

Establishing a Just Inheritance Law (Biological Justice Theory Study)

Sitti Nurkhaerah^{1*}, & Muhammad Syarif Hasyim²

¹ Islamic Family Law Study Program State Islamic University Datokarama Palu, Indonesia

² State Islamic University Datokarama Palu, Indonesia

*Corresponding Author Sitti Nurkhaerah E-mail nurkhaerah@iainpalu.ac.id

ARTICLE INFO

ABSTRACT

Volume: 2

KEYWORDS

Law of Inheritance, Balanced Justice, Biological Justice

It is acceptable to alter or adapt to the rules that have been explicitly defined by the Quran because far-i law aberrations are a reality in society. because it has a connection to society's economic structure from a sociological perspective. As a result, the distribution's quantity can and may fluctuate in accordance with the notions of justice and adaptation to the sociological component. Therefore, the purpose of this process is to investigate how just inheritance law is constructed in the context of biological justice theory. The research technique selected is for qualitative library research (library research). As for the result, the most crucial inheritance law concept, according to *Ijbr's* research, is the transfer of property from a deceased person to his heirs in conformity with Islamic sharia law. According to Allah SWT's instructions in the Qur'an and Hadith, the notion of fairness in inheritance law must be interpreted as an equitable distribution that complies with Islamic inheritance law. Islam places a focus on fairness among people behind the inheritance distribution that may be seen from religious, economic, and social angles.

1. Introduction

The role of each heir is established by the Al-Quran, Sunnah, and Ijtihad with the intention of bringing about justice in society. Allah (swt) determines the distribution fairly and with wisdom, even with extremely clear and ideal principles (Al-Zamakhshyar, n.d.). In order to achieve justice in human life, end tyranny in their lives, close the door on tyranny's perpetrators, and prevent complaints from being made against those who do not get their inherited rights, Allah SWT. prescribes this. The Koran's Surah al-Nisa verse 7 makes this point quite obvious when it states that Allah SWT has firmly eliminated the kind of injustice that often affects two sorts of vulnerable people, namely women and children (Al-Baghaw, 1420).

Their inheritance rights will be fully restored if Allah SWT. sympathizes with them both and does so with grace, wisdom, and full justice.

The Islamic inheritance law arrangement that Allah has established is being contested, which is a fact in today's world. It is a type of oppression against women to assume that a son's inheritance would be divided proportionally to that of two daughters (Muhsin, 1994). It is acceptable to alter or adapt to the rules that have been expressly stated in the Koran due to

¹Sitti Nurkhaerah is a Ph.D candidat of Islamic Family Law Study Program at Postgraduate School, State Islamic University Datokarama Palu, Indonesia. This paper was presented at the 2nd International Conference on Islamic and Interdisciplinary Studies (ICIIS) 2023, as a presenter, held by the Postgraduate School State Islamic University Datokarama Palu, Indonesia.

Establishing a Just Inheritance Law (Biological Justice Theory Study)

the reality that is present in society in the form of deviations from far-i law (Sjadzali, 1995). as it has a connection to the sociological aspect of society in the form of societal economics. Hence, depending on the concept of fairness and adjustment to the sociological component, the quantity of distribution can and may alter (Hamidah, 2011).

Aside from the reasons mentioned above, there is no discrimination against women in the Koranic inheritance distribution clause, which includes the distribution of the 2:1 formula for sons and daughters. Because it considers the sociocultural and economic context, the requirement that males inherit twice as much as daughters does not constitute discrimination. As a result, it is necessary to rethink the 2:1 inheritance formula in light of evolving circumstances and increased knowledge among women (Engineer, n.d.). Even worse, wills are given priority over inheritance despite the fact that they have the ability to promote justice, are successful at maximizing the use of assets, and foster the growth of social and familial ties (Syahrur, 2008).

Given the basic distinctions between justice and inheritance law discussed above, the purpose of this procedure is to characterize and evaluate the notion of justice in Islamic inheritance law in order to address competing claims and establish the nature of justice in theological, economic, and social terms.

2. Literature Review

The phrase "fiqh mawri" refers to the branch of fiqh that examines who is allowed to inherit, who is not, and how much of an inheritance each recipient is to get (Al-Dasq, n.d.). The plural version of the single word farah, which refers to the heirs' provisions that are specifically specified in the Koran, is fari science, also known as fiqh mawri. In the book Mu'n al-Muhtj, Al-Syirbn claims that far-i knowledge consists of the following: inheritance law, which determines how to calculate the inheritance so that it is distributed to each successor who is legally obligated to receive it from the estate's assets in accordance with their rights.

The study of mawri, according to Ibn 'Bidn, is used to assess the rights of heirs to inheritance and is connected to the development of fiqh (bidn, 2005). The most often used term is fari. Al-Nawaw and Ibn Qudma both use this term in their works, Minhj al-Libn (Al-Nawaw, 2005) and al-Mughn (Qudmah, 1968). The partition of inheritance in Islamic law is explicitly described in the Al-Qur'an. There are three passages in particular in surah al-Nisa', including verses 11, verse 12, and verse 176. In addition, there is verse 75 of surah al-Anfl, which is the last verse.

The five guiding principles of Islamic inheritance law are then presented.

First, according to Islamic inheritance law, the concept of *ijbri* means that a deceased person's property is automatically transferred to his or her heirs in accordance with Allah SWT's will, regardless of the heir's wishes or the heirs' requests. Additionally, it is not seen as a transfer of property because it would entail other parties making an attempt to change who owns what. In verse 7 of Surah al-Nisa, the concept of *ijbri* in Islamic inheritance law is stated. Second, the bilateral inheritance principle states that there are two ways in which the inheritance might travel.

3. Methodology

This indicates that everyone has the ability to inherit from both male and female kin, or both sides of kinship. The bilateral concept is evident in Allah SWT's written word, namely in verses 7, 11, 12, and 176 of the letter Al-Nisa (Al-Zuail, 1422). Third, Islamic inheritance law adheres to the individual principle, which means that each Muslim is required to follow this individual distribution, and violators will face severe repercussions in the hereafter, as stated by Allah in surah al-Nisa's verses 13 and 14 (Zahrah, n.d.). Fourth, the concept of balanced justice, which states that Islamic law is dependent on the justice that Allah SWT has decreed because it is impossible for people to know what is right and what is wrong. The belief comes before knowledge in Islamic law since it has been decided that everything Allah swt. orders must be just. Fifth, it will happen under Islamic inheritance law if it is primarily determined by the aftereffects of death. In essence, a person who has met the qualifications to become a legal subject is free to spend their riches to meet their wants and needs for the rest of their lives (Sbiq, n.d.). Thus, this distinguishes Islamic inheritance law from other inheritance laws and is a feature of the Islamic inheritance concept

4. Results and Discussion

4.1 Balanced justice according to Islamic succession law

There are definitely variations in the number of shares acquired when the rights were acquired. This does not imply that it is unjust, however, because justice in the Islamic perspective is tied to uses and wants as well as the amount received while acquiring inheritance rights. In general, males need more material possessions than women do (Kar, 1420). This is so that males may fulfill their dual responsibilities to themselves and their families, which includes women, according to Islamic beliefs (Ri, 1990). Men are mentors for women because Allah has elevated some of them above others and because they can support themselves with their money, as Allah reveals in surah al-Nisa's verse 34. Islamic inheritance law is fair and equitable.

Men and women will experience the same degree of advantages when it comes to the number of shares they receive while gaining rights, if the amount obtained is connected to the obligations and responsibilities specified above. Males initially earn twice as much as women, but as responsible mentors, women will receive a share of what males originally receive. A man's wife and children are his primary duties. This is a duty we have to do on behalf of Allah (Hamidah, 2011).

The subordination of Islamic teachings to social reality will occur if the rule of inheritance is founded on social reality. Islamic teachings will be adjusted to the constantly shifting social reality if the rule of inheritance is founded on social reality. And as time goes on, Islamic inheritance law transitions from a revealed religion to a cultural religion that considers people's social position (Sholahuddin, 2016). According to scholars, the partition of inheritance must still be in accordance with the Sunnah and the Koran (Al-Br, 1387). In the context of inheritance, this is the type of essential justice according to Islam, i.e., justice that is balanced rather than unfair.

a. Understanding of justness in how inheritance is distributed. 2:1

It is important to understand that Allah swt has tremendous wisdom in choosing to divide inheritance amongst sons and daughters. People advocating for gender equality in inheritance, as stated in the *muqoddimah*, do not understand Allah's wisdom. According to Syinq, one way to follow the Koran's instructions and steer clear of obstacles is to give precedence to sons over females when it comes to inheritance (Syinqt, 1995). There is no question that giving males the advantage over daughters in terms of inheritance is the best and most moral course. Men must constantly pay dowries to women and maintain dependent women, and they must also utilize their riches to meet the needs of these women. Men must always pay dowries to women who are their dependents, maintain them, and use their cash for a variety of necessities in their lives (Al-Salb, n.d.). In this manner, lying to get out of his obligations is a serious lesson.

Therefore, if a woman receives the same inheritance portion as her brother because to this privilege, the equality will virtually vanish. Because women already have the ability to inherit property and to earn a living, their rights actually improve while men's rights decline. He has no rights other than the same inheritance rights as women if they are in the same position, unlike males who do. In light of this, if someone asserts that "women must provide," unlike males who do, He has no rights other than the same inheritance rights as women if they are in the same position. In light of this, if someone asserts that "Women must support males, offer dowries to their husbands, and then compete with them for inheritance. If this is the case and it is adopted as a fundamental concept that must be followed, then it stands to reason that the majority of women's marriages would fail because of their inability to provide dowries and support (Al-Rfi, 2000).

Flexible interpretation of Islamic succession law. *Tanzul* in inheritance, which occurs when one of the heirs is not given the inheritance after a share has been decided upon in line with Islamic rules, is well-known in the field of *fiqh*. Considering that there are other heirs that require additional wealth. This is a result of a necessity, making the property's status a gift. *Tanzul*'s presence makes inheritance law supple in the midst of society. After assessing the inheritance in accordance with Islam, this is undoubtedly legal. According to Muhammad (2004), there are two ways to exclude a woman from inheritance rights: He first gave notice of his resignation from the right of inheritance without compensation. She, for instance, left her spouse because she cared more about her children. Second, in exchange (replacement), he resigned from the inheritance right. As long as it is done willingly (*ri*), this issue is acceptable and common in discussions of *fiqh* literature. In return for a certain quantity of property, maybe from that inheritance or another one, the wife withdraws from her inherited part. With a *sanad* "ah," 'Abdurrazaq, Sa'd bin Manr, and Baihaq reported that the wife of 'Abdurrahman bin 'Auf had exchanged her 1/4 to 1/8 portion for 80,000 dirhams. It is unknown if anybody disproved this narrative, which occurred among a group of friends (Imam, 2008).

b. Islamic inheritance law in terms of social, biological, and universal justice

Makhur al-Garawi, according to Rzaq, outlines numerous aspects of the Islamic inheritance system and provides explanations for the accounting-related aspects of inheritance. Shari'a always contains maqsd al-syarah, principles, and is authoritative. In Islamic law, commands are always subordinate to principles, and principles are always governed by the maqsd al-syarah, or the aims of sharia. In this instance, he used the rule of fairness and proportion as an illustration of Islamic law, particularly with relation to just inheritance law. The justice of the inheritance system is examined by looking from several angles, one of which being the idea that total equality is tyranny. Justice must be set apart from equality. Tyranny occurs when a teacher assigns grades to all pupils in a single education class without making a distinction between those who pass and those who fail, or between those who are obedient and those who are rebellious. The two-to-one split for males and women in the inheritance system is despotism in terms of the family and community economics (Al-Gharawi, 2013).

Islam upholds the existence of family members' rights and exhorts them via the Koran and Sunnah to treat one another with kindness, maintain close family ties, and do good deeds. For those who split up families or offend his family, Allah warns a severe punishment. "And fear Allah whom we ask Him for, and take care of your family, for verily Allah is in charge of you," says verse 1 of the letter al-Nisa. And Rasulullah said in his hadith, which is translated as follows: "Doing good to you, your father, your sisters, your brothers, and your relatives after them is an obligation, and a family that must be maintained" (Dwud, n.d.).

Because there exist bonds owing to kinship and family relationships, the verses and hadiths demonstrate that family members have more rights to their families than to other individuals. This commitment entails helping out low-income households with upkeep costs. If a family member can inherit his family after his death, making it sufficient, it is only fair if he is required to take care of him if he becomes unable, keeping him from being abandoned (Qardw, 1985). In addition to other things, the guarantee that exists between a person and his family, as well as between succeeding generations, and that is governed by Islam, is more than just a means of preventing riches from being accumulated in a way that poses a threat to society. Without giving those in need a means of subsistence, maintaining the family (silaturrahim) has no purpose. Due to the existence of Islamic inheritance law and the notion of life, those who get more benefits from Allah are obligated to support their lower-income family. In other words, Islam set the foundation stone for the development of social security.

The core idea of biological justice is a normative force dedicated to giving people a life that is fair, wealthy, and fulfilling. The fundamental tenet that law exists for humans, not the other way around, is violated by this. On the basis of this, legislation was created for a greater good, namely for human dignity, happiness, welfare, and glory. Because of this, rather than requiring people to be included into the legal system when issues with the law arise, the legislation itself must be examined and rectified (Suadi, 2020).

5. Conclusion

After discussing the importance of fairness in Islamic inheritance law, it can be said that *ijbar*, or the transfer of property from a deceased person to his heirs in line with Islamic sharia law, is the most crucial fundamental in inheritance law. In addition to the will that has been established, either verbally or in writing, by the heir to the beneficiary of the inheritance. In addition, inheritance law is not considered as a transfer of property since if it were, it would indicate that others were trying to transfer ownership in a manner that was against Islamic law. As a result, the requirements of inheritance law must be followed while defining the value of justice. Justice in inheritance law must thus be understood in terms of an equitable distribution that complies with Islamic inheritance law, which is what Allah SWT commands in the Qur'an and Hadith. Islam places a high focus on human justice that may be seen from religious, economic, and social angles behind the inheritance distribution.

When evaluated from a theological perspective, it appears that Allah SWT has established that the inheritance rule includes justice for His followers. Thus, the definition of justice in inheritance law must be interpreted in accordance with the directives of Allah SWT as stated in the Qur'an and Hadith, which essentially call for an equitable distribution that complies with Islamic inheritance law. Islam places a high importance on fairness among people, which is observable from theological, economic, and social angles. This ideal is hidden behind the inheritance distribution. If the inheritance rule were considered from a theological perspective, it would appear that Allah SWT has decreed that it contains fairness for His followers. Due to our work demonstrating this fairness from the benefit side, there is no longer any assumption that Islamic inheritance law discriminates against women or does not apply properly.

References

- Ābidīn, M. A. bin U. I. (2005). *Radd al-Mukhtār 'ala al-Durr alMukhtār*. Dar Al Fikr.
- Al-Baghāwī. (1420). *Al-Ma'ālim al-Tanzīl fī Tafsīr al-Qurān* (ed. 'Abd a). Dār Ihyā al-Turās al-Arabī.
- Al-Bār, I. 'Abd. (1387). *al-Tamhīd limā fī al-Muwa'ttā'* (Jilid ke-2). Wazīrah al-Awaqāf wa al-Syu'ūn al-Islamīyyah.
- Al-Dasūqī. (n.d.). *Hāsyiyah al-Dasūqī 'alā Syarh al-Kabīr* (Vol. 4). Dār al-Fikr.
- Al-Gharawi, R. M. (2013). Muhāsabah al-Mīrās Wifqa al-Niẓām al-Iqtisādī al-Islamī: Ru'yah Muhasibiyah Islamīyah Mu'āsirah. *Jurnal Akuntansi Ekonomi Islam Universitas Zaitona, Yordania*, 56.
- Al-Nawawī, M. al-D. A. Z. Y. ibn S. (2005). *Minhāj al-Ṭālibīn wa 'Umdah al-Muftīn*. Dār al-Minhāj li al-Nasyr wa al-Tawzī'.
- Al-Rāfī'i, A. al-Q. (2000). *Wahyu al-Qalam* (Jilid ke-3). Dār al-Kutub al-Ilmīyah.