

DEMISOGYNY OF THE EPISTEMOLOGY OF WOMEN'S FIKIH MUTAWALLĪ AL-SHA'RĀWĪ IN THE INDONESIAN CONTEXT

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Abstract

The fruit of al-Sha'rāwī's ideas in an effort to demystify the epistemology of women's jurisprudence is a breath of fresh air for Islamic legal thinkers. Apart from saving the religious stigmatization of women, his thinking also breaks down how to interpret religious texts holistically. This is so that religious doctrine is not interpreted in a strict and rigid manner, so that it can be totally grounded in accordance with the maqāṣid spirit and can give birth to gender-friendly legal products. Of the four issues in this research (hadith on women's reason and religion, verses on beating women, verses on polygamy, and verses on women's testimony), in general, al-Sha'rāwī has introduced his progressive thinking, although several points have not been said to be optimally applied in the context of modern Indonesia. The contribution of his thinking to the Indonesian context is in an affirmative and curative framework. What is appropriate - in representing the spirit of gender equality - needs to be preserved and what is less appropriate needs to be reformulated. This is the main aim of the author in providing a comparison of contemporary Islamic legal thinkers who are quite concerned with highlighting women.

Keywords: *Al-Sha'rāwī, Demisogyny of Epistemology of Jurisprudence, Indonesian Context.*

Abstrak

Buah gagasan al-Sha'rāwī dalam upaya demisogini epistemologi fikih perempuan merupakan angin segar bagi pemikir hukum Islam. Selain menyelamatkan stigmatisasi terhadap perempuan, pemikirannya juga mendobrak bagaimana cara memaknai teks-teks agama secara holistik. Hal ini supaya doktrin agama tidak dimaknai secara kaku dan rigid, sehingga dapat dibumikan secara total sesuai dengan semangat maqāṣid dan dapat melahirkan produk-produk hukum yang ramah gender. Kontribusi pemikiran al-Sya'rawi turut mewarnai progresifitas fikih perempuan dengan mencairkan pemikiran-pemikiran yang membeku dalam teks. Dari keempat isu dalam penelitian ini (hadis akal dan agama perempuan, ayat pemukulan perempuan, ayat poligami, dan ayat kesaksian perempuan), secara garis besar, al-Sha'rāwī telah mengintrodusir pemikiran progresifnya, meskipun beberapa poin belum dikatakan maksimal untuk diaplikasikan di konteks modern Indonesia. Kontribusi pemikirannya dengan konteks Indonesia adalah dalam rangka afirmatif dan kuratif. Apa yang sudah sesuai –dalam merepresentasikan semangat kesetaraan gender- maka perlu dilestarikan dan apa yang kurang sesuai maka perlu direformulasi. Inilah tujuan utama penulis dengan memberikan bandingan pemikir hukum Islam kontemporer yang cukup konsen menyoroiti tentang perempuan.

Kata Kunci: *Al-Sha'rāwī, Demisogini Epistemologi Fikih, Konteks Indonesia.*

Introduction

One of the actual, long-standing crises is attention to women. In various aspects, women still receive less attention than men. In fact, the creation of humans is equal and balanced, without differentiation based on gender, race or ethnicity. Tracing historical facts, long before Islam came, women were placed as inferior and passive creatures. He is marginalized in various aspects of life; whether social, cultural, intellectual, or even political. Banality regarding women's rights is commonplace. Women's rights are often restricted by men, because they feel they have superior power and power compared to women. Women are considered weak and not considered to exist. Ironically, it is also considered nothing more than exploitative and consumptive property. Not a few women are commercialized. Based on social history like this, violence or abusive acts are a daily occurrence for women, both in the private and public domains. This setting creates a big concern for women.

The presence of Islam as a revealed religion is a breath of fresh air for women. Initially women were oppressively discredited and marginalized by men, then the presence of Islam increased women's emancipation. Islam is a religion that is friendly toward the existence of women. Strictly speaking, Islam also negates all

practices that go against the principle of equivalence (*al-Musāwah*). In Islam, there is no distinction between rights and orders between gender, race and ethnicity. Everyone has the same position. This is recorded in history, during the time of the Prophet and his companions, women's dedication was very influential in social life. Even with female extensions.¹ Women's actions have a positive impact on building Islamic civilization and state stability. Even in the intellectual aspect, women also have the widest possible space to become productive beings, so that many female scholars have written great works.

However, the issue of women cannot in fact be said to be final and finished. After the arrival of Islam, regulations relating to women still caused conflict. This can be proven in religious texts which are misogynistic in nature. This means that, at first glance, there are many arguments that appear to prioritize women. This is what Islamic legal thinkers are working on to introduce the spirit of Islamic law itself. Because of this phenomenon, Islamic legal thinkers were polarized into two parts; conservative-textualists and progressive-contextualists.

We must agree that quite a few religious texts are ad hoc in nature. This is indeed a periodization of revelation in response to the social phenomena of that time. Thus, with the

¹ Al-Sha'rāwī affirmed that with the presence of Islam, women's existence was optimally protected. Women have independence in social spaces. This is like Khadījah Ra. who became a career woman at that time. Even the Prophet

Muhammad. before marrying her, he had time to do business with her. Muhammad Mutawallī al-Sha'rāwī, *Al-Ma'rah Fī al-Qur'ān al-Karīm*, (Mesir: Akhbār al-Yaum, t. th), 14.

occurrence of mass and socio-cultural dynamics, Islamic law will continue to demand to provide a new normative basis that has not occurred in the previous period. This is what is called embodying the spirit of religious texts by dialoguing the text with the context. So, simply put, religious texts (read: the Qur'an, hadith, and conventional ulama's arguments) that talk about womanhood may be less relevant to read and actualize in this modern context. This has seen shifts in various aspects, such as social, cultural and regional. This does not mean that Islam is irrelevant to the authenticity of the final revelation. In fact, this is a reflection of *khaṣā'is al-Islām* which does not preclude the birth of *al-tajdīd* (change) and *al-khilāf* (difference) in its legal products, so that the essence of Islamic ideology is always adaptable in every dimension.

Anxiety about responding to misogynistic texts will continue to exist. This can be suppressed and overcome by efforts to reinterpret and reformulate Islamic law. The reason is, it's not just one or two transcendental postulates that seem gender biased. In fact, there are many of them. Of course it would be dangerous if readers only stopped at the text. To align the text with the context, the mission of contemporary Ulama is to dialogue between the two using certain varied methods. Misogynistic texts must be interpreted more loosely so that they are not stiff and vague. Of course, this projection must consider various aspects,

including *maqāṣidī* to give birth to a holistic interpretation.

One of the thinkers in contemporary Islamic law who is intense in unraveling and uncovering the implicit meaning of the epistemology of jurisprudence - from the transcendental propositions of the Qur'an and al-Hadith - for women is Mutawalli al-Sha'rāwī, a well-known Egyptian expert on exegesis and jurisprudence. The way he reads and interprets misogynist texts is appreciated by modern society. The reason is, from the results of his reading, he tries to demystify the epistemology of postulates that have been fermented into actual jurisprudence with a scientific paradigm. Al-Sha'rāwī presents an established method of interpretation by compromising text and context. Apart from that, he also presents affirmative texts originating from hadith and *aṣar* to support the contextualization of the propositions.

This research tries to identify the *istinbat* paradigm and thought products of Mutawalli al-Sha'rāwī related to his efforts to demystify the epistemology of jurisprudence which originates from the authoritative propositions of the Qur'an and Hadith. Apart from that, this research will explain how Mutawalli al-Sha'rāwī's demysogynistic plot on the propositions of the Qur'an or Hadith was later produced into special jurisprudence on crucial women's issues, in order to give birth to new thought products. In this research, there are four important issues that are analyzed through the lens of Mutawalli al-

Sha'rāwī's analysis, namely: 1) Concerning hadith that allude to the lack of intellectual and religious dominance of women; 2) Verse about beating women; 3) Verses about polygamy; 4) Verse about women's testimony. These four themes are sexy issues that fall under the radar of misogynist arguments. In order to understand the implicitness of the argument comprehensively, it is of course very necessary to look broadly at how the verses and hadith about women are contextualized in this contemporary era. It is necessary that readers do not get trapped in the frozen text, thereby giving rise to a mindset that is rooted in patriarchal culture which does not actually manifest the spirit of the proposition, but leads to discrimination and the reduction of women. Apart from describing al-Sha'rāwī's efforts to demysogyny, the author will contextualize these four issues in the context of the Indonesian state. It is hoped that with the presence of this article, readers will be more literate and careful about how they should act when faced with misogynist religious texts in this modern era.

Profile Sketch of Mutawalli al-Sha'rāwī

His full name is Muhammad bin Mutawalli al-Sha'rāwī al-Ḥusayni. Familiar with the nickname al-Sha'rāwī, he was born on

Sunday, 17 Rabī' al-Šānī 1329 H or coincides with 16 April 1911 AD. Al-Sha'rāwī was born in the village of Daqadus, one of the villages in the city of Mait Ghamir, and the capital in al-Dakhaliyyah, Egypt. He is a descendant of the Prophet Muhammad Saw. from the path of Husein ra.² Living among a simple family did not make al-Sha'rāwī give up hope of gaining knowledge. His father worked as a farmer who worked on other people's land. However, this profession was not an excuse for al-Sha'rāwī's father not to attend the science council of the Ulama.³ Becoming the world-class cleric he is today, al-Sha'rāwī's academic journey cannot be separated from his father's upbringing. Starting from his love of science, al-Sha'rāwī's father had a great desire and determination for his son to become a successful academic figure in the future. This began to be demonstrated when al-Sha'rāwī's father diligently monitored his son's studies when he was little. His father also wanted al-Sha'rāwī to gain knowledge from al-Azhar scholars by studying at al-Azhar University.⁴

The seeds of the future great scholar had begun to grow in al-Sha'rāwī when he began memorizing the Qur'an at 'Abd al-Majīd Pāşa at a young age, namely 11 years old.⁵ After that, he began his intellectual career by attending elementary school at al-Azhar Zaqāqīq in 1926

² Sa'īd Abū al-'Aynayn, *Al-Sha'rāwī Anā Min Şulahāt Ahli al-Bayt*, (Mesir: Akhbār al-Yawm, 1955), 6.

³ Sa'īd Abu al-'Aynayn, 59.

⁴ Husain Jauhar, *Ma`a Dā'iyah al-Islām Shaikh Muhammad Mutawallī al-Sha'rāwī Imām al-'Aşr*, (Kairo: Maktabah Naḥdah, n. th), 20.

⁵ Ahmad 'Umar Hāshim, *Al-Imām al-Sha'rāwī Mufasssiran wa Dā'iyah*, (Kairo: Akhbār al-Yaum, 1998), 2.

AD. Then he continued at secondary school at al-Azhar Zaqaqīq and graduated in 1936 AD. After that, he realized his father's dream, namely studying at the University al-Azhar with an Arabic language study program, and he succeeded in obtaining a bachelor's degree in ,1941 AD. Not stopping there, al-Sha'rāwī continued his education at the Master's level with the same major and successfully graduated cum laude in 1943 AD. Sha'rāwī was appreciated by the general public. This was proven when he received many awards, such as: National awards in 1983 and 1988 in the form of an Honorary Doctoral Clause Award in literature at Mansurah University and al-Azhar Dakhālia.⁶

After successfully completing his formal studies, al-Sha'rāwī began to engage in other worlds of education, such as; became a lecturer at various universities such as al-Azhar Tanta, al-Azhar Iskandariyah, al-Azhar Zaqaqīq, Malik bin Abdul Aziz University Makkah, al-Anjal Arab University, Ummul Qura University Makkah, and others. Apart from intensely teaching at universities, al-Sha'rāwī has other activities in the field of religion, such as: religious lectures, being a preacher, tafsir studies which have been broadcast on the *Nūr alā Nūr* television channel for a long time, approximately 25 years. Apart from the religious field, al-Sha'rāwī's work in the country also

made a big contribution. In 1976 AD, al-Sha'rāwī was appointed to the Department of Endowments and Al-Azhar Affairs for 2 years. Having a positive influence on the Egyptian economy, al-Sha'rāwī was named the first figure to issue a ministerial decree regarding the creation of the first Islamic Bank in Egypt, namely Bank Faisal, as a means of stabilizing the wheels of the Egyptian economy.⁷

Apart from being active in various fields, al-Sha'rāwī is a great and productive scholar. He produced many compositions - both those he wrote himself and notes from his students -. Some of his works are: *Mu'jizat al-Qur'ān al-Karīm*, *Al-Isrā' wa al-Mi'rāj*, *al-Mukhtār min Tafsi'r al-Qur'ān*, *al-Mar'ah fi al-Qur'ān al-Karīm*, *al-Ghāib*, *Makānah al-Mar'ah fi al-Islām*, *Fiqh al-Mar'ah al-Muslimah*, *al-Fatāwā*, *al-Mar'ah Kamā Arādahā Allāhu*, *Naẓārah al-Qur'ān*, *al-Islām wa al-Fikr al-Mu'āṣir*, *al-Islām wa al-Mar'ah Aqīdah wa Manāhij*, *Shubhat Wa Abāṭil*, *Al-Ḥalāl Wa al-Ḥarām*, *Mu'jizat Al-Rasūl*, *Al-Ḥajj Al-Mabrūr*, *al-Qaṣaṣ Al-Qur'ani fi Sūrah al-Kahf*, *Khawāṭir Al-Shaykh al-Sha'rāwī Ḥawla 'Umran al-Mujtam* etc.⁸ Al-Sha'rāwī breathed his last breath at the age of 87 on Wednesday, June 17 1998. He was buried in Egypt. Al-Sha'rāwī left three sons (Sami', Abdurrahīm, Aḥmad) and two daughters (Fāṭimah and Ṣāliḥah).⁹

⁶ Ḥusain Jauhar., 215

⁷ Sa'īd Abu al-'Aynayn, 31.

⁸ Muhammad Alī Ūyazi, *al-Mufasssirūn Hayātuhum wa Manhajuhum*, (Tehran: Mu'assasah al-Thabā'ah wa al-Nashr, 1952), 132.

⁹ Ḥusain Jauhar, 14.

Mutawalli al-Sha'rāwī's Istinbat Paradigm

Every Islamic legal thinker has diversity of paradigms in the context of legal *ijtihad*. This is because socio-politics also influences methods of thinking and analysis. Al-Sha'rāwī was an Egyptian Islamic legal thinker and interpreter who was born at the end of the 290th century. He manifested his thoughts through the interpretation of passages in his magnum opus entitled *Tafsīr al-Sha'rāwī*.¹⁰ Apart from explaining the interpretation directly and clearly, it is not uncommon for al-Sha'rāwī to also explain the arguments epistemologically. Al-Sha'rāwī's style of thinking is contextual in examining verses related to law. This can be found in various workshops which specifically discuss jurisprudence, especially women's jurisprudence. In producing *fiqh*, al-Sha'rāwī elaborated between text and contextual. The methods used are very diverse, ranging from linguistics, *maqāṣidī*, or syllogism. In his *fiqh* works, he often provides lengthy arguments, which are constructed on an authoritative basis in the form of the Koran or hadith. Apart from that, he also embedded ratio legis with *qiyās* (read: analogical) or *tamsīl* (read: descriptive) techniques. He uses this kind of method so that it is easy for readers to understand.¹¹

As a moderate contemporary scholar, al-Sha'rāwī, he is not a scripturalist, who only

focuses on texts in exploring the law. Nor is it too liberal to deify rationality or Sufism (read: kebatinan).¹² Al-Sha'rāwī is not rigid in analyzing the laws of time and space. It also involves factual reality in order to obtain integral analysis results.¹³ Many scholars of al-Sha'rāwī's time recognized his integrity and capability in writing books and delivering material. Al-Sha'rāwī's work is a flexible scientific work in the contemporary era. Of course, it is really needed to answer the problems of this modern era. Even in his preaching technique, al-Sha'rāwī was very skilled at ensuring that his preaching was well received by the audience. He always shows his characteristics with his contemplation of Islamic law, then represents it syllogically with reality. This kind of method is considered very effective, efficient and easy to understand.¹⁴

Mutawalli al-Sha'rāwī's Epistemology of Women's Jurisprudence Demisogyny**1. The concept of "Women lack reason and religion"**

In religious discourse, quite a few religious narratives confront gender aspects; there are those who appreciate equality and there are also those who are gender biased. It cannot be denied that the embryo of this diversity of views began in the context of the past, where patriarchal culture is still carried over to this day. As is

¹⁰ Muhammad Yasīn Jizr, *Ālim 'Iṣṣrif Fī 'Uyūn Al Mu'āṣir*, (Beirut: Dār al-Jayt, 1990), 10.

¹¹ Look at various works of al-Sha'rāwī's *fiqh*, one of which is *Fiqh al-Mar'ah al-Muslimah*.

¹² Aḥmad al-Marsi Husein Jauhar, *Muhammad Mutawallī al-Sha'rāwī: Imām al-'Aṣr*, (Mesir: Handar Misr, 1990), 51.

¹³ Aḥmad al-Marsi Husein Jauhar, 53.

¹⁴ Aḥmad al-Marsi Husein Jauhar, 140.

known, the true top to down mission is the revelation and words of the Prophet SAW. was a response to the factual reality of that time. So it is not surprising that many religious texts seem to reflect the superiority of men and the inferiority of women. Because the strata between men and women are like that. One of the popular hadith fragments that is gender biased and seems depressing towards women's capabilities is the following hadith:

النساء ناقصات عقل و دين

With The meaning of teks, "Women are less (dominant) in matters of reason and religion", If we look at the lexical hadith, then this hadith is part of a misogynist hadith which has an impression of gender inequality. Then it will arise in our minds, why are women put second in matters of reason and religion? Is it true that the quality of both of them is below men's standards? So, in order to answer this hypothesis, intensive analysis is needed, not just stopping at the text but understanding its substance and implications in their entirety. This is different from groups that promote positivism, where they remain aggressive in echoing this hadith as an instrument for blocking women's rights in public spaces. It could be that women are not only marginalized, but can also receive hate speech about their intellectual and spiritual limitations according to the hadith text. This kind of distortion must be

corrected and straightened out. Because, if attitudes of puritanism and radicalism continue to be intensified, stereotypes of women in the name of religion will be fatal and threaten women's rights in life.

In reading the hadith, Mutawalli al-Sha'rāwī studied this hadith carefully. He is of the view that, in fact, this hadith is not at all discussing the issue of women's decadence in matters of reason and religion. Initially, al-Sha'rāwī admitted that there were quite a few positivistic groups who jargonized this hadith as a boomerang to rob women of their rights and dignity, both in the private and public domains. This is a form of fatal failure in understanding hadith. This hadith is essentially explaining how the Prophet SAW. reflects the character of a woman from a natural perspective (read: human creation). Not talking about the inferiority of women to men in intellectual and spiritual matters.¹⁵

Ironically, this hadith is widely misused. They understand that this hadith is not in accordance with the meaning of the Prophet SAW. This hadith is understood as a form of women's lack of space to express their thoughts and play a role. Even though that's not the case. In fact, implicitly, the orientation of this hadith is for men to socialize and interact well with women. In essence, the figure of a woman is created with a physical appearance that is different from that of

¹⁵ Muhammad Mutawallī al-Sha'rāwī, *Makānah al-Mar'ah*, (Beirut: Dār al-Qalam, t. th), 159.

a man. This is an indisputable fact. Because the aim of creating women in an attributive way is not as heavy and hardworking creatures like men. Women were created with a gentle heart and character. This is not a disgrace for women. In fact, this is an affirmation for women of their synchronization with life activities.

Al-Sha'rāwī emphasized that the substantive meaning of the phrase "lacking (dominating) in reason" is that women have characteristics that contrast with men. In general, men have a mission in life, namely meeting family needs, both material and immaterial. In this case, of course the role of reason is more prioritized than the heart. In terms of work, men are required to be able to manage – wisely – well all household and life activities.¹⁶ It's different with women, they are created as creatures full of affection. This is because by nature she is the mother of her future children. It is a home for his children to find love. Because of this, women's feelings are often prioritized over reason. Because in a family a mother's love is needed more than reason.¹⁷

However, the dominance of feelings and hearts in women does not mean that in reality the quality of reason - ideas, arguments and

aspirations - women occupy the proletarian class. This is the normal human way of working. That what is desired is the dominance of feelings over reason is that the reflexivity of feelings (read: heart) precedes the performance of reason (read: reason). Meanwhile, the message in the phrase "lack of religion" is that this hadith is describing how the nature of women intersects with religion. Religion provides a space for women that is slightly different from men, where under certain conditions - such as having large *hadas* - women are not allowed to carry out spiritual worship - which has the condition that they must be pure from *hadas* - first. Of course this is not depreciation or a taboo for women.¹⁸

Revealing evidence that the fact that women's intellectuals are no less than men, al-Sha'rāwī provides an inspiring story about the role of women's minds in the Hudaibiyah arbitration incident.

“At that time, the Prophet SAW. instructed Muslims to slaughter the animal and perform *tahallul*. But strangely, none of them carried out the Prophet's instructions. Seeing the community's response, the Prophet. suddenly became furious and decided to go home. When he got home, the Prophet SAW. met his wife

¹⁶ Muhammad Mutawallī al-Sha'rāwī, *Makānah al-Mar'ah*, 161.

¹⁷ We can assume that a husband comes home from work tired and wants to sleep to rest his body. Coincidentally, at that time the little child was crying because he was asking for milk. So, instinctively, the husband will look for a solution - according to his wits - for his own problems, namely continuing to rest at all costs for the sake of tomorrow's work. So, what you do is look for another place

to rest yourself. This is different with women. Even if she is tired and exhausted, she will try to calm her baby without thinking, even if the next day she also has to work. Because his heart's feelings are more dominant than his mind. See Muhammad Mutawallī al-Sha'rāwī, *Fiqh al-Mar'ah al-Muslimah*, 296.

¹⁸ Muhammad Mutawallī al-Sha'rāwī, *Fiqh al-Mar'ah al-Muslimah*, 297-298.

Umm Salamah Ra. Seeing the attitude of the Prophet Saw. different from Umm Salamah Ra. asked: *"What happened to you Rasulullah"*. Prophet SAW. silent and did not answer. Prophet SAW. still in a furious and angry mood. Umm Salamah Ra. kept asking the same thing repeatedly to the Prophet SAW. In the end, the Prophet SAW. deigned to reply: *"Woe to you, Muslims. I ordered them to slaughter the animal and perform tahallul, but they did not do it."* Umm Salamah Ra. trying to win the heart of the Prophet SAW. by giving advice: *"O Rasulullah Saw., do not be angry and curse them. Because their hearts still feel heavy because of the arbitration incident and the failure of Makkah divestment. O Prophet Sa., I suggest that you leave the house without saying a word to them. Then slaughter your slaughtered animal and tahallul."*¹⁹ Finally, without thinking, the Prophet SAW. carried out the idea his wife suggested. After the Muslims saw the Prophet SAW. did it, immediately they followed what the Prophet SAW did. namely slaughtering the slaughtered animal and saying tahallul."²⁰

FactThe history above is a piece of concrete evidence that when the situation was crucial and serious, the Prophet SAW. - the greatest figure of the Prophet - chose to accept and carry out the brilliant idea of a female figure, namely Umm Salamah Ra. If it is true that the hadith about "women's lack of reason and religion" means that women's minds are less accountable, then clearly this conception is paradoxical with the historical facts above. This is a big mistake. Of course, if women's intelligence is secondary, it should be the Prophet SAW. choosing the opinion of a male friend over that of his wife, a female figure. This is a legal ratio, that the above hadith orientation is not marginalizing the role of women's reason and religion in the public sphere. The hadith above is visualizing women's behavior.

Simply put, men and women are equally equipped with reason and intellect. Both have respective privileges. The hadith above illustrates that women are responsive by using feelings. Because in one human soul it is impossible to have equal feelings or reason. One of them dominates the other. And in a major way,

¹⁹ This phenomenal story is recorded in the hadith narrated by Imām Bukhārī No. 2731. This story begins in the sixth century. At that time, Muslims wanted to perform the Umrah series by bringing their slaughtered animals. However, on the way, they were intercepted by Kafir Quraish. Long story short, in the end both camps chose to have a long and tough discussion. The final result of these negotiations was an agreement called "ḥudaibiyah arbitration". However, this made Muslims reluctant to accept the substance of the agreement agreed upon by the

Prophet and the Quraish infidels. The friends were angry and uncontrolled over the agreement, because the terms of the agreement were very detrimental to the Muslims; one of which is the prohibition on entering Mecca. In fact, the effort to agree on this agreement on the Prophet's initiative was to break up the war between the two parties. Due to this incident, QS came down. Al-Faṭḥ verse 24. Muhammad Mutawallī al-Sha'rāwī, *Fiqh al-Mar'ah al-Muslimah*, 299.
²⁰Muhammad Mutawallī al-Sha'rāwī, *Makānah al-Mar'ah*, 161.

women prioritize feelings and men prioritize ratio (read: reason) in many situations.²¹

2. Concept of "Beating Women"

In family dimension, there are many problems faced between a husband and wife. It does not rule out the possibility that a devastating conflict will occur within it. This causes conflict in the family. Psychologically, emotions that overflow within a person will result in him being reluctant and neglecting to carry out his normal obligations. In fiqh, conditions like this are known as *nusyuz*.²² The epistemology of jurisprudence regarding *nusyuz* is in QS. Al-Nisa : 34.

وَالَّذِينَ تَخَافُونَ نُشُوزَهُنَّ فَعِظُوهُنَّ وَاهْجُرُوهُنَّ فِي الْمَضَاجِعِ
وَاضْرِبُوهُنَّ فَإِنْ أَطَعْنَكُمْ فَلَا تَبْغُوا عَلَيْهِنَّ سَبِيلًا إِنَّ اللَّهَ كَانَ عَلِيمًا
كَبِيرًا

The verse above explicitly provides guidance in the event of a wife's *nusyuz* towards her husband. The guidelines above are gradual, not optional. Of the stages of reconciliation that sparked conflict was the phrase "*Waḍribūhunna*" which is translated by commentators as "beating". If viewed from the perspective of the *ushul fiqh* methodology, the original law of *al-amr* (commandment) is obligatory or mandatory. This kind of understanding is also echoed by a group

of scripturalists who argue that beating one's wife - in conditions of *nusyuz* - is a religious command. Responding to concerns about this way of thinking, al-Sha'rāwī explained the understanding of the verse above as follows:

First, *al-Wa'zu*. What is meant is giving advice gently, affectionately and politely. Al-Sha'rāwī explained that the way to advise is by taking the right moment to make peace so that what is conveyed can be well received. Because, an effective way of giving advice must look at your personal situation.

Second, *al-Hajr*. What is meant by separate beds is don't leave him alone at home or in his room, but instead let him sleep on one side and the other. This is so that anger does not escalate further. Leaving the house is not the best solution, because it will have an impact on the wife's hard character. The main point of *al-hajr* here is how to avoid letting out emotions on each other. This method is to give each other space to make peace with themselves first.

Third, *al-Darbu*. What is meant by hitting is conditional. This means that the legality of hitting must not cause injuries that result in domestic violence. This can be done by hitting it lightly, for example with a *siwak*. Apart from that,

²¹ Muhammad Mutawallī al-Sha'rāwī, *Fiqh al-Mar'ah al-Muslimah*, 298-300.

²² An important concept that needs to be understood is that al-Sha'rāwī does not state that *nusyuz* is only for wives - as is the concept explained by classical scholars -. Furthermore, he elaborated that *nusyuz* also happened to

husbands. He also specifies a special chapter that explains the *nusyuznya* of husbands. This is concrete evidence that al-Sha'rāwī's women's fiqh paradigm has indeed been proactive in highlighting gender equality. See Muhammad Mutawallī al-Sha'rāwī, *Fiqh al-Mar'ah al-Muslimah*, 230.

the blow must also be gentle and unemotional so that you can regain consciousness.²³

Of the three phases above, one of the mainstream forms is "*al-Darbu*". In order to maintain the sacredness and authenticity of the text, al-Sha'rāwī revitalized the way of understanding the verse. al-Sha'rāwī took moderate steps to find a middle ground between the message of *ilāhiyyah* and gender-based justice. Strictly speaking, al-Sha'rāwī stated that the meaning of the phrase "*Waḍribūhunna*" is not an *al-amr* (command), but only limited to *al-ibāḥah* (permissibility). Al-Sha'rāwī said:

ان الله تبارك و تعالى لم يأمر بضرب النساء و لكنه اباحه, و فرق كبير

بين الامر و الاباحة و لقد جعله مرحلة الثالثة بعد الوعظ و التذكير

بشرع الله و بعد الهجر في الفرائض

With the texts talks, *Allah SWT. does not order to hit women, but Allah only allows it. This is clearly a big difference between commands and abilities. Allah places the position of "hitting" in the third stage, after giving advice and returning to remembering Allah's law and separating from bed.*²⁴

Al-Sha'rāwī illustrates how a father beats his child for disobeying his parents. So the blow is in the context of *al-Ta'dīb* (education). Not based on emotion. Same with wife. Al-Sha'rāwī emphasized that Islam is a religion that does not

discriminate against women. There are quite a few religious narratives that encourage men to always be kind and gentle towards women. Of course this is much different from pre-Islamic or non-Islamic times. For example, in Europe, domestic violence resulting from husbands hitting their wives is widespread and commonplace. In contrast to Islam, Islam provides signs and a blueprint so that families do not encounter violence so that they can form a family with a *mawaddah* and *rahmah*. Women will also be more accepting and reconciled to conflicts in the household if the path taken by men is one that is kind and loving, not violent.²⁵

3. Concept of "Polygamy"

Polygamy is a practicedeatable among the public. Especially for women, polygamy is a stigma for them. However, there are also quite a few textualist groups who accept polygamy with grace. They argue that polygamy is a form of carrying out the mandate of religious law. The polygamy verse is written in the QS. Al-Nisa': 3:

وَإِنْ حِفْتُمْ إِلَّا تُقْسِطُوا فِي الْيَتْمَىٰ فَانكِحُوا مَا طَابَ لَكُمْ مِنَ النِّسَاءِ
مَثْنَىٰ وَثُلَّةَ وَرُبَعٍ فَإِنَّ حِفْتَكُمْ إِلَّا تَعْدِلُوا فَوَاحِدَةً أَوْ مَا مَلَكَتْ أَيْمَانُكُمْ
ذَلِكَ أَذَىٰ لَا تَعُولُوا

On a factual level, poligamy is often used as an orchestration for men to fulfill their desires.

²³ Muhammad Mutawallī al-Sha'rāwī, *Fiqh al-Mar'ah al-Muslimah*, 298-299.

²⁴ Muhammad Mutawallī al-Sha'rāwī, *Fiqh al-Mar'ah al-Muslimah*, 177.

²⁵ Muhammad Mutawallī al-Sha'rāwī, *Makānah al-Mar'ah*, 178.

Not only that, they argue that polygamy is a teaching of the Koran and the sunnah of the Prophet SAW. Al-Sha'rāwī straightened out this radical understanding firmly, that polygamy was an ancient tradition before Islam came. He asked a counter question, "*Which is correct, the Apostle was present when society was already polygamous or the Apostle came to bring teachings about polygamy?*". The truth is the Messenger of Allah. was born and appointed as a Prophetic mandate in the socio-cultural conditions of a polygamous society. Also the quantity of polygamy is not limited. Rasul Saw. carrying a mission not to teach polygamy. On the other hand, Rasul Saw. present with the mission of Islam to regulate polygamy - which already existed in ancient traditions - in society at that time. Evidence of this can be found in historical records in the story of Ghailān's friend.²⁶

The polygamy verse only speaks of permission, not commands. This ability is conditional, if the husband really needs polygamy. If the verse is examined carefully in terms of the text, then the verse actually states "*Do not do polygamy, unless there is an advantage!*". Al-Sha'rāwī provides an interesting illustration of what is meant by "excess" in the context of polygamy:

"When five people enter a room, and there are five chairs, each of them will get one at a time. However, if there are ten seats, then each of those people is entitled to two."

A common thread can be drawn, that polygamy is legal or permissible if in society there are many single women and it is feared that they will fall into things that are forbidden if they do not practice polygamy. Apart from that, the second wife also found no other alternative but to marry him.²⁷

De facto polygamy has become endemic in a number of public entities. This is an inevitability. The fault is not with women, but with men who only use the phrase "the ability to engage in polygamy" without considering aspects of justice. However, in principle, the essence of polygamy is an alternative that reaches the emergency level (*al-ḍarūrah*). Polygamy is prevention and a solution in the social and religious domains, namely to prevent deviations such as free sex from occurring.²⁸ In the issue of polygamy, what you have to understand is how to read and examine this verse in a complex manner. It doesn't stop at the legality of polygamy but ignores justice. In fact, justice in polygamy is a primordial requirement that is absolute. In fact, quite a few men disintegrate between the

²⁶ Muhammad Mutawallī al-Sha'rāwī, *Fiqh al-Mar'ah al-Muslimah*, 130. The editorial of the hadith is as follows:

عَنْ ابْنِ عُمَرَ، أَنَّ غَيْلَانَ بْنَ سَلَمَةَ النَّقَّافِيَّ أَسْلَمَ وَلَهُ عَشْرُ نِسْوَةٍ فِي الْجَاهِلِيَّةِ، فَأَسْلَمَ مَعَهُ، فَأَمَرَهُ النَّبِيُّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ أَنْ يَتَخَيَّرَ أَرْبَعًا مِنْهُنَّ»

Meaning: "*In fact, Ghailān bin Salamah al-Ṣaqqafī converted to Islam and still has ten wives from his marriage during the jahiliyah period. They also converted to Islam*

with him. Then the Prophet SAW. ordered him to choose four wives from all of them." Muhammad bin 'Isā al-Tirmidhī, *Sunan al-Tirmidhī*, (Mesir: Dar al-'Alamiyyah, 1975), 427.

²⁷ Muhammad Mutawallī al-Sha'rāwī, *Makānah al-Mar'ah*, 148.

²⁸ Muhammad Mutawallī al-Sha'rāwī, *Makānah al-Mar'ah*, 149-153.

permissibility of polygamy and the fairness of polygamy. They practice legality without justice. Of course this is a fatal mistake. In social reality, quite a few people who practice polygamy do not give birth to benefits, but instead give rise to new polemics in the household; such as ignoring the rights of the first wife and children.²⁹

Questioning Regarding justice in polygamy, the prerequisites that must be met are not easy. In summary, al-Sha'rāwī explained that the justice desired in polygamy is justice that is *ikhṭiyāri* (something that can be worked for), including the distribution of *al-Qismah* (giving turns) in a balanced and fair manner. *Al-Qismah's* diction contained in the fiqh literature is not limited to biological relationships alone, but rather includes; providing shelter; visiting time; provision of living; and other materials equally. This means that to manifest justice in polygamy you must not prioritize one wife over another wife without reason. Meanwhile, justice which is not *ikhṭiyāri* (beyond human will) such as the scale of love and affection, the Shari'a does not require this. This is as per the hadith of the Prophet Saw. narrated by Aisyah ra..³⁰

عن عائشة رضي الله عنها قالت: كان رسول الله صلى الله عليه وسلم

يقسم ويعدل ويقول: «اللهم هذا قسمي فيما أملك فلا تلمني فيما

تملك ولا أملك يعني القلب»³¹.

4. Concept of "Women's Testimony"

In the aspect of testimony, Islam provides space for men and women to equally be witnesses in both civil and criminal matters. However, the portions given still talk about quantity. Where normatively the existence of women is half that of men. This is what triggered the reinterpretation of the verse about witnesses. Islam regulates verses about witnesses in the QS. al-Baqarah: 282:

وَاسْتَشْهِدُوا شَهِيدَيْنِ مِنْ رِجَالِكُمْ فَإِنْ لَمْ يَكُونَا رَجُلَيْنِ فَرَجُلٌ وَامْرَأَتَانِ
بِمَنْ تَرْضَوْنَ مِنَ الشُّهَدَاءِ أَنْ تَضِلَّ إِحْدَاهُمَا فَتُذَكِّرَ إِحْدَىٰ هُمَا الْأُخْرَىٰ

Responding to testimony in this modern context, of course many people are wondering: "How can a woman's testimony be half that of a man's, especially those - women - who have doctoral or master's degrees?". In this case, al-Sha'rāwī places and understands this dialectic. Al-Sha'rāwī stated that the term *al-Shahādah* comes from the derivation of *al-mashhad*, which means something that can be truly seen by the eye. So the quality of knowledge or degree does not affect this testimony. What is needed is reality and honesty, integrity and trust.³² According to al-Sha'rāwī, why do women get half as much as men, because it is the nature of women to be inclusive creatures. Apart from that, there are quite a few prescriptions that limit women's movements and steps, such as prohibiting them

²⁹ Muhammad Mutawallī al-Sha'rāwī, *Tafsīr al-Shar'rāwī*, (Beirut: Maṭābi' Akhbār al-Yaum, 1997), 2001.

³⁰ Muhammad Mutawallī al-Sha'rāwī, *Tafsīr al-Shar'rāwī*.

³¹ Abu Dawud Sulaiman, *Sunan Abī Dawud*, (Beirut: al-Maktabah al-'Aṣriyyah, t. th), 242.

³² Muhammad Mutawallī al-Sha'rāwī, *Makānah al-Mar'ah*, 173.

from mingling with men. At the level of rationalization of this statement, al-Sha'rāwī provides an empirical illustration:

"If there is an argument in a public place, what will the woman do? investigate what happened or move away from the scene to avoid being exposed to danger or injured? Of course the answer is that he leaves and stays away from her."

In the end, al-Sha'rāwī concluded that the factors that influence the comparison of witnesses between women and men are as follows: *First*, because women are inclusive creatures. It is not his main job to follow and observe the course of conflicts in such a public. *Second*, because women are gentle figures. Women would prefer not to investigate and analyze so as not to intervene in it. *Third*, psychologically, women will be easily mentally attacked when they see a conflict. This can be exemplified when she sees a man fighting - even if it is her husband - so she will call and seek help from someone else. These three points explain that women cannot observe atomistically the symptoms of conflict in the field. Women prefer to stay away rather than be involved in it. This factor is what makes its existence considered half of the testimony of men.³³

Contextualization of Mutawalli al-Sha'rāwī Women's Jurisprudence in the Indonesian Context

Contemporary fiqh discourse is always hoped for as a guide to solving a cosmopolitan dilemma. Not only what is stated in the text, but also the elasticity of law within society. Considering that fiqh is the result of *ijtihādi* which is *zanny* (assumptive), it is very possible that fiqh will also move to synergize itself with local situations and conditions. It does not rule out the possibility that jurisprudence will cause friction. Theoretically and applied, jurisprudence cannot be rigid. Muslims must not be trapped in the trap of text. That dark period has been buried with the birth of the Islamic revival. The jargon "the door to *ijtihad* is always open" is an adage that needs to be echoed, so that jurisprudence is always in line with the spirit of the Shari'a. Anthropologizing jurisprudence in Indonesia in particular is a big concern that needs to be empowered. Considering that the spirit of jurisprudence will integrate itself into its respective socio-political-cultural context, it is very possible that Arabic jurisprudence, Egyptian jurisprudence, Malaysian jurisprudence and Indonesian jurisprudence will have massive differentiation.

In Indonesia, the existence of women's jurisprudence must continue to be empowered. Women's jurisprudence must be permissive and

³³ Muhammad Mutawallī al-Sha'rāwī, *Makānah al-Mar'ah*, 176.

relative. At the de jure level, women and men in the social frame are balanced. Women are not lower in IQ or competence than men. Even in the private context of family, women and men are both required to create harmonious family relationships that complement each other to design a stable family life.³⁴ However, in practice, people's perception of religion is still firmly rooted in a patriarchal and dichotomous culture. Societies that are stumped on gender equality still continue to assume that women are proletarian creatures. Of course this is wrong and must be restructured. This is the biggest concern for Indonesian feminist ulama' who continue to strive to introduce gender equality simultaneously with relevant ways of reading texts and their applications in Indonesia. Because, if misogynistic texts continue to be translated in the Indonesian context as they are, it will go against the spirit *maqāsid* implied in it. This is the reason why reinterpretation and reactualization are essential in the ijthihad discourse in Indonesia, namely in order to produce holistic and eclectic laws.

The fundamental women's issues raised by the author are gender-based polemics based on the epistemology of jurisprudence in the form of misogynistic verses and hadith. From the discussion above, the author explains Mutawalli al-Sha'rāwī's argument in reformulating women's jurisprudence towards progressive jurisprudence.

Al-Sha'rāwī tries to redefine the substance and implicitness of texts from a modern perspective. After explaining the paradigm of al-Sha'rāwī women's jurisprudence, the author will analyze it using deductive method contextualization in the Indonesian context. To what extent is the application of al-Sha'rāwī women's jurisprudence relevant in Indonesia. The author will also provide a breakthrough in the legal standing of Indonesian jurisprudence, either to affirm or reject al-Sha'rāwī's opinion.

1. Contextualization of the concept of "women lacking reason and religion"

Regarding the authoritative proposition that touches on the concept of women lacking reason and religion, the complete hadith is as follows:

عَنْ أَبِي سَعِيدٍ الْخُدْرِيِّ قَالَ: حَرَجَ رَسُولُ اللَّهِ -صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ- فِي أَضْحَى أَوْ فِطْرٍ إِلَى الْمُصَلَّى، فَمَرَّ عَلَى النِّسَاءِ، فَقَالَ: "يَا مَعْشَرَ النِّسَاءِ، تَصَدَّقْنَ، فَإِنِّي أُرِيكُمْ أَكْثَرَ أَهْلِ النَّارِ" فَقُلْنَ: "وَيْمَ يَا رَسُولَ اللَّهِ؟ قَالَ: "تُكْفِرْنَ اللَّعْنَ، وَتُكْفِرْنَ الْعَشِيرَ، مَا رَأَيْتُ مِنْ نَاقِصَاتِ عَقْلِ وَدِينٍ أَذْهَبَ لِلْبَّ الرَّجُلِ الْحَازِمِ مِنْ إِحْدَاكُنَّ" قُلْنَ: "وَمَا نُقْصَانُ دِينَنَا وَعَقْلَنَا يَا رَسُولَ اللَّهِ؟ قَالَ: "أَلَيْسَ شَهَادَةُ الْمَرْأَةِ مِثْلَ نِصْفِ شَهَادَةِ الرَّجُلِ؟" قُلْنَ: "بَلَى. قَالَ: "فَدَلِكِ مِنْ نُقْصَانِ عَقْلِهَا. أَلَيْسَ إِذَا حَاضَتْ لَمْ تُصَلِّ وَلَمْ تَصُمْ؟" قُلْنَ: "بَلَى. قَالَ: "فَدَلِكِ مِنْ نُقْصَانِ دِينِهَا" متفق عليه

³⁴ Dalāl kāzīm Ubaid, *Maḥmū Hurriyyah al-Mar'ah*, (Lebanon: Book Publisher, 2000), 111.

The hadist talks One day the Prophet Muhammad SAW. go to the place of prayer (to perform prayers) for Eid al-Adha or Eid al-Fitr. Then Nabi SAW. met a group of women, and the Prophet SAW. said: "O women, give out your zakat, because I have seen that most of the inhabitants of hell are women. They said: "Why can we be like that, Rasulullah?" Prophet Muhammad SAW. then answered: "You often curse and don't thank your husband. I have never seen anyone more deficient in religion and reason than you (women). Even men of common sense can be led astray by you." The women asked again: "O Messenger, what do we lack in religion and reason?" Prophet SAW. answered: "Isn't the testimony of two women comparable to the testimony of one man?" The women answered: "That's right, O Messenger of Allah." said: "This is what is meant by a deficiency in the mind. Then, aren't women allowed to pray or fast while menstruating?" The women confirmed again. Prophet saw. said: "This is what is meant by your deficiency in religion."³⁵

Textually, it is true that the hadith is talking about the Prophet's claims.towards women. However, in substance this is not the case. Prophet SAW. has another purpose when reciting his words. So, the way to understand hadith like this must be comprehensive. It should not only be understood in terms of the text and raw translation. Of course it would be risky if read

in this modern context, especially Indonesia. In Indonesian reality, the position of women and men is based on the principle of equilibrium. Confirming that in any space - whether private or public - women and men are positioned in a balanced state without regard to gender, race or ethnicity. Discrediting or marginalizing women in any realm is a form of discrimination that is condemned by state regulations. This entire concept is clearly stated in the following regulations:

Article 1 paragraph 3 of Law No. 39 of 1999 concerning Human Rights

"Discrimination is any restriction, harassment or exclusion that is directly or indirectly based on human differentiation on the basis of religion, tribe, race, ethnicity, group, group, social status, economic status, gender, language, political beliefs, which results in the reduction , deviation or elimination of recognition, implementation or use of human rights and basic freedoms in both individual and collective life in the political, economic, legal, social, cultural and other aspects of life."

Article 2 UDHR

"Everyone is entitled to all the rights and freedoms set forth in this Declaration without any exceptions, such as distinctions made on race, color, sex,

³⁵ Muhammad bin Ismā'il al-Bukhārī, *Ṣaḥīḥ al-Bukhārī*, (Beirut: Dār Ṭūq al-Najāh, 2001), 68.

*language, religion, political or other opinion, national or social origin, property rights, birth or other position. "Furthermore, no distinction will be made on the basis of the political, legal or international position of the country or region from which a person originates, whether from an independent country, in the form of trust territories, colonies or under other sovereign boundaries."*³⁶

Even in the domain of reason, Indonesia does not reduce women's rights to carry out activities in the academic world. Men and women have the same rights to engage in the world of education, such as; learn, teach, participate in matters related to academics. Based on empirical facts, currently in Indonesia, millions of women have demonstrated their capabilities by occupying high chairs in social, cultural, religious and political contexts.³⁷ In line with the Islamic religion, in essence Islam has given free will to women to work in the academic field from entry level to high level, until finally giving birth to female graduates with scientific capacity; whether working as a teacher, educator or doctor. This is a concrete fact as the basis that Islam has

actually provided wide independence for women to be democratic and educated.³⁸

About Gender equality in the intellectual domain is regulated in Law No. 39 of 1999 concerning Human Rights:

Article 12

"Everyone has the right to protection for their personal development, to obtain education, to educate themselves, and to improve their quality of life in order to become a person who is faithful, devout, responsible, has noble character, is happy and prosperous in accordance with human rights."

Article 13

"Every person has the right to develop and obtain benefits from science and technology, arts and culture in accordance with human dignity for the welfare of his person, nation and humanity."

Article 48

Women have the right to obtain education and teaching at all types, levels and pathways of education in accordance with predetermined requirements.

Apart from the intellectual aspect, inRegarding religion, Indonesia has also

³⁶ Majelis Umum PBB, *Deklarasi Universal Hak-Hak Asasi Manusia*, 10 Desember 1948.

³⁷ In the professional-political domain, Indonesia specifically also gives women the right to freedom in expressing their aspirations. This is set in Article 49 of Law No. 39 of 1999 concerning Human Rights:

(1) Women have the right to choose, be elected, be appointed to jobs, positions and professions in accordance with statutory requirements and regulations.

(2) Women have the right to obtain special protection in carrying out their work or profession against matters that could threaten their safety and/or health regarding women's reproductive function.

(3) The special rights inherent in women due to their reproductive function are guaranteed and protected by law.

³⁸ Muhammad Aṭīyyah al-Ibrāshī, *Makānah al-Mar'ah Fī al-Islām*, (Mesir: 'Ālam al-Kitāb, 1975), 109-111.

concretely guaranteed the independence of women in carrying out their spiritual activities. This is one form of representation of gender equality in the religious domain. Women and men are free in terms of accessing their worship. This is in accordance with 22 of Law No. 39 of 1999 concerning Human Rights, which reads:

(1) *Everyone is free to embrace their own religion and to worship according to their religion and beliefs.*

(2) *The state guarantees the freedom of every person to embrace his or her religion and belief.*

The mission of contextualizing women's jurisprudence in Indonesia is to create gender equality and justice. What al-Sha'rāwī said about his interpretation of misogynistic hadith is relevant and in line with the state spirit. This kind of epistemology of women's jurisprudence must continue to be introduced to the wider community collectively and cooperatively. Islamic legal thinkers such as al-Sha'rāwī are urgently needed as partners to progressively reform jurisprudence. This kind of contextualization projection is a big mission that must be nurtured continuously. For example, state and religion must go hand in hand. Of course, women's jurisprudence and law - which relate to women - must also go hand in hand with each other in a synthetic manner.

2. Contextualization of the concept of "beating women"

Religious discourse that has talked about "beating women" has more or less sparked a long discourse among Islamic legal thinkers. One verse that states this is QS. Al-Nisa: 34. When this verse is read at this time, it will create quite a big dilemma. On the one hand, normatively, the verse says so. However, in implementation, beatings are something unnatural, where beatings are synonymous with social violence and against human dignity. From these conditions, it is not surprising that jurists have raised various arguments regarding this verse. The author maps out three main opinions about beating women:

- a) Opinions that allow hitting women during *nusyuz* - provided that it does not hurt or leave scars. The Ulama' who voiced this opinion were Imam al-Ṭabari, Sa'īd bin Zubayr, Āmir al-Sha'bi, Qatādah bin Di'āmah, Akramah Mawlā bin Abbas, Muhammad bin Ka'ab and Ḥasan al-Baṣri. This group places this verse with the hadith of the Prophet SAW. which says: "*Beat them without hurting them.*"³⁹
- b) The blow allowed is the lightest blow. This opinion was conveyed by Ibn Abbās, where he gave an example using *siwak*.⁴⁰
- c) Opinions that prefer not to hit. This opinion was cited by Ibn al-'Arāby, that 'Aṭā' bin

³⁹ Muhammad Jarīr al-Ṭabarī, *Tafsīr Ṭabarī: Jāmi' al-Bayān Fī Ta'wīl al-Qur'ān*, (Beirut: Muassisah al-Risālah, 2000), 314.

⁴⁰ Muhammad Jarīr al-Ṭabarī, *Tafsīr Ṭabarī: Jāmi' al-Bayān Fī Ta'wīl al-Qur'ān*, 315.

Rabah instructed not to hit his wife when she was nusyuz, but simply to show an expression of displeasure. This is because ijthihad in understanding the text of the verse which indicates that hitting is permissible is not a command. This opinion is in line with Imam Nafi' al-Maliki who stated that hitting is permissible, but it is sunnah not to hit.⁴¹ Even more firmly, Ibnu Hajar stated that hitting women does not mean that it is absolutely "*mubah*", but can be "*makruh*" or even "*haram*", according to motives and factors.⁴²

Of the many opinions about beatings, the opinion that is in line with the context of Indonesian reality is the opinion that chooses not to beat. This means that hitting women is not the best stage of household reconciliation. Because, in empirical facts, beatings carried out by husbands against wives are mostly filled with anger and emotion, especially in the context of nusyuz, which is a denial of the husband's rights. If so, then hitting is not in order to manifest the text whose spirit is *al-Ta'dib*, but will cause other harm to the wife and family. This kind of phenomenon was mentioned by the Prophet SAW. in his words:

قَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ: «لَا تَضْرِبُوا إِمَاءَ اللَّهِ» فَجَاءَ عُمَرُ
بُنُ الحُطَّابِ إِلَى رَسُولِ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ فَقَالَ: قَدْ دَرَبَنَ عَلِيٌّ

أَزْوَاجَهُنَّ، فَرَحَّصَ لَهُمْ فِي ضَرْبِهِنَّ، فَأَطَافَ بِإِلِ رَسُولِ اللَّهِ صَلَّى اللَّهُ
عَلَيْهِ وَسَلَّمَ نِسَاءً كَثِيرًا يَشْكُونَ أَزْوَاجَهُنَّ، فَقَالَ النَّبِيُّ صَلَّى اللَّهُ عَلَيْهِ
وَسَلَّمَ: «لَقَدْ طَافَ بِإِلِ مُحَمَّدٍ نِسَاءً كَثِيرًا، يَشْكُونَ أَزْوَاجَهُنَّ لَيْسَ
أَوْلَيْكَ بِجِنَارِكُمْ

the hadist talks about The Messenger of Allah sallallaahu 'alaihi wasallam said: "Do not hit the female servants of Allah." Then Umar bin Al Khathab came to Rasulullah sallallaahu 'alaihi wasallam and said; "Truly they have dared their husbands.". Then he gave them relief to beat them. It turned out that many women surrounded the family of the Prophet sallallaahu 'alaihi wasallam, they complained about their husbands. Then the Prophet sallallaahu 'alaihi wasallam said: "There are many women who surround Muhammad's family, they complain about their husbands, even though they (who beat their wives) are not your best people (but the best are those who don't beat)."⁴³

Prophet SAW.always educate, how to treat women well. There are many histories about the personality of the Prophet Saw. as the head of the household who needs to be emulated. In history, the Prophet SAW. also never beat his wives. This is real proof that hitting women is not the best alternative. How families should be constructed with a romantic frame, so everything that can

⁴¹ Abū Bakar al-'Araby, *Ahkām al-Qur'ān Li Ibnī al-Araby*, (Beirut: Dār 'Amaliyah, 2003), 536.

⁴² Ibn Ḥajar al-'Asqalāny, *Fath al-Bāri Sharḥ Ṣaḥīḥ al-Bukhārī*, (Beirut: Dār al-Ma'rifah, 1960), 302.

⁴³ Abū Muhammad Abdullāh al-Darāmy, *Musnad al-Darāmy al-Ma'rūf bi Sunan al-Darāmy*, (Arabic: Dar al-Mughni, 2000), 1424.

trigger disharmony - such as arguments and violence - is something that must be eliminated.

In line with 'Alī Jum'ah's statement, where he emphasized that hitting was not the best move. Because many husbands' situations are filled with sentiment. Allah only allows hitting, and even then to indicate that the husband is not happy with his wife's nusyuz, or vice versa. If the goal is peaceful efforts, then the better effort is not to hit. This can be replaced with other, more ethical ways to make the wife aware. Prophet SAW. himself never beat his wives. Romance in the household can be achieved by negating deviant things such as violence and sarcasm. Therefore, the Prophet Saw. condemn everything that is oriented towards these two.⁴⁴

In the national context, Indonesia has formalized the legal umbrella regarding domestic violence in Law no. 23 of 2004 concerning the Elimination of Domestic Violence. By definition, domestic violence is regulated in:

Article 1 paragraph 1:

“Domestic violence is any act against someone, especially women, which results in physical, sexual, psychological misery or suffering, and/or domestic neglect, including threats to commit acts, coercion, or unlawful deprivation of liberty within the household. .”

More clearly, the motive for violence is clearly stated in:

Article 5

“Everyone is prohibited from committing domestic violence against people within their household, by:

a. physical abuse;

b. psychological violence;

c. sexual violence; or

d. domestic neglect”

Article 6

“Physical violence as referred to in Article 5 letter a is an act that results in pain, illness or serious injury.”

Article 7

“Psychological violence as referred to in Article 5 letter b is an act that causes fear, loss of self-confidence, loss of ability to act, a feeling of helplessness, and/or severe psychological suffering in a person.”⁴⁵

It can be understood from the verses that "hitting women" will have a negative impact. The consequences felt by the wife are two-way: physical and psychological. If it doesn't cause wounds or scars, hitting a woman has the potential to hurt her psychologically (read: a woman's heart). He will experience trauma, mental breakdown, acute stress, or depression. This is a motive for crimes that should not occur.

⁴⁴ 'Alī Jum'ah, *Al-Mar'ah fī Ḥaḍārah al-Islāmiyyah Bayna Nuṣūṣ al-shar'I wa Turāṣ al-Fiqh wa al-Wāqi' al-Ma'īsh*, 52.

⁴⁵ Undang-Undang No. 23 Tahun 2004 Tentang Penghapusan Kekerasan Dalam Rumah Tangga.

Hitting women under any circumstances is something that should be avoided. The risks that arise have more detrimental effects than benefits. In this case, it is in line with *maqāṣid* theory, then rejecting harm must be prioritized over attracting benefits. According to Dewi, domestic-based violence occurs mainly in relationships between people who are partners (either in marriage, living together, or not living together but there is a marriage bond). This violence often occurs because men think that what they are doing is right⁴⁶

Manifesting the *maqāṣid* spirit also requires being aware of the surrounding reality in an effort to ground the law. Empirical foundations are certainly a consideration in actualizing these legal postulates. According to Ibn 'Āshūr, a country or territory that legalizes beating women - which is not painful - and the community also considers this to be normal, then this is not a local problem. However, it would be different if the ethos of society had prohibited and categorized beatings as a criminal act, then this is not a prohibited act.⁴⁷

In an effort to contextualize pIn al-Sha'rāwī's thoughts in the Indonesian context, the author assesses the lack of relevance in this issue.

⁴⁶ Dewi Candraningrum, *Ketika Cinta Membunuh: Dinamika terminologi dan matra kekerasan domestik selama pandemic covid-19*, dalam *Kerasan di Masa Pandemi*, (Malang: Fakultas Ilmu Budaya Universitas Gadjah Mada, 2021), 93.

⁴⁷ Ibnū 'Āshūr, *al-Tahrīr wa al-Tanwīr*, (Mesir : Dār al-Fikr , 2001), 41.

⁴⁸ Ibn Rushd stated that *Shadd al-Dharī'ah* is:

الاشياء التي ظاهرها الاباحة يتوصل بما الى فعل المحذور

Even though in principle, al-Sha'rāwī states that the orientation of the verse is not instructive, and there are various strict requirements for its legality, the idea of "the ability to hit" can still open the tap which leads to violence and family breakdown. Despite its potential, any mediator that leads to violence should be closed. In the discipline of Ushul al-Fiqh, this theory is known as *Shadd al-Dharī'ah*.⁴⁸ This theory is ultimately used as a tool for internalizing the legal umbrella as an enforcer of justice and equality.

The author offers, that dIn order to reinterpret the text, it is very necessary to accentuate the *wasā'il* and *maqāṣid* theories. That the *maqāṣid* of QS. Al-Nisa verse is *al-Irshād* in order to improve the family situation. The main aim is to manifest the stages of *al-Ṣulḥ* - which were revealed at that time - optimally between husband and wife who are involved in conflict. At this time, making peace by hitting is not a restorative solution. However, it could create new, bigger problems. So in order to contextualize the spirit of the verse, the editorial "*ḍaraba*" needs to be redefined.

Remember that in the Arabic dialect the word "*ḍaraba*" has various terms. Hopefully "*ḍaraba*" will be more relevant and peacefully

"Everything that is naturally permissible, but becomes prohibited because it can lead to conditions that are prohibited" See Abu al-Walid Muhammad bin Aḥmad Ibn Rushd, *al-Muqaddimāt al-Mumahhidāt*, (Beirut: Dār al-Ṣādir, t. th), 524. Imam al-Shāṭibī interprets it as:

التوصل بما هو مصلحة الى المفسدة

"A benefit that leads to mafsadah". Abū Ishaq Ibrahim bin Mūsā al-Shāṭibī, *al-Muwāfaqāt Fī Uṣūl al-Sharī'ah*, (Beirut: Dār al-Ma'rifah, 1999), 628.

translated with other meanings that are in line with the axiological side of the verse, two of which are: giving an example⁴⁹ and hold back⁵⁰. In the author's opinion, it would not be an exaggeration to interpret the editorial "*daraba*" as; Husbands provide good examples (read: examples) for wives on how to make peace and behave well towards their husbands. This is relevant to al-Ghazali's advice which verifies that giving practical examples is more touching and reaches the heart than just theory.⁵¹ Or it means, the husband restrains his anger and emotions, and forgives his wife in a kind way for her behavior, which is in accordance with the word of Allah in the QS. Ali Imran: 134 about the virtue of holding back anger and emotions. This is the concept of *wasā'il* which seems relevant to be applied in this context.

Progressive *ijtihād* Actually, it is not to make God's revelation profane, but in order to inspire the public in the household to continue to uphold *maqāṣid*, in the form of *hifẓ al-naḥs*, *hifẓ al-'ird* and *hifẓ al-usrah*. So the success of this platform is to realize *wasā'il* in the form of a restorative justice system with positive actions so that conflicts caused by *nusyuz* can be resolved as soon as possible and a romantic and harmonious domestic life can be returned.

3. Contextualization of the Concept of "Polygamy"

In understanding religious doctrine, polygamy has various points of view from readers; some consider it positive and negative. The group that assesses the positivity of polygamy is the puritanical-textualist group. Meanwhile, the group that considers polygamy to be a phenomenon of the past and not a teaching is the progressive-contextualist group. Re-reading the polygamy verse has given rise to tough discourse among Islamic legal thinkers. The reason is, polygamy has become a positive rule in religious countries. From the perspective of each legislator, the implications of polygamy result in different regulations; some allow it with strict conditions and some prohibit it absolutely, such as the State of Tunisia which is regulated in *Majallāt al-Aḥwāl al-Shakhsīyyah* No. 66 of 1956 which was legitimized by President Habib Bourguiba.⁵² Countries that prohibit polygamy absolutely maintain that the polygamy verse must not stop at the editorial "*Masnā wa sulāsa wa rubā'*", but must be read in full. This is so as not to reduce the desired meaning in the text. They are of the view that it would not be wrong to state that it is impossible to be fair in polygamy in this modern context.

Indonesia is one of the countries that represents the permissibility of polygamy with strict conditions. This means that the state does not prohibit or legalize polygamy freely. The rules

⁴⁹ QS. Al-Tahrim: 10 and 11

⁵⁰ QS. Al-Zuhurf: 5

⁵¹ Abu Ḥamid al-Ghazālī, *Bidāyah al-Hidāyah*, (Indonesian: Dār Ihyā' al-Kutub al-'Arabiyyah, n. th), 8.

⁵² Dawoud El-Alami and Hinchliffe, *Islamic Marriage and Divorce Laws of the Arab World*, (London: The Hague, Boston: Kluwer Law International, 1996).

regarding polygamy are contained in the Marriage Law No.1 of 1974.⁵³

Article 3

(1) In principle, in a marriage, a man can only have one wife. A woman can only have one husband.

(2) The court can give permission to a husband to have more than one wife if the parties concerned wish.

Or in the Compilation of Islamic Law:⁵⁴

Article 55

(2) The main requirement for having more than one wife is that the husband must be able to treat his wives and children fairly.

(3) If the main conditions mentioned in article (2) cannot be fulfilled, the husband is prohibited from having more than one wife.

Article 57

The Religious Court only gives permission to a husband who will marry more than one wife if:

(1) The wife cannot carry out her obligations as a wife;

(2) The wife has a physical disability or an incurable disease;

(3) The wife cannot bear children.

Reading the polygamy articles above provides a stimulus that the phrases "*the principle in a marriage is that a man can only have one*

wife" and "*only give permission to a husband who will have more than one wife if*" are gradual instruments that must be taken by the husband.

Reflecting on the facts of the court, it is not easy for the applicant to penetrate into polygamy. Judges do not simply agree with the premises presented. He will see in detail the advantages and disadvantages of polygamy; Is polygamy really an emergency need or just for glamorization? As Qāsim Amīn said, if polygamy will damage family philanthropic relations, then the judge has the right to prohibit it. Because this does not represent religious instructions that encourage the creation of a family of sakinah, mawaddah and mercy.⁵⁵

Contextualization of women's fiqh ideas al-Sha'rāwī in polygamy has relevance to the Indonesian context. Both of them took moderate steps in addressing the issue of polygamy. It does not allow absolutely and does not prohibit absolutely. In line with al-Sha'rāwī's thoughts, polygamy is not an easy matter. There are special conditions that must be met by husbands. Justice in polygamy also means that the husband must be able to create a continuous reciprocal relationship. It is not permissible if in the end one of the wives objects. This is why the principle of marriage is monogamy is the right option.

4. Contextualization of the Concept of "Women's Testimony"

⁵³ Undang-Undang No. 1 Tahun 1974 Tentang Perkawinan.

⁵⁴ Abdurrahman, *Kompilasi Hukum Islam di Indonesia*, (Jakarta: Akademika Pressindo, 2010).

⁵⁵ Aḥmad Khāki, *A'lām al-Islām "Qāsim Amīn"*, (Mesir: Dār al-Ihyā', 1944), 109.

The verse about testimony states that there is a disparity between the quality of testimony addressed to gender. The epistemology of jurisprudence regarding testimony comes from the transcendental postulates of QS. Al-Baqarah :282 which states that women's testimony is half that of men. This is an actual issue that needs to be reformulated as a draft of gender equality from an Islamic perspective. The reason is, in principle, Islam does not look at the quality of its servants in terms of gender or gender. This primordial spirit needs to be enlivened in an effort to interpret the testimony text so that it is flexible to the state context.

In reality, the legal umbrella Islam in Indonesia (read: Compilation of Islamic Law) seems to be experiencing deconstruction in the matter of witnesses. This is stated in the Compilation of Islamic Law article 25, which reads:

"The person who can be appointed as a witness in the marriage contract is a Muslim man, fair, of puberty, not disturbed by memory and not deaf or hard of hearing."

The Islamic law article above is a dichotomous article. Between al-Sha'rāwī's thoughts - which explore the estorical dimensions of testimonial verses - and the Compilation of Islamic Law have the same results. In fact, al-Sha'rāwī only chose to display the axiological implications of the verse

about witnesses. In fact, he also confirmed the issue of women's testimony being half that of men's. Both use literal-scripturalist logic. What is stated in the text is the dogma.

The author assesses the existence of regressiveness between al-Sha'rāwī with 25 KHI. A comparative understanding of the testimony in the text will distort the existence of women in the public sphere. Because, in testimony what is targeted is the quality of thinking power, not about gender or sex. If we only refer to the text, then the question of quantitative testimony will certainly deconstruct justice in Islamic law. Therefore, in order to restore justice and equality, reformulating the testimony of women half of men is a necessity. Testimonial text must be explored and actualized intensively and elaboratively in the right context. In line with Ema Marhumah, she emphasized that the Prophet Muhammad SAW. In fact, he is very concerned about respecting women. namely giving sufficient respect to women in testimony. This hadith is temporal and situational in nature. It could be that at that time women were still unfamiliar with calculating, so they needed two witnesses. In contrast to the modern context, where many women are smart and intelligent in their fields, comparing the testimony of women to half of men is less accurate.⁵⁶

Genealogically, The reason why women's testimony was half that of men was because

⁵⁶ Ema Marhumah, Kesaksian Perempuan Dalam Hadis Nabi, *Musawa*, Vol.8, No.1, Januari 2009, 70.

women - at that time - had less powerful memories than men, because they didn't have much knowledge about transactions. He spends a lot of time at home.⁵⁷ It cannot be denied that the culture rooted in the context of the revelation of the verse is patriarchal. Ibn Qayyim (d. 1350) also stated, regarding the theory of causality (read: *'illat*), that the testimony verse came down when women in general were still domestic creatures. They have not played an important role in matters relating to transactions or the public domain. In contrast to the current context, if indeed - in reality now - women's intellectual and active roles have developed, and their dedication in public has become commonplace - including transactional - then women's testimony (*al-shahādah* and *al-Ishhād*) in the context of protecting their rights they are economically equal to men.⁵⁸

As a new breakthrough, contemporary Islamic legal thinker, Ali Jum'ah also explained that this verse was not speaking in the context of witnesses in court (read: *al-Qadāya*), but in the transaction of debts and receivables. Meanwhile, testimony in court, of course, does not differentiate between gender, male or female. The reason that is the main consideration is the honesty of the witness. Apart from that, the

benchmark for succession in testimony is the analysis of the judge's discretion regarding his witnesses, both male and female. It could be two men, two women, one man and one woman, one man and two women, one woman and two men, one man, or even one woman. In this case there is no discrimination against gender.⁵⁹

Thus, the dynamics of the times to will also change all systems and phenomena settings in them. The empirical reality of the past is certainly very different from today, where women have occupied central positions in the public sphere and exerted great hegemony over the stability of society. With this neat argument, jurists and academics should continue to be aware of social reality and have the courage to make progressive efforts to embody religious texts. The spirit of the verse must be applied in the appropriate place. Analyzing a text should not only stop at the textual side, but also be holistic in its substance. The initiator of legal opinions not only positions himself as a scripturalist, but also a reformist-contextualist. Thus, the misogynist article above should be reformulated into an article that upholds the principles of equality and gender justice.

Conclusion

point 26 of the Criminal Procedure Code states "a witness is a person who can provide information for the purposes of investigation, prosecution and justice regarding a criminal case that he himself heard, saw for himself and experienced for himself." The jurisdiction of this article is without distinction on gender; both men and women can be witnesses in trials. Look at the Kitab Undang-Undang Hukum Pidana (KUHP).

⁵⁷ Muhammad 'Abdūh, *Al-A'māl al-Kāmilah*, (Beirut: Dār al-Shurūq, 1993), 32.

⁵⁸ Ibn Qayyim al-Jauziyyah, *I'lām al-Muwaqqi'īn 'an Rabb al-'Ālamīn*, (Beirut: Dār al-'Alamiyah, 1991), 95.

⁵⁹ 'Alī Jum'ah, *Al-Musawah al-Insāniyyah Bayna al-Nazriyyah wa al-Taṭbīq*, (Egypt: Dār al-Ma'ārif, t. th), 51. This is in line with the definition of a witness in the Kitab Undang-Undang Hukum Pidana (KUHP) which has been ratified into Undang-Undang No. 8 Tahun 1981. Article 1

Blue print the progress of the law needs to continue to be projected. The spirit of contextual ijthihad must be nurtured continuously, this is so that it can give birth to legal products that are holistic, eclectic and adaptive. Contemporary ulama continue to provide inspiration to subsequent generations to continue to promote ijthihad and not be frozen in conservative dogmas. Of course it must be based on courage and adequate competence. Not haphazardly. In the discourse on gender equality, there will be many ijthihads to demisogyny religious texts that seem dichotomous towards women. This is not in order to change or replace the authenticity of the Koran or Hadith, but to explore the spirit and substantial implications in them so that they are relevant to be manifested in every dimensional space.

Talking about the four issues of women's jurisprudence that have been described above, there is a harmony of vision between the Indonesian context and al-Sha'rāwī's thoughts. The first two themes: "hadith of reason and women's religion" and "polygamy verses", al-Sha'rāwī is in line with Indonesian rules in demisogynying religious texts. Meanwhile, the last two themes: "verses about beating women" and "verses about women's testimony", al-Sha'rāwī are less in line with the spirit of gender equality. Heuristically, al-Sha'rāwī's analysis in demisogyny is less than optimal. So, if applied in a modern context it will be gender biased.

REFERENCES

- ‘Abdūh, Muhammad, *Al-A’māl al-Kāmilah*, Beirut: Dār al-Shurūq, 1993.
- Abdurrahman, *Kompilasi Hukum Islam di Indonesia*, Jakarta: Akademika Pressindo, 2010.
- Al-‘Araby, Abū Bakar, *Ahkām al-Qur’ān Li Ibnī al-Araby*, Beirut: Dār ‘Amaliah, 2003.
- Al-‘Asqalāny, Ibnu Ḥajar, *Fath al-Bāri Sharḥ Ṣaḥīḥ al-Bukhārī*, Beirut: Dār al-Ma’rifah, 1960.
- Al-‘Aynayn, Sa’īd Abū, *Al-Sha’rāwī Anā Min Ṣulāḥāt Ahli al-Bayt*, Mesir: Akhbār al-Yawm, 1955.
- Al-Bukhārī, Muhammad bin Ismā’il, *Ṣaḥīḥ al-Bukhārī*, Beirut: Dār Ṭūq al-Najāh, 2001.
- Al-Darāmy, Abū Muhammad Abdullāh, *Musnad al-Darāmy al-Ma’rūf bi Sunan al-Darāmy*, Arab: Dar al-Mughni, 2000.
- Al-Ghazālī, Abu Ḥamīd, *Bidāyah al-Hidāyah*, Indonesia: Dār Iḥyā’ al-Kutub al-‘Arabiyyah, t.th.
- Al-Ibrashi, Muhammad Aṭiyyah, *Makānah al-Mar’ah Fī al-Islām*, Mesir: ‘Ālam al-Kitāb, 1975.
- Al-Jauziyyah, Ibnu Qayyim, *I’lām al-Muwaqqi’īn ‘an Rabb al-‘Ālamīn*, Beirut: Dār al-‘Alamiyyah, 1991.
- Al-Sha’rāwī, Muhammad Mutawallī, *Al-Ma’rah Fī al-Qur’ān al-Karīm*, Mesir: Akhbār al-Yaum, t. th.
- _____, *Fiqh al-Mar’ah al-Muslimah*, (Mesir: al-Maktabah al-Tauṣīfiyyah, t. th.

- _____, *Makānah al-Mar'ah*, Beirut: Dār al-Qalam, t. th.
- _____, *Tafsīr al-Shar'rāwī*, Beirut: Maṭābi' Akhbār al-Yaum, 1997.
- Al-Shāṭibī, Abū Ishāq Ibrahim bin Mūsā, *al-Muwāfaqāt Fī Uṣūl al-Shar'ah*, Beirut: Dār al-Ma'rifah, 1999.
- Al-Ṭabarī, Muhammad Jarīr, *Tafsīr Ṭabarī: Jāmi' al-Bayān Fī Ta'wīl al-Qur'ān*, (Beirut: Muassisah al-Risālah, 2000.
- Al-Tirmidhī, Muhammad bin 'Īsā, *Sunan al-Tirmidhī*, Mesir: Dar al-'Alamiyyah, 1975
- Candraningrum, Dewi, *Ketika Cinta Membunuh: Dinamika terminologi dan matra kekerasan domestik selama pandemic covid-19*, dalam *Kerasan di Masa Pandemi*, Malang: Fakultas Ilmu Budaya Universitas Gadjah Mada, 2021.
- El-Alami, Dawoud dan Hinchliffe, *Islamic Marriage and Divorce Laws of the Arab World*, London: The Hague, Boston: Kluwer Law International, 1996.
- Hāshim, Ahmad 'Umar, al-Imām al-Sha'rāwī *Mufassiran wa Dā'iyah*, Kairo: Akhbār al-Yaum, 1998.
- Ibn Rushd, Abu al-Walid Muhammad bin Aḥmad, *al-Muqaddimāt al-Mumahhidāt*, Beirut: Dār al-Ṣādir, t. th.
- Ibnū 'Āshūr, *al-Taḥrīr wa al-Tanwīr*, Mesir: Dār al-Fikr, 2001.
- Īyazi, Muhammad Alī, *al-Mufasssirūn Hayātuhum wa Manhajuhum*, Teheran: Mu'assasah al-Thabā'ah wa al-Nashr, 1952.
- Jauhar, Aḥmad al-Marsi Husein, *Muhammad Mutawallī al-Sha'rāwī: Imām al-'Aṣr*, Mesir: Handar Misr, 1990.
- Jauhar, Ḥusain, *Ma'a Dā'iyah al-Islām Shaikh Muhammad Mutawallī al-Sha'rāwī Imām al-'Aṣr*, Kairo: Maktabah Naḥdah, t. th
- Jizr, Muhammad Yasīn, *Ālim 'Iṣrif Fī 'Uyūn Al Mu'āṣir*, Beirut: Dār al-Jayt, 1990.
- Jum'ah, 'Alī, *Al-Mar'ah fī al-Ḥaḍārah al-Islāmiyyah Bayna Nuṣūṣ al-shar'I wa Turāṣ al-Fiḥ wa al-Wāqī' al-Ma'ish* _____, *Al-Musawah al-Insāniyyah Bayna al-Nazriyyah wa al-Taṭbīq*, Mesir: Dār al-Ma'ārif, t. th.
- Kitab Undang-Undang Hukum Pidana Indonesia (KUHP)
- Khāki, Aḥmad, *A'lām al-Islām "Qāsim Amīn"*, Mesir: Dār al-Iḥyā', 1944.
- Majelis Umum PBB, *Dekralasi Universal Hak-Hak Asasi Manusia*, 10 Desember 1948.
- Marhumah, Ema, Kesaksian Perempuan Dalam Hadis Nabi, *Musawa*, Vol.8, No.1, Januari
- Sulaiman, Abu Dawud, *Sunan Abī Dawud*, (Beirut: al-Maktabah al-'Aṣriyyah, t. th.
- Ubaid, Dalāl kāzīm, *Maḥmūḥ Hurriyyah al-Mar'ah*, (Lebanon: Book Publisher, 2000
- Undang-Undang No. 1 Tahun 1974 Tentang Perkawinan.
- Undang-Undang No 39 Tahun 1999 Tentang Hak Asasi Manusia:
- Undang-Undang No. 23 Tahun 2004 Tentang Penghapusan Kekerasan Dalam Rumah Tangga.