

Reinterpretation of Justice in Islamic Inheritance Rights Based on Gender

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Abstract: The concept of gender justice is often understood from contradictory perspectives. In religion, this issue is notably found in the division of inheritance rights. The interpretation of gender justice in inheritance is polarized between textual and contextual patterns, with approaches that are difficult to reconcile. This paper aims to construct a new meaning of gender justice in inheritance. This theme is examined through qualitative research, literature review design, and analysis based on theories of justice and equality. The research results conclude that the reinterpretation of gender justice in inheritance distribution is implicitly contained. Although there is gender inequality in inheritance distribution, this inequality demonstrates justice. The implications of this research are expected to provide an understanding that equality is not synonymous with justice, so when the distribution of inheritance between men and women is unequal, it does not necessarily mean it is unfair.

Keywords: equality, gender, Islamic inheritance, justice

Abstrak: Konsep keadilan gender tidak jarang dipahami dalam perspektif yang kontradiktif. Dalam agama, isu ini antara lain ditemukan dalam pembagian hak waris. Interpretasi keadilan gender dalam pewarisan terpolarisasi pada pola tekstual dan kontekstual dengan pendekatan yang sulit dipertemukan. Tulisan ini bertujuan untuk mengkonstruksi makna baru tentang keadilan gender dalam pewarisan. Tema mengenai ini dikaji dengan menggunakan penelitian kualitatif, desain studi pustaka, dan dianalisis berdasarkan teori keadilan dan kesetaraan. Hasil penelitian menyimpulkan bahwa reinterpretasi keadilan gender pada pembagian waris adalah tertuang secara implisit. Memang terdapat ketidaksetaraan gender dalam pembagian waris, tetapi ketidaksetaraan tersebut justru menunjukkan keadilannya. Implikasi dari penelitian ini diharapkan memberi pemahaman bahwa kesetaraan tidak sama dengan keadilan, sehingga ketika pembagian waris laki-laki dan perempuan tidak setara, tidak berarti tidak adil.

Kata kunci: kesetaraan, gender, waris Islam, keadilan

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Introduction

Methodologically, there are two different approaches to interpreting religious texts, namely the textual and contextual approaches. On the other hand, there are also two groups of schools of thought in the realm of Islamic law, namely the textual school (hadith experts) which adhere to the idealism of holy texts, and the rational school (*ra'yu* experts) who tend to use logic in interpreting provisions in a text. Both models of interpretation and schools of thought sometimes give rise to polemics when interpreting religious issues. The first model is considered too rigid, and schematic, and ignores the dynamics that develop in society. At the same time, the second model is deemed to prioritize reason so that it often ignores fundamental values in holy texts.

The nature of law itself is seen from two perspectives. The classical view states that law is neutral and therefore not related to aspects outside the realm of law. While the modern view states the opposite, that law is not neutral because it is related to the dynamics of social reality, so Islamic law functions as a control and value for social change. Therefore, law is understood as a historical product that justifies the demands for change in a society that experiences dynamics as an inherent characteristic of civilization.¹

Meanwhile, the concept of gender justice discussed in gender literature, among other things, often questions women's rights in inheritance issues which are considered to accommodate men's rights more than women's due to the dominance of men's roles throughout history. In today's modern era, the gap in roles and functions between men and women is narrowing, gender equality is increasing, and women's career status is increasing.² Therefore the proportion of inheritance rights distribution of 2:1 between them is considered irrelevant. Thus, *ijtihâd* is needed to align fundamental Islamic values with contemporary dynamics. This argument is an elaboration of the contextual interpretation model,

¹ MA. Sahal Mahfudh, *Nuansa Fiqh Sosial* (Yogyakarta: LKIS, 2012), pp. 3–17.

² Muhammad Mahsus, 'Tafsir Kontekstual dan Eksistensi Perempuan Serta Implikasinya Terhadap Penyetaraan Bagian Waris Laki-Laki dan Perempuan', *JIL: Journal of Islamic Law*, 1.1 (2020): 25–44, doi:10.24260/jil.v1i1.19.

a rational approach, and is based on the nature of law in the modern paradigm which appears to contradict the textual interpretation model and classical paradigm law, but methodologically both have equally strong arguments. This paper attempts to reconcile these seemingly contradictory areas by applying them to the case of inheritance distribution.

On the other hand, several studies have discussed the issue of gender justice in the Islamic inheritance system from various perspectives. They include Permana's research which opens up space for the interpretation of the development of equality of inheritance law through *ijtihad* as part of legal reform.³ The alternative to *ijtihad* itself is found in the results of Aniroh's research which begins with a study of the concept of bilateral inheritance with an offer of equality of quantity (1:1), one part as the minimum limit and two parts as the maximum limit, or the concept of joint property and *wasiyat wajibah* (mandatory will).⁴

More specifically, some studies reinforce Syahrur's *theory of limit* (*hudud*) stating that in Allah's provisions, there is flexible *ijtihad* space so that one portion for women in a 2:1 comparison can be interpreted as its minimum limit while for men it is its maximum limit.⁵

It is also stated that inheritance law is an open space to being reformulated and considerations of justice have also been and can be used even though they seem to contradict textual provisions that are considered *qat'iy* (absolute and unchangeable).⁶ The philosophical basis for the need for Syahrur's theory as an effort to reinterpret Islamic teachings in line with the challenges of modernity, is studied in Rachmat Afandi's research.⁷

³ Sugiri Permana, 'Kesetaraan Gender dalam Ijtihad Hukum Waris di Indonesia', *Asy-Syari'ah*, 20.2 (2018): 117–32, doi:10.15575/as.v20i2.3210.

⁴ 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): 119–38.

⁵ Muhammad Yusuf and Ismail Suardi Wekke, 'Inheritance and Gender Equality', *Justicia Islamica*, 15.1 (2018): 1–12, doi:10.21154/justicia.v15i1.1436; Ridwan, 'Gender Equality in Islamic Inheritance Law: Rereading Muhammad Shahrur's Thought', *Al-Manahij: Jurnal Kajian Hukum Islam*, 16.2 (2022): 181–92, doi:10.24090/mnh.v16i2.6916.

⁶ Fatimatuz Zahro and Shinta Pramesti K.M., 'Kesetaraan Gender dalam Hukum Kewarisan Islam', *Journal of Islamic Family Law*, 7.1 (2023): 25–46.

⁷ Rachmat Afandi, 'Islamic Theology and Gender: Reflections on Muhammad Shahrur's Thoughts', *Journal of Islamic Studies*, 02.02 (2019): 81–95, doi:https://doi.org/10.32506/jois.v2i2.537.

In general, previous studies are polarized in consequential interpretations of textual and contextual interpretations. Both interpretations have their consequences that tend to be difficult to harmonize. This study will strengthen the theory of gender justice in the Islamic inheritance system from both textual and contextual perspectives, with a focus on reinterpreting the meaning of justice in the distribution of Islamic inheritance based on gender, after first explaining the differences in the distribution of male and female inheritance in Islamic law. This study seeks to use the text of the Qur'an and Hadith as a basis and then reinterpret previous interpretations assumed to be gender-biased. This effort appears to have not been made by other researchers.

Research Methods

Research on the principles of justice and equality in inheritance rights is discussed using qualitative research, library research design, and content analysis methods categorized as discourse analysis.⁸ The theme is then analyzed from a gender perspective. Various writings on Islamic inheritance law serve as the main reference material in this study, both from classical and modern Fiqh books, as well as the Compilation of Islamic Law. The data from various writings are then analyzed using the theory of equality and equity.⁹ Equality and equity are two different concepts. Equality means treating each individual in the same way, regardless of their needs and conditions whereas equity, on the other hand, is the quality of treating individuals fairly based on their needs and conditions.

Results and Discussion

The Difference in Inheritance Shares between Men and Women in Islamic Law

Inheritance law in Islam is an integral part of Islamic family law that regulates the rights and responsibilities of families as well as individual

⁸ Jumal Ahmad, 'Desain Penelitian Analisis Isi (Content Analysis)', *Jurnal Analisis Isi*, 5.9 (2018): 1–20, doi:10.13140/RG.2.2.12201.08804.

⁹ Nancy E Dowd, 'Equality, Equity, and Dignity', *UF Law Scholarship Repository*, 37.1 (2019): 4–20; Harerimana Jean-Paul, 'Equity Vs Equality: Facilitating Equity in the Classroom', *International Journal of Research and Scientific Innovation (IJRSI)*, 6.11 (2019): 216–19.

inheritance rights. The Qur'an, as the primary source of Islamic law, elaborates on inheritance law in more detail, unlike other laws that are described more generally in the sacred text. This suggests that issues regarding the division of inherited property are susceptible to disputes, even conflicts within families. Therefore, the details of each share have been directly established by Allah in the Qur'an, as humans do not know exactly the best way to divide them (Q.S. al-Nisa [4]: 11).

Allah commands every believer to obey His regulations regarding inheritance law as found in the Qur'an. Allah also threatens hellfire for those who violate these regulations (Q.S. al-Nisa [4]: 13 and 14). These verses relate to Allah's laws regarding determining heirs, steps for dividing inheritance, and each heir's share. These verses emphasize the obligation to carry out inheritance distribution as determined by Allah. Allah offers paradise as a reward for servants who obey His provisions, while conversely, there is a threat of punishment for those who violate them.¹⁰

The Qur'an states that both men and women have equal rights to inherit from their parents or relatives, according to the predetermined distribution procedure (Q.S. al-Nisa [4]: 7). Based on this verse, the right to inherit is possessed by both male and female children. In other words, Islam acknowledges that women also have the same legal status as men and are entitled to inheritance. This principle reflects Islam's intention to create a fair and balanced distribution of inheritance. This means that every individual, whether male or female, is entitled to receive inheritance according to the proportion of their burdens and responsibilities.¹¹

Issues arising in the context of inheritance distribution involve questions about the difference in the amount of inheritance shares received by men and women. Some people maintain this difference as an unchallengeable decree of Allah.¹² Classical Islamic jurists, such

¹⁰ Nurhadi, 'Hikmah Dibalik Kaedah Dua Banding Satu pada Hukum Warisan', *Al-Adalah: Jurnal Syariah dan Hukum Islam*, 4.1 (2019): 01–13, doi:10.31538/adlh.v4i1.436.

¹¹ Nashirun, Kurniati, and Marilang, 'Konsep Keadilan dan Kesetaraan Gender Tentang Pembagian Harta Waris dalam Perspektif Hukum Islam', *Madani Legal Review*, 6.1 (2022): 65–78.

¹² Fahrur Roji and Mochamad Samsukadi, 'Pembagian Waris dalam Perspektif Hadis Nabi', *Jurnal Mu'allim*, 2.1 (2019): 42–56, doi:10.35891/muallim.v2i1.2189.

as Abû Bakar and Utsman, state that the ratio of inheritance shares between men and women being 2:1 is a consensus (*ijmâ'*) based on the words of Allah in Surah al-Nisa.¹³ Not only did classical Islamic jurists hold this view, but even modern (contemporary) Islamic jurists, such as Wahbah al-Zuhaili, also hold the same opinion.¹⁴ Even the Compilation of Islamic Law, as a result of the *ijtihad* of Indonesian scholars which in some matters adopts the evolving law in society, maintains the ratio of inheritance division between men and women at 2:1.

Indeed, the size of the shares between male and female heirs is different, with a ratio of 2:1, as stated in Q.S. al-Nisa (4): 11. According to the commentators, the larger share for men, which is twice as much as that for women, is based on the consideration that men have greater obligations than women, namely the obligation to pay the dowry (*mahr*) and provide maintenance. In addition, a man (husband) - as the head of the family - is responsible for protecting, caring for, and ensuring the welfare of the family.¹⁵

The division of inheritance in the perspective of Islamic law shows a difference between the shares of men and women, where men are given a double share while women receive a single share (2:1). This is because when a man gets married, the inheritance he receives from his parents is used to pay the dowry and provide maintenance to his wife and children. On the other hand, when a daughter gets married, the inheritance she receives is not utilized because she receives maintenance and dowry from her husband.¹⁶

Islamic inheritance law has established a distinction in the division of inheritance between sons and daughters. The Quran, particularly in Surah al-Nisa (4): 11 and 12, provides clear guidance on who is

¹³ Abu Bakar Utsman bin Muhammad Syaththa al-Dimyathi, *I'ânât al-Thâlibîn* (Bayrût: Dâr al-Kutub al-'Ilmiyyah, 2013), p. III, p. 389.

¹⁴ Wahbah al-Zuhaili, *al-Fiqh al-Islâmî Wa Adillatuh* (Bayrût: Dar al-Fikr, 2005), p. X, p. 7.802.

¹⁵ Nashirun, Kurniati, and Marilang.

¹⁶ Anang Hadi Kurniawan and Ade Darmawan Basri, 'Analisis Terhadap Pembagian Harta Warisan Ditinjau dari Hukum Perdata dan Hukum Islam', *Alauddin Law Development Journal (ALDEV)*, 2.2 (2020): 258.

entitled to inherit and the portion allocated to each heir. Verse 11 explicitly states that the share of inheritance for sons is twice as much as that for daughters. The difference in responsibilities and obligations between men and women, viewed through the law of causality of reward and responsibility, does not entail any form of discrimination. This is because the portion received by a woman is already balanced with the obligations she must bear. In Islam, women are not burdened with economic responsibilities within their families. Therefore, if someone receives a larger share of the inheritance, it reflects the greater level of obligation they must fulfill, derived from the sociological concept of differences within Islamic society.¹⁷

Based on the opinion above, the larger inheritance rights for men compared to women are proportionate to their obligations to provide dowry to their wives and to provide for their wives, children, and even their parents or siblings when needed. Therefore, some opinions state that the inheritance system formulated by Islam is the most solution-oriented form of administration in assessing and implementing welfare. Islamic law establishes inheritance rules in a highly organized and systematic manner and determines their portions fairly.¹⁸

Equality and Gender Justice in Islamic Inheritance Law

The number of inheritance shares for each heir has been clearly regulated in the Islamic inheritance law. In Surah al-Nisa (4): 11, the comparison between the portions of inheritance received by sons and daughters is set at two to one. However, over time, the role of women has increasingly approached equality with men. Many jobs previously considered exclusive to men can now also be pursued by women. In fact, some women have become the backbone of their families. Changes in these roles have brought about gender issues in society. Women, who were previously considered less important and often overlooked, are

¹⁷ Nashirun, Kurniati, and Marilang.

¹⁸ Muhammad Alwin Abdillah and M. Anzaikhan, 'Sistem Pembagian Harta Warisan dalam Hukum Islam', *Al-Qadha: Jurnal Hukum Islam dan Perundang-Undangan*, 9.1 (2022): 285–305, doi:10.32505/qadha.v9i1.4134.

now becoming subjects of attention. With the increasing proximity of women's positions to men's, demands for gender equality in inheritance distribution have emerged. The significant difference in the number of inheritance shares received by men and women, with a ratio of 2:1, has sparked dissatisfaction among gender activists and feminist groups. Many parties have protested against this ratio and demanded that it be equalized to 1:1 or equitable. Gender activists and feminist groups often advocate ideas about equality of status between men and women because fundamentally, the law reflects the concept of justice, which sees equality as a fundamental principle, without distinguishing gender.¹⁹

Gender is a perception used to denote differences in behavior, roles, thought patterns and emotional characteristics often associated with men and women. This perception is influenced by social, psychological, historical, and cultural factors. Gender refers more to masculine and feminine attributes and is not solely related to biological differences in sex. Meanwhile, gender equality is a social condition in which men and women have equal, harmonious, and balanced positions. This condition can be achieved through fair social treatment between them. It is important to realize that achieving gender justice and equality must consider specific situations and contexts and not rely solely on mathematical calculations. In other words, the concept of gender equality is not about quantity but quality in the social relationship between men and women.²⁰

According to Amalia & Zafi,²¹ gender equality is also known as gender justice. Gender equality is defined as the belief that every human individual should be treated equally, without distinction or discrimination based on gender. This is because of the understanding that gender is essentially a natural disposition or nature given by God. In Islamic inheritance law, which stipulates that a son's share of inheritance is twice as much as a daughter's, this does not mean it is unfair and discriminatory

¹⁹ Endah Amalia and Asif Az Zafi, 'Penyetaraan Gender dalam Hal Pembagian Warisan', *Abkam*, 8.2 (2020): 213–32.

²⁰ Amalia and Zafi.

²¹ Amalia and Zafi.

against women. The difference in inheritance distribution is due to the greater responsibility borne by men.

This discussion can be examined from a historical perspective. In pre-Islamic Arab tradition, women and children did not have inheritance rights on the grounds that they lacked the ability to fight and defend their tribe or group. Therefore, inheritance was reserved for physically strong men who could fight to protect the group in battle. This meant that women, children, and elderly parents did not have inheritance rights to the property of their relatives. When Islam came, the principle of equality between men and women, children, adults, parents, husbands, wives, brothers, and sisters was introduced. At least, there are five fundamental principles (doctrines) in Islamic inheritance law, namely the compulsive, bilateral, individual, balanced justice, and consequences of death principles.²²

Initially, the inheritance system for women in Islam was not regulated and depended on customs. In pre-Islamic times, women did not even have inheritance rights and were considered as property that could be inherited by the closest male relatives. Regulations regarding inheritance distribution with a ratio of 2:1 are not absolute rules and do not apply to all situations. These rules cannot be considered inherently fair and in line with the principle of equality. Instead, the verses about inheritance in Islam are actually responses to traditional problems existing in Arab society before Islam. These provisions cannot be used to justify that these texts clearly state the principle of equality as a standard of truth assessment. The verses about inheritance aim to raise awareness among Arab communities that women are not just objects of inheritance but also subjects who have the right to inherit and be inherited like men. Therefore, the verses about inheritance in Surah al-Nisa (4): 11-12 are efforts to improve the position of women in society by adjusting to the social context of the community at that time, so that the concept of more balanced distribution is considered as a fair concept.²³

²² Nurhadi.

²³ Anjar Kususiyanah, 'Keadilan Gender dalam Kewarisan Islam: Kajian Sosiologis Historis', *Al-Mazaahib: Jurnal Perbandingan Hukum*, 9.1 (2021): 63–82.

Some scholars identify this verse as *qath'iy*, which means the provisions in this verse are absolute and unchangeable. Therefore, inheritance distribution with a ratio of 2:1 is considered immutable, even if social situations change. Surah al-Nisa, verse 11, essentially reflects the principle of justice. Before the revelation of this verse, women had no share in inheritance and were often considered objects of inheritance. The difference in inheritance distribution between men and women can be interpreted as a divine decree from Allah SWT. This concept emphasizes that a man is inherently responsible for providing dowry, supporting his family, and ensuring their welfare, while women do not have similar responsibilities. Therefore, from this perspective, the Qur'an honors women and provides them with protection and appropriate roles in inheritance law.²⁴

Feminists argue that the current construction of Islamic law tends to be gender-biased and discriminatory against women. They contend that women are a socially vulnerable group susceptible to discrimination due to social structures based on masculine views. One of the verses considered discriminatory against women by feminists is the verse in Surah al-Nisa (4): 11. While classical jurists consider this verse as a definitive ruling (*qath'iy*), feminists argue that this verse should be interpreted contextually, considering its historical aspects, as done by Western thinkers and also by some liberal Muslim thinkers like Muhammed Arkoun. Arkoun states that the Quran is a product of culture and society, so according to him, the only way to interpret the Quran is by connecting it with its historical context. In line with Arkoun's view, Nasr Hamid Abu Zayd argues that the basic texts are fundamentally products of cultural contexts.²⁵ Similarly, the research findings of Firdawaty et al.,²⁶ conclude that according to Husein Muhammad, gender inequality in Islamic inheritance distribution occurs due to biases in interpreting the Quran and the influence of patriarchal culture.

²⁴ Amalia and Zafi.

²⁵ Mohammad Ruslan, 'Tinjauan al-Qur'an Terhadap Kesetaraan Gender dalam Pembagian Warisan (Studi Analisis Pada Surah al-Nisa Ayat 11)', *AR ROSYAD Jurnal Keislaman dan Sosial Humaniora*, 1.2 (2023): 168–99.

²⁶ Linda Firdawaty and others, 'Husein Muhammad's Thoughts on Gender Equality in Islamic Inheritance Law', *Al-'Adalah*, 19.2 (2023): 223–44, doi:10.24042/adalah.v19i2.13123.

In her study, Musdah Mulia criticizes the practice of inheritance distribution in Islam as applied in Indonesia. Musdah Mulia reinterprets and adapts verses related to inheritance distribution to fit the social context of Indonesian society. For example, regarding the distribution of inheritance, she proposes that the property should be given to those with the closest relationship to the deceased. In many cases, women are the ones who take care of their parents, both in sickness and in health. However, ironically, in the practice of inheritance distribution, men tend to receive a larger share than women. According to Musdah, this is an injustice that needs to be addressed. Musdah argues that the argument stating that men have greater responsibilities and burdens than women, hence entitled to a larger share in inheritance, is no longer relevant. This is because the social and historical situations when the revelation was sent down have significantly changed. Nowadays, women actively work and provide for their families, which is common and did not exist in Arab society at that time. According to Musdah, the verse that includes the phrase "*li al-dzakar mislu hadz al-untsayain*" refers to specific situations and not as a general rule. Musdah argues that inheritance distribution is not a static law but more of a dynamic law that can adapt to various situations. For example, the amount of inheritance given to mothers has some variations. Therefore, inheritance distribution should be seen as flexible and able to adapt to societal developments.²⁷ The conditions of Arab society in the seventh century cannot be directly applied to the realities of the twenty-first century, which have undergone significant social and cultural changes.²⁸

In Indonesia, the gender relationship with Indonesian culture in the context of Islam creates several categories. First is *tahmîl* (appreciation). Islam preserves cultures that are in line with Islamic principles, including a positive attitude towards women. For example, Islam respects women who contribute to the family's interests. The second is *tahrîm* (destruction).

²⁷ Siti Musdah Mulia, 'Muslim Family Law Reform in Indonesia: A Progressive Interpretation of The Qur'an', *Al-Mawarid: Journal of Islamic Law*, 15.1 (2015): 1–18.

²⁸ Endang Sriani, 'Fiqh Mawaris Kontemporer: Pembagian Waris Berkeadilan Gender', *Tawazun: Journal of Sharia Economic Law*, 1.2 (2018): 133, doi:10.21043/tawazun.v1i2.4986.

Islam rejects Arab cultural elements that are inconsistent with Islamic principles and discriminatory towards women, such as the practice of slavery that exploits women. The third is *tabqîq* (reconstructive). Gender laws in Indonesia arise from women activists' concerns about issues arising in marriages. At the Indonesian Women's Congress in 1928, they voiced their views and offered alternative legal designs to create equitable gender laws. This reformist approach differs from previous formulations of Islamic law because the CLD-KHI team used reasoning in legal formation, combining interpretations of the Quran and Hadith with perspectives of democracy, pluralism, human rights, and gender justice. This is applied in the laws and regulations applicable in the current Indonesian context. Gender life in Fiqh in Indonesia is a breakthrough in the development of Islamic law. Gender inequality issues emerged massively after the colonial era. The transnational Islamic influence that altered perspectives/interpretations of sacred texts (the Quran and Hadith), and the madhhab fanaticism that emerged since early Islam in Indonesia related to gender issues, must be produced through contextual understanding of the sacred texts with a systematic madhhab method (*manhaj*), not textual (*Qauli Madhhab*) adapted to Indonesian culture.²⁹

According to Syarifuddin Prawiranegara, the inheritance distribution described in Surah al-Nisa (4): 11 can be grouped into both voluntary law and compulsory law. In voluntary law, the application of the law will occur if there is no other alternative available to resolve the issue. This alternative could be an agreement through consultation to decide whether the parties involved agree to a 1:1 inheritance distribution. However, if there is no agreement in the consultation, the inheritance law will revert to the provisions of Islamic law. In this context, inheritance law is considered compulsory law, which means the law applies absolutely according to the provisions of Islamic law.³⁰

²⁹ Arifah Millati Agustina, 'Gender Construction in the Perspective of Living Fiqh in Indonesia', *Justicia Islamica: Jurnal Kajian Hukum dan Sosial*, 18.2 (2021): 189–210, doi:10.21154/justicia.v18i2.2488.

³⁰ Amalia and Zafi.

In the journey of bilateral inheritance law evolution, Hazairin initiated a debate about equality in inheritance distribution between men and women by reinterpreting the inheritance verses in the Quran. However, Munawir Sjadzali, in his book "*Reactualization of Islamic Teachings*," took a more revolutionary approach by attempting to change the traditional 2:1 ratio to 1:1. The reason is that the 2:1 ratio, although consistent with the textual verses, is considered not to reflect a "sense of justice" in the context of Indonesian society and current conditions. However, this idea faces challenges in finding practical solutions. Subsequently, Yahya Harahap emerged with the idea of approaching inheritance distribution between men and women to reach a ratio of 1:1 or even more, which aligns with the actual conditions of the heirs, in line with the theory of Syahrur's *hudûd*.³¹

However, according to Zahro & K.M.,³² Syahrur's statement regarding men receiving a larger share of inheritance than women, with men as the upper limit and women as the lower limit, is not in line with the principle of gender equality. The principle of gender equality emphasizes that both men and women have equal rights in various aspects of life, including in inheritance distribution. Some issues that often arise in the implementation of Islamic inheritance law.³³ Involve injustice in wealth distribution between men and women, discrimination against women in recognizing inheritance rights, and the continuation of traditional practices that disregard women's rights in the inheritance context.

Several researchers acknowledge that Islamic inheritance law, known as *fiqh mawâris*, can be explored through different approaches. Issues of wealth inheritance distribution tend to be more related to civil law and focus on the study of *fiqh muâmalah* and horizontal interactions between individuals. Therefore, research in the field of *fiqh mawâris* provides significant opportunities for *ijtihad*, an effort of

³¹ Aniroh.

³² Zahro and K.M.

³³ Sadi Hassan Baram, 'The Priority of Application Regarding the Inheritance Provisions Differed between the Iraqi Personal Status Law and the Amended Law in the Kurdistan Region', *As-Siyasi*, 3.2 (2023): 215–38, doi:10.24042/as-siyasi.v3i2.18440.

legal interpretation based on the principle that in *muâmalah* law, all actions are considered permissible unless there is a clear prohibition (*dalîl*). This principle creates ample opportunities to develop more dynamic and progressive laws in the context of *fiqh mawâris*. With the development of society and the increasingly complex dynamics of social relationships, issues that are not explicitly regulated in the Quran and Sunnah arise.³⁴ One way is distributing wealth to sons and daughters while their parents are still alive, known as a gift. In this context, there is no provision giving sons a larger share than daughters, so each child is given an equal share.³⁵

Regarding the strict rules of inheritance distribution and the desire of certain parties for alternative methods in specific situations, there are no guiding principles for exceptions. However, the demands for justice and the agreement of the involved parties can resolve the issue. There are two ways of resolution: first, after the inheritance has been distributed, and second, before the distribution takes place. The first method involves determining the individual shares of each heir, and then reuniting the inheritance to distribute it according to a mutual agreement. The second method involves making adjustments before the inheritance distribution, with all heirs agreeing to use an alternative method outside Islamic law. This agreement could mean one or more heirs opt out of the distribution in exchange for compensation from the inheritance, or an heir takes one form of the inheritance. This method is known as *takharuj* or *tashaluh*.³⁶

Reinterpretation of Gender Justice in Islamic Inheritance Law

Equality and justice, including gender equality and justice, are two concepts that are often demanded and fought for by various groups, especially women. On the other hand, there are segments of society that

³⁴ Sriani.

³⁵ Fahrur Roji and Mochamad Samsukadi.

³⁶ Laras Shesa, Oloan Muda Hasim Harahap, and Elimartati Elimartati, 'Eksistensi Hukum Islam dalam Sistem Waris Adat yang Dipengaruhi Sistem Kekerabatan Melalui Penyelesaian *al-Takharuj*', *Al-Istinbath: Jurnal Hukum Islam*, 6.1 (2021): 145, doi:10.29240/jhi.v6i1.2643.

reject gender equality, particularly among men. This is evident among the men of the Batak Angkola tribe.³⁷

Justice is giving each individual their due rights without depriving others of theirs. It is a fair attitude that contradicts unjust behaviors such as stealing or coercion. Discussions about justice have existed since ancient times, as considered by Plato. For him, justice is giving each person their due rights according to their role in society. To achieve ideal justice, every individual must fully take responsibility for their duties in society. Aristotle classified justice into five different forms. First, there is commutative justice, which is fair treatment without considering the deeds done. The second is distributive justice, which means giving according to the deeds performed. Third, natural justice is returning what has been given to us. Fourth, conventional justice is following all applicable rules. Fifth, corrective justice is restoring the reputation of those who have been tarnished. For Aristotle, an act is just when one treats oneself and others well, with rational consideration, and without causing harm. John Rawls states that justice is the most important value in social order. To achieve it, three principles are needed: equal liberty, fair opportunity, and recognition of differences.³⁸

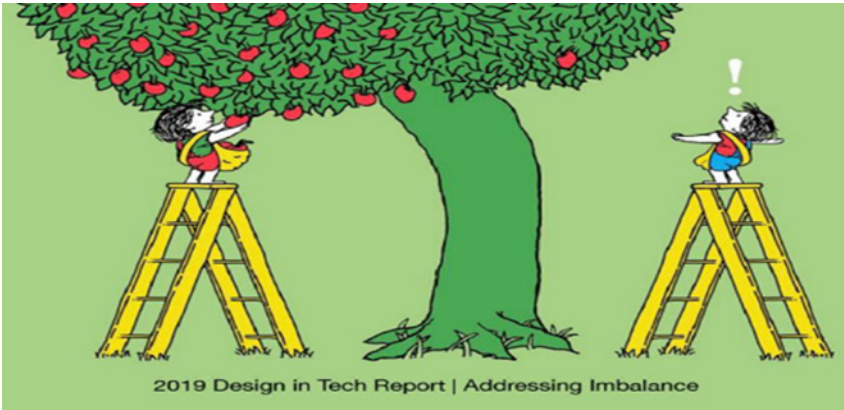
Meanwhile, equality means without discrimination and sameness or equal treatment. Thus, the principle of justice reinforces principles related to equality. This is because justice strengthens equal outcomes by taking into account differences in one's position and capacity. Although humans are born equal, they are not born in the same circumstances, and they also have the same abilities and potential. Although equality and equity may sound similar, applying one over the other can result in different outcomes. Equality means every individual or group of people is given the same resources or opportunities, while justice acknowledges that

³⁷ Ulfa Ramadhani Nasution, 'When Tradition Against Modernity: Batak Angkola Men's Resistance towards Gender Equality', *Al-Ahwal*, 16.1 (2023): 23–42, doi:10.14421/ahwal.2023.16102.

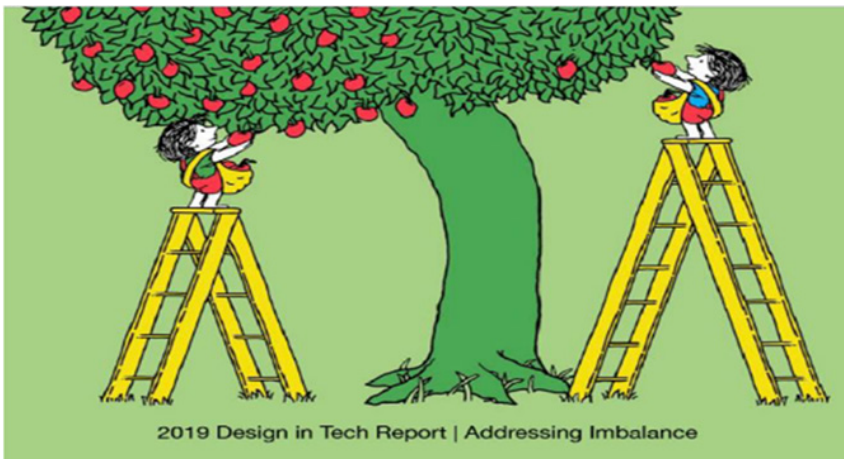
³⁸ Hafidz Taqiyuddin, 'Konsep Islam Tentang Keadilan', *Aqlania*, 10.2 (2019): 157, doi:10.32678/aqlania.v10i2.2311.

everyone has different circumstances and allocates appropriate resources and opportunities needed to achieve the same outcome.³⁹ Thus, considering differences is essential to achieve justice.⁴⁰

Equality can be described as follows:⁴¹



As for the depiction of equity, it is as follows:⁴²



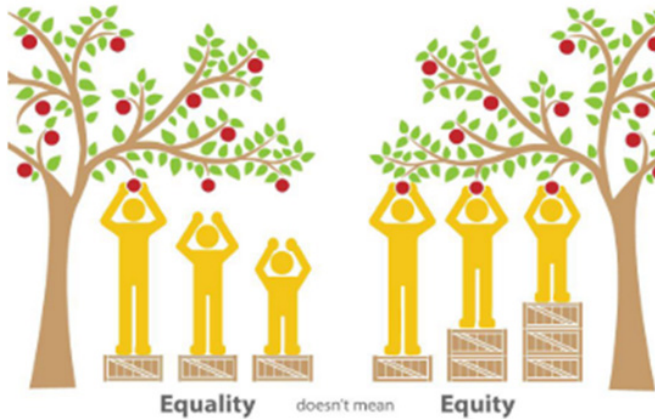
³⁹ Robert Longley, 'Equity vs. Equality: What Is the Difference?', *Thoughtco.Com*, (2022): 1–4.

⁴⁰ Dowd.

⁴¹ Longley.

⁴² Longley.

The terms equality and equity are often equated because, at first glance, they seem to have the same meaning. Both are related to how an individual or group of people are treated, and both terms are often used in law, governance, economics, and so on. Often, these terms are used to explain actions, laws, or rules that seek to end or counteract injustice or unfair treatment of people. However, equality and equity, as illustrated above, are not synonymous, and the methods used to achieve them are often very different.⁴³ Equality can be defined as treating every individual in the same way regardless of their needs and requirements. Meanwhile, equity can be defined as treating individuals fairly based on their needs and requirements. The difference between the two terms can be illustrated as follows:⁴⁴



The illustration above demonstrates that equality is not the same as equity. Equality can lead to justice when applied to individuals with the same conditions. Conversely, equality can result in injustice if applied to individuals with different conditions, as shown in the illustration above. The same principle applies to equality in the case of inheritance distribution.

Allah SWT has established different roles between men and women to complement each other. One of the roles of women is as the caretaker of the household (*rabbat al-bayt*), while men have the responsibility of providing for the family. These role differences are not intended to belittle

⁴³ Longley.

⁴⁴ Jean-Paul.

women. Each individual will be held accountable for the roles Allah has ordained on the Day of Judgment. The provision that women are not obligated to provide for the family or perform Friday prayers does not mean that Allah belittles women.

On the contrary, it is an expression of Allah's mercy towards women by alleviating some of these burdens. For example, in the case of female testimony being valued as half of male testimony in criminal law matters, this is a concession for women. To be a witness is not an easy task, and the responsibility is considerably heavy. Witness protection programs are evidence that the position of a witness can endanger lives. Ultimately, despite having different roles, both men and women have the opportunity to attain paradise. The feminist understanding of Islamic religious texts is essentially the result of critical analysis from a gender perspective, aiming to understand women's issues within the framework of feminist theology that emphasizes equality, justice, and respect for human rights regardless of gender. As a new form of *ijtihad*, feminist studies deserve respect, although they remain open to criticism in the effort to explore the values of a particular viewpoint.⁴⁵

Islamic law has based the concept of justice on needs. The principle of inheritance division at a ratio of 2:1, as stated in the Quran, is not absolute and can be adjusted according to the existing needs. By logical reasoning, if women bear a greater burden of responsibility than men, then women's rights to inheritance should be equal or even greater than men. In the context of inheritance division between men and women, it is important to remember that Islam has recognized women's rights in the division of inheritance. The issue that arises is that before Islam, the prevailing culture disregarded women's rights, even making them objects of inheritance. The opinion advocating for equal division of inheritance between male and female offspring is a valid perspective. There is room to give women an equal share in inheritance, not solely based on the textual provisions of the verses, but following the spirit of recognizing

⁴⁵ Nur Sari Wangi and A. Halil Thahir, 'Iman dan Keadilan Gender: Menjawab Legitimasi Pemikiran Kaum Feminis Liberal Tentang Ketidakadilan Gender dalam Islam', *Akademika*, 16.1 (2022): 39–50.

women's rights in receiving inheritance. Moreover, in certain situations, a male may receive a smaller share compared to a female, as long as all parties have agreed. The agreement between these parties can be recognized as a legal basis in the division of inheritance.⁴⁶

Regarding the amount of inheritance received by individuals inheriting wealth, including men and women, there is indeed a difference. However, this difference does not imply injustice, because, in the Islamic view, justice is not only assessed based on the amount of wealth received when inheriting but also relates to benefits and needs. Sons require more resources than daughters because they have double responsibility, for themselves and their families, including the women in their families. Therefore, the inheritance rights received by each heir reflect the continuation of the deceased's responsibility towards their family. Thus, the amount of inheritance received by individuals is balanced with the difference in responsibilities they bear.⁴⁷

This 2:1 ratio difference is not due to gender considerations, but because of the difference in tasks and responsibilities given to men that are greater than women within the framework of Islamic society. The greater the responsibility one has to bear, the greater the rights granted to them.⁴⁸ The principle of justice in Islamic inheritance law depicts a balance between the rights and inheritance wealth one receives and the obligations or burdens one must bear among the heirs. In other words, in the context of Islamic inheritance law, justice is not measured based on equality in the distribution of wealth among heirs but rather depends more on the extent of the burden or responsibility given to them according to the general conditions of human life. If we refer to the definition of justice conveyed by Amir Syarifuddin as "a balance between rights and obligations and a balance between what is obtained with needs and benefits," or as "a balance between the burden and responsibility given

⁴⁶ Zulham Wahyudani and Muhammad Firdaus, 'Faktor-Faktor Perubahan Sosial yang Mempengaruhi Pembagian Harta Warisan di Banda Aceh Indonesia', *Journal of Shar*, 3.1 (2022): 13–33.

⁴⁷ Asnawi Abdullah, 'Signifikansi Hukum Waris Islam dalam Kehidupan Keluarga', *Syarab: Jurnal Hukum Islam & Ekonomi*, 10.1 (2021): 1–20, doi:10.47766/syarab.v10i1.218.

⁴⁸ Zahro and K.M.

to heirs that is equal," then the value of justice in Islamic inheritance law will be reflected in the implementation of inheritance distribution.⁴⁹

The provision regarding inheritance distribution with a ratio of 2:1 essentially aligns with the principles of justice and equality. Several factors need to be considered to explain this, namely: 1) Compared to the previous social situation, women at that time often had no inheritance rights and were considered objects to be inherited. Therefore, granting inheritance rights to women by Islam can be seen as a fair act. By granting inheritance rights to women, Islam effectively states that men and women have equal positions in receiving inheritance; 2) To address the question of the quantity difference in inheritance distribution between men and women, the social context at that time needs to be considered, where men traditionally had full responsibility for providing for the family's livelihood.⁵⁰

The principle of justice in Islamic law depends on the justice determined by Allah SWT, as humans find it difficult to fully understand the concept of justice. In Islamic law, faith in Allah precedes understanding, as it is acknowledged that everything set by Allah is surely just. Therefore, justice in inheritance matters is to fulfill Allah's command regarding inheritance by distributing it according to the provisions found in the Quran and Sunnah. The inheritance distribution with a ratio of 2:1 is a provision found in the Quran, and this is applied because men have greater responsibilities than women, so according to Sharia, the size of the inheritance share is determined. Islamic law remains committed to providing gender equality and justice, without distinguishing between men and women. The view of scholars from the Shâfi'i School is that the arguments often put forward by feminist advocates are irrelevant concepts of justice because they do not understand inheritance law before Islam. As a perfect religion, Islam remains the relevant legal foundation worldwide, as every law revealed by Allah is a form of justice for His servants.⁵¹

⁴⁹ Nurhadi.

⁵⁰ Kususiyannah.

⁵¹ Mochammad Fahd Akbar and Ari Prastiyo, 'Persamaan Gender Kaum Feminisme

In the context of inheritance law, justice in Islam stems from individual responsibilities in line with the rights they receive from the inheritance distribution. The lack of equality in wealth distribution between men and women in Islam does not mean that Islam acts unjustly or diminishes women's rights. On the contrary, Islam strongly emphasizes the principle of justice because Allah knows who benefits more. Therefore, inheritance distribution is based on the roles and responsibilities of each individual.⁵²

Conclusion

The reinterpretation of gender justice in the distribution of inheritance as contained in the verses of the Qur'an is implicit. The distribution of inheritance in Islam, which establishes a ratio of 2:1 between male and female heirs, is viewed by scholars of Fiqh, both classical and modern, as a *qath'iy* and final ruling of Islamic law. Some opinions, particularly from feminists, view this ruling as gender-biased and unjust due to the lack of gender equality between men and women. However, research findings indicate that justice is not the same as equality. In Islamic inheritance distribution, the unequal allocation of inheritance between men and women at a ratio of 2:1 is considered just because it corresponds to the responsibilities that men bear towards their families.

Author Contribution

Hani Sholihah is responsible for developing research ideas, designing, and formulating questions, determining the methodology and data analysis, conducting initial analysis of the data obtained, and organizing the overall structure of the article. Hani Sholihah also determines the theory used and presents it in the Research Results section. Hani also plays a role in translating the article into English.

Nani Widiawati contributes by compiling the general framework and systematics of the article, including the abstract and introduction. Nani

dalam Pembagian Harta Waris Ditinjau dari Perspektif Madzhab Syafi'i, *Al-Rasikh: Jurnal Hukum Islam*, 10.2 (2021): 170–78.

⁵² Wahyudani and Firdaus.

also compiled a comprehensive literature review to support theoretical arguments in compiling the article.

Mohd Khairul Nazif bin Hj. Awang Damit conducts a global review of the entire article, from the abstract, introduction, methods, results, and discussion to the conclusion.

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