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MUBADALAH PERSPECTIVE: A PROGRESSIVE READING ON BOOK OF DHAU' AL-MISHBAH FI BAYANI AHKAM AN- NIKAH

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Abstract

This article tries to portray the concept of duties and rights between man and women in the family based on the book of Hasyim Asy'ari (Dhau' al-Mishbah Fi Bayani Ahkam an-Nikah. By elaborating the theory of reciprocity (mubadalah) created by Faqihuddin Abdul Kodir, this article wants to reinterpret that concept in order to be adjusted to the contemporary condition of how man and women build relation which can be harmonized properly in the household. This article is a normative research using conceptual approach. The writer finds that although there were divisions of rights and duties in detail, but it ideally should be comprehended as a system that one supporting each other. Neglecting the detail job of the spouse will be easily bring the one or the two to harm. Therefore, trying this work to implement the theory is one of the way to build a new narration about what should man and women do in household. Based on Mubadalah perspective, this article show that the concept of duties and rights of both man and woman in household can be implemented.

Keywords: *Rights, Duties, Fiqh Mubadalah*

Introduction

As a product of *Ijtihad*, fiqh as a part of Islamic Law arises through a systemic paradigm by using various approach

and method. When *mujtahids* interpret the Qur'an or the hadith, they may use a basic paradigm and different methods to produce a norm of *fiqh* contextualizing with the existence of conditions. *Fiqh* is commonly interpreted as a product of humans thought. As a consequence, *fiqh* is not a static value, but it is a dynamic value following the dynamic of era in which it is demanded the reader to interpret contextually by providing responsive-adoptive paradigm. Assuming *fiqh* as the final truth is same with idealizing the profane norm (Mughits, 2008). However, to this fact Abdurahman Wahid and Snouck Hurgronje have another view. Johari explains that both Abdurrahan and Snouck view that although *fiqh* in the archipelago tends to middle-east paradigm, in truth *fiqh* has been reforming fundamentally, slowly, complicatedly, and deeply so that only the expert can know and learn what reforms are. This condition has been existing till now through reforming by modernist and traditionalist group although they only do reform in restricted are (*restricted reform*) (Johari, 2019).

The validated way to track thoughts of *fiqh* is by exploring texts. In this position, reading text need to be done intensively to find ideal norms bridging and guiding human needs about Islamic Law. Nowadays, reading to *fiqh* (classical book) needs to be renewal because many scholars stated that when *fiqh* is still viewed through Arabic paradigm, of course, it will present irresponsive-*fiqh* to the context. Therefore, to this fact, some scholars had offered methods of text interpretation. The methods are really important as the solution to avoid the reader or

interpreter from authoritarianism in interpreting the text. Many scholars, to contribute against this discourse, had offered and arranged a methodology, like Khalid Abu Fadl, Fazlur Rahman, Abdullah an-Na'im, Hasan Hanafi, Farid Essack, Abdullah Saed, and other contemporary scholars with the new perspective that engages multi-perspective of sciences. Of course, these methods inspire other scholars to create another method that may can bring the text ccomodately to new transformations.

These kinds of progressive methods need to be implemented in some issues, especially marriages issues. The crucial topic disucussed on marriage issues are about rights and duties of man and woman in household. The scholars have a different opinion about how they preserve and serve each other. Mostly, their opinions to that topic tend to burden women. Husein Muhammad stated that generally the discourses of relation between husband and wife existing in books in *pasantren* containing patriarchal paradigm or even perspective. He mentioned several topics containing patriarchal paradigm, like the loyalty of wife to husband, domesticating work of wife, God blessing depending on husband grace, and polygamy as the religion decision (Muhammad, 2019). To learn the statement which was written on books and learned by many student in the world, as far as we know that an opinion arises influenced and caused by conditions or situations surrounding in their self, the writer. So that, when the one learns a norm, a value, or a doctrine

written in a book, first step that should be done is learning about where and when the book was written and produced.

That condition may be found in the era of Hasyim Asy'ari. He, at that time, knew that the sacred norm of Islamic Family Law was intervened by the Colonialist. This condition might influenced him to write a book guiding those who want to marry because, besides there were people did not know what should they take and do when they marry, the Colonialist positioned the Islamic Family Law as the basic law should be obeyed by the society under the custom or tradition in order to strengthen the Islamic law custom to resist domination or exploitation which has been existing for many years. In this position it can be stated that a dialectic of *fiqh* and reality should be reactivated in this contemporary era so that assumption of dominating or powering *fiqh* to the reality can be solved by this dialogue to create justice, equality, and benefit (Kodir, 2019).

Ideally, to reactivate the text, there are three levels can be used toward a reform of *fiqh*. The first level is reforming methodology that can be implemented by reinterpreting texts contextually, thinking methodologically (*manhaj*), and verifying primer (*ushul*) and branch aspects (*furu'*). To get renewal of this level, someone may use both deconstruction (*al-qath'iyah al-ma'rifiyyah*) and reconstruction (*at-tawassul al-ma'rifi*). The next level is ethical reform by avoiding legislating *fiqh* as regulation, like the ordinance or the act and strengthening *fiqhas* social ethic. Philosophical reform is the third level which provides philosophy of science and social theories for *fiqh*so that

fiqh will be opening for any social science which can make it more adaptable in any situation (Sa'adah, 2012). These steps or levels are reform perspective that may inspire arisen methodology by contemporary scholars. A *mubadalah* perspective may be one of reinterpretation methods based on these kinds of levels. Therefore, according to these levels, as a new reinterpretation methods of Islamic text focusing on relation among two both majority and minority sides, *mubadalah* bridging *fiqh* as opened science to the dynamic era or the shifting paradigm.

The works of reinterpreting text, related to this theme, had been conducted by some researchers. The research presented by Jumhur analyzes *Uqudu al-Lujjain* written by Imam Nawawi al-Bantani, focusing on rights and duties of man and women in household. He deeply tried to reinterpret superiority of the man and domesticating woman by using theory of *fiqh sosial* of Sahal Mahfudz (Hidayat, 2019). However, he did not clearly explain how the object will be approached. As a result, his analysis seems to follow other researches with the same object.

Another research related to this book is presented by Ahmad Hasan who also focuses on and elaborates the thought of duties and rights in "The Book". By using normative and juridical approach he only tried to find the relevance of that thought to some laws in Indonesia; Compilation of Islamic Law (KHI), Marriage Law (UUP), and Law of Violence in Household (UU KDRT). He did not try to read the concept of rights and duties in

“The Book” by using reciprocity perspective (Hasan, 2010). In this position, the writer learns that he just tried to describe it more and get a relevance without using the theory which can explain how to take man and woman in one line.

The research presenting discussion more closely to this article is written by Nurul Afiah. She focused her research on *hadis* used by Hasyim Asy'ari as ground argumentation to create his thought. In that article, she uses hermeneutic theory with two approaches; psychological approach and linguistic approach. Through that framework, she concluded that the thought of Hasyim Asy'ari to the topic cannot be separated from social and educational background, so that what he had been formulated on his book can be interpreted again according to where and when the reader lives (Afifah, 2017).

This paper tries to read a text through another perspective idealizing an equality and a mutuality perspective between man and woman. The writer assumes that by this way what has been encouraged as a paradigm of *fiqh* in *pesantren* will be a new discourses to build a new paradigm of family law studies. Therefore, assuming *pesantren* providing patriarchal perspective can be solved by implementing a dialectic between text and method. Finally, a *mubadalah* perspective will be used as a methodology to analyze a text that is assumed as patriarchal text. This method will be elaborated only to the text explaining duties and rights of husband and wife that is described in *Dhawu' al-Mishbah Fi Bayani Ahkam an-Nikah* (“The Book”), created by Hasyim Asy'ari.

Methodology

This article is a normative research. By taking *mubadalah* theory, this article uses conceptual approach in order to get a comprehension of rights and duties between man and woman in the contemporary era. Therefore, the first step should be done is by reading the text on “The Book” and it then will be categorized based on the big theme. After completing this step, applying *mubadalah* theory is the next step. In this step, analyzing the thought by using *mubadalah* perspective will be elaborated more with another view that can expand how *mubadalah* theory can work deeply.

Result and Discussion

Fiqh Mubadalah: A New Paradigm of Re-Contextualization

The idea of *fiqh mubadalah* is based on the theory of *qira'ah Mubadalah* (a perspective of mutual reading). This theory is introduced by Faqihuddin through his book, *Qira'ah Mubadalah: Tafsir Progresif Untuk Keadilan Gender dalam Islam*. Faqihuddin is the first thinker who has formed and constructed *mubadalah* perspective with the whole and systemic methodology because a discourse of *mubadalah* has been discussed by the contemporary scholars on *fiqh* Islamic Law although it is narrated implicitly.

In Arabic term, *mubadalah*(مبادلة) is derived from *ba-da-la* (ب-د-ل) which means *change, replace, and exchange*. Then,

the form of “*mubadalah*” is a word indicating the mutual (*mufa’alah*) and cooperation or collaboration between two persons (*musyarakah*). By using this paradigm, *mubadalah* can be understood as change mutually or exchange mutually.

Faqihuddin affirmed that a meaning *mubadalah* in the book he wrote will be explored to create a new perspective of relationship containing spirit of partnership, mutuality, and reciprocal between two parties. However, he then focuses the meaning and the discussion of *mubadalah* on how a man and a woman create a relation in domestic and public. Moreover, this concept is not only for a spouse, like husband and wife, but it may prevail also for those who have relation with other persons such as a relation between parents and children, boss and assistant, or among members in a community and citizens in a state.

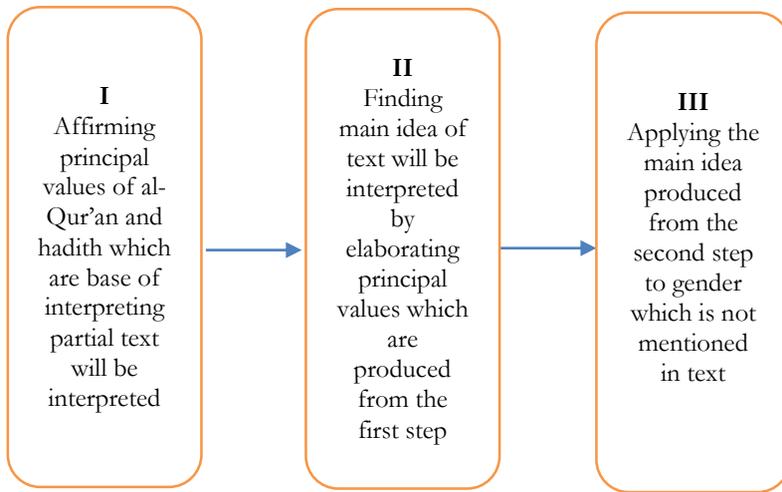
Then, Faqihuddin also argues that a *mubadalah* perspective can be implemented to read Islamic sources; texts, that idealize a partnership between man and woman mutually. Therefore, *fiqh mubadalah* based on Faqihuddin’s perspective discusses and explores about how a relation between man and woman is created mutually and how an equality and a mutuality perspective in Islamic sources should be interpreted to portray the ideal norm of constructing the relation (Kodir, 2019).

To make it clearly, here is the methodology of how *mubadalah* works in interpreting, creating, and constructing a renewal of reading text, particularly on *fiqh an-nikah*. Faqihuddin determines three steps of methodology of *mubadalah* interpretation in Islamic sources in which these steps are

chronologic. Firstly, finding and asserting the principals of Islam from universal texts as a base foundation is the step must be completed before finding the idea of the text. The principals include universal principals exceeding all themes (*mabadi'*) or specific principals connecting the specific theme (*al-qawa'id*) (Kodir, 2019).

The next step is finding the primer idea existing or recorded in texts that will be interpreted. This step can be implemented by omitting subject and object of the text. Then, the verb of text will be the idea which will be interpreted through *mubadalah* perspective. In order to get a thick description, this step can be elaborated by other methods of *ushulfiqh*, like *qiyas*, *istihsan*, *istislah*, or *maqashid syari'ah*. (Kodir, 2019)

The third step is implementing idea that is found form text to a gender which is not mentioned in text. In this position, we can learn that text for man can be implemented for woman as long as we can find an idea of text which can be prevailed for both man and woman (Kodir, 2019). By using this methodology, a reciprocal interpretation of texts indicating inequality will be cleared. However, we have to learn that not all texts can be interpreted through this perspective, like polygamy. The important point in using this paradigm is learning a base foundation of Islamic Law in general or a principal of the topic discussed in text so that a liberal interpretation can be avoided. Here is a diagram of this methodology.



To emphasize how this method tends and works, the basic thoughts of its urgency are based on three argumentations. *First*, Islam comes for both man and woman so that ideally the texts behave for both. *Second*, the principal relation between man and woman is cooperation or collaboration in which hegemony or authority should be omitted. *Third*, Islamic texts are opened to reinterpret so that two reasons above can be reflected in any interpreting work (Kodir, 2019).

In the other hand, to create a harmony in relational substance of household, five pillars of marriage presented by al-Qur'an should be a standard to avoid a dominance. These five pillars, ideally, has been guiding to rebuild a good relationship for those who want to reorient what ideal objectives in household are. These five pillars contains commitment of marriage (an-Nisa': 21), mutuality and partnership (al-Baqarah: 187 and ar-

Rum: 21), willingness (al-Baqarah: 233), good treating (*mu'asyarah bi al-ma'ruf*) (an-Nisa': 19), and discussion (al-Baqarah: 233) (Kodir, 2019).

In order to get comprehensive reading, this work will also elaborate how *worldview* influences a reciprocal thought in leading interpretation. Without viewing it, the contextual interpretation using *mubadalah* perspective will bring the interpreter to bias paradigm area. Therefore, how *worldview* works is also be a fundamental thought of this work. Jasser Auda states that worldview is a product of factors forming human cognition toward the world. He affirms that worldview is formed by everything surrounding humans being; like religion, concept, geography, politic, environment, social, economy, language, and personality (Auda, 2015). Therefore, what has been formed by Jasser Auda with his paradigm framework to guide *mujtahid* or reader to create reformation of law is needed to be declared as a base consideration for who want to try in expanding paradigm and range of *fiqh*, especially on relation in household which is elaborated through *mubadalah* perspective. This is an example framework can be a guidance for interpretation work.

Biography of KH. HasyimAsy'ari

As public figure in Indonesia, Hasyim Asy'ari, born February, 14th 1871 (Dzulqa'idah, 24th 1287 H) has a unique genealogy. He was born through two combination between aristocrat and elite Muslim. Through his mother, the genealogy

is connected to Prabu Brawijaya VI, king of Majapahit-a big kingdom of Hindu in Java. While through the father, his genealogy is connected to Sultan Hadiwijaya who are well known as Joko Tingkir, and SunanGiri. Based on this data, it is rational that Hasyim Asy'ari has a power to be a leader of Muslim in Java when colonialism still exist in Java. Therefore, based on these descents, the full name of him is Muhammad Hasyim bin Asy'ari bin 'Abdul Wahid bin 'Abdul Halim (*Pangeran Benowo*) bin 'Abdurrahman (*JokoTingkir* or *Mas Karebet* or Sultan Hadiwijaya) bin 'Abdullah bin 'Abdul Aziz bin 'Abdul Fattah bin MaulanaIshaq bin Raden Ainul Yaqin (SunanGiri) (Mukani, 2018). His father is the founder of *Pondok Pesantren Keras* in Jombang while his grandfather is the popular scholar and the founder of *Pondok Pesantren Gedang* built in 19 century (Ghofir, 2013).

Since he was six years old, besides guiding society in Keras, Jombang, his father taught him to learn Islamic sciences intensively. Through this way, HasyimAsy'ari had learned how his father taught and cultivated them directly. It had influenced to his personality especially on how to create a paradigm of leadership and education. Because of his shrewdness, in 13 years old he had been mandated by his father to teach some of *kitab kuning* (yellow books) to students (Ghofir, 2013).

Two years letter after he got a mandate from his father, he then went to study in some *pesantren* (Islamic Boarding Schools) in Java and Madura; *Pesantren Wonokoyo Probolinggo*, *Pesantren Langitan Tuban*, *Pesantren Trenggilis*, *Pesantren*

Kademangan Bangkalan Madura, and Pesantren Siwalan Panji Sidoarjo. Learning Islamic sciences by living in some *pesantren* is the tradition of *santri*. This way provided him to build a complex paradigm uniquely. For him, KH. Kholil, Bangkalan, is the master of Arabic lecturer in which he had learned this material during three years. In the other hand, he then also learned Kyai Ya'qub in Siwalan Village, Panji, Sidoarjo (Ghofir, 2013).

After he married with Ya'qub's daughter, he went to Mecca to learn in some popular Scholars. One of his best lecturer *Syaikh Ahmad Khatib al-Minangkabawi* who were well-known as the master of hadith. Moreover, he learned *Shahih Bukhari* through cultivating of *Syaikh Mahfudz* until he got a license as the master of hadith and the he declared as the 24th chain (*sanad*) of *Syaikh Mahfudz*. Based on this fact, it was true if he were called as the master of Indonesia in his era. Moreover, Hasyim Asy'ari also learn *falak, aljabar, and tafsir*, through *Syaikh Mahfudz*. Other lecturers of Hasyim Asy'ari are *Syaikh Nawawi al-Bantani, Syaikh Ahmad Amin AlAttar, Sayyid Sultan bin Hasyim, Sayyid Ahmad Zawawy, Syaikh Ibrahim Arab, Syaikh Said Yamani, Sayyid Huseini Al-Habsyi, Sayyid Bakar Syatha, Syaikh Rahmatullah, Sayyid Alawi bin Ahmad al-Saqqaf, Sayyid Abbas Maliky, Sayyid Abdullah Al-Zawawy, Syaikh Shaleh Befadal, and Syaikh Sulthan Hasyim Daghestani*. Besides learning to these scholars, during in Mecca Hasyim Asy'ari also followed frequently classes in al-Haram Mosque and class of Al-'Allamah

Sayyid Alawi bin Ahmad Al-Saqqaf and Sayyid Huseini Al-Habsyi Al-Mufti (Ghofir, 2013). Because of his curiosity, when he was studying in Mecca, he then was mandated by his teacher, a popular scholar in Mecca, to teach students in Masjid al-Haram (Shahab, 2019). This is the gate bridging him to be a leader in his country after she had passed the study completely

The rising star in Hasyim Asy'ari's personality as an influential scholar was influenced by paradigms or thoughts introduced or provided by his teachers. The most influential teacher of him is Mahfudz at- Tarmasi who follows the thought of *Syaikh* Nawawi al-Bantani and *Syaikh* Sambas. Through this way Hasyim Asy'ari believed that maintaining or preserving *mazhab* and *tarekat* (suluk) were the important thing in living Islam. He rejected what Muhammad Abduh declares as neo-revivalism of Islam without handing one *mazhab* (tought) in Islam. According to Hasyim Asy'ari, learning Islam in various aspect such as *tafsir* (exegesis), *hadith*, *fiqh*, *aqidah* (theolgy), and *akhlaq* (moral) cannot be interpreted clearly without comprehending what Scholars stated or declared in their books.(Wahid, 1995).

As a thinker and a scholar, HasyimAys'ari wrote many books indicating him that he was an authoritative person to discuss, solve, and also discourse everything related to Islamic perspective, like *fiqh*, *tafsir*, *tasawuuf*, *hadits*, and *akhlaq*. Here are book lists had written by him; *Adab al-'Alimwa al-Muta'allim*, *RisalahAhlu as-Sunnahwa al-Jama'ah Fi Bayani al-Musammahbi Ahli as-Sunnahwa al-Jama'ah*, *at-Tibyan fi al-*

Nahy 'an Muqatha'ah al-Arhamwa al-Aqaribwa al-Ikhwan, Muqaddimah al-Qanun al-Asasy Li Jam'iyah Nahdhatil Ulama, Risalah fi Ta'kid al-Akhdz bi Madzhab al-A'immah al-Arba'ah, Risalah Tusamma bi al-Mawa'idz, al-Arba'in Haditsan Tata'allaq bi Mabadi' Jam'iyah Nahdhatul Ulama', al-Nur al-Mubin fi Mahabbah Sayyid al-Mursalin (Cahaya pada Rasul), Ziyadah at-Ta'liqat 'ala Mandzumah asy-Syaikh Yasin al-Farusuani, Tanbihat al-Wajibat liman Yashna' al-Maulid bi al-Munkarat, Risalah Ahli Sunah Wal Jama'ah fi Hadits al-Mautawa Syarat as-Sa'ahwa Bayan Mafhum al-Sunahwa al-Bid'ah, Dhau'ul Mishbah fi Bayan Ahkam al-Nikah, Miftah al-Falah Fi Ahdits an-Nikah, Awdhah al-Bayan fi Ma Yata'allaqu bi Wadzaifi Ramadhan, Abyan an-Nidzhim fi Bayani Ma Yu'marubih aw Yuhan 'anhu min Anwa' ash-Shiyam, Ahsan al-Kalam fi Ma Yata'allaqu bi Say'ni al-'Abdi min al-Fadhail wa al-Ahkam, Irsyadu al-Mu'minIla SirahSayyid al-Mursalin, Jam'u al-Maqashid fi Bayani Mabadi' at-Tauhidwa al-Fiqhwa at-Tashawwuf li al-Murid, Risalah Tusamma bi al-Jamus fi Bayani Ahkami an-Naqus, and others. These book proved him as the Islamic Thinker with great authorities in various aspects.

Concept of Duties and Rights of Spouse in *Dhou'ulMishbah Fi BayaniAhkamiNikah*

The book, entitled *Dhou'ul Mishbah Fi Bayani Ahkami Nikah* (a light of lamp in explaining the laws of marriage), consists of 22 pages with four subthemes; introduction

(*khithbatulkitab*), explanation of marriage law (*fi bayani ahkami nikah*), pillars of marriage and other aspect connecting with it (*arkan an-nikah wa ghairiha*), and the closing (*khotimatun*) containing explanation of rights and duties for spouse (*Fi bayani huquq az-zawjah 'ala az-zawj wa huquq az-zawj 'ala az-zawjah*). In this article, as I has confirmed before, the topic will be focused on discussion is the rights and the duties in marriage. This topic will be analyzed through a *mubadalah* perspective (*fiqh mubadalah*) in order to show or portray a narration of equality and mutuality in family between husband and wife ideally in contemporary era.

Based on explanations of the book, HasyimAsy'ari starts analyzing the duties of husband that are rights of wife in the first part before explaining the duties of wife which are the rights of husband. Here is the text (Asy'ari, n.d.)

تجب على الزوج مصاحبة زوجته بالمعروف، بأن يحسن إليها بإيصال حقها مهرا و نفقة ومؤنة وكسوة برضا وطيب نفس ولين قول و بالصبر على سوء خلقها، وأن يسلكها سبيل الخيرو العبادات، وأن يعلمها ما تحتاج إليه في الدين من أحكام الطهارة و الحيض و الصلوات التي تقتضيها

“The husband has to assort his wife bil ma’aruf, by giving her dowry, money, home, dress –called as three necessary needs- as right should she gets, with fully willingness, by talking to her softly, and by calming his self of her foul or nasty morals. He also has to guide her to stay on the right path and the way of worships. Then, he has to teach her of what she needs specifically in law of cleanless (thaharah), menstruation, and prayers.”

According to the above text, Hasyim Asy'ari classifies the duties of husband to wife into three general points. *First*, a husband has to associate or assort a wife with the best way in which it can be portrayed by giving her dowry and fulfilling necessities of life; clothes, money, and home followed by willingness. Then, a husband also has to talk smoothly with her. Moreover, when a wife shows bad characters or moral, a husband has to be patient because of wife's error. *Second*, a husband has to guide her in the right way and worships. The last point, *three*, is that a husband has an obligatory to teach a wife in order to bring her to be the pious wife ever.

The basic argumentations to these husband duties are based on some *hadis* and verses of al-Qur'an. Here are the lists of bases of his argumentation can represent the thought.

| | |
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| <p>الا واستوصوا بالنساء خيرا فإنما هن عنان عندكم، ليس تملكون منهن غير ذلك إلا أن يأتين بفاحشة مبينة، فإن فعلن فاهجروهن واضربوهن ضربا غير مبرح، فإن أطعنكم فلا تبغوا عليهن سبيلا، ألا إن لكم على نساءكم حقا ولنساءكم عليكم حقا، فحقكم عليهن أن لا يوطئن فراشكم من تكهوهن ولا يأذن في بيوتكم لمن تكرهون، ألا وحقهن عليكم أن تحسنوا إليهن في كسوتهن وطعامهن</p> | <p>Explaining duties of the husband to give the wife <i>mahr</i>, <i>money</i>, <i>home</i>, <i>dress</i>, and other primer needs.</p> |
| <p>حق المرأة على الزوج أن يطعمها إذا طعم، ويكسوها إذا اكتسى، ولا يضرب الوجه، ولا يقبح، ولا يهجر إلا في المبيت</p> | <p>Explaining husband's duty to</p> |

| | |
|--|--|
| | talk and treat he wife softly. |
| إن من أكمل المؤمنين إيماناً أحسنهم خلقاً والطفهم بأهله | Explaining husband's duty to |
| لايلقى الله تعالى رجل بذنب أعظم من جهالة أهله | teach and guide the wife in the straight way |

Then, he categorizes the wife's duties in various aspects; more detail than what he classified on husband's duties.

وحقوق الزوج على الزوج كثيرة منها أنه يجب عليها طاعته في نفسها إلا فيما يحل، ولا تصوم ولا تخرج من بيته إلا بإذنه ورضاه، ومنها أن تتحري رضاه وتتجنب سخطه ما أمكنه، وينبغي أن تعترف أنها كمملوكة فلا تتصرف في ماله إلا بإذنه، بل قيل وفيما لها لأنها كمهجورة له، ومنها أنتقدم حقوقه على حقوق أقاربها بل حقوق نفسها في بعض صورها، ومنها أن تكون مستعدة لتمتعه بها بما تقدر عليه من أسباب النظافة، ولا تفتخر عليه بجمالها، ولا تعيره بقبح فيه، ومنها دوام الحياء منه ورض طرفها قدمه، والطاعة لامره، و السكوت عند كلامه والقيام عند قدومه وخروجه، ومنها عرض نفسها عليه عند النوم، وترك الخيانة عند غيبته في فراشه أو ماله، وطيب الرائحة له وتعهد الفم بالطيب، ومنها دوام الزينة في حضرته وتركها في غيبته، ومنها إكرام أهله وإقاربه ورؤية القليل منه كثيراً، وطلب رضاه جهدها فهو جنتها ونارها.

“There are husband's rights; a wife has to loyal to him except in what are forbidden, is prohibited to go outside from home

without the willingness of husband, tries to find the husband's willingness and avoids what makes husband angry as possible, prioritizes husband's rights than rights of wife family even wife's rights in some parts, has to pay attention or prepare herself to be copulated by him like cleanness of her body, is prohibited to boast of the beauty and to blame of the deficient of husband. The wife also to show her modesty to him, bow her eyes in front of him, obey to his command, silence when he talks, stand up when he comes and leaves. Then, the wife has to devote her body when sleeping, leave betrayal of sex and wealth when he is absent, perfume her body and mouth for him (preparing sexual course), adorn in his presence and leave adorning in his absence. The last is that the wife has also to honor his family and keep her eyes from his member family, and find or get his satisfaction because paradise and fire for follow him."

As explained in most *fiqh* texts, the concept of duties and rights of spouse discusses good relationship (*mu'asyarah bilma'aruf*) which normally prevails for both husband and wife, basic necessities of life (*nafaqah*) which is actually put upon husband, and sexual service which is mostly directed as wife's duties (Kodir, 2019). However, based on the text, the wife's duties according to Hasyim Asy'ari's thought can be classified generally into two themes; loyalty and service. Then, theme of loyalty consists of three main idea; *loyalty by getting willingness, loyalty by preserving the wealth's husband, and loyalty in sexual course*. Meanwhile, the topic of service tells about how woman services in sexual course and how woman show the beauty to husband. The detail classification can be checked in the table below.

| Texts | Topics |
|---|--|
| <ul style="list-style-type: none"> ● أنه يجب عليها طاعته في نفسها إلا فيما يحل ● ولا تصوم ولا تخرج من بيته إلا بإذنه ورضاه ● أن تتحرى رضاه وتتجنب سخطه ما أمكنه ● وطلب رضاه جهدها فهو جنتها ونرّها | Loyalty by getting willingness |
| <ul style="list-style-type: none"> ● وينبغي أن تعترف أنها كملوكة فلا تتصرفي ماله إلا بإذنه بلقيل وفيما لها لأنها كمهجورة له ● وترك الخيانة عند غيبته في ماله | Loyalty by preserving the wealth's husband and |
| <ul style="list-style-type: none"> ● أن تقدم حقوقه على حقوق أقاربها بل حقوق نفسها في بعض صورها | Priority of husband's rights |
| <ul style="list-style-type: none"> ● أن تكون مستعدة لتمتعه بها بما تقدر عليه من أسباب النظافة ● ولا تتفخر عليه بجمالها ● ولا تعيره بقبح فيه ● دوام الحياء منه ورض طرفها قدامه ● والطاعة لامره و السكوت عند كلامه والقيام عند قدومه وخروجه ● عرض نفسها عليه عند النوم ● وترك الخيانة عند غيبته في فراشه | Loyalty in sexual course |
| <ul style="list-style-type: none"> ● وطيب الرائحة له وتعهده الفم بالطيب ● دوام الزينة في حضرته وتركها في غيبته ● إكرام أهله وإقاربه ورؤية القليل منه كثيرا | Dressing up only for husband |

To strengthen his concept, he also provided citations of al-Quran or some hadiths which relate to his paradigm of duties and rights of the wife. Here are some citations of al-Qur'an and hadiths he cited in which in this paper it will be explained by correlating with the main which had been constructed. These two hadith can represent that concept.

| | |
|---|--|
| <p>• إذا صلت المرأة خمسها، وصامت شهرها، وحصنت فرجها، وأطاعت زوجها، دخلت من أي أبواب الجنة شئت</p> <p>• وجاء عن النبي صلى الله عليه وسلم: أربعة من النساء في الجنة، وأربعة في النار، وذكر من الأربعة اللواتي في الجنة: امرأة عفيفة طاعة لله ولزوجها، ولود صابرة قانعة باليسير من زوجها، ذات حياء إن غاب زوجها، حفظت نفسها وماله، وإن حضر أمسكت لسانها عنه، واراة مات زوجها ولها أولاد ضغار فحبست نفسها على أولادها وربت وأحسنن إليهم، ولم تتزوج خشية أن يضيعوا، ثم قال النبي تلى الله عليه وسلم: وأما الأربعة اللواتي في النار: فامرأة بذية اللسان على زوجها، إن غاب عنها زوجها لم تصن نفسها، وإن حضر أدته بلسانها، وامرأة تكلف زوجها ما لا يطيق، وامرأة لا تستر نفسها من الرجال، وتخرج من بيتها متبرجة، و امرأة ليس لا تستر نفسها من الرجال، وليس لها رغبة في صلاة ولا طاعة الله ولا في طاعة رسوله ولا في طاعة زوجها، فالمرأة إذا كانت بهذه الصفات كانت ملعونة من أهل النار إلا أن تتوب</p> | <p>Through these hadith, the wife has the duty to loyal her husband on sexual service, dressing, prioritizing his rights, and preserving wealth. From these hadith, everything she will do has to get license or willingness form him.</p> |
|---|--|

Based on the text he wrote, it is clear that he tends to explore what duties should be done by wife. The hadiths that he used as strengthening of his argumentation of this concept represent woman paradigm dominantly. In the other hand, what husband's duties are is only centralized in three general topic. Then, the hadiths he used in strengthening his opinion to what he call as husband's duties represent dominantly ideal behaviors of husband without presenting a menace or a warn for husband who will be irresponsible person. However, the hadiths strengthening wife's duties dominantly showing a word or sentence indicating

a menace or a warning for those who will be offender of the norm in the hadith. In this position, the writer tends to read it by using equality paradigm. So that, both husband and wife will not be inflicted because of a dominant role. However, this article will focuses only on what he had been conceptualized, not on the verses and the hadiths he claimed as the base argumentation. It is chosen because this article tends to reinterpret his concept which is may be learned as the base argumentation for those citing it as an original concept.

Dialectic of *Fiqh Mubadalah*: A Progressive Reading

This work starts through determining the universal norm idealized by most of Islamic texts toward justice and equality discourse. Through citing and observing on the Qur'an, the writer declares that four verses; al-Hujurat: 13, al-Maidah:1, al-Baqarah: 187, an-Nisa': 19, an-Nur:18-19 are determined in this context as the basic thought inspiring a norm of mutuality between the two. The verses in al-Hujurat and al-Maidah represent universal value of cooperation between the two. Then, the three others represent principal value of cooperation or mutuality relationship between the two.

The keyword of al Hujurat:13 is *ta'arafu* (تعارفوا) which means understanding, recognizing, identifying each other. It means that everyone ideally should has social sensitivity in order to create awareness of unity and requiring each other. Through this awareness, no one will dominate each other, unless one will

complement each other. Therefore, the mean of *ta'arafu* will be completed when it collaborated to the meaning of *ta'awanu* (تعاونوا) which means *helping each other*. These are universal values should be observed when reactivating or re-contextualizing the text. These values, according to hierarchy of values in *mubadalah* concept, are categorized as *al-mabadi'* (principal values) guiding next interpretation.

The next group of verses represent specifically relation between the two. Through the verse al-Baqarah: 187 (*hunna libasun lakum wa antum lahun*), al-Qur'an idealize the cooperation between both husband and wife by portraying the two as the cloth that covers disgraces each of them. Then, through an-Nisa': 19 (*wa 'asyiruhunna bi al-ma'ruf*), al-Qur'an tends to inform human that they have to create well treat each other, especially for husband and wife. Other verses idealize equality between the two are an-Nur: 30 (*qul lil mu'nin yaghdhdhuu min absharihim wa yahfdzu furujahum*) and an-Nur: 31 (*qul lil mu'minati yaghdhdhna min absharhinna wa yahfdzna furujahunna*). The last two verses indicate a command that both man (husband) and woman (wife) are prohibited to gaze others who are not included as a *mahram* in family. This command is prevailed generally with exception in emergence condition. Thus, this values are categorized as *al-qawa'id* (thematic values) which is a branch of principal values that will be guider for interpreting the partial texts.

To create a harmony in relational substance of household, five pillars of marriage presented by al-Qur'an should be a standard to avoid a dominance. These five pillars, ideally, has been guiding to rebuild a good relationship for those who want to reorient what ideal objectives in household are. These five pillars contains commitment of marriage, mutuality and partnership, willingness, good treating, discussion. (Kodir, 2019). Through these principals, a reinterpretation work can be handled or controlled to receive the ideal of *mubadalah* perspective. Moreover, it provides ethical design of *fiqh munakahat* so that the humanity aspect of family will be elaborated completely.

Based on the two steps before, it can be inferred that norm of identifying and helping each other is universal values that represent how ideally relationship between man and woman is. While, creating cooperation and well treatment between the two, and preserving sight or preserving self to others in public are thematic values that relate specifically to marriage discourses.

After completing the two steps before, the next step is interpreting implementation values found in any text. In this context, the implementation values will be reinterpreted are found in "The Book". When explaining the concept, Hasyim Asy'ari cited hadith without mentioning *sanad* and even *rawi* (transmitter). He focused only on what the idea of text to support what he has been concluded, although in truth he was able to identify status and level of hadith. The reason of why he wrote shortly, in writer's assumption, can be found in the opening

(*muqaddimmah*) of “The Book”. He stated that most people in the country who want to marry had demanded him to write the book explaining law marriage. Then, in addition, he also knew that most of them did not know or learn clearly what pillars, requirements, duties, rights, and behaviors are. Therefore, to facilitate them, he wrote the book (*risalah*) providing information they want by explaining material shortly (Asy’ari, n.d.). By explaining the content with short narrative but in thick content, people may learn materials easily with the base argumentation which can convince them. The writer, in this step, will not find how the levels hadiths are, but the writer will focus on text should be read using contextual approach by that method. The duties of husband are explained in the text below:

تجب على الزوج مصاحبة زوجته بالمعروف، بأن يحسن إليها بإيصال
حقها مهرا و نفقة ومؤنة وكسوة برضا وطيب نفس ولين قول و
بالصبر على سوء خلقها، وأن يسلكها سبيل الخيرو العبادات، وأن يعلمها
ما تحتاج إليه في الدين من أحكام الطهارة و الحيض و الصلوات التي
تقتضيها

Three main ideas of the text are *mushahabah* by fulfilling rights, saying respectfully, and accepting her disgraces or her immoral, the guidance for her to get great worship, and teaching her of what they need to learn religion norms. The question is that is the text mandated for husband only.

Meanwhile, the principal of marriage is cooperation. Is there probability for wife to guide, remind, and teach husband. The answer is yes. Both husband and wife have the same chance to do. Even, they ideally have to cooperate to realize it. So that, the duties of husband can be covered and completed by wife when he cannot afford it. In this position, the idea of *ta'arfu* and *ta'awanu* as the universal norm can be realized. Moreover, the thematic values idealize cooperation, solidarity, harmony, togetherness, cohesiveness between the two.

Reaching that idea cannot be completed without taking the idea of *hadiths* which are bases of that concept in “The Book”. So that, considering sociological norms, anthropological norms, and historical values are the important way should be elaborated when reinterpreting that bases.

Another way to reinterpret this text is by omitting subject and object. Then, *yahsuna*, *yusallika*, and *yu'allima* are verbs providing meaning and message of the text. After that, the main idea of those verbs are transferred to the next step. So that, the gender does not mention in text can be approved the meaning of verb. Finally, husband and woman have obligation to create well behaviors each other, remind or guide and teach each other. The domination which actually burdens husband will be covered by existing cooperating between them. In one case, the man can teach or guide the woman to do something in order to realize the perfection. In the other hand, the man may cannot to teach her because of his incapability. Therefore, the woman may covers it. These are the reality should be a consideration for any

interpretation of the text. These are sets of worldviews which can change gradually. It depends on how society works, moves, or activates the life.

Unlike the explanation of husband duties, wife's duties are explained more comprehensively by detailing each point.

وحقوق الزوج على الزوج كثيرة منها أنه يجب عليها طاعته في نفسها إلا فيما يحل، ولا تصوم ولا تخرج من بيته إلا بإذنه ورضاه، ومنها أن تتحرى رضاه وتتجنب سخطه ما أمكنه، وينبغي أن تعترف أنها كمملوكة فلا تتصرف في ماله إلا بإذنه، بل قيل وفيما لها أنها كمهجورة له، ومنها أنتقدم حقوقه على حقوق أقاربها بل حقوق نفسها في بعض صورها، ومنها أن تكون مستعدة لتمتعه بها بما تقدر عليه من أسباب النظافة، ولا تفتخر عليه بجمالها، ولا تعيره بقبح فيه، ومنها دوام الحياء منه و غص طرفها قدامه، والطاعة لامره، و السكوت عند كلامه والقيام عند قدومه وخروجه، ومنها عرض نفسها عليه عند النوم، وترك الخيانة عند غيبته في فراشه أو ماله، وطيب الرائحة له وتعهد الفم بالطيب، ومنها دوام الزينة في حضرته وتركها في غيبته، ومنها إكرام أهله وإقاربه ورؤية القليل منه كثيرا، وطلب رضاه جهدا فهو جنتها ونارها.

Based on categorization in the part before, this text expresses generally norm of *loyalty* and *priority*. Loyalty norm is expressed by three aspects; *by getting willingness, preserving the wealth, and servicing sex*. Then, priority norm is portrayed by

prioritizing husband rights than other and dressing up exclusively for husband.

Generally, If we compare the responsibility between the two, the wife gets quite complicated burdens than husband gets. Whereas, when we look the universal and thematic values, realizing an equality is important. All values will be reinterpreted should be based on that norm. Therefore, probability of prevailing norms of the text for the gender does not mention clearly is acceptable.

Looking on the bold words of the text above, those words indicate that only wife should be more sacrifice to the husband. Moreover, the worlds also indicate a dominant role or position of husband in household. Ideally, in order to create cooperating system among family members or between the two, this perception which is produced from the text should be vanished and then it can be exchanged with another principal providing cooperating or harmonizing paradigm. As a consequence, the cooperation paradigm that ideally will has been existing forever has to be taken by reinterpreting the words by looking on what has been agreed as the universal and thematic norms.

The words; *yajibu* (obligatory), *la tashumu* and *la takhruju* (prohibition), *tataharo-tatajannaba* (finding-avoiding), *ta'rifa-tatasharraf* (understanding-using), *taqaddama* (prioritizing), *musta'iddah* (servicing), and other the bold words, should be reinterpreted by omitting subject and object as well as writer does on the text of husband. So that, the husband who

actually positions his dominant will has been equalizing by this interpretation effort forever. The consequence of this work is that both husband and wife will create harmony or cohesiveness, like puzzle which covers other parts to produce the perfect sketch. Therefore, the commands or mandates idealized by the text can be applied for both husband and wife. In this case, researches had been conducted by group of scholars fighting for rights for women meet a relevance with this perspective.

The meaning of *yajibu 'alaiha tha'atuhu* (an obligatory to loyal) does not intend to wife only, but also to husband. Both husband and wife in this case can be positioned as the partner who are always giving advices each other so that the one can warn the other to stay on the straight path. This case is related to meaning of *anta taharro wa tatajannaba*. *Tataharo* in this position means *finding* and *tatajanaba* means *avoiding* or *keeping away*. This command ideally does not only intend to strengthen wife's role, but it also intends to brace roles of the two. Husband and wife, every time, have to get permission or license for his or her spouse in doing or planning something and keep away from what husband or wife does not want to create a harmony, because the household is built by the works of the two. So that, a condition of warning each other will really be built to realize what al-Qur'an said.

Then, *la tashumu wa la takhruju* ideally can be learned as the prohibition for both. For wife, prohibition of fasting is connected to *sunnah* worship. Actually, husband's willingness

for this kind of fasting for wife relates to sexual service should be realized by wife in anytime husband wants. This perception provide that woman as a field or object of actualizing sex, but actually the case is that wife also needs the object of actualizing sex. In other hand, by giving information between husband and wife weather he or she is fasting or not is a form of creating service not only on sex but also on how wife preserve the meal for fasting to complete or prefect that worship.

A license of utilizing wealth which portrays from the text, *la ta tasharafa* (do not utilize), ideally does not intend to wife only. This command also expects that both husband and wife when they utilize or exploit husband's or wife's wealth or even their wealth have to get agreement in order to know for what wealth is exploited or utilized. By activating this habit, the reliance or even the faithfulness will has been built forever so that no one can dominate to exploit wealth and it will be influenced on how dynamic of family finances develops, in which it is one of the urgent principal of strengthening family life. Then, weeding agreement which organizes how the man or the woman uses, operates, or applies can be the way to solve the domination of them in which it is legalized by the state.

In other side, realizing of wife to herself that she ideally is commodity which is fully controlled by husband (*mamlukah*) has to be deconstructed. Actually, because of patriarchal paradigm, husband convinces that wife is fully under his control, while he does not realize that he is as commodity fully owned by his wife. Ideally, this concept should be exchanged by the new

paradigm. Both husband and wife properly can take the same role. It means that the two cannot dominate each other. Otherwise, they have to create awareness of having each other. So that, there will no one be a commodity exploited by another.

Prioritizing of rights in family ideally does not relate with gender or what position or level is in household. However, the needs are based on the urgency demanding people to realize it as well as how the man gets. In this position, what had been structured by Abraham Maslow of needs is important to be consideration in completing the needs. Based on what Maslow writes, in this case we can say what rights are should be prioritized. Maslow constructed that human ideally need to fulfill these five needs: physical needs, safety needs, social needs, esteem needs, and self-actualization. The needs of each person is different to other, depending on what position is in family. So that, each member of family, especially father and mother, has to learn how they can complete needs of other. In order to create prioritizing of rights, the idea of Ibnu ‘Asyur which provides preserving equality should be applied when reading this text. Using this theory, a concept of how wife eulogizes husband’s family in the text can be applied to husband’s perspective. Finally, there will be consciousness among family members toward arguing of prioritization of rights.

Another theme presented in this text with refracting gender paradigm is sexual service which is intended textually as wife’s duty. Husband in this position as a player, receiver, or

lover of sex who must be serviced as well as she can do properly. Relating to this case, wife has not to be-in Hasyim Asy'ari's text, an arrogant woman of her beauty. In the other side, he has not to blame of husband's disablement of servicing sex for her or other sides. Then, wife has to be ready whenever her husband wants to copulate her. Moreover, the text only tends to presume wife as human who can slid on the wrong way in which it is portrayed by commanding wife to be responsible person of wealth and sex. As consequence of this expectation, wife has to dress up and perfume or even preserve fragrance of herself only for the husband. These are like suspicion to wife in which husband is not an object of this "suspicion". Whereas, these suspicion may prevail to husband. This concept, based on *mubadalah perspective*, tends to position woman as the real devotee in which she, in every time, has to commend her husband rather as inferior partner.

Through this explanation, it can be inferred that ideally Islam tends to position both man and woman on the equality. No one can dominate to other. No one can be dominated to. The principal of reciprocity does not mean to change position the one with other, but it idealize cooperation among the community. Realizing *mubadalah* is a manifestation of realizing the law of universe (*sunnatullah*) that guides and informs to human that all elements in the universe are created, principally, to cover each other in order to reach the balance.

Based on this fact, the writer assumes that Hasyim Asy'ari has been dominated by patriarchal paradigm which

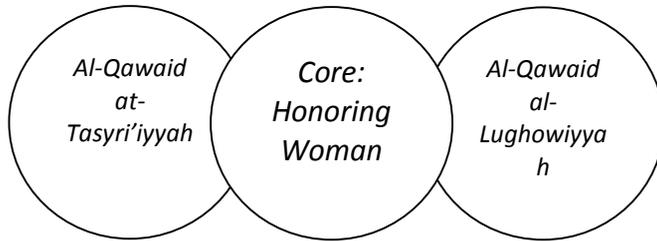
allows him to determine what norms are should be prevailed for women living in his era. Several norms that he idealizes seem restrict women's movement in joining contributing to society as men do. If we look clearly what husband's rights are, dominantly based on his concepts husband gets more lucks than wife gets.

A method of *fiqh mubadalah* idealize a mutuality by combining both husband's and wife's duties. The first step will be taken is checking base argumentation of these concept for both husband's and wife's rights. Finding argumentation is the way to start on getting the essence message of text and it then will be related with principal norms or values of al-Qur'an and hadith that have been affirmed. After finding what main ideas are, applying it to the gender which is not mentioned in text is the next step. By this way, we will learn that there are norms constructed by KH HasyimAsy'ari should be reformed again in order to make it match toward what norms are lives and prevails in contemporary era. Finally, we can conclude that neither texts nor ideas are influenced by context or dominant ideology in that era. In this position, what is mentioned by Abdullah Saeed as the hierarchy of al-Qur'an values gets its relevant. Based on his idea, among five kinds of norms in al-Qur'an, *obligatory values, fundamental values, protection values, implementation values, and instructional values*, that has been categorized only two norm; *implementation values, and instructional values*, depend on context when it is viewed in another context.(Saeed, 2016).

As framework Abdullah constructed, Amin Abdullah offers *fresh ijtihad* as the new way to answer conservatism of *fiqh*. He stated that modern *fiqh* actually tends to focus on how human, in this century, can solve problems of connection, dependence, and dialectic between text and reality. (Abdullah, 2015). New reading is one of ways of how to solve those problems in which it idealizes renewal of progressive readings. Related to this case, offering of contemporary interpretation method has to be appreciated, although it sometimes provides righteousness or mistake. However, for this case, Amin Abdullah said that not all wrong interpretation can be suspected as a deviation or heresy. It can be suspected if that work refuses the truth of the text, especially Islamic texts on five hermeneutic levels; *ontological-existential (dhati)*, *experiential (hissi)*, *conceptual (khayali)*, *intellectual ('aqli)*, and *metaphorical (majazi)*. Therefore, interpretation following on or based on one of those five levels can be recognized as the truth (Abdullah, 2015).

The epistemology of how Islamic Jurisprudence (*Ushul Fiqh*), as the important tool to learn and produce the *fiqh*, responds women issues had been offered by Harissudin. To activate women paradigm on *ushul fiqh*, two main instruments: *qaidah lughowiyah* (language rules) and *qaidah tasyri'iyah*, should be elaborated with the new core: honoring or venerating woman, because only by using this, *fiqh* is able to accommodate new contemporary issues of woman. As a consequence, condemning or imputing paradigm to women identity, women

rules, or women movement will be enable to be vanished. (Harisudin, 2015).



Therefore, various epistemologies of world view to woman, in this case, are really needed to be adopted to create a progressive reading. In this position, engaging other social theories, like cultural studies, post-colonial studies, or discourse theory, will bring and elevate the way of reading text with the new identity. Especially on how *mubadalah* perspective is used, these offers will provide world views of woman or man in which interpretation work of reciprocal paradigm demands a whole worldview that can represent more than biological relation.

In this context, how to renew a paradigm of worldview is based on how people take and learn norms surrounding them, including situation and condition, in creating relation between man and woman in household. The shifting role of woman in household can be inferred as one reason of how law or rule runs. Moreover, existing new regulations that regulate woman's rights and roles in household and public, also can be a basic argumentation to support how women can determine and fight for their rights. Then, the domination of women on role or even wealth in household must be guidance to reinterpret Islamic texts

which indicate bias role. These are parts of worldview that must be learned and collaborated or elaborated by readers.

Existing inclusivism of fiqh is also a part of renewing *worldview* on this subject. Inclusivism on fiqh provides an equality of both majority and minority sides. Actually, fiqh paradigm on Islamic texts is dominated by man's perspective that causes ignorance of woman's perspective in which it somehow offers another view to solve a conflict or problem of spouse relationship wisely. In this position, it is right that fiqh need to be reconciled with social cognition. So that, a work of reinterpretation using *mubadalah* perspective finds a basic paradigm through drawing dynamics of social cognition.

Conclusion

Interpretation work to the text, in this era, idealizes covering worldview. Interpreting text which dominating textual paradigm is only tending to bring to orthodoxy. *Mubadalah* perspective which is applied to read text of *fiqh* will produce *fiqh mubadalah* (reciprocity). Using this perspective in reading book of Hasyim Asy'ari, *Dhaw'ul Mishbah Fi Bayani Ahkamin Nikah*, provides new perspective. Dominating patriarchal paradigm on that book will be changed by this perspective so that the woman or the man when reads or learns this book, especially on topic of duties and rights, will convince that they have to create cooperation in household. By implementing this perspective, what has been assumed or expected by human that traditional books containing traditional paradigm, automatically,

will be transformed. Therefore, existing and implementing this perspective, *mubadalah*, by determining dynamic of worldview, of course, will elevate the text to be adoptive-responsive text, although the ingredients or the composition are still the same.

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