



## **CHAPTER II**

### **HIERARCHY OF REGULATION AND WOMAN'S RIGHTS**

#### **A. Hierarchy of Regulation in Indonesia and the Position of PMA**

Republic of Indonesia is a civil law country. It is clearly stated in Article 1 (3) of the Constitution of 1945. It signifies that the law must be handled strongly by every citizen and the state apparatus must base its actions based on the law. The law in Indonesia is based on positive law that is from law positivism developed by John Austin then continued by Hans Kelsen, and perfected by HLA HART. For the law system in Indonesia, Kelsen as the first person who used the law hierarchy which then becomes the foundation in determining the validity of law in Indonesia.<sup>1</sup>

In a law system, the law regulations will contradict to each other. The disagreement existed between the regulations as it is not improbable is due to the various interests in society. The law system will apply consistently the principles of law, such as

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<sup>1</sup>Act Number 12 year 2012 about formation regulation

the *lex specialis derogat legi generali*, *lex posterior derogat legi priori*, or *lex superior derogat legi infriori*. In accordance with the theories law hierarchy, the principle of law regulations state that a lower legal regulation must not contradict with laws and regulations which are higher on it. This law principle discussed that, when there is a conflict between higher legislations and lower legislation, then based on the hierarchy, the higher rules should be predominant and the lower one should be aside. What is meant by "hierarchy" is the leveling of every kind of Laws and regulations are based on the principle that laws and regulations should not be lower odds with higher Legislations.

In the law system in Indonesia, the legislation hierarchy has been set in the No. 12 of 2011 (which replaced Law No. 10/2004) on the establishment of Regulation Legislation in article 7 states:

- a. The Law of the Republic of Indonesia Year 1945.
- b. Stipulation of the People's Consultative Council
- c. Government Regulation of Law
- d. Government Regulations
- e. Presidential Decree
- f. Provincial Regulation, and
- g. Regency / City Regulation

The types of Legislation except as referred to in Article 8 paragraph (1), is recognized and have legal force throughout ordered by the higher regulations. One of them is the Ministry of Religion Affair's regulation. The explanation of hierarchy are:<sup>2</sup>

1. The Law of Republic of Indonesia Year 1945

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<sup>2</sup>Ismail Hasani & A. Gani Abdullah., *Pengantar Ilmu Perundang-undangan*. Jakarta : FSH UIN Syarif Hidayatullah, 2006. P.78.

The Constitution of 1945 (UUD 1945) is the written basic law of Republic of Indonesia, as it contains the basis and the outline of law in the administration of state law. (UUD1945 was used firstly on 8 August 1945 until December 27, 1949. After that there was several basic change and resulting to UUD 1945 could not be applied, but through a presidential decree dated 5 July 1959, UUD 1945 is able to be applied again until now.)

#### 1. Stipulation of the People's Consultative Council

A decision of the People's Consultative Assembly (MPR) as bearers of popular sovereignty set forth in Assembly sessions.<sup>3</sup> Examples: MPR decree no. iii the year 2000 concerning sources of law and order procedures regulation legislation decree consultative assembly of the republic of Indonesia number iii / MPR/ 2000.

#### 2. Government Regulation of Law

The legislation is established by the House of Representatives by mutual consent of the President. It is pertinent to note that the law is a joint product of the president and parliament (legislative product), in the establishment of this law could have a president who filed a bill that would legally become law if the House agrees, and vice versa. Example: Law of the Republic of Indonesia Number 32 Year 2010 Regarding "Smoking Bans"

#### 3. Government Regulations

Legislation set by the President in matters of urgency that forces (state of emergency), under the following conditions:

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<sup>3</sup>Tap MPRS NO. XX/MPRS/1996 tentang Memorandum DPR-GR mengenai sumber tertib hukum Republik Indonesia dan tata urutan perundang-undangan Republik Indonesia;

Regulation must be enacted by the president alone, without the involvement of Parliament:

- a. Regulation must be submitted to Parliament in the trial that follows.
- b. Parliament may accept or reject the regulation with no make changes.
- c. If rejected Parliament, the regulation should be revoked.

Example: That Law No. 17 of 1999 on the Hajj is no longer appropriate to the development of law and the demands of society that need to be replaced with new legislation replaced with:

#### 4. Presidential Decree

Legislation enacted by the President is to carry out the Act as it should be. Presidential Regulation is legislation established by the President to run the command Legislation higher or in holding governmental power. Indonesian government regulation number 10 year 1987 concerning on the unit of derivatives, additional units and units other applicable and Indonesian government regulation number 48 year 1973 financial guidelines on the implementation.<sup>4</sup>

#### 5. Provincial Regulation

Legislation established by the House of Representatives is by mutual consent of Provincial Governor. Local regulations and decisions of regional heads of State of Indonesia is a country that adheres to the principle of decentralization which means that, Indonesian territory is divided into several autonomous regions and administrative area. The autonomous regions are divided into regional level I and level II regions. In the implementation of regional heads with the approval of

<sup>4</sup><http://nofrialfaresita.vv.si/2013/01/tata-urutan-hierarki-perundang-undangan-indonesia-uu-no-12-tahun-2011/> accessed 20 of March 2015

Parliament can set local regulations. The local regulations must not conflict with laws and regulations thereon.

6. Regency / City Regulation.<sup>5</sup>

Examples: regulation of district level Gresik number 01 of 1990 concerning the amendment of the first regulation of district level ii Gresik number 01 year 1989 on the budget for regional district level ii Gresik fiscal year 1989/1990. Based on the sequence or hierarchy of regulations in Indonesia, these regulations are written and binding as well as ministers of religion regulations in Indonesia that serve as the basis of comparison rules in Indonesia with marriage registration on Malaysia.

Any species of legislation have material separate charge usually based on the legislations in it. In forming the minister must be paid attention judicial base clear. The minister formed must be able to show basic law of its formation serve as basis for. Meaning of the order act invitation regulation relating to the base of juridical the formation of the minister in the sense that only law and rule that higher or equivalent mean that they can be used as the foundation basic. Thus, local regulations cannot be taken basis for formation of the minister. The minister as one of the instruments still legally required in order to the implementation of governing a state.

The existence of the minister it takes to execute perundang- the provisions of the letter in upper in a resolute manner ordered or delegate. Nevertheless, it did not preclude the possibility that minister can be created a rule although the the delegation was not explicitly or not ordered by law and rule that higher. It means, minister able to select

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<sup>5</sup>Jimliy Asshiddiqi, *Hukum Acara Pengujian Undang-Undang*, Jakarta : Konstitusi Press, 2006. P.45

regulations not constituting the delegation legislations which are on it .The minister it is commonly called the minister mandiri , including in the policy .

### **B. The Hierarchy of Regulation in Malaysia and the Position of Enactment**

Malaysia is a country with democratic system in practicing the parliament system with Majesty as the Chairman of the State. Parliament is the highest legislative institution in the country. Malaysia Parliament comprised of His Majesty, the State Council and the People's Council. Sessions of the Council of State has been unveiled for the first time on 11 September 1959.<sup>6</sup>

Law of Malaysia centered with the common law system, as a direct result of colonization Malay land, Sarawak and North Borneo by the British since the early 1800s to the 1960s. The supreme law in Malaysia is the Constitution of Malaysia, outlining the legal framework and the rights of citizens of Malaysia. The federal law enacted by the Parliament of Malaysia is related to the whole country. There is also a state law enacted by the Invitation Council of State (DUN) and is associated with the country. Malaysian constitution also allows a unique dual justice system, namely the secular law (criminal and civil) and sharia law. The implementation and the relationship between the two legal systems is rather complicated and never caused uncertainty.

The source of law is based on the "legal source" which is more easily understood and appropriate use. Even in a legal dispute, the court will look at the source of law based on the definition in determining whether the legislation should be referred. Based on this definition, we can say that the source of law in Malaysia is referring to:

#### 1. The Constitution (the Federation and the State)

<sup>6</sup><http://www.lawnet.com.my/lawnetpublic/LegalInformation/LegalAwareness/FamilyLawandYouPart2/tabid/74/Default.aspx>. Accessed on December 05 2014

2. Legal
3. The decision of Justice
4. Common Law and Rules executive
5. Customary Law
6. Islamic law.

We can further divide the sources of law in Malaysia into two, which are written and unwritten.

- a. Written Law (Written Laws)

Written law is also known as the law of the statute. He was referring to the law contained in the Constitution and law (certificates, rules and entry into force). Unlike with UK, this written law is the main source of law in Malaysia. Malaysia is a country consisting of the alliance's 13 states, the written law in Malaysia is composed of state law (State Laws) and federal (Federal Laws).<sup>7</sup>

There are 3 types of written law in Malaysia which are:

1. The Constitution

There are two means in applying the constitution in Malaysia - One, it is a document that has the nobility of a special law that sets the governance structure, function bodies Reich and the principles which these bodies operate. Secondly, there is a body or group of rules and practices that shape and regulate government agencies as well as controlling the relationship between the individual and the state.

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<sup>7</sup> <http://id.wikipedia.org/wiki/Malaysia>

In Malaysia it is composed of the Federal Constitution which is the main law of the country (the supreme law of the land) and the constitutional state in Malaysia. Article 4 (1) of the Federal Constitution: "The Constitution is the main law of the Federation and any law approved after independence Day and are contrary to this Constitution should be canceled as far as the opposite". In addition to the Federal Constitution, there are 13 more constitution lands in Malaysia. Every state constitution should contain provisions as contained Into Eight Federal Constitution (See Article 71 (4) of the Federal Constitution). This provision touches upon the Government (the King), the Executive Council, Legislative Affairs and so on.

## 2. Law

The law is made by the authorized body to make it. It consists of main and subsidiary laws. The main law in Malaysia is done by Parliament (central level) and the Council of State Invitations (country level).

Laws made by parliament are usually on call as law, while the law made by the Council of State in called as Invitation. Deed Examples include: Contract Act, Labor Law, Law on Household Violence and others again. The examples of Ordinance including: Advocates Ordinance (Sabah Cap. 2) burials Ordinance (Sabah Cap. 19), Merchant Shipping Ordinance 1952 Administration Religion of Islam (State of Johor) in2003.However, there is also a federal law called the Ordinance as the Labor Ordinance of Sabah and Sarawak Labor Ordinance.

## 3. Law Subsidiary



Legislative branch refers to the laws made by the government under the authority given to him by a parent statute. In English, it is called as subsidiary legislation or delegated legislation or also by-laws. See also Section 3, of Law Interpretation in 1948 and 1967 (Act 388) which reads:

"Invited branches mean anything declarations, methods, regulations, notices, small law or other instrument made under any Act Ordinance or legitimate authority, the other and that has the effect of funding".

Examples of the legal subsidiary are: Uniform (Anti-litter) By-laws 2010, which makes power given to the Local Council through the Local Government Ordinance 1961.

b. Unwritten Laws

Unwritten law does not mean that the law was not written directly (literally Unwritten). For instance court's decision may be referred to in writing in the reports of the legal (judicial report), as well as common-law English. However, in order to have a better understanding and remember the source of law in Malaysia, the classification had been made. With this goal, the unwritten law is referring to the part of Malaysian law which is not made by the body that makes laws (the Parliament and the Council of State Invitation) and he is also not of the Federal Constitution and state constitutions. Source Malaysia unwritten law consists of:

1. The principles of English law appropriate in local circumstances.
2. The decision by the court of justice (superior courts).
3. law that has been adopted by the courts.

## C. Woman's Rights in Islamic Perspective

### 1. The Definition of Woman's Rights

Women's rights, is a right held by a woman, as she is a human being and as a woman, the realm of human rights law arrangements can be found in a variety of legal systems on human rights. In that sense explained that arrangements for recognition of the right of a woman found in the various legal systems of human rights. System of human rights law in question is the legal system of human rights contained in the realm of both international and national. In regard to the women's rights contained in the legal system, the human rights can be found either explicitly or implicitly. With the use of common words sometimes make such arrangements become applicable also to the interests of women. In this case, it can be used as a basis for protection and recognition of women's rights.

Of the entire legal system of human rights, we can find other types of women's rights contained in the legal system. Type of women's rights that exist, among others:

#### 1. Rights of Women in Politics

Similarly, a man, a woman also has the same right to participate in government. Women's rights are recognized and carried their protection relating to the rights of women in politics, among others:<sup>8</sup>

- a. The right to participate in government by participating in the formulation of government policy and policy implementation.

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<sup>8</sup>Hikmah, Mutiara. *Hak-hak Perempuan sebagai Modul Mata Kuliah Hukum dan HAM*. Jakarta :PT. Graha Kencana, 2006. P.27

- b. Right to be elected and to vote in regular elections that are free to determine the people's representatives in government.
- c. The right to take part in government organizations and non-governmental and associations related to the government and political life of the country.
- d. The legal basis for the rights of women in politics is to be found in international instruments. Where such rights can be found in the common language of Article 21 UDHR points 1 and 2, Article 25 of the I(International Covenant on Civil and Political Rights (ICCPR),. While the legal basis for more specific mention of women's rights can be found in Article 7 and 8 of Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), Article 1, 2 and 3 of the Convention on Political Rights of Women.

While the legal basis for women's rights can also be found in our national instrument. In Act No. 39 of 1999 on Human Rights can be found in Article 46 which reads as follows: "the electoral system, party, legislative elections and appointment system in the executive, judicial, must ensure appropriate representation of women requirements determined .

## 2. The rights of women in the field of citizenship

Every human being living in a country has the right to acquire citizenship in accordance with the country where he lived. For example someone who is alive and living in the country of Indonesia, in accordance with the Law on Citizenship then there are certain requirements that must be met for someone to obtain Indonesian citizenship. If these requirements can be met then each person has the right to obtain citizenship. This is one of the rights that have to be met against women. Every woman has the same right to obtain citizenship

of a country when they can meet the requirements specified by the legislation of the country concerned.

The legal basis for the rights more specialized and specific can be found in Article 9 of CEDAW, Article 1, 2 and 3 of the Convention on Citizenship of Married Women, Article 1 of the Convention on the Nationality of Women. Where the legal basis, it is known that a woman has the right to acquire, change or retain nationality due to marriage with a man. And each country of origin of these women must be able to guarantee the existence of such rights.

In the national sphere, the basic law regarding the rights of women in the field of citizenship can be found in Article 47 of the Human Rights Act as "a woman who married a foreign man does not automatically follow the citizenship status of her husband but have the right to maintain, replace, or regain their citizenship status.

The contents of the article are compared with the relevant existing international arrangements having a similar arrangement. In other words, setting the rights of women in Indonesia is an adaptation of the existing arrangements in the international sphere. Thus the guarantee of women's rights is of course in addition recognized in Indonesia but is also recognized in the international level.<sup>9</sup>

### 3. The rights of women in education and teaching

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<sup>9</sup> Abdullah, dkk. *Demokrasi dan Hak Asasi Manusia*. . Malang: Averroes Press. 2008. P.56

Education is the most important basis for human life. With one's education can improve the quality of life, both from the quality sense, thinking, and behavior to economics. And education is certainly obtained by teaching. Teaching should be given to each person to get a proper education and quality. Hence, every human being in this world has the right to get an education and teaching, as there is no exception to all women. Every woman as well as every man has a right to education and teaching.

On this basis, the international instruments we can find arrangements that guarantee it. Such arrangements may be common to everyone, and is specific to each woman. International instruments of a general nature, among others, can be found in Article 26 (1) of the Universal Declaration. While the more specialized nature may be found in Article 10 of CEDAW, Article 13 paragraph (2) of the Covenant on the Rights of Economic Social and Cultural Rights Article 4 (d) Convention against Discrimination in Education. Besides that, arrangements regarding the rights can also be found in our national instrument. Arrangements which are more general can be found in Article 31 (1) of the Constitution of 1945. It is more specifically protects the rights of women to be found in Article 48 of the Law of Human Rights which states that "Women have the right to education and teaching in all types, levels and education pathways in accordance with the requirements specified".

1. Women's rights to take legal actions

Before knew the rights of women and the presence of women on a par with men, women are always under male position. It is often seen especially in

cases where women to perform certain legal actions must be approved or under the authority of men. This condition then raises awareness for women that every woman has the same status as men in the eyes of the law, so that later emerged one of the other women's rights recognized in both the international and national levels.

The legal basis in international instruments on women's rights in general can be found in Article 7 of the UDHR, Article 14 paragraph (1) and Article 26 of the International Covenant on Civil and Political Rights and in particular in Article 2 and 15 of CEDAW. In the national instrument, the legal basis for these rights can be found in Article 50 of the Human Rights Act, which reads "a woman who has grown up and has been married or is entitled to conduct his own legal act, unless otherwise provided by the laws of his religion".<sup>10</sup>

In a marriage, the couples sometime been forced to perform the so-called divorce or breakup of marriage. This breakdown marriage on each side of marriage has the same rights and obligations, especially if on marriage produces children. Moreover these two sides also had an equal right to inherit the property along with a fair percentage.

Women Right must be claimed for the rights of women and girls in communities around the world. In some places, these rights are institutionalized or supported by law, local custom, and behavior. The women's rights can be ignored or suppressed. Right of the Women differ from a broader understanding of human

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<sup>10</sup><http://komnasperempuan.com> .accessed 24th april 2015

rights through the claims of traditional and unusual history attached to the exercise of the rights of women and girls in favor of men and boys.

In general, the issues associated with the notion of women's rights, it is not only limited to the right to bodily integrity and autonomy, the right to vote (suffrage), the right to hold public office, the right to work, the right to fair wages or salaries equal to own property, education, to serve in the military or will be deployed, to enter into legal contracts, and have marital or parental rights.

## 2. The Right of Woman in Marriage

In the Islamic world there are many thinkers like Wahbah Zuhaily, Amina Wadud, Fazlur Rohman which identifies about women's rights. Based on the statement made by the leaders of Islamic thinkers, who explained about the rights of women, the authors use Asghar Ali thought to be used as a knife analysis as Asghar Ali Engineer is considered as one of the thinkers relate about women's rights issues associated with the registration of marriages. Asghar Ali Engineer was born in a family environment orthodox *Bohro* on March 10, 1939 in *Sulumber, Rajasthan* (near Udaipur) India. HisnFather namely Sheikh Qurban Hussein. He is a strong believer in understanding the *Shia Ismaili*. Thus, he is open-minded enough to discuss with other religions.

He was a learned Islamic scholar who helped *Bohro* cleric-led establishment. He is described as Asghar Ali Engineer as a person who has great patience when people of other faiths invited to dialogue. As a boy never seen a Hindu Brahmin priest comes to dialogue and exchange ideas with his father about the trust that was followed. But his father, he said that remains confident in the belief that was followed.<sup>11</sup>

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<sup>11</sup>See Progressive Dawoodi Bohro, Asghar Ali Engineer, taken from internet,

In her book, title with Women's Rights in Islam discussed more knowledge about the equality of status cues contained in the Qur'an. In congregate gesture showed the first was a general sense in which the acceptance of the dignity of both sexes is in equal measure. Secondly, the people have to know that men and women have equal rights in social, economic and political. Both should have equal rights to hold a marriage contract and both should have the right to own and arrange the possessions without any other intervention. Both should be free to choose a profession or way of life, as both of them must be equal in responsibility as in freedom. While acknowledging influenced by the works of the great thinkers, he leaves no attention to the study of the Koran and its interpretation written by Muslim scholars.

During this period, he was illustrated the descriptions of *Sir Syed* and *Maulana Azad*. In addition, he also studied in depth about *Rasail Ikhwanus Shafa* and then compared it with the thought from *Shia Ismaili* imams during their hiding at the end of the 8th century. He is becoming a well-known and famous in Islamic scholar after receiving an honorary degree from Litt work at the University of Calcutta in February 1983. This degree earned for his work related to society harmony and social unrest written since the first outbreak of unrest in India in 1961 in Jabalpur. Besides actively writing in the leading mass media in India, he also wrote a number of articles in several leading journals, one of which is in the Indian Journal of Secularism (India). In addition, he also wrote a paper for his studies in various universities at home and abroad.<sup>12</sup>

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<http://www.Dawoodi Bohras.com/aboutus/Asghar.htm>, 8th July 2004. see Progressive Dawoodi Bohro, Asghar Ali Engineer, taken from internet,  
<http://www.Dawoodi Bohras.com/aboutus/Asghar.htm>, 8th July 2004.

<sup>12</sup>Asghar Ali Engineer, what I believe, taken from internet, <http://www.andromeda.rutgers.edu/~ivatakol/engineer/belief.htm>, 8<sup>th</sup> July 2004



a. Women in Asghar Ali Engineer's Perspective

a) Origin Genesis

Islam is a religion in putting a person in the same position, no matter whether it is male or female. God also says that being the closest in his side later is not male or female, but a man of the most devoted, can be men and women. This can be seen in a letter *al-Hujurat* paragraph 13:

يَا أَيُّهَا النَّاسُ إِنَّا خَلَقْنَاكُمْ مِنْ ذَكَرٍ وَأُنْثَىٰ وَجَعَلْنَاكُمْ شُعُوبًا وَقَبَائِلَ لِتَعَارَفُوا إِنَّ أَكْرَمَكُمْ عِنْدَ اللَّهِ أَتْقَاكُمْ إِنَّ اللَّهَ عَلِيمٌ خَبِيرٌ  
(13)

*" Indeed, I created you male and female and I make you a nation and tribes so that you may know each other better; indeed the most noble of you is the most pious. "(QS. al-Hujurat: 13).<sup>13</sup>*

It is intended to create a balanced life between men and women. Although based on the historical view, there has been a dominance of the male role that led to the doctrine of the inequities between men and women. This situation, according to *Asghar Ali Engineer*, is justified by the norms scripture interpreted by men to perpetuate their dominance.

Qur'an, according to *Asghar Ali Engineer*, normatively affirms the concept of equality of status between men and women. The concept of equality it implies two things: first; in a general sense, this means the acceptance of the dignity of both sexes in equal measure. Second; people should know that men and women have equal rights in social, economic, and political. Both should have equal rights to hold a marriage contract or

<sup>13</sup>Yayasan Penyelenggaraan Penerjemahan al-Qur'an, *al-Qur'an dan Terjemahannya*, Jakarta, Departemen Agama.

decide, and both should have the right to own or manage her property without the intervention of others, they should be free to have a profession or way of life, both of them must be equal in responsibility, as in the case of freedom.<sup>14</sup>

#### b. Rights, the Role and Status of Women

Marriage rights (Marital Right) is one of the important indicators for the status of women in society. In most of the religious system, independent women do not get the right to enter into marriage by their own free will. A woman is generally considered to be incapable of (incapable) choosing a life partner because of lower mental ability than men. However, al-Quran is not sighted and regard women as equal to men in terms of their mental abilities as well as moral. Both sexes are equally given a reward or punishment for good and evil deeds he has done: In the Qur'an : (33.35)

إِنَّ الْمُسْلِمِينَ وَالْمُسْلِمَاتِ وَالْمُؤْمِنِينَ وَالْمُؤْمِنَاتِ وَالْقَانِتِينَ وَالْقَانِتَاتِ وَالصَّادِقِينَ وَالصَّادِقَاتِ وَالصَّابِرِينَ وَالصَّابِرَاتِ وَالْخَاشِعِينَ وَالْخَاشِعَاتِ وَالْمُتَصَدِّقِينَ وَالْمُتَصَدِّقَاتِ وَالصَّائِمِينَ وَالصَّائِمَاتِ وَالْحَافِظِينَ فُرُوجَهُمْ وَالْحَافِظَاتِ وَالذَّاكِرِينَ اللَّهَ كَثِيرًا وَالذَّاكِرَاتِ أَعَدَّ اللَّهُ لَهُمْ مَغْفِرَةً وَأَجْرًا عَظِيمًا (35)

Regarding the rights, the role and position of women, *Asghar Ali Engineer* by adhering to the letter al-Ahzab verse 35, as stated above, stating that the verse over and over ten times that women have equal opportunities with men in achieving a level of goodness. This is similar to well-known commentators' opinion of *Maulana Muhammad Ali*.

Even normatively, Qu'ran is in favor of the equality of status between men and women, but contextually Qur'an indeed suggested a certain excess of men over women. According to *Asghar Ali Engineer*, strengths and advantages of men over women is not

<sup>14</sup>See Progressive Dawoodi Bohro, *Asghar Ali Engineer, hak-hak perempuan dalam Islam*, P.38

because of gender. However, it is due to the social context. He sharply criticized the methods of the commentators who understand the verse solely on theological which ignores the sociological approach.<sup>15</sup>Based on Asghar Ali Engineer, the commentators should use socio-theological views. He wrote: "Nevertheless, the Qur'an does talk about men who have social advantages and superiority over women. This, as indicated above, should be seen in the proper social context. The social structure in era Prophet does not recognized the equality of men and women. People can't take the view that theologically in this sort of thing. People should use social-theological views. Even the Koran was composed of contextual teaching and also normative. No scripture can be effective, if it ignores the context at all.

He has been offering a wide variety of demolition discourse. On the issue of women's rights in Islam, he presents his opinions regarding inheritance, testimony and polygamy is considered as an example of inequality. The purpose of all this discussion at least be able to create a balanced life between men and women.<sup>16</sup>

#### 1. Inheritance

In general, as to the issue of inheritance, girls are given half of that earned by men. By Asghar Ali Engineer, if it is a girl get half of that earned by men it does not mean that the recipient is less considered inferior, since inheritance is very different from that of equality between men and women.

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<sup>15</sup>Ali Engineer, Asghar, *Hak-Hak Perempuan dalam Islam*, Yogyakarta: Yayasan Bentang Budaya, 1994. P. 143.

<sup>16</sup>M Agus Nuryatno, *Islam, Teologi Pembebasan dan Kesetaraan Gender*, Surabaya : PT Sukma, 2008. P.67  
Pemikiran Asghar Ali Engineer, *op.cit.*, P.13-14.

Furthermore, Asghar Ali Engineer said, part of which is thus very dependent on the socio-economic structure and functions of the sexes in society. It has become a principle of Islamic law that is very well known, which is quoted from the Quran, that a wife should be living by her husband even though she had many possessions. She did not obligated to spend his own wealth and they were entitled to demand a living from her husband. In addition, at the time of marriage, when she got any dowry as then, the duty of her husband is to provide it with affection. Thus, according to him, provisions are to be discriminative against women. In addition to a share of the inheritance, later the girl was married off to get additional assets in the form of dowry or dowry from her husband. In fact, she does not have any obligation to provide for herself and her children, because everything is under the responsibility of her husband.

## 2. Polygamy

Polygamy is now considered to be a controversial issue that comes from religion. Because it is legally formal religion allows for polygamy or marries more than one wife together. The provision is as stated in the Qur'an letter an-Nisa ', 3.

To understand the true essence of the verse, according to Asghar Ali Engineer, this quote should consider the relation with other verses both before and afterwards (paragraphs 2 and 127) in the same letter. From these verses, it is obvious that polygamy is allowed verse revealed in the context. To understand the true essence of the verse, according to *Asghar Ali Engineer* should consider the relation with other verses both before and afterwards (paragraphs 2 and 127) in the same letter. From

these verses, it is obvious that polygamy is allowed based on the verse revealed in the context. Based on the presentation, the author uses *Asghaar Ali Engineer's* thought as analysts in viewing the women's rights.<sup>17</sup>



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<sup>17</sup>Yunahar Ilyas, *Feminisme dalam Kajian Tafsir al-Qur'an Klasik dan Kontemporer*, Yogyakarta : Pustaka Pelajar, 1998, P. 4