

## WOMEN'S TESTIMONY IN VIEW OF 'ULAMÂ' OF TAFSÎR

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**Abstract:** *Women's Testimony in View of 'Ulamâ' of Tafsîr.* Within Islamic law, the testimony of women is controversial. There are those who distinguish between female witnesses and males in matters such as debts, but there also those who equate the two. The difference appears to have resulted from the difference in points of view. Actually when differentiated between *al-ishhâd* (out of court testimony) and *al-shahâdah* (testimony) as evidence brought before a judge in court, does not need to distinguish between the testimonies of women and men. *Shahâdah* in court is determined by the judges, as drawn out by the Prophet and accepting the testimony of a woman in the case of rape. Similarly, the Prophet accepted the testimony of a woman in the case of 'Uqbah ibn al-Ḥarîth who married Umm Yaḥyâ bint Abi Lahab.

**Keywords:** *al-ishhâd, al-shahâdah, shâhidayn, debts*

**Abstrak:** *Kesaksian Wanita dalam Pandangan Ulama Tafsir.* Dalam hukum Islam, terjadi kontroversi tentang kesaksian perempuan. Ada yang membedakan antara saksi perempuan dengan laki-laki seperti dalam masalah utang-piutang, tapi ada juga yang menyamakan antara keduanya. Perbedaan tersebut tampaknya diakibatkan oleh perbedaan sudut pandang. Sebenarnya bila dibedakan antara *al-ishhâd* (memberi kesaksian di luar pengadilan) dan *al-shahâdah* (persaksian) sebagai alat bukti di depan hakim di pengadilan, tidak perlu membedakan antara kesaksian perempuan dan laki-laki. *Shahâdah* di pengadilan ditentukan oleh keyakinan hakim, sebagaimana dicontohkan oleh Nabi dengan menerima kesaksian seorang perempuan dalam kasus pemerkosaan. Begitu juga Nabi menerima kesaksian seorang perempuan dalam kasus 'Uqbah ibn al-Ḥarîth yang mengawini Umm Yaḥyâ bint Abi Lahab.

**Kata Kunci:** *al-ishhâd, al-shahâdah, shâhidayn, utang-piutang.*

### Introduction

Under Islamic law, there are controversial issues relating to gender: among of them are the origins of women creation, concept of inheritance, testimony, polygamy, reproduction rights, divorce rights (*ṭalâq*) as well as the public role of women.<sup>1</sup>

Dealing with women's testimony, ulama vary in their opinion. There are those who do not differentiate between men's testimony and women's testimony, but there are those who do. Those differences seem to have resulted from different instruments and perspectives. The majority interpret the Quran as departing from *qat'î* and *zannî* perspectives, so they tend to interpret the verses of the Quran literally. On the other hand, there are some who interpret the verses of the Quran

in the light of *aqîdah* and *mu'âmalah*, or contextually.

The author undertakes to review the interpretation of the verses that are gender nuanced, and in an effort to empower women, pay particular attention to the position a woman's testimony while at the same time dispel disparaging views of women. However, we must be careful in this review to not engender any new bias in the name of Islamic teaching.

### Definition of Witness

A witness is a person who can testify to a certain state of facts and/or events based on their observations, knowledge or understanding of those events and/or facts. In court, witnesses are required either to swear on oath or to make an affirmation as to the truth of the testimony. Most people are qualified to give evidence but there are certain exceptions. For example, a judge may reject a witness' evidence if they are mentally unfit to testify. Further, in civil cases, a child who is too young to understand the nature of an oath is not a competent

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<sup>1</sup> Nasaruddin Umar, *Bias Jender Dalam Penafsiran al-Qur'an*, (Speech Inauguration of Professor in *Tafsir*, Ushuluddin Faculty of Syarif Hidayatullah State Islamic University, 2002), p. 1.

witness, although in criminal cases a young child may be allowed to give unsworn evidence. Witnesses can be compelled to give evidence in fear of being in contempt of court, subject to certain exceptions. For example, a witness cannot be compelled to answer a question that may result in incrimination. A witness' evidence is usually given orally in open court, but in certain circumstances evidence may be adduced through affidavit material. Evidence of certain witnesses may be considered unreliable unless it is corroborated.<sup>2</sup>

As such, Muhammad Quraish Shihab has defined a witness as a person who has the potential to function as a witness eventhough he/she has not yet discharged their evidential role and is actually able to become a witness. By way of example, where an event such as an accident has been observed, then at that moment the "witness" of that event is potentially burdened with testimonial duties. From that time on, that person can be called as a witness for the purposes of the court.

Many people are reluctant to be witnesses because of several factors, at the least, because it may make the person's experience unpleasant and uncomfortable. Therefore, these people need to be called upon. In the end, testimony is obligatory if the testimony is absolutely required for law enforcement.<sup>3</sup>

### Dispute on Women's Testimony

Observers and gender activists dispute a verse dealing with testimony, namely verse al-Baqarah [2]: 282:

يَا أَيُّهَا الَّذِينَ ءَامَنُوا إِذَا تَدَايَنْتُمْ بِدَيْنٍ إِلَىٰ أَجَلٍ مُّسَمًّى فَاكْتُبُوهُ وَلْيَكْتُب بَيْنَكُمْ كَاتِبٌ بِالْعَدْلِ وَلَا يَأْبَ كَاتِبٌ أَنْ يَكْتُبَ كَمَا عَلَّمَهُ اللَّهُ فَلْيَكْتُبْ وَلْيَمْلِكِ الَّذِي عَلَيْهِ الْحَقُّ وَلْيَتَّقِ اللَّهَ رَبَّهُ وَلَا يَبْخَسْ مِنْهُ شَيْئًا فَإِنْ كَانَ الَّذِي عَلَيْهِ الْحَقُّ سَفِيهًا أَوْ ضَعِيفًا أَوْ لَا يَسْتَطِيعُ أَنْ يُمِلَّ هُوَ فَلْيَمْلِكْ وَلِيُهُ بِالْعَدْلِ ؕ وَأَسْتَشْهِدُوا شَهِدَيْنِ مِنْ رِجَالِكُمْ ؕ فَإِنْ لَمْ يَكُونَا رَجُلَيْنِ فَرَجُلٌ وَامْرَأَتَانِ مِمَّن تَرْضَوْنَ مِنَ الشُّهَدَاءِ أَنْ تَضِلَّ إِحْدَاهُمَا فَتُذَكِّرَ إِحْدَاهُمَا الْأُخْرَىٰ ؕ وَلَا يَأْبَ الشُّهَدَاءُ إِذَا مَا دُعُوا وَلَا تَسْمَعُوا أَنْ تَكْتُبُوهُ صَغِيرًا

أَوْ كَبِيرًا إِلَىٰ أَجَلِهِ ؕ ذَٰلِكُمْ أَقْسَطُ عِنْدَ اللَّهِ وَأَقْوَمٌ لِلشَّهَادَةِ وَأَدْنَىٰ أَلَّا تَرْتَابُوا ؕ إِلَّا أَنْ تَكُونَ تِجَارَةً حَاضِرَةً تُدِيرُونَهَا بَيْنَكُمْ فَلَيْسَ عَلَيْكُمْ جُنَاحٌ أَلَّا تَكْتُبُوهَا ؕ وَأَشْهِدُوا إِذَا تَبَايَعْتُمْ ؕ وَلَا يُضَارَّ كَاتِبٌ وَلَا شَهِيدٌ وَإِنْ تَفَلَّحُوا فَإِنَّهُ فُسُوقٌ بِكُمْ ؕ وَاتَّقُوا اللَّهَ ؕ وَيُعَلِّمُكُمُ اللَّهُ ؕ وَاللَّهُ بِكُلِّ شَيْءٍ عَلِيمٌ

O you who believe! when you deal with each other in contracting a debt for a fixed time, then write it down; and let a scribe write it down between you with fairness; and the scribe should not refuse to write as Allah has taught him, so he should write; and let him who owes the debt dictate, and he should be careful of (his duty to) Allah, his Lord, and not diminish anything from it; but if he who owes the debt is unsound in understanding, or weak, or (if) he is not able to dictate himself, let his guardian dictate with fairness; and call in to witness from among your men two witnesses; but if there are not two men, then one man and two women from among those whom you choose to be witnesses, so that if one of the two errs, the second of the two may remind the other; and the witnesses should not refuse when they are summoned; and be not averse to writing it (whether it is) small or large, with the time of its falling due; this is more equitable in the sight of Allah and assures greater accuracy in testimony, and the nearest (way) that you may not entertain doubts (afterwards), except when it is ready merchandise which you give and take among yourselves from hand to hand, then there is no blame on you in not writing it down; and have witnesses when you barter with one another, and let no harm be done to the scribe or to the witness; and if you do (it) then surely it will be a transgression in you, and be careful of (your duty) to Allah, Allah teaches you, and Allah knows all things.

Amina Wadud, a female activist, states that the true meaning of this verse is that the two women are not to be considered as a witness. One of the women has been chosen to remind the other woman. The former acts as collaborator for the later. Eventhought, there are two women, they have their own function. In this case, Amina references Fazlur Raham who objected to the literal interpretation of this verse for any transaction. Thus, this verse is of considerable importance for certain situations that can, and have become, obsolete.<sup>4</sup>

The limitation concerning the financial transaction in this verse has no force in other problems. The demand for two women and a man as witnesses to a financial transaction is not general rule for women's participation in other cases. It means that the limitation is not for application to all kinds of testimony. In different

<sup>2</sup> Webster Dictionary.

<sup>3</sup> Muhammad Quraish Shihab, *Tafsir al-Misbah*, vol. I, (Jakarta: Lentera Hati, 2000), p. 568.

<sup>4</sup> Amina Wadud, *Qur'an Menurut Perempuan*, trans. Abdullah Ali, (Jakarta: PT Serambi Ilmu Semesta, 2001), p. 152.

cases, there is no need to distinguish between men and women's testimony. So, anyone who is considered reliable deserves to be a witness.<sup>5</sup>

It seems that Amina Wadud uses the instrument contextually which aligns with an emancipatory interpretation that changes the theocentric interpretation strategy to become contextual whose interpretation no longer departs from Qur'anic text, however departs from the reality of humanity.<sup>6</sup> It is quite different with the tendency of interpretation generally based on the Quranic text and later seeks its meaning and wisdom through the sciences. See the translation of part of the verse below:

وَأَسْتَشْهِدُوا شَهِيدَيْنِ مِنْ رِجَالِكُمْ ط فَإِنْ لَمْ يَكُونَا رَجُلَيْنِ  
فَرَجُلٌ وَأَمْرَأَتَانِ مِمَّن تَرْضَوْنَ مِنَ الشُّهَدَاءِ

And call in to witness from among your men (free) two witnesses, not slaves or infidels, but if there are not two men, then one man and two women from among those whom you choose to be witnesses in transaction of debt.<sup>7</sup> (Q.s. al-Baqarah [2]: 282)

According to Zaitunah Subhan, in defining a witness, witness is an instrument of evidence to be taken into consideration of the law in deciding a case. Alquran also clearly speaks about testimony. Witnesses are mentioned in seven verses, that is Q.s. al-Baqarah [2]: 282; Q.s. al-Nisâ [4]: 15; Q.s. al-Mâidah [5]: 106; Q.s. al-Nûr [24]: 4, 6 and 13; and Q.s. al-Talâq [65]: 2. But no one of these verses have settled that two female witnesses substitute for a single male witness.<sup>8</sup>

Obviously, Zaitunah Subhan says that men and women are truly equal and that the concept of one-

man and two women in terms of witnesses is an exception merely for contracting of debt, and not for any other matter.

The testimonies stated in the Alquran do not determine that the witness must be man such as in verses al-Mâidah [5]: 106, about testimony in *wasyyah*; al-Nisâ[4]: 15; al-Nûr [24]: 4, and al-Talâq [65]: 2 about testimony of *zinâ* (extramarital sex and premarital sex).<sup>9</sup>

The statement of Zaitunah Subhan is right that not all testimonies of two women are equated to that of one man. But, I disagree with Zaitunah when she questioned the relevancy of Q.s. al-Baqarah [2]: 282 in the contemporary context. Because it is the same as rejecting God's words. This is because God clearly emphasized that there must be two men or a man and two women in the testimony of a debt. It is in line with the opinion of M. Quraish Shihab, who says:

The word witness in the verse is شَهِيدَيْنِ, not شاهدين. It means that the concerned witness is a reliable person and repeatedly being a witness. So that there is no doubt in his testimony. The two men are male witnesses from the muslim society. Or if there are not two men, then one man and two women witnesses who are willing, are those who are approved by the transactor.<sup>10</sup>

Furthermore, Muhammad Quraish Shihab said, "Why has the testimony of two males been equated with one male and two females, namely a man to be equated with two women? The verse explains that if one of two women forgets, the other woman (witness) can remind her. Why is this possibility mentioned in the context of the women's testimony. Is it because of the lack of intellectual capacity, like that suspected by the ulama? Or is it because their emotions cannot be controlled?"

According to Muhammad Quraish Shihab, this case has to be seen from the fundamental viewpoint of Islam, namely concerning the main task and function of women.<sup>11</sup> He continues to emphasize that the Quran and Sunah regulate the division of work between men and women or wife and husband. The husband is tasked with earning money and providing for the basic necessities of his children and his wife's livelihood. The main task of women or the wife is to manage household and pay great attention to the physical and physiological development of children.<sup>12</sup> It is noteworthy that this division of work is not absolute and strict.<sup>13</sup>

<sup>5</sup> Amina Wadud, *Qur'an Menurut Perempuan*, p. 154.

<sup>6</sup> Zuhairi Misrawi in foreword of Very Verdiansyah, *Islam Emansipatoris Menafsir Agama Untuk Praksis Pembebasan*, (Jakarta: P3M, 2004), p. xxiii.

<sup>7</sup> Abû Ja'far Muḥammad ibn Jarîr al-Ṭabarî, *Tafsîr al-Ṭabarî*, vol. III, (Bayrût: Dâr al-Kutub al-'Ilmiyyah, 1999), p. 123. See al-Qâdî Nâsir al-Dîn Abî Sa'îd 'Abdullah ibn 'Umar ibn Muḥammad al-Shîrâzî al-Bayḍawî, *Tafsîr al-Bayḍawî*, vol. I, (Bayrût: Dâr al-Kutub al-'Ilmiyyah, 2003), p. 144. See also al-Imâm Muḥammad ibn 'Alî ibn Muḥammad al-Shawkânî (d.1250 AH.), *Fath al-Qadîr*, (Bayrût: Dâr al-Kutub al-'Ilmiyyah, 2003), Vol. I, p. 246. See Muḥammad 'Aliy al-Ṣâbûnî, *Mukhtasar Tafsîr Ibn Kathîr*, vol. I, (al-Qâhirah: Dâr al-Ṣâbûnî, 1999), p. 254. See Abû 'Alî ibn Ḥasan ibn al-Faḍl al-Ṭabarshî, *Majma' al-Bayân Fî Tafsîr al-Qur'ân*, vol. I, (Bayrût: Dâr al-Kutub al-'Ilmiyyah, 1997), p. 172. See al-Imâm al-Ḥâfiẓ 'Imâd al-Dîn Abû al-Fidâ Ismâ'il ibn Kathîr, *Tafsîr al-Qur'ân al-'Azîm*, vol. I, (Al-Qâhirah: Dâr al-Turâth al-'Arabî, t.th.), p. 335. Lihat Abû al-Ḥasan 'Alî ibn Muḥammad ibn Ḥabîb al-Mâwardî al-Baṣariy, *al-Nikat wa al-Uyûn Tafsîr al-Mâwardî*, vol. I, (Bayrût: Dâr al-Kutub al-'Ilmiyyah, t.th.), p. 356. See also Abû Qâsim Jâr Allah Maḥmûd ibn 'Umar ibn Muḥammad al-Zamakhsharî, *al-Kasysyâf*, vol. I, (Bayrût: Dâr al-Kutub al-'Ilmiyyah, 1995), p. 321. See Sayyid Hawâ, *al-Asâs Fî al-Tafsîr*, vol. I, (al-Qâhirah: Dâr al-Salâm, 1985), p. 661.

<sup>8</sup> Zaitunah Subhan, *Tafsîr Kebencian*, (Yogyakarta: LKIS,1999), p. 119.

<sup>9</sup> Zaitunah Subhan, *Tafsîr Kebencian*, p. 119.

<sup>10</sup> Muhammad Quraish Shihab, *Tafsîr al-Misbah*, vol. I . p. 566 .

<sup>11</sup> Muhammad Quraish Shihab, *Tafsîr al-Misbah*, vol. I . p. 567.

<sup>12</sup> Muhammad Quraish Shihab, *Tafsîr al-Misbah*, vol. I . p. 567.

<sup>13</sup> See, Muhammad Quraish Shihab in his Muhammad Quraish Shihab, *Tafsîr al-Misbah*, Vol. I., p. 57. Usually, wives of companions

Zaitunah said that the formula ‘one man and two women’ is only a special case for business transactions, as in fact verse al-Nisâ[4]: 15 does not mention women at all, but mentions four male witnesses.

Muhammad Quraish Shihab explains this by saying that it is apparent that the word *أربعة* indicates that the witness is a man. This is because if the witness is a woman, the word *اربع* must be used without *tâ' al-marbûtah*. In Arabic grammar, when the person to be counted is female, then ‘*adad* (the numeral) must be male (*mudhâkkar*) and *viceversa*, when the person to be counted is male, the numeral must be female or *mu'annath*. As a result, the verse applies the numeral *mu'annath*, so that the meaning is that the person is to be counted as *mudhâkkar* (male).<sup>14</sup>

Then, Muhammad Quraish Shihab quotes the statement of al-Zuhrî, “There was a custom, after the death of Rasul and the two khalifahs after him, not to accept women’s testimony in *hudûd* matters. This is because since the beginning of the Quran and Sunah’s intention to avoid women being in immoral places and seeing rebellious activities.”<sup>15</sup>

The word *أربعة* in verse al-Nûr [24]: 13 was used to reference the disseminator of information, being men, non women. As the verse al-Mâidah [5]: 106 points out, the witness is a man. This verse was revealed in the case of Tamîm al-ârî and ‘Adi ibn Badda where both are men, and the witness is also a man.

The verse al-Nûr [24]: 4 concerns an accusation of *zina* adopting the word *أربعة* not word *اربع* meaning a male witness. As a result, in my view, all of verses expressed by Zaitunah above do not indicate that the witnesses are men and women, but that there is an impression in that verse that all of witnesses are men.

Zaitunah’s statement above seems confusing. From one side, she revises her statement, but on the other

of prophet worked to earn money, because their husbands were not able to complete daily needs of household. Otherwise, many husbands also worked in home and educated their children. Job description as mentioned above made man and woman have their own concerns. These concerns also made their capability and memory different. The memory of women concerning about household matter is stronger than men whose concerns are almost to works, business including debts. Based on those concerns the above demand was decided. The Quran wanted women to pay attention household matters more and more, or based on the reality when the verse was revealed, women had no any attention to the debts, either because husband did not permit their intervention or other reasons. Thus, the possibility of forget for women is greater than man’s. therefore, for the shake of strengthening the testimony, two women is equated to a man, in order if one of two women forget, another woman can remind her.

<sup>14</sup> Muhammad Quraish Shihab, *Tafsir al-Misbah*, Vol. 2. h. 357.

<sup>15</sup> Muhammad Quraish Shihab, *Tafsir al-Misbah*, Vol. 2. h. 357.

side she acknowledges the existence of man and women’s differences in testimony, though it is only in business transactions. But in her conclusion, she questions the relevance or not of the verse al-Baqarah [2]: 282 to be applied in a way just like 14 centuries ago.

I doubt Zaitunah’s perplexing statement because she still questions the relevance of the verse to current conditions, but is not supported by good argument. I am actually worried if the truth is measured by desire (will), not by going back to the Quran, as firmly stated by God:

وَلَوْ اتَّبَعَ الْحَقُّ أَهْوَاءَهُمْ لَفَسَدَتِ السَّمَوَاتُ وَالْأَرْضُ وَمَنْ فِيهِنَّ ۗ بَلْ أَتَيْنَهُمْ بِذِكْرِهِمْ فَهُمْ عَنْ ذِكْرِهِمْ مُعْرِضُونَ

And should the truth follow their low desires, surely the heavens and the earth and all those who are therein would have perished. Nay! We have brought to them their reminder, but from their reminder they turn aside. (Q.s. al-Mu’minûn [23]: 71)

In Islamic legal literature, there are some cases that are adequately witnessed by a woman, such as matters that cannot be witnessed by men like the birth of children, virginity of women and other cases that are not allowed men to witness or see.<sup>16</sup>

There are some ulama who equate the testimony of man and woman, such as testimony of *li’ân* as stated in Alquran:

وَالَّذِينَ يَرْمُونَ أَزْوَاجَهُمْ وَلَمْ يَكُنْ لَهُمْ شُهَدَاءُ إِلَّا أَنْفُسُهُمْ فَشَهَدَةُ أَحَدِهِمْ أَرْبَعُ شَهَدَاتٍ بِاللَّهِ إِنَّهُ لَمِنَ الصَّادِقِينَ ﴿٥﴾ وَالْخَمْسَةَ أَنْ لَعْنَتَ اللَّهِ عَلَيْهِ إِنْ كَانَ مِنَ الْكَاذِبِينَ ﴿٦﴾ وَيَدْرُؤُا عَنْهَا الْعَذَابَ أَنْ تَشْهَدَ أَرْبَعُ شَهَدَاتٍ بِاللَّهِ إِنَّهُ لَمِنَ الْكَاذِبِينَ ﴿٧﴾ وَالْخَمْسَةَ أَنْ غَضَبَ اللَّهِ عَلَيْهَا إِنْ كَانَ مِنَ الصَّادِقِينَ ﴿٨﴾

And (as for) those who accuse their wives and have no witnesses except themselves, the evidence of one of these (should be taken) four times, bearing Allah to witness that he is most surely of the truthful ones. And the fifth (time) that the curse of Allah be on him if he is one of the liars. And it shall avert the chastisement from her if she testify four times, bearing Allah to witness that he is most surely one of the liars. And the fifth (time) that the wrath of Allah be on her if he is one of the truthful. (Q.s. al-Nûr [24]: 6-9)

<sup>16</sup> Mahmûd Shaltût, *Aqidah wa al-Shari’ah*, (Mesir: Dâr al-Qalam, 1966), p. 250.



Later, Zaitunah Subhan said, "If we analyze the use of language, the *mudhakkar* or a male word does not automatically refer to male, without exceptions, because in the Arabic language, *mudhakkar* is used for both males and females."<sup>17</sup>

Unfortunately, Zaitunah does not give any example of *mudhakkar* words relating to testimony which means female. Because in Arabic grammar all *mudhakkar* words are only used for meaning male, and also every *mudhakkar* word only means male. In spite of this, the word رجل can indeed mean a figure or grandparent regardless of whether they are male or female.

Zaitunah concluded three opinions of interpretation (Hamka, Mahmud Yunus, and Tafsir Depag/religion affairs department) about the testimony in Q.s. al-Baqarah [2]: 282 with a format of one man compared with two women, those three categories of cause are: (a) natural causes, namely forgetfulness, emotional state, or lack of intelligence compared with men; (b) external causes, namely the possibility of external pressure which forces women to give false testimony; and (c) women's lack of business transaction experience.

I also disagree if the format of testimony 'one man and two women' were caused by the three factors, because there is no mention of these three factors in the verse. Rather, I agree if the three factors are only for legitimacy when the verse is recited, to convince the absolute truth, namely Q.s. al-Baqarah [2]: 282.

Anwar Jundi said that, "The testimony of two women is same as the testimony of one man. It is considered the natural characteristic of women that is graceful and refined."<sup>18</sup>

After reading Muhammad Quraish Shihab's book *Perempuan*, I have arrived at a solution. He clearly stated that, "Al-Baqarah [2]: 282 talked about testimony in the financial field. Because this verse talks about debt, and such other matters, the testimony of women is considered similar to men's testimony such as testimony in the sighting the moon marking the start of *Ramadhān* and *Shawwal* months, feeding children, birth or other matters that are usually known by women".<sup>19</sup>

If this is the case, then the problem that needs to be discussed is why a women's testimony concerning matters relating to finances is considered as half of a

man's testimony. In general, it can be said that when this verse was handed down, the involvement of women in trade was not as expansive as today. Further, when it is said that this verse was handed down it relates to in transit guidance, such as being legible in the continuation of verses above.<sup>20</sup>

Therefore, if the message of the verse constitutes a part of *ijtihad* and what was expressed by Muhammad Quraish Shihab above was *'illah* (motive of law implementation), then of course it can now be—Muhammad Quraish Shihab says—that women's testimony which is directly involved in financial matters is to be considered similar to men's testimony, namely women's testimony is involved so much in financial matters is the same as men's testimony.<sup>21</sup>

However, from the problem above, we know that there is a variety of opinions amongst ulama opinion even though all of them agree on the principle that "the determination of law is based on reasoning or *'illah*': as long as those *reasons* are there, legal certainty prevails and if those *reasons* are not there, then certainty of the law also fails."<sup>22</sup>

The problem is whether *'illah* is permanent or not? Because the main task of women is in the home or domestic task, and the main task of men, as stipulated in Q.s. *Tāhâ* [20]: 117 is to fulfil family needs. Thus, the main task of wife is to build household and to devote attention for the physical and spiritual development of children. Such *'illah* is regarded by some ulama as a permanent and unchangeable one in any circumstance.<sup>23</sup>

The next question is whether the opinion relating to the division of tasks above constitutes a fundamental view for the reason why women may not get involved too much in trade and financial matters, and as such, too unreasonable to equate a women's testimony in financial to men's testimony?

According to Muhammad Quraish Shihab, there is no matter with women's involvement in business as long as they do not forget their main task. Once more, it is the field of *ijtihad* that engenders varied opinions. In fact, in the past when the verse was handed down, women did not pay attention to debt matters either because their husbands did not permit interference or because of other reasons. The likelihood for women to forget was greater than men. Therefore, by strengthening testimony of two women is equalised with one man's testimony, so that if one woman forgets, then the other

<sup>17</sup> Zaitunah Subhan, *Tafsir Kebencian* (Yogyakarta: LKiS, 1999), p. 120.

<sup>18</sup> Anwar Jundi *Gelombang Tantangan Muslimah*, Terjemahan Ahsin Wijaya, (Solo: CV. Pustaka Mantiq, 1989), p. 36.

<sup>19</sup> Muhammad Quraish Shihab, *Perempuan* (Ciputat: Lentera Hati, 2005), p. 266.

<sup>20</sup> Muhammad Quraish Shihab, *Perempuan*, p. 267.

<sup>21</sup> Muhammad Quraish Shihab, *Perempuan*, p. 268.

<sup>22</sup> Muhammad Quraish Shihab, *Perempuan*, p. 268.

<sup>23</sup> Muhammad Quraish Shihab, *Perempuan*, p. 270.

woman can remind her.<sup>24</sup>

In this case, Muhammad Quraish Shihab states that verse of testimony is a field of *ijtihad* whose legal status is yet to be approved by ulama.

So that I tend to be of the opinion of Muhammad Imarah saying that the discussions above have mixed between the word الشهادة and the word الاشهاد. The word الشهادة means tool of evidence that can be heard by a judge to decide justice based on the evidence of witness. In order to charge an accusation does not depend on men or women, but the standard required to convince the judge on legitimate evidence of the witness regardless the witness' sex and the number of witnesses. So, when the judge is convinced that the evidence is clear, does the judge take the testimony of two men, or two women, or one man and one woman, or one man and two women, or one women and two men? All of these choices do not affect the judge, except the real evidence.<sup>25</sup>

Al-Baqarah: 282 talks about another matter, not of testimony in front of the judge, but about الاشهاد or giving testimony to the owner of the debt to remind of his debts, not the testimony betaken by the judge in hearing the dispute of the two parties. The verse refers only to the owner of the debt, not to the judge, not even all the owners of debt and also there is no condition of same in amount in every debt, but only refers to a certain owner of debt.<sup>26</sup>

The word الاشهاد means giving testimony in debt matters. It has to be done by two-male believers, or one man and two women. This condition is not required in modern trade. Such understanding was expressed by Ibn Taymiyyah (661-728 AH./1263-1328 M), and his students Ibn al-Qayyim (691-751 AH./1292-1350 M.), Muḥammad 'Abduh (1265-1323 AH/1849-1905 M.) and Maḥmūd Shaltūt (1310-1383 AH./1893-1963 M).<sup>27</sup>

The tool of evidence taken by the judge is based on the tradition of Prophet Muhammad, p.u.h:

البينة على المدعى واليمين على المدعى عليه (رواه البخارى  
والتزمذى وابن ماجه)

Evidence for the accused and oath for the accused doer.”  
(Reported by al-Bukhârî, al-Turmudhî, and Ibn Mâjah).

Muḥammad Imârah quotes the statement of Ibn Taymiyyah explaining that the Alquran does not need

two-male witnesses or one man and two women in a legal decision by the judge, but the Alquran requires two kinds of evidence (Q.s. al-Baqarah [2]: 282). In this verse God commanded them within the framework of protecting their rights by two ways, by writing and by testimony of one man or one man and two women.<sup>28</sup>

Protecting rights constitutes one thing and the judge deciding law is another thing. So, the way to decide the law is wider than the testimony of two men and two women.<sup>29</sup>

A judge may decide the law by the testimony of one man. If it is a civil case and not criminal, God commanded the judge to decide the law only by the testimonies of two men or one man and two women. It does not mean that the judge may not decide the law by another way. Because the *Rasûl*—as judge—decided the law by one-male witness on oath, even by one man only. This is not a deviation from God's Book for those who understand, because God's law and the law of *Rasûl* are not in conflict. For example, when the Prophet accepted the testimony of Baduwi who saw the moon in Ramadhan (*ru'yah al-hilâl*). Also the Prophet accepted the testimony of one man in a jewellery matter of killed person, and the testimony of an injured just doctor, all of their testimony were accepted.<sup>30</sup>

The Prophet also accepted the testimony of woman in a breast-feeding matter who was the witness of her own action in the case of Uqbah Ibn al-Hârith who married Umm Yahyâ Bint Abî Lahab. After that, a black woman slave who came and said, “I have suckled both of you.” Complaint was brought before the Prophet. And the Prophet requested that the case be set out. On hearing the matter, the Prophet said, “How could she acknowledge that she has suckled both of you?”<sup>31</sup> The prophet had accepted the testimony of the woman.

The Prophet Muhammad also accepted the testimony of a woman in a criminal *hudûd* matter. Such as in the case of a woman who was raped by a man, as reported in hadis by Abû Dâwud:

حَدَّثَنَا مُحَمَّدُ بْنُ يَحْيَى بْنِ فَارِسٍ حَدَّثَنَا الْقُرْبَائِيُّ حَدَّثَنَا  
إِسْرَائِيلُ حَدَّثَنَا سِمَاكُ بْنُ حَرْبٍ عَنْ عَلْقَمَةَ بْنِ وَاثِلٍ عَنْ أَبِيهِ  
أَنَّ امْرَأَةً خَرَجَتْ عَلَى عَهْدِ النَّبِيِّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ تُرِيدُ  
الصَّلَاةَ فَتَلَقَّاهَا رَجُلٌ فَتَجَلَّلَهَا فَفَضَى حَاجَتَهُ مِنْهَا فَصَاحَتْ

<sup>24</sup> Muhammad Quraish Shihab, *Perempuan*, p. 272.

<sup>25</sup> Muḥammad Imârah, *al-Tahrîr al-Islâmî Li al-Mar'ah*, (al-Qâhirah: Dâr al-Shurûq, 1968), h. 71.

<sup>26</sup> Muḥammad Imârah, *al-Tahrîr al-Islâmî li al-Mar'ah*, p. 72.

<sup>27</sup> Muḥammad Imârah, *al-Tahrîr al-Islâmî li al-Mar'ah*, p. 73.

<sup>28</sup> Muḥammad Imârah, *al-Tahrîr al-Islâmî li al-Mar'ah*, p.74.

<sup>29</sup> Muḥammad Imârah, *al-Tahrîr al-Islâmî li al-Mar'ah*, p.75.

<sup>30</sup> Muḥammad Imârah, *al-Tahrîr al-Islâmî li al-Mar'ah*, p. 76.

<sup>31</sup> Muhammad Imârah, *al-Tahrîr al-Islâmî li al-Mar'ah*, p. 77.

وَأَنْطَلَقَ فَمَرَّ عَلَيْهَا رَجُلٌ فَقَالَتْ إِنَّ ذَلِكَ فَعَلَ بِي كَذَا وَكَذَا  
وَمَرَّتْ عِصَابَةُ مِنَ الْمُهَاجِرِينَ فَقَالَتْ إِنَّ ذَلِكَ الرَّجُلَ فَعَلَ بِي  
كَذَا وَكَذَا فَأَنْطَلَقُوا فَأَخَذُوا الرَّجُلَ الَّذِي ظَنَّتْ أَنَّهُ وَقَعَ عَلَيْهَا  
فَأَتَوْهَا بِهِ فَقَالَتْ نَعَمْ هُوَ هَذَا فَأَتَوْا بِهِ النَّبِيَّ صَلَّى اللَّهُ عَلَيْهِ  
وَسَلَّمَ فَلَمَّا أَمَرَ بِهِ قَامَ صَاحِبُهَا الَّذِي وَقَعَ عَلَيْهَا فَقَالَ يَا  
رَسُولَ اللَّهِ أَنَا صَاحِبُهَا فَقَالَ لَهَا أَذْهَبِي فَقَدْ عَفَرَ اللَّهُ لَكَ  
وَقَالَ لِلرَّجُلِ قَوْلًا حَسَنًا قَالَ أَبُو دَاوُدَ يَعْنِي الرَّجُلَ الْمَأْخُودَ  
وَقَالَ لِلرَّجُلِ الَّذِي وَقَعَ عَلَيْهَا ازْجُمُوهُ فَقَالَ لَقَدْ تَابَ تَوْبَةً لَوْ  
تَابَهَا أَهْلُ الْمَدِينَةِ لَقُبِلَ مِنْهُمْ قَالَ أَبُو دَاوُدَ رَوَاهُ أَسْبَاطُ بْنُ  
نَصْرِ أَيْضًا عَنْ سِمَاكِ<sup>32</sup>

Muhammad ibn Yahyâ ibn Fâris told us, al-Faryâbiy told us, Israil told us, Simâk ibn Harb told us, from Alqamah ibn Wâil from his father, "That a woman in the time of Prophet has gone out from home. Then, a man met the woman and raped her. The woman screamed and the man run. When the man met again the women, she said, "That that person has raped me." A group of Muhâjirîn met her and she complained to them, that the man has raped me. People of Muhâjirîn run after and grasped him who accused as the actor of raping. And people of Muhâjirîn brought him to the woman and the women said, "It was right, he is the actor." An then they brought him to the Prophet. When prophet ordered to stone, a man stood and said, "No he was not the actor, but I'm the actor. The Prophet said, "go away the lady, may God forgive you." Then prophet said to the man, "You have said the right." Abû Dâwud remarked, "The purposed is the man who was brought". And prophet said to the actor of raping, "Stone him," and said "In deed, he is repent. If the people of Madina accepted his repent, then he would not in the hell." Abû Dâwud remarked, "Asbât ibn Naṣr also reported this from Simâk.

Muhammad Imârah quotes Ibn Taymiyyah who comments on al-Baqarah [2]: 282 explaining that two women are a substitute of a man in order if one woman forgets, another woman can remind her. This is not women's behaviour holistically and not necessary in all testimony, but a matter relating to the expertise/skill and would experience develop and change. Therefore, if a woman has the skill in certain testimony, the the woman's testimony is not always a half of man's testimony.<sup>33</sup>

Muhammad Imârah quotes Muhammad 'Abduh saying, "The statement that testimony of woman must be two because a woman often forgets is not absolutely wrong. The right one is because generally in business

matters women have a weak memory. Otherwise, in domestic matter women have a good memory. The memory of women is stronger in domestic matters than man. The meaning is that human nature both men and women, will have good memory in their own fields.<sup>34</sup>

The difference between a man and a woman in debt and trade matters was emphasized in the Quran in verse al-Baqarah [2]: 282 by the reason of a woman's nature of quickly forgetting business matters, not the general nature of women but only certain women. And in a particular problem, namely business matters, as evidenced by: First, the testimony in business matters found in Alquran chapter al-Baqarah [2]: 282 to avoid the dispute and conflict made two means, namely in writing and witnessed by two men and one man and two women. Second, the testimony in other business matters, there is no difference between man and woman. (Q.s. al-Talâq [65]: 2 and Q.s. al-Mâ'idah [5]: 106). Witness in divorce (*ṭalâq*) and *waṣiyah* is required as in business matters, but the condition is only just. Justice in testimony could be done by men and women as well. Third, testimony of two men or one man and two women in business matters, by Maḥmûd Shaltût is an indicator in the timing of business transactions, not the capacity of the not for testimony in court. Fourth, that witnesses are only to strengthen and protect rights, so if the number which is desired by the Quran is not fulfilled, a witness will suffice as was carried out before the Prophet. Fifth, the difference between a man and a woman does not mean giving the privilege to men, because in certain circumstances, Islamic Law accepts only the testimony of women as strengthening the birth of child with the mother. Sixth, the difference in testimony between men and women in business is not for distinguishing between a man and a woman. When Allah settled four witnesses in matter of zina, it does not mean decreasing a man's status, but for protecting the honour and dignity of women. Seventh, when Islamic Law differentiates between men and women in testimony, then the difference of both is based on the particular nature of each. If Islamic law equates men and women in one case, it means for establishing the benefit and justice for people, not only for women.<sup>35</sup>

In the case of testimony, Muhammad Quraish Shihab applies the instrument *al-ibrâh bi 'umûm al-lafẓ lâ bi khusûs al-sabab*. He interprets the verse literally without consideration of the verse contextually.

Whereas contemporary exegesis tend to understand

<sup>32</sup> Abû Dâwud Sulaymân ibn al-Ash'ath al-Sujistâniy al-Azadi, *Sunan Abi Dâwud*, vol. IV, (al-Qâhirah: Dâr al-Hadîth, 1999), p. 1872.

<sup>33</sup> Muhammad Imârah, *al-Tahrîr al-Islâmî li al-Mar'ah*, p. 78.

<sup>34</sup> Muhammad Imârah, *al-Tahrîr al-Islâmî li al-Mar'ah*, p. 80.

<sup>35</sup> Sâlim al-Bahnasawî, *al-Mar'ah Bayna al-Islâm wa al-Qawânin al-'Alamiyyah*, (Kuwait: Dâr al-Wafâ, 2003), p. 182-184.



the text through the speciality of motive, not the generality of word as principle *al-'ibrah bi khusûs al-sabab lâ bi 'umûm al-lafz*. They argued that if the text of verse does not fit within the social reality, then the text is no longer relevant and not practised.

Muhammad Quraish Shihab himself regarded that all verses will be exist for all time. Because, according to him, even though one verse is no longer relevant such as the slavery verse, it may be that at some later period the verse will be reintroduced .

In line with the opinion of Ibrahim Hosen when responding to Munawir Syadzali's article, that, "Umar ibn al-Khattâb is deemed to have departed from verse, because he has deleted the opportunity of *mu'allaf* in taking his zakat."

According to Ibrahim Hosen, 'Umar ibn al-Khattâb does not violate the verse, yet *mu'allaf* which was considered by Umar did not exist. Until the time that *mu'allaf* returns, then the part of the *mu'allaf* must have returned.

### Closing Remarks

Witnesses in court are not always men and not based on a certain number, but must be in accordance with the professionalism of witness themselves. The difference in opinion of *ulama* in understanding the text of the Quran about testimony results from two factors. First, the difference of instruments. Some *ulama* start from the text, and search the legitimacy by other science. Other *ulama* start from the social reality and the find the text of verse or Hadith for supporting that situation. Second, some *ulama* do not distinguish firmly between giving testimony (*al-ishhâd*) outside court and a witness (*al-shahâdah*) as evidence before a judge in court, so that the meaning of Quran particularly about the testimony of women, is regarded as a half that of men's. Third, the witness, as a tool of evidence in court, does not differentiate between men and women, but depends on the judge's discretion in deciding the case.[]

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