The Hadith about Woman’s Lacking Intellectuality and Its Correlation Onto Testimony Law for Woman

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I. Introduction
In our social life, there is a strong and powerfully spreaded opinion among people. So the approvals said that the opinion is taken from Islam itself. The opinion I mean here is odd idea that consider women as the inferior in compare with men. They are inferior from any side we consider. One of the women’s inferiority is their intellectuality. Those who submit to this thought take several verses of Holy Qur’an and Prophet’s hadith to strengthen their opinion.

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II. The Controversy among Hadith and Qur'an
One of the hadith they take to brace their view is the one that reported
by al-Bukhārī on the authority of Abu Sa'īd al-Khudri:

Has reported to us Sa’īd ibn Abī Maryam, he said: Has reported to us
Muhammad ibn Ja’far, he (Ibn Ja’far) said: Has reported to us Zaid—he
is Ibn Aslam, from ‘Īyād ibn ‘Abdillāh from Abī Sa’īd al-Khudri,
he said: Rasulullah has got out in a great celebration day ‘Īd al-Adhā
or ‘Īd al-Fitrī into the field where the pray taking place and he deliver
his khutbah to the women: "O women folk, you should give Charity
and ask much forgiveness for I saw you in bulk amongst the dwellers
of Hell. A wise lady among them said: Why is it, Messenger of Allah,
that our folk is in bulk in Hell? Upon this the Holy Prophet observed:
You curse too much and are ungrateful to your spouses. I have seen
none lacking intellectuality and failing in religion but (at the same time)
robbing the wisdom of the wise besides you. Upon this the woman
remarked: What is wrong with our intellectuality and with religion?
He (the Holy Prophet) observed: Your lack of intellectuality (can be
well judged from the fact) that the testimony of two women is equal to
one man, that is a proof of the lack of intellectuality, and you spend
some nights (and days) in which you do not offer Prayer and in the
month of Ramadan (during the days) you do not observe fast, that is a
failing in religion."1

This hadith clearly indicate that women’s intellectuality is
weaker than men’s.

More over this hadith look so appropriate to 282rd verse of al-
Baqarah and even this hadith seem role a part as this verse’s mubayyin
(clarifier and explanation). This verse explicitly said that two women’s
testimony are considered “only” equal to one man’s testimony:

... And get two witnesses, out of your own men, and if there are not
two men, then a man and two women, such as ye choose, for witnesses,
so that if one of them errs, the other can remind her...2

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1 CD ROM Mausū'ah al-Hadith al-Sharīf. Version 2.00, Global Islamic
Shāfi‘ī al-Bukhārī. Kairo: Dār al-Hadīs, no year, Vol 1, p. 83. The other
corroborate transmission could even found in all other kutub al-his’ah (Muslim,
al-Turmuzdi, Ibn Mājah, Ahmad ibn Hambal dan al-Dārimi) but al-Nasā‘i
dan Mālik. See CD ROM Mausū‘ah al-Hadith al-Sharīf. Version 2.00, Global

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This verse has been strengthen by another verse. The other verse distinctly explain the reason of why men is being superior to women. The verse I mean here is 34th verse of al-Nisā’:

Men are the protectors and maintainers of women, because Allah has given the one more (strength) than the other, and because they support them from their means. Therefore the righteous women are devoutly obedient, and guard in (the husband’s) absence what Allah would have them guard. As to those women on whose part ye fear disloyalty and ill-conduct, admonish them (first), (next), refuse to share their beds, (and last) beat them (lightly); but if they return to obedience, seek not against them means (of annoyance): for Allah is Most High, Great (above you all).

However, the law testimony for women clearly indicated in Holy Qur’an. And the background of this law can be easily found in the hadith described about the women’s lacking intellectuality above. The hadith has been reported by al-Bukhāri and Muslim. And because of it, almost all authority of Ulamas convince without any doubt of it hadith’s quality.

Convince and believe in these verses and hadith, will drive us straightly to Islamic law istinbath about women’s testimony. For example, see how this hadith context agree with the Holy Qur’an’s command to bring two women witnesses beside a man witness. This verse, accompanied with the prime quality of the hadith, will be an undisputable and unrejectable argument.

But a question suddenly appears. Is the opinion really true? Is it really true if women’s intellectuality considered weaker in compare with men’s?

In the other verse Allah SWT said that both men and women’s

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faith and work are consider the same in it’s values before Allah SWT. For example see the following 35th verse of al-Ahzâb:

For Muslim men and women, for believing men and women, for devout men and women, for true men and women, for men and women who are patient and constant, for men and women who humble themselves, for men and women who give in charity, for men and women who fast (and deny themselves), for men and women who guard their chastity, and for men and women who engage much in Allah’s praise, for them has Allah prepared forgiveness and great reward.\(^4\)

They also rewarded same for every work and deed. It also written down and recorded on the Holy Qur’an. See for example 195th verse of Āl ‘Imrân, 124th verse of al-Nisâ’, 97th verse of al-Nahl, 40th verse of al-Mu’min, 72nd verse of al-Taubah and many other verses.

History facts moreover also described many datas about women’s philosopher and fuqaha in great amount. For example, in history has recorded, that once upon a time there is a huge tremendous kingdom led by a shrewd queen of Bilqis. The kingdom well known as Sabâ’. Prosperity of this kingdom briefly narrated in Holy Qur’an and distinctly described the prove about women’s success in her role as al-Imâm al-A’zham (highest leader of a kingdom/nation). See the following 15th verse of Saba’:

There was, for Saba’, aforetime, a Sign in their homeland - two Gardens to the right and to the left - Eat of the Sustenance (provided) by your Lord, and be grateful to Him: a territory fair and happy, and a Lord Oft-Forgiving!\(^5\)

And the other facts telling us that many clever women who have expertise in their field could even subjugate men. They are ‘Āisyah Umm al-Mu’mîln, Bint al-Syâthi’, al-Khansâ’, Syaikhah Syuhrah, al-‘Arudhiyyah, Golda Meir, Indira Gandhi, Queen Isabella, Queen


Victoria and many others. Those are clearly visible examples of success women in their sectors.

And maybe we also have to honestly and fairly remember the history fact when 'Umar ibn al-Khatthab choose and inaugurate al-Syaffa' - a smart woman of 'Adi, his own clan - to be a supervisor in Madinah market. Her authority covers every activity occur in that place. Everybody should obey her rule. Because she has represent the Khalifah himself in the market.

Meanwhile at the same time, the feminists attack with many arguments to nurture their position to defeat lacking intellectuality of women assumption. The arguments embrace the gender equality argument up to discrediting accusations toward Prophet's disciples. These accusations can be potentially confuse and hesitate people toward the Prophet's hadith that originally narrated and reported by those.

See for example Fatima Mernissi and Riffat Hassan's opinion that rudely accuse Abu Bakrah (died in 52 H)⁶, one of the Prophet's disciples, as a Prophet's bootlicker. That accusation appear because Abu Bakrah has been reported a controversial hadith talking about woman's position as a leader of a kingdom. This hadith narrated in the matter of Kisra's (King of Persia) daughter inauguration to substitute her just died father as Queen of Persia.⁷

This kind of opinion clearly apprehensive and dangerously threat a moslem's faith. If a Prophet's disciple considered as a lack credibility individual, both in personality and intellectuality, then rejection for every hadith he narrated is one and the only choice. Imagine how apprehensive and dangerous that condition for Islamic faith and law development.

⁶ Abū Bakrah is kun yah (honor and respecting name that usually derived from a man's oldest son) of Nafī' ibn al-Hāiris ibn Kaldah al-Tsaqafi. He is one of the Prophet's disciples who live in Bashrah. He died at 52 H in that city too.

In other ways, even though hadith of women’s lacking intellectuality has been narrated by al-Bukhārī and Muslim as an agreed upon one and has been authenticated by all authorities, still there are several hesitancy opinions toward al-Shahīḥain’s (Hadith reportation of Shahī ḥ al-Bukhārī and Hadith reportation of Shahī ḥ Muslim) credibility.

As we know, majority number of Ulamas have believed without any hesitation about the perfection quality of both books.

But nowadays, we can surprisingly meet an underestimating view discussing about both books’ quality. MM. A’zami said there are 80 transmitters and 110 contents of al-Bukhārī’s reportation who have been criticized. Meanwhile, Muslim’s seem agreed upon by majority number of Ulamas. The agreement seem strongly occur because of his transmitting methodology. His particular methodology is transmitting only the agreed upon ones. He wouldn’t report the controversial ones. However, critics in connection with al-Bukhārī maybe occur because of major assumption about the perfect quality of the hadith reportation he recorded.

We must remember, although al-Shahīḥain has been reported with an extremely high standard and accuracy, not every transmitter of those agreed upon by Ulamas. However, in my opinion, “mistakes” in Bukhari’s line of transmission wouldn’t be able to decline the quality of al-Bukhārī himself as a reporter of Prophet’s hadith.

Now we can see several contradictory facts. First, we can see the fact that hadith described about women’s lacking intellectuality has been narrated by al-Bukhārī and Muslim and has been authenticated by almost all authorities. But surprisingly we can still

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meet some opinions reject this theory.

Second, the hadith described about women’s lacking espoused by 282nd verse of al-Baqarah. But this verse seem contradictory to 35th verse of al-Ahzâb and the other verses.

Third, the hadith also look unfit with the history facts.

From these contradictories, I’d like to explain the moderate opinion of mine. I will shortly describe my argumentations toward these in order to get the best opinion of this problem. Best in my opinion at least.

After I perform several serious critical research toward 2 lines of transmission of al-Bukhârî and Muslim, I’ve got result that al-Bukhârî’s line of transmission is muttashil (no severances found, all transmitters are properly connected) and shâhîh (reliable line of transmission, trustworthy line) with the good personality and intellectuality transmitters. And so Muslim. I’ve found that Muslim’s line of transmission is also muttashil (no severances found, all transmitters are properly connected) and shâhîh (reliable line of transmission, trustworthy line) with the good personality and intellectuality transmitters.10 The other corroborate transmissions with the term of transmission can be analyze in comprehensive sanad scheme that I attach as an appendix.

III. Intellectuality of Women
There are two major variabel of terminology we can see here. First is “intellectuality.” What is it? We have to find a sharply fit concept intellectuality in it specific context toward testimony law. And the second one is “women.” What is “women” elucidated in this hadith?

With a brighter observation and research, we can distinctly find that “intellectuality” meant here couldn’t understood as a problem.

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10 More comprehensive discussion of sanad scheme, transmitter’s biography with it’s critical discussion, and so the discussion about continuity of transmission and the complete sanad quality which is cover discussion about time research of when the transmitter alive or what the transmission term used, could found in writer’s theses that written with the same title.
solving capability in it general form. But in fact even should be understood specifically as a capability to maintain memories clearly and purely. It should be firmly maintained even under several pressuring circumstances, yet mentally and physiologically. Explanation about this covered in another part of this paper.

"Women" in hadith we discussing clearly refer to it meaning as a particular kind of sex that roughly corresponding to two sexes and sexlessness. Nasaruddin Umar describe the difference between "sex" and "gender." According to his view, "sex" connote an understanding that more oriented to biological, anatomical, chemical composition and reaction and the other hormonal aspects. But in "gender" terminology, the connotation has a simply closer orientation toward cultural, sociological, physiological and the other non-biological aspects instead. From this view, we can clearly understand that "gender" specifically has a closer meaning to behaviour, deed, and caprice pattern.11

In Indonesian language, both words—sex and gender—have a very similar meaning. Both are nouns, and similarly refer to the meaning of "jenis kelamin."12 The other dictionaries also said the meaning of sex and gender. WJS Poerwadarminta in Kamus Besar Bahasa Indonesia said that "kelamin" is refer to the meaning of "jodoh" (marriage partner, mate. Or match in the second meaning), "jenis" (kind of something. Propably refer to meaning of two sexes or sexlessness), and "alat pada tubuh untuk mengadakan keturunan" (genital organ or sexual/reproductive organ).13 In my opinion, the best understanding from several meaning above is "kelamin" in it's meaning as "jenis" (kind of something. Propably refer to meaning of two sexes or sexlessness), and not "alat ataupun organ genital

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tertentu” (genital organ or sexual/reproductive organ).14

“Women” should be understood as a particular sex, also distinctly appear within the khithab (summon phrase) of the hadith hadits tersebut: “O women folk.” It also clearly visible in munāsabah al-taurūd (historical background) of the hadith.15 Which was delivered in a great ceremony day of ‘id in which the Prophet gave special speech for women.

About the women’s lacking intellectuality, there is a writer who has amazingly focused his mind to arrange several research toward women particularly. He is Abu Syuqqah. Within his book he wrote about several kind of proper meaning of nāqishāt al-‘aql (women’s lacking intellectuality):

1. Lacking in common sense. It promote us to think that women’s intellectuality is lack from its origin form of creation;
2. Lacking in particular sense. It promote us to think that women only have particular lacking conditions. Such as lacking in some particular intellectual fields, mathematics, ideas, inventions and discoveries, and so in memorizing something;
3. Lacking intellectuality occurred because of some temporary and incidental conditions. These conditions sometimes arise because of either condition change or situation transition. Menstruation

14 Similar meaning also found in Oxford Dictionary. It said that “sex” is “being male or female;” “males and females collectively;” “sexual instinct or desire or activity.” And “gender” is “grammatical classification (or one of classes) roughly corresponding to two sexes and sexlessness.” Peter Salim also said the same. According to his view, “sex” is “jenis kelamin” (particular sex), “perkelaminan” (sexual intercourse, coitus), “nafsu seks” (desire or passion to get intimate). and in informal meaning could be understood as “aktifitas seksual” (sexual activity). But “gender” meant “jenis kelamin” (particular sex), and the second meaning is “kata benda dan kata ganti yang menggolongkan sesuatu menjadi kelompok jantan, betina dan netral” (noun or pronoun that simply classify to two sexes, male or female and sexlessness). See George Ostler. Little Oxford Dictionary of Current English. Julia Swanell (ed.). Leicester: Ulverscroft, 1986, pp. 227 dan 503. Check and compare with Peter Salim. Salim’s Ninth Collegiate English-Indonesian Dictionary. Jakarta: Modern English Press, 2000, pp. 617 dan 1347.

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is a perfect example for this.

4. Lacking intellectuality occurred because of some incidental conditions, but the conditions has occur for a quite long period. These conditions arise because of problems of life or pressures that come one after another in a quite long period. It happen simultaneously and continually. Bustle activities because of pregnancy, bearing, wet nursing and the other activities with restricted freedom, will roughly lead women to a distinct lacking intellectuality.16

In the other part he wrote, Prophet's example of women's lacking intellectuality actually could brace the reasons of lacking both in sense and intellectuality. However, it doesn't matter what is the lack actually. Because however, the lack wouldn't disturb women's capability to fulfill their major obligatorys, of caring children and family. Those kind of job will never be trusted to an abnormal creature. These jobs definitely will be trusted to a normal and capable creature.17

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15 Asymawi lead us to differences between asbâb al-nuzul and munâsabah al-tanzîl. He said that asbâb al-nuzul is reality which has been interracted with holy text to arise law. Law understanding with emphasize in asbâb al-nuzul, will simply confest law in it zone of authority. But in other ways, munâsabah al-tanzîl—circumstance appropriation toward holy text—promote us to an impression that the holy text has been preserved before the circumstances indeed. But the former "wait for" an appropriate condition to reveal. If the appropriation occur, the holy text suddenly reveal in it holy form. Within this kind of understanding, the holy text's validity will never be expired. It will be affected it believer immortally. This understanding is very suitable to the law theorem al-'ibrah bi 'umûm al-lajfâh là bi khushûsh al-sâbah (the understanding of a text should be understood by it's term generalty, not understood by it particular cause of revelation). The similar understanding also applied in Prophet's hadith. See Muhammad Sa'id al-Asymawi. Nalar Kritis Syari'ah. Luthfi Thomafî (trans.). Yogyakarta: LkiS, 2004, pp. 58-62.


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But in my view, among all kind of understanding released by Abu Syuqqah, I’d like to understand Ṽāqīshāt al-‘aql (women’s lacking intellectuality) as lacking memories in underpressuring conditions.

IV. Women’s Testimony
Within this part, I will cite some experts’ opinions. In Fath al-Bāri, Ibn Hajar al-Asqalāni cited Ibn al-Mundzir who said that majority number of Ulamas has allowed women’s testimony in one condition, it should be performed along with a man. The argumentation for this based clearly on the following 282nd verse of al-Baqarah:

... And get two witnesses, out of your own men, and if there are not two men, then a man and two women, such as ye choose, for witnesses, so that if one of them errs, the other can remind her...18

The majority number of Ulamas specialize this testimony rule in debt and property field. And women’s testimony considered as null testimony in hudud and qishāsh field. They have differences to consider women’s testimony if it delivered in marriage, divorce, descent and custody fields. These fields are forbidden for women’s testimony according to major number of Ulamas. Only the Kufah’s allow these.

Yet the Ulamas accept the women’s testimony even solely delivered in several fields where men are usually unable to be witnesses on those. Those several fields are menstruation, birth, istiljāl (particular time when a baby cries for his/her first earth-sight) and so women’s physical defect and deformity. The Ulamas still arguing of al-radha’ (wet nursing) field. Is it acceptable or not if the women’s testimony delivered without man at all.19

In the same place al-Asqalāni also cite Abū ‘Ubaid who has

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described the reason of why a woman should be allowed to deliver her testimony in property field. He said that the argumentation for this is 282nd verse of al-Baqarah. Whereas the rejection argumentation for women’s testimony in hudūd field is 4th verse of al-Nûr: “… and produce not four witnesses, (to support their allegations)….20

At the time, there are different opinions toward women’s testimony in marriage, divorce, descent and custody. Women are allowed to be witnesses in property field because in this field has been covered the brideprice and nafkah (conjugal rights and material rights that should be an obligatory for man to fulfilled when he marry a woman) and the other similar things. But women are not allowed to be witnesses in hudūd field, because in this field the status of farj (genital organ, the actual meaning is sexual intercourse) is determined. Is it should considered as halal or haram. Abu ‘Ubaid continues his argumentation with a decision that these opinions are the ones we should hold as our conviction. This argument has been strengthen by 2nd verse of al-Thalâq: “…and take for witness two persons from among you, endued with justice…”

Allah said these as hudūd. In 187th verse of al-Baqarah He also said, “… Those are limits (set by) Allah…”21

At the end of his explanation Abu ‘Ubaid said: “How could a woman deliver her testimony in fields that in those she actually has no rights at all to solve the problem?”22

In Bidâyah al-Mujtahid Ibn Rusyd said that the best opinion is women are not allowed to deliver their testimony in hudūd field indeed. Daud al-Zhâhirî approvals said that women’s testimony could be accepted if the testimony delivered along with a man and more than a woman in the case. Abu Ḥanîfah said that women’s testimony in property, marriage, divorce, reconciliation, and wala’ (slave liberation) are allowable. But they are not allowed to deliver

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testimony in \textit{hudi\dot{d}} and physical punishment field. Meanwhile Mâlik, as also Abu Hanifah, reject the testimony from woman in physical law and punishment.

In \textit{al-Muhalla} Ibn Hazm said that in zina problem, the accepted testimony is the one in which it arranged by four credible Moslem men. But two women replacing one man is also considered as an acceptable testimony. So, according to him, the witnesses are equal in it validity if they are:

1. Four men;
2. Three men and two women;
3. Two men and four women;
4. One man and six women, or even;
5. Eight women.

In the next part of the book, Ibn Hazm continues, that testimony is acceptable if it delivered by a man and two credible moslem women in yet \textit{hudi\dot{d}} field, marriage, divorce and reconciliation. Sole testimony of either one man or one woman only acceptable in wet nursing field.\textsuperscript{23}

Muhammad al-Ghazâli wrote that nowadays most women are well educated. So, because of that, restriction toward women’s testimony field is an irrational idea. Women’s testimony should be acceptable in every field, but it still with the same witness quantity as it has permanently determined in Holy Qur’an.\textsuperscript{24}

In \textit{fiqh} (Islamic jurisprudence) we will find several conditions in which a person is considered appropriate to be a witness. For example is the one written by Kâmîl Muhammad Muhammad ‘Arîdah in his book \textit{al-Jâmi’ fi Fiqh al-Nisâ‘}. Those conditions are \textit{Islam} (Moslem, male or female), ‘\textit{aql}’ (being intelligent or smart enough, proper mind condition), \textit{balîgh} (legally responsible, grown up, usually from age


\textsuperscript{24} Muhammad al-Ghazâli. \textit{Al-Sunnah al-Nabawiyyah Bayn Ahl al-Fiqh wa Ahl al-\textit{Hadîth}.} Kairo: Dâr al-Syurûq, 1989, p. 77.
15 on), and ‘adil (proper personal credibility). About these conditions he explained that there are unacceptable testimony too. There are the ones delivered by liar, betrayer. And also considered as unacceptable if it delivered by someone who bears a grudge and spite to the individual in who he deliver his/her testimony on. Considered as null too if a testimony delivered by the litigant’s subordinates. And so the one delivered by families or relatives.

In his view, testimony delivering has some conditions as guidances:

1. A witness only allowed to deliver his/her testimony if he/she really know about the problem without any doubt or hesitation. It should be known by one or more proper sensation;
2. A testimony could be authorized to another proper witness if the “real witness” is being hindered. This removal of authorization should be decided by judge(s);
3. A witness should have tazkiyyah (recommendation) given by two credible individuals describing that he/she is proper and credible to be witness. If the credibility of the witness is already known, recommendation will not necessary anymore;
4. If two individuals has recommended the witness as a credible person, but there are two other individuals has recommended the witness as not credible person, the judge(s) should prefer the later to the former.

V. Conclusion

From those overview, we can conclude that requisites declared for a witness to make his/her testimony accepted is Islam (Moslem, male

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or female), ‘aqil (being intelligent or smart enough, proper mind condition), baligh (legally responsible, grown up, usually from age 15 on), and ‘adil (proper personal credibility). These conditions still added with one other condition; enough knowledge toward the problem he witnesses. The core understanding of these are good personal quality and enough knowledge toward the problem he witnesses.

From those overview we can simply understand that ibn Hazm’s opinion is seem very similar to Muhammad al-Ghazali’s. They said that women’s testimony could be accepted in every field.

Nowadays, information of almost everything could be easily accessed. Almost everybody could simply accessed very much information through medias. Everything happening in this world can be broadcasted real time to almost every people in this world. These magnificent technology developments should be able to abrogate the restriction of women’s testimony.

If a woman has fulfilled the conditions of witnesses, then she should be acceptable in testimony. Meaning is, if she is a Moslem, ‘aqil, baligh, and ‘adil and free from slavery plus she has enough knowledge toward the problem she witnesses, then she has a right to deliver her testimony in a court. It is not a matter in what field she witnesses. On the contrary, if someone has been considered as a not credible witness, or there are some hesitation of his/her knowledge toward the problem he/she witnesses, no matter how clever he/she is, in a court he/she has no right to deliver his/her testimony at all.
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