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Religion & Feminism: Inheritance Law from the Perspective of Gender Equality

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Abstract

Feminism is now attracting the attention of Muslims as a result of the influence of globalization. This includes disturbing inheritance law issues for women. The purpose of writing this article is to describe the problems of inheritance law for women from Amina Wadud's perspective and how Islam explains it in detail. The method used is literature study. The results of this research explain that in Islam, women are positioned as noble and empowered creatures. The Prophet Muhammad SAW taught to honor mothers three times before fathers. Women who were once considered insignificant are now respected. Islamic inheritance law emphasizes fairness between men and women.

Keyword: Feminism, Gender, Inheritance Law, Religion, Women

Abstrak

Feminisme kini menarik perhatian umat Islam akibat dari pengaruh globalisasi. Termasuk di dalamnya mengusik permasalahan hukum waris bagi perempuan. Tujuan penulisan artikel ini adalah untuk menguraikan problematika hukum waris bagi perempuan dalam perspektif Amina Wadud dan bagaimana Islam menjelaskannya secara terperinci. Metode yang digunakan adalah studi literatur. Hasil penelitian ini menjelaskan bahwa dalam Islam, wanita diposisikan sebagai makhluk mulia dan diberdayakan. Nabi Muhammad SAW mengajarkan untuk menghormati ibu tiga kali sebelum ayah. Wanita yang dulunya dianggap tidak berarti kini dihormati. Hukum waris Islam menekankan keadilan antara pria dan wanita.

Kata Kunci: Agama, Feminisme, Gender, Hukum Waris, Perempuan

Introduction

Feminism today is an interesting topic among Muslims. Globalization has influenced the rise of feminism in the Islamic community. Western ideas of democracy and emancipation push Muslims to reconsider women's historical marginalization. The feminist concepts popular in the West during the 19th and 20th centuries serve as models for women's liberation in some Muslim-majority countries.

Beginning with Egyptian intellectuals who studied in Europe, the feminism that was prevalent in Europe was taken up by them after returning from Europe and then developed into what is known as Tahrir al-Mar'ah, or women's liberation. The Tahrir al-Mar'ah movement grew very quickly because people increasingly realized the oppression, especially that experienced by women, caused by colonialism and modernism (Hasyim et al., 1999). Feminism in Islam strives to realize a post-patriarchal Islam, focusing on the liberation of women and men from the bondage of traditionalism, authoritarianism, tribalism, racism, and sexism. The goal of Qur'anic Islam is to establish peace (Achmad, 2020).

The practice of social life during the time of the Prophet Muhammad gave equal positions to women and men. Islam dismantled the patriarchal structure of the jahiliyyah by giving rights to women, such as inheritance rights, and changing the negative view of the birth of girls (Engineer, 2000). The period before Islamic civilization saw gender inequality where women's rights were not respected, and they were considered as inherited property. This was a major human rights violation. Women later realized gender discrimination and demanded equal rights regardless of gender differences.

For example, in Balinese society, daughters have inheritance rights if they fulfill their dharma. Liberation demanded equal inheritance rights with sons. Protection of women's inheritance rights in Bali is strengthened by government regulations (Hastabrata & Septyningrum, 2024). The people of Aceh follow Islamic law with different customary orders and patterns. Peunulang assets, similar to conditional hibat, are used for the families of married daughters. Giving hareuta peunulang aims to avoid injustice among future heirs (Dinda Kania Anggraini, 2023).

Feminism is gaining support from society, with both women and men recognizing the importance of equal rights. In 1979, many countries signed the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), agreeing to uphold gender equality. Before feminism, Islam promoted

principles of justice and equality for women through teachings by Prophet Muhammad SAW, including fair inheritance rights for both genders, as stated in Surah An-Nisa (Azwan, 2021). Even though gender equality has been discussed, many women still lack access (Basri et al., 2022).

Methods

Researchers use a qualitative approach to understand social phenomena through descriptive data collection that is narrative in nature (Pongtiku & Kayame, 2019). The research method used is a literature study (literature review) to collect theoretical information and references on inheritance law in the perspective of gender equality (Nazir, 2014).

The data collection technique used is documentation (Sugiyono, 2014). The main source in this study is Amina Wadud's book entitled *Qur'an and Woman*. While Fatima Mernissi's work entitled *The Veil and The Male Elite: A Feminist Interpretation of Women's Rights in Islam*, several other books and journals are supporting references for this study. Data analysis techniques used with interactive patterns, namely data reduction, data display, and conclusion drawing (Miles et al., 2014).

Result

Feminism theories and figures' views

The rise of the feminist movement is linked to education, consciousness, social class, and socio-culture. This movement emerged because women felt oppressed in the male-dominated patriarchal system.

Feminism, or feminism, is a movement of women who fight for emancipation, equality, and fairness of rights with men. The term comes from the Latin "femina", meaning woman, and came into use in the 1890s. Feminism refers to the theory of equality between men and women and the pursuit of women's rights. Today, the definition includes distinguishing women's rights based on gender equality (Widy N., 2004). So, feminism is a word that does not have a definite meaning that can be formulated as a definition because each feminist movement has its interests that it wants to fight for, but if viewed in general.

Mary Astell (1666) can be called the first true feminist representatives. She was the first writer from England to express and emphasize her views on women. Born in 1666, she was orphaned at the age of 12. In her late teens, she had a terrible experience. In particular, I experienced severe depression when I imagined that my future would be bleak if I could not fulfill my ambitions. Early in his career, he wrote poems expressing his dissatisfaction with the future. None of his relatives were able to help him until he decided to leave his hometown of Chelsea and move to London to try his luck. In 1688, she wrote to the Archbishop of Canterbury to express her despair at not being able to get the same education as men. To her, women were now as intelligent as men and should have access to higher education.

Jeanne Deroin (1805), a French feminist-socialist, also shared the idea that equality will never happen if women are always represented by men. Both women and men have different preferences and should represent themselves accordingly (Albrecht, 2018). Bell Hooks (1952) is an approach to feminism that is critical of the social, cultural, and political structures that oppress women. Hooks proposed an inclusive, anti-racist, and anti-capitalist feminism, and highlighted the impact of power on women, especially black and working-class women (Hooks, 1984).

Islam's View on Feminism

Islam itself does not recognize the feminist movement, Islam is a religion that does not differentiate gender in various concepts and implementations of both worship and social life. In Islam, the position of women and men is the same, having the same glory both in duties and responsibilities as servants. Some theological responses in the Qur'an that assess gender equality are as follows:

- 1) The humanity of women and their equality with men (Q.S. al-Hujurat:13), Allah Subhanahu wa Ta'ala says:

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

Translation: "O people! Indeed, we have created you from a man and a woman, then We made you into nations and tribes so that you may know one another. Indeed, the noblest among you in the sight of Allah is the most pious. Indeed, Allah is All-Knowing, All-Absorbing".

- 2) Outside of natural roles such as in politics, socio-culture, economics, and other social institutions, Islam provides teachings of responsibility and cooperation between men and women as equal partners (Q.S at-Taubah: 71), Allah Subhanahu wa Ta'ala says:

وَالْمُؤْمِنُونَ وَالْمُؤْمِنَاتُ بَعْضُهُمْ أَوْلِيَاءُ بَعْضٍ يَأْمُرُونَ بِالْمَعْرُوفِ وَيَنْهَوْنَ عَنِ الْمُنْكَرِ
وَيُقِيمُونَ الصَّلَاةَ وَيُؤْتُونَ الزَّكَاةَ وَيُطِيعُونَ اللَّهَ وَرَسُولَهُ أُولَئِكَ سَيَرْحَمُهُمُ اللَّهُ إِنَّ اللَّهَ
عَزِيزٌ حَكِيمٌ

Translation: "And those who believe, men and women, some of them (are) helpers for others. They enjoin the ma'ruf and forbid evil, establish prayer, pay the zakat, and obey Allah and His Messenger. Allah will have mercy on them; indeed, Allah is the Mighty and the Wise".

- 3) In carrying out their duties and responsibilities as mukallaf, men and women get the same reward if they obey and the same sin if they disobey, the Word of Allah (Q.S. Al Ahzab: 35), Allah Subhanahu wa Ta'ala says:

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

which means "Indeed, the Muslim men and women, the believing men and women, the men and women who remain in obedience, the righteous men and women, the patient men and women, the solemn men and women, the men and women who give alms, the fasting men and women, the men and women who maintain their honor, the men and women who mention (the name of) Allah a lot, Allah has prepared for them forgiveness and a great reward".

Even in Islam itself, the Prophet made women the most honorable human beings, where he empowered women. Prophet Muhammad Sallallahu Alahi Wasallam, ordered his people to honor a mother three times and then honor the father. So that initially women were considered meaningless who were always enslaved and traded and even killed alive, became respected and respected by men.

Amina Wadud's View on Gender Equality and Women

Amina Wadud focuses on interpreting the Qur'an from a woman's perspective. In her book, *The Qur'an and Women*, she emphasizes the importance of understanding Qur'anic verses in the context of gender equality. She uses a hermeneutical approach to reinterpret scripture and criticizes the patriarchal bias in traditional interpretation. Her theory emphasizes that while the Qur'an does not discriminate against women, the patriarchal culture that interprets the text often perpetuates injustice (Wadud, 1992).

Amina Wadud's five thoughts can be explained as follows, first, contextual and critical interpretation. Wadud argues that the interpretation of the Qur'an has often been dominated by patriarchal male views. She calls for a more contextual

interpretation, prioritizing perspectives that are sensitive to gender issues, and considering the social and historical conditions when the verses were revealed. Amina Wadud proposes the importance of a contextual approach in the interpretation of the Qur'an, which considers the social, historical and cultural conditions when the verses were revealed. So far, many interpretations produced by male scholars have ignored the influence of gender in understanding the text. Wadud emphasizes that contextualization-oriented interpretations will help reveal more inclusive and relevant meanings, especially in issues of gender equality.

Second, gender equality in the Qur'an: Wadud emphasizes that the Qur'an is fundamentally against gender injustice. She points out that verses that are often perceived as containing inequality, if understood more carefully, actually point to the principles of social justice and equality between men and women. Wadud asserts that the Qur'an basically does not treat women as inferior beings or do not have the same abilities as men. On the contrary, the Qur'an teaches equality in rights and obligations, emphasizing the principle of justice. Many verses that are often interpreted to support gender inequality, according to Wadud, can be re-understood in the context of justice and equality.

third, verses related to women. In this book, Amina Wadud analyzes various verses often used to demean the position of women, such as verses about inheritance, women's role in the household, and obligations in marriage. She suggests that these verses must be re-understood in the context of more universal values of justice and equality, rather than within a patriarchal framework. Wadud examines several verses that are often perceived to discredit women, such as verses on inheritance (e.g. QS. 4:11 which states that women's share of inheritance is smaller than men's) and women's role in the household. She argues that conventional interpretations of these verses are often too rigid and do not take into account the social and economic context at the time of revelation.

Fourth, feministic interpretation. Wadud offers a feministic interpretation that highlights how the Qur'anic text can be seen from a woman's perspective. She not only focuses on texts that explicitly mention women, but also how women can play an active role in the interpretation of religion. Amina Wadud introduced feministic interpretation, which aims to see the Qur'an through the lens of women's experiences and perspectives. She invites readers to realize that women also have the right to participate in the interpretation of religious texts. Wadud emphasizes that this

interpretation is not only limited to verses that explicitly mention women, but also to the values contained in the Qur'an about justice, freedom, and humanity.

Fifth, the principle of justice ('adalah). Wadud emphasizes the importance of the principle of justice in the Qur'an, which should include equality between the genders. She points out that many verses emphasizing the principle of justice can be interpreted to support women's empowerment in various areas of life, including in terms of social, economic, and political rights. The principle of 'Adalah (justice) is an important concept that Wadud emphasizes as a foundation for understanding the position of women in Islam. Wadud claims that justice involves not only formal equality between men and women but also ensuring that the differences that exist between the two are not used to discriminate against either party. The Qur'an, she argues, emphasizes genderless justice and the obligations laid out in the Qur'an need to be translated within a broader framework of justice.

Wadud links this principle to the idea that every individual, whether male or female, should be treated fairly without discrimination. Thus, a proper understanding of justice must take into account the existing social and cultural context, and ensure that religious interpretations can serve to improve the well-being of women without compromising their rights. Amina Wadud's thoughts in the *Quran and Women* attempt to challenge conventional interpretations of the Qur'an that often place women in a subordinate position. Through a contextual approach, feminist interpretation, and an emphasis on the principle of justice, Wadud invites Muslims to read the Qur'an in a way that is more inclusive and respectful of women's rights and roles in religious and social life.

Inheritance Law in the Perspective of Gender Equality

Literally, inheritance means the transfer of something from one party to another. If we conclude from the definition in language and terms, inheritance means transferring the rights and obligations of the inheritance from the testator to the parties who are entitled to become heirs in accordance with their respective shares. Inheritance in Islam is regulated in faraidh or Islamic inheritance law to create benefits in the community (Supriyadi, 2016).

The law of inheritance distribution in Islam is regulated in the Qur'an, Hadith, and Ijtihad (the opinion of scholars). In Surah An-Nisa, some verses regulate inheritance and its distribution. The words of Allah SWT (Q.S. An-Nisa, 7):
Allah Subhanahu wa Ta'ala berfirman:

كَيْفَ يَكُونُ لِلْمُشْرِكِينَ عَهْدٌ عِنْدَ اللَّهِ وَعِنْدَ رَسُولِهِ إِلَّا الَّذِينَ عَاهَدْتُمْ عِنْدَ الْمَسْجِدِ الْحَرَامِ فَمَا اسْتَقَامُوا لَكُمْ فَاسْتَقِيمُوا لَهُمْ إِنَّ اللَّهَ يُحِبُّ الْمُتَّقِينَ

means: "For men, there is a right to a share of the inheritance of their parents and relatives, and for women, there is also a right to a share of the inheritance of their parents and relatives, either a little or a lot according to the parts that have been determined".

This verse means that everyone, both men and women, has the right to inherit the legacy of their parents and siblings. The legacy in question is the rest of the testator's property which has been reduced by the obligations of the testator's obligations such as debts and wills.

The division of inheritance between men and women has a ratio of two to one, with women's inheritance in the position of *ashabah*. This division is regulated in the Qur'an and Hadith. Hadiths contain the words and actions of the Prophet Muhammad (peace be upon him) that teach how to live. One of the hadiths that discuss the distribution of inheritance comes from Imam Bukhari, where the Prophet Muhammad visited Sa'ad bin Abi Waqos who was sick in Makkah. Saad wanted to bequeath his entire estate, but the Prophet suggested that only one-third could be bequeathed, explaining that it is better to leave the heirs rich (Al-Khatib, 1975). This hadith explains the Prophet's words regarding people who die and have property. The Prophet forbade a companion who wanted to bequeath all his wealth and advised him to bequeath a portion. The other assets must be bequeathed to the rightful heirs. This hadith is the source of inheritance law in Islam.

Apart from the Qur'an and Hadith, Islamic law also comes from *Ijtihad*, which is the opinion of scholars to solve *amaliyah* problems. They explore the law based on arguments with different meanings. The issue of inheritance in Islam is regulated through *ijtihad*, where the *fuqaha* agree that only male descendants are entitled to inherit. However, to create justice, there are solutions such as those implemented in Egypt, where granddaughters are still entitled through mandatory wills. Inheritance assets cannot be distributed immediately without following certain principles:

- 1) The *Ijbari* principle states that the inheritance property passes from the testator to the heirs automatically according to the provisions of Allah SWT.
- 2) The Principle of Inheritance due to Death states that inheritance occurs only after the testator dies or is declared dead by the Court; if the testator is still alive, the property cannot be transferred.

- 3) The Bilateral Principle eliminates the difference in rights between men and women to get inherited property from relatives, whether male or female.
- 4) The Individual Principle emphasizes that the inheritance is divided to the heirs according to their respective portions and owned individually. However, if there is an agreement to use the estate as a joint venture, the shares will be according to the portions.
- 5) The Direct Heir Principle includes those who are not hindered by other heirs, such as parents and children. Meanwhile, Substitute Heirs are descendants of heirs who have died before the testator.
- 6) The Principle of Legal Marriage Relationship and Blood Relationship states that inheritance property can be given to heirs who have a legal relationship with the testator or blood, including as a result of shubhat marriage or recognition.
- 7) The principle of Balanced Justice includes the balance of rights between men and women in carrying the burden. Men have a greater burden and male heirs get twice as much as women. However, if the heirs agree to divide the estate equally, this principle can be ignored.
- 8) The principle of Compulsory Testament is a will that must be given if the heir does not leave a written will. The maximum share of the will is one-third of the remaining inheritance. The parties entitled to receive are adopted children, adopted parents, non-Muslim relatives, extra-marital children, and stepchildren.
- 9) The Egalitarian Principle states that non-Muslim heirs cannot be categorized as heirs, but they can receive a mandatory will of up to one-third of the estate. The distribution must not exceed the share of equal heirs and no more than that received if they are Muslim.

A major paradigm of feminism is its application to religion. In Islam, men have more rights in proportion to their obligations. Feminism strives for equality without considering obligations. This poses a dilemma, do feminists want equality or privilege?

In the Compilation of Islamic Law (KHI) Article 176, girls and boys become heirs, with the share of men twice that of women. Article 183 allows heirs to agree to peace in the division of inheritance after knowing their rights (Tim Kementarian Agama, 2018). In Islam, most people who receive inheritance are female heirs. Girls can inherit in three types: half, two-thirds and 'asabah. Thus, women do not always get half of a man's share. There is a question about whether the 2:1 inheritance division contradicts the principle of justice in the Qur'an. According to Masdar, the

minimum limit set is not the maximum value. Under certain conditions, a man's share can be equal to or less than a woman. What is emphasized is the spirit of justice and equality. What is emphasized is the spirit of justice and equality. Two important things are: First, the inheritance verse is related to the social reality at that time, when women did not have inheritance rights. Islam gave inheritance rights to women, which can be considered a revolution in the history of inheritance.

The quantity of women's share of inheritance is only half that of men because the responsibility of maintenance is entirely in the hands of men. In Islam, even if women are wealthy, their wealth remains their own, and husbands cannot impose maintenance obligations on their wives' assets without their permission. This 2:1 inheritance system gives women their rights and does not disadvantage them. A man's wealth will decrease over time, while a woman's wealth will increase, showing that Islamic law is compatible with the times.

Discussion

Fatima Mernissi in *The Veil and the Male Elite*, criticizes how patriarchal traditions in Muslim societies are often used to restrict women. She highlighted early Islamic history that saw women play an active role in society and politics. Her theory focuses on deconstructing hadiths used to justify women's subordination (Mernissi, 1993).

Ahmad Syafii Maarif, or Buya Syafii, is a thinker who supports gender equality and justice and fights for women's rights. He rejects polygamy and believes that monogamy is the correct marriage according to the Qur'an. Buya Syafii also argues that women can become political leaders if they are moral, capable, and have their husband's permission. He opposed violence against women and sought to eliminate discrimination through his thoughts and example in his family. Although he did not write about gender equality and justice specifically, his stance shows a deep understanding of the issue (Maarif, 2000). So, in general, feminism is an analytical tool and movement that is historical and contextual by the new awareness that develops in answering women's problems. actual concerning injustice and inequality.

In Indonesia today there is no National Law of Inheritance so that in practice three systems of inheritance law apply. National Inheritance Law so that in practice three systems of inheritance law apply. The following essay describes the position of women in customary inheritance law, Islamic inheritance law and inheritance law

according to the Civil Code. At the end of this paper, the efforts that have been made towards the establishment of a National Inheritance Law are presented, including the points on which there is agreement and other parts of the draft that have not yet won unanimity of opinion (Yunus, 2017).

Talking about equal rights between men and women in Islam, must be in accordance with existing values and norms. In Surah An-Nisa verse 32, Allah SWT emphasizes that both men and women have rights from their respective efforts, "And do not envy the bounty that Allah has bestowed on some of you over others. (For men have a right to a share of what they have earned, and women have a right to a share of what they have earned. Ask Allah for some of His bounty. Indeed, Allah knows all things". If interpreted, the above verse does not emphasize that the rights between men and women must be equal, but must be in accordance with their respective shares. This norm also applies to the distribution of inheritance in Islam. The Qur'an has normatively emphasized the equality between men and women, including in inheritance (Azizah et al., 2023).

Surah An-Nisa verses 11-12, verse 175, and verse 177, Hadith, and the opinions of the fuqaha have determined the parts of inheritance for eligible heirs, both for men and for women. Islam recognizes and protects the rights of women as stated in the Qur'an, Hadith, and Ijma'. And this is the foundation of inheritance law in Islam.

Conclusion

In Islam itself, women are positioned as honorable human beings, where he empowered women. The Prophet Muhammad SAW guided his people to honor a mother three times and then honor the father. So that initially women were considered meaningless who were always enslaved and traded and even killed alive, became respected and respected by men. Therefore, Islamic inheritance law emphasizes that the fulfillment of rights between men and women must adhere to the principle of balanced justice, that is, rights must be fulfilled in line with the amount of burden borne. Islam seeks equal rights between men and women.

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