

## THE REPRESENTATION OF WOMEN'S ROLE AND POSITION IN TAQRIB BOOK: A Discourse Analysis Study

Dudang Gojali<sup>1</sup>; Nandang Abdurrohimi<sup>2</sup>; Hapid Ali<sup>3</sup>

<sup>1</sup>UIN Sunan Gunung Djati, Bandung ([dudanggojali@yahoo.co.id](mailto:dudanggojali@yahoo.co.id)); <sup>2</sup>UIN Sunan Gunung Djati, Bandung ([nandangabdurohimi@gmail.com](mailto:nandangabdurohimi@gmail.com)); <sup>3</sup>UIN Sunan Gunung Djati, Bandung ([hapid.ali@uinsgd.ac.id](mailto:hapid.ali@uinsgd.ac.id))

### **Abstract**

*This article aims at analyzing woman's role and position in a book of Islamic jurisprudence (fiqh book). It focuses on the discussion of women's position in domestic and public sphere as written in the fiqh book titled Taqrib. It also explores the relevance of the Taqrib's contents on women's role and position in the social context by probing its readers' awareness. In this qualitative study, the discourse analysis method is used to examine the contents of the book and the context of readers, i.e. prominent teachers of Islamic boarding school (kyai). Although women's role and position was depicted subordinate to men in several cases of fiqh reasoning (e.g. the authority of father and grandfather in determining marriage for their daughter, the superiority of men over women in being a judge, and so forth) in the Taqrib book, Some kyai were aware of the women's role and position in the social life equally. Hence, they maintain that the women's role and position in the domestic and public environment should be recognized. This study thus emphasizes the need to re-read the fiqh reasoning on women's role and position contextually.*

### **Keywords**

*Woman Role and Position, Fiqh, Taqrib book*

## A. Introduction

In the representation of women in politics, Indonesian women only reach 30% in several fields: executive, legislative, and judicial branches.<sup>1</sup> This condition shows that there are differences in the position and role of women. It already exists in Islamic law which is listed in the Islamic jurisprudence (*fiqh*). It is easy to find these differences, for instance, a husband has absolute right to divorce a wife.<sup>2</sup> However, Women and men are equal partners in social life as cited in Diana.<sup>3</sup> In addition, the era of the Prophet of Muhammad, some earlier Islamic women figures were very brave in struggling and upholding Islamic law without regard to being a woman.<sup>4</sup> The position of women as mothers in Islam is higher than men as fathers.<sup>5</sup> Other parallels are that women in obtaining inheritance in inheritance law, being public officials in leadership and judicial institutions have limited authority in giving testimony to civilian matters, and several other arrangements. This distinction invites critical views on discriminatory tendencies of *fiqh*.

The *Taqrib* book written by Abu Syuja Ahmad bin Husayn al-Isfahany (d. 488 H) is one of the very concise Islamic jurisprudence books that contain almost all the basic views of Sayafi'iyah school. In fact, this book has a wider transmission because it attracts many other *fiqh* scholars (*faqih*) to make *sharah* (explanation book of *fiqh*)

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<sup>1</sup> Zakaria S., *Kepemimpinan Perempuan dalam Persepektif Hukum Islam (studi komparatif antara pemikiran kh. Huseinmuhammaddan prof. Sitimusdahmulia, Khazanah*, vol. 6, 2013, P. 66

<sup>2</sup> Nasution H, *Pembaharuandalam Islam*, Jakarta, BulanBintang, 1996.

<sup>3</sup> Diana, R., *Partisipasi Politik Muslimah dalam Pandangan Yusuf Qardhawi*. Jurnal Tsaqafah, Vol. 5, No. 2, 2010, P. 60

<sup>4</sup> Ibrahim, *Kedudukan dan Kontektualisasi Perempuan dalam Kitab Taqrib*, Bandung Jurnal Perspektif, Vol.6, No.3, 2019, P. 60

<sup>5</sup> Ibrahim, *Kedudukan dan Kontektualisasi Perempuan dalam Kitab Taqrib*, Bandung Jurnal Perspektif, Vol.6, No.3, 2019, P. 61

book) and *hāsyyiah* (further explanation of explanation book of *fiqh* book). For instance, Ibn Qasim wrote the book entitled *Fathul Qarib* and Ibrahim al-Bajuri who wrote *Al-Bajuri 'ala Ibn Qasim al-Ghazzy*. The book is widely used by *pesantren* (Islamic boarding schools), especially some *pesantren* that are affiliated to Nahdhatul Ulama in Indonesia. This book is used as a reference in the basic understanding for students as users who learn Islam. It is used as a reference for *santri* (Islamic students in *pesantren*) to develop their understanding of Islamic jurisprudence. In depth understanding of jurisprudence, *santri* and *kyai*,<sup>6</sup> as users, are required to examine more deeply the way they perceive and realize the message which is conveyed by the researchers in the *Taqrib* book. In this description, The researchers does not only explain the study of Islamic jurisprudence normatively but also analyze some gender issues, especially in women position. Therefore, it is clearly enough that Islamic jurisprudence provides a discourse on women position which is related to several Muslim elements such as *santri*, *kyai* and other Indonesian Muslim community behavior in general.

Based on the urgency of the *fiqh* in determining the legal worldview of Indonesian Muslims, some classical Islamic jurisprudence books taught *pesantrens* are the main source of transmission of legal norms and society norms. Some classical Islamic jurisprudence books can determine how gender can be constructed in *santri*'s paradigm, especially is the issue of women role in social life. Women's research in the view of modern thought has been widely carried out but the view of women in classical *fiqh* is rarely studied.

Based on the explanation of the background and theory above, the researchers try to analyze the women role and position which is represented in *Taqrib* as the classical *fiqh* book and to analyze whether the *kyais*, as

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<sup>6</sup> Kyai is traditionally termed as a leader of Islamic school in Java. It is used to call someone who has honorary degree in Islamic understanding.

users, aware on the woman role and education represented in *Taqrib* as classical Islamic jurisprudence book when they transfer the moral and knowledge regarding to *fiqh* understanding.

This article uses discourse analysis method as a qualitative design by collecting and analyzing the data. The primary and secondary sources are important sources in this study. The primary source/data is directed on emphasizing and identifying the hidden messages in *Taqrib* book whether it has the ideological messages as bias gender or not. Secondary data is the supporting data which is taken from some *kiyais* as users of *Taqrib* book. This study is also conducted by taking interview steps regarding to the role and position of women to some key figure; *kiayi* in some Salafiyah Islamic boarding schools. Those consist of Hidayatussalam Islamic Barding School, Al-Hamidiyah Islamic Boarding School, Miftahurrohman Islamic Institution located in Cibiuk and Baroroh Islamic Boarding School located in Limbangan Garut. *Kiyais* in Islamic boarding school, as user of *Taqrib fiqh*, have high authority to teach and deliver their views including their argumentation on gender issue toward *santri*.

## **B. *Fiqh* in General Perception**

The word "*Fiqh*" means "understanding", as the Qur'an in some letters uses the word *Fiqh* in the general sense of understanding. The statement of the Qur'an "*Liyatafaqqahū fi al-din*" (to understand religious issues) shows that the term *Fiqh* has not been used for legal understanding in era of the Prophet of Muhammad specifically. Nevertheless, it is still in a broad sense that covers all dimensions of religion. Formerly, the term of *fiqh* was the depth knowledge and understanding in each

mater. In the current era, the term of *fiqh* is seemed to be related only Islamic law.<sup>7</sup>

In contemporary era, several terms emerged in the context of Islamic studies such as *Fiqh*, science, faith, monotheism and wisdom used in a general sense. Lately, these terms developed and became more specific including in *fiqh* terms as the branch of shari'a in a modern era. In terminological meaning, *fiqh* is defined as knowledge of Shari'a laws which consist of the branch *fiqh* argument (*furu'*) which is directly extracted from the detailed syar'i arguments Al-Bannani as cited in Widyanto.<sup>8</sup> Here, there are several reasons can be presented regarding to the development of *Fiqh* terminology including; Islamic society during the Prophet era. The changing of the meaning of *fiqh* is terminologically influenced by the development of the Islamic region expansion, the emergence of the schools of *fiqh* and theological sects, and the development of the dynamics of religious thought which is the main factors from previous era to current or modern era.

In classical Era, Abu Hanifah described some issues on *fiqh* in *Fiqhul Akbar*. This book included some Islamic norms such as belief (*aqidah*), law and morality as a part which is covered by the terminology of *Fiqh*. The meaning of *fiqh* terminologically is the knowledge of the *syar'iyah* laws of *amaliyah* (human behavior) from the detailed arguments written both in Quran and sunnah (*min adillah at-tafsiliyah*). Whereas, other scholars define *fiqh* is similar to the knowledge of laws. After Abu Hanifah passed away, the development of *fiqh* terminologically has been explored by some greatest scholars such as: Annas bin Malik who are popularly called Imam Malik, Muhammad Idris Asy-Syafi'i (Imam As-Syafi'i), and the

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<sup>7</sup> Widyanto, A. *Pengembangan Fiqih di Jaman Modern*. Jurnal Ilmiah Islam Futura; Vol.10, No.2, 82-100, 2011, P. 85-86

<sup>8</sup> Widyanto, A. *Pengembangan Fiqih di Jaman Modern*. Jurnal Ilmiah Islam Futura; Vol.10, No.2, 82-1002011, P. 86

last great mujtahid is Ahmad bin Hanbal who are commonly called Imam hambal.

Thus, sharia revelation has been successfully understood and formulated by the early period mujtahid. Then, the formulation of the revelation of Allah becomes operational rule for Muslim people. The result of the formulation is called *Fiqh* which is collected and documented in the form of written works with the names of *fiqh* books. The book of *fiqh* was passed by students or followers of mujtahid scholars to the next generation until current period with only a few changes. At this current era, people often assumed that *fiqh* was classical books introduced by early period scholars.

Characteristic of *fiqh* appears to answer needs of society in their era. It also prepares a legacy for the development of the law in the future. To obtain a comprehensive picture of the characteristics of *fiqh*, it is necessary to explain the development of *fiqh* from the beginning (*‘asr al-tasyrī’*) to the current era. In the spectrum, it can be stated that *fiqh* is more directed at the reality of the development of *fiqh* itself. This is similar to Norman J. Coulson’s argument which stated that *fiqh* is different from Roman law which has very limited development. Islamic *fiqh* developed in the form of academic formulations from alternative schemes for practical needs in which the rulers do not interfere with the development of *fiqh* but *fiqh* is more theoretical arguments from scientists in the long run.

Historically, the development of *fiqh* can be identified into several periods as follows:

### **1. First Period**

After the Prophet passed away, *shari’a* –which has been directly given from God in the form of revelations given to the Prophet–, stopped automatically. However, in following years in the aftermath of prophet death, several religious problems rise more complex than before. In this period, the Muhammad’s follower era

had a very important role in preserving the Prophet's tradition and widening the wings of Islamic speech to other countries. This is the starting point of the *fiqh* mining era with the emergence of new legal, cultural and ethical problems that emerged during the Prophet's era.

New development which is accompanied by the expansion of Islamic territory also began due to different perceptions in understanding the Qur'an and the sunnah. Furthermore, the differences between Islamic scholars are not only caused by new problems but also caused by the *ijtihad* of the Islamic scholars themselves in understanding the two main resources of Islam; Quran and hadis. Even though *ijtihad* among earlier follower of the Prophet makes an opportunity for the emergence of *khilafiyah* (different argument), but the companions in carrying out their *ijtihad* are often carried out in similar deliberation that gives birth to an *ijma'* (gathered agreement) among them.

Islamic scholars in different understanding deal with its difference in reasonable attitude. Therefore, the different interpretations continue without forcing one understanding to another. In this period, the freedom of opinion does not have a tendency for personal or group interests. So, that it has given birth to a moral power of Islam that sincerely seeks to see problems new legitimacy and answers. The scope of *ijtihad* in the Islamic scholar era was quite extensive. Companions of the Prophet do not respond to Islamic laws in an ideal that stands alone apart from the social context. Nevertheless, the social dimension has made them aware of the ideal answers of Islam to various developing problems. Hence, *fiqh* in this period is really developed by those Islamic scholars. Some differences begin to appear even though once smaller than the next period.

## **2. Second Period**

Generally, the second period was rather similar pattern with previous period in answering the faced problems. In this period, they sought the law to refer to the Quran and the tradition (sunnah). They do not find it in the qu'ran and the tradition (sunnah), they refer to *ijtihad* which is carried out by the companions of the Prophet, then they carried out their own *ijtihad* in accordance with the rules of *ijtihad* from the greatest scholars.

In this period, there were new development that distinguished *fiqh* from the previous period. The distinguished pattern of Islamic scholars in this period is their tendency to view Islamic law from rational paradigm, especially those who lived in Iraq. Scholars used a lot of logical interpretation in understanding Islamic law as well as addressing some advanced religious problems.

## **3. Third Period**

This period is famously known as the golden period of *Fiqh*. The transition of power from the Umayyads to the Abbasids (brought a great influence on the development of *Fiqh* realm. Thus, the *fuqahā* (Islamic scholars in *fiqh*) have the freedom to acquire the understanding of *ijtihad* which is more profound the previous period. Therefore, the third period is known as the golden era of development of *fiqh* in history. In addition to the attention from the leader of Bani Abbas mentioned above, there are also other factors that have a role in delivering *fiqh* to its golden era. These factors supported by the flourishing of scientific studies in this period.

The next factor is the transfer of the Abbasid empire capital city to Baghdad. This has given a new environment in the development of the world of *fiqh*. Then, other factors affect *fiqh* from this period and this



is probably the most important thing. It is the codification of the sciences. Hence, this period is also known as the codification of science including the codification of *Fiqh*. In the current era, there are not only men have a quality but also women have a quality in environment because of the heritage of social fact itself.<sup>9</sup> For this argument, the codification of *fiqh* is not only focuses on *fiqh* problems but also focuses on previous problem and the future problem including the discussion of women role.

### **C. The Main Theory of Woman Position and Role**

On the first period, earlier companions of the prophet Muhammad have the important role in keeping and actualizing Islamic inheritance law (*fiqh* inheritance) on the whole word. In the second period, they tried to find a legal answer of Muslim problems that are refer to Qur'an and hadis. If scholars did not find, they refer the law to ijthihad conducted by prominent Islamic scholars. In the third period, the development of *fiqh* has been improved in the era of Abasiyah caliphate. It also supported by the development of scientific studies of *fiqh* by *fiqh* scholars. The development of *fiqh* studies rose since some Islamic scholars, especially for four famous schools in Islam, introduced theory, methodology, and the norms of ijthihad which are the pillar of Islamic law decision.<sup>10</sup> Those periods have own development based on the social and heritage construction. Thus, three main theories can explain how social construction and inheritance law in Islam plays a role in determining the position and role of women over men.<sup>11</sup>

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<sup>9</sup> Hussain Muhammad, *Fiqh Perempuan (Refleksi Kiai atas Wacana Agama dan Gender)*, Yogyakarta, LkiS, 2001, 25.

<sup>10</sup> Mun'im A. Sirry, *Sejarah Fiqh Islam*, Surabaya: Risalah Gusti, Cet. 1, 1995, 61-61

<sup>11</sup> Zeitlin, I., *Memahami Kembali Sosiologi: Kritik terhadap Teori Sosiologi*. Yogyakarta: Gajah Mada University Press, 1998.

## 1. Structural Functional Theory

In structural functional theory, it is stated that the integration of a social system is largely determined by the fulfillment of functional prerequisites. There are nine functional prerequisites: the provision of adequate relations with the environment and for sex recruitment; different roles and tasks; communication; cognitive orientations are divided; a set of expressions of articulated ideals; normative rules regarding facilities; effective expression of the rule; socialization; and effective control of deviant forms of behavior D.F. Alberle, as cited in Zeitlin.<sup>12</sup>

The development of this theory can be seen from the application of *fiqh* on the role of women in public sphere like the role of women as a judge. It shows that women have right to involve in each social structure dimension.

Based on this theoretical approach, social stratification is a substantial issue of the strong limits of independent variability of the instrumental structure and distribution of several facilities. Division of labor (differentiation of roles) requires an organization and the organization needs the allocation of responsibilities in structuring collective-relations relational relations. Based on this approach, the difference in position and role in social life between men and women is the need for the social system itself to be functioned. The division of gender roles is one of the functional prerequisites so that system integration can be maintained.

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<sup>12</sup> Zeitlin, I., *Memahami Kembali Sosiologi: Kritik terhadap Teori Sosiologi*. Yogyakarta: Gajah Mada University Press, 1998.

## **2. Conflict Theory**

This theory has a connection with the concept of social conflict stated by Cosser as cited in Zeitlin.<sup>13</sup> The theory states that a struggle against values and recognition of social status is rarely advocated, then power and sources of opposition are neutralized which is carried out by political rival. Social position and role are no more than derivatives of struggle against value and recognition. It is obtained from the hegemonic stakes of the position and role achieved which are then maintained in a systemic structure of socio-political power. In this sense, the position and role of women is not really a natural acquisition and provision of social structures but a result of the stake in the interests of the power relations from whom and how those interests are distributed.

Based on the social conflict theory, position and role of women are a result of social construction determined by the dominance relations of men power. This condition further also determines how behavior patterns are made and represented by people.

## **3. Feminist theory**

In historical order, several issues on women representation in public sphere is still the most frequently discussed issue not only by scholars but also by other researchers. In historical perspective of position materials, it has been vigorously discussed in western countries since the 1970. In America, as a developed country which adheres strictly to the ideology of democracy, social problems related to the treatment of women have emerged in 1849. Feminism is a movement of groups that try to establish and explain how unequal position and role of women constructed by a social system can be returned to a pattern of equal relation. There are several schools in

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<sup>13</sup> Zeitlin, I., *Memahami Kembali Sosiologi: Kritik terhadap Teori Sosiologi*. Yogyakarta: Gajah Mada University Press, 1998.

this feminism, including: liberal, Marxist, and radical feminism.

In 1960 and 1970, feminism served to uncover, challenge, and eliminate operation and dominant gender imagery representation.<sup>14</sup> It has a witness debates on the narrow range of stereotypes present across all media and written text such as women virginity, promiscuous, sex object of men, and women inferiority. The theoretical perspective of radical feminism advocates the opposites of society where women are more privilege, powerful, and prestigious society. This kind of feminism states that men's reason was created to emphasize masculine control and that is not as good as women's institution. This liberal feminism also emphasizes that the advocacy of women equality cannot be obtained only through legal, political, and even constitutional amendment, but also through social consciousness. They emphasize the equal right for women; women can and should be treated the same as men and this lead to equality. Social feminism state that the idea equality and feminism could be achieved through socialism.

Post feminism argues that masculinity and femininity are socially constructed, and these are represented in the text and or images. On the other side, it is identified by three major groups of feminist; the first, liberal feminists who focused on individual right in the context of current social structures Chafe as cited in Ali<sup>15</sup>. The second, radical feminists who focus on group advancement and activities, they wanted to be independent from men and celebrate the

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<sup>14</sup> Althusser cited in Mustapha, A. S., *Gender and Language Education Research: A Review. Journal of Language Teaching and Research*, Journal of Language Teaching and Research, Vol.4, No.3, 2013, P.455

<sup>15</sup> Ali, H., *Gender representation in English in Focus Textbook*. Jakarta: UIN Syarif Hidayaulah, June, 2018, P. 7

overall class of women. Next, socialist feminists believed that the system of capitalism was the primary vehicle used to operate women.

In current era, the existence of women has been discussed in education life. This issue is prevalent discussion among Islamic scholars and researchers. It occurs at the process of teaching and learning at the classroom among *santris* and *kyiais*. Men and women who interact at the process of each position often differ in biological site. Therefore, the gap between men and women socially constructed in social communication including in teaching and learning process of the understanding of *Taqrib* books as one of religious subjects in *pesantren*. In addition, gender identity between woman and man as the social construction is established by social environment.<sup>16</sup> It can be interpreted that social and environment condition influence on students' attitude and values in everyday life. Thus, the woman position has been presented in *Taqrib*. Study on *fiqh* in *pesantren* gives the new ideas on students to actualize the author's ideas who have the authority to transfer the information from the *Taqrib* book. In this regard, there are two basics of teachers. First, the transmission teacher needs to maintain a high degree of control over the learners to create the condition under which the subject can be taught; second, the interpretation of teacher prefers to disperse among learners responsibility where control is maintained by persuasion and appeal to the better judgment of the learners.<sup>17</sup>

In identifying the data of women role and position represented in *Taqrib* as the *Syafi'iyah* school in Islam, discourse analysis is an appropriate tool to analyze this issue. Specifically, the finding of the result can be

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<sup>16</sup> Ali, H., *Gender representation in English in Focus Textbook*. Jakarta: UIN Syarif Hidayauallah, June, 2018, P. 9

<sup>17</sup> Mara Lucia Fabiano Soares, *The Important of Coursebooks for Teachers of English as Foreign Language*. *Teaching english Journal*, 2005.

discussed into: 1) Role of women in family and public law, it discussed about women's domestic role as narrow scope and their right such as women's domestic roles in family life and Parallels inheritance rights in two inheritance law partners, namely the right of half in obtaining the inheritance and exclusive rights as heirs within the circle of men relatives; 2) public position problems, bearing witness and criminal compensation; 3) Scholars' awareness on women role and position in social structure. Those results can be explored into specific discussion as follows:

#### **D. Role of Women in Domestic and Public sphere**

The domestic role of women in household in various *fiqh* arguments is on the prominence of the role of care (*hadhānah*) as a consideration of the obligations of the husband / father as a "breadwinner" in the general condition of Islamic family. This role is a derivation of the spirit of the Al-Quran which was fully adopted by the al-Quran on the affirmation of a strong family structure. This is a progressive argument for domestic environment of the Arab tribal tradition in emphasizing the power of broad family structures (*qabīlah*) with men as the main authority.

The division of domestic and public roles in family structures of Hammudah's view is a matter of "status, power and authority" applying to all humans or animals. Sociologists always find lower and higher parties in all the groups they studied. Social psychologists argued the existence of power, obedience, and dominance in two interconnected people.<sup>18</sup> At this level, it is acceptable to view them practically and universally. The wife's status is measured by her rights and privileges. In addition, a family arise a variety of interdependent power structures.

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<sup>18</sup>Al 'AtiHammudahAbd, *The Family Structure In Islam*, Alihbahasa, AnshariThayib, *Keluarga Muslim*, Pt. Binallmu : Surabaya, Cet. I, 1984, p. 230

One of the structures needed a leadership in the family where each family member plays a different role in that power. There are two types of leadership in the family that are normally not possible in someone's hands; first, instrumental leadership in which leadership needed to advance the family or also called the *lahīriyah* system (inward); second, inner leadership called the internal system (outward)<sup>19</sup>. In inner leadership, the role is addressed to the function of guardianship, psychological protection, and emotional comfort. All of them are directed at the balance point of the subtle mental tranquility. In almost common society, the role of instrumental leadership including economic and political leadership is played by a group of men or husbands. Meanwhile the inner leadership role is carried out by wife/mother. The attitude of *Taqrib* as well as *fiqh* is to support the division of instrumental and inner roles in the family life.

However, the widespread role of men instrumental leadership (husband/father) is the developed problem of *fiqh* on the pattern of family control which seems more a tradition than the basic spirit of Islamic *fiqh*. The orientation of control and regulation of family members is very dominant in *Taqrib*. This can be found in the divorce case (*thalaq*), husband has privilege in making decision of divorce. Father and grandfather's (as a representation of men in family) have authority for their daughters and restrictions on the public activities of women (wives and daughters), women members of family do not allowed to except with permission or emergency reasons (*udzur*).

Husband has the high authority to give divorce decision (*thalaq*) on wife. On the *Taqrib* book written that *thalaq* can be made either by clearly words (*sharih*) or metaphorical words (*kināyah*). Even in the first way, the fall of the divorce law in Islam does not wait for the

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<sup>19</sup> Al 'AtiHammudahAbd, *The Family Structure In Islam*, Alihahasa, AnshariThayib, *Keluarga Muslim*, Pt. Binallmu : Surabaya, Cet. I, 1984, p. 230

element of intentions. In certain cases of *thalaq* (*thalaq rajā'i*), husband can just back to his wife without waiting for her willingness. Absolutely, wife has the right to sue for divorce against her husband but that right can be obtained through a more complicated procedure with compensation in the form of payment of ransom (*iwadh*). This divorce right is called *khulu*.

Husband's privilege in divorcing in a very loose manner is more a normative extension of control over the household rather than a basic spirit of morality "*The halal case that God hates the most is divorce*". The moral spirit should become derivative regulation of *fiqh* norms practically in tighter arrangements for divorce or in a balanced arrangement between the rights of women and men without more progressive controls. Normative factor could be a trigger and becomes a legal basis for the occurrence of unregistered marriage in Indonesia for the purpose of monogamy or polygamy.

The researchers observe that an excessive control of husbands towards wives as found in *Taqrib* cannot be separated from the perspective of *fiqh* towards marriage itself. According to Sunni school in almost all classical corpus of *fiqh* defines marriage, in various versions of the definition, as a contract to legalize men over public ownership.<sup>20</sup> The definition in many ways saves the relationship of text and the power of men in confirming the meaning of marriage relation. From such an approach, it is difficult to deny that marriage relation could be a discriminative relation as a deviation from message of the morality of the Qur'an. As written in Ar Rum verse 21, marriage is a place for fulfilling love and peace.

Just like the tradition of Sunni *fiqh* in general, *Taqrib* has overcome a pattern of unbalanced relation by

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<sup>20</sup> al-JaziryAbdurrahman, *Al-Fiqh 'alaMadzahibi al-Arba'ah*, Dar al-Fikr: Beirut, the fourth edition,1990, P. 2-3



perpetuating polygamy as a basic principle of Islamic marriage and *thalaq* as the husband's privileges. Instead of understanding the rights of *khulu*, *zihar* and *li'an* as important declarations in balancing women's rights in deciding marital status, *fiqh* scholars often place these norms as an exception to men's general rights to divorce. The issue of polygamy and *thalaq* as a failure to understand the meaning in the text structure between *manthūq* (literal meaning) and understanding (contextual meaning); and between the general meaning (*ām*) and specific (*khāss*). In contrast to Muhamad Abduh, Nasr Hamid understood the issue of discrimination in marriage as contained in the range of *fiqh* traditions as a problem with cultural, sociological and historical dimensions.

The researchers found that the role of men on women in *Taqrib* is more an excessive expansion of Quranic ethics which gives more role to men as protectors and responsible for living a way for the Quran to establish a family training institution in the middle of a family structure. Thus, *Fiqh* has carried out an expansion of control based more on the specific responds of patriarchal institutions that were widely applicable during premodern times, without the true spirit of *fiqh*.

This study found another important part of *Taqrib*, it reproduced by Sunni *fiqh* books. It has related to the problem of patriarchal control, namely the issue of genitalia. Almost in all *fiqh* books state that the body of an independent woman is prohibition to open (theological definition: *aurat*) except the face and the palm. Whereas, the genital of women slave is the same as men's genital between navel and knee (pubic).

As stated by Nasr Hamid, the concept of *aurat* is an inseparable part of the structure of culture in its socio-historical context. From the context of Qur'an, genitalia are only part of the sexual organs of living people, and limbs of people who die. Based on structure of culture, the researchers observe that the issue of genitalia, in further, developed into a hijab problem (separation of men and women), the use of veils (face coverings), travel

restrictions to protect slander, and veiling. Those are some issues that are actually inseparable parts of the social structure as implicitly stated in *fiqh* books.

The issue of inheritance goods distribution is also important thing in *fiqh*. Women always accept half of men's allotment in inheritance case in Islam. This case could be is a very big leap in women's rights guaranteed by the Qur'an. Muhammad Abduh and Nasr Hamid argued that the notion of "men as two parts of women" and "limits of God's law must not be surpassed" to be understood as a shift in the axis of men domination over the women axis. This understanding should be understood that men have the highest rights (*hadd al-aqshā*) do not exceed the two parts of women. Whereas, women have the lowest share rights (*hadd al-adnā*) should not be reduced from half the portion of men. These are the limits of God's law that no one should violate.

Between the highest and the lowest limitations of the researchers understanding, those can be shifts in parts that those are in accordance with cultural modalities which lead to equality between men and women as the culmination of the goal of the balance of the distribution of Quranic justice. In addition, what is interesting to observe in *Taqrib* is the issue of *dzawil arhām* which is absolutely eliminated from the structure of heir. *Taqrib* seemed to use the standard legal provisions of the *Syafi'iyah* school even though it was not popular among other Sunni jurists who accepted the *dzawil arhām* group as heirs after *'asābah*. *Taqrib* seems to maintain the concept of the family of heirs in the old Arab context which excludes women relatives as clan members.

When referring to the concept of Al-Qur'an inheritance that places children, siblings, parents, and husband and wife as heirs whose parts and whereabouts obtain the assurance of the Qur'an. In terminological *fiqh*, this group is called *dzawil furūdh*. Qur'anic spirit places the nuclear family (*batīh*) as a new family structure that is

very strong with the weakening of sex segregation of family members. However, it can occur when the meanings of descendants (الولد) are interpreted as children of direct descent from boys. A descendant meaning that is clearly derived from the meaning of patrilineal descent that draws a line of kinship is limited to the men genealogical line.

The offspring withdrawal pattern which is followed by the grouping of *ashabah* and *dzawil arhām* is a cultural interpretation of the Sunni *fiqh* towards the Quran as a patriarchal bias which is included in the interpretation of the Quran. In Arab context, the sorting seems to be relevant to the pattern of distribution of the authority in *ashabah* and *dzawil arhām* on the broad kinship structure. A real kinship structure is more than just an Arab cultural heritage. At this level, *Taqrib* seemed to maintain the general view of the Syafi'iyah which gave more of the inheritance to the state (through *bait al-māl*) than to the *dzawil arhām*. However the general flow of Sunni schools of thought had accepted the position of *dzawil arhām* relatives even though they were still very weak. The dichotomous view used by *Taqrib* seems to be very irrelevant to contemporary kinship conditions which increasingly strengthen the nuclear family compared to extended families. This factor seems to have a variety of 'deviation' in inheritance patterns in Javanese society that are famous for their parental kinship system.

### **E. Public Position Problems, Testimony and Criminal Compensation**

In this result finding of this research study, the researchers found that *Taqrib* stressed that one of the requirements for judges is women. Besides, limited acceptance of women witnesses in economic were very difficult for men to know. This view is a natural repetition of all Sunni-Shafi'i doctrines against the impossibility of women occupying public authority or those suspected of having links with them. The issue of leadership (*imāmah*)

almost reached the *ijma* in Sunni school for the impossibility of being occupied by women, although these views began to shift with the appearance of several women government leaders in current several Muslim countries, including the issue of the position of judges in the jurists still differed.

The difference in views about the position of women judges lies on the way of analogy. Ibn Jarir al-Tabari absolutely accepts women as judges on the basis of the analogy of women's authority to give a suggestion voice (*fatwas*) that are equated with the authority of being judges. Hanafiyyah limits the competence of women in the judiciary and civil fields were equal to the authority of their testimony in the civil field. The majority of Sunni scholars in *fiqh* (*fuqahā*), however, rejected it because of woman's inadequacy. Women are considered as “problematic” due to the biological and psychological constraints of women in public matters. The perspective of *Taqrib* and some of Sunni *fiqh* perspective is around the limitations of the role of women judges in some cases were often based on Quran and Hadits. Based on this result finding, the researchers argue that the fundamental prohibition is more socially folded than as a legal normative prohibition from the sources of strict interpretation of the text (*qath'i*). The reason for women's inability is a legacy of cultural construction which at the time of the corpus *fiqh* in *Taqrib* compiled by women's public spaces was very limited.

The limitation of women to the role of judges in the jurists has a significant relationship with the issue of testimony. Generally, terms witnesses written in Sunni *fiqh* are not included in the requirements of men (*dzukūrah*), but it is focused on issues of ability, physically and intellectually related to witness validation. But at the applied level, *fiqh* provides specific criteria for those who want to be a witness, and in what area they can take case. *Taqrib* takes the Syafi'iyah views in Sunni

*fiqh* generally, that women cannot be a witness except in economic field (*muāmalah*) and some cases in women privileges such as witnesses for birth and virginity. Generally, the *Taqrib* and almost all Sunni views in limited testimony in certain fields are related to cultural and based on the stereotype of limited women rationality (*nuqṣān al-'aql wa al-dīn*) and biological constraints due to reproductive organs problems which affects emotional stability.

Therefore, a shifting paradigm in cultural orientation from an agrarian to industrial society have been giving pattern of relations in gender construction on the public sphere in a very broad and loose role differentiation democratically, equally, and awareness universally. Hence, the limitations of the role of judges and the testimony of women are also equivalent to half the criminal compensation received by women in the case of *jināyat* (Islamic public law) as has been presented in *Taqrib*.

The researchers cannot deny that the *diyat* provisions for women in *Taqrib* have a backing of scattered *hadits* in various valid histories but whether the Prophet's decision was a universal decision or a specific legal dictation, in the historical time, space is limited in line with the social construction of Arabs.

Based on this approach, the researchers argue that the criminal compensation case *diyat* has a logical reason (*'illat*) of civilization in the value of functions in the overall system of social roles between men and women when Quran revealed. However, if the wake is drawn into the situation of contemporary society, there will be a gap in the system because no logical reason of *fiqh* (*illat*) is found strictly. Everyone is created equal because the body's social functions are not distinguished by sex. At this level, the researchers agree with Abdullah Ahmad al-Naim (1994) who argued that *jinayat* compensation must be placed in pure criminal cases, not civil or quasi-civil case. This stipulation requires the elimination of legal discrimination between women and men.

In line with the critical review, the equality of women's and men's laws also based on the fundamental spirit of the early human creation story that told by the Qur'an. According to *surah* An-Nisa verse 1, classical Islamic scholars as Al-Suyuthi, Al-Baidhawi, Ibn Katsir, and Al-Qurtubi interpret the word “*nafs*” with Adam. Even an exegete from the Shi'ism claimed that opinion was the *ijma* 'of all scholars. But recent scholars such as Muhammad Abduh and Al-Qasimi argue that the meaning of “*nafs*” in the verse above is not Adam, but “a type” of person. The implications showed that men and women was created from the same type (raw material), their role are equal. On the other hand, the principle of monotheism has placed spiritual quality as a function of essential human health as very clearly required in the *surah* Al-Hujurāt. Practically, there is an expansion of roles and functions that were not parallel to the principle of equality of spirituality between individuals and society as a social structure. The roles and function are around the needs of individual and their freedom becomes an extension of a society's need for comprehensive social law. From two normative bases, we can draw the significance meaning that human sovereignty is the main principle without sexual dichotomy. The forms of discrimination contained in discursive *fiqh* must be considered as an exception to the general principle because of limited space in history and cultural modalities.

The track of spiritual equality and openness of women's public spaces in economic rights can be found in *Taqrib* chapters as *fiqh* studies generally. The issue of worship and the economy is almost placed in a complete legal structure without discrimination except for a number of technical matters which contain a patriarchal cultural bias in a small charge. This case proves that some aspects of spirituality and transactional freedom, which are the basic spirit of Islam, are the solid foundation of *fiqh* discourse. This part is often understood

separately as a legal decision which is free from the context of the universal spirit where other values refer to it as the true ideal of the sharia.

Based on the data of result finding of the questionnaires and interview on scholars (kiayi) of this study, the researchers found that most of scholars (kiayi) as user of *Taqrib* book agreed that the inequality on women role and position presented in certain lesson of *Taqrib* book. This issue is appeared through the discussion of judges, witness, marriages, inheritance law. The interview results were taken from some scholars (kiayi) in Islamic Boarding Schools. Those are Hidayatussalam Islamic Boarding School, Al-Hamidiyah Islamic Boarding School, Miftahurrohman Islamic Institution located in Cibiuk and Baroroh Islamic Boarding School which is located in Limbangan, Garut. Additionally, they argued that the role and position between women and men represented in *Taqrib* book, as the understanding of *fiqh*, should be applied in certain social on domestic and public environment equally. It could be interpreted that most of scholars' awareness on women role and position represented in *Taqrib* book as *Fiqh* studies. About 80% Islamic prominent scholars in mentioned Islamic scholars agreed that women role should be involved in public environment because it is the position message on women role and position. This indicates that the most scholars (*kiayi*), as user of *Taqrib* book, aware on women role and position. The women role and position issue which are presented through *Taqrib* book should be applied in social structure.

## **F. Conclusion**

The position and role of women in *Taqrib* has a common similarity with the *fiqh* discourse and some specifications as characteristics of the Syafi'iyah schools in Islamic jurisprudence (*fiqh*). The position and role of women in the field of *muāmalah* and worship are placed equally in a social structure. This paradigm also similar to common Sunni schools which places equality in these

positions and roles generally. However, for special fields like guardianship, inheritance, judges, and legal testimony sound more restrictive views than common Sunni scholars' argument.

Some restrictive views are indicated in these cases. In the marriage law, fathers and grandfathers may force their girls to marry without consent. In inheritance law, it is assumed that the relatives of the mother/daughter line are not at all entitled to inheritance even though there are no family members of the *ashābah* (heir). The position of judge cannot be held by a woman even though in the field of *muāmalah*; and women only have the right to be witnesses to economic issues and special cases that can only be known to them generally.

In common case of women involvement in social life, some scholars who use *Taqrib* books aware on women role and position in public environment as the social structure represented in *Taqrib*. They are generally agreed that women role should involve in public space in the appropriate proportion according to *Taqrib* book.

Women discourse in Islam which is represented by *Taqrib* gives some hidden message about women role and position in certain discussion especially in women involvement in Islamic court, must delivered by scholars (either *kiyai* or *ustadz*) comprehensively and equally. In order that the students aware on women position and role in social life. Thus, the position and the role of women should be involved in all activities even in domestic and public environment. The people's paradigm on women interpretation on social structure was still subservient to patriarchal structure. Thus, the researchers suggest that readers, students and other researchers should tried to involve women social activity in order that men can respect to women role and position without changing the substance of Quranic norms as the divine texts of Islam.



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