
The Relationship between Islamic Law and the Concept of Gender Equality Based on Maqasid Sharia Perspective

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ABSTRACT: This study aims to determine the relationship between Islamic law and gender equality using the maqashid sharia approach. Gender equality is a concept that refers to the granting of equal rights, responsibilities, and opportunities to all individuals regardless of gender whether male or female which covers various aspects of life. This research analyzes the relationship between Islamic law as the main law of Islam and gender equality, which is a concept in all religions that is drawn using the maqashid sharia perspective. The research method used is qualitative literature that uses maqasid sharia studies as the primary data source and secondary data such as literature related to the studies discussed. The results show that in the perspective of maqasid sharia, gender equality in Islamic law holds the main principle of maintaining the benefit and justice as well as the maintenance of the five principles of maqashid sharia consisting of hifdz ad-din, hifdz an-nafs, hifdz al-aql, hifdz al-nasl, and hifdz al-mal.

Keywords: Gender Equality, Islamic Law, Gender Maqasid Sharia



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INTRODUCTION

One of the central themes and main principles of Islamic teachings is one of them regarding the egalitarian principle, namely equality between humans, both men and women, as well as between generations, nations and tribes. This is as stated in the text of the Al-Qur'an Surah Al-Hujurat verse 13: (Al-Qur'an Surah Al-Hujurat Verse 13, n.d.)

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

“O mankind, indeed We created you from a man and a woman and made you into nations and tribes so that you may know each other. Indeed, the noblest among you in the sight of Allah is the most pious among you. Indeed, Allah is All-Knowing, All-Knowing.”

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This verse provides an overview of the equality between men and women both in the dimensions of worship and in social activities such as career, work and profession. This verse also completely erodes the view which states that there are differences between men and women, thereby discriminating between the two (Conley & Page, 2018; Johnson Ross, 2018; Mateos et al., 2022; Pierotti et al., 2018). This can be seen from the dimension of worship, anyone who performs worship will get a reward regardless of gender. This verse also emphasizes the mission of the Al-Qur'an which was revealed to liberate humans from various forms of discrimination and oppression such as discrimination against skin color, ethnicity and other primordial ties. Even though the Qur'an contains theories about gender equality, it is often ignored (Alarcón & Cole, 2019; Alsarve, 2018; Koirala, 2022a).

Broadly speaking, the issue of gender equality discourse in Islam is represented by the feminist movement which is very critical of symbols, ideologies and cultures that treat women unfairly. The feminist movement wants to deconstruct the social system that is detrimental to the position of women, so that the existence of religion is considered as a source of the social system which is an important concern in every study. (Kadariusman, 2005) In this regard, nowadays religion is often accused of being a source of injustice. in a social system, including injustice towards the relations between men and women. However, basically it is religion that provides space for men and women to work together as per the maqashid sharia perspective (Koirala, 2022b; Pearl-Martinez, 2020; Spierings et al., 2009; Syed et al., 2018; Wolff, 2022).

METHOD

This type of research is qualitative research which is a form of research carried out by collecting data based on a problem to interpret a phenomenon or event that occurs. In another definition, qualitative research is a type of research that produces discoveries that cannot be achieved using statistical procedures or other quantitative methods. (Sujarweni, 2015) The method used by the author is included in the type of qualitative library research which is carried out by analyzing and evaluating existing literature on a particular topic or problem. The data used is using maqasid dyariah studies as primary data sources and secondary data obtained from several literatures that are related to the focus of the study discussed.

RESULT AND DISCUSSION

1. Definition of Gender and Sex and the Qodrati of Law
 - a. Definition of Gender

In the 1960s the word "gender" was used in America as a form of radical, conservative, secular and religious struggle to voice the existence of women, which then gave birth to gender awareness. (Ma'ruf, 2016) In 1977 the gender discourse began to develop. In contrast to gender, which concentrates more on social, psychological cultural, and other non-biological aspects.

The use of the term gender in this sense began to be used frequently in early 1977, when a group of London feminists no longer used old issues such as patriarchal or sexist, but replaced

it with gender discourse. Since then, the concept of gender has been discussed through writing and speaking. The term gender is defined as the mental and cultural interpretation of male and female sex differences.

The word "gender" comes from English, gender means "sex" in Webster's New World Dictionary gender is defined as "the differences that appear between men and women in terms of behavioral values". (Nasaruddin Umar, 2001) According to language, the word gender is defined as "the grouping of words into masculine, feminine and neuter according to as they are regarded as male, female or without sex". Gender is a group of words that have masculine, feminine, or neuter characteristics. Gender is a term that denotes the division of social roles between men and women and it refers to the assignment of emotional and psychological traits expected by certain cultures that are adapted to the physicality of men and women. The term sex refers to the biological and anatomical differences between men and women.

Hilary M Lips in her book entitled *Sex & Gender an: Introduction*, defines gender as cultural expectations for women and men. Wilson said that gender is not just a distinction between men and women seen from socio-cultural constructs, but is more emphasized on the concept of analysis in understanding and explaining something. (H.T. Wilson, 1989) Therefore the word "gender" is often juxtaposed with the words injustice, equality and so on. its position is difficult to be given a separate understanding. Mentioned in Kepmendagri No. 132 that gender is a concept that refers to the roles and responsibilities of men and women that always change according to the social and cultural conditions of society.

Gender is the role and position of a person that is constructed by society and culture because someone is born as a woman, and because someone is born as a man. So a newborn baby with a certain sex is constructed, given an understanding by society that the man will be the head of the family. He will be the breadwinner, the one who decides. For women, it's the opposite. Once a baby girl is born, she will be given an understanding by the culture and society as a housewife, as a wife, as a person who is protected and so on. Gender is a social or cultural construction on a person born as a woman. Therefore, it is different from sex characteristics that come by nature. Therefore, gender roles and gender positions are not universal, because they are non-natural, non-biological, and come from social and cultural constructions.

b. Definition of sex

The concept of sex or gender refers to the biological differences between women and men, to the bodily differences between men and women. As stated by Moor, "Sex refers to biological differences between man and woman, the result of differences in the chromosomes of the embryo". The definition of the concept of sex emphasizes the differences caused by chromosomal differences in the fetus. As stated by Health 1995, sex is biological and carried from birth so it cannot be changed. For example, only women can become pregnant and only men can make women pregnant.

Sex is a biological characteristic of a person that is inherent from birth and cannot be changed except by surgery. They are the basis on which a person's sex is recognized as female or male. Sex or biological sex is a biologically determined, permanent (not interchangeable between male and female) classification or division of the two human sexes, carried from birth and is a gift from God as a man or a woman.

This biological sex determination then says that a person will be called male if he has a penis, Adam's apple, mustache, beard, and produces sperm. While a person is called female if he has a vagina and uterus as reproductive organs, has a tool for breastfeeding (breasts) and experiences pregnancy and childbirth. These biological characteristics are the same in all places, in all cultures over time and are not interchangeable.

c. Definition of Qodrati Law

The thinking that later gave birth to the theory of natural law cannot be separated from the influence of the writings of Saint Thomas Aquinas. According to Aquinas, natural law is part of God's law that can be known through human reasoning. Aquinas' ideas laid the foundations of autonomous individual rights (J. A, 2013) Every human being is endowed with a unique individual identity by God, and this is separated by the State. However, Aquinas' ideas have been criticized for not being empirical, how do we know God has given certain rights to all people.

Hugo de Groot, otherwise known as Grotius, further developed the theory of natural law. According to Grotius, the existence of natural law can be known by using correct reasoning, and the degree of validity does not depend on God. Natural law, which is the basis of positive law or written law, can be rationalized by using axiomatic logic and measurement science (Masyhur Effendi, 2014).

The theory of natural law sees human rights born from God as part of human nature. When humans are born, a number of rights are inherent in them that cannot be replaced or eliminated, regardless of their religious background, ethnicity, social class, and sexual orientation. Natural law can also be interpreted as certain rights that are inherent as a consequence of human nature and can be universally understood through human thinking or reason.

2. Scope of Feminine Qodrati

The word nature comes from Arabic which means power, position, and provisions. (Louis Malouf, 1975) Nature also has the meaning of original, natural, and unique nature. The word nature, if the word woman is added behind it, can be interpreted as a quality inherent in the female body. The use of the word woman is an identity, honor, and struggle that is not just a mere mention for a woman. Gender is not nature, so it can change and be changed. For example, women are seen as beautiful, gentle, emotional, and motherly. While men are

considered strong, virile, mighty and rational. This can change according to the conditions and place or even the social environment that is occupied.

Regarding Zaitunah Subhan, the author of the book "Tafsir Kebenciatan Studi Bias Gender Dalam Tafsir Al-Qur'an", explains that there are two definitions of nature, first, is biological nature and second, nature in general. Biological nature means something that is given specifically to women or can only be owned by women, while nature in general can be given to men and women. The details of women's nature in terms of biology are in terms of reproduction, such as only a woman who "can" menstruate, conceive (pregnant), give birth, and suckle. This biological nature includes reproductive functions that cannot be replaced by men (Zaitunah Subhan, 2015). In addition, in a book entitled *Positioning Natures: Women and Change in Islamic Perspective* edited by Lily Zakiyah Munir in 1999, women's nature is then interpreted as the specificity of the roles played by women in society in accordance with their biological specificity. Because in this case, which is interpreted using the perspective of health science, it also explains that the biological influence or biologically there are some differences between men and women, this shows the location of women's nature when viewed from a biological perspective.

Furthermore, the nature of women is seen using psychological glasses. Basically, the natures of men and women can be influenced by their respective psychological conditions so that the development of their psychological traits is naturally seen. (Purnomo, 2012) The difference in biological natures between women and men also results in differences in the psychological temperament of both. The existence of these differences, men dominate the public sector with their physical strength capital, while women dominate the domestic household sector and their gentle nature and patience.

3. Qodrati and Culturally Constructed Shari'ah Stipulations

The nature of each gender in social reality where in domestics and discrimination is divided into two focuses of study, looking in terms of its essence and from an empirical point of view. Gender is used to explain the roles between men and women. Gender itself is said to differentiate roles, positions, responsibilities and other division of tasks. When examining the word gender, gender is not the same as nature, nature is something that is determined by Allah Swt, which is unable to change or reject.

Nature itself is universal, for example, the nature of a woman is to give birth, menstruate and breastfeed, while the nature of a man has sperm. One form of Islamic recognition of the equality of men and women is seen from the measure of a person's glory in the sight of Allah SWT is his piety, regardless of ethnic and gender differences, this is reinforced by QS. Al-Hujurat [49]:13 which means: "O mankind, indeed We created you from a man and a woman and made you into nations and tribes that you may know one another. Indeed, the noblest among you in the sight of Allah is the most pious among you. Indeed, Allah knows best."

The concept of gender equality has two meanings where the Qur'an in a general sense recognizes no difference between men and women. Furthermore, men and women have equal rights and obligations in various fields of life. (Faisol, 2004) However, it can be reinterpreted that there are two possibilities about this gender nature, first biological nature and second nature in general. Biological nature is something that is given specifically or privileges to men and women, while nature in general or seen as the same is something given to men and women. Some equality between men and women are as follows:

- a. Equality of rights and obligations of a man and a woman in worship.
- b. Using the mind and sharpening it with education.
- c. Choosing a life partner.

Natures experience several changes in different forms, which are influenced by various sources, namely religion, local culture, global culture, the state and others (Rhona K.M Smith, 2008). H. T. Wilson in *Sex and Gender* defines gender as one of the bases for determining the influence of culture and collective life in distinguishing men and women (H.T. Wilson, 1989). The view of gender in the Koran does not only regulate the harmony between male and female genders, but more than that the Koran also regulates the harmony of patterns between humans, nature and God. The Quran itself has the goal of realizing justice in society. Quranic justice covers all aspects of human life, both as individuals and as members of society. The Quran strongly opposes any form of oppression, whether based on group, ethnicity, skin color, race and belief or based on gender.

In achieving gender justice, we must work hard to achieve a clearer balance. Men and women must help each other in calling for goodness and preventing unfairness. The implementation of a cultural construction is seen in the following:

- a. There is a transformation between men and women in the laws of polygamy and inheritance in Islam. Polygamy became a culture in the history of Arab life before Islam, where Arabs were fond of having many wives, which resulted in the revelation of the verse to limit polygamy to four people with conditions and justice from all parties involved. Meanwhile, men get two shares in inheritance and women 2:1. This could change by looking at the role of men and women in fulfilling the standard of living in their families.
- b. There is a transformation in the thinking of professions such as female judges and other professions that are usually carried out by one gender, finally it can be done by all genders.

4. Gender Equality in the Perspective of Maqashid Sharia

Maqashid sharia comes from two words that are combined, namely maqashid as a jamaic form of the word maqshad which means intention or purpose, and sharia which means the laws of Allah which are stipulated for humans as a guide and guide to live life in this world and in the hereafter (Shidiq, 1970). Maqashid sharia can be interpreted as an objective to be achieved for a legal stipulation. Prominent scholars, such as Wahbah Az-Zuhaili, define maqashid sharia as the meaning and purpose that is maintained by shara' in all of its laws or most of its laws or the ultimate goal of sharia and the secrets laid by shara' in each of its laws (Az-Zuhaili, 1986).

On the concept of gender equality, it is necessary to know that maqashid sharia as a set of divine goals always looks at the side of benefit, which in this case is God's creation of men and women. In the perspective of maqashid sharia, gender equality is a principle that includes a good understanding of equal rights, protection, and respect for dignity between men and women within the framework of sharia values. The context of gender equality in maqashid sharia as a concept in Islamic law that refers to the main objectives or principles of Islamic law can be seen in the following:

- a. *Hifdzu ad-din* (maintenance of religion), meaning that gender equality plays a role in maintaining religion because both men and women have rights and obligations in practicing religion, equality in accessing the same religious understanding, and equality in performing worship without social discrimination.
- b. *Hifdzu al-aql* (maintenance of reason), meaning that gender equality plays a role in ensuring that men and women have equal opportunities in terms of intellectual development such as education to achieve benefits and as an effort to advance civilization.
- c. *Hifdzu an-nasl* (preservation of offspring), meaning that one of the main objectives of Islamic law is the preservation of human offspring. Gender equality plays an important role in achieving hifdzu an-nasl, because the balance between men and women in society can help maintain the continuity of offspring and prevent hereditary problems.
- d. *Hifdzu an-nafs* (maintenance of the soul), meaning that in the principle of gender equality between men and women have equal access in terms of self-preservation such as equality in getting access to health, protection against all kinds of discrimination, protection against violence that can endanger an-nafs, and so on.
- e. *Hifdzu al-mal* (maintenance of property), meaning that gender equality is also related to the maintenance of property. In Islam, men and women have the same rights and obligations in terms of property ownership and inheritance even though the amount is different 2: 1 but that is a fair portion according to Allah SWT. The purpose of Allah swt setting men greater than women is because men are heads of families who will be responsible for their families. This interpretation can be seen in terms of essence and interpreted using the principles of maqashid sharia.

The principle of maqashid sharia above as in the perspective of gender equality is based on the belief that men and women have equal rights and responsibilities before Allah SWT. Islam recognizes their biological differences and different roles, but both have equal value, rights and responsibilities in society.

CONCLUSION

Gender is a term denoting the social division of roles between men and women that refers to the assignment of emotional and psychological characteristics, adapted to the physicality of men and women. The term sex refers to the biological and anatomical differences between men and women. Both are attached with natural law which can be interpreted as certain rights attached as a consequence of human nature and can be universally understood through human thinking or reason. In the perspective of maqashid sharia, gender equality is associated with the five principles of preserving maqashid sharia consisting of hifdzu ad-din, hifdzu an-nafs, hifdzu al-aql, hifdzu an-nasl, and hifdzu al-mal with the belief that men and women have equal rights and responsibilities before Allah swt.

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