

THE DYNAMICS OF DETERMINING MEN AND WOMEN PARTS IN MATTERS OF INHERITANCE: A STUDY OF ISLAMIC LAW

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Abstract: This study aims to understand the dynamics of determining men's and women's parts of inheritance; explore thoughts related to contemporary inheritance formulations and analyze from the perspective of Islamic law. This research is library research with a normative approach (syar'i) in the form of literary analysis relevant to the research object, namely the problem of determining men's and women's parts in the matter of inheritance. The Data were collected structurally through document studies to be analyzed. Data analysis uses qualitative content analysis of relevant documents or texts. As a result, determining men's and women's parts is currently experiencing dynamics 2:1 to 1:1 concept because of the influence of customary law, distribution of inheritance level of welfare, and understanding of the justice value, which has shifted from based on rights and obligations which interpreted according to the needs and conditions. The 1:1 inheritance paradigm or equal share results from the ijtiḥad of contemporary figures by understanding the value of justice according to social situations and conditions and gender equality. The initiators of the paradigm are Hazairin with the concept of bilateral inheritance, Munawir Sjadzali with his quantitative equation, Muhammad Syahrur, and Yahya Harahap with the concept of boundary theory. According to Islamic law, the 1:1 inheritance paradigm is not contradictory because the goal is for the common good of the heirs. In contrast, the benefit is the goal of Islamic law through the concept of maqāsiḍ sharia by paying attention to the rules of Islamic law, such as not ignoring human rights and maintaining good relations with others. Islamic law, with its flexibility that can adapt to place, time, and circumstances, has also blended with the results of contemporary ijtiḥad.

Keywords: Inheritance law; male and female heirs; Islamic law; contemporary ijtiḥad; the ratio of 2:1 and 1:1.

I. INTRODUCTION

Islamic inheritance law, as a guideline on inheritance distribution, has regulated the procedure for dividing the inheritance left by the testator, determining the right heirs and their respective shares.¹ The provisions of inheritance distribution are regulated in the Qur'an, and many scholars established the legal basis for *qath'i*. However, their application still has problems and criticisms of the inheritance provisions.²

So far, the inheritance issue is still a severe discussion among practitioners and academics, including the determination of the distribution of inheritance to male and female heirs who are currently experiencing the dynamics of thought. Currently, two paradigms are found from several previous studies related to the male and female portions, namely the determination of 2:1 as in Islamic inheritance law and the concept of 1:1 or equal. Of course, these two paradigms have their reasons and different methods of interpretation in interpreting inheritance law.

The first paradigm views that the provisions of the inheritance share for men and women are 2:1, which means that men get two parts and women one share. This concept is considered fair according to the Qur'an, which determines that the share of men is equal to that of two women because men have more significant duties and responsibilities than women.³ This means that men who get more shares does not mean this is unfair, but Islam has determined that men are more responsible for the family's needs. This thinking holds fast to the rules text and believes that what has been prescribed is oriented towards justice.

The second paradigm views the provision of male and female heirs with the 2:1 concept for the present does not provide equality and does not realize justice.⁴ This progressive thinking pays more attention to gender equality so that

¹Sodikin Sodikin, 'The Implementation of Islamic Heritage Distribution in Community of Setu Subdistrict, South Tangerang Region', *SALAM: Jurnal Sosial Dan Budaya Syar-I*, 8.5 (2021) <https://doi.org/10.15408/sjsbs.v8i5.22224>.

²Ismail Ismail, 'The Philosophical Values of Islamic Inheritance Law', *INNOVATIO: Journal for Religious Innovation Studies*, 20.2 (2020) <https://doi.org/10.30631/innovatio.v20i2.112>.

³Linda Firdawaty, 'PEWARISAN HARTA PUSAKA TINGGI KEPADA ANAK PEREMPUAN DI MINANG KABAU DALAM PERSPEKTIF PERLINDUNGAN TERHADAP PEREMPUAN DAN HUKUM ISLAM', *ASAS*, 10.02 (2019) <https://doi.org/10.24042/asas.v10i02.4533>.

⁴Musda Asmara, Rahadian Kurniawan, and Linda Agustian, 'Teori Batas Kewarisan Muhammad Syahrur Dan Relevansinya Dengan Keadilan Sosial', *Journal de Jure*, 12.1 (2020), h.1718. <https://doi.org/10.18860/j-fsh.v12i1.7580>.

the rules in mawāris fiqh are seen as gender biased. According to this paradigm, the provisions of 2:1 in classical inheritance law are not final rules but can still change to 1:1 according to the situation and conditions of society.⁵ Such as the distribution of inheritance by taking into account the level of the economic welfare of the heirs. The division in this way is a contemporary division with the concept of distributive or proportional justice, which aims to provide justice and welfare to the heirs.⁶ For example, from an economic point of view, male heirs are better than female heirs, so the inheritance must be divided equally to achieve proportional justice. This thought understands the meaning of justice in Islam contextually based on conditions.

The existence of dualism in the concept of inheritance causes problems with the practice of dividing inheritance in society. Some do the division based on farāi certainty provisions, and some use a family system that differs from the farāi system. On the one hand, this 2:1 ratio applied because men have greater responsibilities than women.⁷ In addition, the rules in Islamic inheritance law originating from the Qur'an and hadith determine by the fuqaha as absolute and unchangeable laws.⁸ Meanwhile, on the other hand, the assumption of the meaning of justice is based on the existing conditions in society so that it is possible to do an equal distribution.

Seeing the current inheritance problems proves that the discourse on inheritance issues is always interesting to study in the view of Islamic law and its relationship with the socio-cultural sphere of society. It is because the inheritance system in society is quite diverse according to the conditions and laws of each.⁹ That is what underlies the importance of exploring the dynamics

⁵Endang Sriani, 'Fiqh Mawaris Kontemporer: Pembagian Waris Berkeadilan Gender', *TAWAZUN: Journal of Sharia Economic Law*, 1.2 (2018), 133 <https://doi.org/10.21043/tawazun.v1i2.4986>.

⁶Abdul Aziz, 'Pembagian Waris Berdasarkan Tingkat Kesejahteraan Ekonomi Ahli Waris Dalam Tinjauan Maqashid Shariah', *Journal de Jure*, 8.1 (2016), 48 <https://doi.org/10.18860/j-fsh.v8i1.3729>.

⁷Ahmad Tahali, 'Wanita Dalam Sistem Kewarisan Perspektif Sosiologi Hukum Islam', *Jurnal At-Tadbir: Media Hukum Dan Pendidikan*, 31.1 (2021), 43–72 <https://doi.org/10.52030/attadbir.v31i1.65>.

⁸Masykurotus Syarifah and Ach.Maulana Elbe, 'Metode Waris Perspektif Muhammad Shahrur Serta Upaya Rekonsiliasi Dengan 'Urf', *KABILAH: Journal of Social Community*, 6.1 (2021) <https://doi.org/10.35127/kbl.v6i1.4767>.

⁹Gusti Muzainah and Syaikhu Syaikhu, 'Pembagian Warisan Keluarga Ulama Palangka Raya Dalam Tinjauan Hukum Waris Adat Masyarakat Banjar', *Jurnal Hadratul Madaniyah*, 7.1 (2020) <https://doi.org/10.33084/jhm.v7i1.1598>.

of determining the parts of men and women, exploring the concepts of thought, then testing their suitability according to Islamic law. Because by analyzing the two different inheritance paradigms in the view of Islamic law, which shows the benefits and drawbacks, it is possible to find the best paradigm in current inheritance. This study aims to determine the dynamics of the share of male and female heirs, explore thoughts related to contemporary inheritance formulations and analyze from the point of view of Islamic law.

II. THEORETICAL REVIEW

Inheritance in Islamic law is one part of family law because the scope of the discussion concerns transferring property from a deceased person to a loving family.¹⁰ This knowledge is essential to learning to carry out the Shari'a so that there are no mistakes in the distribution of inheritance and expected to achieve justice. Because studying and implementing inheritance science for Muslims is a form of implementing the rights to property left by the testator to the heirs entitled to receive it. That intends to help a person avoid the sin of eating property that is not his right.¹¹

Inheritance law is a rule regarding transferring assets from deceased owners to their legal heirs.¹² When the owner of the property or heir has died, then the property becomes an obligation for the heirs to distribute it by following the applicable provisions.¹³ According to Islamic law, three elements or pillars must fulfill the heir, inheritance, and heirs. Then the share obtained by the heirs is determined according to gender.¹⁴ The inheritance rights to male and female heirs regulate in QS al-Nisa/4: 7.

¹⁰Lalu Junaidi, 'KAJIAN SOSIOLOGI HUKUM TERHADAP ADAT KEWARISAN MASYARAKAT DESA MANGKUNG KECAMATAN PRAYA BARAT KABUPATEN LOMBOK TENGAH', *Al-IHKAM: Jurnal Hukum Keluarga Jurusan Ahwal Al-Syakhshiyah Fakultas Syariah IAIN Mataram*, 9.01 (2017) <https://doi.org/10.20414/alihkam.v9i01.1154>.

¹¹Afidah Wahyuni, 'Sistem Waris Dalam Perspektif Islam Dan Peraturan Perundang-Undangan Di Indonesia', *SALAM: Jurnal Sosial Dan Budaya Syar-I*, 5.2 (2018), 147-60 <https://doi.org/10.15408/sjsbs.v5i2.9412>.

¹²Sriono, 'Sistem Pewarisan Pada Warga Negara Indonesia Keturunan Tionghoa (Cina) Muslim', *Jurnal Ilmiah Advokasi*, 5.2 (2017).

¹³Sirman Dahwal, 'HUBUNGAN HUKUM KELUARGA DAN HUKUM KEWARISAN ISLAM DALAM MASYARAKAT MODERN INDONESIA', *Supremasi Hukum: Jurnal Penelitian Hukum*, 28.1 (2019) <https://doi.org/10.33369/jsh.28.1.17-32>.

¹⁴Ni Luh Tanzila Yuliasri, 'KEDUDUKAN AHLI WARIS KHUNTSA DALAM HUKUM WARIS ISLAM', *Mimbar Keadilan*, 14.28 (2018) <https://doi.org/10.30996/mk.v0i0.178I>.

لِّلرِّجَالِ نَصِيبٌ مِّمَّا تَرَكَ الْوَالِدَانِ وَالْأَقْرَبُونَ وَلِلنِّسَاءِ نَصِيبٌ مِّمَّا تَرَكَ
الْوَالِدَانِ وَالْأَقْرَبُونَ مِمَّا قَلَّ مِنْهُ أَوْ كَثُرَ ۗ نَصِيبًا مَّفْرُوضًا. (٧)

The Translation:

*For men, there is a right to share the inheritance of their parents and relatives. According to the determined share, women have the right to share parents' and relatives' inheritance, either a little or a lot.*¹⁵

In the book al-farāiḍ from the al-Kalbi path from Abi Salih from Ibn Abbas r.a., said that in the past, the ignorant people were reluctant to give their daughters and their young sons an inheritance until they grew up. One of the Ansar died, namely Aus bin abit, and he left two daughters and one son who were still small. Then came two of his uncle's children, Khalid and Urfah and they were both his family and took all his inheritance. Then his wife Aus came to the Messenger of Allah. When he complained about this, the Messenger of Allah said, "I do not know what to say" then the word of Allah came down, "For men, there is a share of the inheritance of their parents and relatives, and for women, there is a share."¹⁶ Furthermore, the share of male and female heirs describes in QS al-Nisa/4:11.

يُوصِيكُمُ اللَّهُ فِي أَوْلَادِكُمْ لِلذَّكَرِ مِثْلُ حَظِّ الْأُنثَيَيْنِ ۚ فَإِن كُنَّ نِسَاءً فَوْقَ
اثنَتَيْنِ فَلَهُنَّ ثُلُثَا مَا تَرَكَ وَإِن كَانَتْ وَاحِدَةً فَلَهَا النِّصْفُ ۚ وَلِأَبَوَيْهِ لِكُلِّ وَاحِدٍ
مِّنْهُمَا السُّدُسُ مِمَّا تَرَكَ إِن كَانَ لَهُ وَلَدٌ ۚ فَإِن لَّمْ يَكُنْ لَهُ وَلَدٌ وَوَرِثَهُ أَبَوَاهُ
فَلَأُمِّهِ الثُّلُثُ فَإِن كَانَ لَهُ إِخْوَةٌ فَلِأُمِّهِ السُّدُسُ ۚ مِن بَعْدِ وَصِيَّةٍ يُوصِي بِهَا أَوْ دِينِ
ءَابَاؤِكُمْ وَأَبْنَاؤِكُمْ لَا تَدْرُونَ أَيُّهُمْ أَقْرَبُ لَكُمْ نَفَعًا فَرِيضَةٌ مِّنَ اللَّهِ ۚ إِنَّ اللَّهَ كَانَ
عَلِيمًا حَكِيمًا. (١١)

The Translation:

Allah commands you as regards your children's (inheritance); to the male, a portion equal to that of two females; if (there are) only daughters, two or more, their share is two-thirds of the inheritance; if only one, her share is half. For parents, a sixth share of inheritance to each if the deceased left

¹⁵Kementerian Agama RI, *Al-Qur'an Tajwid dan Terjemah al-Qayyim* (Surakarta: Ziyad Fisi Madya, 2014), p. 78.

¹⁶Imam as-Suyuti, *Asbabun An-Nuzul*, terj. Andi Mahmud Syahril dan Yasir Maqasid, *Asbabun Nuzul: Sebab-sebab Turunnya Ayat al-Qur'an* (Cet. I; Jakarta: Pustaka Al-Kautsar, 2014), p. 128.

*children; if no children, and the parents are the (only) heirs, the mother has a third; if the deceased left brothers (or sisters), the mother has a sixth. (The distribution in all cases is) after the payment of legacies he may have bequeathed or debts. You know not which of them, whether your parents or your children, are nearest to you in benefit, (these fixed shares) are ordained by Allah. And Allah is Ever All-Knower, All-Wise.*¹⁷

Based on the verse, it is evident that the provisions of Islamic inheritance law regarding a man's share of inheritance are equal to that of two daughters, more popularly known as 2:1 (two to one). This provision has become the principle rule of Islamic inheritance described by Mahmud Shaltut and Grand Syekh al-Azhar as quoted by Muhammad Amin Suma that if a group of male and female heirs gathers, the male heirs get a multiple of the expert division from the female heir (2:1).¹⁸ Thus, the provisions for the division of inheritance between men and women with a 2:1 system are the basic principle in determining the share of the inheritance.

III. RESEARCH METHODOLOGY

This research is library research with a syar'i-based normative approach in the form of literary analysis relevant to the object of research, namely the problem of determining the share of male and female heirs. This research is descriptive-analytic with data collection techniques through document studies arranged to be analyzed. The data analysis technique uses qualitative content analysis to analyze documents or texts relevant to this research. Data analysis is an assessment of the arguments in the dynamics of determining the inheritance share of men and women according to Islamic law.

IV. RESEARCH RESULT AND DISCUSSION

A. The Dynamics of Determining the Inheritance of Men and Women

One of the main rules for dividing inheritance in Islam that is different from other ways of dividing inheritance is to distinguish between male and female parts. This rule is in QS al-Nisa/4:11, which emphasizes that the male part is equal to two female parts. This rule is already patent according to the study of fiqh in several mu'tabaroh schools. This rule is already patent, and its validity is recognized in religious courts throughout Indonesia, proven through the *Kompilasi Hukum Islam* (KHI) legislation in Indonesia. In addition to

¹⁷Kementerian Agama RI, *Al-Qur'an Tajwid dan Terjemah al-Qayyim*, p. 78.

¹⁸Muhammad Amin Suma, *Keadilan Hukum Waris Islam dalam Pendekatan Teks dan Konteks*, (Cet. I; Jakarta: Rajawali Pers, 2013), h. 63-64.

resolving through litigation, the text of QS al-Nisā/4:11 held by several experts and community leaders outside the court.¹⁹

Determination of the share of male and female heirs as regulated in the Qur'an is the fairest rule. According to the Qur'an, justice determines that the share of men is equal to that of two women well known that men have more significant burdens and responsibilities than women. Justice in Islam is not always the same according to needs and responsibilities. That is because the protection of women both in Islamic law and positive law includes the right to get good treatment, education, dowry, living, inheritance, the right to choose a life partner, and the right to try and get results from their efforts.²⁰

In addition to the value of justice and legal certainty for the 2:1 inheritance system, implementing an Islamic inheritance system is the implementation of religious instructions and orders believed in providing justice and benefit compared to customary law or civil law.²¹ Therefore, the meaning of justice is not equal but instead leads to an appropriate balance.²² So it is pretty clear that the purpose of religion in establishing law is to achieve justice and benefit.

After looking at the Islamic inheritance paradigm with the concept of two parts for male heirs and one for female heirs, there is a different application of inheritance distribution in terms of implementation. There is also an inheritance system with the determination of the share of men and women being equal or balanced, which is a system widely adopted by customary law in Indonesia.²³ It is proven from several studies, which is in Wajo Regency, the community, is more at peace in dividing the inheritance, and in customary law, the 1:1 or equal part applies.²⁴ Furthermore, the distribution of inheritance between sons and

¹⁹Labib Fahmi, 'Hermeneutika Emillio Betti Dan Aplikasinya Dalam Menafsirkan Sistem Kewarisan 2:1 Pada Surat an-Nisa Ayat 11', *Ulul Albab: Jurnal Studi Dan Penelitian Hukum Islam*, 2.1 (2018), h.144. <https://doi.org/10.30659/jua.v2i1.3120>.

²⁰Firdawat̄y.

²¹Muh. Idris, 'Implementasi Hukum Waris Dan Pengajarannya Pada Masyarakat Kec. Poleang Tengah Kab. Bombana (Perbandingan Antara Hukum Adat, Hukum Islam Dan Hukum Perdata)', *Jurnal Al-'Adl*, 8.1 (2015), 20–36.

²²M Sabri, 'Persepsi Hukum Islam Terhadap Sistem Kewarisan Berbasis Budaya Pada Masyarakat Bugis Bone', *Al-Risalah: Jurnal Hukum Keluarga Islam (Ahwal Al Syakhsiiyah)* (2019).

²³Muhammad Asykur Muchtar, 'Analisis Terhadap Sistem Pembagian Harta Warisan', *JUSTISI*, 4.2 (2019) <https://doi.org/10.33506/js.v4i2.532>.

²⁴Ismail Saleng, "Pelaksanaan Hukum Kewarisan Islam Menurut KHI dan *Adc' Māna'* Bugis Wajo", *Tesis* (Makassar: PPs UIN Alauddin, 2018), h. ii.

daughters in Sidrap Regency is also more often found using an equal distribution system or 1:1, which is contrary to Islamic inheritance law.²⁵

The application of the customary inheritance system stems from the nature of kinship and the form of Indonesian society that adheres to the heredity system and has its inheritance system.²⁶ That is because inheritance law has an important role and determines and reflects the family system enforced in society.²⁷ Inheritance law in Indonesia uses the socio-cultural school of law or pays more attention to the socio-cultural community. This sociological law school is under the conditions of the Indonesian people, who are very concerned about customary law in regulating behavior patterns.²⁸ Based on these findings, customary law is one of the pioneers of the equal inheritance system between men and women (1:1).

Equitable distribution of inheritance (1:1) is not only the influence of customary law but also a concept coined by Munawir Sjadzali. By looking at the reality of inheritance distribution in Indonesia which puts forward the principle of cooperation, divides inheritance based on the needs of the heirs because each heir does not have the same economic level. In a case like this, it is only fair that the sons and daughters get an equal share (1:1).²⁹ This opinion clarified from the results of Abdul Aziz's research that the current inheritance system refers to distributive or proportional justice by adjusting the level of the economic welfare of the heirs. So if the male heirs have more jobs and wealth while the female heirs have the opposite fate, then the female heirs should get more or equalize the share. On the other hand, if the economy of the female heirs is better than that of the male heirs, then the male heirs will get more.³⁰ This system is flexible

²⁵Wirani Aisiyah Anwar, "Praktek Pembagian Kewarisan Anak di Kabupaten Sidrap", *al-Qaḍāu: Peradilan dan Hukum Keluarga Islam*, 6.2 (2019), h. 249.

²⁶Anwar Hidayat, M. Gary Gagarin Akbar, and Deny Guntara, 'KAJIAN PERBANDINGAN DALAM PEMBAGIAN WARIS BERDASARKAN PADA HUKUM ISLAM DAN HUKUM ADAT', *Justisi Jurnal Ilmu Hukum*, 3.1 (2018) <https://doi.org/10.36805/jjih.v3i1.546>.

²⁷Ida Ayu Adi Iin Yuliandari, I Ketut Sukadana, and Diah Gayatri Sudibya, 'Kedudukan Cucu Sebagai Ahli Waris Pengganti Dalam Hukum Waris Islam (Studi Kasus Nomor: 0013/PDT.P/2015/PA.DPS)', *Jurnal Analogi Hukum*, 2.3 (2020) <https://doi.org/10.22225/ah.2.3.2520.346-350>.

²⁸Maylissabet Maylissabet, 'Hukum Waris Dalam Kompilasi Hukum Islam Perspektif Filsafat Hukum', *TERAJU*, 1.01 (2019) <https://doi.org/10.35961/teraju.v1i01.51>.

²⁹Munawir Sjadzali, *Ijtihad Kemanusiaan* (Jakarta: Paramadina, 1997), h. 62.

³⁰Aziz.

because the share of the heirs is determined based on the level of welfare. However, it should note that this inheritance system must still be in agreement with the heirs.

In addition, to implement a 1:1 inheritance distribution system in Indonesia, several countries such as Turkey and Somalia have formulated family law with a 1:1 inheritance system in the sense that the share of male and female heirs is equal. The aim is to improve the status of women, unify the law, and respond to the progress and demands of the times.³¹ The demands of times and the level of welfare of the different heirs are reasons for the emergence and application of the 1:1 inheritance concept in society.

The determining share dynamics of male and female heirs, there is migration by some groups from a 2:1 inheritance system to a 1:1 inheritance system based on the needs of the people and responding to the demands of the times. That causes the Islamic inheritance law, either directly or indirectly, has slowly been abandoned by the community. This phenomenon occurs because understanding the meaning of justice in Islamic inheritance law has experienced a shift in value.³² The existence of equal rights between men and women is also a contemporary issue from a gender perspective which defines the value of justice based on rights and obligations, including regarding justice in inheritance.³³ Therefore, the values of justice contained in the Qur'an, especially in inheritance, still need a clear meaning according to conditions while referring to the objectives of Islamic law.

B. The 1:1 Inheritance Paradigm as a Result of Contemporary Ijtihad

Currently, many shifts in values will eventually have implications for implementing sharia, including Islamic inheritance law. It shows the shift of the inheritance distribution system based on concepts 2:1 to 1:1 due to the dominance of customary law in society and the meaning of justice that has shifted—encouraging Islamic scholars and scholars to revitalize with the aim

³¹Lilik Andaryuni, 'Pembaharuan Hukum Kewarisan Islam Di Turki Dan Somalia', *Hikmah Journal of Islamic Studies*, XIV.1 (2018), h.173.

³²Siah Khosyi'ah, 'PERDAMAIAN DALAM MENYELESAIKAN KEWARISAN', *ADLIYA: Jurnal Hukum Dan Kemanusiaan*, 10.1 (2019) <https://doi.org/10.15575/adliya.v10i1.5143>.

³³Syaikhu Syaikhu, 'KEWARISAN ISLAM DALAM PERSFEKTIF KEADILAN GENDER', *El-Mashlahah*, 8.2 (2019), h.122-123. <https://doi.org/10.23971/maslahah.v8i2.1323>.

that Islamic law felt by the societies according to the times and places.³⁴ Because the space for ijtihad towards Islamic law is always wide open for mujtahids, the interpretation of the Qur'an's values as times, places, and circumstances change. Likewise, the concept of 2:1 inheritance is not wholly absolute, so that it can change according to the situation and conditions.³⁵

Although most Muslims understand the formulation of Islamic inheritance law cannot be changed because the rules are clear, including the 2:1 formula for men and women, which understand as a solid formulation. However, some figures assume that inheritance law in Islam can change according to social conditions, because social conditions can affect the enforcement of a law, including inheritance law. That shows from the thoughts of several figures who offer the results of contemporary ijtihad regarding Islamic inheritance law.

Begin from the concept of Hazairin with quite prominent characteristics related to equality of position or rights between men and women. His view of inheritance law adopted by the Muslim community in Indonesia so far is an inheritance system that is gender biased because it privileges the position of men more than women. The idea is in the mawali concept, which is considered an effort to reduce male domination over women in inheritance.³⁶ Hazairin inheritance is more popularly known as the concept of bilateral or family inheritance, which can be justified according to Islamic law because the issue of inheritance cannot be separated from human rights. The law is permissible when someone wants to give up their rights consciously and without coercion.³⁷ For example, an heir with a larger share gives up to an heir whose share is a little voluntarily intending to share it. The concept of bilateral inheritance places emphasis on equal rights between men and women, including equal shares in inheritance.

Furthermore, Munawir Sjadzali also believes that men and women are not only equal in rights and positions but also in terms of inheritance. According to

³⁴Zakiul Fuady Muhammad Daud and Raihanah Bt Azahari, 'MENYOAL REKONTRUKSI MAQASHID DALAM PEMBAHARUAN HUKUM KEWARISAN ISLAM', *Jurnal Ilmiah Islam Futura*, 18.1 (2019) <https://doi.org/10.22373/jiif.v18i1.2843>.

³⁵Sriani.

³⁶Rosidi Jamil, 'HUKUM WARIS DAN WASIAT (Sebuah Perbandingan Antara Pemikiran Hazairin Dan Munawwir Sjadzali)', *Al-Ahwal: Jurnal Hukum Keluarga Islam*, 10.1 (2017), h.99. <https://doi.org/10.14421/ahwal.2017.10108>.

³⁷Chamim Tohari, 'SISTEM KEWARISAN BILATERAL DITINJAU DARI PERSPEKTIF HUKUM ISLAM', *Istinbath: Jurnal Hukum*, 15.1 (2018), h.88. <https://doi.org/10.32332/istinbath.v15i1.1094>.

Munawir, the fairness of the 2:1 inheritance formula is still questionable because the distribution of inheritance should consider social conditions and the condition of heirs. So that under certain circumstances, the 2:1 formula can change to 1:1 due to the situation and environmental conditions.

The concept of inheritance that Hazairin and Munawir Sjadzali initiated aims to realize the goals of Islam, namely the value of justice and the benefit of humankind. This goal can understand that justice in Islamic inheritance can achieve by adapting to the social conditions of society. In other words, justice is not only seen based on the existing law but also in its suitability to the situation and circumstances where the law is applied. So not if the practice of dividing inheritance in Indonesia refers to the concept of Hazairin and Munawir Sjadzali.³⁸

Besides Hazairin and Munawir, another figure who gave ideas in the formulation of Islamic inheritance is Muhammad Syahrur with the concept of boundary theory. The boundary theory initiated by Muhammad Syahrur is the concept of a balanced division between men and women. That means the formula for men getting two parts is the maximum limit. It cannot be more, but it is possible to increase it. Meanwhile, women who get one share are the minimum limit, and it is still possible to increase by more than one, but it cannot decrease. So in certain situations, men and women can get an equal or equal share. This limit theory is relevant to the value of justice if women become the backbone or breadwinner to provide for the family so that their share can increase while still paying attention to the limits of Allah's law.³⁹

In line with Muhammad Syahrur's boundary theory, Yahya Harahap offers the same concept. According to him, the concept of bilateral inheritance does not only consider the meaning of the verse according to the context, but it is also necessary to pay attention to kinship relations, gender justice, and justice as the main goals in religion.⁴⁰ The polarization of some figures' thoughts pays attention to the social conditions of society, gender equality, and the meaning of a sense of justice.

³⁸Jamil.

³⁹Musda Asmara, Rahadian Kurniawan, and Linda Agustian, 'Teori Batas Kewarisan Muhammad Syahrur Dan Relevansinya Dengan Keadilan Sosial', *Journal de Jure*, 12.1 (2020), h.1718. <https://doi.org/10.18860/j-fsh.v12i1.7580>.

⁴⁰Reni Nur Aniroh, 'MEMPERTEGAS IDE KESETARAAN GENDER DALAM SISTEM KEWARISAN BILATERAL : Sistem Waris Bilateral Pasca Hazairin', *Al-Ahwal: Jurnal Hukum Keluarga Islam*, 13.2 (2020).

Contemporary *ijtihad* in determining the share of inheritance for men and women is the result of thinking that cannot separate from the concept of *maqāṣid sharia*. The concept that al-Syatibi initiated is used not only rest through the sound of the text but is projected to respond to social conditions and realities through the aspect of its substance meaning.⁴¹ The arguments relating to Islamic inheritance law are qualified in the *zhanni al-dalālah* category because they have implications for social relations (*muāmalah*). So it is clear that the actualization of Islamic law cannot be separated from the discourse of renewal to achieve justice according to the current situation and conditions.⁴²

The concept of determining inheritance 1:1 is the result of contemporary *ijtihad* of thinkers and figures who interpret the proposition not only limited to the text, but see its suitability for various circumstances. The equal share of inheritance between male and female heirs can be applied according to the economic level of each heir and as a form of equalization of rights between men and women (gender). The arguments of some of the figures above illustrate the implementation of the distribution of inheritance in today's society which is quite dynamic and flexible.

C. Islamic Law Perspective on Part 1:1 Inheritance as Inheritance Formulation for Male and Female

The concept and implementation of inheritance distribution to male and female heirs continue to experience significant dynamics. There was shifting in determining the share of men and women from the concept of 2:1 (two to one) to 1:1 (one to one) or equally. The 1:1 inheritance concept was born from the *ijtihad* results of contemporary thinkers, even though there are contradictions to the *qath'i* argument about the distribution of inheritance. However, groups that are pro-inheritance reconstruction reasoned because the arguments need to be understood contextually to see their relevance to current needs.⁴³ For this reason, the 1:1 inheritance paradigm still needs to be studied from the perspective of Islamic law in measuring the permissibility and limitations of its implementation.

⁴¹Albert Alfikri, 'INDUKSI TEMATIK AS-SYATIBI DALAM EPISTEMOLOGI DAN AKSIOLOGI HUKUM ISLAM', *REUSAM: Jurnal Ilmu Hukum*, 9.1 (2021) <https://doi.org/10.29103/reusam.v9i1.4868>.

⁴²Sakirman Sakirman, 'Telaah Hermenutika Pasal 211 KHI Dalam Memberikan Access to Justice Terkait Hibah Dan Waris', *Jurnal Konstitusi*, 15.1 (2018) <https://doi.org/10.31078/jk1515>.

⁴³Toharī.

The formulation of the 1:1 inheritance paradigm is inseparable from the concept of maqāšid sharia. Maqāšid contained in the new paradigm of Islamic inheritance law related to the male and female divisions, aims to realize equitable justice.⁴⁴ That is because in solving inheritance problems classified as ijthadiyah problems, it is more tathbīqy (implementation of law) that needs to pay attention and consider the value of justice.⁴⁵ The meaning of the value of justice in the concept of maqāšid sharia adapts to the social reality of society.

Although the 1:1 inheritance paradigm is justified, it should also be noted as an important note that carrying out the distribution of inheritance according to farāid provisions also aims to maintain religion (hifz al-din) as the principle of ta'abbudi. In contrast, the 1:1 formulation in inheritance results from responsive ijthad that pays attention to society's humanistic nature and dynamics as the principle of ta'aqquli.⁴⁶ The concept of maqāšid sharia is positioned to achieve benefits and prevent harm while still paying attention to the rights of everyone.⁴⁷ In the distribution of inheritance using the concept of 1:1, it is only justified if each heir realizes his share first and then agrees to divide equally. That is intended, so fellow heirs' rights are not eaten vanity due to the greedy nature of wealth.

The purpose of Islamic inheritance law philosophically is to realize the common benefit of the heirs. However, if it is necessary to formulate an inheritance law relevant to the situation and conditions, there is no harm in providing a breakthrough.⁴⁸ Since Islamic law has a flexible nature, it has provided ornaments that can answer the challenges of the times and adapt to the circumstances.⁴⁹ That is in line with one of the rules of fiqh, which shows the flexibility of Islamic law.

⁴⁴Muhammad Daud and Azahari.

⁴⁵Elfia Elfia, 'Kebijakan Hukum Dalam Penyelesaian Kewarisan Islam (Analisis Terhadap Beberapa Kebijakan Umar Bin Al-Khattab)', *FOKUS Jurnal Kajian Keislaman Dan Kemasyarakatan*, 2.2 (2017), p.149-150. <https://doi.org/10.29240/jf.v2i2.296>.

⁴⁶Haji Syaikh, 'The Dispute Settlements of Inheritance in Palangka Raya: A Legal Anthropology Approach', *Mazahib*, 18.1 (2019), h.1. <https://doi.org/10.21093/mj.v18i1.1441>.

⁴⁷Wardatun Nabilah, Deri Rizal, and Arifki Budia Warman, 'Persecutory and Defamation as Barriers to Inheritance (Review of Maqāšid Shari'ah in a Compilation of Islamic Law)', *Al-Hurriyah : Jurnal Hukum Islam*, 6.1 (2021), h.60. <https://doi.org/10.30983/alhurriyah.v6i1.3274>.

⁴⁸Ismail.

⁴⁹Abd. Ghaffar, 'KEWARISAN ANAK ANGKAT DALAM PERSPEKTIF HUKUM ISLÂM', *AL-IHKAM: Jurnal Hukum & Pranata Sosial*, 2.1 (2019) <https://doi.org/10.19105/al-lhkam.v2i1.2615>.

لَا يُنكَرُ تَغْيِيرُ الْأَحْكَامِ بِتَغْيِيرِ الْأَمْكِنَةِ وَالْأَزْمَنَةِ وَالْأَحْوَالِ

The Translation:

*It cannot be denied that the law changes according to changes in place, time, and circumstances.*⁵⁰

This rule interprets that Islamic law can change with the progress of the times, different places, and social conditions of society. In addition, it should be understood that legal verses are born from a communicative process using the *tahmīl*, *tahrīm*, or *taghyīr* model. In contrast, inheritance verses are born through the *taghyīr* model. That means that the continuity of reinterpretation with the *taghyīr* model should not stop at one time or place but can continue to this day.⁵¹ because the concept of 1:1 inheritance is productive due to contemporary *ijtihād* in interpreting the value of justice in its distribution which is adapted to social conditions.

In addition, the verses of the Qur'an related to Islamic inheritance law in the *hudud* provisions (limitations) set by Allah so that humans can provide *ijtihād* by adjusting their respective circumstances and as long as they are still in the corridor.⁵² That is also in line with the concept of al-Qardāwī, namely *tarjīh bi al-maqāṣid al-syari'ah*, which emphasizes benefit as the last goal to be achieved in determining the law. If the stipulation of law cannot realize benefit as the ultimate goal, it must be shifted to choices that have a beneficial impact.⁵³ When the distribution of inheritance is carried out with the concept of 2:1, it is felt that it has not given justice to the heirs. The second choice can be divided into 1:1, expecting to provide benefits according to the condition of the heirs.

Thus, the 1:1 inheritance paradigm does not conflict with Islamic law if the law was implemented based on achieving benefits and responding to the demands of the times because there is still an assumption that the distribution of 2:1 is considered not to provide complete justice. Then the concept of 1:1 is a form of peace in inheritance. Peace is a solution to the inheritance problem because it is

⁵⁰Jaih Mubarak, *Kaidah Fiqh: Sejarah dan Kaidah-kaidah Asasi*, Edisi pertama (Cet. I; Jakarta: PT RajaGrafindo Persada, 2002), h. 156.

⁵¹Ahmad Rajafi, 'KEWARISAN PRODUKTIF (MERAMU MAKNA ADIL MELALUI WARIS PRODUKTIF)', *Al-Risalah*, 16.02 (2018) <https://doi.org/10.30631/al-risalah.v16i02.313>.

⁵²Syarifah and Elbe.

⁵³Wahid Ahtar Baihaqi, 'Revitalisasi Maqasid Al-Shari'ah: Pembacaan Ulang Konsep Kewarisan Beda Agama', *Muslim Heritage*, 2.1 (2017) <https://doi.org/10.21154/muslimheritage.v2i1.1048>.

considered close to a sense of justice. After all, there is an element of willingness between the heirs to give their share to the other.⁵⁴

Nevertheless, it is still necessary to pay attention to and follow the rules of inheritance distribution currently in effect in Indonesia, namely the Compilation of Islamic Law (KHI) book II on Inheritance. The Compilation of Islamic Law (KHI) in the publishing process is also based on the principle that guarantees a sense of justice in inheritance according to Islamic law.⁵⁵ In the KHI procedures for the distribution of inheritance are systematically arranged as well as the share obtained by each heir. Including peace in inheritance has been regulated in Article 183 KHI that the heirs can agree to make peace in the distribution of inheritance after realizing their respective shares. For this reason, implementing the distribution with a 1:1 system must be carried out by taking into account the rights of each heir and then the element of willingness in it. Because Islamic law does not justify the act of ignoring the rights of everyone as regulated in the Qur'an.

V. CLOSING

Now, the inheritance distribution for male and female heirs has experienced a dynamic from a 2:1 to 1:1 concept caused by the conventional inheritance system. The distribution of inheritance according to the level of welfare and the demands of the times. In addition, the understanding of the meaning of fair has undergone a shift where fair, which was previously recognized based on rights and obligations, is now interpreted based on needs and conditions.

The 1:1 inheritance paradigm or equal share for male and female heirs results from contemporary *ijtihad* Islamic thinkers understanding the values of justice based on the situation and conditions in which the law is applied. The figures who initiated the paradigm include Hazairin with the concept of bilateral inheritance, Munawir Sjadzali with his quantitative equation, Muhammad Syahrur, and Yahya Harahap with the concept of the boundary theory. This thinking is based on the social conditions of society, gender equality, and the meaning of a sense of justice.

Meanwhile, the 1:1 inheritance paradigm, when examined from the perspective of Islamic law, is not contradictory because the goal is for the common good of the heirs. In contrast, the benefit is the goal of Islamic law,

⁵⁴Khosyi'ah.

⁵⁵Hulia Syahendra, 'AUL DALAM TEORI DAN PRAKTEK HUKUM WARIS ISLAM', *Jurnal Hukum Replik*, 6.1 (2018) <https://doi.org/10.31000/jhr.v6i1.1179>.

which is clarified in the concept of maqāsiḍ sharia while still paying attention to the rules of Islamic law, such as not ignoring human rights and maintaining good relations with others. In addition, the flexibility of Islamic law can adjust to the place, time, and circumstances so that it can blend in with the results of contemporary ijtihad.

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