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LOCAL CONTEXTS

Domestic Violence in Indonesia

Lily Zakiyah Munir*

*Emory Islam and Human Rights Program, lilyzm@hotmail.com

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Abstract

Anthropological studies have shown that attitudes and behavior of majority of Muslims towards gender and women's issues are influenced by the combined patriarchal culture and patriarchal reading of Islamic teachings which is reflected in conventional fiqh. This creates room for domestic violence; men occupy a dominant position and women are obliged to show their submission to them, such submission being portrayed as divine order. Some of the men interviewed in this study defended their dominant position by exaggerating the interpretation of religious texts that grant special privileges to men. Because of its serious repercussions on women, and because it runs counter to the basic principles of Islam on justice and equality and the overall objective of sharia, i.e. *maslahat* (benefit, well being), such male-biased reading of religious texts should be challenged. Over 30 verses in the Qur'an support equality between women and men and refer to women's rights in various aspects of life. Many of these women-friendly Qur'anic verses are further supported by the Hadith, traditionally attributed to Prophet Muhammad. The question that emerges is: why are Muslims' attitudes quite contradictory to the spirit of gender equality and equity and women's emancipation advocated in the Qur'an's verses? Using three different perspectives: theology (fiqh), legal (the newly passed Indonesian law), and anthropological case studies, this paper explores the answer to the above question and suggests how the gap between Islamic ideals on gender and their realities can be bridged.

KEYWORDS: Human Rights, Islamic Law, Domestic Violence, Indonesia

**The author is the Director of the Center for Pesantren and Democracy Studies, Jombang, Indonesia. She has been active in women's organizations tied to Nahdlatul Ulama - the largest Muslim organization in Indonesia.

*“And among His Signs is this, that He has created
for you mates from among yourselves,
that ye may dwell in tranquility with them, and He
has put love and mercy between your (hearts):
Verily in that are Signs for those who reflect.
(Q.S. Al Rum/ 39:21)”*

*The best of you are those who are best to their wives,
and I am the best among of you to my wives.
(Prophet Muhammad)*

INTRODUCTION

The above quotations from the Qur’an and hadith, two primary sources of Islamic law, perfectly illustrate an ideal marital gender relation. In a proper, functional marriage will flourish love and mercy, tranquility in the hearts of women and men, and legitimate sexual relations for pleasure and procreation. The famous saying by Prophet Mohammad *baiti jannati* (my house is my paradise) captures what a family environment can be: peaceful and loving, where its members function and share responsibilities to pursue their goals and ideals.

However, family life is not always as beautiful as it is idealized. This heaven often turns into hell. Instead of being the epitome of peace, love or mercy, the institution can become a crucible of violence, torture, insults, battering, exploitation, rapes, incest or a commanded sexual orientation. Violence in the family, so-called domestic violence, is currently gaining wide attention. Long, tireless awareness raising efforts by women activists in Indonesia resulted in a milestone when the Anti-Domestic Violence Bill was passed. This law recognizes domestic violence as a violation of human rights and a crime against humanity and, therefore, the State has the right and responsibility to interfere as part of its obligation to protect its citizens.

Despite the significant achievement at the legal structural level, however, a bigger challenge still lies ahead: cultural transformation toward a more egalitarian gender relation where domestic violence may not occur and where society accepts and abides by the Law. Changing deeply rooted cultural norms such as gender equality, equity, and justice for women is a big challenge. This is partly due to the ‘culture of openness’ spawned by the current reform era and women’s courage and confidence to break cultural taboos. Violence experienced by financially independent public figures with high education and social status suggest that there may be no correlation between violence and women’s low education and economic dependence.

Anthropological studies¹ reveal that attitudes and behavior of majority of Muslims towards gender and women's issues are influenced by the combined patriarchal culture and patriarchal reading of Islamic teachings which is reflected in conventional *fiqh*.² These studies confirm the argument regarding the influential role of conventional *fiqh* in shaping stratified, rather than egalitarian, gender relations. Domestic violence takes place because of this imbalance in woman-man relations within the family. Men are categorically placed in a dominant position and women are obliged to show their submission to their spouses as if it were ordained by God. Most men interviewed in the study defended their dominant position by exaggerating the interpretation of religious texts that grant special privileges to men. This argument has been used to legitimize their acts of violence against women by hiding themselves behind religious doctrines.

Because of its serious repercussions on women, and because it runs counter to the basic principles of Islam on justice and equality and the overall objective of *sharia*, i.e. *maslahat* (benefit, well being), such male-biased reading of religious texts should be challenged. Over 30 verses in the Qur'an support equality between women and men and refer to women's rights in various aspects of life.³ Many of these women-friendly Qur'anic verses are further supported by the Hadith, traditionally attributed to Prophet Muhammad. But why are Muslims' attitudes quite contradictory to the spirit of gender equality and equity and women's emancipation advocated in the Qur'an's verses?

This paper explores the answer to the above question and how the gap between Islam's ideals on gender and their realities can be bridged. The problem will be approached from different perspectives: theology (*fiqh*), legal (the newly passed Indonesian law on anti domestic violence), and anthropology (case studies). This combined approach is necessary to gain a comprehensive understanding of the issue. (Patriarchal) socio-cultural setting influences society's way of understanding religious texts and, vice versa, male biased understanding of religious texts entrenches patriarchy. The new law on anti domestic violence is a significant achievement of a concerted effort to end this criminal act and therefore it is important to reflect on it.

A major portion of this paper will be devoted for the discussion of *fiqh* to understand the theological bases of violent acts perpetrated against women in the

¹ See Lily Zakiyah Munir, "He Is Your Garment and You Are His ...": Religious Precepts, Interpretations, and Power Relations in Marital Sexuality among Javanese Muslim Women, *SOJOURN: Journal of Social Issues in Southeast Asia* Vol. 17, Number 2 (October 2002): 191-220; and Zuhairi Misrawi, ed., *Dari Syariat Menuju Maqashid Syariat: Fundamentalisme, Seksualitas dan Kesehatan Reproduksi/From Syariat to Maqashid Syariat: Fundamentalism, Sexuality and Reproductive Health* (Jakarta: KIKJ in cooperation with The Ford Foundation, 2003).

² *Fiqh* is an intellectual product of Muslim jurists which has become the most practical guide for Muslims in applying religious teachings. More discussion on the need for reforming the current conventional *fiqh* because of its discriminatory stance toward women is presented later in this paper.

³ Munir, Lily Zakiyah, "The Koran's Spirit of Gender Equality," *Qantara. De: Dialogue with the Islamic World*, http://www.qantara.de/webcom/show_article.php/c-307/nr-19/p-1/i.html

family. This religious discipline has a special position among Muslims. A practical derivation of the Qur'an's teachings and Hadith, it has become a normative foundation for Muslims' way of religiosity, shaping individual and society's attitudes and behavior. A renowned *fiqh* scholar from Indonesia, Sahal Mahfudh, argues⁴ that what needs urgently be done is to shift people's paradigm and misunderstanding, not only of lay people but also of those who feel that they understand *fiqh* correctly, that *fiqh* is equally sacred and authoritative as the Qur'an or hadith. This view, argues Mahfudh further, is not only not proportional for *fiqh* itself, but even lowering the level (*darajat*) of Allah and the Prophet's *sunnah* as a fully universal source of Islamic law (2003, xxvii-xxix).

Following this line of argument, this paper proposes that *fiqh* be repositioned as 'an explored discipline' (*al-muktasab*) (Mahfudh 2003, xxix), a discipline which came into existence after a series of processes before finally declared as a practical law. These processes, so-called *ijtihad* (literally meaning 'serious effort'), not only do accommodate changes, but also provide opportunities for its unlimited development on various aspects of life because of their dynamic and continually changing nature. If *fiqh* appears as a dynamic and progressive intellectual product of Muslim jurists responding to actual and contemporary issues, there is a bigger possibility for this discipline to reflect the true goal of *sharia*, i.e. well being (*maslahat*) of all humankind. From a woman's perspective, a women-emancipating *fiqh* needs to be reconstructed, otherwise Islam will lose its humanity spirit and the conventional *fiqh* will bear the risk of being abandoned by Muslim believers. This paper will conclude with a proposed model of an evolutionary reform of *fiqh* toward justice for women.

ANTI DOMESTIC VIOLENCE LAW: A NEW HOPE FOR INDONESIAN WOMEN

Indonesia has recently given new hope for justice to women and the oppressed groups within the household after the Anti Domestic Violence Law (*Undang-Undang Anti Kekerasan Dalam Rumah Tangga/UU KDRT*) was passed on September 14, 2004. The passing of the law was a significant achievement for the House of Representatives at the end of its term before the new legislators were installed after the 2004 elections. It also means a victory of some 60 women's and non-governmental organization who, along with the National Commission on the Elimination of Violence Against Women, popularly known as the Women's Commission (*Komnas Perempuan*), have relentlessly struggled and put pressures on the House to endorse the bill.

Long before passage of the law, the Ministry of Women's Empowerment (MOWE) facilitated the National Plan of Action on the Elimination of Violence

⁴ In his scientific speech when he received the *doctor honoris causa* degree awarded by the Syarif Hidayatullah State Islamic University in Jakarta on June 18, 2003 for his services in developing *fiqh* and in *oesantren* (Islamic boarding school) and community development. This speech is used as introduction for his book *Nuansa Fiqh Sosial/Nuances of Social Fiqh*, (Yogyakarta: LKIS, 2003).

against Women 2001-2005. Launched in November 2000, it involved 150 NGOs, mass organizations, UN agencies, and donor agencies. The launch was a follow-up action to the Declaration of Commitment made in November 1999 by the Nation and the Society to Eliminate Violence against Women. The Declaration was signed by various groups, Ministers of Government, leaders of the People's Consultative Assembly and the Parliament as well as people from various regions as a sign of national determination to eliminate violence against women. It is an effort to reach 'Zero Tolerance,' a situation where no single act of violence against women, however small, can be tolerated.⁵

The need for the specific law criminalizing violence against women particularly in domestic sphere had long been felt. For many years, the issue was of no concern to the public. Victims did not know what to do or whom they should turn for help. Because of the influence of culture and religion, they preferred to keep their experiences to themselves and bear the violence silently. Under the new law, perpetrators of sexual violence can be sentenced to 20 years in jail or fined up to Rp 500 million for assaults causing serious injury, mental disorder, lead to the death of an unborn child, or damage the reproductive organs.

The downfall of Suharto in 1998 opened up the gate toward openness including for women. His toppling down was followed by riots and mass rapes in May in Jakarta and the surrounding provinces, widely known as the 'May tragedy.' Mobilized by the tragedy and a new spirit of openness under a new president, many women's NGOs became aware of the lack of prevention programs for violence against women. The spirit for pushing the bill on Domestic Violence which was drafted in 1997 by an NGO movement of 15 organizations heightened.⁶ The movement promoted the draft bill throughout Indonesia to bring attention to its importance to all stakeholders.

This May tragedy also gave rise to the birth of the *Komnas Perempuan*. An independent body established under Presidential Decree No. 181/1998 in October 1998, the Commission has the objective of eliminating violence and all forms of discrimination against Indonesian women. It came into being following the demand of civil society, particularly women, to the government in realizing the State's responsibility in responding to and handling violence against women issues. The demand was rooted in the sexual violence particularly experienced by women of Chinese ethnicity in the May 1998 tragedy.⁷ Now, *Komnas Perempuan* together with women's and mass based NGOs, and related institutions are involved in socializing the Anti Domestic Violence law throughout the country.

⁵ Further information on the National Plan of Action on the Elimination of Violence Against Women and its Declaration can be accessed from Ministry of Women's Empowerment website: www.menegpp.co.id or obtained in *Jurnal Perempuan/Women's Journal* No. 26/2002.

⁶ *Domestic Violence in Indonesia: Country Profile* (UNIFEM Jakarta).

⁷ http://www.komnasperempuan.or.id/i_profil.html

The Anti Domestic Violence law was proposed by women's activists because the relevant articles of the penal code (*Kitab Undang-Undang Hukum Pidana/KUHP*) were deemed to be weak and failed to protect the victims. The Code basically does not recognize the term 'domestic violence' and only regulates penalties for violence or rapes in public places. The term 'domestic violence' needs to be institutionalized to break the patriarchal ideology of family harmony under which victimized women suffer without their miseries being acknowledged. In patriarchal societies worldwide, including in Indonesia, women are saddled with the burden of uplifting, maintaining and representing the image of the family harmony at any cost. Women's voices are barely heard; their 'noble' responsibility, perceived to be granted by nature, is to maintain and sustain the family. In spite of its serious repercussions, domestic violence is viewed only as an ordinary issue within one's private life.

The new law has accommodated different perspectives in viewing the problem. It has laid down three fundamental principles that are not catered for in the penal code, namely: a) protection and enforcement of human rights, b) gender equality and justice, and c) equitable social relation and protection of victims. This new law has also challenged the prevalent view that all criminal cases are to be regulated under a codified law such as the penal code in Indonesia. Problems in this modern life have become so complex and diverse and the division of work and responsibilities between men and women has in most cases changed; therefore, we need to develop a new law that can address the issues and reflect justice including gender justice.

The new law states that all forms of violence against women are a violation of human rights, which it regards as "a crime against humanity," and a form of discrimination that should be abolished in accordance with UN Declaration of Human Rights and the Elimination of Violence against Women and other international conventions. Domestic violence can be categorized as a criminal act because, substantively, it has violated the principle of gender equality advocated in Indonesia's constitution, in Indonesia's law number 7/1978 on the ratification of the Convention on the Elimination of All Forms of Discrimination against Women, and of child protection regulated in law number 23/2002. The new law is based on the *lex priori adagium*, which means that the new law overrides the old one; it also follows the principle of *lex specialis derogat legi generalis* (the specific law overrides the general one). These principles enable victims to access legal protection and have their difficulties taken into consideration. These are not possible under the general penal code, which fails to consider the patriarchal and feudalistic contexts and the discrimination arising out of different classes and social status resulting in imbalanced social relations particularly in the domestic sphere. The code assumes that every individual is equally capable of accessing legal justice.

The Anti Domestic Violence law broadly defines domestic violence as:

any act against a woman and other subordinated groups which results in or is likely to result in physical, sexual, economic and or psychological miseries or sufferings, including threats of such act, coercion or arbitrary deprivation of liberty, within the scope of the household.

A wide range of violence is now recognized as a crime: physical, psychological, sexual, economic, and sexual harassment. The definition of each type of violence is so broad that it accommodates the various forms of miseries suffered by women or children in the family. Physical violence, for example, is defined as any act that results in a painful feeling, injury, wound, or scar on one's body, abortion, fainting, and or death. Psychological violence is any act that results in fear, loss of confidence, loss of ability to take action, feeling of helplessness, and or serious psychological suffering. Sexual violence, including marital rape (which stimulated lengthy debates), is defined as any act that constitutes forced sex, sexual harassment, abnormal and unwanted sexual relation, forced sex for commercial purposes and or for certain objectives. Economic violence, whose limited meaning, relating to the provision of *nafaqah*, is accommodated in the penal code, is now widely defined. It is interpreted as any act that results in economic loss and the deprivation of family member, and or creating economic dependence by limiting and or prohibiting someone to work within or outside the house, not providing *nafaqah*, eliminating access and control to economic resources, and neglecting the family member. Sexual harassment, which was viewed as common and acceptable in a culture where women often become sexual objects, is now categorized as a criminal act. It involves indecent joke that may be hurting or embarrassing, questions on one's sexual or private life, touching, groping or holding one's part of the body in various ways without her/his consent.

The law is substantively rich and has accommodated the various forms of violence perpetrated to the less powerful members of the household such as wives, female domestic helpers, or children. If properly enforced, the law will no doubt leave room for the oppressed group in the family to access legal justice. However, like other newly passed laws and as shown by experience, the big challenge lying ahead of us all is how to bring this tool for justice into a real force. A law reflecting justice for women will bear no meaning and benefit without enabling contexts to guarantee its effectiveness. This would include local traditional beliefs and practices regarding gender relations and people's interpretation of religious doctrines such as relevant Qur'anic verses and *hadith*. In addition to the context, advocacy efforts and public education should be made to socialize the law to the public in general and the legal apparatus in particular with the hope of changing the way the issues of domestic violence are viewed.

AN INTEGRATED CRIMINAL COURT SYSTEM: EFFORT TO PROVIDE LEGAL JUSTICE FOR WOMEN

Six months after the passage of the Anti-Domestic Violence Law, a gender-sensitive criminal court system was introduced. This new system is called ‘Gender-Sensitive Criminal Court System for the Handling of Violence against Women Cases’ (*Sistem Peradilan Pidana Yang Berkeadilan Jender Untuk Penanganan Kasus Kekerasan Terhadap Perempuan/SPPT-PKKTP*).⁸ The socialization of this new system was conducted in mid April 2005 by a number of NGOs such as the National Commission of Women (*Komnas Perempuan*), LBH APIK Jakarta, Convention Watch of University of Indonesia’s Women’s Studies Center, Derap Warapsari together with law-enforcement apparatus such as Supreme Court, Office of Attorney General, the Police, and Association of Advocates.

The new system responds to women’s real need in accessing legal justice. After the Law was promulgated, more and more violence cases have been reported. But the current court system does not incorporate women’s experience so that the law often times does not give justice and protection to women, either as victims or criminal actors. The current legal system nullifies women’s experience, and even tends to blame, stigmatize, and suspect women’s sexuality.⁹ Violence against women’s bodily integrity has been considered as a mere violation of ethical norms, not violation of women’s human rights. Protection is given to society’s ‘sense of ethics,’ not to women as victims. The penal code reaffirms this lack of respect to women’s human rights in its articles, which incorporate crimes against women’s bodily integrity and sexuality into those on crimes against society’s ethics. An example is rape, which is often reduced to an ordinary sexual relation case. Moreover, victim-blaming and accusation of “victim participation” in their own assault also abound, particularly among legal personnel. This stigmatization and victim-blaming attitude leads to negligence in the fulfillment of the right of the women victims to obtain legal assistance.

The above reality has triggered the emergence of the integrated ‘Gender-Sensitive Criminal Court System for the Handling of Violence against Women Cases’ (*Sistem Peradilan Pidana Yang Berkeadilan Jender Untuk Penanganan Kasus Kekerasan Terhadap Perempuan/SPPT-PKKTP*). The concept is based on the need and interest of the (woman) victim and is bound to the norms of justice for women. The emphasis is laid on victim’s perspective by placing her in the center of the court system. Here, the victims are entitled to be heard, to get information on the legal proceedings, to get her wish for justice considered, and to regain her rights after experiencing the violence. Women are to be positioned as the subject from the early stage of the case, during medical, social, and psychological handlings, police investigation, court examination, court decision-making, and execution of the court decision.

This concept adopts the main principles of Law No. 7/1984 which ratifies the Convention on Elimination of All Forms of Discrimination against Women

⁸ Kompas Daily, May 2, 2005, p. 43

⁹ Ratna Batara Munti of LBH APIK, based on field experience and monitoring of violence against women cases in six regions (Kompas Daily, May 2, 2005, 43)

(CEDAW) and Law No. 23/2004 on Anti-Domestic Violence. These main principles reflect protection and promotion of human rights and gender equality, protection of victims, and principle of non-discrimination.

MAGNITUDE OF THE PROBLEM AND ADVOCACY EFFORTS

The Indonesian National Commission on Women has studied the wide spectrum of cases of violence against women, including domestic violence, and mapped them as follows:

Table 1

Map of Violence against Women in Indonesia¹⁰

	Personal Relations	Professional Relations	Social Relations	Conflict Situation
FORMS	<ul style="list-style-type: none"> ○ Psychological pressures ○ Physical violence ○ Sexual Harassment ○ Rape ○ Economic exploitation ○ Family worker ○ Deprivation from access to needs 	<ul style="list-style-type: none"> ○ Various forms of discrimination at work (pay, status, position, career) ○ Sexual harassment ○ Rape ○ Sexual tortures 	<ul style="list-style-type: none"> ○ Sexual harassment ○ Rape ○ Cultural practices (e.g. no rights for inheritance, polygamy, divorce, finger cutting (among the Dani tribe)) 	<ul style="list-style-type: none"> ○ Killing/shooting ○ Physical abuses ○ Kidnapping/ ○ Forced labor ○ Sexual harassment ○ Rape ○ Sexual tortures ○ Sexual slavery ○ Gender-based intimidation ○ Domestic violence/personal relations
LOCATION	<ul style="list-style-type: none"> ○ House (and other place possible) 	<ul style="list-style-type: none"> ○ Work place (and other place possible) 	<ul style="list-style-type: none"> ○ Community ○ Public places ○ Transit places 	<ul style="list-style-type: none"> ○ Public places ○ MilitaryHead quarters ○ Victim's house ○ Refugee places
PERPETRATOR	<ul style="list-style-type: none"> ○ (Former) husband, father (own, step) ○ Brother ○ Other family member/with personal 	<ul style="list-style-type: none"> ○ Master/super-visor ○ Co-worker 	<ul style="list-style-type: none"> ○ Community members 	<ul style="list-style-type: none"> ○ Military ○ Armed civilian ○ People with family/personal relations

¹⁰ National Commission on Women, "The Violence Mapping: Indonesian Women's Experience" (SGIFF-CIDA, The Asia Foundation and Tifa Foundation, 2002)

	relations			
VICTIMS	<ul style="list-style-type: none"> ○ Wife ○ Daughter ○ Women (lover, fiancée, friend) 	<ul style="list-style-type: none"> ○ Informal sector worker ○ Formal sector worker ○ Female migrant worker ○ Domestic helper and other domestic workers ○ Labor activist 	<ul style="list-style-type: none"> ○ Adult women ○ Under-aged women ○ Street children 	<ul style="list-style-type: none"> ○ Civilian women ○ Women refugee ○ Women in prison

Underreporting is a typical problem regarding domestic violence. Complete data or comprehensive statistics on the issue are barely available. This lack of supporting documents is due to the fact that domestic violence is not recognized as a crime in the eyes of the public at large, despite its harsh and even inhuman forms. Economic or sexual exploitation, rape, including marital rape, incest, or battering perpetrated to a wife or other female member of the family is often viewed as 'natural', as part of a woman's fate. In-depth interviews during the fieldwork, which will be reported in a later section, have evidently proven this.

The Minister for Women's Empowerment of Indonesia estimated that 11.4% of 217,000,000 citizens of Indonesia or around 24,000,000 women especially in the village admitted that they experienced violence, and the majority was domestic violence.¹¹ Occurring in a well-guarded private environment, the family, which is recognized as a legal institution, domestic violence is hardly detectable from outside. Only when the (women) victims are seriously injured, or mentally disturbed, or get very pregnant in the case of rape or incest, will the case be known to outsiders. A Women's Crisis Center in Jombang, a small city in East Java, Indonesia, notes that a case of incest between father and daughter had lasted almost two years before it finally became public when the girl got pregnant.¹² An interview with a psychiatrist in Jakarta, Dr. Fuad (pseudo name) on January 20, 2004 reveals that one of his patients, a heart specialist, had been experiencing insults and mockeries and forced sex from her husband for the last five years. The husband had lost his job because of the economic crises, which made him frustrated and over-sensitive, and his wife has been the target of his frustration.

Another factor that makes domestic violence cases remain unnoticed is the victims' reluctance to talk openly. Feeling shamed, disgraced, and afraid, many of these victims choose to keep quiet in spite of their suffering. *'Silence for the Sake of Harmony'* (Hakimi, et al, 2001) is the title of a book which aptly discusses the issue of

¹¹ Khofifah Indar Parawansa, *Government Policy in the Effort to Eliminate Violence Against Women (Kebijakan Pemerintah Dalam Upaya Penghapusan Kekerasan Terhadap Perempuan)*, Jakarta: September 2000, 2.

¹² Interview with Alfi, Director of the WCC on February 15, 2004.

domestic violence in Indonesia. This book critically reviews the issue which often is deliberately suppressed in order to avoid acknowledgment of a problem and to maintain a marital union. For the sake of social and family harmony, women should remain speechless of their plights. Culture has placed women in a 'noble' position in the domestic sphere and, naturally, given them a 'noble' responsibility of maintaining family union regardless of the case, at the women's cost. How women feel is not important, what is important is that the family remains united or harmonious.

In spite of the limited data and information, however, a number of studies can sufficiently prove the fact that women become victims of violence arising out of imbalanced gender power relations. This can take place in the marriage, in the family, and between intimate partners. Non-governmental organizations (NGOs) and women's organizations, especially women's crises centers who work to receive complaints and to help domestic violence victims, are major sources of information that can unveil the reality. A women's crises center in Jakarta, *Mitra Perempuan* (Friend of the Women), during the period of 1997-2002 received 879 reports of violence cases occurring in the surrounding cities and towns.¹³ The fact shows that majority of the perpetrators are the victims' husbands (69, 26-74%). Another center, *Rifka Annisa*, in Yogyakarta, from 1994 to 2000 received 994 complaints of violence against wives occurring in Yogyakarta and Central Java.¹⁴ This center offers free social services in the forms of hotline, counseling, shelter, and other assistance such as legal and medical aids for women and children.

Meanwhile, the Legal Aid Institute of the Association of Indonesian Women for Justice (LBH Apik) in its Reflection on Women and Legal Advocacy in 2001 stated that along the year, 2001, they received 471 cases, 302 of which were family-based violence.¹⁵ The Legal Aid also stated that most of the 302 cases were related to violence against wives such as wife's maintenance (*nafaqah*), unfaithfulness/polygamy, and wife battering, including sexual violence. Of the cases, 154 victims decided to get divorced. Only 15 cases were reported to the police, while most of the others were just consulted. *Komnas Perempuan*¹⁶ gathers information from thirty organizations providing services to victims of violence in 14 regions of Indonesia and notes that 40% of 3169 cases of violence documented were committed by males familiar to the victims, 32% were rapes occurring in victims' own communities.

¹³ Fact Sheet "Notes on Domestic Violence and Its Impacts on Women's Health in 2002 (*Catatan Kekerasan Dalam Rumah Tangga dan Dampaknya Terhadap Kesehatan Perempuan Tahun 2002*)", Mitra Perempuan and World Population Foundation, 2002.

¹⁴ In Hakimi et.al., *Silence for the Sake of Harmony: Violence Against Wives and Women's Health in Central Java, Indonesia (Membisu Demi Harmoni: Kekerasan Terhadap Isteri dan Kesehatan Perempuan di Jawa Tengah)*, Yogyakarta: LPKGM-FK-UGM, Rifka Annisa, Umea University, Women's Health Exchange, 2001, p. 28.

¹⁵ Kompas, January 9, 2002.

¹⁶ National Commission on the Elimination of Violence Against Women: The 2001 Year End Notes.

The low number of cases reported to the police indicates that it is not easy for the victims to decide whether to submit a criminal lawsuit about their cases. Although it has serious repercussion on the victims, domestic violence receives inappropriate attention from society. Neighbors, relatives or friends tend to respond passively or reluctantly, fearing to be seen as interfering in a family's internal affair. In many cases, where the perpetrators are socially powerful and respectable, social sanction is even impossible. Complicated and inefficient procedures of reporting violence cases to the police or in the hospital have been another strong reason, in addition to the feeling of shame and fear, which prevents victims from seeking legal or health redress. Victims usually have to go back and forth to the police office and to the hospital for the investigation of the cases they have experienced and reported. Male investigators, often with no sensitivity or empathy to the victims, may boldly inquire for lurid details and even embarrassing examination of the victims. This, in itself, an interrogation about a rape or other violence case, is a punishment to the victims. They would rather stay silent, resulting in the high number of under-reported cases.

CASE ILLUSTRATION

Two case studies of Muslim women with different social, economic, and educational backgrounds disclose their marital lives to unpack the complexities in their marriage including acts of violence perpetrated by their loved ones, their husbands. The cases will reveal that different backgrounds of the women do not necessarily relate to the presence or absence of domestic violence. It occurs anywhere and everywhere, when power relation between women and men is unbalanced. The issues faced by the women in the case studies are typical of problems faced by women in their marriage, which have been comprehensively incorporated in the new Anti Domestic Violence Law (UU KDRT) that was recently passed. These include issues falling within women's economic right (*nafaqah*), sexual right (cases of forced sex or marital rape), women's independence and dignity, or on unfaithfulness/polygamy and issues of wife battering.

*From Burning Love to Frigidity*¹⁷

Lisa was born and raised in a *pesantren* (Islamic boarding school), in a religiously devout family, a *kyai* (ulama) father and a politician mother, who introduced to her the Islamic values of freedom, gender equality and justice. At a time when most *kyais* would rather arrange marriages for their daughters, Lisa's father did the opposite. He encouraged his daughters to pursue tertiary education, just as he did his sons.

¹⁷ Based on my anthropological study which has been published under the title "He is Your Garment and You Are His ..." in *SOJOURN: Journal of Social Issues in Southeast Asia* (Vol. 17, No. 2, October 2002, pp. 191-220).

Although they are a Javanese family, they do not adhere strictly to Javanese values regarding gender relations.¹⁸ Lisa recalled her sweet memories of her late father:

My father was a symbol of the Islamic spirit of freedom and empowerment. He had a far-reaching vision of empowering the Muslims and enacting justice and equality for all. In spite of his academic background in Islamic legal system - he was a *faqih* - he was much influenced by Sufism in practicing the religion. When he taught us about God through stories and signs in the universe, he made us feel God was so close to us. My childhood picture of God was sweet, loving, caring, and not frightening. My father was a *kyai* who could bring into light the emancipating and liberating, rather than oppressive, side of the religion.

Lisa married a man of her own choice, a college friend with whom she was 'madly in love.' They were university classmates. Her husband, Hadi, came from a very different family culture, where male domination and material orientation prevailed, which is entirely different from the world Lisa was familiar with. In Lisa's family, daughters and sons had equal opportunities for education and everyone was involved in family discussion. In Hadi's family, father and sons were the central figures and decision makers, while mother and daughters were "the others," who had to be content with kitchen related activities. Lisa expressed her concerns about this.

I was shocked when I first interacted with his family. I saw how women were discriminated against in his family. One day I witnessed my husband's father and brothers discussing an important family issue. Then his sister came to join, but she was turned down. "It's not a woman's business," She was told. "It's an important decision about our family; go to the kitchen and make tea for us." I was hurt to hear that kind of male arrogance. I would have protested against such discrimination if I had been her.

Only after they got married did Lisa know how arrogant and egoistic Hadi was. During their courtship for about three years when they were university students, Hadi was very good at covering up his real characters. He was gentle, kind and helpful. But now, after marriage, things completely changed. He demonstrated male chauvinism, which must have been shaped by the way he was raised. His was a

¹⁸ Javanese is the major ethnic group in Indonesia, composing over 75% of the whole country's population. In the Javanese worldview, family is seen as a microcosm of society, reflecting the hierarchy of the macro structures of the society. The man and woman enter marriage in a hierarchy-based relationship, as symbolized by one of the Javanese wedding rituals. In this ritual, the bride will squat, the groom will step his foot on an egg, indicating her fertility, to break it, and she will wash his foot to symbolize her lifetime subservience to him. The gender stratification is also reflected in sexual relations which, in Javanese epistemology, is termed *manunggaling kawulo gusti* – the union of servant and lord (Beatty 1999, p. 173).

typical Javanese patriarchal family, where women were regarded as subordinate to men and expected to be obedient and submissive. They were nevertheless devout Muslims in the sense that they observed the religious rituals and ceremonies. But their attitudes, apparently, did not reflect the Islamic mission of justice and equality for women.

I was overwhelmed by the contradictions since the beginning of our marriage. My father, a religious leader and a professor with large number of students and followers, knew how to respect women. Being a respectable public figure, he had no difficulty sharing responsibilities in child rearing and domestic work. Now I had to live twenty-four hours a day with an arrogant man who wanted to lord it over others in the family. We were all to obey his words and treat him as our 'center.' He never touched anything in the kitchen, as it was "not his world." He argued that as head of the family he deserved special treatment because he had "bigger responsibilities." He even quoted the Qur'an that recognized men's family leadership and their being one level higher than women.

Lisa's husband used a Qur'anic verse (Q.S. al-Nisa' 4:34) to justify his patriarchal attitude. This confused Lisa because her father had interpreted and implemented this same verse very differently. She said:

My father perceived men's family leadership as empowering, supporting, and liberating. That's why men have been given certain privileges to enable them to "bring blessings" to women, the oppressed group, not the other way round. My husband was different. He perceived leadership as monopolizing, controlling, demanding rather than giving, and even repressing and exploiting.

Lisa felt that she was economically and sexually exploited by her husband. Hadi, who was raised in scarcity and had to work to support himself since childhood, turned out to be a very materially oriented man. He could not see his wife idle or unemployed. With a tertiary education from a reputable university and other personal and intellectual capabilities, Lisa managed to get a well-paid job with salaries higher than her husband's. When she wanted to resign from work for a while to concentrate on rearing their children, Hadi objected. He urged her to remain at work as, he said, they still needed a lot of money to build the family. He said that whoever wants to stay in their house must be productive, meaning that he/she has to earn money to contribute to the family. Lisa just could not understand this way of thinking.

Lisa's most bitter experience was in the area of sexuality. She described her husband's sexual behavior as "savage, insensitive, inhuman, exploitative, oppressive,

and humiliating.” These harsh adjectives indicate deep feelings of oppression and humiliation. She continued:

I felt worse than a whore. A whore serves sex and receives money in return. I served him sex and he demanded me to work as well. He saw my big potentials in earning money and, because of his materially oriented world-view, he demanded that I work. He said that everyone in the house has to be productive, including me, to earn money ...He’s crazy ...

Lisa’s relative success in career opportunities and financial rewards, however, did not seem to have enlightened her husband. He stuck to his culturally bound androcentrism. Sexuality, for him, appeared to be a symbol of his power over his wife and her submission to him. His egoism and self-centeredness exacerbated these cruelties. He never seemed to care about his wife’s sexual needs. Lisa vehemently recalled her painful memories:

When he wanted it, he just did it, and in five minutes it could finish. For me, and maybe for other women as well, sex is not just the act. It is very much related to the atmosphere, the romanticism, the mood, the emotions, and also the quality of your relationship in general. I explained this to him but he did not seem to understand. I often asked him to spend time together, just the two of us, at the beach or in the mountains, but he did not agree. He was not romantic at all. He was insensitive. He even could not sense it when I told him that I needed small attentive gestures such as sweet words or small presents.

This sexual exploitation lasted for years and years. It was after their twentieth wedding anniversary that Lisa could no longer tolerate it. Bursting into tears, she boldly stated to him that she could no longer be his sexual slave. She gave him two alternatives, either to divorce her or take another wife to satisfy his sexual drive. He took neither the divorce nor the polygamy option. Lisa consulted a psychiatrist who, after examining both of them, concluded that Hadi could never possibly leave her. “You are his wife, his lover, and also his mother,” he said.

The marital conflict with all its ramifications lasted for many years but Lisa decided not to dissolve the marriage. She had every right, in terms of the law, to end it, but she did not. Two main reasons restrained her from ending it: children and God’s anger. Lisa kept on her work with an international agency, ensuring her financial security. With bitter experiences in her marital life, she was determined to dedicate the rest of her life to advocating women’s rights and promoting their status. Reflecting on the inferior status of women in many countries worldwide that Lisa had been observing, Lisa was even more determined to stay the course and work for equality in gender relations. The biggest repercussion for Lisa has been the loss of

her sexual drive for her husband. Her marriage started with a burning love and developed into frigidity.

Love and Devotion

Zainab (28) is a wife and mother of three children, two girls (11 and 9) and a boy (7). She was born and raised in a small village in the district of Kediri, East Java, where she got her elementary education in the local village school. She wanted to continue her studies, but her father said it was not necessary. "A girl needs not go for high education, it's not necessary. Men will be afraid to marry her," he said. "You can help your mother at home or help me in the field. We will start planting soon when we have enough rain water," he convinced her.

Zainab did not protest. She understood the situation completely. The reason for her father's reluctance to send her to school was not because she is a girl, but because of economic problem. "Schools are expensive, you need to pay the tuition, buy the books, shoes and uniforms, and you have to pay for the public transport to the city. I cannot burden my father with all these costs," she tried to console herself.

When Zainab's father spoke about farming, it did not mean that he owned the farm. He was just a farm worker, who received sharing of farm produce from the farm owner when harvest time came. Their fate was fully dependant on nature's 'mercy'; during good harvest, the farm workers would receive good shares as well, and meager share during poor harvest. But when nature was unfriendly such as giving them long drought or infestation of insects, and the harvest was bad, these farm workers would hardly receive anything. Such was a common system of agricultural employment in the village, and Zainab's father was just one of hundreds such farm workers in the village.

"Life was difficult, we lived in complete poverty. Often we did not have anything to eat, no rice, no cassava, or nothing, especially during dry season. In that situation, my father would usually go to the city, bringing his hoe or shovel, and look for a job there. When he came back with some money, we could buy rice, a lot, and save it for another month ..."

That was the background of Zainab's family. They were so familiar with scarcity and lack of food; but they remained patient and submissive. "When you are patient with what God has destined for you, you will be highly rewarded in the hereafter," said Zainab, echoing her family's philosophy.

When Zainab was sixteen, her father asked her if she was ready to get married. There was a suitor for her, a young man from a nearby village, who worked in the city as a construction worker. For the village people, this job was more prestigious and promising than farming. Villagers who became urbanites like this could be distinguished by their houses: made of bricks, painted in striking colors, and often with glittering ceramic tiles. Zainab's father must have been hopeful of his

prospective son in law. When asked about her feelings on this arranged marriage, Zainab answered,

Well, I was a little bit nervous, actually, but how I felt was not important. My father was more important. The marriage would reduce his burden as I would be the responsibility of my husband. I did not know my husband, but I believed that my father had made the right choice for me. So, I just followed his advice.

Zainab finally got married, at the age of sixteen. After a simple ceremony, the newly wed couple enjoyed their honeymoon, and a week after that Zainab's husband went back to the city, leaving her with her parents. Once a month, Zainab's husband would visit her on the weekends, and leave her the money he earned in the city. This was the happiest moment in Zainab's life, as she recalled:

I was very happy. We had enough to eat, also my parents. My husband visited me regularly, every month, and I could save some of his earnings. I was always excited when his scheduled arrival was approaching. Days before, I already started preparing his favorite food, or clean our room. I know that he cannot eat well in the city, and I heard that they sleep in the open air in the construction project. So, I wanted to make him happy here in the village, make him sleep well and eat well.

She admitted that her love for her husband grew more and more everyday especially after they had the first baby. "It grew along with my activities to take care of him like washing his clothes, preparing his food, or sleeping with him," Zainab recounted her sweet memories with her husband.

But all these happy moments suddenly disappeared when, some seven years ago, Indonesia was struck by the monetary crisis, which crumbled the country's fundamental economy. Many businesses, especially in the property and construction sector, went bankrupt. The company where Zainab's husband worked was no exception. He was laid off, alongside thousands of other workers, with practically with no compensation. These people remained in the city and competed to get a new job, but it was hardly possible. No company was recruiting new labor; they even dismissed the old ones.

Zainab's husband went back to the village, trying to get a job as farm laborer. But no one was in need of new labor. This situation lasted several months, until finally Zainab's saving was finished. Her children were small and they needed food to grow. She shared her sadness,

I often cried at that time, not because I was hungry but because I could not see my children hungry. Who can stand when her child asks for food and

there is nothing to give? I myself was breastfeeding our third child and I should eat nutritious food; but we just did not have anything to eat. We lived out of mercy of other people and relatives who took pity on us. I could not complain to my husband, either, as he seemed to be depressed by the situation. He became apathetic, easily got angry and yelled at the children or at me. Once he almost hit me on my cheek when I tried to protect my daughter from his anger.

Zainab's suffering was worst when it came to sexuality. Her husband's appetite for sex had developed into an uncontrollable and uncompromising drive. When he wanted it, he had to get it, otherwise he could explode into anger.

This lengthy unemployment and economic problems, without any certainty of when they would end, deteriorated my husband's mentality. He changed into a hot-tempered man, easily got angry and uttered indecent, rough words to me. His new attitude slowly killed my sexual desires, but at the same time he developed a new habit of asking for sex anytime he liked, even in the afternoon when I was busy with the children. I was his sexual object, where he could channel out desires and release the tension.

It was at that critical time that she was informed of an opportunity to work as a migrant worker in the Middle East. They were recruiting male and female workers, so Zainab asked her husband to apply. She saw that he might fit one of the vacancies, i.e. as a construction worker. She brought it to his attention, but he did not seem to be interested. Instead, he asked her to go,

“Why don't you go yourself, working as domestic helper? You are good at domestic work,” he said sarcastically. Zainab was hurt and offended to hear this remark and answered back, “You are the one who should go, you are head of the family and you have to earn money. Besides, what about the children? They are so small and need me!” Zainab argued. “I will take care of them; don't you think I can do it? Also, we have your mother, who usually takes care of them,” he answered easily.

Zainab shocked by her husband's irrationality, but there was nothing she could. This family feud went on for several months. Finally, Zainab could no longer bear it. She could not stand living out of other people's mercy, particularly when these others were also in economic difficulties. She began to foresee the bleak future of her family. Confronted by her hungry children, she resolved to take over her husband's responsibility as a breadwinner. She decided to leave them and work overseas. As a mother, Zainab, of course, felt bitter, especially

because her youngest child was not even three years old yet. She explained her motive:

My intention was just to earn money. Six hundred dollars a month is a huge amount. We could live decently, my children could go to school, and I could buy new clothes for my parents, and, of course, for my husband as well. It should have been him (the husband) who had to go, but I understood why he did not want to. It's just that either of us had to work, and I did not mind. My only concern is our three children, especially the third one; but I trust my mother and father. They love their grandchildren so much and are willing to take care of them.

To make the long story short, Zainab left for the Middle-east after a long drawn-out process. She asked her mother and father to take care of her children. Her husband went back to his parents' home in another village. He remained jobless and did not seem to be motivated in getting a new job. He could have worked in the farm, like many other men similar to him. But he said that it was too tiring and he was not accustomed to doing it. He just stayed idle in his parents' home. Sometimes, he visited Zainab's parents to see his children.

As for Zainab, she worked for a family with five growing children, aged five to fifteen years old. Her job basically covered everything, from cleaning the big house to bathing and feeding the children. She worked long hours every day. At home in her village, she could rest at eight, after everyone had had dinner and she put the children in bed. Here, the family had dinner very late, sometimes at ten or eleven, and they liked to have guests and chat until two o'clock in the morning. In spite of the long working hours, she did not complain. Her only motivation, making money for her family, beat all these hardships. Her biggest happiness was when she sent her pay home. She addressed it to her husband, because her parents are illiterate and could not deal with the banking system. Every time she sent money, she imagined that the amount would accumulate in saving for the future of the children.

Two years later, at the end of her contract, she told her masters that she would extend the contract for another term (two years). She went back to Indonesia for vacation, thrilled and excited to see her children and family; and certainly full of hope to see the savings. But these hopes and excitement crumbled to pieces when she found that her husband had remarried three months before and now was living with the new wife. He defended this by saying that he was a normal man, with sexual drive and desires. He could not possibly restrain these natural drives forever. Moreover, he reasoned, this marriage was better than fornication. Still even worse, he used some of her money for this marriage. Zainab was stupefied, could not say anything. Her life and dreams were broken to pieces.

DISCUSSION

Lisa and Zainab are just two out of countless Muslim women who become victims of Muslims' inability to capture the fundamental message of Islam on gender equality and justice. They entered marriage, a sacred institution advocated by the religion to pursue love and affection (*mawaddah wa rahmah*), naturally with a hope to materialize these ideals. However, they found that marriage was not as sweet as their dreams and their homes were not like 'heaven' as suggested by the Prophet '*baiti jannati*' (my home is my paradise).

Lisa and Zainab have quite similar cases. Lisa is a highly educated and economically independent urban woman with a long history of social work and dedication to improve the status of other women's life. Zainab, on the other hand, is a simple village woman with barely any education, who was fully dependant on her husband's provision of *nafaqah* at the beginning of her marriage and later became the backbone of her family economy. Both admitted that various acts of violence perpetrated by their loved ones, their husbands and fathers of their children, to whom they have pledged an oath for an everlasting loving matrimonial relation, are the most hurting realities in their lives.

Despite their different family backgrounds, religious upbringing, and marriage partners, both Lisa and Zainab had a common view about who was to play the role of leader in the family. They both perceived that men should assume leadership in the family regardless of their economic status or their economic contribution to support the family.¹⁹ For example, although Lisa and Zainab contributed more than their husbands in meeting family expenses (in the case of Zainab, she was even the sole breadwinner), they were quite happy to let their husbands take on the role of leader in the family. They were quite contented to be the one "led" in spite of their greater financial contribution. However, this voluntary contribution, which in *fiqh* is regarded as *sadaqah*, was not always properly appreciated by their husbands, who maintained their egoism as "head of the family and provider of family sustenance" and viewed the wife's financial contribution as merely something "additional and peripheral."

The husbands' egoism and their 'leadership' in the family further assume that they have power to control the wife including in sexuality. Both Lisa and Zainab experienced being objects of the husbands' frustrating sexuality. In feminism, sexuality is a crucial issue because "aggression and the 'need' to dominate form a routine part of what is accepted as (normal) male sexuality" (Coveney et al. 1984, p. 9). Another feminist writer, Catherine MacKinnon (1982, p.533), similarly, argues that sexuality is *the* locus of male power, because gender, the socially constructed dynamic of male domination and female submission, is rooted in the institution of heterosexuality. Each and every element of female gender stereotype is sexually

¹⁹ Further on the relation between *nafaqah*, family leadership, and wife's submission is discussed elsewhere in this paper.

charged. Male violence against women is normalized and legitimized in sexual practices through the assumption that when it comes to sex, men are by nature aggressive and dominant, whereas women by nature are passive and submissive. Because male dominance and female submission are the norm in something as fundamental as sexuality, they become the norm in other contexts as well. As most radical feminists see it, women will never be men's full political, economic, and social equals until heterosexual relations are entirely egalitarian—a state of affairs not likely to be achieved so long as women's sexuality is interpreted in terms of men's sexuality.

Under the new Indonesia's Anti Domestic Violence law (UU KDRT), the tribulations of these women may be classified into: economic deprivation (not receiving *nafaqah* and even becoming objects of economic exploitation), sexual harassment (being targets of abusive and insulting language), and psychological torture (losing self confidence, feeling terrorized and powerless). How these women negotiated (or were unable to) a way out of their marital problems provides an opportunity to explore the dynamics between the internalization of Islamic teachings and stratified gender relations which resulted in the various forms of domestic violence. Although no simple correlation has been found that suggests that deeper religious internalization brings about gender (in)equity and (in)equality mindsets, the experiences of these two women point to the impact that Islamic teachings can have on a person's marital happiness.

In the case of Lisa, her deep internalization of what is open and progressive in Islam has shaped her expectations of her husband as being protective, egalitarian, respectful and mutually supportive and complementing with her. But her husband used the same Qur'anic verse to oppress her. Similarly, Zainab expected to submit to her husband and did not believe in taking the family leadership position from her husband. She believed in the Islamic teachings on productive-reproductive functions of the husband and wife, which reflect mutuality, balance, and justice in marital gender relation. Family leadership, she believed, should correspond to economic responsibility of each spouse. But her husband, even when he was unable to provide the *nafaqah* for the family and was economically dependent on her, still saw himself as the power holder with the right of ownership over her. This way of thinking was supported by his understanding of Islamic teaching that men are leaders of women and are therefore one level higher than women. This highlights the problem of contradictions in religious texts and the diversity of interpretations that can arise from a single source.

ISLAM, A LIBERATING RELIGION FOR WOMEN: IDEALS VERSUS REALITIES

Male-Biased Reading of the Qur'an: A Source of Discrimination against Women

Islam reinforces the dignity and equality of human beings and perceives discrimination based on gender as a form of violation of human rights. There are at

least thirty verses in the Qur'an that support equality between women and men and that refer to women's rights in various aspects of life. Among of these verses are al-Nisa' 4:1 on human creation; al-Ahzab 33:35 on equal forgiveness and reward for women and men; al-Fath 48: 5-6 on men and women being equally capable of doing virtuous deeds or committing sins; al-Hujurat 49:13 on equality of all races, nations, and sexes and the importance of mutual recognition; al-Tawbah 9: 71-72 on men and women being *awliya* one of another and the equal responsibility for enjoining what is just and forbidding what is evil; Ali Imran, 3:195 on God's indiscrimination in rewarding women and men's virtuous deeds; al-Nisa', 4:124 on the promise to men and women believers who perform virtuous deeds to go to heaven; al-Nahl, 16: 97 on whoever believes and performs good deeds, men and women, will be granted good life; al-Mu'min, 40:40 on the promise to whoever performs good deeds and is believer, man or woman, will go to heaven and will be given *rizq* without limit; and al-Fath, 48:5 on the promise that men and women believers will go to heaven; al-Nisa', 4:75 on the prohibition to kill the weak, men and women, as part of *sabil Allah*; and al-Isra', 17:70 on the dignity of the Children of Adam (men and women).

In the sixth century, the Arabian Peninsula was in a state of the so-called *jahiliyah* (ignorance) period. At that time women were regarded as expendable. A Qur'anic verse makes an explicit reference to infanticide, apparently confined to girls (Q.S. al-Nahl, 16:58-59). The Qur'an granted women the status of full human and equality to men within such a patriarchal culture where baby girls were customarily buried alive, as depicted in the verse.

The Qur'an prohibits at least six forms of acts of violence against women that were prevalent among Arabic societies: female infanticide and burying women alive, as depicted above, in Q.S. al-Takwir, 81:8-9; beating a woman in Q.S. al-Nisa', 4:30; divorcing a woman when she gets old in Q.S. al-Mujadilah, 58:2; expelling women from home in Q.S. at-Thalaq, 65:1; making women's life miserable or making them suffer in Q.S. al-Thalaq, 65:6; and complicating a woman's life in Q.S. al-Baqarah, 2:236. It should not be a mistake, therefore, to say that feminism, the awareness that women are oppressed and the need to redress this situation is part of Islamic teaching. Prophet Muhammad's teachings are liberating to women. His life is also a model of these teachings. Therefore, he could be said to be an advocate of feminism.

Earlier, we listed several Qur'anic verses which advocate gender equality in all essential rights and duties of humankind. The following verse is similar to those previously listed, and is specially quoted to illustrate how the Qur'an has beautifully conceptualized gender equality. The verse explicitly mentions equal potentials between women and men in essentially all aspects of life: as Muslims and believers. There is no single word in this verse that implies a discriminatory stance of the Qur'an against women; and God has prepared forgiveness and rewards, justly and equally, to both genders of God's creatures, women and men. The verse is as follows.

For Muslim men and women; for believing men and women; for devout men and women; for men and women who are patient; for men and women who humble themselves; for men and women who give charity; for men and women who fast; for men and women who guard their chastity; for men and women who remember Allah much—for them all has God prepared forgiveness and a great reward (Q.S. al-Ahzab, 33: 35)

However, despite the numerous verses of the Qur'an that advocate gender equality, it is hard to say categorically that the Qur'an gives equal status to men and women. When speaking normatively, such as the verses previously referred to, the Qur'an appears to take side on man-woman equality. But contextually, the Qur'an seems to favor men by granting them a degree higher than women as depicted in the following verse:

“But, in accordance with justice, the wife’s rights (with regards to their husbands) are equal to the (husband’s) rights with regards to them, although men are a degree above them. And Allah is Almighty, Wise” (Q.S. al-Baqarah 2:228).

Another verse which is often cited to show men’s superior position is Q.S. al-Nisa’ 4:34 (see the discussion to follow). There are other Qur’anic injunctions that seem to be discriminative against women such as one on polygamy (Q.S. al-Nisa’ 4: 3); on inheritance, “*To the male a portion equal to that of two females*” (Q.S. al-Nisa’ 4:11); or on divorce (Q.S. al-Baqarah 2: 228-9). These are verses that are always quoted to justify men’s superiority over women and their privileged status and rights. When read literally and with male-chauvinistic mindset, these verses are perfect arguments on which gender biased laws of *fiqh* are grounded by conservative exegetes.

Of the several gender-biased verses, the most critical and influential verse in shaping patriarchal mindset is the pivotal verse of Q.S. al-Nisa’ 4:34. In most classical exegesis, this verse is interpreted categorically to imply gender and sexual hierarchy, with women as sexual objects at the service of men. This conservative reading of the Qur’anic verses is widely circulated, reinforcing the already deeply rooted patriarchy prevailing in most Muslim societies. Although modern methodologies of interpreting religious texts that accord more justice to women now exist, such conservative male-centered readings remain popular. Below is the gender-biased interpretation of the verse in question by several conservative exegetes, such as al-Tabari and al-Baydawi, who read it as:

Men are in charge of / are guardians of / are superior to / have authority over/ women (*al-rijalu qanwamuuna ‘ala l-nisa’*) because God has endowed one with more / because God has preferred some of them over others (*bi-ma faddala Allahu ba’dubum ‘ala ba’din*) and because they support them

from their means (*wa-bi-ma anfaqu min amwalihim*). Therefore, the righteous women are obedient, guarding in secret that which God has guarded. As for those whom you fear may rebel (*nushuz*), admonish them and banish them to separate beds, and beat them. God exalted, Great (Stowasser 1998, p. 33)

The same verse was interpreted by Imam Nawawi Al-Bantany in a similarly gender-biased manner in his book *Uqud-u 'l-Lajain fi Bayan Huquqi Zaujain*. This book on woman-man relations within marriage is popular and widely used among *pesantren* (Islamic boarding schools) in Indonesia; the writer was a cleric born in Banten, one of Indonesia's provinces, and spent his later life and wrote this book in Mecca. This classical book, used on the subject of sex education, is highly influential in shaping the students' views on gender hierarchical relations. The following is a citation of what he wrote in *Uqud-u 'l-Lajain*:

Allah has revealed, 'Men are leaders of women,' which means that men lead women; he is her leader, her great superior, her judge, and her educator, if the woman deviates. 'Because Allah has given some of them more than some of the others', meaning that men are more priority than women, and men are better than women. Therefore, all prophets are men; also, the highest authorities are in the hands of men, based on Prophet Muhammad's saying, 'A group (*qaum*) will not be fortunate if they trust their leadership to women,' *hadith* retold by Bukhari from Abd. Al-Rahman bin Abi Bakrah from his father. Thus is the position as a judge and others. "And because they have spent some of their wealth', which is in the forms of *mahar*, *nafaqah*, expenditures obligated by Allah on men as mentioned in the Qur'an and the *sunnah*. Therefore men are more privileged than women by nature (*fi nafsihi*). Men are more privileged than women, and therefore should share their privileges. Therefore it is appropriate that men become leaders for women, as mentioned in the words of Allah SWT, 'For men is one degree higher. (My translation)

The translation of al-Maududi (in Hassan 1999, 354), similarly, is explicit in constructing gender inequality, "Men are the managers of the affairs of women because Allah has made the one superior to the other." A more gender-friendly translation is made by Yusuf Ali (1989, p. 185) as follows.

Men are the protectors and maintainers of women, because Allah has given the one more (strength) than the other, and because they support them from their means. Therefore righteous women are devoutly obedient and guard in (the husband's) absence what Allah would have them guard. As to those women on whose part you fear disloyalty and ill-conduct, admonish them (first), (next)

refuse to share their beds, and (last) beat them (lightly); but if they return to obedience, seek not against them means of annoyance (Ali 1989. p. 185)

The above citations show how the same text can be interpreted differently, shaped by the exegetes' backgrounds. Crucial to the understanding of this verse, whether or not it is oppressive to women, however, is how the words *qanwam*, *qanitat*, and *nushuẓ* are interpreted. Proponents of women's rights in Islam such as Amina Wadud, Azizah al-Hibri (1982), and Riffat Hassan (1999) argue that, linguistically, *qanwamun* means 'breadwinners' or 'those who provide a means of support or livelihood' (Hassan, in Barlas 2002, 186). Thus, *qanwam* cannot be understood as to imply men's superiority as widely interpreted by conservative exegetes. As to gender relations, the Qur'an has clearly appointed women and men each other's *awliya*, or mutual protectors, which it could not do if men were in fact more superior to women and become their 'managers'. Quoting al-Hibri, Barlas (2002, 187) argues that men as a class are not *qanwamun* over women as a class, because men are only *qanwamun* over women in matters where God gave *some* of the men more than *some* of the women, *and* in what the men spend of their money. By this rule, al-Hibri (in Barlas 2002, 187) concludes that "no one has the right to counsel a self-supporting woman." In this context, Fazlur Rahman (1980, in Barlas 2002, 187) also argues that a wife's economic self-sufficiency and contribution to the household reduces the husband's superiority, "*since as a human, he has no superiority over his wife.*"

Engineer (2000, 78-79), quoting an Indian exegete, Maulana Usmani, submits that the verse *bima fadhalallah ba'dhubum 'ala ba'd* (Allah has given some of them more than some others) does not at all indicate men's superiority. He points out that the pronoun *hum* in Arabic refers to both male and female; hence, the verse is a general statement and applies to both men and women. Maulana Usmani's interpretation of the verse is that men have certain qualities that women don't, and women have certain qualities that men don't; and this does not mean that one is superior to the other. He has observed women doing men's (typical) work and men doing women's (typical) work, and both are good at what they are doing. This, according to Maulana Usmani, is the spirit of the Qur'an implied in the verse.

Another crucial word in the verse is *qanitat* which is often interpreted by conservative exegetes as 'wifely obedience.' However, progressive exegetes such as Ahmad Ali (in Engineer 2000, 76), translate it as obedience to God and give a note that in the Arabic language, the word *qanitat* means submission or obedience to God and nothing else. The classical exegete, al-Razi, translates *qanitat* into submission to both God and the husband. Wadud (1999, 70) and Siddique (in Barlas 2002, 187) point out that the Qur'an uses the word *qanitat* in other contexts to refer to human behavior towards God; we cannot, therefore, assume that it refers to the wife's conduct alone. Indeed, as Wadud (77) illustrates, the Qur'an "never orders a woman to obey her husband. It never states that obedience to their husbands is a

characteristic of the ‘better women’; nor does it make “a prerequisite for women to enter the community of Islam.” The Qur’an did not ask even the wives of the Prophet to obey him, nor did he force obedience on them. Similarly, while exegetes translate *nushuz* as disloyalty and ill conduct on the wife’s part, in the Qur’an it refers to a general state of marital disorder.

Quoting Pervez, a Pakistani exegete, Engineer (2000, 76) gives a completely different interpretation to this verse. He believes that the husband-wife relationship is not such that one is superior over the other, but one of friendship (*rafakat*). Both husband and wife are demanded to submit to Allah’s will. Therefore, the Qur’an never recommends that a husband beat his wife, whatever her mistake is. He contends that since the verse is not talking about husband-wife relations, but man-woman relations in general, the word *nushuz* (rebellion) does not refer to a wife’s rebellion against her husband. It refers to the rebellion of women in general regarding the predestined functions which, according to him, may lead to *fauḍiyat* (anarchy) and therefore needs to be prevented, if necessary by imposing physical punishment. Hence, *wadhribubunna* (beat her), according to Parves, does not refer to wife beating, but the imposition of physical punishment by the appropriate authorities to women who rebel against their determined functions.

It is interesting to observe the different meanings given by exegetes to the word *wadhribubunna*. Ahmad Ali (Engineer 2000, 76) known for his gender-friendly interpretation, understands the word as “go to bed with her!”, strikingly different from the common translation “beat her.” For his uncommon understanding, Ali refers to al-Raghib’s *al-Mufradat fi Gharib al-Qur’an* (Beirut, n.d., see the word *dharaba*, p. 294-5). In this book, al-Raghib points out that the word *dharaba* metaphorically means to have sexual relations. Wadud (1999, 76) contends that *dharaba* can mean “to strike” but also “to set an example” and is not the same as *dharaba* which means “to strike repeatedly or intensely.” Hence, the verse should be interpreted as “prohibiting unchecked violence against females. Thus, this is not permission, but a severe restriction of existing practices.” Another interpretation is proposed by Rafi Ullah Shahab (in Barlas 2002, 188-9), who says that *dharaba* also means “to prevent”; on his reading, the verse is instructing the husbands to “leave (the wives) alone in their beds and prevent them from going outside of houses.” This reading of *dharaba* as confinement accords with Riffat Hassan’s (355-56) who points out that in a “legal context” the word *dharaba* means ‘holding confinement.’ This reading is in conformity with the Qur’an’s counsel to husbands to deal with their wives kindly.

Misogynistic Hadith and Patriarchal Fiqh: Other Sources of Discrimination

Hadith are statements, actions, *taqrir* (determination), and matters attributable to the Prophet Muhammad (PBUH). Linguistically, it means “tradition” and the verbal reflection of the actual practices (*sunnah*) of the Prophet (Akhmad Minhaji 2001, p. 32). Unlike the Qur’an, which took a relatively shorter period to be codified (compiled in the form of *mushaf* during the Abu Bakar caliphate—upon the advice of

Umar ibn Khattab—and standardized by Uthman ibn Affan), *hadiths* needed longer time for their documentation. Pioneers of the codification of *hadith* such as al-Bukhari, Muslim, Ibn Majah, al-Turmuzi, Abu Dawud, and al-Nasa'i (Nurcholis Madjid 1997, p. 241) lived in the second or third centuries of *hijriyah*. The period spent waiting for the documentation of the *hadith*, almost three centuries, was useful in resolving controversies, present even during the life of the Prophet himself, on whether or not the *hadiths* were to be documented.

In using *hadith* as the second source of Islamic teachings, it is important that they be read in a comprehensive way. In his controversial book, *as-Sunnah an-Nabawiyah Baina Ahl-Fiqh wa Ahl al-Hadith (The Prophet's Sunnah Between the Fiqh and the Hadith Scholars)*, a moderate Ikhwanul Muslimin activist scholar, Muhammad al-Ghazali, has brought into the attention the need to approach the Prophet's *hadith* more cautiously (Wawan GA Wahid, in Hamim Ilyas et al 2003, 158). This precaution is necessary to avoid *a priori* perception characterized by textual and rigid understanding of the *hadith*. The concern for *hadith* as a source of Islamic laws is also expressed by Rashid Ridha, one of a number of scholars who have doubts about the authenticity of the *hadith* (Mochamad Sodik 2003, xxvii).

As a second level legal source, *hadith* should not contradict the primary source, the Qur'an. However, studies show that there are many *hadiths* that appear to be contradictory to the gender equality spirit of the Qur'anic verses. In these "misogynistic *hadiths*," a term coined by Fatima Mernissi (1991) to refer to *hadiths* that are hateful to women, women are described as merging behind the shadow of men, with no independent identity, a second-class human creature in the domestic and public spheres. From the time she is in her mother's womb, reaches childhood, adolescence, marriage, till she dies and returns to her Creator, a female is treated differently from her male folks. This is rightfully expressed by an Indonesian Muslim scholar, Budhy Munawar Rachman (1995, pp. 13-14), who submits that there are four misogynistic 'wombs' in the life of a woman. First, is her mother's womb; second, her parents' womb until she gets married; third, her husband's womb, i.e. the house which she is not supposed to leave without his consent; and fourth is her graveyard womb when she returns to her Creator.

In the Islamic intellectual tradition, the interpretation of Qur'anic verses and *hadiths* is widely known as *fiqh*, an intellectual product of Muslim jurists, which cannot be disassociated from their socio-cultural context and which, simultaneously, is a judicial response to the legal problems in the then real life. Culture is, therefore, influential in shaping the character and nature of *fiqh*. In addition, the process of *fiqh* formation may have some political elements, associated with the interest of its jurists or those in power at that time. Interpretation and understanding that a wife should submit to her husband, otherwise she is considered as *nushuz* or rebellious; or that she should not refuse her husband's sexual advances otherwise she will be cursed by the angel; or that she should stay at home and get out only with her husband's permission, etc. are the products of *fiqh*. Almost none of the teachings of *fiqh* which

becomes a legal reference in the public and domestic lives of Muslims have a gender perspective. Rather than defending women's interests, the existing *fiqh* products have, instead, been discriminative to women and placed them in a secondary position. *Fiqh* is often used to justify resistance against women's empowerment or gender equality and equity. Of the various disciplines within established intellectual tradition of Islam, unfortunately, *fiqh* is the most dominating branch of religious knowledge and the most influential in shaping Muslims' religious way of thinking (Nurcholis Madjid 1992, p. 235).

A number of critical writings by Indonesian Muslim scholars of *fiqh*, misogynistic *hadiths*, and gender-biased exegeses can be consulted. Mahfudh (2003), for example, emphasizes the need to look at *fiqh* in a holistic and comprehensive way, not just as a compilation of Islamic law. Viewing *fiqh* normatively and reducing it to just a compilation of law may alienate this discipline from society at large. *Fiqh* should not be seen as static and textual; it is dynamic and should be understood in the context of solving and fulfilling three types of human needs: *dharuriyah* (primary), *hajjiyah* (secondary), and *tahsiniyah* (tertiary). This social *fiqh* is characterized by: contextual interpretation; shift from textual approach to methodological approach; basic verification of what is fundamental teaching and what is operational; *fiqh* present as a social ethic; and, introducing philosophical thinking methodology, especially on social and cultural issues (xxxv).

The most recent book, *Kembang Setaman Perkawinan* (The Garden of Marriage) (2005), seeks to position a more equal and equitable gender relation within marriage. Written by Forum for the Studies of 'Yellow Books'²⁰/FK3 under leadership of former First Lady Sinta Nuriyah Abdurrahman Wahid, the book is a review of Sheikh Nawawi al-Bantani's *Uqud al-Lujjain fi Bayan Huquq az-Zanjain* which is popular and widely used as a reference for marital and sex education among Muslims. The book critically reviews stereotypical and gender-biased interpretations on various issues and topics and offers Qur'anic verses or *hadith* which support justice for women and equality between wife and husband in marriage.²¹ On wife beating, for example, the book argues that the 11 reasons given in *Uqud al-Lujjain* which allows a husband to beat his wife are the writer's personal view (112). This personal view runs counter to the Prophet's attitude to his wives, as he never beat them and his saying in *hadith* that a husband should treat his wife in the best possible manner.

Another book, *Dari Syariat Menuju Maqashid Syariat: Fundamentalisme, Seksualitas dan Kesehatan Reproduksi* (From Syariat To Maqashid Syariat: Fundamentalism, Sexuality and Reproductive Health) (2004), documents the impact of religious fundamentalism on the discriminatory attitudes of majority Muslims

²⁰ *Kitab Kuning*, literally meaning 'yellow books', refers to books in Arabic, usually old, on religious subjects such as *fiqh*, *hadith*, *tafsir*, etc. They are widely used in Islamic boarding schools (*pesantren*), often viewed as 'sacred' and unchangeable, and the most authoritative sources of Islamic law.

²¹ 11 reasons that allow a husband to beat his wife, according to *Uqud al-Lujjain* are: 1)

against women. A compilation of literature studies of misogynistic *hadith* is published in Ilyas' *Perempuan Tertindas? (Women Oppressed?)* (2003). The studies unveiled that misogynistic *hadith* give a complex portrayal of women; in general, women are blended behind the shadow of men and become secondary creatures in public and domestic spheres. Among the *hadiths* critically reviewed are: the myth that women were created from men's ribs; the myth that women lack intellectual capacity and religiosity; the myth that women have to enslave themselves to their husbands; and, the myth that women cannot be legitimate as *imam* (leader) of prayer.

The study demonstrates the discriminatory stance of *fiqh* against women by listing different treatments it regulates for males and females from the moments they are babies to the time when they are in the graveyards. In general it can be inferred from these *fiqh* injunctions that the conventional *fiqh* scholars view women as weaker, dirtier, need more protection, a sexual threat, dependent, lacking intellectual capacity, etc. Because of these negative presumptions on women, *fiqh* produces gender-based discriminatory law among others: women receive half men's inheritance; women cannot lead prayers in the presence of men; baby girl's urine is to be washed with running water while that of a baby boy is enough just by sprinkling water; women may not fast *sunnah* without her husband's consent while men are not required to have the wives' consent; woman dead body has to be covered with 5 layers of *kafan* (cloth covering dead bodies) while for men, 3 layers is enough; it is recommended (*sunnah*) that woman's dead body be protected with an umbrella, while that of a man is not; women should be accompanied by male *mabram* when traveling for *haj* while men are not. There are many other instances of how *fiqh* treats women as 'the other,' different from how it treats men.

In opposition to these critical writings of Indonesian scholars that promote equality and justice for women, one finds a number of widely circulated books, usually small and using simple and easy to understand language, which defend and entrench patriarchy and oppression of women using religious justification. The topics of these books, as can be predicted, concern centuries-long controversies such as polygamy, objectification of women, or women as a source of sexual threat (*fitnah*) that should be covered and restricted in the domestic sphere. Examples include: *Wanita-Wanita Penghuni Neraka (Women Residing in Hells)*,²² *Terkadang Satu Istri Tidak Cukup (Sometimes One Wife Is Not Enough)*,²³ *Wanita Itu Aurat: Debat Hangat Seputar Hijab & Cadar (Women Are Aurat: Hot Debates Around Hijab & Veils)*,²⁴ *Kemana Pergi Wanita Mukminah (Where Are the Women Believers Going)*,²⁵ Nippan,

²² Abdul Muiz Khothob, *Wanita-Wanita Penghuni Neraka (Women Residents of Hells)*, (Jakarta: Penerbit Akbar, 2002)

²³ Hani al-Haj, *Terkadang Satu Istri Tidak Cukup (Sometimes One Wife Is Not Enough)*, (Jakarta: Penerbit Al-Kautsar, 2003)

²⁴ Ahmad Mahmud ad-Dieb, *Wanita Itu Aurat: Debat Hangat Seputar Hijab & Cadar (Women Are Aurat: Hot Debates Around Hijab & Veil)*, (Jakarta: Cendekia Sentra Muslim, 2002)

²⁵ Muhammad Said Ramadhan, *Kemana Pergi Wanita Mukminah (Where Are Women Believers Going)*, (Jakarta: Gema Insani Press, 2001)

Muhammad Abdullah, *Membahagiakan Suami Sejak Malam Pertama* (Making the Husband Happy Since the First Night),²⁶ or *Mempersoalkan Wanita* (Debating About Women).²⁷

On the issue of marital sexuality, for example, *fiqh* has shown its oppressive face to women by referring to misogynistic *hadiths*. One of them, retold by two most reliable *rawi*, Bukhari and Muslim, and hence is viewed as substantively accurate, is quoted as follows. The *hadith* says: “*Idza da’a rajul imra’atahu ila firashi fa aba wa huwa ghadlban la’anatha al-mala’ikah batta tusbaha*” (If a husband wants to have sex with his wife and the wife refuses him and the husband is angry, the angels will curse her till morning). A lot of marital rapes or forced sex incidences within marriage occur because of the Muslims’ believe in this *hadith*. Women themselves are so convinced on the truthfulness of this angel’s ‘intervention’ in sexuality that they prefer to undergo the suffering than be ‘cursed by the angels.’

In his *Book of Counsel for King*, Al-Ghazali devotes chapter 7 to “Describing Women and Their Good and Bad Points,” wherein he states:

A wife will become dear to her husband and gain his affection, firstly by honoring him; secondly by obeying him when they are alone together; and (further) by bearing in mind his advantages and disadvantages, adorning herself (for him only), keeping herself concealed (from other men) and secluding herself in the house; by coming to him tidy and pleasantly perfumed, having meals ready (for him) at the (proper) times and cheerfully preparing whatever he desires; by not making impossible demands, not nagging; keeping her nakedness covered at bedtime, and keeping her husband’s secrets during his absence and in his presence (As quoted in Farah 1984, p. 41)

The above citation is part of Al-Ghazali’s *magnum corpus*, *Ihya’ Ulumuddin*, a widely prestigious series of classical books which have inspired subsequent writings on similar themes and topics. One of them is Imam Nawawi’s in his widely used book in Indonesian Islamic boarding schools, *Uqud al-Lujain*, who said that if a wife declines servicing her husband’s invitation for sex, all her virtuous deeds can be wiped out and she can be threatened with a very serious torturing. He bases his opinion on the following *hadith* retold from Ibn Abbas (Nipan 2000, p.264):

“Once I heard the Prophet (PBUH) saying: Even if a wife is active every day in performing night prayers and *sunnah* fasting, but if she lingers, even

²⁶ Nipan, Muhammad Abdullah, *Membahagiakan Suami Sejak Malam Pertama* (Making the Husband Happy Since the First Night), (Yogyakarta: Mitra Pustaka, 2000)

²⁷ Nazhat Afsa and Khurshid Ahmad, *Mempersoalkan Wanita* (Debating About Women), (Jakarta: Gema Insani Press, 2001)

just for an hour, when asked by her husband to bed (for sexual relations), in the hereafter she will surely be dragged with her hands handcuffed and chained, and she will be placed together with the evils at the lowest and most insulting part of the hell.”

The above *hadiths* are certainly contradictory to the spirit of egalitarianism and gender equality and equity advocated in the Qur'an. They are also not in line with the *hadith* that is retold by Imam Ahmad and at-Tarmidzi, as quoted by Wahbah az-Zuhaili (1989, p.329), '*Akmal al-mu'mininin iman an absanubum kbuluqan, wa kbizarukum kbizarukum li nisa'ihim*' (A *mu'min* with the most perfect *iman* is one with the best *akbalaq*, and the best of you are those who are best to their wives). There are a number of *hadiths* portraying the Prophet's gentle and respectful attitudes toward women, and his prohibition to his followers not to treat their wives roughly and not to beat them.

In a patriarchal context such as that of the Prophet's time, domestic violence, unsurprisingly, was a common phenomenon. The Prophet's *sahabah*, whose attitudes in social life were to be modeled after the Prophet, practiced such violence in their families. One of them, Zubair ibn Awam, for example, in the light of education (*ta'dib*), beat his wife, Asma' binti Abu Bakar, daughter of Caliphate Abu Bakar and one of prominent women in her time, and made her seriously injured. The *anshar sahabah*, like Ka'ab and Sa'ad bin al-Rabi' did the same acts in educating their wives (Khalil Abdul Karim 1997, pp.409-411). The writer also refers to a *hadith* (p.408), reported from Ummu Kulsum binti Abu Bakar as-Siddiq, which tells us that in one night, a group of some seventy women came to the Prophet and complained about the beating perpetrated by their husbands. The Prophet said: "Indeed, a large group of women gathered here, in my house, complaining about their husbands. They beat their wives and did not treat them well. Those who teach women to become bad do not belong as my followers." The banality of domestic violence among Muslim communities aroused the concerns of the Prophet. In one of his *khutbah*, the Prophet angrily reprimanded men in order not to beat their wives "like they do their slaves, and then at night they will sleep with them" (M. Habib, in Marhumah and M. Alfatih Suryadilaga 2003, p.310).

In addition to marital sex and wife beating, another issue within the domain of *fiqh* which is often problematic to women is *nafaqah*. In the Qur'an (al-Baqarah, 2:215), *nafaqah* is given not only because of marital relation, between husband and wife, but also to those who have blood relation such as father and children, and even to others such as the orphans. The theological basis for the husband's responsibility in providing *nafaqah* is mentioned in Q.S. al-Baqarah, 2:233 and al-Nisa', 4:34 (as earlier explained). The relationship between *nafaqah* and family leadership is clearly stated in Q.S. al-Nisa' 4:34. The verse states that the husbands are *qanwam* for their wives because Allah has given some of them more than the others and because they have provided *nafaqah* to the wives. It is obvious from the verse that the leadership

of men over women in the family is not caused categorically by their gender type (male/female), but because of the social functions they bear in providing the *nafaqah* (Engineer 1996, p.45). Hence, there is an *illat* (reason) for relating *qawwam* with the provision of *nafaqah*. The provider of *nafaqah* may act as *qawwam* in the husband-wife relationship. If the wife is the breadwinner and has a bigger share in contributing to the family economy, she can be the *qawwam* for the family. This is based on the fact that she bears a bigger burden of social function than the husband. In addition, the Qur'anic statement of *qawwam* is contextual, and not normative, and, therefore, its implementation should consider the social context.

Fiqh does not regulate who the head of the family is, but clearly mentions that a husband is obliged to provide *nafaqah* for his wife in the forms of foods (*tha'am*), clothing (*kismah*) and residence (*maskan*) (ZA Noeh, in Munir 1999, 151). If he fails to provide *nafaqah*, he is considered indebted to his wife. Following the principles of complementarity and mutuality, a husband's obligation becomes his wife's right, and vice versa. With regards to *nafaqah*, the wife is entitled to receive it from her husband and, therefore, she can claim for it when it is not fulfilled. The provision of *nafaqah* by the husband implies consequences from the wife's side, i.e. her obedience (*ta'at*). Failure from the wife's side to obey her husband can be considered as *nushuz* (disobedience) which bears punishment by the husband. On the contrary, if the husband fails to perform his obligation to provide *nafaqah*, his right to have his wife's obedience is also nullified.

In the context of Indonesia, this *fiqh* injunction is interpreted with ambivalence and ambiguity. For example, the Marriage Law No. 1/1974 contains the principle of gender equality that "Rights and status of the wife are equal to the rights and status of the husband within the family as well as the social lives." However, in the Presidential Instruction No. 1/1991 on the Islamic Legal Compilation (KHI) covering laws on marriage, inheritance, and *wakaf* which was widely accepted by *ulamas* in Indonesia, in its Article 79, it is mentioned that the husband is head of the family and the wife is the housewife. This article has been successful in sustaining the stereotypical role of women in the domestic sphere and in reinforcing men's leadership and women's subordinate role in the family.

Toward a Gender-Equitable Fiqh

Fiqh is one of three components of *sharia* (*al-syariah al-tsalatsah*) (ZA Noeh, in Munir 1999, 152) dealing with the legal system, and referring to al-Islam. The other two components are *tawhid/ushuluddin* which refers to al-iman and constitutes the theological system, and *tasawwuf/akhlaq* referring to *al-ihsan* and constitutes the ethical and spiritual system. As product of human intelligence directly referred to the Qur'an and *Hadith*, and as part of *sharia*, *fiqh* should naturally reflect the goal of *sharia* (*maqasid al-sharia*) and the universal values of the Qur'an such as justice, equality, deliberation, and good association between women and men (*al-mu'asyarah bi al-ma'ruf*).

Islam views that sexual/gender differences should not result in differences in the enjoyment of rights by men or women. Both men and women have the same rights, as contained in *ad-Dharurat al-Khamsah*, i.e. right to a religion (*hifẓ ad-din*), right to life (*hifẓ an-nafs*), right to freedom of thinking (*hifẓ al-'aql*), right for procreation (*hifẓ an-nasl*), and right for wealth and property (*hifẓ al-mal*). Some *ulemas* add with right for self-dignity (*hifẓ al-'ird*) (Sahal Mahfudz, in Syafiq Hasyim 1999, 114).

Unfortunately, *fiqh* as elaborated earlier is filled with patriarchal and gender biased nuances in its formulation of laws. The question is, therefore, should such gender inequitable construction of *fiqh* be sustained? Would dismissing conservative, male-centered *fiqh* equivalent to deviating from the Qur'anic principles? Or should we transform the *fiqh* by constructing a new *fiqh* that reflects gender justice and is in line with the goal of *sharia* and the universal values of the Qur'an, even though it may mean confronting deeply rooted convictions that *fiqh* is a final and perfect product of *ijtihad* by authoritative *ulemas*? The latter should be the answer to the question. As part of *sharia*, *fiqh* should reflect the goal of *sharia* and the fundamental values of Islam such as justice and equality between women and men.

The reform of *fiqh* should be geared toward promoting the humanistic face of Islam especially on women. This could be done only if we could get out of the current *fiqh* on women and move to a *fiqh* that is more humane and incorporates current socio-cultural realities and the need to promote justice for women in its process of codifying the law. Conventional *fiqh* which is largely based on the verses of Medina and the misogynistic *hadiths* should gradually shift its bases of law with verses and *hadiths* of the Meccan period, as advocated by *Ustadh* Mahmoud Mohamed Taha, a Sudanese Muslim scholar and reformer (Taha 1987, Taha, in Kurzman 1998, An-Na'im 1996).

Medina verses, to which a large number of *fiqh* laws refer, such as Q.S. al-Nisa' 4:34 which is pivotal in constructing gender stratified relations, are substantively distinct from the Meccan ones. The Meccan verses imply messages emphasizing the fundamental values of justice and the equality and inherent dignity of all human beings. For example, the Qur'an during the Mecca period always addresses the whole of humanity using phrases such as "O, children of Adam" and "O, humankind." Moreover, all humankind was described in terms of honor and dignity, without distinction as to race, color, gender, or religion (54). Numerous verses on the equality of women and men, as presented earlier, such as Q.S. al-Hujurat, 49:13, were revealed in Mecca. The content of the message shifted after the migration to Medina, as it began to distinguish between men and women, Muslims and non-Muslims, in their status and rights before the law. All the verses (and related Suna) that constituted the basis of discrimination against women and non-Muslims were of the Medina and not the Mecca stage.

The view of *Ustadh* Mahmoud Mohamed Taha, as reflected by An-Na'im, is that the shift of content of the message, from universal into particular, is not because of the time and place of revelation, but essentially because of the audience to which

they are addressed (1996, 55). This shift of audience was dictated by the violent and irrational rejection of the earlier message. This also shows that the message of Islam can, and in fact was, adjusted to the needs and capabilities of its audience. The Medina verses are characterized by the phrase such as ‘O believers,’ addressing a particular nation, while the Mecca verses frequently begin with ‘O humankind,’ addressing the whole human kind with universal messages on justice, equality, and freedom, etc.

The public law of *sharia* (or *fiqh* as widely used in our previous discussion) was based on the Qur’an of the Medina period, rather than that of the Mecca stage. An-Na’im contends that

...this was done by the founding jurists through the process of *naskh*, by holding the subsequent texts of the Qur’an and Sunna of the Medina stage to have repealed or abrogated, for the purposes of the positive law of *Sharia*, all previously revealed inconsistent texts of the Mecca stage. The question that would then arise is whether such *naskh* is permanent, thereby rendering the earlier texts of Mecca inoperative for posterity. According to *Ustadh* Mahmoud, this cannot be possibly so because if that were the case, there would have been no point in having revealed the earlier texts. He also argued that to deem *naskh* to be permanent is to deny the Muslims the best part of their religion’ (56)

The proposal of *Ustadh* Mahmoud on the methodology of reformation, as presented by An-Na’im (1996, 56), is by shifting

...the evolution of the basis of the texts of the Medina stage to that of the earlier Mecca period. In other words, the evolutionary principle of interpretation is nothing more than reversing the process of *naskh* or abrogation so that those texts which were abrogated in the past can be enacted into law now, with the consequent abrogation of texts that used to be enacted as *Sharia*. Verses that used to be enacted as *Sharia* shall be repealed, and verses that used to be repealed shall be enacted as modern Islamic law. Since this proposal would found modern principles of public laws on one class of Qur’an and Suna texts as opposed to another class of those texts, the resultant body of law would be as Islamic as *Sharia* has been.”

CONCLUDING COMMENT

Reforming Islamic law, *fiqh*, from within is not without risk. Despite being a product of human intellect in a gone era, *fiqh* continues to be viewed as a near-

sacred, particularly because of its direct reference to the Qur'an and *hadith*. It has remained mute and unchangeable for centuries. It therefore struggles to maintain relevance in these modern times. It is not easy, however, to differ from this mainstream religious thinking or *fiqh*. Instances abound where reformist thinkers were punished, branded as infidel, and even executed. The Sudanese reformer Mahmud Mohamed Taha was executed because of his unorthodox view that the earlier Qur'anic revelation in Mecca should be given greater importance (Taha, in Kurzman 1998, 270). Liberal thinkers who seek to incorporate new perspectives of democracy, human rights, pluralism, or gender such as Muhammad Abduh, Qasim Amin, Thaha Husain, amongst others, are bitterly criticized as being un-Islamic and having no valid methodology to explore the *sharia* law (Said 1995, 268). More branding to reformers can be found in websites of radical Islamic movement in Indonesia.²⁸

The sacred message of religion was initially revealed by God in response to a certain problem in human life. But in its development, religion has often become part of the problem itself. In the case of Islam, for example, the religion through its *fiqh* laws has allegedly strengthened the stratified gender and sexual relation arising out patriarchal system. This unbalanced relation has created various forms of injustices for the less powerful, women. Domestic violence is the most obvious reflection of these unbalanced gender relations in Muslim societies. This phenomenon, as shown by the case studies, prevails among the educated and uneducated couples with different socio-economic status.

There is a bigger challenge for the reform from within Islamic law, *fiqh*. A lot of studies have been conducted to criticize the discriminatory stance of *fiqh* and offer an alternative discourse which is more equitable to women. Supporters of classical *fiqh* scholars believe that the current reformers do not have enough scholarship and qualifications to challenge the views of classical scholars. In spite of these challenges and difficulties, a reform from within *fiqh* needs to be sustained.

The methodology proposed by *Ustadh Mahmud Taha*, of giving priority to Meccan, rather than Medina, verses, is also advocated for by many reform thinkers in Indonesia. The problem is how to specify these universal teachings, and make them operational in every-day life of Muslims. The shift from *sharia* to *maqashid al-sharia* as recommended by Imam al-Syatiby is also widely proposed. However, this shift of paradigm from particular to universal teachings needs further elaboration. A series of *ijtihad* (serious efforts) need to be taken by scholars to operationalize the universal teachings. This is the locus of contestation between classical thinkers and reformers. We can learn from our previous experience. The passage of the Anti Domestic Violence Law, for example, involved years of advocacy and lobbying efforts. For a reform of *fiqh*, these efforts need to be multiplied because it involves the change of a discipline that most people view as sacred.

²⁸ For example M. Shiddiq al-Jawi, *Ushul Fikih Palsu Kaum Liberal (False Ushul Fiqh of the Liberals)*, www.hizbut-tahrir.or.id, www.swaramuslim.net, or www.hayatulislam.net

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