

**JUSTICE IN ISLAM ON GENDER ISSUES
(The Study of Discourse on Polygamy Regulation in
Pamekasan Regency)**

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Abstract: The issue of gender equality has long rolling and be on the agenda in many countries, including the Islamic discussion. Many studies and thinking about these gender issues by Muslim thinkers influencing the discourse of feminism studies. Muslim thinkers view that Islam has had in common with the concept of equality brought feminism. All the rules in Islam always puts equality and justice. But feminists do not think they declare Islam demikain contradictory to the spirit of justice and equality. Finally, many of the legal texts and passages that have been governing the relationship between men and women in Islam be re-examined, disassembled and modified to suit the gender equality perspective. This article exemplifies the study of discourse regulations to legalize polygamy in Pamekasan with the intention of positioning gender issues and perspectives of polygamy in Islam as true according to the quran and hadith.

Keywords: Gender, Feminism, Equality, Justice

Abstrak: Persoalan kesetaraan gender telah menggelinding lama dan telah menjadi agenda banyak Negara, termasuk perdebatan islam. Banyak penelitian dan pemikiran tentang persoalan gender yang dicetuskan oleh para cendekia muslim yang mempengaruhi wacana studi feminisme. Cendekia muslim melihat Islam telah terbiasa dengan kesetaraan gender. Semua aturan dalam islam selalu mengedepankan persamaan dan keadilan. Tapi para kaum feminist tidak pernah berfikir bahwa mereka menganggap Islam berseberangan dengan semangat persamaan dan keadilan. Akhirnya,

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banyak ayat dan surat dalam al-Qur'an yang mengatur tentang hubungan pria dan wanita dalam Islam diuji ulang, dibongkar, dan dimodifikasi agar sesuai dengan cara pandang kesetaraan gender. Artikel ini memberikan contoh tentang wacana peraturan untuk melegalkan poligami di pamekasan dengan tujuan menempatkan persoalan gender dan cara pandang poligami dalam Islam yang benar menurut Al-Qur'an dan hadits.

Kata kunci: Gender, feminisme, equalitas, keadilan

Introduction

Since the beginning of his arrival, eliminate discrimination against Islam has women¹. practice of female infanticide is prevalent in *Jahiliyya*, banned total after the arrival of Islam. *Akikah* as a tradition of celebration after the birth that were previously only done to a baby boy, then also carried out for the woman's infant. Islam also gave rights to women in choosing a partner. Women have the right to determine the dowry recognized as belonging to a private full of women. Having the right legacy before it is treated as a legacy of the husband.² Indeed, in the religious rules are the differences in the distribution of rights, roles and responsibilities between men and women. But all that was considered beneficial and fair to women. Evidently, throughout history, there are no Muslims ever sued the rule.

Only when the Western civilization into the world of Islam Islamic law has been criticized and sued. What is believed by Muslims of the rights, roles, and responsibilities under challenge Western discourse by bringing up the issue of gender equality. The goal is the freedom of the status and role of equality between men and women in all aspects of

¹ In history, Islam fell in the society of ignorance, a society that sees women's eye. Islam came, and then laid down some laws to elevate the dignity of women; formulate how to be a woman according to nature, so that the social imbalance that occurs when it becomes balanced. Zaitunah Subhan, *Tafsir Kebencian; Studi Bias Gender dalam Tafsir Qur'an* (Yogyakarta: LKiS, 1999),1-2.

²Musdah Mulia, *Muslimah Sejati; Menempuh Jalan Islami Meraih Ridha Ilahi* (Bandung: MARJA, 2011), 45-49.

Muslim thinkers of life.³ Surprisingly affected and cause a new discourse in the Islamic world. Islamic concepts about the role and rights of women questioned and dismantled under the pretext not suitable context of the times and it is unfair for the woman herself. They accuse Islam must allocate more to men than women in all aspects of life, such as the issue of leadership, the right dress, work, and others.

This paper will try to compare the concept of gender equality by feminism⁴ with Islamic justice. The goal is to answer the question whether the concept of gender equality as claimed by some Muslim thinkers in accordance with the concepts of Islam? The extent to which different principles embodied in the concept of gender equity with the principles of Islamic justice?

Gender Equality

In English, gender equality is known as gender equality, meaningful equality gender.⁵ In language "gender" means the sex type.⁶ That is synonymous with this vocabulary is relatively new, so it is not found in the Dictionary of Indonesia.⁷ By the term, gender has some understanding. Helen Tierney for example, defines gender as a cultural concept that seeks to make a distinction between male and female roles, behavior, mentality, and emotional characteristics that develop in society.⁸ For H.T. Wilson, gender is the basis for determining the

³ Nasaruddin Umar, *Argumen Kesetaraan Gender Perspektif al-Qur'an* (Jakarta: Paramadina, 2001), 68.

⁴ Feminism comes from the Latin *femina* or *feminus* which *fe* means the combination of the words *faith* and *mina* or *minus*, which means less so *femina* means lack of faith. Naming this proves that Western women are considered as being the lack of faith, in the sense of being a secondary or second after the men. Not wondering if history in the West, women are often the victims of the Inquisition and rape. Degrading conception produces a social awareness and mobilize against such discriminatory treatment. Feminism is a misunderstanding to believe that women should have equal rights (equal) with men. See, *Oxford Learner's Pocket Dictionary* (London: Oxford University Press, 1995), 153.

⁵ Maggie Humm, *Ensiklopedia Feminisme* (Yogyakarta: Fajar Pustaka, 2007), 123.

⁶ John M. Echols dan Hassan Shadily, *Kamus Inggris-Indonesia* (Jakarta: Gramedia, 1983), 265.

⁷ Nasaruddin Umar, *Argumen Kesetaraan Gender...*, 33.

⁸ Helen Tierney, *Women's Studies Encyclopedia*, Vol. 1 (New York: Green Wood Press, T. Th), 153.

contribution of the differences of men and women in culture and collective life that as a result they become men and woman.⁹ Hilary M. Lips defines gender as the cultural expectations of men and Linda L. Lindsey women.¹⁰ declare that all provisions concerning the determination of one's society as male or female is included studies gender.¹¹

Some understanding of the above, gender can be understood as a concept that is used to distinguish the identity of men and women in terms of socio cultural.¹² contrast to the concept of sex which is generally used to identify differences in men and women in terms of human biological anatomy.¹³ As for the draft Law for Justice and Equality (RUU KKG) is a gender equality is equality of condition and position of women to get the opportunity to access, participate, control and gain the benefits of development in all spheres of life.

From the definition of gender in the above, the question arises; Where does the establishment of gender? What initially due to biological factors or are purely social construction? These questions arise from two theories. First, the nature theory, which holds that the establishment of the nature of women and men has to do with, -even not escape than the differences of gender (sex).¹⁴ Consequently, gender roles between men and women will be difficult to change, because he is natural. Physical form bigger man and muscular than women, for example, would make choosing unskilled, while women are physically weaker soft and would choose a job based on his condition. Second, nurture theory, which

⁹H.T. Wison, *Sex and Gender, Making Cultural Sense of Civilization* (Lieden, New York, Kobenhavn: E.J. Brill, 1989), 2.

¹⁰ Hillary M.Lips, *Sex and Gender: an Introduction* (London: Mayfield Publishing Company, 1993), 4.

¹¹ Linda L. Lindsey, *Gender Roles: a Sociological Prespective* (New Jersey: Prentice Hall, 1990), 2.

¹² Riant Nugroho, *Gender dan Administrasi Publik: Studi tentang Kualitas Kesetaraan Gender dalam Administrasi Publik Indonesia Pasca Reformasi 1998 – 2002* (Yogyakarta: Pustaka Pelajar, 2008), 38.

¹³The study of sex or gender usually refers to a person's biological aspects, such as the chemical composition and hormones in the body, physical anatomy, reproduction, and so forth. While gender is more to the social, cultural, psychological, and other aspects that are non-biological. Linda L. Lindsey, *Gender Roles*, 517.

¹⁴ Ratna Megawangi, *Mebiarkan Berbeda? Sudut Pandang Baru Tentang Relasi Gender* (Bandung: Mizan, 1995), 94.

assumes that the nature of the differences between women and men was not due to biological differences, but because of their socialization or social construction.¹⁵ Consequently, it becomes neutral gender roles, changing, and can be exchanged. Because originally it comes from the absence of which was formed by a community.

The basic assumption of gender equality brought about by feminism departing from theory nurture. According to them, gender role only from the social construction (nurture) alone and not natural or nature (nature), so it can changed.¹⁶ Thus the role of gender is essentially neutral, equal, equal, and can be performed by the male gender and women. There is no difference between men and women, everything is the same.

Neutral above are ideal conditions of men and women feminists picture. If neutrality is violated, in their view would lead to social inequality, namely discrimination against women. To find out more about whether there have been inaccuracies, usually feminists used quantitative measures, such as by looking out come, results, lot or on past successes in the world of men and women publik.¹⁷ As for other forms of gender inequality will be described hereinafter.

Gender Inequality

Gender inequality or gender inequalities is a term commonly used to indicate the different treatment of gender (gender differences). The distinction is often understood as a form of discrimination or hegemony of men over women. Gender inequality that comes from gender differences, it is considered highly detrimental to women's position in the social community.

As for other forms of inequality, among others; *First*, the marginalization of women, namely women away from public activity which resulted in women having no income to be poor. *Second*, the subordination of women, which put women in an inferior position to men. The subordination of women departing from the basic assumption that women are irrational, emotional, weak, and others. So that women

¹⁵Ibid.,94.

¹⁶Ibid.,95.

¹⁷Ibid.,48.

are placed in roles that are not important. For example consider women unfit to be a leader because she was irrational and emotional. *Third*, negative stereotypes against women. As she was regarded as being the tempter, the seducer, or a source of immorality, so that, in case of harassment and sexual violence by men, women are supposed to be a victim even considered as a cause of crime. *Fourth*, violence against women, the harsh treatment of women in the form of physical, psychological, and sexual. *Fifth*, sexual workload, which imposes two women to assume a dual role as domestic workers and outside workers. For example, women who have a career outside also had to work at home. Dual roles make women gain the difficulty of working out, so that the (wage) obtained low woman.

The gender imbalance before a serious concern among feminists. They analyze what part the cause of the birth of gender differences, and how should that inequality does not happen again. If referred to the back, the idea of gender equality in fact can not be separated from its historical context. Gender equality comes from the feminist movement that tried to fight Western cultural patriarchy^{18, 19} at which time the woman looked down upon. The struggle for gender equality can not be separated from social upheaval, economic, political and West were developed at that

¹⁸ The definition of the patriarchate is a state in which the male is positioned powerful or superior to women in various sectors, both domestic and public. Kamus Bahasa, Sues Patriarchate, trans. Nungkatjasungkana, (Yogyakarta: Cultural Foundation, 1996), 1.

¹⁹ The initial culture can be traced from the time of the Ancient Greeks, Romans, until the Modern Ages. In the Greek, the rule of law and the laws establish wholly-owned female guardian. That is, before she married his father, brother, or who is believed to be his guardian, and after marriage he belongs to her husband. Women do not have any rights over him, even could be sold to others. In Roman times, women are considered dirty creatures, such as small children and irrational. The guardian also has the right to trade in to anyone, playing, hurt, even kill if necessary. In Judaism, women are considered housekeeper and did not get the inheritance rights when her husband died. A father has the right to sell his daughter if he had no sons. Women are also considered to be cursed for making Adam expelled from paradise. Furthermore, in Christianity, women are considered weapons of the devil in an attempt to mislead people. In the 5th century AD, the council held to discuss whether the woman who had the spirit beings or not, with the final conclusions have not the spirit. In the 6th century AD, discussed whether women were human or not, the answer that they were created to serve man. Muhammad Mutawall al-Sha'rawi, *al-Mar'ah fi al-Qur'an al-Karim* (Cairo: Muassasah al-Akbar al-Yaum, t.t.), 8-9.

time, namely liberalism. It brought the mission of freedom and equality of individuals. According to Coady, liberalism bringing ethical values of freedom (liberty) and equality (equality). Two of these ethical values become the principle of the equality concept gender.²⁰

To realize social change towards life equivalent, then the movement is wearing foundation of social conflict theory.²¹ Namely social theories tend to demand a social change towards a classless society. According to this theory, social change occurs through the dialectical process between the class of people who seize power. Distinction and gender inequality is not caused by differences in sex (biological), but a divine creation.²² In analyzing the issue of gender relations, these theories tend to be provocative, namely spreading the issues of oppression and inequality experienced by women, triggering hot atmosphere and suspicious. Of the theoretical basis of the above, was born a couple of feminism. Streams arises not out of their difference's view of the concept of equality, the causes of gender inequality and how to transform the values of equality into reality.

1. Liberal feminism

This flow holds that women have the same ratio as the man power.²³ Ontologically, men and women are equal. Thus, the rights were owned by men should have prevailed also for women, such as the right to education, to live freely, and happy.²⁴ However, it would not have happened if the position of women is still placed in the domestic world that depend on the husband. Their work in the domestic sphere, making capability ratio is blunt, and even more dominant only element of his emotions. In conclusion, the family institution is a cause of discrimination against women. This flow also criticized all the values, traditions, norms, religion, culture for confining women only in the domestic world alone.

2. Marxist Feminism

²⁰Coady, C.A.J., *Distribute Justice, A Companion to Contemporary Political Philosophy*, Ed. Robert E. Goodin and Philip Pettit (t.t.: Blackwell Publishing, 1995), 440.

²¹Megawangi, *Mebiarkan Berbeda?*, 76.

²²Ibid.

²³MansourFakih(et.al), *Membincang Feminisme: Diskursus Gender Perspektif Islam* (Surabaya: Risalah Gusti, 2000), 39.

²⁴Megawangi, *Mebiarkan Berbeda?*, 118.

This flow of the view that the causes of the gender imbalance is due to the capitalist class system.²⁵ This system has made men work outside the home, while women in the house. Earned wages make men feel higher and power. Personal rights of women finally fell into the hands of men. That is, women are considered as private property man. At home, women were unpaid workers, the poor, and had no possessions. In the system of the family, the husband is described as the oppressive bourgeoisie while the wife as the oppressed proletariat. According to feminist marxist tradition in the patriarchal capitalist system is very strong, then the struggle for gender equality can be realized by eliminating the dichotomy of domestic work sector and the public sector. The emancipation of women occurs only in women who are involved in the production, and stop taking care of domestic affairs.

3. *Socialist Feminism*

This flow considers that social equality will never be achieved if women are not aware of their oppression.²⁶ realization that his position would make women oppressed rise up and reject male domination so as to undermine the patriarchal system, a fairy considers men dominate women in the family. In the countries of the capitalist and socialist, women also falls as labor and most of them are already economically independent. The emergence of this awareness will make women rose by rejecting the domination of men in the family, so it will be able to break down the patriarchal system.

4. *Radical Feminism*

The flow of the view that all the interactions of women to men is the cause of all women's dependency. Said to be radical, because in his analysis, this flow also includes sexual intercourse as a form of women's dependence on men. According to this flow, sexual satisfaction may also be obtained from the same sex, need not only to male.²⁷ Marriage will only be a place of slavery of women. Lesbian groups for one, says that a heterosexual relationship (in a family) as an institution and ideology

²⁵ Kadarusman, *Agama, Relasi Gender & Feminisme* (Yogyakarta: Kreasi Wacana, 2005), 29.

²⁶ Yunahar Ilyas, *Kesetaraan Gender dalam al-Qur'an: Studi Pemikiran Para Mufasir* (Yogyakarta: Labda Press, 2006), 21.

²⁷ *Ibid.*, 19-20.

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become a means of oppression and rape against women. Along women continue his relationship with men, it will be difficult, if not impossible, to struggle against the male.²⁸

Of multiple streams above, it can be concluded that the demand for gender equality include the following; *First*, the physical similarities of men and women, the same power and its power. Unless there are some special functions related to sexual function and all that related to male and female sexual hormones. Consequently, the assumption that women are weak, emotional, irrational, and the like instead discredit women. What is done by men with automatic can also be done by women as well. Thus, gender roles can be exchanged by anyone.

Second, sexual equality of rights. It means that women have the right to get the same pleasure in sexual intercourse. In this case, women are often only be the object of men. Men often exploit the female reproductive function. Another abuse received by women, as well as sexual problems. Therefore, women are entitled to wear his body at will owner. Included in obtaining sexual satisfaction, women do not depend on men. Lesbianism is an example of these.

Third, equality of social rights. One of the demands of most feminists are social change. Marxist and socialist feminism, for example, want to decrease domestic roles for women who related to affair with the family and household. For them, women are often associated with domestic world would find it difficult to compensate for the position of men. In addition will give the double burden on women when he carrer, domestic affairs ultimately preserve the social environment dominated by men.

Justice in Islam

Justice comes from the Arabic '*adalah* who have a variety of meanings. In the dictionary *Lisan al- 'Arab* this word mean "Straight".²⁹ That is straight to the truth and do not deviate because debauched. In the dictionary of *al-Wasit* is defined by the equation,³⁰ which equate something with others.

²⁸ Megawangi, *Mebiarkan Berbeda?*, 179.

²⁹ IbnManzur, *Lisanal- 'Arab*(Kairo:Daral-Ma'arif,tt),2838.

³⁰ IbrahimMustafa.et.al, *al-Mu'jamal-Wasith*(Kairo:Syuruqal-Daulah,2004),422.

In terms of justice have some understanding. Raghīb al-Asfahā'ni defines justice as the fulfillment of full rights.³¹ According to M. Quraish Shihab, there are three words that contain the meaning of justice in the Qur'an; *al-'adl*, *al-qism*, and *al-mizan*. According to him, three have characteristics different meaning.

'*Adl* is giving thoughtful guidance as needed and put it in its proper place. Be fair to yourself and others. So it is not necessarily to two people. Giving it may be convenient that one but not others. In contrast, *qism* is the gift that gives a sense of happy and satisfied to the two sides, though not necessarily the same. While *mizan* is justice base on balance of activity. For example between expenditures with revenues must match or the number of people in accordance with the capacity.³² Among the three fair meaning that only *al-qism* that the nature of God. This proves that God is a substance that when giving and sharing his grace or in the affairs of His creatures, always fair and appropriate trends, the nature and potential of each creature, so that makes them feel happy.

Negative form of the course of justice is injustice. It is often paired with the word *zulm*. Etymologically, "*zulm*" means "aberration",³³ which violate the proper way. While the term is defined by putting something in place that wrong.³⁴ In ethical problems, *zulm* means acting in ways that go beyond the limits that right and violate the rights of others. In short, what is meant injustice, is that one has crossed the line and do something that does not belong her right.³⁵

In the context of the Qur'an, the word *zulm* occur in two directions; from man to God (it can be said also with *zulm* to yourself) and from the human to another human. The former is usually interpreted

³¹ Al-Raghīb al-Asfahāni, *Gharīb al-Quran* (tt.: Nazār al-Mustafa, t.t.), 46.

³² M. Quraish Shihab, *Tafsir al-Misbah: Pesan, Kesan dan Keserasian al-Qur'an*, Vol.5 (Jakarta: Lentera Hati, 2002), 284.

³³ Manzūr, *Lisan*, 2756.

³⁴ Ibid.

³⁵ Interestingly, according to Toshihiko Izutsu, God repeatedly mentioned that he was never the slightest unjust in His creatures, even with an ant or a binding promise. It shows that all matters concerning the rules or the law laid down His is fair, that in accordance with the needs and the capacity of the creature. Toshihiko Izutsu, *Konsep-konsep Etika Religius dalam al-Qur'an*, Terj. Agus Fahri Husein, et. al (Yogyakarta: Tiara Wacana, t.t.), 197.

as an act beyond the limits that God commands, while the latter are within the limits of good behavior in social life (Qur'an, al-Baqarah: 229). In the Qur'an, human behavior in society as defined God to man called God bonding or *hudud* God. It can be seen from the example verses of the Koran that states that took the calf in the case of Prophet Musa. referred to as the *zulm* act against themselves. This proves that *zulm* against oneself is closely related to the abuse of human nature. false one of the human nature is to worship only Allah (*tauhid*) as the primordial covenant of man against God during the process penciptaan.³⁶ Both are wronged others. Namely regarding the treatment that is outside the limits of human behavior are well known by the public (*ma'ruf*).³⁷ One is depriving that was not hers. For example, hurt others with words (QS. Al-Nisa: 148) or fight against an innocent person, because the war is taking other people's rights, state rights, and right of freedom. (QS. al-Hajj: 39).

The Concept of Justice in Islam

In Islam, the principle of justice can not be separated from the teachings of monotheism. *Tawhid* is the action that asserts that God is The One, absolute and transcendent Creator, Lord of all that exists, while the other is a creature or creation of God.³⁸ God the Creator has a distinctly different entities with His creatures. This distinction brings consequences that no one is equal to God, while all humans (male and female), equal in status as His creatures. All human activity will be bound and to live in accordance with God's will. Everything is equally the duty and responsibility. What distinguishes it is the value of piety (Q.S. al-Hujurat: 13).

In contrast, feminists looked at men and women are equal in all respects, except for the biological course. Biological factors is also restricted to the form and function of sex, namely menstruation and pregnancy. Apart from that, women are free and are not bound by anything. Boundaries between men and women becomes nothing. Nature,

³⁶Therefore, Toshihiko Izutsu divide *zulm* to two kinds; *zulm* to God and to others.Ibid., 197.

³⁷ Ibid.

³⁸Isma'il Raji al-Faruqi, *Tauhid* (Bandung: Pustaka, t.t.), 16.

tendencies, actions, and behavior, is seen coming from the construction of community culture. This is contrary to the reality that the woman's not only different in terms of gender. Nature, tendencies, and their behavior is also different. According to Alexis Carrel in *The Unknown Men* Quraish Shihab was quoted as saying that differences in men and women not only on sex and education, but overall the limbs with the chemical elements produced by glands. Each cell in women has a characteristic, which is the hallmark of femininity.³⁹

In contrast to feminists who believe that men and women are two individuals who stand alone, while Islam considers women and men are the two entities in pairs. Like the other creatures that also pairs (QS. Al-Dzariyat: 49 and al-Rum: 21). It means that both have similarities as well as differences. They are the same because of his position as a servant of Allah (QS. Al-Dzariyat: 13 al-An'am: 165, and al-Baqarah: 30). They have the right, duty and responsibility of the same will that matter. But they are different functions, in accordance with the nature or the nature of each. Nature or human nature in Islam is not just a purely physical, but psychological and spiritual too.⁴⁰ Besides pairing also means that individuals need each other. Can not stand alone and incomplete without the presence of the other.

Differing views on the identity of women over affected how gender equality and justice of Islam about the relation between men and women. According to feminist humans are individuals who are more concerned with himself. Nature is what resulted in differentiation and finally lead to oppression. While Islam considers men and women need each other, respect, and love.

³⁹ M. Quraish Shihab, *Perempuan dari Cinta Sampai Seks, dari Nikah Mut'ah Sampai Nikah dari Bias Lama sampai Bias Baru* (Jakarta: Lentera Hati, 2005), 26.

⁴⁰Fitrah is the innate nature of all that God implanted in the process of creation that can not be changed and in humans from birth. The natural disposition include: *first, jismiyah* (physical or human biological) that is part of nature and its laws, subject to the laws. *Second, Nafsiyah* (psychic) consists of a lust that has a tendency to protect themselves from danger and the pursuit of pleasure. With a reasonable instrument that serves to distinguish what is right or wrong and liver function determines what is good or bad. *Third, Ruhaniyah* (spiritual), which is divinity in man. Baharuddin, *Paradigma Psikologi Islami; Studitentang Elemen Psikologi dalam al-Qur'an* (Yogyakarta: Pustaka Pelajar, 2004), 158-172.

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Basically, it's the nature of the patriarchal and matriarchal positive, only then become negative when in extreme conditions. Patriarchal positive nature is the tendency to want to protect, maintain, independently. If it's too extreme happens is negativity will appear, which is authoritarian and oppressive. While the positive properties matriarchal is predisposed want to embrace, cherish, and see something as part of united with him. If it's too extreme, then the negative qualities that will arise, namely too lenient, including may violate the norms of good and bad, and did not notice the law.⁴¹

Islam is a religion that prevents the existence of patriarchal and matriarchal remain stable and runs in a balanced and harmonious. This is in contrast with the goals to be achieved by feminists. Feminist attempts to undermine the patriarchal culture and the demand for equality and freedom of women. While Islamic justice seeks to balance the patriarchal character and matriarchal with the rules stipulated in the Law. Average main purpose is to direct that men and women are able to carry out their duties as servants of God as best as possible, ie in accordance with the nature of their own.

In addition, feminists have always regarded the patriarchal and matriarchal with a negative viewpoint. Patriarchate is seen to be authoritarian and oppressive, so it must demolished the right. While matriarchal is weak, then it should be abandoned. But the way in which feminists are by directing women to occupy a man's world and imitate their way of life. This is inconsistency feminists. They opened it undermine the patriarchal system actually legalized it by altering the female form became like men.

The rules of Islamic law adhered to the principle that Islam, the issue of the relation of men and women, as well as matriarchal patriarchal nature. Both complement each other and help each other. Inequality occurs when something happens that is not balanced between the two. As at the time Islam first came in the Arabian Peninsula. In the period of Ignorance, women underestimated. Culture that flourished at the time was negative patriarchal culture. In Arab society, the man on duty to defend and maintain the whole family, are responsible to meet all the needs of family members. Consequently men monopolize the leadership at all

⁴¹ Ibid.

levels, ranging from the head of the household and the community. Promotion of careers in various professions in society only rolling among men. Women only served with the tasks of reproduction. Thus, men have a greater chance than women to earn achievements and prestige in society.⁴² Islam came to bring change; which returned the social stability of society. Many legal cases are changed and it would benefit women.

Women were also given a role in building a society to exist. For example, female infanticide is prevalent in society of ignorance is eliminated. Baby girls also greeted his presence with *akikah*, a thanksgiving tradition births that were previously only to a baby boy. Islam is also very appreciative of women to choose a preferred mate. Dowry in Islam is recognized as the private property rights of women, both in status as a wife or ex-wife. She is a wife, women's rights are also guaranteed and must be met, such as food, clothing, and shelter. Women are at the Time of Ignorance made inheritance. Party late husband is entitled to dignity of women whether to marry one of the family or redeemed himself to the late husband's family in order to marry someone else. In addition, women's reproductive value was also appreciated. The position of a mother, much more noble in rank than a father.⁴³

Gender Equality Versus Justice in Islam

In some aspects of life, feminists usually sue a product of Islamic law that is considered gender bias. Some examples of commonly defendant is a matter of inheritance rights, leadership in the family, and the divorce filing. Based on that, then they offer a new perspective that would be sued, blaming, and deconstructed. The results of the products offered is mind stuff definitely influenced Western secular worldview. As a result, what is offered is far and contradicting Islamic values.

1. Inheritance Rights

Related to inheritance rights, disputing QS.al-Nisa: 11. This verse is being contested by feminists. Asghar Ali Engineer stated inheritance as stated in the paragraph above is not a provision that

⁴²Because of the importance of the position of men at that time, the Arabs feel embarrassed when then born in a family of their daughter, they even kill their daughters. See Umar. *Argumen Kesetaraan Gender*, 135.

⁴³Mulia, *Muslimah Sejati*, 45-48.

final.⁴⁴ Because, in essence, the Qur'an requires the acquisition of the same between men and women. That is the legacy statutes 2: 1 it may turn out to be 1: 1. This division (1: 1) at the time of the Prophet was not performed because the system adopted at that time still patriarchal. In addition, when viewed from the social and economic aspects at the time, the burden of family or living fully the responsibility of men, so the acquisition of possessions men have more. This is the social background who gave birth to the formulation of 2:1.⁴⁵ If today many women are working and not infrequently they become the backbone of the family, then the division (2: 1) to change.

Asghar above arguments have been weak. In addition to the provisions of inheritance for itself already considered final (QS. Al-Nisa: 13- 14), also in understanding the inheritance rights he wears equality perspective not justice perspective. It was explained that one of the meanings is fair balance. That is the fulfillment of the rights of each part in a system very well. Islamic justice in matters of inheritance is right with this perspective. Giving legacy for boys as much as two-fold based on the balance in the family relations system is closely linked to the obligations of men in terms of feed family.⁴⁶ Part two possessions of men are in fact also to be given to his wife and family, while the women only one not so. Treasure that one was just his own. If the woman was married, his maintenance will be borne by her husband, while the parts that one can be a tube without the need to spend. If seen treasure who is first discharged, and who kept intact, the answer is clear, faster runs belongs to

⁴⁴Asghar Ali Engineer, *Hak-hak Perempuan dalam Islam*, Terj. Farid Wajidi dan Cici Farkha Assegaf (Yogyakarta: Yayasan Bentang Budaya, Cet. I, 1994), 101-106.

⁴⁵Amina Wadud Muhsin, *Wanita di dalam al-Qur'an*, Terj. Yaziar Radianti (Bandung: Pustaka, 1994), 117-118.

⁴⁶Conditions inheritance in Islam didasarkan pada several factors. First, the level of kinship heirs (either male or female) and those who died. The closer kinship, the greater the share of the inheritance received. Secondly, the position of generation rate. The younger generation of the heir whose future is still long sometimes gain a larger share than the older generation, regardless of manhood or womanhood. Three, bear the responsibility for family life. This point that sometimes distinguish the inheritance rights between men and women, even though located in the same degree of kinship. Because the position of the boy bore a living wife and family. Being female is not charged these responsibilities. See, Muhammad Imarah, *Pengantar dalam Shalahuddin Sultan, Miratsal-Mar'ahwaal-Qadiyyahal-Musawah* (Kairo: Dar Nahdah Misr, 1999), 4.

the man, because he earned two parts to be subdivided, was what women have absolutely no use.⁴⁷

Besides the problem of inheritance is also related to the characteristics of the male patriarchal and matriarchal women. In accordance with the terms of the characteristics of each. That treasures more patriarchal character which is the safeguarding and protecting it, are met. While women with a loving matriarchal character, dependent, and wants to be loved, just as when you receive such assistance. Another example, controlling the emotions of men and women are very different. Men are better able to control his emotions than women. Or psychologically women are not willing to "spend" her husband.

2. *Women and Leadership in Family*

With glasses of equality, the leadership of men against women in the family is not fixed. According to Amina Wadud, women could replace men when the terms of the verses of the Koran on leadership can be met, namely to give a living and privileges in terms of physical and psychology.⁴⁸ Both women and men have the right to be free in leadership, Provisions lead character is not natural, it can be changed, and can be exchanged between women and men. The above statutes are gender roles is a cultural construction. This is in line with the opinion of Asghar stating that excess which is the requirement above not be natural, but rather a social nature, namely the ability to provide for and regulate keluarga.⁴⁹ According to him, the leadership paragraph only show a social fact, not a order.⁵⁰

In Islam, the domestic leadership handed over to men (QS. Al-Nisa: 34). It is based on the principle of fairness. One of the principles of justice is to put something in accordance with their respective capacities. Some of the reasons why men who are burdened tasks are not only because of the obligation to make a living, but also because of the natural advantages possessed men both from physical and psychology.⁵¹ Opinion

⁴⁷Shihab, *Perempuan dari*, 262.

⁴⁸Muhsin, *Wanita*, 93-94.

⁴⁹Engineer, *Hak-hak Perempuan*, 62.-63.

⁵⁰Ibid.

⁵¹Abbas Mahmudal-'Aqqad, *Al-Mar'ah fial-Qur'an* (Beirut: Mansyurah al- Maktabahal-'Asriyyah, tt.), 5.

Amina Wadud above clearly assume that the differences in men and women only situated on gender alone, while others are the same. Though described above that the differences between them concerning the overall physical, thought and psyche.

The interpretation of "*al-qawwamah*" in QS.al-Nisa: 34, which is only meant as provider, seems less appropriate. Therefore, the scholars never interpret it as such. Al-labari for example, defines *qawwamah* with the task of implementing (*tanfidh al-amr*) and the patron (protector).⁵² Ibn cashier interpret the chairman and magnifying households because he thought the man better than woman.⁵³ Yusuf Qaradawi characterized it responsibilities and scope of meaning pronunciation *amanah*.⁵⁴ So *qawwamah* More broadly, concerns the physical advantages, think, psychic, and treasure.

Many prominent Muslim feminist assumption that the provision of a living husband pointed possession husband over the wife, is a misconception. According *Mutawalli al-Sha'rawi*, *qawwamah* no meaningful ownership and discrimination.⁵⁵ reason, because the wife does not belong to the husband. One proof that the marriage is not ownership is that there is no association concerning the husband who wants his wife, and the wife would revolt if women learned that her husband with another person, but one feature was originally the proof of ownership for the association on his property to the lain.⁵⁶

Leadership in Islam is the position and mandate will be accounted for in the Hereafter. The higher a mandate, increasingly heavy burden to bear. Thus the title was not something comfortable. Reward a person is not measured by the position, but how he was carrying out their mandate properly. Being a leader is very heavy. Not just the physical, emotional stability is also needed. And if it is borne by women it will be very burdensome.

3. Divorce

⁵²IbnJarial-Tabari,*Jami'al-Baya fi Ta'wil Al-Qur'an*, Vol.7 (Beirut:Muassasah al-Risalah),290.

⁵³Ibn Katsir,*Tafsiral-Qur'anal-'Azim*,Vol.2(Beirut:Daral-Tayyibah,1999),292.

⁵⁴Yusuf al-Qardhawi, *Min Fiqh al-Daulah*(Kairo: Maktabah Nahdah al-Misriyyah, 1985), 162.

⁵⁵al-Sya'rawi,*Al-Mar'ah*,74-75.

⁵⁶Ibid.

According to feminist rights for a husband divorces dropped open opportunities husband abuses are not responsible.⁵⁷ For that, it needs to be sued. Whereas in Islam, the authority of divorce is not intended as such. Imposition of divorce has some conditions. First, the husband must know whether his wife was menstruating or not. Divorces wife when menstruation not assessed properly. Divorces in a state of holy wife was judged not divorce true it may be that when the husband had freshly saturated. Or maybe the wife's pregnant, so her husband will regret leaving his prospective mother. Besides divorce in anger great that it can master the emotions, is viewed by many scholars do not lead to divorce. Actually, Islam does not rule out the possibility for wives to "sue for divorce" through the courts or the term of right under Islamic law to *khulu'*. Islam establishes the right of divorce is basically in the hands of her husband. This is because the husband is obliged to pay the dowry and meet the needs of the family. In addition, if the right to divorce at the wife's hand, then divorced gain or loss. Losses due to lost his wife, lost the dowry, and finance his wife and children. Additionally, the psychological considerations that emotionally stable men more than women. Women's physical and psychological condition at the time leading up to and at the time of menstruation or puerperal tend to be unstable,⁵⁸ resulting in instability in the decision.

Legislative (DPRD) Pamekasan, East Java plans to legalize the practice of polygamy through local regulations (regulations) as an attempt to suppress disobedience and illegal prostitution is increasingly prevalent in the region. Polygamy a draft regulation is being discussed at the Parliament's internal Pamekasan. The idea of legalizing polygamy legislative Pamekasan it, for several reasons. In addition to avoid breaking the law, as well as to suppress the practice of prostitution is lately increasingly prevalent. If polygamy is legalized, then the practice of illegal prostitution will be reduced. Moreover, the idea of legalizing the practice of polygamy is also on the proposal of the scholars. Another reason is also a reference population of Pamekasan statistics between men and women.

⁵⁷Muhsin, *Wanita*, 106.

⁵⁸Shihab, *Perempuan dari*, 301.

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Based on data from the Central Statistics Agency (BPS) Pamekasan, the number of people with the female gender in districts that apply Islamic law through the Community Development Movement Islami (GERBANGSALAM) is more. Of the total population Pamekasan many as 829 323 people, the number of people with male sex just as much as 402 314 people, while the population with female sex as much as 427 009 people.

Meanwhile, based on the observation between some members of Parliament Pamekasan has indeed been practicing take more one or polygamy. Only, they were married *siri* or not recorded in the office of religious affairs. For some representatives who have practiced polygamy, it is generally reasonable to help. There are also reasonable, because it wants to get a new feel, so it took refreasing through a new life companion. Polygamy through legislation, expected later disobedience increasingly rampant in Pamekasan can be reduced. Rather than commit adultery, mending run *sunna* form of polygamy. Polygamy regulation discourse was raised along with the increasingly widespread practice of prostitution in the City Gate Salam. The representatives of the people was actually a lot of polygamy, but *Sirri* or confidential nature.

Conclusion

The concept of gender equality is the result of Western cultural experience that has tried to impose Islamic societies. From his home course, both Western and Islam are different. Experience and history was also different. Surprisingly, this concept is forced, not only by Western feminists, but feminists Muslims. As a result, some of the provisions of Islamic law is challenged and reformed, such as the concept of inheritance rights, leadership in the family, and the divorce filing. With jargon want to elevate the rights and dignity of women, it turns out feminists actually gets them into trouble and humiliation. The responsibility of feeding their families who had been charged to men switched mandate also to women. Results inheritance of a woman who had been absolute, because the act of the feminist, may be shared to any other. In Islam, it is not known the concept of equality. That there is a concept of justice. Women and men were given the rights and responsibilities of its portion. Islam put them in place. If the obligation is

to provide for a family man, so he got right "more" than women in terms of inheritance. And even then he does not have his own rights, because it must be subdivided to the responsibility.***

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