

## **DECONSTRUCTION OF GENDER ISSUE: WOMEN'S POSITION IN RIGHTS ON RELIGIOUS TEXTS**

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### **Abstract**

This article provides many explanations about the equal positions and rights of men and women. However, in fact, this reality is not always based on the principles of justice and equality in the eyes of the law as a result of biased interpretation. This study responds to a Lacuna in the previous literature that tends to emphasize the seeming dumbing down of women in both the private and public spheres. This article aims to erase the misunderstanding of sacred texts, by attempting to re-read religious texts. This article uses Jacques Derrida's deconstruction theory in re-reading the text. The author wants to show that using Derrida's deconstruction is able to influence one's thinking style when understanding a meaning in finding a context but not ending and continuing. Then, the deconstruction of the text can establish the law of the fuqaha opinion that meets the needs and dynamics of society. It is necessary to build understanding in society with the teachings of fiqh in the text that must be interpreted with social reality (fiqh al-waqi'). This understanding of fiqh embodies the culture in society and eliminates the impression that fiqh is more likely to be born from patriarchal power relations.

**Keywords:** Deconstruction, Gender Fiqh, Women's Position and Rights, Religious Texts.

### **Abstrak**

*Artikel ini menunjukkan bahwa teks suci agama banyak ditemui penjelasan tentang persamaan posisi dan hak baik untuk laki-laki dan perempuan. Namun, fakta dilapangan tidak sesuai dengan prinsip keadilan, kesetaraan, dan persamaan dimata hukum sebagai akibat dari penafsiran yang bias. Artikel ini merespons kekosongan dalam literatur sebelumnya yang terkesan adanya pembodohan terhadap perempuan baik dalam ranah privat maupun publik, dan bertujuan menghapus kekeliruan dalam memahami teks-teks suci dengan upaya pembacaan ulang teks agama. Artikel ini menggunakan teori dekonstruksi Jacques Derrida dalam membaca ulang teks. Penulis ingin menunjukkan bahwa menggunakan dekonstruksi Derrida mampu mempengaruhi gaya berpikir seseorang ketika memahami suatu makna dalam menemukan konteks tetapi tidak berakhir dan terus berkelanjutan. Kemudian, dekonstruksi teks tersebut dapat menetapkan hukum dari pendapat fuqaha yang memenuhi kebutuhan dan dinamika masyarakat. Perlu membangun pemahaman di masyarakat dengan ajaran fiqh dalam teks yang harus ditafsirkan dengan realitas sosial (fiqh al waqi'). Pemahaman fiqh ini mengejawantahkan budaya di masyarakat dan menghilangkan kesan bahwa fiqh lebih cenderung lahir dari relasi kuasa patriarki.*

**Kata Kunci:** Dekonstruksi, Fikih Gender, Posisi dan Hak-hak Perempuan, Teks-teks Keagamaan

# INTRODUCTION

Women in sacred texts have always experienced oppression and criminalization about the position and rights.<sup>1</sup> From several Islamic teaching texts, there are many efforts to fool women by displaying symbols of Islamic teachings that are understood textually rather than contextually. Such as the position of witnesses in evidence in court is only allowed if one man is equal to 2 (two) women, women cannot become judges except in civil cases. Women should not pray in congregation in the mosque and it is more affdhol to pray at home.<sup>2</sup> Women cannot be judges, except for the opinion of Imam Hanafi who allows it but is not justified in the case of Hudud and Qishas.<sup>3</sup> many more restrictions on women that tend to harm the women themselves which in turn harm Muslims as a whole.It is common to see discriminatory societal actions due to gender stereotypical considerations.<sup>4</sup> The limitation of roles and functions is always associated with the position of womanhood.<sup>5</sup> This does not only arise from men, but from women themselves. As long as women themselves do not have enough mental readiness to play an equal role with men, they will also face discriminatory realities.To date, studies of position and rights of women, in religious texts have provided little insight into Deconstruction of Gender in some

sacred religious texts. There seems to be a dumbing down of women both in the private and public spheres, especially with regard to practices in Islamic law whether it is about marriage, politics and law, both concerning the private sphere and the position of women in the public sphere such as becoming leaders, or placing in strategic positions in an organization. At least three trends from existing studies can be mapped.<sup>6</sup> Second, the study of religious assessment of women starts from three basic assumptions about religious beliefs. First, dogmatic assumptions that explicitly place women as appendages. Second, the dogma that women's ethical moral talents are inferior. Third, the materialistic view, the ideology of the pre-Islamic Makkah society that underestimated women's role in the production process.<sup>7</sup> Third, there is an understanding in the empirical reality in the interpretation of religious texts that are gender biased and cause problems related to the relations between men and women, such as injustice, subordination, discrimination, and marginalization, efforts have been made to review the interpretation of verses and interpretation models that tend to marginalize the role of women. By reinterpreting QS an-Nisa` verse 34 contextually.<sup>8</sup> Existing studies recommend the elimination of gender inequality that occurs in

<sup>1</sup> Sukamto, "Status Perempuan Dalam Wacana Tafsir Teks Suci : Studi Singkat Pada Dua Agama Besar Islam Dan Kristen," *Jurnal Transformasi*, 7/1 (Juni 2011)

<sup>2</sup> Isu keterbatasan akses perempuan ke masjid telah menimbulkan kontroversi di seluruh dunia termasuk di Australia, lihat Rachel Woodlock, "The Masjid Is for Men: Competing Voices in the Debate about Australian Muslim Women's Access to Mosques," *Islam and Christian-Muslim Relations* 21, no. 1 (2010): 51–60, <https://doi.org/10.1080/09596410903481853>.

<sup>3</sup> Dahwadin et al., "Revisiting the Role of Women as Witnesses in Fiqh Justice," *Ahkam: Jurnal Ilmu Syariah* 19, no. 1 (2019): 61–80, <https://doi.org/10.15408/ajis.v19i1.11768>.

<sup>4</sup> Ahmad Rofiq, *Fiqh Kontekstual Dari Normatif Ke Pemaknaan Sosial* (Yogyakarta: Pustaka Pelajar, 2004). 57.

<sup>5</sup> R H Al Idrus et al., "Flexibility of Women's Inheritance Distribution in Jambi Malay Society: Compromising Islamic and Customary Law," *El-Usrah: Jurnal Hukum Keluarga* 7, no. 1 (2024): 42–61, <https://doi.org/10.22373/ujhk.v7i1.22038>.

<sup>6</sup> Arifah Millati Agustina, "Gender Construction in The Perspective of Living Fiqh in Indonesia," *Justicia Islamica* 18, no. 2 (2021): 189–210, <https://doi.org/10.21154/justicia.v18i2.2488>.

<sup>7</sup> Ulumuddin, M. Kesaksian Perempuan: Telaah Terhadap Status dan Kedudukan Perempuan dalam Hukum Islam. *EGALITA*, 10(2). 2015

<sup>8</sup> Andika, Reinterpretasi Ayat Gender dalam Memahami Relasi Laki-laki dan Perempuan (Sebuah Kajian Kontekstual Dalam Penafsiran), *Musawa, Jurnal Studi Gender dan Islam*, Vol. 17 No. 2 (2018), [ejournal.uin-suka.ac.id](http://ejournal.uin-suka.ac.id).

society, so that the position and position of women both in private and public can be equalized with men.

This paper is to complement the shortcomings of previous studies that neglect interpretations that use deconstruction theory in gender fiqh. Existing studies tend to look from the perspective of interpreting religious texts from the side of traditional fiqh, and there are also those who interpret religious texts more towards Western thought. So it appears that the position and rights of women in religious texts tend to be biased towards the will of sharia. The effort to deconstruct gender fiqh is to provide breadth in understanding religious texts, not that it does not believe in religious teachings but wants to understand religious teachings that are universal and comprehensive. Moreover, more religious texts teach their followers to think in more detail in understanding the interpretation of their teachings which leads to finding the truth that does not conflict with the sharia itself.

This paper is based on the argument that the ignorance of women occurs because it is triggered by the forms of ignorance in the position and rights of women in religious texts, the ignorance is found in the public and private spheres, about women's testimony, women cannot become leaders (judges), women can only travel except with their mahram. Women cannot marry except with the permission of their guardian and there are restrictions on women's aurat. These factors arise for various reasons such as the limited understanding of women to know the situation and conditions in the public sphere which originated from a lack of knowledge and access to education. The second factor is religious teachings that are understood doctrinally, and third, power

relations that still dominate people's lives. These are some forms of discrimination in the position and rights of women, so that this triggers a kind of resistance in some groups of women, and ends with an effort to deconstruct the understanding of religious teachings in the text. In the form of deconstruction of gender fiqh in religious texts, and efforts to interpret religious texts that are adjusted to the needs and dynamics of today's society.

### Islamic Texts on Women

In the text of Islam, there are two sources of law that are always used and cannot be doubted, namely the Al-Quran and Hadith. The Quran and Hadith speak a lot about human guidelines, both in the dimensions of worship and muamalah, especially about women. Similarly, in other religions such as Christianity, the Bible also talks about women.<sup>9</sup> One of the doctrines taught is about the position of women, and even worse in the Bible there are teachings that consider women the cause of all sins and make the fall of mankind from Heaven. This religious sacred text describes how women are in disrepair and as if they have no meaning and even considered marriage for them is a condition of slavery. The period of pregnancy is a time of suffering and sadness.<sup>10</sup> there are similar teachings about restricting women from doing the same things as men. one of the teachings of Islam that is always associated with the existence of women is the issue of marriage. Women are not allowed to be leaders. Especially about marriage, it seems that there are many teachings that seem to restrain women's freedom to play a better role both in the public and private spheres.

It is not permissible for a girl to marry except with the permission of her guardian. The

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<sup>9</sup> The Bible teaches that woman brought sin and death into the world. Lihat Elizabeth Cady Stanton, *The Woman's Bible A Classic Feminist Perspective*, US : Amazon, 1989.

<sup>10</sup> Elizabeth Cady Stanton, *The Woman's Bible A Classic Feminist Perspective*, US : Amazon, 1989.

majority of scholars are of the view that it is not permissible for a woman to marry herself or anyone else. But they must go through a man who acts as her guardian. The Qur'anic texts explicitly explain the concept of guardianship, as found in the Qur'anic texts and Hadith, such as the Hadith that reads: "If a woman marries without the permission of her guardian, the marriage is void". In this Hadith, what is required is the permission of the guardian, not the marriage contracted by the guardian, because if the marriage contracted is the guardian, it is certainly irrelevant to the requirement of the guardian's permission, because the one who marries is the guardian himself. 11

The provisions regarding this guardian in the fiqh book are very clear, such as the opinion of Imam Ash-Shafi'i who states that marriage without a guardian is invalid or it can be said that the guardian is a condition for the validity of marriage, even the guardian is a pillar of marriage.<sup>12</sup> This indicates that women do not have the right to marry themselves except through a designated guardian, except for women who are married and divorced (widows) then they have the freedom to marry themselves without the consent of their guardian.

Women are not allowed to be leaders (judges). In one of the verses of the Qur'an, namely surah an-nisa verse 34, it is explained that: men are qawwam over women because Allah has exalted some of them over others and because they (men) provide for their wealth (Q.S. an-Nisa' [4]:3). The commentators state

that qawwam means leader, responsible, organizer, educator and so on.<sup>13</sup> In general, the commentators argue that this male superiority is absolute. The superiority of men over women as stated in the verse, by the interpreters of the Qur'an is said to be due to their intellect and physique. Ar-Razi in his tafsir says that the advantages of men over women include two things: knowledge/mind/intellect (al-'Ilm) and ability (al-qudrah). That is, men's will and knowledge exceed women's minds and knowledge, and they are perfect for hard work.<sup>14</sup> The same view is also expressed by other commentators, such as Ibn Kathir, Az-Zamakhshari, al-Qurthubi, Muhammad Abduh, Sheikh Muhammad Thahir bin Ashur, Ath-Thabathaba'i, al-Hijazi and so on. <sup>15</sup>

At this time, more and more women have the potential and can perform roles that have been seen only and must belong to men. Many women in various spheres of life are able to appear in domestic and public leadership roles, both in the political, economic and social fields. Therefore, the characteristics that form the basis of the argument for male superiority are not something that is fixed and applies all the time. However, it is a product of a historical process, a process of development that continues to move forward. This is in line with what T. Yanggo said, that women may become leaders or heads of state, where if the government system is based on deliberation, because the head of state does not work alone, but is assisted by experts, the most important thing is that women who carry out their duties

<sup>11</sup> Amir Syarifuddin, *Hukum Perkawinan Islam Di Indonesia* (Jakarta: Prenada, 2007). 74-75.

<sup>12</sup> Rohmat, *Kedudukan Wali Dalam Pernikahan : Studi Pemikiran Syafi'iyah, Hanafiyah, dan Praktiknya di Indonesia*,

<sup>13</sup> Husein Muhammad, *Fiqh Perempuan Refleksi Kiai Atas Tafsir Wacana Agama Dan Gender* (Yogyakarta: IRCiSoD, 2019)., 24

<sup>14</sup> Fakhruddin ar-Razi, *Tafsir al-Kabir*, Juz X, 88.

<sup>15</sup> Al Zamakhshari, al Kasysyaf an Haqa'iq al Tanzil wa Uyun al Aqawil fi Wujuh al Ta'wil (Beirut : Muassasah al Alawi al Matbu'ah, 1911), jld 5, 351, Muhammad, *Fiqh Perempuan Refleksi Kiai Atas Tafsir Wacana Agama Dan Gender*, 2019.197 Sofia Rosdanila Andri, "Argumen Penafsiran Tekstualis versus Kontekstualis Tentang Kepemimpinan Perempuan," *Refleksi* 13, no. 6 (2014): 761-78, <https://doi.org/10.15408/ref.v13i6.999>.

have the ability to carry out their duties.<sup>16</sup> This is reinforced by Tedi Supriyadi, that based on the contextual interpretation of texts from the perspective of the Qur'an and hadith, fiqh, Sufism, siyasah and history there is no reason or argument that forces reject women's leadership.<sup>17</sup>

If traced, the position of women is mostly placed as part of men and men as leaders of households, actually arises in a patriarchal civilization.<sup>18</sup> or civilization where men in the economic and security aspects are very strong. In this kind of society, the positioning of women may be appropriate as long as in practice it still pays attention to the principle of benefit. Therefore, the editorial of the verse also comes in the form of narration (ikhbar) which in the discipline of ushul fiqh is only limited to news that does not indicate a teaching (religious command).

According to the explanation above, it appears that women in this case are limited when they will become judges like men, this according to the author that this restriction has two reasons, first, because in the past women were not free to carry out activities outside the home, this had an impact that women only knew and understood events in the household or private sphere. It is natural that with this limitation women cannot become judges in the fields of hudud and qisas. Secondly, on the grounds that women in the past did not have access to education and knowledge at all, so that women at that time did not know much about events outside the home so that

understanding of criminal events in the public domain could not be known. However, today, many women have received proper education, even more than men, so according to the author, this can be a reason that women can now become criminal judges. This has been widely practiced in Muslim-majority countries such as Egypt, Tunisia and Morocco. In the case of Indonesia, many women have become judges in general and religious courts. The permissibility of female judges began during the Wahid Hasyim era when he was Minister of Religious Affairs.<sup>19</sup> Thus, in principle, there is no strict prohibition in Islam that rejects women's leadership in various fields, especially as judges.<sup>20</sup>

Women can express themselves in all public and domestic spaces, it's just that as a creature created by God as a woman, it's good to realize and understand the boundaries that God has reserved for her, such as mutual respect, mutual responsibility and understanding rights and obligations.

Women Witnessing in Court, The issue of women's testimony in judicial institutions has until now been considered an issue where women are subordinated. The issue is considered incompatible with the basic spirit of the Qur'an which does not differentiate between people on the basis of sex, but on the basis of faith and piety.<sup>21</sup> Based on these considerations, feminists reviewed the issue and came to different conclusions.<sup>22</sup>

Referring to the Qur'anic verses, men and women have the same capacity to testify.

<sup>16</sup> Huzaimah Tahido Yanggo, *Kepemimpinan Perempuan Dalam Perspektif Hukum Islam*.

<sup>17</sup> Tedi Supriyadi, J. Julia, and Endis Firdaus, "The Problems of Gender Equality: A Reconstruction of Islamic Doctrine," *Journal of Social Studies Education Research* 10, no. 2 (2019): 91–110.

<sup>18</sup> Siti Nurjannah, "المبادلة في مفهوم فقه المرأة المعاصرة," *باندونيسيا (Misogyni in Contemporary Woman)* *Al Ihkam* 17, no. 1 (2022): 189–215.

<sup>19</sup> Dahwadin et al., "Revisting the Role of Women as Witnesses in Fiqh Justice."

<sup>20</sup> Supriyadi, Julia, and Firdaus, "The Problems of Gender Equality: A Reconstruction of Islamic Doctrine."

<sup>21</sup> Muhammad Patri Arifin, *Penafsiran Kontekstual Kesaksian Perempuan*, *Jurnal Musawa*, No. 1 (2017), 107

<sup>22</sup> Umul Barorah, *Pemahaman Islam Dan Tantangan Keadilan Gender* (Yogyakarta: Gema Media, 2002). 67.

However, the ruling on women as witnesses is permissible, provided that two women take the place of one male witness.<sup>23</sup> This is also agreed upon by the Fuqaha if a woman is a witness with a man.<sup>24</sup> The Four Fuqaha also agree that it is permissible for two women to be witnesses together with a man, namely for the witnessing of property.<sup>25</sup> This is in accordance with the text of the Qur'an surah Al-Baqarah verse 282. This opinion is also reinforced in another section that women's testimony is considered weak because of their lack of understanding (intellect) compared to men so that a negative stigma arises that women will not be able to play a role in the public sphere.<sup>26</sup> In the Hadith of Said al-Khudari, that women's lack of intelligence in explaining, so that women's testimony is like half the testimony of men.<sup>27</sup> This opinion is supported by the scholars of Shafi'iyah Hanafiyah, Malikiyah women may be witnesses in matters concerning women such as about breastfeeding, and matters surrounding the law, namely about *wiladah*.<sup>28</sup>

Women can be witnesses. Women who are accompanied by men have the right of testimony. In this case, there is some ambiguity because women are prone to forgetfulness, as Allah, the Almighty, indicates in His Word: "So that if one of them forgets, the other may remember." By joining one woman to another, the accusation of forgetfulness is minimized. Although this accusation cannot be eliminated due to her status as a woman, so she cannot be used as a proof in matters in which there should be no ambiguity, such as hudud and qishash. As for marriage and divorce, they are valid even if

there is ambiguity. So the testimony of this woman is compared to that of a man.<sup>29</sup>

There is no doubt that accusations of negligence and forgetfulness in testifying when present do not occur. Hence the marriage should take place with the testimony of one man and one woman. However, according to this madhhab, it is established from the text that two women are considered one witness. This means that one woman is half a witness. And with half a witness, something cannot be valid. For this reason, if two If a man and a woman testify and then they withdraw from the testimony, the woman is not considered anything. Women can be witnesses. Women who are accompanied by men have the right to testify. This is also a question whether the testimony referred to in the verse states based on memory ability, if we examine it, it turns out that in terms of memory ability even women remember better than men, this can be seen in the field of education the highest GPA is on average owned by female students, this shows how the ability in terms of memory is better for women than men. Although historically it has been proven that many women are intelligent, have emotional maturity, credibility and are qualified to appear as witnesses in court, this is considered by some as one of the differences that subordinate women.<sup>30</sup> Therefore, in the current development, the role of women as witnesses in court needs to be reconsidered.

Women may not go out without their Muhrim, This section also provides that women are not allowed to travel (travellers) without being accompanied by their Muhrim. Safar

<sup>23</sup> Dahwadin et al., "Revisting the Role of Women as Witnesses in Fiqh Justice."

<sup>24</sup> Ali Abu al-Bashal, *Syahadah al-Nisa' Fi Fiqh al-Islami*, Noor-Book .com , 149.

<sup>25</sup> Muhammad Ibnu Abdul 'Aziz al-Khadiri, *Syahadah al-Mar'ah fi al-Fiqh al-Islami*, 305

<sup>26</sup> Abd. Warits, "Menggagas Fiqh Perempuan : Membangun Kekuatan ' Hukum ' Bagi Perempuan," no. 110 (2017): 486-503.

<sup>27</sup> *Ibid. hlm. 307.*

<sup>28</sup> Abdul Fatah Muhammad abu 'Ain, *Al-Qadha wa al-Itsbat fi Fiqh al-Islam*, (T.tp. , 1983), 239-240

<sup>29</sup> Syamsuddin al Sarakhsi, *Al Mabsuth* (Beirut: Dar al Ma'rifah, n.d.), 33.

<sup>30</sup> Dahwadin et al., "Revisting the Role of Women as Witnesses in Fiqh Justice."

means taking a journey. Allah SWT has established the law of safar and informed His servants about the manners of Safar in the Qur'an and the Sunnah of the Prophet SAW. In the review of sharia safar is leaving the place of residence with the intention of traveling to another place in order to carry out obedience to Allah SWT.<sup>31</sup>

Meanwhile, the definition of Mahram in general for Muslim women is a person who is prohibited from marrying her because of the relationship of blood, marriage, or breastfeeding. The explanations of the three are: Firstly, Mahram because of blood relationship, such as her son, brother, father, paternal uncle, maternal uncle, grandfather, son of her brother (nephew), daughter of her sister (niece), It is the same whether it is a brother or sister or a mother. This mahram can also be due to mahrams by marriage and mahrams by breastfeeding.<sup>32</sup>

The evidences related to women's travel are still general. Such as the hadith that explains: It is not permissible for a woman to travel more than three days unless accompanied by her mahram.<sup>33</sup> This Hadith is used by many as a basis for prohibiting Muslim women from traveling for more than three days without a mahram. However, for some people, one of them is Yusuf Qardhawi, he said that the Hadith cannot be understood lafzhi (textually) but must be considered with the Illat (reason) for

the prohibition. One of the reasons is the lack of security and the fear of temptation when traveling.<sup>34</sup>

Basically, the law for women to travel, such as traveling to perform the Hajj pilgrimage, traveling to earn a living in another country, or becoming a migrant worker, attending seminars or completing studies outside the city, without a mahram is permissible or mubah. However, there are still many assumptions that women are not allowed to travel without being accompanied by a mahram. If we look at the historical prohibition, why women are prohibited from leaving the house, let alone traveling without a mahram. This can be interpreted that the prohibition at that time saw the social reality of Arab society which was unstable, the absence of mobility that supported travel, and in a war situation, and for a woman to travel it was feared that it would not be safe to travel.<sup>35</sup> But if we look at the present time travel is very comfortable with various means of transportation, and the situation is not in war and if traveling at night the situation is now crowded and communication tools can be used at any time. According to the author, this is permissible as Saudi Arabia's policy No. M/134 of 2019 which gives women the freedom to travel without being accompanied by a mahram.<sup>36</sup>

<sup>31</sup> Faiq Tobroni, "Rethinking Posisi Mahram Pria Dalam Fiqih Safar Perempuan (Membendung Feminisasi Pengangguran Dengan Analisis Hukum Kritis)" 9, no. 1 (2010): 41–61, <https://doi.org/https://doi.org/10.14421/musawa.2010.9.1.41-61>.

<sup>32</sup> Aramdhan Kodrat Permana, "Mahram Pada Safar Perempuan Dalam Tinjauan Sosiologis (Menjembatani Realitas Muslim Klasik Dan Kekinian)," *Musāwa Jurnal Studi Gender Dan Islam*, 2010, <https://doi.org/10.14421/musawa.2010.91.101-117>.

<sup>33</sup> Muhammad bin Ismail al-Bukhari, *Shahih al Bukhari* (Beirut: Dar al-Kutub al Ilmiyah, 1992), hadis 1088

<sup>34</sup> Syarifuddin, *Hukum Perkawinan Islam Di Indonesia*. 448.

<sup>35</sup> Masnun Tahir, "Mahram Dan Transformasi Zaman: Sebuah Analisis Fiqhiyyah Dan Keadilan Gender," *Musāwa Jurnal Studi Gender Dan Islam*, 2010, <https://doi.org/10.14421/musawa.2010.91.63-81>.

<sup>36</sup> Firqah Annajiyah Mansyuroh, "Analysis of Legal Change for Women Traveling without Mahram: A Case Study of the Kingdom of Saudi Arabia Royal Decree No.m/134 of 2019," *Al-Ihkam: Jurnal Hukum Dan Pranata Sosial* 14, no. 2 (2019): 201–20, <https://doi.org/10.19105/al-lhkam.v14i2.2785>.

Limits of Women's Aurat under fiqh aurat, women are divided into two groups with free women (al-hurrah) and servant women (al-amah). The limits of the aurat of free women are different from servant women. Regarding the aurat of free women, there are several opinions expressed by fiqh scholars. In the Shafi'i school, as stated by An-Nawawi and Khatib ash-Sharbini, the aurat of free women is the entire body except the face and the two palms (upper / outer and lower / inner) to the wrist. Al-Muzani added that the soles of the feet are also not included in the aurat that must be covered.<sup>37</sup>

Imam al-Marghinani of the Hanafi school said that the 'awrah of a free woman is all parts of her body, except the face and the palms of her hands. However, the most correct opinion (ashah) in the madhhab is that the soles of the feet are also not included in the aurat that must be covered.<sup>38</sup> In fact, Abu Yusuf tolerated almost half of the calf. Meanwhile, in the Hanbali madhhab, the aurat of free women is the entire body without exception, only for prayer and certain purposes women are allowed to open their faces and palms. However, some Hanbali scholars still require covering the entire body, including in prayer.<sup>39</sup>

Ash-Shawkani in Nayl al-Awthar summarizes the differences between scholars regarding the limits of the aurat of free women. The scholars differed concerning the limits of a free woman's 'awrah; some said that her entire body is 'awrah except for her face and the palms of her hands. This was stated by al-Hadi, al-Qasim in one of his two opinions, ash-Shafi'i in one of his opinions, Abu Haneefah in one of his two reports and Maalik. Some said (the

'awrah is the whole body, except the face and the palms of the hands) and the soles of the feet up to the ankles. This was said by al-Qasim in one of his sayings, Abu Hanifah in one of his reports. Ats-Tsauri and Abul Abbas. Some say that her 'awrah is her entire body, except for the face. This was said by Ahmad ibn Hanbal and Dawud. There are those who say that her entire body is aurat without exception. This was said by some of the students of Ash-Shafi'i and was also narrated from Ahmad.<sup>40</sup> The majority of scholars agree that the aurat of a woman that must be covered during prayer is all of her body parts, except her face and palms. The face and two palms, according to Sayyid Sabiq are parts of the body that are allowed to be seen in accordance with the phrase illa ma zaha minha in QS. An-Nur:31.<sup>41</sup>

Ibn Hazm azh-Zhahiri is also of the opinion that the limits of the 'awrah of servant women and free women are the same in all circumstances, namely the whole body except the face and the two palms, because there is no authoritative shara' text to distinguish between free women and servant women.<sup>42</sup>

However, in the view of the majority of fiqh scholars, the 'awrah of a free woman is more covered than that of a slave woman, or that of a slave woman is more uncovered than that of a free woman, and there is even a tendency among some of them to equate slave women with men. This means that there is no common limit of aurat for all women. Of course, behind this view there is a series of legal bases that serve as references and footing, both from authoritative shara' texts and from the logic ('illat) of the law relating to determining the limits of the aurat. Among the

<sup>37</sup> Syafaruddin an-Nawawi, *Al-Majmu'*... Juz III, 171.

<sup>38</sup> Ali bin Abu Bakr al-Marghinani, *Al-Hidayah syarh al-Bidayah* (Beirut : al-Maktabah al-Islamiyah, tanpa tahun), Juz I, 43-44.

<sup>39</sup> Muhammad, *Fiqh Perempuan Refleksi Kiai Atas Tafsir Wacana Agama Dan Gender*, 2019., 126-127

<sup>40</sup> Asy-Syaukani, *Nayl al-Awthar*..., Juz II, 55.

<sup>41</sup> Sayyid Sabiq, *Fiqh Sunnah*, Jilid I, Dar al-Kitab al-Arabi, tt. 114.

<sup>42</sup> Abu Muhammad Ali bin Ahmad Ibnu Hazm, *Al-Muhalla*, (Beirut: Dar al-Afaq al-Jadidah, T.Th.), Juz III, 210.

arguments that serve as the basis for the law is Surah an-Nur verse 31 to cover and keep their private parts, and let them not reveal their adornment, except what is (normally) visible. And, let them cover their chests with a cloth.

وَقُلْ لِلْمُؤْمِنَاتِ يَغْضُضْنَ مِنْ أَبْصَارِهِنَّ وَيَحْفَظْنَ فُرُوجَهُنَّ وَلَا يُبْدِينَ زِينَتَهُنَّ إِلَّا مَا ظَهَرَ مِنْهَا وَلْيَضْرِبْنَ بِخُمُرِهِنَّ عَلَى جُيُوبِهِنَّ وَلَا يُبْدِينَ زِينَتَهُنَّ إِلَّا لِبُعُولَتِهِنَّ أَوْ آبَائِهِنَّ أَوْ أَبْنَاءِ بُعُولَتِهِنَّ أَوْ إِخْوَانِهِنَّ أَوْ بَنِي إِخْوَانِهِنَّ أَوْ نِسَائِهِنَّ أَوْ مَا مَلَكَتْ أَيْمَانُهُنَّ أَوِ التَّابِعِينَ غَيْرَ أُولَى الْإِرْبَةِ مِنَ الرِّجَالِ أَوِ الطِّفْلِ الَّذِينَ لَمْ يَظْهَرُوا عَلَى عَوْرَاتِ النِّسَاءِ وَلَا يَضْرِبْنَ بِأَرْجُلِهِنَّ لِيُعْلَمَ مَا يُخْفِينَ مِنْ زِينَتِهِنَّ وَتُوبُوا إِلَى اللَّهِ جَمِيعًا أَيُّهَ الْمُؤْمِنُونَ لَعَلَّكُمْ تُفْلِحُونَ  
(Q.S an-Nuur (24) : 31).

According to Ibn Rushd and Ash-Shukani, all scholarly opinions regarding the limits of women's aurat refer to the verse in Surah an-Nur, only differences of opinion arise because of their differences in interpreting the *Illa ma zhahara minha* (except what is usually exposed) exist.<sup>43</sup> This is also a form of doctrine for women to cover their aurat when leaving the house. It is as if all forms of crime begin with women. In contrast, the command in the Qur'an about restraining the gaze is also not directly proportional, which must also be applied to men to also keep their gaze on women, so that

no elements of sexual harassment or others occur. Because the event of a crime will not occur only one party, and usually there is a response from the other party so that the crime occurs.

The understanding of classical fiqh must be changed, because it is not in accordance with the cultural conditions of society, educational background and abilities in various fields make fiqh about women must undergo changes. And this change is *muthlaq* based on the widely known *manhaj* fiqh, namely: First, the school of *al-tasyaddud* or *al-Ifrati*, the school of *al-tafrit wa al-tahallul*, and the school of *al-wast wa al-i'tidal*.<sup>44</sup>

Many verses and hadiths explain human equality in Islam. Husein Muhammad<sup>45</sup> one of the Indonesian Muslim feminist leaders traced the verses that explain that the position of men and women is equal. Among these verses are *al-Hujurat* (13) : 11-13, *al-Tawbah* (9) : 71, *al-Nahl* (16): These verses explicitly mention that men and women have the same position and there is no difference at all. In addition, verses that explain the human caliphate on earth, teachings related to worship and *muamalah* are always addressed to humans without distinguishing men and women.<sup>46</sup> Munawir Sjadzali emphasizes the principle of equality between fellow human beings without recognizing differences in degrees or levels based on nationality, ethnicity and descent. Arabs are not higher than non-Arabs, and what distinguishes the level between them is the level of piety to Allah.<sup>47</sup>

<sup>43</sup> Ibnu Rusyd, *Bidayatul Mujtahid*, Juz I, 83.

<sup>44</sup> Faridah Haid, "Al-Ifta' fi Qadaya al-Mar'ah baina al-Guluw wa al-I'tidal", *al-Multaqa al-dauli al-Rabi' : Suna'ahnal-Fatwa Fi Zil al-Tahaddiyat al-Mu'asarah*, Vol. 16(13-14 Nopember 2019), 155. <https://www.univ-eloued.dz/index.php/isi/85-c-institute-science-islamique/tous-articles-ins-islamic/9858-1144701258>.

<sup>45</sup> Husein Muhammad, *Islam Agama Ramah Perempuan : Pembelaan Kiai Pesantren* (Yogyakarta: LKIS, 2004). 93

<sup>46</sup> Tutik Hamidah, "Dialektika Teks Dan Konteks Dalam Metode," *Ahkam* XIII, no. 1 (2013): 135–44.

<sup>47</sup> Budhy Munawar-Rachman, "Islam dan Feminisme dari Sentralisme Kepada Kesetaraan", dalam *Ipandang Ipandang*, "Fiqh Perempuan, Kekinian Dan Keindonesiaan (Telaah Kritis Membangun Fiqh Berkeadilan Gender)," *AL-MAIYYAH: Media*

But in reality, if traced in depth from the early history of the growth and development of fiqh discourse, why is fiqh very discriminatory against women? Looking at the roots of the problem, it is not surprising that the current fiqh is more asymmetrical in the sense that pragmatically, fiqh is always centered on men.<sup>48</sup>

### Deconstructing the Classical Understanding of Gender Fiqh

The debate around gender fiqh has been going on for a long time until today, differences in understanding fiqh always occur so that it tapered off and in the end there was a compartmentalization in the madhhab. Many fiqh gender studies have been written by Indonesian Muslim feminists and from other countries. Women's fiqh written by Muslim feminists responds to human rights.<sup>49</sup> and gender analysis<sup>50</sup> Women's fiqh studies fight for equality and justice for women comprehensively, namely women are positioned as autonomous subjects, who have the same human dignity as men, the same rights as men including responsibilities in community development in all fields including human rights.

The effort to deconstruct gender fiqh by using Jacques Derrida's theory, the background of Derrida's thought is found in the books of thinkers, such as Friedrich Nietzsche and the work of Rousseau, and many more thinkers

who influenced him. Derrida's style of thought is characterized by mixes genres where any field is studied in order to explain his ideas.<sup>51</sup> He has a style of thinking that is able to evoke meaning with the aim of building text readers to continue thinking in finding their own context. Derrida's style is circular, meaning that when he finds a meaning, it is not immediately considered final. but still looking and still in the process of consideration<sup>52</sup>

Regarding deconstruction, there is actually no specific definition given by Derrida directly because according to him, if deconstruction is defined, it will become standardized and if it is standardized, it will not be deconstruction. However, there are figures who provide a definition of deconstruction such as McQuillan who explains that deconstruction is a form of text interpretation, but the interpretation is not the same as what we know and understand so far. This means that deconstruction is an interpretation that is characterized by a continuous or continuous change of perspective. In this case it can be seen that the purpose of deconstruction is not only to understand (Versthen) through fusion to limit but to process differences that cannot be captured in a whole or cannot be concluded.<sup>53</sup> In short, deconstruction is like an interpretation that is characterized by a continuous change of perspective.<sup>54</sup> The application of Derrida's deconstruction to gender fiqh in religious texts can be used because there is an assumption that

*Transformasi Gender Dalam Paradigma Sosial Keagamaan* 8, no. 1 (2015): 79–98.

<sup>48</sup> Ipandang., 83-84.

<sup>49</sup> Hamidah, "Dialektika Teks Dan Konteks Dalam Metode."

<sup>50</sup> Nasaruddin Umar, *Argumentasi Kesetaraan Gender Perspektif Al Qur'an* (Jakarta: Paramadina, 1999)., 3, Mansour Fakihi, *Analisis Gender Dan Transformasi Sosial* (Yogyakarta: Pustaka Pelajar, 1999)., 4-5

<sup>51</sup> Elis Mila Rosa, *Pernikahan Kontrak Dalam Perspektif Dekonstruksi Jacques Derrida, Aqlania :*

*Jurnal Filsafat dan Teologi Islam*, Vol. 14 No. 1 (January-June) 2023, p.1-20

<sup>52</sup> Elis Mila Rosa, *Pernikahan Kontrak Dalam Perspektif Dekonstruksi Jacques Derrida, Aqlania :* *Jurnal Filsafat dan Teologi Islam*, Vol. 14, No. 1, (January-June) 2023.

<sup>53</sup> Hardiman, *Seni Memahami Hermeneutik Dari Schleiermacher Sampai Derrida*, Yogyakarta : PT. Kanisius : 2015., p. 285.

<sup>54</sup> Elis Mila Rosa, *Pernikahan Kontrak Dalam Perspektif Dekonstruksi Jacques Derrida, Aqlania :* *Jurnal Filsafat dan Teologi Islam*, Vol. 14 No. 1 (January-June), 2023, p. 1-20

fiqh has been discrediting women, while in reality there are several prohibitions that women should not do. These restrictions on women's positions and rights are not supposed to happen, but many factors cause this based on three basic assumptions about religious beliefs. First, dogmatic assumptions that explicitly place women as appendages. Second, the dogma that women's moral and ethical talents are inferior. Thirdly, the materialistic view, the ideology of the pre-Islamic Makkah society that looked down on women's role in the production process.<sup>55</sup> Even during the period when mujtahid scholars formulated fiqh under the strong auspices of Islam, there was no push for reform. The patriarchal culture that colored the treasures of fiqh and tafsir was accepted as normal. The creative process of the mujtahid scholars was free from the influence of the culture and the growing discourse that had become common sense.<sup>56</sup>

In some instances, it is found that women are prohibited from becoming leaders, this is based on surah an-Nisa' verse 34; that men are the leaders. According to Nasr Hamid Abu Zayd, the word Qawwam can be understood to mean leader, responsible, or other words that indicate the position of men is higher than women. However, Q.S an-Nisa' verse 34 is not a legal verse that obliges the reader to follow this meaning. The interpretation is only a Qur'anic description of the social condition.<sup>57</sup> Meanwhile, Quraish Shihab's opinion rejects the assumption that prohibits a woman from becoming a leader, because according to him men and women have the same rights in the

public. With a note that the woman does not leave her obligations as a wife.<sup>58</sup>

However, this text can be understood with Deridda's theoretical approach that can be interpreted in a sustainable manner, that women can also become leaders if they have competencies that are worthy of being leaders compared to men. Efforts to provide opportunities for women to take part more in the public sphere such as becoming presidents, judges, political party leaders and so on. This is through reading the reality of society, then through Derrida's deconstruction approach, it turns out that although there are differences in scholarly opinion in answering the problem of women's leadership, with Derrida's theory it does not justify and blame both opinions. This theory is in the middle, by not siding with the opinion that allows women to become leaders and vice versa does not favor those who prohibit women from becoming leaders. For this reason, the interpretation model used by Derrida provides an understanding that something is seen from the bad side, not from the good side alone. So that no group can be certain to be justified or blamed.<sup>59</sup>

The discussion about marriage guardians for women has also been debated for a long time, the first opinion explains that it is not valid for a woman to marry herself or someone else, even if she is an adult. This opinion was expressed by Malikiyyah, Shafi'iyyah, Hanabilah and Zahiriyyah. Meanwhile, the second group is spearheaded by the Hanafiyyah who argue that guardians are only needed for women who are not yet mature. Meanwhile, an

<sup>55</sup> K.H. Sahal Mahfudz, dalam pengantar buku Husein Muhammad, *Fiqh Perempuan Refleksi Kiai Atas Tafsir Wacana Agama Dan Gender* (Yogyakarta: IRCiSoD, 2019). 7.

<sup>56</sup> Hamidah, "Dialektika Teks Dan Konteks Dalam Metode."

<sup>57</sup> Lia Aliyah, "KDRT dalam Pandangan Mufassir Indonesia (Studi atas Tafsir al-Azhar dan al-Misbah)", h. 197.

<sup>58</sup> Fahmi Ibnu Khoer, Syarifah Gustiawati dan Yono, Kepemimpinan Perempuan dalam Perspektif Hukum Islam : Studi Analisis M. Quraish Shihab, *As-Syar'i Jurnal Bimbingan & Konseling Keluarga*, Vol. 3 Nomor 2 (2021), 33-50 103 E-ISSN 2656-8152 P-ISSN 2656-4807.

<sup>59</sup> Elis Mila Rosa, Pernikahan Kontrak Dalam Perspektif Dekonstruksi Jacques Derrida, *Aqlania : Jurnal Filsafat dan Teologi Islam*

adult woman of sound mind has the right to marry herself off to a man of her choice, provided that she is of equal status (kafa'ah).<sup>60</sup>

According to Engineer, a thorough and serious study of the Qur'an and hadith will reveal that women are given full autonomy in marriage, including women who are bakirah (virgins) which fiqh scholars distinguish from tayyibah (widows). A widow has the right to decide for herself and she can refuse or accept a marriage on her own behalf. According to Engineer, the Qur'an does not mention the need for a guardian in the marriage of a girl.<sup>61</sup> For her, the issue of guardianship must be understood within the framework of the patriarchal traditions of Arab society, where women were totally dependent on men for their existence. In pre-Islamic society, the obligation to look after a woman's welfare rested with her father, grandfather or brother. They had the right to determine the fate of women. If Derrida's deconstruction approach is used, then there is actually nothing to be disputed in the issue of guardians for girls, the hadith that explains the invalidity of Nikah without a guardian, does not have to be understood lafziah alone. By reading Derrida's thought, it can be understood that the provision of guardians can be used if the girl is incapable of the same as in the control of property.<sup>62</sup> However, if the girl is intelligent and has good knowledge of her future husband, then she has the right to marry herself directly. Because the evidence used does not have to be interpreted textually, but it must be seen further that the understanding of the hadith is categorized as the inability of the child to marry. This is

because the Hadith states that the widow has the right to marry herself without a guardian,<sup>63</sup> If we follow Derrida's deconstruction, the comprehensive meaning of the hadith is that a girl may marry herself if she is mature (has the capacity to marry). This can also be compared to a woman's consent to marry if she does not agree then the marriage should not take place. This is in accordance with the Prophet's instructions in the hadith should ask the girl who wants to get married, if the girl is silent means that she agrees.<sup>64</sup> For this reason, efforts to deconstruct religious texts are needed for the fiqh that is developing today.

Another example is the position of women as witnesses in court. If traced in the past, why women were not allowed to be witnesses, if allowed, two female witnesses must occupy one male witness. According to the author, this is natural because women do not have access outside the home and do not know the situation and conditions around their environment, so it is natural that women are not accepted for testimony except for two people. However, this reality if associated with the current reality of women there is no difference with men, they get the same educational opportunities as men, and the opportunity to know the conditions around them, even many women are more aware of the situation and conditions of existing events. So the understanding of this religious text must be changed if women can be witnesses in any case, especially if the case requires the expertise of a woman to explain it. This is where Derrida's approach can be used in terms of religious texts that can be interpreted with the needs and

<sup>60</sup> Moh. Fauzi, "Perempuan Sebagai Wali Nikah" dalam Jurnal Gender dan Islam Musawa Vol.5, No.2 April 2007, 283.

<sup>61</sup> Asghar Ali Engineer, Hak-Hak Perempuan dalam Islam, terj. Farid wajidi dan Ciciek Farcha Assegaf. Yogyakarta: LSPPA, 1992, h. 164.

<sup>62</sup> D Ristianti, RR Kurniawan, Pemeliharaan Harta Anak Yatim oleh Wali Dalam QS. An-Nisa Ayat 2, *Center For Open Science*, 2022- osf.io

<sup>63</sup> Abd al-Rahman Al-Jaziry, Kitâb al-fiqh Alâ al-Madzâhib al-Arba'ah(Bairut: Dâr al-Kutub al-Ilmiyah), Jil. 4, 1990, h. 48-49.

<sup>64</sup> Hasan al-Syaibani, *Al-Aslu*, (Qatar: Awqaf,2012), juz 10, h. 198.

dynamics of today's society. This is an effort to free women from discriminatory and subordinate treatment.<sup>65</sup>

The understanding in classical fiqh tends to marginalize women in both the private and public spheres. There are several scholarly opinions that reject contemporary understanding such as women's leadership, the issue of testimony, guardianship, about aurat and so on. Whereas at the time of the Prophet women participated freely in matters of war, which was an area of male dominance. As was the case with Hindun bint 'Utbah, the wife of the Makkan leader Abu Sufyan, brought about 14 or 15 traditional Jahiliyah women in singing war poems called rajz to raise the spirit of the war.<sup>66</sup> But their reality is not recognized, or arguably, deliberately omitted from the trajectory of (Islamic) history with the encouragement of patriarchal culture to strengthen the male "throne".<sup>67</sup> On the other hand, there is the opinion of figures who agree with Derrida, such as Arkoun who also adopts Derrida's "logocentrism", logocentrism that occurs in Western metaphysics, also occurs in the world of Islamic thought. Islamic thought always refers to certain texts that have been standardized in the fields of fiqh, kalam, and Sufism. To eliminate logocentrism, Arkoun uses the "deconstruction" method derived from Derrida. Although not exactly the same, Arkoun seeks to turn the standardized meaning by turning to the neglected meaning, or which is covered with an understanding that is not in accordance with the true meaning.<sup>68</sup> This deconstruction is an answer to doubts about traditional fiqh understanding, and also doubts

about the development of interpretations that tend towards Western thought. By applying the deconstruction pattern results in Muslims not only relying on traditional fiqh understandings, which are very detrimental to the position and rights of women in life, and limit the existence and role of women in all fields, but with the deconstruction of religious texts opens opportunities for women to get their rights and positions, and get the same respect as men, where this explanation is in accordance with the teachings in Islam that do not distinguish between men and women, in getting their rights and positions.

### Efforts to Reform Islamic Law in Gender Jurisprudence

The patriarchal culture has been deeply rooted in society so that it also affects the sensitivity of the issue of relations between women and men. It can be seen that the history of life and the creative process of the founders of fiqh, starting from Abu Hanifah to Imam Ahmad bin Hanbal, shows that they do not have awareness of gender equity issues. This may be due to several factors, among others <sup>69</sup>(1) scientifically they had not interacted with women, so there was no reference to women at all; (2) there was no transmission of knowledge to women and did not have female teachers at that time; (3) or possibly at that time regarding the decline of the role of women in the map of Islamic thought, whereas they should have referred to the thoughts of Muslims during the Companions.

<sup>65</sup> Lisa Beyer, *The Other Woman of Islam*, (Time Magazine November 25, 2001).

<sup>66</sup> Asghar Ali Engineer, *Matinya Perempuan : Transformasi Al-Qur'an, Perempuan, dan Masyarakat Modern*, Terj. Akhmad Affandi dan Muh. Ihsan (Yogyakarta : IRCiSiD, 2003), 296

<sup>67</sup> Ahmad Suhendra, Rekonstruksi Peran Dan Hak Perempuan Dalam Organisasi Masyarakat Islam, *Jurnal Musawa*, Vol. 11 No. 1 (2012). P. 47-66.

<sup>68</sup> Ahmad Suhendra, Rekonstruksi Peran Dan Hak Perempuan Dalam Organisasi Masyarakat Islam, *Jurnal Musawa*, Vol. 11 No. 1 (2012). P. 47-66

<sup>69</sup> Syafiq Hasyim, *Hal-Hal Yang Tak Terpikirkan tentang isu-isu Keperempuanan Dalam Islam*, 132-134.

The same thing was also revealed by K.H. Sahal Mahfudz<sup>70</sup> which explains that gender injustice in society is difficult to eradicate the equality of men and women is quite weak. This is based on three basic assumptions about religious beliefs. First, dogmatic assumptions that explicitly place women as appendages. Second, the dogma that women's ethical moral talents are lower. Third, the materialistic view, the ideology of the pre-Islamic Makkah society that underestimated women's role in the production process.

Almost the entire Islamic world is influenced by Arab culture so that existing religious texts are always interpreted on the power relations of patriarchal culture, this is also encountered in other Islamic countries, but awareness of gender equality also makes some Islamic-majority countries reform Islamic law, such as family law in Egypt and Pakistan and Indonesia.<sup>71</sup> For this reason, fiqh is actually a situational conclusion of Islamic law, and fiqh itself grows and develops fully with the dynamics of society which cannot escape the inclusion of elements of subjectivity and the influence of certain values, be it ideology, racial politics or culture as a whole. Even Marzuki Wahid in the conclusion of his writing states that Islamic law in Indonesia as positive law is a socio-political construction, not merely a theological formulation.<sup>72</sup>

Therefore, it is necessary to reform fiqh into fiqh of reality (fiqh al-waqi') and fiqh of priorities (fiqh al-awliyyah), namely fiqh that can be used as a new light for humanitarian

problems that arise in the midst of society. There needs to be diverse interpretations that build women's awareness of the true meaning of religious texts. Instead of just following the thoughts that marginalize women in society. Because humanitarian problems are not limited to space and time. Therefore, the Qur'an was not revealed all at once but over a long period of time, even the period of revelation was from the time the Prophet Muhammad SAW was appointed as the Messenger until he died. Likewise with the sunnah, for example, which does not appear at one time but is present periodically following the phenomena that develop in society.<sup>73</sup>

Munawir Sadzali explains that in order to determine the law and changes and the basis of consideration towards it, Allah has given the authority to consider it to human reason. He based his opinion on Muhammad Abduh who stated that to renew the understanding of religion that must be done is to free from the shackles of taklid and return to the method of knowledge before the occurrence of i'tikaf.<sup>74</sup> The first thing to do is to use reason as one of human's leading powers.

To reformulate Fikih Zuhairi Misrawi divides it into three (3) levels in an effort to make Fikih able to be sustainable with the times, including<sup>75</sup> Firstly, at the methodological level has a need for contextual interpretation of fiqh texts, methodological mazhab and verification between the main teachings (ushul) and branches (furu') without having to clear the roots of classical fiqh. Secondly, on an ethical

<sup>70</sup> K.H. Sahal Mahfudz, dalam pengantar buku Muhammad, *Fiqh Perempuan Refleksi Kiai Atas Tafsir Wacana Agama Dan Gender*, 2019. 7.

<sup>71</sup> Yudianti, *Pembaharuan Hukum Keluarga Mesir, Pakistan dan Indonesia : Suatu Perbandingan*, dalam *Jurnal Penelitian Logika Logiko, Hipotetiko, Verifikasi*, Vol. 6 Nomor 7 Desember 2001 Yogyakarta : LP UII

<sup>72</sup> Marzuki Wahid, *Pembaharuan Hukum Keluarga Islam Pasca Orde Baru dalam Pendekatan Politik dalam Generasi Baru Peneliti Muslim Indonesia*, (Kajian Islam dalam Ragam Pendekatan), hlm. 68

<sup>73</sup> Muammar Bakry, *Fiqh Prioritas (Konstruksi Metodologi Prioritas Hukum Islam Dan Kompilasi Kaidah Prioritas Hukum Islam)* (Makasar: Alauddin University Press, 2011)., 46-47.

<sup>74</sup> Faisar Ananda Arfa, *Wanita Dalam Konsep Islam Modernis* (Jakarta: Pustaka Firdaus, 2004)., 153.

<sup>75</sup> Zuhairi Misrawi, *Dari Syariat Menuju Maqashid Syariat*, 62.

level, the treasury of fiqh that has already developed in the midst of a treasury society that seems to provide something standardized and ready to serve. As a result, formalistic and legalistic fiqh products are expected to experience renewal by presenting fiqh as social ethics. And not only fiqh which only discusses halal-haram issues, but discusses the five souls of fiqh (Al-Kulliyat al-Khamsah). Thirdly, Philosophical level, according to Misrawi at this level fiqh is actually open to philosophy and contemporary social theories. So far, it is only known that fiqh is sourced from "revelation", in the future fiqh should be able to make modern social theories a reference in recognizing a law.

In understanding religious texts that are considered discriminatory, rationalists always use the legal illat or hikmah tasyri by using a ta'aqquli (rational) approach. On the other hand, the religious adhere to the zahir nash by relying on the ta'abbudi (emocial) approach.<sup>76</sup>

Every country has the right to change fiqh from traditional thinking to a more rational one. Because in principle, Sharia does not limit the space for understanding religious teachings, as long as these rules fulfill the elements of the benefit of the people and do not conflict with the principles of Sharia itself.

So there needs to be an effort to deconstruct gender fiqh, with one of the efforts using Derrida's theory can provide understanding and interpretation in the meaning of fiqh in different meanings or look for sustainability understanding, this is used so that gender fiqh can be understood in all circles, so that it can provide freedom for women in placing their position and rights in the eyes of the law, so that it can be applied in the practice of daily life, and there is no longer a misguided understanding in understanding religious texts

that are also interpreted through patriarchal culture.

## CONCLUSION

The reality of religious texts about gender that color classical fiqh needs to be reinterpreted in the context of developing Islamic law so that it can be dialectical with human life in all places and times as a framework for developing fiqh including gender fiqh. With the efforts to deconstruct gender fiqh, the understanding of society can accept all changes in the position and rights of women in religious texts, so that women are not discriminated against and subordinated in social life.

The findings in this study are the deconstruction of gender fiqh using Derrida's theory turns out to have breadth in understanding religious texts, not that it does not believe in religious teachings but wants to understand religious teachings that are universal and comprehensive. Moreover, religious texts teach people to think more deeply in understanding the interpretation of these teachings, which ultimately seeks truth that does not contradict the sharia.

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<sup>76</sup> Harun Nasution, *Islam Rasional : Gagasan Dan Pemikiran* (Bandung: Mizan, 1996). 123.

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