

# Husein Muhammad's Thoughts on Gender Equality in Islamic Inheritance Law

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**Abstract:** *Husein Muhammad's Thoughts on Gender Equality in Islamic Inheritance Law.*

This research aims to analyze the philosophical reasons for Husein Muhammad's thoughts about the importance of the equal distribution of inheritance between men and women in Islamic inheritance law, as well as the method of legal reform that he uses when understanding verses about inheritance. This research is field research. Data was collected through virtual interviews. Data analysis was descriptive qualitative, with *maslahah* theory, and historical and sociological approaches. The research findings show that one of the reasons why verses about inheritance need to be reinterpreted, according to Husein, is because these verses fall into the category of *mutashâbihât* verses (interpretable) so they need to be reinterpreted by looking at the current context. Another reason is that the inheritance verses that regulate section 2:1 for men and women in the Prophet's era were only intended for the context of society at that time, where women had no inheritance rights, and even women were used as objects of inheritance. Nowadays, the existence of women is growing. That way the portion of their inheritance should be reformed and adapted to current socio-cultural developments. Husein emphasized that gender bias occurs due to bias when interpreting the Qur'an, and the influence of patriarchal culture.

**Keywords:** Husein Muhammad, gender equality, Islamic inheritance

**Abstrak:** *Pemikiran Husein Muhammad Tentang Kesetaraan Gender dalam Hukum Waris Islam.* Penelitian ini bertujuan menganalisis alasan-alasan filosofis pemikiran Husein Muhammad tentang pentingnya penyeteraan bagian waris antara pria dan wanita dalam hukum waris Islam, serta metode pembaruan hukum yang digunakan ketika memahami ayat tentang waris. Penelitian ini merupakan penelitian lapangan. Data dikumpulkan melalui wawancara secara virtual. Analisa data secara deskriptif kualitatif, dengan teori *maslahah*, melalui pendekatan historis dan sosiologis. Temuan penelitian menunjukkan bahwa salah satu alasan mengapa ayat-ayat tentang waris perlu diinterpretasi ulang, menurut Husein, adalah karena ayat-ayat itu termasuk kategori ayat *mutashâbihât* (*interpretable*) sehingga perlu ditafsir ulang dengan melihat konteks masa kini. Alasan lain adalah ayat-ayat waris yang mengatur bagian 2:1 bagi pria dan wanita di era Rasulullah hanya ditujukan untuk konteks masyarakat ketika itu, di mana wanita tidak memiliki hak waris, bahkan wanita dijadikan objek warisan. Di masa sekarang, eksistensi wanita makin berkembang. Dengan begitu porsi waris mereka seharusnya direformasi dan disesuaikan dengan perkembangan sosial budaya saat ini. Husein menandakan bahwa bias gender itu terjadi disebabkan adanya bias ketika menafsirkan Alquran, dan pengaruh budaya patriarki.

**Kata kunci:** Husein Muhammad, kesetaraan gender, kewarisan Islam

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## Introduction

The transformation of the socio-cultural system of society brings many consequences, one of which is a change in the law. Reinterpretation and reformulation of fiqh need to be done because classical fiqh is seen as irrelevant to the social problems faced by women today. There is even a view that classical fiqh books have contributed to violations and injustices for women. One issue that is still being debated among legal observers is the distribution of inheritance. Although the stipulation on the distribution of inheritance has been stated *qath'iy* (clear and unequivocal) in the Qur'an, the development of the social and cultural aspects of women is very dynamic, even the existence of women has been increasingly recognized as primary beings. This requires reform of provisions in the field of inheritance law.

Responding to the demand for the renewal of inheritance law, two schools of thought emerge among contemporary scholars. First, the conservative group adheres to the traditional distribution of classical inheritance using textual methods. Second, the interpretive-progressive groups tend to apply a contextual approach in reading Islamic inheritance law.<sup>1</sup> The criticism of the conservatives towards the progressive groups is that the results of legal interpretations tend to contradict the *syar'i* texts. The share of inheritance 2:1 in the era of the Prophet was already a progressive legal reform idea. This is because, in fact, in the era of ignorance, women did not have the right to inherit property if a relative or husband died, in fact, at that time, women were considered objects of inheritance. Thus, the presence of Islam carries the mission of changing the law against the Arab Jahiliyyah tradition, even though the influence of patriarchal culture is very dominant in coloring the inheritance rights of men and women. On the other hand, the progressive group considers Islamic law understood by the conservative group to be rigid and resistant to it. Change. According to this group, normative stipulations on the share of inheritance as well as classical fiqh provisions are seen as no

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<sup>1</sup> Anugrah Reskiani, Dian Furqani, Tenrilawa, Aminuddin, Rahman Subha, "Reform Methods of Islamic Inheritance Law in Indonesia in Jurisprudence," *Jurnal Ilmiah Syari'ah*, 1.21 (2022): 39–51.

longer relevant to the social problems faced by women today. There have been various responses from parties claiming to be parties who care about women's rights who demand justice, and equality between men and women, who call it demands gender equality.<sup>2</sup>

Husein Muhammad is one of the exponents of the second group. He is known as a feminist chaplain because he studies women's themes from a religious perspective. She is very concerned about issues of gender equality and is active in the movement to assist women's rights in Indonesia. Most of her books have nuances of gender equality which give a new color to the struggle for feminism. Husein tirelessly defends women's rights and breaks established understandings of gender relations in the Qur'an. As a *kiyai* (religious figure) who graduated from an Islamic boarding school, he has a paradigmatic view with his ability in the science of interpretation, jurisprudence, and Arabic,<sup>3</sup> His thoughts provide a lot of criticism regarding the existence of gender bias, the learning process, and the different treatment of female students. Concerned about this situation, Hussein brought up ideas about *fiqh* that defended gender equality, including gender equality in the distribution of inheritance between boys and girls. According to him, the inheritance verses considered *qahf'iy* can still be re-interpreted, looking at the category of verses whether they are global or particular. In addition, the revelation of the inheritance verse was a response to an event at that time. Therefore, the reinterpretation of the inheritance verse is very important to adapt to the sociological development of today's women. According to him, Islamic legal thinking needs to be refreshed so that living laws do not collide with the reality of an increasingly complete *ummah* (Muslim society), and the pillars of law enforcement can produce goodness and justice.

Several previous studies were similar to this research, including Muhammad Ali Murtadlo regarding the theory of inheritance limits. The theory of limits, according to Muhammad Syahrur referred to by

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<sup>2</sup> Nasaruddin Umar, *Ketika Fikih Membela Perempuan* (Jakarta: PT. ELX Media Comotindo, 2014), p. 25.

<sup>3</sup> Eni Zulaiha, "Analisa Gender dan Prinsip-Prinsip Penafsiran Husein Muhammad Pada Ayat-Ayat Relasi Gender," *Jurnal Al-Bayan*, 3.1 (2018): 1-11.

Murtadlo, is the limits of Allah's law. Section 2 for boys is the maximum limit, while section 1 for girls is the minimum limit so this provision has the opportunity to shift according to the community context.<sup>4</sup> Another study, conducted by Sugiri Permana, explained that the different rights and obligations of men and women in Islamic family law were not intended to exaggerate one over the other. *Ijtihâd* inheritance rules pointed out by Indonesian clerics and judges' decisions aim to bring about the development of a woman's right to her parent's inheritance.<sup>5</sup> Moreover, a study conducted by Eni Zulaiha explains that Husein Muhammad as one of the Indonesian feminist interpreters has succeeded in taking a contextual-philosophical approach and incorporating gender analysis into his interpretation. The principle of interpretation has integrated gender analysis originating from the West into a study that does not contradict even the opinions of classical scholars. He still uses a hermeneutical approach in his interpretation but does not abandon the logic of Islamic law which has been popular among Muslim scholars.<sup>6</sup> Furthermore, the findings from Aniroh's researchers explain that Hazairin believes that the bilateral inheritance system is the basic character of Islamic inheritance

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<sup>4</sup> Muhammad Ali Murtadlo, "Keadilan Gender dalam Hukum Pembagian Waris Islam Perspektif the Theory of Limit Muhammad Syahrur," *International Journal of Child and Gender Studies*, 4.1 (2018): 16. See also Syarifah, Masykurotus, and Ach Maulana Elbe. "Metode Waris Perspektif Muhammad Syahrur Serta Upaya Rekonsiliasi dengan 'Urf." *Kabilah: Journal of Social Community*, 6. 1 (2021): 84-96; Abdul Mustaqim, "Pemikiran Fikih Kontemporer Muhammad Syahrur Tentang Poligami dan Jilbab." *Al-Manahij: Jurnal Kajian Hukum Islam*, 5.1 (2011): 67-80; Abdul Mustaqim, "Teori *Hudûd* Muhammad Syahrur dan Kontribusinya dalam Penafsiran al-Qur'an." *AL QUDS: Jurnal Studi Alquran dan Hadis*, 1.1 (2017): 1-26; Afif Muamar, "Rekonstruksi Hukum Waris Islam (Telaah Pemikiran Muhammad Syahrur)." *Mahkamah: Jurnal Kajian Hukum Islam*, 2.2 (2017); Asmara, Musda, Rahadian Kurniawan, and Linda Agustian. "Teori Batas Kewarisan Muhammad Syahrur dan Relevansinya dengan Keadilan Sosial." *Journal De Jure*, 12.1 (2020): 17-34; Doli Witro, "Muhammad Syahrur dan Teori Limitasi: Sebuah Metode Penggalan Hukum Islam." *Istinbath: Jurnal Hukum*, 18.1 (2021): 15-31; Jendri, "Aplikasi Teori Batas Terhadap Poligami (Studi Hermeneutika Muhammad Syahrur)." *Nun: Jurnal Studi Alquran dan Tafsir di Nusantara*, 6.2 (2020): 145-162; Hendri Hermawan Adinugraha, "Reaktualisasi Hukum Islam di Indonesia (Analisis Terhadap Teori *Hudûd* Muhammad Syahrur)." *Islamadina: Jurnal Pemikiran Islam*, 19.1 (2018): 1-26; Mia Fitriah Elkarimah, "Teori Limit dalam Metode Hukum Islam Muhammad Syahrur." *Maslahah (Jurnal Hukum Islam dan Perbankan Syariah)*, 5.1 (2014): 21-40.

<sup>5</sup> Sugiri Permana, "Kesetaraan Gender dalam Ijtihad Hukum Waris di Indonesia," *Jurnal As-Syar'iyah*, 20.2 (2018): 117-129.

<sup>6</sup> Eni Zulaiha, "Analisa Gender dan Prinsip-Prinsip Penafsiran Husein Muhammad Pada Ayat-Ayat Relasi Gender." *Jurnal al Bayan, Studi al-Qur'an dan Tafsir*, 3.1, (2018): 1-11.

law. After Hazairin<sup>7</sup>, the concept of bilateral inheritance has been revived by several Indonesian Muslim scholars such as Munawir Sazali, Yahya Harahap, and Sarmadi. From the perspective of legal history, the idea of bilateral inheritance law has developed following the Indonesian context, which does not only consider the meaning of the verse but also the development of the structure of kinship relations, gender justice, and social justice as the main objectives of the inheritance law verses.<sup>8</sup>

This research is different from previous studies because this research focuses on the philosophical reasons for Husein Muhammad's thoughts about the importance of the equal distribution of inheritance between men and women in Islamic inheritance law and the method of legal reform used when understanding verses about inheritance. This research is important to explain the urgency of reinterpretation and meaning of inheritance verses as well as renewal of Islamic inheritance law thinking, so that the law can be in line with the reality and development of a dynamic society, and can realize justice and prosperity.

## Research Methods

This research is classified as field research, which is descriptive in nature. Primary data was obtained through in-depth interviews with K.H. Husein Muhammad a feminist figure related to gender equality in Islamic inheritance. While secondary data was obtained from literature on religion and other references related to the theme of this study, in the form

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<sup>7</sup> About Hazairin see Reni Nur Aniroh, "Mempertegas Ide Kesetaraan Gender dalam Sistem Kewarisan Bilateral: Sistem Waris Bilateral Pasca Hazairin." *Al-Ahwal: Jurnal Hukum Keluarga Islam*, 13.2 (2020): 119-138; Rosidi Jamil, "Hukum Waris dan Wasiat (Sebuah Perbandingan antara Pemikiran Hazairin dan Munawwir Sjadzali)." *Al-Ahwal: Jurnal Hukum Keluarga Islam*, 10.1 (2017): 99-114; Muhammad Darwis, "Analisa Pemikiran Hazairin Tentang Mawali." *Hukum Islam*, 14.1 (2014): 82-89; Muhammad Nurcholis, and Pepe Iswanto. "Konsep Keadilan dalam Hukum Waris Menurut Hazairin." *Istinbath| Jurnal Penelitian Hukum Islam*, 12.1 (2018); Saoki, "Metode *Istinbath* Hazairin Tentang Hukum Waris." *Al-Hukama'*, 5.1 (2015): 123-147; Afiq Budiawan, "Telaah Pemikiran Hazairin dalam Mengelompokkan Ahli Waris Menurut Perspektif Hukum Kewarisan Islam." *Journal of Hupo Linea*, 1.1 (2020): 46-53; Idris Mahmudi, "Metodologi Pembaharuan Hukum Islam dalam Perspektif Pemikiran Hazairin." *Al-Fikra: Jurnal Ilmiah Keislaman*, 5.2 (2017): 175-194.

<sup>8</sup> Aniroh, "Mempertegas Ide Kesetaraan Gender dalam Sistem Kewarisan Bilateral", *Jurnal al-Ahwal*, 13.2 (2020): 119-138.

of fiqh books, *ushûl fiqh*, interpretation, hadith, laws, and regulations. The data obtained were then processed and analyzed qualitatively with *maslahah* theory, as well as historical and sociological approaches.

## Results and Discussion

### 1. The Principles of Gender Equality

Gender is a concept that shows the difference between men and women seen through sociocultural aspects. The concept is the result of social engineering (social construction), not natural. Gender is the characterization of men and women who are formed socially and culturally. This trait is dominant in the socio-cultural, psychological as well as other non-biological aspects. Gender is different from sex. Gender is a biologically based sex attribute and belongs to a certain sex.<sup>9</sup>

As a response to the issue of gender equality, a feminist movement emerged, working hard to eliminate and change the existence of subordination and oppression of women. As stated by Nurmila, the main criterion of feminism is "awareness" of the existence of oppression and subordination, as well as "actions" to eliminate and change this oppression. In the Muslim world itself, this gender issue has spawned 2 schools of thought: First, a group of scholars who view men and women as unequal, men as leaders, superior, and women as inferior. Second, the scholars who think that men and women are the same, having the same intellectual, physical, and spiritual mentality. The difference lies only in its physical function. The two above-mentioned views refer to the same source, namely the Qur'an and Hadith.<sup>10</sup>

Nasaruddin Umar, when analyzing gender issues, said that the variables that can be used as a measure in analyzing the principles of gender equality in the Qur'an are that men and women have the same position as servants of Allah, that men and women are caliphs on earth, that men and women accept the primordial agreement, that Adam and

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<sup>9</sup> Nasaruddin Umar, *Argumen Kesetaraan Jender Perspektif al-Qur'an* (Jakarta: Paramadina, 2001).

<sup>10</sup> Ansori, Muhammad Iqbal Juliansyahzen, "The Contestation of the Family Law Discourse in the Digital Age: Islam, State, and Gender," *Samarah* 6 (n.d.): 244-272.

Eve are involved in the cosmic drama, and that men and women have the opportunity to obtain achievements.<sup>11</sup> This is in line with the affirmation in several verses of the Qur'an which are references to gender equality, including QS. al-Nahl (16) verse: 97 which explains that anyone who does good deeds whether male or female in a state of faith, will be rewarded with goodness and a better reward than what they have done.

## 2. The Principles and Distribution of Inheritance in Islam

The rules of inheritance are contained in the Qur'an, the Hadith of the Prophet Muhammad. and *ijmâ'*, In surah al-Nisa' (4): 11 it is explained in detail about the portion of the inheritance, for children (boys and girls) for parents (father or mother), husband or wife, siblings and so on. Then in the hadith narrated by *Muttafaq 'alaih*.

الحقوا الفرائض فما بقي فهو لأولى رجل ذكر (متفق عليه)

The meaning of the hadith above is the command of the Prophet Muhammad to surrender certain portions to those who have rights. As well as the rest for men whose kinship is more important. (Narrated by Bukhari and Muslim).

Inheritance law in Islam has several principles namely the principle of *ijbâri*, bilateral principles, individual principles, the principle of fairness in a balanced manner, the principle of inheritance only because of the death of a person, the distribution of inheritance for heirs is determined by *syara'*. The determination of *al-furûdhul muqaddarah* in the Qur'an and Hadith, consists of six types, namely: 2/3, 1/2, 1/4, 1/8, 1/3, and 1/6. In the explanation of *al-furûdhul muqaddarah* 17 people get inheritance rights if they are not *hijâb* (barrier) 10 of them were male and 7 female.

Male heirs are divided into sons, grandsons of sons continuing downwards, father, grandfather continuing upwards, brothers, brothers' children, uncles, uncle's children, husbands and sons, and men who freed slaves. While female heirs are daughters, granddaughters of sons, mothers, grandmothers, sisters, wives, and women who freed slaves. If there are

<sup>11</sup> Nasaruddin Umar, *Argumen Kesetaraan Jender Perspektif al-Qur'an*, p. 247-265.

all 17 heirs, then only five people have inheritance rights, namely the father, mother, son, daughter, husband, or wife. Because the 5 heirs are the closest people to the deceased and they cannot be hindered by the *hijab hirman* (the closest heir who prevents other heirs from getting an inheritance).

### 3. Husein Muhammad's Thoughts Regarding Gender Equality

The philosophical foundation of Husein's thoughts on gender equality is in essence contained in the word *Lâ ilâha illa* which contains a noble meaning and can lead humans to piety and humanity. The teaching of *Tawhid* (monotheism) is not only interpreted as an utterance that unites God but it must be internalized that Allah is the One and Most High Substance.<sup>12</sup> The view that Allah is the One and the Only Essence raises the understanding that there is no other creature that equals His position.<sup>13</sup> Husein added respect for human rights can be realized in the teachings of monotheism. The position of both men and women in the sight of Allah is the same because the highest position is only Allah SWT. Husein, then, did the translation of monotheistic sentences into per sentence. The sentence *lâ ilâha* has the nature of rejection of the subject being worshipped, including glorifying oneself, because exalting oneself is prohibited by religion. Then *lafaz illallâh* means only Allah is the only Substance that has greatness. The sentence *lâ ilâha illallâh* can be concluded as a form of self-liberation of humans from ego traits or individualism. If humans continue to live in their desires, so that the dominant ones will take advantage of the weak, then women, as the weak party, will continue to be oppressed by men who are considered the stronger party. Even though the obligation to believe in monotheism to Allah does not differentiate between men and women, every human being is obliged to believe in monotheism to Allah by not separating men and women, in essence, every human being

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<sup>12</sup> Husein Muhammad, Interview, Agustus 2020. See also Faqihuddin Abdul Kadir, *Qiraah Mubadalah, Tafsir Progresif Untuk Keadilan Gender dalam Islam* (Yogyakarta: IRCiSoD, 2019), p. 95.

<sup>13</sup> Husein Muhammad, Interview, Agustus 2020.



is obliged to believe in monotheism to Allah without distinguishing between gender.<sup>14</sup>

The principle of *Tawhîd* in religious doctrine has established the principle of human equality. This is very relevant to the principle of gender equality. Several verses of the Qur'an have explained that a sense of justice is a principle that must be established in all aspects of human life. This is as stated in the Surah al-Mâidah: 8 which orders all believers to always uphold justice and truth for God's sake, to be fair witnesses, and to be prohibited from criticizing a people so that hatred causes people to act unfairly. So, based on the verse above, it can be understood that the principle of justice applies universally to all human beings, whether Muslim or non-Muslim, male or female. In some aspects, the position of women and men is the same. Inequality in religious and social reality must be faced wisely. The concept of trust provides the actual role and process of equality between women and men, even though there are limitations in social reality.

The idea of gender equality in such a way has received a rejection from many classical scholars arguing QS. al-Nisâ: 34, which states that men are leaders over women, because Allah has exalted some of them (men) above some others (women) and because they (men) have spent part of their wealth.<sup>15</sup> Based on this verse, the concept of the relationship between men and women is often assessed by many as something that is *qath'iy*, clear, firm, certain, and unchangeable, so that it is close to new *ijtihad*. All interpretations that are different from things that are already common are considered wrong, contrary to standard teachings and also the *qath'iy*.

Every human being, both male and female, is endowed by Allah with the same mind, mind, spirit, and potential, the only differences being the limbs and gender. Allah places men and women as equal following the principles of the Qur'an which shows its egalitarian views.<sup>16</sup>

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<sup>14</sup> Husein Muhammad, *Islam Agama Ramah Perempuan, Pembelaan Kiyai Pesantren* (Yogyakarta: LKIS, 2004), p. 207.

<sup>15</sup> Husein Muhammad, Interview, Agustus 2020.

<sup>16</sup> Husein Muhammad, Interview, Agustus 2020

These principles include justice, equality, independence, and respect for the rights of others regardless of who they are, when, and where they are.<sup>17</sup> This principle has been regulated in the verses of the Qur'an and must become the basis of thought, and views in studying particular verses of the Qur'an. Husein stressed that when understanding a verse that was revealed in a situation, of course it cannot be separated from the community's background and must be seen as a guide in efforts to realize the principles of law enforcement.

Furthermore, Husen emphasized that the purpose of the Qur'an being revealed was to bring about justice. The Qur'an does not want SARA intimidation and discrimination to emerge. The Qur'an descends gradually showing a form of Allah's wisdom, to respond to every problem that arises in human life. The Qur'an succeeded in changing the life of Arab society from a gloomy and dark condition to a civilized society. Allah's wisdom regarding how the verses of the Qur'an were revealed was able to change the culture of the ignorant Arab society into a civilized society, and the changes that occurred were following the situation and needs of society at that time. Historical facts that give rise to particular problems are of course in different times and places. In other words, history always has causality and background. Therefore, an event or historical fact cannot be generalized or equated if the fact occurs in a different space and time.<sup>18</sup>

According to Husein, gender injustice can arise in religious life. The existence of gender inequality in Muslims is caused by gender bias when interpreting the Qur'an. The oppression and subordination of women are caused by religious thoughts, patriarchal culture, and ideology.<sup>19</sup> Therefore, various ways are needed to eliminate subordination to women, one of which is through a hermeneutic feminist approach to interpreting verses of the Qur'an. This approach is needed to minimize the occurrence of

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<sup>17</sup> Husein Muhammad, *Fikih Perempuan, Refleksi Kiyai Atas Wacana Agama dan Gender*, II (Yogyakarta: LKIS, 2019), p. 65.

<sup>18</sup> Husein Muhammad, Interview, Agustus 2020.

<sup>19</sup> Yusuf Rahman, "Feminist Kyai, KH Husein Muhammad, The Feminist Interpretation on Gendered Verses and the Qur'an Based Activism": 55.2 (2017): 293-326"

gender-biased interpretations of the Qur'an. In other words, to reject the gender-biased interpretation of the Qur'an requires interpretation on a feminist basis.<sup>20</sup>

In realizing his mission to protect women from this subordination, Husein is very active in trying to provide advocacy to the community both through his writings with nuances of gender justice, as well as through seminars and discussion forums at the national and international levels.

#### 4. Husein Muhammad's Thoughts Regarding Gender Equality in Islamic Inheritance Law

The foundation of Husein Muhammad's thinking is to be open to receiving input from various parties. All knowledge, whether it comes from Allah or humans, is wisdom from Allah and does not see differences in ethnicity or race, or even religion. As long as knowledge brings benefits to human life, then it still has wisdom for people's lives.<sup>21</sup>

Husein also added, when relying on several books of interpretation and fiqh, many opinions explain that something single, standard, and qath'iy can still be interpreted; For example, the issue of male and female leadership, as stated in QS. al-Nisa' [4]:34. According to the opinion of the scholars of the Shafi'i's school of thought, for example, Abu Tsaur, al-Muzani, and other scholars of the 3rd-century school, women are allowed to be Imams of male congregations in sunnah prayers. This ability shows that the opportunity to reinterpret the qath'i verse is open. In line with that, Husein explained, there is no reason not to allow reinterpreting some verses about inheritance.<sup>22</sup>

Elsewhere, Husein also argues that inheritance verses are verses that can be interpreted based on his arguments related to text groups. According to him, there are 2 kinds of texts, namely texts that contain universal messages and texts that contain particular messages. A universal

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<sup>20</sup> Husein Muhammad, Interview, Agustus 2020.

<sup>21</sup> Husein Muhammad, Interview, Agustus 2020.

<sup>22</sup> Abu Abdillah Muhammad bin Abdurrahman al-Dimmasyqi, *Rahmat al-Ummah Fi Ikhtilâfi al-Aimmah* (Qatar: Syeikh Khalifah bin Hamid Alu Tsani, 1981).p. 405.

text is a text that contains human principles for every human being in all spaces and times. Examples of universal texts are verses that fall into the category of clear, and unequivocal verses, while particular texts are texts that refer to certain matters.<sup>23</sup> As particular sentences are born to respond to an event, a problem, or a phenomenon, a particular text, therefore, must be interpreted by looking at the context. Issues of male leadership over women, female guardianship, polygamy, inheritance, and others are examples of particular texts. This kind of text is included in the group of *mutasyâbihât* (interpretable) verses and can be interpreted because it can give a different understanding.<sup>24</sup>

This diversity of opinion arises because of the diversity of approaches used by mujtahids when tracing the meaning of a text. Some interpret the text and judge it as the final truth and do not have to consider aspects of the explanation logically or the reality outside it. While other opinions look at the text with a deep and holistic meaning, especially its presence which cannot be separated from the space and time that encompasses it. The text is not alone but is a reflection of the state of life phenomena which always go through a process of change that is also dynamic.

Husein's opinion is supported by Anjar Kususiyannah who reveals that a text can be considered true if it contains universal principles and norms of justice and equality. As for the verse on inheritance, the verse was intended to make Arabs aware at that time that women had equal rights with men, namely being the subject of inheritance, they were not objects of inheritance. In other words, QS. al-Nisa [4]: 11-12 has the mission of aligning the position of women with men in a social order following the sense of justice in society at that time.<sup>25</sup>

On the other hand, Muhammad Ali Murtagh, when discussing inheritance issues, used Muhammad Syahrur's Limit Theory. According

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<sup>23</sup> Husein Muhammad, Interview, Agustus 2020.

<sup>24</sup> M. Nuruzzaman, *Kiyai Husein Membela Perempuan* (Yogyakarta: Pustaka Pesantren, 2005). 26.

<sup>25</sup> Anjar Kususiyannah, "Keadilan Gender dalam Kewarisan Islam: Kajian Sosiologis Historis", *Al-Mazaahib, Jurnal Perbandingan Hukum*, 9.1 (2021): 64.

to him, the provisions in the verse are explaining the limits of Allah's provisions that cannot be violated, as well as providing an opportunity to carry out *ijtihad*. 2 servings for men is the biggest limit, and 1 serving for women is the smallest limit. In one condition, women may get a portion that is more than what is mentioned in the Qur'an based on certain situations and conditions but may not exceed 2. In other words, the share of women's inheritance may change to be the same as that of men, if certain circumstances require it. This means that in dividing the inheritance, the parties must pay attention to social problems that develop in the family so that the values of justice can be realized.<sup>26</sup> Sugiri Permana explained that the differences in rights and obligations in Islam are not intended to incline one another. Therefore, *Ijtihad* which is related to inheritance rules carried out by Indonesian clerics or court judge decisions is more directed at efforts to develop women's rights over the inheritance of their parents.<sup>27</sup>

Judging from the historical context of the Arab tradition in pre-Islamic times, inheritance can only be inherited by family members who are financially able to contribute to meeting the needs of the family, or who can provide care for the family, not those who need it. This is illustrated in the case of Aus bin Thabit Ra who died leaving behind young children (2 women and 1 man). Then, all of his inheritance was taken by his 2 mature sons. Then came down the verse of inheritance (Surah al-Nisa [4]: 7). Likewise when Abdurrahman bin Thabit Ra. died, he left a wife named Umm Kajah, and all of his inheritance was taken by the men without setting it aside for the wife. Then Umm Kajah complained to Prophet Muhammad SAW, then QS. al-Nisa' (4): 12 as revealed which determines the wife's rights to be  $\frac{1}{4}$  or  $\frac{1}{8}$ .

The historical context as described above shows that the presence of Islam has changed society's assessment of women who were previously

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<sup>26</sup> Muhammad Ali Murtadlo, "Keadilan Gender dalam Hukum Pembagian Waris Islam Perspektif the Theory of Limit Muhammad Syahrur", p. 16. See also Endang Sriyani, Fiqih Mawaris Kontemporer: Pembagian Waris Berkeadilan Gender, *Tazawun: Journal of Shari'a Economic Law*, 1.2 (2018): 133.

<sup>27</sup> Sugiri Permana, "Kesetaraan Gender dalam Ijtihad Hukum Waris di Indonesia," *Jurnal As-Syar'iyah*, 20.2 (2018): 129.

treated as objects of inheritance. Islam made this change gradually by stipulating that the inheritance received by women was only half of that of men. Even so, the change was quite fantastic when compared to the Jahiliyya period. Because after the arrival of Islam, women got a noble position and obtained equality it was an acknowledgment of their existence.<sup>28</sup>

Furthermore, when examined from a social science perspective, the problem related to inheritance, "2:1" for men and women, is motivated by the fact that men are obliged to provide for their wives and families, while women are not. So that in theory, women get from 2 places, get an inheritance as well as be supported. Thus the problem 2:1 on inheritance must be seen in context and function, and not in terms of principles let alone the power of men over women

Furthermore, the importance of reinterpreting the verses of inheritance in Husein's thinking in the current era has something to do with social developments and social traditions that are progressive in nature, in which women are increasingly becoming primary human beings, taking part in the public sphere, even as the person in charge of the main breadwinner in family. Therefore, Husein Muhammad believes that the portion of inheritance in 2:1 must be updated again, to synchronize with social developments, especially in the position of women.

Commenting on the thoughts above, the author agrees that if currently, the socio-cultural conditions for women have changed, they are no longer domestic creatures, so it is possible for women to get the same share of inheritance as men. This is following the rules of fiqh that law develops according to changes in time, place, and circumstances. The majority of Indonesian people today have distributed inheritance according to customary law, and this is acceptable as long as the custom is recognized by the community and there is agreement among the heirs.

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<sup>28</sup> Faqihuddin Abdul Kadir, *Qiraah Mubadalah, Tafsir Progresif Untuk Keadilan Gender dalam Islam*, p. 272.

## 5. Husein Muhammad's Law Renewal Method

Family law reform is a necessity for the development of today's Islamic society, both in Indonesia and other Muslim countries. Renewal of rules in Islam is a serious effort made by parties who have Islamic scientific authority, by following the principles of legal *istinbâth* (law finding). The main goal is for Islamic rules to become more dynamic, following the development of society.

Regarding the method of reforming Islamic family law, two methods can be applied, namely:

- a. **Conventional Method.** In this method, the Qur'an and Sunnah are the references of the scholars. Some of the characteristics of the method of determining conventional Islamic law include:
  - 1) Using a partial approach
  - 2) Krang pays attention to historical aspects
  - 3) Dominant stick to textual studies
  - 4) Only using the fiqh method alone, apart from the method of interpretation
  - 5) The habits of the surrounding community are very dominant in influencing the formation of law, even in terms of worship it can be influenced by heresy and superstition practices
  - 6) Political influence and the interests of the rulers also color the application of fiqh theories.
- b. **Contemporary Method:** Khoiruddin Nasution explained that there are at least two bases for carrying out the reinterpretation of verses in the renewal of rules, namely (1) *mashlahah mursalah*, (2) compliance with the demands and developments of the times.<sup>29</sup> The renewal model used when carrying out the codification of modern Islamic rules includes:
  - a) *Tahayyur*
  - b) *Talfîq*

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<sup>29</sup> Khoiruddin Nasution, "Metode Pembaruan Hukum Keluarga Islam Kontemporer," *Unisia*, 30.66 (2007): 329–41, <https://doi.org/10.20885/unisia.vol30.iss66.art1>.

- c) *Takhshîsh al-Qadhâ*
- d) *Siyâsa*
- e) *Nash's reinterpretation*<sup>30</sup>

It must be remembered that renewal must still follow the *ushûl fiqh* rules, which are based on whether or not there is an '*illat* (reason d'etre) law. '*Illat* is something that becomes the basis for the issuance of a rule in the text (*al-Asl*). If there is law there must be '*illat* and vice versa. But '*illat* is not the only basis for law. Apart from that, there are other rules which also form the basis of a rule of law, namely: benefit. Rules must contain elements of goodness, while the benefit is the goal to be achieved by Islamic law through the concept of *maqâshid al-sharî'ah*. If '*illat* is the foundation for the rule of law, then (*maqâshid al-sharî'ah*) is the goal to be achieved by law, which includes: *hifz al-dîn* (safeguarding the interests of religion), *hifz al-nafs* (safeguarding the interests of the soul), *hifz al-'aql* (safeguarding the interests of the mind), *hifz al-mâl* (safeguarding the interests of property), and *hifz al-nasl* (safeguarding the interests of offspring). Because the intent of a rule is something abstract, it takes '*illat* to become a basis for whether or not there is a benefit.<sup>31</sup>

Legal reform, according to Husein Muhammad, can be carried out in two ways: First, by selecting traditional *fiqh* products from existing schools; and Second, by reinterpreting *nash* and *fiqh* texts.<sup>32</sup> Regarding the provisions of the Qur'an regarding inheritance, Husein uses the text re-interpretation method through a hermeneutic feminist, historical and sociological approach. According to him, the provisions regarding an inheritance that exist are particular verses (*mutasyâbih*) that arise due to phenomena that affect a certain space and time. While the universal verse (*muhkam*), includes the concept of humanity that is common to every human being in every time and space. Considering that a particular

<sup>30</sup> Khoiruddin Nasution, *Unisia*, 30.66 (2007)

<sup>31</sup> Titik Hamidah, *Fikih Perempuan Berwawasan Keadilan Gender* (Malang: UIN Maliki Press, 2011), pp. 15-16.

<sup>32</sup> Husein Muhamad Husein Muhammad, *Perempuan, Islam & Negara: Pergulatan Identitas dan Entitas*. (Yogyakarta: IRCiSoD, Januari 2016).



text is present as a response to a case, the particular sentence must be interpreted according to its context.<sup>33</sup>

When understanding a Qur'anic text, Husein is more inclined to use *ta'wil* (inner meaning) than interpretation. This is because using *ta'wil* makes it easier to understand the global and particular meanings of a word. If there are 2 meanings (literal or metaphor), *Ta'wil*, besides being more directed to substantive meanings, can provide a rational understanding and philosophical meaning from the definition of a Qur'anic text, as well as reveal more meaning and purpose. Therefore, using *ta'wil* can provide an understanding of the condition of society and the habits that cover it, so that it is closer to the hermeneutical approach.<sup>34</sup>

The meaning of hermeneutic feminism is based on the concept of *Tawhid*,<sup>35</sup> namely that every human being has equality before God. Both men and women are equal; Because the highest existence is in Allah SWT. The end of the explanation of the term *Tawhid* is human freedom from the influence of egoism or individualism.

Hermeneutic interpretation is a strategy to increase understanding of the balanced relationship between men and women, as well as prevent subordination to women as a result of gender-biased interpretations. Efforts to fight for women's rights are not easy, because the application of hermeneutics in the interpretation of the Qur'an is still being debated. Conventional groups reject this method and state that gender activists who promote the idea of gender equality and justice in Islamic studies have disrupted the epistemological building of Islamic scholarship.

The historical approach looks at the causes of the inheritance of verses that are limited by space-time. In the past, women did not get a share of inheritance, so the rules for inheritance in the Qur'an can be seen as a progressive rule for that era. However, the development of today's society is different from the conditions underlying its decline; Therefore,

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<sup>33</sup> Husein Muhammad, Interview, Agustus 2020.

<sup>34</sup> Eni Zulaiha, "Analisa Gender dan Prinsip-Prinsip Penafsiran Husein Muhammad pada Ayat-Ayat Relasi Gender", p. 5.

<sup>35</sup> Husein Muhammad, Interview, Agustus 2020.

the verse can be reinterpreted so that it does not conflict with human development. This is in line with Kusugianah's statement which argues that the descent of the inheritance verse was a response to pre-Islamic Arab traditions. Therefore, the 2:1 inheritance law is not a *muhkamât* and universal norm. Because the truth of law is measured by how much the decree can give a sense of justice and equality; This is *muhkam* and universal principle. The inheritance verse only aims to make Arabs aware at that time that women are not just things that can be inherited but also people who have the right to inherit and be inherited.<sup>36</sup>

The above description shows that the concept of 1:1 inheritance as a result of *ijtihad* by contemporary scholars is not against the provisions of Islamic law; Because in addition to aiming for the good of humanity, Islamic law aims to protect human rights and maintain good relations with others, especially all heirs. Thus, the results of contemporary *ijtihad* which gave birth to Islamic law which is flexible and can adapt to place, time, and circumstances, are very much in sync with the aims of Syara'.<sup>37</sup>

The explanation above is in line with Endah Amalia's view regarding the implementation of the *mashlahah* theory on inheritance provisions in the dynamics of today's Muslim community, especially when a woman is in the position of breadwinner, while her husband is in a situation where he cannot afford it.<sup>38</sup> So that every individual who has inheritance rights can agree that the inheritance is divided equally between male and female heirs. For this reason, family deliberations need to be held so as not to cause problems in the future.<sup>39</sup>

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<sup>36</sup> Anjar Kusugianah, "Keadilan Gender dalam Kewarisan Islam: Kajian Sosiologis Historis" *Al-Mazahib: Jurnal Perbandingan Hukum*, 9.1 (2021): 20. See also Nur Alfy Syahriana, Zainul Mahmudi, The Principle of Segendong Sepikul in the Inheritance Distribution System of the Muslim Community from the Perspective of Multidisciplinary Studies, *De Jure: Jurnal Hukum dan Syar'iah*, 14.2 (2022): 195-210.

<sup>37</sup> Gustika Sandra Jumra, Sakti Yadi, And Tarmiz, "The Dynamics of Determining Men and Women Parts in Matters of Inheritance: A Study of Islamic Law," *Jurnal Diskursus Islam*, 10.2 (2022), 271-289, <https://doi.org/file:///D:/2022/AL%20Adalah%20Husein/Waris%20masalah.pdf>.

<sup>38</sup> Amalia, "Penyetaraan Gender dalam Hal Pembagian Warisan", *Ahkam: Jurnal Hukum Islam*, 8.2 (2020): 213-232.

<sup>39</sup> Fikri Najitama, *Hukum Waris Islam di Somalia*, in *Hukum Perkawinan dan Warisan di Dunia Muslim Modern*, Khairuddin Nasution, dkk, (Yogyakarta: Tazkia, 2012), p. 264.

## Conclusion

Based on the explanation above, it can be concluded that Husein Muhammad presents the dominant fiqh idea of gender equality. He put forward several reasons for the importance of equality in the distribution of inheritance between men and women; First, the verse related to inheritance law is a particular verse (*mutasyâbihât*), reinterpretable, because its presence is in response to events that cannot be separated from the space and time that surround it. Based on in paragraph inheritance can be reinterpreted to adapt to the current social and psychological conditions of society. Second: the inheritance verses that regulate section 2:1 for men and women in the era of the Prophet, are recognized as a progressive form of legal reform considering that during the Jahiliyya era, women did not have inheritance rights, even women were used as objects of inheritance. However, in line with the development of the current existence of women as primary human beings, some are even the breadwinners in the family. So the portion of their inheritance should be reformed and adapted to the current needs of women. Third; the occurrence of gender injustice in Muslims due to gender bias when interpreting the Qur'an. The oppression and subordination of women based on religious thoughts, patriarchal culture, and ideology, require efforts to reinterpret inherited verses. In carrying out legal reforms, Husein understands the verses of inheritance using a combination of text reinterpretation methods, and feminist, historical, and contextual hermeneutic approaches. With this legal reform, it is hoped that the principles of the rule of law can be realized to achieve goodness, justice, and *qanâ'ah* (balance) between human beings.

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