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Women's Leadership in Fiqh Siyasah Perspective

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Abstract: Women's leadership in politics shutter and perspective of Islamic law being debated. In 1999, Islamic political parties in Indonesia are in stiff position about women's possibility becoming president but now Islamic political parties has "revise" their opinion. Through various constructive engineering, they try to legitimize women's leadership within countries. Based on the phenomena it is important to research about women's leadership in fiqh siyasah perspective. This research was used qualitative methods by descriptive analysis, primary data ⁶ in this research were collected through observation based on the activities and phenomenon while the secondary data gained from documents or files which are related to the topic. From the research which have been conducted it can be known that in the view of Islam that the woman which related with leadership has the right to be selected and choose that although, there is opinions differences in this matters. There are some different fiqh siyasah perspective about women's leadership in politics. For classical Sunni Ulama Siyasah Syar'iyah most require that it has to be men like Imam Al-Ghazali and some do not require men like al-Mawardi and Ibn Taymiyah.

Key words: Women's, leadership, Islam and politics, Sunni, Siyasah, opinion, secondary data

INTRODUCTION

Women's leadership in politics shutter and perspective of Islamic law being debated. It becomes something crucial to discussed among people who make it become a marginal issue and who legalize it. The first roots of the problem is understandable about the Al-Quran letter An-Nisa verse 34: ¹ Men are the maintainers of women because Allah has made some of them (men) to excels others (women) and because they (men) spend out of their property. The good women are therefore obedient, guarding the unseen as Allah has guarded and (as to) those on whose part you fear desertion, admonish them and leave them alone in the sleeping-places and beat them. Then if they obey you do not seek a way against them. Allah is Most High, Most Great".

The second, the hadith "there will not prosper for a people who hand over their leadership to women" (Bukhari, Ahmad, Tirmidhi and an-Nasa'i from Abu Bakrah ra). The controversy about whether or not a woman should be a president seemed to have no end. But now the focus is not like some time before the election and a few moments before the Indonesia Republic General Session Year 1999 ago which characterized by stiff opposition, especially from Islamic political parties about women's possibility becoming president. Now Islamic political parties has "revise" their opinion. Through various constructive engineering, they try to legitimize women's leadership within countries.

President of the Justice Party (PKS), M. Hidayat Nur Wahid also said, "since, the first real Moslems accept women presidency from fellow Moslems" (Media Indonesia 03/03/2001). In fact, according to PDI-P figures Soetardjo Soerjoguritno, Amien Rais, Hamzah Haz and even Ahmad Soemargono formerly known adamantly opposed to Megawati's leadership has vowed to support Megawati as Indonesian president until year 2004 (Rakyat Merdeka, 07/03/2001). This attitude is supported by Nurcholish Madjid by saying that most theologians do not question the rise of women as president/head of state. Only a fraction of those that forbid a woman to be president. Meanwhile, KH Salahuddin Wahid in a dialogue held at the mosque of University of Indonesia, on 07.13.2001, stated, Indonesian Moslems should accept the presence of Megawati as head of state. Therefore, rejection of Islam on women's leadership not set in stone.

Constructive engineering to achieve these female leadership ideas in this state entities is also seen in one-day seminar held at the Indonesian Republic House of Representatives Commission VII on 04/07/2001. Seminars that bring Nazaruddin Umar and KH. Mohamad Husein aims to provide syariah legitimacy to the legality of women's leadership within country. Nevertheless, the seminar was more accurately described as an engineering to dilute theological barriers that often leads to religious texts rape with political interests. Regardless from concrete facts above is it true Islam as is now said by

the Islamic political parties and Moslem intellectuals, no longer questioning whether or not a woman being a president?

The Dissent of several public figures recently, about whether or not a woman should be president is interesting to observe. Muslim Congress II year 2004 held in Jakarta, under the spotlight from various parties, especially by the observer which can not be separated from political interest groups who fought. Most of the congress participants wants enacted determination of the presidential election, at a minimum does not conflict with Islamic law. They submit their ideas in accordance with the opinion of the prudent (Jurist) that a woman should not be a president or commonly known in the language of religion is: raisul Jumhuriyah or sultan or a priest or waliyul-amri desire some parts of the nation components, also to defend sharia formalization in the positive legal order in Indonesia. They reasoned because considering the majority of Indonesia's population is Moslem as well as the future responsibilities before Allah The Almighty. Of course, in every step that ukhrawi considerations can not be ignored in taking a stand that will determine worldly affairs.

Theoretical framework: The theoretical basis is an important part in a study as for the use of the theoretical basis is so that research can be precisely targeted and effective. As for some of the theoretical basis here.

Theory of ijthad and legal changes: Ijthad means to devote all its capabilities or bear the burden. Earnest efforts undertaken by the mujtahid to achieve a personality verdict (Islamic law) about a case that settlement has not been stated in the Qur'an and Sunnah of the Prophet Muhammad (SAW).

Al-Suyuti (1982) submitted a statement: that ijthad law is fardhu kifayah. The reason because the passage is not descend again while new problems always arise, therefore, he thinks there should be (fardhu kifayah) in every age mujtahid fulfilled their terms.

The next Al-Suyuti (1982) state that ijthad can not be canceled by ijthad, meaning that ijthad previously agreed upon inviolability on new ijthad because the position of each ijthad outcome is the same, therefore each ijthad nothing more special so that each could not cancelled. Even though it could be the result of ijthad canceled by another ijthad with the following provisions: first, second ijthad stronger than the first such as Imam Shafi'i qaul jadid can change the qaul qodim. Second, previous ijthad is not relevant to the conditions or circumstances encountered nowadays so the results need to be revised. Fiqhiyah Convention states:

"Fatwa changes and the difference was based changing times, circumstances, intentions and tradition".

Theory of diversity assessment development: Theory of Diversity Assessment Development submitted by Durkheim (2014) was born in Epinal, France 15 April 1858/W15 November 1917 and Jean Piaget, a Swiss psychologist who lived from 1896-1980M.

Durkheim states that how people can maintain the integrity and coherence in the modern era, when things such as religious and ethnic backgrounds together no more. To study social life in modern societies, Durkheim attempted to create one of the first scientific approaches to social phenomena. Together with Herbert Spencer Durkheim was one of the first which explain the existence and character of various sections of society by referring to the function they perform in maintaining the society sanity and balance a position that became known as functionalism.

Durkheim (2014) also emphasize that society is more than the mere sum of its parts. So, diverse from his fellow contemporaries, Max Weber, he focused not on what motivates the actions of every person (methodological individualism) but rather to the study of "social facts", a term that created to describe a phenomenon exists by itself and are not tied to the individuals actions. He contend that social facts had a greater independent existence and more objective than individuals actions who established the society and can only be explained by other social facts rather than for example, through the society adaptation to a particular climate or ecological situation.

In his book "The Division of Labor in Society" Durkheim review how social order maintained in various forms of society. He focused on the labor division and review how it diverse in traditional and modern societies. Researchers before him such as Herbert Spencer and Ferdinand Toennies contended that societies evolved much like living organisms, moving from a simple state to a more complex which similar to complex working machines. Durkheim reversed this formulation while adding his theory to the evolving set theories about social progress, evolutionism and darwinism. He contend that traditional societies are 'mechanical' and united by the fact that everyone is more or less the same and hence has much in common among themselves. In traditional societies, says Durkheim, the collective consciousness fully embraces the individual consciousness strong social norms and behavior neatly arranged.

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In modern society, he argued, the highly complex labor division produces 'organic' solidarity. Different specialties in employment field and social roles created dependencies that tied people to one another because they are no longer able to meet all the needs of their own. In a 'mechanical' society for example, small holders living in self-supporting and are bound together by a shared heritage and the same work. In a modern 'organic' society, workers earn money and have to rely on other people who specialize in certain products (groceries, clothing, etc.) to meet their needs. As a result of complex increasingly labor division, thereby Durkheim is that individual consciousness develops in a different way from the collective consciousness is even often conflict with collective consciousness.

Durkheim associate the type of solidarity in a given society with a legal system dominance. He found that people who have a mechanical solidarity laws are often repressive perpetrators of a crime or deviant behavior will be penalized and it will reply to the collective consciousness which violated by the crime; the punishment acts more to preserve the consciousness integrity. On the contrary, in societies with organic solidarity, legal tend to restitutive, he aims not to punish but to restore normal activity of a complex society.

Piaget and Brown (1978) submitted assessment cognitive development theory, he says that an individual in his life will always interacting with the environment. With that interaction, one will obtain the scheme. Schemes such as the knowledge category that helps in interpreting and understanding the world. The scheme is also described acts both mentally and physically involved in understanding or knowing something. Thus, in Piaget view, the scheme covers both knowledge category nor acquisition process. Along with the experience of exploring the environment, newly acquired information is used to modify, add or replace the previously existing schemes.

Assimilation is the process of adding new information to the existing scheme. This process is subjective because the person will tend to modify experience or information obtained in order to enter into a pre-existing schemes. Accommodation is another adjustment form involves changing or replacement of the scheme as a result of new information that is not in accordance with the existing scheme. In this process can also occur appearance of the new scheme altogether. Through both of these adjustment processes, systems change and develop cognition someone that can increase from one stage to stage above. This adjustment process carried out by an individual because he wanted to reach a equilibrium state, namely in the state form of balance

between the cognition structure with environmental experience. Someone will always strive to make things balanced is always achieved by using both the above adjustments. Thus, a person cognition grown not because of receiving knowledge from outside passively but that person is actively construct knowledge.

MATERIALS AND METHODS

This study is a qualitative research which method using by researcher is a descriptive analysis method. Descriptive method is a research method that examines the status of a group of humans, an object, a condition, a thought or an event today (Moleong, 1989).

Objectives to be achieved in this research is the author can find a picture of a systematic, factual and accurate concerning the facts and symptoms that have been investigated.

The data sources in this research consisted of a main or primary and additional sources or secondary data. Primary data in this research were collected through observation based on the activities and phenomenon. While the secondary data gained from documents or files which are related to the topic.

The data validity test in this study is done through triangulation namely data validity testing techniques performed by checking the obtained data correctness. Triangulation is done on data sources that researchers get from the field.

RESULTS AND DISCUSSION

Islam and women's rights

AL Quran Talking about human potential and capabilities: According to the Quran, the purpose of the humans creation is at least to portray themselves received the word of Allah as caliph as well as a servant to serve only to Allah. While status as caliphs, namely as a representative of God is to manage and prosperity the earth that human life itself.

In terms of serving Allah, verily is not just humans that assign to worship but all God creatures. That is why the Qur'an states that the entire universe as a "Moslems" because every thing in it submits to the will of God and every thing praising God. The difference with the worship of human is that the entire contents of this universe obeys Allah "automatically" because Allah has established in accordance with amr to him (sunatullah). As for humans worship becomes a "necessity" fulfill God amr because humans are given freedom and right to choose (obey or not).

As for its function as a caliph is a special function for humans. That is why humans was said to be the caliph of Allah fi AI-ARDL and other creatures do not bearing this title. This Khilafah function has been announced by God when the first human, Adam was created. In the letter, Al-Baqarah verses 30-39 stated a "cosmic drama" telling a dialogue between God and the angels after the announcement of the God plan created human as His caliph on earth.

In the cosmic drama involving God, angels, human and Satan is told that when God was about to create Adam to uphold "caliphate on earth," the angels interpose and said: "are You going to put someone who will do tyranny on earth and who will shed blood while we always praise the greatness and purity?" God did not deny the allegations against the human but He replied: "I come to know the things you do not know". Then, He made a competition among the angels with Adam: Who is among them who has a greater knowledge. To the angel God commanded that they mention the name (al-asma) on various things (explain the nature of these things). The angels are not capable but Adam was able to mention it. This pronouncement represent that unlike the angels, Adam can have a creative knowledge. After that God told the angels to kneel in honor of Adam. All of them recognize the supremacy of Adam and kneel except the devil or satan who declared himself more noble than Adam. Allah cursed the devil as a dissident, arrogant and unbelievers. Satan accept this curse but begs the opportunity to tempt human to do evil and it was granted. Since then there is fight between human and Satan.

The stories above show among other things that human beings deserve to be caliph of God on earth because humans has a supremacy among other creatures that he has a creative potential as a basis for managing the earth. This creative potential is not be required by the angels that can only be submissive and obedient to God. On the contrary, Adam or humans really need it to be able to support a succeed in carrying out his functions as the caliph. Therefore, knowledge of the names given by God to him. Humans are given the ability to provide names for the objects which formed the concept of objects. Forming a concept means to master it. So, the nature of human knowledge is conceptual.

With this creative potential human can subdue and overcome nature that is to understand and discover the feature of nature and the laws contained within that nature. After understanding the nature then humans, with the creative potential, they will be able to formulate theories that can explain, predict and control the phenomena of nature. This is perhaps what is meant by taskhir or subjugation of nature to the humans in the

Qur'an verses 45: 13, 22:65, 31:20 and other passages. Moreover, the presence of this human creative potential can create a moral social order in the top of the world. This mission: finding and mastering the laws of nature and uses mastery of the law of nature, under the human moral initiative, to create a better world order says by The Quran as "mandate".

Because human beings are given the mandate for the prosperity of life, then God would also raise the human beings status which given dignity and excess over another creatures. The human dignity perhaps site as a position as a caliph on the earth, being the excess may be found on the potential and ability he had as completeness to implement the caliphate function.

These humans Potential and capabilities that are: first., a perfect physical potential that humans have bodies/corpus with a form that Ahsan Al-Taqwim (QS. 94: 4) and had the form that ahsan shuwarukum (QS. 64: 3). The Perfection of human physical potential in bio-psychological, not only in figures but apparently culminated in the perfection of the nervous system that centered in the brain. Expected that brain contains about 12 billion nerve cells (neurons) which allows humans to do variety of behaviors and experiences. Other physical potential is a sense which is one of the tools and a source of human knowledge (namely sensory knowledge). A sense which most often called in the Quran is hearing and vision as stated in the word of God: first., "And Allah has brought you forth from the wombs of your mother's you did not know anything and He gave you hearing and sight and hearts, that you may be grateful" (QS., An-Nahl: 78).

Second, the pure spiritual potential, namely that human has a spirit that comes from God. According to the Qur'an, after humans formed with perfect form, God "breathed the soul itself into him (QS. 15:29; 38:72; 32:9). This represent that humans tend to holiness and goodness along obedience to God. This is perhaps the so-called "natural tendency" or more precisely "fitrah majbullah" (nature which embedded) as an opposed word "fitrah munazzalah" (nature which inherited through revelation, namely religion). With the spirits breathed into humans, then the first potential, namely physical potential will be functioning.

Quran converse about equality between men and women:

The following we raise a few verses and a history that converse about equality between men and women as stated by Al-Ghazali as follows: "and their Lord heard their plea and He said: Behold I have never wasted those who labor among you all both men and women".

According to Ghazali (1988), citing the contention of Imam Tabari that the background of this decent verse is Umm Salamah, the Prophet's wife who at one day asked the Apostles: "Why do men who migrated called (in the Qur'an) while women not? "Because in reality, Umm Salamah was among the women who had twice moved to support the Islamic struggle. The first one from Mecca to Ethiopia and then from Mecca to Medina. God heard the question of Umm Salamah and there came a revelation to define this new religion momentum: "and their Lord heard their plea and He said: Behold, I have never wasted those who labor among you all both men and women". Umm Salamah get answers to the great questions and we, centuries later can enjoy a certainty that the new religion (Islam) provides absolute equality between men and women. Hijrah as a political action which contain an explicit message that women should be involved in public affairs. It is the responsibility of women to fight for the better society and they will achieve the rewards of what they do.

Therefore the Muslims, especially women, owe a lot to Umm Salamah for the question who kept going to clarity of status given to women in the Qur'an. When the Prophet married her, she has become a mature woman, a widow with several children. Umm Salamah has experienced a hard life as a Muslim who emigrated (Muhajir). Umm Salamah alongside her first husband converted to Islam during the early days of Islam in Mecca. She is one of those who emigrated to Ethiopia on the first hijrah event when resistance against Islam is very hard. She and her husband then returned to Mecca when the situation has calmed down and do the next migrated from Mecca to Medina. During that long period she give-birth of 4 children. And after her husband died, the Prophet proposed her and she accept it.

Therefore, it is not surprising if Ummu Salamah continued to ask questions about the equality between men and women and various changes to be realized by Islam for women's lives. It is important for known how far and in what way Islam make the distance with practices in a period of ignorance in which violence and slavery must be received like fate to be experienced by women.

For this reasons she then submit questions about the women status who emigrated from Mecca to Medina which believed as a form of action support to Islamic struggle. To the question about the status of women, where at period of ignorance as subordination to men, then there came a verse explaining ⁸ that there is no substantial difference between men and women as revealed when decent verses 35 Surah Al-Ahzab. Riffat Hassan, explained that the equality stated clearly in various terms undoubted in Qur'an itself. So, if we claim

that equality was an Eastern inheritance or borrow ideas from foreign culture, then we are indeed foolish. Because the Quran, since its inception has been the first ever converse an equality between men and women.

Moreover, not only questions about the equality that arise when the Prophet in Medina but more than that women also received a positive response toward their curiosity. Divine revelation assure them that violence and lawyer-servant hood on women in period of ignorance which really has ended? The new era of Islam means a good status for women. The verses on the Queen of Saba raising her women aspirations to give their backing female role models as a head of state. And many women in Muslim history has proved all their succeed too.

Furthermore, Riffat Hassan stated that with the reality the moslems women should commemorate ahead seriously and have high aspire. The world belongs to us, the greatness and glory is the future as well as our past to reclaim the heritage of Islam, both religious and historical. Based on diversity awareness Umm Salama, the wife of the Prophet who asked a fundamental question that women and men has the same status in Islam and that equal in privileges. Therefore, no more Islamic than a woman who demanded their rights as Umm Salamah for equality and freedom from servitude and humiliation. The authority and self-conception might contribute most meaningful among Islam's contributions to human rights to civilization.

And throughout its relationship with history, many of our female ancestors who carry political responsibility seriously and get the top position as head of state. A clear example are the Queen of Saba and the Quran has showed the way to us. And it is in line with the demands of today's era.

Women leadership and ruling according to fuqaha: Alquranul Karim recognizes the leadership of women to be told that in the days of King Solomon there is the Queen Bilqis which has successfully presided over a kingdom named Sheba. Thanks to her leadership, the country was in a safe, peaceful and prosperous. The Qur'an implicitly recognize and appreciate the women leadership who truly have the ability to do so. While the Quran verse which states that man is a leader for women (QS. Al-Nisa, 4: 34) as the leadership of men in the household. It is obtained from the descriptions provided in the further verses states that because they (the husbands) spend their wealth to their wives and that shalihah women is an obedient woman to God and care for herself at a time when her husband was not there.

Hadith of the Prophet which states that it is not going to be happy a people who hand over their matters

(leadership) to a woman as quoted by Sayyid Sabiq in Fiqh sunnah, this hadith is quite authentic but in fact is a comment of the Prophet against the Persian kingdom that was on the verge of destruction and happened to be led by a woman. If only the Persian kingdom was led by a woman who has the ability commensurate with the queen Bilqis, perhaps the Prophet comment is not like that.

However, actualization and socialization of women and femininity that in the perspective of the Qur'an are equal, then the interpretation level became dichotomous so that the concept of gender in the Qur'an is not clear in the meaning of that there are partially to menfolk. Even more clearly in Hadith is found some history expressed as a Prophet Hadith, who cornered the woman who is said to be the source of evil temptations of life or the lives of men. While men are not mentioned as a distraction for the women's life. It's also stated that most of the women in the future will be the inhabitants of hell (Al-Bukhari, 1997). While men do not say so. Thus, the actualization of the femininity values which was originally has a place in the Quran being crude back. Women as though returning to nature as being a scape goat. The whole misfortune of men inflicted upon women.

Whereas, if traced further for example in the Quran absolutely no words appointment that woman is infidel (kafirah) that there are words musyrikat alone. Is the use of these words may indicate that female infidelity was more likely caused by men? But why is it always the woman who became the error spotlight object and humiliation for the man? From here the gender theory increasingly vague and unclear. Whereas if it is returned to the Qur'an, many verses which positioning women as human beings equal to men. In the view of the Quran the creation of man and woman are both essentially comes from one soul and from the same nature and essence as well. "O mankind! ⁵ Be careful of (your duty to) your Lord who created you from a single beings and created mate of the same kind" (QS. An-Nisa, 4: 1). Here clearly emphasized that there was no difference degrees between men and women. In other words, there is no higher or lower. Both are not created in exactly the same form but rather as complementary pairs of human. Still in the same verses, states: "and ⁵ spread from these two, Many men and women".

The companion have different physical abilities. Men have physically stronger, allowing him to do the job that requires a lot of energy and thought while a woman-have a gentle/soft physical, allowing her a work that requires perseverance and patience. The men Soul are more volatile, rugged and requires tension drainage of his soul, the women soul being quieter, subtle and require aegis. From this inequality, briefly appears that each has

advantages and disadvantages. However, when examined further this is a natural harmonious synchronization when combined.

In the women's legal issues become a leader according to Islamic law is haram or not, the Islamic jurist broadly divided into two groups. First Group, ijma 'ulama, ijma' (agreement) mentioned above can be referred to the various references (Tafseer, Hadith, Fiqh, Usul Fiqh and Siasah Syar'iyah) include:

- Madzhab Hanafi: Syarh Fath Qadiir by Ibn Hammam, 7/297-298.
- Madzhab Maliki: Bulghatus Salik liaqrabil Masaalik by Ahmad bin Muhammad As-Shaawi, 31261. Tafsir AI-Qhurthubi, 71171

Madzhab Shafii: Takmilah Al-Majmoo 'syarhul Muhadzaab Syairaazi by Imam Muhammad al-Muthi'i Najib, 191114 Nihayatul Muhtaaj ila Syarhil Minhaaj by Imam ar-Ramli, 7/389 Al-Ahkaam as-Sulthaniyah by Al-Mawardi case 27. Fadha'ih Al-Bathiniyah by Imam Al-Ghazali things, 180. Al-Mawaqif wa Syarhuha by Al-Iji and Al-Jurjani, 8/350. Al-Irsyaad by Al-Juwaini, p. 246-247-TafsirlbnKastsir, 1/76.

- Madzhab Hambali: Al-Mughni by Ibn Qudaamah, 111180
- Madzhab Dhaheri: Al-Fashlufi ⁶ Al-Milal wa Al-Ahwa' wa Al-Nihal by Ibn Hazm, 41166

Contemporary Fiqh: Al-Fiqh Al-Islami wa Adillatuhu, by Dr. Wahbah az-Zuhaili, 6/693. Min Fiqhi ad-Daula, by Yusuf Al-Qaradawi, p 165 that lifting a woman head of state is forbidden. Imam Al-Qurtubi in his Tafseer Al-Jaami 'Ii ahkami Quran says, "The Caliph must be a male and jurists have agreed that women should not be priests (Caliph/head of state)". In detail, there are a number of arguments as the basis for the prohibition of a woman as head of state.

First: There is the hadeeth narrated by Imam Bukhari, Ibn Hibban, Al-Tirmidhi, Bayhaqi and Al-Nasai that forbid a woman as head of state. "There will never be prosperous a people who handed over their matters (of government) to a woman".

Lafadz wallau amrahum in this hadith means appoint a waliyul amri (holder of the reins of government). This is not surprising because this hadith is indeed the Prophet Muhammad comment. when the news reached him about the appointment of the daughter of Chosroes, King of Persia? Although, the hadith text in news sentences form but the notifications in this hadith accompanied with

disapproval (dzam) on a people or people who hand over the government power to a woman, threats absence of luck on them. This reproach is qarinah (indication) of the demands that are jazm (loud and firm). Thus, lifting a woman as president is definitely forbidden.

Indeed, there are some realm who doubted validity of this hadith. They pointed to one of the narrators of this Hadith, Abu Bakrah as untrustworthy person because they thought he had given false testimony in a case of adultery at the time of Umar bin Khattab. But the assessment of Abu Bakrah figures as mentioned in the holy books were written about the narrator (the person who reported) hadith such as Al-kamal Tahdibu fi Asmaa Al-Rijal, Thabaqat Ibn Saad, Al Kamil fi Tarikh Ibn Al-Athir indicate that Abu Bakrah is a pious Companions and reliable narrators. Therefore, in terms of transmission there is no reason at all reject the validity of the hadith about the prohibition lifted woman as head of state.

Besides that, there is also one who considered that the prohibition lifted a woman as head of state does not include a prohibition to be president because, he said, the presidency is not the same as the position of head of state in Islam or the president is not Al-imamu Al-azham as the Islam government system. This kind of opinion is very weak. Why? Because the hadith text above has been answered by itself. Buran, D'Andrea's daughter who was appointed as the queen of the Persian Kingdom in the system is not the same as the Islamic government system. If in the case of Buran, the Prophet Messenger of Allah forbid, what's the difference with the current presidential system is also equally not Islamic government system? Second, fiqh convention said that:

(like the (value/message) taken from the pronunciation generally not the specificity reasons). This convention can be explained that a text consists of two things: pronunciation and illat. Understanding the value of a text according to these convention is the value of the pronunciation generally, meaning that if there is an emerging texts for some reason, then the pronunciation will be applicable to all cases not only to the cause Hadith:

will not prosperous/win a clan if a woman was their leader. This hadith appears when the Prophet noticed a clan led by a woman who is not qualified to be a leader both because of her behavior is not good or because she does not have the properties like other leaders.

When following the convention above, then this hadith become common to all female leadership cases, it means that the hadith prohibits female leadership over men although for the Hadith emergence is a special causes, namely the existence of women leaders who are not competent.

Third, in the Qur'an there are verses that requires us to obey the head of State, namely Surat al-Nisa 'verse 59: Hi people ⁴ who believe, obey Allah and obey the Messenger (it) and ulil amri among you. Then, if you differ on anything, then give back it to Allah (the Qur'an) and Messenger (Sunnah), if you truly believe in Allah and the Last Day. This is better and very good in the end.

In this verse, the command to obey a leader by using lafadz ulil amri. Based on the Arabic language rules, it is understandable that the orders to referred leaders in the verse quoted above is a men leader. Because, if the leader in question is female, it should be used uulatul amri word.

Fourth, in the Qur'an Surah an-Nisa 'verse 34, namely: ¹ "The men are the maintainers of women because Allah has made some of them to excel others and because they spend out of their properties, the good women therefore obedient, guarding the unseen as Allah has guarded and (as too) those on whose part you fear desertion, admonish them and leave them alone in the sleeping-places and beat them. Then if they obey you, then do not seek a way against them. Allah is Most High, Most Great".

This verse, there is a very clear instructions that the man is a leader for women. True, this verse indeed talking about family and men leadership over women in a household. So, what is the matters with state issues? With the approach of tasyri 'min baabi Al-hall (which must be the main), when to set up the household only a man must be a leader, even less a "large household" in the form of a nation or state certainty is a must for a man. When to manage the smaller matters such as housekeeping, God established a man as a leader over women, then even more the nation problems are larger and complex, certainly more must be submitted to a man.

Fifth, Women's lack of intellect and religion: Prophet sallallaahu 'alaihi wa sallam said, "It is not I've seen people with less intellect and religion so that they can wiggle a man firm other than one of you, O woman" (HR. Bukhari no. 304). What is with the lack of intellect and religion? Someone asked to Shaykh 'Abdul Aziz bin' Abdillah bin Baz: I often heard the hadith "the woman's lack of intellect and religion". From this hadith most men

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end up persecuting women. Therefore, O Syaikh we asked you to explain the meaning of this hadith. As for the Hadith purpose the Prophet sallallaahu 'alaihi wa sallam: "It is not I've seen people with less intellect and religion so that they can wiggle a man firm other than one of you, O woman". Then someone asked the Prophet, "O Messenger of Allah, what is meant by lack of intellect?" He sallallaahu 'alaihi wa sallam replied "is it the testimony of two women is equal to one man?" Someone asked again, "O Messenger of Allah, what is meant by lack of religion?" He sallallaahu 'alaihi wa sallam replied "Is it when a woman have menstruation, she can not perform prayer and can not fast?" (HR. Bukhari and Muslim).

Sixth: Women when congregation prayer take the rearmost rows Prophet sallallaahu 'alaihi wa sallam said "the best rows for men is at the front while the rear is lousy and the best rows for women is the rear most while the lousy is in front" (HR. Muslim No. 440).

Seventh: the woman can not wed herself but must be with her guardian. Prophet sallallaahu 'alaihi wa sallam said, "There is no marriage except with a guardian" (HR. Abu Dawud No. 2085, Tirmidhi No. 1101 and Ibn Majah No. 1880. Shaykh Al Albani said that this hadith shohih).

Eighth: according to temperament Women tend to a fault. Prophet sallallaahu 'alaihi wa sallam said "Be nice to the women because they are created from a rib. The most crooked part of the rib is the top. If you are forced to straighten the ribs before, then it would break. However, if you let her, she will always be crooked so behave well to women" (HR. Bukhari No. 5184).

Ninth: Women experiencing menstruation, pregnancy, childbirth and breast feeding Allah Ta'ala says, "and (as for) those of your women are who have despaired of menstruation, if you have a doubt, their prescribed time shall be three months, and those too who have not had their courses and (as for) the pregnant women, their prescribed time is that they lay down their burden and whoever is careful of (his duty to) Allah He will make easy for him his matter" (QS. Ath Tholaq: 4).

Tenth: Women easily discouraged and impatient. We have witnessed at the time of death and disaster, women often commit forbidden acts and spill over such as a bash of cheek, breaking stuff and body slams. Though a leader must possess patience and fortitude.

Eleventh: In the history of the Islamic government both in the rashidun, Umayyad, Abbasid Bani or government

afterward, never once caliph appointed from among women. Indeed in Egypt have ruling a queen named Syajaratuddur of Mamalik dynasty. But the power derived from simply overflow of Malikus Salih, when the possessor died. After three months in power (so its very temporary and relatively unexpected) eventually the power held by Emir Izzudin who later married her. So, obviously there is no historical reference concerning the role of women in Islam as the state.

Twelfth: the reality of women presidents in some Moslems countries (Benazir Bhutto in Pakistan, Begum Khalida Zia in Bangladesh) is not enough to terminate prohibition on women serving as a head of state. This fact should be viewed as an aberration. And a fact is not the law, especially when the fact that contrary to the law itself. Just as the law of prayer.

Thirteenth: Women are only allowed to be a leader in her home, it was under the supervision of her husband or an equal to him. They lead in a special terms namely especially nourish themselves, educating children and nurturing husband treasure that is in the house. The purpose of all this is that a family improvement needs is resolved by the woman while community improvement will be done by men. Allah Ta'ala says that is to say.

"And be remain ² in your house and do not display your finery like the displaying of the Ignorance of yore and keep up prayer and pay the poor due and obey Allah and His Messenger. Allah only desires to keep away the uncleanness from you, O People of the house and to purify you a thorough purifying" (QS. Al Ahzab: 33).

Prophet sallallaahu 'alaihi wa sallam said, "And she became a leader in her husband's house, she will be questioned about the responsibility of people who organized" (HR. Bukhari No. 2409).

Fourteenth: In women there are barriers in stay out of the house (Mahram) as the word of Allah in the letter Al-Ahzab verse 33.

And be remain ² in your house and do not display your finery like the displaying of the ignorance of yore and keep up prayer and pay the poor due and obey Allah and His Messenger. Allah only desires to keep away the uncleanness from you, O People of the house and to purify you a thorough purifying.

The point: The Apostles wives to remain at home and stay out of the house when there is personality necessity justified by syara. This command also includes entire mukminat. Formerly ignorance is infidelity ignorance that was located before the Prophet Muhammad (SAW) and

present ignorance is a disobedience ignorance which occurred after the arrival of Islam. Ahlul bait here is a family of the Prophet (SAW) household. The second group, Allow Women became Leader.

The legal basis for the prohibition came from the verse of the Quran, the Hadith and theologian ijma' (consensus). The first and foremost ⁹ is the Qur'an, the letter Al-Nisa verse 34: "Men are qawwam for women because God has given them advantages over the other and because they support them from their means". In translation of religion department qawwam means "leader" whereas in Abdullah Yusuf Ali's translation is the "patron" (protector). Most theologian assert this verse as the basis for the female leadership prohibition in Islam. While other theologian, balked at that view. Some of the reasons stated by the latter group.

First that this verse converse about the domestic area so it can not be basis for leadership in the public domain. Second, that this verse is not normative but it is informative about the situation and condition of Arab society (the world) at the time so it does not have a legal consequences.

Third, because there are a number of other verses that indicate the ability of female leadership. As in the letter Al-Tawbah, verse 71 which entitles the region to women over men. Word the region could mean mastery, leadership, teamwork and helping each other "and ³ (as for) the believing men and women, they are guardians of each other, they enjoin good and forbid evil and keep up prayer and pay the poor rate and obey Allah and His Messenger. (As for) these, Allah will show mercy to them; Surely Allah is Mighty, Wise".

Fourth, in this verse does not mean the male gender but the masculinity trait that can be possessed by men and women.

With these four reasons, the statement that the Qur'an forbids women's political leadership can not be justified. Inconnection with Hadith, there are three hadith texts underlying the prohibition of women's leadership. First Hadith: The Prophet statement narrated by comrade Abi Bakarrah ra that: "When it came to the Prophet the news of the Persians who raised a daughter Chosroes as their queen", the Prophet said: "There will not be a fortunate of people who gave their concern to women". This hadith narrated by Imam Bukhari in the validity book (Vol. VII, page 732, zero hadith 4425). Because narrated by Imam Bukhari, the most theologian accept this Hadith. But it does not mean that there no theologian who criticize the validity of this Hadith. Some theologian see irregularities in the transmission of this Hadith, namely that the narrators comrade Abi Bakarrah ra this figure at

the time of Caliph Umar bin Khattab, ever whipped eighty times for accuse comrade Shu'bah bin Mughirahra commit adultery without sufficient evidence by court.

In the letter Al-Nur stated those who accuse others fornicating without evidence can not be accepted the testimony of all time even if (as the opinion of the mahdzab Hanafi) he repents. Because his testimony is not accepted, righteously transmission should also not be accepted. Another reason, stated by Abdul Hamid Muhammad ash-Syawarebi; this hadith absolutely can not be used as a legal basis because it involves things that very principle, namely the state implementation. As for things that principle in making kaedah legal basis (usul fiqh) may not be based on the texts narrated by only one or two people such as this Hadith. Acceptance of the hadith narrations by theologian due to the credibility of Imam Bukhari (Izzat, 1997).

But for its meaning, seems have to be re-examined. states some theologian opinion about this. First, women are not worthy of holding any position, even taking care of any problems. Secondly, this hadith only prohibits the delivery of high leadership issues (caliphate) to women, not the leadership of other issues. Third, reject the legal consequences of this Hadith. Another group of theologian also develop two opinions; first, does not accept this Hadith at all by narrations reason and opposition with the fundamental principles of Islam. Second, criticized the understanding of these hadith and provide a more neutral reinterpretation. Bequest is in the second group (Al-mar'ah wa Al-amal Al-siyasi; ru'yah islamiyah) Political perspective progress of women.

Fiqhiyyah convention contextual said that like the (value/message) taken from the specificity causes not the generality pronounciation. This convention is the opposite of the convention "like (value/message) is taken from the generality of the pronounciation not the specificity of causes". If this convention is used to understand the hadith: will not prosperous/win a clan if a woman was their leader.

Then, comprehension which appear later is that the Prophet prohibition on women's leadership limited to conditions such as people who heckled by the Prophet. Namely in women who are not competent to be a leader whereas if she is competent, then there is no prohibition of this hadith to be a leader. So, this Hadith are not prohibit female leadership because the hadith is bound by the causes conditions of the hadith emerge? According to bequest, this Hadith is valid but can not be interpreted as a prohibition against female political/public leadership. The right is grouping with other Hadith (which also valid and narrated by Imam Bukhari) who spoke about the kingdom of Persia D'Andrea and

their interaction with the community of the Prophet Muhammad. First, there is a hadith narrated that when the Prophet messenger came with a letter to D' Andrea Persia, he tore the letter so that the Prophet messenger returned to Medina. After that the Prophet (SAW) predicted the destruction of the D' Andrea kingdom. Both the preaching of the Prophet that the Romawi and The Persia kingdom will destroy and the people will submit to Allah's way. Secondly, this hadith only began the Prophet (SAW) statement about the destruction of women's leadership at D'Andrea Persians, Bawran bint Syayrurah bin D' Andrea.

From this story, Hadith can not be generalized to prohibit female leadership. This Hadith is specifically about the Persians and women leaders at the time. In the language of bequest, this Hadith included in the informative text category (al-akhbar) and preaching the victory (al-Bisjarah), not included in the normative texts category which have shari'ah legal consequences (al-Hukm Al-Syari). Shaykh Ibn Hajar Al-Asqalani statement also reinforces the latter view. According to Ibn Hajar this hadith is one of the Hadith associated with the story of the Persian kingdom. The Persian king once tore up the letter from the Prophet then he killed by his own son. The son then became king but later died of poisoning. The kingdom later handed over to his daughter, who then took the destruction of the Persian kingdom.

Second Hadith: In a history, Prophet (SAW) said: "O women, give charity because I see you all as most inhabitants of hell". The woman asked: "Why, O Prophet?" The Prophet replied: "You're often cursing and forget people kindness, I once never saw the people who (say) a narrow intellect and less religious but could undermine the firmness of a man, other than you. Why do we (considered) have a narrow intellect and less religious, O Messengers?", the Prophet answered "Is it the women's testimony is considered half of men's testimony?" Yes, they replied. "That is the meaning of narrow intellect is not that when menstruating women do not pray and do not fast?", "Yes". they replied. "That is less religion". This hadith narrated by Imam Bukhari in the chapter on menstruation (No. Hadith 304, chapters I, page 483).

Until now rarely heard theologians criticize the narrations. About its meaning, there are a variety of what is meant by a narrow intellect and less religion for women. Is it general for all the (majority of) women or it is tend caustic and conditional on certain things and for caused specific conditions? Many people simple conclude about this Hadith. According to them, women is prohibits

to be a head of state because Islam considers women have narrow intellect and less religion (al-'aql naqisat waal-din).

The jurisprudence concept about a person feasibility (al-Ahliyah), either related by intelligence or religious, no difference between men and women. That there is a distinction a small child with an adult or a madman and the sane. When an adult and sane, men and women are considered to have full eligibility (Al-Ahliyah Al-tammah) to take on responsibilities in all areas. Reliefs bestowed on women in religion, not departing from the narrowness of their intellect or label 'less religious' which attached to them inherently, creation or congenital. But constitute the condition effect and caustic that can changed by the society dynamics.

According to Al-Buthi (2002), contemporary Shafi fiqh experts from Syria, there is a correlation between the initial statement and subsequent explanation in the hadith. Narrowness of intelligence is only 'half of the testimony of women as revealed by the Prophet'. This means that it is simply a label to a case, instead of the label for a whole created reality. As expressions a students 'lack of intellect' for students who could not answer a teacher's question. Hadith narration by a woman received Islamists. So, funny, if women are considered less sense but accepted to narrate and explain the religious texts. 'Less religious' referred to in the hadith only for not praying and not fasting because of menstruation. That is, the phrase was simply explaining a condition, not a statement for all conditions.

Women are allowed to not praying and fasting when menstruation and even commanded to it. It is Naive, if religion had commanded an act then gave the label 'less religious' for doing so. So, this Hadith simply can not be the basis of female leadership prohibition in Islam. Third Hadith: Many people prohibit female leadership with reason that the Prophet never submit the political leadership to women as well as the comrade and tabi'in, In fact, at that time many women who are intelligent, clever and wise. This Facts (hadith) is considered as a strong evidence to support a prohibition on female leadership.

But this conclusion is correct in making the methodology of Islamic law? Many verses of the Quran and Hadith texts stating full feasibility (al-Ahliyah Al-tammah) women as men. When this become the basis, it is not important whether there are facts or not in the past. Because not all the kindness were there and form in the past. In the Usul Fiqh methodology there is a statement "Something that was left is not the basis for negative or positive declare against him" (al-tarku laysa bi-proof). If the Prophet had not been handed another

leadership in the tribe of Quraish so do too comrade and tabiin do not make it as a legal basis for claim that Islam only allows the political leadership in the tribe of Quraysh alone. Once Khaldun (1951, 1958). The same is apply for women's leadership. Women can not be prevented from becoming a leader just because it does not occur at the time of the Prophet.

There is a pretty good statement of a classical theologian Ibn Qayim Al-Jauziyah to put an end to this Hadith analysis. Ibn Qayim Al-Jauziyah: "politics (sanctioned by Islam) is a truly bring benefit to humans being and keep the destruction from them, even if it is not done by the Prophet and not revealed in the revelation texts"? Measurement to support or reject the leadership of someone is not because of gender, male or female. But on the basis of their ability, the extent to which it can bring benefit or destruction to the community.

There is an assumption that in the classical Islamic literature, the legal basis of the prohibition is easier to find than the other way around. However, in the early history of Islam there is a reality that Siti Aishah, the wife of the Prophet Muhammad (SAW), led the army against the forces of Ali bin Abi Talib. That is, there are a number of companions of the Prophet which are in Aisha forces, acknowledge the leadership of a woman. With these reasons, the legal basis for the prohibition on women's leadership, could be reviewed? Verses of the Koran that forbids women to leave the house, namely the letters Al-Ahzab verse 33, namely: "and be remain² in your house and do not display your finery like the displaying of the ignorance of yore and keep up prayer and pay the poor due and obey Allah and His Messenger. Allah only desires to keep away the uncleanness from you, O People of the house and to purify you a thorough purifying" (QS. Al Ahzab: 33) this verse is specifically for the Prophet's Wives.

CONCLUSION

From the researcher research in the issue of female leadership in Fiqh Siyasah perspective can be summarized as follows.

⁸ **Islam and the rights of women:** In the view of Islam that the woman which related with leadership has the right to be selected and choose that although there is opinions differences in this matters. Woman leadership in Fiqh

Siyasah perspective there are several opinions that is: Classical Sunni Ulama siyasah Syariyah most require that it has to be men like Imam Al-Ghazali and some do not require men like Al-Mawardi and Ibn Taymiyah.

At the present time, there are opinions differences associated with female leadership in siyasah fiqh perspective, there are who still not allowed with reasons that used by fuqaha and some are allowed and partly promoting the ability of women became a public leader with the gender study.

The fight so that women are equal to men in matters of leadership until now being fought by women's activists both in Islamic and Western countries.

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