



*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 QURAIISH 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 *mufasssir* 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>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)

<sup>547</sup> Mansur Fakih, *Analisis Gender dan Transformasi Sosial* (Yogyakarta: Pustaka Pelajar, cet VIII, 2004), 140.

<sup>548</sup> Typology of gender feminist thought can be classified into six, namely: apologists, reformist, transformative, rationalist, rejeksionis, and post-modernist (Jamali, "Kebiasaan Tatapan dalam Kebiasaan (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.













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 breadwinner <sup>575</sup>

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





prohibits wife beating. Also, keep in-the absurd with other verse وعاشروهن بالمعروف<sup>580</sup> 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 seems 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 sworn by the husband or wife before the religious court hearing as provided in Article 67."<sup>582</sup> In *fiqh*, divorce by the wife initiatives called *khulu'*, thus also in KHI, expressed as a *`talaq bāin sghrā*, 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 *fiqh* and KHI, *rujū'* right only possessed by husband, the right to *rujū'* in CLD KHI is owned by the wife besides 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 Hanafī 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>580</sup> Q.S. *al-Nisā'*/4: 19

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

<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.



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.<sup>589</sup> 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>588</sup> M. Quraish Shihab, 283-287.

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

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





time), and *ḥarf 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 *ijtihād*, like the women's testimony, which is categorized as *ijtihād* field by Shihab. The legal basis of the provisions set out by Shihab about boys and girls portions are verse 11 *al-Nisā`* of which contains provisions concerning the estate section for boys is twice of girls portion, verse 3 of the *al-Mā'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-Nisā`* 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.<sup>604</sup>

Moreover, Shihab argued that the provisions of girls portons are a half of the boys, as verse 11 *al-Nisā`* 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>598</sup> Naqiyah Mukhtar, "Kontroversi Kesaksian Perempuan," 186.

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

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

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

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



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 *qaṭ'ī* verses, then, for the verses that are considered as *ẓannī* 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 occurred 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 *maṣlahah*





