

THE ISLAMIC FEMINISM: A Methodological Reconstruction of Contemporary Islamic Era

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Abstract: *Feminism always be a favorable discussion among academics. It is supported by the increasing blending of non-dichotomous intellectual and study area, between the pure-Islamic studies and anti-Islamic studies. The studies were started to be integral since the 19th century marked by the emergence of the various Islamic studies. Muslim scholars have conducted research on women from various perspectives, family-law, and humiliation in the society. The study of women has attracted attention of international Muslim scholar that respond to the methodological reconstruction. It occurred due to the concern of women existence especially for women who require a distinct protection. This paper employed a historical-methodological approach which analysed the views of two Muslim scholars which are well-known with western education and concern about women's issues, namely Khaled Abou el Fadl who reviewed the notes on the fatwa of the middle eastern scholars at the CRLO institutions (council for scientific research and legal opinion) and Ziba Mir Hosseini who studies about the sacredness and profanity of Islamic law, especially the position of women in family law.*

Keywords: feminism, contemporary muslim scholar, Islamic law.

الملخص: إن الحديث عن المساواة بين الجنسين حديث جَدَّاب عند الأكاديميين. هذا الواقع مؤيد بارتقاء الثقافة الأكاديمية وعدم التفريق بين الدراسات الإسلامية المحضة وما في خارجها. بدأ أن اتحدت العلوم في القرن التاسع عشر بظهور أنواع العلوم الإسلامية. ثمّة من العلماء المسلمين قاموا بالدراسات عن النساء من وجهات نظر متعددة بداية من مكانتها في فقه الأحوال

الشخصية، ووصمة عار المجتمع، بل وإن الدراسات عن النساء تثير اهتمام الخبراء المسلمين في المستوى العالمي وتدفعهم إلى إعادة البناء المنهجي. هذه الحالة نوع من اهتمام الخبراء المسلمين تجاه النساء لكونهن في حاجة إلى الرعاية الخاصة وكثرة الحديث عن وجودهن. استخدم هذا المقال المدخل التاريخي المنهجي ويناقش رأي العالمين المسلمين المعاصرين الكائنين في لب التربية الغربية ومهتمين تجاه قضايا النساء (خالد أبو فضل وزبا مر حسين). انتقد خالد الفتاوى التي أصدرها علماء الشرق الأوسط في مؤسسة (*CRLO (council for scientific research and legal opinion)*)، وزيبا قامت بدراسة قدسية الأحكام الإسلامية، خاصة مكانة المرأة في فقه الأحوال الشخصية.

Abstrak: *Feminisme merupakan kajian kontemporer yang selalu hangat dibicarakan di tengah-tengah insan akademik. Hal ini didukung oleh semakin meningkatnya budaya intelektual dan wilayah kajian yang non dikotomis, antara kajian Islam murni dengan pengetahuan di luarnya. Keilmuan mulai bersifat integral sejak abad ke-19 yang ditandai dengan munculnya berbagai keilmuan Islam. Banyak intelektual Islam yang melakukan penelitian tentang perempuan dari berbagai sudut pandangnya, mulai kedudukannya dalam hukum keluarga, stigma masyarakat, bahkan kajian mengenai perempuan menyita perhatian Muslim scholar Internasional yang menciptakan respon Muslim scholar kontemporer untuk melakukan rekonstruksi metodologis. Tindakan ini adalah bentuk kepedulian Muslim scholar terhadap perempuan yang keberadaannya banyak diperbincangkan dan memerlukan perlindungan khusus. Artikel ini dengan menggunakan pendekatan historis-metodologis mengulas pandangan dua intelektual Islam kontemporer yang berjibaku dengan pendidikan Barat, dan konsen terhadap isu-isu perempuan, yaitu Khaled Abou el Fadl yang memberikan catatan terhadap fatwa Muslim scholar Timur Tengah dalam lembaga CRLO (council for scientific research and legal opinion) dan Ziba Mir Hosseini yang melakukan kajian sakralitas dan profanitas hukum Islam, terutama kedudukan perempuan dalam hukum keluarga.*

INTRODUCTION

The development of Islamic law had extraordinary power. It is supported by the development of the contemporary Muslim scholar from various aspects, one of them is Khaled Abou el-Fadl. He was on the list of Islamic Law scholars who contributed to jargon “the Islamic authoritarian towards the authoritative Islam”. The achievements were developed by these scientists, indirectly broke in the root of thinking was lulled over the historical data which was the most powerful in development Islam occurred during the Abbasiyah period which was difficult to repeat.¹ The rejection of historical negligence, Hasan Hanafi mentioned that he would have just affected someone who had an apologetic idea to reduce their productivity level. The apologetic arose due to the understanding as it was. It was only taken the pragmatically.²

In addition to Khaled Abou el-Fadl, there is a Muslim scholar from Iran named Ziba Mir Hosseini. She was concerned with the problem of family law which according to her was a lot of inequality, especially in the context of religious courts and other legal institutions in several Islamic countries such as Iran, Pakistan, Sudan and Saudi Arabia. Ziba Mir Hosseini—as Muslim feminists—are critical of patriarchal regulations or Islamic law and are used as tools for controlling sexuality with women. For her, the legal product is nothing more than regulating how women dress and ignoring the realities of the problems of contemporary society and women’s aspirations.³

This paper discusses two contemporary Muslim scholar influencers’ views of Khaled Abou el Fadl and Ziba Mir Hosseini on women’s issues from the perspective of Islamic law by using a

¹ Moh Sofwan, *Kesetaraan Gender dalam Jalan Ketiga Pemikiran Islam: Mencari Solusi Perdebatan Tradisionalisme dan Liberalisme* (Yogyakarta: IRCISOD, 2006), 275.

² M. Agus Nuryatno, *Islam Teologi Pembebasan dan Kesetaraan Gender, Studi atas Pemikiran Asghar Ali Engineer* (Jakarta: UI Press, 2001), 1. It based on Charles J. Adams, the beginning of *Appologetic* was the truly answer of Christianization in western to the Islam, by this approach, this mission was used to frame the youth Islamic generation to be proud of their religion. Charles J. Adams, ‘Islamic Religious Tradition’, in *The Study of the Middle East: Research and Scholarship in the Humanities and the Social Science* (Toronto: John Wiley & Sons, 1976), 54.

³ Ziba Mir- Hosseini, ‘Muslim Women’s Quest for Equality: Between Islamic Law and Feminism’, *Critical Inquiry*, 32, no. 4 (2006): 634.

historical-methodological approach. It is interesting to be discussed in the midst of the problems of women's discourse in the perspective of Islam, especially what is happening in Indonesia. Two figures who are often considered to have controversial thoughts because of their courage to deconstruct the history of Islamic orthodoxy can be used as a breakthrough for stagnation in the study of Islamic feminism due to an ahistorical and androcentric perspective.

ISLAM AND THE HISTORY OF ORTHODOXY

In Shahrur's terms, the impropriety of a person with the historical data results in the stagnation of thought was termed *musallamatihī al-mawrūthah*, the *kāffah* acceptance was against the data without considering the scientific validation.⁴ Generally, the history had noted that there was an attempt to release the intellectual stagnancy cultivated by several Islamic scholars from the middle to the early 20th century. This effort was manifested in establishing the *mukhtasar*, *syarh* and *ḥasyiah* which substantially lead to the fanaticism, and unconsidered to compare with the Muslim scholar par-excellence in an era which was believed to be the gold era of Islam.⁵

In the analysis of Mukti Ali, Muhammad Iqbal view the decline of Islamic era in the Middle ages from the external side. According to Muhammad Iqbal was the main result of Islamic decline came from the massive rationalist movement as the result in preferring conservative to take refuge under the opinion of the Muslim scholar.⁶ Besides, the jargons was returned to Islamic theory without seeing the interests of the world called for, and after experiencing the internal weakness as the center of Islamic culture was defeated and destroyed by the Mongol army in 1258 Hijriyah. Muhammad Iqbal also claimed that the effort to liquify the rigid of *ijtihād* at that time was only able to be done by reviving the spirit of learning and thinking was appropriated as the needs of eras. Therefore, Iqbal saw the needs to make a system changes from the authority *ijtihād* itself to the collectively. In modern era, the *ijmā'* is the only form to represent the *mazhab*.⁷

⁴ Muhammad Shahrur, *Al-Kitab wa al-Qur'an, Qira'ah Mu'asirah* (Damaskus: al-Ahali, 1990), 29.

⁵ Shahrur, 29.

⁶ Mukti Ali, *Alam Pemikiran Islam di India dan Pakistan* (Bandung: Mizan, 1993), 173–174.

⁷ Ali, 174.

Similarly, Muhammad 'Abed al-Jābirī. He was famous as Islamic intellectual from Morocco with his criticism of the interpretation of the Quran. Al-Jābirī was argued that fanaticism in *mahzab* without any modern discoveries would only make the stagnancy of law, for example, interpreted the Quran based on the period only. Whereas the objectives interpretation according to al-Jābirī was the actual interpretation, both in his time or the period of the reader were termed by *mu'āṣiran lināfsih wa mu'āṣiran lana (li-al qāri')*.⁸

In diminishing the factor of Islamic era, al-Jābirī argued that it was due to the Muslim people's humiliation towards the romanticism of the past. According to him, the analogy combined the *furū'* and *uṣūl* problems was being an urgent factor to result in declining someone in criticism.⁹

Referring to the history of Islamic decline in the past, one of the limitations towards the dynamization of Islam is very visible, this view fits the assumption of the results of *ijtihād* by previous Muslim scholar as doctrines or dogmas, so that the dependence communities at the past time was clearly seemed, as if everyone uncourageous to face the dynamics of the age. The most powerful weapon to deal with modernization is the past Muslim scholar arguments resulting in someone attacked by a multi-dimensional crisis.

Harun Nasution explained that the works of the Muslim scholar at that time which were considered to have the spreading stagnation viruses were the substantial labor aiming to the criticism of Islamic classical philosophers such as al-Farabi, Ibn Sinā and al-Rāzi. The *magnum opus* of al-Ghazali was entitled, *Maqāṣid al-Falāsifah*, *Tahafut al-Falāsifah* and *Ihyā' 'Ulūm al-Dīn* preferring to offer the mystics (*'irfāni*) than the philosophical (*burhāni*) approach. Substantially it has more function than the *'irfāni* approach which cannot be studied theoretically and scientifically. The idea of al-Ghazali was very struck to the Muslim community at the time, so that Muslims were allowed to leave the intellectual and turn to the *sufism*.¹⁰

⁸ M.'Ābed al-Jābirī, *Madkhal Ilā al-Qur'ān al-Karīm* (Beirut: Markaz Dirāsāt al-Wahdah al-'Arābiyyah, 2006), 26.

⁹ Muhammad 'Abed al-Jābirī, *Naqd al-'Aql al-'Arabi, Takwin al-'Aql al-'Arabi* (Beirut: Markaz Dirasat al-'Arabiyyah, 1998), 80–81.

¹⁰ Harun Nasution, *Falsafat dan Mistisisme dalam Islam* (Jakarta: Bulan Bintang, 1985), 43.

The left behind of Muslims in the scientific area is more evident in the political sedimentation project carried out by the Mongol power. Baghdad as the center of science and civilization was destroyed without leaving the slightest inheritance. The classical literatures with the monumental labor of the earlier scholars were burnt by the revenge fire, the history was occurred more or less in 1258. During the crisis of science and knowledge recorded around the 18th century. The efforts to change the model of scientific thought and dynamics began to be seen, this dramatic event began with the awareness of Muhammad Ali Pasya, an Egyptian scientist who felt left behind when Egypt was invaded by the France on the command of Napoleon Bonaparte. The science as a symbol of modern science was so rarely weak even mastered by most Egyptian, it was being the main reason for Pasya to order his people to study in Paris.¹¹

The next recovery efforts of intellectual were continued by reformers in various parts of the world. Turkey, one of the countries was known as reformist figures such as Mustafa Kemal At-Taturk, Jamāl al-Dīn al-Afghāni, S'ad Zaghlul, Khairudin Pasya al-Tūnisī, Abū al-A'lā al-Maududi, Dziyā' Gokalp dan Muḥammad Iqbāl, Fazlur Rahman, Moḥammad Arkoun, Muḥammad 'Imārah, 'Abed al-Jābiri, Fatima Mernissi, Amina Wadud Muḥsin, Louis Lamya al-Farouqi and her partner Ismā'īl al-Farouqī, Ashgar Eli Engineer, Naṣr Hāmid Abū Zayd who left Egypt dramatically, and chose Germany as the place to fight for his brilliant ideas.¹²

In the same way, the controversial problem in modern era is feminism. These studies were often carried out in various activities of Non-Governmental Organizations (LSM) calling for studies of the female in genre. But feminists apparently believed in many styles of various comprehensions which are different from the ideological basis. It is suspected that there are many new-*mahzab* in feminist studies, such as: liberals, socialist, radicalistic and culturalist.

The development of reconstructive and deconstructive thinking of the feminine movement were called as feminists, feminists was rarely known particularly among the public, in spite of the group/movement is the root of gender studies, women's discrimination,

¹¹ Nasution, 43–44.

¹² Harun Nasution, *Pembaharuan dalam Islam, Sejarah Pemikiran dan Gerakan* (Jakarta: Bulan Bintang, 1975), 34.

women's rights, moreover inside of the midst, it movement had been realized in the society activities such as PKK, Dharma Wanita, Karang Taruna, etc.

In Islam, the study of women was originally a taboo, because in the early day of Islam was still influenced by the *Jahiliyah* tradition used to not give award to women. As the example, in the terms of inheritance, the *Jahiliyah* community only shares its with men, for one tribe brothers, and for those who follow the war.¹³ After Islam, their condition was changed. Women's positions and rights began to be taken into account, at the end of modern era, the ideas emerged about the women's movement (feminist) which led many figures from various scientific backgrounds to reconstruct methodologies and ideas considered in anti-establishment.¹⁴

FEMINISM IN ISLAM: Historical-Methodological Approach

The study of feminism in the scientific literature was began with an unpleasant history, because inseparable from the past stories revealed the tradition of *Jahiliyah*. Generally, the pre-Islamic era of Mecca was known as the period *Jahiliyah*, this period had the characteristics of ignorance in terms of morality and extremes known as Barbarian terms. Phillip K. Hitti described the society at that time as a society which did not have a good destiny, did not have Prophet who guarded them and felt free from the scriptures were referred to.¹⁵

Husni al-Khurbuthuli in his work described that there were three legal features used in the time of *Jahiliyah*:¹⁶ *first*, racists. It was in their life at their community *Jahiliyah* manifested in their tendencies towards groups, or excessive groups.

Second, feudalism. In this character of *Jahiliyah* people favored superiority for the nobility and demean the lives of the lower classes of society. At this time, the main holders of the highest authority

¹³ Muhammad Fuad 'Abd al-Baqi, *Al-Mu'jam al-Mufahras li Alfadz al-Qur'an al-Karim* (Beirut: Dār al-Fikr, 1986), 184.

¹⁴ Philip K. Hitti, *History of Arabs from Earliest Times to the Present* (London: The Macmillan Press, 1974), 87.

¹⁵ Hitti, 87.

¹⁶ Ali Husni al-Khurbuthuli, *Ma'a al-'Arab: Muhammad wa al-Qawmiyyah al-'Arabiyyah* (Cairo: al-Mathbū'ah al-Hadītsah, 1959), 5.

were rich people from the nobility. Lapidus explained that pre-Islamic Arab society had a sense of pride that was not based on morality.¹⁷

Third, patriarchs. This character shown that male attitudes were the highlighted attitudes, they assumed that men were a holder of absolute power in terms of relations between men and women. Women get discriminatory attitudes and the existence of women was considered a embodiment of sin; women were not entitled to inheritance but they could be inherited.

Those sad situations gradually became a happy news when Muhammad Saw introducing Islam and giving enlightenment on earth. Labeling women as number two (the second sex), marginalization, stereotypes, and subordination finally faded with the doctrines they carried. Unpleasant acts against women such as violence, multi-burden had spread among the patriarchal community since pre-Islamic times.¹⁸

Islam finally brought enlightenment and began to change the negative things to be positive thing, put forward the humanity side, and slowly Islam began to shift the frame of thought in changing the structure of both culture and structure.¹⁹ The appreciation of women and the elimination of all the forms of discrimination against women was a priority scheduled of Islam. The slavery was abolished, women who were previously equated with goods could as same as men and even receive inheritance now, the doctrines on men to respect the efforts of women to take care of the household. Even women are not only considered to have reproductive benefits, but their work and thinking are valued and appreciated.²⁰

The arrival of Muhammad as an enlightenment was proved to be in tandem with the strictness of Islam, the history recorded that the distance of time with the apostles greatly influenced the flow and quality of thought, which was sometimes different from the Prophet.²¹ During the era of *Khalifa* Umar, the prohibition of women as priest's despite of the prevalence of male slaves, even though the

¹⁷ Ira M. Lapidus, *A History of Islamic Societies* (Cambridge: Cambridge University Press, 1995), 24.

¹⁸ Mansour Fakhri, *Analisis Gender dan Transformasi Sosial* (Yogyakarta: Pustaka Pelajar, 1999), 12–23.

¹⁹ QS. Al-Hujra, (49): 13’.

²⁰ Fakhri, *Analisis Gender dan Transformasi Sosial*, 12–23.

²¹ Lapidus, *A History of Islamic Societies*, 25.

Prophet had ordered Ummu Waraqaḥ to become a male slave priest.²² Women's boundaries and rights were increasingly felt when Umar announces the rules to ban women from going out on their own, even for worship at mosques. Asghar Ali Engineer gave an idea of the rational reason he received about the event, rooted patriarchal culture inherited from ignorance, understanding verses and *hadith* that were gender biased, partisanship interpretation by looking at sex, and Islamic stories of *israiliyāt* became the main cause of emergence of obstruction gender.²³

Methodologically, the study of feminism in Islam underwent a period of *fatrah* from the Prophet era until the several next centuries, precisely the 19th century.²⁴ Rifa'ah Badawī al-Taḥṭawi state that the Muslims desired for progressing must be balanced with more effort to study about Western theories, the good progress during the 16th century was based on the free of thinking (*ḥuriyyat al-fikr*). In fact, he explained that the decline of Muslims had been occurred since the 12th century in Baghdad and the 15th century in Spain was marked by the collapse of the Islamic scientific tradition (*ijtihād*) was the cause of the stagnation of Muslim horizons of thinking.²⁵

The study of feminism in Islam was reestablished by the Egyptian scholars who were struggled enthusiastically for feminism. This study coincided while the hanging of four Egyptian residents who clashed with the British forces in 1906. It was commonly called as the *Dinshawai*, this incident was exactly burned the spirit of Egyptian scientists continuously conducted studies on nationalism and feminism.²⁶

²² Abu Syuqqah, *Jati Diri Wanita Menurut al-Quran dan Hadis*, trans. Mujiyono (Bandung: al-Bayan, 1993), 138.

²³ Asghar Ali Engineer, *The Qur'an, Women and Modern Society* (New Delhi: Sterling Publisher, 1999), 9.

²⁴ Engineer, 9–10.

²⁵ The feminists in Europe is surely established in 1963, it was proved by the publishing of Betty Friedan's book, an American scientist who asked the position of women which was able to be added the religion texts. It was entitled *The Feminine Mystique* explained many things about unfair thing in gender which was limited with the *exegesis text*. A. Baba Beg, *First Enciclopedia of Islam* (Leiden: B. J Bull, 1987), 1155.

²⁶ Qasim Amin, *Sejarah Penindasan Perempuan Menggugat Islam Laki-laki, Menggugat Perempuan Baru* (Yogyakarta: IRCISOD, 2003), 85–109.

Qasim Amin-one of the Egyptian intellectual-had created an *opus* entitled *Tarbiyāt al-Mar’ah wa al-Hijāb* dan *Mar’ah al-Muslimah*. His work was suspected of his anxiety about the work of French intellectual D’Haorcourt who was illustrating the marginalization of the Egyptian women, the compared method of distinguishing western women and eastern women were the issue of freedom which caused by the importance of education and *aurat*.²⁷ According to him, women must have higher education to be able to educate their generation, the *hijab* which was commonly practiced by the Egyptians to cover their entire body. It was corresponded to Qasim that the usual habit of restraining women at home. He tried to conciliate the religion and social, this assumption arose when he was reading of the habits of Europeans both men and women joined and contributed to improve the quality of the Nation and State.²⁸ Their struggle was continued by the contemporary Muslim intellectuals, from Egypt carried by Nabawiyya Mūsā, Malak Hifni Nashif Bek, Hudā Sya’rawī, Shafiyah Zhaghloul and Sa’d Zaghloul, May Ziyadā from Lebanon, Ashghar Ali Engineer from India, Shahrur, Riffat Hasan, Fatima Mernissi, Amina Wadud Muhsin and others.

FORMATION OF CONTEMPORARY ISLAMIC METHODOLOGY

The requirement for an increasing number of scientists. have become a serious task for Muslim scholar. the most important contemporary to reformulate the new discoveries to answer the challenges era. The lagging of Muslims in understanding the text of the Quran from the text and context is no longer a reason, it caused of the consideration of contemporary Muslim scholar level are no longer to do in re-actualization the exist theories, but already in the area of reconstruction and deconstruction of methodologies that have been considered previously established. *Fiqh* as a legal product by most contemporary Muslim scholar is seriously studied again but is not aimed at calling the demands of complex era. This approach is much pleased by contemporary Muslim intellectual groups especially those experienced in Western education, such as Muḥammad

²⁷ Amin, 109.

²⁸ Harun Nasution, *Pembaharuan dalam Islam* (Jakarta: Bulan Bintang, 1992), 59.

Arkoun, Fazlur Rahman, Muḥammad Shahrūr, Saʿīd al-ʿAshmawī and others. But in this discussion, the author wants to explain the style of deconstruction of some of the Muslim scholar mentioned, especially those who have a concept of feminism.

The explanation of the deconstruction style of contemporary Muslim scholar, the writer would start with the offer of Khaled Abou el-Fadl, a contemporary scholar was born in Kuwait 54 years ago (1963). Khaled's scientific journey began in Kuwait. On his birth ground, Khaled was already interested in pursuing Islamic studies. His interest in Islamic studies he got from his life experience living in the area of puritanism.²⁹ Luckily, Khaled had a piety Muslim father and had progressive thinking. His interest in the progressive style of Islamic thought was realized by continuing his education at Yale University in the USA. After completing his education in the USA, his academic anxiety had not been down, to treat his curiosity in the academic field, Khaled continued his studies at the University of Pennsylvania in 1986 and completed in 1989.³⁰ His education had been increasingly shaped as his character as a lover of studies in the field of Islamic Studies, therefore in 1999 he continued his scientific studies at Princeton University with a concentration of Islamic studies and a concentration of law at UCLA (University of California Los Angeles) at the same time, leading to become a professor of Islamic law at UCLA.³¹

Khaled Abou el-Fadl in his deconstructive thinking was famous for *ijtihād* from authoritarian *fiqh* to authoritative *fiqh*.³² The supporting factor of his thinking was his critical study of the *fatwas* of middle eastern Muslim scholar framed in the CRLO (Council for Scientific Research and Legal Opinion) which according to Khaled as gender biased.³³ Even though Khaled admitted lacked mastery of feminist studies, but as a Muslim law scientist who loved studies

²⁹ Webmaster@law.ucla.edu or for more detailed about who Khalid really is at least can be through his e-mail: abouel@law.ucla.edu.

³⁰ Sumaryono, *Hermeneutik: Sebuah Metode Filsafat* (Yogyakarta: Kanisius, 1999), 31.

³¹ Sumaryono, 32.*Ibid.*

³² Khalid Abou el Fadl, *Atas Nama Tuhan dari Fiqih Otoriter ke Fiqih Otoritatif*, trans. Cecep Lukman Yasin (Jakarta: PT. Serambi Ilmu Semesta, 2004), xi.

³³ Rumadi and Wiwit Rizka Fathurahman, *Perempuan dalam Relasi Agama dan Negara* (Jakarta: Komnas Perempuan, 2010), 84.

around Islamic Studies, Khaled considered that feminists had to be studied in depth, because many elements were discussing women's behaviour, regarding this he stated:³⁴

"I have chosen these responses in particular because, it more than any others, they demonstrate the misuse and abuse of the god's authority in order to impose a suffocating patriarchy upon Muslim society. Furthermore, I think that gender which is related to the issues show that some of the most difficult and complicated challenges to contemporary Islamic law, and it is imperatively that the Muslim scholar starts to develop coherent and critical ways of dealing with these issues. However, this book does not belong to the genre of gender studies of feminist jurisprudence. I don't have the competence to engage these discourses. In addition, my primary aim in this work is to develop a conceptual frame work for analysing Islamic law determine according to their own frame of reference. In the Islamic context, gender studies and feminist jurisprudence raise controversies that I am not eager to engage. I leave it to get more resolute of hearts."

Khaled explained that he chose the study of feminist because the complexity of women had arisen so that many challenges had to be responded to and given solutions to contemporary Islamic law, and this required Muslim scientists to develop a methodology by providing critical ways to the cases above.³⁵

According to Amin Abdullah, initiative Khaled responding to the *fatwa* of gender-biased Muslim scholar with hermeneutist not the same with Fazlur Rahman, Nasr Hamid and Farid Esack's theories.

³⁴ The meaning of Khaded argument can be translated into: I choose this reaction specially (give side the other) because they show the abuse of the God authority to force the patriarchy capacity to the Muslim society. The next, I think that the relation of issues gender on this era become so complicated and a hard challenge for Contemporary Islamic law thinker specialist and this is must need a Muslim start to develop the coherent and critical ways which is directly face with the issues. But this book is not widely explained about the feminism ideology from the study gender or jurisprudence feminism. I am not competence to include in this discourse. In addition, the main aim in this opportunity is to reinstate the form of conceptual to analyze the Islamic law that is appropriate from the reference of theirs. In the context of Islam, gender study and jurisprudence of feminism emergence some controversies that I don't desire to involve. I left in willing, read more in Khaled Abou el Fadl, *Speaking in God's Name* (England: One world Oxford, 2003), 55–56.

³⁵ el Fadl, 56.

If the performance of the hermeneutic approach generally involves texts, authors and readers, Khaled tends to use a critical, linguistic and social approach, which combines *Ushul Fiqh* with humanities studies.³⁶

Khaled's response to the *fatwa* of the CRLO Muslim scholar is highly expected by activists of Islamic legal scholarship, because in his approach, Khaled refreshed the study of Islamic law as an epistemology and method, which is far from authoritarian Islamic values and despotism (arbitrary). In his invention, Khaled desires to sharpen the role of mind, tendency, the concept of good and bad which has previously been conceived by classical Muslim scholar.³⁷

This effort is influenced by the reality of Islamic law which according to Khaled is not in accordance with Islamic ideals. Khaled explained that Islamic law is a representation of Islamic law, but Islamic law has been attacked by the colonial science of radicals, whereas modernity continues to develop. This condition is described by Khaled due to four things of influence; exclusiveness, patriarchy, traditional-agrarian, and Islamic of Arabic locality or Islam Local Arabic is the main cause of the decline of methodology in Islam.³⁸

Khaled's idea of authoritarianism-epistemological which placed in the body of Islamic legal discourse without regard to the problem of feminism. He saw the CRLO *fatwa* which at that time was represented by Ibn Baz, Muhammad Fauzan bin Fauzan, al-Tutsaimin and Ibn Jibrin were a form of *fiqh* authoritarianism. *Fatwa* was concerning the prohibition of women from visiting her husband's grave, the prohibition of women from preening with the aim of deceiving reality (wearing high heels, wearing a bra, traveling without *mahram*) etc. according to Khaled was a hasty decision, because the analysis was

³⁶ Amin Abdullah, 'Islam dan Tantangan Modernitas' (21 July 2005).

³⁷ Abdullah.

³⁸ Islamic Exclusives appear in the different of behavior when Muslim sided with non-Muslim, like a punishment for apostate, kind of patriarchy covers in face of *fiqh* dominantly because of the authors were man, agrarian-traditional character appears in explanation about *Zakawi* things, Muslim scholars keep using their thought as business in resulting of agriculture with the simple mind, and the last is local Arabian character, in this matter Khaled saw all of the formulation of *fiqh* thought that created since 2 Hijriyah is the tendencies toward Local Arabian. This was proved by the standard that was formed in determining *halal-haram* by using Arab assessment, like determining the cleanliness (*thayyib*) and dirty (*khabits*) of the food. Rumadi and Fathurahman, *Perempuan dalam Relasi Agama dan Negara*, 85–86.

only comparative, which distinguished between men and women, so that had on *mufasssir* results in arbitrary interpretation. Khaled also feeling disturbed by the normative assumption of the *fatwa*, because it was deemed not to consider the aesthetic value and comfort.³⁹

In addition to Khaled, the Islamic leader who studied western education and deconstructed feminist studies were Ziba Mir Hosseini, an Iranian woman who decided to be a gender researcher and in some cases about development. Ziba was keen in research on gender in the Iranian and Moroccan regions, although he stayed in London. Iran became the object of study because since the revolution in 1979, Ziba found many imbalances of Islamic law, especially concerning family law, which much in the Religious Courts, legal aid institutions and other legal institutions. According to her, many women disharmony in marriage, even women's efforts that struggle to find justice in the Religious Courts environment, and were finally recorded clearly in the documentary film entitled *Divorce Iranian Style*. It tells how Iranian women protected each other when domestic violence occurs, and those were resolved in shelters, children who were secluded and run away from the threat of violent family acts and abusive behavior.⁴⁰

In the contestation of Islamic law, Ziba's concerned lies in the lame stigma, views which justify that *fiqh* was the area of male studies, so that women's authority became marginal. For her reconstruction of the study of women, Ziba learned from the political experience of his country, Iran, which gave birth to assumptions about limiting women's rights. *Fiqh* had a contradictory to impress, because the assumption of studying feminism was not integrated with other scholars even eliminated the value of Islamic and un-contextualized *maqasids*.⁴¹

In addition, Ziba saw the confusion thing among the Iranian people who were unable to distinguish the sacred sharia zone from secular *fiqh*. Sacred in the sense that Muslims believed that the source came from holy revelation and its main purpose was to map the path to God. However, Islamic law also contained secular aspects temporally, where Islamic law was the product of interpretations of

³⁹ Rumadi and Fathurahman, 86.

⁴⁰ Rumadi, *Perkawinan dalam Kontroversi Dua Madzhab: Kajian Hukum Keluarga dalam Islam* (Jakarta: Komnas Perempuan, 2010), 126–127.

⁴¹ Rumadi, 127.

jurists for centuries. According to Ziba, law was formed on a well-developed legal theory and contained a varied arrangement of positive laws. Thus, on the one hand Islamic law had transcendental value, but its main direction was to shape the temporal human reality.⁴²

According to Ziba, in Iran the boundaries of sacred and secondaries areas are vague, especially concerning family law. Islamic family law contains religious ideas and moral values, and in itself contains a clear model of family and gender relations. This model is then claimed by some groups as sacred and absolute commands.⁴³

Upon this fact, Ziba carried out a reconstruction of critical thinking, testing the validity of contemporary gender theories. In contrast to the opinion of the majority of the Iranian government which was a-historical and endocentric, it did not link to the feminist studies with other scholarship. Ziba actually links feminist studies with Islamic law, according to his family as an example of social life is often misunderstood by some people who do not see the sacredness in it. Marriage in fiqh is often interpreted as worldly and temporal (secular) affairs so that it is often underestimated. The contract in marriage is even categorized in mu'amalah matters which are analogous to buying and selling, in which there is an offer that is materialized in the *ijab*, and the receipt of goods in *qabul*. The emergence of *mahar* (dowry) as a medium of exchange for female *bidh'* (male genitals) from men to women, the prohibition of women's rejection of husband's sexual invitation because of full acceptance of dowry by women is also an example of Islamic legal thought that needs to be reformulated.⁴⁴

⁴² Although the sacred Islamic law had been acknowledged widely, but that not much study about interactions between law and actual practice, about manner how Muslim accepted and related to the law prohibitions with the truth reason and the God's eternity. Although studies covered Islamic law from the perspective legal-formal, or the custom practiced studies from the perspective of anthropology was widely enough, but in that study was rarely tried to untangle how far the process of acceptance the religious Muslim translated to their daily actualization practiced. Rumadi, 127.

⁴³ Hosseini, *Perkawinan dalam Kontroversi Dua Madzhab: Kajian Hukum Keluarga dalam Islam* (Jakarta: ICIP, 2005), 50–51.

⁴⁴ Rumadi, *Perkawinan dalam Kontroversi Dua Madzhab: Kajian Hukum Keluarga dalam Islam*, 127.; see Hosseini, 'Muslim Women's Quest for Equality: Between Islamic Law and Feminism', 629–645.

In this case, Ziba gave a warn to the scientific contestation of Islamic law, that although men had monopolized and controlled the area of fiqh studies for their power, which was called as Muslim scholar, women would always criticize and develop knowledge related to women, through socio-political space which is wide open to form a line of solidarity in social transformation with a mission to change the face of the state.

CONCLUSION

The emergence of new laws in Islam has led to an urgent need for the methodology used to acquaint with the law. The problem of feminism includes the methodology must be reconstructed because it is necessary to generate understanding the text in order to produce formal and substantive justice laws. Khaled Abou el Fadl is one of the Muslim scholar who applied a new method of interpreting the meaning of feminism. Departing from the criticism addressing to the *muftis* in Saudi Arabia, he issued a theory called as authoritarian Islamic law. The goal is to change authoritarian *fiqh* to authoritative *fiqh*. His opinion was supported by a female activist named Ziba Mir Hosseini. Ziba described Iran as being vague in making sacred and secular conclusions, especially concerning family law. Islamic family law covers religious ideas, moral values, as well as a clear model of family relations, gender, and feminism which require to be examined by using a new methodology to solve a pleasing feminist problem.

REFERENCES

- Abdullah, Amin. 'Islam dan Tantangan Modernitas'. presented at the Forum of the Scholar Festival of Khaled Abou El Fadl, Perhimpunan Pengembangan Pesantren dan Masyarakat (P3M), Gedung PBNU, Jakarta Pusat, 21 July 2005.
- Adams, Charles J. 'Islamic Religious Tradition'. In *The Study of the Middle East: Research and Scholarship in the Humanities and the Social Science*. Toronto: John Wiley & Sons, 1976.
- Ali, Mukti. *Alam Pemikiran Islam di India dan Pakistan*. Bandung: Mizan, 1993.

- Amin, Qasim. *Sejarah Penindasan Perempuan Menggugat Islam Laki-laki, Menggugat Perempuan Baru*. Yogyakarta: IRCISOD, 2003.
- Baqi, Muhammad Fuad ‘Abd al-. *Al-Mu’jam al-Mufahras li Alfadz al-Qur’an al-Karim*. Beirut: Dār al-Fikr, 1986.
- Beg, A. Baba. *First Enciclopedia of Islam*. Leiden: B. J Bull, 1987.
- Engineer, Asghar Ali. *The Qur’an, Women and Modern Society*. New Delhi: Sterling Publisher, 1999.
- Fadl, Khaled Abou el. *Speaking in God’s Name*. England: One world Oxford, 2003.
- Fadl, Khalid Abou el. *Atas Nama Tuhan dari Fiqih Otoriter ke Fiqih Otoritatif*. Translated by Cecep Lukman Yasin. Jakarta: PT. Serambi Ilmu Semesta, 2004.
- Fakih, Mansour. *Analisis Gender dan Transformasi Sosial*. Yogyakarta: Pustaka Pelajar, 1999.
- Hitti, Philip K. *History of Arabs from Earliest Times to the Present*. London: The Macmillan Press, 1974.
- Hosseini. *Perkawinan dalam Kontroversi Dua Madzhab: Kajian Hukum Keluarga Dalam Islam*. Jakarta: ICIP, 2005.
- Hosseini, Ziba Mir-. ‘Muslim Women’s Quest for Equality: Between Islamic Law and Feminism’. *Critical Inquiry* 32, no. 4 (2006).
- Jābirī, M.‘Ābed al-. *Madkhal Ilā al-Qur’ān al-Karīm*. Beirut: Markaz Dirāsāt al-Waḥdah al-‘Arābiyyah, 2006.
- Jābirī, Muhammad ‘Abd al-. *Naqd Al-‘Aql al-‘Arabi, Takwin al-‘Aql al-‘Arabi*. Beirut: Markaz Dirasat al-‘Arabiyah, 1998.
- Khurbuthuli, Ali Husni al-. *Ma’a al-‘Arab: Muhammad wa al-Qawmiyyah al-‘Arabiyyah*. Cairo: al-Mathbū’ah al-Hadītsah, 1959.
- Lapidus, Ira M. *A History of Islamic Societies*. Cambridge: Cambridge University Press, 1995.
- Nasution, Harun. *Falsafat Dan Mistisisme dalam Islam*. Jakarta: Bulan Bintang, 1985.

- . *Pembaharuan dalam Islam*. Jakarta: Bulan Bintang, 1992.
- . *Pembaharuan dalam Islam, Sejarah Pemikiran dan Gerakan*. Jakarta: Bulan Bintang, 1975.
- Nuryatno, M. Agus. *Islam Teologi Pembebasan dan Kesetaraan Gender, Studi atas Pemikiran Asghar Ali Engineer*. Jakarta: UI Press, 2001.
- Rumadi. *Perkawinan dalam Kontroversi Dua Madzhab: Kajian Hukum Keluarga dalam Islam*. Jakarta: Komnas Perempuan, 2010.
- Rumadi, and Wiwit Rizka Fathurahman. *Perempuan dalam Relasi Agama dan Negara*. Jakarta: Komnas Perempuan, 2010.
- Shahrur, Muhammad. *Al-Kitab Wa al-Qur'an, Qira'ah Mu'asirah*. Damaskus: al-Ahali, 1990.
- Sofwan, Moh. *Kesetaraan Gender dalam Jalan Ketiga Pemikiran Islam: Mencari Solusi Perdebatan Tradisionalisme dan Liberalisme*. Yogyakarta: IRCISOD, 2006.
- Sumaryono. *Hermeneutik: Sebuah Metode Filsafat*. Yogyakarta: Kanisius, 1999.
- Syuqqah, Abu. *Jati Diri Wanita Menurut al-Quran Dan Hadis*. Translated by Mujiyono. Bandung: al-Bayan, 1993.