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Perspective of Islamic Law and Ulama Polemics about Women Judges (Gender Analysis and Moderation of Fiqh)

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Abstract. This study aims to investigate and debate the validity of women's opinions founded on the normative Islamic viewpoint known as fiqh. This research endeavor endeavors to scrutinize the arguments of various ulama, or Muslim scholars, concerning female judges while maintaining a foundation in fiqh, the body of Islamic law. This study's technique combines focus group discussions (FGD) and content analysis with qualitative approaches. FGD is held with numerous lecturers and specialists in Islamic law at the Faculty of Sharia and Law at Institut Agama Islam Negeri Syekh Nurjati Cirebon. The study's conclusions, which come from at least three well-known ulama or Muslim scholars, indicate that the debate among fiqh experts on the standing of women judges was affected by several factors.

Keywords: fiqh, Islamic law, Islamic perspective, ulama, women judges, moderation of fiqh

INTRODUCTION

Although the issue of gender has been discussed for quite some time, it is still interesting to study. This is because some people still think that the classes of men and women differ. This gender difference can be seen in the treatment of women in religious, social, economic, political, and other fields. There are strong allegations that the emergence of views about discrimination between men and women is caused by three (three) factors, namely the strong influence of tradition, how to understand incomplete and complete revelation, and a bound understanding of theology. These three factors are often obstacles in discussions related to gender equality.

The strong influence of tradition in people's lives makes women a lower class than men. Women are seen as unable to make decisions, and the responsibilities given to women are smaller compared to men. No less important influence in this gender discrimination is an understanding of incomplete and comprehensive revelation. The verses that are used as

arguments are still partial. However, one complete verse cannot be used as a proposition without looking at the verse before and after and other verses that talk about the same topic.

Islam views the court as essential, as it substantially pursues the goal of universal justice. It is anticipated that the fundamental human rights and justice principles can be appropriately upheld using judicial instruments. Because of the importance of a court system, Islamic legal scriptures carefully consider how justice is formed. It is so understandable that the Prophet himself held judicial authority in addition to serving as a spiritual and political leader throughout his time.

Fiqh (one of the Islamic Shariah that explicitly addresses the laws governing various aspects of human life, including personal, social, and human life with God) was developed (after the Prophet and Companions), and scholars gave their predecessors the same consideration (Djazuli, 2010; Sabiq, 1978). Ikhtiath refers to a cautious approach and selection while making legal decisions, drawing on both Sharia texts and matters that arise outside of them. This mindset is widely recognized in the Shafi'i school of fiqh (A. Zahrah, 1978). It permeates the ulama's reasoning when determining the standards for a legal proceeding in which the actor is the subject.

As a sign of dedication to the court, one of the worries of yurist fiqh specialists is how serious it is to establish standards for judges. Their idealistic efforts to establish a comparatively pristine and powerful judicial system that is anticipated to adhere to the ethical precepts of the Shariah books make sense. Their talks over a woman's eligibility to serve as a judge in a legal proceeding became one of their agenda items. This debate makes sense because, in the eyes of them (ulama), women are viewed as having numerous flaws when it comes to the legal system, more so as an actors settling a legal dispute (Judge) in historical, anthropological, sociological, and even normative texts (Aziz, 2017; Mehdi, 2017; Sonneveld & Tawfik, 2015).

This study aims to investigate objectively the philosophical and sociological reasons why Islamic religious experts doubt the legitimacy of women's emancipation rather than attempting to "deconstruct" the idea of women's emancipation, which numerous women's organizations are currently promoting.

LITERATURE

Normative Islamic Perspective (Fiqh)

Islamic jurisprudence, which is the result of "reason," does more than only offer a foundation for Islamic legal theory in the strict sense. On the other hand, it has also

significantly advanced the framework for developing Islamic philosophy in a broader sense. The ups and downs of the evolution of Islam itself appear to have been accompanied by fiqh, amongst the conflicts over Islamic scholarship from the time of the Companions until the rise of the leaders of the schools of thought. The historical level of fiqh has occasionally supplied various kinds of religious thinking for the advancement of Islam, even throughout specific junctures in the history of Muslims. After centuries of the majority of Muslims' "rooted" understanding of fiqh (fiqh oriented), there was harsh criticism, especially from reformers, that one of the reasons for ignorance in the Islamic scientific tradition is that Muslims are too normatively inclined when it comes to fiqh. While Islamic law is exceedingly elastic and flexible in its evolution (tasyrī - legal determination) (Ubadah, 1980, p. 10), at its most vulnerable, the fiqh products of the experts are sometimes even considered "sacred" (Al-Hajwi, 1977, p. 6). Even though ijtihad is the primary component of the overall dynamics of Islamic teachings, the most disastrous outcome would be the cessation of Islamic law at the freezing point of ignorance and the closing of the doors to ijtihad (the process of establishing Shari'a law by devoting all thoughts and energy seriously, where it is not discussed in the Qur'an and Hadith) (Iqbal, 1965, p. 148).

This objection could be justified because historical evidence indicates that the majority of Muslims, both past and present, consider fiqh to be the same as Islamic law in the sense of divine law. From this angle, jurisprudence is perceived as being by God's unchanging law rather than as a historical creation of human thinking that is flexible, relative, adaptive, and interpretable. This point of view emerges. It can result from a poor comprehension of the jurisprudence aspect concerning social interaction. William C. Schuctz observed that the history of Islamic institutions has consistently noted that legislation, especially Islamic law, constantly changes and influences social interaction (Schutz, 1972, p. 458). William Friedman advanced the same thesis as C. Schutz in a somewhat different editorial, stating that one must first comprehend proportionately the relationship between legal theory and social change, a historical process, to have a less comprehensive understanding of fiqh (Islamic law). Given that comprehension is the primary issue with Islamic law, this is significant (Friedman, 1964, p. 19). Indeed, the paradigms of Islamic law and general law differ significantly. There is, nevertheless, a point where the two overlap in specific ways. The modes of understanding of fiqh, regarded as God's law, greatly influence the characteristics of the growth of Islam in a given era, which is not surprising given the poor historical awareness of most Muslims and their

misinterpretation of the law. Fiqh may be distorted as a result. The most susceptible aspect of this misunderstanding will give rise to fanaticism and sectarianism about fiqh schools. In addition to the appearance of these viewpoints during the evolution of Islamic law, it is essential to acknowledge that law was historically the most valuable output of the era. Law served as a foundational framework for analyzing Muslim thought patterns worldwide at a given time. At the very least, this is predicated on the idea that the dynamics of Islamic religious thought and the evolution of fiqh are the same. Meanwhile, a declaration asserting that Islamic Jurisprudence, which dates back to the earliest periods of the Islamic generation (companions), was created and evolved alongside the people's lives during each change, growing more obscure over time. From there, studying the development of fiqh has more significance than just being historical. In the upcoming period, it will, nevertheless, naturally generate fresh proposals for the advancement of global Islamic studies. Scholars cannot then use a priori (break away) to refer to the historical goods produced by generations of early Muslims (friends) at the stage of study, which is the development of parts of Islamic teachings, without exception in the field of fiqh. The Companions have left behind a variety of fiqh goods in this regard. It turned out that among friends, being adaptable to changing circumstances, critical of the texts themselves, and even interpreting them has become a phenomenon in and of itself. Without a doubt, the period of friendship gave rise to a highly valuable treasury in fiqh and serves as a crucial point of reference for the evolution of fiqh history.

According to Joseph Schacht's conclusion in The Origin of Muhammadan Jurisprudence, based on these and other facts, the accusations of Western Orientalists that Islamic law did not originate in the early generations of Islam and that Islam was only a moral religion during those early generations Asaf AA Fyzee, a contemporary Islamic scholar, concurs with Norman J. Coulson (Coulson, 1964, p. 4), who also confirms Schacht's dissertation (Fyzee, 1964, pp. 26–28). I take the writer's viewpoint to be an indictment of the past. Attempts have been made since the beginning of the Islamic era to speed up the revelation texts with societal realities to construct a new paradigm of Islamic law that is more pertinent to the circumstances of the day (ijtihad).

Argumentative Foundation Concerning Female Judges.

Divergent views exist among academic organizations regarding the legitimacy of female judges. From the shari'ah scriptures and aqli, each of them has a strong and convincing argumentation foundation. These include:

1. First, judges in law are not women. Prominent scholars, including Ahmad Ibnu Hanbal, Shafi'i, and Imam Malik, endorse this viewpoint.
2. Secondly, women are eligible to serve as judges, except in matters of hudud (criminal) and qishah. Imam Abu Hanifah is an example of a reasonable fiqh figure who represents this viewpoint.
3. Third, Imam Ibn Jarir Al-Thabary asserts that women can sit as judges in all civil and pridana proceedings. In agreement with Imam Thabary, Imam Ibn Hazm also stated that women have the absolute right to sit as judges, at least in civil or criminal cases, indicating they are qualified to serve as judges.

METHOD

A focus group discussion (FGD) and content analysis are two qualitative methods used in this study, held at the Institut Agama Islam Negeri Syekh Nurjati in Cirebon, Indonesia. Specifically, the content analytics approach describes the specific object associated with the research. Human ideas or concepts disclosed in primary or secondary writings are the subject of study in this methodology. The primary source of data for this study is the library, which is examined using the following procedures: (a) description, (b) discussion, and (c) enrichment and criticism; (d) conducting analytical studies of primary ideas through relationship analysis, comparison analysis, and rational model development (Suriasumantri, 2001). FGD, however, is a technique for identifying, validating, and equating perceptions in a case (Manoranjitham & Jacob, 2007; Masadeh, 2012; Stewart et al., 2012). In order to bolster the conclusions on the argument for the legitimacy of women serving as judges, the content analytics result is therefore explored in focus group discussions.

DISCUSSION

In the polemic expert fiqh, women judge. The conversation about women's empowerment, currently popular in intellectual circles, appears to be the culmination of women's difficult historical experiences everywhere in the world. For instance, during the Islamic era, women in the Greek city of Athens were known to be subjected to severe mistreatment and discrimination. Under Greek law at the time, women were viewed as

"domestic servants" whose only responsibility was to bear children. They were also perceived as easily traded animals with no right to manage their possessions. When men no longer need it, their holiness is diminished to that of animals and even associated with filthy deeds and Shaytan (Al-Khuli, n.d., p. 7). Nearly all women, even in pre-Islamic Arab communities, have encountered this predicament, particularly in situations where Islam has not yet arrived to fulfill its goal. With the ideals it upholds, Islam attempts to "revolutionize" how people in the Arab world regard women. Islamic Sharia gradually started to pull women out of the long-standing pit of discrimination in Arab society. In Islamic treatises, women are regarded as having rights equivalent to those of males, including equal rights and obligations in terms of their spiritual, moral, and economic well-being and their legal rights (Lubis, 1991, p. 16). Formally speaking, men and women have equal rights and responsibilities under the law; the distinction in the legal part is attributable mainly to biological distinctions. The advancement of women's status in Islam has been greatly enlightened, but only when there was a debate about ulama's competence as female judges. The social context of the academics who examined it at the time was inextricably linked. It is believed that certain social, cultural, and structural aspects of the community played a significant role in shaping how the ulama perceived the role of women as judges. In addition, it is still regarded as dangerous to leave the judicial matter in the hands of women. For this reason, scholars of fiqh have done everything they can to establish formal requirements for judges.

Classical ulama fiqh scholars, for instance, have established very specific normative standards for judges, such as Islam, manhood, independence, mukallaf, "fairness," listening skills, fluency in speaking and writing, and—above all—moral integrity and authority over Islamic Shariah. This condition makes sense in that potential judges who don't meet the requirements are not regarded as having enough legal standing if they even apply. Its validity cannot be legally justified if a woman becomes a judge because one of the requirements is specifically that she be a man. This remark also implies that any decision derived from something illegal will undoubtedly result in a legally dubious outcome. Prominent religious figures (Muslim scholars), including Imam Malik, Shafi'i, and Ahmad Ibnu Hanbal, presented the findings of the analysis at least the Focus Discussion Group discussion on the legitimacy of female judges, which the Syari'ah Department of IAIN Cirebon arranged. The discussion part will provide a detailed explanation of the analysis and findings of the

discussion.

Polemic by Ulama about Gender in the Qur'an

As a comparative material in analyzing the status of women in various professions compared to men, it is deemed necessary to explain the views of tafsir scholars in understanding gender in verses of the Koran. It is important to analyze the views of scholars regarding the profession of judge for women, as follows:

According to Ibn 'Ajibah ([1] Ibn 'Ajîbah, p. 453.), men come from women and women come from men. Therefore, the origin of the two is one so that men and women in religion can interact, unite, and agree. The similarities between men and women in Ibn 'Ajibah's view are more focused on the origin of man. If the woman is one, then she means that both are human beings. Each man and woman have advantages and disadvantages; both have reason and mind, and both have passions and desires and others**.**

Imam Al-Râzî (Al-Fakhr al-Râzî, p. 150) comments that there is no difference between men and women when it comes to performing obligations and receiving rewards. This indicates that a person's advantage in the view of religion is only determined by the deeds of deeds. Al-Razi's view shows that an obligation is never distinguished between men and women in terms of number or weight, likewise with the reward that the great and small of a reward is not determined by gender but is determined by their respective deeds.

Meanwhile, reformers such as Muhammad Abduh, as quoted by Muhammad Rasyîd Ridhâ, held that men and women are equal in the eyes of Allah in terms of getting recompense and also practice. A man should not feel superior to the power and leadership he has over women and assume that he is closer to God than to women. Then women should not feel inferior to themselves by making men their leaders, for from the human side there is nothing to distinguish men from women." (Muḥammad Rasyîd Ridhâ, pp. 248-249.)

That's what Muhammad Abduh said.

Another opinion was conveyed also by Imam al-Marâghi (d. 1371 H), who stated that: "Islam is the first religion to convert men and women are the same, not European scientists (French). Although it cannot be denied there are some Muslims limiting the movement of women in the field of teaching and education. However, this cannot be used as an excuse to represent the view of Islam in totality. (Ahmad Mushthafa al-Marâghî, ***p.***. 137.)

Al-Marâghî's opinion can be used as the antithesis to the view of some people who make the generalization that Islam distinguishes men and women. Although some Muslims do so, it is more influenced by certain socio-cultural factors.

In his tafsir (tafsir al-Azhar), Hamka also has almost the same view that charity is not only focused on men. "Women have rights and obligations that are half of the half. That is, all the great charities in society are the unit of men's men's labor and the fine work of women." Even so, the husband works outside to earn a living, and the wife works at home, maintaining peace in the household. (Hasbi ash-Shiddieqy, p. 764.)

Hamka's statement about equality between men and women is more about interactions that indicators can be found through the equality between obligations and rights.

M. Hasbi as-Shiddieqie (d. 1975) also believed that "men and women are equal and they are simultaneous with Allah in accepting vengeance. The cause of equality is that men are part of women and vice versa." Men are born to women, and women are born because there are men. There is no difference in his humanity, and nothing exceeds each other except just because of his practices. Hasbi as-Shiddieqy's view shows that men and women are equal in aspects of humanity. In God's view, the noblest man is the most exalted regardless of male or female sex. In line with that, M. Quraish Shihab (1944) mentions that men and women come from one offspring, gathered by one father and mother. Therefore, their circumstances are the same (Hasbi ash-Shiddieqy, p. 764.).

Therefore, there is no difference between humanity and degree, and God does not diminish the reward. M. Quraish Shihab's statement shows that men and women are of equal status and should be used as a form of togetherness and partnership.

According to the above scholars, the degree of discrimination between men and women is the same. Thus, the existence of discrimination between men and women is more due to traditional, cultural, and misguided factors in understanding the messages of the Qur'an. This wrong view should not have happened because the active role of women along with men in the early days of Islam already existed in various fields, including education, defense, health, and others.

Analysis of Ulama Polemic Argumentative

The following section presents a study of three Muslim scholar groups about the legitimacy of women judges, among other things:

1. According to Muhammad Abu Al-‘Ainaini’s records, the scholars who disapproved of women serving as judges—represented by Malik and Shafi’i imams—were directed by verse 47 of the Al Qur’an in An-Nisa. The clerics of this group interpret the word "excess" in the passage as referring to the application of reasoning and thought, which is

something that women are often not able to achieve on par with men, particularly when it comes to the legal system (Al-'Ainaini, 1983, p. 124). Furthermore, Hamid Muhammad Abu Talib contended that it could lead to defamation for women to participate in the legal system, particularly as judges, which is particularly against social norms. As a result, their testimony is not admissible in court. It is deemed unusual for women to be involved in the legal system. Due to women's mental capacities and limitations as both defendants and witnesses, it will undermine the legal system (Thalib, 1982, p. 76). The Sunnah Rasul (Hadith) is another argument presented by this group. It tells the story of King Kisra's death. "Who do you think (companions) is worthy of replacing King Kisra?" the Prophet questioned his associates. and they said, "Of course, his daughter named Nora, instead of the king." right away. The Prophet instantly responded to the friend by saying, "Will not experience success, a nation if the leader is handed over to women." (Hadith and others). Particular academics who construe the hadith to prohibit women from holding judicial positions also employ syllogistic reasoning, similar to qiyas logic. To understand the hadith, scholars use a syllogistic logic that maintains that it is reproachful. Al-'Ainaini (1983, p. 24) states that reproach carries a prohibition as well, and the restriction suggests that something negative is prohibited. This statement clarifies that women judges will always be negligent judges, regardless of the reasons for their appointment. They relied on historical changes in Islamic history as well as quotes from Sharia texts to justify the prohibition on women holding judicial positions. Regarding Thalib (1982, p. 76), it is asserted that there is no historical record of the Prophet Muhammad (pbuhl-lafa al-Rasyidin) and his followers appointing women as judges. Regardless of the validity of the arguments presented by the first group of scholars, it is clear that women judges are unqualified.

2. It differs from what the first group thought. Instead, Imam Abu Hanifa advanced a different defense. He concluded that women can serve as judges if they handle non-criminal cases. (This viewpoint is comparable to how women's testimony is treated). A woman is deemed credible if she is a judge and her testimony is accepted in a civil case (Al-Humam, n.d., pp. 252-253). Imam Abu Hanifah forbids women from serving as judges in criminal trials (hudud and qishah), just to be precise. Hudud is the upper bound of Allah's decrees concerning the penalty meted out to those who commit crimes against Islam. Simultaneously, the shari'ah Islam governs the imposition of qishahs, which are punishments for crimes carried out in retribution similar to murder, limb injury, and other

similar offenses (Mujib et al., 1994, pp. 106&278). Hanifah forbids women from serving as judges in hudud and qishah cases because, according to shari'ah, it is improper for one woman to testify alone as a judge in a case involving these two issues. Abu Hanifah says women should only sit as judges in civil cases.

3. Meanwhile, the third group of specialists (who also allowed women to be judges) represented Ibn Jarir Ath-Thabary and Mrs. Hazm. The following were among the topics they discussed (Al-Syirazy, n.d., pp. 17–18): (1) Neither the Qur'an nor the Hadith expressly forbids women from holding judicial positions; (2) Ibn Jarir claims that women were historically appointed to judgeships during the administration of Umar Ibn Khattab, who appointed women to judgeships for the Al-Syuq tribe, also known as the Al-Syifa; (3) Drawing on the precedent of a woman's fatwa, which is recognized as legitimate, one can naturally conclude that a woman's decision as a right can also be considered as legitimate.

Socio-Cultural Analysis of Ulama's Thinking About Women Judges

Every legal theory acknowledges that the sociocultural context of a location dramatically influences the mindset and style of a legal figure (ulama), including Islamic law in the sense of fiqh (Friedman, 1964). One guideline frequently refers to this is "It is undeniable that law - without exception, Islamic law always changes according to changes in time and circumstances." Legal experts in the West generally agree with this rule. Since social interaction is also the source of law, understanding law as a whole necessitates an appreciation of the continuing historical process linking legal theories to social development. Since ulama have historically produced legal thinking products that are socio-culturally specific—that is, their ideas are not meant to be applied broadly—understandably, the products of Islamic fiqh formulations are highly particularistic. This is because the ulama's work is essentially the outcome of a specific social and cultural context and a specific historical period. Suppose his fatwa was implemented in a different setting with a different social structure. In that case, it might no longer be relevant, even in his time and the location where the academics issued it. This requirement also applies to fiqh ulama products when assessing their views on the status of women as judges; it is plausible—indeed, quite probable—that sociocultural and environmental variables have a significant role in the variations in viewpoints among scholars.

Since women in the Hijaz (where Malik and Shafi'i once lived) are still very attached to social structures to Arabans who tend to be exclusively accustomed to the seclusion tradition, it makes sense that madhab figures like Maliki and Syafi'i argue that illegitimate women become judges. Significant restrictions exist on their ability to engage in activities outside of the home. Hijaz and Medina's generally humble, uncomplicated lifestyle and isolation from foreign cultures and their issues (Zaid, 1989) further strengthened the customs of the local populace, particularly concerning women's standing. "Tilted" in favor of women. Due to this, it appears that the ulama has limited women's role as judges. Imam Malik's attitude toward the Prophet's hadith, which expressly forbids women from participating in the leadership process, is another aspect that suggests why he forbids women from serving as judges, as was previously mentioned. It also appears that Imam Malik is unwilling to take a chance by allowing women to serve as judges, in line with his position on this hadith. Imam Shafi'i expressed the same viewpoint, and while he did not stay in Medina for very long, it is possible that Malik's ideas—who had become his hadith teacher—impacted Shafi'i (M. A. Zahrah, 1978). It makes sense that he prohibits women from holding the position of judge. It is well known that Shafi'i thought in fiqh is a synthesis of two poles: Abu Hanifah's representation of the Ahlu Rays and Malik's representation of the Ahlu Hadith. Then, it is possible that Shafi'i, which discusses women judges, among other things, has largely incorporated Malik's way of thinking. In contrast to Imam Abu Hanifah, who suggests that women can serve as judges, individuals in the Iraqi region already have liberal views because of the region's intense influx of Western culture. Hanafi lived in Iraq, where conditions were better than in the Hijaz. Long ago, acculturation had been established with the Persians, who had advanced first. Thus, the Iraqi people's cognitive process was influenced by the more or less established Persian culture. The better a country's attitudes on women, its culture is more advanced. As a result, women in Iraq have a greater status than they do in Hijaz. The intellectuals' discourse also appears to have been significantly impacted by this stark disparity (Syarifuddin, 1993). Thus, it makes sense that Abu Hanifah permitted women to serve as judges because, at the time, Iraqi culture was moving in that direction. Islamic legal scholars such as Ibn Jarir At-Thabary and Ibn Hazm, who are more progressive in affirming the independence and legitimacy of women as supreme judges, are influenced by these sociocultural contexts in their thought. Ibn Hazm is a literalist (textual) fiqh figure who adheres to the school of thought of Imam Daud Adz-Dzhahiri, another literalist person. The fact that Iraq places more emphasis on reason and free thinking than Hijaz does on

upholding the tradition of the Prophet's books and hadiths is another reason why the opinions of scholars in the two countries diverge. That was the reasonable fiqh of Iraq and the traditional Hijaz at that time. The practice of employing ra'yu in this manner quickly spread across Islamic fiqh discourse, impacting the evolving fiqh style. Because of the freedom of ratio employed as Steinbach (an activity carried out by fiqh or legal experts to expose a proposition that is used as a basis in concluding to answer an issue or solve a problem), the third group's acceptance of women as judges is therefore also said to be robust.

Aspects of Fiqh Moderation in Women Judges

From the discussion above, it becomes increasingly clear that the differences in schools of fiqh in understanding the position of women as many factors determine judges. Some of them are differences in the social situation in which the ulama lives and the process of cultural acculturation that occurs in society when ulama hold opinions, which also greatly influences their thinking in determining the status of female judges. These factors include sociological factors as well as the legal thinking methods used.

Differences in the thinking of ulama in determining the position of female judges make it clearer that these differences are a historical fact so a moderate attitude is needed when they are used as a reference in the context of the modern world. Moderation in thinking in the fiqh school of thought is important so that the laws born from previous scholars do not conflict with cultural, social, and modern thought developments. This is where the importance of understanding the history of thought formation lies in the fiqh school of thought.

It needs to be understood that the school of fiqh is a product of Islamic legal thought that developed at the beginning of the second century of the Hijrah. The schools of fiqh, which are mostly written in classical works, when written by scholars, are not at all intended to be used and are aimed at a certain time or period. In the absence of this period of practice, the fiqh works of that school of thought are considered valid forever and for all time. In other words, even though the compiler of the fiqh work did not intend to immortalize his work, at a particular time, some of the followers of the school who came later considered it to be something universal and eternal.

This is one of the reasons scholars think about fiqh in their works has stagnated, so the space for developing moderation in fiqh is closed. Apart from that, the fiqh school of thought is almost often the reference for various legal issues, and its nature is comprehensive

and holistic. As a result of this comprehensive nature, there is an opinion among Muslims that repairing, revising or even changing it will result in disrupting its integrity. Because of this, the schools of thought of fiqh, as stated in these books, tend to be closed to change. If you look at the differences between ulama regarding female judges, as explained previously, they are very open to changes and differences. In other words, the thinking of this ulama is very open to giving birth to moderate thinking on the issue of female judges.

Some people's view that fiqh is universal and static does not seem entirely correct because if you trace its historical roots, it is evident that (the school of fiqh) is a product of thought, which is very open to new thoughts that develop. This kind of frame of mind can also be analogous in the context of a madhhab, meaning that because a school of thought adhered to by a person is the result of thought, one should not assume that the school of fiqh is sacred and taboo against change. When it is felt that the school of jurisprudence adopted does not resolve a developing legal problem (especially regarding the issue of female judges), it should not be prohibited from looking for another school of jurisprudence that is considered more relevant. This shift in fiqh thinking should not be seen as a form of inconsistency in religion but as a dynamic and moderate way of using the fiqh matzah.

In the context of today's modern world, efforts to place and use schools of jurisprudence in accordance with conditions are vital. Not only that, efforts to reinterpret the thoughts of figures from schools of thought regarding female judges as conveyed by previous scholars are a necessity, as long as they remain within the framework of correct legal istinbath and capture the spirit of the Qur'an and As-Sunnah.

There has been a pretty long polemic among the ulama in the context of using a school of thought that is adapted to the needs of the times, which is considered to have made a big mistake, so this group of ulama thinks that switching to a (moderate) school of fiqh is prohibited by law, and will even reduce a person's validity in religion. Meanwhile, some others are of the opposite opinion, that being moderate towards fiqh thinking, in the context of this ever-evolving era, must be done. Another group, which seems to be a synthesis of two different groups, states that taking a moderate stance in understanding fiqh is conditional.

Apart from the polemic mentioned above, it seems very important for Muslims today to develop more moderate thinking in Islamic law, as was done by previous ulama scholars. It must be understood that the school of fiqh is not something rigid and not contextual because, after all, the school of fiqh, from the thoughts of previous scholars, was good,

creative, dynamic, and relevant in their time. So, there needs to be a correction to the views and thoughts that insist on using the works of old schools of thought for today's religious regulations because sociologically, culturally, and in methods, they are very different from the current situation. It is also important to understand that the formulation of this school of fiqh does not intend to be used forever.

From this explanation, several points need to be considered as an effort to build moderation in the fiqh school of thought as well as moderation in religion, including, first, using the products of any previous school of fiqh in the form of fiqh substance, second, using whichever school of fiqh is considered most in line with current benefits from a methodological aspect, third, not using the products of previous schools of fiqh both in terms of substance and methodology as long as new, more relevant alternatives are found.

CONCLUSION

The debate among fiqh academics (Ulama) about women's status is influenced by various issues, including sociocultural contexts and the circumstances of local scholars, in addition to variations in the application of the istinbath approach and textual perspectives. The fatwa against female judges reflected that, in some civilizations, such as the Hijaz region where Imam Malik lived, the habit of seclusion against women is still so strong. On the other hand, if a society leans liberal and cultural acculturation occurs quickly, as it did in Iraq during Hanafi's lifetime, then even female judges are accepted as genuine and unproblematic. Similar differences existed in the community during Ibn Jarir At-Thabary's residence. This justifies granting women the right to serve as final judges.

LIMITATION AND STUDY FORWARD

The primary source of content analysis for this study is books and libraries. Thus, by examining the most recent study on gender, particularly the role of women as judges, especially in the contemporary digital era of technology, which is undoubtedly still founded on an Islamic perspective, future research studies can be developed.

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