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**GENDER FAIRNESS, EQUALITY AND ANALYSIS METHOD: A STUDY ON
THEIR ESSENCE AND IMPACT ON ISLAMIC LAW**

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Abstract:

This paper aims at exploring the meanings of fairness and equality from the perspectives of both gender activists and Moslem jurists, and also examining the method of gender analysis in reinterpreting and aligning Islamic texts that contradict its gender perspective. For these purposes, a descriptive-analytical approach is employed. It is revealed that from gender activists' perspective, the meanings of fairness and equality are stressed on the issue that men and women should have the same rights and responsibilities in domestic life as well as in public domain, while they are not understood that way by Moslem jurists. It is also found out that using the gender analysis method to align Islamic texts is not in line with the Islamic principles and will consequently result in laws and points of view that deviate from the mainstream Islamic teachings.

Keywords: *gender, fairness, equality, analysis method, Islamic law.*

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1. Introduction

It is undeniable that social oppression and unfairness have always been occurring on the face of the earth throughout history. They befall both men and women, even in Indonesia. But because women are believed to be the weak ones, it is they that are often made victims.

To uphold fairness and combat oppression, activists create many theories and analyses. One that is recently favored by a lot of people, including Indonesian Moslem activists, is called gender analysis, a method widely used as a means for feminism movement. It questions social injustice from the aspect of gender relations.

Gender analysis is accepted by and receives approvals from Indonesian Moslem feminists because the fact in the community—from their understanding of gender—shows that gender differences are the cause of gender injustice.

These gender differences between men and women are a result of a very long process. According to activists, they are established in many ways: socially and culturally shaped, spread, reinforced, and constructed through religious teachings and state policies.

The supporters of gender equality among Indonesian Moslems seek not only to combat the unfairness brought about by patriarchal culture or state laws and regulations, but also the injustice believed to be originated from Islam, or thought of as Islamic, or a misinterpretation of the Islamic law. However, is their cause for fairness by adopting gender analysis correct? Or, does the method of gender analysis they have been employing actually need to be criticized as it is problematic, inaccurate, and invalid?

This paper aims at exploring the meanings of fairness and equality from the perspectives of both gender activists and Islamic jurists. Furthermore, it also examines the validity of the gender analysis method in reinterpreting Islamic texts that contradict the method's gender perspective.

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2. Discussion

Before going further, it needs to be clear here the distinction between the terms sex and gender. Sex refers to the biological differences of men and women. These differences are natural, meaning that they are God's will or decision and thus not exchangeable. For example, men have a penis and produce sperm that can impregnate women, while women have reproduction organs such as womb and birth canal, produce eggs, and have a vagina and mammary glands. These characteristics of men and women respectively are not an issue for gender activists because they are gifts from God that cannot be exchanged.

On the other hand, gender is a term to refer to the fact of being male or female from social aspects. In other words, it refers to a set of socially or culturally-constructed characteristics attached to men and women (Fakih, 2008:8). Men are known to be strong, rational, brave, and robust, while women are beautiful, graceful, emotional, and motherly. These characteristics—according to gender activists—are not natural and thus exchangeable, meaning that they exist in men and women not because of God's will but rather, they are socially and culturally shaped, spread, reinforced, and constructed by means of religious teachings or state policies throughout a very long time. So they are exchangeable. Men can be beautiful, graceful, and emotional at a certain time and place. Likewise, women can be strong, robust, rational, and brave.

In line with the above meaning, the draft of the Indonesian Gender Equality and Fairness Bill (RUU KKG), under Chapter 1 General Provisions Article 1, defines gender as follows: "Gender distinguishes the roles and responsibilities of men and women and is a result of socio-cultural construction that is impermanent in nature and can be learned, and may be exchangeable at a certain time, place, and culture from one type to another."

With the above definitions in mind, gender as adopted by activists refers to any characteristic attached to men or women that is exchangeable, which means that it is constructed by society through a very long process, and it is by no means God's will or decision that cannot be modified or exchanged.

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The above understanding is perfectly normal and acceptable for non-religious or secular individuals. But for Moslems, the understanding that men's and women's roles and responsibilities are cultural construction and so exchangeable is not right. This is because according to the Islamic belief, men's and women's rights, obligations, roles, and responsibilities are religious teachings and divine rules, thus permanent and non-exchangeable. For this reason, any effort to change these rules is considered an act of abandoning the fixed divine revelations. For example, the duty to provide a living for the family is assigned to men. This is not cultural; this is Allah's will. That a husband may allow his wife to work is clear and not an issue, but the duty remains on his shoulder. Moslems throughout history have accepted it and never once felt any discrimination in it. They do not think this rule represents some kind of marginalization over women or men's superiority to women as well.

According to activists, these differences are the cause of gender injustice such as marginalization, subordination, stereotyping, violence, and excessive work load and work time (Fakih, 2008:12). The victims of this injustice come from both genders, but especially women.

An example of marginalization over women: their inheritance portion is half that of men; stereotyping: women cannot lead men in prayers and be a caller for prayer or a preacher; violence: women are often at the receiving end of domestic violence of physical, psychological, sexual, and economic nature; excessive work load and time: women often have to work and do chores so they have to do too many things and thus to labor for a relatively longer time.

3. Gender Fairness and Equality

Driven by unfairness on men and especially women, gender activists often bring forward a meaning of gender fairness and equality as "the same rights and obligations between men and women, and equality in roles both in the household and in the society." This understanding implies that only if men and women hold the same rights and obligations, as well as equal roles and responsibilities, at home and among the community that they can be said to be equal. So fairness and equality here are taken to mean sameness in rights,

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obligations, roles, responsibilities, and everything that can be exchanged between men and women. Conversely, if there is inequity against one of the genders in these matters—especially women, it will be called gender discrimination, unfairness, and bias.

Not much different from the above definition, the Gender Equality Bill draft provides the following interpretation of gender equality under Chapter 1 General Provisions, Article 1 Section 1: “Gender equality means the equal condition and position for men and women to obtain opportunities for access, participation, control, and receiving the benefits of development in all areas of life.” It also offers the following definition of gender fairness in Article 2: “Gender fairness is a state and treatment that reflect equal rights and responsibilities between women and men as individuals, family members, community members, and citizens.” The definition of gender equality and fairness is later amended to: “The condition where women and men are equal partners and so receive fair treatment with regards to opportunities for access to resources, control, participation, and receiving the benefits of development” (Gender Equality Bill Draft from the Work Committee Session on 9 December 2013).

The understanding of gender fairness and equality as sameness and parallelism in terms of condition and position between men and women is very attractive and actually receives warm responses among feminists in Indonesia, including Moslem gender activists. This is because it provides them with some kind of a new guideline, parameter, or indicator for viewing things around them. Equipped with this understanding of gender equality, they evaluate the culture they have inherited from generations before them, the applicable laws and regulations, school curricula for children, government policies on certain matters, and even religious teachings—especially Islam—in all areas including rules on both ritual worship and worldly matters. They consider anything in harmony with their parameter fair and equal gender-wise. On the contrary, anything that does not agree with the notion of gender fairness and equality as the same rights and responsibilities between men and women will surely be challenged and resisted because it is believed to be gender bias, which suggests oppression and unfairness.

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With regard to Islamic law, Moslem gender activists find many Islamic rules and teachings, which have been believed to be true by the majority of Moslems for hundreds of years, are not in line with the parameter of gender fairness and equality they are fighting for.

This is a thick wall hampering them from disseminating their concept of gender fairness and equality into the Moslem community. Islam, which had existed centuries before gender analysis came about, has its own definition of fairness and equality in men-women relations that is entirely different from that of gender activists.

4. Fairness and Equality in Opinion of Islamic Scholars

According to Islamic scholars, fairness is the opposite of oppression. Fairness does not necessarily mean sameness, and difference does not always mean oppression and unfairness. Fairness in the opinion of Islamic scholars means “putting everything in its proper place” (Ibn Taymiyah, 2000:6/35). In other words, appropriateness, suitability, willingness, and natural predisposition (*fiṭrah*) need to be considered when putting someone or something for a certain function. For example, assigning a mason who knows nothing about welding to join two pieces of metal is an oppression to him since it is not his expertise and skills. Another example is assigning a carpenter who knows nothing about machinery to fix a car machine. Certainly, he will not be able to do well and may even cause more damage.

Fairness may also be defined as “giving the proper rights to the suitable ones” or “giving each who has rights, their rights” (Ash-Sharbīnī, 2002: 1/692). This definition is based on the hadith of Abū ad-Dardā’ and Salmān al-Fārisī. Salmān said to Abū ad-Dardā’, his close friend who never missed midnight prayers: “Truly your God has a right to you. You have a right to yourself. And your wife has a right to you. Give each who has rights, their rights” (Al-Bukhārī, 1987:3/49). Based on this hadith, on the authority of Salmān, Allah has a right to be worshipped through midnight prayers, but one’s body has a right to rest and sleep, and one’s wife has a right to intimacy so one should not stay awake late every day even for praying while at the same time neglecting his eye’s right to sleep and his wife’s right to intimacy.

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Therefore, fairness means giving men and women their respective rights, even if these rights are not the same between them. Islam awards men with two portions of inheritance while women receive only one. Despite the inequality, this is fair because the one portion for women is fully theirs. As for men, they are given two portions because they have to provide a living for their family too throughout their life. The two portions are not entirely theirs.

Some Islamic scholars define fairness as follows: “Treating the same things as the same and different things as different” (Al-‘Utsaymin, 1413H:5/101). In keeping with this, fairness does not mean absolute sameness but rather, treating in the same way people or things that are indeed the same. Treating different people or things in the same way is not fairness. It is in fact an act of oppression. Likewise, treating the same people or things differently is unfairness.

Moreover, equality according to Islamic scholars is the sameness of men and women in front of Allah. It means that every man and woman has the same obligation to worship Allah and surrender to Him. Besides, every man and woman has the same responsibility for anything they do before Allah. Allah will count everything they do for judgment, that is, good deeds will be rewarded and bad deeds punished.

5. Gender Bias and Misogynic Verses and Hadiths

Such beautiful definitions of fairness and equality from Islamic scholars do not appeal to gender activists. They are more interested in defining fairness and equality as the sameness of men and women in rights and obligations, in roles and responsibilities, in both domestic and public domains.

With this understanding, gender activists challenge Islamic teachings that have been established and believed to be true for centuries by the majority of Moslems, not only in Indonesia but all over the globe. As a consequence of the aforementioned idea of gender fairness and equality, there are too many Islamic teachings that can be considered gender bias and misogynic.

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In terms of ritual worship, for instance, women are always marginalized as only men can be a leader of prayer, caller of prayer, and preacher. In addition, women's rows are always behind men's in performing prayer.

In domestic life, it is found that the ones holding the right to lead the family are men. The responsibility to provide a living is men's. Men can practice polygamy, and men's inheritance portion is twice that of women. Quite the reverse, women must ask their husband for a permission if they want to go out of the house and so must they when they intend to perform a *sunnah* (called for but not obligatory) fast while their husband is around.

With regard to public life, women's testimony is valued half of men's. The ones who can be a marriage guardian (*wālī an-nikāḥ*) are men and a caliph must also be a man. Furthermore, men carry the responsibility to fight or go to war against enemies.

6. Which One is Bias: Religious Texts or Their Interpretations?

All of these Islamic teachings are bias and misogynic under the measures of gender fairness and equality. The gender activists, however, are afraid to frankly criticize Islam, which is said to have gender-bias laws, because they are Moslems after all. Doing so can result in apostasy on their part.

They will only go as far as saying the Islamic laws in Quranic verses and the hadiths are "believed to be" or "assumed" to be gender bias and misogynic. As written by Sri Suhandjati Sukri: "Knowing the gap between the ideal and the real in gender equality, it appears to be important to carry out some deconstruction of thoughts to carefully discuss and study the hadiths believed to be gender bias" (Sukri, 2002:vi). And Zaitunah Subhan, when touching on the violent texts in the Quran and the hadiths: "We cannot close our eyes on this matter because it is fact that there are a number of religious texts, of Islam in particular, either the Quran or the hadiths of the Prophet PBUH, that can be assumed to provide a basis for legitimacy to look down on and position women below men. This could give a chance for violence towards women to happen in the name of religious dogma" (Subhan, 2004:44).

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They will question whether gender unfairness originates from the Islamic texts or from the interpretations. Such a question is posed by Husein Muhammad, which he answers himself: "Does Islam have any contribution to the process of establishing and preserving the patriarchal and gender-bias culture? Those who read the holy texts of the Quran and the hadiths of Prophet Muhammad PBUH with a literal (scripturalistic) approach will find many texts legitimate the authoritative power of men over women" (Muhammad, 2004:238-239). A similar opinion is conveyed by Mansour Fakhri, who says that recently religion faces a new test where it is often considered the cause of problems and even a scapegoat for today's persistent gender unfairness. In a questioning tone, he raises an issue: "Does gender inequality in religion originate in the nature of religion or in the religious understandings, interpretations, and thoughts, which have possibly been shaped by patriarchal traditions and cultures, the capitalism ideology, and also other isms?" (Fakhri, 2008:28). He tends to point out that it is our religious understandings that are problematic and need to be revised instead of the texts.

The tendency of gender activists to put the blame on our gender bias perception of Quranic texts is based on a view that understandings and interpretations are human products, thus not holy as Quranic texts. The understandings and interpretations of Islamic scholars can be a "subject of criticisms" because even they are impossible to be free from socio-cultural influences. As mentioned in the book published by PSW-UIN Yogya entitled *Isu-isu Gender dalam Kurikulum Pendidikan Dasar dan Menengah* (Gender Issues in Elementary and Middle School Curricula): "Religious texts do not stand by themselves and are not independent of their contexts. Therefore they cannot be understood unless in their relations with other entities. At this level, we can see the importance of reviewing them with regard to the common understanding and interpretation, both epistemologically and hermeneutically. If such is realized, thus reinterpretation and restudy of the Quran and the hadiths will not be considered abnormal, but rather inevitable. Why so? Because religious understanding requires creativity. So there is no "taboo" in reviewing religious understanding, for who knows if what we have believed to be the true religious dogma—in the words of Peter L. Berger and Luckmann—is nothing but socially constructed" (Abdul Ghafur and Isnanto (ed), 2004:2).

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In line with the above thinking, Ridwan, the author of the book *Kekerasan Berbasis Gender* (Gender-based Violence), wrote: "Islamic classical literatures were generally created in the cultural perspective of androcentric society, where men are the measure of all things. Until today these literatures continues to be accepted as the third "holy book" after the Quran and the hadiths. The volumes of books of exegeses and practical rules written hundreds of years ago keep getting reprinted, with some even more frequently than contemporary religious books. Many Islamic classic literatures, when seen from the perspective of modern measures, can be considered strongly gender bias. Of course we cannot blame the authors because their idea of gender equality adopts the paradigm and perception of gender relations accepted in their society's culture. Studying classical literatures requires the study on the coherent whole of the framework, especially the relations between the author and their socio-cultural background. This is where hermeneutics is needed as a method to read texts accurately and not take them out of their contextual meanings" (Ridwan, 2006:161-162).

In similar fashion, Mansour Fakih, after discussing the identification of strategic religious problems, concludes: "From the above description, it can be concluded that religious interpretations have a strategic position both in preserving gender injustice and, also the contrary, in the effort of promoting gender justice. For the latter, there needs to be some kind of re-studying on the entire religious interpretations and their implications for religious teachings and behaviors. This study involves identifying the roots of the problems and the solution strategies" (Fakih, 2008:140).

In short, to avoid frontal confrontation with the gender bias Quranic texts and hadiths, Indonesian Moslem gender activists call for reinterpretation in order to adjust those texts to their idea of gender fairness and equality. (Ichsan, 2014:58).

7. Harmonization Method

To reinterpret and adjust the gender bias and misogynic verses and hadiths to the gender fairness and equality they are fighting for, Indonesian Moslem activists establish the harmonization method. Exercising this method, they try to exploit the principles of human equality, fairness, equality before law, freedom, responsibility, deliberation, husband's good treatment towards wife (*mu'āsharah bi al-ma'rūf*), altruism, and mutual-respect contained in

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several verses and hadiths as a theological foundation in understanding and establishing practical rules concerning human relations. The verses and hadiths that provide practical rules are seen as sociological in nature and thus must be understood in a contextual manner. They contain principles of teachings specific for a certain place and time (Hamidah, 2013:135-139).

In other words, they differentiate Quranic verses and hadiths into two categories. One, the cross-contextual verses and hadiths, i.e. the absolute and universal ones. Two, the sociological verses and hadiths, i.e. the practical ones that respond to the Arab society's culture at the time when they were revealed or told. The first category is binding for all places and times, cannot be ignored, and should be the foundation for understanding and interpreting the sociological verses and hadiths because these verses and hadiths are not static (Hamidah, 2013:139-140).

Among the main factors behind the creation of the above harmonization method by Moslem gender activists and feminists, namely the new interpretation (*istinbāt*) method in the contemporary Islamic law on women as opposed to the jurisprudence by scholars convention (*jumhūr 'ulamā'*) method, is the fact that there are Quranic verses and hadiths of the Prophet PBUH that contradict their idea of gender fairness and equality.

Some Quranic verses and hadiths are undeniably in conflict and in opposition with their notion. But at the same time, according to gender activists, there are also verses and hadiths that support their version of gender fairness and equality. Therefore, harmonization is needed. The method is to use the verses and hadiths supporting gender fairness and equality, which stipulate the principles of human equality, fairness, equality before law, freedom, responsibility, deliberation, husband's good treatment towards wife (*mu'āsharah bi al-ma'rūf*), altruism, and mutual-respect, as a foundation for understanding the verses and hadiths specifying practical rules on human relations, which are often not in line with their idea of gender fairness and equality as they were revealed to respond to a specific situation and condition in the past that is very different from ours today.

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For example, there are many Quranic verses that order us to be fair in conducts, such as *sūrah* al-Māidah (5):8, *sūrah* al-An‘ām (6):152, and *sūrah* al-Ḥijr (16):90. These verses incorporate universal principles on fairness that must be applied to both one’s self and other people, men and women, and friends and foes. They should be made the foundation and guideline for understanding other verses that specify technical rules, such as those on the allocation of inheritance in *sūrah* an-Nisā’ (4):11, polygamy in *sūrah* an-Nisā’ (4):3, and leadership in household in *sūrah* an-Nisā’ (4):34. This is because these practical rules were given to respond to the situation, condition, and need of the people at the time when they were revealed. People’s situation, condition, and need are always changing and evolving. If such verses on practical rules are understood only by the literal texts, there will be conflicts with the universal verses. In the case of inheritance allocation, for example, men are given twice of women’s portion, as specified in *sūrah* an-Nisā’ (4):11. This obviously contradicts the principles of fairness in *sūrah* al-Māidah (5):8, *sūrah* al-An‘ām (6):152, and *sūrah* al-Ḥijr (16):90. So for this reason, the practical and technical verses must be understood with a consideration of the time and place in which they were revealed and based on the universal principles contained in the other verses as explained.

This is the method for understanding Quranic verses and hadiths offered by Indonesian Moslem gender activists and feminists. This method is very simple. It categorizes verses and hadiths into two groups. One, the cross-contextual verses and hadiths, i.e. those that are absolute and universal in nature. Two, the sociological verses and hadiths, i.e. the practical verses and hadiths that respond to the Arab society’s culture at the time when the verses were revealed and the hadiths told. The first category is binding for all places and times, cannot be ignored, and should be made the foundation for understanding and interpreting the sociological verses and hadiths because these verses and hadiths are not static.

With this method, gender activists believe they have brought modernization to the Islamic law. And with this method, in their opinion, the Islamic law has properly responded the advance of time.

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8. Impact of Moslem Feminists' Method

Using the Moslem feminists' method and applying it to contemporary issues will result in a great impact on the Islamic law.

Firstly, this method makes no distinction between *qaṭ'ī* and *ẓannī* indicants (*dalīl*). *Qaṭ'ī* indicants are those conclusive texts contained in the Quran and the hadiths. They are categorized into two: *qaṭ'ī tsubūt*, namely indicants of which origin is certain and undoubted such as all verses in the Quran and the *mutāwatir* hadiths, and *qaṭ'ī dalālah*, which is indicants with one certain meaning or interpretation so they are not open to reinterpretation such as the Quranic verse “*Wa lilLāhi ‘ala an-nāsi hijj al-bayti man istatā‘a ilayhi sabīlan*” (And [due] to Allah from the people is a pilgrimage to the House - for whoever is able to find thereto a way) (Āli ‘Imrān (3):97). This particular verse—and all other Quranic verses—is obviously *qaṭ'ī tsubūt*, because it unquestionably comes from Allah, and at the same time it is *qaṭ'ī dalālah*, which means its ruling on the obligatory performance of the hajj pilgrimage is certain.

Meanwhile *ẓannī* indicants are texts in the Quran and the hadiths of which interpretations are based on strong presuppositions. *Ẓannī* indicants are also categorized into two: *ẓannī tsubūt*, if the origin is based on a strong presupposition such as *āḥad hadiths*, and *ẓannī dalālah*, which are indicants that present a meaning based on a strong presupposition so that there could be more than one meanings or interpretations. The Quranic verse “*qurū*” is an example. Although this verse is *qaṭ'ī* or certain from a *tsubūt* point of view, or it undoubtedly originates from Allah, it is also *ẓannī dalālah*. Its ruling is based on a strong presupposition as the word has two meanings, pure and menstruation, and so it is understandable that a group of Islamic scholars interpret “*qurū*” as pure and the others as menstruation.

Given that the method of Moslem gender activists and feminists makes no distinction between *qaṭ'ī* and *ẓannī*, it may cause a *qaṭ'ī* indicant to be treated as a *ẓannī*. It may then be interpreted in different ways and its interpretation can change from time to time. The main purpose of the Islamic jurisprudence scholars by categorizing indicants into *qaṭ'ī* and *ẓannī* is so that there will be no difference of opinion on the law concerning a *qaṭ'ī* or certain issue.

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Everything that has been confirmed as *qaṭ'ī* or certain should be and not need to be disputed. If it is disputable, then there will be no certain things in Islam. This would surely cause complications and, at the same time, danger. Complications because things that are already certain would need to be discussed over and over, and danger because Moslems would practice their religion with doubts as the laws keep changing.

If not treating *qaṭ'ī* indicants as *ẓannī*, this feminist method will make *qaṭ'ī* indicants seem contradicting one another. For instance, there is a *qaṭ'ī* text that orders us to always be just while another *qaṭ'ī* text tells us to allocate inheritance differently between men and women. The latter is then taken as discrimination and oppression over women.

Secondly, this method replaces the *al-‘ibrah bi ‘umūm al-laḥẓ lā bi khuṣūṣ as-sabab* principle with the *al-‘ibrah bi khuṣūṣ as-sabab* principle. The principle of *al-‘ibrah bi ‘umūm al-laḥẓ lā bi khuṣūṣ as-sabab* maintains that the understanding of a Quranic verse or hadith shall be built upon the generality of its meaning instead of the specificity of the reason for its revelation. This principle is created by the Islamic jurists to guide our understanding and avoid any misinterpretation of a verse or hadith. Why does it have to be based on the generality and not the specificity? These are the bases of argument: one, the Prophet PBUH himself recited the Quranic verse of *sūrah* al-Kahf (18):54 when he woke up Ali RA and Fatimah to perform midnight prayers. Ali said to the Prophet: “Truly our souls are in the hand of Allah, if He wills it, He will rise us up.” The Prophet turned to him and patted his thigh while reciting (the verse): “but man has ever been, most of anything [prone to] dispute” (QS Al-Kahf (18):54), although it was revealed for the unbelievers that denied the Quran. Two, the companions of the Prophet (*ṣaḥābah*) and the followers after them (*tābi‘īn*) preserved the generality of the general verses and hadiths that were revealed for specific reasons, and they did not limit them to their specific reasons. Some example of this are the verse on ending a marriage due to adultery concerning Hilāl ibn Umayyah, the verse on the *ẓihār* case (an oath by a husband that means sexual relations with his wife are forbidden for him) concerning Salmah ibn Ṣaḥkar, the verse on theft concerning the theft of Ṣafwān’s shield or shawl, and the verse on inheritance concerning Jābir ibn ‘Abd Allah and the two daughters of Sa‘ad. Three, laws shall be established based on the texts or the meanings of the texts as revealed by the Law Maker rather than the problems or the reasons that led to their revelations. And

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because they are general texts, they should be interpreted in accordance with their generality. Four, that the Law Maker provides a general answer for a specific problem is evidence that He wants such generality (Al-Ghazālī, 1997:2/132 and As-Silmī, 2005:1/247).

Thirdly, as a consequence of all the above, this method will turn the laws upside down. With this method, forbidden matters will become permissible and vice versa. For example, using the new interpretation (*istinbāṭ*) method in the contemporary jurisprudence on women, Moslem gender activists and feminists go as far as saying that the prohibition against marrying polytheists under *sūrah* al-Baqarah (2):221 was revealed because the Islamic community at the time of its revelation was still small in number, so it would harm the existence of the community if they married polytheists. Today when the population of Moslems is large, the prohibition automatically becomes irrelevant because such marriage no longer poses harm to the community. In other words, marrying polytheists was forbidden in the past because it was considered dangerous, while today Moslems may do that because the danger is not there anymore. This interpretation is based on the principle of *al-‘ibrah bi khusūṣ as-sabab* explained above.

9. Validity of Moslem Gender Activists’ Method

This is the impact brought by the method employed by feminists. Maybe it is what they want. To keep up with the advance of time, the Islamic law must be bent down to reality and the spirit of the time itself, instead of the Islamic law being seen as a measure or guidance for reality and time, which often deviate from it. The following part discusses the results of an examination on the method.

Firstly, this method is established upon the mere assumption that there are contradictions between Quranic verses and hadiths that support gender fairness and equality by providing principles of human equality, fairness, equality before law, freedom, responsibility, deliberation, husband’s good treatment towards wife (*mu‘āsharah bi al-ma‘rūf*), altruism, and mutual-respect, and Quranic verses and hadiths that oppose gender fairness and equality such as those concerning polygamy, inheritance, men’s leadership in household, women’s testimony, and men’s leadership in some practices of worship (congregatory prayer, preaching, calling for prayer, etc.).

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It is acceptable to say that more indicants is stronger than less. What is intolerable, though, is how feminists make *qaṭ'ī* indicants seem in conflict with one another so there appear to be contradictions. No predecessor (*salaf*) and latter day (*khalaf*) scholar ever identifies a contradiction among the *qaṭ'ī* verses and hadiths. This is because such contradictions between *qaṭ'ī* indicants are non-existent and impossible (Al-Ghazālī, 1997:2/412), because there is only one truth in the *qaṭ'ī* indicants (As-Silmī, 2005:1/313), and because violating a *qaṭ'ī* indicant is a sin (Al-Ghazālī, 1997:2/376).

Among the examples are the verses ordering us to be just such as *sūrah* al-Māidah (5):8, *sūrah* al-An'ām (6):152, and *sūrah* al-Ḥijr (16):90. These verses do not contradict the ruling on inheritance allocation in which men's and women's portions are not equal as specified in *sūrah* an-Nisā' (4):11. It is not possible that Allah orders us to be just then He himself gives an unjust ruling by specifying that men's portion of inheritance is twice that of women. This allocation of inheritance according to Allah's order shows that fairness does not necessarily mean sameness in Islam. The unequal allocation is fair because men's obligations and responsibilities in the family are not the same as those of women. According to the Islamic law, if a man intends to marry a woman, he is required to pay the bride price and after the marriage, he must provide a living for his family. The allocation is unfair only if seen from the materialistic perspective of gender fairness and equality. Feminists call for sameness and parallelism in everything, including inheritance allocation.

Because the verses are not in conflict with each other, what happens here is a different understanding of fairness between gender activists and Islamic scholars. As illustrated previously, in the opinion of gender activists, fair means sameness between men and women in all things not natural, such as in roles, rights, obligations, and responsibilities. Therefore, they believe that the allocation of inheritance must be the same for both genders in terms of quantity. On the other hand, according to Islamic scholars, fair means putting something or someone in their proper position. Fair may also be understood as giving someone or something that has a right, their right. Fair, thus, does not have to mean sameness. Islam giving men two portions compared to women's one is because a man's financial obligations and responsibilities are greater than a woman's.

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As for the argument that *maqāṣid ash-sharī‘ah* or the objective of the Islamic law is achieving humans’ wellbeing, it is also obviously correct (Hamidah, 2013:141). The effort to do so, nevertheless, shall not violate the Quran and the hadiths. It must be subject to the two holy texts.

Secondly, the method of feminists subjugates the Quran and the hadiths to reality and the spirit of the time without considering whether the current situation is leading to goodness or badness. Any verse and hadith that is not in line with the current situation, because it cannot be revoked, must be reinterpreted and adjusted. And one of the ways to reinterpret the holy texts is by adopting the principle of *al-‘ibrah bi khuṣūṣ as-sabab* for only with this principle that the Quran and the hadiths can be “adjusted” to the now. However, it is the now that should actually follow the Quran and the hadiths. The two sources of Islamic laws should be seen as a guideline and a benchmark whether the current situation is good, so it is acceptable, or bad and misleading, so it must be forsaken. The Quran and the hadiths should be the measure and the determiner, not the object to be measured and determined by the current situation, which may in fact be detrimental. This is because they are the *hudan* or guidance to mankind (QS Al-Baqarah (2):185).

Thirdly, gender activists adopt the principle of *al-‘ibrah bi khuṣūṣ as-sabab* in their method upon the following thinking: if the reasons are not to be the ground for understanding Quranic verses and hadiths, why are they mentioned in various texts concerning different issues? It cannot be denied that *asbāb an-nuzūl* and *asbāb al-wurūd* are a factor in determining a law, but they are not the determiner and they in fact have other functions, namely helping understand the bases for Islamic laws and helping interpret unclear meanings. Also, the reasons are there to provide a history of the revelation of Quranic verses and the occurrence of hadiths so it can be known which comes earlier or later and thus, which is the replacement (*nāsikh*) and which is replaced (*mansūkh*) (As-Silmī, 2005:1/248).

In addition, if the principle of *al-‘ibrah bi khuṣūṣ as-sabab* is used, there will be many verses and hadiths that have to be ignored (*ihmāl*) because they do not have the *asbāb an-nuzūl* and the *asbāb al-wurūd*. There will be many verses and hadiths that have to be nullified (*‘adam al-i‘māl*) because they are only suitable for the situation and condition in which they were revealed or occurred, which is very different from today’s situation and condition. This

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suggests that such verses and hadiths are local and temporal, not global and universal. Knowing this, the claim that the feminist method is necessary to enable Islam to keep abreast of the times and be universal is thus false. What truly happens is quite the contrary, where *qat'ī* verses and hadiths are left out for the sake of adjusting to the potentially harmful current situation. And more importantly, according to Islamic scholars, religious laws are not derived from the context; they are extracted from the text (Al-Ghazālī, 1997:2/412 and As-Silmī, 2005:1/313).

10. Closing

In Indonesia, Moslem gender activists persistently fight for gender fairness and equality amidst a Moslem-majority community. Sadly, their effort to promote fairness and combat oppression is made by not conforming to the laws of the Quran and the hadiths. To avoid frontal confrontations with Quranic verses and the Prophet's hadiths, they challenge Islamic scholars' understandings and interpretations of the verses and hadiths. Moreover, they adopt a method to harmonize the verses and hadiths that support their idea and those that oppose. The purpose, nevertheless, is the same: fighting for their understanding of gender fairness and equality as sameness and parallelism between men and women in both domestic and public domains. Upon analysis, this method is found to overlook the principles established by Islamic scholars for understanding Quranic verses and hadiths.

From a rational point of view, whether it is realized or not, seeing the positions and roles of men and women as the same clearly denies the biological differences between the two, including the differences in innate character, capacity, as well as strength and weakness. And that is in fact a form of unfairness because two kinds of people with different capacities and characteristics are forced to give the same performance and even to compete to be the best.

Islam, as a religion that honors the natural characteristics of things, treats humans, both men and women, in accordance with each own capacities. Islam sees men and women as partners that should help one another as God's servants, without having to assign them the same rights, obligations, roles, and responsibilities.

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