

Inheritance Distribution in Islamic Family Law: A Juridical Study of the Principle of Gender Justice

Basri[✉]

University of Borneo Tarakan, North Kalimantan, Indonesia

e-mail: basriubt@gmail.com

INFO ARTIKEL

Accepted : 19 June 2025

Revised : 26 June 2025

Approved : 28 June 2025

Published : 30 June 2025

Keywords:

Inheritance Distribution; Islamic Inheritance Law; Gender Justice



Creative Commons Attribution-

ShareAlike 4.0 International License:

<https://creativecommons.org/licenses/by-sa/4.0/>

ABSTRAK

This article explores the principles of Islamic inheritance law through a normative and conceptual approach, focusing on gender-based distribution and its alignment with the broader ideals of justice in Islamic legal thought. It analyzes classical juristic formulations, particularly the rule that assigns male heirs twice the share of females, in light of *maqāṣid al-sharī'ah* and contemporary interpretations of gender justice. The study also compares these principles with customary inheritance practices in Indonesia, which emphasize social roles, flexibility, and deliberation-based distribution. The findings reveal an ongoing tension between the rigidity of classical *fiqh* and the evolving demands of justice in pluralistic and modern contexts. By synthesizing classical doctrines with *maqāṣid*-oriented reasoning and contextual *ijtihād*, the study demonstrates the potential for a more responsive and ethically grounded inheritance framework. This research contributes to the broader discourse on Islamic legal reform by highlighting how contextual reinterpretation of inheritance norms can reflect not only legal continuity but also the living spirit of *sharī'ah* justice in addressing gendered realities.

INTRODUCTION

The division of inheritance is one of the important aspects of Islamic family law that receives serious attention in the Qur'an, especially in Surah An-Nisa verses 7, 11, and 12. These provisions establish the rights of heirs in detail, including the amount of shares that must be received by each party, both men and women, according to the closeness of the kinship relationship. (Suadi & Amran, 2015). This rule shows that inheritance law in Islam is not a cultural product, but a normative commandment derived from divine revelation. The affirmation of the detailed division of inheritance in the Qur'an is proof that justice and order in inheritance are crucial elements in the formation and continuity of the Muslim family structure.

Apart from being a private law provision that regulates relations between family members in terms of property distribution, inheritance also has a strong social dimension. The provisions on inheritance cannot be separated from the values of justice, responsibility, and respect for rights that are the basis of social life in Islam. The process of distributing inheritance reflects the principles of balance in the distribution of wealth, and is one of the mechanisms to prevent conflicts between family members that can damage social harmony. (Suwasta et al., 2024). Therefore, the implementation of inheritance law not only protects individual rights, but also strengthens the social structure and strengthens family ties in Muslim societies. Furthermore, the inheritance system in Islamic family law also reflects spiritual values relating to the moral responsibility of Muslims towards property. Inheritance is not seen simply as a material part that is passed on, but also as a mandate that must be distributed according to Sharia. This reflects the concept of the blessing of wealth and the responsibility of its owner in the life of this world and the hereafter.

One aspect that is often debated in Islamic inheritance law is the difference in shares between men and women, as stipulated in Surah An-Nisa verse 11, where sons get twice as much as daughters (Murtadlo, 2018). This provision is often considered inconsistent with the principles of gender justice, especially in a modern context that emphasizes equal rights between men and women. The criticism arises from the perspective that normatively the law must guarantee equal justice for every individual, regardless of gender. The inequality of inheritance shares is considered to reflect patriarchal bias in the structure of Islamic law. However, in the perspective of classical Islamic law, such provisions do not necessarily reflect injustice, but rather are structured based on the different social roles and financial responsibilities of men and women in traditional Islamic societies. (Fahmi, 2018). Men, for example, have the obligation to provide for the family, pay the dowry, and cover the needs of children and wife, while women are not burdened with similar financial responsibilities. This change in social roles has sparked debate among academics and practitioners of Islamic law regarding the need for reinterpretation of the texts of inheritance law in order to answer the demands of contemporary justice. On the one hand, Islamic law is believed to have basic principles that are fair and flexible in facing the dynamics of the times, such as through the concepts of *ijtihad* and *maqashid al-syari'ah*. On the other hand, the literal application of inheritance provisions is often considered to hinder efforts to realize substantive gender equality. It is important to explore a more contextual hermeneutic approach in interpreting inheritance verses, so that Islamic law remains relevant and responsive to the values of universal justice in the modern era.

The development of modern society brings with it significant social changes in family structure, gender roles and perceptions of justice. In this context, the demand for the application of laws that are more responsive to the principle of gender equality is getting stronger. People no longer interpret justice formally, but emphasize the importance of substantive justice, namely justice that considers factual conditions and the real impact on the parties involved. This has an impact on the interpretation and application of law, including Islamic inheritance law, which is now required to not only be based on normative texts, but also pay attention to justice in a dynamic social context. Consequently, there is a tension between sacred and unchanging religious norms and the evolving values of contemporary social justice. The inheritance norms in Islam that have been regulated in detail are considered by some to no longer be sufficient to answer current social complexities, especially in terms of women's increasingly significant and

independent economic participation. When women also contribute economically to the family and even become the backbone, the difference in inheritance shares based on gender is no longer considered substantively relevant. This is a big challenge for Islamic legal thinkers in formulating a legal approach that does not deny the sacred text, but remains responsive to the needs and justice of the times. Some Muslim scholars and intellectuals encourage a more progressive interpretive approach through the methods of *maqāsid al-syarī'ah* (the objectives of Islamic law), *istihsān* (legal discretion based on justice), and contextual *ijtihād* (Bakry & Awal Rifai, 2025). This approach aims to ensure that the value of justice as the main principle of sharia remains realized in every aspect of legal life, including in the distribution of inheritance.

In the Islamic scholarly tradition, differences in interpretation of inheritance verses are commonplace and reflect the intellectual richness of *fiqh* scholarship. Scholars from different schools of thought have taken different approaches; some emphasize normative justice, i.e. justice as explicitly stated in the texts of the Qur'an and Sunnah, while others have begun to develop a distributive justice approach, i.e. justice that takes into account the actual role and contribution of individuals in social and economic life. (Qomar, 2021). In this context, contemporary *fiqh* increasingly opens up space for interpretation of the distribution of inheritance that considers the role of women who are now also breadwinners, often carrying the economic burden of the family in parallel with men.

In the context of a legal state like Indonesia, which makes Islamic law one of the sources of positive law, especially in family law, there is an urgent need to conduct a critical juridical study of the inheritance distribution system. This study is important so that the implemented Islamic inheritance law does not conflict with the principles of justice in Pancasila and the 1945 Constitution, especially regarding the protection of women's rights. Gender discrimination that arises in the practice of inheritance distribution, either because of a literal understanding of the text or because of patriarchal customs, must be studied comprehensively so that national law is able to answer increasingly complex and plural social realities. Therefore, the main objective of this study is to find a harmonious meeting point between the texts of inheritance *fiqh* and the principles of gender justice that live and develop in Indonesian society today. An integrative approach that brings together religious values and modern law is very important so that inheritance law is not only normatively valid, but also substantively fair.

METHODOLOGY

The research method used in this article is normative legal research, which relies on the study of legal norms and scientific doctrines through literature studies. (Jonaedi Efendi, 2018). The focus of this research is on the division of inheritance in Islamic family law, especially in relation to the principle of gender justice and the challenges of its application in the context of Indonesian national law. This research analyzes the fundamentals of Islamic inheritance law based on the Qur'an, *hadith*, and the views of the *fiqh* schools, and evaluates its compatibility with the principles of justice guaranteed in the constitution, especially in Pancasila and the 1945 Constitution. The approaches used are legislative approach and conceptual approach by examining the provisions in the Compilation of Islamic Law (KHI), national legislation, as well as theories of justice and gender equality in Islamic law and modern law.

The data sources in this research consist of primary legal materials (Al-Qur'an, Compilation of Islamic Law, 1945 Constitution, and related regulations), secondary legal

materials (books, scientific journals, fatwas of scholars, and academic articles on inheritance law and gender), and tertiary legal materials (legal dictionaries and encyclopedias). Data collection techniques are carried out through library research with qualitative-descriptive analysis to interpret and construct legal arguments systematically. (Barus & Zulfadli, 2013). This research also examines several inheritance distribution practices in the community as a reflection of the application of legal norms in social reality, in order to produce a critical analysis and offer solutions to the problems of gender justice in Islamic inheritance law in Indonesia.

This study employs a normative juridical method, which focuses on analyzing legal norms as found in statutory regulations, Islamic legal sources (the Qur'an, Hadith, and classical fiqh), and authoritative commentaries. In addition, a conceptual approach is applied to explore ideas, principles, and doctrines related to justice and gender within Islamic inheritance law. This combination of approaches allows for a comprehensive examination of how legal norms are formulated and how they interact with evolving socio-cultural realities. By utilizing this method, the study aims not only to understand the textual structure of Islamic inheritance law particularly the rule granting male heirs twice the share of females but also to assess how these norms operate in contemporary contexts where gender equity is a central concern. The normative approach enables the exploration of the internal coherence and theological justifications of the law, while the conceptual lens facilitates critical reflection on its relevance and adaptability to modern values of equality and justice. This dual framework is particularly effective in addressing the tension between fixed textual provisions and dynamic social conditions, especially in societies that uphold both religious and constitutional commitments to justice.

RESULTS AND DISCUSSION

Provisions for the Distribution of Inheritance in Islamic Family Law from the Perspective of Fiqh and Legislation

Inheritance or al-mirāts is the transfer of ownership rights of a person who has died to his heirs based on the provisions stipulated by Allah SWT. Inheritance is not just a material distribution of property, but part of the family law system integrated in Islamic teachings. Inheritance is also understood as a means of maintaining the continuity of the welfare of the family left behind, as well as avoiding disputes or fighting over property after someone dies. Therefore, inheritance law in Islam has dimensions of worship, social, and legal that complement each other (Syaiyku, 2022).

The regulation of inheritance law in Islam is very detailed and strict, making it one of the few aspects of muamalah that is explicitly determined in the Qur'an. Such arrangements reflect Islam's serious concern for justice and order in the distribution of wealth. The Qur'ān mentions the distribution of inheritance specifically in Surah An-Nisa verses 11, 12 and 176, which stipulate the share of inheritance for children, parents, husband, wife and siblings. These provisions not only demonstrate the importance of legal clarity, but also serve to protect the rights of individuals, especially women and children, within the Islamic family structure. In addition to the Qur'an, the legal basis of inheritance is also reinforced by various traditions of the Prophet Muhammad SAW, which emphasize the importance of distributing inheritance fairly and in accordance with the provisions of the Shari'ah (Nafisyah et al., 2024). One of the traditions that is often used as a basis is the saying of the Prophet: "Verily, Allah has given to each person his right, so there should be no will for the heirs" (HR Abu Dawud and Tirmidzi). This Hadith reinforces the principle that the share of inheritance is a fixed right (qath'i right) that has

been determined by Sharia, and cannot be changed by a will or interference from other parties. This shows that the distribution of inheritance in Islam is part of a binding legal system and is not flexible, except within the limits set by Sharia. With these fundamentals, inheritance law in Islam is not only normative, but also contains moral and social values. It reflects the principles of justice, legal certainty, and protection of property rights in the Islamic family system. Inheritance law also serves as an instrument to strengthen family solidarity and maintain social stability by preventing conflicts over inherited property.

The division of inheritance in Islam is based on general principles rooted in justice (*al-'adl*) and legal certainty (*al-yaqīn*) (Ahyani et al., 2023). In inheritance fiqh, these two principles become the main basis for ensuring that the inheritance is distributed to the entitled parties proportionally, in accordance with the provisions of Sharia. Justice in this context does not mean equal distribution, but distribution in accordance with the roles, responsibilities, and kinship relations of the heirs to the testator. Meanwhile, the principle of legal certainty is upheld by determining the inheritance portion in detail in the Qur'an and closing the possibility of manipulation or uncertainty in its implementation.

The main heirs whose share of inheritance has been explicitly stipulated in the Qur'an are referred to as *ashabul furudh* (definite shareholders). They include children (male and female), parents, husband or wife, and siblings under certain circumstances. For example, a son gets two shares, while a daughter gets one share; the mother gets a third or a sixth depending on the situation, and the husband gets half or a quarter depending on whether the testator has children or not. This provision shows that the distribution of inheritance is not flexible, but follows a predetermined formula based on revelation (Febriastri Aryani Ratu, 2017).

The difference in shares between men and women in inheritance law is often highlighted, especially as boys get twice the share of girls. According to fiqh, this is not meant to demean the position of women, but because men in the traditional Islamic social structure have greater financial responsibilities, such as providing for the family, paying the dowry, and providing for the needs of the children. (Sirin, 2013). Therefore, a larger share reflects a greater burden of responsibility. However, in the contemporary social context, where women's roles and contributions in the family are also significant, this approach requires contextual reassessment in order to still reflect the principles of substantive justice. According to Muhammad Abu Zahrah, he explains that differences in inheritance shares do not mean inequality, but are part of the Islamic family financial system that ensures a balance of responsibility and social protection. (Ali, 2022). Abu Zahrah also emphasizes that all provisions of inheritance law in Islam are definite (*qat'i*) and cannot be modified without valid *shar'i* reasons, but he opens space for social interpretation through *ijtihad* aimed at maintaining the values of justice and benefit (*maslahah*) of the people. This shows that the fiqh of inheritance, although it has standardized rules, can still be reviewed in a changing context in order to maintain justice as the main objective of sharia.

Understanding the flexibility of inheritance fiqh in responding to social change needs to be based on a mastery of the basic structure and systematics of inheritance in Islam. In Islamic fiqh, the heirs are classified into several categories based on the level of closeness of their relationship with the testator and the rights they have to the inheritance. First, the *dzawil furudh* group is the heirs whose shares have been determined in the Qur'an and Hadith, such as husbands, wives, fathers, mothers, sons and daughters, and siblings under certain conditions. Second, the *'ashabah* group, which is the heirs who receive the remaining property after the *dzawil furudh* get their share, and if there is no

dzawil furudh, then the 'ashabah will get all the property. This group generally consists of male relatives who have direct nasab relationships. Third, the dzawil arham group, which is distant relatives who are not included in the previous two groups, such as grandchildren of daughters, aunts, or maternal uncles. They are only entitled to receive inheritance if there are no heirs from the previous two groups. (Cahyani & Tinuk Dwi, 2018).

As for obtaining inheritance rights, there are several conditions and causes of inheritance stipulated in Islamic law. The conditions for inheritance include: (1) the existence of a nasab relationship or family ties (both vertically such as parents and children, and horizontally such as siblings), (2) a legal marriage relationship between husband and wife, and (3) the existence of a wala' relationship (a relationship of protection between the former slave and his free master) (Walangadi & Gibran Refto, 2021). In addition, another absolute requirement is the death of the testator, both in reality and legally, as well as the certainty that the heirs are still alive at the time of the testator's death. The existence of a valid legal relationship is the absolute basis for a person to be entitled to a share of inheritance.

Fiqh also regulates the things that nullify inheritance rights, known as mawānī' al-irtث. There are three main obstacles to inheritance, namely: (1) qatl (murder), i.e. if an heir is proven to have intentionally killed the heir, then he is disinherited based on the principle that the murderer does not inherit from the person he killed; (2) apostasy, i.e. leaving Islam, which causes a person to be unable to inherit or be inherited by a Muslim; and (3) slavery, in the context of classical fiqh, because slaves do not have full legal status as owners of property. (Noviarni & Dewi., 2021). Although the latter two are no longer relevant in the modern legal context, these principles demonstrate the importance of moral integrity and religious relationships in the Islamic system of inheritance law.

In addition, in the Indonesian national legislation system, Islamic inheritance law is specifically regulated in the Compilation of Islamic Law (KHI) which was enacted through Presidential Instruction No. 1 of 1991. Book II of KHI discusses in detail the provisions of inheritance, starting from the definition, requirements, classification of heirs, inheritance shares, to dispute resolution. KHI tries to summarize the principles of inheritance fiqh from various madhhabs, especially the Syafi'i madhhab which is dominantly followed in Indonesia, by also considering national legal values and the needs of the pluralistic Indonesian society. KHI is the main guideline for religious courts in resolving inheritance cases in Indonesia.

The harmonization effort between fiqh inheritance and positive law is a challenge in a plural legal state like Indonesia. On the one hand, KHI as a representation of Islamic law is accommodated in the national legal system. On the other hand, the constitutional principles in Pancasila and the 1945 Constitution demand equal rights without discrimination, including in terms of gender. Thus, the need arises to conduct a progressive interpretation of KHI to be in line with the value of substantive justice, without eliminating the essence of Islamic teachings. This approach can be done through reinterpretation of the provisions of inheritance distribution by considering social developments and the role of women in modern life.

Furthermore, it is important to review the extent to which the provisions of classical fiqh, especially the Syafi'i school, are in harmony or different from the provisions contained in the Compilation of Islamic Law (KHI). The Compilation of Islamic Law (KHI) in Indonesia is basically compiled with reference to the Syafi'i school of fiqh as the majority school of thought, but with a more practical and adaptive approach

to the conditions of Indonesian society. (Damanik & Wahda Hilwani, 2025). Some provisions in the KHI adopt the opinion of the Syafi'i school of thought directly, such as in the division of inheritance shares for dzawil furudh and 'ashabah. However, there are also differences or simplifications from classical fiqh opinions, for example in the distribution of inheritance to adopted children and the appointment of substitute heirs (for example, grandchildren of deceased children replacing their parents), which are not found in pure Syafi'i fiqh. KHI also allows for family deliberation in the division of inheritance, as long as it does not contradict the basic principles of sharia. This difference has a practical impact on the field, where people are more flexible in resolving inheritance disputes through religious courts without being rigidly bound by the provisions of classical fiqh.

Therefore, although KHI attempts to bridge the gap between inheritance fiqh and the legal needs of Indonesian society, its implementation in the field still faces various challenges. One of the main challenges is the conflict between sacred religious norms and local values, such as patriarchal culture that marginalizes the rights of women and children in the distribution of inheritance. In some areas, women's inheritance rights are still often ignored or reduced unilaterally under the pretext of tradition or for the sake of "family unity." Another challenge is the issue of substantive justice in the modern context, where women are often the breadwinners or have significant economic responsibilities, yet still receive a smaller share of inheritance under classical provisions. In this context, the implementation of Islamic inheritance law is required to be more inclusive and sensitive to the protection of vulnerable groups in order to uphold the principle of justice as the main objective of sharia.

Application of the Principle of Gender Justice in the Division of Inheritance Based on Islamic Law

Gender justice from a legal perspective is a principle that demands fair and equal treatment of all people, regardless of gender. In the context of human rights, gender justice means the recognition of the basic rights inherent in every individual, both men and women, to enjoy legal protection, access to resources, and equal participation in public and private life (Handayani, 2016). This concept aims to remove structural, social and cultural barriers that cause subordination or marginalization of certain groups based on gender. In the legal framework, gender justice is also closely related to ensuring legal protection for vulnerable groups, especially women and children, who are often victims of injustice in a patriarchal legal system.

It is important to distinguish between gender equality and gender equity. Gender equality refers to the equal treatment of men and women in all areas of life, including in access, opportunities and legal protection. Meanwhile, gender justice emphasizes fair treatment by considering the specific needs and conditions of each gender. In gender justice, differences are understood not to discriminate, but to adjust legal treatment so that the results achieved are truly fair. For example, the provision of special protection for pregnant women in labor law is not considered discrimination, but rather a form of affirmation to achieve substantive justice. (Susiana & Sali, 2016).

In Indonesian national law, the principle of gender justice is reflected in various laws and regulations that adopt the principle of non-discrimination, such as in Law No. 39/1999 on Human Rights, which states that everyone is entitled to protection without discrimination on any basis, including gender. At the international level, this principle is affirmed through various human rights instruments such as the Convention on the

Elimination of All Forms of Discrimination against Women (CEDAW), which Indonesia has ratified through Law No. 7 of 1984. This convention obliges countries to eliminate all forms of discrimination against women in the political, social, economic, and cultural fields, as well as guarantee fair access to the law.

In Islamic inheritance law, there are normative provisions that explicitly differentiate the share of inheritance between men and women, the best known of which is the principle of 2:1 division (Siregar, 2024). This provision means that in the context of male and female siblings, a man receives twice the share of inheritance that a woman receives. This division is explicitly mentioned in the Qur'ān Surah An-Nisā' verse 11. This verse became the main basis of inheritance fiqh and became a qath'i (definite) provision in classical Islamic law. The classical rationalization for the 2:1 division is generally associated with the social role of men in traditional Islamic societies. Men are regarded as having greater financial responsibilities in the family, such as providing for their wives and children, giving dowries during marriage, and taking care of the needs of parents or unmarried female relatives. Meanwhile, women, despite receiving a share of the inheritance, are not formally burdened with economic obligations. (La Harisi & M. Wahid Abdullah, 2024). In that framework, a division that appears unequal numerically is considered fair because it considers the burden of responsibility carried by each party.

Along with the growing awareness of gender equality and justice in modern society, a number of contemporary Muslim thinkers and Islamic feminists have begun to criticize the provisions of Islamic inheritance law, especially regarding the difference in shares between men and women. Figures such as Amina Wadud, Asma Barlas, and Riffat Hassan argue that the 2:1 provision that gives two parts to men and one part to women cannot be understood literally, without considering the social, historical, and structural context at the time the revelation was revealed (Kurniawan & Kana., 2022). According to them, Islamic legal texts must be read in the light of basic Islamic principles such as justice (al-'adl), benefit (al-maslahah), and equality (al-musāwah), not merely based on fixed numerical formulations.

The main criticism raised by Muslim feminists is the presence of a patriarchal bias in the interpretation of religious texts, especially when Islamic law is interpreted and codified in societies dominated by patriarchal social structures. In many cases, the difference in the share of inheritance between men and women is not simply based on normative texts, but is also reinforced by cultures and traditions that consider men socially and economically superior. As a result, women are often marginalized in inheritance practices, both legally and socially, even when they have a significant economic role in the family. This view highlights the importance of distinguishing between the teachings of Islam as a just spiritual value, and fiqh as the result of human interpretation that can be influenced by the context of his time. Furthermore, these thinkers proposed an approach of contextual interpretation and gender hermeneutics, which allowed adjusting to social change without losing the essence of Islamic values. They argue that the provisions of inheritance law in the Qur'an are essentially minimalist in nature and provide basic guarantees for women in a time when they previously had no inheritance rights at all (Umar & Nasaruddin, 2014).

In the face of the tension between classical Islamic inheritance provisions and the demands of gender justice in the contemporary era, many Muslim scholars have put forward a new approach to ijtihad based on the maqāṣid al-sharī'ah (goals of the Shari'a). The main purpose of Shari'a, such as the protection of religion, soul, intellect, lineage, and property, is not intended only to be adhered to literally, but also to be embodied

substantively in the life of society. In this context, *ijtihad* was undertaken to reinterpret inheritance texts taking into account the modern social context, in which women often bear the same or greater economic burden as men. By using the *maqāsid* approach, the terms of inheritance can be evaluated based on whether it still meets the principles of Justice (*al-‘adl*) and benefit (*al-maslahah*) in a changing social reality (Ridwan, 2020).

One of the methodological approaches used in this reinterpretation process is the hermeneutical approach, which is the contextual and historical interpretation of texts. This approach was used by progressive Islamic thinkers to understand that Qur'anic verses, including inheritance verses, were revealed in a specific social context. The hermeneutic interpretation emphasizes that sacred texts need to be read Taking into account the moral goals and universal values of Islam, rather than merely numbers or textual legal formulations. For example, a 2:1 Division in inheritance was not the ultimate goal, but a form of justice in the context of 7th century Arab society. In a more egalitarian modern society, the proportion of divisions could have been reviewed while maintaining the spirit of justice and protection of the weak (Hasibuan et al., 2020).

Some Muslim countries have tried to implement a gender justice approach in their inheritance systems. In Tunisia, for example, the government and local clerics have proposed an equal division of inheritance between men and women under certain conditions, arguing that the social roles of both have been equal in many aspects of life. In Morocco, through the reform of family law in the *Mudawwanah* of 2004, there was an increase in the protection of women's rights, including in access to inheritance and settlement of family disputes. Egypt and Pakistan have also opened up *ijtihad* space in family law, including the division of inheritance, by emphasizing *maqāsid* principles and social interpretation. Although reaping the pros and cons, this step shows the political and intellectual courage to adapt Islamic law to the context of the Times (Wahyu et al., 2024).

In Indonesia's national legal system, the principle of gender justice is recognized and protected through various legal instruments, both in the Constitution and other laws and regulations. One of them is Article 27 paragraph (1) of the 1945 Constitution in addition, Law No. 39 of 1999 on Human Rights and Law No. 7 of 1984 which ratified the CEDAW Convention (Convention on the Elimination of All Forms of Discrimination against Women) shows Indonesia's commitment to the elimination of all forms of discrimination against women. Not only that, UU No. 23 of 2004 on the elimination of domestic violence and Law No. 12 of 2022 on sexual violence crimes helps strengthen legal protection for women, including in the family sphere, which is relevant to inheritance issues.

However, in practice, the compilation of Islamic law (KHI), which is the main reference in inheritance cases for Muslims in Indonesia, still adopts the provisions of classical *fiqh*, especially the Shafi'i school, including the division of inheritance 2:1 between boys and girls. Although the KHI does not explicitly prohibit women from inheriting, the adoption of such classical provisions without considering women's contemporary social roles and responsibilities can create gaps in social reality. The implication of this is that there is limited room for women to demand a legally equal share of inheritance, even though in practice they bear an economic burden similar to or even greater than that of men. KHI itself opens a gap in family deliberation in the division of property, but this gap is often not used optimally to ensure substantive justice, especially for women (Rozi, 2024).

Harmonization between Islamic law and the principle of gender justice is not a form of value conflict, but an attempt to revive the spirit of *Ijtihad* that is responsive to

the social reality of the Ummah. One of the great opportunities that can be pursued is through the reformulation of inheritance law with a progressive approach in fiqh, especially those based on *maqāṣid al-sharī'ah* (the goals of Islamic law). This approach does not reject the normative text, but rereads it taking into account substantive justice for women, in particular in the context of their changed economic and social roles (Suhaili & Achmad, 2025). Contemporary scholars and fatwa institutions can play an important role in reviewing the distribution of inheritance more proportionally, for example by considering the contribution of income, family responsibilities, and protection of vulnerable parties.

In the Indonesian context, recommendations for contextual renewal of inheritance law need to be made through limited revisions to the compilation of Islamic law (KHI) and increasing the capacity of religious court judges to adopt a substantive justice approach. This reform can be carried out without violating the basic principles of Islam, because it aims to maintain the value of *al-'adl* (justice) and *al-raīmah* (compassion) as the main spirit of Islamic law. In addition to normative reform, the development of social awareness and gender legal education is also very important, so that Muslim communities understand that gender justice does not contradict Islam. Through legal education with a gender perspective in pesantren, madrasah, universities, and religious forums, the community will be more prepared to accept the renewal of inheritance law that is not only normatively valid, but also socially fair.

Synthesis of Classical Fiqh, Maqāṣid al-Sharī'ah, and Gender Justice

The discussion of Islamic inheritance law reveals an inherent tension between the legal structure of classical fiqh which assigns fixed shares such as a 2:1 ratio between sons and daughters and the evolving concept of gender justice in contemporary legal discourse. Classical jurists developed these formulas based on literal interpretations of Qur'anic verses and the social context of their time, which generally positioned men as financial providers and women as dependents. However, through the lens of *maqāṣid al-sharī'ah*, particularly the goals of justice (*'adl*) and protection of human dignity (*karāmah al-insān*), these fixed rules can be revisited in light of changing socio-economic realities. When women today serve as primary breadwinners, heads of households, or equal contributors to family welfare, strict textual application without contextual sensitivity may risk producing outcomes that contradict the ethical foundations of Islamic law.

The integration of *maqāṣid* with fiqh requires a methodological openness to *ijtihād*, allowing jurists and judges to harmonize religious authority with present-day demands for equity. This does not mean disregarding divine texts, but rather prioritizing their higher objectives when applying them in diverse contexts especially in legal systems like Indonesia's, where religious courts (Pengadilan Agama) serve a pluralistic society that values both tradition and justice.

Table1
Classical Fiqh vs Contextual-Maqāṣid Approach in Inheritance

Aspect	Classical Fiqh Approach	Contextual Maqāṣid-Gender Justice Approach
Source of Norms	Literal Qur'anic texts, hadith, <i>ijmā'</i>	Qur'anic values + <i>maqāṣid al-sharī'ah</i> (justice, benefit, dignity)
Method of Interpretation	Rigid/formulaic (e.g., 2:1 rule)	Flexible, purposive (<i>ijtihād</i> based on changing roles &

Gender Role Assumptions	Male = breadwinner; Female = dependent	realities) Gender roles fluid; based on actual financial/social responsibility
Legal Outcome	Fixed share, regardless of context	Adaptive share, contextualized through family dynamics & equity
Judicial Implementation	Applied strictly unless exceptional	Room for judicial discretion based on fairness and family situation
Relevance in Religious Courts	Upholds classical fiqh unless overridden by state law	Enables justice-oriented interpretation within the framework of fiqh

Implication for Religious Courts in Indonesia

In the context of Indonesia's dual legal system, religious courts hold the authority to apply Islamic family law, including inheritance. The *Kompilasi Hukum Islam* (KHI) generally follows classical fiqh patterns. However, judges often face real-life disputes involving complex gendered realities, such as daughters who provide full support to their parents or women who assume financial leadership in the family. In such cases, reliance on textual formulas without space for judicial equity can produce socially unjust outcomes. Therefore, this synthesis argues for the institutional empowerment of religious judges to apply maqāṣid-based reasoning, supported by progressive jurisprudence and contextual considerations. This approach would not only align inheritance rulings with Islamic ethics but also enhance the legitimacy of Islamic law in a modern, rights-based legal environment.

CONCLUSION

The division of inheritance in Islamic Family Law is an integral part of the teachings of the Shari'a, which are set out in detail in the Qur'an, but in the context of modern society, this provision has received a variety of responses, especially regarding the issue of gender justice. The different terms of inheritance distribution between men and women, although based on normative texts and rationalizations of traditional social roles, are now being questioned again through the approach of maqāṣid al-sharī'ah and contextual interpretation. Critics from Muslim feminists and contemporary thinkers point to the need for a review of the inheritance system in order to remain relevant to the principles of substantive justice and equality of rights in a changing society. In the context of Indonesia, the opportunity for harmonization between Islamic law and gender justice principles is wide open through the reform of the compilation of Islamic law (KHI), increasing the capacity of religious court judges, and public education. By upholding the spirit of ijtihad and universal Islamic values such as justice, mercy, and welfare, Islamic inheritance law can remain applied legitimately and with dignity, without negating women's rights as an important part of the social and legal structure. The reinterpretation based on maqāṣid becomes the key in answering the challenges of the times, while maintaining the relevance and humanism of Islamic law in a society that is increasingly oriented towards inclusive justice. Ultimately, this study affirms that contextual ijtihād is not a departure from the core values of Islam, but rather a faithful expression of its

intrinsic commitment to justice (‘adl) and public welfare (maṣlaḥah) values that lie at the heart of the sharī‘ah itself.

LITERATURE

- Ahyani, H., Putra, H. M., Muharir, M., Sa’diyah, F., Kasih, D. K., Mutmainah, N., & Prakasa, A. (2023). PRINSIP-PRINSIP KEADILAN BERBASIS RAMAH GENDER (MASLAHAH) DALAM PEMBAGIAN WARISAN DI INDONESIA. *Al-Mawarid Jurnal Syariah Dan Hukum (JSYH)*, 5(1), 73–100. <https://doi.org/10.20885/mawarid.vol5.iss1.art6>
- Ali. (2022). *Hukum Islam: Pengantar Ilmu Hukum Islam di Indonesia*. . Sinar Grafika.
- Bakry, K., & Awal Rifai. (2025). Infertilitas sebagai Alasan Khulu Perspektif Maqāṣid al-Syarī‘ah. *AL-QIBLAH: Jurnal Studi Islam Dan Bahasa Arab*, 4(3), 244–269. <https://doi.org/10.36701/qiblah.v4i3.2128>
- Barus, & Zulfadli. (2013). Analisis filosofis tentang peta konseptual penelitian hukum normatif dan penelitian hukum sosiologis. *Jurnal Dinamika Hukum*, 13(2), 307–318.
- Cahyani, & Tinuk Dwi. (2018). *Hukum waris dalam Islam: dilengkapi contoh kasus dan penyelesaiannya*. UMMPress,.
- Damanik, & Wahda Hilwani. (2025). Damanik, Wahda Hilwani. "DINAMIKA PEMBAHARUAN HUKUM KELUARGA ISLAM DALAM HUKUM NASIONAL. *Urnal Hukum Ekonomi Dan Wakaf*, 3(1).
- Fahmi, L. (2018). 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), 143. <https://doi.org/10.30659/jua.v2i1.3120>
- Febriastri Aryani Ratu. (2017). Praktek Pembagian Harta Waris Masyarakat Suku Lio Perspektif Fikih Mawaris. *MAQASID*, 6(1).
- Handayani. (20161). Mewujudkan Keadilan Gender Melalui Perlindungan Hukum Terhadap Perempuan. *RECHTSTAAT NIEUW*, 1(1).
- Hasibuan, Umni Kalsum, & Risqo Faridatul Ulya. (2020). Tipologi Kajian Tafsir: Metode, Pendekatan dan Corak dalam Mitra Penafsiran al-Qur’an. *Ishlah: Jurnal Ilmu Ushuluddin, Adab Dan Dakwah*, 2(2), 96–120.
- Jonaedi Efendi. (2018). *Metode penelitian hukum: normatif dan empiris*. Prenada Media.
- Kurniawan, & Kana. (2022). *Perempuan dalam perspektif hukum Islam dan HAM*. . Publica Indonesia Utama .
- La Harisi, I., & M. Wahid Abdullah. (2024). PEMBAHARUAN HUKUM KELUARGA ISLAM DALAM MENGHADAPI TANTANGAN SOSIAL KONTEMPORER PERSEPEKTIF MAQASHID SYARIAH. *USRAH: Jurnal Hukum Keluarga Islam*, 5(2), 226–241. <https://doi.org/10.46773/usrah.v5i2.1358>
- Murtadlo, M. A. (2018). Keadilan Gender dalam Hukum Pembagian Waris Islam Perspektif The Theory Of Limit Muhammad Syahrur. *Tafāqquh: Jurnal Penelitian Dan Kajian Keislaman*, 6(1), 76–89. <https://doi.org/10.52431/tafaqquh.v6i1.132>
- Nafisyah, Syadza Nida, & Devika Rosa Guspita. (2024). Hukum Waris Islam: Keadilan dalam Pembagian Harta dan Penerapannya." . *Journal of Dual Legal Systems*, 1(2), 137–152.
- Noviarni, & Dewi. (2021). Noviarni, D. (2021). Kewarisan Dalam Hukum Islam Di Indonesia. *Aainul Haq: Jurnal Hukum Keluarga Islam*, 1(1), 62–75.
- Qomar. (2021). *Moderasi Islam Indonesia*. IRCiSoD.
- Ridwan. (2020). *Gagasan, Harapan, dan Kenyataan*. Bumi Aksara,.

- Rozi, A. F. (2024). Keadilan Gender dalam Hukum Waris Islam. *ASASI: Journal of Islamic Family Law*, 5(1), 64–79. <https://doi.org/10.36420/asasi.v5i1.702>
- Siregar, D. (2024). PRINSIP KEADILAN HUKUM WARIS ISLAM TENTANG PEMBAGIAN WARISAN ANTARA LAKI-LAKI DAN PEREMPUAN. *As-Salam: Jurnal Studi Hukum Islam & Pendidikan*, 13(1), 94–105. <https://doi.org/10.51226/assalam.v13i1.505>
- Sirin, K. (2013). Analisis Pendekatan Teks dan Konteks dalam Penentuan Pembagian Waris Islam. *AHKAM: Jurnal Ilmu Syariah*, 13(2). <https://doi.org/10.15408/ajis.v13i2.941>
- Suadi, & Amran. (2015). Perkembangan Hukum Perdata Islam di Indonesia (Aspek Perkawinan dan Kewarisan). *Jurnal Yuridis*, 2(1), 1–27.
- Suhaili, & Achmad. (2025). Integrasi Maqāṣid al-Syarī ‘ah dalam Praktik Peradilan Agama di Indonesia: Studi Alternatif Penyelesaian Sengketa Keluarga. *MABAHITS: Jurnal Hukum Keluarga*, 6(1), 29–42.
- Susiana, & Sali. (2016). Urgensi Undang-Undang Tentang Kesetaraan dan Keadilan Gender. *Kajian*, 19(3), 219–234.
- Suwasta, Asep Dedi, Juhana, & Alfiany. (2024). *Pengantar hukum perdata*. TOHAR MEDIA .
- Syaikhu. (2022). *Internalisasi Hukum Waris (Menakar Sistem Hukum Waris dalam Budaya Kearifan Lokal)*. Penerbit K-Media .
- Umar, & Nasaruddin. (2014). *Ketika fikih membela perempuan*. Elex Media Komputindo. Elex Media Komputindo.
- Wahyu, W., Sya'bani, Moh. A., & Permana, S. P. (2024). Hak Waris dan Keadilan: Menggagas Reformasi Hukum Keluarga dengan Prinsip Maqasid Syariah. *Jurnal Studi Inovasi*, 4(2). <https://doi.org/10.52000/jsi.v4i2.156>
- Walangadi, & Gibran Refto. (2021). Penyebab Mendapat Dan Tidak Mendapat Warisan Menurut Hukum Waris Islam. *Lex Privatum*, 9(1).