

## GENDER IN FIQH PERSPECTIVE

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**Abstract :** *In contrast to the concept of sex (sex) or nature, Gender only contains the functions and social roles of men and women, which are formed from the environment in which a person resides / lives. Thus, the concept of gender is a trait inherent in men and women who are constructed socially and culturally. Like, women in the heart are gentle, emotional and motherly, while men are known to be strong, rational and mighty. Gender differences have led to injustice, both for men and for women. The manifestation of gender inequality can be seen in the form of marginalization, subordination, stereotyping, violence and workload.*

*Keyword : Gender, Fiqih, violence*

**Abstrak :** Berbeda dengan konsep seks (sex) atau alam, Gender hanya memuat fungsi dan peran sosial laki-laki dan perempuan, yang terbentuk dari lingkungan tempat seseorang tinggal / hidup. Dengan demikian, konsep gender secara inheren melekat pada pria dan wanita yang dibangun secara sosial dan budaya. Seperti, wanita dalam hati lembut, emosional dan keibuan, sementara pria dikenal kuat, rasional, dan perkasa. Perbedaan gender telah mengarah pada keadilan, baik untuk pria maupun wanita. Manifestasi ketimpangan gender dapat dilihat dalam bentuk marginalisasi, subordinasi, stereotip, kekerasan, dan beban kerja.

Kata Kunci : Gender, Fiqh, kekerasan

### A. Background

Women are as complete as men, having a perfect form equipped with reason and conscience. But in the course of his life there are many uniqueness and controversies. During this time women often get discriminatory treatment, although it does not rule out the possibility that men can also experience it. The standardization of roles in a society is the most important obstacle in the process of social change. As far as gender issues are concerned, women globally have more potential to experience negative impacts.

Islam does not discriminate between men and women, because in the Koran it has been explained that humans have the same position in the eyes of Allah, whether male or female. Because of the view that men are perfect human beings, the term gender appears to eliminate the notion that men are the most perfect

human beings, because basically the position of men and women is the same. What is meant by gender? What are the consequences and forms of injustice gender? How is the position of women in the Koran? How is the relationship between gender and marriage? What is the relationship between gender and inheritance?

## B. Definition of Gender

In general, gender is often equated or equated with sex (*sex*). Although there are also those that link gender with feminists that are very closely related to women. Confusion of understanding and differentiation between the concepts of sex (*sex*) and the concept of gender can not be separated from the literal meaning of Gender which comes from English which means sex,<sup>1</sup>while in Indonesian only borrows the meaning of English.

An understanding of the concept of gender must first understand the clear distinction between the concept of gender and the concept of sex (*sex*). This is very necessary to discuss the problem of social injustice<sup>2</sup> Gender is penyifatan or division of biologically determined sexes, such as men have zakar and produce sperm, while women have a uterus and produce eggs / ovum.<sup>3</sup>This difference in gender is permanent, natural and does not change from time to time and cannot be exchanged for its functions. What is like this is then called nature, which if someone tries to fight or change things or functions of the sex he gets from birth, it can be said that he violates his nature.<sup>4</sup>

In contrast to the concept of sex (*sex*) or nature, Gender only contains the functions and social roles of men and women, which are formed from the environment in which a person resides / lives.<sup>5</sup>Thus, the concept of gender is a trait inherent in men and women who are constructed socially and culturally.<sup>6</sup>Like, women in the heart are gentle, emotional and motherly, while

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<sup>1</sup> Jhon M. Echols dan Hassan Shadily, *Kamus Inggris Indonesia*, (Jakarta: Gramedia, 2005), page. 265.

<sup>2</sup> Mansour Fakih, *Menggeser Konsepsi Gender dan Transformasi Sosial*, (Yogyakarta: Pustaka Pelajar, 1996), page. 4.

<sup>3</sup> Momon Sudarna, *Sosiologi untuk Kesehatan*, (Jakarta: Salemba Medika, 2008), page. 188.

<sup>4</sup> Dede Wiliam-de Vries, *Gender Bukan Tabu: Catatan Perjalanan Fasilitasi Kelompok Perempuan di Jambi*, (Bogor: CIFOR, 2006), page. 3.

<sup>5</sup> Dede Wiliam-de Vries, *Gender Bukan Tabu* .....page. 3

<sup>6</sup> Mansour Fakih, *Menggeser Konsepsi Gender dan Transformasi Sosial*, page. 8-9.

men are known to be strong, rational and mighty. There are several characters from the nature of the concept of gender, namely:<sup>7</sup>

1. Can be exchanged

For example, men who are known to be strong, rational and mighty also have a gentle, motherly, emotional. Likewise with women, not only emotional, gentle and motherly, but some are strong, rational.

2. Changing from time to time.

So that it is different from the next generation of generations, such as in the past who were worthy of using trousers only men, while in today's women who wear trousers are no longer considered inappropriate, but good for active women.<sup>8</sup>

3. Different from one place to another place

The creation of gender through a long socio-cultural process in a particular area of society causes differences from one place to another. For example, in certain areas men / women who work / work and women are considered unethical to work, while in other places men are just relaxed and women are the ones who work, including in the fields.

4. Different from one class to another class

Such as in lower class women disuku certain stronger than men, while in the upper class is not the case.

The natural differences between men and women then cause people to choose and sort out which social roles are appropriate for men and which are appropriate for women. <sup>9</sup>The selection and sorting of merit is supported and strengthened by environmental socialization which then forms a gender ideology. Determination of appropriateness then makes the label attached to each sex, so that it blurs the view of humans personally. In this case it seems as if each sex is in a certain box / boundary which when it is exceeded it will feel or feel it is inappropriate, guilty, even this is considered to be a divine nature that is inviolable.<sup>10</sup>This is then cause gender differences. In gender differences, not

<sup>7</sup> Mansour Fakhri, *Menggeser Konsepsi Gender* .....<sup>9</sup>

<sup>8</sup> Dede Wiliam-de Vries, *Gender Bukan Tabu*: .....page. 4.

<sup>9</sup> Dede Wiliam-de Vries, *Gender Bukan Tabu*:.....page. 4.

<sup>10</sup> A. Nunuk P. Murniati, *Getar Gender: Book I*, ( Magelang: Indonesia Tera, 2004) page. XVIII-XIX.

only confirms socialization, but culture, religion and even political conditions, the economy of a country also builds up, creating the birth of these differences.

From the various explanations above, it can be concluded that Gender is a concept of engineering or human formation through social, environmental, cultural, religious, even political and economic construction of a particular country / place which includes the functions and social roles of each sex that are inherent in the character changing from time to time, different from one place to another, can be exchanged, different from one class to another class.

### C. Gender Consequences and Injustices

As a cultural product, concepts and practices related to gender construction always change according to social, political and economic changes. However, despite varying forms and always changing, in a patriarchal social structure (the dominant order in modern society) gender relations are structured asymmetrically, so that as if each sex is at a certain social boundary manifested in institutionalizing male differences male and female gender.<sup>11</sup>

Basically gender differences do not become a problem as long as they do not produce *gender inequalities*. But the problem is, it turns out that gender differences have given rise to various injustices, both for men and especially for women. Gender injustice is a system and structure where both men and women are victims of the system. To understand how gender differences cause gender inequality, it can be seen through the various kinds of injustices that exist. Gender injustice is manifested in various forms as follows:<sup>12</sup>

#### 1. Gender and marginalization of women

One form of injustice is the existence of a process of marginalization, namely a process of impoverishment or exclusion of a particular sex caused by gender differences. This process of marginalization occurs a lot in society and the state that afflicts both men and women, which are caused by various things, such as manipulation, natural disasters or exploitation processes.

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<sup>11</sup> Budi Munawar-Rachman dkk, *Rekonstruksi Fiqh Perempuan*, (Yogyakarta: Pusat Studi Islam Universitas Islam Indonesia, 1996), page. 116.

<sup>12</sup> Mansour Fakih, *Analisis Gender dan Transformasi Sosial*, (Yogyakarta: Pustaka Pelajar, 2001), page. 12.

But there is one form of impoverishment of one particular sex, in this case women, which is caused by gender. Marginalization of women with wounds occurs in the surrounding environment. For example, at work, many women workers are excluded and impoverished as a result of development programs such as agricultural internation which only focus on male farmers. Women are marginalized from various types of agricultural and industrial activities which require more skills that are usually owned by men. As a result, many poor rural women were marginalized, namely, getting poorer and being excluded because they did not get work in the rice fields during the harvest season.<sup>13</sup>

## 2. Gender and subordination

Not only results in marginalization, gender views also result in subordination of women. The assumption that women are irrational or emotional so they cannot appear to lead leads to an attitude that places women in unimportant positions.<sup>14</sup> Subordination because gender occurs in various forms. For example in domestic life, it is still often heard if family finances are limited and must make the decision to send their children to school, so boys will get top priority. Practices like this actually depart from gender awareness that is not fair.

## 3. Gender and stereotype

stereotypes are labeling certain parties which always cause harm and cause injustice. One type of stereotype introduced in this discussion is the stereotype that is based on gender views. Because of this, many forms of injustice towards certain sexes are generally women who are derived from labeling (stereotypes) that are attached to them. For example labeling that starts from the assumption that women preening is in the framework of fishing for the opposite sex, so if there is rape experienced by women, the community tends to blame the victim.<sup>15</sup>

## 4. Gender and violence

<sup>13</sup> [Mansour Fakih, *Analisis Gender dan Transformasi* .....page. 13.

<sup>14</sup> Mohammad Nor Ichwan, *Prof. M. Quraish Shihab Membincang Persoalan Gender*, (Semarang: Rasail Media Group, 2013), page. 170.

<sup>15</sup> Mansour Fakih, *Analisis Gender dan Transformasi Sosial*,.....page. 16.

Violence is an *assault* both on the physical and psychological integrity of a person. Violence against humans can occur due to a variety of sources, one of which is violence against a particular sex which is based on gender assumptions. Violence caused by this gender bias is called "*gender-related violence*". Basically, gender violence is caused by the power inequalities that exist in society. For example, acts of beating and physical attacks that occur in the household (*domestic violence*).<sup>16</sup> It also includes the type of covert violence (*molestation*), which is holding or touching certain parts of a woman's body in various ways and opportunities without the willingness of the owner of the body. This type of violence often occurs at work or in public places, such as on buses.

#### 5. Gender and workload

The notion in society that women are weak creatures that must be protected and respected creates justification for the attitude of isolating women from public life and narrowing down the space for movement in the domestic arena<sup>17</sup>As a result all domestic work is the responsibility of women. Consequently, the workload of women is very heavy and the allocation of time is long to maintain the cleanliness and tidiness of households, ranging from mopping the floor, cooking, and caring for children and so on. Moreover, if the woman has to work, then she carries a double workload.

The manifestation of gender injustice in the form of marginalization, subordination, stereotyping, violence and workload occurs in various levels and has taken root in the beliefs in each person, family up to the global level.

#### D. Position of Women in the Qur'an

Gender that is associated with feminists or women, is more likely to assume that gender differences more discriminate against women so that gender equality needs to be demanded for alleged gender injustice. Like religion, where religion contributes to social construction which affirms labeling in gender, Islam also recognizes gender equality and does not discriminate against women. Although in reality many consider that all religions, especially Islam, are more

<sup>16</sup> Mansour Fakhri, *Analisis Gender dan Transformasi Sosial* .....page. 17.

<sup>17</sup> Budi Munawar-Rachman dkk, *Rekonstruksi Fiqh Perempuan*, page. 117.

affirming the position of men who are more powerful than the position of women, causing injustice. Of course this is wrong, because in the Koran itself there are principles of gender equality by placing the position of women as they should. The principle of gender equality in the Qur'an as referenced from the results of the research of Nasarudin Umar is:<sup>18</sup>

### 1. Women are equal to men – lakada

As a servant, both men and women have the same potential to be servants ideal. The degree of man before God is the same, and glory as an ideal servant can be pursued by devotion. This is as stated in the Qur'an surat al-Hujurat verse 13:

يَا أَيُّهَا النَّاسُ إِنَّا خَلَقْنَاكُمْ مِنْ ذَكَرٍ وَأُنْثَىٰ وَجَعَلْنَاكُمْ شُعُوبًا وَقَبَائِلَ لِتَعَارَفُوا ۗ إِنَّ أَكْرَمَكُمْ عِنْدَ اللَّهِ أَتْقَاكُمْ ۗ إِنَّ اللَّهَ عَلِيمٌ خَبِيرٌ

*Meaning: O mankind, Verily We created you from a man and a woman and made you nations and tribes so that you would know one another. Surely the noblest person among you is on the side of Allah who is the one who most taqwa among you. Lo! Allah is the Knower, the Knower.*

### 2. Women as caliphs on Earth as men

As the Qur'an Surat al-An'am verse 165:

وَهُوَ الَّذِي جَعَلَكُمْ خَلَائِفَ الْأَرْضِ وَرَفَعَ بَعْضَكُمْ فَوْقَ بَعْضٍ دَرَجَاتٍ لِيُبْلِغَكُمْ فِي مَا آتَاكُمْ ۗ إِنَّ رَبَّكَ سَرِيعُ الْعِقَابِ وَإِنَّهُ لَغَفُورٌ رَحِيمٌ

*Meaning: He is the one who made you rulers on earth and He exalts you to some (some) degrees, to test you for what is given To you. Indeed, your Lord is very quick in torment, and surely He is Forgiving, Most Merciful.*

In the verse, the word "Caliph" does not refer to a particular sex or group. So that both men and women have an important role as caliphs on Earth.

### 3. Both men and women accept primordial agreements with God.

Primordial agreements are private agreements between beings and their creators. Humans as creatures have done primordial agreements with their God, there is no intervention from any party. This agreement was carried out

<sup>18</sup> Hj. Asni, *Pembaruan Hukum Islam di Indonesia*, (Jakarta: Kementrian Agama RI Dirjen Pendidikan Islam, 2012), page.55-58.

at the beginning of human creation, this event is contained in the Qur'an Surat al-A'raf verse 172:

وَإِذْ أَخَذَ رَبُّكَ مِنْ بَنِي آدَمَ مِنْ ظُهُورِهِمْ ذُرِّيَّتَهُمْ وَأَشْهَدَهُمْ عَلَىٰ أَنفُسِهِمْ أَلَسْتُ بِرَبِّكُمْ قَالُوا بَلَىٰ شَهِدْنَا أَن تَقُولُوا يَوْمَ الْقِيَامَةِ إِنَّا كُنَّا عَنْ هَذَا غَافِلِينَ

*Meaning: (remember), when your Lord took the descendants of the children of Adam from their sulbi and God took a testimony of their souls (saying): "Am I not this is your god? " they answered: "Yes (You are our Tuhan), We are witnesses". (We do this) so that you do not say on the Day of Resurrection: "Indeed We (Banu Adam) are people who are unaware of this (oneness of God)",*

in the verse also does not mention the specificity of the children and grandchildren adam male or female.

#### 4. Adam and Eve were actively involved in the cosmic drama Cosmic

drama is the story of the condition of the prophet Adam and his partner Eve, starting from heaven to the earth. In the Qur'an, all verses containing the story always emphasize both actively with the use of two-person pronouns, for example. This shows that Adama and Hawa have the same role in the story of the spread of humanity. The example of the verse that contains the story is the Qur'an Surat al-Baqarah verse 35:

*Artinys: and We say: "O Adam, be taught by you and your wife heaven, and eat many other good foods wherever you like, and do not approach this tree, which causes you, including those who do wrong.*

وَقُلْنَا يَا آدَمُ اسْكُنْ أَنتَ وَزَوْجُكَ الْجَنَّةَ وَكُلَا مِنْهَا رَغَدًا حَيْثُ شِئْتُمَا وَلَا تَقْرَبَا هَذِهِ الشَّجَرَةَ فَتَكُونَا مِنَ الظَّالِمِينَ

#### 5. As men can have the potential to achieve, women have the same potential for achievement.

This is based on the Qur'an, Surat al-Nahl verse 97: '

مَنْ عَمِلَ صَالِحًا مِنْ ذَكَرٍ أَوْ أُنْثَىٰ وَهُوَ مُؤْمِنٌ فَلَنُحْيِيَنَّهٗ حَيَاةً طَيِّبَةً وَلَنَجْزِيَنَّهُمْ أَجْرَهُمْ بِأَحْسَنِ مَا كَانُوا يَعْمَلُونَ



*Meaning: Whoever does good deeds, both men and women in the state of faith, then verily We will give him a good life and verily We will reward them with a better reward than what they have done.*

In contrast to these five things, gender equality in the Qur'an is divided into 8 groups according to Khoirudin Nasution, namely:<sup>19</sup>

1. The general statement concerning equality between men and women is included in the Qur'an Surat al-Baqarah verse 187 :

هُنَّ لِبَاسٌ لَكُمْ وَأَنْتُمْ لِبَاسٌ لَهُنَّ ...

*Meaning: ... they are clothes for you, and you are also clothes for them ...*

2. Equality of origin.

In the creation of humans, the Qur'an never distinguishes elements or substances originating from human creation. This is as stated in the Qur'an Surat al-Nisa 'verse 1:

يَا أَيُّهَا النَّاسُ اتَّقُوا رَبَّكُمُ الَّذِي خَلَقَكُمْ مِنْ نَفْسٍ وَاحِدَةٍ وَخَلَقَ مِنْهَا زَوْجَهَا وَبَثَّ مِنْهُمَا رِجَالًا كَثِيرًا وَنِسَاءً ۚ وَاتَّقُوا اللَّهَ الَّذِي تَسَاءَلُونَ بِهِ وَالْأَرْحَامَ ۚ إِنَّ اللَّهَ كَانَ عَلَيْكُمْ رَقِيبًا

*Meaning: O people, fear your God who created you from alone, and from him Allah created his wife; and from both of them God breeds many men and women. and fear Allah who by (uses) His name you ask each other, and (maintain) friendship relations. Surely Allah always watches over and watches over you.*

3. Equality of charity and rewards

There are many verses that include equality of men and women in terms of charity and reward. Such as in Surat al-Imran verse 195:

فَاسْتَجَابَ لَهُمْ رَبُّهُمْ أَنِّي لَا أُضِيعُ عَمَلَ عَامِلٍ مِنْكُمْ مِنْ ذَكَرٍ أَوْ أُنْثَى ۖ بَعْضُكُمْ مِنْ بَعْضٍ ۚ فَالَّذِينَ هَجَرُوا وَأُخْرِجُوا مِنْ دِيَارِهِمْ وَأُودُوا فِي سَبِيلِي وَقَاتَلُوا وَقُتِلُوا لَأُكَفِّرَنَّ عَنْهُمْ سَيِّئَاتِهِمْ وَلَأُدْخِلَنَّهُمْ جَنَّاتٍ تَجْرِي مِنْ تَحْتِهَا الْأَنْهَارُ نَوَافًا مِنْ عِنْدِ اللَّهِ ۗ وَاللَّهُ عِنْدَهُ حُسْنُ النَّوَابِ

*Meaning: So their Lord allows his request (by saying):" I am not wasting charity those who do charity among you, whether male or female, (because)*

<sup>19</sup>Hj. Asni, *Pembaruan Hukum Islam di Indonesia*, (Jakarta: Kementrian Agama RI Dirjen Pendidikan Islam, 2012), page.58-63.

*some of you are descended from others, so those who emigrate, who are cast out of their homes, who are hurt on my way, who fighting and being killed, I will surely erase their mistakes and surely I put them in paradise a flowing rivers beneath it, as a reward in the Allah, and Allah on His side a good reward.*

”

#### 4. Sight of Alignment to love and love

in the Qur'an letter Ar-Rum verse 21 mentioned that although different types sex, men and women were created to love and love one another by pairing in order to create peace. The sounds of the verse are

وَمِنْ آيَاتِهِ أَنْ خَلَقَ لَكُمْ مِنْ أَنْفُسِكُمْ أَزْوَاجًا لِتَسْكُنُوا إِلَيْهَا وَجَعَلَ بَيْنَكُمْ مَوَدَّةً وَرَحْمَةً إِنَّ فِي ذَلِكَ لَآيَاتٍ لِقَوْمٍ يَتَفَكَّرُونَ

*Meaning: and among His signs of authority is He created for you wives of your own kind, so that you tended and felt secure to Him, and made Him you love and affection. Verily in that there are truly signs for those who think.*

#### 5. Justice and equality

There are many verses which contain justice and equality, including Al-Baqarah verse 228:

وَلَهُنَّ مِثْلُ الَّذِي عَلَيْهِنَّ بِالْمَعْرُوفِ.....

*Meaning: and women have rights that are balanced with their obligations according to the correct way ...*

#### 6. Alignment insocial security

Al-Baqarah verse 177:

لَيْسَ الْبِرُّ أَنْ تُوَلُّوا وُجُوهَكُمْ قِبَلَ الْمَشْرِقِ وَالْمَغْرِبِ وَلَكِنَّ الْبِرَّ مَنْ آمَنَ بِاللَّهِ وَالْيَوْمِ الْآخِرِ وَالْمَلَائِكَةِ وَالْكِتَابِ وَالنَّبِيِّينَ وَآتَى الْمَالَ عَلَى حُبِّهِ ذَوِي الْقُرْبَىٰ وَالْيَتَامَىٰ وَالْمَسَاكِينَ وَابْنَ السَّبِيلِ وَالسَّائِلِينَ وَفِي الرِّقَابِ وَأَقَامَ الصَّلَاةَ وَآتَى الزَّكَاةَ وَالْمُوفُونَ بِعَهْدِهِمْ إِذَا عَاهَدُوا وَالصَّابِرِينَ فِي الْبَأْسَاءِ وَالضَّرَّاءِ وَحِينَ الْبَأْسِ ۗ أُولَٰئِكَ الَّذِينَ صَدَقُوا ۗ وَأُولَٰئِكَ هُمُ الْمُتَّقُونَ

*Meaning: not confronting Your face to the east and west is a virtue, but indeed the virtue is faith in a God, the day Then, the angels, the books, the*

*prophets and gave their beloved property to their relatives, orphans, poor people, travelers (who need help) and those who begged; and (liberating) slaves, establishing prayers, and performing zakat; and those who keep their promises when they promise, and those who are patient in pain, suffering and in war. they are the righteous (faith); and they are the ones who fear.*

#### 7. Mutual help with

Al-Taubah verse 71:

وَالْمُؤْمِنُونَ وَالْمُؤْمِنَاتُ بَعْضُهُمْ أَوْلِيَاءُ بَعْضٍ يَأْمُرُونَ بِالْمَعْرُوفِ وَيَنْهَوْنَ عَنِ الْمُنْكَرِ وَيُقِيمُونَ الصَّلَاةَ وَيُؤْتُونَ الزَّكَاةَ وَيُطِيعُونَ اللَّهَ وَرَسُولَهُ أُولَئِكَ سَيَرْحَمُهُمُ اللَّهُ إِنَّ اللَّهَ عَزِيزٌ حَكِيمٌ

*Meaning: and those who believe, men and women, some of them (are) become helpers for others. they sent (to do) the one who understood, prevented from the evil, established prayer, performed zakat and obeyed Allah and His Messenger. they will be given mercy by God; Allah is Mighty, Wise.*

### E. Gender Relations with the Marriage of

the Qur'an as a reference to the principles of Islamic society, basically recognizing that the position of men and women is the same. Both are created from one nafs (*living entity*), where one has no superiority over the other. Even the Qur'an does not explain explicitly that Eve was created from the ribs of the Prophet Adam so that his position and status were lower. On this basis, the principle of the Qur'an on men and women is the same, where the right of the wife is recognized equally with the rights of the husband. In other words, men have rights and obligations towards women and vice versa women also have rights and obligations towards men. Especially if it is associated with the context of pre-Islamic society that was transformed.

The equal position of men and women in addition to decision-making, also in economic rights, namely to own property is not the husband or father may interfere with his wealth. That wealth includes those obtained through inheritance or self-cultivated. Therefore dowry or dowry is paid by men for the women themselves, not for their parents and cannot be taken back by their husbands.

In Indonesian positive law, the rights and obligations of the husband and wife are regulated in the Marriage Law No. 1 of 1974. In its history, the formulation of this Law has been challenged, especially from women who want to fight for their rights, for example is the problem of polygamy and talaq, because women feel this is a form of injustice and arbitrariness of men who degrading women. At that time the material about the role of husband and wife in the household did not get a significant spotlight, as it is today.<sup>20</sup>

Entering the current era of globalization, many women activists voiced that the existence of the Marriage Law was biased towards gender issues. As seen in article 31 paragraph 3 of the Marriage Law No. 1 of 1974 which firmly states that: "husband as head of family and wife as housewife" As well as article 34: "husband is obliged to protect his wife and wife must regulate the household as well as possible"

Men act as the main and final goalkeeper or defense in the development of domestic life movements. The article is in line with the statement in article 79 paragraph 1 Compilation of Islamic Law, which also states that the husband is the head of the family and wife is a housewife.

In the view of female activists, these articles justify that the position of the husband as the head of the household (leader) has a living responsibility for his family, so their duty is in the public sphere. While the wife is in the domestic sphere, caring for the child and husband. The article further legitimizes various forms of injustice for women. The division of public and domestic tasks is considered a form of discrimination against women, plus there is a lack of respect for domestic work. The existence of this domestication places women as number two creatures (*the second sex*).

The article also further strengthens the patriarchal culture which assumes that women do not have the right to be leaders in the household, on the contrary they have the right to be regulated. Domestic work charged to women is carried out together with reproductive functions for menstruation, pregnancy,

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<sup>20</sup> Mansour Fakih, *Posisi Kaum Perempuan dalam Islam Tinjauan dari Analisis Gender. Dalam Memebincang Feminisme Diskursus Gender Perspektif Islam*, (Surabaya: Risalah Gusti, 1996), page. 62-63.

breastfeeding and so on. While men with their public roles according to the habits of society (social construction), they are not responsible for the domestic workload, because it is only feasible to be done by women.

The position of women is still often faced with the position of men. The position of women is always associated with the domestic environment related to family affairs and household affairs. While the position of men is often associated with the public environment, which deals with matters outside the home.

In the social structure, such a position of women is difficult to compensate for the position of men. Women in the public sphere still find it difficult to escape responsibility in the domestic environment. Women in this case are powerless to avoid the double burden because their duties as caregivers have become cultural perceptions in general. Cultural controls are tighter to women than men.

If you look at the prospects and development of the image of the role of women in the family in the era of modernity, there will be several categories, including:

- 1 household manager (wife, mother, family and housewife),
- 2 workers and household managers, and
- 3 professional workers .

If calculated from adult women (labor force), the combination of categories 2) and 3) is estimated to produce a proportion of 1: 1 with the first category, then in terms of the role of sorting that will occur can be formed from several things:

- 1) The role of tradition in placing women in reproductive function (taking care of the household, giving birth and caring for children, protecting the husband). His life is 100 percent for the family. The division of labor is very clear, women at home, men outside the home
- 2) Role of transition  
Realizing the role of tradition is more important than others. The division of tasks according to Gender aspirations still exists to maintain harmony and household affairs is the responsibility of women.
- 3) The dual role of

positioning women in the lives of two worlds, the domestic-public role is equally important. Husband's opinion is a trigger for constancy and anxiety.

4) Egalitarian roles

Take the time and attention of women to outside activities. Moral support and a level of male concern are essential to avoid conflicts of interest.

5) Contemporary role

Is the impact of the choice of women to be independent in solitude. The amount is not much, but the impact of the dominance of men who have not cared too much about women's interests might increase their population.

The role of women as wives in the household is as the responsible and manager of the household economy. Family income originating from a husband and wife's business, then the expenses are arranged according to their needs and abilities. Islam teaches not to overdo it and get and fulfill some Wife Rights such as:

1. Men act as fathers or husbands in domestic life;
2. Men act as leaders or heads of households;
3. Men as the main decision makers in the household;
4. Men as directors or guides in the household;
5. Men as household breadwinners or main income;
6. Men act as lovers and partners to befriend and joke in the household;
7. Men act as connoisseurs of household interests with outside parties;
8. Men as educators and sponsors in the household;
9. Men play a role as a driving motor for a household while functioning as a mechanism or repairman if there is damage to the household wheel;
10. Men act as educators or instructors for family members in the household.<sup>21</sup>

In the formulation of the Compilation of Islamic Law itself, arrangements regarding the distribution of rights and obligations of husband and wife in a household can be seen in the following article:

1. Husbands are family heads, and wives of housewives.

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<sup>21</sup> Istiadah, *Pembagian Kerja Rumah Tangga dalam Islam*, (Jakarta: Lembaga Kajian Agama dan Gender, 1999), page. 7-8.

2. The right and the position of the wife are balanced with the right and the position of the husband in the household life and the association of life in society.
3. Each party is entitled to a legal act.

Article 80 The compilations govern the obligations of a husband to his wife and family. This article consists of 7 sentences, that is,

1. Husband is a guide to his wife and household, but in matters of his household affairs are important to be decided by a husband and wife.
2. The husband is obliged to protect his wife and provide all the necessities of living of a household according to his ability.
3. Husbands are required to provide religious education to their wives and to provide the opportunity to learn useful and useful knowledge of religion, religion, and nation.
4. In accordance with her husband's income bear: a. maintenance, *kiswah*, and place of residence for the wife. b. household expenses, maintenance costs, and medical costs for wives and children. c. education costs for children.
5. The obligation of the husband to his wife as mentioned in paragraph (4) letters a and b above shall come into force after the full enjoyment of his wife.
6. His wife can release her husband from her obligations as mentioned in paragraph (4) letters a and b.
7. The husband's obligation as referred to in paragraph (5) shall be terminated if the wife is *nusyuz*.

the husband's obligation to provide a place of residence, the Compilation arranges itself in section 81. Looking at some of the articles above, there is actually a government effort to protect the rights of married wives. The gender issue that has been widely disputed by women activists today, is the fruit of distrust (*trust*) on the government to control women's rights. And this should be a joint effort to make a woman in her role as a wife to best match the corridors and capabilities of the woman.

## E. Gender relations

the Greatest Revolutionary Presidency in the last hundred years is the transformation of women's position in society, whether viewed from social status or from cultural perspective. That happens after human consciousness about the role of women in common life in this world. Accompanying this new awareness emerged a number of gender concepts referring to the rise of the woman.

In Indonesia, there is a symptom showing the trend of women resurgence that manifests itself in the form of equality of rights, obligations and role equality with men in various aspects of life. This gender equality movement by some women is welcomed with euphoria, and strives to fight for it without any biological differences between men and women, as feminists say that the concept of gender is social constructs, so gender differences do not necessarily cause role differences and gender behavior in social settings, hence any kind of gendered work, for example women fit for parenting, and men as family breadwinners, should be eliminated in social life, otherwise it would be difficult to eliminate the condition of inequality.

The concept of gender equality is an integral part of an effort to realize a 50/50 equivalent society. One of the efforts to practice this concept is to make social transformation so that the structure of society becomes simple, the way it is:

- 1) There is no stratification in society, every component in society is the same, so the structural division in society is irrelevant.
- 2) There is no diversity in human nature, ability and desire, so every individual in society will have the same utility function, and the same satisfaction.
- 3) Therefore, all allocation of resources should be uniform. [22]

The concept of gender that wants 50/50 if applied, it must abolish the biological diversity of humans, and eliminate any structure that can lead to *division of labor* within the family. This is why they involve the structural change of society, which is of course a change of value, religion, culture and law so that everything becomes uniform.

They did not realize that de facto, the reality that empirically encountered, men and women were different, feminists could have de jure outlining that there



was no biological difference implication between men and women. However, de facto women and men's hormones are different, this seems universally applicable and can be found everywhere.

Feminisms are unaware that structured societies are always on the ground, as people need rules and order in order to create a safe and peaceful life, if the writer says they want to live without rules, even without morals and Ethics, as a religion of religion, is not an important issue for them, which is important to them is the principle of equal living, without realizing that what they are doing is boomerang for themselves.

Gender equality that wants the same situation between men and women, necessarily requires the underlying assumptions, because to explain a proposition, or the relationship between a concept with another concept, then the relationship is formed by using some assumptions, this assumption is often not explicitly described, but consciously or not, is an integral part of our point of view through which one often holds an opinion or a theory because he believes that his assumptions are true.<sup>22</sup> However, this truth is again dependent on the assumptions it uses. Until the truth value can not be said to be true or certainly wrong, because in assessing an assumption should be associated with a context where the assumption can apply, then we will get a misleading conclusion.

Women in Islam do not always inherit half of men. The Qur'an does not say: "God requires you about (the division of the heir to) the heirs, that is, the part of a man equal to the part of two women." But it is devoted to the condition of children, not at all beneficiaries. Allah says in surah al-Nisa, verse 11, that is

يُوصِيكُمُ اللَّهُ فِي أَوْلَادِكُمْ لِلذَّكَرِ مِثْلُ حَظِّ الْأُنثِيَيْنِ ۚ فَإِن كُنَّ نِسَاءً فَوْقَ الثَّنَيْنِ فَلَهُنَّ ثُلُثَا مَا تَرَكَ ۚ وَإِن كَانَتْ وَاحِدَةً فَلَهَا النِّصْفُ ۚ وَلِأَبَوَيْهِ لِكُلِّ وَاحِدٍ مِّنْهُمَا السُّدُسُ مِمَّا تَرَكَ إِن كَانَ لَهُ وَلَدٌ ۚ فَإِن لَّمْ يَكُنْ لَهُ وَلَدٌ وَوَرِثَتْهُ أَبَوَاهُ فَلِأُمِّهِ الثُّلُثُ ۚ فَإِن كَانَ لَهُ إِخْوَةٌ فَلِأُمِّهِ السُّدُسُ ۚ مِن بَعْدِ وَصِيَّةٍ يُوصِي بِهَا أَوْ دِينٍ ۗ أَبَاؤُكُمْ وَأَبْنَاؤُكُمْ لَا تَدْرُونَ أَيُّهُمْ أَقْرَبُ لَكُمْ نَعْمًا ۚ فَرِضْوَةٌ مِنَ اللَّهِ ۚ إِنَّ اللَّهَ كَانَ عَلِيمًا حَكِيمًا

*Meaning: Allah requires you to share your children. That is: the share of a boy is equal to the share of two daughters, and if the child is more than two women,*

<sup>22</sup> Salman, Otje, *Kesadaran Masyarakat Terhadap Hukum Waris*. (Bandung: Alumni, 1993).t.h

*then for them two third of the abandoned property; if the girl is only one, then she gets half the property. And for two parents, for each one sixth of the abandoned property, if the deceased has a child; if the deceased has no child and he is inherited by his (only) mothers, then his mother gets a third; if the deceased has several brothers, then his mother gets a sixth. (The above divisions) upon completion of his will or (and) after payment of his debt. Your parents and your children know not one of them who is nearer to you. This is the ordinance of Allah. Surely Allah is Knowing and Wise."*

As long as the provisions are intended for all heirs, then the Qur'an uses the common words, lafazh an-nashib (part), that each man and woman have a part same.<sup>23</sup> God said.

لِّلرِّجَالِ نَصِيبٌ مِّمَّا تَرَكَ الْوَالِدَانُ وَالْأَقْرَبُونَ وَلِلنِّسَاءِ نَصِيبٌ مِّمَّا تَرَكَ الْوَالِدَانُ وَالْأَقْرَبُونَ مِمَّا قَلَّ مِنْهُ أَوْ كَثُرَ ۗ  
نَصِيبًا مَّفْرُوضًا

*means: For men a share of the property be for her and her relatives, and for women there is a share of the inheritance of their mothers and their relatives, either small or large according to the appointed portion. [An-Nisa: 7]*

The size of the inheritance heterosexual has nothing to do with gender-men or women-in absolute terms. Unlike most people, however, the size of this difference is three:

1. The level of kinship. The closer the level of kinship (nasab relationship) to the corpse, the higher the rights in the heirs.<sup>24</sup>
2. The position of generation of heirs in the generation chain. This is a very high wisdom of the Ilahiyyah in laying the foundation of the heirs according to Islam. The smaller the heir, the generation that sees the life and the burden of his burdens, who face the ever-growing responsibility, the heir becomes larger. The son of the mayit inherits many from the father of the dead, but both are men. The wife of the mayit inherits much more than her mother, but both are women. Even the maiden's daughter inherited more than the father of the dead.

<sup>23</sup> Haideh Moghisi, *Feminisme dan Fundamentalisme Islam*, (Yogyakarta: LKIS, 2004), Page. 105.

<sup>24</sup> Amir Syarifudidin, *Hukum Kewarisan Islam* (Jakarta: Prenada Media, 2004), page. 24-27.

3. The third factor in distinguishing the inheritance parts is the financial burden that it holds in accordance with Islamic law. If the degree of kinship is the same and the position of the heir generation is the same as the position of the child, with the distinction between boys who are burdened to spend their wives, families and children, with the girls who will be guaranteed his livelihood and the maintenance of his children by her husband. So in this condition the male part, the same as the two female parts. In this division there is absolutely no element of discrimination, but that prevents women as a form of caution.

Here are the facts of truth in the unknown Islamic heritages or deliberately forgotten by liberals who invoke to redecorate the inheritance law and interpret the verse- the heirs with the textual historical theories. These are the facts of the truth of the heirs of Islam by making women in the list of heirs, who inherit with men in accordance with their conditions. Women inherit the same as men, or more than men.

In total the law of the Islamic family as the law of God will always always put justice in justice. The provisions of the male legacy section are twice female, it contains a noble law objective to raise the dignity and dignity of women, providing legal protection to them as the biologically needed people.

### **Conclusion**

Gender is the concept of engineering or human formation through social, environmental, cultural, religious, even political and economic construction of a particular country / place in which it contains the social functions and roles of each sex that are inherent to the changing character of time-time, different from one place to another, can be exchanged, different from one class to another.

Gender differences have led to injustice, both for men and for women. The manifestation of gender inequality can be seen in the form of marginalization, subordination, stereotyping, violence and workload.

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