Commissions at the end of 2020 released a data record entitled "Perempuan dalam himpitan pandemi" or Women in the Hump of a Pandemic, in the note several data were obtained, including in the midst of Covid-19, the number of cases of Violence against Women (KtP) was 299,911 cases, these cases were handled by the District Court/Religious Court (PN/PA) as many as 291,677 cases. A total of 8,234 cases were handled by women's commissions partner service institutions, and 2,389 cases handled by the women's commissions

<sup>1</sup> Ashilly Achidsti, *Gender Gus Dur: Tonggak Kebijakan Kesetaraan Gender Era Presiden Abdurrahman Wahid* (Yogyakarta: Gading Publishing, 2021) 5.

<sup>2</sup> Rossa Ilma Silfiah, *Otoritas Negara terhadap Agama dan Kehidupan Beragama di Indonesia* (Pasuruan: Yudharta Press, 2018) 33.

<sup>3</sup> Risna Halidi, "Data Kemen PPPA: Laporan Kekerasan Seksual Pada Anak Masih Mendominasi", (7 June 2021), online: <<https://www.suara.com/health/2021/06/07/202416/data-kemen-pppa-laporan-kekerasan-seksual-pada-anak-masih-mendominasi>>.

<sup>4</sup> Mahatma Gandhi, *Kaum Perempuan Dan Ketidak Adilan Sosial* (Yogyakarta: Pustaka Pelajar, 2011) 5–10.

Service and Referral Unit (UPR), with a record of 2,134 cases were gender-based cases and 255 cases of which were not gender-based or provided information.<sup>5</sup> The data shows that cases of violence against women until the Covid-19 pandemic still occur. Moreover, the country is in a state of emergency, so that the government's focus is reduced to think about cases of violence against women.

The use of the words *wanita* and *perempuan* also has an effect on developing social conditions. Before the reformation era, the word *wanita* was often found, which the Javanese said, *wani ditata-tata* (that woman must be ready to be regulated). Meanwhile, the word *perempuan* from that point on was synonymous with women who were not good. However, during the reformation era, the word *perempuan* was used more. Because it comes from the word *empu* which means to be appreciated, according to Hamka, it is said that the *empu* as the finger master are the reinforcement of the finger, the finger cannot grip tightly, hold firmly, if the master finger is not present.<sup>6</sup> In Arabic, women are equated with the word *nisa'*. Some said that the word *nisa'* comes from the word *nasiya* which means forgetting due to a weakness of mind.<sup>7</sup> From the use of this language, discrimination appears in the social sphere, so that it always places women in the second class after men.

In general, there is no difference in rights between men and women, this is explained in Surah An-Nisa' verse 32: Meaning: For men there is a right/share of what they work for, and for women there is a right/share of what which she worked on. This verse explains that there is no difference between men and women in what they strive for. The difference that is used as a measure to elevate and lower their degree is only the value of their devotion and piety to Allah (QS. Al-Hujurat: 13). For Islam, a good woman is a woman who runs life as optimally as possible according to the Qur'an and Hadith, is able to carry out her functions, rights, and obligations, both as servants of Allah. This is contained in the surah An-Nahl, verse 97: Which means: Whoever does righteous deeds, both men and women in a state of faith, we will indeed give them a good life and indeed we will reward those who are more generous, better than what they have done.

This verse also explains that in good deeds and faith the position is equal between men and women. Each of them is equally able to grow faith in the heart and do good deeds as optimally as possible. So women are no less responsible than men in upholding faith in Allah and doing righteous deeds. Therefore, both of them are promised by Allah that they will be given a good life (Hayatan Thayyibah), because men and women are equal before Allah, that is, they are both His servants. And the noblest of them is the one who is more pious.<sup>8</sup>

The Qur'an rejects views that discriminate between men and women by asserting that they are both of the same breed and that from both of them God created offspring that are both male and female. With this consideration, God confirms that. Meaning: "Verily Allah does not waste the deeds of those who do good deeds, both men and women" (QS. 3:195) On this basis, it can be said that every man and woman have the same rights, because there is not a single provision in the Qur'an that can be understood as prohibiting the involvement of women in social life. We can also find this reality at the time of the Prophet, Companions, Tabi'in, and the heyday of Islam even today. They appear in various fields. The Prophet himself was very fond of active women, it was proven that his wife Khadijah was a successful businesswoman and conglomerate, and his other wife, Aisyah, was a scientist in the field of hadith, and was given

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<sup>5</sup> Rifa' Rasyaadah & Rahayu, "Perlindungan Hak Asasi Manusia Perempuan terhadap Kasus Kekerasan dalam Rumah Tangga di Indonesia dalam Perspektif Hukum Internasional" (2021) 12 no 2 Jurnal HAM.

<sup>6</sup> Zaitunah Subhan, *Tafsir Kebencian, Studi Bias Gender dalam Al-Qur'an* (Yogyakarta: LkiS, 1999) 17.

<sup>7</sup> Louis Ma'luf, *Al-Munjid fi al-Lughah wa al-i'lam* (Dar Al- Masyrik, Beirut, 1986) at 807.

<sup>8</sup> Nur Hayati & Mal Al Fahnum, "Hak-hak Perempuan menurut Perspektif Al-Qur'an, Marwah, Jurnal Perempuan, Agama dan Jender" (2017) 16, No. 2 188.

the opportunity to participate in the struggle. While the caliph Umar ibn Al-Khatab appointed Ash Syifa '(w640 AD) to handle the market in Medina.<sup>9</sup>

In accordance with the problems mentioned, the research on Gender Mainstreaming and Women's Rights in Islamic Law uses normative legal research.<sup>10</sup> It is hoped that this normative research method will be able to be examined and reviewed the norms and principles of gender equality and women's rights. Research on legal norms and principles is commonly referred to as doctrinal research.<sup>11</sup> This doctrinal research will be reflected in the efforts to inventory positive law, and the efforts to discover the principles and philosophical foundations (dogmas and doctrines) behind it.

As a legal consequence of the existence of the First Precept of God Almighty, the concept of Islamic law is one of the sources of material law which is explored with a value-oriented approach<sup>12</sup> in order to take the values of equality in Islam. Besides, the existence of the Shari'ah concept will also be a framework for the arguments<sup>13</sup> in this study.

## B. Discussion

The domestication of women in Indonesia was once massive in the form of policies that curbed women's freedom during the Soeharto era. Domestication of women is a concept about the subordination of women's position under men. In 1972, the Soeharto government launched the Family Welfare Empowerment Program (PKK) in all rural areas of Indonesia with the jargon of Panca Dharma Wanita, namely: 1) Women as husband's companions, 2) Women as housewives, 3) Women as successors and child educators, 4) Women as additional breadwinners, and 5) Women as citizens and members of society.<sup>14</sup> This program continues to this day, but with dynamics that also adapt to current conditions.

The government has made quite strict regulations regarding the equality of women's rights, these regulations have been in effect both nationally and internationally. But the people are still strong with a patriarchal culture that is believed to be passed down from generation to generation.<sup>15</sup> Even at the level of state administration, there is discrimination and injustice against women. Women are often victims of progress in the fields of economy, education, health, employment, and politics. In a society with a patriarchal culture, men are more involved in holding power, which can automatically reduce the role and existence of women. Even though in this reformation era women have started to emerge and occupy strategic positions, on the other hand, there are still many women who are victims of violence.

In global discourse, gender mainstreaming has begun to be applied in various countries since the 1995 Beijing Conference which prioritizes women's empowerment and gender mainstreaming in government. The existence of the Beijing Conference which raised gender mainstreaming was the result of the development of the two previous streams, namely: women in development, and gender and development.

Women in development (WID) is a strategy to open up access for women to be equal in education, because this stream considers the inability of women to be caused by inequality in socio-cultural access. This implementation, in Indonesia, can be seen with the existence of the

<sup>9</sup> *Ibid* 190.

<sup>10</sup> Soerjono Soekanto, *Pengantar Penelitian Hukum* (Jakarta: UI-Press, 1986) 81.

<sup>11</sup> Zainuddin Ali, *Metode Penelitian Hukum*, 4th ed (Jakarta: Sunar Grafika, 2013) 88.

<sup>12</sup> Barda Nawawi Arief, *Bunga Rampai Kebijakan Hukum Pidana: Perkembangan Penyusunan konsep KUHP Baru* (Jakarta: Kencana Prenadamedia, 2014) 29.

<sup>13</sup> Ali, *supra* note 11 73.

<sup>14</sup> Achidsti, *supra* note 1 2.

<sup>15</sup> Dede Kania, "Hak Asasi Perempuan dalam Peraturan Perundang-undangan di Indonesia" (2015) 12 no 4 Jurnal Konstitusi.

Youth Ministry for Women's Roles in 1978. However, this approach has not been able to reduce the violence experienced by women, public, domestic discrimination, or exploitation of women.

The Gender and Development (GAD) was born around the 1980s. According to this approach, women are victims of development because of the injustice of relations in the public and private spheres. Therefore, strengthening the position of women is increased beyond what has been done in Women in Development. From this approach, the Convention on the Elimination of Discrimination against Women (CEDAW) was born. However, the drawback is that it does not make explicit the barriers to women's glass ceiling in public institutions. The class ceiling is an obstacle for women not being able to occupy significant positions in the realm of government institutions.<sup>16</sup>

CEDAW is a testament to the long history of international women's struggle for gender equality with men. Since the 1979 United Nations conference in Mexico City which discussed Women, where it was agreed that women's rights were equal to men's rights, so that in 1984, CEDAW was agreed internationally which essentially contained an agreement that women have equal rights to men. Juridically, CEDAW is the legal basis for the protection of women's human rights throughout the world, meaning that when a country signs CEDAW and ratifies it in national law, that country is bound to CEDAW.<sup>17</sup> As a consequence and becoming a common need, Indonesia must also harmonize the law, namely ratifying CEDAW and implementing it in national laws and regulations.

A challenge that is quite tough for the Indonesian nation, even though a woman has once led this country, President Megawati Soekarno Putri, but this struggle has not made a significant contribution to elevating women's status. Equality is difficult to achieve, especially in the field of law where the struggle for justice is still far from expectations.<sup>18</sup>

Gender Mainstreaming, which is enacted in the form of a Presidential Instruction, is one of the other laws and regulations. Among the laws and regulations that contain the content of protecting women's human rights are: Law Number 39 of 1999 concerning Human Rights, Law Number 23 of 2004 concerning the Elimination of Domestic Violence, Law Number 12 of 2006 concerning Citizenship, Law Number 21 of 2007 concerning Eradication of the Crime of Trafficking in Persons, and Political Laws (UU No. 2 of 2008 and Law No. 42 of 2008). Presidential Decree No. 181 of 1998 concerning the Establishment of the National Commission on Violence Against Women or Komnas Perempuan which was amended by Presidential Decree No. 65 of 2005.

The reform era has changed the mindset of society about women. especially the Gus Dur era which issued presidential instructions no. 9 of 2000 concerning gender mainstreaming. These instructions carry a huge impact until now. the large number of women occupying strategic posts as decision makers, along with laws and regulations that elevate women's status and protect women. for example Law No. 23 of 2004 concerning the Elimination of Domestic Violence. and at this time Law no. 12 of 2022 concerning Crimes of Sexual Violence. an extraordinary historical leap, has changed the development of women themselves.

In order for this research to be more comprehensive, it would be better to understand the meaning of gender from various sides. What is the meaning of statutory regulations, if they are not understood starting from the exact root of the problem. The struggle for women's rights has gone through a very long history. Therefore, the following definition of gender in terms of biological and social will help the problem of gender inequality so far.

The use of the word gender in different terms from sex, gender relates to social roles in life that can be performed by both men and women. This role has nothing to do with the biological signs

<sup>16</sup> Achidsti, *supra* note 1 80–81.

<sup>17</sup> Rasyaadah & Rahayu, *supra* note 5, 268.

<sup>18</sup> Kania, *supra* note 15 718.

that humans carry from birth. Then the term gender must be separated from sex, which refers more to a person's genetic or physical identity..<sup>19</sup>

From the above understanding, conclusions can be drawn about gender. Gender cannot be separated from society's culture, because gender is shaped by culture. The views of one society will be different from other societies, this is in accordance with the cultural constructs that develop in a society. So that the gender roles between men and women differ from one society to another.

Traditional Javanese society is still thick with patriarchal culture, cooking is a woman's job and is her main task in her role as a housewife. Meanwhile, men are considered inappropriate when it comes to cooking. However, in modern Javanese society, cooking is not only considered a woman's job, but is a shared task that is carried out according to opportunity by adjusting to each other's busyness.

The word Gender comes from English which means sexual role.<sup>20</sup> In the Women's Studies Encyclopedia, it is explained that gender is a cultural concept, trying to make a difference (distinction) in terms of roles, behavior, mentality, and emotional character between men and women who develop in society. Hillary M. Lips in her book *Sex and Gender: an Introduction* defines gender as cultural expectations for women and men, for example, women are known to be gentle, beautiful, emotional, and motherly. While men are known to be strong, rational, manly, and mighty. The characteristics of these traits are traits that can be exchanged, for example there are men who are gentle, and on the contrary there are women who are strong and rational. Changes in these characteristics can occur from time to time or place.<sup>21</sup>

Biologically, the differences between men and women are not interchangeable. Because it is a gift of Allah Almighty to give different biological functions between the two. So the elimination of gender discrimination must not deny a clear biological reality. If the female reproductive function is suppressed, then life on earth will not survive. As a social phenomenon, gender is relative and contextual, the gender known in Bali is different from the gender in Minang, and also different from the Javanese society.

The phenomenon of the difference between men and women is not really a problem for the majority. These differences become problematic when they result in injustice, in which certain sexes gain a superior position over others. In this term, the struggle against gender inequality does not only touch on practical issues, but has entered the realm of philosophy and religion. This study will focus on the study of gender in religion, namely how Islam regulates justice and gender equality in both the domestic and public spheres. Because in this country with the ideology of Pancasila, religion is a source of legal exploration in solving various problems.

Table: Differences in terms of sex and gender

<b>SEX</b>	<b>GENDER</b>
Biological	Social culture
God's gift is universal (anywhere at any time)	Taught through local and temporal community socialization
Can't be changed	Can be changed

<sup>19</sup> M Ainul Yaqin, *Pendidikan Multikultural, Cross Cultural Understanding untuk Demokrasi dan Keadilan* (Yogyakarta: Pilar Media, 2005) 115.

<sup>20</sup> John M Echols & Hasan Shadily, *Kamus Inggris Indonesia* (Jakarta: Gramedia, 1983) 265.

<sup>21</sup> Mansour Faqih, *Analisis Gender dan Transformasi Sosial* (Yogyakarta: Pustaka Pelajar, 1997) 8–9.

Biological roles between men and women are not interchangeable	Social roles can be exchanged according to local social culture agreements
Men = Production Women = Reproduction	Educating children, cooking, cleaning the house, making a career in the public world are done by both men and women

According to Mufidah<sup>22</sup> in many studies it is proven that the standardization of roles and views that are gender biased are sourced from patriarchal and matriarchal cultures which have the potential to cause injustice to both women and men. Patriarchal culture tends to prioritize men over women. On the other hand, matriarchal culture tends to prioritize women over men. The manifestations of gender injustice originating from the culture mentioned above are:<sup>23</sup>

### 1. Stereotypes

Labeling of male or female gender always has a negative connotation so that it often causes problems, for example women/females are weak, timid, fussy, and emotionally unable to take responsibility and so on. While men/males are seen as strong, hard, rude, rational, selfish, and jealous, this kind of labeling will be detrimental to both, because it will have implications for an unequal division of roles and injustice.

### 2. Subordination

An unfair view of one gender based on gender stereotypes causes the placement of one gender in unequal and fair status, roles, and relationships. Usually, men are considered superior to being in a superordinate position, which has a lot of roles in production and decision-making, while women are considered to be in a subordinate position, this position is an obstacle to access to participation, a control function especially related to decision making.

### 3. Marginalization

It is a process of marginalization, either intentionally or unintentionally, of a certain gender from the other gender systematically from gaining access to, and benefiting from in life as a result of stereotypes and subordination. The impact is that women are far behind men in various aspects of life in society, from education, economy, and politics.

### 4. Disproportionate Workload

Coercion and or neglect of one gender to bear the burden of excessive activity caused by standardization of productive-reproductive roles for men and women which then has an impact on an inflexible pattern of division of labor, dichotomous work patterns on the basis of gender, thus, this can trigger gender inequality due to the doubled workload. This is experienced by women in addition to act as housewives whose duties are infinite, especially if she works too, the burden is borne by a woman, not that she can play a double role but she has multiple job duties and responsibilities.

### 5. Gender Based Violence

The gender bias view that places men as superior and women as inferior, has an impact on non-equal hierarchical relationships, this unequal gender relationship is prone to violence where the more powerful party commits violence against the controlled party. In general, gender-based

<sup>22</sup> Mufidah, *Paradigma Gender* (Malang: Bayu Media Publishing, 2003) 51.

<sup>23</sup> Mufidah, *supra* note 22.

violence is more experienced by women than men. This is based on the dominant perception that women are weak creatures lacking independence.<sup>24</sup>

The study of Islamic law regarding to the equality of women and men is widely stated in the Qur'an, the following verse:

“Indeed, Muslim men and women, believing men and women, men and women who are obedient, righteous men and women, patient men and women, humble men and women, men and women who give in charity, men and women who fasts, men and women who keep their honor, men and women who mention (name) Allah a lot, Allah has provided forgiveness and a great reward.” (Qs al-Ahzab, 35).

### 1. Islamic Studies on Woman

Islamic studies that explain the existence of women are the result of Islamic theologian interpretation, most of whom are male theologians. So that, most interpretations in religion tend to be gender biased. This can be seen from the following interpretation/comprehension:<sup>25</sup>

- a. Interpretation/comprehension of woman status from which she was created.

Among Muslims, there is a deep-rooted belief that Eve was created from Adam's rib. Though this story is not from the Qur'an, but from the Bible. Whereas in the Qur'an Surah An-Nisa 'verse 1 explains:

“O mankind, fear your Lord, who created you from the same kind and from it Allah created mates and dispersed from both of them many men and women.”

The above verse shows that the creation of men and women of the same kind. The interpreters as well as the interpretation of the Ministry of Religion of the Republic of Indonesia interpreted that what is meant by the same kind, namely from one person (Adam). Quraish Shihab also explained about curved ribs as in the Hadith narrated by Bukhari, it must be understood in the sense of majazi (figuratively). That is, the hadith warns men to deal with women wisely. Because there are traits, characteristics, and their tendencies that are not the same as men. If men are not aware of this difference, it will lead them to an unnatural attitude. The traits and characters of women that are not the same as men, if it forced to be changed, it will be as fatal as straightening a curved bone.

- b. Interpretation/comprehension of women brings disaster

Satan's temptations are aimed at men and women, as in Surah Al-A'raf Verse 20 “Then the Satan whispered evil thoughts to both of them”. The verse is shown in the form of mutsanna (two people), Adam and Eve. Even in Surah Thaha Verse 120 “Then Satan whispered to him; he said, "O Adam, shall I direct you to the tree of eternity and possession that will not deteriorate?”. This verse is a refutation of the view that it is women (Eve) who are tempted and used by Satan, so that they are expelled from heaven. Therefore, it is not true that women are the source of disaster.

- c. Interpretation/comprehension of violence against women

Husbands are given the right to educate wives who are nusyuz (disobedient, disrespectful to the husband) as in An-Nisa 'Verse 34, through three ways: advising, separating from bed, and hitting. These three ways should performed gradually. Hitting can only be performed when the wife doing nusyuz repeatedly. According to Imam Syafi'i, the husband may only hit without injuring, not on her face or head. Fiqh scholars agree that it is better to avoid hitting, because the Prophet SAW said: "Do not do violence to women". Aisha also said that the Prpohet Muhammad never hit his wife, nor

<sup>24</sup> Mansour Faqih, *supra* note 21.

<sup>25</sup> Huzaemah T Yanggo, *Fiqh Perempuan Kontemporer* (Jakarta: Al-Mawardi Prima, 2001).

his maid. He did not do that, unless Allah's rules are violated by her. Judging from the context, wife beating is allowed if the woman's attitude has gone too far in violating religious rules or disrespecting her husband.

d. Interpretation/comprehension of the right to break the marriage

Divorce is the right of the husband. On this basis, some husbands act arbitrarily against their wives. In the household, the wife is entitled to good treatment from her husband in accordance with the Word of Allah in An-Nisa 'Verse 19 "And live with them with kindness". Appropriate/good treatment is such as polite act done by the husband to the wife, then the wife will be polite to the husband.

In Islam, the wife is also given the right of *khulu'* (divorce suit) after a reconciliation effort through a third party (*hakam*) if the husband does not want to provide a decent living, or if the husband commits rudeness, cheating, and immorality.

e. Interpretation/comprehension of the differences in the urine of boys and girls

In the Hadith of the Prophet Muhammad narrated by Bukhari and Muslim from Ummi Qais (Umairah), that he brought his son who was still small and had not eaten food other than breast milk, then the Messenger of Allah put it in his room and the child urinated. Then the Prophet Muhammad asked for water and sprinkled it on the urine and did not wash it. The hadith narrated by Turmudzi and another Hadith of Hasan are also mentioned, "The urine of a girl is washed, and the urine of a boy is sprinkled with water".

According to al-Mahalli who narrated the Book of Minhaj at-Talibin in Syafi'i Fiqh, it is said that the difference in urinary purification for boys and girls is because boys are carried more than girls. Boys pee less in one place because it is scattered, while girls pee accumulate in one place. So it does not mean that the degree of sanctity of girls is lower than that of boys.

## 2. Women's Rights in Islam

### a. Women's Rights in Education

Sitting in the same class, reading the same book, listening to the same teacher, male and female students receive different education. Although initially female students performed better than male students on every measure of achievement, by the time they graduated from college, and entered society, women were left behind. This gap is caused by gender socialization in schools and the existence of a gender biased hidden curriculum that makes female students less aware of changes in the classroom. Socialization about feminism has been instilled by schools from an early age, women are valued for their gentleness, urbanity, and friendliness, while men are encouraged to think independently, be active, and talk a lot.<sup>26</sup>

The hidden education applied in schools so far is actually very contrary to the teachings of Islam. The hadith of the Prophet PBUH "Seeking knowledge is an obligation for every Muslim". Islam does not differentiate between education for men and women. Even in worship, the Sharia's imposed on women is actually greater, such as knowledge about menstruation, childbirth postpartum, the procedure of covering the aurat or nakedness. This shows that the science should be learnt by the women are more than men.

### b. Women's Rights in the Household

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<sup>26</sup> Zakiyuddin Baidhawi, *Pendidikan Agama Berwawasan Multikultural* (Jakarta: Erlangga, 2007).

Domestic life, the relationship between husband and wife is likened in the Qur'an to *libas* (Arabic) or clothing. Clothing has a deep meaning, it serves as a cover from the heat of the sun and the cold air. This means that husband and wife cover each other's nakedness (*aurat*), functioning as jewelry that provides beauty and comfort to both. So between husband and wife, there is actually no difference in degree, one is higher than the other, because the two are covering each other's shortcomings and being each other's adornment.

In An-Nisa' verse 34, there is term *qawwam* which means leader, protector, person in charge, educator, regulator, and so on according to the interpreters. Furthermore, the advantages of men over women lies in their intellectual and physical superiority. Each of these meanings describes the supremacy of men (husbands) over wives. Muslim feminists try to provide a contemporary interpretation of the term *qawwam* as men who are obliged to provide a living (production function), as well as supporting the reproductive function of the wife, and the wife as the bearer of the reproductive function. The rights of mother as the bearer of reproductive function must be guaranteed by her husband (father) both in the form of a living (economy) as well as her health and safety.<sup>27</sup>

The term *qawwam* appears three times in the Qur'an; An-Nisa': 34, 135 and Al-Maidah: 8. In Surah An-Nisa': 135 and Al-Maidah: 8, it is not interpreted as a leader, but as "standing for Allah", "straight for Allah", "those who always uphold (the truth) for Allah". Why the meaning of *qawwam* in the verses related to women/wives is different, that is to be a "leader"? In the Lisanul Arab dictionary, the term *qawwam* means "men are the guarantors and guardians of your women's affairs". So the meaning of protector, supporter, and person in charge/guarantor (associated with the obligation to provide a living) is more appropriate. Because leadership is not only imposed on men, but leadership is the nature of all believers, both men and women.<sup>28</sup>

c. Women's reproductive rights

The role of women in terms of reproduction is very important in a household, because the household is a determining institution for the existence of future generations. Lies Marcoes Natsir emphasized that the discourse on women's reproductive rights cannot be separated from religious discourse. Meanwhile, so far, *fiqh* has not paid attention to the reproductive role of women.<sup>29</sup>

So far, there is still a confusion of understanding between the rights and obligations of husband and wife. Justice according to Islam is the fulfillment of a balance between rights and obligations. Logically, the more responsibilities, the greater the rights that will be obtained. Many people think that the husband's responsibility or production responsibility in earning a living is heavier than the wives (reproductive burden: pregnancy, childbirth and breastfeeding).<sup>30</sup> The responsibility is equally heavy, therefore it cannot be said to be heavier.

In the Qur'an Surah Al-An'am Verse 132 saying "And each person gets degrees (balanced) with what he does..." Currently, the support for the family economy is not only borne by the husband, many wives are also responsible for supporting the family. Islam does pay attention to the biological nature of women in carrying out their obligations. Such as the fall of the obligation to pray during menstruation and childbirth, but these biological differences do not necessarily distinguish social status, resulting in the loss of equality between women and men. In Islam, family life has a special

<sup>27</sup> Mufidah, hlm. 64

<sup>28</sup> Subhan, *supra* note 6. Hlm, 105.

<sup>29</sup> Mufidah, 65

<sup>30</sup> Subhan, *supra* note 6. hal. 198

philosophy regarding the rights and responsibilities of men and women. Both have the same and equal rights and responsibilities.

d. The rights in public spaces

The people of South Asia and the countries of the Middle East are heavily influenced by the misguided teachings of Islam. Seclusion is still strong enough to limit the movement of women in the public world. Women are required to wear a veil when leaving the house. Even in the house, women are only allowed to occupy certain places, namely, the kitchen. In Indonesia, especially in Java, the term seclusion is also known, but only before the wedding ritual. Women are always associated with femininity which is very thick developed in Southeast Asia.<sup>31</sup>

Women's rights in public spaces in the Qur'an Surah Al-Ahzab Verse 33 are indeed limited. Lafadz *qarna* in the verse is meant to stay at home (house building, not household), she can only to go out due to emergency. Abul A'la Al-Maududi in his book Al-Hijab reads *qirna*, meaning "stay in your family environment calmly and respectfully". So that the wife is allowed to go out that it is not an emergency but needs and necessities. Women have the right to work (activities outside the home) as long as they need it or the job requires it and as long as religious and ethical norms are maintained.<sup>32</sup>

e. Rights in politics

Regarding politics, the Qur'an shows women who are independent of their husbands, giving bai'at (faithful promise) to the Prophet (QS. Al-Mumtahanah: 12). A number of women converted to Islam before their husbands. The phenomenon proves that the political role of women in Islam has existed since the time of the Prophet. Aisyah, the Prophet's wife also took an important role in politics until his involvement in the Jamal war.

### 3. The Role of Woman in Islamic History

Islam came to make fundamental changes to the practice of jahiliyah life that discriminated against women. The Prophet as the last prophet on a macro level attempted to raise human dignity with the mission of rahmatan lil-'alamiin, by defending women's rights which had never been obtained. Therefore, by some Muslim feminists, he is considered the first feminist in Islam. Epistemologically, the process of gender equality formation carried out by the Prophet not only in the domestic sphere, but touches all aspects of community life. Women as mothers, children, wives, neighbors, and as members of society at the same time provide security guarantees for the protection of basic rights that have been granted to them by Allah.

Thus, the Prophet had started a new tradition in the view of women because of the following: First, He carried out a major overhaul of the world view of Arab society, which at that time was still dominated by the perspective of the people of the pharaoh era (QS. Al-Nahl: 58-59) in which the historical background that accompanied the construction of society in it was misogynistic.<sup>33</sup> When the Prophet Muhammad was blessed with a son, the child died when he was still a child. This holds a valuable lesson that the cult of sons did not occur at the era of the Prophet, where a habit that was seen as spectacular, he often carried his daughter (Fatimah) demonstratively in public, which was considered taboo by Arab tradition at that time. What the Prophet saw was a process of forming a discourse that men and women should not be discriminated.

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<sup>31</sup> Ratna Saptari & Brigitte Holzner, *Perempuan Kerja dan Perubahan Sosial* (Jakarta: Pustaka Utama Grafiti, 1997).

<sup>32</sup> Shihab, M Quraish, *Wawasan Al-Qur'an* (Bandung: Mizan, 1996).

<sup>33</sup> Mufidah, hlm. 37

Second, Prophet Muhammad gave an example of good behavior (*mu'asyarah bil-ma'ruf*) towards women throughout his life. He never committed violence against his wives, even when each had a chance to be jealous of each other. In one narration, He said "It is best for you all to treat your wives the best, and I am the best of you for my wives". The status of women at the era of the Prophet can be seen in their involvement in a number of important roles that have historical-monumental meaning, such as in the process of narrating hadith and the formation of early Islamic discourse. A number of opinions circulating among companion biographers say that there is no doubt, the role of women is enormous in this regard. Ibn Ishaq, the author of an early biography, mentioned no less than 50 women as narrators of Hadith. In the Book of *Al-Muwatha'*, there are also quite a few Hadiths narrated by women.

Historical data shows that women have contributed significantly to the writing/bookkeeping of the Qur'an, as is Hafshah bint Umar, who is a memorizer of the Qur'an and is good at reading and writing. Women are also believed to hold vital things related to the Muslim community, for example, women first learned about revelation. They hold a secret in the form of the Prophet's hiding place before his migration to Medina. Before the Prophet's death, several selected women from the Muslim community were asked for their opinion on who should succeed the Prophet.

In the field of education, the Prophet Muhammad gave women the opportunity to study Islam with him on certain days. Aisyah is recorded as a woman who narrated many Hadiths and performed *ijtihad* as many as 200 fatwas independently, and 600 fatwas together with other companions. As a leading Hadith scholar, Aisyah has narrated Hadith in the early period reaching 2,210 Hadith. Imam Bukhari and Imam Muslim, who are known to be very strict, have set standards of hadith authenticity, both of which include 300 Hadiths in their collection of Hadiths.<sup>34</sup>

### C. Conclusion

The concept of gender is not new in Islam, even the Prophet Muhammad was a pioneer as well as a breaker during the downturn of women in his time. The teachings that are brought are very respectful of the existence of women from birth. Why not, in the history of the Prophet's life, there have been many roles of women who took part. Siti Khodijah's role in Islamic *da'wah* has supported the spread of Islam, Siti Aisyah was intelligent in observing and practicing daily life with the Prophet, as well as her courage in leading the Jamal War. Hafshah bint Umar, she was a memorizer of the Qur'an and good at reading and writing who contributed greatly in the compilation of the Qur'an. In fact, it was only Siti Fatimah, the descendants of the Prophet who were allowed by Allah to have descendants. This indicates that the teachings of Islam through the life journey of the Prophet have respected women who were previously only male descendants who were recognized by lineage.

In line with Presidential Instruction No. 9 of 2000 concerning Gender Mainstreaming in Indonesia, has changed the mindset of the Indonesian people about women themselves. There were many big changes after the issuance of this instruction, and even one year later Indonesia was led by a woman, Mrs. Megawati Soekarno Putri. Then, many career women have emerged who occupy strategic posts in this country. Followed by many laws and regulations that provide space for existence and explore women's intelligence. The rules that protect women as victims are also getting stronger in changing the culture of society that has so far underestimated women.

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<sup>34</sup> Lela Ahmad, *Women and Gender in Islam*, Alih Bahasa: Wanita dan Gender dalam Islam (Jakarta: Lentera, 1992).

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