
Reinterpretation of Women's Inheritance Rights in Islam:

A Study Qs. Al-Nisā'/4: 11

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Abstract

One of the problems that arise after death is regarding the distribution of property to whom and how much share will be obtained, this has been regulated in Islamic inheritance law, but an issue that until now is often debated and prone to conflict in the family is the inheritance rights of women who in the Islamic inheritance system are different from men so that there is a stigma that Islamic inheritance law tends to be discriminatory and gender biased, This is due to the assumption that the inheritance system in Islam is something patent and cannot be changed, whereas the formulation of inheritance in the books of fiqh is the interpretation of scholars in the social setting where the ulama live, therefore it is necessary to reinterpret the inheritance system for women because the law is actually a social response that will continue to interact with the social construction of community life.

Keywords: inheritance, women's inheritance rights, Islamic inheritance

Reinterpretasi Hak Waris Perempuan dalam Islam:

Sebuah Kajian Qs. Al-Nisā'/4: 11

Abstrak

Salah satu masalah yang muncul setelah kematian adalah mengenai pembagian harta kepada siapa dan berapa bagian yang akan diperoleh, hal ini sudah diatur dalam hukum waris Islam, namun masalah yang sampai saat ini sering diperdebatkan dan rawan konflik dalam keluarga adalah hak waris perempuan yang dalam sistem waris Islam berbeda dengan laki-laki sehingga ada stigma bahwa hukum waris Islam cenderung diskriminatif dan bias gender, Hal ini disebabkan oleh anggapan bahwa sistem warisan dalam Islam adalah sesuatu yang paten dan tidak dapat diubah, sedangkan rumusan warisan dalam kitab-kitab fiqh adalah interpretasi para ulama dalam setting sosial dimana ulama tinggal, oleh karena itu perlu diinterpretasikan kembali sistem warisan bagi perempuan karena hukum sebenarnya merupakan respon sosial yang akan terus berinteraksi dengan konstruksi sosial kehidupan masyarakat.

Kata kunci: warisan, hak waris perempuan, warisan Islam

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A. Introduction

Man was created by Allah Almighty. over two different sexes namely male and female. The difference in human creation consisting of these two genders complements each other. This creation of male and female has no privilege over one class over another. All human beings are created equal in the future, which distinguishes only faith and piety. Since the time of jahiliyah, the position of men has always been considered superior to women. Both in terms of personal, social, political and so on. Men always have a more special place than women.¹

Gender equality or equal rights between men and women continues to be an interesting discourse to talk about. One of the reasons is due to the customs that live in the community, in addition to the understanding that lives in the community about the differences in abilities possessed between men and women, causing this gap to continue to grow and grow. Although in fact at this time it is undeniable that many women have been able to participate in economic development and improvement both for their families and participation in the development of the nation and State.²

The difference between men and women is still being discussed by several parties, especially Indonesian people who understand gender. As a Muslim-majority country, it is possible that many members of society use the Islamic legal system. But along with the development of the times marked by progress and technology, the principles in Islamic law continue to experience rapid progress and always follow the changing times for the benefit of the people in the world. Without distinguishing between both males and females. The concept of inheritance and³ what exactly is inheritance law, especially Islamic inheritance, has been tested in the practice of division and settlement of inheritance disputes in society, especially in Indonesia. Concepts and laws that have been considered standard, it turns out that in practice they are fluid, acquiring new meanings; and make the concept and law of

¹Surya Sukti, et al., "Gender Justice: Education, Leadership and Islamic Heritage Rights", *Journal of Religion and Society Studies* Vol. 18, No. 2, 2022, p. 131.

²Surya Sukti, et al., "Gender Justice: Education, Leadership and Islamic Heritage Rights", p. 131.

³Maryati Bachtiar, "Islamic Inheritance Law Viewed from the Perspective of Gender Justice Law", *Journal of Legal Sciences* Vol. 3, No. 1, 2012, p. 7.

inheritance have to be rethought. The meaning of inheritance is very diverse, not only because the laws are diverse, but also gender perspectives.⁴

The main sources of Islamic inheritance law are the Qur'an and hadith which were later developed in detail by Islamic jurists through their *ijtihad* in their time, according to the time and space, situation and conditions in which *ijtihad* was made. As a law that has a direct source and divine revelation delivered and explained by the Holy Prophetsa with his *sunnah*, the Islamic law of inheritance contains its own principles and patterns. It is part of the religion of Islam and its practice cannot be separated from the faith or *aqidah* of a Muslim.⁵

In Islamic inheritance law, we know the concept of 2:1 (two to one) between men and women. This provision is contained in Qs. an-Nisā'/4:11. Historically, the concept in the verse was fair, because the derivation of the verse contained the value of equality between men and women in receiving inheritance rights, and upheld the dignity and dignity of women compared to the position of women in pre-Islam. Social conditions at that time also changed along with the development of the times and differences in existing social conditions. Social conditions at this time uphold the equal position and rights of women in the name of gender. Thus, the ⁶ possibility of a reinterpretation of the verse of inheritance in Islam, especially women's inheritance rights, is very likely.

This study focuses on the study of the Reinterpretation of women's inheritance rights in Islam by analyzing various interpretations of scholars, both classical and contentporer related to QS. an-Nisā'/4:11. This is important to remind Islamic law about inheritance rights, especially rights and divisions, especially women, tend to be viewed unfairly by some parties. To reveal more clearly the rights of women's inheritance, the author will explain the verse about women's inheritance rights more clearly.

⁴Sulistyowati Irianto, et al., *Pluralism of Inheritance Law and Women's Justice* (Cet. I; Jakarta: Obor, 2016), p. 1.

⁵Iman Jauhari, "The Position and Rights of Girls in Islamic Inheritance Law", *Confrontation: Journal of Culture, Economics and Social Change* Vol. 3, No. 2, 2016, p. 11.

⁶M. Lutfi Hakim, "Justice of Islamic Inheritance to the Part of Inheritance 2:1 between Men and Women Perspectives of Islamic Legal Philosophy", *Journal of Legal Sciences* Vol. 1, No. 2, 2016, p. 7.

B. RESEARCH METHODS

This paper is a *library research* because the source data is taken from books and books by classical and contemporary scholars, books written by women fighters, feminist studies and other articles related to women and their problems. The approach used in this paper is the structure-functional approach (theory) which is a sociological theory approach applied in family institutions that recognize diversity in social life. This diversity is the main source of organizational structure in society. Furthermore, a person's position in the organizational structure will determine their respective functions, each of which is different. However, this distinction is not to meet the interests of the individual concerned, but rather to achieve the goals of the organization as a whole. This structure and function will never be separated from the influence of culture, norms, and values that underlie the system of society. In addition, this theory is dialogued with the Islamic inheritance system where the issue of inheritance is a problem that arises in the institution of the family. In analyzing the data and material that has been collected, using the analytical descriptive method, which describes the understanding, scope and matters related to the general discussion. With this methodology, it is hoped that it can obtain clear thoughts and interpretations from everything and can be in line with Islamic teachings.

C. Discussion

1. Verses and Translations of Qs. an-Nisā'/4:11

God commands you in your children for the male like the luck of the females, if they are women above two, they have two-thirds of what is left, and if you are one, they have one-half, and each of them has one-sixth of what is left, if he has a son, if he does not have a son, and his parents inherit him, so his mother is one-third, if he has brothers, his mother is one-sixth, after a commandment that is recommended by your fathers and sons, you do not know which one The closest benefit to you is an assumption from God that God was wise

Translation:

Allah decreed for you about (the distribution of inheritance to) your children. That is: the share of a son is equal to the share of two daughters; and if the child is all more than two girls, then to them two-thirds of the property left behind; if the daughter is alone, then she obtains half the property. And for two fathers, for each one-sixth of the property left behind, if the deceased had children; if the deceased has no children and he is inherited by his father's mother (only), then his mother gets one-third; If the deceased had several relatives, then his mother got one-sixth. (The aforesaid divisions) after the fulfillment of the will he made or (and) after the payment of his debt. (About) your parents and your children, you do not know which of them is closer (many) benefits to you. This is a decree from God. Indeed, Allah is All-Knowing, All-Wise.⁷

2. Asbabun Nuzul Qs. an-Nisā'/4:11

Narrated by Al-Bukhari, Muslim, Dawud, An-Nasa'I, AT-Tirmidhi and Ibn Majah of Jabir bin Abdullah said, "The Messenger of Allah and Abu Bakr came to visit me in the Banu Salmah on foot, they saw me unconscious, so he took water and then performed ablution, then he sprinkled the water on me and I immediately regained consciousness, then I said to the Messenger of Allah, "What do you command me to do with my treasure?", so says Allah, "Allah decrees for you about (the distribution of inheritance for) your children. That is: the share of a son is equal to the share of two daughters."⁸

Narrated by Imam Ahmad, Abu Dawud, At-Tirmidhi, AL-Hakim of Jabir said, "O Messenger of Allah, these are two daughters of Sa'ad bin Rabi', their father was martyred while participating in the battle of Uhud with you, and verily their uncle took all the property left by their father and left not for the daughter of the woman, and they could not be married without it, So the Holy Prophet(sa) said, "Allah will decide this matter", so came the verse about inheritance."⁹

Ibn Hajar said, this hadith became a guide for those who said, "This verse comes down to the story of Sa'ad bin Rabi's two daughters, and this verse does not

⁷Ministry of Religious Affairs of the Republic of Indonesia, *Al-Qur'an and its Translation*, (Bandung: Cordoba, 2018), p. 78.

⁸Imam As-Suyuti, *Asbab An-Nuzul*, tr. Andi Muhammad Syahril and Yasir Maqasid, *Reasons for the Descent of the Qur'anic Verse* (Cet. I; Jakarta: Pustaka Al-Kautsar, 2016), pp. 129-130.

⁹Imam As-Suyuti, *Asbab An-Nuzul*, tr. Andi Muhammad Syahril and Yasir Maqasid, *Reasons for the Descent of the Qur'anic Verse*, p. 130.

come down to the story of Jabir bin Abdullah because at that time Jabir had no children."¹⁰

Then Ibn Hajar said, the answer to the above opinion is that this verse descends on both stories at once, and there is a possibility that this verse came down initially to the two daughters of Sa'ad ibn Rabi', and the last verse is, "If a man dies, both male and female who do not leave a father and leave no children, but have a brother (mother only)" descending on the kisa of Jabir bin Abdullah, and meaning Jabir bin Abdullah with his words, then came down the word of Allah, "Allah decreed for you about (the distribution of inheritance to) your children, namely; the share of a son is equal to the share of two daughters," i.e. mentioning Al-kalalah (the man who leaves no father and leaves no son) as a connection to this verse.¹¹

And, there is a third reason for this verse: it is narrated by Ibn Jarir of As-Suddi saying: "That in the past, people in the days of jahiliyah, were reluctant to give inheritance to daughters as well as young sons, nor did anyone give inheritance to his sons except those who were able to fight. One day, Abdur-Rahman died and he left behind a wife who used to be called um Kujjah and five sisters, so the heirs came to take his property, so um went to the Prophet Muhammad (peace be upon him) to complain about this, so Allah sent down His words, "And if the children are all more than two women, then for them two-thirds of the property left behind, " and said Allah to um Kujjah, "Wives get a quarter of the property you leave behind if you have no children. If you have children, then wives get one-eighth of the property you leave behind."¹²

¹⁰Imam As-Suyuti, *Asbab An-Nuzul*, tr. Andi Muhammad Syahril and Yasir Maqasid, *Reasons for the Descent of the Qur'anic Verse*, p. 130.

¹¹Imam As-Suyuti, *Asbab An-Nuzul*, tr. Andi Muhammad Syahril and Yasir Maqasid, *Reasons for the Descent of the Qur'anic Verse*, p. 130.

¹²Imam As-Suyuti, *Asbab An-Nuzul*, tr. Andi Muhammad Syahril and Yasir Maqasid, *Reasons for the Descent of Qur'anic Verses*, p. 131.

3. Interpretation of Ulama Qs. an-Nisā'/4:11

a. Tafsir Ibn Kathir

This verse and the verses after it and the concluding verse of this surah are verses on the science of *faraidh* (division of inheritance). And the science of *faraidh* is quoted (taken as a legal conclusion), from these three verses and the hadiths that explain it as its interpretation. Some of what pertains to the interpretation of this issue we will mention. As for the decision of the issue, the description of the differences of opinion and its postulates and the arguments put forward by the priests, its place is in the books of law. Only God asks for help.¹³

While interpreting this verse, al-Bukhari narrated from Jabir bin 'Abdillah, he said: "The Messenger of Allah and Abu Bakr who were in Banu Salam visited me on foot. Then, he found me unconscious. So he asked for water for ablution and splashed it on me, until I came to my senses. I asked: "What do you command to manage my treasure, O Messenger of Allah?" So came down the verse *يُؤْتِيكُمُ اللَّهُ فِي* *أَوْلَادِكُمُ لِلذَّكَرِ مِثْلُ حَظِّ الْأُنثَيَيْنِ* (Allah decreed for you about (the distribution of inheritance to) your children. That is: the share of a son is equal to the share of two daughters)¹⁴

Word of Allah swt. *يُؤْتِيكُمُ اللَّهُ فِي أَوْلَادِكُمُ لِلذَّكَرِ مِثْلُ حَظِّ الْأُنثَيَيْنِ* (Allah decrees for you about (division of inheritance for) your children. That is: the share of a son is equal to the share of two daughters). This means, He (Allah) commands you to do justice to them. Because, in the past, the Jahiliah gave all inheritance only to men not to women. Then Allah swt. commanded similarities between them in the legal origin of inheritance and distinguished the part between the two types, where the male part was equal to the two female parts. That, because men need to fulfill the

¹³Ismail bin Umar bin Katsir al-Qursyi ad-Damasyqi, *Lubabut Tafsir Min Ibni Katsir*, Terj. M. Abdul Ghoffar, *Tafsir Ibnu Katsir*, Jilid 2 (Cet. I; Bogor: Pustaka Imam Syafi'i, 2001), h. 243.

¹⁴Ismail bin Umar bin Kathir al-Qursyi ad-Damasyqi, *Lubabut Tafsir Min Ibni Kathir*, Terj. M. Abdul Ghoffar, *Tafsir Ibn Kathir*, p. 244.

responsibilities of bread, needs, and burdens of trade, effort and risk and responsibility, it is appropriate if he is given twice as much as given to women.¹⁵

Then in the continuation of the verse, *فَإِنْ كُنَّ نِسَاءً فَوْقَ ائْتِنَيْنِ فَلَهُنَّ ثُلُثَا مَا تَرَكَ* (and if the child is all girls more than two, then for them two-thirds of the property left behind). The acquisition of the two-thirds share of the two daughters is taken from the law of the two-sister part. This is because in it, Allah Almighty. set the sister by two-thirds. If two sisters get two-thirds, then giving two-thirds inheritance to daughters is obviously more important.¹⁶

Then in the continuation of the verse, *وَإِنْ كَانَتْ وَاحِدَةً فَلَهَا نِصْفٌ* (If the daughter is alone, then she gets half the property). If two daughters had received half the property, it would have been mentioned in the nash. For this reason, it can be concluded, if the share of a girl is mentioned independently, then it shows that 2 girls are equal to the law 3 girls.

Word of Allah swt. *وَلِأَبَوَيْهِ لِكُلِّ وَاحِدٍ مِّنْهُمَا السُّدُسُ* (And for two fathers, each gets one-sixth of the property left behind). Two fathers have several circumstances in receiving inheritance.¹⁷

First, both are joined by children (corpses), then each obtains one-sixth. If the body leaves no heirs except one daughter, then for the daughter it is half and each father's mother gets one-sixth, while the father one-sixth '*ashabah* (remainder). So the father has a share and '*ashabah*. *Secondly*, the two father's mothers are the only heirs, so the mother gets one-third, while the father gets the remaining share. *Third*, two fathers joined by several brothers, either siblings, fathers or mothers. His Word, *مِن بَعْدِ وَصِيَّةٍ يُوصِي بِهَا أَوْ دِينٍ* "These divisions after the fulfillment of the will he made or

¹⁵Ismail ibn Umar ibn Kathir al-Qursyi ad-Damasyqi, *Lubabut Tafsir Min Ibni Kathir*, Terj. M. Abdul Ghoffar, *Tafsir Ibn Kathir*, p. 244.

¹⁶Ismail ibn Umar ibn Kathir al-Qursyi ad-Damasyqi, *Lubabut Tafsir Min Ibni Kathir*, Tr. M. Abdul Ghoffar, *Tafsir Ibn Kathir*, p. 245.

¹⁷Ismail ibn Umar ibn Kathir al-Qursyi ad-Damasyqi, *Lubabut Tafsir Min Ibni Kathir*, Tr. M. Abdul Ghoffar, *Tafsir Ibn Kathir*, p. 245.

(and) after the payment of his debt." The scholars of salaf and khalaf agree that debts take precedence over wills.¹⁸

His Word, أَبَاؤُكُمْ وَأَبْنَاؤُكُمْ لَا تَدْرُونَ أَيُّهُمَ أَقْرَبُ لَكُمْ نَفْعًا "As for your parents and your children, you do not know who in their midst is closer (much) benefit to you." That is, we have determined a share for your parents and children and we have equated them entirely in the origin of the law of inheritance, in contrast to the custom that prevailed in the time of Jahiliyah and in contrast to the provisions that prevailed in the early days of Islam, where property was for children and wills for parents.

He said, فَرِئَضَةٌ مِنَ اللَّهِ "This is a decree from Allah." The details of the inheritance we have mentioned and the granting of a larger share of the inheritance to some of them are decrees, laws and decrees of God. Allah is all-knowing and all-wise who puts things according to their place and gives to everyone who is entitled according to their content. For that Allah swt. said, إِنَّ اللَّهَ كَانَ عَلِيمًا حَكِيمًا means: (Verily Allah is All-Knowing, All-Wise).¹⁹

b. Tafsir Al-Misbāh

The preceding verses are an introduction to the provision of giving each owner their legitimate rights. It also affirms that there is a right for men and women in the form of a certain part of the inheritance of mothers, fathers and relatives that will be governed by God the Most High God. Now, this verse details these statutes by saying that Allah wills your brother, that is, decrees regarding the distribution of inheritance to your children, women and men, adults and children. That is, the share of a son of your children, if with him there are daughters, and there is no religiously prescribed obstacle for him to obtain an inheritance, such as killing the heir or differing in religion from him, then he is entitled to an inheritance of the same level as the share of two daughters; so that if he is alone with his sister then he gets two-

¹⁸Ismail ibn Umar ibn Kathir al-Qursyi ad-Damasyqi, *Lubabut Tafsir Min Ibni Kathir*, Tr. M. Abdul Ghoffar, *Tafsir Ibn Kathir*, p. 246.

¹⁹Ismail ibn Umar ibn Kathir al-Qursyi ad-Damasyqi, *Lubabut Tafsir Min Ibni Kathir*, Terj. M. Abdul Ghoffar, *Tafsir Ibn Kathir*, p. 247.

thirds and his sister gets one-third, and if the child is all girls more than two, and there is not with them a son, then for them two-thirds of the estate left by the deceased; if the daughter alone no other heir is entitled with her, So he obtained no more than half of the estate.²⁰

After giving priority to the rights of children, because they are generally weaker than parents, it is now explained the rights of the father's mother because they are the closest to the child, that is, and for the two fathers, that is, the mother of the father of the deceased child, both male and female, for each of the two, that is, to the father's mother one-sixth of the property left behind, that amount becomes his right if the deceased has children, but; If the deceased person has several, i.e. two or more brothers, either paternal relatives, or only a mother or father, male or female and the deceased has no children, then the mother, i.e. the mother of the deceased gets one-sixth of the estate, while the father gets the rest, while the brothers do not get any inheritance. The aforesaid divisions are after the fulfillment of the will he made before his death or also after the repayment of his debts if he owes debts. Your parents and your children, of whom God details this division, are ordained by God in such a way because you do not know which of them is of greater benefit to you that if you assign it you will be mistaken. Therefore carry it out responsibly because this is a decree that comes directly from God. Indeed, Allah from the past and the future has always been All-Knowing, All-Knowing, *All-Wise, in all His statutes.*²¹

From these two interpretations, it certainly provides more understanding or explanation of inheritance rights. That it is explicitly explained the division of property for men and women which will be a source of law or a guide in carrying out the division of inheritance rights.

²⁰M. Quraish Shihab, *Tafsir Al-Misbah: Message, Impression, and Harmony of the Qur'an*, Volume 2 (Jakarta: Lentera Hati, 2017), p. 360.

²¹M. Quraish Shihab, *Tafsir Al-Misbah: The Message, Impression, and Harmony of the Qur'an*, p. 361.

4. *The Concept of Women's Inheritance Rights*

Allah's rule in the form of Islamic law is grouped into two parts, namely the law of worship and the law of muamalat. The law of worship is a rule that concerns between man and his creator. Second, the muamalat law is in the form of a law that regulates the relationship between fellow humans and the surrounding nature. Among the laws governing the relationship between fellow humans and the surrounding nature have been established by Allah Almighty, one of them is about inheritance.²²

In language *mawarits* comes from the form jama' word *miirats*, which is a masdar of the words *waratsa, yaritsu, wiraatsatan, wa miiratsan*, which means relic. While in terms is the transfer of an individual or group property to another individual or group.²³ Inheritance according to Islamic law is anything left behind by an heir who can legally pass to his heir. People who leave property that is inherited by heirs are called *mawarits*.²⁴

When people talk about inheritance issues, then people will arrive at 3 main issues, namely; there is a person who dies (heir), inheritance (inheritance), and people who take care of and are entitled to the inheritance (heirs).²⁵ There are several general principles described in the Qur'an regarding the law of inheritance, including:

1. Bilateral principles

The bilateral principle in inheritance law means that inheritance passes to and through two directions, that is, a person receives rights or shares of inheritance from both parties of the family line, namely male line relatives and female line relatives. This can be seen in Qs. an-Nisa'/4:7. Based on the verse of the Qur'an it is clearly illustrated that the transfer of property in Islamic inheritance law applies

²²Maimun Nawawi, *Introduction to Islamic Heritage Law* (Surabaya: Pustaka Radja, 2016), p. 1.

²³Maimun Nawawi, *Introduction to Islamic Heritage Law*, p. 2.

²⁴Amir Syarifuddin, *Islamic Inheritance Law* (Cet. V; Jakarta: Prenadamedia Group, 2015), p. 215.

²⁵M. Idris Ramulyo, *Comparative Islamic Heritage Law* (Jakarta: Pedoman Ilmu Jaya, 1992), p. 105.

downward (children), upward (father and mother) and sideways (brothers) both from the male family line and from the female family line. Similarly, in receiving inheritance, it also applies from two family lines, namely from the male family line and the female family line. This is called bilateral inheritance.²⁶

2. Moral principles

The moral principle is when the distribution of inheritance is carried out in public which is attended by people who do not get inheritance because there is no relationship between nasab and kinship, therefore the Qur'an teaches moral principles as found in the word of Allah swt. Qs. AN-Nisa'/4: 8. The lesson that can be learned from the above verse is that in the atmosphere of the division of inheritance a sense of solidarity with others must still be built, especially for those who witness the division firsthand, even though they legally do not get a share of the inheritance, which is due to the absence of nasab and kinship relations or the existence of shari'i obstacles.²⁷

3. Principles of Balanced Justice

What is meant by the principle of balanced justice in Islamic inheritance law is that in the division of inheritance there is a balance between rights and obligations, a balance between what a person gets and his needs and uses. This is the concept of justice in the context of the division of Islamic legal inheritance. In this case it can be said that gender differences do not affect the right of inheritance in Islam, meaning that men and women have the same strong right to inherit, corresponding and proportional between the rights they obtain and the obligations they bear and must be fulfilled in family and community life. In terms of the number of shares obtained when receiving inheritance rights, there is indeed a difference between men and women (when looking at the provisions of Qs. An-Nisa' verses 11

²⁶Iman Jauhari, "The Position and Rights of Girls in Islamic Inheritance Law", pp. 11-12.

²⁷Arsal, "Inheritance in the Perspective of the Qur'an (Uncovering the Philosophy of the Male and Female Portions of 2:1)", *Al-Hurriyah* Vol.13, No.1, 2012, p. 20.

and 176), but this does not mean unfair, because justice in the Islamic view is not only measured by the amount obtained when receiving inheritance rights but also related to their usefulness and needs or responsibilities.²⁸

The right of inheritance is regulated in such a way in the Qur'an. But until now, the distribution of inheritance rights is sometimes still influenced by cultural culture without neglecting the rules in the Qur'an itself. The concept of division of property or inheritance rights between men and women, namely 2:1, is still relevant and continues to this day. This is because Indonesian law still requires the provision of dowry and the right to provide for the wife. However, if it is related to the case of working women, this general concept can change according to the social conditions that occur in Indonesian society.

5. Possible Reinterpretation of the inheritance verse

This 2:1 division of inheritance is much contrary to the principles of justice and partnership set forth by the Qur'an itself? And for what reason are women given one-second share of men's share? Though women are weaker than men and need wealth more? To answer all these questions, Ash-Shabuni gave an explanation of the reasons why women are given part 1/2 of men, namely: 1. The woman's livelihood has been bought, namely sons, fathers, brothers and other male families who are obliged to give nafakah to her. 2. Women are not required to provide for anyone, while men are required to provide for their relatives and others who are their obligations. 3. The obligation to issue nafakah to men is more diverse and the duty of his obligations regarding material matters is more vital, so that his need for property is greater than that of women. 4. The four men are required to give dowry to their wives and to provide food and shelter for their wives and children 5. Children's school fees, fees, children's treatment, wives and so on become the responsibility of men (husbands) not to be the obligations of women. (AsShabuni

²⁸Iman Jauhari, "The Position and Rights of Girls in Islamic Inheritance Law", p. 13.

1995: 23) Thus, all material expenditures are the responsibility of more mature men, in accordance with the guidance of Islamic law.

The next question is what if the role of men above does not materialize, but here women are the ones who provide a living so as to replace the roles that should be done by men due to men's incompetence due to other factors such as not having a job? Is 2:1 still applied? Based on this, another view was put forward by Masdar who said the verse *fi Auladikum Lidzakari Mitslu Hadhin al Untsyayaiin* can be understood as a minimal form. That is, the minimum limit in the distribution of inheritance for women. If in certain cases, where the demands of justice require it, the share for men can be equal to women or even women can get the most share. What matters is not the numbers, but the spirit of justice and partnership as equally inherited subjects after previously being treated only as inherited objects. (Mas'udi, 1997: 5).

In relation to Masdar's expression above, there are two things that must be considered: first, to review the social reality when this verse was revealed (*asbabun nuzul*), that is, women at that time did not get inheritance, even considered part of inherited property. Then Islam came by giving inheritance rights to them. Obviously this was a very revolutionary and radical decision. Islam with its teachings establishes a norm that men and women as equal partners are equally inherited subjects. Second, the amount or quantity of inheritance distribution in which women only get half of the male share can be seen from an economic point of view (especially in family life) at that time, namely the burden of family or income is entirely the responsibility of men. But if the woman is rich or earns more than her husband, then her wealth and income all belong to her own wife. The husband may not impose the obligation of family support on the wife's estate or income, unless the wife is happy and does not object. This is the socioeconomic background of the 2:1 inheritance system as proclaimed by the Qur'an in the midst of Arab culture at

that time. By looking at the discourse stated above, the author has the following assumptions:

1. The law of inheritance is basically a social response in which the legal illat is a sociological construction of society, where women at that time as objects of inheritance and only dabbled in the domestic world, while the law can change when the legal illat also changes due to changing circumstances of the times and times. In accordance with the rules: *تغير الأحكام بتغيير الزمان والمكان*

Changes in law are based on changes in times, places and circumstances.

2. Examples of the behavior of the companions of the prophet who made a breakthrough against the law but in essence did not come out of the nash-nash, this shows for the sake of creating fame, for example the behavior of Umar not cutting off the hands of thieves because of the famine season, ijthad umar in the matter of Aul and Rad, where this Aul occurred because the shares of the heirs were greater than the amount of inheritance so that the amount of inheritance of all other heirs was reduced, likewise in rad, basically increasing the amount of property because in Aul the amount of property is greater than the number of shares obtained by the heirs, then the issue of inheritance of the mother who on the one hand gets 1/3 of all property but on the other hand 1/3 of the rest of the property after being deducted by the husband even though there is no explanation from the Qur'an and Hadith on this matter, Another example of a companion is Ali who determined the stoning law which was originally 40 to 80 whips.
3. When viewed women's inheritance rights there is no absolute determination but conditional or situational, for example the rights of mothers are sometimes the same as fathers, the number is 1/6 if there are children, sometimes also one-

third, as well as women sometimes $1/2$, $2/3$, and Ashabah. This shows that women's inheritance rights are very situational.

4. The superiority of men and women in the Qur'an with the expression *bima fadhalallah* must be reviewed as a whole because of the superiority there in terms of providing for a living as in QS. Al-Nisa/4: 34. This means that if the ability to provide a living does not exist, then the value of this male excess becomes reduced, Based on this, the possibility of equality between men and women in inheritance rights can be applied with a special note, namely women in the economic order become the backbone of the family, the application of 1: 1 can be applied in certain conditions or in emergency or narrow conditions.

D. Conclusion

The law of inheritance is basically a social response to the social building that occurred during the derivation of the inheritance verse which aimed to create fame in the midst of society. The provisions in the Qur'an are considered as the standard *hudud* of Allah, so they cannot be changed. Although the possibility of equality between men and women in inheritance rights can be applied with a special note, namely women in the economic order become the backbone of the family, the application of 1: 1 can be applied in certain conditions or in emergency conditions. This makes the provisions of the 2:1 inheritance law continue to be preserved today, even though the context is different. The male part remains twice the female part. It is different when we talk to gender missionaries who interpret the Qur'an by harmonizing the text with the context so that the Qur'an remains a response to any changes in social construction.

There are different perceptions of justice in inheritance law between classical and contemporary scholars, especially gender warriors. The construct of the point of view of classical scholarly interpretation, especially on women's inheritance rights, is very textual. The provisions in the Qur'an are considered as the standard

hudud of Allah, so they cannot be changed. This makes the provisions of the 2:1 inheritance law continue to be preserved today, even though the context is different. The male part remains twice the female part. Unlike gender missionaries who interpret the Qur'an by harmonizing the text with the context so that the Qur'an remains a response to any changes in social construction based on it, in the view of contemporary scholars with the understanding of genderism views that the classical legal istinbath method that does not pay attention to the historical context of the text proves incapable of dialectics with the contemporary world.

Equality between men and women in inheritance rights can be applied with a special note that women in the economic order become the backbone of the family, the application of 1:1 can be applied in certain conditions or in emergency conditions or occasions and there is agreement between heirs after each is aware of their respective shares.

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