

# THE RESPONSE OF QURAISH SHIHAB TO THE BIAS OF FEMINISTS

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#### Abstract

Some feminists' views are regarded as biased by Quraish Shihab. These viewpoints, according to Shihab, were due to excessive enthusiasm to protect women from the old bias, besides, they rest on a claim of absolute equality between men and women. So, they ignored the arguments that do not absolutely equalize men and women and they even thought that Islam abuses women. Therefore, these produced views that are inconsistent with the naš or it's spirit, and the religious guidelines. That was why Shihab urged that these views needed to be reconsidered and realigned with the teachings of Islam, in harmony with the nature of women.

This study resulted in three points, first, Shihab's responses to the contemporary views can be grouped into three categories: 1. Shihab completely rejected equality of inheritance between sons and daughters, the right of divorce to a wife, and a wife as a breadwinner obligation in addition to her husband. 2. Shihab did not fully reject the necessity of guardian in marriage, the requirement of an agreement between the prospective bride and her guardian, the obligation of 'iddah for men is a merely religious moral obligation, and wife beating permission is sometimes still needed. 3. Shihab accepted the feminists' opinion of women's testimony.

Second, the difference between Shihab's and the feminists' point of views is due to the fact that they used different methodological approach and in defining the nature of women. Although Shihab and feminists scholars who were considered as bias, they both claimed that their ideas were based on the text and its spirit, but they used them in different portions. Furthermore, Shihab responded contemporary issues with a deductive approach, which was grounded from the texts and then he interpreted it textually to the the qat'ī verses, then, for the verses that were considered as żannī he interpreted it contextually. While the feminists responded contemporary issues with an inductive approach (empirical) and then looked for arguments in the texts to interpret it contextually. Moreover, these differences occured because of their differences in defining the nature of women. Feminists define it with something that is physically attached to the reproductive organs in women. While for Shihab, the nature of women is not only that, but also includes gender roles.

Third, I argue that if Shihab and feminists used the same methods and had the same definition of the nature of women, they would produce more or less the same views.



The primary reference is Perempuan Dari Cinta Sampai Seks Dari Nikah Mut'ah Sampai Sunnah Dari Bias Lama Sampai Bias Baru by Shihab. The Data were analyzed with the maqasid al-Syarī'ah approach and gender perspectives.

The significance of this study is to explain theoretical views of feminists who are considered as biased by Shihab as well as Shihab's response to these problems. In addition, it analyzes the response of Shihab against the views of feminists which are considered as biased in the gender perspective.

#### THE RESPONSE OF OURAISH SHIHAB TO THE BIAS OF FEMINISTS

#### A. Introduction

Some feminists views as in the case of inheritance, divorce, maintenance, 'iddah, guardian of marriage, and female witnesses are considered biased by Quraish Shihab<sup>546</sup>. That is understandable, because even the thought feminism varies, but the core of his talk was about cooperation between men and women to build a more balanced and healthier society. In turn, when feminists understand religious texts, they generally use a gender perspective, because they believe this perspective can help to analysis what fair is and what unfair is, and how the mechanism of injustice occurred and practiced in the community. Mansour Fakih, for example, stated that interpretation has a very strategic position in perpetuating gender inequality and vice versa, which is in gender justice. Therefore, a study of the overall interpretations and implications for the teaching of religion and religious behavior is particularly vital.<sup>547</sup> In relation to the diversity of feminism, it is possible that the understanding of religion (Islam) is also diverse.<sup>548</sup> Therefore, it is possible that some interpretations of their religion assessed bias by Shihab because according to Shihab the feminists rests on the assumption that it demands the total equation in terms of the relationship of women and men.

Shihab, who is known as quite productive a *mufassir* in Indonesia, seems to feel that there is a need for a discussion concerning the feminists views considered bias by referring to the verses of the Qur'an and Hadith in addition to other references. One of his writings that specifically responded to the issues and discourses about women in

<sup>&</sup>lt;sup>546</sup> M. Quraish Shihab, Perempuan Dari Cinta Sampai Seks Dari Nikah Mut'ah Sampai Sunnah Dari Bias Lama Sampai Bias Baru, (Lentera Hati, 2005)

Mansur Fakih, Analisis Gender dan Transformasi Sosial (Yogyakarta: Pustaka Pelajar, cet VIII, 2004), 140.

Typology of gender feminist thought can be classified into six, namely: apologists, reformist, transformative, rationalist, rejeksionis, and post-modernist (Jamali, "Kebiasaan Tatapan dalam Kebiasan (sebuah Respon atas Pemikiran Kesetaraan Jender)" in *Equalita*, Vol. 3 No.2 Juni 2003, 36—42 and Abdul Mustaqim, *Tafsir feminis versus Tafsir Patriarki: Telaah Keritis Panafsiran Dekonstruktif Rif'at Hasan* (Yogyakarta: Sabda Persada, 2003), 74-83.



Indonesian society is *Perempuan Dari Cinta Sampai Seks Dari Nikah Mut'ah Sampai Sunnah Dari Bias Lama Sampai Bias Baru*. In this book, Shihab discussed about the biases against women who are considered as not only an understatement but also harassing women. <sup>549</sup> This paper will describe how the feminist view on issues perceived bias by Shihab and his response to the feminist views? This problem will be studied by using a gender and *maqāṣid al-syarī'ah* approaches.

## B. Maqāşid al-syarī'ah and Gender approaches in interpretating religion

Syarī'ah or law in fact enacted for human benefits. Al-Syatibi said that the aims of syarī'ah are to realize the human benefits in the world and in the hereafter<sup>550</sup> or in another expression he alsio stated that the law is prescribed for the benefit of servants ('ibād) <sup>551</sup> not for the law itself. Later, Ibn Qayyim stated that the building and the foundation of Syarī'ah are the law and human kindness in this world and in the hereafter. <sup>552</sup> Therefore, the whole building and its basic are being fair, beneficence and wisdom. Everything that turns away from justice, mercy, *maslahah*, and wisdom cannot be called Islamic <sup>553</sup>. Even Ibn Qayyim said further that basing on the law and Syarī'ah, law should be in accordance with the laws of rationality. He even declared that syarī'ah goodness centered on reasons. <sup>554</sup>

Gender as a step, generally used by adherents of the flow of social sciences that focus on the conflicts and structural inequities caused by the gender system. Gender as represented by Oakley is different from sex. Gender is the difference between men and women neither the biological nor the nature of God, but it is created by both men and women through the process of a long social and cultural construction. While sex is biological differences (sex) as the nature of God and permanently different. Gender differences which in turn engender gender roles that in reality gives rise to injustice and subordination, marginalization, stereotyping (labeling), and the double burden of women. According to Mansour Faqih, in many observations found that 90% of the domestic work done by women, especially for those who have multiple roles. perpetuating position and this condition has been run by a patriarchal ideology and culture. Therefore, there should be a transformation movement for creating the better and more humane relationship among human beings, 555 through the interpretation of religion.

<sup>&</sup>lt;sup>549</sup> M. Quraish Shihab, *Perempuan*, 31-32.

<sup>550</sup> Al-Syāţibī, al-Miwāfaqāt fī Uşūl al-Syarī ah (al-Qāhirah, Muşţafā Muĥammad, n.d.), II, 6.

<sup>&</sup>lt;sup>551</sup> Al-Syāṭibī, *al-Miwāfaqāt*, II, 54.

<sup>552</sup> Al-Svātibī, al-Miwāfaqāt fī Uṣūl al-Syarī ah (al-Qāhirah, Muṣṭafā Muĥammad, n.d.), II, 6.

<sup>&</sup>lt;sup>553</sup> Ibnu al-Qayyim, *I'lām al-Muwaqi'īn min abb al-'ālamīn*. (n.p.: Dār al-Fikr, n.d.), III, 55.

Ibnu al-Qayyim, *Miftāĥ al-Dār al-Sa'ādah wa Mansyūr al-Wilāyah al-'Ilm wa al-Irādah* (Mesir: Maṭba'ah Sa'ādah, I), II, 2.

<sup>555</sup> Mansour Faqih, Analisis Gender, 12-23



Religion today is often used as a scapegoat for keeping gender inequality alive. The question is whether widespread gender inequality in religion comes from the nature of religion itself or it comes from understanding, interpretation, and religious thought that might influenced by the traditions and culture of patriarchy, capitalism and the ideology of other views? Shihab stated that there are interpretations of Islamic literature that are bias and harassing women. There are many  $riw\bar{a}yahs$  attributed to the Prophet or his companions, even though they did not mean as such, which was then accepted as consistent with the idea that there was in his subconscious. It could happen, because of the diversity of  $riw\bar{a}yahs$  attributed to the Prophet or his companions. Some are  $sah\bar{i}h$ , sam, and sam are sam attributed to the Prophet or his companions. Some are sam and sam are sam and sam and sam are sam and sam and sam are sam and sam and sam and sam are sam and sam are sam and sam an

Basically the core teachings of Islam encourage and uphold some principles such as justice, equality, and socially doing good. Meanwhile, the problems in society and the kind of injustice continue to evolve with the time. To understand and analyze about what fair is and what unfair is and how the injustice mechanisms underlying principles of religion, an analysis tool in social sciences including gender analysis is required. In the Qur'an there are *dalīl qoţ'ī* in addition to the *żannī*. In practice, the text specified as *qaţ'ī* is dependent on *ijma'* regarding the *qaţī's* meaning, which in reality scholars are very careful to declare consensus on one problem. <sup>557</sup> Even theoretically found juresprudence, scholars, such as al-Razi, who invalidate a verse is *qaţ'ī* interpretation. <sup>558</sup> In addition, to understand the proposition *żannī* analyzes, a tool is needed for other sciences, including gender analysis. Understanding or interpretation of the teaching of religious principles of justice will evolve according to the understanding of social reality as real principles of Islam. The principles of Islam regarding justice are of course still relevant.

#### C. Quraish Shihab response to the feminist views

# 1. Marriage Guardian

Quraish Shihab said that feminists criticize approval requirement of trustee (wali) as a condition of validity of marriage only for the prospective bride. <sup>559</sup> This is Shihab's response to the draft CLD KHI Article 7 (2) and (3) which states that "a man

<sup>556</sup> M. Quraish Shihab, Perempuan, 37-38.

<sup>557</sup> See 'Abd al-Wahhāb Khallāf, *'Ilm Ushûl al-Fiqh* (Cairo: Dār al-Qalam li al-Tibā'ah wa al-Nasyr wa al-Tauzī', 1978, XII), 48-50.

<sup>&</sup>lt;sup>558</sup> Ibrahim Hosen, Beberapa Catatan Tentang Reaktualisasi Hukum Islam, in: Nafis, Muhammad Wahyuni, et al., *Kontekstualisasi Ajaran Islam*, 1995, 273-280.

<sup>559</sup> M. Quraish Shihab, Perempuan, 273.



or a woman can marry him/herself with the following requirements: a. thoughtful. b. 21 years old. c. competent/mature (rasyiid/rasyiidah). For the prospective husband or wife who does not meet the requirements under paragraph (2), then the right to marry is a nasab trustee or judge guardian." <sup>560</sup>

Shihab then presented four scholars views about a guardian permission for women. First, guardian permission is mandatory, so, it is not allowed for woman to marry herself in the opinion of Imam Shafi'i. Second, it is permissible for woman to marry herself when it has been authorized by the guardian, as the opinion of Abu Yusuf. Third, it is acceptable to marry or delegate to someone else to marry her. Fourth, it is permitted to marry herself only for widow as the opinion of Hanafi and the Shia Imami schools. <sup>561</sup>

According to Shihab these disagreements among scholars because they differ in understanding the verse 232 of *al-Baqarah*. Hanafi understands this verse as a *dalil* of inherent rights for women. Whereas, according to the Shafi'i this verse is addressed to the trustee (*wali*) and forbids him to prevent women who wants to marry. In addition, according to Shihab, the scholars who require trustee believe that it is necessary in marriage in order to guarantee strongly a woman to avoid any doubt, mistake and deceit man who is not responsible. A Woman desperately needs for help from an experienced person, which in this case is her guardian. Having explained the views of the scholars, Shihab then stressed though trustee has the right, but he is not allowed to impose its will by marrying his daughter to men whom she does not like. It is based on some hadiths of the Prophet. Then, Shihab concluded that "for achieving the marriage harmony and perpetuity is required the agreement between prospective bride and her guardian and such which is reflected in the terms of the trustee. the elements of harassment in this case was not found at all."

Verse 232 al-Baqarah, as a proof (*dalīl*) that is differently interpreted, talking about divorce. It needs to be highlighted that some earlier verses also talked about divorce that the *Khiţāb* is some husbands, not the guardians. Verse 226, for example, speaks about *Ila*', verse 227 speaks about divorce, verse 228 and 229 talk about *raj'ī* divorce, verse 230 concerns on *ba'in* divorce, verse 231 speaks about how to unite wife who is in a period of '*iddah*. Thus, it is understandable if the Imam Hanafi's interpretation of verse 232 is addressed to the husband, not to the guardian, as if it is

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<sup>&</sup>lt;sup>560</sup> Tim Pengarusutamaan Gender Departemen Agama RI, *Pembaharuan Hukum Islam: Counter Legal Draft Kompilasi Hukum Islam* (Jakarta: n.p., 2004), 37-38.

<sup>&</sup>lt;sup>561</sup> M. Quraish Shihab, *Perempuan*, 273-274.

وَإِذَا طَلَقْتُمُ النَّسَاءَ فَبَلَغْنَ أَجَلَهُنَّ فَلَا تَعْضُلُو هُنَّ أَنْ يَنْكِحْنَ أَرْوَاجَهُنَّ إِذَا تَرَاضَوَا بَيْنَهُمْ بِالْمَعْرُوفَ ِ ذَلِكَ يُوعَظُ بِهِ مَنْ كَانَ مِثْكُمْ يُؤُمِّنُ بِاللَّهِ 562 واللَّيوْمِ اللَّخِرِ ذَلِكُمْ أَرْكَى لَكُمْ وَأَطْهَرُ وَاللَّهُ يَعْلَمُ وَأَلْتُمْ لَا تَعْلَمُونَ

<sup>&</sup>lt;sup>563</sup> M. Quraish Shihab, *Perempuan*, 275-276.

<sup>&</sup>lt;sup>564</sup> M. Quraish Shihab, *Perempuan*, 277-278.

<sup>&</sup>lt;sup>565</sup> Quraish, *Perempuan*, 278-279.



connected to some earlier verses, the  $Khit\bar{a}b$  of the verse is the husband, not the guardian.

Razi explained that the commentators disagree about whom is the *Khiṭāb* of كف تعضلوهن. The majority of them stated that *Khiṭāb* of this lafadz is the trustee, while for some others the *khiṭāb* of this lafadz is husbands. According to al-Razi, the opinion of the latter is elected because the passage وإذا طلقتم النساء فبلغن أجلهن فلا تعضلوهن as syaraṭ and jaza `. as jaza `. Because khiṭāb أعلى are husbands, so, khiṭāb lafadz وإذا طلقتم النساء فبلغن أجلهن أجلهن أجلهن of course also husbands. If then, khiṭāb lafadz فلا تعضلوهن is the trustees, it does not fit at all between these syaraṭ and jaza`. In addition, khiṭāb preceding verses to this verse which speaks of divorce as well as husbands. If then, khiṭāb lafadz فلا تعضلوهن the trustees, it is not coherent. 566

As for the opinion that  $Khit\bar{a}b$  lafadz is the trustees based on  $asb\bar{a}b$   $al-Nuz\bar{u}l$  of the verse addressed to the trustees. It is reported that the sister Ma'qil bin Yasar was divorced by her husband and she let him (do not get back together) until the expiration of her 'iddah. Then, the man ask for her hand back, but Ma'qil did not want to recieve proposal to her sister. The verse 232 then came down. She looking at the history, it appears that the verse as a response to the Ma'qil case, as the guardian of his sister, who did not want to accept the proposal ex-husband's sister. However, according to al-Razi, rely on the Qur'an textually, as noted above, greater than based on the khabar ahad, especially if the narrations were conflicting between one another. She

Furthermore, according to Abu Hanifah, in the text "أن ينكحن أزواجهن" married is the preference of woman, not to the guardian, even God forbids the guardian to prevent her. Based on this verse Abu Hanifa allowed legal marriage without a guardian. The text in this verse strengthen preceding verse عليكم فيما فعلن في أنفسهن بالمعروف showing women who marry themselves with men who are kufu' is legitimate and verse وامرأة مؤمنة إن "570" showing women who marry themselves with men who are kufu' is legitimate and verse وامرأة مؤمنة إن "571" وهبت نفسها للنبي إن أراد النبي أن يستنكحها Prophet, if the Prophet would marry her, an obvious proposition (dalīl) that the guardian did not attend it.

<sup>566</sup> See in al-Rāzī, *Mafātīĥ al-Ghaib*, 32.

حَدَّثَنْا عُبِيْدُ اللَّهِ بْنُ سَعِيدِ حَدَّثْنَا أَبُو عَامِرِ الْعَقْدِيُّ حَدَّثْنَا عَبَّادُ بْنُ رَاشِدِ حَدَّثْنَا الْحَسَنُ قَالَ حَدَّثْنِي مَعْقِلُ بْنُ يَسَارِ عَلَى كَانْتُ لِى اَحْتَ لَى اَحْتَ لَى اَحْتَ لَى اَحْتَ لَى اَحْتَ لَى اَحْتَ لَى اَحْتَ الْوَارِثُ حَدَّثْنَا عَبُدُ الْوَارِثِ حَدَّثْنَا يُولُسُ عَن الْحَسَنَ حَدَّثْنِي مَعْقِلُ بْنُ يَسَارٍ . حَدَّثْنَا أَبُو مَعْمَر حَدَّثْنَا عَبُدُ الْوَارِثِ حَدَّثْنَا يُولُسُ عَن الْحَسَنَ عَن الْحَسَنَ اللهِ الْعَلَى مَعْقِلُ بْنُ يَسَارٍ طلَقَهَا زَوْجُهَا ، فتركها حَتَّى الْقَضَتُ عِدَّتُها ، فخطبَها قابَى مَعْقِلُ ، فنزلت ( فلا تَعْضَلُوهُنَ أَنْ يَلْكِحْنَ الْحَسَنَ أَنْ يَلْكِحْنَ الْحَسَنَ أَنْ يَلْكِحْنَ الْحَسَنَ أَنْ يَلْكِمْنَ ( al- Bukhārī, Şaĥīĥ al-Bukhārī, al-Tafsīr, hadis no. 4529)

<sup>&</sup>lt;sup>568</sup> Al-Rāzī, *Mafātīĥ al-Ghaib*, III, 344.

<sup>&</sup>lt;sup>569</sup> Q.S. al-Baqarah/2:230.

<sup>&</sup>lt;sup>570</sup> Q.S. al-Baqarah/2:234.

<sup>&</sup>lt;sup>571</sup> Q.S.  $al-A\hat{h}z\bar{a}b/33:50$ .



In addition, Ibn Rushd explains that the difference interpretation between Abu Hanifa and al-Shafi'i caused partly by differences in the concept of guardianship in marriage. For Abu Hanifa held custody of a guardian based on legal reasoning, ie immature (al-Saghīrah), whereas al-Syāfi'ī custody was based on the law 'illat virginity (al-bikārah). Therefore, for the adult virgin (al-bikārah al-bālighah) may marry herself and guardian may not marry her without her consent. While Shafi'i considers guardian ijbar even has the right to marry his daughter without her consent. Likewise, there is no right ijbār the guardian of a young widow because 'illat ijbār rights law says is virginity. Meanwhile, according to Abu Hanifah otherwise, for the young widow must ask for permission to her guardian when she want to marry. <sup>572</sup>

Thus, it can be concluded that what is being proposed by feminists that a woman can marry herself actually has some references in the works of classical scholars, as recognized by Shihab. Nevertheless, Shihab prefers to the middle ground by emphasizing the need for guardian consent, in addition to approval prospective bride. The problem is, if this ideal conditions, namely the approval of the guardian and the prospective bride, is not achieved? Can a grown woman married herself? When referring to the opinion of Imam Hanafi who agrees with him, there are no obstacles for a woman to marry herself. It does seem discord to the textually hadith, that no marriage or invalid marriage without the permission of a guardian. The wower, some scholars (such as Abu Hanifa) understands that the custody of a guardian owned *illah* based on the law (legal reasoning), immature (*al-ṣaghūr*). Therefore, for an adult virgin (*al-bikārah al-bālighah*) may marry herself and guardian may not marry without her consent. This view agrees with that of feminists and avoides harms which is as a part of the purpose of the law.

## 2. The obligation of breadwinner

Quraish Shihab further highlights a group of scholars proposal to revise the Compilation of Islamic Law (KHI) in the perspective of Islamic law in Indonesia about the obligation of bredwinner (*nafkah*) in a family that is charged not only to the husband but also to the wife. <sup>574</sup> In CLD KHI article 51 (1) stated that "a husband and a wife is obliged: ... (b) to support each other and provide all the needs of family life in accordance with their respective capabilities. ... (2) The obligation applies to both

<sup>574</sup> M. Quraish Shihab, *Perempuan*, 306-307.

<sup>&</sup>lt;sup>572</sup> Maĥhmūd Ahmad al-Zanjānī, *Takhrīj al-Furū' 'alā al-Uşūl* (Beirut: Mu`assasah al-Risālah, 1987), 257-258

عن عائشة ان النبى صل الله عليه Likewise, the Hadith, عن ابى موسى عن النبى صل الله عليه وسلم قال : لا نكاح إلا بولي 573 . واله وسلم قال : أيما امرأة نكحت بغير إذن وليها فنكاحها باطل فنكاحها باطل فنكاحها باطل



parties after the marriage akad was held. Then article 52 (1) states that pregnancy, childbirth, and breastfeeding that inherent to the wife worth with a bredwinner "575"

Shihab argued about why the obligation of breadwinner imposed on the husband. Theological instruction is verse 34 *al-Nisā* ', which talks about the leadership (*qiwāmah*) of men/husbands to the women/wives, stating that men/husbands have spend their wealth (وبما أنفقوا من أموالهم). The use of the past tense in the sentence according to Shihab showed that the husband gives his wife living (nafkah) in the community has been the prevalence of the past until now. <sup>576</sup> This duties were very forceful that the Prophet permitted a woman to take her husband's property, without his knowledge, as appropriate to the fair.

Then Shihab argued on maintenance obligations imposed on the husband in the form of prevalence and tradition, "natural," psychological, physical, sexual, and women need on money. Interestingly, Shihab also said that the duty is not chargeable to wives also for the husband behalf to have peace and tranquility. Similarly, when a husband defends a wife and children, in the form of physical protection as well as others, indirectly he has fulfilled the needs of his soul as a defender. <sup>577</sup>

What that Shihab states are on the line with religious understanding promoted in the community over the years, that the obligation to provide *nafkah* for normatively charged to the husband or father, as verse 233 of *al-Baqarah*. However, the empirical level, even though women make money earner considered additional proceeds are generally used not only for their own needs, but also for their families. However, because of the culture (traditions) in Indonesia housework charged to the wife, even the wife works and makes the money used for the needs of the family, is still burdened with most of the housework. While their husband were not responsible or separated from the housework. In such, it happens multiple burdens to women, although often not realized either by women themselves or even more by men except by certain circles women. In this context why CLD KHI team legalize empirical fact that family income is not only borne by the husband but also to the wife.

Then, what about the other arguments? The "natural" reason that seemed to be psychological presented by Shihab could be attributed to the culture of patriarchy that has constructed and socialized to the community for generations, so it then becomes a habit and even communities faith. Then, related to a physical relation with women is by nature such, so it's not fair if women still be required to be the breadwinner. In this case CLD KHI team actually had anticipated, as stated in article 52, that the task of wife nature was such as pregnant and breast-feed worth of a breadwinner, in other words, if

<sup>&</sup>lt;sup>575</sup> Tim Pengarusutamaan Gender Departemen Agama RI, *Pembaharuan Hukum Islam: Counter Legal Draft Kompilasi Hukum Islam,* Jakarta: n.p., 2004, 51-52.

<sup>576</sup> M. Quraish Shihab, Perempuan, 306-307.

<sup>&</sup>lt;sup>577</sup> M. Quraish Shihab, *Perempuan*, 312-313



the wife is in a state of pregnancy and breast-feed her child, it is free from the obligation of breadwinner. Then, in relation to sex, what Shihab pointed out, is one sides has a point, but on the other hand, can also be associated with a culture that has been ingrained in society that it is not possible then affect people behavior. Furthermore, the relation with the needs money of women still can be discussed. Nowdays, some men feel the need to take care their bodies wether for good looking or for health reasons. Also, not a few men who will reach into their money to buy cigarettes that actually not only harm to their health but also to their environment. Thus, the argument presented by Shihab still need to be debated.

The idea of feminists (CLD Team KHI) on breadwinner obligation to the wife is still to be discussed, because it might make the the more burden for women. Whereas the purpose of syarī'ah creates human kindness and resists damage. The response of Shihab to the idea there was indeed a theological foundation, even though objective arguments still need to be debated, because it is so obviously male gender bias.

# 3. Wife Beating

Permit wife beating who is *nushūz* relies on verse 34 *al-Nisā*. Asghar Ali Engineer, for example, states that when it seen in the time of revealed verse, the verse is not encouraging a man to beat his wife, but it seems to try to prevent beatings to the wife and to eliminate it gradually, thus beating placed on the third stage. However, when measured at the present time, the verse is not siding with the woman. <sup>578</sup> Shihab considers that a blows against nushuz wife is still relevant. But with underlining that the hit should not be injured and not directed to those who judges that blow as an insult or a dishonorable act. Further Shihab stated that "seems to the present - and among educated families - beating is no longer an appropriate way." <sup>579</sup>

There are two problems that still need to be discussed, which is a  $nush\bar{u}z$  wife and if the blow is believed to benefit. For the former, scholars mention that  $nush\bar{u}z$  wife is rebellious and disobedient to her husband command. The problem is, what is the limitation of obedience? How if the wife's disobedience was motivated by the behavior of the husband? Is there a chance for her to defend herself? Similarly, the statement "if the blow is believed to benefit" is extreemely subjective. This gives an opportunity to the man to act arbitrarily to hide behind the justification of religious guidance. Now, how many physical violences by a man against his wife on the pretext of educating that be allowed by religion.

Reading verse 34 al-Nisa, which seemed to be the legitimacy of a husband beating his wife that nushuz should be attributed to the spirit of the Prophet's hadith that

<sup>579</sup> M. Qurais Shihab, *Perempuan*, 294.

<sup>&</sup>lt;sup>578</sup> Asghar Ali Engineer, *Hak-hak Perempuan dalam Islam*, 64-65.



prohibits wife beating. Also, keep in-the absurd with other verse و عاشر و هن بالمعروف 580 that requires husbands to associate their wives with Ma'ruf, ie, an attitude that can be felt good by both husband and his wife. In fact, if then verse 34 al-Nisā' will be literally understood and regarded as a solution to overcome the tension in the household, but then abused, the government has the authority to stop the perpetrators sentenced, such as the enactment of the Domestic Violence.

Feminists reject the textual interpretation of the verse referenced, either by ta wīl or by putting the verse in the context, so that for the moment in which society has changed, it is not considered appropriate if interpreted literally. Shihab seemes continually strive to interpret textually by providing arguments that then supports a literal understanding of the text. But then, Shihab attempts to take on the current state right now that seems difficult to maintain its literal sense so that later, though not explicitly consider the beating is no longer the way to the educated families. Finally, it should be underlined that in understanding the passage of nushūz wife should be attributed to the Prophet's prohibition to the man to beat his wife and another verse which tells husbands to associate her with ma'rūf.

#### 4. **Divorce Right**

According to the Shihab, feminists wanted the right to divorce is not only given to men but also to women. <sup>581</sup> In CLD KHI in Part Two of Divorce Article 59 mentioned "divorce swore by the husband or wife before the religious court hearing as provided in Article 67. 582 In figh, divorce by the wife initiatives called *khulu*, thus also in KHI, expressed as a 'talag bain sghra, so it should not be reconciled except with a new marriage contract. While in CLD KHI seems not differentiate between divorce and khulu', so, divorce on the initiative of the husband or wife, is equally possible reconciliation. In addition, if in figh and KHI, rujū' right only possessed by husband, the right to rujū' in CLD KHI is owned by the wife bisides the husband. Both done with the divorce petition, not by a lawsuit, in addition, both must be made before the court session. Thus in the basic thoughts of divorce in CLD KHI.

Shihab explained that Islam actually establish the right of divorce rights in the the husband hands. However, according to the Hanafi school, women should make the terms in the contract that the divorce did not become the authority of her husband. If the requirements are approved by the husbands, then they can be enforced. Moreover, Islam has provided the means for it by demanding a divorce through the courts, known as

<sup>&</sup>lt;sup>580</sup> Q.S. al-Nisā`/4: 19

<sup>&</sup>lt;sup>581</sup> M. Quraish Shihab, *Perempuan*, 306.

<sup>&</sup>lt;sup>582</sup> Tim Pengarusutamaan Gender, *Pembaharuan*, 55. But perhaps it is meant Article 71, because Article 67 regulates the husband or wife who will do li'an. While Article 71 (3) regulates about divorce vow by husband or wife.



khulū<sup>.583</sup> Then, Shihab argues both materially and psychologically why the divorce in the hands of the husband. According to Shihab that because the husband oblegated to pay dowry, to meet the needs of his wife and his children, and man is emotionally more stable because he does not experience pre-menstrual syndrome. Besides, why Islam gives the husband the right to divorce without setting strict conditions, such as through the court process? First, because the marriage contract is a contract specifically involves instinct and feeling, body and soul unification, and amalgamation of hearts, so much as possible that does not involve other person so that the households confidential can be maintained, unless the immediate family knows, that is, if forced. This is in order to keep good relations, post-divorce. Second, although al-Quran and al-Sunnah do not explicitly mentioned, but there is no prohibition to set requirements. <sup>584</sup>

It is interesting to discuss is any "bias" to the man (husband) is often associated with the payment of dowry, giving *nafaqah*, and emotional stability. This is evident, for example, the right to lead the household and dropped the divorce rights. It seems these reasons might cause some feminists proposed that a dowry could be given by the husband or wife according to the local tradition. Aalso to the income should be charged to the husband and wife at the same time. With this in turn, households leadership and divorce rights are not only owned by the husband but also at the hands of his wife.

Tthe argument of Shihab above seems rational despite looking very male gender bias. In reality, not all men have the good will to maintain the household and not all men always think rationally. For that, it is interesting to see what Syafiq Hasyim proposed that conceptual divorce required reconstruction and its implementation. First, the divorce can be done if there is a clear background and good emergency in the husband and wife views. Second, the process of divorce should be through consultation between husband and wife that the wife has the bargaining position of the divorce process. Third, the husband must has a clear assurance that the wife will get 'iwad' (severance) and post-divorce maintenance in accordance with his religious beliefs. Fourth, the process of divorce should be legal.

#### 5. 'Iddah obligation

Shihab said that there was a serious idea, to establish the 'iddah for both men wether of the wife death or of the divorce broke. <sup>586</sup> This stated in CLD KHI in article 88 of the Transitional Period ('iddah). <sup>587</sup>

<sup>&</sup>lt;sup>583</sup> M. Quraish Shihab, perempuan, 301.

<sup>&</sup>lt;sup>584</sup> M. Quraish Shihab, *Perempuan*, 301-305.

Syafiq Hasyim, *Hal-Hal yang Tak Terpikirkan tentang Isu-Isu Keperempuanan dalam Islam* (Bandung: Mizan, 2001), 170-171.

<sup>&</sup>lt;sup>586</sup> M. Quraish Shihab, 282-283.

<sup>&</sup>lt;sup>587</sup> Tim Pengarusutamaan Gender, *Pembaharuan*, 65-67.



Shihab said that adherents of the above ideas do not know or pretend to forget the differences between men and women. Shihab then rationalizes why men are not given a '*iddah* duty because they have different biological aspects of women. Men have sexual stimulation throughout their lives, from puberty to the end of their lives and men very easily aroused. Therefore, if the '*iddah* set to men would pretend great danger and likely to be many people who break them. Then Shihab continues that if there is a "waiting period" for the husband, should be based on religious and moral guidance and not on religious law. <sup>588</sup>

According to Zainuddin 'Abd al-' Aziz al-Malibarī 'iddah is a woman waiting period if the content is a wife free from pregnancy or for the purpose of worship or for a shock as the death of the husband. From this definition it appears there were three goals of 'iddah regulation: to ascertain whether or not pregnant women, if the woman is not a child and not a manupouse, for the purpose of worship, and for a period of adjustment after the death of her husband, for a woman who undergos a period of 'iddah because her husband's death. For the first goal, which is to ensure the pregnancy women, now can be acknowledged with certainty in a very short time, just in view minutes, so it does not take months, as stipulated in 'iddah. Then, for the purposes of both the worship, but in order to obey God's command, must still remain relevant. Then, for the third goal, in the context of conformity, of course, is still relevant today.

If it is conected to the goal of 'iddah described above, what is carried by the "feminist" can only be rationalized if it is associated with the third goal, namely to adjust, particularly against female family psychological condition. As for the first goal was not necessary for men. Similarly with the second goal, because there is no command in religion, but take a look at the Sunnah of the Prophet after the death of Khadijah, he did not get remarried, but after a few years following with marrying 'Aisha. Therefore, what should be delivered by Shihab religious moral obligation is appropriate.

The reasons of the biological conditions given by Shihab still need to be discussed, because both men and women have sexual desires as well as they both have the potential to restrain their sexual desires.

# 6. The women's testimony

In terms of women's testimony, Shihab insisted that the general testimony of women equal to the testimony of men. <sup>590</sup> Shihab then describes women as the verse revealed not much involved in the trade as the current conditions, especially in the travel situation, women are less widely noticed. In such conditions it is possible to

<sup>590</sup> M. Quraish Shihab, Perempuan, 266-267.

<sup>&</sup>lt;sup>588</sup> M. Quraish Shihab, 283-287.

<sup>&</sup>lt;sup>589</sup> Syafiq Hasyim, *Hal-hal yang tak terpikirkan*, 173.



forget about trafficking of women is greater than of men. This is due to differences in attention, not because of potential recall<sup>591</sup> or lack of intellectual ability, nor it is because of the emotional instability of women as assumed by some scholars, <sup>592</sup> which can be proved in a social reality.<sup>593</sup> The same opinion comes from Zaitunah Subhan who perceives that the woman's testimony is half of the testimony of men in accordance with the general conditions when the verse was revealed.<sup>594</sup>

In addition, the woman's testimony half the value of men, according to Shihab, because Islam provides different tasks for women and men. Women were assigned to give more attention to the household, while men were given the task to make a living, although these differences are not strictly task. Verse 282 *al-Baqarah*, can be included according to Shihab to verse that becomes the ijtihad field. Thus, for those women todanowdays who usually directly involved in the financial field, their estimony in the same field as men testimony. <sup>595</sup> In this case the view Shihab aligned with the feminist outlook.

However, Andi Faisal Bakti propose a different translation of the above verse with translation in general, ie, "And watch with two male witnesses (adult) in your midst. If no two men (adults), then a man or two women (adults) of any witnesses you compliant, so that if one forgot to remind him then that one. "With such interpretation, the witness may consist of two men male (adult) or a man (adult) or two women (adults). Translation is to look at the word al-waw in lafadz وامر أنان contained in verse, which may mean or of the means and so that men and women were declared equal. This can be understood from the meaning and function of al-waw letters, some of which can mean aw (or), iz (as), ma'a (and along with), rubba (sometimes). As for some of its functions are: al-things (while and when), al-isti'naf (beginning), qasam (order /

<sup>&</sup>lt;sup>591</sup> M. Quraish Shihab, *Perempuan*, 268.

M. Quraish Shihab, *Tafsir al-Mishbāĥ*, vol. 1, 567. Based on the results of Zaitunah Subhan research to some work of commentatos on woman's testimony half the value of men is as follows: a. "Because that is natural, that is forgetful, emotional, and thinking less than men. b. Because that is inherent in women, the possibility of outside forces that would force them to give false testimony. c. Less experienced in business transactions (Zaitunah Subhan: *Tafsir Kebencian*, p. 121). The same conclusion was also raised by Yunahar Ilyas (See the Yunahar Ilyas, *Feminism*, p. 130) and Naqiyah Mukhtar, "Kontroversi Kesaksian Perempuan: Mengurai Tafsir Kesaksian Perempuan dalam al-Qur'an," *al-Manāhij*, vol. V, no 2, Juli 2012, 182-183.

<sup>&</sup>lt;sup>593</sup>M. Quraish Shihab, *Tafsir al-Mishbāĥ*, vol. 1, p. 568 and M. Quraish Shihab, *Perempuan*, 272.

<sup>&</sup>lt;sup>594</sup> Zaitunah Subhan: *Tafsir Kebencian*, p. 121. Read also in Naqiyah Mukhtar, "Kontroversi Kesaksian Perempuan," 183.

<sup>&</sup>lt;sup>595</sup> M. Quraish Shihab, *Perempuan*, 268.

<sup>&</sup>lt;sup>596</sup>Andi Faisal Bakti, "Commucation and Dakwah: Religious Learning Groups and Their Role in the Protection of Islamic Human Security and Rights for Indonesian Civil Society," in *Comaparative Education, Terrorism and Human Security: From Critical Pedagogy to Peace Building?*, ed. Wayne Nelles, New York: Palgrave Macmillan, 2003, 119.

<sup>&</sup>lt;sup>597</sup> See in Naqiyah Mukhtar, Kontroversi Presiden Perempuan, 42.



time), and  $\hat{h}arf$  al- 'atf. <sup>598</sup> With these meanings, textual any woman's testimony in paragraph value is equal to men.

#### 7. Inheritance

Despite the provisions of inheritance by some contemporary scholars recognized the progressiveness for the time of the Prophet, but it is now considered necessary to be revisited and developed so that girls get the same with the boys. <sup>599</sup> In this case there are multiple views. CLD KHI (Couter Legal Draft Compilation of Islamic Law), for example, states that "If together with the boys, then the portion of the girls is same as the boys (Article 8, paragraph 3)." <sup>600</sup> Which is lighter, just as Amina Wadud, stated that the girls do not have half of the men, but could be flexible taking into account distributions to the surviving families, the wealth that can be shared, and the heirs conditions following the treasure benefit. <sup>601</sup> Likewise, Hakim Junaidi stating that the application of inheritance in Indonesia can be a flexible because of the reality of Indonesian women who acted as the breadwinners. <sup>602</sup> Then Nasaruddin Umar said that is not wrong if the estate is divided based on the spirit of "recognition" of women to inherit and without being tied to the text. <sup>603</sup>

Shihab refuses flexibility and change the division of inheritance, because this provisions are final, not the field of ijtihad, like the women's testimony, which is categorized as ijtihad field by Shihab. The legal basis of the provisions set out by Shihab about boys and girls portions are verse  $11 \, al$ - $Nis\bar{a}$  of which contains provisions concerning the estate section for boys is twice of girls portion, verse 3 of the al- $M\bar{a}$  idah explaining that Islam has been perfect; so, it is understood that its provisions were final. In addition to the two verses are verses 13- $14 \, al$ - $Nis\bar{a}$  that can be understood that these laws are the provisions of God that must be obeyed and not to be violated in order to avoid sanctions, either hellfire or a humiliating punishment.

Moreover, Shihab argued that the provisions of girls portons are a half of the boys, as verse  $11 \ al$ - $Nis\bar{a}$  `which is due to men gave a dowry to their wives and provided living to their familes. Men also generally have the privilege in the field of emotional control than women. Furthermore, although girls only get a half of the boys,

<sup>&</sup>lt;sup>598</sup> Naqiyah Mukhtar, "Kontroversi Kesaksian Perempuan,"186.

<sup>&</sup>lt;sup>599</sup> M. Quraish Shihab, *perempuan*, 264.

<sup>&</sup>lt;sup>600</sup> Tim Pengarusutamaan Gender Departeman Agama RI., Pembaharuan Hukum Islam: Counyrt Legal Daraft Kompilasi Hukum Islam (Jakarta: Departemen Agama), 89.

<sup>&</sup>lt;sup>601</sup> Amina Wadud Muhsin, *Qur'an and Women* (Kuala Lumpur: Fajar Bakti, 1992), 87-88.

<sup>&</sup>lt;sup>602</sup> Hakim Junaidi, "Hak Waris Perempuan Separuh Laki-Laki?," in Sri Suhandjati Sukri, *Bias Jender dalam Pemahaman Islam*, 186-187.

<sup>603</sup> Nasaruddin Umar, Fikih Wanita untuk Semua (Jakarta: Serambi, 2010), 140-141.

<sup>&</sup>lt;sup>604</sup> M. Quraish Shihab, *Perempuan*, 264-265.



God actually more pro-women, for their part just spent on themselves, if they do not marry, even if they were married, then their estate can be saved. <sup>605</sup>

How if the people condition who will implement the provisions of the division is not as a state of "ideal" conveyed by the text. Mahar received by women (wives) in the community in part of Indonesia, especially Java, for example, are not as expensive as the usual dowry received by the Arabs. Even somewhat become a trend in some communities, dowry just a *mukena* (clothing for shalah), including for rich enough people. Similarly, the condition of Indonesian women who generally spend their property not only for themselves but also for their family. This is not as "designed" by the religion that the men responsible for the livelihood of families, including their extended families under certain conditions. This different social conditions promote some to rethink the 1:2 inheritance provisions for girls and boys. There is no denying that Revelation is not revealed in a vacuum chamber cultures, so that not a few of its provisions are concerned with the situation and conditions.

This different conditions encourage the formulation of KHI, the provisions of inheritance opportunities in the division of inheritance by way of peace (sulh) after their respective heirs aware of their parts. This model was agreed by Zaitunah Subhan and Ridwan. <sup>606</sup> Another alternative that can be done to get the girls to be more equitable property in accordance with the circumstances, but not out of the provision of religious texts is a way to give the property to him when the parents are still alive and well within the limits of lawful and fair. This model was also proposed by Shihab when responding to cases where the parents have to meet the many needs of her son that was not fair to property inheritance and then split 1:2 between daughters and sons. <sup>607</sup> Another alternative is to use the means of his possessions testament that is provided by Islam.

The three alternatives above are not out of the provisions of the text. However, it can be said  $\hat{h}\bar{\imath}lah$  substantively (engineering the law), <sup>608</sup> which is rejected by most scholars like Imam Shafi'i, but accepted by most scholars as the Hanafi School, as do the three alternative motive to avoid the division of the estate with the  $far\bar{a}$  id model, because it was sensed unfairness.

#### D. Concluding Remarks

This study resulted in three points, *first*, Shihab's response to the contemporary view of these can be grouped into three categories: 1. Shihab completely rejected equality of inheritance between sons and daughters, the right of divorce to a wife, and a wife as a breadwinner obligation in addition to her husband. 2. Shihab did not fully reject the necessity of guardian in marriage, the requirement of an agreement between

<sup>605</sup> M. Quraish Shihab Perempuan, h. 262-263.

<sup>606</sup> Zaitunah Subhan, Tafsir, 129 and Ridwan, Membongkar, 202-206.

<sup>607</sup> M. Quraish Shihab, *Perempuan*, 265-266.

<sup>608</sup> made an attempt to justify an action that outwardly in accordance with Personality '.



the prospective bride and her guardian, the obligation of 'iddah for men is a merely religious moral obligation, and wife beating permission is sometimes still needed. 3. Shihab accepted the feminists' opinion of women's testimony.

Second, the difference between Shihab's and the feminists' point of views is due to the fact that they used different methodological approach and in defining the nature of women. Although Shihab and feminists scholars who were considered as bias, they both claimed that their ideas were based on the text and its spirit, but they used them in different portions. Furthermore, Shihab responded contemporary issues with a deductive approach, which was grounded from the texts and then he interpreted it textually to the the  $qat'\bar{t}$  verses, then, for the verses that are considered as  $\dot{z}ann\bar{t}$  he interpreted it contextually. While the feminists responded contemporary issues with an inductive approach (empirical) and then looked for arguments in the texts to interpret it contextually. Moreover, these differences occured because of their differences in defining the nature of women. Feminists define it with something that is physically attached to the reproductive organs in women. While for Shihab, the nature of women is not only that, but also includes gender roles.

Third, in sum if Shihab and feminists used the same methods and had the same definition of the nature of women, they would produce more or less the same views. Although the feminist views were sometimes different from Shihab's opinions, but in fact, they refer to the works of earlier scholars whether as a legal product or as a legal methodology like maqāṣid al-syari'ah and maṣlaĥah



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