

EQUALITIES AND FAIRNESS IN MUSLIM FAMILY LAW

Kasjim Salenda¹

¹State Islamic University of Alauddin Makassar

kasjimsalenda@gmail.com

Abstract

The discussion about justice and equality in Islamic family law is an interesting topic to be raised because there exists a discrepancy between the explicit principles of Islam that outline the rights and responsibilities of family members and the practices in society that sometimes result in unfair treatment, especially towards women. This factor is triggered by interpretations that are less inclusive of religious texts (the Qur'an and hadith), which tend to be influenced by history, cultural norms, and patriarchal traditions embraced within the community. This condition leads to the emergence of inherited perspectives and behaviors that uphold the notion that men hold a superior position compared to women. Therefore, it is crucial for Islamic family law to ensure justice and equality as integral components in order to achieve harmony and tranquility within the family sphere. Without this, the risk of discrimination and neglect will persist, particularly towards women and children.

Keywords: Equalities, Fairness, Muslim Family Law.

A. Introduction

Considering there are discrepancies within Islamic concepts that expressly describe the rights and obligations of family members and their practises within the community due to inequality, particularly towards women, the discourse on justice and equality in Islamic family law is relevant to examine. Due to gender stereotypes upheld in society and non-inclusive perspectives of religious texts (the al-Qur'an and hadith), which were both shaped by historical events, social norms, and cultural environments, some people have inherited attitudes and behaviours that consider men are superior to women.

One of the presumptions that leads to discrimination against women is that they were produced from a man's rib, which marginalizes and places them in a lower social status. Women are seen as a source of tragedy and are expected to bow to the authority of men. based on the notion that Eve (female) enticed Adam (male) to consume *khuldi* fruit, causing him to be kicked out of heaven. The idea that women

are the cause (tempter) of disobedience is based on the influence of Israiliyat stories, and it undoubtedly diminishes the dignity of women.¹

The primary elements of Islamic principles, the Qur'an and Hadith, include universal principles that serve as a roadmap for living. These ideals include moral principles, fairness, autonomy, equality, and others. Islam has never accepted human discrimination, for instance, when it comes to the concepts of justice and equality.² The Qur'an emphasizes that the only physical distinctions between men and women, which are part of their inherent essence as men and women, and *Taqwa* are the only differences between men and women.³

B. Findings and Discussion

1. Equity in Islamic Family Law

One of the tenets of Islam is equity, which emphasises that everyone is entitled to the same rights and opportunities. The need for thoughts and traits that strike a balance between rights and obligations is equity.⁴ Al-'adl is an Arabic word that signifies straight and is derived from the phrase ((عدل) ع - د - ل)⁵ specifically, staying true to the truth and not veering off course under the lure of passion. Al-'adl is pronounced similarly to the Arabic word for equality, which means to compare one item to another.⁶ Al-qist, also known as al-misl, is another name for al-'adl and meaning "the same in the distribution or equality of something in its place."⁷ Al-'adl is

¹Cerita Israiliyah yang terdapat dalam penafsiran al-Qur'an maupun hadis adalah riwayat-riwayat yang bersumber dari orang-orang Yahudi dan Nasrani yang telah masuk Islam namun masih terpengaruh dengan keyakinan mereka sebelumnya.

²Mursyidah Thahir, *Pemikiran Islam tentang Pemberdayaan Perempuan* (Jakarta: Logos Wacana Ilmu, 2000), 21.

³Nasaruddin Umar, *Qur'an untuk Perempuan* (Jakarta: Jaringan Islam Liberal (JIL) dan Teater Utan Kayu, 2002), 27.

⁴Tim Redaksi Kamus Bahasa Indonesia, *Kamus Bahasa Indonesia* (Jakarta: Pusat Bahasa Departemen Pendidikan Nasional, 2008), 13.

⁵Ibn Manzur, *Lisan al-'Arab* (Kairo: Dar al-Ma'arif, t. th), 28.

⁶Ibrahim Mustafa (et.al), *Al-Mu'jam al-Wasit* (Kairo: Syuruq al-Daulah, 2004), 422.

⁷Abdul Aziz Dahlan, *Ensiklopedia Hukum Islam* (Jakarta: PT. Ichtiar Baru van House, 1996), 25.

characterized by the phrase as justice in full rights fulfilment.⁸ Al-'adl, al-qist, and al-mizan are the three concepts used by M. Quraish Shihab to define justice. Al-'adl is providing prudently as required and positioning the direction appropriately. Being fair doesn't always have to include two people; it can be applied to oneself as well as to others. One party may appreciate the present but not the other. Unlike the phrase al-qist, which is a present that, despite being different from the recipient(s), pleases both parties. Regarding the concept of al-mizan, it refers to justice that is based on balance and is not biased in the same way that scales are when something is being weighed.⁹ When considering the three definitions of justice, it appears that only al-qist is one of God's qualities because He constantly distributes to His creatures in compliance with their capacities.

2. Equality in the Household

Equality is a value that should be upheld in the area of family law in order to promote happiness and harmony in the home. This entails granting each right to those who are eligible, including the husband, wife, and children, without lowering or enhancing it. Several verses, including QS. Al-Maidah/5: 8 and QS. Al-Nisa/4: 135, contain directives to defend justice.¹⁰

The outcome of the lack of implementing justice in relationships with family members is the phenomena of the household crises that took place and the discriminatory treatment of women and children, especially in the domestic space. The prevalence of domestic violence (KDRT), both physical and non-physical (social, economic, psychological, and verbal abuse), is rising year after year. Husbands and parents are typically the perpetrators, while wives and daughters are the victims. Data from the KPPA predicts 4,322 cases in 2021 and 4,371 cases in

⁸Al-Raghib al-Asfahani, *Al-Mufradat fi Gharib al-Qura'n* (t. tp: Nazar al- Mustafa, t. th), 46.

⁹M. Quraish Shihab, *Tafsir al-Misbah: Pesan, Kesan dan Keserasian al-Qur'an*, Vol. 5 (Jakarta: Lentera Hati, 2002), 284.

¹⁰ يَا أَيُّهَا الَّذِينَ آمَنُوا كُونُوا قَوَّامِينَ بِالْقِسْطِ شُهَدَاءَ لِلَّهِ وَلَوْ عَلَىٰ أَنفُسِكُمْ أَوِ الْوَالِدِينَ وَالْأَقْرَبِينَ ۚ إِن يَكُنْ غَنِيًّا أَوْ فَقِيرًا فَاللَّهُ أَوْلَىٰ بِهِمَا فَلَا تَتَّبِعُوا الْهَوَىٰ أَن تَعْدِلُوا ۗ وَإِن تَلَوَا أَوْ تَعْرَضُوا فَأِنَّ اللَّهَ كَانَ بِمَا تَعْمَلُونَ خَبِيرًا

2022. There are specifically 2,098 instances of personal violence, 1,276 instances of public violence, and 68 instances of state violence.¹¹

Excessive control relationships between the offenders and those who are hurt, as well as a lack of respect and mutual admiration, are the root causes of this injustice. Men (husbands and dads) believe they have the right to abuse and control women when they make mistakes or go against the rules, which they view as "deviations". Additionally, domestic sexual abuse occurs when biological parents conceive biological children, stepfathers conceive stepchildren, and siblings conceive siblings.¹² An issue that needs priority and an extensive remedy is the threat and disruption to women's life in settings when they ought to be able to ask for safety and affection. Alternative measures that can be taken to reduce discrimination in the family include internalising the Islamic family law's values of justice and equality and putting them into practise in all aspects of daily life so that the general public perceives and believes that men receive preferential treatment in terms of education and other areas of life. connections within families can be avoided.

In Indonesia, however, there is currently a very positive trend towards equal access to education for men and women. The discriminatory belief that women cannot travel for longer than three days unless they are accompanied by their mahram is another issue connected to the lack of equality in society's attitude. This is based on a literal interpretation of verse 33 of Qur'an al-Ahzab.:

وَقَرْنَ فِي بُيُوتِكُنَّ وَلَا تَبَرَّجْنَ تَبَرُّجَ الْجَاهِلِيَّةِ الْأُولَىٰ وَأَقِمْنَ الصَّلَاةَ وَآتِينَ الزَّكَاةَ
وَأَطِعْنَ اللَّهَ وَرَسُولَهُ إِنَّمَا يُرِيدُ اللَّهُ لِيُذْهِبَ عَنْكُمُ الرِّجْسَ أَهْلَ الْبَيْتِ وَيُطَهِّرَكُمْ تَطْهِيرًا

Meaning:

And you ought to remain in your homes, refrain from decorating them and acting foolishly like the ignorant people who were there before, pray, give alms,

¹¹<https://www.metrotvnews.com/play/b2lCrdXL-kemenpppa-rilis-data-jumlah-kasus-kdrt-di-indonesia-hingga-oktober-2022>

¹²<https://regional.kompas.com/read/2021/03/13/233229578/seorang-ayah-tega-hamili-anak-kandung-perbuatannya-terbongkar-setelah>.

and obey Allah and His Messenger. Indeed, O ahlul bait, Allah will purify you of all sins and make you as pure as possible.¹³

This precise interpretation is not in accordance with Islamic teachings because, as stated in Q.S. al-Mujadilah, Allah has promised anyone—men and women alike—who is serious about learning will obtain a better and nobler degree and position./58: 11:

يَرْفَعُ اللَّهُ الَّذِينَ آمَنُوا مِنْكُمْ وَالَّذِينَ أُوتُوا الْعِلْمَ دَرَجَاتٍ.....

Meaning:

... Undoubtedly, those within you who believe in Allah and those who receive knowledge in stages will be raised (in degrees)...¹⁴

The level of one's degree is defined by the person's expertise and level of faith throughout this world and the next. In some ways, a person's life will be more advanced and rich the more advanced their education is. The passage encourages women to work and engage in activities outside the home as long as they can safeguard their privacy and identities. It is not just directed at men. This relates to Islamic law:

الأصل في العبادة التحريم الا أن يدل دليل على اباحتها والأصل في المعاملة الإباحة
الا أن يدل دليل على تحريمها

(Everything is permissible in social situations as long as there is no restriction, but nothing is permissible in pure worship situations as long as there is no instruction) .

This is in conformity with KHI Article 79, Paragraph 2, which states that husbands and wives have similar rights and privileges in communal life, i.e., they are similarly free to participate in social life, including the right to pursue a profession or career. Since the time of the Prophet, who did not restrict it, many women have been actively working and engaging in pursuits. For instance, in trade Khadijah bint Khuwailid, a prominent female businesswoman. The Prophet was once approached

¹³Kementerian Agama RI, *Al-Qur'an dan Terjemahnya* (Jakarta: PT. Adhi Aksara Abadi Indonesia, 2011), 597.

¹⁴Kementerian Agama RI, *Al-Qur'an dan Terjemahnya*, 793.

by a woman named Qilat Ummi Bani Ammar who requested advice on buying and selling. Animal skin tanning was another activity that Zainab bint Jahsy engaged in, and she contributed the money she earned. Because her husband and child at the time were unable to support the household, Raithah, the wife of the Prophet's closest friend named Abdullah Ibnu Mas'ud, was highly busy at work. Al-Syifa, a woman with aptitude for writing, was chosen by Caliph Umar r.a. to serve as an agent in charge of the market in Medina. This fact further persuades everyone that it appears that women can do the jobs assigned to them.

3. Justice in Polygamy

Islamic family law has a severe issue with polygamy. Polygamy is a known practise, not just among Muslims, but also in China, India, Egypt, and across the rest of the country.¹⁵ Islam supports polygamy on the basis of reasoning from the Koran, such as Q.S. al-Nisa/4:3 and 123, which confirm its legitimacy under the condition that it must be just towards the women; if it is not, the marriage is still legitimate but has committed a sin.¹⁶ How a person can carry out justice is the issue.

Some claim that the passage only pertains to physical justice, such as clothes, food, shelter, and mu'amalah between wives, and that justice in terms of love and affection is difficult to attain. According to Mahmud Shaltut, the first and second verses are interconnected; the first verse establishes the fundamental tenet of polygamy's legality, while the second verse serves as a manual for comprehending the nature of polygamy. The historical evidence that prophets, companions, tabi'in, and other individuals engaged in polygamy demonstrates that a man who can uphold justice in polygamy is a guy who has goodness above goodness. In the sense that not all males are capable of polygamy, or having more than one wife, and are able to manage all the repercussions.¹⁷

¹⁵Muhammad ibn Musfir ibn Husein al-Thawil, *Ta'addud al-Zawaij fi al-Islam* (Ummul Qura': Idarah al-Da'wah wa al-Islam bi Jama'ah Anshar al-Sunnah al-Muhammadiyah, t. th.), 4.

¹⁶Muhammad ibn Musfir ibn Husein al-Thawil, *Ta'addud al-Zawaij fi al-Islam*, 9.

¹⁷Mahmud Syaltut, *Al-Islam Aqidatun wa Syariah* (Mesir: Dar al-Qalam, 1395 H), 183.

In general, polygamy is not encouraged (recommended) and is not outright forbidden (forbidden) in Islam.¹⁸ The polygamy passage, in Quraish Shihab's opinion, needs to be highlighted in multiple ways, including the fact that it does not introduce any brand-new prohibitions because polygamy is already accepted and practised by followers of a number of religious shari'ahs and social norms. However, the verse permits polygamy for those who meet certain criteria because it concludes with a call to monogamy in His own words: *تعولوا إلا أدنى ذلك* "That is closer so that you do not persecute).¹⁹ According to Quraish Shihab, polygamy that has negative effects is practised by individuals who disobey Islamic edicts. A legal provision should not be repealed simply because someone broke the law, especially if doing so would have a detrimental effect on society. Here, it is important to understand that free or unmarried sex, the emergence of mistresses, and deceptive weddings have all occurred in societies where polygamy is, in his opinion, outlawed (both in the East and more so in the West). Is it possible that this has a very negative effect on society, particularly on women?²⁰

A different approach argument against polygamy is that the verse's "fair" standard cannot be adequately met without fairness in terms of population, support, and wives. The two verses above actually hold that polygamy is the norm for marriage, with monogamy being an exception (*istitsna*) for those who are unable to behave appropriately. It follows from the sentence: *فان خفتم ألا تعدلوا فواحدة* Yet, only marry one if you are concerned that you won't be able to do them justice. However, in theory that *الأصل دائما يقدم الاستثناء* The key idea is that *istitsnâ*, because exemptions serve as confirmation of the rule, *istitsn* always prevails over principles.

In reality, the Prophet discussed the benefits of polygamy in a number of hadiths. (*ta'adud al-jauzah*):

¹⁸Iffah Qanita Nailiya, *Poligami Berkah ataukah Musibah? Mengungkap Alasan-alasan Nabi Melarang Ali Berpoligami* (Cet. Ke-1; Yogyakarta: DIVA Press, 2016), 16.

¹⁹Nurus Sa'adah, dkk, *Poligami dalam Lintas Budaya dan Agama*, Vol. 49 (Jurnal Ilmu Syari'ah dan Hukum, No. 2, Desember 2015), 485.

²⁰M. Quraish Shihab, *Perempan: dari Cinta sampai Seks, dar Nikah Mut'ah sampai Nikah Sunnah, dari Bias lama sampa Bias Baru*, Cet. Ke-1 (Tangerang: PT. Lentera Hati, 2018), 195.

أن سعيد بن جبیر قال: وقال لی ابن عباس: هل تزوجت ؟ فقلت لا, قال: فتزوج فان
خیر هذه الأمة أكثرها نساء.²¹

Meaning:

That Said al-Khudri said (and said to me) ibn Abbas: are you married? I replied, no. Ibn Abbas said, marry, in fact the best of these people are those who have the most wives.

The aforementioned hadith demonstrates that a guy who has multiple wives and is capable of doing justice is the finest man because justice will enable him to get Allah's protection on the Day of Judgment. And the fact that he was able to treat his wives fairly demonstrates his ability, knowledge, and piety. Because the quality that most closely resembles piety is justice.

In basic terms, Islam does not require polygamy to be as constrained as it is under current law, such as when the wife is ill or unable of bearing children, for example. Islam, on the other hand, is more likely to focus on a person's aptitude and sense of justice. Therefore, in this situation, a person's ability and justice when marrying multiple people need to be put to the test. Abu Zahrah therefore views requiring polygamy as heresy in the religious sense.

Al-Mughni says the following:

وان تزوجها وشرط لها أن لا يتزوج عليها فلها فراقه اذا تزوج عليها²².

(If you marry a woman who gives conditions then do not marry her, because marriage will lead to divorce).

In relation to material justice for wives, this means that a person who desires to practice polygamy must be able to support his wife equitably. Philosophically speaking, it is actually understandable that a man must possess material skills in order to implement this Shari'a, even if one is not against the idea of polygamy. Even for a wife, if the talent is actually inadequate in this situation, it won't be an issue and will

²¹Imam al-Bukhari, *Shahih al-Bukhari*, Bab Katsrat al-Nisa', Juz 5 (Kairo: Dar al-Sya'bi, 1987), 1951.

²²Ibn Qudamah, *al-Mughni*, Juz 6 (Beirut: Dar al-Fikr, 1405 H), 548.

ultimately result in loss. Imam Malik in *al-Muwatha* authorizes polygamy up to a maximum of four wives, according to madzhab,²³ while al-Syâfi'i in *al-Umm*, Polygamy that is sanctioned by the Qur'an and Sunnah.²⁴ Ibn Qudâmah also permits a maximum of four polygamous relationships. In essence, the madzhab priests divide the night and demand material fairness.

4. Equality in an Inheritance

According to an Islamic perspective that is informed by the Al-Qur'an and Hadith, justice in the distribution of inheritance is both a necessary and the ultimate objective of law. Justice-seeking is a universal legal principle that can exist without any physical boundaries.²⁵ It includes both individual and universal ideas.²⁶

In Islamic inheritance law, the concept of fairness denotes a balance between the rights derived from inherited property and the responsibilities or burdens of life that the successors are required to bear or fulfill.²⁷ Therefore, the definition of fairness in Islamic inheritance law is based on the amount of the burden or obligation placed on them, in terms of the generality of human circumstances/life, rather than on the similarity of levels amongst heirs. Sayyid Qutb expounded on the topic of 2: 1 for men and women in *Tafsir Fi Dzilal al-Qur'an* because men are thought to have higher obligations than women, such as paying dowries or caring for the family. Justice is decided in a balanced manner based on the various responsibilities that fall to men and women. If it is connected to Amir Syarifuddin's definition of justice as "The balance between rights and obligations and the balance between what is obtained and the needs and uses" or "the balance between burdens and responsibilities among

²³Imam Malik ibn Anas, *al-Muwaththa'* (Mesir: Dar Ihya al-Turats, t. th.), 362.

²⁴Muhammad ibn Idris al-Syafii', *al-Umm*, Juz 5 (Beirut: Dar al-Ma'rifah, t. th.), 129.

²⁵Abdul Ghofur Anshori, *Filsafat Hukum Kewarisan Islam; Konsep Kewarisan Bilateral Hazairin* (Yogyakarta: UII Press, 2005), 153.

²⁶Kamaruddin, "Beragam Norma Hukum dalam Penerapan Waris", *Jurnal Al-Risalah* 13, no. 1 (2013), 29.

²⁷Ahmad Zahari, *Tiga Versi Hukum Kewarisan Islam: Syafi'i, Hazairin dan KHI* (Pontianak: Romeo Grafika, 2003), 25.

equal heirs," it is concluded that justice will manifest itself in the application of the Islamic inheritance division system.

This clause is founded on the fact that, in Muslim society, males are responsible for supporting their families but women are not.²⁸ The woman becomes the responsibility of her parents, guardian, or brother if she is a female or is still single. After a woman marries, the responsibility for moving will fall to her husband (a guy).

The fundamental question is whether the 2:1 inheritance distribution is still applicable given the differences in the circumstances and contributions of women who have improved the economy and welfare of the family as a result of their involvement and contributions in public areas.

The first response to this issue claims that because men are still forced to pay a dowry and support their wives, the idea of distributive justice in Indonesia is still applicable and a general idea in the inheritance section of 2:1 between men and women. Al-ahliyah al-wujub, or the eligibility of a mulatto to carry out legal actions that carry out rights and responsibilities, without recognizing between the status of men and women, can be used to determine the equal allocation of inheritance between men and women. This basic concept can change if women work and social conditions change. Consequently, the 2:1 inheritance distribution cannot be generalized by the casuistic law, which is still in use.²⁹ Thus, the inheritance system in Islamic society, which occasionally deviates from 2:1, cannot be defended as an alteration to the guidelines set down in the Qur'an.

The second viewpoint highlights that the Qur'anic acknowledgement of women's rights in inheritance, which they had no prior access to, is first determined by the division of inheritance (2:1). In order to comprehend the verse on inheritance

²⁸Syariat Islam tidak mewajibkan perempuan untuk menafkahkan hartanya bagi kepentingan dirinya ataupun kebutuhan anak-anaknya, meskipun ia tergolong mampu/kaya jika ia telah bersuami, sebab memberi nafkah (tempat tinggal, makanan dan pakaian) keluarga merupakan kewajiban yang dibebankan syara' kepada suami (laki-laki setelah ia menikah).

²⁹Ahmad Rofiq, *Hukum Islam di Indonesia*, 4th ed (Jakarta: PT RajaGrafindo Persada, 2000), 374.

as an acceptable limit, the Syrian Arab progressive Muslim thinker Muhammad Syahrur introduced a progressive methodology known as the "Theory of Limits" (nadzariyyah al-hudud), or the theory of limits. According to this interpretation, women may receive inheritance in excess of the initial provisions because the verse only defines the minimum limit.³⁰ Even women can earn more than their brothers, for example, if they agree to do so or if sisters have an excessive burden in taking care of and caring for their parents, for example.

5. Equality in Islamic Family Law

One of the central themes as well as the main principles of Islamic teachings is the egalitarian principle, namely equality between humans, both men and women as well as between nations, ethnicities and descendants. This is implied in Q.S. al-Hujurat/49: 13:

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

Meaning:

O populace! Indeed, We fashioned nations and tribes for you to interact with one another after We created you from a male and a female. The one who is the most pious among you is undoubtedly the most honourable in Allah's eyes. Undoubtedly, Allah is All-Wise and All-Knowing.³¹

The verse highlights the equality of men and women in terms of worship (the spiritual aspect) and civic engagement (career-related issues), liberating people from different kinds of oppression and intolerance, such as prejudice against sex, skin color, race, and other groups. The provision of comparable chances and status for men and women to exercise their human rights and benefit from their freedoms in their diverse roles is the concept of equality in question.³²

³⁰<https://journal.uinsgd.ac.id/index.php/Diroyah/article/view/19840/pdf>

³¹Kementerian Agama RI, *Al-Qur'an dan Terjemahnya* (Jakarta: PT. Adhi Aksara Abadi Indonesia, 2011), 745.

³²Badriyah Fayuni dkk, *Keadilan dan Kesetaraan Gender Perspektif Islam*, 1st ed (Jakarta: Tim Pemberdayaan Perempuan Bidang Agama Depag RI, 2001), 126.

According to the Quran above, Islam upholds women and respects the equality of men and women. The same is true for the spiritual (worship) and social (muamalah) dimensions; nonetheless, Allah will recompense them based on the caliber of their deeds. The concepts of equality between men and women in the Koran can be analyzed using a variety of factors, according to Nasaruddin Umar, including:³³

- a. Both sexes serve as servants.

According to the affirmation in Q.S. al-Zariyat/51: 56, the reason for God's creation of humans is for them to adore Him.:

وَمَا خَلَقْتُ الْجِنَّ وَالْإِنْسَ إِلَّا لِيَعْبُدُونِ

Meaning:

And aside from the fact that they serve Me, I did not create jinn and humans.³⁴

Humans serve without distinction between men and women, and those who perform several good deeds are rewarded handsomely without regard to their gender. Both people have an equal chance at realizing their potential as ideal servants. The Qur'an describes the ideal servant as being righteous (muttaqun), and to attain this level of muttaqun, there is no known distinction between gender, ethnicity, or particular ethnic groups.

- b. Both men and women as Earth's Khalifah.

The aim of human existence on this planet is to serve as a slave ('abid) to Allah SWT and to serve as His caliph on earth (khalifah fî al-ard). In Q.S. al-An'am/6:165, the human capacity to rule as caliph on earth is underlined.:

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

Meaning:

³³Nasaruddin Umar, *Argumen Kesetaraan Gender Perspektif al-Qur'an*, 1st ed (Jakarta: Paramadina, 1999), 255.

³⁴Kementerian Agama RI, *al-Qur'an dan Terjemahnya*, 756.

In order to test you regarding what He has given you, He elevated some of you much above others in order to make you the rulers of the earth. Your Lord is certainly quick to punish, and undoubtedly, He is Most Forgiving and Most Merciful.³⁵

c. Men and women Receive the Primordial Covenant.

Men and women equally carry out the mandate and receive the primordial agreement with God. As is well known, before a human child leaves his mother's womb, he must first accept an agreement with his Lord, as mentioned in Q.S. al-A'raf/7: 172:

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

Meaning:

And (remember) when your God produced Adam's progeny from their sulbi and testified against their souls by asking, "Am I not your Lord?" "Yes (you are our Tuban), we are witnesses," they retorted. We do that so that you won't claim, on the Day of Judgment, that we (ban Adams) are the ones who are careless about this.³⁶

According to Fakhr al-Razi, every person being born on this planet swears to the existence of God, and angels are present to record their declaration.³⁷

a. Adam and Eve participated completely in the cosmos' drama.

The pronoun for two people (huma), specifically the pronoun for Adam and Eve, is used throughout all the verses that describe the cosmic drama, specifically the tale of Adam and his companion in heaven before they descended to earth. This can be seen in the following instances :

1. Both were created in heaven and utilize heaven's facilities mentioned in

Q.S. al-Baqarah/2: 35:

³⁵Kementerian Agama RI, *al-Qur'an dan Terjemahnya*, 202.

³⁶Kementerian Agama RI, *al-Qur'an dan Terjemahnya*, 232.

³⁷Fakhr al-Razi, *al-Tafsîr al-Kabîr* (Beirut: Dar al-Haya' al-Turats al-Arabi, 1990), Jilid XV,

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

Meaning:

And We commanded: "O Adam, live in this heaven with your wife, eat from its many delectable delicacies wherever you like, and stay away from this tree, which makes you one of the wrongdoers.³⁸

2. The devil's persuasion to both of them has the same nature as described in Q.S. al-A'raf/7: 20.:

فَوَسْوَسَ لَهُمَا الشَّيْطَانُ لِيُبْدِيَ لَهُمَا مَا وَّرِي عَنْهُمَا مِنْ سَوَاءَتَيْهِمَا وَقَالَ مَا نَهَاكُمَا
رَبُّكُمَا عَنْ هَذِهِ الشَّجَرَةِ إِلَّا أَنْ تَكُونَا مَلَكَتَيْنِ أَوْ تَكُونَا مِنَ الْخَالِدِينَ

Meaning:

Your Lord has not forbidden you from touching this tree, but so that you both do not become angels or do not become eternal people (in heaven), the devil spoke wicked ideas to the two of them in order to reveal to them what was concealed from them, namely what was inside them.³⁹

3. Both ate the khuldi fruit and both received the consequences of falling to earth, mentioned in Q.S. al-A'raf/7: 22:

فَدَلَّيْهُمَا بِغُرُورٍ فَلَمَّا ذَاقَا الشَّجَرَةَ بَدَتْ لَهُمَا سَوَاتُهُمَا وَطَفِقَا يَخْصِفْنَ عَلَيْهِمَا مِنْ
وَرَقِ الْجَنَّةِ وَنَادَيْتُهُمَا رَبُّهُمَا أَلَمْ أَنْهَكُمَا عَنْ تِلْكَ الشَّجَرَةِ وَأَقُلُّ لَكُمَا إِنَّ الشَّيْطَانَ
لَكُمَا عَدُوٌّ مُبِينٌ

Meaning:

Therefore, the devil used trickery to convince them to eat the fruit. Then their Lord yelled at them, saying, "Didn't I forbid you both from that tree and I stated to you: Surely the devil is a serious enemy to you both?⁴⁰

³⁸Kementerian Agama RI, *al-Qur'an dan Terjemahnya*, 7.

³⁹Kementerian Agama RI, *al-Qur'an dan Terjemahnya*, 205.

⁴⁰Kementerian Agama RI, *al-Qur'an dan Terjemahnya*, 205.

4. According to Q.S. al-A'raf/7:23, both who repent and seek God's forgiveness are granted it:

فَالَا رَبَّنَا ظَلَمْنَا أَنفُسَنَا وَإِن لَّمْ تَغْفِرْ لَنَا وَتَرْحَمْنَا لَنَكُونَنَّ مِنَ الْخَاسِرِينَ

Meaning:

We have injured ourselves, O our Lord, and if You do not pardon us and show mercy to us, we will undoubtedly be included among the losers.⁴¹

5. According to Q.S. Al-Baqarah/2: 187, when on earth, both produce progeny, complement one another, and are dependent upon one another:

أَجَلٌ لَّكُمْ لَيْلَةٌ الصَّيَّامِ الرَّفْتُ إِلَى نِسَائِكُمْ ۚ هُنَّ لِبَاسٌ لَّكُمْ وَأَنْتُمْ لِبَاسٌ لَّهُنَّ ۗ عَلِمَ اللَّهُ أَنَّكُمْ كُنْتُمْ تَخْتَانُونَ أَنْفُسَكُمْ فَتَابَ عَلَيْكُمْ وَعَفَا عَنْكُمْ

Meaning:

You are allowed to mix with your spouses on the evenings of the fasting month because both of you provide garments for each other. Because Allah is aware of your inability to control your lust, He pardons you....⁴²

- b. Men and women have the potential to achieve achievements.

Opportunity to achieve maximum performance is no difference between men and women, specifically emphasized in several verses including Q.S. Ali-Imran/3: 195:

فَاسْتَجَابَ لَهُمْ رَبُّهُمْ أَنِّي لَا أُضِيعُ عَمَلَ عَامِلٍ مِّنْكُمْ مِّنْ ذَكَرٍ أَوْ أُنْثَىٰ ۖ بَعْضُكُمْ مِّنْ بَعْضٍ ۚ فَالَّذِينَ هَاجَرُوا وَأُخْرِجُوا مِنْ دِيَارِهِمْ وَأُوذُوا فِي سَبِيلِي وَقُتِلُوا وَقُتِلُوا لَأَكْفِرَنَّ عَنْهُمْ سَيِّئَاتِهِمْ وَلَأُدْخِلَنَّهُمْ جَنَّاتٍ تَجْرِي مِنْ تَحْتِهَا الْأَنْهَارُ ۗ تَوَابًا مِّنْ عِنْدِ اللَّهِ ۗ وَاللَّهُ عِنْدَهُ حُسْنُ التَّوَابِ

Meaning:

⁴¹Kementerian Agama RI, *al-Qur'an dan Terjemahnya*, 205.

⁴²Kementerian Agama RI, *al-Qur'an dan Terjemahnya*, 36.

Because some of them were descended from others, their Lord granted their request and declared: "Truly, I do not waste the deeds of those who do good deeds among you, whether male or female. People who migrated, were driven from their homes, suffered harm as a result of their actions, engaged in combat, and died will undoubtedly have their mistakes forgiven and will be admitted into gardens where rivers flow as a recompense with Allah, and Allah with Him is a good reward."⁴³

The passage underlines that individual achievement, both in the spiritual and professional spheres, is not solely a male domain and suggests the ideal concept of equality between men and women. The chance for both sexes to perform at their best is equal. Although there are still many challenges, particularly cultural ones, this ideal concept needs stages and socialization to be realized in society. However, cultural concerns shouldn't dampen enthusiasm for promoting gender equality because it will affect cultural changes in society along with the advancement and growth of science and technology.

After outlining the principles of equality in the Qur'an, several examples of equality between men and women in Islamic family law will be discussed as follows:

1. Equality in Choosing a Life Partner

There is a difference of opinion among scholars regarding the permissibility of a father (wali) choosing a partner for his daughter without the consent of the child. Imam Syafi'i and Imam Malik are among the scholars who allow the right of *ijbar* (forced) for parents (guardians) but must be accompanied by quite strict signs, especially for the happiness and benefit of their child's future marriage.⁴⁴ According to this viewpoint, Sayyid Sabiq concurred that both children who have lost their faculties, such as going insane, and children who have not yet become *mumayyiz* or who have already

⁴³Kementerian Agama RI, *al-Qur'an dan Terjemahnya*, 97.

⁴⁴Muhammad al-Syarbini, *al-Iqna'* (Surabaya: Dar al-Ihya' al-Kutub al-Arabiyyah, t.th.), 168. Bandingkan: Rustam Dahar Kamadi, Kesetaraan Laki-laki dan Perempuan dalam Hukum Perkawinan Islam, *Sawwa* vol. 8 no. 2 (April 2013), 364.

done so are covered by the right of *ijbar* for guardians.⁴⁵ Just since he wants the marriage to result in *sakinah*, *mawaddah*, and *rahmah*, he wants the guardian to request his child's consent.⁴⁶

According to Imam Abu Hanafi, a girl or a widow must give her agreement in order for there to be a marriage. Alternatively, even the father may not enforce the marriage contract if they reject it. This opinion is based on an incident that took place during the lifetime of the Prophet Muhammad, when a woman by the name of Khansa'a in the history of 'A'isyah r.a. received a complaint from a girl who was being forced by her father to wed a guy she didn't like. The Prophet decided to return the marriage arrangements to the girl earlier after hearing what had been said.⁴⁷ Ibn Taimiyah concurred with the scholars who said that fathers shouldn't compel their adult daughters to get married without their permission.⁴⁸ According to another viewpoint, espoused by Asghar Ali Engineer, women and men have equal rights to choose partners because they both possess moral and mental faculties, which are stressed in the Qur'an (Q.S. Al-Ahzab: 35).⁴⁹

2. Equality in Parenting

Raising children is not solely the responsibility of women (wives) but a shared responsibility between husband and wife. There is a disorientation in the mindset that it is the nature of women and is left entirely up to women so that men do not want to be involved in education and raising children. Such an assumption cannot be maintained because children need the touch of father

⁴⁵Sayyid Sabiq, *Fiqh Sunnah*, terj, Nor Hasanuddin, 3rd ed (Jakarta Pusat: Darul Fath, 2008), 18. Bandingkan: Sulaiman bin Ahmad bin Yahya al-Faifi, *Ringkasan Fiqih Sunnah*, terj. Achmad Zaeni Dachlan, 1st ed (Depok-Jawa Barat: Senja Media Utama, 2017), 392.

⁴⁶Sayyid Sabiq, *Fiqh Sunnah*, terj, Nor Hasanuddin, 16.

⁴⁷Masdar Farid Mas'udi, *Islam dan Hak-Hak Reproduksi Perempuan: Dilaog Fiqih Pemberdayaan* (Bandung: Mizan, 1997), 90-91.

⁴⁸Ibnu Taimiyah, *Hukum-Hukum Perkawinan*, Alih bahasa oleh Rusnan Yahya, (Jakarta: Pustaka al-Kausar, 1997), 124.

⁴⁹Asghar Ali Engineer, *Hak-hak Perempuan dalam Islam*, terjemahan Farid Wajidi (Bandung, LSPPA, 1994), 138.

and mother in their development. Children have the right to a good life of growth and development (Q.S. Al-An'am: 151), the right to protection and care from the torments of hell (Q.S. Al-Tahrim: 6), the right to earn a living and welfare (Q.S. Al-Baqarah: 233), the right to education and teaching (Al-Tahrim: 6), the right to justice and equality (Q.S. Al-Hujurat: 13), the right to love (Q.S. Al-Baqarah: 83). Children who do not get parental love and attention tend to have psychological conflicts which can have an impact on their interactions with other people or find ways of living with drugs and other immoral behavior.

As is the nature of women, there are various opinions among the Ulama regarding the duty to breastfeed a kid. Breastfeeding a kid is a moral requirement, not a formal (legal) one, according to Imam Malik. This demonstrates that if a mother is reluctant to nurse her kid, neither the husband nor the court have the authority to compel her to do so. Breastfeeding is *mandub* (recommended), according to Hanafi, Syafi'i, and Hanbali scholars. It should be remembered that the obligation and burden of parenting children falls on both the husband and woman.

3. Equal treatment in A separation

Islam acknowledges that men and women are equally allowed to end a marriage if they are no longer able to do so for a variety of reasons. In Islam, divorce is referred to as *khulu'* and is started by the wife as opposed to *talak*, which is started by the husband. Asghar described the situation involving Jamilah, Thabit bin Qais's wife. Although the Prophet did not discover any major errors Thabit had committed, the Prophet still approved Jamilah's request and instructed Jamilah to return the dowry her husband had given her after she informed him of her displeasure with her marriage.⁵⁰ The right of *khulu'* is the prerogative of the wife and nothing can prevent it.

⁵⁰Asghar Ali Engineer, *Hak-hak Perempuan dalam Islam*, terjemahan Farid Wajidi, 195.

In this context, women are legally recognized as filing for divorce in the Religious Courts if they no longer feel happy as a household, for example as victims of domestic violence. Divorce is one of the solutions to family problems even though the Prophet once said "something that is lawful but hated by Allah is divorce". Data shows that divorce in Indonesia is increasing and is dominated by contested divorce. In 2020, divorce data totaled 291,677 cases and 214,970 (73.70%) were contested divorces. This phenomenon needs to get the attention of all parties, especially community leaders and religious leaders to find the root of the problem and then seek solutions to solve it.

C. Conclusion

Islamic family law's emphasis on justice and equality is a requirement for achieving harmony and peace in the home. Without it, marginalization and prejudice would persist, particularly against women and children.

The dominance of husbands over wives in all domestic matters, domestic violence (both physical and non-physical), sexual abuse of biological/stepchildren by their parents (fathers), and giving priority to the education of sons are just a few examples of discrimination that can be seen in families. -more boys than girls and parents marrying their daughters against their will.

A large number of scholars support polygamy (ta'addud al-zaujat) as long as the men can treat the women justly. There is no mention of non-material justice, such as love, compassion, or caring, yet it is crucial to keep this in mind when interacting (mu'asyarah bi al-ma'ruf). The justice being discussed here is material justice, such as clothing, boards, food, and night.

The distribution of inheritance in the Qur'an (2:1) is zanniyu al-tanfiziyah rather than qat'iyyu al-wurud and qat'iyyu al-dilalah. Although each heir's share has been explicitly stated (*sharih*), in a sense, this portion is subject to vary depending on the heir's actual state. This complies with the regulations.:

لا ينكر تغير الأحكام بتغير الأحوال والأمكنة والأزمان .

Wallahu a'lamu bi al-shawab.

Reference

- Al-Asfahani, Al-Raghib. *Al-Mufradat fi Gharib al-Qura'n*, t. tp: Nazar al- Mustafa, t. th.
- Al-Bukhari, Imam. (1987). *Shahih al-Bukhari*, Bab Katsrat al-Nisa', Juz 5, Kairo: Dar al-Sya'bi.
- Al-Faifi, Sulaiman bin Ahmad bin Yahya. (2017). *Ringkasan Fiqih Sunnah*, terj. Achmad Zaeni Dachlan, Cet. I; Depok-Jawa Barat: Senja Media Utama.
- Al-Razi, Fakhr. (1990). *al-Tafsîr al-Kabîr*, Jilid XV, Beirut: Dar al-Haya' al-Turats al-Arabi.
- Al-Syafii', Muhammad ibn Idris. *al-Umm*, Juz V, Beirut: Dar al-Ma'rifah, t. th.
- Al-Syarbini, Muhammad. *al-Iqna'*, Surabaya: Dar al-Ihya' al-Kutub al-Arabiyyah, t.th.
- Al-Thawil, Muhammad ibn Musfir ibn Husein. *Ta'addud al-Zawaij fi al-Islam*, Ummul Qura': Idarah al-Da'wah wa al-Islam bi Jama'ah Anshar al-Sunnah al-Muhammadiyah, t. th.
- Al-Zuhaili, Wahbah. (1989). *al-Fiqh al-Islamiy wa Adillatuhu*, Damaskus: Dar al-Fikr.
- Anshori, Abdul Ghofur. (2005). *Filsafat Hukum Kewarisan Islam; Konsep Kewarisan Bilateral Hazairin*, Yogyakarta: UII Press.
- Dahlan, Abdul Aziz. (1996). *Ensiklopedia Hukum Islam*, Jakarta: PT. Ichtiar Baru van House.
- Engineer, Asghar Ali. (1994). *Hak-hak Perempuan dalam Islam*, terjemahan Farid Wajidi Bandung, LSPPA.
- Fayuni, Badriyah, dkk. (2001). *Keadilan dan Kesetaraan Gender Perspektif Islam*, 1st ed. Jakarta: Tim Pemberdayaan Perempuan Bidang Agama Depag RI.
- Hanapi, A. (2015). *Peran Perempuan Dalam Islam*, Gender Equality: International Journal of Child and Gender Studies, 1 (1).
- <https://databoks.katadata.co.id/datapublish/2022/02/03/sebanyak-7370-istri-menggugat-cerai-suaminya-pada-2020>
- <https://journal.uinsgd.ac.id/index.php/Diroyah/article/view/19840/pdf>
- <https://regional.kompas.com/read/2021/03/13/233229578/seorang-ayah-tega-hamili-anak-kandung-perbuatannya-terbongkar-setelah>.
- <https://www.metrotvnews.com/play/b2lCrdXL-kemenpppa-rilis-data-jumlah-kasus-kdrt-di-indonesia-hingga-oktober-2022>
- Ibn Anas, Imam Malik. *al-Muwaththa'*, Mesir: Dar Ihya al-Turats, t. th.
- Ibn Manzur. *Lisan al-'Arab*, Kairo: Dar al-Ma'arif, t. th.

- Ibn Qudamah. (1405). *al- Mughni*, Juz 6, Beirut: Dar al-Fikr.
- Ibnu Taimiyah. (1997). *Hukum-Hukum Perkawinan*, Alih bahasa oleh Rusnan Yahya, Jakarta: Pustaka al-Kausar.
- Kamadi, Rustam Dahar. (2013). Kesetaraan Laki-laki dan Perempuan dalam Hukum Perkawinan Islam, *Sawwa*, 8 (2).
- Kamaruddin. (2013). Beragam Norma Hukum dalam Penerapan Waris, *Jurnal Al-Risalah*, 13 (1).
- Kementerian Agama RI. (2011). *Al-Qur'an dan Terjemahnya*, Jakarta: PT. Adhi Aksara Abadi Indonesia.
- Mas'udi, Masdar Farid. (1997). *Islam dan Hak-Hak Reproduksi Perempuan: Dilaog Fiqih Pemberdayaan*, Bandung: Mizan.
- Mustafa, Ibrahim (et.al). (2004). *Al-Mu'jam al-Wasit*, Kairo: Syuruq al-Daulah.
- Nailiya, Iffah Qanita. (2019). *Poligami Berkah ataukah Musibah? Mengungkap Alasan-alasan Nabi Melarang Ali Berpoligami*. 1st ed. Yogyakarta: DIVA Press.
- Rofiq, Ahmad. (2000). *Hukum Islam di Indonesia*, 4th ed. Jakarta: PT RajaGrafindo Persada.
- Sa'adah, Nurus, dkk. (2015). Poligami dalam Lintas Budaya dan Agama, *Jurnal Ilmu Syari'ah dan Hukum*, 49(2).
- Sabiq, Sayyid. (2008). *Fiqh Sunnah*, terj, Nor Hasanuddin, 3rd ed. Jakarta Pusat: Darul Fath.
- Shihab, M. Quraish. (2018). *Perempuan: dari Cinta sampai Seks, dari Nikah Mut'ah sampai Nikah Sunnah, dari Bias lama sampai Bias Baru*, 1st ed. Tangerang: PT. Lentera Hati.
- Shihab, M. Quraish. (2002). *Tafsir al-Misbah: Pesan, Kesan dan Keserasian al-Qur'an*, Vol. 5, Jakarta: Lentera Hati.
- Syaltut, Mahmud. (1395). *Al-Islam Aqidatun wa Syariah*, Mesir: Dar al-Qalam.
- Thahir, Mursyidah. (ed.), (2000). *Pemikiran Islam tentang Pemberdayaan Perempuan*, Jakarta: PP Muslimat NU Kerjasama dengan Logos Wacana Ilmu.
- Tim Redaksi Kamus Bahasa Indonesia. (2008). *Kamus Bahasa Indonesia*, Jakarta: Pusat Bahasa Departemen Pendidikan Nasional.
- Umar, Nasaruddin. (1999). *Argumen Kesetaraan Gender Perspektif al-Qur'an*. 1st ed. Jakarta: Paramadina.
- Umar, Nasaruddin. (2002). *Qur'an untuk Perempuan*, Jakarta: Jaringan Islam Liberal (JIL) dan Teater Utan Kayu.
- Zahari, Ahmad. (2003). *Tiga Versi Hukum Kewarisan Islam: Syafi'i, Hazairin dan KHI*, Pontianak: Romeo Grafika.