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**Gender, Economy, and the Law:  
Women Entrepreneurs in Indonesian and Islamic Legal Perspectives**

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**Abstract:** The relationship between women, the economy, and state law in Muslim countries has generated intense debate about whether such laws have promoted or inversely impeded women's rights and gender equality. This study aims to assess women's economic rights, especially in entrepreneurship, in Indonesia from the state and Islamic legal perspectives. It is qualitative research with the juridical and sociological legal approach by analyzing the dimensions of report on entrepreneurship in Women, Business, and the Law 2023 achieved by Indonesia, Law state-related, and Islamic Law. It finds that Indonesia has promoted women's economic rights, including entrepreneurship, in the state law, despite some room for improvement. Women have the same rights to business licenses, enter into contracts or agreements, and open bank accounts, despite a lack of affirmative actions for access to credits for women entrepreneurs. As the biggest Muslim country in the world, Islamic law has influenced such state law. Islam has granted women the right to be self-employed, despite some cultural barriers to achieving gender equality. The government is expected to promote women's economic rights, including the ones on entrepreneurship, and needs to overturn the prevailing gender norms that assign women multiple burdens.

**Keywords:** Entrepreneurship, women, positive law, Islamic law, economics

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**Abstrak:** Hubungan antara perempuan, ekonomi, dan hukum di negara-negara Muslim telah menimbulkan perdebatan sengit apakah hukum tersebut telah mempromosikan atau sebaliknya membatasi hak-hak perempuan dan kesetaraan gender. Studi ini bertujuan untuk mengkaji hak-hak ekonomi perempuan, khususnya pada aspek kewirausahaan, di Indonesia dari perspektif hukum negara dan hukum Islam. Penelitian tersebut bersifat kualitatif melalui pendekatan hukum yuridis dan sosiologis dengan menganalisis dimensi kewirausahaan dalam laporan dunia tentang perempuan, bisnis, dan hukum 2023 yang dicapai Indonesia, aturan negara yang sesuai, dan hukum Islam. Ditemukan bahwa Indonesia telah mempromosikan hak-hak ekonomi perempuan, termasuk kewirausahaan, dalam hukum, meskipun ada beberapa hal yang perlu diperbaiki. Perempuan memiliki hak yang sama atas izin usaha, membuat kontrak atau perjanjian, dan membuka rekening bank, meskipun masih belum ada afirmatif actions untuk akses kredit bagi pengusaha perempuan. Sebagai negara Muslim terbesar di dunia, hukum Islam telah mempengaruhi hukum yang berlaku di Indonesia. Islam telah memberikan perempuan hak untuk berwirausaha, meskipun masih terdapat hambatan budaya dalam mencapai kesetaraan gender. Pemerintah diharapkan untuk mempromosikan hak-hak ekonomi perempuan, termasuk hak untuk berwirausaha, dan perlu membatalkan norma-norma gender yang berlaku yang memberikan beban ganda pada perempuan.

**Kata Kunci:** Kewirausahaan, perempuan, hukum positif, hukum Islam, ekonomi

## Introduction

Many women help improve various aspects of the household and implicitly contribute to economic growth. Women can make significant contributions to entrepreneurial activities and economic development in terms of creating new jobs and increasing Gross Domestic Product (GDP) income which has a positive impact on poverty reduction.<sup>1</sup>

Said, said in his research that women have a fairly large role in economic activity. However, in fact, entrepreneurship is still dominated by men. She also said that Islamic values have encouraged women to participate in entrepreneurial activities for economic prosperity and social growth.<sup>2</sup> Another study conducted by Grisna states that women are privileged in Islamic law. This

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<sup>1</sup> Giuseppina Maria Cardella, et.al., "Women Entrepreneurship: A Systematic Review to Outline the Boundaries of Scientific Literature," *Women Entrepreneurship: A Systematic Review* 11, no. 1 (2020), p. 1–18.

<sup>2</sup> Said Muhammad, et al., "An Overview of Women Entrepreneurship from Islamic Perspective," *READS: Review of Economics and Development Studies* 6, no. 4 (2020), p. 857–66.

study looks at the activities of Muslim women related to entrepreneurship through a questionnaire of 150 respondents. The results show that women as entrepreneurs are because they are a form of worship to Allah, and most of these women have basic education, thus affecting how they carry out their business activities.<sup>3</sup>

Indonesia's Micro, Small, and Medium Enterprises (MSME) sector has reached 8,71 million.<sup>4</sup> A 2016 report by the International Finance Corporation showed that women-owned MSMEs accounted for 61 percent of Indonesia's GDP.<sup>5</sup> Indonesia's financial industry survey reveals that most women are in the services and trade sectors. Most women entrepreneurs in Indonesia own or manage beauty salons, small shops, caterers, boutiques, and food stalls. Based on several studies, some other women do business in fisheries,<sup>6</sup> agriculture,<sup>7</sup> and livestock.<sup>8</sup> Female entrepreneurs dominate the informal sector, while male entrepreneurs are the dominant players in the formal sector.<sup>9</sup>

The United Nations Development Program (UNDP) report on the impact of the pandemic on MSMEs in Indonesia found that businesses run by women were more resilient than those managed by men. This is because female entrepreneurs switch to online sales more than men. As many as 47 percent of female entrepreneurs sell online during the pandemic, while male entrepreneurs are lower at 40 percent. Despite experiencing a decline in turnover, women entrepreneurs stated that they did not have to close their businesses; some even

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<sup>3</sup> Grisna Anggadwita et al., "Women Entrepreneurship in Islamic Perspective: A Driver for Social Change," *International Journal of Business and Globalisation* 15, no. 3 (2015), p. 389.

<sup>4</sup> Aulia Mutiara Hatia Putri, "Jumlah UMKM Capai 8,71 Juta, Bisa Jadi 'Tameng' Resesi?," CNBC Indonesia, 2023.

<sup>5</sup> Kementerian Pemberdayaan Perempuan dan Perlindungan Anak, "Tingkatkan Level Perempuan Pelaku UMKM, KEMENPPPA Bekali Keterampilan Usaha Dengan Cara Digital," Kementerian Pemberdayaan Perempuan dan Perlindungan Anak, 2023.

<sup>6</sup> Nurlaili and Rizky Muhartono, "Peran Perempuan Nelayan Dalam Usaha Perikanan Tangkap Dan Peningkatan Ekonomi Rumah Tangga Pesisir Teluk Jakarta," *Jurnal Sosial Ekonomi Kelautan Dan Perikanan* 12, no. 2 (2017), p. 203–12.

<sup>7</sup> Andi Agustang Rizal and Muhammad Syukur, "Peranan Perempuan Tani Dalam Meningkatkan Ekonomi Keluarga Di Kelurahan Bonto Langkasa Kecamatan Bissappu Kabupaten Bantaeng," *Phinisi Integration Review* 4, no. 2 (2021), p. 282–91.

<sup>8</sup> T. Dalmiyatun et al., "Peran Serta Wanita Peternak Pada Usaha Sapi Perah Di Kecamatan Ungaran Timur Untuk Meningkatkan Kontribusi Pendapatan Keluarga," in *Universitas Trunojoyo Madura*, 2015, p. 458–67.

<sup>9</sup> Agussani, "Are Women The Dominant Entrepreneurs In Indonesia?" *The International Journal of Social Sciences and Humanities Invention* 7, no. 04 (2020), p. 5935–47.

started new side businesses to cover the lack of turnover from their main business.<sup>10</sup>

Entrepreneurship, especially MSMEs, needs to be continuously improved because of its role in providing employment which will directly reduce unemployment which leads to poverty alleviation. Strengthening the government's commitment is hoped to improve the investment climate and increase business spirit so that MSMEs can become pillars in building the nation's economy.

However, the potential of women still needs to be fully realized, and not all women face similar conditions. Thus, each circumstance needs different special treatment. Not only in Indonesia but also in several other developing countries, especially if they have economic problems, which are reflected in their low per capita income and low level of industrialization. In developing countries in Asia, the growth of women's entrepreneurship is still slow and is influenced by several factors, directly and indirectly. Primary factors can include economic pressures and social backgrounds. Other indirect factors can be in the form of government policies and social and financial stability. Both are interrelated in influencing women's decisions or desires to become entrepreneurs.<sup>11</sup> In addition, there are ideological barriers to women, namely the term "triple burden of women." Women must carry out reproductive, production, and social functions simultaneously in society.<sup>12</sup> Such ideological barriers and patriarchal gender norms have been perceived as prevalent in Muslim countries where Islamic law significantly influences state laws. Some studies indicate that Islam has contributed to impeding female labor force participation.<sup>13</sup> Normatively, Islam does not find any restrictions on women's rights in Islam, if there are only differences in interpretation.<sup>14</sup> Indonesia has the concept of legal pluralism; state law, Islamic law, customary law. There are still

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<sup>10</sup> Halimah Anjani, "Potensi Dan Tantangan Wirausaha Perempuan Dalam Perekonomian Indonesia," Noor Center for Indonesian Policy Studies, 2021.

<sup>11</sup> Astri Ayu Purwati, et.al., "The Role of Intellectual Capital in Improving Micro, Small, And Medium-Scale Business Performance in The Hostel And Culinary Sector in Pekanbaru, Indonesia," *International Journal of Economics Development Research (IJEDR)* 2, no. 2 (2021), p. 378–93.

<sup>12</sup> Gusti Ayu Sapt Muna, et.al., "Penguatan Pemberdayaan Ekonomi Perempuan Melalui Presedensi G20 Pada Era Pandemi Covid19 Pada UMKM Di Bali," *Lensa Ilmiah: Jurnal Manajemen Dan Sumberdaya* 1, no. 1 (2022), p. 21–27.

<sup>13</sup> Ghazal Bayanpourtehrani and Kevin Sylwester, "Female Labour Force Participation and Religion: A Cross-Country Analysis," *Bulletin of Economic Research* 65, no. 2 (2012), p. 107–33.

<sup>14</sup> Hayfaa A. Tlaiss and Maura McAdam, "Islam, Arab Women's Entrepreneurship and the Construal of Success," *International Journal of Entrepreneurial Behavior & Research* 27, no. 3 (2021), p. 821–44.

obstacles to women's rights not only because of Islamic law, but customary law also limits women's rights. The best effort is to combine the three legal traditions to obtain justice and guarantee the fulfillment of women's rights. This is also an effort to build a new law to develop a national legal system that is in favor of women's interests.<sup>15</sup>

The relationship between state law, Islamic law, and the economy in Muslim countries has become complex and generated intense debate. The debate has recurred over the issue of whether Islam promotes women's rights and gender equality or vice versa. Some scholars argue that Islamic law is incompatible with human rights, including women's rights.<sup>16</sup> However, some other scholars argue that if interpreted progressively, Islamic teachings promote human rights, including women's rights.<sup>17</sup> Al-Na'im identifies conflicts between historical sharia and women's rights which contribute to discrimination, oppression and denial of the equality of men and women in contemporary Muslim society.<sup>18</sup>

As the biggest Muslim country in the world, Islamic law has played a significant role in Indonesia. It has influenced not only the state law but also the daily lives of Indonesian Muslims, who currently account for around 86,7%<sup>19</sup> of 275, 77 million of the Indonesian population.<sup>20</sup> Normatively, Islam provides equal rights for women and men, including in the economic field. However, it often differs from the empirical realities in Muslim-majority countries. Muslim countries are considered to have a much higher poverty rate than non-Muslim countries. In terms of the economy, Muslim-majority countries have relatively lower levels of women's economic participation than non-Muslim countries with the same level of economic growth.<sup>21</sup> The Central Statistics Agency (BPS) recorded 26.42 million poor people in March 2020. This figure covers 9.78 percent of the entire population in Indonesia. Women's groups dominate poverty. Even the number of poor women has increased compared to March

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<sup>15</sup> Dedy Sumardi, et.al., "Legal Pluralism within The Space of Sharia: Interlegality of Criminal Law Traditions in Aceh, Indonesia," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 5, no. 1 (2021), p. 426.

<sup>16</sup> Haideh Moghissi, *Feminism, and Islamic Fundamentalism: The Limits of Postmodern Analysis* (London, New York: Zed Books, 1999).

<sup>17</sup> Ziba Mir-Hosseini, *Islam and Gender: The Religious Debate in Contemporary Iran* (Princeton, N.J: Princeton University Press, 1999).

<sup>18</sup> Abdullahi Ahmed Al-Na'im, *Toward an Islamic Reformation: Civil Liberties, Human Rights, and International Law* (Syracuse, N.Y: Syracuse University Press, 1990).

<sup>19</sup> The Royal Islamic Strategic Studies Centre, "The Muslim 500," 2023.

<sup>20</sup> BPS, "Jumlah Penduduk Pertengahan Tahun," 2022.

<sup>21</sup> K. Weeks, "The Demography of Islamic Nations," *Population Bulletin* 43, no. 4 (1988), p. 5–54.

2019.<sup>22</sup> Poor women often experience and have to bear more burden of poverty, such as a higher rate of maternal mortality, lower rate of schooling among girls at higher educational levels, more women's labor participation in the informal sector, the lower wage for women workers, and women's vulnerability to violence.<sup>23</sup> This contrasts with Islam's vision to create a socially and economically just society. This fact raises the question of how state laws and statutes provide economic rights for women, particularly in Muslim countries.

Every year the World Bank conducts a study that measures the laws and regulations that affect women's rights and economic opportunities in 190 countries, namely the Women, Business, and the Law (WBL) study. One of the driving factors for this study is that there is still a gender gap worldwide. On average, women only have three-quarters of the legal rights granted to men. Therefore, observing the laws and regulations that limit women's economic rights is considered essential to become the basis for recommendations for legal reform toward gender equality. As WBL 2023 claims, since 2019, 27 economies from all regions have undertaken gender equality promotion reforms based on recommendations from the study. WBL assumes that gender equality in legislation is correlated with better development outcomes, such as lower levels of vulnerable employment and extreme poverty among working women.<sup>24</sup>

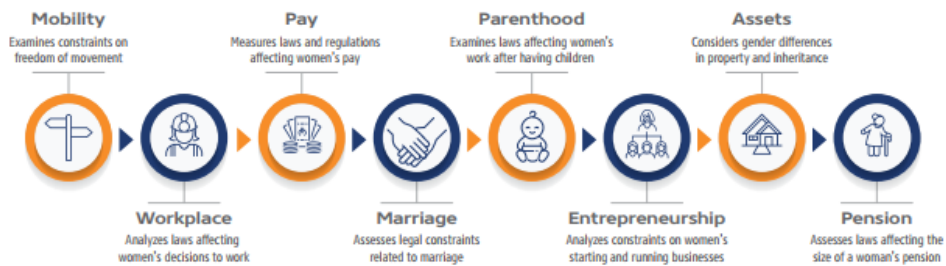
The Women, Business, and the Law study measures eight structured dimensions around women's interactions with the law as they progress, including mobility, workplace, salary, marriage, parenthood, entrepreneurship, assets, and pensions. These indicators are considered constructive evidence of the critical relationship between legitimate gender equality and women's work and entrepreneurship. These studies are expected to contribute to research and policy discussions on women's economic empowerment.

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<sup>22</sup> Betik Endaryati, "Ini Dia Kemiskinan Yang Terjadi Pada Perempuan," Viva.co.id, 2021, <https://www.viva.co.id/vstory/opini-vstory/1370985-ini-dia-kemiskinan-yang-terjadi-pada-perempuan>.

<sup>23</sup> Nur Hidayah, "Women's Movement in the Framework of Modernist Muslims in Indonesia: Aisyiyah and Economic Empowerment," *Hamdard Islamicus* 43, no. 2 (2020), p. 681–91.

<sup>24</sup> World Bank Group, "Women, Business, and the Law 2023," 2023.



**Figure 1. Laws Affect Women Throughout Their Working Lives**

Source: Women, Business and the Law, 2023

In this study, 35 questions are scored across the eight indicators. Overall scores are then calculated by taking the average of each hand, with 100 representing the highest possible score. The final Women, Business, and Law Index score presents the share of good laws in each economy weighted by the indicators. Thus, the index is an easily replicable way to gauge the regulatory environment for women entrepreneurs and employees.

The present study highlights the entrepreneurial dimension of Women, Business, and the Law 2023 Index. The entrepreneurial dimension is divided into four indicators: access to credit, contracts or agreements, business licensing, and creating bank accounts. Each question has a score of 25. The answer "No" is worth 0, and "Yes" is worth 1. Indonesia gets a score of 75 for the entrepreneurial dimension. The 75 points indicate that the results are quite good and show that it is easy for women to do business from a positive law perspective.

**Table 1. Indonesian Entrepreneurship Indicator Scores**

Question	Answer	Legal Basis	Score	Indikator Score
Does the law prohibit discrimination in access to credit based on gender?	No	No applicable provisions could be located	0	75
Can a woman sign a contract in the same way as a man?	Yes	Law No. 1 of 1974 on Marriage, Arts. 31(2)	1	
Can a woman register a business in the same way as a man?	Yes	Law No. 1 of 1974 on Marriage, Art. 31(2)	1	
Can a woman open a	Yes	Law No. 1 of	1	

bank account in the same way as a man?		1974 on Marriage, Art. 31(2)		
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Source: Women, Business and the Law, 2021

These facts have motivated the authors to investigate further and discuss the condition of entrepreneurship for women in Indonesia. Therefore, this study aims to assess women's economic rights, especially in entrepreneurship, from the state and Islamic legal perspectives. First, the author will analyze the score obtained by Indonesia in the Women, Business, and Law Study by looking at it from the perspective of state laws. Next, the writer will analyze the rights of entrepreneurs for women from the perspective of Islamic law. Then, the author will analyze the impact of women's entrepreneurship on the economy in Indonesia. The authors also offer some possible strategies that can be carried out by several related parties, such as the government and banks, to reform women's economic rights in entrepreneurship.

This study uses qualitative methods through juridical and sociological legal approaches. It will analyze primary sources of the related state and Islamic laws from a gender perspective. It will also analyze relevant secondary sources of books, journals, articles, and news. So, studies on gender, economics, and law will have implications for changing the paradigm of understanding Islamic law that is not discriminatory against women. Islamic law provides equal opportunities for entrepreneurship, and progress in Islamic economics. Because Indonesia as the largest Muslim country in the world will be a barometer of the treatment of women in various aspects.

### **Analysis of Women's Entrepreneurship Index in Women, Business, and the Law: Indonesian Legal Perspective**

Normatively, no rules discriminate against women in running a business or building a business. Article 32 of Law Number 1 of 1974 concerning Marriage emphasizes that women have the same position about legal actions, in this case, concerning business licensing.

The number one question on the entrepreneurial dimension in the Women, Business, and the Law, namely whether there are rules regulating the prohibition of discrimination in access to credit for men and women, gets a score of 0. Regarding business credit, the Coordinating Minister for Economic Affairs Number 21 of 2021 concerning Guidelines for Implementing People's Business Credit in Article 23 states several requirements related to credit applications.<sup>25</sup> Such an O score seems partly attributed to the assumption that institutions

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<sup>25</sup> Indonesia, "Peraturan Menteri Perekonomian Perekonomian Nomor 21 Tahun 2021 Tentang Pedoman Pelaksanaan Kredit Usaha Rakyat" (2021).



providing business credit seem gender-neutral. Women often face challenges in accessing such credits, such as preparing good business proposals and providing credit collaterals. There appears to be an explicit clause in the regulation stipulating a specific portion of such recognition is disbursed to women's entrepreneurs. There need affirmative actions in the regulations to increase the number of women entrepreneurs having access to business credits.

Questions two, three, and four regarding contracts or agreements, business licensing, and bank account creation each get a score of 1. There are no conflicts in the field, and they have been regulated by law. Women may make contracts or agreements, register their businesses, and create bank accounts as regulated in Law Number 1 of 1974 Article 31 paragraph (2) concerning marriage, which states that men and women can take legal action. The state legalizes legal acts committed by women.<sup>26</sup>

Other regulations that support business licensing for women are also contained in Presidential Regulation Number 98 of 2014 concerning Micro and Small Business Licensing. The law states that the government will eliminate all MSME licensing fees. The state budget will cover all costs. MSME actors only need to apply for a nuisance permit (HO), a building permit (IMB), a place of business permit, an industrial business permit, a company registration certificate, and an industrial registration certificate (TDI). Women can create bank accounts, and so can men.<sup>27</sup>

In reality, fewer women register businesses than men because of concerns that they will face complicated procedures. More women than men do not see the benefits of registering their business at 28% women vs. 24% men<sup>28</sup>. There are still challenges women entrepreneurs face, including registration of these businesses, lack of government support, political instability, starting a complex business, and lack of childcare facilities. Lack of entrepreneurial knowledge and experience is also a significant problem for expansion and makes activities less attractive<sup>29</sup>. The competitive environment is one of the main factors limiting women in Indonesia from starting a business. Most women entrepreneurs in Indonesia feel that compared to their male counterparts, they have more influence because they produce more competitive commodities in the market.

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<sup>26</sup> Indonesia, "Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan" (1974).

<sup>27</sup> Indonesia, "Peraturan Presiden Nomor 98 Tahun 2014 Tentang Perizinan Usaha Mikro Dan Kecil" (2014).

<sup>28</sup> International Finance Corporation, *UKM Yang Dimiliki Wanita Di Indonesia : Kesempatan Emas Untuk Institusi Keuangan Lokal* (Financial Institutions Group, 2016).

<sup>29</sup> Muhammad et al., "An Overview of Women Entrepreneurship from Islamic Perspective."

They also think that support from the Indonesian government does not have a direct impact on perceptions of behavioral control.<sup>30</sup>

Likewise, with access to credit and making contracts in applying for credit, it turns out that it is still difficult for women to access them in the field. Only some women use microfinance or bank credit as their working capital. Most of them also own their business as a privately owned business.<sup>31</sup> An International Finance Corporation (IFC) study shows that 80% of women-owned companies have underserved credit needs. Women entrepreneurs have a lower default rate than men. Moreover, there is an argument that women are more disciplined in repaying loans than men.<sup>32</sup> The rate of return on microcredit for women in Indonesia is 91%, while for men, it is only 80%.<sup>33</sup>

However, the bank stated that it did not consider women as the main target of its products, even though women's creditworthiness level was not much different from that of male debtors. Previous relationships with the bank can affect the amount of credit funds approved. The better the relationship between the entrepreneur and the bank in the past, the more the bank will give the trust to the entrepreneur<sup>34</sup>. Several factors that determine access to sources of financing include business age or length of business, business scale, asset value, business operating period, type of business, and business financial information.<sup>35</sup> Women entrepreneurs, especially in micro and medium enterprises, are usually not given credit by the bank because they are considered riskier. Thus, it is still a question of whether the bank experiences a gender bias in channeling their credit to micro and medium women entrepreneurs because it is proven that women have a better rate of return. This discrimination can be in the form of rejection of credit proposals, or if the credit proposal is accepted, the amount of funds approved is relatively less than for men.

Article 27, paragraph 1 of the 1945 Constitution of the Republic of Indonesia, recognizes the principle of equality for men and women without exception. This can be seen that there is an elimination of discrimination

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<sup>30</sup> Agussani, "Are Women The Dominant Entrepreneurs In Indonesia?" *The International Journal of Social Sciences and Humanities Invention* 7, no. 4 (2020), p. 5935–47.

<sup>31</sup> Ummu Hani et al., "Patterns of Indonesian Women Entrepreneurship," in *Procedia Economics and Finance* 4 (2012), p. 274–85.

<sup>32</sup> Remenyi, *Is There a State of the Art in Microfinance* (London: Routledge, 2000).

<sup>33</sup> Panjaitan et al., "Gender, Self Employment and a Micro Credit Program: An Indonesian Case Study," *The Quarterly Review of Economics and Finance* 39, no. 5 (1999), p. 94–105.

<sup>34</sup> Linda Ariany Mahastanti and Yeterina Widi Nugrahanti, "Bias Gender Dalam Akses Kredit Perbankan (Studi Pada Wirausaha Mikro Dan Menengah Di Salatiga)," *MODUS* 25, no. 2 (2013), p. 139–51.

<sup>35</sup> Cardella, et.al., "Women Entrepreneurship : A Systematic Review to Outline the Boundaries of Scientific Literature."

between genders in Indonesia because every citizen has the same rights before the law and government regardless of religion, ethnicity, gender, position, and class. Now, through the DPR, the government is preparing a Draft Law on National Entrepreneurs, which in general, is related to the development of entrepreneurship in the framework of boosting the country's economy. In one of the chapters, it is explained associated with the development of entrepreneurial resources, in which the entrepreneur's design does not mention the gender of men or women, meaning that the entrepreneurs to be developed can be both men and women. This draft will be one of the rules that will accommodate entrepreneurship in Indonesia.<sup>36</sup>

### **The Rights of Women Entrepreneurs in the Perspective of Islamic Law**

Conservative interpretations of Islamic texts regarding women's rights often indicate patriarchal bias. This is reflected in the construction of women's rights in classical fiqh (historical sharia). Al-Na'im argues that the concept of *qawamah* in Q.S An-Nisa verse 34, which reads, "*Men (husbands) are protectors of women (wives) because Allah has made some of them (men) superior to others (women), and because they (men) have provided a living...*" is often interpreted by classical scholars as male guardianship over women. This concept then has implications for the status and rights of women in the private and public spheres, often placing women in subordinate positions and depriving women of their autonomous agency. This can be reflected in some rules such as polygamy (a man can marry up to four wives), justification of a husband's beating his wife, inheritance (a son inherits twice of a daughter), testimony (a man equals to two women)

The second historical Sharia principle that has negatively affected women in Islam is the concept of the hijab, which obliges women to cover their bodies in public. Al-Na'im examines the broader implications of the hijab. He noted that the Sharia interpretations of Q.S An-Nur: 31 and Al-Ahzab: 33, 53, and 59 suggest women should stay home and not leave it except in urgent circumstances. Al-Na'im observes the tendency of classical clerics to use the hijab to reinforce women's inability to hold public office and limit their access to participate in public life.<sup>37</sup>

Even so, the Sharia does not aim to discriminate against women because, at the beginning of its formation, the Sharia gave women some equal rights that women got in other legal systems in the 20th Century. Examples are the legal independence of women to own and manage property in their own right on an

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<sup>36</sup> DPR, "Rancangan Undang-Undang Tentang Kewirausahaan Nasional" (n.d.).

<sup>37</sup> Abdullahi Ahmed An-Na'im, "Human Rights in the Muslim World: Socio-Political Conditions and Scriptural Imperatives," *Harvard Human Rights Journal* 3 (1990), p.13–52.

equal basis with men and the granting of minimum rights to women in family law and inheritance under the Sharia long before other legal systems recognized similar rights. He acknowledges that this level of achievement may not seem impressive by some modern standards, but it means a very significant increase in women's rights from a historical perspective.<sup>38</sup>

Dissonance like this creates a dilemma for many Muslims to follow the ancient shari'a as a religious teaching or simply leave it. To overcome this dilemma, progressive Muslim scholars propose reforming the shari'a to recapture the universal principles of justice, equality, and human dignity. The reform was initiated by providing a challenge to constructing Islamic law, especially the classical fiqh literature. Some scholars, such as Mir-Hosseini and Abou El-Fadl, have criticized the androcentric bias of Islamic law. Abou El-Fadl argues that the patriarchal bias in Islamic law not only means that the vast majority of interpreters of Islamic law throughout its history have been male but also that the prevailing mode of interpretation and determination of Islamic law is designed to preserve and promote male privileges over women.<sup>39</sup>

Some scholars, such as Esposito and Stowasser, argue that the advent of Islam weakened the patriarchal structure of Arab society.<sup>40</sup> Other scholars, such as Ahmed and Mernissi, argue that it inadvertently strengthened them because Arab society was at that time undergoing a transition from matrilineality to patrilineality which Islam facilitated by providing patriarchal consent, as reflected in the Qur'anic injunctions regarding marriage, divorce, inheritance, and other issues concerning women.<sup>41</sup>

The difference between these two positions in the ulama reflects the complex relationship between Islam and gender issues. It is not only religious teachings but also the surrounding cultural structures and contexts that play an important role in influencing the status and position of women. Ahmed noted that the development of Islam is an important part of forming Islamic culture. Despite disagreements, these scholars have reached a consensus on the existence of gender dynamics since the beginning of Islam in the seventh Century. Gender dynamics indicate that Muslim women continued to play an active role in

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<sup>38</sup> Abdullahi Ahmed An-Na'im, "The Rights of Women and International Law in the Muslim Context," *Whittier Law Review* 9 (1987), p. 495.

<sup>39</sup> Khaled Abou El Fadl, *Legal, and Jurisprudential Literature: 9th to 15th Century*, ed. Suad Joseph, *Encyclopedia of Women in Islamic Cultures* (Leiden; Boston, Mass: Brill, n.d.).

<sup>40</sup> Nur Hidayah, "Feminising Islam In Contemporary Indonesia: The Role Of Progressive Muslim Women's Organisations" (The University of Melbourne, 2013).

<sup>41</sup> Laela Ahmed, *Women and Gender in Islam: Historical Roots of a Modern Debate* (New Haven and London: Yale University Press, 1992).

negotiating their status and rights in the face of patriarchal forces that would limit their rights and distort the egalitarian vision of Islam.<sup>42</sup>

Islamic history has indicated the active role of women in the economic field. In his speech before his death, the Prophet gave a will regarding equal economic rights between men and women<sup>43</sup>. The practice of women entrepreneurs has existed since the time of the Prophet. One well-known example of a Muslim woman entrepreneur is Khadijah, the first wife of Prophet Muhammad PBUH, a successful trader in her time becoming a role model and showed nothing wrong with women getting involved in entrepreneurial activities. Several other successful women entrepreneurs during the Prophet's time were Umm al-Munir bint Qays and Asmah bint Makhzemah bin Jandal.

The ability of women to have careers and work outside the home to help their husbands when they have difficulty meeting family needs is also expressed in the classic fiqh books written by the Syafi'iyah school. Syafi'iyah scholars think when the husband experiences economic problems and delays and does not provide a living, then at that time, the wife may leave the house to work to earn a living. The book *Fathul Wahab* written by Sheikh Zakariyal Anshar, states: "There is no *fasakh* for the wife before the certainty of the husband in matters of the difficulty of earning a living either by the statement of a husband himself or by witnesses brought by the husband before the judge, if the decision on the problem of the husband earning a living has not been broken then the wife must wait for three days even though the husband does not order his wife to stay, the purpose of this waiting period is to make it clear that the husband is struggling to earn a living, even though in the near future the husband will not have the power to find a business or to seek loans as a farm so he can provide for his wife and children. During the waiting period, the wife can leave the house to make money; a husband may not forbid his wife to go because the husband gives no living. Husbands can't stop their wives from leaving the house".<sup>44</sup>

In addition, in the book *Al-Muhazzab*, Sheikh Abi Ishaq al-Asyirazi argues: "Regarding a husband who is experiencing difficulties in providing a living for the family, while the wife decides to stay with her husband, a wife is

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<sup>42</sup> Nur Hidayah, "Feminising Islam In Contemporary Indonesia: The Role Of Progressive Muslim Women's Organisations" (The University of Melbourne, 2013).

<sup>43</sup> Nur Hidayah, "Reinterpretasi Hak-Hak Ekonomi Perempuan Dalam Islam," *Ahkam* 14, no. 1 (2014), p. 85–96.

<sup>44</sup> Wifa Latifah Qudsiah and Syarifah Gustiawati, "Peranan Wanita Karir Dalam Membantu Kebutuhan Keluarga Menurut MAzhab Syafi'iyah," *MIZAN: Journal of Islamic Law* 1, no. 2 (2017), p. 11–172.

allowed to leave the house to work to earn income to help her husband meet the family's needs." <sup>45</sup>

Hanabilah also believes that if the husband cannot provide a living, the wife has the right to choose between *fasakh* or staying forever. If the wife does not apply for *fasakh*, the husband may not prohibit her from working or detain her because detaining a wife without providing a living is an act that endangers the wife. The husband can only restrain his wife if he can meet the needs that must be met for his wife. Abu Hanifah stated that a woman might become a judge and decide all cases other than criminal law.<sup>46</sup> When examined according to the rules of Fiqh, women should choose different types of work that are safer and far from slander and damage that can occur, even though the woman needs a job to benefit the family.

There is no prohibition by the Islamic religion to do business as long as it is in line with Islamic principles and law. Muslim women have equal status and are highly respected in Islam. In Islam, entrepreneurial activity is considered noble and recommended by religion. In Al-Qur'an Surah Al-Baqarah verse 275, Allah SWT says, "Trade is allowed, and interest is forbidden." Work and entrepreneurship are part of women's economic rights; in Q.S. An-Nisa verse 32, Allah SWT says: "And do not be envious of what Allah has bestowed upon some of you more than others. (Because) for men, there is a share of what they earn, and for women (even), there is a share of what they earn. And ask Allah for some of His bounties. Surely Allah is All-Knower of all things." In this verse, it is understood that every man and woman who does business will get results from what they try, regardless of men or women, who are judged the same.

Women reformers in Muslim countries such as Egypt, Tunisia, Turkey, Iran, India, and Indonesia consider women's increasing status and role in the public and private spheres as the primary site of modernization and progress to socio-cultural transformation to build a more humane and just society.<sup>47</sup> Education for women and the modernization of Islamic law regarding women are central issues for the women's movement. Muslim women in Indonesia can show a unique gender identity and a style of Islamic culture in Indonesia that is different from the pattern of Islamic culture in other parts of the Muslim world due to the acculturation of Islam with the local culture of the Archipelago. The predominantly bilateral system of Indonesian kinship has accultured with

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<sup>45</sup> Wifa Latifah Qudsiyah and Syarifah Gustiawati, *Peranan Wanita Karir...*, p. 11-172.

<sup>46</sup> Afiful Huda, "Dampak Wanita Karir Terhadap Keluarga," *Usratuna* 3, no. 1 (2019), p. 91-104.

<sup>47</sup> Nur Hidayah, "How Reformist Islamic Theology Influences Muslim Women's Movement: The Case of Liberal-Progressive Muslims in Indonesia," *Journal of Asian Social Science Research* 2, no. 1 (2020), p. 53-72.

Islamic law in Indonesia that, to some extent, influences the moderate and even progressive nature of Islamic law in Indonesia. This has led to moderate state laws, including the one regulating gender relations, in Indonesia. This has been further strengthened by the shifting paradigm of mainstream Muslims in Indonesian from the tendency of religious literalism and scripturalism emphasizing textual approaches into moderate, and even progressive religiosity, emphasizing contextual approaches.<sup>48</sup>

Such a shifting paradigm has been pioneered by some prominent scholars such as Wahid introduced "pribumisasi Islam" to adept Islam into local wisdom, and Madjid, advocating "secularist Islam" in the sense of separating Islam as sacred religion from mundane worldly affairs. Such reforms have influenced the Indonesian women's movement, particularly the Muslim women's movement, to advocate for gender justice on behalf of Islam. With the rising middle-class, educated Muslims, where women constitute a significant part, they have pushed for reforms to women's rights and gender equality in some state laws and regulations.<sup>49</sup>

The trend of gender equality in Indonesia has changed, fluctuating, along with the issuance of several regulations that continue to support gender equality between men and women. In 1974, there was the Marriage Law No. 1 of 1974.<sup>50</sup> Then in 1977, a government regulation was issued related to social security.<sup>51</sup> In 2003, regulations related to employment in Indonesia were issued,<sup>52</sup> then in 2004, a law was issued concerning the elimination of domestic violence, namely Number 23 of 2004,<sup>53</sup> and in 2022, regulations related to criminal acts of sexual violence were issued, namely Number 12 of 2022.<sup>54</sup> Related developments with women's rights protected by the state continue to show a positive trend.

With the passage of the law, the articles in the civil code of 1847 about marriage were annulled, thus removing the historical restrictions on a woman's ability to act autonomously without the express permission of her husband. For

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<sup>48</sup> Nur Hidayah, "Feminising Islam In Contemporary Indonesia: The Role Of Progressive Muslim Women's Organisations" (The University of Melbourne, 2013).

<sup>49</sup> Nur Hidayah, "Islam, Gender, Dan Kewirausahaan Dalam Perspektif Budaya Muslim Indonesia: Kendala Dan Strategi Partisipasi Perempuan," *HARKAT: Media Komunikasi Islam Tentang Gender Dan Anak* 12, no. 1 (2016), p. 69–82.

<sup>50</sup> Indonesia, Undang-Undang Nomor 1 Tahun 1974 tentang Perkawinan.

<sup>51</sup> Indonesia, "Peraturan Pemerintah Nomor 33 Tahun 1977 Tentang Jaminan Sosial" (1977).

<sup>52</sup> Indonesia, "Undang-Undang Nomor 13 Tahun 2003 Tentang Ketenagakerjaan" (2003).

<sup>53</sup> Indonesia, "Undang-Undang Nomor 23 Tahun 2004 Tentang Penghapusan Kekerasan Dalam Rumah Tangga" (2004).

<sup>54</sup> Indonesia, "Undang-Undang Nomor 12 Tahun 2022 Tentang Tindak Pidana Kekerasan Seksual" (2022).

example, as of 1975, married women in Indonesia could choose where to live, get a job, or sign a contract without facing restrictions that men did not face. By then, they also had greater rights related to the ownership and management of assets. Seven data points across four indicators changed from "no" to "yes" because of this legal reform. Another important step toward ensuring a woman's economic rights occurred in 1977.<sup>55</sup>

Government Regulation No. 33/1977 on Social Insurance mandated equal retirement ages for men and women, contributing to women's economic security in later years. This reform was followed by a long period from the mid-1970s to the mid-1990s, during which Indonesia did not make strides toward legal equality. However, notable progress followed: Indonesia's score jumped in 2004 with the introduction of the 2003 Labor Law (Law No. 13/2003). This legislation prohibited discrimination based on gender in employment and removed historical restrictions on the tasks and industries in which a woman could work. This reform was soon followed by the passage of the Domestic Violence Law (Law No. 23/2004). Today, Indonesia continues to make important gains toward women's legal equality. In 2022 Indonesia enacted legislation protecting women from sexual harassment in employment and strengthening a woman's right to engage safely in paid work in the formal sector. Over the last five decades, Indonesia's legal landscape has progressed: in 1970, women had only 20 percent of the rights afforded to men; in 2022, they have just over 70 percent of these rights.<sup>56</sup>

Such moderate and even progressive influences of Islamic law on the state laws in Indonesia that promote women's rights, however, have to face some cultural barriers in the implementation. The prevailing gender norms that assign household, childcare, and even community responsibilities to women often impede women from accessing their economic rights. This is sometimes further complicated by discriminative treatments that women get in the workplace.<sup>57</sup> Data shows that around 46% of women do not work one year after giving birth to their first child (around 8.5 million Indonesian women aged 20 to 24). Women are attached to the main responsibility of raising children and managing the household. 43% of Indonesian men prefer women to stay at home. 76% of Indonesian men and 74% of women agree with the statement that men have more rights to work than women.<sup>58</sup> Facing such gender norms, entrepreneurship provides a possible solution for women so they can have flexible working hours

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<sup>55</sup> World Bank Group, "Women, Business, and the Law 2023."

<sup>56</sup> World Bank Group.

<sup>57</sup> Nur Hidayah, "Islamic Law and Women's Rights in Indonesia: A Case of Regional Sharia Legislation," *Ahkam: Jurnal Ilmu Syariah* 19, no. 1 (2019), p. 19–38.

<sup>58</sup> Lisa Cameron, "Gender Equality and Development: Indonesia in a Global Context" (Australia, 2023).



and can work from home while simultaneously taking care of children and household.<sup>59</sup> Nevertheless, to help mitigate such huge ‘triple burdens of women,’ the government should provide some facilities to support women, such as affordable and adequate childcare.

### **Efforts to Reform Women's Economic Rights**

Several efforts can be made to reform women's economic rights, especially in entrepreneurship. First, regarding business permits, the central and local governments can identify and map the potential of women's MSMEs. This can be done through technical assistance such as convenience and assistance in registering business registration numbers, obtaining standard certificates or product permits, providing business training tailored to the needs of women entrepreneurs, and providing supporting infrastructure. Second, there is a need for a single MSME database and gender-based data to facilitate the government and the private sector in targeting assistance or programs for women entrepreneurs. Creating single and gender-based data has also been mandated in Article 88 of the Job Creation Law.

Third, related to access to capital. To overcome the problem of access to capital that still needs to be fulfilled is to make the aid fund a revolving fund. Even though it is a grant fund, the recipient must return the funds to the manager and then roll it out to other women entrepreneurs. This method will ensure that the program is implemented sustainably while at the same time reflecting the principle of justice for different groups of women who have not received this working capital fund. Interest-free financing schemes are necessary today, and the government must improve regulations to protect private sector jobs. Helping women entrepreneurs have better access to capital means increasing their risk management and self-efficacy awareness, contributing to the family economy, improving their quality of life, and at least reducing the gender gap.

Fourth, there is an improvement in the training of bank officers, especially in customer relations. There is still a gap in the quality of the officers, and some of them need to be trained more to serve new customers with the required patience. First-time borrowers may need help with credit application procedures, preparing background documentation, and obtaining the required legal documents. Mainly meeting the collateral requirements, which means getting the necessary legal documents regarding ownership and the husband's consent, complicates borrowing. Banks can carry out credit product reforms that include flexibility in credit terms, namely longer terms for larger loans to reduce the installment burden, and the use of People's Business Credit (KUR) products to

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<sup>59</sup> Hidayah, “Islam, Gender, Dan Kewirausahaan Dalam Perspektif Budaya Muslim Indonesia.”

address gaps in collateral and connect first-time borrowers in a formal banking system with financial education either through banking or referrals to government or NGO programs that offer the necessary services. Banks should adapt their product offerings and lending methodologies and exploit ways to utilize information and communication technology to reach women-led MSMEs that are still underserved.

Although women entrepreneurs have started using digital platforms to sell, many entrepreneurs still need to learn more about using technology. Helping women entrepreneurs take advantage of technology can open access to a broader market and make it easier to get raw materials. Financial literacy is also needed so that women can understand business risks, can choose and utilize financial products and services, have good financial planning, and will assist in making decisions related to their business. Remember, the government is expected to be able to streamline digital and financial literacy training programs. In addition, the Government is expected to further expand facilities that help women overcome cultural barriers in the form of gender norms that burden women with triple burdens. Such as providing adequate and easily accessible childcare facilities at affordable prices, and taking advantage of the extended family culture in Indonesia where extended families help ease household and childcare tasks.

## **Conclusion**

Indonesia has been promoting women's economic rights, including entrepreneurship. However, Indonesia still has room for improvement in promoting women's economic rights and working towards gender equality in the economy. WBL 2023 shows that Indonesia scores 75 for the entrepreneurial dimension, which consists of four indicators: access to credit, business licenses, making agreements, and creating bank accounts. There are no rules that discriminate against women in running a business or building a business. Likewise, there are no regulations that discriminate against women in business licensing, making contracts, and making bank accounts. However, in gaining access to credit, women entrepreneurs are still underserved by banks because they are considered riskier, and banks do not target women as the main target for their products, even though the level of credit worthiness of women is not much different from that of male debtors. Apart from the debate about conservative and progressive Islamic interpretations of Islamic law regarding women's rights and gender equality, there has been a shift in the paradigm of the majority of Muslims in Indonesia from the tendency of religious scripturalism to emphasize a textual approach in reinterpreting Islamic texts. These reforms have influenced the women's movement, especially the Muslim women's movement, to fight for gender equality in state laws and regulations. All stakeholders need

collaboration and synergy to promote women's rights and gender equality in Indonesia.

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