

Charting Equality: Women's Rights and Inheritance Law Reform

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Abstract: The discussions around inheritance law highlight differences in quantity, potentially leading to discrimination claims without fully considering the legal rationale. The study explores how women can assert equality within diverse legal frameworks shaped by cultural contexts. This study, using qualitative methods and case studies, gather data to understand how women have developed unique legal cultures and sub-cultures. Findings suggest that women can advocate for gender justice within varying legal constitutions as long as they ensure protective measures are in place. Ultimately, for inheritance law to remain relevant and equitable, it must accommodate women's perspectives and provide a foundation that respects their rights, ensuring that the law serves society fairly and inclusively without marginalizing any group.

Keywords: equality; inheritance; legal reform; women's rights

Abstrak: Diskusi seputar hukum waris menyoroti perbedaan dalam hal kuantitas, berpotensi menimbulkan klaim adanya diskriminasi tanpa sepenuhnya mempertimbangkan alasan hukum. Penelitian ini mengeksplorasi bagaimana perempuan dapat menuntut kesetaraan dalam berbagai kerangka hukum yang dibentuk oleh konteks budaya. Penelitian ini menggunakan metode kualitatif dan studi kasus untuk mengumpulkan data untuk memahami bagaimana perempuan telah mengembangkan budaya hukum dan sub-budaya yang unik. Temuan menunjukkan bahwa perempuan dapat mengadvokasi keadilan gender dalam berbagai konstitusi hukum selama mereka memastikan adanya langkah-langkah perlindungan. Pada akhirnya, agar hukum waris tetap relevan dan adil, hukum waris harus mengakomodasi perspektif perempuan dan memberikan landasan yang menghormati hak-hak mereka, memastikan bahwa hukum melayani masyarakat secara adil dan inklusif tanpa memarginalkan kelompok mana pun.

Kata Kunci: kesetaraan; warisan; reformasi hukum; hak-hak perempuan

A. Introduction

The debate regarding the constitution of inheritance law, especially distribution to women, has legal validity under the legality of religious law or Islamic law, positive law or government law, and unwritten law, namely customary law.¹ So that its implementation in social reality can apply plurally; besides that, Indonesian society consists of various religions, ethnicities, races, and cultures. In the context of inheritance distribution law, the visible difference is in terms of quantity. Sharing inheritance between men and women's share is often the focus of discussion, which is considered prone to discrimination because the formula still creates room for *ijtihad* to be criticized.² As the interpretation of the inheritance verse contained in Surah al-Nisā' verses 7, 8, 11, and 12, it is highlighted as a *ẓanni* legal basis, not a *qathi* or definite argument, and certainly cannot be challenged. This *ijtihad* occurs because the source of arguments from texts is very limited, while cases and legal actions experience continuous development.³

There is a widespread stereotype that Islamic law and women's rights are fundamentally at odds. It is an assumption held by almost everyone, starting from the veteran anti-Muslim activist commenting beliefs from outside to women in the community human rights activists. The first group blames Islam itself and considers the problem difficult to solve; the latter found space in Islamic law for change, even when they consider the implementation of the current law problematic.

Ijtihād in inheritance law reform is carried out by tracing the birth of the Islamic constitution, using the *asbāb al-nuzūl* verse rethinking method, maximizing the *uṣūl al-fiqh* methodology and *fiqh* rules, as well as considering the relevance of the law itself, so that it must pay attention to various interests

¹ Annelies Moors, "Debating Islamic Family Law: Legal Texts and Social Practices," in *A Social History of Women and Gender in the Modern Middle East* (Routledge, 2018), 141–75, <https://doi.org/10.4324/9780429502606-5>; Issa Khan et al., "The Right of Women in Property Sharing in Bangladesh: Can the Islamic Inheritance System Eliminate Discrimination?," *SpringerPlus* 5, no. 1 (2016): 1695, <https://doi.org/10.1186/s40064-016-3347-2>.

² Hamid R Kusha, "Minority Status of Women in Islam: A Debate between Traditional and Modern Islam," *Institute of Muslim Minority Affairs Journal* 11, no. 1 (1990): 58–72, <https://doi.org/10.1080/02666959008716149>.

³ Imām Abū al-Fath al-Shahrastānī, *al-Milāl wa al-Nihāl* (Beirut: Dār al-Kutub al-'Ilmiyyah, 1992), 20.

such as accommodating the rights of women who are often treated unequally and ensuring the existence of laws that are appropriate to be implemented in society without injuring certain groups. Whether we admit it or not, time has shifted and changed people and their way of life. One of the laws affected is inheritance law, which relates to the female gender. So many figures, contemporary ulema, both women and men, are competing as if they are fighting for inheritance law in the name of human rights. One of them learned from Hazairin, who was the originator of the idea of inheritance. Hazairin's thoughts about inheritance and kinship are based on the theory of reception,⁴ so indirectly he wants to prove that customs do not always conflict with the Shari'a but instead support each other, and this statement is also due to his view that the Qur'an does not explain clearly the desired family form.

If we look further, the results of Hazairin's thoughts were produced by ignoring the rules of *uṣūliyyah*; this may be due to his wishes to prove that anthropology can support the statements in the Qur'an. Finally, the reinterpretation of the bilateral inheritance system is a form of dissatisfaction with accepting the classical Sunni inheritance system.⁵ The Sunni doctrine that Muslims in Indonesia have held has a patrilineal pattern, even though what the Qur'an wants is a bilateral inheritance system. The interpretation of inheritance law, which has a patrilineal pattern among Sunni is actually an influence of Arab culture, which has a patrilineal pattern. So, it needs to be changed to suit Indonesian culture by using a bilateral system that better reflects justice.⁶ Support for Hazairin's opinion has been expressed in various scientific studies. The objection to this theory seems more due to their lack of courage to correct the interpretation of the Sunni madhhab, which is more inclined towards the patrilineal system and has already been made sacred. For this reason, Hazairin's thoughts can be accepted among conservative Sunni circles when he can understand that the Sunni inheritance system is a result of intellectual reasoning, as with Hazairin.⁷

⁴ Hazairin, *Hukum Kekeluargaan Nasional*, 3rd ed. (Jakarta: Tintamas, 1982), 5.

⁵ Hazairin, *Hukum Kewarisan Bilateral menurut al-Qur'an dan Hadits* (Jakarta: Tintamas, 1982), 3.

⁶ Abdul Ghofur Anshori, *Hukum Kewarisan Islam di Indonesia: Eksistensi dan Adaptabilitas* (Yogyakarta: Ekonisia, 2002), 193.

⁷ A Sukris Sarmadi, *Transendensi Keadilan Hukum Waris Islam Transformatif* (Jakarta: RajaGrafindo Persada, 1997), 278.

The inheritance distribution formula for women has undergone a legal transformation.⁸ From the dark history of the Jahiliyah era where women were seen as inferior and worthless, so they did not have the right to receive a share equal to men, to the emergence of a distribution formula that could be said to be more progressive.⁹ Women's share of inheritance is equal to or sometimes can exceed men's share under certain conditions. The initial formula was 1:2 (women got half of the men's share), then it became the same share. Sometimes it was the opposite, becoming 2:1 (men got half of the women's share) with legal reasons that can be justified through legal exploration methods or strengthened by culture and based on egalitarian principles. As proof of achieving gender equality, it is marked by the absence of discrimination for both women and men. It ensures that men and women have equal access to development, broad participation, opportunities, control, and benefits.¹⁰

It should be noted that every civilization creates laws according to its basic views of being, nature, and humans. Whoever interprets a religious text or understands the provisions of religious law separately from that religion's comprehensive view of God, nature, and humans, men and women, will certainly fall into misunderstandings of judgment, including opinions regarding inheritance.¹¹ This discussion is not over yet; there is still a need for ongoing discussion or research regarding the development of inheritance law formulas for women in their families, with various complex societal dynamics. The extent to which the existence of legal offers presented in Indonesian society has increasingly changed since the 19th century, it is even impossible to return to the era of the Arabs, where these laws were formed. So, the historicity of the emergence of the 1:2 inheritance law formula will be used as a reference for case studies with a historical approach.

The main focus of this research is to question two things: how do women map inheritance law to the social construct they face, and how do women

⁸ Syabbul Bachri, "The Differences of Men's and Women's Shares in Islamic Inheritance Law Defense to Criticism and Blasphemy," *Nurani: Jurnal Kajian Syari'ah dan Masyarakat* 22, no. 1 (2022): 17-30, <https://doi.org/10.19109/nurani.v22i1.11251>.

⁹ Lorinza Hartomo Razy, "Islamic Inheritance Law in the Modern Era: Contemporary Aspects and Applications," *An Nur: Jurnal Studi Islam* 15, no. 2 (2023): 287-99, <https://doi.org/10.37252/annur.v15i2.568>.

¹⁰ Zulkifli Ismail et al., "Kesetaraan Gender Ditinjau dari Sudut Pandang Normatif dan Sosiologis," *Sasi* 26, no. 2 (2020): 154, <https://doi.org/10.47268/sasi.v26i2.224>.

¹¹ M. Quraish Shihab, *Islam yang Disalahpahami: Menepis Prasangka, Mengikis Kekeliruan* (Tangerang: Lentera Hati Group, 2018), 152.

create space for the creation of inheritance law in the dynamics of social transformation. There is previous research that is relatable, women do not always inherit less than men because, in certain conditions, the women could get the same share as men, such as father and mother if there are children, both get 1/6 of the deceased's assets.¹² On the other hand, women could also get a larger share than men. Another similar research¹³ concludes that theoretically, the study of Islamic inheritance law can be seen from a different perspective, namely on the legal object relating to the distribution of assets. Objects with a more civil law dimension are closer to the scope of the study of transactions *fiqh* and relate to interpersonal law. By considering a framework like this, the study of Islamic inheritance law opens up space for *ijtihad* and legal modifications.

Seeing that women are faced with various legal offers and changing legal formulas, it is necessary to create a mapping regarding the progressiveness of inheritance law formulas for women in the social context. This research aims to map equality for women: how legal culture works in each society (especially related to inheritance law formulas), causing women to form their own legal culture and sub-culture. The legal culture agreed upon by society opens up space for legal creation. It develops methods for distributing formulas in accordance with benefits and considerations of justice from a feminist perspective. So from here, the shift in the legal position of inheritance is increasingly mapped and a kind of de-sacralization of the legal constitution that has long been constructed can be seen. Finally, women have a standard measure when faced with various legal offers and changing legal formulas for inheritance distribution. The progressiveness of inheritance law opens up opportunities for legal dualism and protects women when fighting for equality. Women are increasingly aware that they have a great opportunity to be equal to men, and women are even more courageous in disputing before the courts to obtain their rights. This research uses qualitative methods and legal reconstruction using the *asbāb al-nuzūl* verse rethinking method, maximizing the *uṣūl al-fiqh* methodology and *fiqh* rules, as well as considering the relevance

¹² Ainul Millah, "Wanita tidak selalu Mendapatkan Warisan Lebih Sedikit dari Laki-Laki." [Master Thesis] (Universitas Muhammadiyah Surakarta, 2016), 7.

¹³ Walim Walim, "Prinsip, Asas dan Kaidah Hukum Waris Islam Adil Gender," *Jurnal Hukum Mimbar Justitia* 3, no. 1 (2017): 35–54, <https://doi.org/10.35194/jhmj.v3i1.9>.

of the law itself, so that it must pay attention to various interests such as accommodating women's rights which are often treated unequally and ensuring their existence. Appropriate laws that can then be implemented in society without injuring certain groups.

B. Method

In this study, descriptive qualitative analysis was employed. If the primary objective of this study is to determine the nature of the particular events under investigation, a qualitative descriptive study design was selected, where this research describes the constitution of inheritance law, both the inheritance distribution formula constructed by Islamic law and positive law to the formula established by custom. The research approach used is a case study approach by providing an overview of phenomena in the field that represent the conditions of women in social interaction along with the changes that arise along with the emergence of the dynamics of social transformation, which relates to the issue of inheritance distribution. Collecting research data through documentation, the author observes data information from the sources being researched, such as social facts, whether conveyed by direct actors or the media.¹⁴ Among the series of data validity testing activities carried out were discussions with colleagues. This technique is carried out by presenting interim or final results with colleagues. Therefore, discussions bring together colleagues who have the same general knowledge about qualitative research. This is done to continue to obtain the following results: a) Provide insight and critical views b) Test working hypotheses c) Help develop next steps d) As a comparison.¹⁵

C. Results and Discussion

The results of the data description test explain that there are typologies of facts in the division of inheritance law between men and women: a) societies which grow from a conservative culture tend to respond to the division of inheritance in a patriarchal manner.¹⁶ It is influenced by narratives constructed

¹⁴ P. Ratu Ile Tokan, *Manajemen Penelitian Guru* (Jakarta: Gramedia Widiasarana Indonesia, 2016), 75.

¹⁵ Sugiyono, *Metode Pendekatan Kualitatif* (Bandung: Alfabeta, 2008), 120.

¹⁶ Muhammad Ali al-Sabouni, *Hukum Kewarisan menurut al-Qur'an dan Sunnah*, trans Hamdan Rasyid and Alwi Abubakar Assegaf (Jakarta: Dar al-Kutub al-Islamiah, 2005), 18.

by religious figures and elders in a society, even within certain families. The legal consequence is that women are returned to the interests of one particular gender, namely men. In quite ironic circumstances, women's rights are being sidelined by the existence of certain gender interests, which are strengthened by postulates which are considered by *qat'i*, to be rigid and cannot be changed forever. Most phenomena like this occur in underdeveloped communities, where the community's resources are minimally literate, so it is easy to understand. b) The distribution of inheritance in modern post-conservative societies tends to have a moderate understanding, so it has implications for the realization of equal legal rules between men and women. The inheritance law formula under certain conditions (depending on internal family considerations) can be in two versions. First, women receive exactly the same share of inheritance as men because they face all forms of family dynamics equally without any exceptions to their obligations, rights, and authority as family members. Second, men and women were initially seen as creatures with different roles in the family, which had an impact on the inheritance distribution formula. However, due to the awareness of individuals, families and communities that are influenced by various kinds of social transformations, a framework of thinking is formed that prioritizes women's rights. Usually the inheritance distribution pattern uses a humanist approach, a description of social phenomena that becomes a public reference to measure the level of legal benefit without harming certain genders. This principle of equality is generally present in intellectually well-established societies that have an Islamic and non-patriarchal understanding of religion and are fully aware of upholding the values of uniformity between humans. This community cannot be generalized to exist in urban areas or only in Islamic boarding schools that understand moderate Islam because its nature is relatively measurable depending on the ability of the community or individual to resolve the distribution of inheritance and if there are disputes or conflicts within it. c) Distribution of inheritance based on exploiting certain gender rights, regardless of individual or community understanding of the principle of equality in inheritance law. Here, there is legal domination of the superior gender to gain more benefits. Sometimes, cases like this can move to the courtroom to maintain legal arguments to achieve the goal of winning inheritance rights. In the courtroom, women's position is often silenced by religious texts and inheritance law articles. However, there is also an opportunity for women's rights to be defended and fought for with all the arguments before the court.

For example, the Medan Religious Court has resolved inheritance cases in decision Number 92/Pdt.G/2009/PA-Mdn. In this case, the plaintiffs are the three sons and two daughters of the heir and three granddaughters and one grandson against the defendant, namely the two daughters and one son of the heir. The content of the decision is that boys and girls get equal shares. It was based on a request from the daughter as a defendant because as long as her parents were sick, she was the one who cared for and met her parents' needs, while the plaintiff did not care about the fate of her parents. There are three legal considerations of the judge in PA decision Number 92/Pdt.G/2009/PA-Mdn. First, according to the *ijtihad* of the panel of judges in this case, the distribution of inheritance, both in the QS. al-Nisā' verse 11 and in Article 176 of the Compilation of Islamic Law, is not a fixed price for a provision that cannot be changed at all, especially when the problem is related to The sense of justice itself is one of the '*illats* of law (a cause that can result in legal changes). The next legal consideration is regarding the defendant or daughter caring for and fulfilling all the interests of the heir during his lifetime and making payments for medical treatment when the heir is sick. For this reason, the panel of judges interpreted that the heir's service or service to the heir was included in the heir's service debt, which had to be paid. The final legal consideration is that men are burdened with bigger life problems such as earning a living and having full responsibility for the family, which women cannot carry out. Thus, the opposite understanding of this opinion is that if women are charged with bigger life problems, in this case, they can earn their living and can also meet the needs of their family, then women can also get a share that is greater or equal to the share that men get. This opinion is quoted from the book *al-Tashri' wa Falsafatuh* written by Shaikh Ali Ahmad al-Jurjawi. The other two decisions are Makassar PA decision No.338/Pdt.G/1998/PA.Upg, Makassar PA decision No.230/Pdt.G/2000/PA.Mks.¹⁷

Inheritance law is categorized as transactions and is not *mahḍah* worship or worship whose terms and conditions are determined in Islamic law. So that the law in practice when certain cases arise can change to uphold the principles of justice. So, what is put forward is not the principle of certainty but the principle of justice,¹⁸ as one of the verses in QS. al-Mā'idah verse 8, Allah says

¹⁷ M. Agus Yozami, "Porsi Waris Laki-Laki dan Perempuan Sama Rata, Mungkinkah?," *Hukum Online*, May 14, 2021, <https://www.hukumonline.com/berita/a/porsi-waris-laki-laki-dan-perempuan-sama-rata--mungkinkah-lt609b77dd45b5d>.

¹⁸ Fadlih Rifenta, "Konsep Adil dalam Hukum Waris Islam," *Ijtihad: Jurnal Hukum dan Ekonomi Islam* 13, no. 1 (2019): 55, <https://doi.org/10.21111/ijtihad.v13i1.3231>.

that justice is closer to piety. “The legal basis is in the Qur’an, to apply justice because justice is closer to piety.” In relation to the context of inheritance distribution, the division of property between sons and daughters equally cannot be equal under normal conditions. Under normal circumstances, the law of inheritance is divided according to what Allah has stipulated in QS. al-Nisā’.¹⁹ So don’t generalize the decision (women get the same share as men) because there are cases where daughters sacrifice a lot for parents who have to have sons; the cases are divided according to Islamic law. The application of this law is based on the theory of justice as fairness (a theory of justice that relies on fairness). The mapping of the phenomena above can be seen in Table 1.

Table 1
Various Inheritance Formulas

Conservative	Post Conservative	Modern Interests
Rigid	Moderate understanding	Dominant understanding
Don’t understand	Discussion	Exploitative
Patent formula	Flexibility	Dispute
1:2 (male superior)	1:2/2:1	1:2/2:1/1:0 (subjective)

Inheritance Law Formula for Women in Islamic Civilization

The substance of the law relating to inheritance for women is very strong in the influence of the formation of law during the development of Islamic science, along with the development of *uṣūl al-fiqh* and *fiqh* rules. As in the books of *tafsīr*, *hadīth*, *uṣūl al-fiqh* and *fiqh* rules from around the 3rd century Hijriyah, they were recorded in complete books with their material.²⁰ The Qur’an and hadith as sources of Islamic law, are supported by *uṣūl al-fiqh* as a methodology in deriving law (*istinbāṭ al-aḥkām*), which uses a deductive mindset that ultimately produces *fiqh* and its various materials. From this large amount of *fiqh* material, the similarities are examined using an inductive

¹⁹ Isniyatin Faizah, Febiyanti Utami Parera, and Silvana Kamelya, “Bagian Ahli Waris Laki-laki dan Perempuan dalam Kajian Hukum Islam,” *The Indonesian Journal of Islamic Law and Civil Law* 2, no. 2 (2021): 152–69, <https://doi.org/10.51675/jaksya.v2i2.166>.

²⁰ Ahmad Djazuli, *Ilmu Fiqh: Penggalan, Perkembangan, dan Penerapan Hukum Islam* (Jakarta: Prenada Media, 2021), 17.

mindset, then grouped, and each group is a collection of similar problems, then concluded into *fiqh* rules. Next, these rules are criticized again using many verses and many *hadīth*, especially to assess their suitability with the substance of the verses of the Qur'an and the *hadīth* of the Prophet. If they are deemed appropriate, they will truly become established in the rules of jurisprudence. After becoming accurate *fiqh* rules, *fiqh* scholars use these rules to answer the challenges of societal development in the social field, economy, political, and culture. From there, new jurisprudence emerged, and it is not surprising that the ulema gave fatwas, especially in new practical matters. In fact, according to the history of the Ottoman Caliphate in *al-Aḥkām al-'Adliyyah* Magazine, 99 rules were used in making the law regarding transactions contracts with 1851 articles.²¹

With the previous description of the *ijtihad* process, it is possible to change a law under certain conditions. Ibn Qayyim al-Jauziyah states that fatwas change and differ with changes in times, places, circumstances, intentions, and customs.²² As for the context of jurisprudence, which contains civil law or family law, including the issue of inheritance distribution, does not escape the reflection of the golden age of Islam, namely the period of the early Abbasid dynasty (*great Abbasid*), marked by the progress of Islamic civilization, especially in the field of science. From this, a figure named Imām Shafi'i was born, whose contribution of thought now becomes a reference for Indonesian society in general and whose influence is extraordinary in Islamic jurisprudence.²³ Inheritance occupies a very high place in Islamic jurisprudence or *fiqh*, which is legal experts call this "obligation" or "inheritance". Its centrality in Islamic law is due to the relationship between inheritance and one's "obligations" in the proper terminology the meaning of the word. Therefore, carrying out the inheritance properly means committing to God's order.²⁴

Suspicion of a monopoly of intellectual power could have occurred at a time when women were not the creators of texts to describe their position.

²¹ Ahmad Djazuli, *Kaidah-Kaidah Fikih: Kaidah-Kaidah Hukum Islam dalam Masalah-masalah yang Praktis* (Jakarta: Kencana, 2006), 13–14.

²² Muḥammad bin Abū Bakr bin al-Qayyim al-Jauziyyah, *I'lām al-Muwaqqi'īn 'an Rabb al-'Ālamīn* (Beirut: Dār al-Jail, n.d.), 3.

²³ Ahmad Shiddiq Rokib, "Imam Syafi'i dalam Yurispundensi Islam," *NU Online*, May 17, 2010, <https://nu.or.id/pustaka/imam-syafiamp8217i-dalam-yurispundensi-islam-wCE9u>.

²⁴ Muḥannad al-Azzeh, *Women's Right to Inheritance in Jordanian Law: Requirements and Prospects of Change* (al-Dhaayen, Qatar: Arab Center for Research & Policy Studies, 2022).

Texts that are correlated with women were created by men who were naturally influenced by patriarchal culture,²⁵ so the depiction of women regarding their roles in life and their relationships with men is very likely to have a patriarchal tendency in their writing, because almost all of the text creators at that time were male. So what is conveyed by the Qur'an, including the concept of equality for men and women, experiences stagnation and even discontinuity because the legislative process is dominated by men.

Several narrations narrate about the reasons for the revelation of the inheritance verses, including those narrated by Imām Bukhari and Imām Muslim. One day Sa'ad bin al-Rabi' 's wife came to Muhammad, the Messenger of Allah. She bringing his two daughters. She said, "O Messenger of Allah, these two daughters are the children of Sa'ad bin al-Rabi' who died as a martyr during the Battle of Uhud. But the uncle of Sa'ad's two daughters has taken all of Sa'ad's inheritance, without leaving anything behind. even for both of them." Then the Messenger said, "May Allah quickly decide this matter." So the verse about inheritance came down, namely Surah al-Nisā' verse 11.

Rasulullah then sent someone to the uncle of Sa'ad's two daughters and ordered him to give two thirds of Sa'ad's inheritance to the two daughters. Meanwhile, their mother (Sa'ad's wife) got one-eighth, and the rest went to Sa'ad's siblings. In another history, issued by Imām al-Ṭabarī, it is said that 'Abdurrahmān bin Thābit died and left behind a wife and five sisters. However, all of 'Abdurrahmān bin Thābit's inheritance was controlled and seized by his male relatives. Umm Kahhah ('Abdurrahmān's wife) then complained about this problem to the Prophet, then the inheritance verse came down as an answer to the problem. There are still a series of authentic narrations that tell about the reasons for the revelation of this inheritance verse. None of these narrations deviate from the essence of the problem, meaning that the revelation of the inheritance verse as an explanation and decree of Allah was because women did not receive a share of inheritance at that time.²⁶

Indeed, before Islam was revealed, Arab societies had inherited each other using a system of descent and a kinship system.²⁷ The descendants who

²⁵ Leila Ahmed, *Wanita dan Gender dalam Islam, Akar-akar Historis Perdebatan Modern*, ed. M. S. Nasrullah (Jakarta: Penerbit Lentera, 2000), 102.

²⁶ M Ali as-Shobuni, *Pembagian Warisan menurut Islam*, trans. A. M. Basamalah (Jakarta: Gema Insani Press, 1995), 95.

²⁷ David S Powers, "The Islamic Inheritance System: A Socio-Historical Approach," *Arab Law Quarterly* 8, no. 1 (1993): 13–29, <https://doi.org/10.2307/3381490>.

inherited the inheritance were only sons who could fight. Their hereditary system did not pay attention to fairness between female heirs and male heirs, between the minor and the adult.²⁸ They only shared inheritance with adult male heirs, while those still children did not receive inheritance because they could not take up arms to defend their families and tribes. Then, with the revelation of this verse, Allah removed injustice towards the weak (men and women) and ordered them to be treated with love, compassion, and justice. They (men and women) were given inheritance from two lineages, the father's and mother's lines. There is no difference between children and adults, all of them had the same share rights, whether few or many children and women were given rights according to their respective provisions.²⁹

However, this does not mean that the historicity revealed mentioned is absolutely a benchmark, and legal formulations that have long been codified simply stop. Because, in essence, new challenges and problems that must be found for solutions are also increasing, mainly due to the widespread of the Muslim territory. Before following the legal rules agreed upon by previous scholars or vice versa, it is important to review the following two things:

Islamic Law in the Orbiting Period

From the perspective of Islamic law, inheritance is one area with a complex and comprehensive set of rules, many of which are explicitly stated in the Qur'an. Islamic inheritance law has several notable features. Perhaps the most well-known is that most female heirs, principally wives, and daughters, inherit one-half of the share of the corresponding male relation. However, the laws are complex. There are circumstances where male and female heirs of the same degree receive equal share. For example, the mother and father of a deceased person who has left children behind inherit equal shares. Women also form the majority of the first set of heirs who receive a precise fractional share before lesser-degree heirs, although "the residue, usually the bulk of the inheritance, reverts to the male agnates." Indeed, Islamic inheritance law can

²⁸ Zainal Muttaqin, "Hukum Penyelenggaraan Pelaksanaan Pembagian Harta Warisan (Analisis Ushul Fiqh terhadap Hadis Alhiqul Fara'idh bi Ahliha)," *Syaksia: Jurnal Hukum Perdata Islam* 22, no. 2 (2021): 183–96, <https://doi.org/10.37035/syakhsia.v22i2.5515>.

²⁹ Muhammad Juni Beddu and Muhammad Iqbal Azhari, "The Nature and History of Inheritance from the Islamic Pre Era to the Islamic Era," *Addayyan* 15, no. 2 (2020), <https://www.jurnalstaiibnusina.ac.id/index.php/AD/article/view/50>.

work to the detriment of all relatives on the maternal side, both male and female. Another notable feature of Islamic inheritance law is that it limits—to a third of the estate—the individual's ability to bequeath property according to their wishes. However, a larger portion can be left if there are no heirs. Legally designated heirs cannot also be beneficiaries of a legacy. These features reflect the partible nature of Islamic inheritance law. Partible systems tend to redistribute wealth to each generation and hinder its accumulation.³⁰

The social conditions of the people who surrounded the life where Islamic law was formed, especially the condition of women at that time, were quite worrying. It became commonplace for women to be used as sex slaves for upper-class men, always considered stupid, and considered as merchandise that could be bought and sold. It is the condition of women in general, except for women who come from elite blood.³¹

At that time, on the one hand, the religious aspect was a priority. Still, on the other hand, Islamic thinkers were confined to an environment that exploited women, not only physically but also materially. Sometimes, the texts of the Qur'an, as a basis for upholding human values, have experienced weakness in the eyes of legislators only for material interests, and the issue of inheritance for women is one example. It was natural for women who had very weak power at that time to be given half of men's share. Never mind protests; the promulgation of the part that was legislated was also agreed upon by a majority vote. So, women are always considered ungrateful if they later challenge the inheritance rights assigned to them. Even in primitive societies, women's parts could be pawned or bought and sold because there was still a stereotype that women were worth buying and selling, especially just the possessions they owned. It seems that if criticisms about gender injustice are then aimed at accusing the Qur'an of not being *ṣariḥ li-kulli zamān wa makān*, it will also lack precision, because what actually happens is an inaccuracy in interpreting its verses while still paying attention to developments in the social context. So that legal decisions do not accommodate women's rights. Sadly, some interested parties play with the Qur'an's texts according to their wishes for answers to the problems they face, so this harms the law itself.

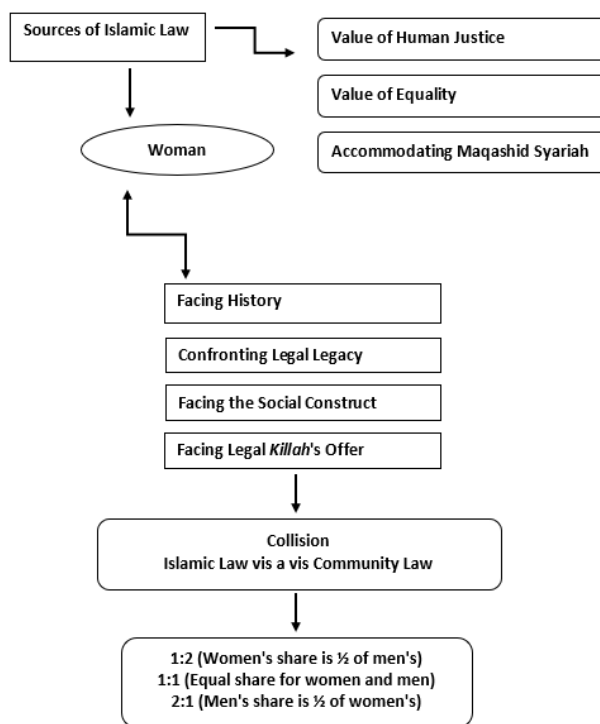
³⁰ Rachel M Schott, "Judicial Autonomy and Heritance," in *Recasting Islamic Law* (New York: Cornell University Press, 2021), 182, <https://doi.org/10.1353/book.83170>.

³¹ Zaenul Mahmudii, *Sosiologi Fikih Perempuan* (Malang: UIN-Malang Press, 2009), 163.

Women and the Legislation

In the past, some women were not in circles of power, let alone involved in formulating laws. Most of them are only depicted as having a sexual influence on the ruler's personality.³² In that condition, even though Islamic law began to be developed, it still left polemics in society, especially for marginalized women. The term of 2:1 on the verse *li al-dhakari misthlu hāzzi al-unthayain* (QS. al-Nisā': 11) seems to be final and occupies the highest throne as an argument for inheritance distribution.

Figure 1
The Dynamics of Inheritance Law Construction



³² Sayyid Muhammad Husain Fadhillah, *Dunia Wanita Dalam Islam* (Jakarta: Lentera, 2000), xi.

The inheritance law formula that Muslims believe in really closes down women's voices from fighting for the meaning of equality. The impression of Islamic law and its legal sources is so static that when it is used as a reference for the formation of positive law in Indonesia, it gives a similar impression, namely stagnant. Suppose there is a case that requires a departure from the formula of Islamic inheritance law. In that case, women as objects of inheritance will be accused with justifications, then cornered their position with stereotypes that women are weak, stupid, unable to move, trouble the family, and so on. Even though religion firmly accommodates women's protection, the state also guarantees social justice for all its people.

Supposedly, women who are faced with a legacy of patriarchal laws and social constructs need to return their conditions to religious principles to strengthen justice and equality, as can be seen in Figure 1.

Progressiveness of the Inheritance Law Formula for Women Based on Social Change

The passing of the era of women as the number two creatures in the family still leaves little room for neglect of their rights in obtaining inheritance. It cannot be denied that the dark history of Muslims, when women were often considered unimportant and unable to fight is clearly recorded in the Islamic kaleidoscope. If they don't want to repeat this dark history, especially women, who are the elite and have the majority of votes, are increasingly realizing that they are moving to socialize. It also somewhat closes the historical wounds of women's pain during that time. However, the focus of this article is not only looking at the historicity of eternal law with the arrogance of its thinkers who, at that time, ignored the rights of marginalized people. But how do we appreciate women's liberation from injustice? Gender discrimination in its various forms generally occurs among women due to several factors,³³ including a) Patriarchal culture, as a system characterized by men (fathers) where men have the power to determine, regulate, and make decisions; b) Religious texts which interpreted are gender biased, caused by partial understanding. So, they do not reflect religious messages that respect women,

³³ Linda Nicholson, "Gender," in *A Companion to Feminist Philosophy*, ed. Iris Marion Young and Alison M. Jaggar (Wiley, 2017), 291, <https://doi.org/10.1002/9781405164498.ch29>.

or inappropriate methods of interpreting the text, resulting in discriminatory religious views; c) Government policies through laws and government management, lack *responsive* gender.

The concern about inheritance law for women is motivated by many things, to the extent that the transformation of the law from time to time changes, gradually until it finds a point of alignment. We will start by examining the law with methodologies to analyze social constructs and all kinds of offers related to human rights. It could be said that there is progress regarding inheritance law in terms of formulating the share for men and women. However, rather than revealing more numbers for women, it means that their rights have been fulfilled. We would like to accommodate that women and religion have a role in paying attention to gender-friendly division.

The presence of the Qur'an in society at that time by presenting the 1:2 inheritance law formula was a quick response to the context adjustments that occurred. Women were given a mere small role in the life matters involving material things. The community indirectly agreed to this formula without thinking that it could be challenged. The point of the problem is that legal culture, especially those related to inheritance, causes women to form their own legal culture over time. As women grow up in modern times and in the development of everything, an analysis of the inheritance law formula for women is identified, which reflects resistance. The phenomenon of the 1:2 division also shows the sacralization of Arab society's customs into non-Arab society, especially in the plural Indonesian context.

Moreover, Indonesian society is faced with national law, which obeys 3 laws at once, such as positive law or the Civil Code (KUHPer), specifically Islamic law compilation for Muslims, customary law, and Islamic law. The demand to implement these three legal references with the same offers creates different legal killings in the public's view, giving rise to criticisms with different rationalities. People will generally claim that Islamic law no longer applies in this distant era, that the socio-cultural context has changed a lot, and that the criticism is still not over. Similar criticism was also leveled against the KUHPer, which has more or less the same substance because all of its content formulations lead to patriarchal Islamic sources and are strengthened by the opinions of conservative ulema. Likewise, customary law, which lags in its way of thinking, also adds to the perspective of legal culture, which weakens women. Forming separate legal provisions such as customary law is strictly adhered to

by the community without providing space for women to be treated fairly and equally. However, under certain conditions, this customary law sometimes opens up new perspectives for people who are quite modern and willing to think a little more critically about the 1:2 formula in inheritance issues.

From here, the legal formula offers become varied, starting from the proportional concept of 1:1 to the most extreme by reversing the formula 2:1 (men get some of the women). Considerations about family conditions that cannot be generalized, for example, when women are always positioned as inferior in their families lifetime, do not have access to education like their brothers, then initiatives to save women's lives are given a greater share. This means that the concept of Islamic law is purely irrelevant when applied in specific cases. This social construct could cause the inheritance law formula to experience legal stagnation in the future, even those brave enough to say that inheritance law is one of the constitutions prone to being lost.

The progressiveness of inheritance law opens up opportunities for legal dualism and provides protection for women when fighting for equality. Women are increasingly aware that they have a great opportunity to be on an equal footing with men, and women are even more courageous in disputing before the courts to obtain their rights. This indicates that women have begun to leave the restrictive traditional and cultural systems. As according to the social construction theory put forward by Berger and Luckmann, inheritance issues can be analyzed starting from the phenomenological analysis method, namely a descriptive method which is empirically based.³⁴

Through subjective experience, different objects present themselves in consciousness as elements that form different environments. For example, in the case of the distribution of inheritance in family A, it is different from the distribution of inheritance in family B. The different results then give rise to different and varied formulas, so social conditions construct legal reasoning. That society is a human product, and humans are a product of their society. Both describe the inherent dialectical nature of societal phenomena. Berger combines various perspectives from various schools of sociological theory that consider other aspects into a theoretical construction that can appear to answer

³⁴ Peter L Berger and Thomas Luckmann, *Tafsir Sosial atas Kenyataan: Risalah tentang Sosiologi Pengetahuan*, trans. Frans M. Parera (Jakarta: LP3ES, 1990), 24.

pluralistic, dynamic, and complex problems. So, a fundamental dialectical process in society consists of three moments: externalization, objectivation and internalization. These three dialectical processes are strengthened by legitimacy, which has a cognitive and normative dimension called social reality. Inheritance law is considered progress by looking at social reality, through stages.

Externalization Process

Externalization occurs when interactions between humans and their environment are open. Externalization is influenced by *stock of knowledge* (knowledge reserves) that human has. The process of becoming a human from birth to adulthood occurs not only in a reciprocal relationship with the environment, but also with specific culture and society, through the intermediary of influential people in one's life. In the context of the formation of gender concepts for men and women, it is influenced by a) Self-concept and self-ideals, how women understand themselves then influences their society; b) Culture that has taken root in the form of human-produced tools, institutions, language, symbols, values and norms that are manifested in everyday behavior; c) Figures who influence the formation of their personality in daily life as social activities.³⁵

Both men and women practice gender inequality through unconscious habituation in life and have formed a social reality. However, this social construction will change in line with social changes. So that gender status, roles and relations can be changed according to space and time.

Objectivation

In the process of objectivation, the institution of the family as a social reality binds individuals which is maintained through the identity and roles they carry out, and is equipped with expressions of meaning that are strengthened by legitimacy. Legitimacy is the basis for someone being motivated to believe and carry out subjective actions in an institutional order that is given a certain meaning. Socially, objectification as knowledge is the

³⁵ Mufidah, *Bingkai Sosial Gender* (Malang: UIN Maliki Press, 2010), 74–76.

truth that is general and applicable to reality. Every radical deviation from the institutional order is a dangerous moral crime. When the concept of gender is introduced in conservative society or institutions that adhere to an objective reality that is seen as already established, their reaction to gender, especially if "gender" is seen as a foreign term, is rejected because it is considered an agent of Zionism, Westernization and is dangerous for religion. However, on the contrary, through a social process, when individuals as part of society are aware of the existence of gender inequality, which has an impact on the institutional order, then in turn gender equality will be accepted because it is a societal need that cannot be separated from the cultural world that is produced and recognized collectively.³⁶

Internalization

Gender women as a social construction appear in internalization, which is the re-absorption of objective reality by humans and transformation from the structures of the objective world to the structures of subjective consciousness. The internalization process is one momentum of a larger dialectical process and also includes externalization and objectivation moments. The individual is not created as a passive object, but is formed over a long period of dialogue as a person with an identity that can be known subjectively and objectively. So he must dialogue to maintain himself as a person by continuously responding to the world that forms him and continuing to maintain the world as reality. It is through the process that individual humans, men and women together with other individuals build society from externalization which is then objectified in the form of institutions as objective reality, where they become part of these institutions and help develop themselves.

Through their identities and roles as men and women in their activities, they understand what it means to "be a man" and "be a woman", projecting their future with their meaning as men or women. The expression of meaning is, men and women share roles for their life's stability.³⁷

³⁶ Mufidah, 81.

³⁷ Berger and Luckmann, *Tafsir Sosial atas Kenyataan: Risalah tentang Sosiologi Pengetahuan*, 62.

However, when there is a dialectical process between individuals and their society which continuously experiences social changes that disrupt their roles as symbols and self-identities of men or women, changes also occur. Men and women in this context will understand themselves differently from before. Thus, society will form two faces of expression of meaning,³⁸ namely: a) Groups that reject the new formula with the concept of gender as a social construction tend to be gender biased, which reflects conservative views so that the status, roles, and patterns of realization of men and women do not change or do not need to be changed because it can disrupt the harmony of life; b) Groups that accept the new formula with the concept of gender as a social construction that can change and be changed, characterized by being gender-sensitive, depict a progressive view so that the expression of meaning that emerges is egalitarian as a basic need in building harmony in life. Thus, gender is understood as a social construction that can be changed according to needs, abilities, and commitments and adapts to space and time.

D. Conclusion

The flexibility of inheritance law does not indicate the inconsistency of Islamic law. However, the provisions of inheritance law that are transactions in nature must be on the path of justice, not just returning to legal certainty. Women or those who support gender equality towards women have space to innovate Islamic inheritance law formulas in certain conditions and casuistries. It is important to map equal rights between men and women based on identification from internal areas to social areas that influence society. In the future, it will break the assumption that the Islamic inheritance law formula has been considered rigid without considering various aspects that disturb certain genders. Gradually, conservatism and women's ability to map out interests in equal inheritance rights will disappear. Even though these changes are not fast and are relatively slow, efforts to protect social justice should be intensified. Whatever the community's agreement with the debate in the midst of it, it does not make it difficult to present a new formula for a more *maṣlaḥah* legal relevance.[s]

³⁸ Mufidah, *Bingkai Sosial Gender*: 81.

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