

## Gender Justice Principles in the Islamic Inheritance System

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### Abstract

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This study aims to examine the principles of gender justice within the Islamic inheritance system, based on Surah An-Nisa' verses 11-12, which stipulate a 2:1 ratio (a male receives two shares of the inheritance compared to a female). However, in the modern era, with changing times and human mindsets, as well as demands for equal rights, this 2:1 stipulation is considered a problem of justice. This research is normative juridical research, employing the library research method. The legal materials used include literature studies, such as interpretations of sacred texts, fiqh books, books, journals, previous research results, websites, and other writings related to the issues being studied. The results of this research indicate that justice refers to fair and equal treatment for every individual in accordance with the principles of the Qur'an and Hadith. However, in the context of Islamic inheritance distribution, challenges arise due to social and cultural changes that affect its interpretation and application. Although the principles of justice remain, there needs to be a renewal in the interpretation and implementation of Islamic law to reflect social and economic developments and to advocate for gender equality. This adaptation is not an effort to oppose culture or religion but a step towards a more just society for all individuals, regardless of gender. In making this adaptation, religious values and cultural traditions must be reinterpreted in accordance with the spirit of inclusivity and justice inherent in Islam, so that Islam remains a relevant moral and legal guide for its followers.

## 1. Introduction

The evolution experienced by humanity necessitates a concurrent re-evaluation of the concept of justice, aligned with societal advancements. Theories of justice must be scrutinized and reassessed to accommodate emerging needs and challenges that arise with societal progression. John Rawls, in his theory of justice as fairness, underscores the imperative of equality in the distribution of resources and opportunities.<sup>1</sup> This dynamic conceptualization of justice must address contemporary societal challenges, such as economic disparity, discrimination, and human rights violations. Islam must engage with this dynamic to ensure that Islamic law can fulfill its roles in social engineering and social regulation. As a comprehensive religion, Islam encompasses teachings that address all facets of human life, including the concept of justice. Islamic law, or Sharia, functions not only as a spiritual guide but also as a social mechanism for regulating community life.

<sup>1</sup>Damanhuri Fattah, "Teori Keadilan Menurut John Rawl," *Teropong Aspirasi Politik Islam* 9, No. 2 (2013); A. Khudori Soleh, "Mencermati Teori Keadilan Sosial John Rawls," *Ulul Albab Jurnal Studi Islam* 5, No. 1 (2018), <https://doi.org/10.18860/Ua.V5i1.6152>; Marilang Marilang, "Rekonstruksi Epistemologi Teori Keadilan John Rawls," *Jurnal Hukum Unsulbar* 1, No. 1 (2018), <https://doi.org/10.31605/J-Law.V1i1.50>; Alfensius Alwino, "Diskursus Mengenai Keadilan Sosial: Kajian Teori Keadilan Dalam Liberalisme Locke, Persamaan Marx, Dan 'Justice As Fairness' Rawls," *Melintas* 32, No. 3 (2017), <https://doi.org/10.26593/Mel.V32i3.2696.309-328>.

Sharia must adapt to social changes without compromising its fundamental principles. Therefore, Muslim scholars and intellectuals must actively reinterpret Islamic teachings to maintain their relevance in contemporary social contexts. They must extract universal values from Islam that can be applied in modern contexts, such as equality, justice, and social welfare. Islamic law functions not only as a means of social regulation but also as an instrument of social transformation, guiding society towards enhanced justice and welfare.

Islamic inheritance provisions, known as *faraid*, stipulate that inheritance is divided with a ratio of two shares for males and one share for females.<sup>2</sup> This provision, commonly referred to as the 2:1 ratio, is explicitly detailed in the Qur'an, specifically in Surah An-Nisa' verses 11-12. These verses delineate the distribution of inheritance between male and female heirs, reflecting the principles of justice upheld in Islam. At the time these verses were revealed, this provision already embodied values of justice and equality for both men and women. Compared to pre-Islamic conditions, these rules marked a significant advancement in respecting the dignity and status of women. Before Islam, women often did not receive inheritance or were treated unjustly in the distribution of family wealth. The revelation of these verses elevated the status of women by granting them clear inheritance rights. Furthermore, the 2:1 rule in *faraid* should not be viewed purely from a nominal perspective.<sup>3</sup> It must be understood within the context of greater financial responsibilities imposed on men in the Islamic family structure. Men are responsible for providing for their families, including wives, children, and relatives in need. Therefore, this inheritance distribution is designed to balance the burdens and responsibilities within the family. This concept ensures that even though men receive a larger share, they also bear greater responsibilities in managing and distributing this wealth for the family's welfare. The inheritance provisions in Islam should be seen as part of a broader system that includes various instruments for protecting women's rights. For instance, in marriage, women have the right to a *mahr* (dowry) and the right to receive financial support from their husbands. These provisions demonstrate that Islamic law comprehensively regulates financial relationships and social responsibilities with the aim of creating justice and welfare for all members of society.

Social changes are an inevitable phenomenon accompanying societal development. In this context, rules considered just and equitable in the past may require reevaluation to remain relevant to contemporary demands. For example, the concept of inheritance distribution in Islam, which uses the 2:1 ratio, where males receive two shares and females receive one share, was seen in its time as a significant step towards justice and equality. This concept is explicitly regulated in the Qur'an and reflects the values of justice in the context of the Arab society of that time. However, the demands of modernity and the ever-evolving social dynamics compel us to reconsider the interpretation of Islamic law to maintain its

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<sup>2</sup> Hulia Syahendra, "Aul Dalam Teori Dan Praktek Hukum Waris Islam," *Jurnal Hukum Replik* 6, No. 1 (March 2018); Ridwan Setiawan, Dini Destiani Siti Fatimah, And Cepy Slamet, "Perancangan Sistem Pakar Untuk Pembagian Waris Menurut Hukum Islam (Fara'id)," *Jurnal Algoritma* 9, No. 1 (August 31, 2012): 1-8, <https://doi.org/10.33364/Algoritma/V.9-1.1>.

<sup>3</sup> Alhafiz Limbanadi, "Kedudukan Dan Bagian Ahli Waris Pengganti Dalam Hukum Islam," *Lex Et Societatis* 2, No. 8 (2014).

relevance and meet the needs of contemporary society. Modernity necessitates flexibility in legal interpretation while remaining grounded in the fundamental principles of Sharia. In this regard, the principle of Islamic law stating "*al-hukmu yaduuru ma'a illatihi*" (the law revolves around its underlying reasons) becomes crucial. This principle teaches that the law must always consider the context and reasons for its application, allowing it to adapt to changing conditions.

In efforts to accommodate these changes, it is necessary to develop an appropriate legal framework that remains faithful to the fundamental principles of Sharia while being responsive to social changes. Muslim scholars and intellectuals play a crucial role in conducting *ijtihad*, or efforts to interpret the law, to ensure that Islamic teachings remain relevant and applicable in various contemporary contexts. They need to consider factors such as economic developments, changes in gender roles, and demands for equality in modern society. For instance, in the context of inheritance distribution, although the 2:1 rule is still considered valid and relevant in many situations, there is room to reassess its application under certain conditions. If there are situations where applying this rule no longer fulfills the intended principles of justice and equality, adjustments grounded in the objectives of Sharia – achieving justice and welfare for all parties involved – are necessary.

This research aims to examine the principles of gender justice within the Islamic inheritance system. Many previous studies have discussed various aspects of the Islamic inheritance system but have not specifically highlighted the perspective of gender justice. For example, research conducted by Muhammad Jaidi et.al<sup>4</sup>, focused on the concept of *musytarakah* in Islamic inheritance law and how this concept ensures justice in inheritance distribution. They elaborate on how *musytarakah* functions in the context of inheritance and its role in ensuring each heir receives a fair share according to Sharia rules. Another study by Muhammad Ali Murtadlo<sup>5</sup> highlighted the Islamic inheritance system from the perspective of The Theory of Limit proposed by Muhammad Syahrur. Syahrur offered a more flexible and contextual approach to Sharia rules, including inheritance distribution, to align with modern societal dynamics. This approach seeks to balance strict legal application with the need for adjustments in contemporary social practices. Meanwhile, research by Sofyan Mei Utama<sup>6</sup> discussed inheritance distribution between original heirs and substitute heirs. The main focus of this research is on the welfare of sibling relationships and how the Islamic inheritance system can be adapted to achieve this goal. This approach emphasizes the importance of flexibility in inheritance law to maintain harmony and welfare within the family.

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<sup>4</sup> Muhammad Jaidi, Ahmadi Hasan, And Masyithah Umar, "Keadilan Dalam Pembagian Waris: Memahami Konsep Musytarakah Dalam Hukum Waris Islam," *Indonesian Journal Of Islamic Jurisprudence, Economic And Legal Theory* 1, No. 4 (December 15, 2023): 718–31, <https://doi.org/10.62976/Ijijel.V1i4.198>.

<sup>5</sup> Muhammad Ali Murtadlo, "Keadilan Gender Dalam Hukum Pembagian Waris Islam Perspektif The Theory Of Limit Muhammad Syahrur," *Tafaqquh: Jurnal Penelitian Dan Kajian Keislaman* 6, No. 1 (August 19, 2018): 76–89, <https://doi.org/10.52431/Tafaqquh.V6i1.132>.

<sup>6</sup> Sofyan Mei Utama, "Kedudukan Ahli Waris Pengganti Dan Prinsip Keadilan Dalam Hukum Waris Islam," *Jurnal Wawasan Yuridika* 34, No. 1 (December 15, 2016): 68, <https://doi.org/10.25072/Jwy.V34i1.109>.

Although these studies provide valuable contributions to understanding the Islamic inheritance system, they have not specifically highlighted the principles of gender justice. Therefore, this research focuses on the perspective of gender justice within the Islamic inheritance system, aiming to fill the gap in the existing literature and contribute significantly to the practice and knowledge of Islamic inheritance law. This study will analyze how the principles of gender justice can be applied in inheritance distribution to ensure that women receive their rights fairly, in accordance with Sharia principles and modern demands. This research is expected to serve as a valuable reference for academics, legal practitioners, and the broader community in understanding and implementing an Islamic inheritance system that is fair and equitable for all genders. The results of this study are anticipated not only to enrich academic discourse but also to provide practical recommendations for improving the Islamic inheritance system to be more responsive to gender justice issues.

## **2. Methods**

This research is a normative juridical study, utilizing a conceptual approach and a statutory approach. The legal materials used include literature studies, such as interpretations of sacred texts, fiqh books, books, journals, previous research results, websites, and other writings related to the issues being studied

## **3. Results and Discussion**

### **3.1. Inheritance Preceding the Advent of Islam: Exploring Historical Contexts**

The inheritance system that prevailed before the advent of Islam was significantly influenced by the conditions and way of life in the Arab region at the time, often referred to as the era of ignorance or nomadic society.<sup>7</sup> During this period, society was largely nomadic, with people moving from one place to another along with their livestock in search of sustenance for themselves and their animals. This nomadic lifestyle profoundly impacted the culture of the time, including the inheritance system. Nomadic societies typically relied on physical strength and skills in managing and protecting livestock as their primary livelihood. Consequently, the inheritance system during the pre-Islamic era tended to prioritize family members who were considered capable of maintaining and continuing this livelihood, usually adult males. Men were deemed more capable of managing livestock and protecting the family from external threats, thus receiving a larger share of the inheritance.

Moreover, the dominant patriarchal system of the era also influenced the distribution of inheritance. Women often did not receive any inheritance or received a much smaller share compared to men. Women were perceived as lacking the same capabilities in physical defense and wealth management, leading to their marginalization in inheritance matters. The advent of Islam brought significant changes to this inheritance system, introducing principles of justice and equality between men and women. Although differences in proportions remained, with men receiving two shares and women one share, this principle represented a substantial advancement in recognizing women's rights to inheritance. Islam teaches that every

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<sup>7</sup> Ali Wahdi, "Historis Waris Jahiliyah Dan Awal Islam," *Al-Manhaj: Journal Of Indonesian Islamic Family Law* 1, No. 2 (December 12, 2019): 86, <https://doi.org/10.19105/Al-Manhaj.V1i2.3075>.

individual, both men and women, has clear and protected rights regarding inheritance. This is reflected in the provisions found in the Qur'an, specifically in Surah An-Nisa', verses 11-12.

Before the advent of Islam, the inheritance system was based on three main principles: Al-Qarabah, Al-Hilf Wa al-Mu'āqodah, and Al-Tabanni.<sup>8</sup> First, Al-Qarabah (kinship ties). In this system, only adult male heirs received inheritance rights due to the belief that men bore significant responsibilities within the family. Men were expected to wield weapons, possess hunting skills, and be physically capable of defending the family against enemies. The heavy burden borne by men in protecting and securing the family made them the primary recipients of inheritance. Thus, the inheritance system was highly patriarchal, with women often overlooked or given a minimal share of family wealth.

Second, Al-Hilf Wa al-Mu'āqodah (mutual inheritance agreement). This principle involved an agreement between two parties to mutually inherit from one another upon death, regardless of blood relations. Such agreements were often made within the context of close partnerships or friendships, where individuals or families committed to mutual protection and support, including in matters of inheritance. This practice indicated that the pre-Islamic inheritance system also considered social and partnership relationships outside of blood ties. Third, Al-Tabanni (adoption). In this context, adopted children were considered part of the family entitled to inheritance. Adoption provided legal status to adopted children, granting them rights equal to those of biological children regarding inheritance. This system allowed families without male heirs to have legitimate successors and ensured the continuity of family wealth.

These three principles reflect the social structure and cultural values of pre-Islamic society, heavily influenced by the need to survive in a harsh and often dangerous environment. The role of men as protectors and primary providers placed them in a dominant position in the inheritance system. On the other hand, inheritance agreements and adoption demonstrated flexibility in forming social relationships and ensuring family continuity. With the advent of Islam, many of these systems and practices were modified or adjusted to reflect better the values of justice and equality. Islam introduced clearer and fairer rules regarding inheritance, ensuring that women and children received their rightful shares proportionally and justly. This marked an evolution from a highly patriarchal inheritance system to one more equitable in accordance with Sharia principles.

With the advent of Islam, the inheritance system underwent significant changes, particularly in correcting the three main principles of the previous system. Islam aimed to reform and rectify the rationale behind the distribution of inheritance prevalent during the pre-Islamic era, thereby creating a more just system aligned with the values of justice and equality. First, Islam affirmed that both men and women, adults and children, have equal rights to inheritance. This provision represented a major revolution in inheritance law, as women and children were often overlooked or given minimal shares in the pre-Islamic era. The Qur'an, particularly in Surah An-Nisa', verses 11 and 12, stipulates a clear distribution of inheritance, where each heir receives a proportional share based on their kinship. This

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<sup>8</sup> Amhar Maulana Harahap And Junda Harahap, "Penerapan Kewarisan Islam: Sejarah, Hukum Dan Asas-Asasnya," *El-Ahli: Jurnal Keluarga Islam* 3, No. 2 (2022).



underscores the principle of justice in the distribution of inheritance, regardless of gender or age.

Second, Islam established that inheritance rights are only granted to those with direct kinship ties, either through blood relations or marriage. Granting inheritance based on mutual binding agreements, as practiced in the pre-Islamic era, is not permissible in Islamic law. *Al-Hilf Wa al-Mu'āqodah*, or mutual inheritance agreements without kinship ties, is not recognized in the Islamic inheritance system. This ensures that the inheritance remains within the immediate family, strengthening family bonds and ensuring that inheritance is given to those with legitimate blood or marital ties. Third, in Islam, adopted children do not automatically receive inheritance rights from their adoptive parents. The adoption system as known in the pre-Islamic era, where adopted children had the same inheritance rights as biological children, is not recognized in Islamic law. However, Islam provides a solution through the concept of bequests, allowing an individual to bequeath up to one-third of their estate to non-heirs, including adopted children. This provides flexibility for adoptive parents to support their adopted children financially without violating the fundamental principles of Islamic inheritance law.

In the pre-Islamic era, women were excluded from inheritance because they did not participate in warfare to defend their tribe and community. This belief stemmed from the view that the primary contribution to the protection and defense of the tribe came from men who could ride horses, wield weapons, and fight against enemies. The physical and military role played by men was the main criterion for determining who deserved inheritance. Hence, a well-known saying among them was: "How can we give inheritance (legacy) to those who cannot and have never ridden a horse, who are unable to carry weapons, and who do not fight against enemies?"

This view reflects the social and cultural norms of that era, which were highly patriarchal, where rights and responsibilities were primarily measured by physical capabilities and military contributions. In such a societal structure, women and young children were considered non-contributors to the tribe's defense and survival through warfare or physical defense. As a result, they were deemed unworthy of receiving a share of the family inheritance. The pre-Islamic community prohibited women from inheriting property just as they prohibited inheritance for young children. Both groups were seen as burdens to be protected and maintained rather than as active contributors to defending and protecting the tribe. Thus, inheritance was distributed to ensure that family resources remained in the hands of those deemed capable of defending and sustaining the community.

However, the arrival of Islam brought a radical change to this perspective. Islam introduced principles of justice that acknowledged the inheritance rights of women and children. In the Qur'an, particularly in Surah An-Nisa', it is affirmed that both men and women have the right to inheritance based on their kinship. This principle corrected the injustices of the pre-Islamic era, where women and young children were often excluded from inheritance. Islam teaches that contributions to the family and community are not solely measured by physical or military capabilities but also by kinship ties and social responsibilities. The Islamic inheritance system grants rights to each individual, regardless of

gender or age, according to their position and role within the family. This transformation not only reflects an evolution in the understanding of social justice but also strengthens family structures by ensuring that every family member receives a fair share of the inheritance. Islam elevated the status of women and children, ensuring they were recognized and protected under inheritance law, thereby creating a more just society. They disagreed with the revelation of the new provision granting inheritance rights to women, children, both parents, and spouses. Their astonishment and ridicule arose because they believed this provision was inconsistent with their traditional values, which highly prioritized physical and military capabilities in determining inheritance rights.<sup>9</sup> They argued that the new inheritors were incapable of wielding weapons to fend off enemies and unable to defend the interests of their tribe. This perspective reflects the highly patriarchal and militaristic thinking of the society at that time. Some even approached the Prophet Muhammad (PBUH) directly to express their objections. They said, "O Messenger of Allah, should we give inheritance to children who are still wet-nosed and to our daughters who cannot ride horses and fight?" This statement illustrates their lack of understanding of the broader concept of justice brought by Islam, which extends beyond mere physical and military contributions.

Their objections were based on the belief that inheritance should be given only to those who could provide direct and tangible contributions in protecting and defending the community.<sup>10</sup> Children and women, in their view, did not fit this category as they were perceived as lacking the ability to engage in warfare or defend the tribe against enemies. Therefore, they felt that granting inheritance to these groups was unfair and unreasonable. However, the new provisions introduced by Islam aimed to rectify long-standing injustices. Islam introduced comprehensive principles of justice, where inheritance rights were granted based on kinship ties and social responsibilities, not merely physical or military abilities. The Qur'an, in Surah An-Nisa', asserts that both men and women, adults and children, have clear rights to inheritance based on their kinship. This provision not only recognized individuals' rights fairly but also protected those who were vulnerable and incapable of defending themselves. The Prophet Muhammad's (PBUH) response to these objections emphasized the importance of understanding and internalizing the principles of justice taught by Islam. He explained that a person's value within the family and community was not solely measured by physical or military capabilities but also by their kinship ties and social responsibilities. A just distribution of inheritance ensured that each family member received a fair share, thereby strengthening family bonds and creating balance within society.

In pre-Islamic times, it was even permissible for the eldest son or his family to inherit (or marry) the widows left behind, even if the widow was his own mother. If the widows were not married by their family members, they could be married off to others through a dowry payment. This practice is implicitly mentioned by Allah SWT in Surah An-Nisa' verse 19.

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<sup>9</sup> Harahap And Harahap.

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*O you who have believed, it is not lawful for you to inherit women by compulsion. And do not make difficulties for them in order to take [back] part of what you gave them unless they commit a clear immorality. And live with them in kindness. For if you dislike them - perhaps you dislike a thing and Allah makes therein much good.*

In the third or fourth year after the Hijrah, calculated from the event of the migration of Prophet Muhammad SAW from the city of Mecca to the city of Medina, a highly significant event occurred in the history of Islam. During this period, Surah An-Nisa' verse 7 was revealed, bringing about a major change in the perception of women in the context of inheritance. Previously, women were considered as objects of inheritance, or property that could be inherited by male relatives. However, with the revelation of this verse, women's status changed to being entitled to inherit. When Surah An-Nisa' verse 7 was revealed, it marked a significant paradigm shift in Islamic inheritance law. The verse signified a turning point in the view of women as inheritors. Although the verse did not specifically determine the portion of inheritance for women, it at least marked a historical milestone where women began to be recognized as individuals entitled to a share of inheritance, no longer treated as objects to be inherited within the family's estate.

This change had a profound impact on the social and legal transformation within Islamic society. Previously, women were often overlooked in the distribution of inheritance, and their rights were not fairly recognized. However, with the revelation of this verse, Islam elevated the status of women and provided greater protection and rights to them regarding inheritance. This change not only reflected the values of justice and equality within Islam but also strengthened the family and societal structure by ensuring that every family member, regardless of gender, had their rights recognized and respected. This paradigm shift also marked a significant step in the evolution of Islamic law, which continues to adapt to social conditions and the needs of society. By shifting away from patriarchal and exclusive views of women in the context of inheritance, Islam emphasized the principles of justice, equality, and respect for human dignity. This reflected the inclusive spirit and commitment to justice that are core teachings of Islam, as well as efforts to create a more just and prosperous society for all individuals.

At the time when these inheritance-related verses were first revealed, they faced opposition from society due to being a completely new concept and contrary to the prevailing beliefs. They were dissatisfied and objected to the new concept introduced by Prophet Muhammad SAW. They wished for the new law or regulation to be nullified, as it contradicted the customs they had adhered to for hundreds or even thousands of years. The revelation of Surah An-Nisa' verses 11-12, which means:

*Allah has ordained for you [Muslims] regarding [the inheritance of] your children: [that] the share of a male child is equal to that of two female children; and if there are only daughters, more than two, for them is two-thirds of what is left; and if there is only one daughter, for her is half. For parents, to each one of them is a sixth of what is left if he has a child; but if he has no child and the parents [alone] inherit from him, then for his mother is one-third. And if the deceased has brothers [or sisters], for his mother is a sixth, after any bequest he [may have] made or debt [he may owe] is paid. Your parents or your children - you know not which of them are nearest to you in benefit. [These shares are] an obligation [imposed] by Allah. Indeed, Allah is ever Knowing and Wise. (Quran, Surah An-Nisa', 4:11).*



*And for you [husbands] is half of what your wives leave if they have no child. But if they have a child, for you is one-fourth of what they leave, after any bequest they [may have] made or [any] debt [they may owe] is paid. Wives receive one-fourth of what you leave if you have no child. If you have children, then for wives is one-eighth of what you leave, after any bequest you [may have] made or [any] debt [you may owe] is paid. But if a man or woman leaves neither ascendants nor descendants but has a brother or a sister, then for each one of them is a sixth. But if they are more than two, they share a third, after any bequest which was made or debt [that] does not harm [the heirs]. [This is] an ordinance from Allah, and Allah is Knowing and Forbearing. (Quran, Surah An-Nisa', 4:12).*

The paradigm shift in Islamic law, particularly concerning women's inheritance rights, not only reflects legal evolution but also demonstrates Islam's ability to adapt to evolving social dynamics. Islam is not a static religion but a dynamic one capable of adjusting to the needs and demands of the times. With the revelation of Quranic verses governing women's inheritance rights, Islam shifts away from traditional patriarchal and exclusive views of women. Previously, in societies dominated by patriarchal culture, women were often disregarded in inheritance distribution, and their rights were not fairly acknowledged. However, with the advent of Islamic teachings, women are granted a more respected position and acknowledgment in terms of inheritance. The principles of justice, equality, and respect for human dignity serve as the primary foundation in establishing inheritance laws in Islam.

This change is not merely a legal update but also reflects the inclusive spirit and justice at the core of Islamic teachings. Islam teaches that every individual, regardless of gender, has an equal right to fair treatment and respect in society. This aligns with universal humanitarian principles demanding fair and equal treatment for all individuals without exception. By granting inheritance rights to women, Islam also strives to create a more just and prosperous society for all individuals. Fair distribution of inheritance not only fosters equity among family members but also strengthens the social and economic structure of society as a whole. Thus, this change impacts not only the individual level but also broader social and economic levels.

This change demonstrates that Islam, as a mercy to all mankind, always seeks to create a just, prosperous, and equitable society for all individuals. This is evidence of Islam's continuity as a relevant and adaptive doctrine in facing the challenges of the times and its efforts to create a better world for all humanity. The inheritance division based on the provisions of Surah An-Nisā' (4):11-12 is *qat'i al-dalālah*, arising from historical reflection as part of social engineering regarding the prevailing legal system in society at that time. Surah An-Nisa' (4) 11-12 was revealed to prohibit arbitrary actions, as shown by Sa'ad ibn al-Rabi's desire to seize his inheritance when he died in battle.

Ata' narrates: Sa'ad Ibn al-Rabi' was martyred, leaving behind two daughters, a wife, and a brother. Then the brother took all the inheritance. Sa'ad's wife, the widow, went to the Prophet Muhammad SAW and said, "O Messenger of Allah, these are Sa'ad's two daughters, and Sa'ad died in battle, but his uncle has taken all the inheritance of these two daughters." the Prophet said: "Return, perhaps Allah will decide in this matter." So Sa'ad's wife returned and wept. Then the verses in Surah An-Nisa' 11-12 were revealed. Then the Prophet Muhammad SAW called his uncle and said, "Give Sa'ad's two daughters two-thirds, their mother one-eighth, and the rest for you." In another narration, these verses were revealed to

declare that the pre-Islamic practice, which only gave inheritance rights to adult males because women and children were unable to fight, was abolished. Some companions also approached the Prophet Muhammad SAW to change this rule, which led to a return to the original rule. It is also said that these verses were revealed to annul the practice of transferring property to children through inheritance and giving rights to parents through wills.<sup>11</sup> According to Hazairin, all children (both male and female) have the right to inherit from their parents. Such a provision is commonly referred to as the bilateral principle, which differs from the patrilineal principle, where only male offspring or male descendants inherit. In matrilineal systems, children only inherit from their mothers. From this conception arises the bilateral principle, which places equal footing between the female and male sides, thus creating equality.

The inheritance concept in Islam adopting the bilateral principle, where both males and females have equal inheritance rights, is a significant step in upholding gender justice. It also responds to criticisms that the 2:1 inheritance system in Islam is considered unfair.<sup>12</sup> Essentially, Islam does not treat women unfairly; instead, Islamic teachings provide protection and recognition of women's rights previously overlooked in the patriarchal systems existing before Islam.

Before Islam, Arabian Peninsula society adhered to a patriarchal system placing men in dominant positions regarding inheritance, where women were often considered to have unequal inheritance rights compared to men. However, with the advent of Islam, this system was changed to bilateral, where both men and women have equal inheritance rights. This bilateral principle affirms that every individual, regardless of gender, has an equal right to inherit. The application of the bilateral principle in the Islamic inheritance system is not merely a cosmetic response to criticism but a genuine effort to grant inheritance rights to women.<sup>13</sup> With this principle, the 2:1 inheritance distribution system aims to provide protection and recognition of the previously marginalized inheritance rights of women. This demonstrates that Islam is not only a religion advocating gender justice but also one that provides concrete solutions to address such injustices. The principles of Islamic teachings, encompassing values of justice, equality, and respect for human dignity, serve as the primary foundation in shaping the legal and social systems in Islamic society.

Tafsir Fi Dzilalil Qur'an regarding the events accompanying the revelation of Surah An-Nisa' verse 11 from a social-historical perspective, Al Aufo, narrating from Ibn Abbas, states:

*When the verse of inheritance (faroid) was revealed, Allah SWT determined the portion for each: sons, daughters, and both parents. People detested it, saying, 'Women are given a quarter or an eighth, daughters get half, even young children are given a share, even though none of them participated in battle or gained spoils. Let us not discuss this; perhaps the Prophet Muhammad SAW forgot, or if we inform him, there may be a change.' Then they said, 'O Messenger of Allah, a daughter is given half of her father's inheritance, even though she never rode a horse or fought against enemies, while young children receive inheritance, even though they have not done*

<sup>11</sup> Al-Yasa' Abubakar, *Rekonstruksi Fikih Kewarisan; Reposisi Hak-Hak Perempuan* (Banda Aceh: Lkas, 2012).

<sup>12</sup> Reni Nur Aniroh, "Mempertegas Ide Kesetaraan Gender Dalam Sistem Kewarisan Bilateral: Sistem Waris Bilateral Pasca Hazairin," *Āl-Aḥwāl* 13, No. 2 (2020).

<sup>13</sup> Aniroh.

*anything. They are accustomed to such practices (not giving inheritance to women and young children). They do not give inheritance except to those who fought against enemies. They give inheritance to the most significant, then to those below them.'* (HR. Ibn Abi Hatim and Ibn Jarir).

The advent of Islam marks a significant milestone in the history of the struggle to protect and recognize women's rights, as well as to safeguard their dignity. In the pre-Islamic era, women were often treated unfairly and did not receive inheritance rights equal to those of men. They were controlled and restricted by the patriarchal norms that dominated society at that time. However, with the advent of Islam, there was a significant paradigm shift in the treatment of women. Islam took concrete steps to protect and advocate for women's rights by establishing fair and inclusive legal provisions. One tangible evidence of this is the granting of inheritance rights to women. In Islamic teachings, women have equal rights with men in terms of receiving inheritance, as a recognition of their dignity and status as equal individuals in society.

The Islamic inheritance system, which divides inheritance in a 2:1 ratio between men and women, is not a form of discrimination against women but rather the result of a highly fair arrangement that considers the social, cultural, and customary contexts of the society at that time. These provisions are not just legislative actions but also efforts to align Islamic principles with the existing social conditions, thus creating a balance between justice and societal needs. Beyond just promoting gender equality, Islam also upholds the values of humanity and equal rights for all individuals. Through its legal provisions, Islam asserts that women have the same rights as men regarding inheritance and should not be treated unfairly or discriminatively. This reflects the spirit of inclusivity and justice at the core of Islamic teachings, as well as the efforts to create a fair and harmonious society for all individuals. Thus, the advent of Islam not only brought about changes in law and society but also manifested Islam's commitment to protecting and respecting women's rights and creating a just and prosperous society for all individuals. This is an integral part of Islam's mission as a religion of mercy for all creation, aiming to create welfare and justice for all humanity, regardless of gender or social background.

### **3.2. Gender Justice in Islamic Inheritance System: A Perspective on Equity**

In the implementation of Islamic law, the main principle is to uphold justice, which refers to ensuring that every individual is treated fairly and equally according to the principles found in the Qur'an and Hadith.<sup>14</sup> However, in the context of Islamic inheritance distribution, significant challenges arise due to changes in human attitudes and behaviors influenced by the social and cultural context in which they live. While the principles of justice in Islam remain unchanged, interpretations and applications in changing contexts can vary. For example, the understanding of women's inheritance rights evolves with social and cultural changes that reinforce their roles in society.<sup>15</sup> Traditions and social norms that once restricted women's roles and inheritance rights are now beginning to deconstruct with the emergence of awareness of the importance of gender equality.

<sup>14</sup> Utama, "Kedudukan Ahli Waris Pengganti Dan Prinsip Keadilan Dalam Hukum Waris Islam."

<sup>15</sup> Muhammad Jaidi, Ahmadi Hasan, And Masyithah Umar, "Keadilan Dalam Pembagian Waris: Memahami Konsep Musytarakah Dalam Hukum Waris Islam."

However, this adaptation process does not always proceed smoothly. Challenges and controversies may arise, especially in the context of strong traditional values and cultural norms. For instance, in some societies still adhering to patriarchal traditions, changes in more equitable inheritance distribution between men and women may be perceived as a threat to existing social structures. Nonetheless, efforts to update interpretations and implementation of Islamic law in the context of inheritance distribution must continue. This requires a balance between understanding religious and cultural values and accommodating social developments that advocate for gender equality and justice.<sup>16</sup> The implementation of Islamic law can remain relevant and contribute positively to building a more just society.

In Indonesia, debates about equality in inheritance distribution between men and women reflect deep discussions within society. While many women advocate for equal distribution, it should be noted that the roles and responsibilities between men and women in households often differ. In the Indonesian tradition, steeped in patriarchal values, men are often seen as the primary breadwinners and family leaders. This perspective provides a basis for the understanding that inheritance distribution favoring men is more reasonable. However, with the growing emphasis on gender equality values and changes in social dynamics, this view is being questioned. Increasing awareness of the importance of equal rights between men and women in various fields, including inheritance, is evident. This change is reflected in the demand for changes in the traditional concept of inheritance distribution that tends to favor men. However, this change is not always readily accepted. Strong traditional values and social structures that have been built over the years are factors that resist such change. The process toward equality in inheritance distribution takes time and sustained effort, including in-depth discussions in the legal, social, and cultural realms.

The concept of inheritance distribution in a 2:1 ratio between men and women was initially intended to balance the burden of responsibilities between them. In this context, this view arises from the understanding that men have heavier responsibilities in meeting family needs, including providing sustenance and protection. With changes in women's social positions and demands for gender equality, this concept of inheritance distribution is being questioned. This change is reflected in the increasing number of women active in the workforce and capable of generating significant income, perhaps even exceeding that of men. As a result, arguments supporting larger inheritance shares for men based on their economic responsibilities become less relevant. This thinking aligns with gender justice perspectives that demand equal treatment for men and women in terms of rights and responsibilities.

Adapting the concept of inheritance distribution is important to remain relevant to evolving social and economic realities. Renewal in inheritance distribution systems needs to consider the active role of women in the economy and the responsibilities they bear in families. This can be achieved by reassessing the proportion of inheritance distribution between men and women, to more fairly reflect their contributions and responsibilities. Adapting the concept of inheritance distribution is a crucial step in responding to gender equality demands

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<sup>16</sup> Mahmud Ikhwanudin, "Penerapan Kesetaraan Gender Dalam Sistem Pembagian Waris Berdasarkan Hukum Islam Di Indonesia," *Syntax Idea* 5, No. 10 (October 20, 2023): 1734-45, <https://doi.org/10.46799/Syntax-Idea.V5i10.2756>.



and achieving more inclusive justice in society. This also contributes to strengthening women's positions in the economic and social spheres overall.

An approach to resolving inheritance distribution issues that considers the common good and principles of gender equality is an important step in the context of sustainable social development.<sup>17</sup> To achieve more inclusive gender justice, it is necessary to recognize that every individual, regardless of gender, has equal rights under the law. While women's roles in society continue to evolve, it cannot be denied that men's responsibilities to the family are still considered crucial within the Indonesian cultural framework. The concept of a 2:1 inheritance distribution, originally designed to reflect differences in responsibilities between men and women, is still considered relevant in this context.<sup>18</sup>

Acknowledgment of the significant economic contributions often made by women within and outside the household has changed this dynamic. In situations where women have substantial economic contributions, more flexible inheritance distributions can be considered as a step towards greater equality. Changes in inheritance law must be based on principles of equality and justice, while considering the needs and contributions of each individual within the family. This involves a thorough and detailed process, where religious and cultural values that underpin society are also respected and considered. Adapting the concept of inheritance distribution to achieve greater gender equality is not an act against culture or religion but a step towards a fairer society for all individuals, regardless of gender.

In understanding the dynamics of social change and evolving values, it is crucial to accommodate these reflections in Islamic legal systems. This is essential to ensure that gender justice principles remain preserved and relevant to the changing times. Social changes, including developments in awareness of gender equality, have raised critical questions about various aspects of Islamic law, including inheritance distribution. It is important for the Islamic legal system to be able to adapt to the demands of the time without sacrificing fundamental principles of justice.<sup>19</sup> Gender justice, as an integral part of Islamic principles, must be translated within the current framework.<sup>20</sup> This includes adjustments to changes in women's roles and contributions to society, as well as recognition of equal rights in terms of inheritance distribution.

However, in making these adaptations, it is also important to consider the values that remain foundational for Muslim societies. Religious principles and cultural traditions should not be ignored but rather reinterpreted in line with the inclusive and just spirit of Islam. Thus, the development of an inclusive and responsive Islamic legal system to accommodate societal changes is imperative. This will enable Islam to remain a relevant moral and legal guide for its

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<sup>17</sup> Ikhwanudin.

<sup>18</sup> Indah Sari, "Pengaturan Pembagian Hak Kewarisan Kepada Ahli Waris Dalam Hukum Waris Islam Berdasarkan Kompilasi Hukum Islam (Khi)," *Jurnal Ilmiah Hukum Dirgantara* 7, No. 2 (June 3, 2014), <https://doi.org/10.35968/Jh.V7i2.133>.

<sup>19</sup> Afidah Wahyuni, "Sistem Waris Dalam Perspektif Islam Dan Peraturan Perundang-Undangan Di Indonesia," *Salam: Jurnal Sosial Dan Budaya Syar-I* 5, No. 2 (August 17, 2018): 147-60, <https://doi.org/10.15408/Sjsbs.V5i2.9412>.

<sup>20</sup> Ikhwanudin, "Penerapan Kesetaraan Gender Dalam Sistem Pembagian Waris Berdasarkan Hukum Islam Di Indonesia."



followers while ensuring that gender justice continues to be upheld in all aspects of social and legal life.

#### 4. Conclusions

In the implementation of Islamic law, the main principle is justice, which refers to fair and equal treatment for every individual according to the principles of the Qur'an and Hadith. However, in the context of Islamic inheritance distribution, challenges arise due to social and cultural changes influencing its interpretation and application. Although the principles of justice remain constant, updates in the interpretation and implementation of Islamic law are needed to reflect social and economic developments and to advocate for gender equality. This adaptation process requires a balance between religious and cultural values and social developments that promote gender equality and justice. Moreover, recognizing women's economic contributions and changes in their roles and contributions in society are crucial in considering a more equitable distribution of inheritance. Such adaptation is not an attempt to oppose culture or religion but a step towards a fairer society for all individuals, regardless of gender. In undertaking this adaptation, religious values and cultural traditions must be reinterpreted in line with the spirit of inclusivity and justice inherent in Islam, ensuring that Islam remains a relevant moral and legal guide for its followers

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