

REPUBLIC INDONESIA
KEMENTERIAN HUKUM DAN HAK ASASI MANUSIA

SURAT PENCATATAN CIPTAAN

Dalam rangka perlindungan ciptaan di bidang ilmu pengetahuan, seni dan sastra berdasarkan Undang-Undang Nomor 28 Tahun 2014 tentang Hak Cipta, dengan ini menerangkan:

Nomor dan tanggal permohonan : EC00202366756, 14 Agustus 2023

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Jenis Ciptaan : **Karya Ilmiah**
Judul Ciptaan : **Islamic View On Property Rights For Women**
Tanggal dan tempat diumumkan untuk pertama kali : 12 Agustus 2023, di Fakultas Agama Islam Uhamka
di wilayah Indonesia atau di luar wilayah Indonesia
Jangka waktu perlindungan : Berlaku selama hidup Pencipta dan terus berlangsung selama 70 (tujuh puluh) tahun setelah Pencipta meninggal dunia, terhitung mulai tanggal 1 Januari tahun berikutnya.
Nomor pencatatan : 000499707

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Islamic View of Property Rights for Women

Ai Fatimah Nur Fuad, Ph.D

Data in various countries with Muslim-majority populations show that men have more *property* than women (O Neil and Toktas, 2015; 2015). This is partly influenced by a patriarchal culture that provides more opportunities for men and less space for women to work. The patriarchal culture indirectly creates a division of labor that places men more likely to get wealth; men work outside the home while women take care of domestic issues such as taking care of children at home. In other words, in a patriarchal culture, men are placed as economic actors. On the other hand, women who are required to take care of domestic problems will have an economic dependence on their husbands. It is not surprising that property ownership in patriarchal culture is the domain of men.

Basically, in the context of developed societies, women's opportunities to work are getting more and more open. Women also get access to higher education which has an impact on the type of work that will be better and guarantee their financial independence (Bishin and Cherif, 2017). Women are able to own houses, vehicles, land, jewellery, and other forms of property with the ownership documents in their own names. Unfortunately, in certain communities, there are still women who do not have full control over the management of their assets. For instance, women in certain Muslim communities who wish to sell, rent, and manage their property must be accompanied by a male witness to testify to their identity or seek permission from their husbands or brothers. The domination of men in the ownership and management of the property is part of a patriarchal culture. This condition shows that although progress in Muslim society has provided many benefits to women such as access to education and employment, the patriarchal culture still places women in a subordinate position.

In Islamic teachings, women are given the same potential as men to work outside the home, get a salary/wages, and own property. Property (*al-maal*) which is mentioned 82 times in the Quran has an important and strategic value in achieving the welfare of the owner's life, both male and female (see *QS Al-Baqarah [2]: 177.155, 261-262, 247, QS Al-Imran [3]: 186, QS An-Nisa [4]: 5, QS Al-Kahf [18]: 46, QS Al-Anfal [8]: 28*). Islam also regulates how men and women can properly own property (*QS An-Nur [24]: 33, QS An-Nisa [4]: 5 and 29*), as well as how to collect, manage and transfer ownership (*QS An-Nisa [4]: 95*). These verses are addressed to all human beings (*yaa ayyuhan naas*) without gender discrimination. The hadith of the Prophet reads: “*The best among you are not those who neglect this life for the life to come or those who neglect the life to come for the sake of the present life. On the contrary, each serves as a path to the other*”, advising everyone, including women, to work and take care of their worldly affairs.

In Islam, managing the property (worldly affairs) is one of the elements of the five principles that must be protected by every human being (*al-dharuriyyat al-khamsah*) namely soul, mind, religion, property, and offspring. This is the goal of the implementation of sharia (*maqashid syari'ah*). In Islamic history, having wealth and being rich is not solely male-dominated. Prophet Muhammad's wife, Siti Khadija, was a wealthy businesswoman who

supported his preaching. Muslim women have enjoyed property rights for centuries. Islam's respect for women's property rights was well known during the Ottoman period that Christian and Jewish women at that time pursued inheritance rights through Islamic courts because their religious law did not provide equal rights (Kuran, 2004).

Islam guarantees equal rights to women and men in the ownership and management of property, whether obtained from work or from marriage and inheritance. In marriage, women have the right to get property both as a dowry and *nafaqah* (subsistence). Women have the right to get a dowry when they get married (QS An-Nisa [4]:4). The dowry can be in the form of money, goods, or jewellery; the amount is mutually agreed upon between husband and wife before the marriage contract. Dowry is a woman's property in Islam and she is entitled to its management according to her wishes. In addition to the dowry, women are also entitled to subsistence from their husbands which she can spend according to the needs of the family (QS An-Nisa [4]:34, QS At-Talaq [65]:7). Subsistence is a basic need that a husband must provide to his wife and children, namely in the form of food, clothing, and a house. However, in a hadith of the Prophet from Sahih Bukhari, it is narrated that Zaynab and a woman from the Ansar tribe actually became the breadwinner for her husband and her family. When they told this to the Messenger of Allah, the Messenger of Allah replied that they got two rewards, namely the reward of relatives (*ajru al-qoroobah*) and the reward of alms (*ajru ash-shodaqoh*).

In contemporary society, we see a similar phenomenon in which some women become the breadwinners and providers for their husbands and children. Research by the KOMNAS Perempuan (National Commission of Women) shows that there is an increasing trend of male households earning less than their wives. Some women also do not get the dowry from their husbands. Some local cultures place women as applicants and require them to bring a certain amount of property that is given to the prospective groom, as in matrilineal customs. In this local culture, descent and kinship are arranged according to the maternal line which places women superior to men, and it is the women (wives) who take the husbands home after marriage.

The two verses regarding dowry and subsistence came down in the context when most women in pre-Islamic times only took care of domestic affairs and did not have economic access so that men were given the responsibility to provide dowry and subsistence to women (Hitti, 1984; Hodgson, 1974). Therefore, the obligation of men to give a dowry and subsistence cannot be separated from the patriarchal culture in Arabia at that time which required women to take care of domestic affairs only. In the spirit of gender equality, when women are allowed to work outside the home, obviously this has implications for subsistence matters, where the living can be both a shared obligation and responsibility between husband and wife, and it can even become the wife's responsibility in certain conditions such as when the husband gets sick or gets laid off.

Another implication is related to women's inheritance. The provision of inheritance 2:1, namely that women inherit half a portion of men (QS An-Nisa [4]:11) is considered fair because the husband is obliged to give dowry and subsistence to his wife. In the interpretation of Al Qurtubi and At-Tabari, the half portion for women is fair because husbands have greater economic responsibilities than women. Therefore, the principle of justice in the distribution of inheritance certainly needs to be re-read. A religious text cannot be separated from the context at the time of its revelation. In the context of Arab society when the inheritance verse was revealed,

the concept of men inheriting twice as much as women were already very progressive and revolutionary because women in pre-Islamic times were deprived of an inheritance.

Inheritance to women at that time was abolished because according to Abid Al-Jabiri (2001) it often led to conflicts among tribes. The Arab marriage tradition at that time was a marriage between two different tribes, which caused the woman and property from the origin of the woman's tribe to turn into the property of the man's tribe. The tribe of the woman (wife) feels deprived of their rights because the ownership of their tribal assets such as camels, horses, and others have shifted to the tribe of the man (husband). QS An-Nisa [4] verse 7 and verse 11 came down with the spirit of giving inheritance rights and property protection to women and their tribes. So, the principle of justice is not about half numbers, but in the spirit of giving inheritance and in protecting women's rights.

Early Islamic traditions also show that religious practice is not only built through understanding the text but through understanding the dynamic changing context while maintaining the spirit of Islamic justice as well. For example, Caliph Umar ibn Khattab had done *ijtihad* (legal stipulation) *tsulusul baaqi* (one-third remaining) in his time. This *ijtihad* stipulates that women are not obliged to receive half the inheritance from men. Likewise, the distribution of *fai'* property (wealth obtained from non-Muslims by peaceful or voluntary means) and *ghanimah* (wealth obtained from non-Muslims through battle/war) at that time was the result of Umar's *ijtihad* whose distribution was carried out following the needs of the context at that time, and not based on the existing division of the Quran (Hitti, 1984). The consideration of Umar's *ijtihad* was the principle of justice in accordance with the context of his time.

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An Islamic Perspective on Advancing Women's Property Rights

Meet our Panel Speaker - Dr. Ai Fatimah Nur Fuad



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Date: 31st, August 2022 | Time: 3:00 PM EAT|2:00 PM GMT +2 |7:00 PM WIB
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