

Equality from The Perspective of Islamic Constitutional Law *al-Musāwah* & Legal Equality in Islamic Constitutional Frameworks

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Abstract

This article examines equality from the perspective of contemporary Islamic constitutional law (*fiqh al-siyāsah*), focusing on *al-musāwah* within the framework of human rights and modern political systems. Using the Quran, *hadīth*, and the opinions of ulama and Muslim intellectuals, analyzed via *usūl al-fiqh* with attention to *maqāṣid al-sharī‘ah*, the study highlights that most contemporary scholars uphold equality as a foundational principle of society and the state. Here, equality refers to legal equality (*al-musāwah al-qānūniyyah* or *al-musāwah amām al-qadā’*), rather than factual equality (*al-musāwah al-fī’liyyah*) or general equality of opportunity (*al-musāwah fī takāfu’ al-fursah*). Equality of opportunity applies to free state services such as education and healthcare, which facilitate social mobility. Certain inequalities remain, particularly concerning the status of Muslims versus non-Muslims and men versus women. Key examples include inheritance, polygamy, testimony, and the practice of *hijāb* or *niqāb*, all based on *qatī* (definitive) evidence. Nevertheless, many contemporary scholars engage in *ijtihād* to reinterpret these rulings in modern contexts and uncover their underlying wisdom.

Abstrak

Artikel ini membahas gagasan kesetaraan dari perspektif *fiqh al-siyāsah* kontemporer, dengan menempatkan konsep *al-musāwah* dalam kerangka hak asasi manusia dan sistem politik modern. Dengan merujuk pada Al-Qur'an, hadis, serta pandangan para ulama dan intelektual Muslim, yang dianalisis melalui pendekatan *usūl al-fiqh* dengan mempertimbangkan *maqāṣid al-sharī‘ah*, studi ini menunjukkan bahwa mayoritas ulama kontemporer menempatkan kesetaraan sebagai prinsip fundamental dalam kehidupan bermasyarakat dan bernegara. Dalam kajian ini, kesetaraan dipahami terutama sebagai kesetaraan di hadapan hukum (*al-musāwah al-qānūniyyah* atau *al-musāwah amām al-qadā’*), bukan kesetaraan faktual (*al-musāwah al-fī’liyyah*) ataupun kesetaraan kesempatan (*al-musāwah fī takāfu’ al-fursah*). Kesetaraan kesempatan lebih relevan dalam konteks akses terhadap layanan publik yang disediakan negara, seperti pendidikan dan layanan kesehatan, yang berperan penting dalam mendorong mobilitas sosial. Pada saat yang sama, artikel ini juga mengakui bahwa bentuk-bentuk ketidaksetaraan tertentu masih dipertahankan dalam hukum Islam, khususnya terkait relasi Muslim dan non-Muslim, serta antara laki-laki dan perempuan. Hal ini tampak, misalnya, dalam pengaturan warisan, poligami, kesaksian, serta praktik jilbab atau niqab, yang umumnya bersandar pada dalil-dalil *qatī*. Meski demikian, banyak ulama kontemporer terus melakukan *ijtihād* untuk membaca ulang ketentuan-ketentuan tersebut dalam konteks sosial modern, sekaligus menggali hikmah dan tujuan normatif yang mendasarinya.

Keywords:

Equality; *Al-musāwah*; Social justice; Non-Muslims; Women.

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Introduction

Equality among human beings is one of the most fundamental rights. Article 1 of the Universal Declaration of Human Rights, adopted in 1948, states that "All human beings are born free and equal in dignity and rights." This is also stated in Article 24 of the International Covenant on Civil and Political Rights (ICCPR) 1966, which states: "Every child has the right to the protection required by his family, society and the state, without any discrimination as to race, color, sex, language, religion, national or social origin, property or birth," and "Every child has the right to acquire a nationality." This principle was later adopted by almost all countries worldwide through their constitutions, which state that every citizen has equal standing before the law and enjoys the same rights and obligations without discrimination.

The idea initially emerged as a response to the system of domination and power exercised by the aristocracy or oligarchy, serving as a form of resistance to social hierarchy and discrimination. This phenomenon persists today, not only in developing countries but also in developed, democratic countries. At this time, this inequality may be related to factors such as power, wealth, income, race, gender, religion, and culture. Unequal income distribution can be a significant source of tension in society, often linked to other forms of inequality. Inequality can occur in practice (*de facto*) and, in some cases, simultaneously with law (*de jure*). However, the amount of legal inequality is now decreasing due to demands for greater democracy.

From an Islamic perspective, the principle of equality in social and state life is crucial because it underpins the existence of citizens. As a religion with a mission of "*rahmah li-l-ālamīn*" (blessing for the universe), Islam highly values the principle of equality (*musāwah*) among fellow human beings. The principle of equality is mentioned in the Quran, Hadith, and the books of the ulama. However, ulama in the past did not discuss this concept of equality in detail, except in terms of legal equality. They did not discuss it in a political and human rights context, nor did they critically address the issue of inequality among citizens. This prompted several Western observers, including John L. Esposito and James P. Piscatori, to examine the issues surrounding this principle of equality, specifically the inequality between Muslims and non-Muslims, as well as between men and women. Non-Muslims are even considered second-class citizens, although Bernard Lewis further describes second-class citizenship as being based on tradition, respected by law and customs, and effectively maintained, as being better than first-class citizenship only on paper (Noth, 1984).

Currently, many ulama and Muslim intellectuals are also aware of these problems, as evidenced by their emphasis on respecting and protecting human rights. However, the number of participants in this discussion remains limited. Some of them explain the concepts of equality and justice from an Islamic perspective through academic discussions, clarifying issues of inequality and injustice. Others conduct *ijtihād* or reinterpret specific provisions that, in the current context, differ from their past context. Among them are Ali Gomaa, with his book *Al-Musāwah al-Insāniyah fī al-Islām: Bayna al-Naẓariyyah wa al-Taṭbīq* (Human Equality in Islam: Between Theory and Practice), and Mohammad Hashim Kamali, with his book *Freedom, Equality, and Justice in Islam* (Ahmad, 2003). Only a few of them have tried to liberally reinterpret the provisions of the Quran and Hadith on this issue in favor of fully equal rights between men and women, and between Muslims and non-Muslims, such as Amina Wadud, with her book, *Qur'an and Woman: Rereading the Sacred Text from a Woman's*

Perspective, and Abdullahi Ahmed An-Na'im with his book, *Toward an Islamic Reformation: Civil Liberties, Human Rights, and International Law* (An-Na'im, 1990; Wadud, 1999).

Method

Based on the description above, the formulation of the problem in this literature study is: What is the concept of equality according to contemporary Islamic constitutional law (*fiqh al-siyāsah*)? The aim is to describe and analyze the concept of equality (*al-musāwah*), especially certain inequalities between Muslims and non-Muslims and between men and women, which ulama put forward in the past and present. Data and information were obtained from various written sources, including the Quran, Hadith, contemporary *fiqh* (Islamic jurisprudence) books, academic journal articles, and documents related to the topic from contemporary Islamic political jurisprudence. This research is normative, employing the *uṣūl al-fiqh* method, particularly *maqāṣid al-shari‘ah* (the objectives of sharia), to legitimize the development and changes in the concept of equality, considering the differences between past and present contexts. In addition, it is enriched with historical and empirical analysis of the practice of equality throughout history, both past and present, complemented by approaches from political science and constitutional law theories, including in the context of the constitutions of Muslim countries today.

The Western Concept of Equality

The principle of equality or equity has been advocated since ancient times, primarily promoted by classical religions and civilizations, including Judaism, Christianity, Islam, and ancient Greek civilization. However, the modern concept of equality that shapes political thought is "fundamental equality," which holds that all people are equal by virtue of their inherent human nature. This idea emerged from the theory of human rights that dominated political thought in the 17th and 18th centuries. The American Declaration of Independence, for example, states simply that "All men are created equal", and the *French La Déclaration des droits de l'Homme et du citoyen* (Declaration of the Rights of Man and the Citizen) states that "Men are born and remain free and equal in rights". However, at that time, there was no clear form of equality, because the declaration was only a normative statement about the moral value of every human life (Heywood, 1994).

In the early modern period, the concept of fundamental equality was not closely tied to the ideas of equality of opportunity and equal wealth and social status. As Andrew Heywood describes, the most apparent manifestation of formal equality is the principle of equality before the law. This principle states that the law should treat everyone as an individual, regardless of their social background, religion, race, color, sex, and other characteristics (Heywood, 1994). No one accepts absolute equality, meaning that people are equal in all respects. Social scientists, as described by Derek L. Phillips (1979), recognize that people are not equal in some respects, such as age, character, health, physical strength, intelligence, sex, and other natural endowments. Equality, then, does not mean that people are equal in the concrete sense of the word, but rather indicates an ethical statement that they are equal and should receive equal treatment.

In discussing the principle of equality, political and social theorists distinguish between natural and conventional inequalities. Natural inequalities are differences in sex, age, strength, and so on, while conventional inequalities refer to differences in income, status, power, and so on (Phillips, 1979). Rousseau emphasized this distinction: I conceive of two sorts of inequality in the human species: one, which I call natural or physical, because it is established by nature and consist in the differences in age, health, bodily strengths, and quality of mind or soul; the other, which may be called moral or political inequality, or at least authorized, by the consent of men. The latter consists of the different privileges that some men enjoy to the prejudice of others, such as being more prosperous, more powerful than they, or even to make themselves obeyed by them (Rousseau, 1964).

As Norman P. Barry describes, Rousseau's egalitarianism accepts natural inequality but rejects conventional inequality because the latter can be eliminated, whereas the former cannot (Barry, 1981). Unlike classical liberals, who justify equality before the law, egalitarians uphold the principle of equality not only in the legal and political fields but also in the social and economic fields. According to egalitarians, all people should be treated equally in all respects because they are equal; they are equal in respect of x, therefore, they should also be treated equally in respect of x (Barry, 1981). Although this egalitarianism aims to achieve social equality, it differs from communism in both its method and scope. The Communist creed on equality is "from each according to his ability, to each according to his need" (Phillips, 1979).

A modern concept that combines classical liberal and egalitarian traditions is the idea of equality of opportunity. According to this doctrine, the demand for equality is a demand to remove obstacles that prevent individuals from realizing their potential; an increase in opportunity is also an increase in freedom. It also calls for the elimination of laws and other unjustified privileges that provide social, economic, and political positions for a particular class, race, or sex (Barry, 1981). Egalitarians also reject the concept of equality of opportunity because, under this view, everyone might start from the same position but then be left to the vagaries of the market; some would succeed, but many would fail (Heywood, 1994). However, the egalitarian idea of equality of outcome has been criticized by both conservatives and liberals because prioritizing outcomes over opportunity shifts attention from the starting point of life to its ending, from opportunity to reward. Equality of outcome implies that all runners finish the race at the same time, regardless of their starting point and speed (Heywood, 1994).

A more acceptable concept of equality is "social justice," although right-wing political circles also criticize it. In their view, social justice often serves as a pretext for the expansion of state control and government intervention. On the other hand, modern social democratic and liberal thinkers tend to treat social justice more favorably, believing that it refers to efforts to reconstruct the social order in accordance with moral principles and to redress social injustices. However, there is no necessary connection, either politically or logically, between social justice and ideas of equality and state control. The distinctive concept of social justice first emerged in the early 19th century, understood not as a matter of legal sanctions and punishments, but rather as a concern for social well-being and the overall welfare of society. Thus, social justice refers to the morally just distribution of benefits or rewards in society, evaluated in terms of wages, benefits, housing, medical care, welfare benefits, and other similar factors (Heywood, 1994).

In the discourse on equality, many social theorists relate equality to the principle of justice. The two are interrelated, though in Western political thought the principle of equality is more emphasized than that of justice. Social theorists agree that justice implies equality, and vice versa; equality implies justice. Therefore, it is often said that inequality means arbitrariness and injustice. Justice is defined as "treating equals equally and unequals unequally, and that unequal treatment should be in proportion to the inequality" (Barry, 1981). While J. Rawls defines it as "the appropriate distribution of the benefits and burdens of social cooperation" (Campbell, 1989).

Discussion of the principles of justice encompasses various disciplines and perspectives, including political, legal, social, and economic perspectives. However, in this study, justice is mainly discussed in relation to law. Legal justice refers to how the law imposes punishment for wrongdoing or allocates compensation for injury or damage. This justice can take the form of procedural justice and substantive justice. In the theory of procedural justice, the demands of justice will be met if specific regulations are also satisfactory; justice is only a behavioral trait of individuals who are within the rules and cannot be a characteristic of "society" or "circumstances." In theories of social justice, justice is regarded as a property of particular social conditions. A society is considered just, for instance, when the distribution of income satisfies certain normative criteria, and the state is therefore morally justified in using coercive legal instruments to bring about such a condition (Barry, 1981).

The Concept of Equality in Islams

Several verses from the Quran and Hadith highlight the importance of the principle of equality (*al-musāwah*) for humans as a fundamental principle in the life of society and the state. Among these verses is Q.S. al-Hujurāt: 13: "O mankind, surely, We have created you from a male and a female, and made you nations and tribes, that you may get acquainted with one another (your lineage). Surely the most honorable of you in the Presence of Allah is he who is the most pious of you." Meanwhile, Hadiths that demonstrate the principle of equality include the Prophet's sermon on the *Hajj al-Wadā'* (farewell *Hajj*), which is considered a declaration of human rights, namely: "*O people, indeed your God is one and your ancestors are one.*" The noblest among you in the sight of Allah is the most pious. There is no superiority among Arabs over people other than Arabs" (H.R. Bukhārī).

Muhammad Salim al-'Awwa defines the principle of equality as follows: "Individuals in society have the same status in rights, freedoms, and general obligations, and there is no discrimination between them because of differences in gender, origin, language, and beliefs." Equality in Islam is basically not derived from the concept of a "social contract," but instead from Allah and the Prophet. At that time, Islamic teachings on equality aimed to fundamentally alter the reality of Arab society, which was then characterized by strict social stratification based on descent, implying the superiority of certain tribes over others (Barry, 1981). However, empirically, the Prophet's decision to conclude the Medina agreement (the Medina Charter) can also be considered a "social contract," one of its key points being the establishment of equality among the residents of Medina.

The condition of inequality is also the background for the revelation (*asbāb al-nuzūl*) of the three verses of Q.S. al-Māidah: 44, 45, and 47, which address injustice and inequality within the Jewish community. Q.S. al-Māidah: 44, 45, and 47 reads: "Whoever does not decide according to what Allah has revealed, then they are disbelievers, ... unjust people, ... wicked people." According to Ibn Abbas, the background for the revelation (*asbāb al-nuzūl*) of these three verses is related to the dispute between two Jewish groups, namely Bani Nadhir and Banu Quraizhah. Members of the Bani Nadhir family were generally people in high positions, so they demanded full ransom (*diyat*) for the killing of their family members. However, the ransom for the murder of the Banu Quraizhah family was only paid half, because in general their social level was low. Banu Quraizhah asked the Prophet to decide the dispute, and the Prophet decided fairly, that is, their ransom was the same, based on the principles of justice and equality before the law.

In addition, the practice of slavery was also prevalent, namely by enslaving people into goods that could be bought and sold. At the same time, the position of women was also very weak, having no fundamental rights, including inheritance rights from their parents. In other parts of the world, notably the Eastern Roman Empire (Byzantium) and the Persian Empire (Sassanid), strong feudal and authoritarian practices also existed. However, the forms differed between the two empires. The emperor and the nobles held great power and privileges in the legal, political, social, and economic spheres. The practice of inequality is also the background to the birth of the Hadith: "Indeed, what destroyed the people before you was that if there was a noble person among them who stole, they let him (not punished). However, if a weak person steals, they enforce the law on him. By Allah, if Fatimah, daughter of Muhammad, stole, I would cut off her hand" (HR. Bukhārī and Muslim).

Philosophically, humans are Allah's vicegerents on earth who are given glory and dignity that must be respected and protected, as mentioned in Q.S. al-Hujurāt: 13 above and Q.S. al-Isrā': 70, namely "Indeed, We have honored the children of Adam, and We carry them on land and at sea." This glory lies mainly in the human ability to think and develop self-potential, which other creatures do not possess. Humans are indeed different, both in terms of gender, ethnicity, religion, race, and nationality, and even in terms of social stratification. However, their position as humans is equal (*al-musāwah al-insāniyyah*), so there should be no discrimination between them. From a Godly perspective, there are differences between the pious and the non-pious, with implications for life in the afterlife.

Equality before the Law

In the context of community and state life, most ulama and Muslim intellectuals believe that the equality in question is equality before law (*al-musāwah al-qānūniyyah* or *al-musāwah amām al-qadā'*), not factual equality (*musāwah fi'liyyah*), and not equality of opportunity (*al-musāwah fi takāfu' al-fursah*). According to Muḥammad Imārah, the most realistic form of equality is equality before the law, by eliminating privileges based on birth, inheritance, skin color, race, gender, and belief. This equality is not only possible, but also necessary and obligatory to implement, and has been achieved in most societies. In addition, realistic equality also encompasses equality of opportunity for all citizens and nations. Equality of opportunity extends across a wide range of areas, so that any inequality results from individual effort rather

than discrimination, coercion, exclusion, or privilege. This equality is possible and a goal worth striving for in both social and international contexts ([‘Imārah, n.d.](#)).

However, equality of opportunity is not enough to overcome societal inequality. Wealthy individuals often find it easier to access open opportunities, while those from lower socioeconomic backgrounds may struggle to take advantage of them due to limited access. In contrast, factual equality (*al-musāwah al-fi’liyyah*) is challenging to achieve, as it would negate the natural differences within society — including variations in knowledge, livelihoods, and individual effort in attaining prosperity. Allah affirms these differences in the Quran (Q.S. al-Nahl [16]:71): "Allah has given some of you superiority over others in provision." Yet those who have been granted greater provision are unwilling to share their sustenance with their servants, so that both would be equal in it.

In addition to the principle of equality before the law, the concept of equality of opportunity, particularly in access to free public services such as education and healthcare, also requires strong support, as these are essential for enabling dynamic social mobility. Higher education often leads to a higher income, social status, increased ability, and greater wealth. Therefore, some countries consider expanding education to be the most essential policy for achieving greater social equality. Among these countries, some establish a socialist education system or, at the very least, enforce compulsory education for citizens in certain age groups.

Social Justice

Ulama and Muslim intellectuals do not separate the principle of equality from the principle of justice as the primary and most fundamental principle in all forms and fields of human life, including individual, family, community, and state life, as well as in socio-cultural, economic, legal, and political contexts. Justice is a universal concept recognized by all societies and nations worldwide as the foundation of morality, contributing to the development of human civilization throughout history. In Islam, this principle of justice is based on Q.S. al-Nahl: 90: "Indeed, Allah commands justice, grace, as well as generosity to close relatives. He forbids indecency, wickedness, and aggression. He instructs you, so perhaps you will be mindful." Another verse that shows this principle of justice is Q.S. al-Nisā': 58: "Indeed, Allah commands you to return trusts to their rightful owners; and when you judge between people, judge with fairness."

The ulama define justice as "placing something in its proper place" (*wad' shay' fi mahallih*), and conversely, injustice is defined as "placing something not in its proper place" (*wad' shay' fi ghayr mahallih*). According to Nurcholish Madjid, justice (*al-'adl*) literally means "middle" or "middle attitude," which is equivalent to the words *al-wasat* and *al-qisṭ*. In terminology, justice means: (1) Balance (*mawzūn*), namely that all elements of society exist in a harmonious and proportionate relationship with one another; (2) Equality (*musāwah*), meaning that there is no distinction among human beings and that all individuals with the same rights receive equal treatment; and (3) Giving each their due (*i'tā' kull dhī haqqin haqqah*), which refers to granting every person the rights that rightfully belong to them ([Madjid, 1992](#)).

Justice also means giving equal treatment to others or achieving a state of balance in transacting with them (*al-taswiyyah fi al-mu'āmalah*). According to Hashim Kamali, justice is closely related to equality because it aims to achieve a state of balance in the distribution of

rights and duties, as well as benefits and burdens in society. However, justice and equality are not identical, in that, in certain circumstances, justice can only be achieved through inequality or an unequal distribution of wealth (Ahmad, 2003). This happens, for example, in the income (salary) of someone with high knowledge and skills; of course, it should not be the same as the income (salary) of someone with lower knowledge and abilities.

This indicates that justice in the legal and political spheres alone does not automatically lead to equality in the economic field. Therefore, many ulama and Muslim intellectuals support social justice (*al-'adālah al-ijtimā'iyyah*) to ensure a more equitable distribution of income within the community. The concepts of *zakāh* (almsgiving) and *sadaqah* (charity) are the primary institutions that help realize social justice. It is acknowledged that factual equality (*al-musāwah al-fi'liyyah*) is unattainable, as human capacities and destinies naturally differ. What matters most, however, is the state's endeavor to minimize these disparities so that they do not give rise to class divisions capable of generating social conflict (Ahmad, 2003).

Position of Muslims & Non-Muslims

As explained above, non-Muslims receive protection and have the same rights and obligations as Muslims, except in specific conditions and certain positions. They are referred to as *ahl al-dhimmah* because they live under the protection and responsibility of the Islamic state, which guarantees the safety of their lives, property, and honor. The relationship between Muslims and non-Muslims (*dhimmīs*) is one of peace, tolerance, and cooperation in the fields of economics, science, and government. Several Quranic verses emphasize peaceful relations with non-Muslims, including Q.S. al-Mumtahana [60]:8, which states: "Allah does not forbid you from dealing kindly and fairly with those who have neither fought nor driven you out of your homes."

Classical fiqh distinguishes the world into two areas: the Islamic territory (*dār al-Islām*) and the territory of war (*dār al-ḥarb*), inhabited by non-Muslims. There are differences in the definitions of these terms, but they are not fundamental. Abdul Wahhab Khallāf defined *dār al-Islām* as the territory where Islamic law applies and where the people, whether Muslims or protected people (*dhimmī*), are under Muslim rule. In contrast, he defined *dār al-ḥarb* as the territory where Islamic law does not apply and the people are not under Muslim rule (Khallāf, 1993). Meanwhile, non-Muslims fall into several categories: *dhimmī*, those who live under the protection of the Islamic state; *harbī*, those who reside in territories at war with Islam; *mu'āhad*, those who live in non-Muslim lands but maintain a treaty with the Islamic state; and *musta'min*, those from enemy territories who receive temporary protection within Muslim lands.

The *dhimmī*, *mu'āhad*, and *musta'min* who reside within Islamic territories must pay the head tax (*jizyah*) and the land tax (*kharāj*). In return, they are entitled to freedom of religion as well as protection of their lives, property, and rights. The protection accorded to the *dhimmī* is grounded in the Prophet's *hadīth*, which states: "Whoever hurts a non-Muslim, I am his enemy" (H.R. Abū Daud). The protection of *mu'āhad* non-Muslims is grounded in the Prophet's *hadīth*: "Whoever kills a *mu'āhad* shall not even smell the fragrance of Paradise" (H.R. Bukhārī). Meanwhile, protection for *musta'min* is based on Q.S. al-Tawbah: 6: "And if anyone from the polytheists asks for your protection, grant it to them so they may hear the word of Allah, then escort them to a place of safety."

In the history of the Islamic caliphate, non-Muslims, especially Jews and Christians, occupied important positions in government, especially in administrative and financial affairs, as secretaries, assistants to the caliph, and even ministers (*wazīr*). Among them were Ibn Atsal, a doctor and government official during the Umayyad Dynasty, Yohanes ibn Masawaih, a doctor and head of Baitul Hikmah during the Abbasid Dynasty, and Nasr ibn Harun, a minister of military affairs during the Abbasid Dynasty (Shaikh, 1989). However, normatively, they cannot enjoy full equality; for example, they are not allowed to participate in defending the state and its religious beliefs, nor are they permitted to occupy certain positions within the state (Khadduri, 1955). According to Abū Ya'lā, members of the *dhimmi* community may serve as executive ministers (*wazīr al-tanfidh*), but they cannot hold the position of minister with full authority (*wazīr al-tafwīd*), nor can they serve as the head of state (*imām*) (al-Farrā, 1938).

As mentioned above, some observers see problems with the equality between Muslims and non-Muslims and between men and women. Many ulama and Muslim intellectuals attempt to explain it logically and carry out *ijtihād* that is contextual to the present, aiming to eliminate or reduce inequality. Among the critical *ijtihād* is the review of the concepts of *dār al-Islām* and *dār al-ḥarb*, as well as *dhimmi*, *musta'min*, and *ḥarbī* to show that Islamic teachings are contextual to their times (Huwaydī, 1999). Non-Muslim territories are called *dār al-ḥarb*, which means war territory, because in the past, relations between various social and religious groups were generally based on conflict and war. In contrast, relations between groups (including international relations) today are based on peace under United Nations supervision.

Currently, many ulama and Muslim intellectuals support the equality of rights and obligations between Muslims and non-Muslims as fellow citizens. This is reinforced by the decision of the *Majma' al-Fiqh al-Islāmī al-Duwālī* (International Fiqh Academy) in 2015 regarding the rights and obligations of non-Muslim citizens in Islamic countries, as well as the extent to which Islamic sharia law applies to them. The first point in the decision reads: "Islamic law guarantees non-Muslims residing in an Islamic country the same public and private rights as those guaranteed to Muslims. They have the same rights as Muslim citizens and are subject to the same obligations. They are equal in rights and obligations." While the second point reads: "They have the right to apply their religious doctrines in their worship and personal affairs." A judge may be appointed to decide cases between the parties, and the state will enforce the judge's decision. In addition, the applicable state law also applies to them.

The terms *dhimmi*, *musta'min*, and *ḥarbī*, as political terms, are now no longer used by Muslim countries, and instead, they are called non-Muslims. All Muslim countries currently mention the equality of citizens in their constitutions. For example, the 2019 Constitution of the Republic of Egypt mentions this equality in Article 9, namely "The state ensures equal opportunity for all citizens without discrimination." The 1979 Constitution of the Islamic Republic of Iran mentions it in Article 19, namely "All people of Iran, whatever the ethnic group or tribe to which they belong, enjoy equal rights; and color, race, language, and the like, do not bestow any privilege." While the 1945 Constitution of the Republic of Indonesia mentions it in Article 27, namely "All citizens shall be equal before the law and the government and shall be required to respect the law and the government, with no exceptions." The Basic Law (*al-Nizām al-Asāsī li-al-Ḥukm*) of Saudi Arabia also does not mention the word "*dhimmi*" or non-Muslim. However, there is no explicit article on the equality of citizens of this country.

Article 47 only states: "The right to litigation is guaranteed to citizens and residents of the Kingdom on an equal basis. The law defines the required procedures for this."

However, many ulama and Muslim intellectuals still support the opinion that the head of state in a Muslim country must be a Muslim, although this opinion does not have to be stated in the constitution and laws of the country. Non-Muslims cannot hold the position of head of state, because this position is the Prophet's representative to guard religious affairs and regulate worldly affairs (*Khilāfat al-nubuwwah fī hirāsat al-dīn wa-siyāsat al-dunyā*). This is based on Q.S. Ali' Imran: 118: "O you who believe! Do not take intimates other than your own folk, who would spare no pains to ruin you; they love to hamper you. Hatred is revealed by (the utterance of) their mouths, but that which their breasts hide is greater" ([al-Qarādawī, 1997](#)). At this time, most Muslim countries do not *de jure* include the requirement of being a Muslim for the head of state. Only a few Muslim countries require the head of state to be a Muslim, as stated in their constitution, such as Tunisia, Algeria, Syria, and Pakistan.

Position of Man and Woman

Arab society before Islam significantly degraded the position of women and considered them as objects because they did not have fundamental rights, including inheritance rights from their parents. Women were even a burden, so some of them killed baby girls by burying them alive. This is stated in Q.S. al-Nahl: 58-59: "Whenever one of them is given the good news of a baby girl, his face grows gloomy, as he suppresses his rage. He hides himself from the people because of the bad news he has received. Should he keep her in disgrace or bury her 'alive' in the ground?" ([Gomaa, 2013](#)) Islam came to free women from such acts of tyranny, by giving them their rights and obligations, as mentioned in the Hadith: "Admonish each other to be good to women, because they are in the position of prisoners among you. You have no right to anything from them except for that goodness ... Indeed, you have rights over your wives, and your wives have rights over you." (H.R. Ibn Mājah).

Men and women have equal opportunities in religion, social life, economics, politics, and public office. Equality in religious obligations and social life is mentioned in Q.S. Ghāfir: 40: "Whoever does evil deeds, he will be recompensed according to his evil deeds. And whoever does good deeds, whether male or female, while he is a believer, they will enter Paradise, they will be given unlimited sustenance therein." This verse also indicates that the criminal penalty for crimes committed by women is the same as that for male perpetrators. Regarding the blood ransom (*diyat*) punishment, there was debate among ulama about whether the ransom for women is counted as half or the same as for men. However, the strongest opinion is that the *diyat* punishment is the same for men and women ([al-Qurtubī, 1983](#)).

Among the duties in socio-religious life is the implementation of *amr ma'rūf nahi munkar* (commanding good and forbidding evil), which must be carried out not only by men but also by women. This is stated in Q.S. al-Tawbah: 71: "The believers, both men and women, are guardians of one another. They encourage good and forbid evil, establish prayer and pay alms-tax, and obey Allah and His Messenger" ([Shaltūt, 2001](#)). In a broad sense, *amr ma'rūf* includes all good activities that are beneficial to religion and humanity, such as educational activities, improving the economy, and the welfare of the people. *Nahi munkar* includes all

bad activities that are contrary to religion and humanity, such as injustice, theft, corruption, adultery, drug abuse, and so on.

In the context of public office, there is a Hadith that explicitly forbids women from becoming leaders, namely: "A people who entrust their affairs to women will not be successful" (HR. al-Bukhārī). Most ulama and Muslim intellectuals today are engaging in *ijtihād* to interpret this Hadith contextually, because it is an *ahād ḥadīth* (reported by one or a few transmitters), which means it is *zannī* (relative, based on presumption). The provisions in this Hadith may change because the social context at the time differs from that when it was uttered, in line with the principle that "changes in fatwas due to changes in situations, conditions, and traditions." According to them, women can occupy all social and public positions, including the position of head of state. In this case, the Prophet once appointed a woman named Samra' binti Nuhaik as head of the market. Umar bin Khattab also appointed Shifa' Umm Sulaiman as the head of the market (Gomaa, 2013).

However, there is debate among ulama and Muslim intellectuals about the permissibility of women serving as heads of state. Ali Gomaa, the former Mufti of Egypt, stated that in the past, the ulama engaged in *ijtihad* on the prohibition of women serving as caliphs or supreme leaders (*al-imāmah al- 'uzmā*), as the conditions, situations, and traditions of the time highlighted the limitations of women's abilities compared to men's. In contrast, many women currently possess excellent education and skills, and the position of head of state is not that of a caliph, who is a central ruler; therefore, there is no prohibition on women holding public office, including the position of head of state (Gomaa, 2013). In accordance with Ali Gomaa, Ali Yafie, the former Chairman of Indonesian Council of Ulama says that the classical *ulama* forbade a woman to become head-of-state or caliph, because formerly this position was conducted individually, while now it is typically conducted collectively with the principle of *trias politica* (executive, legislative, and judicial powers), so that women are allowed to become heads of state (Yafie, 1993).

It is true, there is a verse in the Quran that states that men are leaders for women, namely Q.S. al-Nisā': 34: "Men are the caretakers of women, as men have been provisioned by Allah over women and tasked with supporting them financially." However, the context of this verse concerns household life rather than social or state life. Q.S. al-Baqarah: 228 reinforces this, namely "Women have rights similar to those of men equitably, although men have a degree of responsibility above them" (al-Qarādawī, 1997). The difference in rights and obligations cannot be separated from the different natures between men and women in family life, which, according to almost all cultures in the world, follow a patriarchal culture.

As mentioned above, observers see the inequality in the position of men and women in Islam. In the Qur'an four provisions are visible in the unequal position between women and men, namely the law of inheritance and testimony which shows a ratio of men to women of 2:1, the law of polygamy which shows a ratio of 4:1, and the law of *'awrat* (intimate part of the body) which requires women to cover their entire bodies except for their faces and palms. These provisions are still expressed in fiqh books today, although there are differences in their explanations. Some books only explain these provisions normatively, while others also explain the wisdom behind these laws.

The Problem of Inheritance Law

The law of inheritance for women is based on Q.S. al-Nisā': 11: "Allah commands you regarding your children: the share of the male will be twice that of the female." In general, ulama and Muslim intellectuals still accept this "inequality" in inheritance, because the legal basis is the *qat'ī* (certain, absolute) argument. They try to explain the wisdom contained in this provision rationally. In Islam, men (husbands) have the responsibility to meet the needs of the family, so it is very rational if the share of men in inheritance is twice that of women. In addition, Islam has granted women certain rights and responsibilities, including inheritance rights, the right to choose a spouse, the right to education, and the right to work. However, Islam also recognizes the differences between men and women. Some of these differences stem from disparities in economic status, where the rights and responsibilities of men are often greater than those of women. According to sharia, a man is responsible for supporting his family; thus, he serves as the head of household in economic matters (Saida & Nasser, 1980).

In contrast to the above provisions, some ulama and Muslim intellectuals have attempted to reinterpret these verses by changing the inheritance provisions to 1:1 in the name of equality, justice, and human rights. Saad Eddin Al-Hilali, a professor at Al-Azhar University, for example, said that Tunisia's decision to enforce gender equality in inheritance was correct. He also emphasized that ulama must change their fatwas over time by providing this equality. This opinion differs from Al-Azhar University's official position, which holds that Al-Hilali's opinion is contrary to Islamic law. In reality, most inheritance laws in Muslim countries still apply the traditional male-and-female inheritance system, with a 2:1 provision, as in Saudi Arabia, Egypt, Syria, Morocco, Iran, and Indonesia. Only countries that implement secularism practice full equality of inheritance law with a 1:1 provision, such as Turkey, Tunisia, Azerbaijan, Kazakhstan, and others.

The Problem of Polygamy

In addition to inheritance, another contested area of gender inequality is the issue of polygamy, which is legalized by Islam based on Q.S. al-Nisā': 3: "If you fear that you shall not be able to deal justly with the orphans, marry women of your choice, two, three, or four; but if you fear that you shall not be able to deal justly (with them), then only one, or (a captive) that your right hands possess, that will be more suitable, to prevent you from doing injustice." This means that the ratio between men and women in polygamy is 1:4. The basis of marriage in Islam is monogamy, but Islam allows polygamy, which is done for several reasons. Polygamy can be carried out if a person can fulfill two conditions, namely being fair and being able to provide for his wives. What is meant by fair and capable here is treating wives equally in terms of physical needs, such as housing, food, clothing, and so on. However, the husband is not required to give or share equal love between the wives, although he must still try to be fair, in accordance with Q.S. al-Nisā': 129: "You will never be able to maintain (emotional) justice between your wives, no matter how keen you are. So do not totally incline towards one, leaving the other in suspense".

As in the case of women's inheritance, in the case of polygamy, several ulama and Muslim intellectuals have proposed a reinterpretation of the polygamy verse by changing the provisions. In Islamic history, Qāsim Amīn (1863-1908) is considered a modernist who

focused on the condition of Muslim women as the cause of the decline of the family and society, as shown in his book, *Tahrīr al-Mar'ah*. According to him, polygamy is a deep insult to women because almost no woman would be happy to share her husband with another woman (Amīn, 1987). Such opinions were also expressed by several liberal Muslim scholars, such as Nasr Hamid Abu Zayd, Abdullahi Ahmed An-Na'im, and others, who reject polygamy. However, their opinions cannot be accepted by most ulama and Muslim intellectuals, because the legal basis for polygamy is evidence (*dalīl*) that is *qat'ī* (certain, absolute) in nature.

Realizing this problem, many ulama and Muslim intellectuals have tried to explain the wisdom contained in polygamy. First, statistics show that the number of women exceeds that of men. If each man marries only one woman, this means that some women will lose their husbands, which will be detrimental to them and society. Second, men are vulnerable to accidents that can take their lives because they work in heavy professions and become soldiers on the battlefield, thus reducing the number of men compared to the number of women. Third, some men have strong sexual desires, and one wife is not enough for them. If the door to polygamy is closed, husbands will face significant difficulties and may even indulge their passions in forbidden ways. Fourth, polygamy is not only known in Islam, but has been known among previous nations, and some prophets married more than one woman. For example, Prophet Ibrahim had two wives, and Prophet Sulaiman had ninety wives. Fifth, the wife's condition may be sterile, unable to fulfill her husband's needs, or unfit for intercourse due to illness. If the door to polygamy is closed, husbands will face significant difficulties when they want children, and polygamy is better than a husband divorcing his wife.

Most of the family laws of Muslim countries currently allow polygamy, except for secular Muslim countries, such as Turkey and Tunisia. In general, countries that will enable polygamy also set strict conditions with the aim that polygamy does not bring negative impacts, such as increasing poverty and the loss of family unity and harmony. In Indonesia, for example, as stated in articles 3, 4, and 5, Law No. 1 of 1974 concerning Marriage, polygamy is permitted on the following conditions: (1) a husband must submit an application to the Court in the area where he lives, and the Court grants permission to a husband who wishes to have more than one wife if (a) the wife is unable to carry out her duties as a wife, (b) the wife has a physical disability or an incurable disease, (c) the wife is unable to bear children (3) the application to the Court must meet the following conditions: (a) there is consent from the wife/wives, (b) there is certainty that the husband can guarantee the living needs of the wives and their children, (b) there is a guarantee that the husband will treat his wives and their children fairly.

Similarly, in Pakistan, polygamy is still allowed but with strict conditions. Section 6 of the Muslim Family Laws Ordinance of 1961 states: (1) an application for permission to the Arbitration Council must be accompanied by the reasons for polygamy and the consent of the existing wife, (2) a man who practices polygamy without permission from the Arbitration Council will be subject to sanctions. Similar requirements are also found in Moroccan family law, as outlined in the Moroccan Family Code (Moudawana) of 2004. This law permits a man to take a second wife legally, but only in exceptional circumstances and under strict conditions, with the judge's authorization. The judge may not allow polygamy unless he has examined the husband's ability to ensure justice with the first wife and children in all aspects of life, and there are objective and extraordinary reasons that justify polygamy. On the other hand, a woman has

the right to stipulate conditions in the marriage contract that her husband will not marry another woman.

The Problem of Witnesses

Another problem that highlights an inequality between men and women is the law of witnessing, specifically that one man is equal to two women, which implies that women's positions are half those of men. This is based on Q.S. al-Baqarah: 282: "Call upon two of your men to witness. If two men cannot be found, then one man and two women of your choice will witness—so if one of the women forgets, the other may remind her." In the past, ulama have extensively discussed the law of witnessing, particularly regarding the objects witnessed, gender, and the number of witnesses. However, at present, this issue is only debated from the perspective of gender equality discourse, both by Muslims themselves and by outside observers. This debate is also very limited, which is likely because the law in most Muslim countries no longer distinguishes between male and female witnesses other than in terms of marriage witnesses. Only a small number of Muslim countries still apply the law of testimony as outlined in Q.S. al-Baqarah: 282, such as Saudi Arabia, Iran, and Pakistan.

According to Ali Gomaa, the verse concerns debt transactions, which were generally not well understood by women at the time because they were considered a man's business. The verse is not related to testimony before a judge who decides a dispute, as some critics suspect. The requirements for testimony before a judge are not associated with the witness's masculinity or femininity, but rather with two factors. First, the integrity and self-control of the witness are crucial. Second, the witness must have a direct relationship to the incident that is the subject of their testimony, which makes them qualified to know about it and provide their testimony. Testimony also does not make masculinity or femininity a criterion of truth or falsehood, with the consequence that it is accepted or rejected. Instead, the criterion is the judge's belief in the reality of the testimony, regardless of the witness's gender or the number of witnesses (Gomaa, 2013).

The Problem of *Hijāb* and *Niqāb*

Another quite controversial issue related to the principle of equality is the legal issue of covering the '*awrah* (the part of the body which must be covered by clothing) for women, both in the form of head coverings (*hijab*, *jilbab*, *headscarf*) and head and face coverings (*chadar*, *niqāb*, *burqa*). The veil is not only worn by Muslim women but also by Christian women and other non-Muslim women in several countries, such as Russia, Romania, Ukraine, Ethiopia, India, and so on. What is more questionable by many non-Muslim communities in the world is the use of the veil (*niqāb*, *burqa*) as a woman's face covering. Several countries currently prohibit the use of the veil in public places, including France, Belgium, the Netherlands, Italy, Spain, Switzerland, Austria, Denmark, Bulgaria, Tajikistan, Chad, Cameroon, the Democratic Republic of Congo, and Gabon. Critics consider that covering the face in public places for Muslim women is a form of discrimination against women, in addition to hindering social interaction and hiding identity.

The evidence (*dalīl*) for the obligation to cover the head (*hijāb*) is Q.S. al-Ahzāb: 59: "O Prophet! Ask your wives, daughters, and believing women to draw their cloaks (veils) over their bodies." Another evidence is Q.S. al-Nūr: 31: "And tell the believing women to lower their gaze and guard their chastity, and not to reveal their adornments except what normally appears." The companions and the *imām* of the schools of thought differed regarding the '*awrah* of women, but the majority of ulama in the past believed that the '*awrah* of women was the entire body except the face and the palms of the hands, meaning that most of them did not require covering the face.

Because, in recent decades, several liberal Muslim scholars have argued that wearing the hijab is not obligatory, the Egyptian Fatwa Institute (*Dār al-Iftā' al-Miṣriyyah*) issued a fatwa stating that it is obligatory for every Muslim who has reached adulthood (*balīgh*). She must cover her entire body, except her face and palms. All ulama throughout Islamic history have agreed upon this obligation. According to this fatwa, the basis for the obligation to cover the head (*hijāb*) is Q.S. al-Ahzāb: 59 and Q.S. al-Nūr: 31 above. These two verses were revealed when women at that time exposed their hair, necks, and part of their chests. Allah forbade them from doing so and ordered them to cover the hijab over the '*awrah* that they exposed, so that evil people would stay away from them when they saw their '*awrah* and their *awrah* coverings (*al-Iftā'*, n.d.).

The evidence (*dalīl*) used by ulama regarding the obligation to cover the entire body with a *niqāb* (*burqa*) is also the same as the evidence for the hijab above, namely Q.S. al-Nūr: 31 and Q.S. al-Ahzāb: 59. There are no verses in the Quran and Hadith that clearly state (*ṣariḥ*) about the obligation to cover the face by wearing this *niqāb*, but only interpretations of several verses, especially these two verses. However, a few of the school's companions and ulama believe that women must cover their faces. Currently, Salafi ulama generally have an opinion about the obligation for Muslim women to cover their faces. Abdullāh ibn Bāz, for example, said that the "*zīnah*" (jewelry) referred to in Q.S. al-Nūr: 31 is what is visible from a woman, such as the face, hair, and so on. These parts must be covered because they are natural jewelry that should not invite temptation. Meanwhile, "*illā mā ẓahara minhā*" (except what is visible), most ulama interpret it as ordinary clothing that is visible (*Bāz*, n.d.).

Because the issue of the *niqāb* (*burqa*) has become a debate among Muslims, while in non-Muslim countries it has even become a very negative issue, ulama in many countries have clarified this issue. Among them is the Egyptian Fatwa Institute (*Dār al-Iftā' al-Miṣriyyah*). The fatwa of this institute states that the Islamic clothing obligatory for Muslim women is clothing that does not reveal the '*awrah* and covers the entire body, except for the face and palms of the hands. There is no prohibition for women to wear colorful clothing, if it is not striking and does not cause temptation. Regarding the *niqāb* that covers the face and gloves that cover the palms of the hands, most ulama think that it is not obligatory based on Q.S. al-Nūr: 31 above, namely: "And tell the believing women to lower their gaze and guard their chastity, and not to reveal their adornments except what normally appears. Let them draw their veils over their chests, and not reveal their adornments except to their husbands, ..." The majority of ulama from among the companions and after them interpreted "the visible adornment" as the face and the palms of the hands, as narrated from Ibn Abbās, Anas, and 'Āishah. Likewise, the next sentence in the same verse, "Let them draw their veils over their

chests." If covering the face was obligatory, the verse regarding this would have been clearly stated.

By examining these arguments, the view that a woman's '*awrah*' is the entire body except the face and palms of the hands is a much stronger opinion than the opinion that a woman's '*awrah*' is the entire body, including the face. Therefore, most ulama and Muslim communities in the world today, including followers of the Shafi'i and Hanbali schools, agree with the opinion of not covering the face and palms of the hands, which means they do not agree with the use of the *niqāb* (*burqa*). This moderate opinion is critical to practice in today's world, which is increasingly modern, heterogeneous, and complex, requiring clarity of one's identity in social interactions across various fields, including society, economy, and politics. More importantly, this *niqāb*-free clothing will bring more benefits if practiced in Muslim minority countries, so that it can reduce or eliminate prejudice and negative views of Islam. This practice will also be useful for promoting gender equality to reduce the differences between the positions of women and men in Islam and between Islamic teachings and the "universal" (liberal) view of human rights.

Conclusion

The above description suggests that the Quran and Hadith teach equality (*al-musāwah*) among human beings, but the past ulama only understood equality before the law. They also understood the texts of the Quran and Hadith literally, so they did not question the inequality between Muslims and non-Muslims or between men and women. In contrast, many ulama and Muslim intellectuals today reinterpret the concept of equality in the context of modern politics and human rights. In this reinterpretation, they refer to the principle of *maṣlahah* as a central objective of sharia (*maqāṣid al-sharī'ah*). This equality implies that individuals in society have the same rights, freedoms, and general obligations, and that there is no discrimination among them based on gender, origin, language, or beliefs. Equality in Islam is not derived from the concept of a "social contract" but rather from Allah and the Prophet. At that time, the teachings of Islam about this equality were intended to fundamentally change the reality of Arab society, which practiced strict social stratification based on descent, which implied the superiority of certain tribes over others.

The principle of equality is the most fundamental in all forms and areas of human life, encompassing individual, community, and state life, as well as socio-cultural, economic, legal, and political fields. However, Islam also recognizes differences between people. In the context of social and state life, the equality in question is equality in law (*al-musāwah al-qānūniyyah* or *al-musāwah amām al-qadā'*), not factual equality (*al-musāwāh al-fi 'liyyah*), and not equality of opportunity (*al-musāwah fī takāfu' al-furṣah*). The concept of equality of opportunity can be applied to free state services, especially education and health, as both can facilitate dynamic social mobility. To address the enormous inequality, Islam supports the concept of social justice (*al-'adālah al-ijtimā'iyah*), particularly through the institutions of *zakāh* (almsgiving) and *ṣadaqah* (charity), ensuring a more equitable distribution of income among the people.

Discussions of inequality in Islam often focus on the differing statuses of Muslims and non-Muslims, as well as of men and women. Historically, non-Muslims were categorized as

dhimmī, musta'min, or mu'āhad, and these classifications at times produced variations in rights and privileges among the groups. However, at present, most ulama and intellectuals support the equality of rights and obligations of Muslims and non-Muslims as fellow citizens, because non-Muslims have also endorsed the national agreement (*al-mīthāq al-waṭanī*) in the form of a state constitution. Likewise, in the context of religious, social, and state life, men and women have the same position. Men and women have the same opportunities in the social, economic, political, and public office fields.

It is true that four things outwardly show inequality between men and women, namely inheritance, polygamy, testimony, and covering the genitals. All four are based on *qatī* (absolute) evidence so that the law cannot be changed. However, the majority of ulama and Muslim intellectuals are currently engaging in *ijtihād* to interpret these texts in the context of the present and, at the same time, to reveal the wisdom contained therein. Gender inequality exists worldwide, but the nature of these issues varies from one country to another. To achieve equality between men and women, it is necessary to eliminate sociological and political factors that cause inequality and discrimination, such as providing equal opportunities for education and employment, as well as opportunities to hold positions in society and the state.

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