

REORIENTATION OF RIGHTS AND DUTIES OF HUSBAND AND WIFE

(Analitical Studies of Compilation of Islamic Law on Abdullah Saeed's

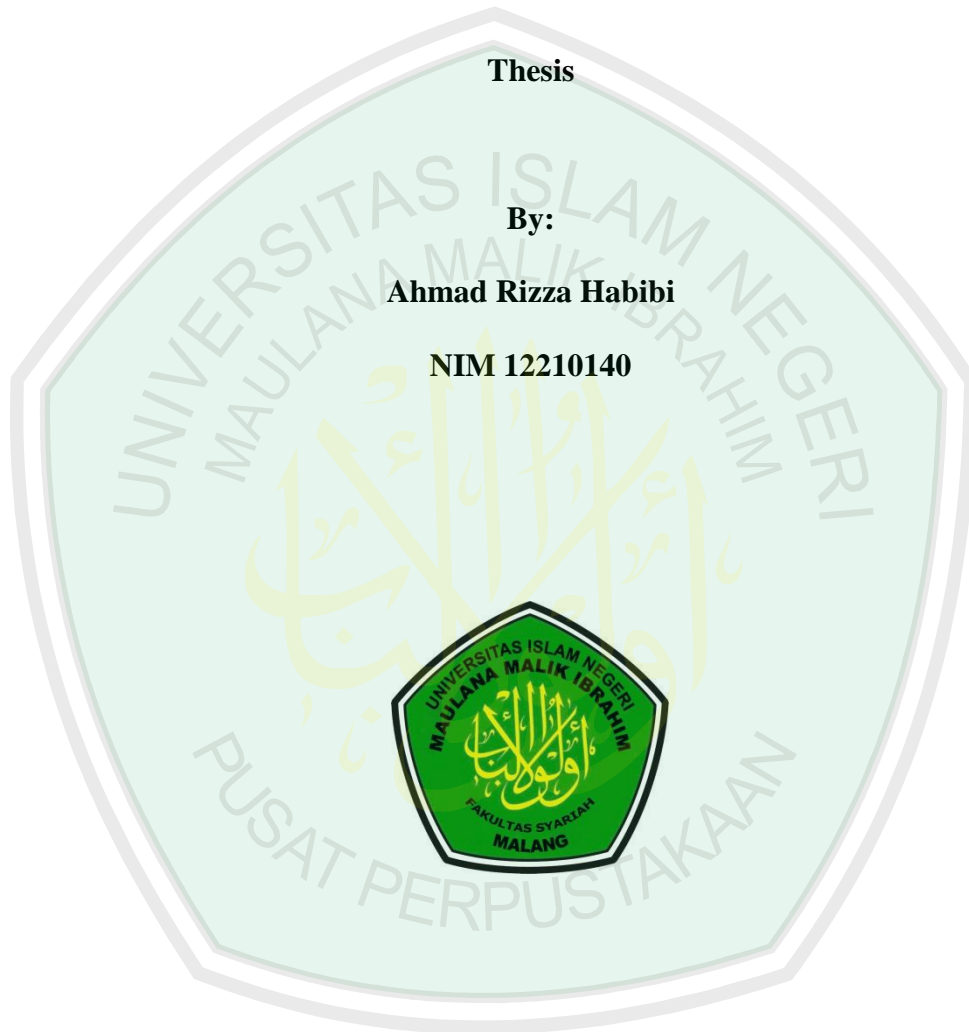
Progressive Islamic Thought)

Thesis

By:

Ahmad Rizza Habibi

NIM 12210140



AL-AHWAL AL-SYAKHSHIYYAH DEPARTEMENT

SHARIA FACULTY

MAULANA MALIK IBRAHIM

STATE ISLAMIC UNIVERSITY MALANG

2016

REORIENTATION OF RIGHTS AND DUTIES OF HUSBAND AND WIFE

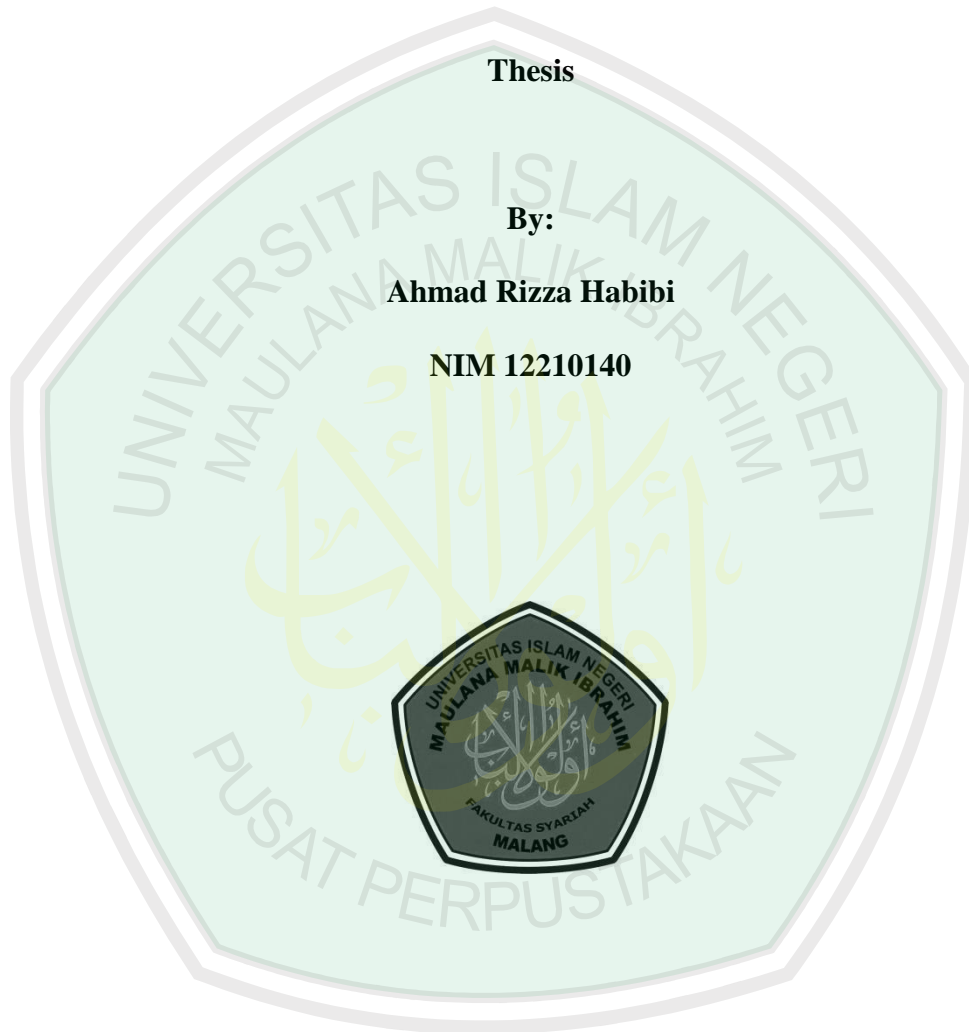
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MOTTO

﴿إِنَّ اللَّهَ يَأْمُرُ بِالْعَدْلِ وَالْإِحْسَانِ﴾

*Indeed God commands justice ('adl)
and the actualization of goodness, realization of beauty (ihsan).*

Qur'an 16:90

Come gather 'round people
wherever you roam
and admit that the waters
around you have grown
and accept it that soon
you'll be drenched to the bone.
If your time to you
is worth savin'
then you better start swimmin'
or you'll sink like a stone
for the times they are a-changin'.
Bob Dylan

STATEMENT OF THE AUNTENTICITY

In the name of Allah (swt),

With consciousness and responsibility towards the development of science, the author declares that the thesis entitled:

REORIENTATION OF RIGHTS AND DUTIES OF HUSBAND AND WIFE
(Analitical Studies of Compilation of Islamic Law on Abdullah Saeed's
Progressive Islamic Thought)

is truly the author's original work. It does not incorporate any material previously written or published by another person. If it is proven to be another person's work, duplication, plagiarism, this thesis and my degree as the result of this action will be deemed legally invalid.

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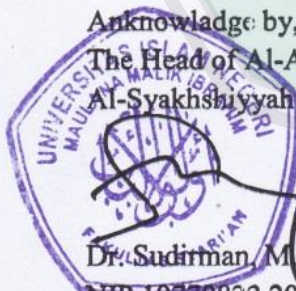
APPROVAL SHEET

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**REORIENTATION OF RIGHTS AND DUTIES OF HUSBAND AND WIFE
(Analitical Studies of Compilation of Islamic Law on Abdullah Saeed's
Progressive Islamic Thought)**

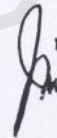
The supervisor states that this thesis has met scientific requirements to be proposed and to be tested by The Thesis Board of Examiners.

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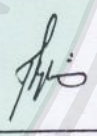
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All praise due to Allah, the Cherisher and Sustainer of all the worlds. There is neither might nor power but with Allah the Great, the Exalted. With only His Grace and Guidance, this thesis entitled “Reorientation of Rights and Duties of Husband and Wife (Analitical Studies of Compilation of Islamic Law on Abdullah Saeed’s Progressive Islamic Thought)” could be completed, and also with His benevolence and love, peace and tranquility of the soul. Peace be upon the Prophet Muhammad (saw) who had brought us from darkness into the light, in this life. May we be together with those who believe and receive intercession from Him in the day of Judgement. Amîn.

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Hopefully, by imparting what has been learned during the course of study in the Faculty of Sharia of State Islamic University, Maulana Malik Ibrahim Malang, it will benefit all readers and the author himself. Realizing the fact that error and weakness is impartial to being human, and that this thesis is still far from perfection, the author appreciates constructive criticism and suggestions for the improvement and betterment of this thesis.

Malang, 18th of June 2016

Author,

Ahmad Rizza Habibi

NIM 12210140

TRANSLITERATION GUIDE

A. General

The transliteration guide which is used by the Sharia Faculty of State Islamic University, Maulana Malik Ibrahim Malang, is the EYD plus. This usage is based on the Consensus Directive (SKB) from the Religious' Ministry, Education Ministry and Culture Ministry of the Republic of Indonesia, dated 22 January 1998, No. 158/1987 and 0543. b/U/1987, which is also found in the Arabic Transliteration Guide book, INIS Fellow 1992.

B. Consonants

ا = a

ض = dl

ب = b

ط = th

ت = t

ظ = dh

ث = ts

ع = ' (comma facing upwards)

ج = j

غ = gh

ح = h)

ف = f

خ = kh

ق = q

د = d

ك = k

ذ = dz

ل = l

ر = r

م = m

ز = z

ن = n

س = s

و = w

ش = sy

ه = h

ص = sh

ي = y

The hamzah (ء) which is usually represented by *alif*, when it is at the beginning of a word, henceforth it is transliterated following its vocal pronouncing and not represented in writing. However, when it is in the middle or end of a word, it is represented by a coma facing upwards ('), as oppose to a comma (,) which replaces the “ع” .

C. Long Vowel and Diftong

In every written Arabic text in the *latin* form, its vowels *fathah* is written with “a”, *kasrah* with “i”, and *dlommah* with “u”, whereas elongated vowels are written as such:

Elongated (a) vowel = â example قال becomes *qâla*

Elongated (i) vowel = î example قيل becomes *qîla*

Elongated (u) vowel = û example دون becomes *dûna*

Specially for the pronouncing of *ya' nisbat* (in association), it cannot represented by “i”, unless it is written as “iy” so as to represent the *ya' nisbat* at the end. The same goes for sound of a diftong, *wawu* and *ya'* after *fathah* it is written as “aw” da “ay”. Study the following examples:

Diftong (aw) = و example قول becomes *qawlun*

Diftong (ay) = ي example خير becomes *khayrun*

D. Ta' Marbûthah (ة)

Ta' marbûthah is transliterated as “t” if it is in the middle of word, but if it is *Ta' marbûthah* at the end, then it is transliterated as “h”. For example: الرسالة للمدرسة will be *al-risalat li al-mudarrisah*, or if it happens to be in the middle of a phrase which constitutes *mudlaf and mudlafilayh*, then the transliteration will be using “t” which is enjoined with the previous word, for example فى رحمة الله becomes *fî rahmatillah*.

E. Definite Article

Arabic has only one article, “al” (ال) and it written in small letters, unless at the beginning of a word, while “al” in the phrase of *lafadh jalalah* (speaking of God) which is in the middle of a sentence and supported by and (*idhafah*), then it is not written. Study the following:

1. Al-Imâm al-Bukhâriy said ...
2. Al-Bukhâriy explains, in the prologue of his book ...
3. *Masyâ Allâh kâna wa mâ lam yasya' lam yakun.*
4. *Billâhi 'azza wa jalla.*

TABLE OF CONTENT

FRONT COVER

TITLE SHEET	ii
MOTTO	iii
STATEMENT OF THE AUTHENTICITY	iv
APPROVAL SHEET	v
LEGITIMATION SHEET	vi
ACKNOWLEDGEMENT	vii
TRANSLATION GUIDENCE	x
TABLE OF CONTENT	xiii
ABSTRACT	xiv
CHAPTER I: INTRODUCTION	1
A. Background of Research	1
B. Scope and Limitation	8
C. Statement of Problem	9
D. Objective of Research	9
E. Significance of Research	9
F. Operational Definition	10
G. Research Method	11
H. Previous Research	15
I. Discussion Structure	22

CHAPTER II: INTELLECTUAL BIOGRAPHY AND PROGRESSIVE

ISLAM OF ABDULLAH SAEED	25
A. Intellectual Biography of Abdullah Saeed	25
1. Educational History of Abdullah Saeed	27
2. Job History of Abdullah Saeed	28
3. Scientific Publications of Abdullah Saeed	30
B. Progressive Islamic Thought of Abdullah Saeed	41
1. Orientation, Contribution, and Potition of Progressive Islam ..	41
2. Gender Equity in Progressive Islam	48
3. Epistemology of Progressive Islamic Thought of Abdullah Saeed.....	53

CHAPTER III: ORIENTATION OF RIGHTS AND DUTIES OF

HUSBAND AND WIFE IN KHI	61
A. Ontology of Rights and Duties of Husband and Wife in KHI	61
1. Overview of Rights and Duties of Husband and Wife.....	61
2. Islaimic Arguments of the Rights and Duties of Husband and Wife.....	67
B. Interpretation of Rights and Duties of husband and wife in KHI and Partiality of Gender	76

CHAPTER IV: REORIENTATION OF RIGHTS AND DUTIES OF HUSBAND AND WIFE IN KHI ON PROGRESSIVE ISLAMIC THOUGHT OF ABDULLAH SAEED	93
A. Restructuring of Legal Source of Rights and Duties of Husband and Wife in Islamic Progressive Perspective	93
1. Legal Source Text of Rights and Duties of Husband and Wife.....	94
2. Critical Analysis of the Legal Source Text.....	95
3. Historical Context Analysis of Legal Source Recipients.....	101
4. Current Context Analysis.....	111
B. Reconstruction of Gender Equity in Rights and Duties of Husband and Wife in KHI.....	114
CHAPTER V: CONCLUSIONS AND SUGGESTIONS	118
A. Conclutions.....	118
B. Suggestions.....	119
BIBLIOGRAPHY	
CURRICULUM VITAE	

ABSTRAK

Ahmad Rizza Habibi, NIM 12210140, 2016, *Reorientasi Hak dan Kewajiban Suami dan Istri (Studi Analisis Kompilasi Hukum Islam Perspektif Pemikiran Islam Progresif Abdullah Saeed)*, Skripsi, Jurusan Al-Ahwal Al-Syakhsiyah, Fakultas Syari'ah, Universitas Islam Negeri, Maulana Malik Ibrahim Malang. Pembimbing: Dr. Hj. Umi Sumbulah, M.Ag.

Kata Kunci: Hak dan Kewajiban, Suami Istri, Kompilasi Hukum Islam, Islam Progresif, Abdullah Saeed.

Realitas sosial masyarakat saat ini telah mengubah paradigma tentang hak dan kewajiban suami istri. Masyarakat telah mempunyai kepekaan terhadap adanya beberapa misrepresentasi antara norma yang telah digariskan oleh ulama'-ulama' klasik dengan kenyataan sosial saat ini. Teks-teks hukum di Indonesia yang terkesan tidak memihak keberadaan perempuan, ditambah lagi pengambilan sumber-sumber hukum yang berasal dari ulama' klasik yang sangat patriarkhis adalah bukti dari adanya disorientasi pemikiran. Ketidakadilan gender tersebut bersumber dari adanya distorsi pemahaman ajaran hukum Islam oleh politik hukum dalam pembuatan Kompilasi Hukum Islam (KHI). Paradigma Islam progresif Abdullah Saeed merupakan suatu wacana baru dalam menanggapi disparitas pemikiran terhadap hak dan kewajiban suami istri dalam KHI.

Penelitian ini merupakan jenis penelitian yuridis-normatif yang menggunakan pendekatan historis-konseptual dengan penelitian kepustakaan. Metode tersebut secara ringkas diimplimentasikan dengan menjadikan KHI sebagai sumber primer yang akan dianalisis menggunakan Pemikiran Islam Progresif Abdullah Saeed yang diperoleh dari studi pustaka dalam bukunya: *Islamic Thought: An Introduction dan Interpreting the Qur'an: Towards a Contemporary Approach*.

Hasil Kajian menunjukkan bahwa orientasi hak dan kewajiban suami istri dalam KHI adalah tidak egaliter, dimana dominasi kekuasaan laki-laki (suami) terhadap istri sangat kuat. Hal ini juga terlihat dari ketidak konsistenan pasal-pasal dalam KHI tentang hak dan kewajiban suami istri yang bersikap mendua, di satu sisi terdapat norma yang menjunjung kesetaraan, namun disisi lain memberikan peran yang inferior terhadap kedudukan istri. Reorientasi dilakukan terhadap sumber hukum Islam yang digunakan, yakni QS. al-Nisa'/4: 34. Hasil yang ditemukan adalah: (1) Secara literal ayat tersebut menyatakan bahwa kepemimpinan (dominasi) suami terhadap istri disebabkan oleh kelebihanannya dalam memberikan nafkah; (2) Secara historis sosio-kultural model keluarga pada saat turunnya ayat adalah berbentuk patriarkal; (3) Ayat tersebut dapat diaplikasikan secara kontekstualis dengan menerapkan misi utamanya, yakni keadilan dan kesetaraan. Sehingga, reorientasi norma yang dapat diaplikasikan adalah "*Baik suami maupun istri secara bersama-sama bertanggung jawab atas kepemimpinan keluarga*"

ABSTRACT

Ahmad Rizza Habibi, 12210140, 2016, *Reorientation of Rights and Duties of Husband and Wife (Analitical Studies of Compilation of Islamic Law on Abdullah Saeed's Progressive Islamic Thought)*, Thesis, Al-Ahwal Al-Syakhsyah Departement, Sharia Faculty, The State Islamic University of Maulana Malik Ibrahim of Malang. Supervisor: Dr. Hj. Umi Sumbulah, M.Ag.

Key Words: Rights and Duties, Husband and Wife, KHI, Islamic Progressive, Abdullah Saeed.

Sociological reality has changed in terms of the paradigm of rights and duties of husband and wife. Some people had to be sensitive to some misrepresentation between the norms outlined by classical scholars with current social reality. The legal texts in Indonesia were impressed impartially the position of women, as well as the making legal resources derived from the classical scholars that highly patriarchal is evidence of disorientation thought. The sources of gender inequity is come from the distortion understanding of the teachings of Islamic law by political law making in Compilation of Islamic Law (KHI). Paradigm of progressive Islam of Abdullah Saeed is a new discourse in response to the disparity of thought of rights and duties of husband and wife in KHI.

This studies purposes is to explain the orientation of rights and duties of husband and wife in KHI as well as the application of its reorientation by Islamic Progressive of Abdullah Saeed. This Research is kind of juridical-normative research that use the historical-conceptual approach with library research. KHI as a primer resources will analysis by Progressive Islamic Thought of Abdullah Saeed that applicated on his book: *Islamic Thought: An Introduction and Interpreting the Qur'an: Towards a Contemporary Approach*.

The results of studies has showed that the orientation of rights and duties of husband and wife in KHI is not egalitary, where the domination of men power (husband) to wife is too strong. It is also evident from the inconsistency of the articles of the KHI rights and duties of husband and wife is ambivalent, on the one hand there is a norm that respects equality, but on the other hand gives the inferior role of the position of the wife. Reorientation of Islamic legal sources have used in QS. al-Nisa'/4: 34. The result is: : (1) literally, this verse states that leadership (domination) husband to wife due to its advantages in providing a living; (2) historical socio-cultural at the time of revelation these verse was shaped that the model of family is patriarchal; (3) the verse can be applied contextualist by applying its primary mission, namely justice and equality. Thus, the reorientation of the norms can be applied by "*Both husband and wife are jointly responsible for the leadership of the family*".

الملخص البحث

أحمد ريزا حبيبي، 12210140 ، 2016، إعادة توجيه عن الحقوق والالتزامات الزوج والزوجة (تحليل الدراسة عن مجموعة من الشريعة الإسلامية على الفكر الإسلامي التقدمي عن منظور عبد الله سعيد)، بحث جامعي، الأحوال الشخصية، كلية الشريعة، جامعة مولانا مالك مالك إبراهيم الإسلامية الحكومية مالانج. المشرف: د. الحاجة. أومي سمبولة الماجستير.

كلمات الرئيسية: حقوق وواجبات، الزوج والزوجة، مجموعة من الشريعة الإسلامية، الإسلام التقدمي، عبد الله سعيد.

الواقع الاجتماعي للمجتمع اليوم تغيرت نموذج من الحقوق والواجبات الزوج والزوجة. قد يكون المجتمع حساسة لبعض التحريف بين المعايير التي حددها العلماء القدم مع الواقع الاجتماعي الحالي. نصوص القوانين في إندونيسيا التي متأثر لا ينجح إلى النساء، بالإضافة إلى جعل مصادر القانون مستمد من العلماء القديم للغاية الأبوية هي دليل على وجود يضلون توجيه الفكر. عدم المساواة بين الجنسين المستمدة من تعاليم مشوهة فهم الشريعة الإسلامية في القانون السياسي في صنع مجموعة من الشريعة الإسلامية (KHI). النموذج الإسلام التقدم عن عبد الله سعيد هو الخطاب الجديد ردا على التفاوت في التفكير في الحقوق والواجبات بين الزوج والزوجة في المملكة للاستثمارات الفندقية.

وتهدف هذه الدراسة إلى توضيح التوجه للحقوق والواجبات بين الزوج والزوجة في KHI وكذلك خطوة تكتيكية في إعادة توجيه الفكر الإسلامي التقدمي عبد الله سعيد. هذه الدراسة هو البحث اعتباري المعيارية باستخدام المنهج التاريخي-المفاهيمي لأدبيات البحوث. هذا هو لأنه هو لأنه سيتم تحليلها المملكة للاستثمارات الفندقية كمصادر أولية باستخدام التقدمي الفكر الإسلامي عبد الله سعيد تطبيقها في كتابه: Islamic Thought: An Introduction و

Interpreting the Qur'an: Towards a Contemporary Approach.

وأظهرت نتائج الدراسة أن التوجه لحقوق وواجبات الزوج والزوجة في المملكة للاستثمارات الفندقية ليس المساواة، حيث هيمنة سلطة الذكور (الزوج) على زوجة قوية جدا. ومن الواضح

الواضح أيضا من التناقض في مواد حقوق المملكة للاستثمارات الفندقية وواجبات الزوج والزوجة غير متناقضة، من جهة هناك قاعدة تحترم المساواة، ولكن من ناحية أخرى يعطي الدور الدور السفلي للموقف الزوجة. تستخدم إعادة توجيه التي أدخلت على مصادر الشريعة الإسلامية، وهي سورة النساء / 4: 34. ونتائج هم: (1) حرفيا وتنص الآية أن القيادة (الهيمنة) (الهيمنة) زوج وزوجة إلى أن يكون سببه زيادة في توفير لقمة العيش. (2) نموذج تاريخيا الاجتماعي والثقافي للأسرة في ذلك الوقت من الفقرة انخفاض يتشكل النظام الأبوي. (3) يمكن أن تطبق هذه المادة في سياق ذاته من خلال تطبيق مهمتها الأساسية، ألا وهي العدالة والمساواة. وهكذا، فإن إعادة توجيه المعايير التي يمكن تطبيقها هو "كل من الزوج والزوجة مسؤولية مشتركة عن قيادة الأسرة"

CHAPTER I

INTRODUCTION

A. BACKGROUND

Interpretation of the Islamic legal text has been influenced by the disparity of thoughts.¹ Developments of science, technology, human rights issues, and other issues have bring out a new perspective on the world.² Muslims as a part of the citizens of the world has experienced the impact of these problems. Authoritarian practices, until liberalism literal understanding of scripture thought had caused a lack of *maslahah* and contrary to universal values.³

The implications of thus disparity of thought led to some schools of Islamic Thought, namely: 1. *The Legal-ist-traditionalist*, the point of emphasis is on the laws that developed and interpreted by the scholars of pre-modern period; 2. *The Theological Puritans*, whose focus on the ethical dimensions and Islamic doctrines; 3. *The Political Islamists*, the tendency of thinking is on the political aspects of Islam with the ultimate

¹ This is caused by the expression of Muslims, on the one hand, they feel obliged attached to their Islamic traditions through authority of sacred source (Quran) and set the understanding that was settled for centuries. At the same time, on the other hand, they are dealing with a phenomenon that is present in most (large) aspects that not combine with the tradition of being held and it was settled. Three of the contemporary phenomenon that inspires of modern human consciousness is the problem of social justice, gender equality, and pluralism. Mukhlis, *Metodologi Muslim Progresif dalam Memahami Pesan Sejati al-Qur'an*, At-Tahrir Journal, Mataram: Faculty of Sharia IAIN Mataram, 2011, p. 6

² Abdullah Saeed, *Interpreting the Qur'an: Towards a Contemporary Approach*, (London: Routledge, 2006), p. 148.

³ Abdullah Saeed, *Some Reflection in the Contextualist Approach to Etico-Legal Texts of Qur'an*, (Bulletin of School of Oriental and African Studies, 2008), h. 223.

purpose of an Islamic state founded; 4. *The Islamist extremists*, who have a tendency to use violence against individuals and groups that deems as opposed to both Muslims and non-Muslims; 5. *The Secular Muslims*, who believe that religion is a private matter; and 6. *The Progressive ijtihadists*, that the modern thinkers on religion that seeks to reinterpret of religious teachings in order to answer the needs of modern society.⁴

In the view of Abdullah Saeed (that in after mention by Saeed), Indonesia originally was derived in the position of a trend of *legalist-traditionalist* thought.⁵ This is evidenced by the pattern of Islamic law development that was based on scholars' pre-modern. They solve the problems referring to the views of scholars' in the past which were deemed to be in accordance with the present. They are also afraid to reform the Islamic laws and criticize the traditionality thought. Blind imitation of the one of the scholars' schools became the main feature of the trend of thought.⁶

The times and the impact of global cultural hybridity has influenced the mindset of the majority of Muslims in Indonesia. Trends of *legalist-traditionalist* thought in Indonesia is began to shift. Saeed explained that the trends of thought which surfaced today in Indonesia is *The Progressive Ijtihadists*. Scholars in Indonesia will no longer hold the view that the classical legal text is primary sources in the interpretation

⁴ Abdullah Saeed, *Islamic Thought: An Introduction*, (London and New York: Routledge, 2006), p. 142-150.

⁵ Abdullah Saeed, *Progressive Muslims and The Interpretation of the Qur'an Today*, (Singapore: Institute of Defence and Strategic Studies, Nanyang Technological University, 2006), p.5

⁶ Abdullah Saeed, *Islamic Thought ...* p. 142

of the legal texts and the exclusion of other aspects. There is a certain flexibility in terms contextualization of various forms of interpretation of the Quran and make them reflect the needs and interests of the Muslims for a period of time they have.

In Indonesia, the development trend of Islamic legal thought can be traced from the texts of Islamic law that is in it. Compilation of Islamic Law (KHI) is one of the official text of Islamic law in Indonesia.⁷ KHI formed on legal politics that follow of *legalist-traditionalist* mindset. That is caused by the retrieval of data sources based on 38 books of fiqh *mu'tabar* on various schools (majority on *Shafi'i* school: *Bajuri*, *Fath al-Mui'n*, *Fath al-Wahab*, *Tuhfah al-Mukhtaj*, *al-Mahalli*, etc.) that is juxtaposed with the decision of the Religious Courts Jurisprudence collected in 16 books.⁸ KHI were only adopted the books of jurisprudence, has been denying the sociological changes and differences as well as the dynamic roles of men and women in life. This factor was the caused of gender bias in KHI.⁹

Inequality position between men and women is the real impact of the pattern of *legalists traditionalists*. This is evident from some of the articles that are considered not gender-responsive. Gender bias in KHI

⁷ Compilation of Islamic Law is present in national law through legal instruments of Presidential Instruction No. 1 of 1991 on the Compilation of Islamic Law dated June 10, 1991, and adapted organically by Decree of the Minister of Religion No. 154 of 1991 dated July 22, 1991. Abdul Gani Abdullah, *Pengantar Kompilasi Hukum Islam dalam Tata Hukum Indonesia*, (Jakarta: Gema Insani Press, 1994), p. 62.

⁸ Abdurrahman, *Kompilasi Hukum Islam di Indonesia*, (Jakarta: Akademika Presindo, 1992), p. 43-44, compare with Ahmad Rofiq, *Pembaharuan Hukum Islam di Indonesia*, (Yogyakarta: Gema Media, 2001), p. 89-91.

⁹ Durotun Nafisah, *Politisasi Relasi Suami Istri: Telaah KHI Perspektif Gender*, Jurnal Studi Gender dan Anak Yin Yang. (Vol. 3, 2008). p. 7.

contained in Article 79 paragraph 1 of the position of spouses, article 80 paragraph 1 to 3 on the duty of husband, article 83 paragraph 1 and 2 on the duty of wife, as well as article 84 paragraph 1 and 2 of *nusyuz*. Article 79, paragraph 1 (a husband is the head of the household and the wife is a housewife) reflect the position of inequality as an source of gender bias, whereas in other articles as a consequence of it position of inequality that has an implications to the standardization of the roles, rights, and the lame of duties.

If we look at the analysis of Scanzoni and Scanoni we will find four different variations of the relationship of husband and wife; *first, the property owner*, which puts the husband as the boss and has fully mastered on his wife. Wife's main task was to serve and submit to her husband and family care. Meanwhile, the husband is the sole breadwinner, he has greater power, a wife must submit and economically dependent to her husband. *Second, head complement*, namely the wife as a complement to the husband, even though the task of husband and wife is still the same as the pattern *owner property*, but husband has been appreciated and help the wives work. *Third, the senior-junior*, the wife's position increased, she has her own income so it is not completely dependent on their husbands. However, it remains the main breadwinner is husband so that he has more power than his wife. *Fourth, equal partner*, ie the position and opportunities of the husband and wife is equal, despite the tasks that their chosen is different. Although the wife is more free to choose and

independent, but their activities should not undermine the achievement of the ideal family.¹⁰ The four variants of the family above, it seems that the two forms of the family first is underlying and used assumptions in the preparation of KHI.

Mansur Fakih pointed out that the source of gender inequality is rests on three kinds, namely the *culture of the law* (public culture for obey to legal materials), interpretation of religion, as well as legal structures.¹¹ When put in the context of Indonesia, gender inequality is beginning from the public culture derived from the disparity in religious interpretation of the legal texts that occur in Indonesia. The spirit that embodied in the norms of KHI is very influential in the formation of the culture in society. Inequality in the distribution of roles between husband and wife is one of the effects of their multiple interpretations on KHI that forming a gender bias in the legal structure of society.

Influence of the political law aspects in making the articles of KHI were rated highly patriarchal, as well as patterns of interpretation *legalist-traditionalist* in norms clauses in KHI is become a strong influence on the polarization of gender bias in society, particularly in distortion of standardizing role of head of the *family*. Literalists Interpretation by denying the others interest (ethical, moral, context, historical, etc.) is causes the rigid approach in the interpretation. KHI that interpreted by

¹⁰ Cited by Evelyn Sulaeman, *Hubungan-Hubungan Dalam Keluargadalam* T.O. Ihromi, Bunga Rampai Sosiologi Keluarga (Jakarta: Yayasan Obor 1999) p.100-101.

¹¹ Mansour Fakih, *Analisis Gender* (Yogyakarta: Pustaka Pelajar, 2002), p. 167.

denying the comprehensive sociological analysis is also brought the impact of gender bias.

Required of reconsideration of the norms contained in the articles of KHI that considered of gender bias, if the articles are appropriate to the context of the present and also in the context of the revelation of the legal source of KHI (Koran). According to Saeed one of the victims of this condition are women, because the verses of the Koran about women, in extrinsic seemed ambiguous. On the one hand, the Koran affirms the principle of equality, even affirmed that distinguishes every human at just a faith. On the other hand, the Koran contains the sentences which deemed the position of women are under men.¹²

Sa'diyya Shaik,¹³ one of the contributors Progressive Muslim, believes that gender equality has actually happened since the early period of Islam. Rasulullah often delegate 'A'ishah to teach certain material in the teachings of Islam, or otherwise companions women have equal access to male friends to ask questions, discuss, and receive direct teachings of the Prophet. If, at a later time gender discrimination occurred, it was due to the imperfect interpretation of the text of the Koran and the Hadith by the

¹² Abdullah Saeed, *The Qur'an: an Introduction* (London and New York: Routledge, 2008) p. 13.

¹³ A Muslim nationality from South Africa and bleed of India. Doctoral candidate in the Department of Religion at Tample University. The focus of study is the study of Islamic feminism, the Koran, and Sufism. Omid Safi (ed), *Muslim Progressive: On Justice, Gender, and Pluralism*, (One World Publication: Oxford, 2005), p. x.

interests of certain people, so that the position of women have been marginalized.¹⁴

Therefore, contextualist approach is required in this regard. However, most of these approaches is eliminate or negate the form of legal texts that exist. Unlike the approach offered by Saeed, where he tried to unite the two. Legal texts that have been used explored further with the contextualization of the formation of a source of law to the condition in the present. The use of such an approach that used by Saeed is bases on spirit of Progressive Islamic paradigm, where he wanted to try to blend between classical scholars heritage with the thoughts that considered more of modern rationalists. There is the importance of a the research study of the legal texts of Islam by using the paradigm of Progressive Islam. Such an approach is considered to answer some of the challenges of modern times that is so complex that is less overcome if only use models of textual approach.

According to Omid Safi, modernity with all its arrogance has managed to steal the ideology of Muslims by making it as an idol who always adored, transmitted, discussed, and even made the estuary regeneration from time to time.¹⁵ Progressive Islam tried to marry the Islamic tradition that is rich and varied on the one hand with the modernization on the other side, and try to formulate the best results of this

¹⁴ Sa'diyya Shaik, *Transforming Feminim: Islam, Women, and Gender Justice*, in Omid Safi (ed), *Muslim Progressive on Justice..* p. 148.

¹⁵ Omid Safi, *Introduction: The Time They Are a Changing- A Muslim Quest for Justice, Gender Equality, and Pluralisme*, in Omid Safi (ed), *Muslim Progressive on Justice, Gender and Pluralisme* (Oxford: Oneworld, 2003), p. 4.

connection. Transformation of Islamic law in the Islamic view is identical to the social Progressive humanity of Islamic Law and Democracy, besides will deliver the Shari'a into the public law which can be accepted by all people, is also compatible with democracy. Thus the reason the establishment of Islamic law perspective, democracy, pluralism and human rights. Therefore, Islamic law today is intended to accommodate and reflect of equality, justice, humanity, and guarantee the benefit.¹⁶

Paradigm Progressive Islamic thought taken by the researchers to discuss in more depth about the disparity in the interpretation of the Rights and Duties of husband and wife were caused by the ambivalence between the trend of Islamic thought which influenced. The paradigm used to analyze whether there dissorientation of standardization of the Rights and Duties of husband wife in KHI and if required a reorientation of thought, this is where the research began.

B. SCOPE AND LIMITATION

The discussion about rights and duties of husband and wife in KHI has a wide scope enough. The researcher limit the problems in these thesis in order to will not extended discuss. The point of problems that will be discuss is focus on the substances of right and duty of husband and wife

¹⁶ The basic principles of fiqh progressive establishment that pluralism (*ta'addudiyah*), nationality (*muwatanah*), enforcement of human rights (*Iqama al-huquq al-insaniyah*), democracy (*dimuqratiyah*), benefit (*beneficiaries*), and gender equality (*al-Musawah al-jinsiyah*). While the interpretation of Islamic teachings groove version of fiqh like this is .Alquran and al-Hadith, benefit, maqasid al-Shari'ah, the public mind. YUSDANI, *Agama Dan Isu-Isu Kontemporer Dalam Perspektif Fiqh Progresif*, Journal of Al-Mawarid, (Vol. XII, 2012), p. 55.

which is on the Article 79 paragraph (1) KHI. That is caused by the indication of gender bias on this article which is debatable, as well as the article has a strong influence to rights and duties on the articles after.

C. STATEMENT OF PROBLEM

1. How the orientation of rights and duties of husband and wife in the Compilation of Islamic Law (KHI)?
2. How the reorientation of the rights and duties of husband and wife in the Compilation of Islamic Law in Progressive Islamic Thought of Abdullah Saeed perspective?

D. OBJECTIVE OF RESEARCH

1. Explaining the orientation of the rights and duties of husband and wife in the Compilation of Islamic Law in terms of philosophical and historical.
2. Explaining the reorientation conception of rights and duties of husband and wife in the Compilation of Islamic Law from the point of view of Progressive Islam theories and methodological aspects.

E. SIGNIFICANCE OF RESEARCH

The benefits to be gained in the research thesis is divided into two big picture, ie, the benefits of theoretical and practical benefits:

1. Theoretically expected to provide a basic understanding of the conception of the reorientation of the rights and duties of husband and wife in the Compilation of Islamic Law which is seen from the view of Progressive Islam.
2. In practical terms is expected to become the new benchmark in norms basis of the concept of rights and duties of husband and wife in the Compilation of Islamic Law as well as a cornerstone in the interpretation of texts of the Compilation of Islamic Law in general.

F. OPERATIONAL DEFINITION

1. Reorientation: derived from the root word "orientation" which means the review to determine the appropriate attitude and the correct, the addition affix the word "re" implies the meaning back, so reorientation can be interpreted by a reconsideration of insight to determine the attitude.¹⁷
2. Rights and duties : The rights are anything that received by a person from another person, while duties are what a person must do to others.¹⁸
3. Compilation of Islamic Law: Law Association Material placed in the document Yustisia which can be used as guidelines for the judge in

¹⁷ Kamus Besar Bahasa Indonesia

¹⁸ Amir Syarifudin, *Hukum Perkawinan Islam Di Indonesia: Antara Fiqh Munakahat dan Undang-Undang Perkawinan*, (Jakarta: Kencana, 2009), p.159.

the Religious Courts as the law applied in resolving cases that raised him.¹⁹

4. Progressive Islam: Muslim thought which seeks to reinterpret the teachings of the religion (Islam) in order to answer the needs of society today's with the *progressive ijtihadi* methodology that uses a contextual interpretation.²⁰

G. RESEARCH METHOD

1. Types of research

The type of research used in this thesis is the *juridical-normative* research, a study that source data is obtained from the law material of juridical, literature, books or papers that are relevant to the subject matter studied. According to Fajar Mukti and Achmad Yulianto normative research is a study laying down the law as a system of norms covering the principles, norms, rules of the legislation or the determination by the competent authority.²¹ If analogical to this study, the norm that will be analyzed are several chapters contained in the Compilation of Islamic Law that are related to the rights and duties of husband and wife directly.

¹⁹ General Explanation on Compilation of Islamic Law, 5 points.

²⁰ Yusdani, *Agama Dan Isu-Isu Kontemporer*, p. 46.

²¹ Mukti fajar ND and Yulianto Achmad, *Dualisme Penelitian Hukum Normatif dan Hukum Empiris*, (Yogyakarta: Pustaka Pelajar, 2010), p. 34.

2. Research approach

The approach used in this research is a historical-conceptual approach. Historical approach is done by examining the background of what is learned and the development of arrangements regarding the issues faced.²² This approach was taken because the researchers wanted to uncover the philosophical and thought patterns of the arrangement of rights and duties of husband and wife in Law Compilation born, whether it has relevance to the present. As a conceptual approach is to examine concepts that depart from the views and doctrines that developed in the science of law and religion.²³ The understanding of the views and doctrines is a backrest for researchers in building a legal argument in solving issues faced, which in view of the implementation of Progressive Islamic thinkers will be analyzed to find the conceptual framework of the rights and duties of husband and wife in the Compilation of Islamic Law can be applied to the attitude in this democratic era.

3. Type of data

The data used is secondary data, the data obtained from the information that is already written in the form of documents. Secondary data in this paper can be categorized into three

²² Peter Mahmud Marzuki, *Penelitian Hukum*, (Jakarta: Kencana, 2010). p. 94

²³ Peter Mahmud Marzuki, *Penelitian Hukum*, p. 95

characteristics, the primary legal materials, secondary law and tertiary legal materials.²⁴

- a. Primary legal materials, the materials legally binding comprising:
 1. Presidential Instruction of 1991 On Compilation of Islamic Law;
 2. Legal materials that not of material written in the law of the Constitution, include:
 - a. Al-Quran; and
 - b. Al-Hadith.
 3. Abdullah Saeed idea of Progressive Islam, especially in literature as follows:
 - a. Islamic Thought: An Introduction. Oxon (UK) and New York: Routledge, 2006. 200 pages.
 - b. Interpreting the Koran: Towards a Contemporary Approach. Oxon (UK) and New York: Routledge, 2006. 192 pages.
- b. Secondary legal materials, namely the legal materials gives explanation to the primary legal materials, include: Books, Research, Journal, Seminar, and other papers.
 - 1) Abdullah Saeed, *The Koran: An Introduction*. Oxon (UK) and New York: Routledge, 2008, 268 halaman.

²⁴ Amiruddin, *Pengantar Metode Penelitian Hukum*, (Jakarta: Rajawali Pers, 2010), p. 118.

- 2) Abdullah Saeed. *Progressive Muslims and The Interpretation of the Koran Today*, Singapore: Institute of Defence and Strategic Studies, Nanyang Technological University, 2006
 - 3) Omid Safi (ed). *Muslim Progressive On Justice, Gender, and Pluralism* (Oxford: Oneworld Publications, 2003).
 - 4) Omid Safi. *Challenges and Opportunities for The Progressive Muslim in North America*, *Muslim Public Affairs Journal*, (Januari 2006)
 - 5) Omid Safi. *What is Progressive Islam*, (The International Institute for the Study of Islam in the Modern World (ISIM) News Letter, No.13, Desember 2003)
 - 6) Yusdani. *Agama Dan Isu-Isu Kontemporer Dalam Perspektif Fiqh Progresif*. Jurnal Al-Mawarid. (Vol. XII, 2012)
- c. Tertiary legal materials, the materials that give instructions and explanations of the primary and secondary legal materials. Such as: the Great Dictionary of Indonesian, Indonesia's Law Dictionary, *Essay Writing Guide*, (Malang: Faculty of Sharia Islamic University of Maulana Malik Ibrahim, 2012)

4. Method of collecting data

The method used in collecting data for this thesis is by collecting secondary data for the collection of primary legal materials, secondary legal materials and tertiary legal materials. Methods of

collecting materials is done by library research (*library research*), the study was conducted by way of making the determination of legal materials, inventory of the relevant laws, and review legal materials.

5. Data processing

The procedure used in the processing and analysis of legal materials in accordance with the approach used. Then the analysis used a qualitative approach is analysis of secondary data. Data processing is carried out by several phases: examination of the data (editing), in classification (classifying), verification (verifying), analysis (analyzing) and the making of the conclusion (concluding).²⁵

H. PREVIOUS RESEARCH

The research that has been presented before to the research object of Rights and Duties of husband and wife are as follows: *Tinjauan Hukum Islam terhadap Pemenuhan Hak dan Kewajiban Husband Istri pada Keluarga TKI di Desa Tresnorejo, Kecamatan Pertanahan, Kabupaten Kebumen, Tahun 2011-2012*,²⁶ this thesis analyzes patterns of fulfillment of rights and duties of husband and wife using approach of empirical research on Tresnorejo village which was later revised to Islamic law. This research is qualitative. The Research Samples is the families that husband

²⁵ Tim Composer, *Pedoman Penulisan Karya Tulis*, (Malang: Faculty of Sharia Islamic University of Maulana Malik Ibrahim, 2012), p. 23.

²⁶ Dwi Susanto, *Tinjauan Hukum Islam terhadap Pemenuhan Hak dan Kewajiban Suami Istri pada Keluarga TKI di Desa Tresnorejo, Kecamatan Pertanahan, Kabupaten Kebumen, Years 2011-2012*, Thesis, Unpublished, (Yogyakarta: State Islamic University Sunan Kalijaga, 2013).

or wife is working abroad as Indonesian Workers (TKI). The findings of this thesis is living duties that held by the husband should not be the main standars in certain conditions. In the village Tresnorejo that majority within the ranks of middle encourage wives to also earn a living. The phenomenon of the husband or wife who is a migrant worker was not halted the fulfillment of rights and duties of husband and wife, especially in terms of living. Wife willingness to work (albeit forced) has made her income as alms to the family.

In analytical discussion, this paper has the same object of study with researchers, namely the rights and duties of husband and wife. Living as the main study is one of the foundations of the sociological aspect which is also used by researchers to be the basic reference of their disorientation rights and duties of husband and wife in KHI. The difference is the author of this thesis using empirical approaches are analyzed through the paradigm of Islamic law (*Ushul Fiqh*), while the researchers used a normative method through Progressive Islamic paradigm.

Next is a thesis entitled *Hak dan Kewajiban Suami Istri Perspektif Gender (Studi Kritis Undang-Undang Nomor 1 Tahun 1974 tentang Perkawinan dan Inpres Nomor 1 Tahun 1991 tentang Kompilasi Hukum Islam)*.²⁷ Author of thesis uses a descriptive approach that explains by

²⁷ Arjuwin Taqwa, *Hak dan Kewajiban Suami Istri Perspektif Gender (Studi Kritis Undang-Undang Nomor 1 Tahun 1974 tentang Perkawinan dan Inpres Nomor 1 Tahun 1991 tentang Kompilasi Hukum Islam)* Thesis, Unpublished, (Yogyakarta: Perbandingan Madzhab dan Hukum Fakultas Syariah Universitas Islam Negeri Sunan Kalijaga, 2009)

critical of the law materill, and analyzed using a gender perspective. The findings of the thesis is explicitly of marriage law in Indonesia (Law on Marriage and KHI) impressed discriminate and subordinate against women, thus implicitly is to be the reconstruction of both these laws to be more egalitarian.

This study is similar to research that will be discussed researchers, which is doing an analysis of the rights and duties of husband and wife in the form of KHI materill law and Marriage Act. The spirit which is reflected from the thesis also almost the same, namely anxiety for a discrepancy between the text of the law (not gender-responsive) to the social reality that developed at this time. The differences is a researcher wants to develop the thesis writing to reorientation of norms that are considered misrepresentations of the culture of Indonesian society today.

In contrast to the previous thesis, entitled *Hak dan Kewajiban Husband Istri dalam Kitab Uqudullijain Karya Syeikh Muhammad Bin Umar An-Nawawi Al-Bantany dan Aplikasinya di Dukuh Krasak Kelurahan Ledok Kecamatan Argomulyo Kota Salatiga*²⁸, the author uses the Rights and Duties of husband and wife who are in the Book (*kitab*) of *Uqudullijian* on the basis of thinking in analyzing the understanding and implementation in Dukuh Krasak. This research uses empirical analyzed by deductive thus infer from the world of ideas and applied to the sensory

²⁸ Zayyana Abdillah, *Hak dan Kewajiban Suami Istri dalam Kitab Uqudullijain Karya Syeikh Muhammad Bin Umar An-Nawawi Al-Bantany dan Aplikasinya di Dukuh Krasak Kelurahan Ledok Kecamatan Argomulyo Kota Salatiga*, Thesis, Unpublished, (Salatiga: Jurusan Syari'ah Program Studi Ahwal Al-Syakhsiyyah Sekolah Tinggi Agama Islam Negeri, 2012)

world. The findings in this paper are the people at the Dukuh Krasak have a positive outlook on the system of rights and duties in the book of *uqudullijain*, but some argue that some substances in it is irrelevant.

Norms about rights and duties are reflected in texts of Islamic law (in this case *uqudullijain*), empirically is still rooted in the culture of the people in Indonesia. The times and increased rationality of society that would later make them understand whether there is any relevance between the theory of classical scholars with the social reality at this time. This is where the researchers want to develop this work, which seemed to texts of Islamic law has been less put contextualization norm, so the difference in time and space can make a problematic implementation.

Similar to the above thesis, a thesis entitled *Hak dan Kewajiban Husband Istri dalam Keluarga: Studi Pemikiran Syaikh Muhammad Ali As-Sabuni dalam Kitab Az-Zawaj Al-Islami Al-Mubakkir: Sa'adah wa Hasanah*,²⁹ It's writing rooted in the thinking of scholars' classic. Authors exploration is focus on the meanings of the rights and duties of husband and wife in the realm of literature such as *The Book of Az-Zawaj Al-Islami Al-Mubakkir: Sa'adah wa Hasanah*. The author uses the normative research that uses the book as the main reference and by critically analyzed. The findings of the thesis is the concept of rights and duties in Ali As-Sabuni thought there are some relevant to the context of Indonesia,

²⁹ Akmalia Uktuv, *Hak dan Kewajiban Suami Istri dalam Keluarga: Studi Pemikiran Syaikh Muhammad Ali As-Sabuni dalam Kitab Az-Zawaj Al-Islami Al-Mubakkir: Sa'adah wa Hasanah*, Thesis, Unpublished, (Yogyakarta: Al-Akhwil Al-Syakhsiyyah Fakultas Syariah dan Hukum Universitas Islam Negeri Sunan Kalijaga, 2010).

but also there is irrelevant because there are changes and developments of times. Criticism of the thesis writer is their some role inequality where the wife's position is only required to serve her husband and to educate children by denying some rights of wife.

This thesis is more focused on some of the content in the discussion of Ali Assabuni thought. The findings can be taken by the researchers is the existence of some classical scholars that is still very patriarchal in terms of the division of roles between husband and wife, there are several subordinated position of women in the family, as if women no bargaining power to formulate decisions in the family. The statement above is makes the bases research of researcher to analyze more than the assumption of disorientation sources of KHI which is derived from the books of scholars' classic, especially in the area of gender.

Next is the thesis under titled *Pemikiran Islam Progresif Khaled Abu El-Fadl: Kajian atas Gagasan Hak Asasi Manusia, Keadilan Gender dan Pluralisme Agama* Peneliti memfokuskan terhadap pendekatan filsafat untuk mengupas pemikiran Abu El-Fadl tentang Islam Progersif³⁰, the author does not reveal explicitly in discussion of the rights and duties of husband and wife, but the paradigm of Progressive Islamic Thought is a similar the analysis knife to that will be analyzed. The findings in this analysis is reveal the idea of Khaled on human rights stems

³⁰ Nurrochman, *Pemikiran Islam Progresif Khaled Abu El-Fadl: Kajian atas Gagasan Hak Asasi Manusia, Keadilan Gender dan Pluralisme Agama*, Thesis, Unpublished, (Yogyakarta: Program Studi Agama dan Filsafat Konsentrasi Filsafat Islam Program Pascasarjana Universitas Islam Negeri Sunan Kalijaga, 2011).

from *dharuriyat al-khomsah*, while gender equality is a tradition which disparage women as a source of law (*fatwa*) and pluralism of religion originated from the claims of all religions that feel each is a way of salvation that the most correct according to their religion.

Lessons can be taken by the researcher here is a Progressive Islamic thought, especially in terms of gender equality. Some of the sources of Islamic law, especially *hadith*, substantially there are still contrary to human rationality, the basic of Properties of the Apostle and the principles of Islam. If according Khaled the *hadith* may be suspended and may even be canceled legality as a source of law. Slightly different from the Progressive Islamic thinking used by Saeed, although there are sources of law to the contrary, but the need for multiple steps of contextualization existing norms, historical contextualization the formation of a source of law with the context of sociological public at this time.

The latter is a thesis entitled *Interpretasi Kontekstual: Studi atas Pemikiran Hermeneutika al-Qur'an Abdullah Saeed*.³¹ The author uses historical philosophical approach with descriptive methods-taxonomy-interpretive. In literature authors wish to express Saeed Thoughts on Contextual Interpretation. The findings of the thesis states that there are verses of ethico-legal in the Koran which have only interpreted literally and denied the context of revelation and interpretation. Saeed build a theoretical framework in Contextual interpretation by criticizing the

³¹ Lien Iffah Naf'atu Fina, *Interpretasi Kontekstual: Studi atas Pemikiran Hermeneutika al-Qur'an Abdullah Saeed*, Skripsi, Tidak di terbitkan, (Yogyakarta: Tafsir Hadis Fakultas Ushuluddin Universitas Islam Negeri Sunan Kalijaga, 2009)

methods of interpretation over the years. Saeed's Contextual interpretation is detracted from the mindset of Fazlur Rahman.

Contextualization sources of Islamic law (Koran) is a necessity in today's contemporary era, where human rationality is directly related to the norms prescribed by Allah. There is needs a bridge between the strength of the legal text to the revelation context and the context of the interpretation of. Researchers consider to uncover the gender inequity in the mindset of Islam Progressive required a comprehensive analysis of the root source of the law itself. Contextual interpretation which, according to Saeed is a knife analysis of the Progressive Islam that is an attempt to formulate gender justice in society, so that legal certainty in harmony with the benefit of the envisioned.

Previous studies such as over the rights and duties of husband and wife as well as some analysis tools have a different characteristics. Starting from this type of research (normative and empirical) and retrieval of data sources and data analysis. There are several aspects that can be developed as a whole in the discussion of this thesis research. Starting from the state of sociological reality that has changed in terms of the paradigm of rights and duties of husband and wife, where the working wife is not a taboo anymore. In other places some people have also had to be sensitive to some misrepresentation between the norms outlined by classical scholars with current social reality. In addition to the legal texts in Indonesia were impressed impartially the position of women, plus making legal resources

derived from the scholars' classic highly patriarchal is evidence of the existence of disorientation thought. Paradigm progressive Islam is a new discourse in response to gender inequity in KHI sourced from distortion understanding of the teachings of Islamic law by political law making. This is where the recency of this study that is to try to develop anxieties researchers before about gender inequity in rights and duties of husband and wife.

I. DISCUSSION STRUCTURE

In this thesis, the author uses systematic discussion in this study as follows:

First chapter, an introduction that contains the background of the problem. Then the problem background of a subject is formulated as a problem to be addressed and the main target in this study. Then proceed with the holding of the purpose and usefulness of the research. Presented research methods to determine the type, the way, the research approach in order to know the scientific framework of this study. After the literature review which will outline several previous research studies relating to the cases studied. Followed by exposure to systematic discussion summarizes the grooves of the discussion in the thesis.

The second chapter, contains biographies of intellectual and progressive Islam of Abdullah Saeed. Specifically contains include an: Education History of Abdullah Saeed, Job History of Abdullah

Saeed, Scientific Publications of Abdullah Saeed, Progressive Islamic Thought of Abdullah Saeed, Orientation-Contribution and Position of Progressive Islam, Gender Equality in Islam Progressive, epistemology of Progressive Islamic Thought of Abdullah Saeed.

The third chapter, the discussion will describe the formulation of the problem first, namely orientation of rights and duties of husband and wife in KHI. More specifically with regard to: Ontology Rights and Duties of Husband and Wife in KHI, Overview of Rights and Duties of Husbands and Wives, Islam's argument concerning the Rights and Duties of husband and wife, Interpretation of the Rights and Duties of husband and wife in KHI and Gender alignments.

The fourth chapter, will discuss the formulation of the second issue, which is about the reorientation of the rights and duties of husband and wife in KHI with a Progressive Islamic of Abdullah Saeed perspective, over which particular addresses: Restructuring Legal Resources of Rights and Duties of Husband and Wife in Progressive Islamic Perspective, its included; Text of Legal Sources of Rights and Duties of husband and wife, Critical Analysis of the Text of Legal Resources, Context Analysis of Historical Recipient of Legal Resources, Current Context Analysis, and further discussion is about the Reconstruction of Gender Equality in Rights and Duties of husband and wife in KHI

The fifth chapter, the closing chapter will elaborate on the conclusions of the discussion in the previous chapters, and concludes with suggestions or contributions as a result of this research.



CHAPTER II

INTELLECTUAL BIOGRAPHY AND PROGRESSIVE ISLAM OF ABDULLAH SAEED

A. INTELLECTUAL BIOGRAPHY OF ABDULLAH SAEED

Abdullah Saeed is an academic expert in Arabic and Islamic studies. His expertise comes after the long intellectual journey that is constructed of two world views, west and east. This makes the paradigm of thinking of Saeed can understand comprehensively the Islamic studies. Saeed comes from the Maldives, was born as the descendants of Arab tribes of Oman in the Maldives islands.³² As of Arab descent living in Africa, Saeed known to be very ambitious, especially in terms of academic.

Saeed academic journey begins with learning the language of the Koran (Arabic). Saeed *hijrah* to the country of this origin language, Saudi Arabia. In 1977-1979 he began deepening the Arabic language at the Institute of Arabic Basic, continued in the Institute of Arabic Medium (1979-1982) and at the Islamic University of Saudi Arabia (1982-1986). In the next year, with a desire to learn Islam Saeed thoroughly his studied to the western world (Australia). He started with the introductory class to

³² Abdullah Saeed (Professor), [http://en.wikipedia.org/wiki/Abdullah_Saeed_\(Professor\)/](http://en.wikipedia.org/wiki/Abdullah_Saeed_(Professor)/), accessed on May 6, 2016.

achieve the title of Professor in the field of Arabic and Islamic studies at the University of Melbourne (1987-2003).³³

Saeed Professionalism of the Islamic studies is getting geared up with his profession as a lecturer at the University of Melbourne. Saeed began his career in the Department of Asian Languages and Anthropology at the University of Melbourne as a lecturer, senior lecturer (1996), associate professor (2000) and full professor (2003). As a Professor of Arab and Islamic Studies, Research Focus Saeed is on the themes of the negotiation text and context, ijihad and interpretation. He was also a strong in guarding the reform of Islamic thought. Saeed also involved in various groups of interfaith dialogue. The ability of foreign language (Arabic, English, Maldives, Urdu, Indonesian, Malay and German) are both also deliver the academic and research into the world of international relations.³⁴

Saeed spreading his knowledge that his have gotten by means of scientific publications and also through lectures. He taught at the undergraduate and post-graduate University of Melbourne. Subjects which is taken by him they are: *Great Texts of Islam: the Koran; Great Empires of Islamic Civilization; Priciple of Islamic Finance; Koranic Hermeneutic; Priciple of Islamic Law; Islam and Human Rights; and*

³³ Abdullah Saeed, *Curriculum Vitae of Abdullah Saeed*, <http://abdullahsaeed.org/aboutme/>, Accessed on May 6, 2016.

³⁴ Abdullah Saeed, *Curriculum Vitae of Abdullah Saeed ...* compare well with Lien Iffah Naf'atu Fina, *Interpretasi Kontekstual: Studi atas Pemikiran Hermeneutika al-Qur'an Abdullah Saeed*, Thesis, not published, (Yogyakarta: Tafsir Hadith Faculty Ushuluddin State Islamic University Sunan Kalijaga, 2009), p. 22.

Islam and Muslims in Australia. In terms of scientific publications Saeed belong to someone who is very productive, both in the form of books, freelance research, prociding international seminar even to international journals. Knowledge and experience as well as an international research network to make an academic Saeed has considered in the World.

The following will be described in greater detail about the intellectual biography of Saeed:

1. Educational History of Abdullah Saeed

Educational history of Saeed starts from the world of the Middle East (Saudi Arabia) to the West (Australia), more detail is as follows:³⁵

- a. Year 1977-1979, Arabic Studies at the Institute of Arabic Language Basics in Medina Saudi Arabia.
- b. Of 1979-1982, Arabic Studies at the Institute of Arabic Medium in Medina Saudi Arabia.
- c. Year 1982-1986, First Strata BA (Bachelor of Arts) in Arab and Islamic Studies at the Islamic University of Saudi Arabia.
- d. In 1986-1987, beginner courses (Master of Arts Preliminary) in the Department of Middle Eastern studies at the University of Melbourne Australia

³⁵ Abdullah Saeed, *Curriculum Vitae of Abdullah Saeed..* Compared with, <http://asianinstitute.unimelb.edu.au/people/staff/saeed.html> Accessed on May 6, 2016.

- e. Year 1992-1994, Postgraduate full-MA (Master of Arts) in the Department of Applied Linguistics at the University of Melbourne Australia.
- f. Year 1988-1992, doctoral Ph.D (Doctor of Philosophy) in Islamic Studies at the University of Melbourne Australia.

2. Job History of Abdullah Saeed

Next will be described on employment history Abdullah Saeed, as follows:³⁶

- a. 1988-1992 years as a tutor and lecturer *part-time* dalam mata study Arabic Language and Literature, and Middle East Studies at the University of Melbourne.
- b. In 1991-1992 as the coordinator of the courses of Arabic and Islamic Studies at the College of King Khalid Victoria.
- c. 1993-1995 years as a consultant courses in Arabic and Islamic Studies at the College of King Khalid Victoria.
- d. 1993-1995 years as an Assistant Lecturer in the subject of Arabic Studies in the Department of Asian Languages and Anthropology Faculty of Languages University of Melbourne.
- e. In 1996-1997 as Deputy Chairman / Chief Executive of the Department of English University of Melbourne.

³⁶ Abdullah Saeed, *Curriculum Vitae of Abdullah Saeed..*

- f. In 1996-1999 as a Senior Lecturer in the course of Arab and Islamic Studies in the Department of English University of Melbourne.
- g. 1999 as a *Visiting Scholar* at SOAS, University of London (SOAS) Universtas London.
- h. From 1998-2003 as Deputy Director of the Asia Institute (*Institute of Asian Language and Societies*) University of Melbourne.
- i. In 2003-2004 as Managing Director Asia Institute (*Institute of Asian Language and Societies*) University of Melbourne.
- j. 2003-present as the Sultan of Oman Professor in the Field of Arab and Islamic Studies University of Melbourne.
- k. 2005-present Director of Pusast Contemporary Islamic Studies University of Melbourne.
- l. Year 2007-present as the Director of the *National Centre of Excellence for Islamic Studies* University of Melbourne.
- m. 2007-present Director of Assistant Professor Faculty of Law, University of Melbourne .
- n. 2007-present as the Board of Examiners (Text and Tradition) Victorian Curriculum Assessment Authority.
- o. 2009-present as a Member of UNESCO Commission of Australia in the Foreign Relations Department and Trade in Australia.

p. 2009-present as a Board member of the Australia-Thailand Institute of the Ministry of Foreign Relations and Trade in Australia.

3. Scientific Publications of Abdullah Saeed

Academic of Abdullah Saeed classified as very productive in terms of research, research and writing. This is evident from the number of scientific papers have been published. Here are some of the works of Saeed by category:³⁷

a. Publication in book form:

1. *The Qur ' an: An Introduction*. Oxon (UK) and New York: Routledge, 2008. 268 pages.
2. *Islamic Thought: An Introduction*. Oxon (UK) and New York: Routledge, 2006. 200 pages.
3. *Interpreting the Qur ' an: Towards a Contemporary Approach*. Oxon (UK) and New York: Routledge, 2006. 192 pages.
4. *Freedom of Religion, Apostasy and Islam* [with Hassan Saeed, Author 2]. Hampshire: Ashgate Publishing, 2004. 227 pages.
5. *Islam in Australia*. Sydney: Allen & Unwin, 2003. 232 pages.

³⁷ Abdullah Saeed, *Curriculum Vitae of Abdullah Saeed* .. The scientific papers that written above do not include of research reports were not published.

6. *Essential Dictionary of Islamic Thought* [with Muhammad Kamal and Christina Mayer, Authors 1 & 3]. Adelaide: Seaview Press, 2001. 224 pages.
7. *Islamic Banking and Interest: A Study of the Prohibition of Riba in Islam and its Contemporary Interpretation*. Leiden: EJ Brill, 1996. 169 pages.
8. *Islam and Human Rights*. 2 vols. Cheltenham Glos, UK: Edward Elgar Publishing. 700 pages. 2012
9. *Islamic Family Law in Australia*, co-edited with Helen McCue. Melbourne: Melbourne University Publishing. 150 pages. (In press).
10. *Islamic Political Thought and Governance*. 4 vols. Oxon (UK) and New York: Routledge, 2011. 1680 pages.
11. *Approaches to the Qur'an in Contemporary Indonesia*. Oxford: Oxford University Press in association with the Institute of Ismaili Studies (London), 2005. 270 pages.
12. *Islam and Political Legitimacy*, co-edited with Shahram Akbarzadeh (Editor 1). London: RoutledgeCurzon, 2003. 210 pages.
13. *Muslim Communities in Australia*, co-edited with Shahram Akbarzadeh (Editor 2). Sydney: University of New South Wales Press, 2001. 309 pages.

14. *Muslim Australians: Their Beliefs, Practices and Institutions*. Canberra: Australian Government, 2004. 81 pages.
15. *Modern Standard Arabic: An Introduction* [with Christina Mayer and AG Abdul Raheem, Authors 2 & 3]. Melbourne: MIALS, 2001. 117 pages.
16. *Modern Standard Arabic: Beginners Book 1* [with Christina Mayer and AG Abdul Raheem, Authors 2 & 3]. Melbourne: MIALS, 2001. 219 pages.
17. *Modern Standard Arabic: Beginners Book 2* [with Christina Mayer and AG Abdul Raheem, Authors 2 & 3]. Melbourne: MIALS, 2001. 318 pages.
18. *Modern Standard Arabic: Intermediate Book 1* [with Christina Mayer and AG Abdul Raheem, Authors 2 & 3]. Melbourne: MIALS, 2001. 290 pages.
19. *Modern Standard Arabic: Intermediate Book 2* [with Christina Mayer and AG Abdul Raheem, Authors 2 & 3]. Melbourne: MIALS, 2001. 325 pages.
20. *Sacred Place and Sacred Life in Islam* [with Ian Weeks, Author 2]. Geelong: Deakin University Press, 1990. 116 pages.
21. *Questioning the Islamic Bank: Bank Interest Criticism Interpretation The Neo-Revivalists*. Trans. Arif

Maftuhin. Jakarta: Paramadina, 2004. 257 pages. (Indonesian translation of Islamic Banking and Interest, 1996)

22. *Introdução ao Pensamento Islâmico, O Saber da Filosofia*, Portugal, 2010. 230 pages. (Portuguese translation of Islamic Thought: An Introduction, 2006)

b. Publication in the Journal form:

1. "Islamic Reform: Salafiya, Modernism and Revival," in John Esposito and Emad Sahin (eds.), *Oxford Handbook of Islam and Politics*. Oxford: Oxford University Press, (In Press).
2. "Pre-modern Islamic Legal Restrictions on Freedom of Religion, with Particular Reference to apostasy and its punishment." In Anver Emon et. al. (Ed.) *Islamic Law and International Human Rights Law: Searching for Common Ground* ?. New York: Oxford University Press. 2012: 226-246.
3. "History of Sukuk: Pragmatic and Idealist Approaches to Structuring Sukuk." (Saeed & False). In Ariff, and Mohamad Iqbal (eds), *The Market for Sukuk Islamic Debt Securities: The Theory and Practice of Profit Sharing Investment*. Cheltenham, United Kingdom: Edward Elgar Publishing. 2012: 42-66.
4. "The Self-Perception and the Originality of the Koran: Koran 2: 23-24; 3:44; 10:15; 69: 38-47, "in David Marshall (ed.)

With an Afterword by Rowan Williams, *Communicating the Word: Revelation, Translation, and Interpretation in Christianity and Islam*. Washington: Georgetown University Press, 2011: 98-104.

5. "Authority in Koranic Interpretation and Interpretive Communities," in David Marshall (ed.) *With an Afterword by Rowan Williams, Communicating the Word: Revelation, Translation, and Interpretation in Christianity and Islam*. Washington: Georgetown University Press, 2011: 115-123.
6. "Rethinking Classical Muslim Law of Apostasy and the Death Penalty," in Paul Marshall and Nina Shea (eds.), *Silenced*. Oxford: Oxford University Press, 2011
7. "Reflections on the Establishment of Sharia 'Courts' in Australia," in Rex Ahdar and Nicholas Aroney (eds.), *Shari'a in the West*. Oxford: Oxford University Press, 2011: 223-238.
8. "How Muslims View the Scriptures of the People of the Book: Towards a reassessment?" In Luca Anceschi, Joseph A. Camilleri, Ruwan Palapathwala and Andrew wicking (eds.), *Religion and Ethics in a Globalizing World - Conflict, Dialogue And Transformation* , New York: Palgrave Macmillan, 2011: 191-210.

9. "Muslim Debates on Human Rights and Freedom of Religion," in Brian Galligan (ed.), *Human Rights in Asia*. Cheltenham Glos, UK: Edward Elgar Publishing, 2011: 25-37.
10. "Adapting Understanding of Riba to Islamic Banking: Some Developments," in Mohamed Ariff and Munawar Iqbal (eds.), *Foundations of Islamic Banking*. Cheltenham Glos, UK: Edward Elgar Publishing, 2011: 51-64.
11. "Muslims in the West and Their Attitudes to Full Participation in Western Societies," in Geoffrey B. Levey and Tariq Modood (eds.), *Secularism, Religion and Multicultural Citizenship*. Cambridge: Cambridge University Press, 2009: 200-215.
12. "Reading the Quran," in Aryn Sajoo (ed.), *A Companion to the Muslim World*. London: IB Tauris, 2009: 55-86.5
13. "Tendenze fondamentali dell'odierna esegesi coranica e idee emergenti per un approccio contestuale al Corano," in *Le religioni e il mondo moderno (Islam)*. Milan: Giulio Einaudi, 2009: 295-315.
14. "Trends in Contemporary Islam: A Preliminary Attempt at a Classification," *The Muslim World*, vol. 97, 2007: 395-404.
15. "Non-Muslims under Muslim Rule: Evolution of a Discourse," in Anthony Reid and

16. Michael Gilson (eds.), *Islamic Legitimacy in a Plural Asia*. London and New York: Routledge, 2007: 14-27.
17. "Koran and Hadith," Project Abraham [CD-ROM]. Jewish Council of South Australia, in 2006.
18. "Muslims in Australia," in Fethi Mansouri (ed.), *Australia and the Middle East: A Front Line Relationship*. London: Tauris Academic Studies, 2006: 73-83.
19. "Muslims in the West Choose Between Isolationism and Participation," Sang Saeng, vol. 16. Seoul: Asia-Pacific Centre for Education and International Understanding / UNESCO, 2006. 8-11.
20. "Contextualizing," in Andrew Rippin (ed.), *The Blackwell Companion to the Koran*. Oxford: Blackwell Publishing, 2006: 36-50.
21. "Introduction: The Koran, Interpretation and the Indonesian Context," in Abdullah Saeed (ed.), *Approaches to the Koran in Contemporary Indonesia*. Oxford: Oxford University Press in association with the Institute of Ismaili Studies, 2005: 1-16.
22. "Islamic Religious Education and the Debate on its Reform Post-September 11," in Shahram Akbarzadeh and Samina Yasmeen (eds.), *Islam and the West: Reflections from Australia*. Sydney: UNSW Press, 2005: 63-76.

23. "Islamic Banking and Finance: In Search of an Islamic but Pragmatic Model," in Virginia Hooker and Amin Saikal (eds.), *Islamic Perspectives on the New Millennium*. Singapore: Institute of Southeast Asian Studies, 2004: 113-129.
24. "Fazlur Rahman: A Framework for Interpreting the Ethico-Legal Content of the Qur'an," in Suha Taji-Farouki (ed.), *Modern Muslim Intellectuals and the Qur'an*. Oxford: Oxford University Press in association with the Institute of Ismaili Studies, 2004: 37-66.
25. "Nurcholish Madjid and the Interpretation of the Koran: Religious Pluralism and Tolerance [with Anthony H. Johns as Author 1], " in Suha Taji-Farouki (ed.), *Modern Muslim Intellectuals and the Qur'an*. Oxford: Oxford University Press in association with the Institute of Ismaili Studies, 2004: 67-96.
26. "The Official Ulema and the Religious Legitimacy of the Modern Nation State," in Shahram Akbarzadeh and Abdullah Saeed (eds.), *Islam and Political Legitimacy*. London and New York: RoutledgeCurzon, 2003: 14-28.
27. "Islam and Politics [with Shahram Akbarzadeh as Author 1]," in Shahram Akbarzadeh and Abdullah Saeed (eds.), *Islam*

and Political Legitimacy. London and New York: RoutledgeCurzon, 2003: 1-13.6

28. "The Charge of Distortion of Jewish and Christian Scriptures: Tension between the Popular Muslim View and the Qur ' anic View, " The Muslim World, vol. 92 nos. 3 & 4, Fall 2002: 419-36.
29. "The Muslim Communities in Australia: The Building of a Community [with Anthony H. Johns as Author 1], " in Yvonne Yazbeck Haddad and Jane I. Smith (eds.), Muslim
30. Minorities in the West: Visible and Invisible. California: Altamira Press, 2002: 195-216.
31. "Jihad and Violence: Changing Understanding of Jihad Among Muslims," in Tony Coady and Michael O ' Keefe (eds.), Terrorism and Justice: Moral Argument in a Threatened World. Melbourne: Melbourne University Press, 2002: 72-86.
32. "Searching for Identity: Muslims in Australia [with Shahram Akbarzadeh as Author 2], " in Abdullah Saeed and Shahram Akbarzadeh (eds.), Muslim Communities in Australia. Sydney: UNSW Press, 2001: 1. - 11.
33. "Muslim Community Cooperative of Australia as an Islamic Financial Service Providers, " in Abdullah Saeed and

- Shahram Akbarzadeh (eds.), *Muslim Communities in Australia*. Sydney: UNSW Press, 2001: 188 - 205.
34. "Indonesian Islamic Banking in a Historical and Legal Context," in Timothy Lindsey (ed.), *Law and Society in Southeast Asia*. Sydney: Federation Press, 1999: 323 - 338.
35. "Towards Religious Tolerance through Education in Islamic Reform: The Case of the State Institute of Islamic Studies of Indonesia." *Journal of Indonesia and the Malay World*, vol. 27 no.79, 1999: 177 - 191.
36. "Rethinking Citizenship Rights of Non-Muslims in an Islamic State: Rashid al-Ghannushi's Contribution to the Evolving Debate." *Journal of Islam and Christian-Muslim Relations*, vol. 10 no. 3, 1999: 307-323.
37. "Rethinking 'Revelation' as a precondition for reinterpreting the Koran: A Koranic Perspective." *Journal of Koranic Studies*, vol. 1 no. 1, 1999: 93 - 114.
38. "Pragmatism and idealism in Islamic Banking: The Application of Shari'a Principles and Adjustments." *Journal of Arabic, Islamic and Middle Eastern Studies*, vol. 4 no. 2, 1998: 89 -111.
39. "Ijtihad and Neo-Modernist Innovation in Islamic Thought in Indonesia." *Journal of Islam and Christian-Muslim Relations*, vol. 8 no. 3, 1997: 279 - 295.

40. "The Moral Context of the Prohibition of Riba in Islam Revisited." *American Journal of Islamic Social Sciences*, vol. 12 no. 4, 1995: 496-517.
41. "Islamic Banking in Practice: The Case of Faisal Islamic Bank of Egypt." *Journal of Arabic, Islamic and Middle Eastern Studies*, vol. 1 no. 3, 1995: 28 - 46.
42. "A Fresh Look at the Freedom of Belief in Islam." In Damien Kingsbury and Greg Barton (eds.), *Difference and Tolerance: Human Rights Issues in Southeast Asia*. Geelong: Deakin University Press, 1994.
43. "Islamic Banking in Practice: A Critical Look at the Murabaha Financing Mechanism," *Journal of Arabic, Islamic and Middle Eastern Studies*, vol. 1 no. 1, 1993: 59 - 79.

The conclusion that can be reached from these explain of intellectual biography of Saeed is; *First*, from his educational history, Saeed has a background that really support to the development of his job and his knowledge in Islamic Studies such his hold now. *Second*, from his Scientific publication of Saeed has showed that tough preference of Saeed is focused by renewal of contemporary Islamic thought. So, the intellectual biography of Saeed was gave the big influence to the development of contemporary Islamic world, especially to Progressive Islam that in process of development in this modern era.

B. PROGRESSIVE ISLAMIC THOUGHT OF ABDULLAH SAEED

4. Orientation, Contribution, and Potition of Progressive Islam

Mapping of Progressive Islamic thought can be recognized by two aspects, namely the reading of religious texts and agendas or themes of social religious that their stretcher.³⁸ A review of these two aspects would be able to deliver to an understanding of the independence of the position of Progressive Islam in the tough of *truth claims* between groups of modern Islamic thought.

According to Farid Esack, use of the word "Islam" coupled with the word "progressive" began in 1983 when Suroosh Irfani tried to popularize in his article titled *Revolutionary Islam in Iran-Popular Liberation or Religious Dictatorship*.³⁹ He said that the words of the progressive have been used by the flow leftist figures such as Sir Sayyid Ahmad Khan and Jamaluddin al-Afghani.

Saeed said that the Progressive Islam is a spirit of how the teachings of Islam that could *salih fi kulli zaman wa makan*. The subject known as a *Progressive Muslims*, whose they are a modern thinkers on religion that seeks to reinterpret religious teachings in order to answer all needs of a modern society, the method of thinking used by Progressive Muslims is what they calls the term *progressive ijthadi*.⁴⁰ As a trend, not a movement, the Progressive Muslim

³⁸ Nurrochman, *Pemikiran Islam Progresif Khaled Abu El-Fadl*.. p. 19.

³⁹ Farid Esack, *In Search of Progressive Islam Beyond 9/11*, in Omid Safi, (ed), *Progressive Muslim: On Justice, Gender, and Pluralism*, One World Publication, Oxford, 2005, p. 79-82.

⁴⁰ Abdullah Saeed, *Islamic Thought ...* p. 142-150.

accommodate all groups and circles that have stood for the universal values of Islam until can to answer the needs of modern society.⁴¹

The main task of the Progressive Muslims is to think again, reinterpretation, and holds the universal values of Islam. To that end, according to Saeed some of the terms that they use to describe "Progressive Islam" are: justice, gender equality, recognition of Islam as the development of civilization, criticism of Islamic tradition, pluralism, and interfaith dialogue.⁴² The basis of rationale is by adopting the Muslims in view of the Koran, they accommodate the message of the Quran to show the needs of the modern world. Progressive Muslims played the part of both sides of both academic intellectual and social activist, facilitate the struggle for a better world.⁴³

Omid Safi then define the meaning of progress with the precondition that something is considered advanced when it gives change for the better, more useful, and more efficient for human life and the world at large.⁴⁴ Furthermore, Omid Safi formulate that something called more well whenever has fulfilled two key words, namely justice (*al-'adl*) and the goodness or beauty (*al-ihsan*). Both of

⁴¹ They include the Modern Muslim groups; liberal, feminist, and also traditionalist-renewal. Abdullah Saeed, *Islamic Thought ...* p. 150.

⁴² Compare with the view of Omid Safi, that the Progressive Islam is includes of several themes: work hard to bring a justice and plurality of society through criticism of Islamic tradition, hunting for social justice, giving attention to gender equality as the basis of human rights, and religious views on pluralism. Omid Safi , *What is Progressive Islam*, (The International Institute for the Study of Islam in the Modern World (ISIM) News Letter, No.13, December 2003), p. 48.

⁴³ Abdullah Saeed, *Progressive Muslims...* p.4

⁴⁴ Omid Safi, *Challenges and Oppuortunities for The Progressive Muslim in North America*, *Muslim Public Affairs Journal*, (January 2006), p. 77.

these keywords are then translated on social justice, gender equality, and pluralism.⁴⁵ Ebrahim Musa believes that the third item on these agenda is a prerequisite for the creation of a global world order which is not only peace, but also justness.⁴⁶

A prominent characteristic possessed by progressive Muslims above, are:

1. Adopting the view that some areas of traditional Islamic law is requires a substantial change and reform in order to adapt to the needs of the Muslim community today.
2. Tend to support the need for fresh thinking (*fresh ijtihadi*) and new methodologies in *ijtihad* to address a contemporary problems.
3. Some of them also combine or integrate the creative heritage of traditional Islamic scholarship with the modern western thought and education.
4. In an optimistic and firmly believes that the dynamics and social change, both in the realm of intellectual, moral, legal, economic or technological, can to be reflected in Islamic law.
5. Do not feel bound by dogmatism or certain schools of law and theology studies in approach.

⁴⁵ Omid Safi, *Introduction: The Time They Are a Changing- A Muslim Quest for Justice, Gender Equality, and Pluralisme*, in Omid Safi (ed), *Muslim Progressive on Justice, Gender and Pluralisme* (Oxford: Oneworld, 2003), p. 6.

⁴⁶ Ebrahim Moosa, *Islam Progresif: Refleksi Dilematis tentang HAM, Modernitas, dan Hak-Hak Perempuan dalam Hukum Islam*. Tslt. Yasrul Huda (Jakarta: ICIP, 2005), p. 39.

6. More putting pressure point thinking on various issues of social justice, gender equality, human rights and harmonious relations between Muslims and non-Muslims.⁴⁷

Furthermore can be elaborated of ten more technical criteria of thought which distinguishes progressive Islam, namely that progressive Islamic thought has views and beliefs as follows:

1. Feel comfortable when reinterpret or re-implement the law and the basic principles of Islam;
2. That gender equality is emphasized in Islam;
3. That all religions inherently are same and should be protected constitutionally;
4. That all people are equally well;
5. That the beauty is an inherent part of the Islamic tradition both found in art, architecture, poetry and music;
6. Support freedom of speech, be convinced and association;
7. Show compassion to all beings;
8. The presumption that the rights of "the other people" exists and needs to be respected;
9. The attitude of moderate and anti-violent to solve the society problems;
10. Joy and enthusiasm when discussing issues relating to the role of religion in the public level.⁴⁸

⁴⁷ Abdullah Saeed, *Islamic Thought...* p. 150-151.

Of the criteria above it is clear that progressive Muslims are required mastery of the basics of Islam and contemporary issues and then through the process of methodological thinking can be answered. Because of this, Saeed also called it by *progressive ijtihadist*. They are required to jump far beyond apologia that is often echoed by the traditionalist or modernist and well beyond the limits declared by the neo-modernist.⁴⁹

Justice, goodness and beauty are universal values of Islam which is the soul of all the provisions of the law. All the rules and traditional legal status that is not in favor of justice, goodness and beauty should be left to later be replaced with provisions and legal status in accordance with the universal principles of Islam by using a approach of *progressive ijtihadi*. In this way, Islam would be able to exist in the world arena and was able to answer a contemporary issues such as the issue of human rights, gender, pluralism and others.

Viewed from orientation and progressive Islamic contributions that have explained above, we will be able to know where the position of progressive Islamic thought. If we look at the current social reality, Muslims overcome a problem of how to implement the commandments of the God in the midst of changes in various aspects of life as a consequence of modernity. On the one hand, the Muslims felt obliged attached to their Islamic traditions through sacred source

⁴⁸ Abdullah Saeed, *Progressive Muslims...* p.4

⁴⁹ Abdullah Saeed, *Progressive Muslims...* p.15

of authority and set the understanding that was settled for centuries. At the same time, on the other hand, they are dealing with a phenomenon that is present in most (large) aspects that is not combine with the tradition of being held and it was settled. Facing such a situation and exacerbated by the lack of religious understanding holistic and comprehensive, the attitude of Muslims patterned into two with each other, at the extreme point respectively, opposite to each other.

The first attitude shown by fanatical Islamic groups (neo-traditionalist) which requires absolute attachment to the traditions, and the utopian attempt to manipulate to fit the contemporary phenomenon that tradition, or even wants to deny them altogether. The spirit cling to tradition coupled with the spirit of newness to the establishment subjecting tradition with the slogan "the times should follow Islam rather than vice versa, because *al-Islam salih kulli Zaman wa makan* – in often they lead to the rejection of modernity and for the group is often dragged into puddles of violent behavior (*violence*) on behalf of the enforcement of Islamic law.

Such an attitude is a characteristic of typical groups of religious fanatics both within and outside the Muslim community.⁵⁰ The second attitude, opposite of the first, shown by a

⁵⁰ Such an attitude not only to bring the local and regional scale effect but there are also world-wide in the sense of international attention and concern, as revealed by Jessica Stern and Mark Jurgensmeyer. See Jessica Stern, *Terror in the Name of God: Why Religious Militants Kill* (New York: Harper Collins Publishers, 2003). Stern's research emphasizes the basic reasons for the search of violence and terror religious backgrounds of the characters perspective perpetrators, and how terrorist organizations conduct / manage violence and terror. A similar study conducted by

group of highly affirmative towards modernity such a way that they are not reluctant to dismantle even abandon the tradition, but, in the other hand, they are not critical of the negative dimensions of contained modernity, such as colonialism and the new imperialism. Such an attitude, in the identification of Omid Safi, adopted by the Liberal Islam group. He stated, *"Liberal advocates of Islam Generally display an uncritical, almost devotional identification with modernity, and often (but do not always) a by-pass discussions of colonialism and imperialism."*⁵¹

The second attitude is deemed by a group of progressive Muslims as understanding of inadequate again to present Islam in an elegant, Islam is *well-adjusted* and *well-dialogueable* with modernity but at the same time remain will taken care of the tradition, not reduced its authenticity, and maintained its identity. In that position progressive Muslims with progressive Islamic thought set its existence, a kind of synthesis between Islamic fanatics (neo-traditionalist) and liberal Islam. Progressive Muslims also assert themselves as an alternative to the XXI century Islamic thought that a little or a lot different from the previous century. Saeed stated that *Ijtihadits Progressive* (Progressive Muslims) come from among those

Mark Juergensmeyer but with a different focus of analysis, namely from the aspect of the cultural context and the context of changing social actors in global politics. See Mark Jurgensmeyer, *Terror in the Mind of God: The Global Rise of Religious Violence*, 3rd Edition (Barkley and Los Angeles: University of California Press, 2003).

⁵¹ Advocacy of liberal Islam generally show identification that is not critical and almost serve to modernity, and often (but not always) not heed discussion about colonialism and imperialism. Omid Safi, *What is ...*, p. 48.

who have the background and intellectual orientation. They can reconsideration of an intellectual descendant who comes from Modernists groups such as in the following line: modernist, neo-modernist, progressive. That is not a movement but includes some trends and sounds in it, namely: Muslim modernist, liberal, femiminis, and also neo-traditionalist.

Progressive ijtihadists not engaged to create a new religion or doctrine but trying to re-interpretation of the traditional religious foundation to accommodate a contemporary life. In the language of Omid Safi, what is done by progressive Muslims is "*is not so much an epistemological rupture from what has come before as a fine-tuning, a polishing, a grooming, an editing, a re-emphasizing of this and a correction of that.*"⁵²

5. Gender Equity in Progressive Islam

Progressive Muslims by Saeed basically putting pressure point thinking on three agenda with regard to human rights issues.⁵³ Third on the agenda is, *first* realizing social justice that does not restrict social strata, race, class, ethnicity, religion and seal any social; *the second* propagating gender equality in every aspect of life, both in the economic, social, cultural, religious, educational, legal, and so

⁵² Omid Safi, *Progressive Muslim...* p.16.

⁵³ Abdullah Saeed, *Islamic Thought...* p. 151.

on; *third* receiving a plurality as a fact that must be respected and implemented.⁵⁴

Omid Safi of the view that "Muslims can not be justice without a guarantee of justice for Muslim women. So the progressive interpretation of Islam should include the issue of gender equality. Gender equality is a benchmark for the wider concern about social justice and pluralism."⁵⁵ The issue of gender is not only about women but also men. Gender inequality is not just about the system that oppresses women, but also dehumanizing men involved.⁵⁶ It should be noted from Omid Safi view is equality and gender justice should be given to women rather than as a gift or mercy on them, but because they are part of humanity that have the right inherent of all which they are supposed to get.⁵⁷

Saeed gives some examples of writings of Progressive Muslims of problems that related to gender.⁵⁸ One of them is Kecia Ali's writing, who said that there was some confusion in Islamic jurisprudence. Acknowledging the deeply patriarchal and discriminatory elements in Islamic jurisprudence is not cause for despair. It does not mean accepting that God intends Muslim women and men to live in hierarchical, authoritarian marital relationships. On

⁵⁴ Omid Safi, *Introduction...* h. 13-14.

⁵⁵ Omid Safi, *What is Progressive Islam*, (The International Institute for the Study of Islam in the Modern World (ISIM) News Letter, No.13, Desember 2003), p. 49.

⁵⁶ Omid Safi, *Introduction..* p. 9-10.

⁵⁷ Omid Safi, *Introduction..* p. 10-11.

⁵⁸ Abdullah Saeed, *Islamic Thought...* p. 151.

the contrary a thorough exploration and analysis of traditional jurisprudence will reveal the extent to which its rules are seriously flawed; they cannot be divine.

The role of human agency in the creation of these laws is evidenced by the diversity of legal views as well as the creation of a system of male marital privilege and sharply differentiated spousal rights that does not simply emerge wholly formed from the Koran. This system is the result of an interpretation, indeed of numerous acts of interpretation, by particular men living and thinking at a specific time. Their jurisprudence is shaped not by any malicious misogyny, or so I choose to believe, but rather by assumptions and constraints of the time in which it was formulated.⁵⁹

More Amina Wadud explained that it needed a new *ijtihad* in the interpretation of the Koran. She argues for an interpretation of the Koran that is appropriate to contemporary realities, a concern of many Muslim women who feel that Koranic exegesis in the past did not sufficiently take into account the concerns and needs of women. In her *Koran and Woman*, she argues:⁶⁰

No interpretation is definitive. I have attempted here to render a reasonably plausible interpretation to some difficult matters. The basis for this plausibility is the significance I draw from the text with regard to the modern woman: the significance of her life-style to her concerns and interactions in her context. I am also

⁵⁹ Kecia Ali, "Progressive Muslim and Islamic Jurisprudence: the necessity for critical engagement with marriage and divorce law", in: Omid Safi, *Muslims Progressive*, p. 183. Compare with Abdullah Saeed, *Islamic Thought...* p. 151.

⁶⁰ Abdullah Saeed, *Islamic Thought...* p. 152.

influenced by prior text. I have demonstrated the relevance of the Koran to the concerns of the modern woman. In doing so, I provide a reading that transcends some of the limitations in previous interpretations. On one hand, some limitations exist in the text – such as when it specifically addresses the social situation in Arabia at the time of revelation – on the other hand, most limitations are reflections of the interpreters who restrict the universality of the divine message to their individual perceptions. It is failure to understand this disparity between particular usages in the Quran and its general usages that have led to some of the variations in opinions concerning the overall Quranic world-view. I believe the Koran adapts to the context of the modern woman as smoothly as it adapted to the original Muslim community fourteen centuries ago. This adaptation can be demonstrated if the text is interpreted with her in mind, thus indicating the universality of the text. Any interpretations which narrowly apply the Quranic guidelines only to literal mimics of the original community do an injustice to the text. No community will ever be exactly like another. Therefore, no community can be a duplicate of that original community. The Koran never states this as the goal. Rather, the goal has been to emulate certain key principles of human development: justice, equity, harmony, moral responsibility, spiritual awareness, and development. Where these general characteristics exist, whether in the first Muslim community or in present and future communities, the goal of the Quran for society has been reached.

Text of the Koran and Sunnah is the domain of the most difficult reinterpreted, at least it becomes a heavy burden for Progressive Muslims movement. During these texts *shari'ah* translated and implemented without associating with the conditions of the times, locus, cultural and anthropological there. Progressive Muslims cope with some tactical steps to respond to these problems by formulating a concept of *multiple critique*. Criticism double-grounded approaches to a variety of directions (*a multi-headed approach based*) that is based

on a critique simultaneously to the various communities and the context in which we are involved directly in therein.⁶¹

Double critique is based on a very simple idea. Omid Safi said that every man is born without a distinguished by Muslim-non-Muslim, male-female, whatever race, color whatsoever, tribes whatever, and so on, have the same value, which is equally equipped with the value of the sanctity of the soul God.⁶² Therefore, all human beings are entitled to equal treatment, justice, equality and equal opportunities without having to distinguish the type of religion, gender, ethnicity, race, and others. With this addition, all forms of injustice, discrimination, colonialism, slavery, and all humanity inequality must be criticized and corrected.

As an example of using *multiple critique* could be explained below: *Progressives Muslim* criticism the discrimination of text interpretation of Islamic law against women who often used the fundamentalist orthodox, while on the other hand *Muslim Progressive* also reject the exploitation of women by the West with the jargon of gender equality and so forth. In this case, Safi criticized the mindset of the Orientalists who blindly assume that Islam has restricted the right of women to their differences with men in matters of polygamy and Islamic prohibition for women to marry a male non-Muslim, while the ban does not apply to men. They are in the view

⁶¹ Omid Safi, *Introduction..* p. 2

⁶² Omid Safi, *Introduction..* p. 3

of *Muslim Progressive* did not read the principle of benefit (*al-Maqasid al-syar'iyyah*) contained on the arrival of the provision.⁶³

6. Epistemology of Progressive Islamic Thought of Abdullah Saeed

Operationalization *ijtihad* of Progressive Muslims is one of the three models of *ijtihad* that most dominant in the modern era. Saeed revealed that the three models of *ijtihad* is the result of the influence of the historical development of Islamic law in some periods, namely:

- a. *The first* is the *text-based ijtihad*, This is the method of *ijtihad* generally recognized in classical Islamic scholarship and is still practised among traditionalist scholars. It is based on the foundation texts, as well as *ijma'* (consensus) and *qiyas* (analogy), and relies on the rules and principles of jurisprudence. For the scholar, each new problem should be seen in isolation. When a new problem emerges, the scholar identifies relevant texts of the sharia and then applies the rules and principles of jurisprudence. The text could be a verse of the Quran, a hadith or even a view of an early authority. The literal reading of texts and the strict application of principles of *fiqh* heavily emphasizes conformity and tradition, which are the hallmarks of this method.
- b. *Second* are *eclectic ijtihad*, in this method, when scholars face a problem or issue, they often attempt to justify a position by

⁶³ William Montgomery Watt, *Islamic Fundamentalism and Modernity* (London dan New York: Routledge, 1988), p. 144.

selecting texts such as verses, hadith or views of early authorities that support their preconceived positions. Their methodology is ad hoc, often opportunistic, and does not systematically follow clear principles or rules. No major consideration is given to the principles of jurisprudence and scholars often ignore textual or historical evidence contrary to their position. As far as intellectual honesty is concerned, this is the most hazardous and problematic approach of all. It has no clear boundaries, signposts or methods that can be followed. In this connection there is an effort to justify not search for the truth.⁶⁴

- c. *The third is a context-based ijtiḥad, (maqasid al-shari'ah 'ah-based ijtiḥad)*, This form of ijtiḥad existed in an embryonic form in early Islam. However, context-based ijtiḥad as it exists today should be seen as a relatively new phenomenon. It is distinguished by the fact that it attempts to understand a legal problem in its historical and modern contexts. If a problem emerges for which an Islamic view is needed, the scholar first looks carefully at the problem, identifying its features, purpose, and function in the society. If it is found that the problem, or a similar one, existed in the time of the Prophet, the scholar will

⁶⁴ When it is stated that ijtiḥad this model is an attempt to justify the "interests", it is already out of the definition of ijtiḥad that agreed by *jumhur usuliyyin*, which is an earnest effort to find the legal status of Personality 'of the propositions that there is. Confirms the text and history of different plays with the interests, is evidence of the lack of seriousness in the search for truth, but emotion to justify it.

examine the nature of the historical problem and will be guided by the concept of public interest or common good (*maslaha*). The scholar is concerned with the underlying objectives of the sharia in relation Legal thought to the problem, such as fairness, justice and equity. A decision is then made as to the attitude Muslims should adopt vis-a-vis the problem. In general, and usually, opinion will eventually refer to the common good as the *maqasid al-shari'ah'ah*.⁶⁵

From the three models of ijtiḥad noted above, that is an option and alternatives conducted by the *progressive Ijtihadists*. If the methodology of the classical era and the middle usually solve the legal problem with basing its on the text of the Koran, then understand what the text says about the problem and the farthest is link the text with the socio-historical context.⁶⁶ While *progressive ijtihadists* try to further by connect with the contemporary context so as to keep *up to date* and can be applied. Models such this is in fact done by the contemporary Muslim thinkers, such as Amina Wadud, Tariq Ramadan, Muqtader Khan, Bassam Tibi, Farid Esack, Ebrahim Moosa, Irshad Manji, Fazlur Rahman, Khaled Abou el Fadl, and so forth.

⁶⁵ Abdullah Saeed, *Islamic Thought*, p. 55.

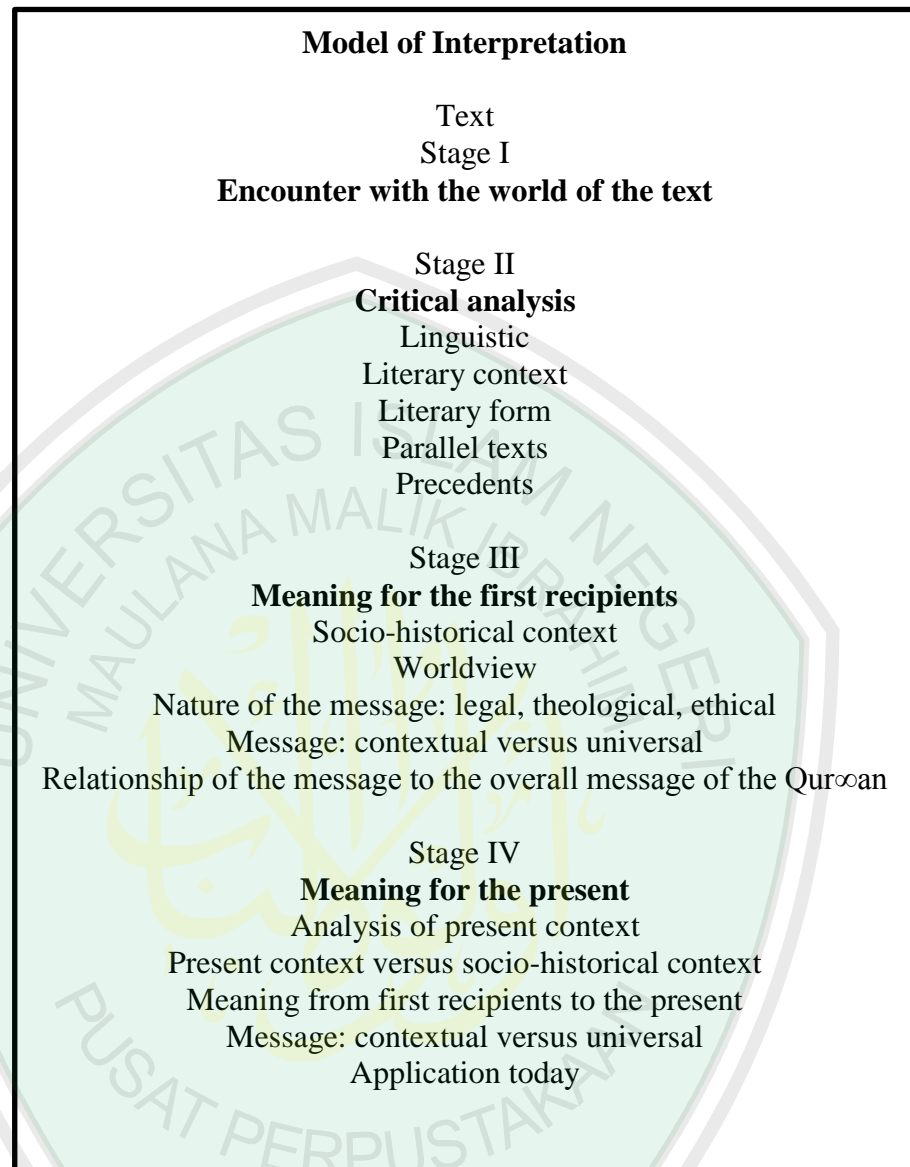
⁶⁶ Abdul Hamid A. Sulayman criticized the method of thinking of the classical jurists in two very substantial: *the first* is the *lack empiricism* due to the use of *multy-disciplinary approach*, such as sociology, psychology, economics and other determination in process of law; *the second* is *lack of overall systemization* as also stated by Ismail R. al-Faruqi and Fazlur Rahman. See his book entitled *Towards Islamic ad Theory of International Relations: New Direation for Methodology and Thought* (Herdon, Virginia: IIT, 1993), p. 87-94.

Relates to how the methodology of progressive ijtihadists reinterpreting the texts of the Koran, Saeed describes the seven main approaches: (1) attention to the context and dynamics of the socio-historical; (2) realize that there are some topics that are not covered by the Koran because time has not yet arrived at the time of the revelation of the Koran; (3) realize that each reading of the text of scripture should be guided by the principles of compassion, justice and fairness; (4) determine that the Koran recognize the hierarchy of values and principles; (5) knowing that allowed to move from one concrete example on generalizations or vice versa; (6) caution should be exercised when using other texts of the classical tradition, especially with regard to its authenticity; (7) the main focus on the needs of contemporary Muslims.⁶⁷

In praxis Saeed offered several steps that can be applied by a cleric to be able to interpret the sources of Islamic law. Saeed tried to formulate a practical method to correct the problem at these moment, apart from using the sacred texts, he also examines the context at the time of acceptance of the revelation that associated with the condition at the moment. Here are some steps in the operationalization of ijtihad.⁶⁸

⁶⁷ Abdullah Saeed, *Progressive Muslims...* p. 5.

⁶⁸ Abdullah Saeed, *Interpreting the Quran..* p. 150.



The first phase is an introduction to the text and the world. This stage of a general nature and has not entered into in the course of the analysis. This stage is something that naturally do every meet with the text.⁶⁹ The second stage, the interpreter discover what called by the text itself. What is meant by this text explanation can reached through a number of aspects. So at this stage it is not time to

⁶⁹ Abdullah Saeed, *Interpreting the Quran..* p.150.

text-associate with the first recipient community or with the present. At this stage must be done is:

First, linguistic analysis.⁷⁰ This analysis relates to the language of the text, the meaning of words and phrases, and syntax. In general, matters of linguistic and grammatical associated with the text. In this section also discussed *qira'at* (variance in reading the text). *Second*, the analysis of literary context. This analysis is to determine how the text is meant to function in a certain letter or more broadly in the Koran. For example, any verse that existed before and after the paragraph in question, how the composition and structure of the text, including the rhetorical style. *Thirdly*, literary form. This section is a paragraph story, worship, proverbs, parables, or the law. Knowledge of the things above is closely connected with the meaning. *Fourth*, the analysis of the texts that related. In this section, exploration of whether there are other texts that are similar to the text in question. If there is, then examined the level how the similarities and differences. *Fifth*, the relationship context. Identification of the texts that have similarities in terms of both content and context, then analysis by the chronology of revelation, if the texts are dropped before or after the text in question.

⁷⁰ Abdullah Saeed, *Interpreting the Quran..* p. 151.

The next stage is the third stage,⁷¹ that is explore the relationship between text with future of socio-historical context of revelation to see how the text is understood by the first recipient. *First*, contextual analysis. A review of historical and social information that includes analysis point of view, culture, customs, beliefs, norms, values and institutions of the first recipient of the Koran. Search above is also involves of specific search in the text meant, where they live and the time through the conditions, which also carried out searches issues well developed from the realm of politics, law, culture, economy and culture. *Second*, determine the nature of the message of the text, whether is it the text of the law, theological or ethical. *Third*, the exploration of the central messages or specific messages that appear to be the focus of this paragraph. Then investigate whether this paragraph is universal (not specific to situations, people or a particular context) or vice versa. The last point of this section is to determine the value from hierarchy of the paragraph its meant.⁷² *Fourth*, consider how a principal message of particular verse when linked to the objectives and broader issues in the Koran. Evaluate how certain text is received by the first receiver, how they interpret, understand and practice it.

⁷¹ Abdullah Saeed, *Interpreting the Quran*.. p.152.

⁷² Saeed provide the categorization of value hierarchy to: Values that are liabilities, Fundamental Values, Protectionall Values, Implementational Value, and Instructional Value. Abdullah Saeed, *Interpreting the Quran* .. p. 132-138.

The fourth phase is the last stage, give a portion to the withdrawal of the text by the present context.⁷³ At this stage the interpreter determine the issues, problems, and needs of today which seemed relevant to the text message that is interpreted. Furthermore, the interpreter is explore the social, political, economic and cultural context in accordance with the text. Next, exploration of values, norms and specific intuition that support text messaging. Interpreter then compares the present context the socio-historical context of the text to understand the similarities and differences between the two. After that, connect how the meaning of the text, as understood, interpreted and practiced by the first receiver to the present context, after considering the similarities and differences above. The last part of this phase is the evaluation of the universality or specificity of the message text and the development of whether he is related or is not related to the purpose and broader issues in the Koran.

Some of the above methodological stages will allow to explain how the intent of the Koran into contextual and reflect certain social realities. After that, at the same time can equate the form of ijtihad which has been practiced by al-Koran in advance with the recipient community now. Only then, the universal truth of scripture will continue to shine, to grow in the contemporary world.

⁷³ Abdullah Saeed, *Interpreting the Quran..* h.152.

CHAPTER IV
ORIENTATION OF RIGHTS AND DUTIES OF HUSBAND
AND WIFE IN KHI

C. ONTOLOGY OF RIGHTS AND DUTIES OF HUSBAND AND WIFE IN KHI

The relationship between husband and wife have an important role in realizing the goal of marriage. The purpose of marriage is to build a happy family, eternal, and immortal based on God. For achieve these objectives is dependent upon optimizing the role of husband and wife. Therefore, marriage is not just the sight as a medium to realize the Shari'ah of God in order to obtain the good of the world and the hereafter, but also a civil contract that would give rise to rights and duties between the two. Before discussing more about the rights and duties in the KHI, need for a basic understanding of the rights and duties of husband and wife in general, and also the opinion of scholars' in the classical that can be a foundation of Islamic law.

3. Overview of Rights and Duties of Husband and Wife

Definition of rights in terms of language can be understood from the Latin with *ius*, whereas in the Dutch language used *recht*, French used the term *droit*, and in English used the

term *law*,⁷⁴ while the Arabic used the term *al-Haq* were also able to understand with provisions, liability, correctness or specificity. In terms understanding of rights can be seen as follows:

- a. According to CST Cansil rights is permission or authority granted by law to an individual.
- b. According to Rudolf von Ihering, the right is the interests protected by the law.
- c. According to Bernhard Windscheid, the right is the *power* given by the rule of law.
- d. According to LJ van Apeldoorn whether it's right or power interests are not important. In the interests protected by the law for protection contained power means power; whereas the powers granted by the law is the element of interest because of the power given to the protection of interests. So according to Apeldoorn, the right is interest and also power.
- e. According to Rachmat Djatnika A right is something that becomes a right for someone and to be a duty for others, it becomes a duty for others to honor him by not bothering, not break them, do not stop him getting in, do not take it without his consent and so.⁷⁵

Someone, in the opinion of al-Ghazali, usually required to take on family life and life in a community. In the collaboration life with another human being, a person has the right to be justified by moral

⁷⁴ C.S.T. Cansil, *Pengantar Ilmu Hukum dan Tata Hukum Indonesia*, Cet. VIII (Jakarta: Balai Pustaka, 1989), p. 119-120.

⁷⁵ Rachmat Djatnika, *Sistem Ethika Islami*, (Jakarta : Pustaka Panjimas, 1992), p. 118-120

reasons for own or obtain something, or to act in a certain way, is exactly what is right in referring to al-Ghazali with called by *haqq al 'Abd* might be called the right or belong to someone. Rights is so many, If an individual has a right, a demand in society, one or several other individuals must have the duty to meet outgrowth of these demands.⁷⁶

While the term of Duties can be interpreted as a counterweight to the right on the other. If a party has the right then the other party has a duty.⁷⁷ Duties derived from a word that must create a duty to do something. The duty arises because of the inherent right of legal subjects.⁷⁸

Duties word has several meanings:

- a. Mandatory in terms of the science of *Tauhid*, something which, according minds certainly their right. Such as: mandatory presence of God.
- b. Mandatory according to the science of *fiqh*, meaning something that gets rewarded by working on it. As: obligatory prayers five times a day.
- c. Mandatory according to the science of *ahlak*, something that was ordered by sacred feelling to conscience to do, because according to conscience and legal rules character such a thing is good and

⁷⁶ M. Abdul Quasem, *Etika Al-Ghazali*, (Bandung : Penerbit Pustaka, 1975), p. 240.

⁷⁷ Laurensius Mamahit, *Hak dan Kewajiban Suami Istri Akibat Perkawinan Campuran Ditinjau dari Hukum Positif Indonesia*, Lex Privatum (Jan-Mrt, 2013), p. 17.

⁷⁸ Wikipedia bahasa Indonesia, ensiklopedia bebas, <http://id.wikipedia.org/wiki/Hak>. Accessed on May 6, 2016..

true. The term of mandatory / duty here is the opposite of right. Such a duty to help the weak, whose rights is for help.

Duties can be defined as having an individual to meet the justified demands submitted to it by individuals or groups of members of the community. The difference between understanding required in the science of *fiqh* or any other law is limited to the terms and legal basis itself, but in the science in addition to the terms legitimate and its pillar also how best extrinsic and instinsic, according to function and can achieve the purpose of which was given the law.⁷⁹ Poespoprojo say that the duty if viewed subjectively defined as a moral imperative to do or not do something. Meanwhile, when viewed objectively, the duty can be defined as things that should be done or not done.⁸⁰

In the law distinguish various kinds of rights. LJ van Apeldoorn make the difference between:

- a. Absolute right, a right which includes the power to act. Named also the right of *onpersoonlijk* because it can be performed on everyone, not just for certain people. On the other hand there is a duty of each person to not infringe on it. Covered into absolute right (absolute) or right *onpersoonlijk* is this:

1. All public rights, ie rights that are based on public law in an objective sense. These rights, among others, can be found

⁷⁹ Rachmat Djatnika, *Sistem Ethika..* p. 119-120

⁸⁰ Abd. Haris, *Etika Hampa*, (Yogyakarta, LKIS, 2010), p.108.

in the Constitution. Including here, human rights defined in the Constitution. In the Act of 1945, the human rights set out in Article 27, 28, 28A - 28I. For example, every person has the right to live and to defend life and the life (Article 28A).

2. The majority of civil rights, a right which is based on civil law in an objective sense. These rights are:

- a) personality rights (*persoonlijkheidsrechten*), namely the rights of man over himself. Most important among them: Right to claim compensation for the killing of a family member. According to Article 1370 of the Civil Code, in the event of an intentional killing or negligence, then the husband or wife left behind, children or the victim's parents, who typically earn money from work of the victim, have the right to demand a compensation, which must be assessed according to the position and wealth both parties, and according to the circumstances. The right to demand compensation for injuries or disabilities. According to Article 1371 of the Civil Code, cause injury or disability of a limb deliberately or because of negligence entitles the victim to reimburse

expenses other than healing, claim damages or injuries caused by the defect.

- b) The rights of the family (*familierechten*), namely the rights arising from family relationships. Examples rights under the authority of parents, for example, the provision of Article 47 paragraph (2) of Act No. 1 of 1974 on Marriage that parents represent a child who has not attained the age of 18 years on legal acts inside and outside the court.
- c) Most of the rights on properties, a right that has financial value. These rights consist of: material rights, namely the right that provides direct control over an object. Examples of property rights over land. Rights to intangible objects, namely the right that the results of the human mind, for example copyright.
- b. Relative rights, namely the right that contains powers demanding that others act. Named also the right *persoonlijk* because it can only be done against certain people. In addition it is also called the right to collect receivables. Included in it is all right to the assets except for the right material and the right to intangible objects. For example, the right to collect repayment of the loan money.

The rights and duties of husband and wife was classified as an absolute right (absolute), since it applies to everyone. Rights and

duties between husband and wife are the rights and duties arising from the marriage between them. Husband received various rights in the family, as well as a woman who became his wife in a marriage rights acquired various anyway. Besides, they also bear the duties as a result of entering into marriage.⁸¹

The rights in question here is a right that belongs or may be owned by the husband or wife of the results obtained from their marriage. This right can also be removed if they are entitled to willingly if rights are not fulfilled or paid by the other party. As the duty here is the things that must be done to or held by one of the spouses to fulfill the rights of the other party. The rights and duties of husband and wife in marriage there is material in the form of rights, for example: right for living, and the right not material, say: the rights and duties of husband and wife get along well in home life.⁸²

4. Islamic Arguments of the Rights and Duties of Husband and Wife

In connection with the rights and duties between husband and wife, Islam provides restrictions contained in several verses of the Koran and the hadith of the Prophet. The examples in the Koran, eg at Suart al-Baqarah (2) paragraph 228:

وَهُنَّ مِثْلُ الَّذِي عَلَيْهِنَ بِالْمَعْرُوفِ ۚ وَلِلرِّجَالِ عَلَيْهِنَّ دَرَجَةٌ ۚ

⁸¹ Moh. Idris Ramulyo, *Hukum perkawinan Islam*, (Jakarta: Sinar Grafika Offset, 1999), p. 63.

⁸² Soemiyati, *Hukum Perkawinan Islam dan Undang-Undang Perkawinan: Undang-Undang No. 1 Tahun 1974 tentang Perkawinan*, (Yogyakarta: Liberty, 1999), p. 57.

*For the wife there is balanced with the rights of its duties
with a kindness and for her husband over wife's level.*

This verse explains that the wife has a right and the wife also have a duties. The wife's duty is a right for husband. Rights such as the right of the husband's wife that was said in these verse implies rights and position of such wife is equivalent to the rights and status of husband. Nevertheless, the husband has a higher-level position, namely as the head of the family, as required by the end of the verse above.

The husband's Right is a duty for wife, on the contrary a duty of the husband to the wife is right. In this regard, Amir syarifududdin classify to three things:⁸³

- a. Duty of husband to his wife, who is the wife's rights of her husband.
- b. Duty wife against her husband, who is the husband's rights of his wife.
- c. Rights of husband and wife together.
- d. The mutual duties of husband and wife.

The duty of the husband to his wife can be divided into two parts:

⁸³ Election of classification of rights and duties of husband and wife that based on the Quran and Hadith to Amir Syarifudiin thoughts is based on his analysis which is one of the scholars' contemporary Indonesia belonging to the *legalists traditionalists*. This is evidenced by the presence of his thoughts on the Marriage Law in the Indonesian Marriage Act and Compilation of Islamic Law is scrutinized using the opinions of scholars' schools. Such thinking can be seen from the book Amir Syarifuddin, *Hukum Perkawinan Islam di Indonesia: Antara Fiqh Munakahat dan Undang-Undang Perkawinan*, (Jakarta: Predana Media, 2007), p. 159.

- a. Duties that are material called *nafaqah*.
- b. Duties that are not material

The husband's duties that is a right for his wife which is a material is in the form of *nafaqah*, either in the form of shopping, clothing and others. Such duties are not due to wife's need for domestic life, but the duty was incurred by itself without looking at the state of his wife. Amir argument on the verse in the Koran and Hadith. Among the verses of the Koran stating shopping duty contained in the letter of al-Baqarag (2) paragraph 233:

* وَعَلَى الْمَوْلُودِ لَهُ رِزْقُهُنَّ وَكِسْوَتُهُنَّ بِالْمَعْرُوفِ لَا تُكَلَّفُ
نَفْسٌ إِلَّا وُسْعَهَا لَا تُضَارُّ وَالِدَةُ بَوْلِدِهَا وَلَا مَوْلُودٌ لَهُ
بَوْلِدِهِ

Father's duty is to provide shopping and clothing for his wife. Someone not burdened except to his ability, a mother will not have trouble because of his son, and a father will not have trouble because of his son.

Among the verses which requires housing is in the verse at-Thalaq (65) of paragraph 6:

أَسْكِنُوهُنَّ مِنْ حَيْثُ سَكَنْتُمْ مِنْ وُجْدِكُمْ وَلَا
تُضَارُّوهُنَّ لِيُتَضَيَّقُوا عَلَيْهِنَّ

Give housing them (wives) where you residing, according to your abilities.

In the form of the sunnah is contained in Prophetic hadith, including the hadith of the Prophet who came from Abu Hurairah according to Muslim history:

وحدثني أبو الطاهر أحمد بن عمرو بن سرح أخبرنا ابن وهب
أخبرنا عمرو بن الحارث أن بكير بن الأشج حدثه عن العجلان
مولى فاطمة عن أبي هريرة عن رسول الله صلى الله عليه وسلم
أنه قال للمملوك طعامه وكسوته ولا يكلف من العمل إلا ما يطيق
(روه المسلم)

Abu Tohir Ahmad bin 'Amrun bin siroh has tell to me, Ibn Wahab has gave a report to us, 'Amrun bin al-Haris has gave a report that Bakir bin al-Asy'j has tell to him from al-'Ijlan Maula Fatimah from Abi Hurairah from Prophet saw. said: the right of children to get food and clothing, and does not undertake to do except that he is able to do.

Similarly, the Prophet's hadith of al-Hakim bin Muawiyah riwayat Qusyairiy by Ahmad and Abu Dawud, al-Nasa'i and Ibn Majah in a hadith:

حدثنا موسى بن إسماعيل حدثنا حماد أخبرنا أبو قزعة الباهلي
عن حكيم بن معاوية القشيري عن أبيه قال قلت يا رسول الله
صلى الله عليه وسلم ما حق زوجة أخذنا عليه قال أن تطعمها إذا
طعمت وتكسوها إذا كتسيت

Musa bin Ismail has tell to us that Himad has tell that Abu Quz'ah has gave a report to us from al-Bahuli from Hakim ibn Mu'awiyah al-Qusyairy from his father said, I (Judge) said: "O Messenger of Allah. whether the right of a wife on her husband? The Prophet said: "You should

*feed according to what you eat and give the dress according to what you are wearing*⁸⁴

While the duty of the husband who is a right for his wife that is non- material are as follows:

- a. Consort with his wife in good and proper. This is in accordance with the word of God in Suart an-Nisa ' verse 19;⁸⁵

• وَعَاشِرُهُنَّ بِالْمَعْرُوفِ ۚ فَإِنْ كَرِهْتُمُوهُنَّ فَعَسَى أَنْ تَكْرَهُوا شَيْئًا وَجَعَلَ اللَّهُ فِيهِ خَيْرًا كَثِيرًا ﴿١٩﴾

Consort them (wives) as well. Then if you do not like them (patient) because maybe you do not like something, but God made him much good.

What is meant by the consort here in particular is the association of husband and wife, including matters relating to sexual fulfillment. Forms of consort are saying in these verses termed a kindness which means good; whereas the form of kindness that God is not explained specifically. In this case submitted to the consideration of the groove and are worth according to the views of indigenous and local environment. What have undestood also in this verse is the husband must keep the words and deeds not to damage or hurt the feelings of the wife.

⁸⁴ Abu Dawud Sulaiman bin al-Asy'ats bin Ishaq bin Bisyairi bin Syadad bin 'Amrun al-Asdissi Jistani, *Sunan Abi Dawud*, Mawqi'ul Islam, Maktabah Syameela, p. 45.

⁸⁵ Amir Syarifudin, *Hukum Perkawinan*.. p. 160.

- b. Keeping from anything that might involve her in an act of sin and immorality or overwritten by something dangers and difficulties. In this verse contained a variety of errands to save the life of his wife, making her keep the teachings of religion; and keep his wife from everything that can cause anger Allah. For that purpose, the husband is obliged to provide religious education and other useful education for his wife in his capacity as a wife.

About away from sin and immorality that can be understood from the general word of God that says:⁸⁶

قُوا أَنْفُسَكُمْ وَأَهْلَكُمْ نَارًا

Guard yourselves and your families from hell himself.

- c. Husband shall creating the marriage live to expected God, namely *mawaddah, rahmah, and sakinah*. For this purpose, the husband is obliged to provide a sense of calm to his wife, give love and affection to his wife. This is in accordance with the word of God in the letter ar-Rum (30) Verse 21:

وَمِنْ آيَاتِهِ أَنْ خَلَقَ لَكُمْ مِنْ أَنْفُسِكُمْ أَزْوَاجًا لِتَسْكُنُوا

إِلَيْهَا وَجَعَلَ بَيْنَكُمْ مَوَدَّةً وَرَحْمَةً إِنَّ فِي ذَلِكَ لَآيَاتٍ

لِقَوْمٍ يَتَفَكَّرُونَ

⁸⁶ Amir Syarifudin, *Hukum Perkawinan*.. p. 161.

Among the signs of God, He made for you spouses that you find peace and make her among you a sense of love and affection. Such are signs for a people who reflect.

Duties wife against her husband who is a right of the husband there is non-material directly. There is a duty in the form of non-material. Duties that are nonmaterial it is:⁸⁷

- a. Consort with her husband properly in accordance with nature. It can be understood from the verse that demands a husband with his wife properly cited above, since the order for consort it applies to reciprocity.
- b. Providing a sense of calm in the household for her husband; and provide a sense of love and affection to her husband within the limits that are within his ability. This is in line with the letter states ar-Rum paragraph 21 above, for the verse shown to each husband and wife.
- c. Obedient and submissive to her husband as long as her husband did not order her to do anything *maksiat* (violation of God law).

Comply with the duties of the husband can be seen from the Word of God in suarat israyat an-Nisa verse 34:

فَالصَّالِحَاتُ قَانِتَاتٌ حَافِظَاتٌ لِّلْغَيْبِ بِمَا حَفِظَ اللَّهُ

Pious women are women who obey God (and adherent to the husband) maintain herself when her husband was not there because God has kept them.

⁸⁷ Amir Syarifudin, *Hukum Perkawinan..* p. 162.

Complying with the husband in this sense means to follow what he was told and stop anything his forbids, during the errand and the ban is not disapprove of religious requirements. When errand or ban is contradicts or inconsistent with religious teachings, there is no duty of the wife to follow him. For example, the husband asked his wife to follow the gambling habit. The absence of anyone, including the duty to obey the husband had sent to *maksiat* can be understood from the words of the Prophet:

حدثنا قتيبة حدثنا الليث عن عبيد الله بن عمر عن نافع عن
ابن عمر قال قال رسول الله صلى الله عليه وسلم السمع
والطاعة على المرء المسلم فيما أحب وكره ما لم يؤمر
بمعصية فإن أمر بمعصية فلا سمع عليه ولا طاعة

*Qutaibah has tell to us that al-Laits has tell to us from 'Ubaidillah ibn 'Umar from Nafi' from Ibn 'Umar said, Propet saw.: listen and obey to muslim people who would like and dislike to maksiat, if he comand to maksiat don't you listen him and obey him.*⁸⁸

- d. Keep herself and save the property of her husband when her husband was not at home. It can be understood from the word of God mentioned above.
- e. Distanced herself from everything behavior that is not liked by her husband.

⁸⁸ Muhammad bin 'Isa bin al-Duhak al-Tirmidzi, *Sunan al-Tirmidzi*, Mauqi'ul Islam, Maktabah Syameela, p. 299

- f. Distanced herself from showing the face of unsightly and sounds pleasing to the ear.

All of this can be seen from the words of the Prophet in the hadith of Abu Hurairah according issued by al-Nasa'i:

أخبرنا قتيبة قال حدثنا الليث عن ابن عجلان عن سعيد المقبري عن أبي هريرة قال قيل: يا رسول الله أي النساء خير؟ قال: التي تسره إن نظر وتطيعه إن أمر ولا تخالفه في نفسها ومالها بما يكره

Qutaibah has gave a report to us, Laits has tell from ibn 'ijlan from sa'id al-muqobari from Abu Hurairah said, The Prophet was asked: "O Messenger which women one is better?" The Prophet said: "When husband looked at her, she can show pleaseasurably to her husband; when her husband told her, he obeyed; she did not violate her husband about herself and his money on something that is not his favorite"⁸⁹

Collective rights of husband and wife:

What is meant by collective rights here are the right couple together on a reciprocal basis from spouse against the other. As for collective rights are as follows:

- a. Be able to consort and have fun in between, this is the true nature of marriage.

⁸⁹ Abu 'Abdur Rahman Ahmad bin Syu'aib bin 'Ali al-Khurasani al-Nasa'I, *Sunan al-Nasa'I*, Mawaqi'ul Islam, Maktabah Syameela, h. 333.

- b. The appear of husband relation with his wife's family and vice versa wife relationship with her husband's family, called by *mushaharah*.
- c. The relationship between husband and wife inherit each other, each party is entitled to inherit the other party in the event of death.

While the duties both of them in the conjunction with the occurrence of its marriage is:

- a. Maintaining and educating descendants from the marriage
- b. Maintaining domestic life to *sakinah, mawaddah* and *rahmah* .

Deeper analysis, by normative (literal), Islam has asserted that both the husband and wife have rights and duties. The husband has also a dutie that become a right of the wife, and vice versa. In his explanation, Amir stated that although the husband and wife both have rights and duties are balanced, but it should be stressed that the position of the husband remain to be put at the higher as stated in the text of the Koran, which as head of the family.

D. INTERPRETATION OF RIGHTS AND DUTIES OF HUSBAND AND WIFE IN KHI AND PARTIALITY OF GENDER

KHI as a basic foundation of Islamic law in Indonesia comes from Koran and Hadith. The KHI formation that it nuanced of *legalists* *traditionalist* greatly affects to the provisions contained in it. Flow of

classical scholar which is tend not gender-responsive is visible from several editorial articles of the KHI. This is particularly evident in some of the provisions concerning the rights and duties of husband and wife. More will be explained in this discussion about the interpretation of the rights and duties of husband and wife in KHI and its influence on gender bias.

The rights and duties of husband and wife in Indonesia is regulated by the State to formulate the Law No. 1 Year 1974 on Marriage (UUP). The needs of Muslims who need a specific regulation related to marriage, make the government issued a Compilation of Islamic Law (KHI).⁹⁰ This regulation is specific to the Muslims who lived in Indonesia with the bases on the principles of Islamic personality. So the formation of KHI is grounded in Islamic legal sources, namely Koran and Hadith. It shows that the pattern of the interpretation of these laws is affect the product of clauses that contained in KHI.

KHI regulate rights and duties of husband and wife start of chapters 77-78 which regulates the general rights, Article 79 concerning the position of husband and wife, article 80 regarding the duty of the husband, article 81 of the residence and article 82 on the duty husbands against wives more of, and article 83 regarding the wife's duty, more details can be seen from some of the following chapters:

a. General Provision (Article 77):

⁹⁰ KHI present in national law through legal instruments of Presidential Instruction (Inpres) No. 1 of 1991 on the Compilation of Islamic Law dated June 10, 1991, and adapted organically by Decree of the Minister of Religion No. 154 of 1991 dated July 22, 1991. Abdul Gani Abdullah, *Pengantar Kompilasi Hukum Islam dalam Tata Hukum Indonesia*, (Jakarta: Gema Insani Press, 1994),p. 62.

- (1) Husband and wife assume the duties to uphold the noble household of *sakinah, mawaddah* and *rahmah* that became the basic principle and the fabric of society
- (2) Husband and wife have to love each others, respect, loyal and provide emotional and physical support that one to each another;
- (3) Husband and wife assume the duty to care for and nurture their children, either on physical growth, spiritual as well as intelligence and religious education;
- (4) Husband and wife shall maintain his honor;
- (5) if husband or wife is shirking their duties can file a lawsuit to the Religious Court.

b. Article 78

- (1) Husband and wife should have a fixed residence.
- (2) The residence referred to paragraph (1), determined by the husband and wife together.

c. Position of Husband and Wife (Article 79):

- (1) Husband is the head of the family and wife is a housewife.
- (2) Right and position of wife is balanced with the rights and position of the husband in the domestic life and social life together in society.
- (3) Each party is entitled to take a legal actions.

d. Husband's Duties (Article 80)

(1) Husband as a mentor the wife and his household, but on the matters of the importance domestic affairs decided by husband and wife together.

(2) Husband shall protect the wife and provide every necessity of home life according to his ability

(3) Husband required to provide religious education to his wife and gave the opportunity to learn the knowledge of useful and beneficial to religion, homeland and nation.

(4) Related with his income husband bear:

- a. living, kiswah and residence for the wife;
- b. household costs, maintenance costs and the cost of treatment for the wife and children;
- c. education fees for children.

(5) Husband's duties against his wife, as referred to paragraph (4) a and b above shall come into force after the last perfect of tamkin of his wife.

(6) Wife can relieve his husband of the duty to her as referred to in paragraph (4) a and b.

(7) Husband's duties as prescribed in paragraph (5) void if the wife is nusyuz.

e. Residential (Article 81)

(1) Husband shall provide the residence for the wife and children or ex-wives who are still in the waiting period (iddah).

(2) The residence is the proper place for his wife during the marriage bond, or in the waiting iddah of divorce or death.

(3) The residence is provided to protect the wives and children of the interference of others, so they feel safe and secure. Residence also serves as a store of wealth, as a place to organize and regulate household appliances.

(4) Husband required to complete the residence according to his ability and adapted to the circumstances in which his lives, whether in the form of household fittings and other support facilities.

f. Husband's Duties who have Wives more One (Article 82)

(1) .Husband that have more than one wife is obliged provide residence and the cost of living for each wife equitably according to the size of the number of families borne wives each, unless there is an agreement of marriage.

(2) .In the case of the wife willingly and ikhlas, the husband could put his wife in a residence.

g. Wife's Duties (Article 83)

(1) The main duties for the wife is inwardly and outwardly devoted to her husband inside justified by Islamic law.

(2) Wife organize and arrange household everyday with the best.

h. Article 84

(1) Wife can be considered nusyuz if she does not want to implement the duties referred to in Article 83 paragraph

(1) unless there are legitimate

(2) During the nusyuz wife, husband against wife duty mentioned in Article 80 paragraph (4) a and b is do not apply unless things for the sake of his child.

(3) The husband duties in paragraph (2) above apply back after nusyuz wife

(4) Determinate about the presence or absence of the nusyuz wife must be based on valid evidence.

Articles of KHI can be said very clearly regulates the status of husband and wife, as well as the duties between husband and wife. In how things KHI adopt such clauses of UUP with regard to the position of the husband as a head of the household and the wife as a housewife, the balanced position, the duty to love each other, to honour and help each other. On the other hand KHI so detailing the things that are outlined in the UUP as the form of needs to be met husband, living, *kiswah* and residence

or clothing, food and shelter. Likewise, the cost of care, treatment wife and education and children.⁹¹

If further analysis, the articles of KHI which stipulates the rights and duties of husband and wife is showing ambiguity, one side wants to bring about equality while the other side has not managed to completely out of the mainstream of Islamic jurisprudence that clearly do not put women and men in a balanced manner. In the case of equality, the framers of KHI has articulate the values contained in it in some chapter 79 verses 2-3, namely:

(2) .Right and position of wife is balanced with the rights and position of the husband in the domestic life and social life together in society.

(3) .Each party is entitled to take a legal actions.

Equality in these articles is bases on the verses which also underpins the feminist fight for gender equality, such as:⁹²

a. Men and women alike as a servant of God.

As for the basic equality of servanthood is QS. Al-Zariyat / 51: 56,

وَمَا خَلَقْتُ الْجِنَّ وَالْإِنْسَ إِلَّا لِيَعْبُدُونِ ﴿٥٦﴾

and I did not create the jinn and mankind except that they may serve Me.

al-Hujarat / 49: 13;

⁹¹ Amiur Nuruddin dan Azhari Akmal Taringan, *Hukum Perdata Islam di Indonesia: Studi Kritis Perkembangan Hukum Islam dari Fikih, UU No. 1/1974 sampai KHI*, (Jakarta: Kencana, 2004), h. 193.

⁹² See more widely on Nasaruddin Umar, *Argumen Kesetaraan Jender; Perspektif Al-Qur'an*, (Jakarta: Paramadina, 1999), p. 248-265, compared with Zaitunah Syubhan, *Tafsir Kebencian: Studi Bias Gender dalam Al-Qur'an*, (Yogyakarta: LKiS, 1999), compared with Khairuddin Nasution, *Status Wanita di Asia Tenggara: Studi terhadap Perundang-undangan Perkawinan Muslim Kontemporer di Indonesia dan Malaysia*, (Jakarta: INIS, 2002), p. 1-2 ,

يَتَأْتِيهَا النَّاسُ إِنَّا خَلَقْنَاهُ مِنْ ذَكَرٍ وَأُنْثَىٰ وَجَعَلْنَاهُمْ شُعُوبًا
وَقَبَائِلَ لِتَعَارَفُوا ۚ إِنَّ أَكْرَمَكُمْ عِنْدَ اللَّهِ أَتَقْوَاهُ ۚ إِنَّ اللَّهَ

عَلِيمٌ خَبِيرٌ ﴿١٣﴾

O mankind, We have created you from a male and a female and made you a nation - nations and tribes that ye may know each other-know. Surely the noblest of you with Allah is the most pious among you. Indeed, Allah is knowing, All-Knowing.

al-Nahl / 16: 97.

مَنْ عَمِلَ صَالِحًا مِّنْ ذَكَرٍ أَوْ أُنْثَىٰ وَهُوَ مُؤْمِنٌ فَلَنُحْيِيَنَّهٗ
حَيٰوةً طَيِّبَةً ۖ وَلَنَجْزِيَنَّهُمْ أَجْرَهُمْ بِأَحْسَنِ مَا كَانُوا

يَعْمَلُونَ ﴿١٧﴾

Whoever works righteousness, whether male or female in the state of faith, verily to him will We give a good life and Lo will We give reply to them with a better reward than what they have done.

These verses explain that men and women are equally as servants of God. Both have the same potential and the opportunity to be an ideal servant of God. The ideal servant can termed by *Muttaqun* . Its consequences is anyone who sincere devotion to servants God has deserve to an award of Allah.

b. Men and women as a Chaliphate (*Khalifah*) on Earth

As for the basis of equality as the caliphate is QS. al-An'am / 6:
165,

وَهُوَ الَّذِي جَعَلَكُمْ خَلَائِفَ الْأَرْضِ وَرَفَعَ بَعْضَكُمْ فَوْقَ
بَعْضٍ دَرَجَاتٍ لِّيَبْلُوَكُمْ فِي مَا آتَاكُمْ إِنَّ رَبَّكَ سَرِيعُ الْعِقَابِ
وَإِنَّهُ لَغَفُورٌ رَحِيمٌ ﴿١٦٥﴾

and He was the one who made you rulers of the earth, and He exalted you above a part to part (others) some degree, to test you on what is given you. Your Lord is rapidets for his torment and verily He is Most Forgiving, Merciful.

al-Baqarah / 2: 30.

وَإِذْ قَالَ رَبُّكَ لِلْمَلَائِكَةِ إِنِّي جَاعِلٌ فِي الْأَرْضِ خَلِيفَةً قَالُوا
أَتَجْعَلُ فِيهَا مَن يُفْسِدُ فِيهَا وَيَسْفِكُ الدِّمَاءَ وَنَحْنُ نُسَبِّحُ
بِحَمْدِكَ وَنُقَدِّسُ لَكَ قَالَ إِنِّي أَعْلَمُ مَا لَا تَعْلَمُونَ ﴿٣٠﴾

Remember when your God said to the Angels: "I am going to make a caliphate (khalifah) on earth." They say: 'Why do you want to make (caliphate) on earth that was the person who will make mischief therein and shed blood, and we always exalt with the praise you and purify you? " God said: "I know what you not know."

The second verse asserts that the task of the Caliphate (leader on this earth) is not specific to one sex only, but both. Both male and female have the same duties for the prosperity of the earth (*taskhir*) to conquer nature for the sake of mankind.

- c. Adam (man) and Eve (women) are equally involved in the Cosmic drama.

The verses that became the basis of equality are QS. al-Baqarah / 2: 35,

وَقُلْنَا يٰٓآدَمُ اَسْكُنْ اَنْتَ وَزَوْجُكَ الْجَنَّةَ وَكُلَا مِنْهَا رَغَدًا
حَيْثُ شِئْتُمَا وَلَا تَقْرَبَا هَذِهِ الشَّجَرَةَ فَتَكُونَا مِنَ الظَّالِمِينَ



and We said: "O Adam, live in you and your wife this heaven, and ate his foods that many others were good anywhere you like, and do not approach this tree, which causes you Including those who do wrong.

al-A'raf / 7: 20 and 22.

فَوَسْوَسَ لَهُمَا الشَّيْطَانُ لِيُبْدِيَ لَهُمَا مَا وُورِيَ عَنْهُمَا مِنْ
سَوْءَاتِهِمَا وَقَالَ مَا نَهَاكُمَا رَبُّكُمَا عَنْ هَذِهِ الشَّجَرَةِ إِلَّا أَنْ
تَكُونَا مَلَكَتَيْنِ أَوْ تَكُونَا مِنَ الْخَالِدِينَ ﴿٢٠﴾

Then the devil whispering evil thought to both of them for Appears to both what is covered from them, That nakedness and devils said: "Your God did not forbid and approach this tree, but that ye should become Angels or become the eternal (heaven)".

All the verses that tell about the cosmic drama that is the story of Adam and his partner state in heaven to come out into the earth, always stressed the two sides are actively using the pronoun for

two people (*huma*). Questions Koran is very different from the statements of al-Kitab that is more mistakes imposes on Eve.

d. Male and female potential achievement.

The verses that became the basis of equality are QS. Ali Imran / 3:

195,

فَاسْتَجَابَ لَهُمْ رَبُّهُمْ أَنِّي لَا أُضِيعُ عَمَلَ عَمَلٍ مِّنْكُمْ مِّنْ
ذَكَرٍ أَوْ أُنْثَىٰ بَعْضُكُم مِّنْ بَعْضٍ ۖ فَالَّذِينَ هَاجَرُوا وَأُخْرِجُوا
مِنْ دِيَارِهِمْ وَأُودُوا فِي سَبِيلِي وَقَتَلُوا وَقُتِلُوا لَا أَكْفِرَنَّ عَنْهُمْ
سَيِّئَاتِهِمْ وَلَا أَدْخِلَنَّهُمْ جَنَّاتٍ تَجْرَىٰ مِنْ تَحْتِهَا الْأَنْهَارُ ثَوَابًا
مِّنْ عِنْدِ اللَّهِ ۖ وَاللَّهُ عِنْدَهُ حُسْنُ الثَّوَابِ ﴿١٩٥﴾

And their Lord allow the petition (by saying): 'I am not wasting charitable people who labor among you, whether male or female, (because) Ye are of others [259]. So those who emigrated and were driven from their homes, and suffered harm in my way and fought and were killed, would have Ku-erase their mistakes and I must have put them to Gardens with rivers flowing underneath, as a reward from Allah, and Allah on his side of rewards. "

al-Nisa ' / 4: 124,

وَمَنْ يَعْمَلْ مِنَ الصَّالِحَاتِ مِثْلَ ذَكَرٍ أَوْ أُنْثَىٰ وَهُوَ مُؤْمِنٌ
فَأُولَٰئِكَ يَدْخُلُونَ الْجَنَّةَ وَلَا يُظْلَمُونَ نَقِيرًا ﴿١٢٤﴾

Whoever is doing good deeds, whether male or female who believe, then they will enter paradise and they will not be wronged the slightest.

al-Nahl / 16: 97,

مَنْ عَمِلَ صَالِحًا مِّنْ ذَكَرٍ أَوْ أُنْثَىٰ وَهُوَ مُؤْمِنٌ فَلَنُحْيِيَنَّهٗ
حَيٰوةً طَيِّبَةً ۖ وَلَنَجْزِيَنَّهُمْ أَجْرَهُمْ بِأَحْسَنِ مَا كَانُوا

يَعْمَلُونَ ﴿٩٧﴾

Whoever works righteousness, whether male or female in the state of faith, verily to him will We give a good life and Lo will We give reply to them with a better reward than what they have done.

Ghafir / 40: 40.

مَنْ عَمِلَ سَيِّئَةً فَلَا تُمْحِزْ إِلَىٰ مِثْلِهَا ۖ وَمَنْ عَمِلَ صَالِحًا مِّنْ
ذَكَرٍ أَوْ أُنْثَىٰ وَهُوَ مُؤْمِنٌ فَأُولَٰئِكَ يَدْخُلُونَ الْجَنَّةَ
يُرَزَقُونَ فِيهَا بِغَيْرِ حِسَابٍ ﴿٤٠﴾

Whoever do evil deeds, then he will not be rewarded, but in proportion to the crime. and whoever do good works, both men and women in the state he is a believer, then they will go to heaven, they were given therein sustenance without measure.

The verse implies that the ideal concept of gender equality and made clear that the individual achievements, both in the field of spiritual and professional career affairs, should not be monopolized by one sex only. Men and women have equal opportunities achieve optimal performance.

Equality feminists who fought by bases the verses above is useless when confronted with the previous chapter, namely the paradoxical chapter in KHI Article 79 paragraph 1, which reads: *The husband is the head of the family and the wife a housewife*. According Atho mudzar, actually in management science each organizational unit, including the family would need to oust the leader, and the husband as head of household is not really a problem. The problem is that when it is contrasted with that of his wife is a housewife who is certainly not clear the scope of its responsibilities, especially in an era in which the wives also work to get earn such today. Coupling the two functions that is not parallel is that often led to criticism.⁹³

The critics are often included to those chapters are indications of discriminatory discourse between the position of husband and wife. The mention of "family head" on one side and "housewife" on the other hand, clearly shows the imbalance. The word "head" impressive figure that has full authority not only on the household, but also to his wife and children are also part of these powers. The mention of the mother shows a second person in the household impressive building softness and compliance of devotion to her husband.⁹⁴

⁹³ Atho Mudzhar, *Pembaruan Hukum Perkawinan di Indonesia*, Paper is presented as an introduction to the discussion in the Law Discussion Forum of Directorate General of Religious Courts, the Supreme Court, August 4, 2015, in the Religious Courts Magazine October 7, 2015, 7th edition, p. 49.

⁹⁴ Amiur Nuruddin dan Azhari Akmal Taringan, *Hukum Perdata Islam...* p. 195.

The impression of discriminatory is come form the legal interpretation that making use of a few basic Koranic verses include, QS. An-Nisa ': 34:

الرِّجَالُ قَوَّامُونَ عَلَى النِّسَاءِ بِمَا فَضَّلَ اللَّهُ بَعْضَهُمْ عَلَى
بَعْضٍ وَبِمَا أَنْفَقُوا مِنْ أَمْوَالِهِمْ ۚ فَالصَّالِحَاتُ قَانِتَاتٌ
حَافِظَاتٌ لِّلْغَيْبِ بِمَا حَفِظَ اللَّهُ

"Mens are leaders of womens, because Allah has preferred some of them (men) on parts anothers (female), and because they (men) spend out of their properties. So therefore virtuous woman, is obedient to Allah and preserve herself when her husband was not there, because God has kept (them). "

In connection with word *qawwam*, the commentators (*mufasssir*) scholars have given different interpretations. Imam Tabari interprets the word *qawwam* the person in charge. That man is responsible for educating and guiding wife in order to fulfill their duties to God and to her husband.⁹⁵ Muhammad Asad a mufasssir contemporary stated that the word means *to take full care of* (keeping entirely), either in the form of physical and moral.⁹⁶ Furthermore Zamakhsyari interpret the word *qawwam* as a person who is obliged to uphold *amar ma'ruf nahi munkar* to his wife as the ruler of the people. Abdullah Yusuf Ali explains that the word *qawwam* can meaning as a protector.⁹⁷

⁹⁵ Ibn Jabir al-Tabari, *Jami' al-Bayan 'an Ta'wil ayat Al-Qur'an*, Juz IVX, (Beirut: Dar al-Fikr, 1998), p. 57.

⁹⁶ Muhammad Asad, *The Messege of The Qur'an*, (Giblatar: Dar al-Andalus, 1980), p. 109.

⁹⁷ Abdullah Yusuf Ali, *Qur'an, Terjemah dan Tafsirnya*, trslt. Ali Audah, (Jakarta: Pustaka Firdaus, 1993), p. 190.

The explanation above shows that the classical and contemporary scholars translate words *qawwam* as the responsible, protective, rulers, leaders, and women guards. The position of men over women in the commentaries of scholars' above is over relatively superior. So men on the husband's name is automatically obliged to lead the family.⁹⁸ The reason for the commentators to position the male superior because Allah has preferred the male form of intellect, the excess in the estate and *ghanimah*, determination, courage and the masculinity others.⁹⁹ This argument is also corroborated in the verses that describing notch husbands level is higher from wives, namely in the QS. Al-Baqarah: 228:

وَهُنَّ مِثْلُ الَّذِي عَلَيْهِنَّ بِالْمَعْرُوفِ وَلِلرِّجَالِ عَلَيْهِنَّ دَرَجَةٌ

For the wife there is balanced of the rights with the duties in kindness and for her husband is over wife's level.

This verse explains that the wife has the right and the wife also have duties. The wife's duty is a right for husband. Wife's rights such as the right of the husband's wife that is said in this paragraph implies rights and position of such wife is equivalent or balanced with the rights and status of the husband. Nevertheless, the husband has a higher-level position, namely as the head of the family, as required by the end of the paragraph above.

⁹⁸ Didin Syarifuddin, *Argumen Supremasi atas Perempuan: Penafsiran Klasik QS. An-Nisa: 34 dalam Ulumul Qur'an*, No. 5 dan 6, Vol. V, 1994, p. 4-5. Compare with Amiur Nuruddin dan Azhari Akmal Taringan, *Hukum Perdata Islam...* p. 196.

⁹⁹ Didin Syarifuddin, *Argumen Supremasi atas Perempuan...*, p. 6.

From the above verses can be seen views of the commentators on the position of men as "leaders" or head of household for women. The commentators can not just escape from the confines of its historical understand of the verse, either in the form of a tradition growing belief that moment or their masculine subjectivity who want to maintain the status quo. A literal interpretation is also greatly affects to the interpretation of the results of the discriminatory.

The interpretation of the word *qawwam* as head protectors, responsible man and the leader as mentioned above is prove the epistemology of word the head of the household in KHI which established in article 80, explained firmly words,

Husband as a mentor the wife and his household, but on the matters of the importance domestic affairs decided by husband and wife together.

In fact the final article has been indication of a position of equality between husband and wife, but the husband placement as a leader is a literal translation of meaning *qawwam* which has implications for the imbalance. Next there have a word of protectors (to protect), such as,

Husband shall protect the wife and provide every necessity of home life according to his ability

With regard to the meaning *bore* described in the article which says,

Husband required to provide religious education to his wife and gave the opportunity to learn the knowledge of useful and beneficial to religion, homeland and nation.

Furthermore, bear the meaning described by the editor,

Related with his income husband bear: a. living, kiswah and residence for the wife; b. household costs, maintenance costs and the cost of treatment for the wife and children; c. education fees for children.

Thus, the sound of the articles above, indicates that the legalistic traditionalists interpretation that are literalists has strong influence on the formation of laws. Position of husband and wife which in principle is similar and parallel is does not appear dominant in the articles above. Still notch of husband is higher and powerful. It is caused that in the Koran itself there are several ambiguity meaning of the position of husband and wife that used by interpreters in accordance with the interpreter's own subjectivity. On the one hand the feminist bases to verses of the Koran which also mentions equality between men and women, but on the other hand the commentators base their interpretation that the position of husband and wife should be the dominant husband such verses mentioned above.

Inconsistencies between the norms contained in the articles of KHI on the rights and duties of husband and wife is one effect of the pattern interpretation of the verses of the Koran by literalists. Influence of *legalists traditionalists* paradigm make the establishment of these norms separated from the social context of the community at this time and also the context of the sources of Islamic law (Koran). Therefore we need a reconstruction of some norms on the rights and duties of the KHI to conform to universal values in Islamic law and social reality of Indonesia.

BAB V
REORIENTATION OF RIGHTS AND DUTIES OF HUSBAND AND WIFE
IN KHI ON PROGRESSIVE ISLAMIC THOUGHT
OF ABDULLAH SAEED

**A. RESTRUCTURING OF LEGAL SOURCE OF RIGHTS AND
DUTIES OF HUSBAND AND WIFE IN ISLAMIC PROGRESSIVE
PERSPECTIVE**

The problems of marital rights and duties is come from KHI Article 79 paragraph 1 which describes the position of husband and wife. Pattern of interpretation that bases to legal sources in the verses of the Koran as interpreted ambiguous (between affirmative gender and vice versa), influencing to norms the subsequent articles. So we need a further review of the verses of the Koran which is used as a basic foundation of the formation of the article. According to Saeed one of the victims of this condition are women, because the verses of the Koran about women, outwardly appear ambiguous. On the one hand, the Koran affirms the principle of equality, even affirmed that distinguishes every human at just faith. On the other hand, the Koran contains sentences which deemed the

position of women are below men. The interpretation often stop on the second point.¹⁰⁰

For that, on this occasion the author will present the application of Progressive Islamic paradigm of Abdullah Saeed through his methodology, contextual interpretation of the verses that concerning about the women, which is about the position of women between husband and wife in the QS. al-Nisa ' / 4: 34. As far as the author searches, there is not a complete commentary was written by Saeed, therefore this paper is just as ijtihad of author of the model of Progressive Islamic thought of Adbullah Saeed. Election of QS. al-Nisa ' / 4: 34 as the basic analysis is based also that the verse is basically is indicated for leadership / husband's position in the household, to lead his wife and also protect her.¹⁰¹ As specifically will discussed including the followed:

1. Legal Source Text of Rights and Duties of Husband and Wife

الرِّجَالُ قَوَّامُونَ عَلَى النِّسَاءِ بِمَا فَضَّلَ اللَّهُ بَعْضَهُمْ عَلَى
بَعْضٍ وَبِمَا أَنْفَقُوا مِنْ أَمْوَالِهِمْ ۚ فَالصَّالِحَاتُ قَانِتَاتٌ حَافِظَاتٌ
لِّلْغَيْبِ بِمَا حَفِظَ اللَّهُ ۚ وَالَّتِي تَخَافُونَ نُشُوزَهُنَّ فَعِظُوهُنَّ
وَاهْجُرُوهُنَّ فِي الْمَضَاجِعِ وَاضْرِبُوهُنَّ فَإِنْ أَطَعْنَكُمْ فَلَا تَبْغُوا
عَلَيْهِنَّ سَبِيلًا ۗ إِنَّ اللَّهَ كَانَ عَلِيمًا كَبِيرًا ﴿٣٤﴾

¹⁰⁰ Abdullah Saeed, *The Qur'an: an Introduction* (London and New York: Routledge, 2008) p. 13.

¹⁰¹ Muhammad Jawad Mughniyah, *Tafsir al-Kasyif*, (Beirut: Dar Ilmi Li al-Malayin, 1968), Juz II, Cet. I, p. 314.

Meaning: "Mens are a leaders of womens, because Allah has preferred some of them (men) on parts anothers (female), and because they (men) spend out of their properties. So therefore virtuous woman, is obedient to Allah and preserve herself when her husband was not there, because God has kept (them). Women whom you fear of her disobedience (*nusyuz*), admonish them and then separate them to their beds, and beat them. Then if they obey you, then do not be looking for a way against them. Allah is Most High, Most Great."

2. Critical Analysis of the Legal Source Text

The first discourse that can be analyzed in these verses is a linguistic¹⁰² analysis of the words *Rijal* and *qawwam*. The word *qawwam* in the verse is the word used for someone who is able to carry out the responsibility for something. In the Arab tradition stated: *hadha qiyamu wa al-mar'atu qawamuhu* which means that people who take care a problems of his wife and give attention by keeping. Word *qawwam* is from *shighot muballaghoh* (hyperbolic shape). He may be said to *qayyam*. Therefore, in a hadith says " *anta qayyam alsamawat wa al-ard wa man fihinna*. " Which means, "You are the keepers of the heavens, the earth and whatever is in it." So says *qawwam* or *qayyam* means a person who is able to implement and maintain of

¹⁰² Abdullah Saeed, *Interpreting the Quran..* p.150

responsibility or given to him. Someone called *qawwam* if it meets these criteria.¹⁰³

The word *qawwam* is an attribute that is used to confirm the status of *Rijal*, word *qawwam* explained word *Rijal*, word *qawwam* be *khabar* and word *rijal* be *mubtada'*. Thus, the status *rijal* is explained. Abu Hayyan provides an interesting illustration about linkages of status *qawwam* on word *Rijal*. According to him, a *rijal* can have a status *qawwam* if within *rijal* met the criteria (nature) its *rijal*-ity. Therefore, he stated that in the structure of the paragraph contained the number *muqaddarah* (hidden). The sound is *ar-rijalu qawwamuna ala al-Nisa* '[in kanu rijalan]', if defined, then it becomes " *Rijal* it is the people who *qawwam* on *Nisa'* [if there are (adjective) *rijal*-ity]"¹⁰⁴

Word *Rijal*, according to Abu Hayyan, has a sense of the person who has the strenght, which is resilient in managing and performing the responsibilities. A strenght guy was a strong man. Arab communities often say: " *al-rajulu Baina a rajuliyah wa al-rajulah* " which means 'a *rajul* between masculinity and maleness'. Up here can be drawn a conclusion, that sense *rajul* in Arabic culture refers to the toughness and strength properties. Thus, a person would be called *rajul* if he has an superior or advantage over the others; can be in the form of strength, toughness, intelligence and others.

¹⁰³ M. Faisol, *Hermeneutika Gender: Perempuan dalam Tafsir Bahr al-Bahr al-Muhith*, (Malang: UIN-Maliki Press, 2011), p. 96.

¹⁰⁴ Abu Hayyan Muhammad bin Yusuf bin Ali bin Yusuf bin Hayyan, *Tafsir al-Bahr al-Muhith*, juz IV, p. 118.

Understanding *rajul* as described by Abu Hayyan, has a logical consequence that basically understanding of *rajul* is not synonymous and refer to a specific gender. Both male and female, both can be called by *rajul* if he have the toughness, strength and excellence. Therefore, a strong man to walk either male or female, according to Arabic dictionaries, referred to *rajul* or *Rajil*. The implication is the women who has the toughness also can called by *rajulah*. Even in a phrase declared: "*Kanat A'ishah radi anha rajlatu al-ra'yi*. " It means, 'Aisha is a formidable of her mind'.¹⁰⁵ It can be concluded that in terms of the size of the language, leadership was based on toughness or strenght properties not of sex.

Next is the analysis of the sentence structure in the QS. al-Nisa ' / 4: 34. First wording used in these verses is "*ar-rijalu qawwamuna ala al-Nisa*." These structures illustrate that the position of word *rijal* serves as *asl*. Koran in this case seems to be using the word *rijal* as parameters and standard of value than *nisa* '. The literal consequences is *rijal* (men) are entitled to be the leader of *nisa*' (women). It is also evident from the verses afterwards. Ar-Razi in his commentary reveals that the leadership of men over women is caused by two reasons, namely: *First*: Allah has set their primacy over the other virtues (*bima faddala Allah ba'dahum 'ala ba'd*); *Second*, the virtue men over

¹⁰⁵ See description of the material r - j - l in some dictionaries. For example al-Jauhari, *al-fī al-lughah Sihah*; Muhammad bin Muhammad bin Abdurrazaq al-Husaini, *Taj al-Arusy min Jawahir al-Qamus*.

women that are essential and in accordance with religious law. As for which is essential of primacy of men over women lies in two parts, the knowledge and strength.¹⁰⁶

While at-Tabari bases of leadership of men over women is based on the reflection of physical strength, education, and his duties to meet all the duties prescribed by Allah. This is reflected in the advanced Paragraph *wa bi ma anfaqu min amwalihim* interpreted as an duty to pay dowry, living, and *kifayah*.¹⁰⁷ A similar view is found in *al-Jalalayn*¹⁰⁸, *Muqatill*¹⁰⁹, *ruh albayan*¹¹⁰, *al-Baghawi*¹¹¹, *al-Alusi*¹¹², *Fath al-Qadir*¹¹³, *Zad al-Masir*¹¹⁴, *al-Biq'a'i*¹¹⁵, and *Samarqandi*¹¹⁶. the

¹⁰⁶ Al-Razi, *Tafsir al-Razi*, Volume IX, p. 88.

¹⁰⁷ Abu Ja'far Muhammad bin Jarir bin Yazid al-Tabari, *Tafsir al-Tabari*, Volume IV, (Kairo: Bulaq, 1323 H), p. 40.

¹⁰⁸ Jamaluddin Muhammad al-Mahalli dan Jalaluddin Abdurrahman bin Abi Bakar al-Suyuti, *Tafsir al-Jalalain*, Volume II, (Surabaya: Syarikah wa Matba'ah Salim Nabhan wa Auladuh, 1958), p.26.

¹⁰⁹ Muqatil ibn Sulaiman, *Tafsir Muqatil*, Jilid I, (Kairo: t.pn., 1980), p. 311.

¹¹⁰ Syaikh Ismail al-haqqi al-Burusawi, *Tafsir Ruh al-Bayan*, Prnt. I, Volume II, (Turki: Matba'at al-Utsmani, 1306 H), p. 458.

¹¹¹ Al-Husain bin Mas'ud bin Muhammad al-Bahawi al-Syafi'i, *Mu'alim al-Tanzil fi Tafsir al-Qur'an*, Prnt I, Volume II, (India: Matba'ah Hajariyah, 1295 H), p. 207.

¹¹² Letter *ba* in sentence *bi ma faddala al-Allah* serves as *ba sababiyah* that causes make the male as *qawwam* over women. Check in Abu ats-Tsina'i Syihabuddin al-Sayyid Mahmud al-Alusi al-Baghd, *Tafsir Ruh al-Ma'ani*, Prnt I, Volume IV, (Kairo: Bulaq, 1301 H), h. 41.

¹¹³ This Exegesis understands the word *qawwam* in the form of *muballaghah*, showing that male leadership is the specificity and absolute. Furthermore it can be seen in: Mohammed bin Ali bin Abdullah al-Syaukani, *Fath al-Qair; al-Jami 'al-Fann Baina riwayat wa al-Dirayah min' ilmi al-Tafsir*, Cet. I, Volume II, (Cairo: Mustafa al-Babi al-Halabi, 1349 H), p. 135. 111 Jamal al-Din Abdur-Rahman bin Ali bin Muhammad al-Jawzi, *Zad algranular fi 'ilmi al-Tafsir*, Cet. I, Volume II, (as Beirut: al-Maktab al-Islami, H 1384), p. 25.

¹¹⁴ Jamal al-Din Abdurrahman bin Ali bin Muhammad al-Jauzi, *Zad al-Masir fi 'ilmi al-Tafsir*, Cet. I, Volume II, (Bairut: al-Maktab al-Islami, 1384 H), p. 25.

¹¹⁵ Words *ba'duhum* interpreted by men and *ba'd* with women. So, this interpretation makes it clear that the leadership of men over women because it has exceeded the primacy of men over women. Check in: Burhanuddin Ibrahim Abu al-Hasan ibn 'Umar al-Biq'a'i, *Nuzm al-Durar fi Burhanuddin Ibrahim Abu al-Hasan ibn 'Umar al-Biq'a'i, Nuzm al-Durar fi Tanasub al-Ayat wa al-Suwar*, Cet I, Volume II, (India: Da'irat al-Maarif al-Utsmaniyah, 1396 H), p. 204.

¹¹⁶ Abu al-Laits Nasr bin muhammad bin Ahmad bin Ibrahim al-Samarqandi al-Balkhi, *Bahr al-Ulum*, more known by *Tafsir al-Samarqandi*, Cet. I, Volume, (Baghdad: al-Lajnah al-Wataniyah li al-Ihtifalat bi Mathla' al-Qarn XV, 1405 H), p. 381.

reason of leadership that is anchored in the primacy of the male in providing a living for his wife also could be interpreted otherwise, ie if there are wives within a family are responsible for providing a bread for his family, the leadership can move her.¹¹⁷

Al-Tabari with tahlili method, then connect the QS. al-Nisa ' / 4: 34 with the next verse as a consequence of the leadership men over women, that women righteous (*salihat*) are those who obey (*qanitat*) carry out the duty of the husband, and keep her honor, as well as maintaining the household and property objects belonging to her husband when the husband was not at home, including keeping his secret.¹¹⁸ This verse became an indicator of the rights that should be accepted by the husband on his duty that had paid a living on his wife.

Thus, the analysis of the structure of a sentence in the verses above can indicate the position *rijal* and *qawwam*. At the beginning of this paragraph directly Koran seated position between men with women. Men as a women leaders caused by the meaning of the next verses, stating that the leadership position is caused by male (husband) as the breadwinner. The consequence is that if the husband has given its duty to give a living (which is also the right of the wife), then the wife of an duty as described in the next paragraph, is to obey the commands husbands and maintain themselves if the husband was not

¹¹⁷ Ayatullah Salih Abadi, *Qadayah al-Mar'ah fi al-Fiqh al-Islami*, (Itla'ath, 1358 H) and Jamilah Kadyur, *al-Mar'ah:Ru'yah min Wara'i Judur*, Cet. I (Bairut: Dar al-Fikr al-Mu'asir, 1422 H), p. 75-82.

¹¹⁸ Al_tabari, *Tafsir al-Tabari*.. p. 41.

there. If the rights and duties between husband and wife above have been met or have been executed by their respective roles, then with some of the advantages that exist in the husband, when the wife of nusyus (fight / do not obey the husband) husband obliged to perform the commands as specified in Quran verses. But if the wife is obedient (to perform its duties), the husband is forbidden to look for errors.

The verses regulating the position between husband and wife and the rights and duties between the two, other than those described in the QS. al-Nisa ' / 4: 34 above, there are some verses that are similar in material, one containing the latter al-Baqarah (2) paragraph 228:

وَهُنَّ مِثْلُ الَّذِي عَلَيْهِنَّ بِالْمَعْرُوفِ وَلِلرِّجَالِ عَلَيْهِنَّ دَرَجَةٌ

For the wife there is balanced with the rights of its duties kindness and for her husband over wife's level.

This verse explains that the wife has the right and the wife also have duties. The wife's duty is a right for husband. Wife's rights such as the right of the husband that said in this verse implies that rights and position of such wife is equivalent or balanced with the rights and status of the husband. Between husband and wife both have rights and duties which must be met each other. Nevertheless, the husband has a higher-level position, namely as the head of the family, as required by the end of the paragraph above. This clause is similar to QS. al-Nisa ' / 4: 34 which explains the existence of rights and duties between husband and wife, but the position of men with women still have

given an edge to her husband (it caused by the nature / strength boyish husband). So by literally, the two verses explain that the leadership anchored in the male is caused by excess given by God in the form of strength to be able to earn living for women (wives)

3. Historical Context Analysis of Legal Source Recipients

The next stage was to explore the relationship between text with the socio-historical context of revelation to see how the text is understood by the first recipient.¹¹⁹ *First*, the structure of society at the time before the fall of the QS. Al-Nisa ' / 4: 34 is not the recognition of equal partnership of men and women.¹²⁰ The fall of this verse is influenced by socio-historical of pre-Islamic Arab society that are on the inequality of the position of women in society. Maulana Muhammad Ali, as quoted by Asghar Ali Engineer, said, "*among the pre-Islamic Arab socety, if a man dies, his older son or other family members have the right to have a widow or widows, marry them if they like, without giving dowry, marry it with others, or to prevent mating at all.*"¹²¹ In addition, the Arabs community at the time of *Jahliyyah* is ordinary bury their daughters alive with motifs add to the

¹¹⁹ Abdullah Saeed, *Interpreting the Quran..* p.152.

¹²⁰ Zainab Subhan, *Tafsir Kebencian; Studi Bias Jender dalam Tafsir*, (Yogyakarta: LkiS, 1999), p. 104.

¹²¹ Asghar Ali Enginer, *The Rights of Women in Islam*, ter. Farid Wajidi & Cici Farkha, *Hak-hak Perempuan dalam Islam*, (LSPPA Yayasan Prakarsa, 1994), p. 28.

economic burden and bring disgrace to the family. At that time also has no restrictions on the number of wives to having of man.¹²²

In addition to these practices, at the time of *Jahiliyyah* also has many of the practices that have been removed after the marriage of Islam. Among them are marriage *mut'ah* (temporary marriage types whose validity period has been determined), marriage *zawaj al-badal* (exchange wife to each others), marriage *zawaj al-Shigar* (similar to the form of marriage that marriage was common, except no dowry granted because the bride her marry the daughter or sister with a man who will marry your daughter or sister with him), and marriage *jawaz al-Istibda'* (husband may tell his wife has sexual relations with another man to get pregnant).¹²³ In general conditions of women in Islam when there are no women in the position it is very low. After Islam came almost all practices that debase women is removed and replaced or revised by the teachings of the friendly and tolerant towards women.

Second, the overall of social structure in Arab society in the early days of the Prophet to come is to follow the patriarchal system, as happened in the city of Makkah (Although there are also matriaral system in Madiyah). These indications are shown by the attitude of the Prophet who tend to apply *qishas* to give the penalty to the husband who had slapped his wife. Prophet desire is a wish to

¹²² M. Faisol, *Hermeneutika Gender...* p. 41.

¹²³ M. Faisol, *Hermeneutika Gender...* h. 41. Compare with the categorization of some cancellation wedding by Islam in: Sayid Sabiq, *Fiqh Sunnah*, Juz II, (Kairo: Dar al-Turats, 2005), p. 4.

change the dominance of patriarchy as in this statement: "I want to something, but God willed to another." The motivation prophet is not without reason, because in some history, at the time the action of husbands beating their wives has become a tradition among followers prophet. Therefore the prophet urged them not to be rude and do not hit to their wives.

Fakhruddin al-Razi, citing a history of coming from Umar, said: "We in the Community of Quraysh, our husbands are able to master the wives. When we arrived in Medina, we found that the wives of the people of Medina dominate their husbands. After our wives interact with them, our wives was started to dare, ie against the husband. So, I came to the Prophet and explained that wives had begun to dare to her husband. The Prophet was then allowed a husband to beat his wife. After that, a group of women walking around in the house wives of the prophet. All complained the treatment against her. The Prophet said: *'at night there are around seventy women in his family home. They complain about the treatment of their husbands, which you do not find the best among them. it means that people who have hit their wives are no better than those who do not hit their wives'* "¹²⁴

On the other hand there is also a story narrated by Sa'eed ibn Rabi' who states that one of the leaders Anshor maligned by his wife,

¹²⁴ See, Fakhrudin al-Razi, *Tafsir Mafatih al-Ghaib*, tafsir surat al-Nisa' ayat 34.

Habibah bint Zaid bin Zubair. Then she slapped by her husband. Be hard done like that, Habibah complained to his father, who then took him to the Prophet. His father said: "O glorious, thou have marry my daughter, but her husband slapped her." The Prophet also recommends Habibah for her *qishahs* (reply) to her husband. Then there came QS. Al-Nisa ' / 4: 34. So, the prophet was commanded to Habibah to canceled to avenge her husband, and saying "I want something, but God willed to another. The will of God is much better. "The story above is considered as micro context of a decline in QS. al-Nisa ' / 4: 34.¹²⁵

The fall in this verse indicates the deconstruction well as socio-religious revolution in Jahiliyyah Arab society. Violent practices were always dominated by the patriarchal system that degrades slowly in women have erased. This is evident from the motivation of the Prophet who had wanted the elimination of such violence radically by using *qishas*, but with the decline in the verse is the elimination of violence against women carried out gradually (as contained in paragraph, when the wife of *nusyuz* first to do is advise, separate beds, then with a hit).

¹²⁵ Imam Zamarkashi, *Tafsir al-Kasysyaf*, Vol. I, the interpretation of the letter al-Nisa '. The commentators agreed that the verse was revealed with regard to slapped committed by a husband to his wife, as mentioned above. However, there are differences of opinion on who the woman in question. Some say that she is Habibah bint Zaid; Nothing says Jamilah binti Abdullah bin Abi Aufa, wife of Thabit bin Qais bin Syammas; and some argue Habibah binti Muhammad bin Salamah, the wife of Said bin Rabi '. More details see, *Tafsir al-Tabari*, *Jami 'al-Bayan fi Ta'wil Qur'an*, tafsir surat al-Nisa' verse 34.

Third, in the history of the prophethood of Muhammad, all the policies and regulations gradually has led to the principle of gender equality. Women initially did not get the inheritance or the rights of others, then gradually Islam gives that opportunity to them (Q.S. 4: 12). At first, women were not allowed to witness, then by Islam it is removed and women are given the right to be witnesses (Q.S. 2: 228). At first, the women are always being abused by her husband, gradually have removed Islam (Q.S. 4: 34).

In politics, too. Women at the time of the Prophet was given the right in politics. Not found verse or hadith that prohibits women to active in politics. So if in the future there is a presumption that a *taboo* for women to be active in politics or other professions, the trend was obvious because the social construction (*Socially constructed*). One example of this is happening at Hazrat Zahra, who are directly involved in the political world,¹²⁶ and a number of other women at the time of the Prophet (Fatima bint Prophet, 'Aisha bint Abu Bakr,' Atika bint Yazid ibn Mu'awiya, Umm Salamah bint Yes' QUB, Al-Khayzaran bint Athok etc.).¹²⁷ She's a lot of communicating with group leaders Anshor and Emigrants. The activity was considered as the normal activities undertaken by a head of state, even when the

¹²⁶ Nasir Makarim al-Syairazi, *Zahra, Khair al-Nisa' al-Alamin*, (Bairut: Dar al-Hadi, 1414 H/1993 M).

¹²⁷ Ahmad Jadi'i, *Nisa' haula al-Rasul*, Cet. I, (Kairo: Dar al-Basyir, 1417 H); Bassam Muhammad Hamami, *Nisa' Haula al-Rasul*, Cet. I, (Bairut: Dar Daniyah, 1413 H); dan Abd. Aziz al-Syanawi, *Nisa' Nazala fihima al-Qur'an*, (Kairo: Maktabah al-Iman, 1992).

Prophet was alive the participation of women in building a civilization appears its significance.¹²⁸

In addition, many women at the time of the Prophet who pursue the professions like a men. The wives of the Prophet, especially 'Aisha has run an important political role. In addition to 'Aisha, also many other women who are involved in the field of political affairs, they are heavily involved in the battlefield, of not a few of them gurg on the battlefield, such as Umm Salamah (the wife of the Prophet), Safia, Laylah al-Sinam Ghaffariyahm Umm al-Aslamiyah.

In the economic sphere the woman is free to choose a decent job, either inside or outside the home. This is evidenced by a number of the important names like a Khadijah bint Khuwailid (wives of the Prophet), known as a successful trader, zaynab bint Jahsh, his profession as a tanner animal, Malhan bint Umm Salim who works as a bridal, wife of Abdullah ibn Mas'ud and Qilat Umm Anmar Bani known as a successful entrepreneur, al-Shifa ', who works as a secretary and had been tasked by the Caliph' Umar as an officer who handle the Medina City market.¹²⁹

¹²⁸ Intisar Yasin, *al-Mar'ah al-Muslimah fi Dzilli al-Madaniyah al-Haditsah*, (Kairo: al-Isro, w.yrs), p. 17-19 and Wahiduddin Khan, *Agar Perempuan tetap Jadi Perempuan tetap Jadi Perempuan: Cara Islam Membebaskan Wanita*, Translated by Abdullah Ali, Cet. II, (Jakarta: Serambi, 2001), p. 188.

¹²⁹ Nasaruddin Umar, *Persepektif Jender dalam Islam*, dalam M. Faisol, *Hermeneutika Gender..* p. 58.

In conclusion, if in a contextual analysis, the decline in QS. al-Nisa ' / 4: 34 preceded by the patriarchal culture of the Arabs, from *jahiliyyah* until the advent of Islam. Koran seek gradual deconstruction of the culture that begins with the paragraph above, which aims at the reduction of the culture of violence against women. Furthermore Koran also seek to uplift women, it is seen by some Arab cultures are beginning to shift to the degree of her promotion of women. Socio-historical reality as a result of deconstruction is to start their active roles of women / wives began to expand in the realm of economics, politics and even in warfare.

The next step is to determine the nature of the text messages, whether it is a legal text, theological or ethical. QS. al-Nisa ' / 4: 34 explicitly a legal text. This is evident from the language commands contained, namely the discussion of the duty of the husband to support his wife, and the wife's duty to obey the law of the husband and the punishment to wife who has *nusyus*. However, if traced further, implicitly that paragraph has an ethical motivated, which wants to position wives higher level by giving them rights and duties to her and give it a little space in terms nusyus (due to the pre- Islamic era, when the wife has nusyus, the husband started beating the wife).

Next is needed to further exploration of the specific message that appear to be the focus of this paragraph. Needs to be further analysis of the hierarchy of values contained in that paragraph. The

goal is to determine the application of the paragraph above, whether the clause is only valid at the time of revelation or of all time, and whether this paragraph is universal (not specific to situations, people or a particular context) or vice versa.

According to researcher, when seen from Saeed hierarchy of value categorization, this paragraph included in the instructional value. The reason is this verse talking about issues that apply (special) at the time of revelation. To find out more Saeed has set up the test tool, which also serves to explain this verse applies whether universal or particular. *First*, the frequency. Frequency is closely related to how often a certain value mentioned in the Koran through search themes associated with these values.¹³⁰ As described in the previous discussion, the value of the fulfillment of the rights and duties of husband and wife in the QS. al-Nisa ' / 4: 34, delivered the Koran through several concepts, namely: equal rights of husband and wife (QS. Al-Baqarah / 2: 228), the duty of the husband to provide for the family (QS. Al-Baqarah / 2 : 233), the duty to provide shelter husband (QS. al-Thalaq / 65: 6). That is, this paragraph is referred to in the Koran in minimal quantity.

Second, the emphasis. This dose questioned whether this value is really emphasized in propaganda of prophet.¹³¹ Context fulfillment of rights and duties of married contained in QS. al-Nisa ' / 4: 34, is

¹³⁰ Abdullah Saeed, *Interpreting the Quran..* p.139.

¹³¹ Abdullah Saeed, *Interpreting the Quran..* p.139-140.

including the issues emphasized in propaganda the prophet, in an effort to organize people into a condition which is more egalitarian and equitable. As explained previously, the emphasis lies on the appointment of women as wives degree of the previously highly degraded and neglected her rights as a wife. The result at the time of the Prophet preaching development, women (wives) are given greater space in terms of economics, politics and even warfare.

Third, relevance. Saeed divide the relevant to two kinds; (1) relevance to the particular culture that is limited by time, place and conditions, (2) the relevance of universal regardless of time, place and conditions.¹³² Because the Prophet lowered in society Hijaz, there is an important relationship between the Prophet's mission and culture at that time. As is known, not all teachings, values, and practices in the pre-Islamic society that is discarded by the Prophet. So rational to say that what was done and said to the Prophet in accordance with the conditions at that time. What is contained in the QS. al-Nisa ' / 4: 34 more appear to have limited relevance in space and time at the time of revelation. This paragraph does not apply universally true in the wording, but it is universally applicable in its mission, namely the appointment of the degree of women through the provision of rights and duties between husband and wife equally.

¹³² Abdullah Saeed, *Interpreting the Quran..* p.140-141.

Duties and liabilities living husbands obey the wife's husband and wife who nusyus penalties gradually (disobedient husband), as an attempt by the Koran to avoid arbitrariness husband who does not pay attention to the rights of wives and even violent to her. That is, the excess husband (in terms of support his wife) that require wives obey him and sentenced nusyus (advised, separate beds and hitting), only according to the conditions at that time, due to the excellence husband in that paragraph is concentrated because of the strength of the husband in case to provide of wife , if the power is lost rationalization context can also be changed.

Furthermore, when looking at the spirit of the Koran which seeks to eradicate the practice of arbitrariness, as a correction to the culture of pre-Islamic Arab society of denial of the rights of the wife (living, bride price / dowry), violence against wives (QS. Al Nisa / 4: 34), and several other revolutions Koran, verses about the equalization of rights and duties of husband and wife can be seen in the spirit of fairness and equality. That is, as stated Saeed, the experience of the paragraph above should not be taken literally (the implementation may change or differ from that verse), for the principle remains the same as it was revealed first.¹³³

¹³³ Abdullah Saeed, *Interpreting the Quran..* p. 122.

4. Current Context Analysis

The fourth phase is the last stage that gives a portion to the withdrawal of the text by the present context.¹³⁴ The key issue in the present context is the disparity in the interpretation and application of the above verse (QS. Al-Nisa ' / 4: 34). One of them is the legitimacy of the holy book to say that the inferior position of women compared to men in the functioning of economic, political and intellectual. Normative interpretation (literal) provides a strong influence on the legitimacy. One is the view of some scholars' classic remains a legitimacy until today, ie stating that women should remain consistent on the task (obedient to her husband and take care of the household) and does not seek to enter in the space for men (whether economic, political, and intellectual).¹³⁵ In the view of the contemporary scholars seem almost identical, the man is considered to have an duty heavier than women, where men are responsible for feeding their families (including giving dowry),¹³⁶ while women rely only economy on husband, consequently there is a legitimate meaning of the dominance of husband to wife.

In fact, when combined with the historical context and mission analysis of the above verse, the purposes of paragraphs above is not at all show that women are inferior to men. Paragraph above

¹³⁴ Abdullah Saeed, *Interpreting the Quran..* p.152.

¹³⁵ Muhammad bin Abdullah al-Anshari, *Qanun al-Ahwal al-Syakhsiyyah baina Mu'ayyad wa Mu'arid*, (Kairo: w.yrs), p. 313.

¹³⁶

must be seen in context. Thus, when society has changed or is different from the context of the revelation, then people can still apply the paragraph above with the appropriate operational. As is known, in modern times, has many different situations that period. At present, the general view has been greatly eased against women - although there are still many injustices which must be felt by women. At a minimum, culture burying girls alive, women as inheritance, married a woman without a dowry is not met. The role and status of women at the present time has also undergone a transformation. Women have been active in the public sphere which shows that the social, intellectual, and economic, women have been able to compete with men.¹³⁷ Later in the private sphere, women alongside men equally have a role in fulfilling the economic function of the family.

Above view, apart from generalizations, shows that there is so much friction that occurs between the past revelation with the present. And, as previously agreed, that paragraph merely particular, only in situations condition as at the time of revelation, for which its application could change if conditions change the situation, then this verse can be applied differently to the sound of literal text.

As for the application of an operational nature, depending on the context of the existing society, the Koran gives certain advantages to men over women at that time because of the social context in

¹³⁷ Abdullah Saeed, *Interpreting the Quran..* p.121-122.

patriarchal domination. However, the Koran also explains the advantages has given is not inherent in the male self. Or, conversely, the weakness is inherent in women. Thus, the problem of excess which is the requirement of *qawwams*-ity someone not in the form of excess sex. So that the position between a husband and wife at this time can be compared with the role of inequality in terms of economic, educational and political.

The principles that must be held in its application are: *First*, the paragraph above is not to be understood as normative (literal) overall. Given after performing a search, the above paragraph is so associated with the background of society at that time. The above verse is very flexible and can be changed; *Second*, any operational form as the application of this paragraph can not leave the basic mission or message of this text, namely the principles of justice and equality. Reform of the Koran against Arab society at that time was very comprehensive. It can be seen that the Koran is not only to build the religious equality (all people are equal that differentiate them in the eyes of the Lord are goodfearing). The Koran also noticed things to build social equality. This is accomplished through the correction of the Arab people's habits in demeaning to women at that time (correction of the Koran and the customs of the Arabs can be seen in the preceding discussion), including reforms in the area of distribution rights and duties of husband and wife.

B. RECONSTRUCTION OF GENDER EQUITY IN RIGHTS AND DUTIES OF HUSBAND AND WIFE IN KHI

Right system (privilege) of men in marriage and a sharp distinction between the rights of husband and wife is not the fault entirely derived from the Quran, but the human role in creating the law with the diverse views of law is exactly what makes their interpretation is distortion. This system is derived from the interpretation by certain people who live and think at a certain time. According Kecia Ali laws that they form is not because they are the misogyny, but it is possible due to time constraints in which the law was created.¹³⁸

The interpretation of the QS. al-Nisa ' / 4: 34 conducted by the legalists traditionalists is provide the strong influence on the system of rights and duties in KHI. The norms contained in those articles are very obvious with the normative interpretation (literal) as described previously. This has an impact to the system of rights and duties that are very patriarchal, where the position of the husband who made heads of households, while the wife just housewives, consequences on the distribution of rights and duties is far from egalitarian.

Progressive Muslim view that Islamic law should be understood in a new pradiagama. That are the law born can not be released by the *illat* accompanying. Including of *illat* is the condition of the times, intentions,

¹³⁸ Kecia Ali, "Progressive Muslim and Islamic Jurisprudence: the necessity for critical engagement with marriage and divorce law", in: Omid Safi, *Muslims Progressive*, p. 183. Compare with Abdullah Saeed, *Islamic Thought...* p. 151.

and interests or goals and the causes of the occurrence of something as an object of law. Urgency of law is to achieve social well as *maqasid al-shari'ah*.¹³⁹ Therefore, it could have been the product of fiqh will change from time to time.

Anthropological and cultural differences should not blur on gender equality that is indeed a basic right of all human beings. It may be a different local traditions, but keep in mind that the instincts of humanity will remain attached anywhere. In public spaces may be physical women get a limitations moving, but empathy, emotion, and imagination, they still should be considered. In terms of parenting, choose the direction of family education, determine the domicile of residence and so on, women (wives) have the same opportunities as men (husbands). Because it all is a basic human right.¹⁴⁰

Therefore, reconstruction of some norms on the rights and duties of the KHI necessary, to conform to universal values in Islamic law and social reality at this time. If viewed from the analysis of the sources of law on the rights and duties of QS. al-Nisa ' / 4: 34 previously, there are three conclusions, namely: *first*, literally, the verse states that leadership (domination) husband to wife due to its advantages in providing a living for the family; *second*, historically, the verse is a correction of misconduct of men against women and aims to uplift women, where a social and cultural at the time was shaped is patriarchal; *third*, when faced with the

¹³⁹ Kecia Ali, *Progressive Muslim and...* p. 168-169.

¹⁴⁰ Sa'diyya Shaik, *Transforming Feminim: Islam, Women, and Gender Justice dalam Muslim Progressive on Justice, Gender, and Pluralism*, ed. Omid Safi, (Oxford: Oneworld, 2003), p. 150.

challenges at this time then the verse can be applied contextualist by applying its primary mission, namely justice and equality.

Thus, if associated with the application of the above paragraph of the articles in KHI rights and duties of husband and wife, the researcher can base the primary mission of the above verse form of justice and equality to those chapters. Article paradoxical in KHI contained in article 79 paragraph 1, which reads: *The husband is the head of the family and the wife is a homemaker*, is the first legal text that must be reconstructed. This is because there is a striking role inequality between husband and wife. Researcher offer new norms which can be replaced with " *Both husband and wife are jointly responsible for the leadership of the family* ".

Selection of these norms based on the current state of society, where both men and women have the same rights (economic, educational and political), even in the public sphere. In contrast to the historically during the first revelation, in which the shape of the patriarchal family system, which requires a strong domination of men. Additionally literally, male leadership because of its advantages (strength) in feeding their families. So if it was compared to the modern era, where women also gain broad access to work, then automatically woman (wife) also has the right to family leadership. What needs to be reiterated is that the leadership in

the family is not based on the gender, but to the task or role between husband and wife.¹⁴¹



¹⁴¹ Perhaps it should be emphasized also that basically the task of the husband is related to external tasks, including making a living, and his wife the task of essentially internal housekeeping. Atho Mudzhar, , *Pembaruan Hukum Perkawinan*.. p. 49.

CHAPTER V

CONCLUSIONS AND SUGGESTIONS

A. CONCLUSION

Based on the discussion at chapters previously, then can take a conclusions by the folowwing:

First, the rights and duties between the spouses arising from the marriage. Islam insists on the distribution of rights and duties mentioned in the legal sources, al-Quran and al-Hadith. Pattern of interpretation of the verses is influence the implementation of the rights and duties of husband and wife. Literalits interpretation by the *legalists traditionalists* of the verses of the Koran are used in the formation of norms in the Articles of KHI. Thus, one consequence is shaping the orientation of the rights and duties of husband and wife in a KHI that is not egalitarian, where the dominance of male power (the husband) the wife is very strong. It is also evident from the inconsistency of the articles of the KHI rights and duties of husband and wife is ambivalent, on the one hand there is a norm that respects equality, but on the other hand gives the inferior role of the position of the wife.

Second, look at the orientation of rights and responsibilities that are not egalitarian KHI caused by a literal interpretation, the researchers used applications contextualist interpretation in progressive Islam used by

Saeed to reorient or deconstruct the sources of law used. Results found at least divided into three parts, namely: *first*, literally verse in Sura. al-Nisa ' / 4: 34 states that leadership (domination) husband to wife due to its advantages in providing a living for the family; *second*, historical socio-cultural at the time was shaped by patriarchal; *third*, the verse can be applied contextualist by applying its primary mission, namely justice and equality. Thus, the reorientation of the article regarding the rights and duties of husband and wife in KHI can use the basic mission of the verses of the Koran which is used as a source of legal rights and duties of husband and wife, namely justice and equality. Norms that can be applied is " *Both husband and wife are jointly responsible for the leadership of the family* "

B. SUGGESTIONS

As we know, that gender equality is very influential on three conditions, namely: legislators, legal structure and legal culture. In practice, the analysis in this paper was shown to reconstruct gender inequity created by the makers of the law, especially in articles about the rights and duties of husband and wife in KHI. The objective of this recommendation is showed to:

Practitioner of Religious Courts, in particular to judges who is decide the cases of rights and duties of husband and wife issues. The judges is expectable to reorientation the disparity of understanding of

rights and duties of husband and wife that a long time is looked by gender bias. The equality and gender justice as a mission on Sura al-Nisa ' / 4: 34 be provided that a base of paradigm on the judge interpretation in thus cases.

Furthermore to the Constitutional Courts in Indonesia to *judicial review* of the articles that had not accordance with the social reality in Indonesian society. That caused by the experienced of thus articles that have some the disorientation to commons rights on the Basic Law of Republic of Indonesia years 1945 (UUD 1945).

Last but not least, to the Islamic law observer, especially to them who are fighting for the justice and gender equality to improved on this thesis. Considering, there are still many shortcomings inherent in the analysis of this thesis. Both of the methodology or the application model in the analytical data. So need a further study more comprehensive in order to realize the objectives expected. In particular to be able to reconstruct the clauses in KHI seen much indication of gender bias and is not in favor of women.

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CURRICULUM VITAE

A. GENERAL DATA



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Phone : 0857 907 555 62
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B. EDUCATIONAL HISTORY

Formal Education		
NO	EDUCATION	GRADUATE
1	SDN 01 Siwalan Ponorogo	2006
2	MTs Al-Islam Joresan Ponorogo	2009
3	MA Darul Huda Maayak Ponorogo	2012
4	Islamic Family Law (<i>Al-Ahwal Al-Syakhsiyyah</i>) – State Islamic University of Maulana Malik Ibrahim Malang	2016

Informal Education		
NO	EDUCATION	GRADUATE
1	Pondok Pesantren Darul Huda Mayak Ponorogo	2012
2	Ma'had Al-Jami'ah UIN Maulana Malik Ibrahim Malang	2013

C. TRAINING

NO	TRAINING	YEARS
1	Kursus Pembina Pramuka Mahir Tingkat Dasar	2010
2	Sekolah Parlemen Senat Mahasiswa UIN Maulana Malik Ibrahim Malang	2013
3	Sekolah Penelitian Pemula (SPP) LKP2M UIN Maulana Malik Ibrahim Malang	2015
4	Sekolah Penelitian Lanjutan (SPL) LKP2M UIN Maulana Malik Ibrahim Malang	2015
5	Shortcourse Metodologi Penelitian Nasional LKP2M (Lembaga Kajian Penelitian dan Pengembangan Mahasiswa) UIN Maulana Malik Ibrahim Malang	2015
6	Sosialisasi Empat Pilar MPR RI	2016

D. ORGANIZATION EXPERIENCE

NO	POSITION	YEARS
1	CO Bagian Pendidikan Keluarga Besar Mahasiswa Bidikmisi (KBMB)	2013
2	Sekretaris Ikatan Alumni Darul Huda (IKADHA) Malang	2014
3	Staf bidang Penelitian Integratif Lembaga Kajian Penelitian dan Pengembangan Mahasiswa (LKP2M) UIN Maulana Malik Ibrahim Malang	2014
4	Tim Redaksi Majalah Dewan Eksekutif Mahasiswa (DEMA) Fakultas Syariah UIN Maulana Malik Ibrahim Malang	2014
5	Tim Redaksi Buletin <i>Sharia News</i> Fakultas Syariah UIN Maulana Malik Ibrahim Malang	2015
6	Vounteer Lembaga Bantuan Hukum Malang	2015
7	Pengurus Bagian Advokasi Keluarga Alumni Mahasiswa Bidikmisi (KAMABI) UIN Maulana	2016

	Malik Ibrahim Malang	
8	Volunteer Lembaga Penelitian dan Pengabdian Masyarakat (LP2M) UIN Maulana Malik Ibrahim Malang	2016

E. ACHIEVEMENT

NO	ACHIEVEMENT	YEARS
1	Peserta Debat Ilmiah Mahasiswa Universitas Negeri Jakarta	2013
2	Finalis (4 Besar) Lomba Karya Tulis Ilmiah Mahasiswa Nasional Keluarga Muslim Fakultas Hukum Universitas Gadjah Mada	2014
3	Finalis (5 besar) Kompetisi Karya Tulis Ilmiah Nasional <i>Sciecesational</i> Fakultas Hukum Universitas Indonesia	2015
4	Finalis (6 Besar LKTI Mahasiswa Mahkamah Agung Fakultas Hukum Universitas Mulawarman)	2015
5	Peserta Karya Tulis Ilmiah Al-Qur'an Musabaqah Tilawatil Qur'an Mahasiswa Nasional XIV 2015 Universitas Indonesia	2015

F. WRITING PUBLICATION

NO	TITLE	PUBLICATION	YEARS
1	<i>Revitalisasi Nilai-Nilai Hukum Islam Terhadap Realitas Aturan Kawin Hamil Dengan Metode Ijtihad Intiq'a'i Dan Insya'i</i>	(LKTI Nasional Keluarga Muslim Fakultas Hukum Universitas Gadjah Mada)	2014
2	<i>Water Restoration Sebagai Upaya Revitalisasi Ekokrasi Di Bidang Kedaulatan Air Menuju Indonesia Yang Berkeadilan Sosial</i>	(LKTI Nasional Fakultas Hukum Universitas Indonesia)	2015
3	<i>Reaktualisasi Water Cooperation System Sebagai Upaya Rekonstruksi Tata Kelola Air Untuk Mewujudkan Kesejahteraan Warga Indonesia</i>	(LKTI Mahasiswa Mahkamah Agung Fakultas Hukum Universitas Mulawarman)	2015
4	<i>Reaktualisasi Pertanggung Jawaban Industri Terhadap Kerusakan Lingkungan (Fasâdul</i>	(LKTI MTQ Mahasiswa Nasional	2015

	<i>Bi'ah): Upaya Implementatif Model Community-Based Industrial Waste Management (Cbiwm)</i>	Universitas Indonesia)	
5	<i>Learning Legal Reasoning To Uncle Sam (US)</i>	(Buletin <i>Sharia News</i> Fakultas Syariah UIN Maulana Malik Ibrahim Malang)	2015
6	<i>Dari Bhineka ke Formalisasi Agama: Infiltrasi Reproduksi Ideologis Negara Islam dalam Perda Syariat</i>	(Jurnal <i>Lorong LKP2M</i> UIN Maulana Malik Ibrahim Malang)	2015

