

Abdullah Saeed: Islamic Law, Human Rights and Women Towards Equality

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ABSTRACT: This article aims to understand Abdullah Saeed's thoughts on Islamic law and human rights and how to harmonize Islamic law and human rights. As written by Abdullah Saeed, the problem related to human rights is a concern of Saeed because of the debate between Islamic law and human rights. It seeks to find a solution to how Muslims respond to the debate to reconcile human rights discourse with Islamic norms and values. This problem has given rise to international human rights instruments that affirm gender equality and protect women from discrimination. The emergence of human rights brought from the West, which is predicted to solve the problem of discrimination against women, is considered not to provide significant changes to women in the world because international law and its application in non-Western cultures are not in harmony with Islamic law and even become a controversial issue. This library research tries to examine Saeed's thinking and find solutions related to the debate on Islamic law, human rights, and gender equality. Possible reconciliation so that there will be a balance between international human rights and Islamic law.

KEYWORDS: Saeed, Islamic Law, Human Rights, Gender Equality

I. INTRODUCTION

Human life in the world will never be separated from various kinds of problems, but every problem must have a solution to solve it. As a *Kalamullah*, the Qur'an is a guide and a solution to various problems in humanity's life (Khalli et al., 2020). This is where humans try to find answers, meanings, or God's will, which occurs with different interpretations from the *mufassirs* (Rofiq, 2020). So far, many in the tradition of tafsir have experienced a freeze in thought, resulting in scientific backwardness and being unable to answer the problems of Muslims (Ridwan et al., 2020). Many consider that classical interpretation is like a sacred holy book and cannot be criticized or reinterpreted, giving rise to debates related to Islamic law, when in fact, classical interpretation is only Dhani, which can be criticized or perfected (Raza et al., 2021).

Scholars have recently considered that Islamic law offers various concepts, values, and moral principles that can be adapted to establish human rights (Mufarroha & Hakim, 2020). For example, an-Na'im argues that Islamic law can be reformed by international human rights principles that use the *reverse process* of *naskh* (Fatwa, 2023). This is in the view of Mahmud Mohamed Taha. An-Na'im argues that the verses of the Qur'an do not seem to be by international human rights because they are almost entirely descended in the Medina phase, where the end of the Prophet's life can be ruled out in favor of the earlier Mecca verses (Nisa' et al., 2023).

For Muslims themselves, Islamic law is based on divine demands, and they believe that human rights are enshrined in Islamic law, which is seen as coming from God, who has a higher position than other human rights ideas, so human rights are considered an obligation and not a right (Fitriyanah & Mawardi, 2022). This needs to be emphasized and underlined, as Islamic law is diverse and will give rise to diverse interpretations (Mochamad, 2020). Islamic law results from human thought, so it is also inappropriate to call it a demand of God without human intervention (Siswanto & Islamy, 2022). The close relationship between the Qur'an, hadith, and Islamic law does not mean that Islamic law's overall structure is commensurate with God's command.

The problems related to human rights written by Abdullah Saeed in his book *Human Rights and Islam: An Introduction to Key Debates Between Islamic Law and International Human Rights Law* are a concern of Saeed because of the debate between Islamic

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law and human rights and trying to find a solution on how Muslims respond to the debate to reconcile the discourse of human rights with Islamic norms and values (Saeed, 2018a). This paper focuses more on one of the controversial issues in the discourse on Islam and human rights (HAM), namely the status of pre-election in Islam. Here, there is a strong public perception that Islam discriminates against women. Women are often ostracized and oppressed, and they do not even have the same rights and freedoms as Muslim men (Saeed, 2018b). Women are often the target of crime, even in Muslim-majority countries—the occurrence of violence, sexual harassment, and even murder. There is a practice of violence in which the victims are women.

The view of women being considered inferior to men was a socio-cultural norm in most societies worldwide (Kotsonis, 2020). Even in pre-modern Western culture, women of all classes, regardless of their independent status, are under the authority of men and are considered property in the eyes of the law (Afanasieva et al., 2020). The same also happens in the Arab culture where Islam appeared; discriminatory attitudes towards women are also common, such as the example mentioned in the Qur'an of a baby girl who is considered a disgrace so that the baby is killed and committed to a particular tribe, the practice of polygamy, trafficking in women and many other similar things that discriminate against women so that women do not get justice and are deprived of their human rights (Tabassum et al., 2021).

The emergence of human rights brought in from the West, predicted to solve the problem of discrimination against women, is considered not to provide significant changes to women worldwide (Aini, 2024) because international law and its application in non-Western cultures are not in harmony with Islamic law and have even become controversial (Afif et al., 2021). Therefore, this paper tries to understand Abdullah Saeed's thoughts related to international human rights and how to align them with Islamic law, as well as how to deal with the problem and deal with the problem.

II. METHOD

The research method used is qualitative with a library research approach. This research will examine Abdullah Saeed's thoughts on Islamic law and how he interacts with contemporary issues related to human rights, especially in the context of women's equality. The primary data source in this study is Abdullah Saeed's writings, including books, scientific articles, and other writings that discuss the topic of Islamic law and women's rights. In addition, this research will also use relevant secondary literature, such as books and articles from other authors who have researched Saeed's thoughts and related issues in the context of Islamic law and human rights. The data analysis technique used is content analysis, where the research will explore the main themes in Saeed's thinking related to Islamic law and gender equality. The analysis results will focus on understanding how Saeed reconciles the principles of traditional Islamic law with modern values of human rights and women's equality.

III. RESULT AND DISCUSSION

A. Biography of Abdullah Saeed

Abdullah Saeed is a *Sultan of Oman Professor of Arab and Islamic studies*. He works as *Director of the Center for the Study of Contemporary Islam* at the University of Melbourne, Australia (Umala & Mumtaza, 2022). Saeed was born in Maldives and became an immigrant in Australia. His education was pursued in the Arab and Western worlds, and he peaked his career in Australia as a Professor of Islamic studies at the University of Melbourne (Fanani, 2019).

Saeed's educational history began in 1977 in Arabic language studies at the Saudi Arabian Arabic Language Institute, then continued his secondary school at the Saudi Arabian Secondary Institute, graduating in 1982. He earned his B.A. (*Bachelor of Art*) in Arabic literature and Islamic Studies in 1986 at the Islamic University of Saudi Arabia in Medina; then, in 1987, he obtained a bachelor's degree in Middle Eastern Studies at the University of Melbourne, Australia. He earned his MA (*Master of Arts*) in 1994 at Melbourne University, majoring in linguistics; then, in 1992, he earned a PhD (*Doctor of Philosophy*) in Islamic Studies at the University of Melbourne, Australia (Zakka, 2018).

Saeed's career began in 1988 as a part-time tutor and lecturer in Arabic language and literature and Middle Eastern studies at Melbourne University, then also became the coordinator of Arabic language and Islamic Studies courses at the King Khalid Victoria Islamic College in 1991 (Ummah, 2019). In 1993, Saeed became a consultant at the King Khalid Victoria Islamic College and an assistant lecturer in the Arabic Studies course in the Department of Asian Languages and Anthropology, Faculty of Languages, University of Melbourne. Saeed's career accelerated so that in 2000, he was appointed as a senior lecturer and became a member of the Associate Professor in 2000 (Kholily, 2019).

Saeed's works are very diverse, among his works that have been published are; *Sacred Time and Sacred Place in Islam* was published in 1990 by Daikin University Press, *Islamic Banking : A Study of the Prohibition of Riba and in Contemporary Interpretation* was published in 1996 in Leiden, *Introduction to Modern Standard Arabic* was published in Melbourne in 2000, *Modern Standard Arabic*, Books I to 4 co-authored by C Mayer and A.G. Raheem in 2000 and 2001 by the Asia Institute, *The Essential Dictionary of Islamic Thought* was published in Adelaide in 2001, *Muslim Communities in Australia* was published in 2002 in Sidney by the University of New South Wales Press, *Islam and Political Legitimacy* was published in 2003 in London and

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New York, *Freedom of Religion Apostasy and Islam* was published in 2004 in Hampshire by Ashgate Publishing, *Muslim Australians: Their Beliefs, Practices and Institutions* in 2004 in Canberra, *Contemporary Approaches to the Qur'an* in 2005 published by Oxford University Press, *Interprating the Qur'an : toward Contemporary Approach* published by Routledge in London and New York in 2006, *Islamic Thought: An Introduction* published by Routledge in 2008 in London and New York, *Islam and Human Rights* published by Edward Elgas Publishing in 2012 in Cheltenham Glos (U.K.), *family law and Australian Muslim Women* as editor in 2013 published by Melbourne University, *Reading the Qur'an in the twenty- First Century : A Contextually Approach* published by Routledge New York in 2014, *Islam and Belief : at Home with religious Freedom* published in Palo Alto California in 2014 and there are many other works by Saeed in the form of articles (Qomar, 2018).

B. Women in the Arabian Peninsula Before Islam and Several Forms of Discrimination Against Women

Almost in all pre-modern societies, discrimination against women was common. Women being considered inferior to men was a prevalent social norm at that time; even in the pre-modern Western world, women were under the authority of men and considered like property in the eyes of the law (Madaniyyah & Munawar, 2022). Discrimination against women often occurs in various forms (Suprpto, 2012).

In the post-Prophetic period, the reform of the Qur'an against discrimination against women was carried out. The inferior status of women has been affirmed in Islamic law. However, the result of the social conditions that prevailed at that time rather than being based on the moral teachings of the Qur'an, social attitudes did not change in line with the reforms carried out by the Qur'an and the traditions of the Prophet (Juliansyah, 2019). For example, leadership or public power is dominated by men, so women are marginalized. The marginalization of women is sometimes justified by referring to certain hadiths which are reported from the Prophet, such as in the hadith, which means "those who entrust their affairs to the women will not get prosperity." Several scholars analyzed the text of the hadith. The hadith appeared suddenly after a meeting between Aisha, the wife of the Prophet, and Ali, who was then the caliph in which Aisha was defeated. The words of the Prophet began to be narrated in this context and are considered by Muslims as authentic hadith (Nasrullah, 2020).

Another form is related to the enforcement of dress codes in public spaces. The idea of the hijab explained in fiqh is based on two juridical conceptions, namely, *first*, the female body is the aura, so it must be covered both in the eyes of God (during prayer) and in public (in front of men). *Second*, the existence of the public that women's bodies are slanderous (temptation) and also a threat to the social order, and their best efforts are by covering. If it is associated with socio-cultural conditions at that time, for example, slave women were prohibited from using head coverings, which was intended to distinguish them from independent women (Anggraeni, 2019).

Other issues such as polygamy, which is a socio-cultural context that affects the interpretation of the Qur'an (Aulia, 2022). Classical Islamic law allows men to have four wives at once, but behind this verse lies the principle of justice. Polygamy is only allowed to uphold justice for orphans and close relatives of prisoners of war and is not a common thing given to Muslim men. In addition to the problems that I have described, many other issues discriminate against women when viewed from the textual and historical background of the position of traditional Islamic law (Haramain, 2019). From these problems, there are international human rights instruments that affirm gender equality and protect women from discrimination. Next, I will elaborate on the rights of women proposed in the International Human Rights Agreement, which has also received a lot of criticism.

C. Women's Rights in International Human Rights Treaties

Human rights instruments that aim to protect women's rights have not yet significantly impacted women throughout Indonesia, so women defenders are developing more effective instruments with better global reach. These instruments created declarations such as the Universal Declaration of Human Rights (DUHAM) (Qamaria, 2022). The DUHAM emphasizes the basic principles of equality and non-discrimination with all rights contained therein, as stated in Article 2, which states that "everyone is entitled to all the rights and freedoms set forth in the declaration without any exceptions, such as distinction of race, color, sex, language, religion, politics or other views, national or societal origin, property rights, birth, or other positions" (Sinombor, 2022). Several forms of International Human Rights agreements regarding women's rights include;

1) Civil and Political Rights

The International Covenant on Civil and Political Rights (ICCPR) outlines the civil and political rights in the Human Rights Act. The rights that have been affirmed must be enjoyed equally by men and women (Saeed, 2018a). These rights are contained in articles that have a particular significance for women, as stated in article 23, which emphasizes that women have the right and consent to be entirely free to marry even after reaching the age of marriage. The rights and obligations of human rights here include all matters related to residence, household life, children's education, and others, and any planning related to divorce and post-divorce so that women are not discriminated against. In addition, women are also given the same opportunity in public affairs, which includes the right to vote, be elected, and access to public services, even the protection of pregnant women from the death penalty.

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2) Economic, Social and Cultural Rights

The International Covenant on Economic, Social, and Cultural Rights (ICESCR) emphasizes in Article 3 that all rights must be enjoyed jointly by both men and women. ICESCR's efforts to prevent discriminatory acts against women that result in the neglect of equality in economic, social, and cultural terms are by putting aside things that are contrary to Article 3 and trying to eliminate prejudices, customs, and various other practices that perpetuate the inferiority or superiority of one of the sexes (Saeed, 2018a).

D. Convention on the Elimination of All Forms of Discrimination against Women (Convention on the Elimination of All Forms of Discrimination against Women)

Efforts in the elimination of discrimination CEDAW (Convention on the Elimination of All Forms of Discrimination against Women) emphasize equality and emphasize that women must be protected both in the public and private spheres (Masitoh & Pramesti, 2020), the provisions of CEDAW regarding the rights and status of women are regulated in several articles such as:

- 1) *First*, article 15 affirms that women and men are equal in law and have the same legal capacity. This means that women can apply for financial credit, own property, or manage a business in their own right. In addition, women's testimony must also be treated with respect and have the same weight as men in court (Saeed, 2018a).
- 2) *Second*, article 16 affirms the prohibition of discrimination against women in marriage and the context of family relationships (Saeed, 2018a). Women must have an equal position in the family and society and eliminate stereotypes that hinder equality between women and men (Suhada, 2021). In addition, CEDAW also rejects the argument that customary or religious law can determine different rights or responsibilities between men and women in the context of marriage; for example, the husband is sovereign as the head of the household and the primary decision-maker. Similarly, the practice of polygamy is also contrary to women's equal rights with men, which allows for emotional and financial consequences incurred by women due to the practice of polygamy.
- 3) *Third*, article 7, which states that women should not be discriminated against in public or political matters, is included in legislative, judicial, and administrative authority where men have dominated the role while women are limited or only play a role in the private sphere (Haque et al., 2020).

However, the instruments created by international human rights have drawn much criticism. One of the most glaring criticisms is that CEDAW does not recognize the diversity in different cultures and deliberations worldwide. Some see CEDAW as the imposition of a particular model of equality. If it is not taken into account, only a few women will benefit from CEDAW, so it is impossible to bring significant changes to the lives of many women in the world because CEDAW does not consider their experiences.

The role of international law and its application in non-Western cultures is controversial, and the best way to deal with it in the context of Islam is not to dictate that it conforms to universal standards that can be met but through liberal interpretations of texts and laws carried out by Islamic scholars themselves. A Na'im underlines that international standards must interact with the shari'ah but are not always meaningful depending on their historical formulation (Masitoh & Pramesti, 2020). Provisions related to the Qur'an and the Sunnah can be reviewed and interpreted differently because the Qur'an is a living text that can be reinterpreted according to contemporary needs. Another criticism related to CEDAW is that the instruments that CEDAW has created related to human rights trigger a normative conflict between equality and non-discrimination. In a culture where traditions and customs will give rise to gender hierarchies, the right to Freedom of religion can be used to legitimize inequality. Human rights or CEDAW has failed to provide a methodology for resolving conflicting rights issues because domestic law overlaps the interaction between state laws, customary norms, and religious orders (Briddick, 2022).

E. Emphasis on Gender Equality

Regarding international human rights issues that support equality, several Muslim scholars view that there is no particular difficulty in harmonizing international human rights norms with Islamic norms regarding women's rights. The relationship between men and women is similar to the principles of the Qur'an, which describes an egalitarian point of view. The Quran confirms that the two have the same status. For example, in surah an-Nisa (124), it is written that men and women will receive the same reward from Allah in the Hereafter for any good deeds they do as long as they believe in Allah. In essence, no information in the Qur'an states that, in God's view, men are a category of human beings who are more than women, and God treats them equally. On the other hand, some expressions that show the inferiority of women to men are also found in religious texts. For example, in the verse that tells about the creation of Adam and Eve, where Eve was created from Adam's ribs, women are considered secondary beings, weak creatures. Another verse also seems to establish the superiority of men over women so that this is what men abuse and to justify men if women are not equal and as if Islam oppresses women.

In fact, through the reading of the Qur'an and the practice of the Prophet, there is no solid basis for supporting inequality between men and women in Islam. The Qur'an and the Prophet oppose discriminatory practices and attitudes. However, this reform is not

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practiced due to cultural resistance factors and misinterpretation by Islamic jurists because it affirms the cultural status-*quo* so that discrimination still exists and is inherent in the Islamic tradition.

Contemporary Muslim scholars oppose the view of Islam that seems to oppress women. For example, Amina Wadud, an American female citizen who later converted to Islam, argues that the traditional method used by Muslims in reading the Qur'an is to use verse-by-verse interpretation and is not contextual, so it fails to recognize the internal coherence and general principles underlying the teachings of the Qur'an (Zahra, 2024). According to Wadud, reading the Qur'an means understanding its ethos and spirit, not just its literal meaning.

In reading the Qur'an, wadud considers three aspects: *first*, the context of the text is revealed; *second*, the linguistic composition, the text as a whole (*world view*) (Abubakar & Mutawali, 2020). According to Wadud, the Qur'an must be understood as a text that responds to specific circumstances in Arabia during the revelation (Nisa, 2021). The teachings of the Qur'an in the social and historical context should be reformed by Islam as well as in the context of its linguistic structure. The approach used should be different from the cultural practices of the time.

Asma Barlas also emphasized that the problem does not lie in Islam itself, but rather, the fundamental value of Islam in gender relations is stubborn egalitarianism. However, those fundamental values are distorted depending on who reads religious texts and how the Muslim community treats the reading products. Barlas considers that the Qur'an must be read holistically and not in pieces. The Qur'an must be interpreted, but Muslims interpret it in various ways. However, not all of these interpretations are good and acceptable. Therefore, according to Barlas, Muslims should use their capacity and choice to construct religious knowledge. According to Barlas, inequality and discrimination against women do not come from the Qur'an but from its interpretation or translation. Thus, the texts' reinterpretation is essential because different readings result in a fundamentally different Islam.

According to Fazlurrahman, the Qur'an must be understood as a divine response through the Prophet's mind to the socio-moral situation when the Prophet lived in Arabia. Therefore, in understanding it, Rahman offers a double reading (*double movement*) model in interpreting the Qur'an. Khaled Abou El Fadl made a distinction between Islamic law and Muslim law. Islamic law developed from the normative teachings of the Prophet Muhammad and his companions. However, Muslims combine legal or cultural practices from the surrounding Arab regions and communities, including Jewish law, so that the practices in this region are not in line with Islamic law and even contradict it. The impact of these norms and cultures has an impact on women, so women are discriminated against. For example, women who were quite active during the prophetic period (as scholars, poets, or narrators of hadith) were marginalized by discriminatory attitudes. This attitude was a form of men's refusal to accept women in the public sphere (Nisa, 2021).

F. Women's Rights and Possible Reconciliation

The conflict between Islamic law and international human rights law is likely to occur because Islamic law recognizes that women and men are ontologically equal but does not advocate absolute equality of their roles, especially in family relationships. The difference in roles in the family environment due to traditional, cultural, and religious attitudes is what gives rise to violations against women in the name of equality. However, scholars offer several strategies to overcome the problems related to gender issues.

An example related to polygamy cases is among some of the problems and strategies offered related to marriage problems. Polygamy is discrimination against women that is unacceptable and must be abolished wherever the practice occurs. However, why does the Qur'an allow the practice of polygamy? This is as stated by Wadud in QS. 4 : 3 about the treatment of orphans rather than the institution of marriage. This is because the existence of marriage to orphans can guarantee that the economic responsibility to protect the wife will offset the access to the wealth of orphans through the responsibility for management. However, Islamic law allows the practice of polygamy, according to classical and contemporary scholars, on the condition that it is applied fairly; it is challenging to do. Because based on the principle of *maslahah*, polygamy can be limited in order to eliminate conflicts with international human rights.

In addition, related to the issue of divorce, CEDAW provides equal rights with men related to divorce so to overcome the problem, several Muslim countries make laws that husbands may not divorce by talaq or provide compensation if they are unilaterally divorced without a valid reason. Unilateral divorce often occurred at a time when the Qur'an was revealed. Even though the Qur'an had stipulated the conditions for a fair separation or reconciliation, there was no rule that men had complete power over the rejection of divorce. In addition, no evidence in the Qur'an states that women cannot have the same power (Saeed, 2018a).

Islamic law also regulates inheritance issues. Generally, men receive twice as much inheritance as women as stipulated in Q.S., 4 11, which states that the share of a boy is twice as much as the share of two girls. According to some scholars, this is fair because women are considered to have less finances than men, but it is not in line with the principle of women's equality. According to Wadud, the Quran does not regulate every possible situation in the distribution of inheritance. However, it provides illustrations that allow relatives to consider the distribution amount with the principle of justice. The difference in inheritance distribution

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between men and women may be revisited and reformulated. However, from the state's perspective, imposing changes to traditional inheritance law may be legally and constitutionally tricky.

Furthermore, it is related to the hijab issue. The use of the hijab in public spaces has the potential to violate several articles in ICCPR article 26 on non-discrimination. According to Asma Barlas, the practice of using the hijab in any form, as stated in Q.S., 33: 59-60 and Q.S. 24-30-31 is based on the fact that the female body is attractive to men, so it needs to be hidden (Rahman, 2017). Baderin, therefore, identified several possibilities in the reconciliation of Islamic law and international human rights in order to protect their human dignity.

IV. CONCLUSIONS

The debate between human rights and Islamic law can be reconciled by prioritizing *maslahah*. The Qur'an and Islamic law, which have been considered oppressive and discriminatory against women, actually do not distinguish between men and women. The Quran is not a dead and rigid text. However, it contains social, historical, and cultural conditions and interpretations with different interpretations, which eventually give rise to various meanings and debates. For this reason, for harmony between international human rights and Islamic law to occur, it is necessary to examine interpretation and reinterpretation contextualized with contemporary life and with possible reconciliation so that there will be a balance between international human rights and Islamic law.

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