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THE CAUSES OF PROS AND CONS IN DIVIDING INHERITANCE TWO TO ONE BY USING THE PERSPECTIVE OF JUSTICE PRINCIPLE TAFSEER

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Abstract

This study discussed the pros and cons of two-to-one inheritance using the principle of fair interpretation. The method used in this research was qualitative with library research, including finding sources from written materials with a historical approach. The discussion results included the sources of the argument for inheritance in the Qur'an, the distribution of inheritance one to two (1: 2) between men and women according to contemporary scholars and scholars, and the concept of justice put forward by the scholars. This study concluded that the reason for the pros and cons was the existence of different paradigms in interpreting the term justice. Classical scholars agree that inheritance verses are qath'i verses whose distribution cannot be contested so that the distribution of inheritance two to one is considered fair based on the responsibilities borne by a man. Meanwhile, feminist commentators consider the inheritance verse a sociological verse where the division of inheritance cannot ignore the current social context. The distribution of inheritance could change by the context of the circumstances and the benefits of the inheritance itself.

Keywords: Inheritance, Male and Female, Justice.

Abstrak

Penelitian ini bertujuan membahas sebab pro kontra pembagian waris dua banding satu dengan menggunakan prespektif prinsip tafsir berkeadilan. Metode yang digunakan dalam penelitian ini ialah bersifat kualitatif dengan metode kepustakaan (library research) yaitu mencari sumber dari bahan-bahan tertulis dengan pendekatan sejarah. Hasil dari pembahasan penelitian ini meliputi sumber dalil waris dalam Al-Qur'an, pembagian waris satu banding dua (1:2) antara laki-laki dan perempuan menurut ulama dan cendekiawan kontemporer, serta konsep keadilan yang dikemukakan oleh para ulama. Penelitian ini menyimpulkan sebab terjadinya pro kontra adalah adanya paradigma yang berbeda dalam menafsirkan term keadilan. Para ulama klasik bersepakat bahwa ayat waris adalah ayat qath'i yang tidak dapat diganggu gugat pembagiannya, sehingga pembagian waris dua berbanding satu sudah dinilai adil berdasarkan tanggung jawab yang dipikul seorang laki-laki. Sedangkan para mufassir feminis menilai bahwa ayat waris adalah ayat sosiologis dimana pembagian waris tidak bisa mengabaikan konteks sosial yang terjadi saat ini. Sehingga pembagian waris bisa berubah sesuai konteks keadaan dan kemanfaatan harta waris itu sendiri.

Keywords: Waris, Laki-laki dan Perempuan, Keadilan.

Introduction

Becoming "a woman to the backbone" of the family is not strange in Indonesia. Based on a survey conducted by the DKI Jakarta Statistics Agency in March 2018, 16.92% of women were heads of households. The percentage was subdivided based on age, and 6.04% of women were heads of households in the age range of 31-40 years. The remaining 45.44% were in the age range of 20 years.¹ Furthermore, regarding the dowry that is said to be charged to men, several areas have a tradition of women giving dowry to men.²

In the Islamic inheritance system, daughters get half the share of men, known as two to one (2:1). This division is considered fair considering that men have other responsibilities, namely in the form of a dowry and maintenance for women. In the past, men were considered responsible for every household problem. However, today we find a completely different reality where men are

¹ <https://statistik.jakarta.go.id/persentase-perempuan-sebagai-kepala-rumah-tangga-di-dki-jakarta/>

² Noryamin Aini, *Tradisi Mahar di Ranah Lokalitas Umat Islam: Mahar dan Struktur Sosial di Masyarakat*, Jurnal Ahkam, Vol.XIV, No. 1 Januari, 2014, h.15

not the only breadwinners and responsibilities in the family. Therefore, the demands for justice will also change, including inheritance.

The issue of inheritance is closely related to the stereotype of Islamic injustice regarding the inequality of inheritance rights between women and men. The Qur'an is said to be *shalih li kulli zaman wa makan*, meaning that it will remain valid at all times and places. It has the consequence that inheritance must be able to accommodate the community's need for inheritance laws that can provide justice for women.

Research on inheritance has been widely studied before. One is the research conducted by Maryati Bachtiar entitled *Islamic Inheritance Law from a Gender Equitable Legal Perspective*. In her research, Maryati revealed that the legal principle of Islamic inheritance is not equal justice but balanced justice between men and women heirs having the same rights as heirs, but only the comparison is different.³

Furthermore, research conducted by Sugiri Permana entitled *Gender Equality in Ijtihad Inheritance Law in Indonesia*. In his research, he explained the development of inheritance law in Indonesia and several ijthad regarding equality in inheritance law. The granting of inheritance rights to women is referred to as a legal revolution, where surah al-Nisa verse 7 is considered a historical milestone that provides equality between men and women. Likewise, Indonesian inheritance law is in line with this decree. However, in conclusion, he stated that the comparison of inheritance rights is not absolute. In fact, men have received a lot of inheritance, while women need more attention.⁴

Idris Rasyid tried to rationalize the distribution of inheritance rights for men and women by conducting research entitled *Execution of 'Ab Intestato' Inheritance Two to One: Rationalization of Surah Annisa Verse 11 in 2016*. In his research, Idris revealed that Islamic inheritance law elevates, glorifies, and affirms the existence of women as honorable human beings, and their rights are respected as men's. Classical scholars interpret surah an-Nisa based on the principle of balance between rights and obligations, while for feminists, the verse is dzanni, which is interpreted with a contextual approach.⁵

M. Hajir Mutawakkil also conducted research entitled *Islamic Justice in Gender Issues*. In his research, he revealed that Islam does not recognize equality because what exists is the concept of justice. Women and men are given rights and responsibilities according to their portion. If a man's obligation is to provide

³ Maryati Bachtiar, *Hukum Waris Islam Dipandang dari Prespektif Hukum Berkeadilan Gender*, Jurnal Ilmu Hukum, Vol. 3, No. 1

⁴ Sugiri Permana, *Kesetaraan Gender dalam Ijtihad Hukum Waris di Indonesia*, Jurnal Asy-Syari'ah Vol.20, No.2, Desember 2018

⁵ Idris Rasyid, *Eksekusi 'Ab Intestato' Warisan Dua Banding Satu: Rasionalisasi Surah Annisa Ayat 11*, Jurnal Hukum Diktum, Vol. 14, No.2, Desember 2016

for the family, then he gets more rights than women in terms of inheritance because it has to be divided among the people for whom he is responsible.⁶

Ananda Luthfiyyah also conducted research with the title *Interpreting the Fulfillment of Women's Rights in the Implementation of CEDAW on the Distribution of Islamic Inheritance*. In Islamic inheritance, women's rights are contained in CEDAW paragraph (1) article 16, where women have the right to transfer property. However, when it is related to inheritance in Islam, it means the inheritance transfer. The division of inheritance in Islam is based on balanced justice, so the concept of justice differs from the concept promoted by CEDAW.⁷

Several previous studies are reference materials in this study because they have provided various views on inheritance. However, the present study focused on discussing the pros and cons of the two-to-one distribution of inheritance that occurred in men and women. The research question was whether the term justice in inheritance is the starting point for the cause of the difference. Therefore, this study will discuss these matters

The method used in this study was the library research method. All data came from written materials directly or indirectly related to the topics discussed. The researcher conducted an in-depth analysis of the object under study. It was connected with other sources so that, in the end, an overall conclusion was drawn regarding the theme being discussed.⁸ In this case, the research was obtained by reviewing books, literature, notes, and reports relating to sources of Al-Qur'an interpretation.

Discussion

In KBBI, inheritance is defined as a person who has the right to receive an inheritance from someone who has died.⁹ Meanwhile, inheritance law is the law that regulates the transfer of ownership of inheritance and determines who the people who have the right to become heirs are and how many of them are.¹⁰ Accordingly, the inheritance of the *muwaris* (the person who inherits) cannot be given to anyone. It is due to how much the will of the *muwaris* is regulated based

⁶ M. Hajir Mutawakkil, *Keadilan Islam dalam Persoalan Gender*, Jurnal Kalimah, Vol. 12m No 1, Maret, 2014

⁷ Ananda Luthfiyyah, *Memaknai Pemenuhan Hak-hak Perempuan dalam Implementasi CEDAW Terhadap Pembagian Waris Islam*, Jurnal Al-Imarah: Jurnal Pemerintahan dan Politik Islam, Vol. 6, No. 1, tahun 2021

⁸ Khatibah, *Penelitian Kepustakaan, "Iqra': Jurnal Kepustakaan dan Informasi"*, Vol 5, No 01, 2011. h. 36-39

⁹ Diakses pada tanggal 04 Oktober 2022 dari <https://kbbi.web.id/waris>

¹⁰ Heri Khoiruddin, *Keadilan Waris dalam Islam*, (Sukabumi: CV Jejak, 2018) h.11

on religious texts. The verb *waratha* is often found in the Qur'an, one of which is in surah Al-Zumar verse 74:

وَقَالُوا الْحَمْدُ لِلَّهِ الَّذِي صَدَقَنَا وَعْدَهُ وَأَوْرَثَنَا الْأَرْضَ نَتَّبِعُوهُ مِنَ الْجَنَّةِ حَيْثُ نَشَاءُ ۗ فَنِعْمَ أَجْرُ الْعَمَلِينَ

“ The righteous will say, “Praise be to Allah Who has fulfilled His promise to us, and made us inherit the ‘everlasting’ land to settle in Paradise wherever we please.” How excellent is the reward of those who work righteousness”.

In this verse, the word *waratha* means giving, that is, God's gift to humans in the form of all the pleasures of this world and the hereafter, as well as heaven, which He promises to those who do good deeds.

The discussion on this matter is called *faraid*, which is the plural form of the word *faridah* (something that is required), which comes from the word *farada*, *faradhiyun*, which means the word *mafrudhah*, which is the part that has been graded. In terms of definition, it is a science that studies the procedures for dividing inheritance among those entitled to receive it.¹¹

The inheritance system is one of the reasons for the transfer of ownership, namely the transfer of property and material rights from the bequeathing party to the inheritance recipients. This inheritance tradition has existed since the *Jahiliyya* era (an era that has ignorant beliefs). At that time, children and girls were not entitled to inheritance. The causes of inheritance during the *Jahiliyya* period it was divided into three:

1. Based on lineage, namely assets passed down to adult males with the condition that they can ride a horse, fight, and win the spoils of war .
2. Adopted children, the status of adopted children is equated with biological children.
3. Oath agreement, for example, two people promise under an oath that they will inherit between the two of them.¹²

After Islam came, the inheritance system on the lineage and relatives was renewed. Not only do adult men have inheritance rights, but women and young children have the same rights in inheritance. Meanwhile, Indonesia has different inheritance laws from one religion to another. So that heirs who want to solve inheritance problems can refer to which law they want between religious and state law. For Muslims, Indonesian inheritance law refers to the Compilation of Islamic Law (KHI), which consists of marriage law, inheritance law, and waqf law.¹³

¹¹ Muhibbussabry, *Fikih Mawaris*, (Medan : Pusdikara Mitra Jaya, 2020) h.1

¹² Isniyatin Faizah dkk, *Bagian Ahli Waris Laki-laki dan Perempuan dalam Kajian Hukum Islam*, The Indonesian Journal of Islamic Law and Civil Law, Vol.2, No.2, h.156

¹³ Heri Khoiruddin, *Keadilan Waris dalam Islam*, (Sukabumi: CV Jejak, 2018) h.18-19

Even in inheritance distribution, assets cannot be immediately distributed to heirs because principles must be obeyed. These principles are the *Ijabari*, the inheritance due to death, the Bilateral principle, the Individual Principle, the direct heirs and surrogate heirs, the legal marital relations, the balanced justice, the obligatory wills, and the Egalitarian Principle.¹⁴

The legal basis for inheritance in the Qur'an is stated in surah al-Nisa verses 7, 11, 12, 33, and 176. However, the verse which discusses the distribution of inheritance for men and women is contained in verse 11.

يُوصِيكُمُ اللَّهُ فِي أَوْلَادِكُمْ لِلذَّكَرِ مِثْلُ حَظِّ الْأُنثِيَيْنِ ۚ فَإِن كُنَّ نِسَاءً فَوْقَ اثْنَتَيْنِ فَلَهُنَّ ثُلُثَا مَا تَرَكَ ۚ وَإِن كَانَتْ وَاحِدَةً فَلَهَا النِّصْفُ ۚ وَلِأَبَوَيْهِ لِكُلِّ وَاحِدٍ مِّنْهُمَا السُّدُسُ مِمَّا تَرَكَ إِن كَانَ لَهُ وَلَدٌ ۚ فَإِن لَّمْ يَكُن لَهُ وَلَدٌ وَوَرِثَتْهُ آبَاؤُهُ فَلِلْأُمِّهِ الثُّلُثُ ۚ فَإِن كَانَ لَهُ إِخْوَةٌ فَلِلْأُمِّهِ السُّدُسُ ۚ مِن بَعْدِ وَصِيَّةٍ يُوصِي بِهَا أَوْ دَيْنٍ ۚ ءَآبَاؤُكُمْ وَأَبْنَاؤُكُمْ لَا تَدْرُونَ أَيُّهُمْ أَقْرَبُ لَكُمْ نَعْمًا ۚ فَرِيضَةٌ مِّنَ اللَّهِ ۚ إِنَّ اللَّهَ كَانَ عَلِيمًا حَكِيمًا

“Allah commands you regarding your children: the share of the male will be twice that of the female.¹ If you leave only two ‘or more’ females, their share is two-thirds of the estate. But if there is only one female, her share will be one-half. Each parent is entitled to one-sixth if you leave offspring.² But if you are childless and your parents are the only heirs, then your mother will receive one-third.³ But if you leave siblings, your mother will receive one-sixth⁴—after fulfilling legacies and debts.⁵ ‘Be fair to’ your parents and children, as you do not ‘fully’ know who is more beneficial to you.⁶ ‘This is’ an obligation from Allah. Surely Allah is All-Knowing, All-Wise.” (An-Nisa: 11).”

In this verse, Ibn Kathir, in his commentary, explained that in the past, ignorant people only gave an inheritance to men, while female heirs did not get anything. So, God also ordered us to do justice, but the distribution is different. This division is considered appropriate because a man is required to provide maintenance and other obligations.¹⁵

Sai'd ibn Zubair and Qatadah said that polytheists gave their wealth only to adult men and was not given to women and children in the past. So, Allah sent down the verse "For men, there is a right to share in the inheritance of their parents and relatives;" It means that all people in Allah's law are the same, even

¹⁴ Ananda Luthfiyyah Azwan, *Memaknai Pemenuhan Hak-hak Perempuan dalam Implementasi CEDAW terhadap Pembagian Waris Islam*, Jurnal Al-Imarah: Jurnal Pemerintahan dan Politik Islam, Vo.6, No.1, tahun 2021, h.127-129

¹⁵ Ibn Kathir, *Tafsir Al-Qur'an al-'Adzim*, jilid 3, h.371

if they are different according to the provisions made by Allah, by looking closer at the corpse from the perspective of kinship, marriage, or freedom of slaves.¹⁶

Wahbah Zuhaili, in al-Munir's commentary, states that this verse was revealed regarding the story of the two daughters of Sa'd ibn Rabi'. In line with Ibn Kathir, Wahbah Zuhaili stated that sons get twice as much inheritance as girls because sons have the obligation to provide a living, work, bear various heavy responsibilities, and pay a dowry. Meanwhile, women are not at all burdened to provide a living to anyone, whether they are daughters, sisters, mothers, wives, or aunts.¹⁷

According to Sa'id Ramadhan Al-Buthi, the ratio of 1:2 only applies in conditions where the heirs are husband or wife, as well as sons and daughters. In this condition, both children get *ashobah* (remaining) with the provision that the son gets twice as many inheritance rights as the woman inheritance rights. Al-Buthi continued that this division was due to several considerations: a) Boys would be responsible for providing for their parents apart from their children and wife; b) The son would later give the dowry to the woman whom he will marry; c) Daughters are not burdened with these obligations. Therefore, this kind of distribution is considered fair by the provisions of Islamic law.¹⁸

However, if this division is understood contextually, not all men support living in the family. Not infrequently, a woman or a wife acts as the backbone of the family. Of course, if two-to-one is understood textually and rigidly, this division will feel unfair.

Quoted from CNN, Grant Thornton surveyed countries with the most career women in senior positions. Globally, Eastern Europe is a region that provides opportunities for women, as much as 35%. At the same time, Indonesia itself occupies the sixth position with a percentage of 36%. In addition, based on the news released by Republika, many women are the backbone of the family because their husbands don't work or even die.¹⁹

The researcher also found a survey by the DKI Jakarta Statistics Agency in March 2018 that 16.92% of women were heads of households. The percentage was subdivided based on age 6.04% of women were heads of households in the

¹⁶ Ibnu Katsir, *Tafsir Al-Qur'an al-'Adzim*, jilid 3, h.259

¹⁷ Prof. Wahbah Zuhaili, *Tafsir al-Munir*, jilid 2, (Jakarta, Gema Insani), h.613-614

¹⁸ M. Noor Ashry dan Umi Wasilatul Firdausiyah, *Pemikiran Sa'id Ramadhan Al-Buthi Terhadap Isu-isu Feminisme*, Jurnal Studi Al-Qur'an, Vol. 18, No. 1, tahun 2022, h.128

¹⁹ Indira Rezkisari *Pandemi Buat Banyak Perempuan Jadi Tulang Punggung*, diakses pada tanggal 24 Oktober dari <https://www.republika.co.id/berita/rc33a0328/pandemi-buat-banyak-perempuan-jadi-tulang-punggung-keluarga>

age range of 31-40 years, while the remaining 45.44% were in the age range of 20 years.²⁰

Furthermore, regarding the dowry charged to men, several areas have a tradition of women giving dowry to men. Noryamin Aini revealed that the male family is a measure of social status in a patrilineal society. Because of this, many lower-class women's families want to marry off their daughters to upper-class men. In this case, the woman gives a dowry to her husband to achieve a better social status. This tradition is common in parts of the South Asian subcontinent, India, Pakistan, and Bangladesh.²¹

In Indonesia, in certain cases, even though the dowry is formally considered a gift from a man, it is often found that the dowry comes from the woman herself. The Mbojo tribe in Bima, for example, is known for the term *ampo co'i ndai* where the woman herself pays the dowry. In practice, this dowry will still be in the man's name and mentioned in *Ijab qabul* (the solemnization of marriage).²²

The facts above have implications for the relevance of dividing inheritance rights two to one between boys and girls. The question is, where is the justice in Islamic inheritance law which still carries a ratio of two to one? Feminists consider the current fiqh structure very gender-biased and discriminatory against women, including in the distribution of inheritance in surah Al-Nisa verse 11.

*Feminist considers that the interpretation carried out by classical scholars does not reflect gender justice. The Qur'an places men and women equally. Therefore, the approach taken by a feminist is to prioritize gender equality where women and men have the same position in the eyes of religion.*²³

Asghar Ali Engineer emphasized that there are two concepts of equality between men and women. In this general sense, equality means the acceptance of dignity on an equal footing. Meanwhile, in a special sense, people must know that men and women have equal social, economic, and political rights. Therefore, in dissecting women's problems, it is necessary to carry out a socio-theological

²⁰ Azira Irawan, *Persentase Perempuan Sebagai Kepala Rumah Tangga di DKI Jakarta*, diakses pada tanggal 24 Oktober 2022 dari <https://statistik.jakarta.go.id/persentase-perempuan-sebagai-kepala-rumah-tangga-di-dki-jakarta/>

²¹ Noryamin Aini, *Tradisi Mahar di Ranah Lokalitas Umat Islam: Mahar dan Struktur Sosial di Masyarakat*, *Jurnal Ahkam*, Vol.XIV, No. 1 Januari, 2014, h.15

²² Atun Wardatun, *Kompromi dan Interseksionalitas Gender dalam Pemberian Mahar: Tradisi Ampa Coi Ndai Pada Suku Mbojo*, *Jurnal Ulummuna*, Vol. XIII, No. 1, Juni 2009, h.220-221

²³ Eni Zulaiha, *Tafsir Feminis: Sejarah, Paradigma dan Validitas Tafsir Feminis*, *Jurnal al-Bayan*, No.1, 2016, h.21

approach based on the social context. He revealed that no holy book could be effective if it completely ignored the context.²⁴

According to Abu Zayd, verse 11 in surah an-Nisa emphasizes the change in which women have equal rights in inheritance matters. He concluded that the Qur'an slowly but surely leads to equality between men and women, especially in inheritance.²⁵

Henri Sholahudin later criticized Abu Zayd's opinion. He considered that Abu Zayd's conclusions were not by the theory of the research project developed by him. It was because no evidence from the Qur'an verses or hadith corroborated his opinion. Instead, he mentioned the theory of al-Maskut 'anhu (unspeakable) and strengthened it with the sociocultural conditions of Arab society at that time. The theory seems to say that Abu Zayd understood God's intentions that He did not say.²⁶

Amina Wadud also disagrees with the conventional interpretation, she argues that there are many imbalances in women's rights in terms of faraid. He refers to surah an-Nisa verse 34 concerning excess inheritance, so such a materialistic excess is not absolute. Wadud also considered that the excess for men was due to a reciprocal relationship. It was a conditional indication of this excess. The division of the inheritance ratio of 2:1 cannot be understood in black and white only but must be studied based on the context of the problem and studied based on benefits. Regarding this matter, there are three considerations, such as the distribution of inheritance for living relatives, some wealth can be divided equally, the distribution of wealth must take into account the condition of the people left behind, the benefits for those left behind, and the benefits of the property itself. So, the inheritance verses are sociological and are the only alternative.²⁷

Amin Suma revealed that this was not new, considering that similar questions and lawsuits had been expressed by friends, at least through the intermediary of the Prophet's wife. Umm Salamah once asked the Prophet Muhammad SAW why women only get half the share in inheritance matters. Then Allah sent down surah Al-Nisa verse 32, which prohibits women from being jealous or jealous of the difference in inheritance between men and women. Qatadah and al-Sudi said that when a fragment of the verse *liddzakari mithlu hadzdzil unthayayin* descends, male friends hope to receive multiple goodnesses

²⁴ Nurjannah Ismail, *Rekontruksi Tafsir Perempuan: Membangun Tafsir Berkeadilan Gender*, International Journal of Child and Gender Studies, Vol. 1, No. 1, Maret 2015, h.41

²⁵ Henri Sholahudin, *Al-Quran dihuji*, (Jakarta: Gema Insani), h.51-52

²⁶ Henri Sholahudin, *Al-Qur'an Dihujat*, (Jakarta: Gema Insani), h.54-55

²⁷ Ernita Dewi, *Pemikiran Amina Wadud Tentang Rekontruksi Penafsiran Berbasis Metode Hermeneutika*, Jurnal Substantia, Vol.15, No.2, Oktober 2013, h.115-116

in the afterlife, and female friends hope that Allah will lighten the punishment for the sins they have committed.²⁸

In his book entitled *Justice of Islamic Inheritance Law*, Amin Suma also mentions that those who sue for inheritance distribution only rely on relative logic, which may be very narrow. He only refers to certain cases whose number is not comparable to the reality that, In general, the world of work is still dominated by men. Furthermore, Amin Suma also revealed:²⁹

"At first glance, the idea of changing the inheritance balance from 2:1 to 1:1 does seem philosophical and looks fairer than the 2:1 balance, for example, when the term justice is interpreted with the meaning of the same or the same, with the same meaning or the same size. However, according to the author, changing the balance of inheritance from 2:1 to 1:1 is not that simple and does not necessarily ensure justice in household life."

There are at least twenty-five reasons put forward by Amin Suma for rejecting the idea of dividing the one-to-one inheritance, including:

1. Interpreting the word fair as much or exactly the same is not always correct because the word fair/justice has many meanings.
2. The inheritance system is a subsystem that cannot be separated from the Islamic family law system. So the inheritance system can't be independent and related to the legal subsystem of marriage and bloodlines, which are the basis for the existence of the inheritance itself, also related to matters of dowry and maintenance.
3. Those who oppose the law of inheritance may see reason as being capable of solving all problems. In comparison, Allah SWT regulates the Islamic inheritance system directly with clear, firm, straightforward, and thorough legal arrangements and provisions marked by the determination of heirs, along with their respective parts and regulatory mechanisms.
4. several other arguments need to be contemplated either textually or contextually.
5. All *ahkam tafseer* experts state that the *mawaris* verses belong to the *Muhkamat* line of verses. Likewise, the *ushul fiqh* experts state that the *mawaris* verses are included in the *qath'iyah* verses in terms of their meaning and *wurud*.
6. The verses and hadiths of the roses are basically detailed and binding; nothing is *ijmali* let alone absolute. The consequence is that there is no

²⁸ Muhammad Amin Suma, *Keadilan Hukum Waris Islam dalam Pendekatan Teks dan Konteks*, (Jakarta:Rajawali Press, 2013), h.69-70

²⁹ Muhammad Amin Suma, *Keadilan Hukum Waris Islam dalam Pendekatan Teks dan Konteks*, (Jakarta:Rajawali Press, 2013), h.71-72

- more place for *ijtihad* to provide additional understanding and institute its laws
7. The distribution of inheritance is not in accordance with the *wa'ad* verses (good promises) and *wa'id* verses (bad threats), especially verses 13 and 14 of al-Nisa which textually emphasize obeying the laws of Allah SWT.
 8. The inheritance clause is the central clause to oversee the application and experience of the legal system
 9. In line with point 5, people who violate it are classified as people who behave *zayigh* (inclined to go astray).³⁰
 10. However, textual interpretation is one of the methods of interpretation that still exists and has been important from the past until now
 11. In general, the hadith details religious affairs in detail. On the other hand, the verses on inheritance in the Qur'an are more detailed than the hadiths on inheritance, which are small in number. Their content does not address inheritance, distribution, and so on.
 12. In general, the property is directly determined by Allah SWT. For example, in the matter of zakat
 13. From any point of view, Islamic inheritance law truly reflects justice in addition to the principle of equality
 14. Changing the balance of inheritance is not by the teachings of legal science, which prioritizes the principles of clarity, certainty, and expediency
 15. Balance 2:1 only applies in certain cases, namely husbands, sons and daughters, and grandsons and granddaughters
 16. Changing the balance from 2:1 to 1:1 seems to impose subjective will rather than considering the relationship between rights and obligations
 17. The argument focuses more on *akliyyah*. It refers to the meaning of justice as much without even more *naqliat* arguments
 18. Inheritance 1:1 seems fair, but the Qur'an warns that what seems good may turn out to be bad
 19. All jurists agree that there is no room for *ijtihad* amid a crowd of texts
 20. The person who changes the inheritance balance to 1:1 estimates that the division is a reasonable thought because it creates benefits. However, Allah knows better which ones are *mufsid* and which ones are beneficial

³⁰ Berdasarkan firman-Nya: "...Adapun orang-orang yang dalam hatinya condong kepada kesesatan (*zayigh*), maka mereka mengikuti sebagaimana ayat-ayat yang mutasyabihat daripadanya untuk menimbulkan fitnah untuk mencari-cari ta'wilnya. Padahal tidak ada yang mengetahui ta'wilnya melainkan Allah SWT dan orang-orang yang mendalam ilmunya berkata: "Kami beriman kepada ayat-ayat mutasyabihat, semuanya dari sisi Tuhan kami" dan tidak dapat mengambil pelajaran (daripadanya) melainkan orang-orang yang berakal". (Surah Ali Imran ayat 7)

21. Changing the inheritance of 1:1 can be categorized as *zayigh*, inconsistency, and a tendency to turn away from *istiqomah* towards the rightful
22. Changing the inheritance 1:1 could be an act of defiance against the law of Allah SWT
23. The verses in surah an-Nisa (verses 6,7, and 8) seem wider to be guided by than deliberately changing the division that the parent inheritance verses have regulated
24. How can *faraid* laws sent down from the sky possibly contain the value of injustice?
25. Almost all scholars agree that religious similarity between the heir and the expert must be one of the prerequisites for an inheritance law.³¹

Justice is a term that is often debated meaning. In Arabic, the word means straight. Meanwhile, M. Quraish Shihab revealed that three words in the Qur'an contain the meaning of justice. *Adl* is giving wisely according to needs and placing the guidance correctly. Be fair to yourself and others. So, it doesn't have to be two people. The gift may be fun for one but not for the other. In contrast, *qism* is a gift that gives pleasure and satisfaction to both parties, although it doesn't have to be the same. At the same time, *Mizan* is justice based on a balance of activities. For example, expenses and income must match, or the number of people invited must be under the rooms.³²

There are four meanings of justice put forward by Taqiyyudin:

First, fair in the same sense as treating all individuals without discriminating against them and obtaining according to their rights. For example, the treatment of judges to the parties affected by legal cases.

Second, fair in a balanced sense, namely, giving something to someone according to his worth. To realize the intended state of balance, conditions are needed, be it size or pattern on the linkages between these parts. However, it does not demand the similarity of something obtained but is more towards proportionality

Third, fair in the sense of attention to and provision of individual rights. In other words, every individual who is part of society must get the same rights by not taking away the rights of others. Fair in this distribution is the opposite of the nature of tyranny

Fourth, justice is attributed to God, His grace and goodness. In fact, according to the Mu'tazilah, the nature of justice is the highest attribute of Allah's

³¹ Muhammad Amin Suma, *Keadilan Hukum Waris Islam dalam Pendekatan Teks dan Konteks*, (Jakarta: Rajawali Press, 2013), h.73-98

³² M. Quraish Shihab, *Tafsir Al-Misbah: Pesan, Kesan dan Keserasian Al-Qur'an*, Vol. 5 (Jakarta: Lentera Hati, 2002), h.284

deeds compared to other attributes. If Allah sets a law on something, then there must be justice contained in it. Because if there is no such trait, then his actions will be in vain, which is impossible for Allah.³³

Aristotle introduced the concept of justice. According to him, there are two kinds of justice, namely:

1. Distributive justice gives each person a share according to his services. This justice does not demand that everyone gets an equal share.
2. Commutative justice, namely justice that gives everyone the same amount without considering individual services.³⁴

Conclusion

From the description above, it can be concluded that the cause of pros and cons is a different paradigm in interpreting the term justice. Classical scholars agree that inheritance verses are *qath'i* verses whose distribution cannot be contested so that the distribution of inheritance two to one is considered fair based on the responsibilities borne by a man. Meanwhile, feminist commentators consider the inheritance verse a sociological verse where the division of inheritance cannot ignore the current social context. Accordingly, the distribution of inheritance can change due to the circumstances and the benefits of the inheritance itself.

References

- Aini, Noryamin, *Tradisi Mahar di Ranah Lokalitas Umat Islam: Mahar dan Struktur Sosial di Masyarakat*, Jurnal Ahkam, Vol.XIV, No. 1 Januari, 2014
- Ashry, M. Noor, Umi Wasilatul, *Pemikiran Sa'id Ramadhan Al-Buthi Terhadap Isu-isu Feminisme*, Jurnal Studi Al-Qur'an, Vol. 18, No. 1, tahun 2022
- Bachtiar, Maryati, *Hukum Waris Islam Dipandang dari Prespektif Hukum Berkeadilan Gender*, Jurnal Ilmu Hukum, Vo. 3, No. 1
- Dewi, Ernita *Pemikiran Amina Wadud Tentang Rekonstruksi Penafsiran Berbasis Metode Hermeneutika*, Jurnal Substantia, Vol.15, No.2, Oktober 2013
- Faizah, Isniyatin, *Bagian Ahli Waris Laki-laki dan Perempuan dalam Kajian Hukum Islam*, The Indonesian Journal of Islamic Law and Civil Law, Vol.2, No.2
- Ibnu Katsir, *Tafsir Al-Qur'an al-'Adzim*

³³ Hafidz Taqiyuddin, *Konsep Islam Tentang Keadilan*, Jurnal Aqlania: Jurnal Filsafat dan Teologi, Vol. 10, No.2, Desember 2019, h.159-161

³⁴ Idris Rasyid, *Eksekusi 'Ab Intestato' Warisan Dua Banding Satu: Rasionalisasi Surah Annisa Ayat 11*, Jurnal Hukum Diktum, Vol. 14, No.2, Desember 2016, h.206

- Irawan, Azira, *Pesentase Perempuan Sebagai Kepala Rumah Tangga di DKI Jakarta*, diakses dari <https://statistik.jakarta.go.id/persentase-perempuan-sebagai-kepala-rumah-tangga-di-dki-jakarta>
- Ismail, Nurjannah, *Rekonstruksi Tafsir Perempuan: Membangun Tafsir Berkeadilan Gender*, *International Journal of Child and Gender Studies*, Vol. 1, No. 1, Maret 2015
- Khoiruddin, Heri, *Keadilan Waris dalam Islam*, (Sukabumi: CV Jejak) 2018
- Khatibah, *Penelitian Kepustakaan, "Iqra': Jurnal Kepustakaan dan Informasi"*, Vol 5, No 01, 2011. hlm 36-39
- Luthfiyyah, Ananda, *Memaknai Pemenuhan Hak-hak Perempuan dalam Implementasi CEDAW Terhadap Pembagian Waris Islam*, *Jurnal Al-Imarah: Jurnal Pemerintahan dan Politik Islam*, Vol. 6, No. 1, tahun 2021
- Muhibbussabry, *Fikih Mawaris*, (Medan : Pusdikara Mitra Jaya, 2020)
- Mutawakkil, M. Hajir, *Keadilan Islam dalam Persoalan Gender*, *Jurnal Kalimah*, Vol. 12m No 1, Maret, 2014
- Permana, Sugiri, *Kesetaraan Gender dalam Ijtihad Hukum Waris di Indonesia*, *Jurnal Asy-Syari'ah* Vol.20, No.2, Desember 2018
- Priherdityo, Endro, *Wanita Karir Indonesia Terbanyak Keenam*, 2016, diakses dari <https://www.cnnindonesia.com/gaya-hidup/20160308121332-277-116053/wanita-karier-indonesia-terbanyak-keenam-di-dunia>
- Rasyid, Idris, *Eksekusi 'Ab Intestato' Warisan Dua Banding Satu: Rasionalisasi Surah Annisa Ayat 11*, *Jurnal Hukum Diktum*, Vol. 14, No.2, Desember 2016
- Rezkisari, Indira, *Pandemi Buat Banyak Perempuan Jadi Tulang Punggung Keluarga*, 2022, diakses pada tanggal 24 Oktober 2022 dari <https://www.republika.co.id/berita/rc33a0328/pandemi-buat-banyak-perempuan-jadi-tulang-punggung-keluarga>
- Sholahudin, Henry, *Al-Quran dihujat*
- Shihab, M. Quraish, *Tafsir Al-Misbah: Pesan, Kesan dan Keserasian Al-Qur'an*, Vol. 5 (Jakarta: Lentera Hati) 2002
- Wawasan al-Qur'an: Tafsir Maudhui Atas Berbagai Persoalan Umat*, (Bandung: Mizan) 1996
- Suma, Amin, *Keadilan Hukum Waris Islam dalam Pendekatan Teks dan Konteks*, (Jakarta:Rajawali Press), 2013
- Wardatun, Atun, *Kompromi dan Interseksionalitas Gender dalam Pemberian Mahar: Tradisi Ampa Coi Ndai Pada Suku Mbojo*, *Jurnal Ulummuna*, Vol. XIII, No. 1, Juni 2009
- Zulaiha, Eni, *Tafsir Feminis: Sejarah, Paradigma dan Validitas Tafsir Feminis*, *Jurnal al-Bayan*, No.1, 2016
- Zuhaili, Wahbah, *Tafsir al-Munir*, jilid 2, (Jakarta, Gema Insani) <https://kbbi.web.id/waris>