



Women in West Law and Islamic Law View

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Abstrak

Studi tentang perempuan dari waktu ke waktu terus bermunculan. Belakangan ini, dengan wacana feminisme yang menyebar di berbagai belahan dunia, perempuan dan keberadaannya kembali menjadi buah bibir masyarakat kita. Feminisme dengan gagasan kesetaraan, dalam teori, dan praktik, tidaklah seragam. Bahkan saat ini, meski kata kesetaraan sering dibahas dan dipelajari secara mendalam, belum ada rumusan media yang memuaskan, yang umumnya disepakati bersama. Ada perbedaan mendasar antara feminisme Islam dan feminisme Barat. Islam mengakui berbagai hak perempuan dengan catatan terdapat batasan-batasan tertentu untuk menjaga harkat dan martabat perempuan. Barat dalam menjalankan gerakan feminis telah melampaui fitrah perempuan sehingga semua perempuan dan laki-laki harus sederajat, hal ini berdampak kurang baik bagi perempuan juga, perempuan menjadi objek seksualitas yang bebas berpakaian semaunya. Metode penelitian yang digunakan dalam jurnal ini menggunakan studi literatur untuk mengkaji teori atau literatur yang relevan. Barat dan Islam, misalnya, memiliki pemahaman yang berbeda tentang kesetaraan perempuan. Sebagaimana terungkap dalam jurnal ini, perbedaan ini misalnya, merupakan upaya Islam yang lebih berhati-hati dan berpandangan jauh ke depan untuk memperjuangkan gender perempuan di satu sisi tanpa menghapuskan sifat-sifat kewanitaan itu di sisi lainnya. Berbeda halnya dengan pelaksanaan gender di negara barat, kesetaraan dipahami dan dilaksanakan seluas-luasnya sehingga perempuan yang awalnya merasa bahagia dan senang dengan kebebasan yang ditawarkan, pada masa berikutnya terjebak dengan kesetaraan yang mengeksploitasi dan menghilangkan sifat perempuan. Inilah salah satu pesan moral jurnal ini bahwa dalam menyikapi tawaran kebebasan hendaknya menimbang dan menelaah lebih dalam. Umat Islam sendiri dalam melaksanakan pertimbangan tersebut tentunya harus berdasarkan kaidah dan hukum Allah yang tertuang dalam Al Quran dan Sunnah. Beberapa hal yang dibahas dalam jurnal ini antara lain Sumber hukum hak dan kewajiban perempuan dalam hukum Islam dan masyarakat Eropa, posisi perempuan dalam Islam, wacana perbedaan dan persamaan.

Kata kunci: Wanita, Hukum Barat, Hukum Islam

Abstract

Studies of women from time to time continue to emerge. Recently, with the discourse of feminism spreading in various parts of the world, women and their existence have again become the bywords of our society. Feminism with the notion of equality, in theory and practice, is not uniform. Even today, although the word equality is often discussed and studied in depth, there is no satisfactory formulation of the media, which is generally mutually agreed upon. There is a fundamental difference between Islamic feminism and Western feminism. Islam recognizes the various rights of women, provided that there are certain limitations to protect the dignity of women. The West in carrying out the feminist movement has transcended the nature of women so that all women and men must be equal, this has an adverse impact on women as well, women are objects of sexuality who are free to dress at will. The research method used in this journal uses literature studies to examine relevant theories or literature. The West and Islam, for example, have different understandings of women's equality. As revealed in this journal, this difference, for example, is a more careful and far-sighted Islamic effort to fight for female gender on the one hand without eliminating those feminine traits on the other. Unlike the case with the implementation of gender in western countries, equality is understood and implemented as widely as possible so that women who

initially feel happy and happy with the freedom offered, in the next period are trapped with equality that exploits and eliminates women's characteristics. This is one of the moral messages of this journal that in responding to the offer of freedom, we should consider and examine more deeply. Muslims themselves, in carrying out these considerations, of course, must be based on the rules and laws of Allah as stated in the Al Quran and Sunnah. Some things discussed in this journal include sources of legal rights and obligations of women in Islamic law and European society, the position of women in Islam, the discourse of difference and equality.

Keywords: Women, Western Law, Islamic Law

Introduction

Since the time of the Prophet, the problems faced by women have received great attention. Islamic principles that prioritize justice and equality of mankind, provide a strong impetus for women to get their rights outlined by Allah, in addition to the obligations that must be carried out.¹ Every community group, regardless of skin type and understanding, must be borne by the individual and the rights to be enjoyed. That is what constitutes an element of community formation.² However, there are many differences regarding these provisions which are influenced by several factors, such as religion, sects in religion, philosophy, and prevailing customs.

Women in every society are just like men. They both have rights that they can enjoy, so each of them is burdened with obligations. Their difference lies in the presence or absence of similarities. Then what sources determine the obligations and rights of women in Islamic societies and the midst of the realities of Western life? Similarity according to Said Agil Husin Al-Munawwar means that equality contains meaning; equal rights and obligations, equality between groups, and equality of legal protection. Equality of rights and obligations is determined and stipulated by law, equality between groups, and equality of legal protection. Equal rights and obligations are defined and defined by laws, regulations and are maintained by law.³ Liability is an effort or action that is imposed by the state based on laws or regulations. Various studies on women from time to time continue to emerge. Recently, with the proliferation of feminist discourses in various parts of the world, women and their existence have again become the bywords of society. Many aspects concerning the male partner were discussed, and there were also various opinions of experts, philosophers, thinkers, and scholars from the past to the present day, various opinions that often contradict themselves. Starting from those who harassed and marginalized them to those who gave such a big role.⁴

¹ Sri Suhandjati Sukri, *Perempuan Menggugat Kasus Dalam Al-Qur'an Dan Realitas Masa Kini* (Semarang: Pustaka Adnan, 2005). p. 11

² Muhammad Said Ramadhan al-Buthi, *Perempuan: Dalam Pandangan Hukum Barat Dan Islam* (Yogyakarta: Suluh Press, 2005). p. 9

³ Said Agil Husin Al-Munawwar, *Fikih Hubungan Antar Agama* (Jakarta: Ciputat Press, 2003). p. 32

⁴ M. Quraish Shihab, *Perempuan: Dari Cinta Sampai Seks Dari Nikah Mut'ah Sampai Nikah Sunnah Dari Bias Lama Sampai Bias Baru* (Jakarta: Lentera Hati, 2005). p. 30

The feminism movement seeks to criticize the symbolic and ideological forces of a culture or even to dismantle social systems such as class and patriarchy that treat women unfairly. Feminism wants to deconstruct social systems that are detrimental to the position of women. Religion as the source of the social system cannot be separated from the attention of feminists.⁵ The study of feminism and religion has always generated controversy. This is because the study of feminism and religion always involves a set of emotional systems that have a direct effect on human life. On the one hand, the emotion of faith is very strong in maintaining religious traditions that have been passed down from generation to generation.⁶

The discourse of feminism has recently become one of the interesting studies and has become a separate phenomenon among Muslims. The waves of globalization seem to be very influential for the inclusion of the discourse on feminism among Muslims. The idea of "democracy" and "emancipation" of the West that entered the Islamic world "forced" Muslims to reexamine the position of women who have been marginalized for centuries. The concept of "feminism" which flourished in the West in the 19th and 20th centuries has become a model for the liberation of women in many Muslim countries. Starting from the Egyptian intellectuals who studied in Europe, the feminist discourse that was rife in Europe was "adopted" by them after returning from Europe to later develop what is known as "*Tahrir al-Mar'ah*" (women's liberation).⁷ The gender movement has become a global issue in the modern era. The gender movement has influenced many Muslim thinkers who are active in the world.⁸ The gender campaign has also reached the Islamic world. The country of Egypt as a place for the transformation of European science and technology was the gateway to the entry of the campaign for gender and feminism into the Islamic world at the beginning of the 20th century. The change that was immediately visible at that time was the clothes of women and men. Women have started to appear on the streets. Egyptian women no longer just stay at home. They began to play an active role in organizations, the world of education, and even politics.⁹

Feminism with the idea of equality, in theory, and practice, is not uniform. Even today, although the word equality is often discussed and studied in-depth,

⁵ Maggie Humm, *Feminist Criticism* (New York: St. Martin's Press, 1986). p. 4

⁶ Kadarusman, *Agama Relasi Gender Dan Feminisme* (Yogyakarta: Kreasi Wacana Yogyakarta, 2005). p. 1

⁷ Ariana Suryorini, "Menelaah Femenisme Dalam Islam," *The Center for Gender and Child Studies (Pusat Studi Gender Dan Anak) LP2M, Universitas Islam Negeri Walisongo*, Vol 7. No 2 tahun 2012 (n.d.): 22.

⁸ Zainal Abidin, "KONSTRUKSI PEMIKIRAN FEMINISMEDALAM ISLAM(Menggali Makna Kesetaraan Gender Dan Gerakan AntiKekerasan Terhadap Perempuan)," *AKADEMIKA: Jurnal Pemikiran Islam*, Volume 16 No. 2 Tahun 2011 (n.d.): 2.

⁹ Ainur Rofiq, *Hak Gugat Cerai Istri Permasalahan Gender, Hak Gugat Cerai Istri, Poligami Dan Kepemimpinan Domestik, Perbincangan Di Kalangan Ulama* (Surabaya: H.I. Press, 2004). p. 30

there is no satisfactory ideal formulation, which is generally agreed upon.¹⁰ The theory of feminism is a theory of social life and human experience from a woman's perspective. Feminist theory focuses on three things; first, the main object of study is the situation and experiences of women in society; second, discussing women as the main subject in the study process; and these three theories are critical and actively defend women, trying to produce a better world for women in particular and humans in general.¹¹ West and Islam, for example, have their formulations and interpretations regarding women's equality. This difference, for example, can be seen in the more cautious and far-sighted efforts of Islam; striving for women's equality on the one hand without eliminating that womanly nature on the other. In contrast to the West, equality is interpreted as broadly as possible, so that women who initially feel happy with the freedom offered, in turn, are trapped in a form of equality that exploits and eliminates their female nature.

In fact, in this matter, Western society is not bound by laws, either written or unwritten. The West is only subject to pragmatic and materialist legislation.¹² It is different from the Islamic community which in this and other problems, is subject to what has been stipulated by Islamic law. However, it is said that law is still mingled with Western law.¹³ This is still unclear, even the influence of the West and its use as a reference is very weak if it is based on the Islamic legal system and its principles. Based on the description above, what needs to be examined in this paper is how women are in the view of Western and Islamic law, as the main study. How is the Legal Source of Women's Rights and Obligations in Islamic Sharia? What are the sources of the legal rights and obligations of women in European society?

Legal Resources, Rights and Obligations of Women in Islamic Sharia

Talking about women's rights and obligations in Islamic teachings will be easy to understand if you know the picture of the situation of women in the days before the arrival of Islam. From there it will be seen what improvements and what progress has been made by Islam in matters relating to the fate of women in general and about their rights/obligations in particular.¹⁴ Islam has opened the space for universalism regarding basic human rights and the basic rights of

¹⁰ Abdul Mustaqim, *Tafsir Feminis Versus Tafsir Patriarki Telaah Kritis Penafsiran Dekonstruktif Riffat Hasan* (Yogyakarta: Sabda Persada, 2003). p. 16

¹¹ Ida Hidayatul Aliyah, "Femenisme Indonesia Dalam Lintasan Sejarah," *Temali: Jurnal Pembangunan Sosial* Volume 1 Nomor 2 Tahun 2018 (n.d.): 14.

¹² A. Chumaidi Umar, *Wanita Dalam Pandangan Yahudi, Kristen, Marxisme Dan Islam* (Jakarta: Hikmah, 2001). p. 10

¹³ Mohammad Daud Ali, *Hukum Islam: Pengantar Ilmu Hukum Dan Tata Hukum Islam Di Indonesia* (Jakarta: PT Raja Grafindo Persada, 2000). p. 187

¹⁴ Ali Yafie, *Menggagas Fiqih Sosial: Dari Soal Lingkungan Hidup, Asuransi Hingga Ukhuwah* (Bandung: Mizan, 1995). p. 262

women. In his view, Islam has broken down the gates and freed women from the shackles of ignorance.¹⁵

Obligations for women in Islamic law are integrated into one goal, namely "servitude to Allah Ta'ala". Self-worship to Allah is the main essence of Islam and the most obvious nature of nature, the first obligation to believe in the existence of God. The discussion about women's rights and obligations in Islamic teachings starts from the confirmation of the Koran (QS 4: 1, 49:13, 53:45, and 75:39) regarding the nature of women as human beings who are the same as men and to be a male partner. This affirmation is a very basic improvement in terms of removing opinions originating from various kinds of beliefs or religions (before Islam) that negated or doubted the human nature of women (who were considered not human beings). Furthermore, al-Qur'an (QS. 4: 124, 40:40, 16:97) also emphasizes the woman's right to worship and live in religion and enter heaven. This affirmation aims to erase previous opinions originating from various beliefs or religions that believe that religious life (worship) and entering heaven are men's monopoly rights.

The fundamental improvements in the field of belief (akidah) that are laid down by the above Islamic teachings place women in a place that is not less honorable than men, both in human dignity and in religious dignity. And it is from these principles that Islamic teachings recognize the full civil rights of a woman. It is a matter of pride for Muslim women (who know) that their religion has given them the rights that the developed Western world has had. It was only thirteen centuries later that such rights were recognized after their women struggled to demand emancipation. After examining the Islamic ideology regarding humans, especially its insight into women, it is useful to look at women's rights in the Islamic legal system. The human rights of women in Islam can be divided into two parts: first, common rights together with men and, second, special rights which pertain to women only, which are seen as privileges for women.¹⁶ About the rights that women have, they also have a special responsibility to implement. Therefore, it is possible to name the various special responsibilities, as well as the special rights of men.

Part I: General rights

General rights are rights in which the rights of men and women share as human beings. Throughout history, women have been deprived of some of their human rights. Islam created tempers with its cultural and social revolutions and overthrew the ignorance that ruled during this time. According to Nasaruddin Umar, the lives of women during Muhammad's time gradually led to gender

¹⁵ Nazar Naamy, "Hak Asasi Perempuan Dalam Islam," *Jurnal Qawwām* Volume 11 Nomor 2, Desember 2018 (n.d.): 105.

¹⁶ S.M. Khamenei, *Woman's Human Rights: A Comparative Study of Woman's Human Rights in Islam and the Universal Declaration of Human Rights*, Dialihbahasakan. Quito R. Motinggo, *Risalah Hak Asasi Wanita: Studi Komparatif Antara Pandangan Islam Dan Deklarasi Universal HAM* (Jakarta: Al Huda, 74). p. 74

justice. However, after his death, the ideal conditions which had been applied by the Prophet again experienced a setback. This is due to the expanding area of Islamic rule, resulting in acculturation with local culture.¹⁷ According to Nasaruddin Umar, the occurrence of interpretive bias is caused by a gap in understanding with different socio-cultural developments in various regions.¹⁸

As for Islam, the principle that applies is the equality of men and women. Because of their humanity, no difference must exist between them and the "principle of equality" must apply except in matters which have no importance. However, the meaning of being equal and equal in Islam is different from what Western women demand, which demands equality and identity between men and women in all respects. Here it must be seen whether the identity of rights is a necessity for equal rights. The equation is different from identity. Equality means equality and proportionality, while identity means that they must be the same.¹⁹ Women's human rights are part of human rights. Upholding women's human rights is part of upholding human rights. By international commitments in the 1993 UN Declaration, the protection, fulfillment, and respect of women's human rights are the responsibility of all parties, both state institutions (executive, legislative, judiciary) as well as political parties and non-governmental organizations (NGOs).²⁰ Even individual citizens have the responsibility to protect and fulfill women's human rights.

The main rights that are considered to be the same for women as men include: Economic Rights. The economic rights that Islam gives to women, even though the adat of ignorance later enforces it, include ownership rights and inheritance rights.

Ownership Rights. Throughout history, women have not enjoyed the right to own. He is considered as the property of others. In cases where the woman is considered the owner, she cannot enjoy it either. Islam contradicts what was believed at the beginning. Islam recognizes the freedom of women in ownership, ownership, and enjoyment of their wealth as men. The Qur'an states,

"For men, there is a part of what they earn and for women, there is also a part of what they earn." (Surat an-Nisa: 32).²¹

This verse clearly explains that what women earn is their property. Her husband could not consider himself the owner. The Prophet's noble wife, Khadija, was very rich. He does business with his wealth or releases his wealth at will for the sake of Islam.

¹⁷ Hamid laonso dan Muhammad Jamil, *Hukum Islam Alternatif Solusi Terhadap Masalah Fikih Kontemporer* (Jakarta: Restu Ilahi, 2005). p. 79

¹⁸ Ahmad Fudhaili, *Perempuan Di Lembaran Suci: Kritik Atas Hadis-Hadis Sahih* (Yogyakarta: Pilar Religia, 2005). p. 8

¹⁹ Morteza Mutahhari, *The Rights of Women in Islam, Dialihbahasakan. M. Hashem, Wanita Dan Hak-Haknya Dalam Islam* (Bandung: Pustaka Bandung, 1986). p. 92

²⁰ M. Sarbini, "Hak-Hak Wanita Dalam Fiqih Islam," *AL MASHLAHAH JURNAL HUKUM ISLAM DAN PRANATA SOSIAL ISLAM* Volume 7 No 2 Tahun 2018 (n.d.): 611.

²¹ Departemen Agama RI., *Al-Qur'an Dan Terjemahnya* (Semarang: Toha Putra, 1989). p. 122

Inheritance Rights. Inheritance is also part of women's property rights and in most civilizations, especially during the advent of Islam, this right was deprived of women. No one has dared to mention this issue. These customs continued even for centuries after that. For example, in Scandinavia and some European countries, women did not enjoy inheritance rights before the arrival of Christian armies and Islamic influence in Europe. The same thing happened to Hindu, Brahma, Chinese and Barbarian religions that did not give ownership and inheritance rights to women. Likewise, Greece does not inherit unless there is no male. As for Rome, as explained, treating women between respect and also humiliation. Even this opinion of women persists in the many new civil laws that emerged shortly after that period. Islam overthrows this custom and demands rights for women to inherit half the rights of men in most cases. There is a philosophy behind this difference in the amount of inheritance. Allamah Tabataba'i stated that half of the men's share will naturally be spent on maintenance and maintenance (nafaqah) and cover women's expenses, and therefore it will be returned to the women.

To prove this right, the Koran states, For men, there is a right to share the inheritance of the mother-father and relatives, and for women, there is also the right to share the inheritance of the mother and father and their relatives, either a little or a lot according to the part has been established.

Political Rights. Political rights are the most important rights enjoyed by various individuals. This right makes the individual effective in terms of his political, social, and economic gain. It can also determine government regulations, organization, and manners. That way, taking part directly in the flow of the implementation of law and legislation, law and its abolition. It can demand better administration of various affairs and can also prevent betrayal and deviation from leaders and state officials. In Islam, both men and women have main political rights which include the right to vote, the right to associate, fight and defend, and the right to participate in diplomacy and political agreements.²²

Pledge or Voting Right. Fourteen centuries ago, when women were not even considered human, and baby girls were considered a disgrace, Islam declared women's political independence and responsibility. Women are allowed to go their way and determine their destiny. He was permitted to pledge allegiance (baiat) to the Prophet, to establish state and community policy and leadership. Baiat in Islam embodies the individual's right to choose a leader. The Qur'an says, O Prophet, when women who believe come to you to make an oath of allegiance, that they will not associate anything with Allah; Will not steal, will not commit adultery, will not kill their children, will not lie that they fabricate between their hands and feet and will not disobey you in good affairs, so take their oath of loyalty and ask Allah for their forgiveness. Allah is most accommodating, most merciful.

²² S.M. Khamenei, *Woman's Human Rights: A Comparative Studi of Woman's Human Rights in Islam and the Universal Decleration of Human Rights, Dialihbahasakan. Quito R. Motinggo, Risalah Hak Asasi Wanita: Studi Komparatif Antara Pandangan Islam Dan Deklarasi Universal HAM.* p. 77

Rights of Association. The right to attend political and religious gatherings is another proof of women's political independence. Islam views women as equal to men by allowing them to participate in gatherings and congregational prayers, unless they are polluted in that place or when they are menstruating. This is to some extent, women can preach (in front of female congregations), teach and even act as priests for women. The broad and active and courageous participation of Iranian women in political meetings, demonstrations, and congregational prayers before the Islamic Revolution to overthrow the Royal regime and after that, when faced with any accusations that they were locked up or deprived of basic rights, can prove to be political and social independence in Islam.

Fight and Defend. To fight is one type of defending freedom and freedom as well as individual or social sovereignty and is between the political dignity of each individual. Women can participate in defending and attacking to defend their territory, ideology, and themselves. This right can sometimes even become a compulsory duty for him (obliged al-ayni). The active participation of women behind the battlefield is one of the innovations of Islam. Before that, women were not allowed to decide independently regarding their participation in the war. In cases where they participate either participate or are present to please the officers or soldiers, this has nothing to do with this issue.

Bond Rights. Every Muslim has the right under the necessary conditions to offer political asylum in the name of Islamic sharia and the government is obliged to accept his offer of responsibility. In a hadith the Prophet stated, "At least of them can provide security guarantees." This immense and sensitive right, which makes the person offering asylum a kind of representative of the government, has been granted to women since the advent of Islam. In a hadith it is narrated that: If a woman gives asylum on behalf of the government to anyone (legal guarantee without punishment), she can be done and right. When the Muslims conquered Mecca, Umm Hani, Imam Ali's sister, gave asylum to one of the polytheists of Mecca and the Prophet approved Umm Hani's offer. As stated by an Arabic writer. This hadith expresses the high Islamic belief in women and shows their political authority and their noble nature which is not felt anywhere else.

Family Rights. In Islam, women enjoy the right to choose their partners. This shows their freedom, which has been deprived throughout history. This provision and freedom establish the family and the center of the family in society as well. Based on her Islamic rights, a woman can reject anyone she considers not eligible for marriage. No one can force marriage on him. According to Islam a marriage in which the woman is displeased is illegitimate. An exception is the case of girls who marry for the first time as a girl. The pleasure of his father, to some extent, which did not harm him, was a condition. It is a kind of "veto power" for the father. He can use this power to reject a future son-in-law where his daughter's interests could be misused. In the marriage agreement, apart from the pleasure of women, he is always the person proposing to marry and is considered the main player. Man is the one who receives. This reveals the degree of freedom and authority of women.

Court Rights. One of the most important social rights of a human being is the right of his court. This includes the right to complain and refer to court centers to satisfy even against the will of the husband or father. Women have the right to petition the court even against their husband or father, to participate in court hearings, to request implementation of decisions such as qisas (retaliation), punishment, or financial settlement. He can also act as a witness. Regarding the testimony for Munawir Syadzali, women have the right to become witnesses in all kinds of cases, both civil and criminal.²³

Social Rights. There are other social rights besides those discussed earlier. This includes the right to impart makruf Nahi Munkar, participate in social determination and services, work, study the arts or the profession, perform social and religious duties such as Hajj and participate in other political and religious associations. Previously, women were completely deprived of their rights, or only selected women from certain communities (rulers and royal families) enjoyed them. Islam places women equal to men in all social rights and these given stages are when it does not interfere with her particular responsibilities and nature and commitment to her husband and children and does not empty herself from the art of being a female creature.

Part II. Special Rights of Women

Apart from the common rights granted to both men and women (which are commonly called general law), Islam gives women special rights concerning their natural and social characteristics. Meanwhile, Islam also alludes to specific responsibilities based on these rights. In the Koran, together with the special rights of women, they clearly state these duties ... and they (women) have the same rights as them (men) above them. .. "The special rights of women have the same divisions as previously mentioned. Can divide it into financial rights and spiritual rights.

Financial Rights. The Marriage Section One of the rights of women is "part of the marriage" or *sidaq* (dowry). In Islam, the part of marriage is a woman's financial right from the husband she marries. This part of the marriage or the dowry is due either in writing or not. The Qur'an states, and give dowry to the woman (whom you have married) as a voluntary gift. Islam views the gift of a dowry as a gift that a man should give to his wife to show his love and loyalty in the best possible way.

However, in Islam, a woman's dowry is based on the following: Her personality and independence and not on a fee to be paid to her relatives; The dignity and dignity of the dowry are gifts and gifts given to someone who is noble or loved, respected and cherished; Economic independence and control over property rights; The relationship between husband and wife that is above simple matters and where emotions and affection play an important role as long as the woman does not belong to her but her heart is held captive by her husband. In the Qur'an, the term "*nihlah*" (gift) gently indicates this.²⁴

²³ Munawir Sjadzali, *Ijtihad Kemanusiaan* (Jakarta: Paramadina, 1997). p. 4

²⁴ S.M. Khamenei, *Woman's Human Rights: A Comparative Studi of Woman's Human Rights in Islam and the Universal Decleration of Human Rights, Dialihbahasakan. Quito R.*

Allowances (*nafaqah*). Receiving alimony is another special right enjoyed by women and the responsibilities and obligations of the husband. The allowance consists of covering the general costs of women in the family center such as clothing, food, housing, and other necessities to an acceptable level. Apart from the usual responsibility of providing expenses and necessities, Islam has explicitly ordered that men should work hard to earn more and not limit themselves to the gifts they need and must work for more.

Spiritual Rights. Good behavior. Although good character must exist in both men and women, logically this aspect is necessary for family integrity and proper mental and spiritual development for both. Islamic law views this aspect as a special responsibility of men and specifically of women. To avoid a bitter life, a woman does not have to make the fulfillment of this difficult responsibility for her husband. Good behavior towards women is not limited to only wives but parents must also behave well towards their daughters. According to Islam men are obliged to behave appropriately towards their wives even when they decide to divorce.

Right to Welfare and Services. One of the Islamic responsibilities placed on men is to look after the welfare of their wives. Women are not obliged to work at home and serve their families, although naturally, no woman wants to leave her control over household affairs. It seems that women manifest their identity and leadership by working at home and serving their husbands. No man takes away his wife's job. The declaration of the right to not work at home is a development that is inconsistent with the human rights of women. This is a revolutionary and powerful position in history to end the improper tradition of slavery and protect women from becoming servants or slaves.

The Right to Live Together. Another woman's right is that a man should not be lost from being together and if he has more than one wife, he should not leave her alone at night. Living together is one of the purposes of marriage and if a husband vows that to irritate and hurt his wife he will not have sexual relations with her, Islam has obliged the court to either collect cash from him or ask him to divorce his wife. In the case of a husband who is unable to have sex because of a physical illness, the woman has the right to cancel the marriage. According to Islam, the husband cannot even reduce this right just because of the many prayers. Addressing one who leaves sexual relations for the sake of meditation and worship, the Holy Prophet stated, "Your wife has certain rights to be fulfilled by you and worship should not prevent you from fulfilling this right."

Part III: Special Duties of Women

Because rights and responsibilities go hand in hand, as opposed to general rights and special rights of women, women have certain responsibilities towards their husbands, which are the special rights of men. The main duties of women include:

Motinggo, Risalah Hak Asasi Wanita: Studi Komparatif Antara Pandangan Islam Dan Deklarasi Universal HAM. p. 84

Compliance and Compliance. A wife must obey her husband and must obtain prior permission to leave her home or to do anything that may prejudice men's privileges. Taking into account their natural and sexual demands (and the physical and spiritual characteristics of such demands), the right to obey is a natural affair and is based on legal support. An offense in this area by the wife constitutes *nusyuz* (disobedience on the part of the wife) and the man can withhold his financial support as long as the wife does not obey. In some hadiths, a woman is prohibited from avoiding sexual relations with her husband, even if she is afraid of miscarriage, or is looking for other reasons.

Chastity. Chastity is a valuable gem, which is the acquisition of the female personality entrusted by men to women. She protects her husband's property, looks after and takes care of her children, and safeguards his reputation. He builds a solid bar against other men, whose nature is to find a partner for reproduction, keeping their chastity and simplicity; and to save her husband's generation, she protected herself from thieves and bandits of human dignity. A hadith of the Prophet states that women are a "private part" that must be protected. Islam has anticipated all the necessities to maintain the chastity and simplicity of women. In conclusion, Allah imposes the same duties on men and women. This principle of equality in Islamic legislation is numerous. One of them, the hadith narrated by Muslims from Mu'adz, states that the Messenger of Allah said: "The right of Allah to His servants is to be worshiped and not be associated with anything, while the right of servants to Allah if they have worshiped Him and have not partnered Him, then they will not be punished. "

This hadith contains the meaning of rights and obligations. The first is likened to the right of Allah, and the second is the right of the slave. The two of them then branched into various kinds of laws. Some are categorized as obligations, namely the rights of Allah, and some are categorized as rights, namely the rights of the servant himself. If you pay attention to the hadith mentioned above, then the sentence "The right of Allah to His servants ..." it is found that the word "rights" contains generality between men and women. This confirms the existence of the same obligations that are borne by men and women. However, why should there be specific obligations for men and some for women? For example, the obligation to provide support and Friday prayers for men and the obligation to educate children and guard against slander from outside for women?

This difference does not originate from the differences between feminine and masculine, or male and female. This happens because of external factors related to wisdom or benefit, namely something that is the main objective of determining these obligations. Like the Friday prayer which is implied as a means of unifying and strengthening the people. The value of this wisdom will appear if it does not eliminate the more important benefits. If there is a conflict with a benefit that is far more important, then this obligation will be annulled. Regardless of whether those who perform the prayers are men or women. Men may leave Friday prayers when they are sick without having to replace their position because it is their right not to perform Friday prayers. Eliminating the pain that befell him is more important than his position. Likewise, if women are required to attend

Friday prayers, it will raise concerns about their neglect of the benefit of their children, so that Friday prayers are aborted from their obligations. In this case, male or female characteristics have absolutely no influence in determining an obligation.

Changes in customs and cultural cycles prove that if women place themselves as breadwinners in place of men, or vice versa, men replace the sacred task of women's society, namely the education of children and the development of their character, according to the correct method, this sacred task will be neglected because of the inability of the men in that regard. However, what needs to be underlined is that male masculinity does not affect this situation because a person's gender does not lead to the stipulation or use of the law. In conclusion, Allah imposes the same duties on men and women. This principle of equality in Islamic legislation is numerous. One of them, the hadith narrated by Muslims from Mu'adz, states that the Messenger of Allah said: "The right of Allah to His servants is to be worshiped and not be associated with anything, while the right of servants to Allah if they have worshiped Him and have not partnered Him, then they will not be punished. "

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task of women's society, namely the education of children and the development of their character, according to the correct method, this sacred task will be neglected because of the inability of the men in that regard. However, what needs to be underlined is that male masculinity does not affect this situation because a person's gender does not lead to the stipulation or use of the law. Likewise, jihad does not cause someone to leave more important obligations or those that are parallel to their interests. If the obligation to jihad collides with a more important benefit, then the obligation of jihad automatically falls regardless of whether a mujtahid is a man or a woman.

However, if the degree of jihad rises to the point of reaching the need for general mobilization, to expel enemies from Muslim areas, or to crush those who take away the rights of Muslims, then jihad becomes the obligation of everyone in such circumstances. The urgency of jihad outperforms other benefits that lead to the elimination of women's domestic jihad obligations. This discussion also touched on the obligation to breastfeed, which is only borne by women, while men are not burdened. Then the obligation to close the possibility of slander that occurs is also faced by women. If men are burdened with the obligation to breastfeed their children, it will result in their neglect of various more important matters, namely various social and economic responsibilities. Something women are unable to solve.

As for the obligation to cover slander if a woman is slandered by a man the same as the situation for a man when slandered by a woman, this obligation will certainly be addressed to men as is required of women. However, Allah created His servants, male and female according to His will by giving them their characteristics and traits. She knows the pleasure of women towards the advantages and characteristics of men, in contrast to the pleasure of men towards the advantages and characteristics of women. Therefore, the rules are distinguished according to their different character and love. In this case, legal equality applies to the boundaries of equality between men and women, namely the obligation to cover the genitals (*satrul aurat*) between the knees and the navel. This is because the meaning of slander itself in covering the limbs is the same for them and has the same effect.

Legal Resources for the Rights and Duties of Women in the European Community

History records that long before the arrival of Islam, the world had recognized the existence of two major civilizations, namely the Greek civilization and the Roman civilization. In addition, the world also recognizes the existence of two major religions, namely Judaism and Christianity. What is the fate of women, what are their rights and obligations in these civilizations and religions? Greek society, which is known for its high philosophy, does not make the issue of women's rights and obligations a topic of discussion. In their elite circle's women are locked up in palaces, and in those, under women, the fate of women is very sad because they are trafficked in the markets and those who are married are completely under the control of their husbands. Their civil rights are not

recognized at all, among other things, they are not seen as the heirs of their deceased family. Then at the peak of the Greek civilization, women were given such freedom to fulfill men's luxury needs and tastes. At that time, then, free sexual relations were not considered a violation of decency, and places of prostitution became centers of political and literary or artistic activity.

Further in the Roman civilization is that the woman is completely under the control of her father in her position as head of the household. And if the woman is married, then the power is transferred to the husband's hands. Their power includes the authority to sell, expel, persecute and kill. Therefore, his power is his power, not patronage power. This situation continued until the sixth century AD. And the right to own property is not recognized at all for women. Therefore, all the results of the woman's business belonged to the male head of her family and later a small change occurred at the time of Emperor Constantin, who invited limited property rights for women with the note that every transaction must be with the consent of the head of the family. Now the issue of rights and obligations of women in Judaism. In their teachings, a woman's dignity is the same as that of a servant (khadim). There is a group of them who adhere to the teaching that a father has the right to sell his daughter as long as he has not reached maturity. Furthermore, in Judaism, it is stipulated that a daughter does not inherit from her father's inheritance unless she has no brother. Their teachings consider that woman the source of cursing because she was the one who caused Adam to be expelled from heaven.

Furthermore, Christian religious teachings are no better than Jewish teachings in terms of women's rights and obligations. There is their teaching that says that women are weapons of Satan to lead people astray. In the 5th century AD, a council was held to discuss whether a woman has a spirit or not. Finally, there was the conclusion that the woman did not have a holy spirit. Even in the 6th century AD, a meeting was held to discuss whether women are human or non-human and whether women are human beings who were created solely to serve men. Throughout the Middle Ages, the fate of women remained very concerning. Even as late as 1805, British legislation recognized a husband's right to sell his wife.

When there was a revolution in France at the end of the 12th century which succeeded in elevating human dignity, women did not get anything that could change their bad luck. Because French law still categorizes women with the status of minors and crazy people who do not have full civil rights. It was only in 1938 that there were changes to laws that slightly improved the fate of women. However, in the implementation of these recognized civil rights, there are still limitations associated with the need for the consent or permission of the guardian or husband.²⁵ Meanwhile, in England, women's rights have been fought for since the 18th century by Mary Wollstonecraft, who gave birth to the concept of "feminism". Feminism according to Wollstonecraft has the perspective of a lack of education in women, so that they are unable to exercise the rights that are left

²⁵ Budi Hermawan Bangun, "Hak Perempuan Dan Kesetaraan Gender Dalam Perspektif Filsafat Hukum," *Jurnal Pandecta* Volume 15. Nomor 1. Juni 2020 (n.d.): 76.

behind by men. According to Hodgson-Wright, early feminism struggled in three ways. First, through efforts to revise the essence of women's subordination in church teaching. Second, by opposing various attitude manuals that tended to restrain women at that time. Third, by building solidarity between women writers. This solidarity builds self-confidence and financial support among female writers. The intuitive education given to girls in Enlightenment-influenced families, in turn, inspired the importance of women's education as the basis for a more political movement in feminism.²⁶

During its development, the feminism movement gave birth to a new movement called gender. This movement criticized the inequality between men and women in the economy and their positions. Feminism theory analyzes various gender issues, especially those related to other forms of oppression, such as oppression based on class, race or ethnicity, sexuality, age, ability, and so on.²⁷ In the last century, the Western world has granted many rights to women and tends to lead to total emancipation. This Western culture has influenced the world so much that emancipation currents have permeated the whole world even though it differs in the degree of absorption.²⁸ Western countries have different ideologies so that the currents of feminism that develop in each western country are different, the schools or movements are social feminism, radical feminism, liberal feminism, cultural feminism, feminist theology.²⁹ The wave of feminism in the United States began to resonate harder in the era of change with the publication of the book *The Feminine Mystique* written by Betty Friedan in 1963. This book turned out to have a broad impact, especially after Betty Friedan formed a women's organization called the National Organization for Women (NOW). In 1966 the echo then spread to all areas of life. In the field of legislation, Betty Friedan's writings have succeeded in encouraging the issuance of Equal Pay Right (1963) so that women can enjoy better working conditions and earn the same salary as men for the same work, and the Equal Right Act (1964) where women have the rightfully select in all fields.³⁰ Furthermore, people believe that the development of women's rights in the West has gone through four stages and is now on the threshold of the fifth stage.

The first stage is an age of cruelty or semi-civilization. Here, women due to their physical weakness and lack of education and knowledge are "things" and are

²⁶ Ni Komang Arie Suwastini, "Perkembangan Feminisme Barat Dari Abad Kedelapan Belas Hingga Postfeminisme Sebuah Tinjauan Teoritis," *Jurnal Ilmu Sosial Dan Humaniora*. Vol. 2, No. 1, April 2013 (n.d.). 200

²⁷ Hamidah Hanim, "Peranan Wanita Dalam Islam Dan Feminisme Barat," *At-Tarbawi: Jurnal Pendidikan, Sosial Dan Kebudayaan* Volume 12 Nomor 2 Tahun 2020 (n.d.): 144.

²⁸ Amir Syarifuddin, *Meretas Kebekuan Ijtihad Isu-Isu Penting Hukum Islam Kontemporer Di Indonesia* (Jakarta: Ciputat Press, 2002). p. 182

²⁹ Dawam Mahfud, dkk, "Relevansi Pemikiran Feminis Muslim Dengan Feminis Barat," *SAWWA* Volume 11, Nomor 1, Oktober 2015 (n.d.): 103.

³⁰ Siti Dana Panti Retnani, "Feminisme Dalam Perkembangan Aliran Pemikiran Dan Hukum Di Indonesia," *Jurnal Ilmu Hukum* Vol. 3 No. 1 Tahun 2019 (n.d.): 97.

not considered human beings. The second stage was the ancient civilization in which women were seen as human beings but as backward humans, male servants attained slave status. In this stage, man does not only have himself but also his life and death under his authority. Maintain, without relying on fictional historical classifications, that this stage can be reconciled with the severe feudal system of the landlords. Due to this fact, due to the breakdown of this system and the birth of capitalism or the bourgeoisie, another detrimental stage has emerged and the form of women's rights has also changed.

In the third stage, women enter a revolutionary process. She is free to some extent from male and family detainees. With the collapse of the feudal system and certain customs, women felt free from slavery and sometimes entered the social and political arena. The so-called breeze of freedom rubbed against her veiled face. This stage, which was followed by the Renaissance and the French Revolution, and then to the Western Industrial Revolution, was a period of growth and maturity for capitalism and economic and political liberalism. This enchanting and erroneous period does not elevate the status of women any more than the previous stages except simply cover them with a layer of freedom and freedom, and cover the ignorant face of female slavery with a mask of beauty.

Women are drawn from their homes to markets and workspaces. He works on the men's side. He governs his life with the relative economic independence he has gained. Girls go away from the family and large families turn into small families (known as nuclear families). The attractiveness of women and their status and dignity fell into the gears of the economy. Women are installed to serve the economy and sometimes politics. The relationship between men and women becomes free and people gradually make their way to corruption and cruelty. Sexual freedom and corruption are exercised and facilitated by the ruling systems and by visible and hidden forces. The fake allure of cosmetics, clothing, fashion, and household goods surround and captivate him. The foundation of the family begins to break down and becomes instability and sexual freedom replaces its chastity. Pure moral and emotional bonds are replaced by pleasure and gain. At this stage, a woman lost what little respect she had in the aristocratic feudal system! In a realistic view, women are becoming a luxury items that can be traded, loaned, or rented. The difference here is that it is surrounded by deceptive human rights slogans, a propaganda rainbow of liberty and freedom from the ancient traditional obligations of representative of the modern mechanistic lifestyle.

As a result of this liberalism, a woman loses her dignity and self-worth more than what she derives from it. Several laws were made to please and a group of women made progress in the fields of science and technology while maintaining their dignity. Therefore, they fall within the scope of teachers, investors, women human rights leaders, or politicians. However, in general, in essence, she lost her real role and female value, and the foundation of society. He lives as a metamorphosis and neutral being who is neither male nor female and is affixed by the West as "sex three."

The fourth stage is the stage where women find themselves today. This is the stage of revising the unstable status of women and the stage of considering

their real human rights. A stage which several centuries ago called modernity failed and a stage of returning to human nature and its rules. The beginnings of this stage can be seen among intellectuals in the West. The fifth stage is a living Islamic ideology and human rights under the banner that can claim that humans and especially women can attain real and natural status. This issue is inspirational and will be fulfilled in the future despite its dawn and its promising signs. A comparative study of women's rights in the West and within the Islamic community shows that trends are much more complex in the East. Following the Industrial Revolution in Europe, various developments took place in the cultural and social aspects of the European people. Both new and old cultures, however, originate from the same society. Islamic countries, with the attack of European industrial civilization and bourgeois culture through Europeans and ancient Greeks, indigenous and Islamic cultures in Muslim countries and Muslim communities suffered greatly and many of its fruitful achievements were plundered. If we imprison the views and insights in the perception of this slogan, one will undoubtedly feel confident that women in the West are enjoying an abundance of honor. Swim in the ocean of freedom without restraints and enjoy their rights perfectly, without any troubles and worries.

In the world view and Western philosophy, women are more oppressed and more deprived of men than men, both religiously and not. In medieval European society, for example, women were considered the source of disaster and the cause of destruction.³¹ He is considered a human temptation who has caused Adam (as) to come down from heaven to earth.³² Therefore, wherever he goes, he will be considered a source of immorality. In Western culture, women are considered backward, dirty, and weak and a source of misery for a long period. Despite advertisements and pretexts of respecting women and recognizing their rights, there are still ancient thoughts in Western culture today. In summary, the main points of view in the philosophy and ideology of Western religion are as follows:

Women are parasitic creatures. All divine gifts are created for men. Women were created for men and not the other way around. There is no reciprocal relationship here. Women are backward and dirty creatures. Men have dignity while women do not. Women are the source of crime and sin and hatred. Women will not go to heaven. Unfortunately, not only the West but also all cultures and even the philosophies and religions of the peoples of the world believe in this false, oppressive, fictional, and unjust viewpoint. Only Islam presents a different point of view and defends the identity of women. But if they look at the facts that are happening, they suffer because there is no match between facts and slogans. Anyone who has the opportunity to research the nature of Western life will know of this contradiction. Then feel sorry for the situation of those who are victims of

³¹ Samsul Ma'arif, *Fiqih Progresif Menjawab Tantangan Modernitas* (Jakarta: FKKU Press, 2003). p. 159

³² Asma Barlas, *Believing Women in Islam, Dialihbahasakan R. Cecep Lukman Yasin, Cara Al-Qur'an Membebaskan Perempuan* (Jakarta: PT Serambi Ilmu Semesta, 2005). p. 265

the real pride of Western law, not what is expressed in words and slogans. Starting from this view, some ask, what is the source of the obligations imposed on women in the West? The answer reads, that everything comes from a materialistic-oriented government.

At a glance, the tasks they have to carry out appear to be following humanitarian norms and Islamic values. Perhaps, the economy is one of the most important means as a condition for establishing society, defending and strengthening religion. Likewise, it is imperative to create a peaceful society through the partnership of men and women, especially in the economic field. However, the West's mistakes occur when they do not balance. They only make the economy the binding and guardian in establishing a society. Whereas Islamic foundations and religious norms, in general, see the economic element as only part of other elements.

The West has developed a materialistic school. Putting it as the only way to establish prosperity in society. As a result, there has been much neglect of rights in various business fields, to safeguard what is believed to be such an all-important obligation. This in turn gave birth to various forms of abuse and injustice and mostly afflicted women. Women are burdened by this materialistic movement. They are either a virgin in the house of their parents or a wife and mother in the household of their husband and children as long as there is a way for all forms of business, pushing themselves to neglect their female nature. The materialistic cultural philosophy that makes the economy the sole principle of a prosperous society is engraved in the soul of every individual in Western society. Their belief is limitless material happiness. However, it requires a lot of sacrifices. They run for an unhealthy competition to find as much material as possible and for the fulfillment of various needs. Because of this extreme sense of independence, women are immersed in the world of careers, so that family institutions fall apart, divorce cases are increasingly mushrooming. Women then become truly independent; however, the subsequent impact of poverty affects a lot of women's lives. The dual role of women, forcing them to enter any job without choosing. Women become a social group that, according to men's perceptions, rival the workspace that was previously a place for men. The next consequence is that if men and women previously became equal partners, then this competition will bring down each other, and what happens is unfair competition, especially in a capitalist society, women become commodities that are traded.³³

Under this ignorant philosophy of life, women are forced to strengthen themselves to look for material at all sides of the time. Each member of the family looks for away in their own life. They expect to get the things that the crowd craves and loves as much as possible. It is also under the rule of this philosophy that a wife is forced to break the threads that limit their ideals. The responsibility of the husband is seen as a burden in household life. So, they went out to find work to

³³ Nurhasnah Abbas, "Dampak Feminisme Pada Perempuan," *Al-Wardah: Jurnal Kajian Perempuan, Gender Dan Agama* Volume: 14. Nomor : 2 . Edisi Desember 2020 (n.d.): 196.

support themselves. There is no more foundation for Western society than matter. Matter for them is the source of the imposition of all obligations, wherever they are. But what do they get under this philosophy of life?

First, society demands the application of this philosophy to the family, which in turn destroys family values. Even though everyone understands that a society is formed from the threads and fibers of the family. The existence of a family is doubtful if there is no guarantee between members. In other words, there is no responsibility of the husband towards his wife and the responsibility of the parents towards the children. Therefore, the independence of each family member is the main requirement in the Western philosophy of life. Second, the West exploits the femininity of women to destruction by the lure of freedom from educational constraints and childcare responsibilities. Their exploitation of femininity became a disaster. They leave work because they are forced, not to fill their spare time or their desires. As a result, women do not have the opportunity to have jobs that match their skills and do not deviate from their nature.

This problem is related to the violence of life which forces them to give up femininity and honor to fulfill their life's interests. If they are satisfied with a job, it may be because there is no other place of escape. They also have to be willing to do any job that is not necessarily better than their current job. The laws of society require one to familiarize and train oneself with the system and climate around them. The West promotes and campaigns at every opportunity using which possible so that women are obliged to obtain their rights perfectly. Social, economic, political independence and equality with men in all fields, situations, and conditions. Undoubtedly, if this invitation or call that echoes at every opportunity and is reported in print and electronic media will bring joy to women and give an impression in their souls the image of very happy work.

However, some say, aren't the laws regulating women's rights in the West strict without any discriminatory articles? It is true, but the reality faced is different from what is written and it is not impossible if the absence of the realization of this law is another form of deviation. If the articles of the law written in the law book can make women there happy and realize their honor, is it fitting that sexual relations between them and men be the greatest happiness and the deepest impression for their honor? After this, it will reveal the bitter events experienced by women in the West who hide behind the beauty of alluring rules and regulations. The relationship between men and women in Western society occurs in two ways. First, the marriage and usually the priest has the power to determine this marriage bond. Second, the bond that occurs between men and women based on "consensual". Until now, it has not been able to calculate the large number and distribution of the two models above. And that, not including other illicit relationships that are not bound by marital ties.

Conclusion

From the description stated above, the following conclusions can be drawn: The human rights of women in Islam can be divided into two parts: first, common rights together with men and, second, special rights which pertain to women only,

which are seen as privileges for women. About the rights that women have, they also have a special responsibility to implement. Therefore, it is possible to name the various special responsibilities, as well as the special rights of men.

In the last century, the Western world has granted many rights to women and tends to lead to total emancipation. This Western culture has influenced the world so much that emancipation currents have permeated the whole world even though it differs in the degree of absorption. The flow of emancipation is moving so fast, while some countries are not ready to accept it so that in some countries that are not ready, it will have a negative impact. Meanwhile, in the life of a developed nation, which "goes too far" in carrying out this emancipation there is also a negative impact that brings women out of their dignity as women.

Islam recognizes women's rights, for example, the right to inheritance, the right to get an education, the right to get legal protection, and so on, even so, women are still regulated in their daily activities so that they are following Islamic law whose ultimate goal is to protect the dignity of women. that. Meanwhile, the feminist movement and gender equality pioneered by western women reduce the sense of protection for women, for example, women become objects of sexuality, dress freely, and even worse, same-sex marriage is also protected and recognized by the state. This of course greatly reduces the dignity of women in particular and humans in general.

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