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Gender Equality in Social Jurisprudence: A Review Of KH. MA. Sahal Mahfudh's Fatwa on Women

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Abstract: Women's issues are a perennial topic of discussion, including within the dynamics of Islamic law. Various issues concerning women in the domestic and public spheres are always hotly debated. Islam in Indonesia is a religious institution that manifests the interaction of the universal values of Islam brought by the Prophet Muhammad with the diverse social and cultural realities of the Indonesian archipelago. This interaction has given rise to new and distinct understandings of Islam, different from its place of origin (Arab). The Indonesian archipelago, with its particular culture from that of Arabia, means that the application of Islamic law varies considerably between the two regions, including in addressing women's issues. Aware of these differences, several Islamic scholars have developed diverse legal perspectives, often differing from the provisions outlined by the early scholars in their works. One such scholar is KH. MA. Sahal Mahfudh, a prominent Indonesian scholar whose Islamic legal thinking differs significantly from that of his contemporaries. Kiai Sahal distinguished between religious law's fixed and flexible dimensions with his social jurisprudence.

Keywords: Women, Gender, Social Jurisprudence, Fatwa, KH. MA. Sahal Mahfudh

Abstrak: Isu perempuan merupakan salah satu pembahasan yang tidak kunjung habis dibahas, termasuk dalam dinamika hukum Islam. Berbagai macam problem tentang perempuan baik dalam ranah domestik hingga publik selalu menjadi isu yang hangat untuk diperbincangkan. Islam di Indonesia merupakan institusi agama yang menjadi manifestasi dari adanya interaksi nilai-nilai universal Islam yang dibawa oleh Nabi Muhammad Saw dengan realitas sosial dan budaya nusantara yang beragam macamnya. Interaksi keduanya melahirkan corak pemahaman keislaman yang baru dan berbeda dari tempat asalnya (arab). Nusantara yang memiliki budaya yang berbeda dengan Arab menjadikan keberlakuan hukum Islam tidak sama persis di dua tempat tersebut, termasuk dalam menyikapi isu perempuan. Bertolak dari sini, beberapa ulama yang sadar akan perbedaan tersebut memiliki pandangan hukum yang beragam dan tidak jarang berbeda dari ketentuan yang telah disampaikan oleh para ulama salaf dalam beberapa karyanya. Adalah KH. MA. Sahal Mahfudh, sosok Ulama nusantara yang memiliki pemikiran hukum Islam yang relatif berbeda dengan para ulama semasanya. Dengan gagasan fikih sosial yang beliau inisiasi, Kiai Sahal mampu membedakan antara dimensi yang baku dan elastis dalam ketentuan beragama.

Kata Kunci : Perempuan, Gender, Fikih Sosial, Fatwa, KH. MA. Sahal Mahfudh

INTRODUCTION

The dynamics of Islamic legal thought have always evolved in tandem with inevitable social change. The limited availability of authoritative texts due to the interruption of revelation after the death of the Prophet Muhammad (peace be upon him) has led scholars, from the time of the Companions to the present, to undertake various efforts to uncover the true purpose of Islamic law

through *ijtihad*.¹ The results of these *ijtihads* vary due to each scholar's differing methodologies and methods at each period. Furthermore, the social dynamics surrounding these scholars also influenced their differing perspectives on *ijtihad* and the formulation of legal provisions.² These social dynamics have shaped general perceptions of various concepts in life, including Islamic teachings and how a Muslim should practice Islam. The presence of scholars, particularly the Salaf (Salaf) in the *Mazāhib al-Arba'ah* tradition, as scholars born and raised within the patriarchal Arab tradition, has influenced their understanding of Islamic teachings.

The relationship between men and women in a patriarchal culture necessitates the superiority of men over women. Several provisions within the classical Islamic jurisprudence tradition, particularly the four schools of thought (*mazhab*), are strongly suspected of having a patriarchal curriculum. This is reflected in the early scholars' interpretations regarding women's position within the family and society. The emergence of guardians (*Walī Mujbīr*) and the prohibition on women becoming leaders are just a few of the many patriarchal concepts within the four schools of jurisprudence. Yet, Islam came with the mission of *rahmatan li al-'ālamīn*, meaning it does not discriminate based on gender, as the benchmark for a servant's closeness to God is piety.³

In Indonesia, the thinking of these four schools of thought serves as the primary reference for resolving legal issues facing the majority of Muslims. This is reinforced by various doctrines advocated by traditional Indonesian scholars. Naturally, the public will follow them devoutly and obediently, and over time, these doctrines become customs and continue to shape the culture. However, among these scholars, there are figures who are aware of the urgency of equal rights for Muslims, both men and women. This is KH. MA. Sahal Mahfudh, a charismatic cleric with a broad and flexible understanding of Islamic law and the social context. Through his social *fiqh* initiatives, various legal and societal issues can be effectively addressed, providing effective solutions through the fatwa method. Some of these issues address women in the family and society.

RESEARCH METHOD

This qualitative study employs a library research approach that focuses on Kiai Sahal Mahfudh's thoughts on *social fiqh* and his fatwas related to gender. The data were collected through documentation from primary sources such as the classical Islamic texts (*kitab kuning*) and Kiai Sahal's works, as well as secondary sources including books, articles, and relevant studies. The analysis technique used is content analysis with a hermeneutic approach to interpret the texts contextually. A comparative method is also applied to examine and contrast the perspectives of scholars from various schools of thought. The analysis refers to the framework of *maqāṣid al-sharī'ah* to assess the alignment of the fatwas with the principles of public welfare, justice, and gender equality. Thus, this study is descriptive-analytical in nature, as it not only explains definitions and characteristics but also evaluates the relevance of Kiai Sahal's ideas in contemporary socio-religious contexts.

RESULT AND DISCUSSION

Epistemology of Social Fiqh: Definition & Characteristics

¹ Wael B. Hallaq, "Was the Gate of Ijtihad Closed?," *International Journal of Middle East Studies* 16, no. 1 (1984), <http://www.jstor.org/stable/162939>.

² Muhammad Hashim Kamali, *Principles of Islamic Jurisprudence* (United Kingdom: The Islamic Text Society, 2003), <https://dn790007.ca.archive.org/0/items/principles-of-islamic-jurisprudence.pdf>.

³ Barbara Freyer Stowasser, *Women in the Qur'an, Traditions, and Interpretation* (New York: Oxford University Press, 1994), https://islamicbulletin.org/en/ebooks/women/women_in_the_quran.pdf. See also, Leila Ahmed, *Women and Gender in Islam Historical Roots of A Modern Debate* (London: Yale University Press, 2021).

The term *fiqh* (Islamic jurisprudence) comes from the root words *faqih*, *yafqahu*, and *fiqhan*, meaning to understand and comprehend.⁴ Etymologically, it means profound comprehension.⁵ Terminologically, it is generally defined as the practical science of Islamic law formulated from detailed evidence.⁶

Social *Fiqh*, on the other hand, is a form of *tarkib idāfī*, or phrase, meaning that *fiqh*'s position as a body of knowledge—practical Islamic law formulated from detailed evidence—is inseparable from and closely related to the realities and relativities of society. Therefore, *fiqh* must provide solutions that realize the welfare of the community. In this regard, the FISI Center research team provides the following definition of social *fiqh*.

العلم بالأحكام الشرعية العملية المكتسب من أدلتها التفصيلية لمصلحة الأمة.

"The social jurisprudence is the science of practical sharia laws derived from detailed evidence for the benefit of the community."⁷

Conceptually, the social jurisprudence initiated by Kiai Sahal is a development of several thoughts of jurists, particularly those within the Shafi'i school of thought. This is understandable, as he is a renowned cleric affiliated with the Nahdlatul Ulama organization, which predominantly adheres to the Shafi'i school of thought. However, his Islamic boarding school background did not limit his perspective in addressing prevailing social realities, as he recognized that the essence of sharia is to realize the welfare of the people.⁸

Social *Fiqh* (Islamic jurisprudence) was his concrete response to the fact that society's existing and prevailing *Fiqh* (Islamic jurisprudence) could no longer realize its welfare. This was allegedly due to a gap between their understanding of religious knowledge and their understanding of the social realities within society. This was furthered by the existence of groups comprised of intellectuals who comprehensively understand religious knowledge but lack a grasp of the social realities surrounding them. Conversely, there were groups comprised of preachers (*Da'i*) or prominent figures within the community who clearly understood the social realities surrounding them but lacked adequate skills in religious knowledge, particularly the principles of Islamic jurisprudence (*Uṣūl al-Fiqh*) and Islamic jurisprudence (*Fiqh*).⁹

His concept of social *Fiqh* (Islamic jurisprudence) possesses several characteristics that distinguish it from traditional *Fiqh*. These characteristics, or distinctive features, distinguish it from conventional *Fiqh*.

a. Contextual Interpretation of *Fiqh* Texts

This first characteristic explains that Kiai Sahal's character as a pesantren scholar cannot be separated from his thinking. Despite his involvement with various issues, the dynamics of his scholarship remain inextricably linked to the pesantren culture, which is steeped in the "yellow books" (classic literature). This literature is one of the main components of Islamic boarding schools. Its presence is almost certainly in every Islamic boarding school in Indonesia.¹⁰ Furthermore, this first characteristic is one of his efforts to counter some groups who consider classical *fiqh* texts outdated and unsuitable as references for addressing emerging societal

⁴ Fairuz Abady, *Al-Munjid Fi Al-Lughah Wa Al-A'lām*, 28 ed. (Beirut: Dar el-Machreq Sarl Publisher, 1986).

⁵ Amir Syarifuddin, *Garis-Garis Besar Fikih* (Jakarta: Kencana, 2003).

⁶ Muḥammad Abū Zahrah, *Uṣūl Al-Fiqh* (Kairo: Dār al-Fikr al-'Arabī, 2007).

⁷ Umdah el Baroroh dan Tutik Nurul Jannah, *Fiqh Sosial Masa Depan Fiqh Indonesia* (Pati: PUSAT FISI IP MAFA, 2018).

⁸ Abu Hafsini, "Fiqh Sosial: Suatu Upaya Menjadikan Fiqh Sebagai Etika Sosial," dalam *Fiqh Sosial Kiai Sahal Mahfudh Antara Konsep dan Implementasi* (Surabaya: Khalista, 2007); Muhammad Ahmad Sahal Mahfudh, *Nuansa Fikih Sosial*, 7 ed. (Yogyakarta: LKiS, 2011).

⁹ Sumanto al-Qurtuby, KH. MA. Sahal Mahfudh Era Baru Fikih Indonesia (Yogyakarta: Cermin, 1999).

¹⁰ Zamakhsyari Dhofier, *The Pesantren Tradition: The Role of Kyai in The Maintenance of Traditional Islam in Java*, ed. oleh Anne Dresskell (Arizona: Program For South Asian Studies, Arizona State University, 1999).

problems. This contextualization effort was not solely his own thinking but the result of a deliberation by several Islamic scholars at the Watucongol Muntlan Magelang Islamic Boarding School in 1988. These scholars established three main guidelines for contextualizing the understanding of the yellow books. First, the process of understanding the classic books rests on the facts of the individual and communal situations that underlie them. Second, understanding the classic books is not limited to a literal understanding; it must encompass the spirit of welfare that animates them. Third, the study of the yellow books is projected into practical use for society.¹¹

b. Shifting from the Qauli Method to the Manhaji Method

The second characteristic of social fiqh is the effort to optimize the discovery of solutions to contemporary legal problems by methodically developing schools of thought. This approach does not rely solely on classical texts for legal conclusions but rather bases these findings on methods developed by scholars to broaden the scope of the solutions provided. This stems from Kiai Sahal's awareness that classical fiqh texts do not fully address the problems of the times. He also acknowledged that some aspects of classical texts are outdated within this context. This confession appears to stem from his concern over the formalistic construction of Islamic jurisprudence texts, which has left most Muslims underdeveloped in thought and decision-making regarding every emerging contemporary problem.¹² One of the issues discussed in this regard is the family planning program. Therefore, a renewal of the school of thought is necessary to achieve the welfare of the people.

The term "*maṣlahah*" in Islamic law is commonly referred to as "*maṣlahah*," meaning "bringing benefit and repelling harm." Regarding this, al-Ghazali stated that Islamic law exists to achieve this. However, the welfare desired by God is not the benefit that humans freely perceive. He classified the benefits desired by the sharia into three levels, namely: 1) *Ḍarūriyyah*, 2) *Ḥajiyah*, 3) *Taḥsiniyyah*. He further divided aspects of the *Ḍarūriyyah* level of benefits into five types: *hiḏ al-dīn*, *hiḏ al-naḑs*, *hiḏ al-naṣl*, *hiḏ al-‘aql*, and *hiḏ al-māl*.¹³ Al-Ghazali believed that a mujtahid, in addition to having a comprehensive grasp of religious knowledge, is also necessary to know and understand the community's needs in the realities of their lives. Therefore, mujtahids must not ignore the social realities within society so that the resulting fiqh products will benefit them. This is achieved if the five main objectives—as a representation of the rights of society—are realized.¹⁴

c. Verifying the Dimensions of Uṣūl and Furū

This characteristic is based on Kiai Sahal's awareness of the inevitability of differences in Islamic jurisprudence (fiqh) as a product of understanding among scholars, both within and between schools of thought, within the configuration of the majority Muslim community's school of thought (mazhab), in Indonesia. These differences arise from differences in methods and understanding of the texts of the Qur'an and Sunnah—some scholars even add *ijma'* (consensus). Within this context, texts are clearly distinct from fiqh. Therefore, the distinction between the two needs to be clarified.

¹¹ Abdul Moqsiṭh Ghazali, "Ta'liqat Atas Fiqh Sosial Kiai Sahal," dalam *Fiqh Sosial Masa Depan Fiqh Indonesia* (Pati: PUSAT FISI IP MAFA, 2018).

¹² Jamal Ma'mur Asmani, *Mengembangkan Fikih Sosial KH. MA. Sahal Mahfudh Elaborasi Lima Ciri Utama* (Jakarta: PT. Elex Media Komputindo, 2017).

¹³ Abu Hamid Muhammad ibn Muhammad Al-Ghazali, *Al- Mustasfā Min 'Ilm Al- Uṣūl Juz II* (Riyadh: Dar al- Wathan, 1997).

¹⁴ Anas Rolli Muchlisin, "Revitalisasi Gagasan Fiqh Sosial KH. Sahal Mahfudh untuk Menyongsong Indonesia Berkemajuan," dalam *Respons Terhadap Problematika Umat dalam Bingkai Fiqh Sosial*, ed. oleh Andi Kunarti (Pati: PUSAT FISI IP MAFA & Ruang Desain, 2017).

To emphasize this distinction, Kiai Sahal uses the terms *Uṣūl* and *Furū'*. Several other Muslim thinkers have different terms in explaining the difference between *naṣ* and *fiqh*, such as the terms *al-thawābit* and *al-mutaghayyirāt* by Yusuf al-Qarḍawī, the terms revelation and understanding of revelation by Abdul Karim Sorous, the terms *al-ma'nā* and *al-maghzā* by Nasr Hamid Abu Zaid and others.¹⁵ This characteristic focuses on defining the boundaries between provisions that cannot be changed despite changing times and provisions that must continually respond to developments that may result in legal provisions that differ from those previously established. This is not a new issue in the dynamics of the application of Islamic law, given that Ibn al-Qayyim al-Jawzi long ago emphasized this possibility with the following principle:¹⁶

تغير الأحكام بتغير الأزمنة والأمكنة والأحوال.

d. Fiqh as social ethics

In this context, social Fiqh opposes formalizing Islamic law (including Fiqh) as positive state law. Kiai Sahal's awareness of this rejection stems from the fact that Indonesia stands above the interests of various groups. Islam is not the host, and therefore, historically, it has no right to prioritize its version of truth. Furthermore, the absolute application of Fiqh in Indonesia's legal and political configuration is seen as counterproductive because it is predicted to generate more conflict than harmony. Islamic law does not desire harm in the form of conflict and disagreement for its followers.¹⁷

e. Philosophical Thinking about socio-cultural issues

?This characteristic demonstrates that Kiai Sahal's scientific dimension has transcended the dichotomous divide between religious and non-religious knowledge that has long shackled Muslims and plunged them into a valley of scientific stagnation. Within this scope, Kiai Sahal is evidently aware that religion is not a theologically entrenched discipline per se. He recognizes that religion, in this case, exists within a sociological dimension, meaning that it is no longer merely a manifestation of God's absolute commandments but also a manifestation of the results of social interactions formed by various civilizations, from its origins in Mecca to its widespread spread throughout the world, including Indonesia. In this latter sense, religion has become both a symptom and a product of socio-cultural.¹⁸

Gender and Islam

Etymologically, gender is a loanword from English, meaning "sex." Within this context, gender has the same meaning as "sex".¹⁹ Several scholars have offered varying definitions of gender. According to Cristeva, gender is a cultural concept that creates distinctions in men's and women's roles, mentality, behavior, and emotional characteristics within a social construct.²⁰ This definition is nearly identical to that proposed by Mufidah. Meanwhile, according to Mansour Fakih, gender is a characteristic inherent in men and women that is socially and culturally constructed. In other

¹⁵ Muhammad Amin Abdullah, "Fiqh dan Kalam Sosial Era Kontemporer Perjumpaan Ulum al-din dan Sains Modern Menuju Fresh Ijtihad," dalam *Metodologi Fiqh Sosial Dari Qauli Menuju Manhaji*, ed. oleh Tutik Nurul Jannah (Pati: Fiqh Sosial Institute STAI Mathali'ul Falah, 2015).

¹⁶ Abdullah ibn Abd al- Muhsin, *Uṣūl Madhhab Al- Imām Aḥmad Dirāsah Uṣūliyah Muqāranah*, 3 ed. (Beirut: Muassasah al- Risālah, 1990).

¹⁷ Jamal Ma'mur Asmani, *Mengembangkan Fikih Sosial KH. MA. Sahal Mahfudh Elaborasi Lima Ciri Utama*.

¹⁸ Muhammad Atho Mudzhar, "Pendekatan Sosiologi dalam Studi Hukum Islam," dalam *Mencari Islam: Studi Islam dengan Berbagai Pendekatan*, ed. oleh Muhammad Amin Abdullah (Yogyakarta: Tiara Wacana, 2000).

¹⁹ John M. Echols dan Hassan Shadily, *Kamus Inggris - Indonesia* (Jakarta: Gramedia, 1983).

²⁰ Helen Tiemey, *Women's Studies Encyclopedia Vol I* (New York: Green Press, t.t.).

words, the characteristic inherent in women is that they are known as gentle, beautiful, emotional, or maternal creatures. Meanwhile, men are considered strong, rational, and virile.²¹ Based on these definitions, it can be understood that gender is a concept about men and women closely related to their respective social constructs. In other words, gender is a product of cultural interpretations of men and women.

Islam as a religion of monotheism makes Allah the estuary and end point of all things. The position of humans is the same in the eyes of Allah and what differentiates their levels is the level of their individual piety. In this case, Allah SWT says:

يَا أَيُّهَا النَّاسُ إِنَّا خَلَقْنَاكُمْ مِنْ ذَكَرٍ وَأُنْثَىٰ وَجَعَلْنَاكُمْ شُعُوبًا وَقَبَائِلَ لِتَعَارَفُوا إِنَّ أَكْرَمَكُمْ عِنْدَ اللَّهِ أَتْقَاكُمْ إِنَّ اللَّهَ عَلِيمٌ خَبِيرٌ

"O mankind, indeed, We created you from a man and a woman and made you into nations and tribes so that you may know each other. Indeed, the noblest person among you in the sight of Allah is the one who is most pious among you. Indeed, Allah is All-Knowing, All-Knowing."²²

In Islam, a person's good deeds or deeds are not rewarded based on gender. Every person, whether male or female, who does good will be rewarded according to what he has done. In this case, Allah SWT says:

مَنْ عَمِلَ صَالِحًا مِّنْ ذَكَرٍ أَوْ أُنْثَىٰ وَهُوَ مُؤْمِنٌ فَلَنُحْيِيَنَّهٗ حَيٰوةً طَيِّبَةً وَلَنَجْزِيَنَّهُمْ أَجْرَهُمْ بِأَحْسَنِ مَا كَانُوا يَعْمَلُونَ

"Whoever does righteous deeds, whether male or female, in a state of faith, then We will indeed give him a good life and indeed We will reward them with a better reward than what they have done."²³

Islamic law is a teaching that encompasses blessings for all of nature, including women. The fundamental values underlying Islamic teachings, such as peace, liberation, and egalitarianism, including equality between men and women, are reflected in many verses of the Quran. Numerous accounts of the important role of women during the time of the Prophet Muhammad (peace be upon him), such as those of Khadijah, Aisha, and others, have been written. Similarly, he respected women and treated them as partners in his struggle. The Quran does not teach discrimination between men and women as human beings. Both men and women have equal status in the eyes of Allah SWT. However, the problem lies in the implementation or operationalization of these teachings. Many factors contribute to this, including patriarchal cultural environments and traditions, systems (including economic and political systems), and individual attitudes and behaviors that determine the status of women and perpetuate gender inequality.²⁴

Kiai Sahal's Fatwa on Women

The fatwas included in this paper are part of Kiai Sahal's collection of fatwas contained in the book "Dialog Problematika Umat." The author limits the fatwas examined to two that, in his opinion, strongly relate to the issue of gender equality.²⁵

1. The Issue of Forced Marriage

Regarding the law on forced marriage, there are questions about fathers forcing their daughters to marry, even though the daughters refuse. Similarly, there are differences in the criteria for choosing a man between a daughter and her father, who in Islam serves as a guardian in marriage.

²¹ Mansour Fakihi, *Analisa Gender dan Transformasi Sosial* (Yogyakarta: Pustaka Pelajar, 2008).

²² Tim Yayasan Penyelenggara Penterjemah/ Pentafsir al-Qur'an, *Al- Qur'an dan Terjemahnya* (Madinah: Muja'mma' Malik Fahd li Tabā'ah al- Muṣṣhaf al- Sharīf, 1998).

²³ Tim Yayasan Penyelenggara Penterjemah/ Pentafsir al-Qur'an, *Al- Qur'an dan Terjemahnya*.

²⁴ Siti Musdah Mulia, *Islam Menggugat Poligami* (Jakarta: Gramedia Pustaka Utama, 2004).

²⁵ Muhammad Ahmad Sahal Mahfudh, *Dialog Problematika Umat*, ed. oleh Achmad Ma'ruf Asrori (Jakarta: LTN PBNU, 2014).

To answer these questions thoroughly, Kiai Sahal began by stating that marriage is inherent in human nature to fulfill biological needs (*shahwah jinsiyah*) and is indeed provided by God to achieve one of the primary goals of religion: preserving offspring in order to fulfill the duty of *khalifatullah fi al-ardh*. Furthermore, he stated that marriage is expected to bring physical and spiritual happiness, commonly referred to as *mawaddah* (love) and *rahmah* (mercy). To achieve these goals, he stated that careful consideration is needed in selecting a partner, as marriage is sacred. However, he also acknowledged the potential for disagreement between the wishes of the daughter and her parents, who serve as guardians in the marriage.

He then continued by stating that classical Islamic jurisprudence (*fiqh*) addresses the issue of disagreements between daughters and their parents regarding the choice of a partner. In Islamic jurisprudence, this discussion is closely related to the *wali mujbir* (guardian) concept. This concept of guardianship allows parents, especially those holding the status of guardian (father or grandfather) of a daughter, to impose (*ijbar*) their choice on their virgin daughter or granddaughter.²⁶ The Shafi'i school holds this opinion. He further explained that the right of *ijbar* cannot be exercised arbitrarily by authorized guardians. Several conditions must be met. First, there must be no obvious hostility between the child and the guardian known to the surrounding community. Second, the child must not be hostile to the prospective spouse the guardian chooses, either openly or implicitly. Third, the man chosen by the guardian must be of equal standing and capable of fulfilling the obligations of a husband. Fourth, he must be able to pay the dowry.²⁷

In addition to these conditions, other conditions result from the NU Bahtsul Masail (National Consultative Assembly) during the Congress, which specifically limits the validity of the right of *ijbar* to cases of extreme urgency and serious harm. Therefore, considering this anticipatory permissibility, he stated that this permissibility does not mean permissible but rather reprehensible. Therefore, seeking the child's consent is considered *sunnah*.²⁸

He also explained that the term "equality" in one of these conditions refers to what is known in Islamic jurisprudence as the concept of "*al-kufu*" or "*kafa'ah*." This concept implies equality in terms of lineage (freedom, profession, and religion). Therefore, a pious woman is not equal to an immoral man. Similarly, a respectable woman from a respectable family is not equal to a man from a less respectable family.²⁹

Apart from several provisions and prerequisites regarding the right to *ijbār*, there are opinions of Hanafi imams who absolutely eliminate the right to *ijbār* for women, whether they are virgins or widows, for logical reasons. Kiai Sahal said that their reasons were guided by the principle of consent in the sale and purchase agreement. Willingness in buying and selling goods alone indicates the contract's validity, especially in a marriage contract where the subject and object are human beings with rights over themselves. Willingness is definitely a crucial element.³⁰

Apart from rational arguments, this group also includes arguments from the hadith text narrated by Imam Ibn Majjah, which contains a woman's complaint to the Prophet about her fate in being married off by her father to her brother's son, whom the woman did not like. Then Rasulullah SAW permitted him to have the right to annul the marriage. However, this permission was not used and the woman then said, "I allow my father's actions, I just want to tell the women that their parents have no rights over them."³¹

Furthermore, he also mentioned the provisions contained in the KHI Articles 16 and 17 concerning the consent of both prospective bride and groom who wish to marry and the consequences if there is no consent from one or both parties, the marriage cannot take place. In

²⁶ Husein Muhammad, *Fiqh Perempuan Refleksi Kiai atas Tafsir Wacana Agama dan Gender* (Yogyakarta: IRCiSoD, 2019).

²⁷ Sudarsono, *Pokok-pokok Hukum Islam* (Jakarta: Rineka Cipta, 1992).

²⁸ Sulayman ibn Muhammad al-Bujairami, *Tuhfah al-Ḥabīb 'alā al-Sharḥ al-Khaṭīb* (Beirut: Dar al-kutub al-'Ilmiyah, 1996).

²⁹ 'Abd al-Rahman al-Jaziry, *al-Fiqh 'alā al-Madhāhib al-Arba'ah Juz IV* (Beirut: Dār al-kutub al-'Ilmiyah, 2003).

³⁰ Husein Muhammad, *Fiqh Perempuan: Refleksi Kiai atas Wacana Agama dan Gender* (Jakarta: LKiS, 2001).

³¹ Yusuf Qaradhawi, *Halal dan Haram dalam Pandangan Islam* (Surabaya: PT Bina Ilmu, 1993).

closing, he concluded his argument by stating that, based on several previous theoretical foundations, he stated that the consent of the prospective bride and groom should receive appropriate attention. Seeking the consent of a daughter is a good thing, and this is implied in a previous saying of the Prophet Muhammad. He also emphasized the importance of realizing that humans are not merely physical but also created with a metaphysical soul, one element of which is inner feelings, whose rights must also be fulfilled. Therefore, happiness will be achieved perfectly by fulfilling both physical and spiritual needs. Based on this reality, everything is important to consider carefully, referring to both aspects, including marriage.

Fatwa Analysis

Based on the facts contained in the fatwa, it can be understood that Kiai Sahal has implemented a paradigm shift in thinking commonly found in Islamic boarding schools, particularly those affiliated with the Nahdlatul Ulama organization, where the majority of its members adhere to the Shafi'i school of thought. He adopted an eclectic approach, comparing the opinions of scholars from the four schools of thought and referring to the objectives of sharia, namely realizing human welfare and eliminating harm.

In the case of the guardian mujbir, he believes that the previously differing provisions among scholars regarding the permissibility of a guardian to impose his will (*ijbar*) on his daughter's marriage to a man of his choice is a reactive action. This is based on the strict prerequisites set by the scholars that permit *ijbar*. Furthermore, based on the *maqāṣid al-shari'ah* (protection of offspring and honor), he declared that marriage is a sacred institution in Islam. Therefore, all actions must be based on careful consideration and not solely driven by one party. This is especially true in this case, as the daughter will navigate the marital journey.

Furthermore, he recognized that Islam is a religion of justice. Therefore, there is no discrimination between men and women in choosing a partner. The original law or principle of any contract is the consent of both parties, especially in the case of marriage, which the Quran calls *mitāqan ghalīẓan*. Therefore, it is appropriate for both men and women to live their lives with the partners they accept without coercion from any party. Based on this fatwa, Kiai Sahal issued a recommendation advising against the coercion of daughters into marriage. This fatwa is a gender-just legal product because it positions women as legal subjects, deciding to accept or reject a marriage a matter of necessity.

2. The Issue of Women Becoming Leaders

Regarding the controversy surrounding women becoming leaders, questions arise about Islam's perspective on the issue and what kind of women are permitted to become leaders. This is an important topic to discuss because the discourse on women's leadership is increasingly widespread today. In response to this question, Kiai Sahal provided an answer, presenting a general argument that "emancipation" is now very familiar to us, as evidenced by the many women who have become leaders in various fields worldwide. Initially, this movement aimed to eliminate male tyranny over women's rights, but now it seems to be more than just that; it has also expanded into the realm of equal rights and obligations between men and women. This includes women's right to become leaders. This raises the question of whether Islam permits women to become leaders in organizations or even countries.

Naturally, some people are against the idea of women becoming leaders. They rely on the Naqly argument, namely, Surah An-Nisa', verse 34, as the basis for their rejection.

الرِّجَالُ قَوَّامُونَ عَلَى النِّسَاءِ بِمَا فَضَّلَ اللَّهُ بَعْضُهُمْ عَلَى بَعْضٍ وَبِمَا أَنْفَقُوا مِنْ أَمْوَالِهِمْ

"Men are the leaders of women, because Allah has made them excel others, and because they (men) have spent out of their wealth." (An-Nisa' 34)³²

The verse above clearly states that men are leaders, not vice versa. However, this statement is still ambiguous and requires further review for more detailed explanation. The commentary on the Quran by Al-Maraghi explains that men have many advantages over women, both physically and intellectually. Therefore, men have greater rights and obligations than women, making them more suitable to be leaders.³³

So, what if the abilities of men and women are equal? Isn't the benchmark for leadership determined by knowledge (intellectual ability)? As we know, women today are different from women in the past. Many women are now educated, not only are they also actively involved in various fields, and their roles as decision-makers are already significant. Suppose it is true that male leadership is linked to intellectualism and activity, as stated in the verse above (*bi mā faḍḍalallāh wa bi mā anfaqū min amwālihim*). In that case, a woman can also become a leader, of course, a woman who meets the leadership criteria, because in Islam there is no strict rule that only men have the right to be leaders.

Fatwa Analysis

As with his previous fatwa on the position of women in the family, particularly regarding their authority to provide opinions, Kiai Sahal's fatwa on women's leadership also reflects his steadfastness in applying the concepts he initiated in social jurisprudence. He carefully analyzed the perspectives of Islamic scholars, using socio-cultural aspects as a basis for his considerations. This was done out of his awareness of the possibility of legal change within legal *ijtihad* (jurisprudence) based on the Quran and Hadith if social reality proved that pre-existing opinions were no longer relevant. Of course, he did not immediately offer entirely new ideas, as despite his ability to conduct *ijtihad*, he always prioritized the thoughts of previous scholars who were experts in their fields.

This thinking style is characteristic of NU scholars and Islamic boarding schools (Pesantren). However, he did not completely ignore social realities, as is commonly found in some NU LBM deliberations, which only examine the issue of the existence or absence of 'ibārah (reference arguments in the form of texts containing opinions of scholars in classical texts). With five main characteristics that also serve as a methodology for social jurisprudence, he attempted to depart from these standards and place greater emphasis on realizing the public good. This fatwa demonstrates that he did not rely on arguments from scholars, such as those in Ibn Kathīr's commentary, which states that male leadership over women is absolute for one or more reasons. He preferred the view of Muṣṭafā al-Maraghi, who offered a rational interpretation, stating that men's positions in the verse are superior due to fulfilling the prerequisites for the benefit of Allah and the obligation to provide for others. In other words, the legal basis for the law does not lie in the male or female sex. Rather, the legal basis lies in men's God-given abilities, namely, physical strength and the ability to provide for others. As previously mentioned, his *fiqh* considerations do not solely rely on existing 'ibārah as the sole benchmark. He also considers socio-cultural aspects, noting the current social reality that women have significantly changed, individually and socially. Their interactions in education and other social spheres are no longer utopian. He does not dismiss that women possess the capacity and competence to become leaders. In fact, he uses this reality as the basis for his argument in the fatwa.

Based on the analysis above, the author observes that Kiai Sahal has moved beyond the general opinion regarding the polemic surrounding women becoming leaders, and his fatwa on this matter is gender-just because it has conducted a balanced analysis of the relationship between men and women, without basing its considerations on gender.

³² Tim Yayasan Penyelenggara Penterjemah/ Pentafsir al-Qur'an, *Al- Qur'an dan Terjemahnya*.

³³ Aḥmad Muṣṭafā al-Marāghī, *Tafsīr al- Marāghī* (Kairo: Muṣṭafā al- Bābi al- Ḥalabī, 1946).

CONCLUSION

This article emphasizes that the concept of social fiqh formulated by Kiai Sahal Mahfudh is a methodological response to the inability of classical fiqh to address contemporary issues, particularly in relation to community welfare. Rooted in the pesantren tradition and classical texts, Kiai Sahal developed a contextual approach that prioritizes *maslahah*, distinguishes between *usul* and *furu'*, and positions fiqh as social ethics rather than state positive law. These characteristics demonstrate a transformative effort to bridge the gap between textual religious understanding and dynamic social realities, while simultaneously creating space for interaction between religious and socio-cultural dimensions. Social fiqh, therefore, does not stop at preserving tradition but functions as a practical instrument that accommodates societal needs within the framework of *maqāṣid al-sharī'ah*.

In the realm of gender, Kiai Sahal's thought reflects a bold ijtihad oriented toward substantive justice. Through his fatwas on forced marriage and women's leadership, he reaffirmed the principles of consent, equality, and the fulfillment of both spiritual and social rights as the foundation of law. This perspective does not rely solely on textual authority or classical opinions but instead integrates rational arguments, *maqāṣid al-sharī'ah*, and contemporary social realities. Thus, the social fiqh he established emerges as an alternative paradigm that is inclusive, egalitarian, and relevant to the demands of the times, while underscoring that fiqh must continuously evolve from being merely textual to becoming a social praxis that realizes justice and the welfare of society.

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