

Maslahah Analysis on The Value of Gender Equality in The Empowerment of Women's Rights in Indonesian Legal Rules

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Abstract: The purpose of this research is to answer how to analyze the value of gender equality in the empowerment of women's rights in Indonesian legal rules. The research method used in this study is a qualitative research method with the measuring point of the problem is the Indonesian legal rule regarding women's rights that have elements of gender equality. This research is descriptive because the data collected is in the form of texts, words or descriptions derived from literature and literature studies. By analyzing laws and regulations, related to women's empowerment and protection rights. The results of the research found are that so far positive legal rules in Indonesia already have a gender equality value, as can be seen from several women's rights that have been accommodated by several laws such as political rights, legal rights, rights to protection in the world of work and so on. The masalah seen in the above findings is masalah mursalah, on the grounds that these regulations are not contrary to the sharia'. The benefits for women in Indonesia's positive rules whose existence is not supported by sharia and is not canceled or rejected by sharia through detailed evidence. However, it is supported by a collection of meanings from the Qur'an and hadith.

Keywords: Gender, Equality, Masalahah, Law.

Introduction

Gender equality refers to the concept that all individuals, regardless of their gender, have equal rights, responsibilities, and opportunities in all aspects of life.¹ Gender equality demands recognition of the values, human rights, and needs of all individuals, regardless of their gender, as well as the treatment of each individual fairly and without discrimination based on sex. This means that gender equality encompasses various aspects of life, including political, economic, educational, and social rights. The goal is to create a society where everyone has equal access to opportunities,

¹ Sugiri Permana, "GENDER EQUALITY IN IJTihad OF INHERITANCE LAW IN INDONESIA," *Asb-Shari'ah*, 2018, <https://doi.org/10.15575/as.v20i2.3210>.

resources, and decisions, without discrimination based on gender. Gender equality also involves opposing stereotypes and social norms that can limit a person's role and potential based on gender.² Achieving gender equality is a recognized global goal to promote justice, human rights, and sustainable development.

Gender equality is an important aspect of sustainable development and needs to be pursued by all levels of society and government. This collective effort aims to create a more just and inclusive society, where women and men can participate fully in all aspects of life. So there is no doubt that positive regulations in Indonesia are regulated in such a way that the issue of the rights of men and women is based on the 1945 Constitution which guarantees the rights of the same nation regardless of gender.³ There are even regulations that are specifically for women's rights.

Gender equality in Indonesia refers to the principles that guarantee that all individuals, regardless of gender, have equal rights, responsibilities, and opportunities in social, economic, political, and cultural life. Gender equality aims to eliminate discrimination based on sex and create conditions where women and men have equal access to resources, opportunities, and rights, and have an equal role in decision-making.

The rulemaking process that benefits women in Indonesia involves several stages, including the role of the government, legislative institutions, civil society, and non-governmental organizations. The initial step involves research and analysis to understand the conditions of gender equality in various sectors, such as education, employment, health, and others. The data and information collected help in an in-depth understanding of the issues faced by women in different regions. Women's advocacy groups, NGOs, and activists are often involved in campaigns to raise public awareness of gender equality issues. These campaigns can play a crucial role in gaining public support and putting pressure on stakeholders to take action.

In this study, the material for analysis in measuring gender values is political rights, the right to face the law and the right to protection at work. Kegita represents the meaning of gender itself. The difference between men and women is not from physical but position. The role that is prioritized in its essential implementation. How is the value of gender equality in this aspect of the field appropriate to have benefits that are in accordance with the expectations of Islamic principles.

Library research (library research) is used in this study. Literature research refers to research that uses written documents, and the data sources of this research are primary legal materials and secondary legal materials. Basic legal materials are legal materials that are binding or that make people obey the law, including legal products that are primary materials and legal products that are tools of criticism. Secondary legal materials include explanations of primary legal materials in the form of expert doctrines contained in books, journals, and websites. The method used in this study is a qualitative research method. According to Creswell, the qualitative research method is a process of inquiry (question/investigation) about the understanding of something to obtain data,

² Sulistyowati Irianto, "Competition and Interaction between State Law and Customary Law in the Court Room: A Study of Inheritance Cases in Indonesia," *Journal of Legal Pluralism and Unofficial Law* 36, no. 49 (2004): 91–112, <https://doi.org/10.1080/07329113.2004.10756574>.

³ Intan Nevia Cahyana, "Legal Protection of the Existence and Participation of Customary Law Communities in Forest Management in Customary Forest Areas," *PRIORIS Law Journal*, 2017, <https://doi.org/10.25105/prio.v6i2.2440>.

information, texts, and respondents' views using various methodologies in a social or humanitarian problem or phenomenon.⁴ In this study, the problem that becomes a measuring point or problem is the Indonesian legal rules regarding women's rights that have elements of gender equality. This research is descriptive because the data collected is in the form of texts, words or descriptions derived from literature studies such as the 1945 law, criminal laws, and regulations related to women's empowerment and protection. The analysis was carried out by an inductive method, with the flow of discussing the research subject first, namely the value of gender equality in positive legal rules in Indonesia, then analyzed using *maslahah mursalah*. With the aim of getting answers from research on how to apply the value of gender equality in the empowerment of women's rights to Indonesian legal rules. Some of the studies related to this research are:

First, an article by Erna Ermawati Chotim with the title *Gender Equality and Women's Empowerment in Indonesia: The Desire and Inevitability of a Pragmatic Approach (Study of Cirebon Home Made SMEs)*.⁵ This paper discusses how promoting gender equality has become a globally recognized and accepted reality. Gender issues are also recognized as important in achieving national development goals. In fact, achieving gender equality is not only considered the ultimate goal, but also a catalyst and prerequisite for achieving sustainable development. The study used valuable secondary data sources to assess the level of gender equality and women's empowerment using three key indicators: participation in primary, secondary and tertiary education, employment and policymaking. This study uses a qualitative method that is analyzed using a descriptive approach. At the heart of the problem of gender inequality in Indonesia lies in the Indonesian government's dilemma in making decisions to address the problem, expand the capacity needed to increase opportunities, and meet the different needs of both sides. This study is based on the desire and need for a pragmatic approach to achieve gender equality and women's empowerment.

Second, an article from Nurhafiza et al., with the title *Women's Involvement in Politics from a Positive Legal Perspective of Indonesia and Islamic Law*.⁶ This research says that women's involvement in politics as individuals is closely related to gender equality. Gender equality is part of the national rights recognized in Law Number 7 of 1984 which is the legal basis for the realization and protection of women's rights. Convention on the Elimination of All Forms of Discrimination against Women or in the form of the realization or ratification of the Convention on the Elimination of All Forms of Discrimination against Women, this study contains research data in the form of laws, books, journal articles, and the Internet of This research. The results of this study show that women are required to participate in politics as a condition for general elections, which is in accordance with Indonesia's positive laws, and women are required to participate in politics. And women's involvement in politics based on Islamic law is still divided into two parties, namely the pros and cons.

Furthermore, an article from Louisa Yesami Krisnalita with the title *Women, Human*

⁴ Rian Vebrianto et al., "Bedelau: Journal of Education and Learning Mixed Methods Research: Trends and Issues in Research Methodology," *Bedelau: Journal of Education and Learning*, vol. 1, 2020.

⁵ Erna Ermawati Chotim, "Gender Equality and Women's Empowerment in Indonesia: The Desire and Inevitability of a Pragmatic Approach (Study of Cirebon Home Made SMEs)," *Acceleration: National Scientific Journal*, 2012, <https://ejournal.goacademica.com/index.php/ja/article/view/357/336>.

⁶ Askana Fikriana et al., "Women's Involvement in Politics from a Positive Legal Perspective of Indonesia and Islamic Law," *Tambusai Education Journal* 7, no. 3 (2023): 30918–24.

Rights and Its Problems in Indonesia.⁷ This research discusses equality and the elimination of discrimination against women is often the focus of attention, and its implementation is a shared obligation. However, in social life in the year, no significant progress has been made in achieving equality of dignity and value for women. Human rights and women's issues are not taken seriously by the state. Issues such as gender-based systematic violence, political rights, and women's right to work are often violated. Many women's rights to work are still in conflict due to inconsistent law enforcement and differences in perceptions of women's roles in the public sector.

There is also an article by Dhea Januastasya Audina, with the title Gender Equality in the Perspective of Human Rights.⁸ Gender equality is an important part of the concept of human rights, and the aim of this study is to consider gender equality from a human rights perspective. This research uses a normative legal approach, namely a review of literature and books related to the problems studied, as well as existing laws and regulations. Based on a literature review, it was found that women's rights are part of human rights and women are included in the vulnerable category. International laws and treaties are created to guarantee and protect women's rights and gender equality. However, there are still obstacles and difficulties in achieving gender equality in Indonesia. This is due to the culture of society that still values women more at home than at work, low knowledge and understanding of women's rights, and a developing society that views that women are inherently weak and men are inherently strong. The struggle to achieve gender equality continues along with the increasing cases of gender injustice, including in Indonesia.

Results

Women's rights in Indonesia are guaranteed by various laws and regulations. Some of these rights are enshrined in the 1945 Constitution and various laws that are more specific. Some of the rights of women guaranteed by the Indonesian state include:

Yes	Rights	Policy	Information
1	Equal and Non-Discriminatory Rights	Article 28B Paragraph (2) of the 1945 Constitution	Declares that every citizen has an equal position in law and government and is obliged to maintain unity and unity
2	The Right to Live and Thrive	Article 28A Paragraph (2) of the 1945 Constitution	Guaranteeing everyone's right to life and everyone's right to develop themselves.
3	Health Rights	Law Number 36 of 2009 concerning Health	Declares that everyone has the right to live a healthy life
4	Right to Education	Article 31 Paragraph (1) of the 1945 Constitution	Declare that every citizen has the right to education

⁷ Louisa Yesami Krisnalita, "Women, Human Rights and Their Problems in Indonesia," *Binamulia Hukum* 7, no. 1 (2018): 71–81, <https://doi.org/10.37893/JBH.V7I1.315>.

⁸ Dhea Januastasya Audina, "Gender Equality in the Perspective of Human Rights," *Journal of Legal Research* 2, no. 4 (2022): 148–54, <https://doi.org/10.56393/nomos.v1i6.602>.

5	The Right to Work	Article 27 Paragraph (1) of the 1945 Constitution	Guarantee every citizen to work and earn a decent livelihood for humanity
6	Protection against Violence	Law Number 23 of 2004 concerning the Elimination of Domestic Violence	Providing protection for women from all forms of domestic violence
7	Political Rights	Article 28I Paragraph (4) of the 1945 Constitution	declares that every citizen has the right to participate in government, either directly or through his representatives.
8	Protection against Trafficking and Sexual Exploitation	Law Number 21 of 2007 concerning the Eradication of the Crime of Trafficking in Persons and Article 296A of the Criminal Code	Regulate the crime of trafficking in persons, which can involve women
9	The Right to Justice	Article 28I Paragraph (5) of the 1945 Constitution	Declare that everyone has the right to justice
10	Protection of Welfare	Law Number 13 of 2003 concerning Manpower	Provide protection for female workers, including in terms of maternity and maternity leave

Please note that the implementation of these rights can vary and depends on a variety of factors, including social and economic circumstances. Increased awareness, education, and better law enforcement are also needed to ensure the effective protection and fulfillment of women's rights.

Political Rights

In channeling their political aspirations, women have the freedom to choose the ideology of political parties that are in accordance with their ideals. Political parties are an important and indispensable pillar in the democratic system, because political parties function as a liaison between the state government and its citizens.⁹ Women's political rights are channeled through political parties, these distribution can be done through women's participation in building a political party or being part of a political party. The implementation of 30% female representation in the General Election Law has not fully made women represented in the general election process, but statistically, there has been a significant addition of female candidates participating in the election after the implementation of representation was first introduced in the General Election Law Number 12 of 2003 Article 65 paragraph (1).

In terms of women's representation in elections, it is important because every human being

⁹ Andie Hevriansyah, "Women's Political Representation Rights in the Representative Proportional System in Legislative Elections," *Journal of Elections and Democracy* 1, no. 1 (2021), <https://jurnal.banten.bawaslu.go.id/index.php/awasia>.

wants to be treated equally, between women and men.¹⁰ These equal rights were subsequently adopted into the 1945 Constitution of the Republic of Indonesia. In 1976, Indonesia has also ratified a broader international covenant, namely on human rights in the fields of political and civil rights, economic rights, social rights, and cultural rights. This Covenant is an elaboration of the more specific Universal Declaration of Human Rights, where political rights have a "non-derogable" nature. Women as human beings also have the right to participate in politics as well as the right of men to do politics. Women have the same rights as men, even women are one of the parts who get convenience and special treatment in order to get the same benefits and opportunities to achieve equality and justice, as stipulated in the 1945 Constitution Article 28H paragraph (2).¹¹

Special treatment for women by the state is to provide opportunities for women in terms of women's representation to be an election participant of at least 30%, with women's representation in the House of Representatives after the Constitutional Court Decision Number 22-24/PUU-VI/2008.¹² There is constitutional protection, so the political right of women's representation in elections is important and must be implemented by the Election Law, even included as a requirement for political parties to become election participants for members of the DPR, DPRD, Provinces, Regencies/City, by including at least 30% representation of women in the management of political parties at the central level, as stipulated in Law Number 7 of 2017, Article 173 paragraph (2) letter (e).

The Right to Face the Law

Furthermore, in terms of dealing with the law, often women who are dealing with the law with cases of sexual violence, in particular, hardly find a bright spot in the resolution of the cases they experience in the eyes of the law. Instead of resolving their cases in the eyes of the law, women who are often in the position of victims are far from the word protection. How could it not, in the case of sexual violence, law enforcement officials (APH) actually commit victim blaming, criminalization, and even asking questions that seem to corner women (victims) who are in a guilty position. As you can imagine, having suffered physically and psychologically, the victim still has to prepare mentally to face APH.

The initial goal was actually to seek justice through litigation, actually making women feel afraid first because they knew how APH's attitude was towards women victims of violence. It is even worse to be persuaded to take the peaceful path, in other words to marry the perpetrator. As you can imagine, even though marrying the perpetrator does not rule out the possibility that the perpetrator will commit violence again. Not to mention that the police imposed an inappropriate article with lighter punishment consequences for using a makeshift article. This is because there is no lex specialist for sexual violence cases in Indonesia. So this is where the role of the companion is to ensure that the victim feels safe in every process of seeking justice in the eyes of the law and to ensure that the article that ensnare the perpetrator is the most appropriate article.

¹⁰ "2024 Elections and Women's Political Rights - UIN Sunan Gunung Djati Bandung," accessed January 12, 2024, <https://uinsgd.ac.id/pemilu-2024-dan-hak-hak-politik-perempuan/>.

¹¹ "Fulfill Women's Political Rights - Kompas.Id," accessed January 12, 2024, <https://www.kompas.id/baca/polhuk/2023/05/20/penuhi-hak-politik-perempuan>.

¹² "KPU Has No Plans to Revise Women's Representation Rules - Kompas.Id," accessed January 12, 2024, <https://www.kompas.id/baca/polhuk/2023/05/19/kpu-belum-berencana-revisi-aturan-keterwakilan-perempuan>.

The legal process experienced by women is indeed not easy and short. Against the backdrop of the bitterness felt by women facing the law, several regulations were then issued in order to ensure access to justice and justice free from discrimination for women and children. Namely with the Decree of the Chief Justice of the Supreme Court No.88/KMA/SK/V/2016 concerning the Establishment of the Women and Children Working Group. Representatives from the working group then attended the Southeast Asian Women Judges workshop in Bangkok in June 2016 which included basic concepts of gender, the application of gender equality principles, guidance on applying a gender perspective when adjudicating cases, and recommendations for Countries participating in the workshop to develop more gender-sensitive justice systems.

In Indonesia, the follow-up form of the workshop is that the Supreme Court (MA) plans to make regulations related to the handling of women in court. Until finally on August 4, 2017, the Supreme Court finally ratified Supreme Court Regulation (Perma) No.03 of 2017 concerning Guidelines for Adjudicating Women's Cases Facing the Law. In general, the law enforcement process must be based on four principles, namely the principle of equality before law, the principle of legal certainty (*rechtssicherheit*), the principle of justice (*gerechtigkeid*), and the principle of usefulness (*zweckmasigkneit*).¹³ However, a positive progress is that in article 2 of Perma N0. 3 of 2017 in addition to the four principles above, it is now coupled with the principle of respect for human dignity and dignity, non-discrimination and the principle of gender equality. So that in the principle of non-discrimination, judges are prohibited from discriminating, excluding or restricting on the basis of sex.

In addition, this PERMA in article 4 also regulates and provides a basis for how judges should act and behave in women's cases in court. What can be considered by judges in examining and adjudicating women's cases such as the existence of social status inequality between the two parties to the case, inequality in legal protection, physical and mental helplessness, the existence of power relations, the existence of a history of violence from the perpetrator to the victim or witness, and also the psychological impact.

In article 7 of PERMA N0. 3 of 2017, also prohibits judges from showing gender-biased attitudes or statements, justifies discrimination against women and also prohibits asking about the sexual history of victims. In addition, judges have the right to prevent and even reprimand parties, legal counsel, public prosecutors and/or legal representatives who behave or make derogatory statements, blame, intimidate and/or use women's experiences or sexuality backgrounds in the face of the law. Not only that, in article 8 of PERMA N0. 3 In 2017, the judge has the right to ask the victim about her restitution, including the loss, the impact of the case and the needs in the context of recovering women as victims. In terms of the recovery of victims or aggrieved parties, judges are required to be consistent with human rights principles and standards, free from gender stereotypes and take into account the situation and interests of victims of disproportionate losses from gender inequality.

In article 10 of PERMA N0. 3 of 2017, it is also explained that the judge on the initiative or application can hear the testimony of women who are facing the law through remote audio-visual communication if it is felt that the conditions and safety of women who are facing the law

¹³ A. Mukti Arto, *Practice of Civil Cases in Religious Courts* (Yogyakarta: Pustaka Siswa, 1998).

are not possible to be present at the trial.¹⁴ So that with the existence of PERMA N0. 3 of 2017, it really provides a breath of fresh air for women victims of sexual violence in achieving justice in the eyes of the law, and can increase gender sensitivity for judges and multiply other fresh air in order to give birth to new progressive laws that are friendly to women. Although this regulation already exists, we must remember that PERMA N0. 3 The year 2017 is only in the trial. The legal process that women go through outside the trial is still a big concern so that women still feel safe and get justice. In addition, in its embodiment, the Supreme Court has made a guidebook and also socialization, but it can still be said that it is not optimal without workshops and socialization for all law enforcement officials on a massive scale.

Protection Rights at Work

Indonesia has adopted various policies and regulations to ensure women's protection rights in the workplace. Some of these initiatives involve legal aspects, labor policies, and efforts to address gender discrimination. Several concrete steps have been taken by the Indonesian government to protect women's rights in the workplace. Indonesia has a Labor Law that includes provisions related to the protection of women workers. For example, fair working hours and maternity leave rules are regulated.

The Government of Indonesia has committed to eliminating gender discrimination in the workplace through various programs and initiatives. Law No. 7 of 1984 concerning the Ratification of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) is one of the efforts to ensure the protection of women's rights, including in the workplace.¹⁵ Women workers in Indonesia are entitled to maternity leave and breastfeeding leave in accordance with labor regulations. It aims to provide support to female workers during the pregnancy period and after childbirth.

Several rules and policies have been put in place to protect female workers from sexual harassment in the workplace. The government has paid special attention to this issue to create a safe and harassment-free work environment. The government has also made efforts to empower women's economies by providing support for micro, small, and medium enterprises owned by women and increasing employment and education opportunities for women. Although various steps have been taken, there are still challenges in the implementation and monitoring of the effectiveness of these policies. Increased awareness, community involvement, and cross-sectoral cooperation are expected to strengthen the protection of women's rights in the workplace in Indonesia.

Discussion

Imam Malik stated that the ratio must be considered for the consideration of the benefits of al-mashalih al mursalah.¹⁶ In the discussion of the ratio legis, it is late to note that the public

¹⁴ Nurhilmayah Nurhilmayah, "Legal Protection of Women in Conflict with the Law Before and After the Birth of Perma Number 3 of 2017 concerning Guidelines for Adjudicating Women's Cases in Conflict with the Law," *DE LEGALATA: Journal of Legal Sciences* 4, no. 1 (July 30, 2019): 211–19, <https://doi.org/10.30596/dll.v4i2.3172>.

¹⁵ Suci Flambonita, "LEGAL PROTECTION OF WOMEN'S WORKERS' RIGHTS," *Simbur Cahaya Journal* 24, no. 1 (2017), <http://journal.fh.unsri.ac.id/index.php/simburcahaya/article/view/50/51>.

¹⁶ Muhammad Jawad Mughniyah, *Fiqh of the Five Madhhabs Translation by A.B.Masykur et al* (Jakarta: Lentera, 2000).

interest plays a role in determining suitability (reasonable),¹⁷ a fundamental method in constructing and verifying ratios. This is because of this relationship between ratios and conformity that reveals that *maslahah* and *istishab*, think as an extension of *qiyas*. Most of the works of *ushul fiqh* do not give their own parts, but place them under the principle of conformity.¹⁸ Some of the writers who appeared then included a discussion of this problem in a chapter called *istidhal*, a chapter that usually includes types of conclusions that are not included in the category of *qiyas*.

The problem that arises in *istishab* is related to cases whose law is obtained based on rationally appropriate advantages that are not supported by textual evidence called *al-mashalih mursalah*.¹⁹ Some scholars of *ushul fiqh* reject any conclusion that is not supported by the evidence of the texts, even if it is motivated by the public interest or otherwise. Malik bin Anas came to a conclusion that was in the public interest without being supported by the texts, but received little response from his followers, so that no scholar of *ushul fiqh* after the third century supported *maslahah mursalah* in the sense attributed to Malik.²⁰

The method shows that the characteristics of the public interest adopted in a case are in accordance (*munasib*) and relevant (*mutabar*) both with the universal principles of law and with certain parts of the textual evidence. Therefore, suitability and relevance are requirements for a valid conclusion of *maslahah mursalah*. Al ghazali puts the issue of terms differently.²¹ We have seen that the level of legal objectives of al-ghazali (*maqashid tasriyah*) includes at the peak the principle of safeguarding religion, safeguarding the soul, intellect, lineage and personal property.²² These characteristics can be proven as definite (*qath'i*) and universal (*kulli*) principles, so the penalties based on them is valid. Universal is intended to ensure that the interests of Muslims in general are not only partially served.

For example, if the infidel army captures a number of Muslims and makes a shield, if this event is not attacked, the enemy army will succeed in destroying Muslim communications. Therefore, in order to repel the enemy, we must attack the shield, even though it will lead to the killing of many, if not all, of the Muslims who are used as shields. Although individuals from this group did not commit crimes punishable by death according to the principle of *istislah*, killing Muslims was in accordance with the consideration of safeguarding the Islamic community as a whole which would inevitably face annihilation if not attacked.²³ In this case, it is in accordance with three requirements, namely universality, certainty and maintaining the interests of legal purposes.

According to Ash-Syatibi where there is a benefit there is the law of Allah, then Ibrahim

¹⁷ Mohammad Hadi Sucipto and Khotib, "The Debate of *Maslahah Mursalah* in the Books of Al-Imam Al-Ghazali," *El-Faqih : Journal of Islamic Thought and Law* 6, no. 1 (May 9, 2020): 1–17, <https://doi.org/10.29062/FAQIH.V6I1.106>.

¹⁸ Amir Syarifuddin, *Outline of Fiqh* (Jakarta: Kencana, 2013).

¹⁹ Umar Muhaimin, "ISTIDLAL AND ISTISHAB METHOD (FORMULATION OF IJTIHAD METHODOLOGY)," *Judiciary: Journal of Islamic Legal and Legal Thought* 8, no. 2 (2017), <https://journal.iainkudus.ac.id/index.php/Yudisia/article/view/3243/2362>.

²⁰ Lukman Arike, "RELIGION AND THE STATE FROM THE PERSPECTIVE OF Fiqh SIYASAH," *Al-Adalah: Journal of Islamic Law and Politics*, 2019, <https://doi.org/10.35673/ajmpi.v3i2.200>.

²¹ Sucipto and Khotib, "The Debate of *Maslahah Mursalah* in the Books of Al-Imam Al-Ghazali."

²² Syarif Hidayatullah, "MASLAHAH MURSALAH ACCORDING TO AL-GHAZALI," vol. 4, n.d.

²³ Hasnul Arifin Melayu et al., "Islamic Sharia and the Legal Culture of the Society in Aceh," *Sharia Media : A Vehicle for the Study of Islamic Law and Social Institutions*, 2021, <https://doi.org/10.22373/jms.v23i1.9073>.

Hosen made this mashalih al mursalah a legal postulate. Based on this mashalih al mursalah, according to him, there will be many new problems that are not mentioned by the Qur'an and Sunnah and other postulates can be established in the context of reactualizing Islamic law.²⁴ Ibrahim Hosen views the need to encourage the mashalih al mursalah approach in legal cases encountered because the benefits of the ummah are not the same and many varieties and variations are always developing and changing according to the progress of the times.²⁵

The application of this maslahah mursalah can be seen by the ijihad opinion of Ibrahim Hosen regarding the donation of human organs and the donation of animal organs. Regarding the donation of human organs, he agrees with the opinion of scholars who state that human organs including and others do not belong to humans. Humans only have the right to know the benefits. Therefore, man's ownership of the organs of the human body is milk al-intifa', while the object in this case the organs of the body belongs to Allah. This is in line with the spirit of Allah in the letter:

وَلَذَبْلُوكُمْ بِشَيْءٍ مِّنَ الْخَوْفِ وَالْجُوعِ وَنَقْصٍ مِّنَ الْأَمْوَالِ وَالْأَنْفُسِ
وَالْذَّمَّاتِ²⁶ وَبَشِّرِ الصَّابِرِينَ

And indeed We will give you a trial, with a little fear, hunger, lack of wealth, soul and fruits. And give glad tidings to those who are patient. (Al-Baqarah: 155)²⁶

الَّذِي أَحْسَنَ كُلَّ شَيْءٍ خَلَقَهُ²⁷ وَبَدَأَ خَلْقَ الْإِنْسَانِ مِن طِينٍ
ثُمَّ جَعَلَ نَسْلَهُ مِن سُلَالَةٍ مِّن مَّاءٍ مَّهِينٍ
ثُمَّ سَوَّاهُ وَنَفَخَ فِيهِ مِن رُّوحِهِ²⁸ وَجَعَلَ لَكُمُ السَّمْعَ وَالْأَبْصَارَ وَالْأَفْئِدَةَ²⁹
قَلِيلًا مَّا تَشْكُرُونَ

Who made everything He created for the best and Who began the creation of man from the ground. Then He made His offspring from the humble essence of water. Then He perfected and breathed into it His spirit and He made for you hearing, sight and heart; (but) you are very little grateful. (As-Sajadah: 7-9)²⁷

قُلْ هُوَ الَّذِي أَنْشَأَكُمْ وَجَعَلَ لَكُمُ السَّمْعَ وَالْأَبْصَارَ وَالْأَفْئِدَةَ³⁰ قَلِيلًا مَّا
تَشْكُرُونَ

Say: "It is He Who created you and made for you hearing, sight and heart". (But) you are very little grateful. (Al-Mulk: 23)²⁸

Basically, it is not allowed to donate one part of the organ, either while still alive or after

²⁴ Muhammad Rahmatullah, "Ibrahim Hosen's Controversial Fiqh Thoughts in the Field of Ijtihad," 2015, <https://digilib.iainptk.ac.id/xmlui/handle/123456789/2774>.

²⁵ Abdul Rahman Ghazali, *Fiqh Munakahat*, printed to (Jakarta: Kencana, 2014).

²⁶ Syamsuddin, "Plural Taksir and Its Meaning of Surah Al-Baqarah," *Interpretation* 01, no. 02 (2023), <https://journalmahadaly.asadiyahpusat.org/index.php/tafasir/article/view/18/16>.

²⁷ Peter L & Thomas Lukhmann Berger, *Social Interpretation of Reality* (Jakarta: LP3ES, 1990).

²⁸ Asep Fuad and Masykur Masykur, "Manhaj Khash Tafsir An-Nur by Hasby Ash-Shiddieqy," *Journal of Faith and Spirituality*, 2022, <https://doi.org/10.15575/jis.v2i1.15788>.

death, whether it is dangerous or not, even if there is permission from the family or heirs, because the organ does not belong to a human being. However, if the interests of the community want it, it is justified by Islamic law if the government makes laws and regulations that allow the use of human organs and their regulation according to medical instructions and noble morals. So, organ donation is only allowed if there are laws and regulations issued by the government with strict regulations and sanctions for those who violate them. In responding to *mashlahah*, Ibrahim was more moderate. He is not rigid like the Hanafiyah and Shafi'iyah scholars who consider *mashlahah* not as a legal evidence, but he is also not as liberal as *ath-thufi* who still prioritizes the benefit if it is contrary to the *nash*.

Before we look at how *maslahah* is in positive legal policy in Indonesia, it is necessary to discuss how the development of gender equality issues in Indonesia has developed since the post-independence period until now. The development of gender equality issues in Indonesia since the post-independence period to the present can be seen as a complex journey, with diverse progress and challenges. At first, the role of women in Indonesia was still closely related to the traditional role in the family. In 1953, Indonesian women gained the right to vote in general elections for the first time. Under Suharto's rule, family planning programs were introduced to control population growth, but in reality, they often put pressure on women. Then came women's and feminist organizations that fought for women's rights.

Political reforms brought about significant changes in the recognition of women's rights and increased their participation in various fields. Increased awareness of gender issues and efforts to achieve gender equality are becoming more and more evident. The establishment of the Ministry of Women's Empowerment and Child Protection (KPPPA) in 2000 to strengthen the role of women and protect their rights. Increased participation of women in various sectors such as politics, business, and education, although challenges remain. At the political level, there is an increase in the number of women involved in government and parliament.

Currently, what is still a challenge and an issue that is still developing is violence against women, including sexual harassment. Inequality in access to education and employment also still occurs in some regions. The most difficult thing to change is that patriarchal norms and cultures are often still an obstacle to the advancement of gender equality.²⁹ Education and raising awareness about women's rights are key to overcoming gender inequality. Programs and policies to improve women's welfare and support their role in various sectors continue to need to be greatly developed. The development of gender equality in Indonesia is a continuous process. While progress has been made, there is still much work to be done to address the challenges and ensure gender equality becomes a reality for all Indonesians. And that reality is of course a guarantee of community welfare.

The welfare of the community if it is linked to the concept of Islamic *fiqh* which is seen as the concept of *maslahah mursalah*.³⁰ This concept refers to the public interest or welfare that is

²⁹ Syayidah Fitria Lulu' Aniqurrohman, "Gender Equality and the Values Contained in It According to Human Rights," *Journal of the World of Legal Sciences (JURDIKUM)* 1, no. 2 (October 5, 2023): 50–56, <https://doi.org/10.59435/jurdikum.v1i2.170>.

³⁰ "VALIDITY OF MASLAHAT AL-MURSALAH AS A SOURCE OF LAW," n.d.

not directly governed by the nash (text of the Qur'an or hadith), but is considered to be in accordance with the values and purposes of Islamic law. The application of the concept of maslahah mursalah in the context of women's rights empowerment and gender equality in Indonesia can involve several considerations. Maslahah mursalah can be used to support the principles of justice and gender equality. These values create welfare and social justice in society, which in turn supports the concept of maslahah mursalah. Maslahah mursalah can be applied to support efforts to eliminate discrimination against women. In this context, the enactment of laws or policies that create equal access and opportunities for women in various fields can be considered as maslahah mursalah.

Women's empowerment in the economic and social fields can be seen as a form of maslahah mursalah. Recognising women's rights to participate in economic and social life not only provides individual benefits but also makes a positive contribution to the well-being of society as a whole. Maslahah mursalah can be used to support efforts to prevent violence against women. The implementation of laws or policies that protect women from various forms of violence can be considered as a step that supports the welfare of the community. In terms of political rights, it can also encourage women's active participation in political life can be considered as maslahah mursalah. By ensuring women's representation in the decision-making process, people can benefit from diverse views and experiences.

In the context of Indonesian law, the implementation of maslahah mursalah related to gender equality can be reflected in the formation and enforcement of laws that support women's rights. Policy development that involves community participation and involves gender perspectives can be considered as an effort to achieve maslahah mursalah. Although Islamic law does not always explicitly outline gender equality, the concept of maslahah mursalah can be the basis for interpreting and implementing equality values in the Indonesian social and legal context.

Conclusion

Women's rights empowerment in Indonesia is reflected in various government policies and programs dedicated to improving women's welfare and position in society. The value of gender equality in it is very closely felt. Of course, these policies are of very good value for women. The maslahat in question is maslahah mursalah. on the grounds that these regulations are not contrary to sharia'. The benefits for women in Indonesia's positive rules whose existence is not supported by sharia and is not canceled or rejected by sharia through detailed evidence. However, it is supported by a collection of meanings from nash. Collaborative efforts from governments, civil society, and the private sector are essential to achieve sustainable women's rights empowerment. Although sometimes policies that are categorized as good are not necessarily at the time of successful implementation in accordance with the purpose why the policy was created.

References

- A. Mukti Arto. *Practice of Civil Cases in Religious Courts*. Yogyakarta: Pustaka Siswa, 1998.
- Amir Syarifuddin. *Outlines of Fiqh*. Jakarta: Kencana, 2013.
- Aniqurrohmah, Syayidah Fitria Lulu'. "Gender equality and the values contained in it according to

- human rights." *Journal of the World of Legal Sciences (JURDIKUM)* 1, no. 2 (October 5, 2023): 50–56. <https://doi.org/10.59435/jurdikum.v1i2.170>.
- Arake, Lukman. "RELIGION AND THE STATE FROM THE PERSPECTIVE OF FIQH SIYASAH." *Al-Adalah: Journal of Islamic Law and Politics*, 2019. <https://doi.org/10.35673/ajmpi.v3i2.200>.
- Berger, Peter L & Thomas Luhmann. *Social Interpretation of Reality*. Jakarta: LP3ES, 1990.
- Cahyana, Intan Nevia. "Legal Protection of the Existence and Participation of Customary Law Communities in Forest Management in Customary Forest Areas." *PRIORIS Law Journal*, 2017. <https://doi.org/10.25105/prio.v6i2.2440>.
- Chotim, Erna Ermawati. "View of GENDER EQUALITY AND WOMEN'S EMPOWERMENT IN INDONESIA: THE DESIRE AND INEVITABILITY OF A PRAGMATIC APPROACH (A STUDY OF CIREBON HOME MADE SMES)." *ACCELERATION: National Scientific Journal*, 2012. <https://ejournal.goacademica.com/index.php/ja/article/view/357/336>.
- Fikriana, Askana, Redy Eka Cahyadi, Reza Akmal, and Stain Bengkalis. "Women's Involvement in Politics Perspectives of Positive Indonesian Law and Islamic Law." *Journal of Tambusai Education* 7, no. 3 (2023): 30918–24.
- Flambonita, Sacred. "LEGAL PROTECTION OF WOMEN'S WORKERS' RIGHTS." *Journal of Simbur Cahaya* 24, no. 1 (2017). <http://journal.fh.unsri.ac.id/index.php/simburcahaya/article/view/50/51>.
- Fuad, Asep, and Masykur Masykur. "Manhaj Khash Tafsir An-Nur by Hasby Ash-Shiddieqy." *Journal of Faith and Spirituality*, 2022. <https://doi.org/10.15575/jis.v2i1.15788>.
- Ghozali, Abdul Rahman. *Fiqh Munakahat*. Print to. Jakarta: Kencana, 2014.
- Hevriansyah, Andie. "Women's Political Representation Rights in the Proportional Representative System in Legislative Elections." *Journal of Elections and Democracy* 1, no. 1 (2021). <https://jurnal.banten.bawaslu.go.id/index.php/awasia>.
- Hidayatullah, Syarif. "MASLAHAH MURSALAH ACCORDING TO AL-GHAZALI." Vol. 4, n.d.
- Irianto, Sulistyowati. "Competition and Interaction between State Law and Customary Law in the Court Room: A Study of Inheritance Cases in Indonesia." *Journal of Legal Pluralism and Unofficial Law* 36, no. 49 (2004): 91–112. <https://doi.org/10.1080/07329113.2004.10756574>.
- Januastasya Audina, Dhea. "Gender Equality in Human Rights Perspectives." *Journal of Legal Sciences Research* 2, no. 4 (2022): 148–54. <https://doi.org/10.56393/nomos.v1i6.602>.
- "The KPU Has No Plans to Revise the Rules on Women's Representation - Kompas.Id." Accessed January 12, 2024. <https://www.kompas.id/baca/polhuk/2023/05/19/kpu-belum-berencana-revisi-aturan-keterwakilan-perempuan>.
- Krisnalita, Louisa Yesami. "Women, Human Rights and Their Problems in Indonesia." *Binamulia*

- Hukum* 7, no. 1 (2018): 71–81. <https://doi.org/10.37893/JBH.V7I1.315>.
- Malay, Hasnul Arifin, Rusjdi Ali Muhammad, MD Zawawi Abu Bakar, Ihdi Karim Makinara, and Abdul Jalil Salam. "Islamic Shari'a and the Legal Culture of the Society in Aceh." *Sharia Media: A Forum for the Study of Islamic Law and Social Institutions*, 2021. <https://doi.org/10.22373/jms.v23i1.9073>.
- Muhaimin, Umar. "ISTIDLAL AND ISTISHAB METHODS (FORMULATION OF IJTihad METHODOLOGY)." *Judiciary: Journal of Islamic Legal and Legal Thought* 8, no. 2 (2017). <https://journal.iainkudus.ac.id/index.php/Yudisia/article/view/3243/2362>.
- Muhammad Jawad Mughniyah. *Fiqh Five Madhhab Translation by A.B.Masykur et al.* Jakarta: Lentera, 2000.
- Nurhilmiah, Nurhilmiah. "Legal Protection of Women Facing the Law Before and After the Birth of Perma Number 3 of 2017 concerning Guidelines for Adjudicating Women's Cases Facing the Law." *DE LEGA LATA: Journal of Law* 4, no. 1 (July 30, 2019): 211–19. <https://doi.org/10.30596/dll.v4i2.3172>.
- "The 2024 Election and Women's Political Rights - UIN Sunan Gunung Djati Bandung." Accessed January 12, 2024. <https://uinsgd.ac.id/pemilu-2024-dan-hak-hak-politik-perempuan/>.
- "Fulfill Women's Political Rights - Kompas.Id." Accessed January 12, 2024. <https://www.kompas.id/baca/polhuk/2023/05/20/penuhi-hak-politik-perempuan>.
- "Please, Sugiri. "GENDER EQUALITY IN IJTihad OF INHERITANCE LAW IN INDONESIA." *Ash-Syari'ah*, 2018. <https://doi.org/10.15575/as.v20i2.3210>.
- Rahmatullah, Muhammad. "Ibrahim Hosen's Controversial Fiqh Thoughts in the Field of Ijtihad," 2015. <https://digilib.iainptk.ac.id/xmlui/handle/123456789/2774>.
- Sucipto, Mohammad Hadi, and Khotib. "The Debate of Maslahah Mursalah in the Books of Al-Imam Al-Ghazali." *El-Faqih : Journal of Islamic Thought and Law* 6, no. 1 (May 9, 2020): 1–17. <https://doi.org/10.29062/FAQIH.V6I1.106>.
- Syamsuddin. "Plural Taksir and Its Meaning of Surah Al-Baqarah." *Tafsir* 01, no. 02 (2023). <https://journalmahadaly.asadiyahpusat.org/index.php/tafasir/article/view/18/16>.
- "VALIDITY OF MASLAHAT AL-MURSALAH AS A SOURCE OF LAW," n.d.
- Vebrianto, Rian, Musa Thahir, Zelly Putriani, Ira Mahartika, Aldeva Ilhami, and D Diniya. "Bedelau: Journal of Education and Learning Mixed Methods Research: Trends and Issues in Research Methodology." *Bedelau: Journal of Education and Learning*. Vol. 1, 2020.