



GENDER CONSTRUCTION IN THE PERSPECTIVE OF LIVING FIQH IN INDONESIA

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Abstract: This article aims to comprehensively explain the uniqueness of the emergence of gender issues in Indonesia and contribute to the development of Islamic law in terms of the discovery of Islamic legal products, and introduce local culture underlying the forming of laws depending on place and era, including gender issues, where western and eastern cultures certainly differ in various sides. Living fiqh on gender is a term for a concept of *fiqh* responding to women's issues through interpretation, taking into account Indonesia's local culture. *Living fiqh* is a term for strengthening Islamic legal products prioritizing the principle of locality. This study used a qualitative method to respond to the concept of *living fiqh* in Indonesia. The first step in this research was to explore the genealogy of gender issues in Indonesia, compared to the history of gender issues in the west. After that, the differences in the causes of gender issues in Indonesia and the west were classified. Finally, the products of *fiqh* on gender in Indonesian *madzhab* were found. In this article, the author argues that the products of *fiqh* on gender in Indonesia have relations with Indonesian culture. Besides, *fiqh* on gender in Indonesia emerged from the women activists' anxiety against discrimination in marriage and rules. *Fiqh* on Indonesian *madzhab* contributes to minimizing gender inequality emerging massively after strengthening colonialism and the influence of transnational Islam changing the interpretation of the scripture and *madzhab* fanaticism.

Artikel ini bertujuan untuk menjelaskan keunikan munculnya isu gender di Indonesia dan memberikan kontribusi bagi pengembangan hukum Islam dalam hal penemuan produk hukum Islam di Indonesia (KHI), juga mengenalkan budaya lokal yang turut menjadi alasan atas terbentuknya hukum yang sangat mempertimbangkan pada tempat dan waktu; termasuk isu gender, dimana budaya barat dan timur memiliki perbedaan dari berbagai sisi. *Living fiqh gender* adalah sebuah istilah untuk konsep fiqh yang merespon isu-isu perempuan dengan mempertimbangkan budaya lokal Indonesia. *Living fiqh* merupakan salah satu bentuk istilah penguatan produk hukum Islam yang mengedepankan asas lokalitas. Dalam penelitian ini penulis menggunakan metode kualitatif untuk merespon konsep *living fiqh* di Indonesia. langkah dalam penelitian ini adalah menggali genealogi isu gender di Indonesia, kemudian membandingkan dengan sejarah isu gender di barat, setelah itu penulis akan mengklasifikasikan perbedaan penyebab isu gender di Indonesia dan barat beserta fikih 'ala madzhab Indonesia. Dalam artikel ini, penulis menemukan terdapat produk fikih gender yang memiliki relasi dengan

budaya Indonesia, fiqh gender di Indonesia muncul berawal dari kegelisahan para aktivis perempuan terhadap diskriminasi dalam perkawinan beserta aturannya. Hukum *ala madzhab* Indonesia berkontribusi meminimalisir ketimpangan gender yang muncul secara masif setelah menguatnya pengaruh kolonialisme dan Islam transnasional yang mengubah interpretasi terhadap kitab suci dan fanatisme madzhab.

Keywords: *Nusantara's Culture; Gender; Living Fiqh.*

INTRODUCTION

The concept of gender has been known for long periods and has emerged from Western countries. At that time, the turmoil about feminism began to be heard loudly. The Church acted as the center and source of power. Until the 17th century, the church retained its hegemonic power. Therefore, everything that threatened the authority and legitimacy of the church was considered heresy and would be brought to the Inquisition Court.¹

A British socialist theorist, Sheila Rowbotham,² preached the dynamics of gender, starting with the publication of the movement of western figures, such as Mary Wollstonecraft with her writing 'Vindication of the Rights of Women' in 1792. Wollstonecraft described³ that women's dependency caused the psychological and economic damage suffered by women economically to men and the exclusion of women from the public sphere.⁴ Sojourner Truth and Elizabeth Cady Stanton⁵ even supplied a comparable opinion that Western women gained equal political rights and economic opportunities. Feminist political action led by western liberal feminists had brought changes to the conditions of women at that time. Women succeeded in getting their votes in the elections in 1920. Moreover, feminists also succeeded in winning ownership rights for women, more reproductive freedom, and greater access to education and professional fields.

This fact triggers an understanding that Western women have strong idealism and independence. Killary M Lips, a psychologist and head of the Center for gender studies of women's psychology and women's studies at Radford University, explained that the term gender began to be used by London scientists

¹ Several experts, including Arif Syamsudin, strengthen the opinion. He stressed that to open up the history of feminism, it is necessary to read a lot of the history of the Western world in the middle ages. Marry Wollstonecraft is said to be the foremost Western woman against misogyny, she is then followed by other liberal women, such as Hellen Brion from France, Clara Zektin from Germany, and Anna Kuliscioff from Italy. Arif Syamsuddin, *Orientalis Dan Diabolisme Pemikiran* (Jakarta: Gema Insani Press, 2008), 106.

² Sheila Rowbotham, *Women in Movement: Feminism and Social Action* (New York: Rountledge, 1992), 11. Jamhari Ismatu Ropi, *Citra Perempuan dalam Islam*, (Jakarta: PT Gramedia Pustaka Utama, 2003), 1.

³ Marry Wollstonecraft is said to be the foremost Western woman against misogyny, she is then followed by other liberal women, such as Hellen Brion from France, Clara Zektin from Germany, and Anna Kuliscioff from Italy. Arif Syamsuddin, *Orientalis Dan Diabolisme Pemikiran*, 106.

⁴ *Ibid.*, 1-2.

⁵ Elizabeth Cady Stanton, *The Woman's Bible: A Classic Feminist Perspective* (US: Amazon, 1989), XI.

as a substitute for the term patriarchal or known as sexist. People who interpreted them ambiguously caused changes in the term. Gender is considered the result of sex differences - the gender differences are from sex differences. McKay explained deeply that the decades of 1560 and 1648 were a decline in the status of women in European society. Reforms conducted by church reformers did not help much for the women's fate.⁶

Unlike the portraits of Nusantara women, the attitudes and relations of Indonesian women are influenced by the culture, locality, and precursor teachings prioritizing natural female attitudes. An Indonesian female hero named Kartini was once told that she was involved in a polygamy case.⁷ The Regent of Jepara eroded Kartini's idealism at the end of her life over her work in polygamy.⁸ Their movements showed idealism that was not much different from western idealism. However, their attitudes and actions showed different perspectives when fighting dogma, for example, against religious leaders.

Besides Kartini, many other Indonesian women do not dare express their ideas and opinions to fight hegemony. For example, they cannot refuse arranged marriages to obey their parents. Zulfatun Ni'mah's research on divorce in Lombok argued that women are discriminated against because divorce is still done unilaterally.⁹ However, the local community trusts that unilateral divorce is still being carried out today. This situation is disappointing due to the minimum gender education for Indonesian women.¹⁰

Based on the phenomena discussed above, it is necessary to review how the marriage law positions men and women since many Indonesian people do not use an equal perspective. In Indonesia, the rules regarding Islamic marriage are regulated explicitly in the Islamic Law Compilation. The Islamic laws were compiled by Indonesian scholars using the books of *Fiqh* in the *Shafi'iyyis Madzhab*. To formulate Islamic law in Indonesia, it is necessary to look at the experiences of Indonesian women, especially in sociological and biological sides, because this view will provide a gender equality perspective in the process of forming Islamic law in Indonesia.¹¹

⁶ Bennet D. Hill and John Buckler Mc.Kay, John P, *A History of Western Society* (Boston: Houghton Mifflin Company, 1983), 437- 541.

⁷ Zuhriyah, "Female Spellcasters; Mandar Women Existence in Mantra," *Salasika: Indonesian Journal of Gender, Women, Child, and Social Inclusion's Studies* 3, no. 2 (2020): 119.

⁸ *Ibid*, 120.

⁹ Zulfatun Ni'mah, "The Violation on Women's Rights in the Unilateral Divorce in Sasak Community From a Feminist Legal Theory," *Al-Ihkam: Jurnal Hukum dan Pranata Sosial* 13, no. 1 (2018): 34.

¹⁰ Tim Editor, "Hentikan Impunitas Pelaku Kekerasan Seksual Dan Wujudkan Pemulihan Yang Komprehensif Bagi Korban," *Siaran Pers Catatan Tahunan (CATAHU) Komnas Perempuan 2019*, 6 Maret, 2019, <https://komnasperempuan.go.id/siaran-pers-detail/siaran-pers-catatan-tahunan-catahu-komnas-perempuan-2019>. accessed July 3, 2019

¹¹ Nur Rofiah, *Nalar Kritis Muslimah (Refleksi Atas Keperempuanan, Kemanusiaan, dan Keislaman)* (Yogyakarta: Afkaruna, 2020), 7.

In addition, it is also necessary to study the history and background of Indonesia. In Indonesia, women in the colonial and post-colonial periods have their history. Kathrin, in her research, stated that discrimination and marginalization often occur in women. In the post-colonial period, Islamic law in Indonesia has also been significantly influenced by transnational Islam, which resulted in the purification of Islam as the law developed in Arab culture, not Islamic law that is typical of Indonesia.¹²

From the background above, the author would like to discuss the products of Islamic law in the Islamic Law Compilation containing a description of the *fiqh* of marriage in Indonesia. This article answers how gender construction is formed in these rules and whether Islamic law in Indonesia has accommodated local values triggering the formulation of living *fiqh* using a gender perspective.

PORTRAIT OF THE WOMEN'S MOVEMENT IN INDONESIA

The study of feminism begins with a sad historical reality because it is related to the grim story of the jahiliyyah tradition. In general, the Pre-Islamic Mecca period is remembered as the jahiliyyah period. It has the characteristic of being unreasonable in terms of morality and extremity or perceived as the Barbarian. Phillip K. Hitti described society as a society that did not have a good destiny, did not have the Prophet who guided them, and was free from the reference scriptures.¹³ In Indonesia, gender is generally identified as all issues related to women. Even gender has the same meaning as sex. The failure in interpreting the term can cause ambiguity, so that the understanding may be biased. Therefore, gender needs to be discussed in depth in the form of religious texts and intertext involving a variety of sciences.¹⁴

Broadly speaking, gender (*al-musawah al-jinsiyah*) is different from sexuality. The al-Quran explains a division of tasks and functions for men and women, although explicitly, the Koran refers to women as breadwinners in the household. The differences between men and women in the Muslim world are referred to as gender differences. Islamic law in classical texts in the form of *fiqh* is a teaching that can still be compromised with religious norms prevailing in Indonesia.¹⁵

For instance, it is the phenomenon of men and women in Indonesia who can work together to make a living. It is proof that a same task is a form of gender equality.¹⁶ Another example is the *classical fiqh* interpretation which requires the

¹² Nadirsyah Hosen, "Religion and the Indonesian Constitution: A Recent Debate," *Journal of Southeast Asian Studies* 36, no. 03 (2005): 423.

¹³ Philip K. Hitti, *History of Arabs from Earliest Times to the Present* (London: The Macmillan Press, 1974), 87.

¹⁴ Mansour Faqih, *Analisis Gender dan Transformasi Sosial* (Yogyakarta: Pustaka Pelajar, 2010), 10.

¹⁵ Husein Muhammad, *Fiqh Perempuan: Refleksi Kiai Atas Tafsir Wacana Agama Dan Gender* (Yogyakarta: IRCiSod, 2019), 49.

¹⁶ Husein Muhammad, "Hermeneutika Feminism Dalam Pemikiran Husein Muhammad," *Delivered*

wife to work in the domestic sphere and the husband in the public sphere. Saudi Arabia does not demand women to work for a living. This fact is the antithesis of culture in Indonesia, which if the husband works in the fields, the wife will participate in helping with the work or bring the harvest. This phenomenon is not uncommon when the wife contributes to fulfilling family welfare. Many women hold essential and strategic positions in the world of politics and academics. Moreover, no State Jurisprudence or norm forces academics, Ulama, or scientists to have male sex.

Another gender issue in Indonesia is religious law. The problems of religious law (Islam) in Indonesia are increasingly attractive when observed from contextual issues, including the presence of the role of women in Indonesia in the post-reform era. Marriage, gender equality in the distribution of inheritance, custody rights are the most discussed issues. From the socio-political analysis, women in Indonesia can ease conflicts between minority groups and the religious majority, even the opposition of people marginalized by the central government hegemony. Men dominate more and are considered capable of being the initiators of ideas, social and political aspirations. It has caused tension among figures in Indonesia. Post-colonial gender discourse in Indonesia also helped distinguish between skin color and the blurring of the economic system.¹⁷

Gayatri Chakravorty Spivak¹⁸, an academic from India, who pioneered the study of Postcolonialism, argues that women in Indonesia in their struggle need to have an instrument called power. The position of women at that time was in a marginal and minority position. Women in Indonesia in marginal positions will create critical conditions that continually shift core positions among lawmakers in Indonesia.¹⁹

A case of the critical role of women in sustaining the law in Indonesia is the Tengku Fakinah movement, a religious teacher who has a reputation as a religious

in the Inauguration of Doctor (HC) KH. Husein Muhammad at UIN Walisongo Semarang, 2019, <http://www.hermeneutikafeminisme.com/2016/05/15/hermeneutika-feminisme-dalam-pemikiran-husein-muhammad-kiai-feminis-dari-pondok-pesantren-dar-al-tauhid-cirebon-indonesia/>.

¹⁷ This post-colonial feminist analysis of "selfish" style is superficial because it does not include economic analysis and the history of Indonesia. The post-colonialism discourse is a cultural explanation of what is happening today. Why are superior white skin and colored skin considered universal? Why does the economic circulation flow and are centered on the countries of the former colonizers and colonized countries continue to be in the category of under development with high economic inequality? This is attributed to looking at the bigger picture: economic circulation to ex-colonial countries. Hence, the issue of post-colonialism that should emerge is about economic inequality, access to work and the environment. How is it possible for countries in Europe to enjoy its beautiful nature and clean air while the production of raw materials and extractions that produce a lot of waste, continues to be carried out in developing countries like Indonesia? See further in Bandel Katrin, *Kajian Gender Dalam Konteks Pasca Kolonial*, 12-13.

¹⁸ Michael Kilburn, "Glossary of Key Terms in the Works of G. C. Spivak," *Goldsmiths College, University of London*, 2007, <https://scholarblogs.emory.edu/postcolonialstudies/2014/06/19/spivak-gayatri-chakravorty/>. accessed July 3, 2019

¹⁹ *Ibid*,

figure and took care of a pesantren (*Dayah*) in Aceh. All the students, both men, and women were mobilized to eradicate Dutch colonialism. This action eliminated the position of women as marginal people. Another action was to form a line of women and widows to arrange the financial or distribution of logistical assistance for warfighters in Aceh. Moreover, Tengku Fakinah formed a social charity to collect zakat to finance the war in Aceh. The nationalism movement instilled by Tengku Fakinah was a matter of religion and the similarity of fate, traditions, and customs to erode the majority and minority issues (including protection of non-Muslims).²⁰ Hence, Islam in Indonesia deserves to be called inclusive when religion provides more accommodating opportunities than persuasive to women in Indonesia.²¹

Gender portraits in Indonesia are also attested by Nyai Khoiriyah Hasyim,²² the third daughter of KH. Hasyim Ash'ari and Hj. Nafiqah. She is one of 10 siblings. KH. Hasyim Ash'ari gave equal opportunities to his sons and daughters to seek religious knowledge. He did not discriminate in studying various religious disciplines. Nyai Hj. Khoiriyah is the founder of the Seblak Jombang boarding school (pesantren) together with KH. Ma'sum Ali, the first student of KH. Hasyim Ash'ari. He founded the Seblak Jombang boarding school specifically for females because he desired to teach female students to educate women. After her husband passed away, Nyai Hj. Khoiriyah led the boarding school independently. She took over the leadership of the Seblak boarding school at the age of 27 years old. After five years, he married KH. Muhaimin Zaubair from Lasem, Central Java. Nyai Hj. Khoiriyah followed Kyai Muhaimin and lived in Makkah because her husband was a teacher at the Grand Mosque (Masjidil Haram). In Mecca, Nyai Hj. Khoiriyah founded the *madrassa lil banat*, the only madrasa specifically for women after Ibn Su'ud came to power in Makkah. Nyai Hj. Khoiriyah established the madrasa in 1942 with an educational model similar to the Seblak Islamic boarding school.²³

The cases above are criticisms of education in Mecca, which prioritize men. Nyai Hj. Khoiriyah emphasized that women have the right to education and shall be equal to men. Uniquely, the Nyai Khoiriyah movement was implemented in a

²⁰ According to Tariq Ramadhan, Muslims in a certain country have a relationship of casualty, rights and obligations with citizens of other countries. It means, that Islamic identity must merge in national identity, so there is no more mention of Islam in Indonesia or it is necessary called Indonesian Islam, because as an independent nation, Indonesia can produce women who have the dedication and spirit of nationalism. See more in Tariq Ramadhan, *Western Muslim And Future of Islam* (Oxford: Oxford Press, 2004), 10.

²¹ Joseph Biondi Mattovano, *Quo Vadis Ulama Perempuan Di Indonesia, Jejak Perjuangan Keulamaan Perempuan Indonesia* (Cirebon: Fahmina Institute, 2017), 51.

²² Zulkifli, "Nyai Khoiriyah Hasyim: Sebagai Inspirasi Ulama Perempuan Nusantara, Jejak Perjuangan Keulamaan Perempuan Indonesia", *Dalam KH. Helmi Ali Yafie (Ed) Jejak Perjuangan Keislaman Perempuan Indonesia* (Cirebon: Kongres Ulama Perempuan Indonesia, 2017), 239-241.

²³ *Ibid*, 241.

country, which men dominated, and most responded to all problems with a male perspective. Even more interesting, Nyai Khoiriyah once led Syuriyah PBNU and placed her as the first woman ever to occupy that position. Even after that, there was never another woman who replaced her.²⁴

Based on the chronology above, the movement of women in Indonesia bestows at least three functions that secure the existence of women in Indonesia. First is the constitutive function. This part guarantees the realization of government and women's cooperation in Indonesia. The cooperation can be in the form of creating a law protecting and at the same time providing opportunities for women. The second is a conservative function. Women play a role in carrying out discussions to realize better academic quality. The third is an innovative function. Indonesian women can find breakthroughs to struggle and realize total courage to live as a nation.

GENDER AND HISTORY OF THE ENTRY OF WOMEN'S IDEOLOGY IN INDONESIA

The ideology and movement of women in Indonesia are not far from gender discourse. The development of gender in Indonesia is genuinely free, and many works of Indonesian women have reached the world level, such as Fatima Mernissi and Riffat Hasan. However, the rapid development of ideology does not necessarily make movements fast or even slow.²⁵

Studies on gender in Indonesia began to develop in the '80s. However, gender intersected with religious discourse starting in the '90s. At that time, the emergence of gender discourse was accompanied by literature in the form of translated texts included in the categorization of feminist studies. Many books are still controversial, including Egyptian scholars Riffat Hasan,²⁶ Huda Sya'rawi,²⁷ Nawal Shadhawi²⁸, and Hibbah Rauf Izzat. Their thoughts contribute a lot to gender discourse in Indonesia. In the next period, in the 2000s, gender issues developed rapidly in Indonesia.²⁹ Some figures began to appear in Indonesia, ranging from academics and activists. Some figures from activist groups were Lies Marcoes, Ratna Megawangi, while from academics were Siti Musdah Mulia,

²⁴ Zaitunah Subhan, "Gender Dalam Tinjauan Tafsir," *Jurnal Ilmiah Kajian Gender*, www.kafaah.org/index.php/kafaah/article/download/34/25, accessed July 3, 2019.

²⁵ Nani Soewondo, *Kedudukan Wanita Indonesia Dalam Hukum dan Masyarakat* (Jakarta: Ghalia Indonesia, 1984), 84.

²⁶ Riffat Hasan, "Teologi Perempuan Dalam Tradisi Islam," *Jurnal Ilmu dan Kebudayaan Ulumul Quran* V, no. 03 (1994): 36.

²⁷ Leila Ahmad, *Women and Gender in Islam: Historical Roots of Modern Debate* (New Haven and London: Yale University Press, 1992), 128.

²⁸ Nawal Shadhawi, *Imra'ah Índa Nukthi Al Sifr* (Mesir: Zeed Books, 1975), 4.

²⁹ Nunuk P Murniati, *Getar Gender; Perempuan Indonesia Dalam Perspektif Agama, Budaya dan Keluarga, Buku Pertama* (Magelang: Yayasan Indonesia Tera, 2004), 60.

Nur Rafi'ah, Nina Nur Mila, KH. Husein Muhammad, and Khoirudin Nasution. They discussed gender issues from various intersections, cultures, interpretations, religious texts, psychology, health, and intertext approaches that involved history and religion.³⁰

In the typology of gender studies in Indonesia, in the range of 1995, gender discourse studies did not focus on the behavior of religious leaders as in the previous decade often highlighted the polygamy of Kiai of Islamic boarding school. Gender discourse tended to discuss the defense of human rights and freedom of opinion. Gender discourse is still only struggling with scientists.³¹ Gender studies in this era discussed a lot about human creation in theological approaches (creation of theology). One could be invited to discuss my first insight into the form of knowledge about heaven-hell, Adam and Eve in Muslim and non-Muslim theology.³²

To see gender in Indonesia, we can trace the history of the role of women in Indonesia. Many women figures struggled and had a significant role in the context of different cultural situations and conditions. From *Kraton* (Indonesian royal palace), there were Sulthanah Nahrishah and Sulthanah Shofiyatuddin from Aceh. There were also RA Kartini, Cut Meutia, and Cut Nyak Dien as Indonesian women heroes. There were Nyai Khoiriyah, Teungku Fakinah from Aceh, Nyai St Maryam Sumenep, Nyai Mahsunah, Nyai Siti Walidah, Nyai Solekhah Wahid, Nyai Masyithoh, and Nyai Rahma el Yunusiyah as Indonesian women preachers/scholars. In addition, there were Nyi Roro Kidul, Dewi kilisuci, and Putri Sangga Langit who became the beginning of Reog Ponorogo story. Those names prove that, in early Indonesia, there were no significant gender issues because women were still allowed to participate in public issues.³³

Based on historical data, discrimination against women emerged since colonialism began in the early 16th century to the 17th century, in which the majority were men. Because of the "deficit," this problem was then overcome by a concubinage system; white-skinned men forced Javanese, Sundanese, etc. Women

³⁰ Helmy & Ali Yafie, *Nasib Ulama Perempuan, Dalam Jejak Perjuangan Keulamaan Perempuan Indonesia*, (Ed.) (Cirebon: Kongres Ulama Perempuan Indonesia, 2017), xiii-xxxvii.

³¹ Asmaeny Aziz, *Feminisme Profetik* (Yogyakarta: Kreasi Wacana, 2007), 64.

³² Fatima Mernissi's thoughts also influenced many thinkers in Indonesia. Beliefs or interpretations of heaven-hell were often to be the main subjects of discussion. For instance, the challenge of understanding that women have inherited sin from Eve as a seductive creature for men and heaven contains beautiful nymphs. In addition, the picture of heaven is still very material, which is expressed in his work 'perempuan dalam surga kaum muslimin' Anthon F. Susanto dan H.R Otje Salman, *Teori Hukum, Mengingat, Mengumpulkan Dan Membuka Kembali* (Bandung: Refika Aditama, 2008), 188.

³³ Before the colonial period and the emergence of transnational Islam, there were no problems in terms of social roles/gender responsiveness because the Nusantara culture in its socio-cultural life is very inclusive of the role of women in the public sphere. This is evident from the absence of spatial separation in the life of farming and trading in the past. This reality was clearly different from Arab past, which was confined to the *jahily* tradition. Bandel Katrin, *Kajian Gender Dalam Konteks Pasca Kolonial*, 7.

to live together without marriage. Oppression of gender, race, and class occurs in concubinage. Here, the power entirely rested in the hands of the established men.

Besides colonialism, the influence of transnational Islam that has increased in Indonesia since the entry of Islam in the 13th century, marked by the arrival of scholars studying in Arabic in the 17th century, also had a significant influence on the acceptance/understanding of the Al-Qur'an and Al-Hadith textually and scripturally; including the interpretation of the verse about women. It was supported by the use of *syafi'iy*-oriented schools of thought, using *qaul*, which denied the history of Indonesia. Accordingly, the issue of women is understood in a dry, atomistic, and ahistorical way because it is trapped only in the text.³⁴

Gender in the Western World

Gender diction for Western society, especially American society, had been used since the 1960s. This term is a form of the fight in a radical, conservative, secular, and religious manner, intending to voice women who later start gender awareness. In this era, demands for freedom and equal rights emerged so that women could match men in the social, economic, political, and other public spheres.³⁵ Engels thinks 'revolution' is not a guarantee. Equality of gender between men and women is not enough because women will suffer losses due to their domestic responsibilities. Hence, women will achieve justice if managing the household becomes a social industry, and caring for and educating children transforms into a public affair.³⁶

The feminist movement originated with a group of Western women activists that later gradually shifted to be an academic wave in universities, including Islamic nations. Through the 'woman studies' program, the women's movement finally got 'blessing' from the United Nations with the issuance of CEDAW (Convention on the Elimination of All Forms of Discrimination against Women). States, institutions, and organizations in the world advance to support women's movements. According to Khan, this support harmed the women's movement (read-feminism) because female activists missed their political point of view (political edge) and, in some cases, had forgotten their commitment.³⁷

³⁴ As a result of the influence of transnational Islam in Indonesia, there have been many new understandings about how men's and women's relationships are formed. Moreover, from Islamic law products (Islamic Law Compilation) which were formed from Syafi'iyah oriented, there is still a Family Law Reformulation in Indonesia which opens opportunities for gender inequality. Aksa, "Gerakan Islam Transnasional: Sebuah Nomenklatur, Sejarah Dan Pengaruhnya Di Indonesia," *YUPA: Historical Studies Journal* 1, no. 1 (2017): 3-4.

³⁵ Mufidah CH, *Isu-Isu Gender Kontemporer Dalam Keluarga* (Malang: UIN Maliki Press, 2010), 3.

³⁶ Nani Soewondo, *Kedudukan Wanita Indonesia Dalam Hukum Dan Masyarakat*, 84.

³⁷ Feminist movements in the Muslim world show an alarming level of aggressiveness. In the last two decades, Pakistani women have been the target of the feminist movement. In 1975, the Pakistani government encouraged women to follow the ideas of feminism, although in 1977 when the process of Islamization and militarization had succeeded in stemming this thought. But in 1980, feminist

Different from the above opinion, according to Syafiq Hasyim,³⁸ the feminism movement began in the middle ages. Hasyim based his opinion on Valerie Bryson’s ideas in his book *Feminist Political Theory*. The book’s contents are slightly different from the general theoretical assumptions about the emergence of the women’s movement in the West countries. He quoted Bryson saying that the women’s movement had existed since the Middle Ages as a theoretical building. At that time, there was a public debate about women’s rights.³⁹ In her dissertation, Gadis Arivia, an Indian scientist who completed her Doctoral education at the University of Indonesia, divided the development of gender issues into three waves or periods.⁴⁰

a) Feminist Theory in the Early Period

Figure

Types of Movements	Basic of Thinking	Issues	Monumental figures and works
Liberal Feminism	Humans are independent creatures led by reasons because they can understand freedom, morality and guarantee individual rights.	Challenges inaccessible education information, state policies, political matters, and civil rights	Mary Wollstonecraft: <i>A Vindication Rights of The Woman</i> (1779), John Stuart Mill & Harriet Taylor: <i>Early Essay on Marriage and Divorce</i> (1832), <i>Enfranchisement of Women</i> (1851). Betty Friedan: <i>The Feminine Mystique</i> (1974), <i>The Second Stage</i> (1981)

movements re-emerged in Pakistan significantly. Indonesia suffered a similar fate as Pakistan. Gender equality is socialized in an intensive and systematic manner throughout the world through the media, mass organizations, NGOs, formal and non-formal education institutions. The area of the feminist movement is pretty broad, from the international level to reaching the smallest community institutions, namely Neighbourhood (RT, Indonesian: Rukun Tetangga). In the name of human rights, women activists then try to influence the government in matters of policy to operational technical matters. Their attempts have begun to show results with the ratification of the contents of CEDAW, so it triggers the stipulation of Law no. 7 of 1984. Then, the Government of Indonesia promulgated Law number 23 of 2004 about PKDRT (Elimination of Domestic Violence, Indonesian: Penghapusan Kekerasan Dalam Rumah Tangga), the Child Protection Act, and they are trying to legalize abortion through amending the Health Act. In the political field, feminists are behind the issuance of the 2008 Election Law on a 30 percent quota for female candidates. See more in Endang W. Ramli, *Khofifah Indar Parawansa, Mengukur Paradigma, Menembus Tradisi* (Jakarta: Pustaka LP3ES, 2006), xxvii. Adian Husaini, *Tinjauan Historis Konflik Yahudi, Kristen, Islam* (Jakarta: Gema Insani Press, 2004), 158-159.

³⁸ Syafiq Hasyim, *Hal-Hal Tak Terpikirkan Tentang Isu-Isu Keperempuanan Dalam Islam* (Bandung: Mizan, 2001), 141.

³⁹ *Ibid*, 141.

⁴⁰ Gadis Arivia, *Pembongkaran Wacana Seksis Filsafat Menuju Filsafat Berperspektif Feminis*, Disertasi, Universitas Indonesia, Fakultas Ilmu Pengetahuan Budaya (Jakarta: UI Press, 2002), 95.

Radical Feminism	The existence of sexism, patriarchal society. Reproductive rights. Power relations between women and men. Private/Public dichotomy. Lesbianism	The existence of sexism, patriarchal society. Reproductive rights. Power relations between women and men. Private/Public dichotomy, and lesbian	Kate Millet: Sexual Politics (1970). Shulamith Firestone; The Dialectic of Sex (1970). Marilyn French: Beyond Power (1985). Mary Daly: Beyond God the Father Toward a Philosophy of Women's Liberation (1973). Ann Koedt: The Myth of the Virginal Orgasm (1970)
Feminist-Socialist (Marxist)	The mode of production of material life conditions the general processes of social, political, and intellectual life. It is not consciousness that determines a person's existence, but their social existence determines their consciousness.	Economic inequality. Property Ownership. Family and domestic life under capitalism. Domestic wage campaign	Friederich Engels: The Origin of The Family, Private Property and the State (1845). Margareth Benston: The Political Economy of Women's Liberation (1960). Mararosa Dalla Costa & Selma James: The Power of Women and the Subversion of Community (1972).

b) Feminist Theory in the Second Period

Types of Movements	Basic of Thinking	Issues	Monumental figures and works
Psychoanalysis Feminism	The primary explanation of women's oppression lies in the psyche of women, the way women think.	The drama of Oedipus's psychosexual and castration complexity (Freud). Male egocentrism that considers women to suffer from «penis envy» is the reinterpretation of the Oedipus complex. Dual Parenting. Women's gender-ethical feminism.	Karen Horney:

Existentialism Feminism	The concept of Jean Paul Sartre: Etre-en-soi, Etre-pour-soi, Etre-Pour-les-autres	The analysis of the oppression of women because they are considered as «other» in their existence in entre-pour-Les-Autres	Simone de Beauvoir : The Second Sex (1949)
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c) Feminist Theory in the Third Period

Types of Movements	Basic of Thinking	Issues	Monumental figures and works
Postmodern Feminism	Postmodernism rejects phallogocentric thinking (ideas held by absolute logos, i.e., «men» refer to the phallus)	«Otherness» from women brought up by Simone de Beauvoir is not only something more than a condition of inferiority and oppression but also a way of being, way of thinking, speaking, openness, plurality, diversity, and difference	Helene Cixious, "Lécriture Feminine". Luce Irigaray, "Speculum" - female reflection. Julia Kristeva, "to be able to "play" between the semiotic and symbolic realm." Linda Nicholson, "Feminis Postmodern."
Multicultural Feminism	In line with postmodern philosophy but it emphasizes more on cultural studies.	The oppression of women is explained through patriarchy, but there is a connection to race, ethnicity, etc. (interlocking system). Global Feminism is about race and ethnicity and the results of colonialism and the dichotomy of «first world» and «third world.»	Audre Lorde: Age, Race, Class, and Sex: Women Redefining Difference (1995). Alice Walker: Coming Apart (1991). Angela Y Davis: Women, Race, and Class (1981). Charlotte Bunch: Prospects For Global Feminism (1985). Susan Brownmiller: Against Our Will: Men, Women, and Rape (1976). Susan Bordo: Feminism, Postmodernism, and Gender-Skepticism (1990). Maria Mies; The Need for a New Vision (1993)

LIVING FIQH ON GENDER IN INDONESIA

Living Fiqh on gender is a product of Islamic law regarding gender in Indonesia, which is based on the value of locality. Initially, this concept refers to Fazlur Rahman, a professor at the University of Chicago on living sunnah and living Quran concept.⁴¹ Living fiqh is an attempt to understand fiqh texts by looking at new developments, for example, the registration of marriages in Indonesia, which requires the protection of women. Following the madhhab methodically (*Manhaji*), not textually (*Madzhab Qauli*), including the importance of seeing *Asbabun Nuzul* of verses and hadiths, for instance, the verse and hadith about *iddah* period for women.⁴²

Furthermore, the description of gender fiqh products in Indonesia is reflected in the compilation of Islamic law.⁴³ The emergence of KHI cannot be separated from Indonesia's background and development (thought) of Islamic law. The formulation of the KHI was formulated from 13 books of fiqh which were the results of the interpretation of the scholars of the second century Hijriyah and the centuries after, and the implementation of Islamic law at that time was very characterized by the atmosphere of *taqlid* and the attitude of the fanaticism of the *Madzhab* which was quite thick.⁴⁴

Therefore, the elements of Islamic law in the Marriage Law are not fully extracted from Indonesia's empirical reality but are drawn from normative explanations of classical religious teachings in Arabia and the Middle East and do not consider the benefits of Indonesian Muslims. Islamic law is quoted almost perfectly from the classical fiqh point of view. There has been a classical fiqh

⁴¹ Abdul Mustaqim, *Pergeseran Epistemologi Tafsir* (Jogjakarta: Pustaka Pelajar, 2008), vi-viii. Compare with Sutrisno, *Fazlur Rahman: Kajian Terhadap Metode, Epistemologi, dan Sistem Pendidikan*, (Yogyakarta: Pustaka Pelajar, 2006), 60.

⁴² Ensuring the main/basic teaching (*Ushul*) and the branch (*Furu'*) which must take precedence, for example regarding the criteria in determining a prospective husband/wife. Understanding fiqh as something related to social morals, for example the social effect of the verse about justice in inheritance, that justice is *qath'iy* and the amount is *dzanny*. Using local wisdom, especially in social and cultural issues, for example women leading recitation in front of men or women (*Urf*). Abd al-Karim Al-Rafi'iy, *Al Muharar Fi Fiqh Al-Islamy Al-Syafi'y* (Beirut: Dar al-Kutub al-Ilmiyah, 2009), 5.

⁴³ Compilation of Islamic Law (KHI) is a term to denote a set of Islamic law principles derived from the four schools of jurisprudence. All the views of the scholars regarding fiqh are put together in the form of books which are compiled using language legislation. In Islamic history, there were three countries where Islamic law was enforced (1). As the well-known invitations in Alamfiri's fatwa, (2). The Ottoman Empire known as *Majallah al-Ahkam Al-Adliyah* and (3). Islamic law in 1983 was codified in Subang. Hikmatullah, "Selayang Pandang Sejarah Penyusunan Kompilasi Hukum Islam Di Indonesia," *Jurnal Ajudikasi* 1, no. 2 (2017): 39-52.

⁴⁴ These books are *Al-Bajuri, Fath al Mu'in, Asy-Syarkawi 'ala at-Tahrir, Al-Qalyubi / al-Mahalli, Fath al-Wahhab wa Syarhuh, At-Tuhfah, Targhib al-Musytaq, Al-Qawanin. asy-Syar'iyah li Sayyid bin Yahya, Al-Qawanin asy-Syar'iyah li Sayyid Shadaqoh Dachlan, Asy-Syamsuri fi al-Faraid, Bughyah al-Mustarsyidin, Al-Fiqh 'ala al-Madzahib al-Arba'ah, and Al-Mughni al-Muhtaj*. By referring to these 13 recommended books, the steps towards legal certainty are increasingly evident. Although materially these books are known for their validity, this does not solve the problem. In fact, it adds to the chaos of legal references for the Religious Courts. Direktorat Pembinaan Badan Peradilan Agama, *Inpres RI No.1 Tahun 1991 Kompilasi Hukum Islam Di Indonesia* (Jakarta: Depag RI, 2000), 128.

standardization (which is gender unfair and discriminatory). There are several substances of the Islamic law that contradict universal basic Islamic principles: Justice (*al-`adl*), Benefit (*al-mashlahah*), Mercy (*ar-rahmah*), Wisdom (*al-hikmah*), Equality (*al-musawah*), and Brotherhood (*al-ikha`*).⁴⁵

There is an issue of gender inequality contained in the Compilation of Islamic Law (KHI) in Indonesia :

Number	Crucial gender issues	Compilation of Islamic Law
1	Marriage	Carrying out it is worship (art. 2)
2	Guardian	Rukun for a marriage (art. 14)
3	Marriage registration	It does not include the pillars of marriage (art. 14)
4	Testimony of women in marriage	Women cannot be witnesses (article. 25).
5	Minimum age of marriage	inequality of the age of marriage (art. 15)
6	Marriage of a girl (never married woman)	Girls of any age are married by a guardian or their representative. (art. 14)
7	Mahar	Given by a future husband to a prospective wife (art. 30)
8	The position of husband and wife	The husband is the head of the family and the wife of the housewife (art. 79)
9	Living (Nafkah)	<i>Wajib</i> for the husband (art 80)
10	Polygamy	permitted with notes (art. 55-59)
11	<i>'Iddah</i>	<i>Iddah</i> is only for the wife, not for the husband (art. 153)
12	Iddah due to divorce	iddah due to divorce is based on the occurrence of <i>duhul</i> (art. 153)
13	<i>Ihdad</i>	<i>Ihdad</i> is only for wives, not for husbands (art. 170)
14	<i>Nusyuz</i>	<i>Nusyuz</i> is only possible by the wife and not by the husband. (art. 84)
15	<i>Khulu'</i>	<i>Khulu'</i> is declared as divorce bain sughra, so it is not allowed to reconcile, but a new marriage contract (art. 119)
16	<i>Ruju'</i>	The right to refer is owned by the husband and not the wife (art 163)
17	Children out of marriage	Children out of marriage Only have a <i>waris</i> relationship with his mother, even if the biological father is known. (Article 186)
18	distribution of the <i>waris</i> for sons and daughters	distribution of boys and girls is 2: 1

⁴⁵ Marzuqi Wahid, *Fiqh Indonesia: Kompilasi Hukum Islam Dan Counter Legal Draft Kompilasi Hukum Islam Dalam Bingkai Politik Hukum Indonesia* (Bandung: Marja, 2004), 40.

Based on the Islamic law products covered in the Islamic Law Compilation above, it can be seen that the position of women based on these products is not yet fully independent because most of the contents do not accommodate the public interest to build an egalitarian pluralist and democratic society. Why, in this case, did the KHI become the target of criticism of Gender Fiqh in Indonesia? Because KHI is the only detailed provision of Islamic Shari'ah, which discusses the relationship of men and women in the family. The Government has recognized, and almost wholly, the Religious Courts' use of KHI in their decisions.⁴⁶

To answer this problem, legal products in Indonesia must comply with *mukallaf* because Fiqh is a legal product related to the actions of a *mukallaf*. Moreover, Indonesia has its history which is different from the history of other countries, departing from all that, to produce a legal, Fiqh in Indonesia needs to regarding; Pluralism (*ta'addudiyah*), nationality (*muwathanah*), human rights enforcement (*iqamat al-huquq al-insaniyyah*), democracy (*dimuqrathiyah*), benefit (*mashlahah*) and gender equality (*al-musawah al-jinsiyah*), because the product of Fiqh on gender in Indonesia originated from response to the Indonesian Women's Congress in 1928 which voiced horror in terms of marriage, whether in the form of child marriage, forced marriage, polygamy, arbitrary divorce, etc.⁴⁷

Therefore, to see gender fiqh in Indonesia, the experience of Indonesian women, both social and biological experience, is needed.⁴⁸ Women in Indonesia in this marginal position give rise to a critical condition, which will continually shift the core positions among lawmakers in Indonesia.⁴⁹ Women in the colonial era experienced marginalization and discrimination to change rights and close access to information. In contrast, in the post-colonial era, women experienced subordination, stereotypes, and double burdens. In biological experience, women experienced five things that cannot be avoided: *haidh* / menstruation, *istihadhah*,⁵⁰ pregnancy, *nifas*⁵¹, and breastfeeding. From this experience, women in certain conditions ultimately have to get affirmation⁵² or specialization to get the same opportunities as men.

⁴⁶ KHI is also referred to as the only fiqh material in Indonesian that has obtained state justification. Used effectively by religious judges, KUA officials, and some Islamic leaders to resolve family cases faced by the Muslim community. In addition, implicitly, almost 100% of the decisions of the PA / PTA use KHI as a legal basis, and explicitly, 71% of decisions use KHI 29% of decisions do not use KHI *Ibid.*, 41.

⁴⁷ *Ibid.*, 40

⁴⁸ Nur Rofiah, *Nalar Kritis Muslimah (Refleksi Atas Keperempuanan, Kemanusiaan, Dan Keislaman)*, 7.

⁴⁹ Gayatri Chakravorty Spivak an academic from India, assessed that women in the post-colonial era need to have an instrument called power because women are in marginal and minority positions. Gayatri Chakravorty Spivak, *A Critique of Postcolonial Reason: Toward a History Of The Vanishing Present* (Harvard: Harvard University Press, 1999), 1.

⁵⁰ *Istihadhah* is blood that flows from woman's genitals other than menstruation and *nifas*, in Hanifiyah Madzhab *Istihadhah* is blood that comes out more than the custom (*habit*) of women exceeds the maximum period of menstruation and *nifas*. Baha' al-Din al-Maqdisi, *Kitab Al 'Uddah Syarh Al-'Umdah* (Beirut: Dar al-Kutub, 2000), 49.

⁵¹ *Nifas* is blood that flows after a woman gives birth, *Ibid.*, 50.

⁵² Affirmation in this case applies because conditions are not yet responsive to gender, Nur Rofiah, *Nalar*

Women in Indonesia have many activities even though they are not in the office, in the fields, or at sea as fishermen. Jobs are of particular concern that women in the lens of fiqh in Indonesia are different from fiqh produced by other countries. For this fact, the CLD-KHI (Counter Legal Draft for Compilation of Islamic Law) was compiled to realize gender-responsive Islamic legal products, which is a counter-legal text against the Compilation of Islamic Law (Inpres Number 1 of 1991) since 2003 KHI has been proposed by the Government as the Draft Law on Applied Law for Religious Courts increased its status from Inpres to Law. CLD-KHI was launched on October 4th, 2004, in Jakarta by the Gender Mainstreaming working group of the Indonesian Ministry of Religion. As with the KHI-Inpres structure, CLD-KHI is also prepared as Islamic material law in the fields of marriage (116 articles), *waris* (42 articles), and *waqf* (20 articles).⁵³

Many groups have often criticized Islamic family law in Indonesia (especially KHI). Still, no party has seriously and systematically carried out the reconstruction and reformulation of Islamic family law that is gender-just, respects human rights and pluralism, and promotes order. Democratic and human life. Because most of the contents of KHI are no longer relevant to the social development, the culture of Indonesian society, and the basic idea for the formation of a civilized society, it is necessary to create a counter against KHI.

Indonesia is a pluralistic religious nation. In addition to the world's major religions such as Buddhism, Hinduism, Islam, Catholicism, Confucianism, and Christianity, there are some other religions from outside, as well as those that have grown up in the country, such as Sikh, Bahai, Taoist, Kaharingan, Sundanese Wiwitan, Talottang, Malim, and Marapu. In general, the relations between religions are excellent, although there are still conflicts in various regions. That is called conflict among religious communities.⁵⁴ These religions affect gender discourse in Indonesia due to differences in religious dogma. Although the

Kritis Muslimah (Refleksi Atas Keperempuanan, Kemanusiaan, Dan Keislaman, 8.

⁵³ The diversity of religions and cultures in Indonesia above shows that the movement of gender discourses in Indonesia is truly dynamic. That is not because of government pressure, which raises demands as feminist issues in the West countries; gender in Indonesia is precisely the result of a very dynamic interpretation of religious texts. There is a diversity of religions and cultures affecting social control in Indonesia. Sometimes, gender discourse arises from social constructs. In this case, the problem discussed is about the relationship between men and women, the role of men and women. Gender arises because of religious legitimacy. The religions in Indonesia have a very diverse understanding. For example are Islamic boarding schools. So far, Islamic boarding schools are known as patriarch culture, polygamy, and woman voices as *aurat*. That is caused by the understanding of atomistic religious texts or dogmas, since compared with the understanding of Indonesian Ulama in the early period, not a few Ulama also pay attention to the fate of women. Marzuqi, *Fqih Indonesia*, 41. This explanation was also mentioned by Atun Wardatun, *The Social Practice of Mahr among Bimanese Muslims in Women and Property Rights in Indonesian Islamic Legal Context*, Brill.com/view/bbook/edcoll, 15-29.

⁵⁴ Machasin, *Tantangan Dan Peluang Ulama Perempuan Dalam Menebarkan Islam Moderat Di Indonesia, Paper Presented at the Congress of Ulama Perempuan in Indonesia (KUPI) in Kebon Jambu Al-Islamy Islamic Boarding School, Babakan Ciwaringin (Cirebon: Dated 25-27 April, 2017)*, 3.

essence of all teachings is goodness, for example, R.A. Kartini, the symbol of an independent woman, finally lived the life of a third wife. A source stated, her decision was influenced by the religious doctrine taught by Kiai Soleh Darat through the interpretation of *Faydh al-Rahman*.⁵⁵

In detail, here are the difference between western and Indonesian gender concepts:

Gender Issues in Western Countries	Gender Issues in Indonesia
Humans are independent creatures led by reasons because humans can understand freedom, morality and guarantee individual rights.	Humans are social creatures concerned about social values
The existence of sexism, patriarchal society. Reproductive rights. Power relations between women and men are supported by the issue of the Private/Public Dichotomy. The Government determines lesbians.	The problem of sexism, reproduction, and power is a matter of social construction, not because of pressure from the Government. Cultural and religious diversity is a major cause of gender discourse. Patriarchal and religious dogmas also contribute to the gender movement in Indonesia. Moreover, understanding Islam comes from the teachings of Trans-National Islam, which practices religion textually and is loaded with Arab cultures.
Under the guise of the production of material life, socialist-feminists set the condition of the general processes of social, political, and intellectual life. It is not consciousness that determines a person's existence but for their social existence that determines consciousness	Socialist-feminists realize the importance of reciprocal life (distraction between one another). This connection can be exemplified by a farmer man in the fields and women bringing food. So, it realizes about living in the family for mutual benefit, not forcing one party.
The primary explanation of the oppression of women lies in the psyche of women and the way women rejects phallogocentric thinking (ideas held by absolute logos, namely «men»)	Gender emerges without government oppression or religious leaders' fatwas because religious leaders in Indonesia teach friendly values to women. However, there are still Ulama who see women as being number two. Gender as a perspective is used to balance proportionally by complementing the roles of men and women.

⁵⁵ *Ibid.*, 4.

Chandrawilla⁵⁶ explained that the concept of gender in Indonesia experiences a lot of ideas and religious dogmas. The Nusantara was formed from Hindu Buddhist culture in the first century AD and the emergence of culture religion. This triggered the emergence of several Hindu Buddhist kingdoms such as Majapahit, Kutai kingdom, and Mataram kingdom. Indonesia's cultural diversity is the most significant differentiator in the upheaval of gender discourse.

Legally, the religions that emerged in Indonesia were Abrahamic religions such as Islam and Christianity and cultural religions that did not use a system of revelation but inventions. These religions are Hinduism and Buddhism. In the early period of gender development in Indonesia, dogmatic religious teachings still cornered women. In Hindu-Buddhist teachings, women are considered as a tool or weapon to turn away from good deeds. Women are the leading cause of disobedience. This aligns with the picture of Jews who see Eva "Eve" as a disruptor of "Adam."⁵⁷ Women have inherited sin because their ancestors taught harmful deeds. So, as mentioned in both the Torah and Talmud, women are determined to be bitterer than death because they are not perfect, and the creation process is only from the ribs, which are a small part of a man's body.⁵⁸ In the early introduction of religion, Indonesia already had Hindu-Buddhist teachings. Islam then entered Indonesia through Saints (Wali) and Ulama, who were predominantly Shafi'i. They are pretty creative in presenting Nusantara-style fiqh, such as Abd Rauf as-Singkili, who concerns gender equality. Therefore, it triggered the idea of a female king (*sultanah*) in Aceh, which was then followed by the modern Ulama, Kiai Ali Yafi. Sheikh Arsyad Al-Banjari is also quite responsive to gender. In the book of *Sabil al-Muhtadin*, he coined the existence of joint property (Javanese: Harta Gono Gini) based on what is called 'Adat Perpantangan.' Therefore, gender discourse in Indonesia is also influenced by Ulama, who see women as being equal to men. In West Sumatra, the community adopts a matrilineal system, which is more

⁵⁶ Willa Candrawilla Supriadi, *Kumpulan Tulisan Perempuan Dan Kekerasan Dalam Perkawinan* (Bandung: Mandar Maju, 2001), 14.

⁵⁷ Isma'il ibn 'Umar ibn Katsir, *Tafsir Al-Qur'an Al-'Adzim* (Beirut: Dar al-Fikr, 2005), I: 45.

⁵⁸ The same condition happens in the legitimacy of Christianity, Quoted in the Bible of Timothy verse 2:4, "And Adam was not the one deceived; it was the woman who was deceived and became a sinner." Also, there is the same message in verse 11:12, which states, "A woman should learn in quietness and full submission, but do not permit a woman to teach or to assume authority over a man; she must be quiet." In another verse, namely Kornitius verses 11-19 says, "neither was man created for woman, but woman for man." These verses show that the position of women in religious texts is not understood as an equal being. Women are still confined in the context of religious texts because of the legitimacy of the verse. The Bible explains that men have a superior position. Therefore, he is the owner. Women must bow to men. Martin Luther, the founder of the Protestant school, discriminates against women by distance from the place of education; this statement is stated in the 25th Gospel verse 11-12 that men may sell girls. Pope VIII even proclaimed a prohibition against sex with women because it was impure. Finally, in the Gospel story about Adam and Eve, women are valued as a source of disaster. Mun'im Sirry, *Finding Beauty in the Other: Theological Reflections Across Religious Traditions* (Freiburg: Herder, 2018), 83.

beneficial for women in terms of the distribution of inheritance. This system was taught by Shaykh Khatib al-Minangkabawy intending to respect women.⁵⁹ As the ulama of Nusantara read the text of fiqh, women have the right to file for divorce in court if they feel they have been mistreated in the household.⁶⁰

CONCLUSION

Gender and Islamic relations with Indonesian culture produce several categories. First is *Tahmil* (appreciative). Islam preserves a culture that does not conflict with Islamic principles, including a friendly attitude towards women. For example, Islam respects women who work for the benefit of the family. The second is *tahrim* (destructive). Islam eliminates Arabic culture not by Islamic principles and is discriminatory towards women, like slavery that exploits women. The third is *their* (reconstructive).

Fiqh on gender in Indonesia originated from the anxiety of women activists about the horror of marriage. They voiced their opinion in the Indonesian Women's congress in 1928. They offered a counter legal draft (CLD) to produce egalitarian gender fiqh. The offer of CLD-KHI reform is different from the previous formulation of Islamic law because the CLD-KHI team uses the reasoning of the formation of the law, which links the interpretation of the texts of the Al-Qur'an and al-Hadith with the perspectives of democracy, pluralism, human rights, and gender justice, and is used by the prevailing laws and regulations in the context of contemporary In Indonesia.

Living Gender on Fiqh in Indonesia is a breakthrough that Islamic law products. The issue of gender inequality emerged massively after colonialism entered. The influence of transnational Islam, which changed the perspective/interpretation of the holy text (al-Quran and Hadith), and the fanaticism of madhhab that emerged since the beginning of Islam in Indonesia related to

⁵⁹ Although women gain a respectable position as the Ulama of Nusantara explained, post-colonial thinking also influences gender discourse in Indonesia. There were many conflicts between minority groups and religious majorities, so the resistance of the marginalized was aroused by the central government hegemony. Men at this time are more dominating and are considered capable of being the initiators of ideas, socio-political aspirations and triggering tension of figures in Indonesia. In the post-colonial era, gender discrimination emerged by distinguishing skin color. This thinking is the impact of western colonialism, which distinguishes equal rights to education based on skin color. Fathullah Munadi, Mushaf Qiraat Syekh Muhammad Arsyad Al-Banjari Dalam Sejarah Qiraat Nusantara, *Al-Banjari, Jurnal Iliah Ilmu-Ilmu Keislaman*, Vol 9, No. 1 2010, 10. Similarly, the Islamic teachings of Shaykh Abd Rauf Al-Singkily with ulthanah system, Shaykh Arsyad Al Banjari with the joint property system, and Shaykh Khatib with a matrilineal system that favored the inheritance of women than men, the formation of Islamic law in Indonesia in the post-reform era also highlighted forms of respect for women. Not only about marriage or inheritance, but also in the case of divorce, many things are concerned with women. Syamzan Syukur, "Kontroversi Pemikiran Abdu Rauf AL-Singkily," *Jurnal Adabiyah* 15, no. 1 (2015): 10.

⁶⁰ Etin Anwar, *A Geonolgy of Islamic Fennisme, Pattern and Change In Indonesia* (London: Routledge, 2018), 185.

gender must be produced through understanding the holy text contextually by the following madhab methodically (*Manhajji*), not textually (*Madzhab Qauli*) which is adapted to the culture in Indonesia.

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