

HUSEIN MUHAMMAD'S PROGRESSIVE THINKING ABOUT FEMALE JURISPRUDENCE; A Descriptive Analytical Study

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Abstrak

Penelitian ini bertujuan untuk mendeskripsikan perbincangan, perdebatan serta tafsir baru dari pemikiran progresif Husein Muhammad demi terwujudnya reformasi aturan-aturan hukum Islam yang berkeadilan gender. Penelitian ini menggunakan metodologi kualitatif dengan pendekatan deskriptif. Hasil penelitian menunjukkan bahwa Husein Muhammad adalah feminis muslim laki-laki. Berbeda dengan kebanyakan para feminis Islam lainnya yang lebih banyak melakukan dekonstruksi teks keagamaan dan mencari kemungkinan rekonstruksinya dalam nilai-nilai humanisme sekuler, gagasan yang diusung Husein memiliki kekhasan tersendiri, karena selain ia memiliki kedalaman akan literatur klasik Islam dalam melakukan analisis atau argumen tandingan terhadap ketimpangan gender di masyarakat, ia pun melakukan rekonstruksi dengan mencarikan rujukan yang terdapat dalam khazanah Islam klasik yang dipandanginya lebih sesuai dengan semangat keadilan Qur'ani. Hal inilah yang kemudian membuat gagasan yang diusung Husein dalam membela perempuan dianggap oleh beberapa kalangan sebagai satu-satunya di Indonesia yang mampu dan penting untuk tetap dipertahankan. Beberapa metodologi yang digunakan adalah metodologi Tafsir Kontekstual, Maqashid al-Syari'ah, Asbab al Nuzul, Teks Khusus dan Teks Umum, Memahami Kausalitas dan Realitas Sosial, dan Ta'wil. Beberapa Metodologi ini penting karena mampu memberikan pemahaman kepada penyerang Islam tanpa harus bersikap apologetik, sebagaimana banyak ditunjukkan oleh ulama-ulama kontemporer.

Kata kunci: Feminis Laki-laki, Fiqh Perempuan dan Keadilan Gender

Abstract

This study aims to describe the conversation, debate and new interpretations of progressive thinking of Husein Muhammad for the sake of reforming the rules of Islamic law with gender equality perspective. This research uses a qualitative methodology with a descriptive approach. The results showed that Husein Muhammad is a male Muslim feminist. In contrast to most other Islamic feminists who deconstruct religious texts and look for possible reconstructions in the values of secular humanism, Husein's ideas have their own distinctiveness, because in addition he has a depth of classical Islamic literature in analyzing or competing arguments against gender inequality in society, he also carried out reconstruction by finding references contained in the classical Islamic treasures which he considered more in line with the spirit of Koran's justice. This is what makes Husein's ideas in defending women considered by some as the only capable and important in Indonesia to be maintained. Some of the methodologies used are the Contextual Interpretation methodology, Maqashid al-Shari'ah, Asbab al Nuzul, Special Text and General Text, Understanding Causality and Social Reality, and Ta'wil. Some of these methodologies are important because they are able to provide understanding to Islamic attackers without having to be apologetic, as many contemporary scholars show.

Key Words: Male Feminist, Female Jurisprudence and Gender Equality

A. INTRODUCTION

Women's struggle to obtain justice for their human rights continues to face obstacles. Among the most serious obstacles is from a biased religious outlook. The mainstream opinion used to interpret, assess and produce knowledge often only departs from the textual religious argument that was produced during the stagnation of Islamic thought in the middle Ages. Although modernity has changed the lives of women in various aspects, the conservative religious opinion still puts women as inferior beings. This arises from a textual, scripturalistic and literal understanding of some verses of the Koran, such as verse 34 surah al-Nisa which is still maintained. This understanding is then used as the basis of legitimacy for discriminatory actions against women's rights in all spheres of life, both in the public and private domains. This situation in many cases then led to various forms of violence against women.

Responding to this tendency, there is a cleric who does not agree with the textual understanding. He is Husein Muhammad. He is well known as a 'kyai' who has a high concern in advocating for women's problems through religious texts. He believes that the texts of the Koran basically uphold the justice and morality of humanity. The Koran emphasizes both as normative obligations. Human justice and honor are universal moral values which are emphasized in a large number of Qur'anic texts. The meaning and connotation of moral values must be matched with intelligence, intuitive sensitivity and scientific research on

natural and social laws of nature. If the texts that contain universal moral values are not well understood to answer social realities that are constantly changing, then most of the texts of the Koran will become ineffective, static or will only be historical documents.¹

From this view Husein believed that of re-reading religious texts through a contextual approach is very important. His views differ greatly from mainstream religious views, especially when discussing Fiqh regarding women. Despite this, his extensive and in-depth knowledge of the classical books of Islam makes the way he reads the different books is still acceptable and reasonable.² This paper will explore new discussions, debates and interpretations of progressive thinking of Husein Muhammad for the sake of socializing the realization of reform of the rule of law that is fair to women.

B. RESEARCH METHODOLOGY

This research used qualitative methodology with a descriptive approach. Since this study explored Husein Muhammad's progressive thinking about female jurisprudence, the first and foremost sources are the monumental works of Husein Muhammad such as (1) *Fiqh Perempuan: Refleksi Kiyai atas Wacana Agama dan Gender*, 2001 (2) *Islam Agama Ramah Perempuan, Pembelaan*

¹Husein Muhammad, *Islam Agama Ramah Perempuan; Pembelaan kiai Pesantren*, (Yogyakarta: LKIs, 2005), p. 78.

²A result of interviewing female activist of Fahmina Institut, Desember 20, 2018.

Kiyai Pesantren, 2004 AND (3) Kembang Setaman Perkawinan: Analisis Kritis Kitab Uqud al-Lujjain, 2005, while the secondary sources are all literatures based on Islamic Jurisprudence and Gender.³ As much as possible data is attempted to be obtained from primary sources, but it does not rule out the retrieval of data from secondary sources. To obtain an accurate interpretation about the content of the concept of Husein's concepts, the author uses Gadamer's Hermeneutic approach. While in analyzing the data, the researcher uses content analysis.⁴

B. BRIEF BIOGRAPHY OF HUSEIN MUHAMMAD AND HIS WORKS

Husein Muhammad is a figure commonly known as a Kyai gender. He was born in Cirebon on May 9, 1953 to the couple KH Muhammad Asyrofuddin and Umm Salma Syathori. Husein Muhammad was born in the Dar al-Tauhid Islamic Boarding School which his grandfather founded in the 1930s. He is the third generation and is now the representative of his uncle, KH Ibnu Ubaidillah who leads the pesantren. According to Husein, his uncle was a student of KH Hasyim Ashari, grandfather of KH Abdurrahman Wahid.

His educational background began with basic education in 1966 then

SLTPN I Arjawinangun (1969). Then he pursued Islamic boarding school education in Lirboyo Kediri until 1973. Higher education was taken at the Al-Qur'an Institute of Sciences (PTIQ) Jakarta (1980). His last formal education was passed at Dirasah Khashshah, Al-Azhar Cairo, Egypt in 1983. From his educational background it appears, that he is a figure who has a religious educational background and explored Koran and sunnah as a source of Islamic religious knowledge.⁵

His knowledge became sharper after he interacted intellectually with women activists, such as Lies Marcoes, Masdar F. Mas'udi, Wardah Hafidz, and the late Mansour Fakhir. Husein Muhammad admitted that his view which he called progressive had only recently emerged, although in fact he had long wondered and could not accept why religion gave birth to reality such as poverty, ignorance, violence, and the abandonment of the people. But the answer to all of that he found through various religious discussions, which he sometimes called "disrupting" the epistemological structure of his science which was relatively well established. The tradition of conservative religious thought began to be disturbed and defendant, until finally it became increasingly critical and sharp. What he had always believed as something that cannot be changed in gender relations between men and women, it can be changed and engineered. This fact then urged him to retrace the Islamic

³Sugiyono, *Metode Penelitian Pendidikan, Pendekatan Kualitatif, Kuantitatif dan R&D*. Bandung: Alfabeta, 2012), p. 193.

⁴Guide Stempel, *Content Analysis*, Jalaludin Rahmat dan Arko Kasta, (Bandung: Arai Komunikasi. 1983), p. 3.

⁵Nuruzzaman, *Feminis Laki-laki; Studi Kasus Husein Muhammad*, (Thesis), 2004, p. 34.

boarding school scientific content that was scattered in many classic texts that became an authoritative reference in the traditional institution.⁶

The issue of women is the gateway for all discourse on democracy. Subordination is essentially a distinction of one of the existing social identities, in this case women. Democracy wants to eliminate those distinctions. Differences are respected, but they cannot be discriminated against. From there, the issue then enters into other spaces, for example human rights, ethnicity, pluralism.⁷ Finally, Chair of the Policy Council of Fahmina Institute is then actively promoting progressive ideas in various local and national media as well became a guest speaker in various training, workshops and seminars, both nationally and internationally.

Besides as a caretaker at the Dar al-Tauhid Arjawinangun Islamic Boarding School Cirebon, he has always been active in various social organizations and activities; Islamic boarding school, mosque, NU community organization, political parties (PKB), educational and social foundations and a number of NGOs, especially Rahima, Puan Amal Hayati and Fahmina. His organizational experiences were (1) he was the Deputy Chairperson of the Puan Amal Hayati Foundation, Jakarta, 1999-present, (2) as founder/Director of NGO Discourse Development, RAHIMA, Jakarta, 2000-present, (3) General Leader/Responsible

for two-monthly Swara Rahima, Jakarta, 2001, (4) Editorial Board of Dwi Journal of Puan Amal Hayati, Jakarta, 2001, (5) Responsible for Warkah al Basyar Weekly Bulletin, Fahmina Institute, Cirebon, 2003, (6) Responsible for Dwi Monthly Newsletter Masalih al Ra'iyah, Fahmina Institute, Cirebon, 2003, (7) Consultant of the Balqis Foundation for Women's Rights, Cirebon, 2002, Associate Member of the Desantara Jakarta Foundation Associate. 2002-present, (8) Member of the National Broad of International Center for Islam and Pluralism, (ICIP) Jakarta, 2003, (9) Expert Team of the Indonesian Forum of Parliamentarians on Population and Development, 2003, Member of the Board of Associates of The Wahid Institute, Jakarta, 2004.⁸

C. HUSEIN MUHAMMAD: A MALE MUSLIM FEMINIST FIGURE

If we ask whether men can be feminists, then this question is theoretically opposed to feminism itself. The reason is the first, the purpose of feminism as a movement to increase gender awareness to produce a social transformation, of course, it presupposes that men will be 'infected' with feminist ideas. Second, to be a moral, social and political force, feminism needs the support of society, including men. Third, by rejecting men in the feminist category, feminism actually maintains an essentialist view

⁶A result of interviewing Husein Muhammad, Desember 22, 2018.

⁷A result of interviewing Husein Muhammad, Desember 22, 2018.

⁸Nuruzzaman, *Feminis Laki-laki*, p. 34.

by determining that only women can be feminists.

The controversy about male feminists is based on two different views, such as (1) men are considered to be able to declare themselves feminists as long as they participate in fighting for the interests of women. On the other hand, (2) men cannot be feminists because in many cases, men do not get discrimination and oppression as experienced by women. These two views are based on differing views one another in defining feminism itself. Instead of the differences in placing the position of empirical experience of women in the process of defining feminism and feminists.

How feminism is defined will influence the definition of feminist. Yanti Mukhtar in *Jurnal Perempuan* suggested that there were three significant views in defining feminism. The first view holds that feminism is theories that question the pattern of power relations between men and women. The second view argues that a person can be labeled as a feminist as long as his thoughts and actions can be incorporated into feminism schools known so far, such as liberal feminism, Marxist, socialist and radical. The third view, is a view that is between the first and second views. In this third view, feminism is a movement based on the awareness of the oppression of women which is then followed up by actions to overcome the oppression.⁹ Consciousness and action are two

important components to define feminism as well as feminists. A person can be categorized as a feminist as long as he/she has an awareness of the oppression of women caused by various things and take certain actions to overcome the problem of oppression, regardless of whether he/she does an analysis of power relations between men and women or not.

As a man who carries the Islamic feminism movement, Husen Muhammad can be categorized as a male feminist who defends women, as in the third view. Husein's awareness of the suppression of women arose when he was invited in 1993 to a seminar on women in the view of religions. Since Husein knew there were big problems faced and experienced by women and over a long period of time, women have been suppressed and exploited, Husein was introduced to the feminists' movement which tried and fought for human dignity and social equality (gender). Husein felt aware of the role of religious experts (religious leaders), not only Islam but from all religions, which helped strengthen the position of female and male subordination. He was shocked and asked, how could religion justify injustice, something that is contrary to the nature and noble mission of religion revealed to humans. After that, Husein began to analyze the problem from the scientific point of view he had received from the pesantren.

According to Husein, the defense of women can have a very strategic impact on human development. As he expressed "*many people think that the problem of oppression of women is not*

⁹Yanti Mukhtar. "Dapatkah laki-laki menjadi feminis" in *Jurnal Perempuan*, XII/Nov-Des 1999.

a big problem, whereas the problem faced by women (injustice and subordination) is a big problem, because women are one of sexes, and when women are positioned as second beings, then this is actually a big problem for humanity."¹⁰

The difference between Husein and other feminists is in the area of study. The area of Husein's struggle is in the area of religion, especially Pesantren. Pesantren culture legitimizes religion as part of its social life. Almost all behavior carried out in Pesantren always refers to religious texts. This area is very dominant in the midst of Indonesian society, an area where the struggle for the socialization of ideas and the equality movement against women is carried out by Husein. This is because male domination in pesantren is not only a slave to behavior, but has become a belief in religious teachings with the legitimacy of religious texts. Therefore, gender inequality or subordination and marginalization of women in the pesantren community is considered a religious truth that cannot be denied, as stated by Abdurrahman Wahid.¹¹

Comparing with other Islamic feminists, Husein's idea has its own uniqueness, because it has a depth of classical Islamic literature in conducting analysis or counter arguments against gender inequality in society which is very rare for other Islamic feminists. In

general, the discourse of Islamic feminism carried by some thinkers refers more to modern literature which in some cases is still difficult to be accepted by traditional Islamic societies. This is what then makes the ideas promoted by Husein in the defense of women are considered by some as the only important ideas to be maintained. Therefore, Husein is often invited and becomes the main reference by women activists to explain the theological basis and religious references in fighting for women's rights.

It is undeniable that the basic values and orders of life used in pesantren is the application of religious instructions as thoroughly and completely as possible, as set forth in the literature required for students to study and implement them. Whereas the hierarchy of power in the pesantren is given to the teacher (called Kyai) as the sole and absolute ruler who is recognized in the life of the pesantren. How big teacher has a power over his students, so that students for the rest of his life will always be bound by his teacher, at least as a source of inspiration and as a moral support in his personal life. A student at a pesantren feels a moral obligation to consult and follow the instructions of his teacher. The attitude of respect, reverence and absolute obedience of students to teachers in pesantren is one of the first values instilled in each student.¹²

¹⁰A result of interviewing Husein Muhammad, Desember 22, 2018.

¹¹Abdurrahman Wahid, *Menggerakkan Tradisi; Esai-esai Pesantren*, (Yogyakarta: LKIS, 2001), p. 213.

¹²Martin Van Breunessan, *Kitab Kuning, Pesantren dan tarekat tradisi-tradisi Islam di Indonesia*, (Bandung: Mizan, 1995), p. 18.

The patriarchal ideology inherent in a community living in a pesantren changes to religious teachings or religious beliefs not only because of the interests of the ulemas to maintain and preserve their power, but because pesantren have values, norms and culture determined by the yellow book, even though the yellow book was composed in the 14th or 15th century AD, the contents sometimes conflicted with the local conditions of the time and place where the pesantren existed.

In addition to the values and hierarchy, the position of the yellow book is used as the main reference for pesantren in understanding religion and becomes the basis of life as well as being the dominant factor in providing enthusiasm for the pesantren community's life. The views of the yellow book as the main literature of the pesantren greatly influenced the students in their personal lives. It is considered a religious doctrine, because the pesantren tradition views the yellow book by the previous great scholars and the arguments of the sacred text, both the Koran and the prophet's hadith interpreted scripturally as truths and goodness that come from religion, because in the pesantren tradition to this day, criticism of classical religious texts and of the ulama in pesantren is an act of disrespect and no morality.

On the other hand, the views of the yellow book at the pesantren, according to Masdar F. Mas'udi, highly subordinate women, mainly because most of their contents view women as creatures that are only half the price of

men.¹³ This can be seen in various Fiqh provisions adopted by all schools of thought, for example in Islamic teachings, parents are encouraged for newborn children to slaughter animals (*aqiqah*). For boys, there are at least 2 goats, but only one for women. Just as giving birth, so when killed, women are valued at half the price of men, if a man is killed then the family has the right to claim compensation for the killer or his family with 100 camels, whereas if the woman is killed then the compensation is only 50. Also in terms of testimony. The testimonies of two women were also considered to be equivalent to the testimonies of one man. In the distribution of the yellow book inheritance (*waris*) also distinguishes the position of women and men, women get half of the amount of inheritance of men, and in terms of marriage men have the right to marry more than one while women are absolutely justified in having a husband.

The yellow book also views women only as objects. For example, men who has the right to marry while the woman is married. As an object, women who are about to be married may also be seen parts of their bodies by men (future husbands). Men also have the power to divorce their wives, whereas women may only submit a motion of no confidence to the court, they cannot divorce immediately. Men who divorce their wives may ask their wives to

¹³Masdar F. Mas'udi, "Perempuan di antara lembaran kitab kuning" dalam Lies Marcus Natsir dan Johan Hendrik (ed.) *Wanita Islam Indonesia dalam Kajian Tekstual dan kontekstual*, (Jakarta: INIS, 1993), p. 157.

reconcile on the condition that they are still in the *iddah* period, while women cannot refuse, and so on.

From the views of the yellow book against women, then the values of life that develop and the culture that is maintained in the pesantren, makes Husein worthy of being positioned as an ally and good friend in fighting for the ideals and equality movement towards women. Husein has fought and defended in the midst of the culture and discourse of pesantren which has caused injustice and subordination to women. He deserves to be called an Islamic feminist, because of the awareness of the oppression of women he has made him want to initiate rival discourse with the same scientific basis in pesantren.

With the cultural conditions and values of life owned by the pesantren, Husein as a man, kiai and defender of women's rights is an asset that must be maintained. This is mainly to socialize ideas and movements that defend women. What is done by Husein will help the struggle that is being and continues to be done by women activists. He is a male feminist who chooses awareness of gender inequality and injustice and is a friend for the dissemination of ideas in his community, namely pesantren.

As a person who deals in the world of pesantren, Husein's stance can be seen as self-criticism of the traditions he is engaged in. In social science theory, what is produced by Husein can be equated with the method of self-reflection, which is often practiced by Frankfurt follower scientists or critical theory in finding problems and solutions. Amazingly, Husein's self-

reflection works to find a way out that is totally unthinkable for most feminists. Interpretation of religion as a source of gender inequality is well known, but that Islam actually stores a lot of interpretations of religious texts (Fiqh) that are in accordance with the spirit of justice and universal humanism is not widely known, as reflected in the shock of Farid's esack. In other words, Husein offers a reinterpretation of religious texts that are biased against women, underpins texts with religious values such as the value of justice, equality, and if religious texts contradict these values, then it must be considered a wrong interpretation. What Husein did was the deconstruction of religious texts. However, it differs from most scientists who deconstruct religious texts and look for possible reconstructions in the values of secular humanism. Husein reconstructed it by finding references in the classical Islamic literature which he considered more in line with the spirit of Koran's justice.

This methodology has a very important meaning because it is able to provide understanding to Islamic attackers without having to be apologetic, as many contemporary scholars show. Next, Hussein's findings could also be an invitation to a number of Muslim feminists who had been looking for a way out of secular values to revisit the treasures of classical text interpretation in accordance with the spirit of justice. This is what needs to be promoted among Islamic boarding schools and other Muslims: continuous self-reflection on interpretations of

Islamic teachings which has been believed to be true.

D. FEMALE JURISPREDCENCE IN HUSEIN MUHAMMAD'S PROGRESSIVE THOUGHTS

Gender biased interpretation of religious texts becomes an interesting discourse discussed in various discourses around women and religion. Husein Muhammad is among the few scholars who are concerned about highlighting the issue. In his view, "religion" has been involved in a large flow of culture that is gender biased or not being fair to women. Furthermore according to him, Indeed in social reality, there are attractions that are difficult to separate between cultural systems and 'religion'. Although there is agreement among religious leaders that religion cannot possibly provide an opportunity for a discriminatory system to take place in all aspects of life, social reality shows the opposite, especially with regard to relations between men and women, both in the domestic and public domains.¹⁴

Tracing from the Fundamental Islamic principles, namely the principle of monotheism (*tauhid* concept), it will be obtained, that the principle of monotheism basically does not discriminate, moreover subordinating humans to any social and cultural background. Monotheism is often interpreted only as a vertical relationship between humans and God,

but actually there is a horizontal relationship between people. Epistemologically, God seemed to be the place to justify all problems in the name of God. Islamic monotheism is very liberating, there must be no view that states itself is greater and truer than the others. The most ultimate truth is only God. Humans who have privileges, strengths, honors, who are close to God are those who are committed to the enforcement of humanity, who see humans as God's creatures that must be respected because God also respects humans. From this understanding, his social reflection becomes so obvious. That is a logical consequence of the principle of monotheism at the social level of humanity.¹⁵

The question then is why do Indonesian Muslim communities today seem to adopt Arabic culture that is very different from Indonesian culture, in the case of women for example? Answering this question, Husein argued the need to root out the first presence of Islam in Arab society in the nomadic 6th century, Bedouin. Appreciation for women is very low. This is not specifically Arab. This cultural process is assimilated from various previous cultures such as Roman, Greek, Sumerian, Babylonian, who do not respect women. The Prophet Muhammad tried to transform that culture, even revolutionary. Those who were initially despised, could not get any rights, were even killed (girls), were appointed by Islam in such a way even to be called by name, even though their

¹⁴Husein Muhammad. *Fiqh perempuan: refleksi kiai atas wacana agama dan gender*, (Yogyakarta: LKIs, 2001), p. 37.

¹⁵Muhammad, *Islam Agama Ramah Perempuan*, p. 3.

rights were only half. However, in a very short span of time, 23 years of prophetic process, 13 years in Mecca, and 10 years in Medina. This is very revolutionary. During 13 years in Mecca, the Prophet proclaimed universal humanitarian principles, such as remembering one God, getting to know each other, but the most honorable ones were the most piety (*taqwa*), there is no superiority to this nation from that nation. When in Medina, the Prophet founded a new society which in practice, operational, must still accommodate the culture that already existed. Therefore, at that time there were cultural issues that could not be adjusted at the same time with these universal principles.¹⁶

This is actually the task of today's Muslims, continuing the ideals of the Prophet in Mecca. Communities in Mecca are small communities, applying the law when it is appropriate for local conditions in Mecca. Only after the Prophet died, it seems that culture long before Islam reappeared and a single authority like the Prophet did not exist so that people were free to interpret. From this condition, interpretations arise according to place and time. Interestingly, that interpretation is not always the same as that of the Prophet because the cultural process has moved and changed. Only the interpreters understood the purpose, the moral values which had been decided by the Prophet. In the absence of a single authority, different interpretations emerge. In other words, Husein

Muhammad always said, what was decided by the Prophet in Medina was an example of applying universal values in certain social contexts. What is avoided is violence, coercion, so there is always a dialogue between universal ideas and local traditions.¹⁷

As religious people, a discriminative interpretation of discourse or social reality is certainly not expected. Based on revelation and rational thought, it is known that discriminatory behavior is against nature which requires balance. Discrimination deviates from the nature of humanity which longs for social justice. From this, according to Husein Muhammad, a new "religious" paradigm is needed that is more relevant to the realization of the goals of religion itself, namely justice. And to implement the project, a new methodology for interpreting religious texts (Fiqh) which is not gender biased is needed. For the sake of presenting a new religious paradigm, the methodology needed is critical intellectualism to break through religious texts that serve as guidelines.¹⁸ In other words, reinterpretation and reconstruction of the building of religious thought (Fiqh) is needed in the present social context. He also revealed, that the main problem of the product of religious texts in the tradition of thought is our inability to sort out between religious texts that show the meanings of universal humanity and religious

¹⁶Muhammad, *Islam Agama Ramah Perempuan*, p. 23-40.

¹⁷Muhammad, *Islam Agama Ramah Perempuan*, p. 23-40.

¹⁸Muhammad, *Islam Agama Ramah Perempuan*, p. 41.

teachings that give contextual humanity meaning.

There are times when religious interpretations are assumed to be the Koran itself. As a result, there is a gap in the meaning and praxis of religion which is *das Sollen* humanist and anti-discrimination, as well as the meaning and praxis of religion which is discriminatory and anti-humanism. Further implications, many people can not know which is the product of interpretation of texts that are relative and can be updated, as well as sources of interpretation that are universal and standard. Religious interpretation seems to be tangled. Reinterpreting and even reconstructing the interpretation of texts requires that we understand the tradition of thought which is a collection of scholars' responses to their social reality, after that, we try to criticize and analyze whether it has described the product of uninterrupted and stereotypical interpretation of the text. The reconstruction of religious texts or the building of religious thought involves cultural and historical processes in which a product of interpretation of texts develops and arises. The study of cultural and historical nomenclature of religious texts is the first step that must be taken to bring religious understanding (new *Fiqh*). With the help of cultural and historical analysis-as well known in the science of interpretation and hadith as *nuzul asbabun* and *asbabul wurud* can easily be revealed how far a product of text interpretation correlates with the socio-cultural order of society; and the extent of appreciation of the interpretation of the complicated social-

community cases. So, with such a paradigm, the distortive color of *fiqh* in terms of the nature of religion and humanity that so respects the dignity of humanity without distinguishing sexes will be revealed as the impact of masculine interpretation so dominant in the interpretation of religious texts.¹⁹

Fiqh that is understood during this time, as revealed by Husein, has been dominated by male apology in looking at women. The most obvious case is the dominance of the quantity of *Faqih* (*Fiqh* experts) of men over women - which in reality is almost non-existent. The problem of discrimination in the product of text interpretation and the process of interpretation itself not only touches the realm of discourse, but has systematically pierced the realm of social structure in daily life. In this case, the question arises, whether the interpretation process is indeed discriminatory or just the product of interpretation. With a different question, is the substance of the interpretation as an instrument truly discriminatory or is it just a matter of interpretation products that are discriminatory.

The social theory developed by Gadamer and Habermas about interpretation (hermeneutics) might help explain. Gadamer said, hermeneutics as a philosophy actually wants to be free from the methodological objective power of modernity. In other words, hermeneutics is only released after it becomes a form of universal understanding. While for Habermas, that interpretation is always full of interests, even as understanding.

¹⁹Muhammad, *Fiqh Perempuan*, p. 40.

Nevertheless, interpretation will become emancipatory, when it is present as a form of rational teleological communication in the public sphere. Interpretation is no longer mimesis-borrowing the language of George Luckas.

With such an approach, the analogs put forward by Husein Muhammad have been critical of the tradition of religious thought that has evolved to the present. That interpretation actually will not be discriminatory if it is oriented as understanding, without a mastery framework. The non-discriminatory understanding is in the form of rational teleological communication, that is balanced communication or understanding which does not deliver interpretation to the text (mimesis) of the text. To prove his study, Husein examined the Fiqh tradition by using a new paradigm of understanding of religious texts. He chose the study of Fiqh which has gender sensitivity. He offers a variety of methodologies in understanding religious texts which are gender equal including:

1) Contextual Interpretation Methodology

Efforts towards contextual interpretation of the divine texts both the Koran and the *Sunnah* must first begin by placing the principle of the Divinity of Monotheism (monotheism) as the principle of personal faith and for human relations.²⁰ In the system of Islamic monotheism, God is the only Absolute Existence, while besides

Him is a relative and limited existence. Monotheistic theology also assumes that all human beings are equal and are brothers in the sight of God. Koran itself states that there is no advantage of one human over another on the basis of distinguishing social identities in any form, except on the basis of his devotion to God. (Q.S. al-Hujurat, 13). This principle has logical implications for humans to uphold justice between people and to respect each other. Equality, justice, brotherhood, human honor are the most rational results in the Tawheed system. All of them are universal moral values in the Islamic system that want to be upheld in human life.

It is here, then the verses of the Koran that have universal moral messages must be the basis for our whole interpretation of religious texts. Religious thoughts that conflict with these principles must themselves be corrected. Ibn al-Qayyim al-Jauziyah (d. 1292) firmly stated that it is impossible if the *shari'a* causes or results injustice and disrespect, and if this happens then surely the interpretation or positive rules that have been carried out are not correct".²¹

2) Maqashid al-Shari'ah

On the other hand interpreters must always have a high awareness that the texts of the Koran, as well as the *Sunnah* of the Prophet

²⁰Muhammad. *Islam Agama Ramah Perempuan*, p. 3-22.

²¹ Ibnu Qayyim Al-Jauziyyah, *I'lam al Muwaqqi'in*, (Kairo, Maktabah al-Kulliyyat al-Azhariyyah, 1980), vol. III, p. 3.

Muhammad, were deliberately put forward in order to create human benefit. Benefit is the goal of Islamic rules. Imam al Ghazali (d. 1111 AD) called it the term *Maqashid al Shari'ah*. He formulated these benefits into five basic principles or "*al-Kulliyat al-Khams*". Namely *hifzh al-Din* (protection of beliefs / religion), *hifzh al-Nafs* (protection of the soul), *hifzh al-'Aql* (protection of reason), *hifzh al-'irdh* (protection of honor/reproductive organs) and *hifzh al-Maal* (protection of wealth/property).²²

Imam Abu Ishaq Al Syathibi (1388 AD) in his great work *al-Muwafaqat fi Usul al Shari'ah* stated the same thing. He is a great *ushul fiqh* expert who strongly emphasizes how significant these principles are in *Shari'a* law studies.²³ Abd Allah Darraz, in his introduction to this book, asserted that "these five principles of protection are the foundations of community development taught in every religion. Without these basics, the world will not be upright and human safety will be threatened".²⁴ *The Maqashid al-Shari'ah* (religious goals / shari'ah) are at present very identical to the principles set out in the universal declaration of human rights.

3) *Understanding Asbab al Nuzul*

The big problem faced by interpreters of religious texts is that the Koran also contains texts that refer to certain problems. We might call these special verses (*al-Makhshushat*). For example QS al Nisa, 34 and al Baqarah 282. Literal or textual readings of this verse show that men have superiority over women, and therefore men in many cases have full rights while women obtain half of it. A reading like this can easily be interpreted to mean that this verse is gender biased. Verses like this certainly have to be analyzed contextually. If not, then it can produce a conclusion that the verses of the Koran are contradictory. This situation is impossible and should not occur in God's texts.

Specific (particular) verses in the Koran as indicated among others by QS. al Nisa, 34, needs to be understood as texts that are dialoguing and responding to a problem for people at that time. At the same time the response proposed by the Koran to the problem at the same time is actually a transformative response to the ongoing cultural reality with a solution that is very relevant and contains moral values. In other words, this verse is improving the lot of women than they were before and going forward to more ideal conditions. Thus this verse may not apply permanently, but rather conditionally, or subject to certain

²²Imam Al-Ghazali, Tt. *Al-Mustashfa min 'Ilm al-Ushul*, (Beirut: Dar al-Ihya al-Turats al-Arabi, vol. I), p. 281

²³Al-Syathibi, *Al-Muwafaqat*, (Kairo: Maktabah al Tijariyah al Kubra, Vol. II), p. 10.

²⁴Al-Syathibi, *Al-Muwafaqat*, p. 4.

characteristics.²⁵ Khalid Abu al-Fadl, Professor of Islamic Law at UCLA, USA, is very interesting to say that "the rule of law which is particular (particular) contained in valid sources can be seen as moral rules. However, it is considered that way because the rule is more accepted as a divine solution to a specific problem that exists in certain circumstances. With the changing conditions of the special legal rules it may fail to meet its moral objectives and must therefore be reviewed".²⁶

From this explanation, we must once again examine these specific texts in their own context. Textual interpretation to it thus should not be done normatively. If we understand it according to its textual meaning and are treated normatively to respond to changing social contexts, then the verse is probably no longer relevant and may be does not fulfill the ideal will of the *shari'a*.

The study of religious texts with a contextual approach has actually emerged in the early (classical) times of Islam. Contextual approach is an approach that is done by looking at the historical-social context, which in the Islamic tradition is called *Asbab al Nuzul*. To give a little more detailed explanation of this case, it is interesting for us to put forward the view of Abu Ishaq al-Syathibi, the

Spanish ushul fiqh expert in his famous book "*Al Muwafaqat fi Ushul al-Shari'ah*". He said: "For the reviewer of the Koran, knowledge about '*Asbab al Nuzul*' (historical background) is a must. Ignorance of people about this can lead to misunderstanding, difficulties, contradictions and cause conflict".²⁷

Then al-Syathibi said that "to understand Arabic texts in the Koran requires knowledge of a number of conditions (*Muqtadhayat al-Ahwal*); the state of the language (*nafs al-khithab*), the state of the author and the state of the audience "... and to understand this also requires knowledge of contexts beyond its wider (*al-'Umur al-Kharijiyyah*).²⁸ The wider external context in this case includes the construction of the social, economic, political and cultural systems in which the text was derived. Al Syathibi said "to interpret the Koran requires an understanding of the traditions, customs of the Arab community in language, behavior and interaction when the texts of the Koran were revealed".²⁹

Long before, Imam al Ghazali (d.1111) had expressed the same view on this matter. He said that "to be able to understand the purpose of the text requires knowledge of the meaning of language that is deliberately created and used in

²⁵Muhammad. *Islam Agama Ramah Perempuan*, p.237-256.

²⁶Khalid Abu al-Fadl, *Melawan Tentara Tuhan translated to God Knows The Soldier: The Authoritative and Authoritarian in Islamic Discourse*, (Yogyakarta: LKIs, 2001), p. 158.

²⁷Al-Syathibi, *Al-Muwafaqat*, p. 347.

²⁸ Al-Syathibi, *Al-Muwafaqat*, p. 347.

²⁹ Al-Syathibi, *Al-Muwafaqat*, p. 351.

social relations. This can be done by understanding the text itself or by referring to other identical texts. Understanding of the text can also be used by rational reasoning (*ihalalah 'ala dalil al-'Aql*) and through indications of a number of contexts; cues, symbols (*rumuz*), changes of harakat, the context that precedes it (*al-Sawabiq*) and the aftermath (*lawahiq*) and other infinite things".³⁰

4) Specific and General Texts

On the other hand, the contextual approach considers discussion of specific and general texts. The question that needs to be asked in this matter is which one should consider when we encounter specific and general verses. The majority of fiqh experts are of the opinion that if there is a conflict between general and specific legal instructions then the specific instructions must take precedence. However, al-Syatibi believes otherwise. He argues that general instructions or universal law are certain, while specific instructions are possible and conditional, therefore general and universal instructions must take precedence.³¹ From this explanation, the Q.S. al Nisa, 34 above does not describe or refer to universal norms but supports contextual norms. Therefore, male leadership over women must be understood as conditional and

functional leadership. At other times when conditions change our understanding of them and their conclusions can also change. The scholars of Fiqh made a legal method stating that "the law can change in line with the changing context of time, place, tradition and motivation".³²

5) Understanding Causality and Social Reality

In connection with the above problem, contextual interpretation requires research on aspects of rationality or causality in the text. The majority of scholars of fiqh are of the opinion that legal texts always contain '*illat* (causality) or in Fazl al-Rahman's language called the legis ratio. *Illat* is the substance that gave birth to law. He said: "*al-Hukm Yaduuru ma'a Illatihi Wujudan wa' adaman*" (a legal decision always depends on its causality). In Q.S. al Nisa, 34 above the causality aspect of the superiority of men over women and therefore he became the leader of the household is because of his superiority in aspects of rational reasoning and provider functions. These advantages are of course conditional. It arises more because of the patriarchal cultural context. In this context, the potential of women's intelligence is suppressed and their socio-economic access is blocked. This situation, of course, may change and continue to grow. Today's social reality shows that women's intellectual potential has been shed,

³⁰Al-Ghazali, *Al-Mustashfa min 'Ilm al-Ushul*, p. 268.

³¹Al-Syathibi, *Al-Muwafaqat*, p. 261-271

³²Al-Jauziyah, *I'lam al Muwaqqi'in*, p. 3.

as is their access to the economy. Many women today have intellectual excellence, ability to take care of and carry out their household economic functions. If this is the case, there is no reason for anyone to prevent women from carrying out leadership functions in both the personal and public spheres. However, one thing that must always be considered is that the superiorities possessed by a person, both men and women, should not be used as an excuse to demean one another and act unjustly, but rather to respect one another and uphold justice. This is a fixed norm. From this explanation, it can be concluded that the contextual method always considers social reality as a principle for legal change.

6) *Ta'wil*

Religious texts are, after all, linguistic texts as well as other texts. It always connects with the cultural structure in which the text was revealed. From another point of view, these texts cannot always be understood in terms of their literal meaning. Because it often has multiple meanings. The facts of jurisprudence indicate that a particular legal text is interpreted differently by the ulama and therefore the legal decisions it produces also vary or are not always the same. The meaning of a single text can only be understood based on the agreement of the user. Furthermore, the fourth Islamic caliph, Ali bin Abi Talib even said that "*al-Qur'an hammal Ajuhin*"

(Koran has a multidimensional meaning).³³

This statement implies that the texts of the Koran can be interpreted according to different perspectives. An important question that needs to be asked in relation to contextual interpretation is what is our attitude if the literal or outward meaning of a text is contrary to reason? To this question, Ibn Rusyd gave an interesting answer. "If a religious text (*shari'a*) states a law, then it can be in accordance with reason and may not. If it is suitable, then we do not question it. But if it is contradictory, then the words must be confirmed. *Ta'wil* is returning the meaning of essence (birth) to the metaphorical meaning (*majaz*)".³⁴

Ta'wil is thus a method that tries to explain the meaning of a word or language which, if understood literally will cause understanding that is difficult to be accepted by reason. In the classical period (early times of Islam) even to this day, *ta'wil* theory is hotly and profoundly debated among scholars.

The strict textual view of fiqh (experts in hadith) rarely uses this method. This group prefers to use the word interpretation, although the Koran itself mentions the word *ta'wil* more than interpretation. According

³³Muhammad, *Islam Agama Ramah Perempuan*, p. 237-256

³⁴Ibnu Rusyd, *Fashl al-Maqol fi maa baina al-Hikmah wa al-Syari'ah min al-Ittishal*, (Mesir: Dar al-Ma'arif, 1972), p. 97.

to them using this method is the same as giving priority to *naql* (text).

This view was followed by "salafi" (orthodox) scholars. This is different from the rational fiqh method (*ahl al ra'yi*). This group makes rational and *ta'wil* logic as a method of actualizing Islamic law so that its existence may respond to new or changing social contexts. The scholars then distinguish understanding between interpretation and *ta'wil*. Interpretation has more to do with the history (sources of transmission) of *naql* (other texts), while the *ta'wil* always relate to the use of reason and *ijtihad*. *Ta'wil* theory is actually the same as hermeneutic theory. From the above explanation it can be concluded, that the reading of religious texts through a contextual approach is the most appropriate way to understand these texts correctly and proportionally to be in line with the objectives of the *shari'a*. This approach is also very relevant for answering life problems including problems of relationship between men and women who are still lame (gender biased). In this way, the formulation of Islamic *shari'a* will make the rules of the *shari'a* law in accordance with space and time (*shalihah li kulli zaman wa makan*) for a just and dignified human life.³⁵

E. CONCLUSION

Husein Muhammad is a male Muslim feminist. In contrast to most other Islamic feminists who deconstruct

religious texts and look for possible reconstructions in the values of secular humanism, Husein's ideas have their own distinctiveness, because in addition he has a depth of classical Islamic literature in analyzing or competing arguments against gender inequality in society, he also carried out reconstruction by finding references contained in the classical Islamic treasures which he considered more in line with the spirit of Koran's justice. This is what makes Husein's ideas in defending women considered by some as the only capable and important in Indonesia to be maintained. This is what makes Husein's ideas in defending women considered by some as the only capable and important in Indonesia to be maintained. Some of the methodologies used are the Contextual Interpretation methodology, Maqashid al-Shari'ah, Asbab al Nuzul, Special Text and General Text, Understanding Causality and Social Reality, and Ta'wil. Some of these methodologies are important because they are able to provide understanding to Islamic attackers without having to be apologetic, as many contemporary scholars show.

His ability to explore the classical Islamic sciences and his experience in providing assistance in the community is an important provision that becomes the "talisman" of Husein. Therefore, Husein's thought was considered capable of reforming from within; remodel understanding with equal knowledge. Sentimental issues that arise in the community are openly discussed critically and empathically, such as monotheism with justice, women's

³⁵MuhAmmad, *Fiqh perempuan*, p. 137-153.

jihad, abortion, reproductive health and women's political role. The various thoughts and opinions discussed in his works provide new ideas and input for rituals that are commonly practiced by Muslims, especially those relating to women's issues. For Indonesian contexts, Husein's concepts are quite successful in building Fiqh that tend to support women's existence.

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