

# WOMEN'S POLITICAL RIGHTS IN ISLAMIC LAW PERSPECTIVE

**Moh. Fauzi**

IAIN Walisongo Semarang  
email: fauzi\_umma@yahoo.com

## Abstract

Di sebagian besar Negara Islam, masyarakatnya selalu didominasi kaum laki-lakinya. Hal ini disebabkan sistem patrilineal yang dianut masyarakatnya. Di dalam kehidupan masyarakat seperti ini, hak-hak perempuan, termasuk hak untuk berpartisipasi dalam politik sangat sedikit sekali memberikan hak ini kepada perempuan sebagai pemilik sejatinya. Padahal kalau perempuan diberikan hak berpolitik ini mereka akan mampu ikut menentukan kehidupan masyarakat bahkan kehidupan berbangsa dan bernegara. Tulisan ini mendiskusikan hak politik perempuan dalam pandangan Hukum Islam. Hasil kajian menunjukkan bahwa Islam sangat menjunjung tinggi hak-hak perempuan. Sebagaimana patnernya kaum laki-laki, perempuan pun memiliki hak untuk memainkan peran public, termasuk dalam ranah politik.

**Keywords:** women, political rights, islamic law

## A. Preface

Most of the "Muslim States"<sup>1</sup> -like other countries in Arab Peninsulas which have Moslem majority- was a male-dominated society. Robert Roberts

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<sup>1</sup>The term "Muslim States" related the Muslim world that is today divided into separate sovereign nation-states. A few of these states have been specifically declared as Islamic Republics, some others indicate in their Constitutions that Islam is the religion of State, while most are only identifiable as Muslim States on the basis of their predominant Muslim population and the allegiance of the people to Islam. Other criterion for defining modern Muslim States is membership of the Organization of Islamic Conference (OIC) that all Member States of the OIC are definable as Muslim States is supported by the first charter-objective of the Organization, which is the promotion of Islamic spiritual, ethical, social, and economic values among the Member States. While the OIC Member States exist as independent sovereign States, they are theoretically linked by their Islamic heritage, traditions, and solidarity. See, Mashood A. Baderin, *International Human Rights and Islamic Law* (New York: Oxford University Press, 2003), p. 8. Based on that definition, Turkey can be

wrote: "according to the theory of the Arab genealogists the groups were all patriarchal tribes, formed by sub-division of an original stock, on the system of kinship through male descent".<sup>2</sup>

Not which is its societies Muslim majority, the societies to which another Semitic religions such as Judaism and Christian were culturally regarded as androcentrist in manner, in which gender relation was "male-dominated".<sup>3</sup>

In the male-dominated society, there is a minimum women's political rights given for them. Where as participation in political life -be it following political issues or taking political actions, voting, running as a candidate or taking part in decision making mechanisms- is important for individuals to be linked to the political system. If they participate in politics, women can more efficiently pursue their rights and have a voice on policies regarding family, society and national affairs.

Those women's political right will be looked at in the light of Islamic law. In this case, it will be elaborated history of Muslim women political activities and how *salaf* Muslim scholars opinion about women' political participation.

This paper has significance to add the treasures of gender literature. Further significance in particular is to give theoretical contribution for women empowerment which will bridge and close the gender gap in political participation between men and women, especially in Indonesia which has Moslems majority.

Word "Political" (adj.) has mean of the State, of Government, of public affairs in general; protection given by a State to someone who has left his own country.<sup>4</sup> Whereas "right" it means proper authority or claim, the State

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called as Muslim State for two reasons; because of its predominant Muslim population and the the allegiance of the people to Islam, and its membership of OIC.

<sup>2</sup>Robert Robets, *The Social Laws of the Qoran* (New Delhi: Kitab Bhavan, 1977), p. 4.

<sup>3</sup>Nasaruddin Umar, "Gender Biases in the Quranic Exegesis", *Paper presented in the Short Course on Gender, Reproductive Rights and Islam*, by Center for Women's Studies IAIN Sunan Kalijaga, 6-7<sup>th</sup> September 2001.

<sup>4</sup>AS Hornby, *Oxford Advance Learner's of Current English* (New York: Oxford University Press, 1987), p. 646.

of being justly entitled to something; something to which one has a just claim; something one may do or have by law. The combining two words "political right" is one of women's rights it means of equality with men (in political, economic, social).<sup>5</sup> In that right, there was proofed by participating that mean act of participating; "participate" it means have a share, take part.<sup>6</sup> So, women's political rights mean take part of women in political and public affairs.

### **B. Women's Political Action in the Light Islam**

From Islamic viewpoint,<sup>7</sup> human actions are all regarded as duties. It follows that political actions are also viewed as duties. The obligatory nature of any actions, including the political ones, is based on the concept of vicegerency or human representation of God on earth (*khilafah*), which includes both men and women and entails personal as well as corporate responsibility to fulfill God's commands on earth. Both then, as equal partners, share the onus or duty of running the political affairs of their society for they are friends (*auliya*) to each other, enjoin what it just and forbid what is evil. And, as we know, all of the works of the Judiciary, Executive and Legislative power are there to enjoin good and forbid evil. The Muslim women, therefore, like the counterpart -the man- has a broad political responsibility and an important role to play in public life, a role that was put at the service of the nascent Islamic community in Medina and for a while thereafter in the early period of Islam. For women, especially during the Prophet's time, were very active socially and politically. They were allowed and even encouraged to participate in the process of building up the Medina society and they proved to be up the task.

Muslim women started their political activities the moment they embraced Islam. They defended the new religion against fierce opposition

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<sup>5</sup> AS Hornby, *Oxford Advance Learner's*, p. 731.

<sup>6</sup> AS Hornby, *Oxford Advance Learner's*, p. 612.

<sup>7</sup> Women's political action in the light of Islam and Muslim scholars opinion be quoted from Haifaa A. Jawad, *The Rights of Women in Islam An Authentic Approach* (New York: ST. Martin's Press, 1998), p. 83-99.

from both their own families and society at large; they endured abuse and ill treatment and when pressure mounted against them they decided to leave home, seeking refuge with their fellow Muslims rather than abandon their belief and faith. All these actions are regarded as political activities in contemporary terms since they include a challenge to the old political system, a protest against unjustified abuse and torture, and a rejection of suppression and denial of freedom of belief and expression. With establishment of Islamic state, the role of women in the political affairs of the society gained momentum. They became part of the nation and effective members of community, and fully involved in public affairs. For instance, right from the beginning, women, like men, gave support and allegiance to the political system which was set up under the leadership of Muhammad. This was done through the so called *bay'ah*.

Contrary to the traditional image of women being secluded and suppressed, women in early Islam participated in armed conflict either by organizing food and water and taking care of the wounded or through playing a crucial part in the actual fighting when it was needed. Women's involvement in politics, furthermore, manifested itself by the fact that they were alert and actively opposed to any rulers who they thought were deviating from implementing Islamic principles and maintaining a just society; like the case of women who publicly opposed Umar Caliph for passing a law restricting the dowries of women, and case of Aisha who genuinely opposed Ali Caliph and fight him for failing to find the murderer of Uthman Caliph.

It must be stressed that the high level of political (as well as social) activities performed by women in early Islam could not have been achieved without the realization of three important and interrelated factors. First, the recognition of the political ability or competence of women. Second, this recognition or acknowledgement gained momentum when women became politically conscious or aware of their responsibilities in society. An awareness which Muhammad undertook to raise and promote among all women. This was accomplished through instructing women to gain knowledge and education and encouraging them to attend public gatherings

especially Eid celebrations, which often took place in mosques. Even when they were menstruating this being an illustration that although women were at certain times relieved from obligations of their daily worshipping, this did not lead to an automatic reduction in their duty to participate in annual public meeting. On the contrary, they were urged to attend Eid festivals and congregational Jum'ah (i.e. Friday) prayers, which were regarded as general political meeting during which important issues concerning the whole nation were discussed and debated.

Muhammad pushed ahead the process of social change and ensured that the community would accept and regard women's activity in the political sphere as an asset and a valuable contribution to a healthy society. This was fulfilled: firstly, through the Quranic injunctions and Hadith regulations, both of which encourage women to be energetic and creative, while at the same time, exhort men to help them fulfill their roles as active equal members of the community. Secondly, the example set by the Prophet in dealing with his family in particular and the companions women in general. He constantly encouraged them to take part in all aspects of life; social, political, economic and religious.

In spite of mentioned above, there is a general tendency among Muslims has been one which opposes women's involvement in politics. Most scholars prefers an interpretation that enjoins women to stay at home and not to interfere in public life. They argue that women are incapable of handling public affairs. Therefore, it is better for them to perform the work they are good at that is to be mothers and wives only. According to them, women never participated in the politics of the Muslim throughout their history. While about different social, political and economic activities played by women during the Prophet time, the scholars respond by insisting that those were mere individual cases which cannot be cited to legitimize the participation of women in political affairs. Anyone who thinks to the contrary is mistaken, they say, and does not comprehend history. For Aisha case who played a pr early prominent role in politic, they argue that although she fought a famous battle, in the end she regretted her act and ask for forgiveness. Consequently, it cannot be claimed that her act is a proof for

the participation of Muslim women in politics, for it was an individual act which proved to be a complete failure.

It is important to stress that those who oppose women's involvement in politics differ among themselves regarding the level or degree of women's exercise of power. For example, while some are prepared to tolerate the idea that women can have limited access to politics, others deny them any political rights. However, they all agree that women cannot be allowed to hold ministerial positions or become prime minister or president of a state. They base their prohibition on the following:

1. Qur'an, Surah An-Nisa', verse 34 "*Ar-Rijal Qawwamuna 'ala an-Nisa' bima Fadldla Allahu Ba'dlahum 'ala Ba'dlin wa wabima Anfaqu min Amwalihin'*", has virtually closed the door to women's advancement to higher positions. For them, this verse has sanctioned men's authority over women and made the domain of politics or power an exclusively male preserve. According to Haifaa Jawad, this verse (4: 34) deals exclusively with family affairs and has nothing to do with the relationship between men and women in public life.
2. Two Hadith are of particular importance in this issue. *First*, Hadith on women deficiency in her intelligence and deficiency in her religion. This Hadith is used by the opponent of women's rights in politics, to prove their point to saying that women cannot be trusted with handling public matters. They stress that the Hadith makes it clear that women cannot have power over men because they are spiritually as well as cognitively deficient. However, there are those who see the Hadith differently. Some do not accept it and it as fabricated or at best a weak Hadith (*dla'if*), which ought to be abandoned because weak Hadiths usually do not carry any legal effects. Others acknowledge the Hadith as authentic, but stress that it has been grossly misinterpreted. They argue that the deficiency mentioned in the Hadith does not refer to natural but rather specific deficiency. *Second*, Hadith which was Rasulullah was informed that the Persians had crowned the daughter of Kisra as their ruler, he said, such people as ruled by lady will never be successful. The opponents argue that the Prophet in this Hadith advise Muslims not to follow in the footsteps of the Persians who appointed a woman as their leader and consequently led them to a

disastrous end. For them, the Hadith contains a clear-cut warning to be vigilant and not to allow women to overstep the line and enter into politics. Otherwise, their fate would be the same as that of Persia; defeat and humiliation. However, one has to disagree with this view for two reasons. First, the Hadith deals mainly with a specific case, namely, the situation of Persia at the time of the Prophet. As such, it has no legal ruling and therefore it cannot be generalized to include all women at all times. Second, if the Hadith is to be accepted as general, it would surely contradict the Qur'an (about Queen of Shaba, Bilqis who ruled and led people to success and prosperity) and this cannot happen.

Although the wording of the second Hadith -daughter of Kisra leadership- does not specifically contain a prohibition on a woman being elected as a head or leader of an Islamic State, one school of thought contrues from it such a prohibition on the argument that consideration of the nation's prosperity is an important determinant of who is elected to its leadership. Some scholars considered to be an isolated Tradition (*Ahad*) and some others have expressed doubts about its authenticity on the grounds. That the Hadith reported by Abu Bakrah during the Battle of the Camel in which Aishah the widow of Prophet Muhammad led and commanded an army against Ali ibn Abi Talib. According to Usmani -like Baderin quoted-, despite its report on the said occasion many of the illustrious companions of the Prophet still participated in the battle under the leadership of Aisha without anyone disclaiming her leadership. He thus concluded that the Hadith did not connote a prohibition of the appointment of a woman as Head of State but it is generally an advice indicating that it may not be advisable to appoint a woman as Head of State.<sup>8</sup>

3. The practical experience of the early community. The opponent point out that there is no precedent in early Islam which indicates that women were appointed to high positions, despite the fact that there were ample opportunities for such appointments. This point can be responded that Umar who appointed a woman (al-Shafa') as superintendent in a market in Medina. This position was, at the time, more of a political, than a business office, as the Market was not only a center

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<sup>8</sup> Baderin, *International Human Rights*, p. 161.

for trading but also a focal point for political activities. Also, the fact that few women were at the top of the administration does not reflect badly on the abilities of women to run public offices. So, although the social environment was favourable and allowed women greater mobility in society, yet it was still less willing and less amenable to the idea of entrusting women with governmental positions. However, social practices should not be allowed to take precedence over Divine instructions. Most importantly, they should not be used as a pretext to continue to neglect or even abandon the Islamic principles, which oblige women to have their shares in public life and be active and effective in society. For social customs are subject to change, they change with time and place, while Divine principles are meant for all times and all places. As such, the emphasis should be on the Divine tenets not social customs.

4. The consensus (*Ijma'*); there are those who stress that there is an agreement among scholars on the so-called "unsuitability" of women to hold public office. However, invoking the issue of consensus is no more than a fallacy since there is hardly any unity among them on this subject. For example, some scholars prohibit women as a Judge, but Abu Hanifah allow her except under penal code (*jarimah*), meanwhile Ibnu Jarir Al-Thabari allow her without any restrictions.
5. *Maslaha* (welfare). According to the opponents, permitting women to occupy public positions would be detrimental to both society as well as family. For them, top jobs require courage, wisdom and strength, and women in general lack these characteristics. They are feeble and can be easily misled. So, they can not be trusted with executive roles, especially leadership roles. The opponents said, even if there are some women can handle both roles (private and public), they are in reality exceptions. It was unwise to set up and accept rules on rare cases. It must be stressed, however, that those who think that female leadership would damage state-interest base their view on the assumption that women are, by nature incapable of coping with public responsibilities. These opponent reasons was answered by Haifaa A. Jawad, this not case as was explained earlier, women like men are qualified to run state-affairs. Also the opponents view public positions, especially state leadership as a one-person responsibility, thus neglecting the *shura*

principle, which makes state affairs a collective responsibility. Moreover, they regard the state system as more or less similar to that of the Medinan or tribal system with limited scope and structure, hence, confining the Islamic concept of state within a particular historical context. In doing so, they contradict the universal vision of the Islamic state.

6. Cut the pretext (*sad al-dzara'i*). The opponents stress that leadership positions require public display and constant contacts with people. This would inevitably facilitate mingling between the two sexes, an issue which is clearly prohibited in Islam. According to them, the Qur'an explicitly orders women to stay at home and avoid any public exposure. Therefore, it is not appropriate for them to take on public duties, because this would expose them to all forms of public immorality. Haifaa Jawad comments that this view is certainly out of context with both the Qur'an as well as the practical Sunnah of the Prophet. For instance, the Qur'an in Chapter 33, verse 32, ordered solely the Prophet's wives to stay at home and not to display any public appearance, because they were regarded as the mothers of the believers, but other women were not included. For they used to take part in public worship, seek knowledge and education, participate in *Jihad*, enjoy wider social interactions, and attend vocational training. So, the verse deals with a specific case, namely the status of the Prophet's wives, and therefore, it is not right to generalize it to include other Muslim women. In doing so, they reject the practical Sunnah of the Prophet, and this can not be right. It must be made clear, moreover, that of all social interactions only *khulwa* (seclusion), promiscuity, lustfulness, and extravagance or excessiveness are prohibited in Islam. Other societal activities, which are needed for the conduct of normal and respectable social life are allowed and encouraged. So, to use *fitna* (temptation) as an excuse in order to change a religious ruling is indeed unjustifiable. For women, especially now days, can not perform their duties without meeting men.

From mentioned description above, Haifaa Jawad concluded that women in Islam -at least theoretically speaking-, are entitled to full rights as citizens. These rights were put into practice during the Prophet's time and in the period of the early Caliphate, during which women enjoyed the privilege

of fulfilling their private as well as their public duties. Early Muslim society never embraced the concept of social division of labour between the two sexes. It entertained no such ideas as the differentiation between public and private roles, as far as women were concerned, nor the subordination, as is the case today, of the public life and the private one. Indeed, both roles were equally valued, and women were expected to enjoy and excel in them.

That condition to be contrary with the decline of the first Chaliphate. Like other aspects of Muslim lives, the position of women started to deteriorate. Slowly but surely their rights faded away; firstly, they were discouraged from taking part in public life, and secondly, they were ordered to withdraw and hide behind four walls. This was done by separating the private from the public role and subordinating the latter to the former. Hence, and in time, women became passive, yielding and publicly less visible, with little involvement in public matters. It was left entirely to men, who were only too happy to take over, to decide their own destiny. For centuries women were forced to accept humiliation and exploitation. To ensure they were kept under their whips, the ultra-conservatives used many misogynistic interpretations of Islam. Under the false name of Islam they virtually stripped women of every rights: no to education, no to instigating divorce, no to traveling alone, no to leadership positions, no to work outside the house, and so on.

This form of repression was bound to create rebellion, especially among the educated elite who had to rebel against the status quo and lead the liberation movement. But the secular feminist in their quest for change decided to break away with the tradition and fully embrace Western ideals. So convinced are they by the superiority of Western values that they see no way for the liberation of Muslim women other than via the Western model, to the extent that they believe that to be Western is to be free and to be Muslim is to be slave. Content that they have chosen the right path for salvation, they launched a crusade against anything to do with Islam. Indeed, they have displayed self-righteous and self-conceited attitudes, viewing themselves as superior to ordinary Muslim women.

Through that secular feminist approach is failure. So, it is only through the authentic Islamic way that Muslim women will achieve freedom and self

respect, and will be able to demonstrate the beauty of their religion and dispel the misconceptions surrounding the true position of Islam regarding women.

In according to Haifaa point of view on equality right between men and women, Baderin said that the Qur'an states in many verses that sovereignty of the heavens and earth belong to God, but also mentions in other verses that God has made human beings agents and representatives on Earth (*khalifatullah fi al-ardl*). Based on these verses, Islamic scholars and jurists agree that this representative capacity of human beings is conferred upon all human beings alike. Besides, almost all contemporary Islamic legalists concur that every Muslim has the right and the opportunity to participate either directly or indirectly in the public affairs and electoral processes of the State.<sup>9</sup> Finally, Baderin conclude that there is no verse of the Qur'an that specifically prohibits a woman from being elected to any public office under Islamic law. The wording of the Tradition (*Hadith*) itself leaves room for the different opinions that have been expressed by Islamic jurists concerning its interpretation. The controversy surrounding the election of woman to the highest political office of the State is not unique to Islam. The problem exists in almost all societies of today in different forms, albeit informally.<sup>10</sup>

### C. Closing

According to the authentic Islamic tenet, women, like the counterpart - the man- allowed to participate and to play in public life, whereas in political sphere. []

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<sup>9</sup> Baderin, *International Human Rights*, p. 157.

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