

The Role of Islamic Inheritance Law with a Maqasid al-Shariah Approach in Addressing the Challenges of Social Justice for Women

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Abstract: Social justice is a fundamental principle in Islam, encompassing the regulation of inheritance law to ensure fair wealth distribution, particularly for women. Although inheritance rules in the Quran and Hadith grant rights to women, challenges such as patriarchal dominance, lack of legal awareness, and evolving roles of women in families often hinder the implementation of justice. Using the maqasid al-shariah framework as a theoretical approach, this study aims to analyze Islamic inheritance law's role in ensuring women's social justice. The methodology employed is a qualitative approach based on library research. It examines various Islamic legal sources, such as the Quran and Hadith, to understand women's inheritance rights and their obstacles in practice.

Furthermore, this study explores solutions through *ijtihad*, *hibah* (gifting), and *wasiyyah* (bequests) to address these challenges. The findings indicate five key challenges women face in achieving social justice in inheritance law and four practical solutions to overcome these issues. This study seeks to contribute original insights into Islamic inheritance law's role in addressing women's social justice issues through the maqasid al-shariah approach.

Keywords: *Ijtihad*, Islamic Inheritance Law, Maqasid al-Shariah, Social Justice, Women.

Introduction

Social justice is a fundamental principle in every society. From an Islamic perspective, social justice is about economic equity and ensuring that everyone, regardless of gender, has equal rights to live with dignity. This justice encompasses various aspects, including wealth distribution through the inheritance law system. However, implementing social justice in inheritance law often faces challenges, particularly concerning

women's rights¹.

In Muslim societies, Islamic inheritance law, as regulated in the Quran, Hadith, Ijma' (scholarly consensus), and Ijtihad (jurisprudential reasoning by scholars), grants women the right to inherit wealth—an advancement compared to pre-Islamic traditions that tended to discriminate against women. Nevertheless, the rule that allocates a male's share to be twice that of a female's (Quran, Surah An-Nisa: 11) is frequently scrutinized and perceived as not fully reflecting social justice in modern contexts. This is due to women's evolving roles and responsibilities within families and society, where many women now serve as primary breadwinners.

The challenges faced by women in Islamic inheritance law include low public awareness regarding women's inheritance rights and the dominance of patriarchal systems, which often override Islamic legal principles. In some cases, women do not receive their rightful inheritance due to social pressures or a lack of knowledge about Islamic inheritance law. These challenges give rise to several solutions, including the ijtihad approach, raising awareness of Islamic inheritance rights, and alternative solutions such as hibah (gifting) and wasiyyah (bequests).

Islamic inheritance law is designed to ensure fair wealth distribution; however, its implementation requires a contextual approach to remain relevant to social changes. In this context, a deep understanding of the principles and objectives of maqasid al-shariah is necessary, as it aims to uphold justice, welfare, and social harmony. Therefore, this study is essential in exploring how Islamic inheritance law can be applied flexibly and progressively to address social justice challenges for women.

Research on Islamic inheritance law has been extensively conducted by previous scholars, including Taufiq Zuhra and Yuni Roslaili, who examined the rules of inheritance distribution in Islam, particularly concerning women's inheritance rights based on Surah An-Nisa (4:11). This verse states that a male's share of inheritance is twice that of a female's, which is often perceived as discriminatory against women. Their study also explores contemporary thoughts advocating for

¹ St Nur Syahidah Dzatun Nurain,. "PRINSIP KEADILAN SOSIAL DALAM ISLAM: STUDI TEKS AL-QUR'AN DAN HADIS." 2024, p. 35-51.

gender equality in the distribution of inherited wealth ².

While there are similarities with the present study, this research introduces a new perspective by incorporating maqasid al-shariah as a rational foundation for understanding and implementing inheritance law. Maqasid al-shariah focuses on the fundamental objectives of Islamic law, ensuring the well-being of humanity in all aspects of life, such as protecting life, intellect, and lineage. This approach emphasizes the need to consider social context and realities, ensuring that legal decisions are textually compliant, relevant to contemporary needs, and beneficial to society.

Additionally, a previous study by Bahriayub and Siti Rahmawati analyzed Islamic inheritance law from a gender justice perspective, highlighting the inheritance share discrepancy between men and women, traditionally set at a 2:1 ratio. Their research argues that a more equitable distribution should be 1:1, reflecting the different responsibilities and burdens carried by each gender. This study also connects social changes and feminist demands with existing legal frameworks and emphasizes the need for a deeper understanding of gender concepts within inheritance law ³. Although this research shares a similar subject matter with previous studies, including Islamic inheritance law, patriarchal culture, and gender justice, it introduces unique contributions by proposing practical solutions through *ijtihad*, initiating awareness programs, and offering alternative solutions such as *hibah* (gifting) and *wasiyyah* (bequests) to address challenges in implementing Islamic inheritance law for women.

Previous studies by Zuhra & Roslaili (2021) and Bahriayub & Rahmawati (2021) examined Islamic inheritance law from the gender justice perspective. However, these studies have not comprehensively discussed the maqasid al-shariah approach as a contextual solution to address patriarchal challenges and the changing roles of women. Additionally, both studies are limited to normative analysis without offering practical solutions such as *hibah* (gifting) or *wasiyyah* (bequests). The present study aims to address this research gap.

The maqasid al-shariah approach is introduced in this study as a rational foundation for understanding and contextually implementing

² Zuhra, Taufiq, and Yuni Roslaili. "PEMBAGIAN HAK WARIS TERHADAP WANITA." 2021.P.59-81. <https://jurnal.ar-raniry.ac.id/index.php/takamul/article/view/12601>.

³ Ibid

Islamic inheritance law. Maqasid al-shariah focuses on Islamic law's primary objectives, ensuring humankind's well-being in all aspects of life, such as protecting religion, life, intellect, lineage, and wealth. Through this approach, inheritance law is not merely understood as a set of fixed regulations but as a dynamic instrument for achieving justice, welfare, and broader social harmony. Furthermore, this study proposes practical solutions to overcome the challenges in implementing Islamic inheritance law for women through *ijtihad*, public awareness programs, and alternative solutions such as *hibah* and *wasiyyah*.

This research employs a qualitative methodology using the literature review technique. The approach taken is descriptive and focuses on in-depth analysis. The study does not involve direct data collection through observations or interviews; instead, it gathers references from books, journals, articles, and manuscripts relevant to the research topic⁴. The main issues explored include how Islamic inheritance law ensures justice for women and what challenges and solutions arise in its implementation.

Thus, this study aims to analyze the role of Islamic inheritance law in ensuring social justice for women and identify the various challenges women face in implementing inheritance law. It will also explore potential solutions to address these obstacles, striving to establish a more just and equitable application of inheritance law for women in society.

Results and Discussions

Results

The findings of this study identify five significant challenges and four practical solutions in implementing Islamic inheritance law to achieve social justice for women.

CHALLENGES	SOLUTIONS
1. The deep-rooted practice of the patriarchal system in society.	1. Approach through <i>ijtihad</i> .
2. There is ongoing turmoil and	2. Obligation to learn and teach Islamic inheritance law.

⁴ Suprima, Heru Sugiyono, and Ali I. Nasution. 2023. "PENINGKATAN PEMAHAMAN HUKUM WARIS ISLAM BAGI MASYARAKAT DEPOK." p.9-17 <https://ejournal.uika-bogor.ac.id/index.php/YUSTISI/article/view/9351>.

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| <p>uncertainty in interpreting Islamic inheritance law.</p> <p>3. The influence of non-Islamic practices, such as customary traditions that differ from or contradict Islamic principles, often interferes with inheritance distribution.</p> <p>4. Diverging opinions among scholars, figures, and activists regarding Islamic inheritance law.</p> <p>5. Lack of awareness and education among the public, particularly regarding Islamic inheritance law.</p> | <p>3. <i>Hibah</i> (voluntary asset transfer).</p> <p>4. <i>Wasiat</i> (will/testament).</p> |
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Discussion

1. Principles and Relevance of Islamic Inheritance Law in Social Justice

a. Definition of Inheritance in Islam

Islam is a perfect religion that regulates all aspects of human life, including the procedures for the distribution of inheritance rights. The term 'waris' (inheritance) comes from the word الميراث, which comes from the word وارث - يارث - ارث - ميراث. Which means "heirloom"⁵. *Waris* means transferring something from one party to another (Ash-Shabuni & Ali, 1996). In conclusion, inheritance refers to transferring rights and obligations over everything, including wealth and liabilities, from a deceased person (the testator) to their surviving family members as heirs, according to their respective shares. "And to each (male and female), We have appointed heirs to what is left by their parents and close relatives." Islamic inheritance is regulated in Islamic jurisprudence literature, known as *fara'idh* or Islamic inheritance law, which aims to create social welfare⁶.

b. Sources of Islamic Inheritance Law

⁵ Mahmud Yunus. *Kamus Arab - Indonesia*. N. 2010 p.: Mahmud Yunus Wa Dzurriyah.

⁶ Tedi Supriyadi. "Reinterpretasi Kewarisan Islam bagi Perempuan." *Jurnal Sosioreligi* 14. 2016. p. 65-78.
<https://ejournal.upi.edu/index.php/SosioReligi/article/download/5612/3812>.

The people of the Republic of Indonesia recognize and accept three types of inheritance laws: inheritance law based on Islamic law, customary law, and civil law. Islamic law, which Indonesian Muslims follow, is derived from the Qur'an, Hadith, *Ijma'* (scholarly consensus), and *Ijtihad* (the reasoning of Islamic scholars)⁷. Allah regulates inheritance and its distribution through verses in the Qur'an. One of them is in Surah An-Nisa (4:7), where Allah says:

لِّلرِّجَالِ نَصِيبٌ مِّمَّا تَرَكَ الْوَالِدَانِ وَالْأَقْرَبُونَ وَلِلنِّسَاءِ نَصِيبٌ مِّمَّا تَرَكَ الْوَالِدَانِ وَالْأَقْرَبُونَ مِمَّا قَلَّ مِنْهُ أَوْ كَثُرُ ۖ نَصِيبًا مَّفْرُوضًا

Meaning: "For men, there is a share of what is left by their parents and relatives, and for women, there is a share of what is left by their parents and relatives, whether it is little or much—a determined share."

Surah An-Nisa (4:7) signifies that every individual, male, and female, has the right to inherit from their parents or siblings. The inheritance refers to the deceased's remaining assets after deducting their obligations, such as debts.

Allah also states in Surah An-Nisa (4:11):

يُوصِيكُمُ اللَّهُ فِي أَوْلَادِكُمْ لِلذَّكَرِ مِثْلُ حَظِّ الْأُنثَيَيْنِ فَإِنْ كُنَّ نِسَاءً فَوْقَ اثْنَتَيْنِ فَلَهُنَّ ثُلُثُ مَا تَرَكَ وَإِنْ كَانَتْ وَاحِدَةً فَلَهَا النِّصْفُ وَلِأَبَوَيْهِ لِكُلِّ وَاحِدٍ مِّنْهُمَا السُّدُسُ مِمَّا تَرَكَ إِنْ كَانَ لَهُ وَلَدٌ فَإِنْ لَمْ يَكُنْ لَهُ وَلَدٌ وَوَرِثَتْهُ أَبَوُهُ فَلِلْمِثْلِثِ فَإِنْ كَانَ لَهُ إِخْوَةٌ فَلِلْمِثْلِثِ السُّدُسُ مِنْ بَعْدِ وَصِيَّةٍ يُوصِي بِهَا أَوْ دَيْنٍ لِأَبَاؤُكُمْ وَأَبْنَاؤُكُمْ لَا تَدْرُونَ أَيُّهُمْ أَقْرَبُ لَكُمْ نَفْعًا فَرِيضَةٌ مِنَ اللَّهِ إِنَّ اللَّهَ كَانَ عَلِيمًا حَكِيمًا

Meaning: "Allah prescribes concerning (the division of inheritance for) your children: a male shall have a share equal to two females. If there are only daughters, two or more, they shall have two-thirds of what is left. If there is only one daughter, she shall have half. As for the parents, each of them shall receive one-sixth of what is left if the deceased has children. If the deceased has no children and is survived only by their parents, the mother shall receive one-third. But if the deceased has siblings, the mother shall receive one-sixth. (All of this shall be distributed) after fulfilling any bequest made and settling any debts. You do not know which of your parents or children will benefit you. This is the decree of Allah. Indeed, Allah is All-Knowing, Most Wise."

Additionally, in Surah An-Nisa (4:12), Allah states:

⁷ Dwi Yana Alidia Fitri., Reni R. Sari, Wismanto, Firly F. Julita, and Saskia A. Putri. 2024. "Urgennya Pendidikan Pembagian Harta Warisan Menurut Hukum Islam Secara Sistem Parental." *MARAS: Jurnal Penelitian Multidisplin* 2 (1): p. 203-2017. <https://ejournal.lumbungpare.org/index.php/maras>.

وَلَكُمْ نِصْفُ مَا تَرَكَ أَزْوَاجُكُمْ إِنْ لَمْ يَكُنْ لَهُنَّ وَلَدٌ فَإِنْ كَانَ لَهُنَّ وَلَدٌ فَلَكُمْ الرُّبْعُ مِمَّا تَرَكَنَّ مِنْ بَعْدِ وَصِيَّةٍ يُوَصِّينَ بِهَا أَوْ دَيْنٍ وَلَهُنَّ الرُّبْعُ مِمَّا تَرَكَنَّ إِنْ لَمْ يَكُنْ لَكُمْ وَلَدٌ فَإِنْ كَانَ لَكُمْ وَلَدٌ فَلَهُنَّ الثُّمُنُ مِمَّا تَرَكَنَّ مِنْ بَعْدِ وَصِيَّةٍ يُوَصِّونَ بِهَا أَوْ دَيْنٍ وَإِنْ كَانَ رَجُلٌ يُورِثُ كَلَّةً أَوْ امْرَأَةٌ وَلَهُ أَخٌ أَوْ أُخْتٌ فَلِكُلِّ وَاحِدٍ مِّنْهُمَا السُّدُسُ فَإِنْ كَانُوا أَكْثَرَ مِنْ ذَلِكَ فَهُمْ شُرَكَاءُ فِي الثَّلَاثِ مِنْ بَعْدِ وَصِيَّةٍ يُوصَىٰ بِهَا أَوْ دَيْنٍ غَيْرِ مُضَارٍّ ۖ وَصِيَّةً مِنَ اللَّهِ وَاللَّهُ عَلِيمٌ حَلِيمٌ

Meaning: "For you (husbands), there is half of what your wives leave behind if they have no children. But if they have children, you shall receive one-fourth of what they leave after fulfilling any bequest they made or settling their debts. For them (wives), there is one-fourth of what you leave if you have no children. But if you have children, they shall receive one-eighth of what you leave after fulfilling any bequest you made or settling your debts. If a man or a woman passes away leaving neither parents nor children but has a brother or a sister (from the same mother), then each of them shall receive one-sixth of the inheritance. However, if there is more than one sibling (from the same mother), they shall collectively share one-third after fulfilling any bequest made or settling any debts without causing harm to the heirs. This is Allah's command. Allah is All-Knowing, Most Forbearing."

These verses clarify the shares of each heir among those entitled to inherit. Allah SWT establishes a precise and detailed system regarding who is entitled to receive inheritance, the specific shares allotted to each heir, and the priority of inheritance distribution. These provisions ensure justice for all parties and protect the rights of heirs, whether they are children, spouses, parents, or other relatives. The Islamic inheritance system aims to maintain balance and prevent disputes or injustice within the family. This reflects the importance of these regulations in preserving harmony and well-being within society.

Inheritance is also mentioned in hadith, including: From Abu Hurairah (RA), the Prophet Muhammad (SAW) said: "*Indeed, Allah has assigned the rights of inheritance to those entitled to them, so no additional bequest should be made in favor of an heir beyond what has already been determined.*" (Narrated by Bukhari and Muslim) This hadith indicates that Allah SWT has determined the rightful shares for each heir, and deviations from these rulings are not permissible. Additionally, another hadith from Abu Hurairah (RA) states: "*If a person dies leaving neither children nor parents, then their siblings will inherit according to their rightful shares.*" (Narrated by Bukhari) This hadith explains that without direct heirs such as children or parents, siblings may become rightful heirs.

In his writings, Ifthikar (2022) explains a general perspective on

inheritance law derived from the Qur'an. First, the deceased's outstanding debts must be settled from the estate. Second, any bequests made by the deceased must be honored, provided they are just; contrary to traditionalist views, they may exceed one-third of the estate. Third, the designated shares for the heirs must be distributed accordingly.

Beyond the Qur'an and hadith, *ijma'* (scholarly consensus) is also a fundamental source of Islamic inheritance law that must be followed to achieve justice in society. Since *ijma'* represents a unanimous agreement among scholars, it cannot be disputed. Additionally, *ijtihad*—the intellectual efforts of qualified scholars—plays a crucial role in addressing various issues related to inheritance distribution. In this context, *ijtihad* establishes legal rulings rather than altering existing principles, such as resolving shortfalls in inheritance shares through *aul* (proportional adjustment) methods. Overall, inheritance law, as established by the Qur'an, hadith, *ijma'*, and *ijtihad*, upholds social justice by ensuring that each individual's rights are recognized and protected while preventing inequality or unfairness in the distribution of wealth.

c. Differences Between the Jahiliyyah and Islamic Inheritance Systems

Unlike the inheritance law in Islam, which is meticulously detailed and fair—granting rights to every heir, both male and female—the inheritance system during the Jahiliyyah era was highly unjust. The distribution of inheritance in the Jahiliyyah period was based on lineage and situational factors⁸. One of the Jahiliyyah traditions in inheritance distribution was patrilineal, where women and underage children were prohibited from receiving inheritance, even if they were rightful heirs of the deceased⁹. The groups eligible for inheritance were determined by familial ties, including sons, brothers, uncles, and mature male offspring, such as a paternal uncle's sons.

If the deceased had no adult sons, the inheritance would be given to his brother, provided that the brother could fight in battle to defend the tribe. This occurred because the pre-Islamic Arabs believed women lacked the strength to fight and protect their clans. They even strictly prohibited and considered it unlawful for women to inherit wealth, just

⁸ Muhammad Suhaili Sufyan,. *Fiqh Mawaris Praktis*. 2012. N.p.: Cita Pusaka Media Perintis.

⁹Mohammad Muhibbudin,. *Hukum Kewarisan Islam*. . 2009. N.p.: Sinar Grafika.

as they did for young children¹⁰. Furthermore, the Jahiliyyah society viewed widowed women as property that the heirs of their deceased husbands could inherit¹¹. They also allowed inheritance to be given to children born out of wedlock¹².

Islam reformed and improved the inheritance system that was prevalent during the Jahiliyyah era, which severely disregarded the rights of women and children and was highly discriminatory. Unlike this system, Islam introduced a fair and balanced inheritance system with clear regulations regarding the rights of each heir—whether male, female, or child. The Islamic inheritance system is designed to ensure that every rightful heir receives their due share according to the provisions outlined in the Qur'an and Hadith. Thus, Islam abolished the injustices of the Jahiliyyah period, upheld equal respect for the rights of women, children, and all heirs, and ensured social justice in society.

d. Principles of Islamic Inheritance Distribution

Inheritance cannot be distributed directly to heirs without adhering to specific foundational principles. One is the principle of balanced justice, which emphasizes ensuring equal rights between men and women, particularly concerning their responsibilities¹³. Generally, men bear greater financial duties than women, who are obligated to provide for their families and themselves. Hence, the principle of balanced justice dictates that male heirs receive twice the share of female heirs. However, this principle has exceptions—if all heirs mutually agree to distribute the inheritance equally after understanding their respective portions according to Islamic law, this principle may be set aside¹⁴.

Another key principle in inheritance distribution is *maqasid shariah*, the overarching objective of Islamic law, which focuses on

¹⁰ Muhammad Ali Al-Shabuni. *Pembagian Waris Menurut Islam*, terj. A.M Basmalah. 1995. N.p.: Gema Insani Press.

¹¹ Ali Wahdi. "Historis Waris Jahiliyah dan Awal Islam." *Al-Manhaj: Journal of Indonesian Islamic Family Law*. 2019. P.86-96. <http://dx.doi.org/10.19105/al-manhaj.v1i2.3075>.

¹² Ismuha. *Penggantian Tempat Dalam Hukum Waris Menurut KUH Perdata, Hukum Adat dan Hukum Islam*. 1978. N.p.: Bulan Bintang.

¹³ Naskur. "Asas-Asas Hukum Kewarisan dalam Islam (Studi Analisis Pendekatan Al-Qur'an dan Al-Hadits sebagai Sumber Hukum Islam)." *Jurnal Ilmiah Al-Syir'ah* 10 (2). 2012. p.1-15.

¹⁴ Ananda Luthfiyyah Azwan. "MEMAKNAI PEMENUHAN HAK-HAK PEREMPUAN DALAM IMPLEMENTASI CEDAW TERHADAP PEMBAGIAN WARIS ISLAM." *AL-IMARAH: Jurnal Pemerintahan dan Politik Islam*. 2021. p.122-142.

achieving well-being and justice for every individual. Therefore, understanding and applying *maqasid shariah* in the inheritance system is crucial to ensuring that the rights of all parties are respected and that decisions made benefit families and society. The *maqasid sharia* framework can be applied in inheritance distribution (Wahyu et al., 2024). In this context, three main aspects of *maqasid shariah*—the protection of life (*hifz al-nafs*), the protection of intellect (*hifz al-'aql*), and the protection of lineage (*hifz al-nasl*)—play vital roles in ensuring fairness in inheritance allocation¹⁵.

First, *hifz al-nafs* (protection of life) highlights the importance of ensuring the economic well-being of individuals after the loss of the head of the family. The Islamic inheritance system, where male heirs receive twice the portion of female heirs, is designed to ensure that men have sufficient resources to fulfill their financial responsibilities toward the family¹⁶. However, the need for balance remains crucial to prevent financial insecurity for women, who often find themselves in vulnerable economic positions. Therefore, while this system is in place, protecting and empowering women financially should remain a priority.

Second, *hifz al-'aql* (protection of intellect) emphasizes the importance of education and understanding Islamic values in inheritance distribution¹⁷. In modern society, increasing awareness of inheritance rights and responsibilities is essential. The *Maqasid Shariah* principle supports efforts to promote knowledge and understanding about fairness in inheritance distribution, including preventing discrimination that could disadvantage any party. Educating people on fair and equal inheritance rights can help reduce social conflicts and foster gender equality awareness¹⁸.

Third, *hifz al-nasl* (protection of lineage) focuses on ensuring the

¹⁵ Sumarta,, Burhanudin, and Tenda Budiyo. "Maqasid Al-Syariah Mendorong Keadilan Dan Keseimbangan Dalam Hukum Islam." *Khulasah: Islamic Studies Journal*. 2024. p. 16-31.

¹⁶ Faizah, I., F. U. Parera, and S. Kamelya. "Bagian Ahli Waris Laki-laki dan Perempuan dalam Kajian Hukum Islam." *The Indonesian Journal of Islamic Law and Civil Law*. 2021. p. 152-169.

¹⁷ Hasan, M. S., and J. Jamaludin. "Nilai-nilai Pendidikan Akhlak Dalam Pembagian Waris (Kajian QS. An Nisa' Ayat 11 Dan 12)." *Urwatul Wutsqo: Jurnal Studi Kependidikan Dan Keislaman*. 2023. p.146-163.

¹⁸ Mamlu'atin, Mutamakin. "Implementasi pembagian harta waris di blok Dungminian Desa Sumber Kedawung Kecamatan Leces Kabupaten Probolinggo Perspektif Hukum Islam." *Al-Muqaranah: Jurnal Perbandingan Mazhab Dan Hukum*. 2024. p.99-109.

well-being of future generations. Inheritance distribution means that inherited wealth should be used to support the needs of the next generation, including education and overall well-being¹⁹. The Islamic inheritance system should be viewed as a mechanism to support the holistic development of families rather than merely as a means of asset distribution. The *Maqasid Shariah* principle encourages the perspective that inheritance distribution is a strategic step toward securing a better future for descendants.

Thus, implementing *maqasid shariah* in the Islamic inheritance system requires a holistic and balanced approach. It should not only focus on legal execution but also reflect values of justice, protection, and well-being for all family members, regardless of gender. A wise implementation of these principles can foster social harmony and support the development of a fair and sustainable society²⁰.

2. Challenges and Solutions in the Implementation of Islamic Inheritance Law for Women

One of the fundamental principles in Islamic inheritance law is justice. This principle explains that in matters of inheritance, there must be a balance between the share a person receives and the responsibilities or financial obligations they must fulfill. For example, men and women receive shares proportional to their family and societal burdens²¹.

In Surah Al-Baqarah (2:233):

وَالْوَلَدُ يُرْضَعُ أَوْلَادَهُنَّ حَوْلَيْنِ كَامِلَيْنِ لِمَنْ أَرَادَ أَنْ يُنَمِّئَ الرِّضَاعَةَ ۖ وَعَلَى الْمَوْلُودِ لَهُ رِزْقُهُنَّ وَكِسْوَتُهُنَّ بِالْمَعْرُوفِ لَا تُكَلَّفُ نَفْسٌ إِلَّا وُسْعَهَا لَا تُضَارُّ وَالِدَةٌ بَوْلًا لَهَا وَلَا مَوْلُودٌ لَهُ بِوَلَدِهِ وَعَلَى الْوَارِثِ مِثْلُ ذَلِكَ فَإِنْ أَرَادَا فِصَالًا عَنْ تَرَاضٍ مِنْهُمَا وَتَشَاوُرٍ فَلَا جُنَاحَ عَلَيْهِمَا وَإِنْ أَرَدْتُمْ أَنْ تُنْثَرِضِعُوا أَوْلَادَكُمْ فَلَا جُنَاحَ عَلَيْكُمْ إِذَا سَلَّمْتُمْ مَا بَالِغُهُنَّ بِالْمَعْرُوفِ وَأَتَوْهُمَا اللَّهُ وَأَعْلَمُوا أَنَّ اللَّهَ بِمَا تَعْمَلُونَ بَصِيرٌ ﴿٥٦﴾

Meaning: “Mothers may nurse their children for two full years for those who wish to complete the nursing period. The father is responsible

¹⁹ Oneng Nurul Bariyah. "BAB 4 FARAID: ATURAN PEMBAGIAN WARISAN WAJIB." *Hukum Kewarisan Islam*. 2024. p.46.

²⁰ Fikri, Arif, Rudi Santoso, and Miswanto. "Analisis Sistem Pembagian Waris Dua Banding Satu dalam Perspektif Maqasid Syariah: Keadilan dan Kesejahteraan dalam Warisan Keluarga." *Bulletin of Community Engagement*. 2024. p.481-489. <https://attractivejournal.com/index.php/bce/>.

²¹ Hasani Ahmad Said. "Dekonstruksi Syariah: Menggagas Hukum Waris Perspektif Jender." *Al-'Adalah* XI, no. 1 (Januari): 2013. p.17-32. <https://repository.uinjkt.ac.id/dspace/bitstream/123456789/43239/2/DEKONSTRUKSI%20SYARIAH.pdf>.

for their provision and clothing in a fair manner. No soul is burdened beyond its capacity. No mother should be made to suffer harm on account of her child, nor should a father be made to suffer harm because of his child. The same is incumbent upon the father's heir. But if both parents decide, by mutual consent and consultation, to wean [the child] before two years, then there is no blame on them. And if you decide to have a wet nurse for your children, there is no blame upon you, provided you pay them fairly. And be mindful of Allah and know He is All-Seeing of what you do."

This verse explains the concept of justice, emphasizing that no one should be burdened beyond their capacity. Therefore, a father must not reduce the rights of his child or the nursing mother regarding financial support and clothing. Likewise, a father should not suffer due to unreasonable demands from the mother that exceed his financial ability under the pretext of fulfilling the child's needs during the nursing period (NU Online, n.d.).

Moreover, in QS. At-Talaq verse 7:

لِيُنْفِقَ ذُو سَعَةٍ مِّن سَعَتِهِ وَمَن قَدَرَ عَلَيْهِ رِزْقُهُ فَلْيُنْفِقْ مِمَّا آتَاهُ اللَّهُ لَا يُكَلِّفُ اللَّهُ نَفْسًا إِلَّا مَا آتَاهَا سَيَجْعَلُ اللَّهُ
بَعْدَ عُسْرٍ يُسْرًا

Meaning: "Let a man of wealth spend according to his means, and the one whose provision is restricted let him spend from what Allah has given him. Allah does not burden a soul except according to what He has given it. Allah will bring ease after hardship."

In this verse, Allah explains that a father must provide wages to the woman who nurses his child according to his means. If the father can only afford to provide food due to his limited income, then that is his obligation. Allah does not burden a person beyond their capacity (NU Online, n.d.).

From these two verses, it can be concluded that this responsibility is a mandatory duty that must be fulfilled, regardless of whether the wife is capable or whether the children need assistance. Based on the balance between the rights received and the obligations that must be carried out, the benefits of the inheritance received by both men and women are essentially felt equally²².

However, even though the principle of justice is already explained

²² Chatib Rasyid. *AZAS-AZAS HUKUM WARIS DALAM ISLAM*. N.p.: Pengadilan Agama Bengkulu. <http://www.pabengkulukota.go.id/foto/ASAZ%20HUKUM%20WARIS%20-%20chatib.pdf>.

in Islamic inheritance law, which emphasizes the balance between rights and obligations—and is even explicitly stated in the holy book of Islam, the Quran—its implementation often faces various challenges. In many cases, social norms rooted in patriarchal culture influence how inheritance rights, particularly for women, are recognized and enforced. Over time, there has been a shift in gender roles; men are no longer the sole breadwinners, as many women now serve as the primary earners for their families, whether they live with their husbands or are separated. This shift has led to social changes and has become a gender issue, with women demanding their rights by their roles in the family²³. Along with these changes, feminists have increasingly called for equal status with men, arguing that, in essence, the law does not differentiate between men and women²⁴.

One of the challenges in implementing Islamic inheritance law for women is the deeply rooted patriarchal system in many societies. One example is found among the Batak Toba ethnic group in Unte Mungkur Village, where women's inheritance rights are still not adequately fulfilled²⁵. According to the Indonesian Dictionary (KBBI), patriarchy is a social classification system prioritizing paternal lineage (KBBI, n.d.). This term describes a social system where men exercise power over women as the dominant group. In a patriarchal system, men hold primary authority and dominate key roles such as property ownership, political leadership, and moral authority. The "father" figure in the family has control over women, children, and assets.

The position and role of women are marginalized mainly due to the strong dominance of the patriarchal system in society. In other words, injustice occurs, and women become victims. This patriarchal paradigm influences how society, economic actors, intellectuals, and policymakers treat women and shape cultural norms. The patriarchal culture places women in a marginalized position in various aspects of

²³ Bahriayub and St. Rahmawati. "HUKUM WARIS ISLAM DARI SUDUT PANDANG HUKUM BERKEADILAN GENDER." *JURNAL AR-RISALAH*. 2021. p.1-17. <https://ejournal.iain-bone.ac.id/index.php/arrisalah/article/download/4195/1666>.

²⁴ Muhibbussabry. *KEUNIKAN PEREMPUAN DALAM KASUS KEWARISAN ISLAM (FARĀĪD)*. 2022. N.p.: CV. Manhaji Medan dan Pascasarjana UIN-SU.

²⁵ Christin, Naomi, Emilda Firdaus, and Ulfia Hasanah. "PEMENUHAN HAK WARIS PEREMPUAN DALAM BUDAYA PATRIARKI PADA SUKU BATAK TOBA DI DESA UNTEMUNGKUR KECAMATAN MUARA." *Media Keadilan : Jurnal Ilmu Hukum* 14, no. 1 (April). 2023. p.1-16. <https://journal.ummat.ac.id/journals/20/articles/12126/submission/editor/12126-48809-1-ED.doc>.

life, including decision-making processes²⁶. In this context, patriarchy often leads to the perception that men are more entitled to inheritance than women. Many women do not receive a fair share of inheritance because social norms place men as the primary heirs.

This issue has also sparked various debates among scholars. First, a gender activist, Amina Wadud, argues that the inheritance division (2:1) is not an absolute rule but a variation in distribution. According to her, inheritance distribution should consider several factors, including the condition of the surviving family, the principle of benefit, the needs of the heirs, and the utility of the inherited wealth. Therefore, according to Amina Wadud, inheritance distribution can be flexible and has multiple possible divisions. In this way, she believes, it can reflect the principle of justice²⁷.

Munawir Syadzali also argues that the 2:1 inheritance ratio does not reflect the spirit of justice in today's Indonesian society. Deviations from the inheritance rules of laypeople and scholars evidence this. Another reason is that, in modern times, women have roles equal to men in society. Thus, it is reasonable and logical for women to have equal inheritance rights with men.

As a result, the uncertainty in interpreting Islamic inheritance law and the lack of clarity and consistency in its application leads to conflicts among heirs and creates confusion in resolving inheritance disputes. This situation is further exacerbated by non-Islamic practices, such as customary traditions that differ from or contradict Islamic principles, often interfering with the division of inheritance²⁸. Moreover, differing opinions among scholars, figures, and activists have led to accusations and controversies, with many arguing that Islamic inheritance law is unjust and disadvantages women²⁹.

An approach through *ijtihad* may serve as a way to address the challenges in implementing Islamic inheritance law for women. Etymologically, *ijtihad* means making an earnest effort using intellect

²⁶ Parhan, Nur Afiyah, and Nur Isyanto. "Mei2024BUDAYA PATRIARKI DALAM PERSPEKTIF AL-QUR'AN." *Jurnal Al Ashriyyah* 10, no. 1 (Mei). 2024. p.111-122. <https://jurnal.nuruliman.or.id/index.php/alashriyyah/article/view/180/136>.

²⁷ Amina Wadud. *Quran Menurut Perempuan : Meluruskan Bias Gender Dalam Tradisi Tafsir*.1999. N.p.: Jakarta: Serambi Ilmu Semesta.

²⁸ Muhammad Gazali Rahman and Lilik Andaryuni. "HAK WARIS ISLAM DITINJAU DARI HAM DAN KESETARAAN PERSPEKTIF NURCHOLIS MAJID." *Al-Usroh : Jurnal Hukum keluarga Islam* 01, no. 0. 2023. p.65-75.

²⁹ *Ibid*.

and reasoning to achieve a desired goal through a specific method³⁰. One Islamic legal scholar, Muhammad Abu Zahrah, explains the definition of *ijtihad* as

بذل الفقيه وسعه نف استنباط الأحكام العملية من ادلتها التفصيلية

Meaning: "The effort of a *fiqh* (Islamic law) scholar in determining legal rulings based on a specific methodology."

Hazairin also proposed the effort of *ijtihad* in Islamic inheritance law. He identified an imbalance in Islamic inheritance law regarding the status of grandchildren from a son compared to grandchildren from a daughter. Through this *ijtihad*, it is hoped that a fair and equal solution can be achieved in inheritance distribution, ensuring justice regardless of gender or whether the granddaughter descends from a son or a daughter. This argument begins with examining the Quran's perspective on removing marriage prohibitions in customary law. By analyzing the concept of marriage in the Quran, which is bilateral, Hazairin argues that the Quran as a whole advocates for a bilateral society, thereby eliminating significant differences between men and women³¹.

Additionally, *ijtihad* can be used to promote equality in the judiciary. This is evidenced by the stance of the Supreme Court of Indonesia, which has ruled that daughters have the same inheritance rights as sons, preventing other heirs (both male and female siblings) from claiming a larger share³².

Another challenge is the public's lack of awareness and education regarding Islamic inheritance law. Many people, especially women, do not understand their rights, which hinders their ability to fight for them. Therefore, education and socialization about Islamic inheritance law must be enhanced to address this issue. For example, legal outreach programs on Islamic inheritance law have been conducted by the Faculty of Law at Mulawarman University for the people of Samarinda³³.

Between 2019 and 2020, there was an increase in inheritance cases in the Religious Court of Depok, indicating a lack of public

³⁰ Sugiri Permana. "KESETARAAN GENDER DALAM IJTihad HUKUM WARIS DI INDONESIA." *Asy-Syariah* 20, no. 2. 2018. <https://journal.uinsgd.ac.id/index.php/asy-syariah/article/view/3210>.

³¹ *Ibid.*

³² *Ibid.*

³³ Siti Kotijah. "Sosialisasi Hukum Waris Islam, Hukum Perdata, dan Hukum Adat." Fakultas Hukum UNMUL. 2022. <https://fh.unmul.ac.id/article/read/08-12-2022-sosialisasi-hukum-waris-islam-hukum-perdata-dan-hukum-adat>.

awareness about Islamic inheritance law. A professor from the Faculty of Sharia and Law at UIN, Syarif Hidayatullah, stated that public concern about Islamic inheritance law remains minimal despite its natural philosophy and sacred purpose. In line with this, Suhrawardi K. Lubis emphasized that Muslims must learn about inheritance law, and those who understand it are also responsible for teaching it to others³⁴.

An alternative solution to these challenges is *hibah* (gifts) and *wasiat* (wills). *Hibah* refers to the voluntary transfer of assets from one person to another without expecting anything in return, which can be done while the giver is still alive. In this case, *hibah* can be used to grant women direct inheritance rights before the estate's formal division takes place. For example, parents can gift their daughters a portion of their assets to recognize their rights, thereby reducing potential injustices in the inheritance distribution after their passing. According to the Compilation of Islamic Law (*Kompilasi Hukum Islam*, KHI), *hibah* has no fixed limit, allowing parents to allocate their wealth among their children as they see fit³⁵.

Meanwhile, *wasiat* (will) is a statement or directive made by the testator regarding the distribution of their assets after death. In Islam, a *wasiat* can cover up to one-third of the total estate and be allocated to anyone, including women, without being restricted by the fixed inheritance proportions set by Islamic law. Through *wasiat*, a testator can ensure that women receive a fairer share of the estate, even if the standard Islamic inheritance distribution might not favor them³⁶.

Both *hibah* and *wasiat* offer alternative solutions to support social justice in applying Islamic inheritance law. By utilizing these two instruments, it is hoped that women's rights to inheritance will be better protected, strengthening their role and position in society.

Conclusion

³⁴ Suprima, Heru Sugiyono, and Ali I. Nasution. "PENINGKATAN PEMAHAMAN HUKUM WARIS ISLAM BAGI MASYARAKAT DEPOK." 2023. p.9-17 <https://ejournal.uika-bogor.ac.id/index.php/YUSTISI/article/view/9351>.

³⁵ unairnews. 2022. "Hibah, Wasiat dan Waris Dalam Islam." unair.ac.id. <https://unair.ac.id/hibah-wasiat-dan-waris-dalam-islam/>.

³⁶ Jannah, Alifia R., Zaitun Abdullah, and Ricca Anggraeni. "PANDANGAN HUKUM ISLAM TENTANG HIBAH, WASIAT DAN HIBAH WASIATKAJIAN PUTUSAN NOMOR 0214/PDT.G/2017/PA.PBR." *Jurnal Legal Reasoning* 1, no. 2 . 2019. p.81-105.

Islam represents a profound revolution in humanity, founded on humanistic values. It aims to free humankind from servitude and submission to anything other than the Creator while bringing a transformative change in thought, emotions, and practical life. One of the tangible manifestations of this revolution is the introduction of inheritance law in Islam, which reflects deep justice and Allah's concern for balancing rights and obligations in society.

In the early days of Islam, women gained freedoms and rights that they had never previously possessed, including inheritance rights. Islam elevated the status of women to an unprecedented level, eliminating all forms of oppression, whether from family, relatives, or society. The inheritance laws outlined in the Quran and Hadith ensure that every male and female heir receives their rightful share, fostering justice and harmony within the family. These laws provide legal certainty and prevent conflicts often arising in inheritance disputes.

However, the implementation of Islamic inheritance law faces significant challenges. Deeply rooted patriarchal traditions, lack of legal awareness, and evolving social roles have created substantial barriers. This highlights the importance of understanding that Islamic inheritance law is not rigid. These laws can be adapted through approaches like *ijtihad* to address contemporary issues while remaining faithful to fundamental Sharia principles. *Ijtihad* allows Islamic scholars and legal practitioners to formulate solutions relevant to modern developments.

Legal instruments such as *hibah* (voluntary asset transfer) and *wasiat* (will/testament) offer alternative solutions to ensure justice. *Hibah* enables asset distribution before the testator's death, while *wasiat* provides flexibility in inheritance arrangements. These mechanisms are crucial in addressing challenges, particularly in societies with strong patriarchal systems.

Islamic inheritance law is not merely a set of formal legal rules but also a reflection of profound humanistic values. Islamic inheritance law can serve as a just and empowering solution by continuously enhancing public understanding through education and legal literacy and utilizing available legal instruments. Ultimately, these laws guide individuals and establish a foundation for a peaceful, prosperous, and socially just society. The effort to reflect these values in real life is a shared responsibility for all Muslims.

Nevertheless, this study has a primary limitation, as it relies solely on a literature review without incorporating empirical field data. As a

result, the validity of practical solutions such as *hibah* or *wasiat* remains untested in real-world contexts. Based on these findings, future research should conduct field studies to assess the effectiveness of these solutions and compare them with non-Islamic inheritance systems (such as customary or Western laws) to explore opportunities for legal harmonization. Furthermore, the study's results can serve as policy recommendations for institutions such as the Ministry of Religious Affairs (Kemenag) or the Indonesian Ulema Council (MUI) to develop guidelines on *hibah* and *wasiat* that protect women's rights and promote legal literacy programs for the public. Thus, this research is academically valuable and offers concrete solutions for the practical implementation of Islamic inheritance law.

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