

Women, Reconciliation Right and Gender Justice in Islam Family Law

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Abstract:

Religious teachings are considered to have long oppressed women. Teachings having been dominated by men have been used as justifications for the perception of society that is very detrimental to women. This article discusses the gap of understanding on women's rights to reconcile with their husband who have divorced them, viewed from the perspective of Islamic scholars and Islamic law. In this case, the Qur'an has the principle that the positions of men and women are equal as a servant, because men and women are created from the same substance (min nafsina waahidah), the same task (khalifatullah filardh), and have same obligations (liya'budun). However, Muslim scholars agree that the reconciliation is absolutely the husband's right. In gender perspective, women can apply for reconciliation (Rujuk) as their rights to their husbands. This study conducts analysis using a content analysis approach related to the issue of reconciliation rights dominated by men (husbands) by means of redeeming the husband's rights that have been given to them. And in the presence of khulu, the wife also has the right of reconciliation (Rujuk) to the husband who has divorced her.

Key Words: Rights; Reconciliation; Law; Justice; Gender

INTRODUCTION

A marriage performed by a couple of human beings is intended to make their living and life happy and them together forever. Therefore, before the marriage is held, it is recommended to make an approach first, aiming to investigate and to appraise their partner, in the term of personality and etc. Thus, they will wade in their household life later without regret and expectedly with peace and tranquility until the end of life.

Some policies trying to deconstruct Islamic law related to the women's rights in Islam see incompatibility of Islamic law practice and normative value brought by Islam as a universal message. Some studies have been conducted on women's rights in relation to Islamic law (Tahir, 2008: 203-226; Saidah, 2017: 292-312; Harahap, 2013: 361-386; and Wibisana, 2016: 185-193) using one reading perspective leading to the view that Islam universality values abide on discourse level only or on Qur'an and al-Hadits texts, while in practice, Islam communities are more loyal to certain *madzhab*s or *fiqh* laws that have been accomplished and static, moreover after the closing of *ijtihad* gate when Daulah Abbasiyah fell down in 12th century (Engineer: 10). In contrast to previous studies, this article discusses Islamic law from two perspectives: Islamic law and gender. Specifically, this article focuses more on the women's rights to reconcile with their husbands who have divorced them, analyzed by setting forth the gap between *jumbur ulama* of Islamic law and

gender.

Based on Islamic civil law, Islamic scholars (*ulama*) do not give the wife the right at all. In contrast to divorce (*talak*) matter, although the right to divorce (*talak*) belongs to husband, a wife is entitled to require her husband to divorce her when she feels that something has disrupted their household and it comes from her husband, by means of *kbulu'*.

In the term of reconciliation (*Rujuk*), a wife has no right at all to refuse or to be asked for consideration. Meanwhile, another *ulama's* opinion explains that a husband may not harm his wife, when she wants to reconcile. In the case of not harming, whether or not the opinion is heard from husband only, when husband says that he is not intended to harm, it can be accepted without seeing the woman's interest and feeling.

As suggested by scholars of *fiqh* (*fuqaha*), former husband is entitled to return to his former husband during *iddah* period, and in this case, the former wife may not refuse his husband's wish to return to her, when the reconciliation (*rukuk*) is performed during *iddah* period (al-Jaziri, 1994: 221).

DISCUSSION

Concept and Definition of Gender

The perception on gender entrenched into the essentialism position of gender as a binary system of man and women identities by making interpretation positioning the gender identity based on the society's social construction related to the two identities: man and woman (Parks, 2018: 31). The concept of gender is closely related to Islamic law applied to human interest and aiming at universal humanity, including *kemaslahatan* (benefit), justice, God's mercy, and prudence. This principle should underlie the substance of all legal issues. Ursula King (1995: 6) stated that most gender studies discuss injustice experience by women today.

The difference between man and woman is contained in Islam as mentioned in Qur'an, according to Nasaruddin Umar, not only biological difference. Qur'an in verse 32 of Surah an-Nisaa stated that: It means: "And do not wish for that by which Allah has made some of you exceed others. For men is a share of what they have earned, and for women is a share of what they have earned. And ask Allah of his bounty. Indeed Allah is ever, of all things, Knowing". (Q.S. A1-Nisa 32).

Another verse stating that the men are *qawwamuna* over women is perceived to be the excellence and difference of men from women. However, the degree intended, according to Nasaruddin Umar (1999: 31), citing some Islamic scholars' arguments, is "husband's volition to relieve some of wife's obligation" and rather than his arbitrariness over his wife.

This study discussed chronologically the Reconciliation in *fiqh* and positive law perspective by seeing the position of women in Islam law in *imam mazhab* and Islam law's view in Indonesia. This study on reconciliation is separable from religion, law, and social dimensions. Firstly, religion dimension related to the reconciliation here is Islamic religio-legal norm and order to organize human life, either individually or collectively. The procedure of reconciliation is implementation discretionarily as long as it does not break the principle and the requirement specified and corresponding to the social condition in which the law will be enacted.

Islamic law is bond to and understood from socio-cultural background encircling it, so that the mind contributes to the understanding on law revolution. The factor

underlying the birth of adaptability theory is problem. This problem principle will enable Islamic law to respond to the social change (1999: 187-188). To prevent the *maslahah* used from being subjective in nature, it will be countered with Imam Gazzali's *maslahah*, using *Munasabah* or conformity theory.

To the new cases, the law of which has been specified in the *nas*, there will be two forms of *ijtihad*: *ijtihad ibtiddai* and *intihad tarjih*. *Ijtihad ibtidai* can be conducted in two forms of reasoning: *ta'lili* and *istislahi*. *ta'lili* reasoning is conducted through *istimbat qiyas* and *istihsan* methods. Meanwhile, *istislahi* reasoning is conducted through *istinbat maslahah mursalah*, *sadd az-zariah* and *fat az-zariah* method.

Literally, conformity (*munasabah*) is defined as compatibility. In this context, it is the compatibility between law applied and the sign becoming the reason of why the law is applied so. This compatibility between law and its *illat* is called appropriate attribute (*munasib*). *Illat* behind the enactment of a sharia law, viewed from its effectiveness and probability provided, is divided into three: effective *munasib (mu'assir)*, harmonious *munasib (mula'im)* and odd *munasib (garib)*. As such, the concept of reconciliation existing in KHI is elaborated using conformity theory to avoid the subjectivity of *maslahah* making.

In addition, to find out the women's right in the reconciliation from the concept of legal subject in Islamic Law, the concept of reconciliation is studied specifically. Every human being is the actor of regulation from his/her birth through death. As the actor, human beings have right and obligation. Although, according to the current law, everyone can have their own rights, but in law, not everyone is allowed to act individually in implementing their rights as they are related to others' rights. They are categorized to "incompetent" or "less competent" persons.

Positive law knows the competency of taking legal action. MM Djojodigono stated that the border between not adult and adult can be seen from the competency of taking legal action. Those taking legal action incompetently are the ones incapable of taking into account and maintaining their own interest. Legal action is divided into two: unilateral and bilateral legal actions.

Therefore, the competency of taking legal action is the ability of taking into account and maintaining its own interest taking any action intentionally to result in right and obligation for both self and others' interest (Umar, 1999: 15-16).

Speaking of legal subject aforementioned, there is a common term *al-mahkum 'alaib*. *Al-mahkum 'alaib* meaning a *mukallaf*, whose deed is closely related to Islam religion law (Khalaf, 1996: 229). This legal subject discussion is very important, because there are some requirements to fulfill for an individual to be called *al-mahkum 'alaib*. If the requirements have been fulfilled, a *mukallaf* can take legal action.

Secondly, reconciliation in legal and social dimensions. The presence of Law to govern human needs instinctively requires the quiet and tranquil life. Furthermore, to find out the effectiveness of certain rules of law, the main objective of such rules of law should be recognized (Soekanto, 2011: 190) using a perspective not freely governing as the way it wants. Law is created for human benefit; therefore, law can be changed as the time changes (Ali, 2012: 45). For that reason, law should be reviewed and revised, rather than human beings should be forced to be put into the legal scheme (Nurhayati, 2012: 14).

Islam law is also affected by social development. Social change occurring within society affects either directly or indirectly the society institutions in many fields: government, economy, education, religion, and etc, and in turn impacts on the change of legal system. However, law can also change social structure and institutions. The main key

to the establishment of law leading to the social change lies on the implementation of law. There should be a differentiation between the legislation remodeling the society and the effectiveness programmed (Soekanto, 1988: 120).

Religion tenet has long been considered as oppressing the women. Religion tenets dominated by men so far have been used to justify the society's perception very harmful to women. It has an implication to the women represented inadequately in science, technology, engineering, math, and medical fields throughout world, particularly in leadership position (Nash, 2018: 449). However, not only this critique on gender inequality in relation to human rights reverts to the society's misperception but the feminist also questions the concept of human rights itself. Fundamental critique on human rights comes from the feminists, by questioning again the international law's partiality to its makers. Feminists contribute considerably to re-actualizing women's rights following UN's conference in Cairo (1994) and Beijing (1995) in which many parties were not partial to women's rights in the frame of human right and gender equality concepts (Nyambura, 2018: 423).

In addition, Gayle Binion, stated that there are some fundamental reasons of why this concept of human rights touches gender issue inadequately. One of them, according to Binion, is the difference of prior perception in creating these laws. He said that gender perception is based on anything occurring in women. Therefore, legal analysis posed by feminists tends to be contextual, experimental, and inductive; meanwhile, most social theories, including basic philosophy of human rights, are hierarchic, abstract and deductive. Feminist with such a perspective states that if the initiators of human rights based their idea on anything occurring in women, the perception arising will be that these human right values are not universal as understood in liberal countries (Binion, 1955: 512).

Another issue related to gender and human rights is the one occurring in many third worlds, moreover Islamic states. Many experts and feminists view that there are at least three factors making these human rights implemented easily in Muslim neighborhood, moreover in the Islam-based states. They are religion, education, and local culture. For that reason, many activist are affiliated with non-government organization, particularly the women-based ones such as SIGI, trying to focus on looking for the solution to those three problems by 1) interpreting al-Qur'an and al-Hadits; 2) giving more education and access, particularly related to holy text that in turn can be the foundation of change; and 3) activating the community as an agent of change toward what they understand so far.

As such, it is expected that in the perspective of (basic) human right owned by every human beings regardless gender, there is an opportunity for the women to realize their rights in all life aspects, and to change the community's perception entrenched so far into them in all countries, particularly developing countries. Thus, they can contribute reasonably and maximally, in living within nation and state, as the men have in general.

Islamic perspective on Human Rights

Redefining or looking for an appropriate definition of Human Right in Islam religion is likely very desirable. It is because if Human Right issue is applied to women and Islam, a problem to arise is the different interpretation on Islamic history. Pre-Islamic history is viewed differently by two extreme groups in relation to women issue. A group, for example, views that women's freedom in determining who the father of newborn by inviting all men likely to be his/her father is the women's freedom limited in the next Islam development (Karni, 1996: 72-77).

Speaking of Arab culture – the place where Islam was born – is inseparable from classical history of Mesopotamia, the location of which is adjacent to Arab peninsula. Mesopotamia is considered as the history of human civilization and culture. Mesopotamians' experience affects the people surrounding, and even the people in many hemispheres (Umar, 1999: 101). It was told that originally the nation existing in Middle East really respected women. Even the position of women was higher than the men's. It can be seen from archeological proof showing that from Neolithic to second millennium age, some nations living Middle East worshipped "Mother Goddess". The supremacy of goddess and the status of women became the rule in some places: Egypt, Mesopotamia, Elam, Kreta, and among Greek, Phoenician, and other races (nations) (Umar, 1999: 101).

Such condition changes gradually as the life pattern of community changes from the simple in rural to the complex one in urban areas. Similarly, it also occurs in Arab region. Among Arab races, giving birth to a baby girl is considered as disgrace and flaw; thus the existence of baby girl can be sacrificed. They felt shy and contemptible to let the baby girl to live in their family.

The position of men in Arab community occupies the position of very important and decisive. Some principle policies, concerning both family and *kabilah*, are on the men's hands. Another view seeing the women to be equated with commodity proves that Islam tries to raise women's dignity and to restore their (basic) human rights. This pre-Islamic age's view also contributes to the argument about reformation performed by Islam tenet.

Human right concept is not a clear one. Controversy has occurred since a long time ago concerning what the human right is and whether or not it can be effective universally. Ali (2000: 11), citing Donnelly, argued that human right is social products and practices. This Donnelly's argument gives an opportunity that when human rights is a social product, its establishment is affected strongly by those having diverse social difference and it means that the concept can prevail universally.

Some leaders of states doubt the universality of human rights, one of which is Malaysia's Prime Minister, Mahatir Muhammad. Considering Press and Development Study Center (2000: 17), the states ratifying the Declaration of Human Rights do not understand at all the poor countries' needs. Because, according to Mahatir, these states' priority is not only freedom but also food and other sources.

United Nations organization itself recognizes the presence of it. Chapter II of UN and Human Rights Book of 1945-1995 mentions:

"To us, this declaration has some weaknesses, including no articles discussing the right to propose petitions, the right to determine our own fate, right to development and right of minority and community... nevertheless, it can be said that the declaration has contained most of important issues at that time".

However, other scholars such as Weissbrodt and Vasak (1979: 16), firmly stated that the concept of human rights is an ideological concept that is universal in nature. The concept has been concrete and the norms are legal and applicable to all communities, without exception. The figures with this universality of human rights view then accuse relativists to be the seeker of reason for the infringement of human rights.

From the argument above, it can be seen that the universality of human rights is still questionable. Similarly, to Islam that has firmly claimed that its values and tenets are universal and *rahmatan li al-'amiin*, it is not easy to give an obvious border about this human rights. Islamic law is believed to be a universal law with the legal scheme that has been well-established and patent. Islamic law scheme is also considered as a very perfect law, so that

many people believe that Islamic law is the only solution to all problems occurring among human beings at both individual level and at the highest level, international level. It is because Islamic law involving and governing all aspects of human life, moreover seeing what is considered as rights in western view and looking for its synonym in Islam are not easy. In Islam concept, rights can be equalized with *huquq* (plural form of word *haq*). However, by looking for the synonym, it does not mean that human rights problem and concept in Islam can be solved.

It is these two different opinions encountered as well by Islamic law scholars to define what the human rights are in Islam perspective. One the one hand, human beings are seen as the universal value, on the other hand, this human beings is considered as the value that should be adjusted with the standard local culture and or Islamic values. These two different opinions are often symbolized by Western countries suggesting the universality values of human rights and Islamic states as the other side maintaining the local color (Prasetyo, 1993: 91).

Revivalism occurring among Muslims then encourages them to create a distinctive concept of human rights consistent with Islam, Islamic version-human rights. However, at this point dissenting opinions then occur. It is because the definition of *sharia*' is the interpretation of Qur'an and hadist which, in fact, can be multi-interpretable. The next problem is how to see that one version of human rights is Islamic while another is not? Meanwhile, returning to those texts, Qur'an and Hadits prove nothing, recalling the potentially different ways of understanding it.

Abul A'la Maududi, for example, feels to be challenged to develop distinctive criteria for this human right. He then wrote a book entitled *Human Rights in Islam*. Before he discussed his views on human rights in Islam, he firmly stated that what is needed, firstly, is to distinguish two approaches to understanding human rights. Those approaches are Western and Islamic approaches to human rights (Maududi, 1982: 13-15).

Maududi suggested "his dislike" for the approach taken by Western countries to the concept of human rights; it is because of the Western habit of claiming that the best one is their concept and output of their hard work. Otherwise, the concepts proposed do not come from them, e.g. relativism.

Conflict between Islamic and western countries is also a factor encouraging this dichotomy to occur continuously. Thus, as written by Hendro Prasetyo and Ahmad Sahal, if conflict occurs between international law and Islamic law (believed to be law), Muslim communities will choose Islamic law considered as Divine treatise, and at the same time, international law does not want to budge. It is also true for Muslims still loyal to pre-modern sharia concept seeing the presence of association between International human rights and Christian and European traditions (Prasetyo: 93). Therefore, it is unsurprising that Islamic states affiliated with Organization of Islamic Cooperation (OIC) getting the highest point is only Partly Free (PF) in the term of human right infringement based on Freedom House's Report (Panggabean: 100).

In addition to Maududi's criteria, there is also Islamic-version Human Rights concept, constituting the answer to such dissenting opinion. This formulation is *Al-Bayan al-'Alami 'an Huquq al-Insan fi al-Islam* (Universal Declaration on Human Rights in Islam) declared on September 1981 in Paris. Separated from the similarities and the discordance of Islamic version-Human Rights Declaration, this version is claimed by its initiators to be something genuine that has been formulated even since 7th century.

The difficulty faced in posing this Islamic version-concept of human rights is that

the maximum attempt to be taken is only to create Muslim group endeavoring to combine modern and Islamic human rights concepts. One of Muslim figures belonging to this group is Professor Abdullah Ahmed An-Na'im. He is an Islamic law practitioner coming from Sudan with international reputation, trying to remove dichotomy and conflict occurring between the concept of human rights existing and the human rights considered as Islamic version. They realize that the existing modern concept of human rights is a certainty; therefore they try to look for the meeting point only.

This last group believes that Islam has guaranteed fundamental human rights through Qur'an and Hadits. However, the constraint occurs when a state attempts to institutionalize Qur'an and Hadits values. They realize that the invitation to revert to the two Islamic main sources is not easy, recalling both of them are multi-interpretable ones. The elements of interpreter and translator are very dominant.

Roger Garaudy (1993: 102) suggested that values contained in Qur'an and Hadits is as if buried with the tradition and the ruler calling him Islamic ruler. Thus, in his opinion, it is these two things becoming the biggest temptation to Muslim communities in doing what Allah has revealed through Qur'an.

History recorded that the perpetuation of rule (domination) often occurring by means of religion, i.e. by posing one perception only on Qur'an that should be accepted by the people and prohibiting other perception. Garaudy (1993: 102) indicated that this eventually will end up with:

“The establishment of God law (*sharia*) to support the ruler's interest, and thus to create tradition (*sunnah*) sometimes in contradiction radically to the revelation. It has created what can be called 'Muslim Constantianism' analogically, utilizing the religion authority to justify even the worst infringement of human rights”

Meanwhile, in relation to the infringement of women's human rights, Garaudy said that what occurs does not come from Qur'an but the traditional life way existing in Near East. Therefore, to find the values contained in Qur'an, he recommends us to distinguish the value, according to him, constituting God's intervention from the development of community and history in the neighborhood, the absolute value of which cannot be changed. Firstly, it is a historical response to principles and secondly it is developed and adjusted with the development of certain history. It is this absolute value that is difficult to explore later, as there has been an agreement among most Muslim communities believing that the dynamic one should be absolutized.

It is noteworthy that what is called sharia is the product of human's perception non Islamic law sources, Qur'an and Hadits. Thereby, although as suggested by Abdullah Ahmed An-Na'im that Muslim law experts have attempted to interpret Qur'an and Hadits to get a comprehensive law, it is conducted during 7th and 8th centuries. If they compel the law issued to apply to this present time, the infringement of human rights will occur (An-Na'im: 112).

Considering the consciousness and the reality aforementioned, Islamic law experts should see Qur'an and Hadits corresponding to the ever changing time and society context. It is just like what has been done by legal experts in the first centuries clearly using a methodology taking the history and the appreciation of community at that time into account. As suggested by An-Na'im (114):

“Historically, perception on and implementation of Islam have been affected by social and political reality of Muslim community. In other words, practical effect

of Islamic tenets always become and keep becoming the product of human perception on his scriptural sources in certain history context. The appreciation of elementary reality around all religious tradition, including Islam, is very vital to a realistic and positive analysis on the relationship between religion and human rights”.

Basic principle and implementation of human rights in Islam and what An-Na'im has conveyed have been specified by Islamic tenets through Qur'an and Hadits emphasizing that an individual should treat other just the way he/she wants to be treated by others.

It is this reciprocal principles that should be posed later to be the foundation of human rights in Islam. It is a principle constituting basic ethical principle inseparable from the tendency of tradition that can be the reason of human right infringement.

Gender Analysis on Husband and Wife's Rights in Reconciliation

Qur'an itself does not see man-women relation unequal (imbalanced). Otherwise, instead there is no one's advantage over another's, either mentally or morally. These two sexes will be given reward or punishment later according to what they have done in the world. When they have done good deed, they will get reward, and vice versa, when they have done bad deed, they will get punishment.

It can be seen in Qur'an Surah al-Ahzab verse 35: *Meaning: "Indeed, the Muslim men and Muslim women, the believing men and believing women, the obedient men and obedient women, the truthful men and truthful women, the humble men and humble women, the charitable men and charitable women, the fasting men and fasting women, the men who guard their private parts and the women who do so, and the men who remember Allah often and the women who do so – for them Allah has prepared forgiveness and a great reward" (QS. al-Ahzab [15]: 35).*

Marriage in Islam. There is no marriage concept in a sacrament in Islam. Islam views marriage as an *akad* covenant. Therefore, it is a certainty if there is a termination of marriage relation, as occurred in many other contracts agreed by the parties doing the transaction and can be terminated according to the mutually approved agreement.

Meanwhile, seeing all of the verses becoming the foundation of husband's right to Reconciliation covenant on the one hand, and the passive wife in this covenant on the other hand, the right to reconciliation is as if an absolute right belonging to the husband only. Meanwhile, those verses basically emphasize more on the aspect of relation ethics between husband and wife in building a household. In other words, those verses above can actually be categorized into the matters related to any thing not mentioned, establishing the relationship between women and men.

It is also true for the reconciliation (*rujuk*) performed by the husband. Al Maraghi stated that in this reconciliation process, husband does not have good intention, but he will have sexual intercourse with her badly, or will inhibit his wife and marriage with another man, so that the woman's status is suspended, as a result of the Reconciliation by husband, the husband is sinful. It is because he has oppressed and deprived his wife's rights, one of which is to inhibit her from getting married again.

Al-Tirmidzi and al-Hakim narrated a habit of people in pre-Islam age as told by 'Aisyah. 'Aisyah told husband's habit of divorcing and reconciling her again with limitation. Then, the *talak* (divorce) was limited by Islam and only two of them were categorized into *talak raj'i*. Meanwhile, the *asbabun nuzul* (the cause of revelation) of the next verse, *al-Baqarah* 231, concerning *talak* and *Rujuk* was that husbands liked to restrain and suspend

their wives' fate by divorcing and when only two or three days were left for their *iddah*, they reconcile with them, and they did it continuously aiming to inhibit their wife from getting married again and to harm them (Al-Humashi: 80).

Viewed from this verse aforementioned, it can be seen clearly that wife's obligation for passing through *iddah* and husband's right to reconcile are social issues related to others' right. This law is not intended to discriminate one of the parties, but to take care of others' right. It is closely related to the justice for both of them and other parties such as baby contained and another prospect husband.

The verses related to others' rights are related to the feeling of justice. This justice feeling should be measured with an instrument external to him/her self. Whether or not there is *iddah* period should be measured with the husband and fetus' feeling of justice, while *Reconciliation* should be seen from wife and husband. This, according to Masdar F. Mas'udi (1997: 61), can be categorized into *džanni* verse. Therefore, Masdar suggested that the ones entitled to determine the feeling of justice are both parties with the principle of release (liberation) as contained in Qur'an's tenet "*wa amruhum syura bai'anahum*".

It is in line with Sayyid Qutub suggesting that from the two laws, a wife's *iddah* and husband's right to reconcile, there is an ethic between husband and wife intended to take care of each other's right, particularly husband and wife. *Iddah* and *Rujuk* laws emphasize that the wife is required not to conceal her condition, whether it is menstruation or pregnancy, while in *Rujuk* law, husband is required to have good will and not to bother his wife (Quthub: 240-241). It is the requirement for the two parties aiming to take care of each other's rights (Al-Maraghi: 166).

Verses about *talak* and *Rujuk* should be viewed not merely as *fiqh* law or giving rights or imposing obligations to husband and wife. But all of these should also be viewed as a binding ethic. Meanwhile, right and obligation is the last thing spoken of. It should be taken into account recalling that most Islamic scholars and *mufassir*, for example, do not view words in *araadu islahu* as the condition (requirement) in *Rujuk*. On other occasion, we can also see the verse reading *never you Reconcile with them to give them disadvantage (kemudharatan)*. Some ethics revealed in Qur'an and hadits are misperceived by *muffasir* and Islamic scholars (*ulama*). Murteza Mutahhari, for instance, argued that:

"Although the verses are revealed in relation to 'iddah period and reconciliation and divorce matters and give instruction about the way to be taken by husband reasonably, but to husband it is said that Reconciliation should be intended to treat his wife well (ma'ruf) rather than to harm or to hurt her".

Even Mutahhari saw further that these verses are not merely related to *Rujuk* and *Iddah*, but the stipulation is also general provision and principles specifying the rights of wife any time in any thing related to her husband. Mutahhari also said that some of *fiqh* expert is involved in big mistake in this matter because they merely see any thing related to husbands that will reconcile with (*merRujuk*) their wives. Meanwhile, according to Mutahhari (1986: 263), the verses instead explain husbands' obligation to their wives that should be fulfilled anywhere and anytime, viewed from the broader context. It means that verses reconfirm the wife's rights to her husband divorcing her. Her rights should at least remain to be guaranteed and fulfilled by her husband during *iddah* period based on an instruction that husband should divorce (*talak*) in good (*ma'ruf*) way and reconcile with (*Rujuk*) in good (*ma'ruf*) way as well *juga* (QS., 2:229, 231, QS. 65:6).

Mutahhari (265) furthermore revealed that the verse about *ruju*" (reconciliation) is actually the verse used to specify the women's right to be treated well. Therefore, he stated

that a husband in any condition is prohibited from taking benefit from his wife, because this verse actually prioritizes more the wife's rights and the husband's obligation.

If the rights are revealed first, it can be the requirement for the *Rujuk* covenant. In addition, who is entitled to determine that *in* contained in the verse is *in syartiyah*, moreover seeing that in other verses such as the verse 231 of Al Baqarah, Allah prohibits husbands from reconciling with (*meRujuk*) their wife for making disadvantage?

Another point important to consider is what is called "ideas of revelation" and Barbara Freyer Stowasser (2001: 15) stated that it is difficult to separate these two. In this context, whether or not the determination that *in* is the condition or otherwise has an implication to the legal decision taken, constituting "the idea of revelation" or "the idea of interpreter", that when viewed thematically, other verses about *Rujuk* allow both of them.

In the context of the women's right to *Rujuk* and *ulamas'* argument about the law taken it is interesting to study the result of research conducted by W.Canthwell Smith. This prominent Islamic expert has conducted a study on the concept of *Syara'i abkam* (the stipulations of *syara'* law) in the first Islamic century, finding the concept emphasizing more on moral aspect than on legal aspect. The legal aspects existing in Islam in its early times is the *ilahiyyah* (divine) guidance that is binding and obliged morally and accountable for personally, emphasizing more on the relationship between human beings as the creature, and Allah as the *khalik* (the creator), that will be accountable for on Judgment Day (*Yaum al-Hisaab*). However, in its development, this Islam law experienced depersonalization and detranscendentalization, in turn leading to *shari'a* as known today (Engineer, 1994: 10). It is unsurprising that the concept of *sharia'* was not found in early Islamic works until the 7th Century of Islamic calendar. Engineer mentioned those works include, among others Al-Fiqh al-Akbar (2nd Century of Islamic calendar), al-Tahmid Book by al-Baqillani (4th Century of Islamic calendar).

Using some aspects suggested by some Islamic law expert is very interesting to revert to the main question of this thesis. Are there and what are women's rights in *ruju'*?

In addition to some *mufassirs* viewing these verses about *Rujuk* from legal formal aspect to determine who the one entitled to use Right to *Rujuk* is, there are some other *muffasis* and *ulamas* seeing these verse from other aspects. alQurtubi, al-Maraghi, Ibnu Katsir and others see these verses from other aspects not seen by *mufassir* emphasizing on merely the perception on the Right to *Rujuk's* ownership. They see another thing related to wife's rights to be treated well (*ma'ruf*). If the latter is appeared, Muthahhari and An-Na'im's suggestion and indication stating that the *sharia'* law to be revealed is the ethic of relationship between human beings (inter-human relation), particularly in this case between husband and wife.

Just like *mufassir* having different opinions in determining whether or not *Rujuk* is the husband's absolute right, so that wife should accept it the way it is or she is given an option to decline it, *Ulama fiqh* (fiqh experts) also have different opinion to determine the requirement the husband should fulfill if he wants to revert to his wife. Considering the verse using text indicating that some requirements should be fulfilled by husband, in which the verse mention it more than once, and the presence of verses related to the form of *amar* and other reasons, some Islamic scholars (*ulamas*) argued that if husband wants to revert to her wife after divorcing her, he should have good will (*ishlah*) and present to witnesses. In addition, because household life requires the harmonious relationship between husband and wife, husband should inform and ask his wife for approval, when he will reconcile with her.

Using Esposito's categorization concerning Qur'an norms hierarchic system, this law related to *Rujuk* is included into corrective or protective category (Ali: 48). This law is intended to correct pre-Islamic laws that can harm women, wives. Viewed from its existence aspect, it means that the absolute value carried by this verse should be adjusted with time. If this law is implemented, wives can file a guarantee condition to their husband that the reconciliation (*Rujuk*) is intended to be *islah*, or if this *islah* indication is not found by the wives in the husbands who want to reconcile with, wives can decline reconciliation, recalling what is suggested by Murteza Mutahhari that it can be institutionalized and is mandatory to the husbands (*Wallahu A'lam bi al-Shawab*).

CONCLUSION

Qur'an has a principle that the positions of men and women are equal as the creature, because women and men are created from the same substance (*min nafsinn waahidah*), same duty (*kbhalifatullah filardh*), and same obligation (*liya'budun*). Women's rights in *rujuk* matter include: declining or accepting *Rujuk*, being treated well by their husband, freedom of speech and expression, and applying for *Rujuk* to their husbands. It is these rights that are viewed prominently by *ulamas* so that the verses require the husbands to treat their wives well, in the term of *ruju'*. If this perception is stressed, it can be seen that women's are entitled to be treated well by the husbands who want to reconcile with them. In gender's perspective, considering some possible perceptions, women can apply for *Rujuk* as their right to their husband, by conducting new analysis on the problem of right to *Rujuk* apparently dominated by men (husband) so far by means of redeeming the husbands' rights given to them. And in the presence of *kbulu'*, wives are also entitled to reconcile (*rujuk*) with their husbands who have divorced them.

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