

GENDER JUSTICE IN THE SHARING OF INHERITANCE AND IMPLEMENTATION IN INDONESIA

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Abstract: Fairness in inheritance distribution between men and women in Indonesia is still an exciting topic to discuss. It is proven that classical Islamic thought says that men's and women's portions in inheritance distribution are final, as stated in the Qur'an Surat an-Nisa verse 11. However, contemporary Islamic thought sees it as a rule that needs to be contextualized to current situations. This progressive thinking about inheritance distribution was pioneered by gender activists who saw that Fiqh Mawaris has a gender bias and discrimination. Therefore, the application of the "gender-friendly justice" concept in the inheritance distribution in Indonesia needs to be put forward. This research analyses the "gender-friendly justice" concept in inheritance law and its application in Indonesia. This study uses Sigmund Freud's gender theory, with an analytic descriptive method focusing on the problem of inheritance distribution in Indonesia. The research results prove that the concept of "gender-friendly justice" in the inheritance distribution refers to the agreement principle and the gender equity principle, where the application is carried out based on the fairness principle. The gender equality principle is implemented by prioritizing the concept of *rahmatan lil'alamin*, namely equality as servants and caliph of Allah, equality in receiving primordial agreements and cosmic drama events, and reaching achievements.

Keywords: *Islamic Inheritance Law; gender-friendly justice; Classical and Contemporary Islamic Fiqh*

Abstrak: Keadilan pembagian harta waris di Indonesia antara laki-laki dan perempuan masih menjadi bahan diskusi yang menarik. Pemikiran Islam klasik menyatakan bahwa pembagian harta warisan bagi laki-laki dan perempuan sudah dianggap final, sebagaimana disinggung dalam Al-Qur'an surah an-Nisa ayat 11. Namun, pemikiran Islam kontemporer melihat hal tersebut sebagai aturan yang perlu dikontekstualisasikan sesuai perkembangan zaman. Pemikiran progresif tentang pembagian waris ini dipelopori oleh para pegiat gender yang melihat fiqh mawaris masih bersifat bias gender yang dapat menimbulkan diskriminasi gender, sehingga penerapan konsep "keadilan ramah gender" dalam pembagian harta waris di Indonesia perlu dikedepankan. Tujuan penelitian ini adalah untuk menganalisis konsep "keadilan ramah gender" dalam hukum waris dan penerapannya di Indonesia. Penelitian ini menggunakan teori gender Sigmund Freud, dengan metode deskriptif analitik yang memusatkan perhatian pada masalah pembagian waris di Indonesia. Hasil riset membuktikan bahwa konsep "keadilan ramah gender" dalam pembagian harta waris mengacu pada prinsip kesepakatan dan prinsip keadilan gender bagi anak laki-laki dan perempuan, dimana penerapannya dilakukan berdasarkan atas asas keadilan. Penerapan prinsip kesetaraan gender ini diterapkan dengan mengedepankan konsep *rahmatan lil'alam* yakni penyetaraan sebagai hamba dan khalifah Allah, penyetaraan menerima perjanjian primordial, penyetaraan dalam peristiwa drama kosmis, dan penyetaraan dalam meraih prestasi.

Kata Kunci: Hukum Waris Islam; keadilan ramah gender; Fiqh Islam Klasik dan Kontemporer

Introduction

The discussion of inheritance is critical in society and gets serious attention in Islam. However, the controversy over inheritance distribution is still a hot topic of study, including in Indonesia.¹ Before the arrival of Islam, men and women were in different social classes, where men dominated women. Women were used as puppets in the palace to satisfy the lust of kings or rulers, and women were also used as goods that could be traded. In domestic life, women's positions were entirely under the authority of their husbands. Women do not have the same rights as men as humans in general. This condition occurred in almost all known nations then, such as the Greeks, Romans, Chinese, Indians, Persians, and so on. Women are prevented from getting inheritance and even used as objects that can be inherited.² Then Islam came and introduced the concept of justice for humans.

Islam, through the Qur'an, teaches every ummah about equality, justice and equity regardless of gender, social status, religion and race. The only thing that distinguishes humans is the level of their piety, as Allah says in Surat al-Hujarat verse 13 which means "O people, nations and tribes to know each other, in fact the most noble among you in the sight of Allah is the one who is the most pious. Verily Allah is All-Knowing, All-Knowing."³

¹ Endang Sriani, "Fiqh Mawaris Kontemporer: Pembagian Waris Berkeadilan Gender," *TAWAZUN: Journal of Sharia Economic Law* 1, no. 2 (20 September 2018): 133–47, <https://doi.org/10.21043/tawazun.v1i2.4986>.

² N.M. Shaikh, *Woman in Muslim Society* (New Delhi: Kitab Bhavan, 1991).

³ Lajnah Pentashihan Mushaf Al-Qur'an, "Surah Al-Hujurat - سُورَةُ الْحَجَرَاتِ | Qur'an Kemenag," 2022, <https://quran.kemenag.go.id/surah/49>.

The values contained in the Qur'an, which have fundamental legal principles, require further and comprehensive study so that Islam can answer the challenges faced by humans from time to time and everywhere. In studying Islamic law, it is not unusual to meet the Qur'an interpretation polemics, one of which arises due to the differences in the methods used. Some of the interpreters (*mufassir*) adhere to the old rules which emphasise the textual aspect of the *syar'i* proposition, resulting in its interpretation not much different from its literal sound. However, some of them try to understand the *syar'i* arguments contextually by paying attention to socio-cultural and the reasons for the derivation of an argument to understand the implied and explicit meaning of a text so that the resulting law is more responsive to the demands of the times.⁴ In this case, Fazlur Rahman⁵ argues that understanding the message of the Qur'an as a complete unity must look at various backgrounds, including history, customs, social, economic and political; Arab condition, before and after Islam, and the prophet's activities and his struggle for approximately 23 years under the direct guidance of the Qur'an, the important role of the tribe from which the Prophet came, namely the Quraysh tribe and its religio-economic influence among the Arabs.

The word of Allah SWT in An-Nisa verse 11 means: "Allah instructs you concerning your children: for the male, what is equal to the share of two females. But if there are [only] daughters, two or more, for them is two-thirds of one's estate. And if there is only one, for her is half. And for one's parents, to each of them is a sixth of his estate if he left children. But if he had no children and the parents [alone] inherit from him, then for his mother is one third. And if he had brothers [or sisters], for his mother is a sixth, after any bequest he [may have] made or debt. 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."⁶

At least three inheritance pillars must exist as inheritance distribution prerequisites: a). *Al-Muwarrits*, namely a person who dies or dies, both actual death and legal death, death declared by a judge's decision based on several reasons, even though he is not dead, who leaves assets or rights. b). *Al-Warits*, namely people who are still alive or children in the womb who have inheritance rights, although in some instances it will be hindered. Thus, a person is declared an heir, if still alive; there is no barrier for him as an heir; and the principal heir does not bear it. A person is declared the heir if he is related by blood or marriage.⁷ c). *Al-Mauruts*, namely the property that becomes inheritance. Some *faraid* (inheritance law) scholars call it *mirats* or *irts*. Included in inheritance are assets or rights that can be inherited, such as materials and assets with material value. For example, fixed objects, movable objects, debts of dead people borne by other people, or mandatory fines. Additional pillars found which are: d). *Material*

⁴ Hisam Ahyani, Dian Permana, dan Agus Yosep Abduloh, "Pendidikan Islam Dalam Lingkup Dimensi Sosio Kultural Di Era Revolusi Industri 4.0," *Fitrah: Journal of Islamic Education* 1, no. 2 (2020): 273–88, <https://doi.org/10.53802/fitrah.v1i2.20>.

⁵ Fazlurrahman, *Membuka Pintu Ijtihad* (Bandung: Pustaka, 1984).

⁶ Lajnah Pentashihan Mushaf Al-Qur'an, "Surah An-Nisā' - سُورَةُ النَّسَاءِ | Qur'an Kemenag," 2022, <https://quran.kemenag.go.id/surah/4>.

⁷ Hassan Saleh dkk., *Kajian Fiqh Nabawi Dan Fiqh Kontemporer* (Rajawali Pers, 2008), <https://repository.uinjkt.ac.id/dspace/handle/123456789/35045>.

rights, such as monopoly rights to exploit and extract the proceeds from traffic roads, sources of drinking water, agricultural irrigation, and plantations. e). Rights that are not material, such as *khiyar* rights, *syuf'ah* rights, and rights to use inherited goods.⁸ As conditions or *syuruth*, inheritance can only be distributed to heirs after four types of payments have been made:⁹ a). Zakat on inherited property; b). Cost of posthumous burial; c). *al-muwarrits's* debt; and d). *al-muwarrits's* will/testament.

In the condition of a deceased heir, there is intermediary inheritance, which has requirements: a). the heir's death, whether actual, estimation, or legal death. The actual death of the heir can be known by direct observation or by obtaining evidence acceptable to the Shari'a. The legal death of an heir including missing person, a person from whom there is no news, or not known whether they alive or deceased. According to Sheikh Nawawi,¹⁰ we must wait for the return of the heirs within a certain period of time based on Islamic law. b). The heirs still alive at the time of the *muwarits's* death are entitled to inherit his inheritance. In this second condition, there is dissent, among others.¹¹ First is *Mafqud* (the disappeared person). If the *mafqud* gets a judge's decision regarding his death and the decision precedes the heir's death, then there will be no difficulty. Complexity arises when there is no permanent decision of the judge regarding the *mafqud's* demise at the time of the *muwarit's* death. In this case, if the *mafqud* is determined as deceased without authentic evidence, the *mafqud's* portion will be withheld to a predetermined limit. However, if the authentic evidence is found or there is a judge's sentence, then their share will be returned to the *muwarrits*. Second is the child in the womb. They are entitled to receive a part of the inheritance held for them until they're born alive, which becomes strong evidence that he was alive at the death of the *muwarrits*. Third are people who died together. Some jurists tend that people who die together can still inherit from each other.

Equality in inheritance law is part of the *ijtihad* object of legal experts, including in court decision development.¹² Legal pluralism in Indonesia forced judges and legal experts to make a middle way between *fiqh* and customary (*adat*) law for inheritance dispute resolution.¹³ This made formal truth on gender justice in Indonesia no longer relevant.¹⁴ The middle way aims to maintain assets' integrity and family relationships, based on the *rahmatan lil 'alamin* principle. The principle is under Islamic legal theory, as research launched by Ahyani et al,¹⁵ which states that the legality of law in Indonesia

⁸ Fatchur Rahman, *Ilmu Waris* (Bandung: PT Alma'arif Bandung, 1975).

⁹ Sudarsono, *Hukum Waris Dan Sistem Bilateral* (Rineka Cipta, 1991), 227.

¹⁰ محمد بن عمر نووي الجاوي، الشيخ، شرح عقود اللجين في بيان حقوق الزوجين (Dar Al Kotob Al Ilmiah 2015، دار الكتب العلمية).

¹¹ Syaikh Muhammad Bin Umar Al-Bantany Nawawi dan M. Humaidy, *Uqud Al- Lujjain: Kalung Perak Kebahagiaan Rumah Tangga* (Jakarta: Wangsamerta, 2006), 80.

¹² Sugiri Permana, "Kesetaraan Gender Dalam Ijtihad Hukum Waris Di Indonesia," *Asy-Syari'ah* 20, no. 2 (21 Desember 2018): 117–32, <https://doi.org/10.15575/as.v20i2.3210>.

¹³ Miftahul Huda, Niswatul Hidayati, dan Khairil Umami, "Fiqh And Custom Negotiation In Inheritance Dispute Tradition At Mataraman Society, East Java," *AL-IHKAM: Jurnal Hukum & Pranata Sosial* 15, no. 2 (29 Desember 2020): 224–50, <https://doi.org/10.19105/al-Ihkam.v15i2.3787>.

¹⁴ Syaikh Syaikh, "Kewarisan Islam Dalam Perspektif Keadilan Gender," *El-Mashlahah* 8, no. 2 (2018), <https://doi.org/10.23971/maslahah.v8i2.1323>.

¹⁵ Hisam Ahyani dan Memet Slamet, "Building the Values of Rahmatan Lil'Alamin for Indonesian Economic Development at 4.0 Era from the Perspective of Philosophy and Islamic Economic Law," *AL-IHKAM: Jurnal Hukum & Pranata Sosial* 16, no. 1 (2021): 111–36.

needs to teach the concept of helping each other (*ta'awun*) and making benefits that are complementary in the form of flexibility that can complement the previous benefits (*Maslahah Tahsiniyah*).¹⁶ Apart from that, the Creed theory states that enacting Islamic law in Indonesia is a reality that cannot be denied.¹⁷ That is, people who have accepted Islam as their religion means that they have accepted the authority of Islamic law over themselves,¹⁸ including inheritance law.

In Indonesian customary laws, some ethnic groups with a Muslim majority do not fully apply Islamic inheritance law. Madura for example, is known for its Islamic solid culture, where women are on an equal footing with men.¹⁹ In Java, the traditional law on joint assets, an arrangement not found in Islamic property law, complicates the inheritance distribution due to the mixing of inheritance between men (husbands) and women (wives).²⁰ The disputes on it were settled through the Javanese customary system.²¹ It emphasizes the family peace aspect through deliberation to reach a consensus.

Endah Amalia's research stated that inheritance is the transfer of the property of someone who has died and then given to another person with the right to inherit it.²² The source of injustice in the distribution of inheritance in Indonesia is related to the family members' role as breadwinners, which is a logical reason regarding men's higher portion of inheritance than women's. While the Civil Law Code (*Burgerlijk Wetboek/BW*) does not determine inheritance distribution based on the family provider role, it gives an equal share between men and women.²³ This means that the West, where the BW came from, adopted gender equality in inheritance distribution. So today, with the polemic on gender equality, it is necessary to re-read the reasoning of *fiqh* about the role and position of women contextually.²⁴ In Tunisia, for example, modern

¹⁶ Haris Maiza Putra dan Hisam Ahyani, "Internalization in Islamic Law Progressive in Criminal Law Changes in Indonesia," *Jurnal Ilmiah Al-Syir'ah* 20, no. 1 (2022): 23, <https://doi.org/10.30984/jis.v20i1.1861>.

¹⁷ Dedah Jubaedah dkk., "Legal Analysis of Crypto Investment in Era 4.0 View from Credo Theory," *Diponegoro Law Review* 7, no. 2 (27 Oktober 2022): 262–78, <https://doi.org/10.14710/dilrev.7.2.2022.262-278>.

¹⁸ Muhamad Mas'ud, Rosbandi Rosbandi, dan Sugih Suryagalih, "Eksistensi Teori Kredo Dalam Pemberlakuan Hukum Islam Di Indonesia," *Islamika: Jurnal Agama, Pendidikan Dan Sosial Budaya* 14, no. 1 (11 Juli 2020): 54–68, <https://doi.org/10.33592/islamika.v14i1.642>.

¹⁹ Mohammad Hipni, "The Study of Maqashidi Sharia Toward Maduresse Traditional Inheritance by Using System Approach," *AL-IHKAM: Jurnal Hukum & Pranata Sosial* 14, no. 1 (30 Juni 2019): 50–71, <https://doi.org/10.19105/al-lhkam.v14i1.2159>.

²⁰ Lifa Datun Nisa, Darmawan Darmawan, dan Muhammad Adli, "Distribution of Poh Roh Asset Due to Divorce in Gayo Lues Community Aceh," *AL-IHKAM: Jurnal Hukum & Pranata Sosial* 14, no. 2 (2019): 283–303, <https://doi.org/10.19105/al-lhkam.v14i2.2203>.

²¹ M. Roem Syibly dan Sidik Tono, "Prinsip Keadilan Dalam Pembagian Waris Dan Wasiat Pada Masyarakat Muslim Yogyakarta," *Istinbath* 16, no. 2 (25 Desember 2017): 419–40, <https://doi.org/10.20414/ijhi.v16i2.12>.

²² Endah Amalia, "Penyetaraan Gender Dalam Hal Pembagian Warisan," *Ahkam: Jurnal Hukum Islam* 8, no. 2 (2020), <https://ejournal.uinsatu.ac.id/index.php/ahkam/article/view/3496>.

²³ M. Nasikhul Umam Al-Mabruri, "Keadilan Pembagian Harta Warisan Perspektif Hukum Islam Dan Burgerlijk Wetboek," *Al-Mazaahib: Jurnal Perbandingan Hukum* 5, no. 1 (1 Juni 2017), <https://ejournal.uin-suka.ac.id/syariah/almazahib/article/view/1394>.

²⁴ Mazahib, "The Representation of Women's Role and Position in Taqrib Book: A Discourse Analysis Study," *Mazahib Jurnal Pemikiran Hukum Islam* 19, no. 1 (2020), <https://journal.uinsi.ac.id/index.php/mazahib/article/view/1737>.

interpretations of Sharia result in a gender-friendly Islamic law.²⁵ In India, women's economic empowerment increases women's independence and creates a gender-balance household.²⁶

There are several ways that Muslims solve inheritance distribution inequality, such as through grants, deliberations, and *faraid*.²⁷ Grants for instance are usually done by dividing property when the heir is still alive.²⁸ This is categorised as "*zhanni al-dalalah*, it concerns human social relations (*mu'amalah*) which are influenced by the socio-economic context of the roles of men and women in society (*ta'aqquli*). Consequently, texts in the field of inheritance law are open to modern interpretation.²⁹

Regarding Islamic inheritance jurisprudence, dispute resolution must aim to comply with sharia to conform to Islamic teachings, namely (*hifz al-din*) or maintain religion.³⁰ For this reason, the Indonesian government arranged the Compilation of Islamic Law to guide judges and ensure legal certainty for justice seekers.³¹ Thus, legal experts in Indonesia can make new legal interpretations when there is a debate of opinion regarding the distribution of inheritance,³² with the record of sticking to the legal objectives namely 1) the principle of benefit, 2) the principle of justice, and 3) the principle of benefit for the heirs.³³

As a predominantly Muslim,³⁴ Indonesians tend to use Islamic inheritance law, but it is necessary to prioritise gender equality as contained in the 1945 Constitution Article 27 Paragraph 1 concerning equality among citizens regardless of gender. So, the researchers are trying to uncover and explore the concept of gender-friendly justice in the distribution of inheritance in Indonesia.

²⁵ Zulfikar Ismail dan Maisyarah Rahmi Hasan, "Islamic Legal Modernism and Women's Emancipation in Tunisia," *Mazahib Jurnal Pemikiran Hukum Islam* 19, no. 2 (2021), <https://journal.uinsi.ac.id/index.php/mazahib/article/view/2800>.

²⁶ Sulagna Mookerjee, "Gender-Neutral Inheritance Laws, Family Structure, and Women's Status in India," *The World Bank Economic Review* 33, no. 2 (1 Juni 2019): 498–515, <https://doi.org/10.1093/wber/lhx004>.

²⁷ Zainal Arifin Haji Munir, "Analysis of Patterns for Inheritance Dispute Settlement in the Tradition of Sasak Community in Lombok," *Mazahib Jurnal Pemikiran Hukum Islam* 20, no. 2 (2021), <https://journal.uinsi.ac.id/index.php/mazahib/article/view/3774>.

²⁸ Siah Khosyi'ah dan M. Asro, "Penyelesaian Warisan Melalui Hibah Dalam Perspektif Hukum Islam," *Asy-Syari'ah* 23, no. 1 (13 Agustus 2021): 39–62, <https://doi.org/10.15575/as.v23i1.12755>.

²⁹ Ratu Haika, "Konsep Qath'i Dan Zhanni Dalam Hukum Kewarisan Islam," *Mazahib Jurnal Pemikiran Hukum Islam* 15, no. 2 (2016), <https://journal.uinsi.ac.id/index.php/mazahib/article/view/632>.

³⁰ Syaikh, "The Dispute Settlements of Inheritance in Palangka Raya: A Legal Anthropology Approach," *Mazahib Jurnal Pemikiran Hukum Islam* 18, no. 1 (2019), <https://journal.uinsi.ac.id/index.php/mazahib/article/view/1441>.

³¹ Ana Amalia Furqan, Alfritri, dan Akhmad Haries, "The Difference of a Child (Walad) Concept in Islamic Inheritance Law and Its Implications on The Decisions of the Religious Courts in Indonesia," *Mazahib Jurnal Pemikiran Hukum Islam* 17, no. 2 (2018), <https://journal.uinsi.ac.id/index.php/mazahib/article/view/1212>.

³² Taufik Maulani, "Anotasi Putusan Dissenting Opinion Dalam Putusan Kasasi," *Asy-Syari'ah* 21, no. 2 (2019): 187–206, <https://doi.org/10.15575/as.v21i2.5907>.

³³ Siah Khosyi'ah dan Aah Tsamrotul Fuadah, "Rechtvinding Tentang Waris Beda Agama Di Pengadilan Agama Kota Bandung," *Asy-Syari'ah* 21, no. 2 (2019): 135–58, <https://doi.org/10.15575/as.v21i2.4706>.

³⁴ Putra dan Ahyani, "Internalization in Islamic Law Progressive in Criminal Law Changes in Indonesia."

Research Methods

This article is doctrinal legal research that uses a comparative and deductive approach.³⁵ The comparative approach is carried out by comparing regulations related to the distribution of inheritance in force in Indonesia including: 1) Western civil inheritance law as contained in Article 830 of the Civil Code (BW); 2) Islamic inheritance law; 3) customary inheritance law. According to Peter Mahmud, the deductive approach is a way of thinking in which a specific conclusion can be drawn from general statements, regarding the concept of gender-friendly in the distribution of inheritance in Indonesia, starting from collecting data, as well as carrying out the reasoning process carried out by researchers, namely reasoning facts general to particular that occurs in Indonesia concerning the inheritance distribution.

The study type is literature study, which, according to Mestika Zed, means a series of activities related to collecting library data, reading and recording, and processing research materials. The data were obtained from literature related to gender equality in inheritance law including: 1) The main sources in Islamic inheritance law, namely the Al-Qur'an Surah An-Nisa' verses 11, 12, and 176; 2) Compilation of Indonesian Islamic Law; 3) Article 27 Paragraph 1 of the 1945 Constitution concerning equality among citizens regardless of gender; 4) Law no. 7 of 1984 concerning Ratification of the Convention Concerning the Elimination of All Forms of Discrimination Against Women (Convention on the Elimination of all Forms of Discrimination Against Women); 5) as well as other relevant sources related to the concept of gender-friendly justice in the distribution of inheritance in Indonesia. In addition, descriptive analytics was applied by focusing on the problem of inheritance distribution, namely the two portions for men and one portion for women, the 2:1 (two to one) distribution. Data were analysed by reviewing the arguments about inheritance with a socio-historical approach, and general legal theory to describe legal arrangements regarding the concept of gender-friendly distribution of inheritance in Indonesia.

Results and Discussion

The Concept of Gender-Friendly Distribution of Inheritance in Indonesia

Before discussing women's position in *faraid* (Islamic inheritance law), it is necessary to understand women's situation in Islamic culture when fiqh was born. In fiqh munakahat men get a special place. In the book *Uqud al-Lujjain*,³⁶ women must be submissive and obedient to what their husband wants, especially intercourse. For example, one of the Hadith stated in the book seems odd: "A woman who spends her day fasting and her night praying, then when her husband takes her to sleep, she is late, just a little while later, on the Day of Judgment, she will be dragged in chains by the devils in the lowest hell." Many contemporary Muslim thinkers have explored the hadiths used in the book. As was done by Husein Muhammad who examined the hadiths

³⁵ Soerjono Soekanto, *Pengantar Penelitian Hukum* (Jakarta: UI Press, 1986).

³⁶ Nawawi dan Humaidy, *Uqud Al-Lujjain: Kalung Perak Kebahagiaan Rumah Tangga*.

quoted in the book *Uqud Dulu jain*, the majority were categorised as unauthentic, some were *hasan*, *dhaif* and even *maudhu'*, while some sources were unknown.³⁷

Women's discredit might still be found nowadays. The Ministry of Religion's program on the gender-friendly translation and interpretation of The Qur'an according to Farida Nur 'Afifah has raised indications that the previous al-Qur'an translation by the Ministry of Religion contained gender bias.³⁸

According to Sigmund Freud, gender is a trait inherent in men and women based on socio-cultural construction.³⁹ This theory is motivated by the contextual framework of family relations, anti-Semitism, politics, economics, science, and culture influencing Freud's work on feminine psychology.⁴⁰ In Islam, one of the gender-biased issues in households is *nusyuz*. *Nusyuz* is interpreted as the disobedience of a wife to her husband. In the Qur'an Surah an-Nisa verse 34, the husband is given the right to advise, separate the bed and even beat his wife if she does not obey her husband. This discredits the position of women in the family. In *fiqh muamalah*, women also have a narrower space than men. Surah al-Baqarah verses 282-283 state that the testimony of two women is equal to one man and is generally interpreted that a woman's price is half of a man's. This interpretation has been going on for a long time and is accepted without resistance because awareness of women's rights is low. In fact, according to Halimah Basri,⁴¹ the generalisation of women's testimony is not only a matter of economics such as in the financial sector alone, but also in other fields outside the scope of the verse. Even without the support of the verse, the ransom for a woman killed accidentally is half that of a man.

According to Rasyid Rida, women's testimonies are half of men's for two reasons: the weakness of women's testimonies and the lack of public trust in women.⁴² The reason for the weak testimony of women is that women do not play a role in taking care of their husband's assets, but only as guardians of their husband's assets. In addition, whenever a woman fails to memorise things they heard or saw, the other female witnesses can remind them. This deficiency is not due to their capability, but because women have limited public space, including conducting transactions in the field of *muamalah*. Therefore, it is natural that knowledge is limited and the sources of information received are few. In contrast to the current conditions, women have played a significant role in the public sphere, including economic affairs.

Then, in *mawaris* case, the Qur'an Surah An-Nisa verse 11 states that "a woman's share is half that of a man." For some people, this argument strengthens the justification of men's superiority over women.

³⁷ Majdudin Nurul Huda, Ahmad Asmuni, dan Siti Fatimah, "Kitab 'Uqud Al-Lujjain Dalam Pandangan KH. Husein Muhammad," *Jurnal Nasional My Campaign Journal* 3, no. 3 (2022), <https://mycampaignjournal.ami.sch.id/index.php/mcj/article/view/75>.

³⁸ Farida Nur Afifah, "Penerjemahan Ramah Gender Studi Atas Al-Qur'an Dan Terjemahannya Terbitan Kementerian Agama Edisi Penyempurnaan 2019," *Suhuf Jurnal Pengkajian Al-Qur'an Dan Budaya* 14, no. 2 (30 Desember 2021): 313–50, <https://doi.org/10.22548/shf.v14i2.675>.

³⁹ Sander L. Gilman, *Freud, Race, and Gender* (Princeton University Press, 1993).

⁴⁰ Samuel Slipp, *The Freudian Mystique: Freud, Women, and Feminism* (NYU Press, 1993).

⁴¹ Halimah Basri, "Kesaksian Perempuan Dalam Kontrak Keuangan Dalam Kitab-Kitab Tafsir," *Al Daulah: Jurnal Hukum Pidana dan Ketatanegaraan* 7, no. 2 (17 Desember 2018): 347–61, <https://doi.org/10.24252/ad.v7i2.7247>.

⁴² Imam Muhammad Rasyid Ridha, *Tafsir al Quran al-Hakim (Tafsir Al-Manar)* (Beirut: Daar al-Fikr, 2007).

Inheritance law in Indonesia is enforced based on the Civil Code, Islamic Law and Customary Law. According to Supomo,⁴³ there are three types of inheritance systems in Indonesia, including 1) blood relationship according to the father's line (patrilineal), 2) blood relationship according to the mother's line (matrilineal), and 3) blood relationship according to the father's line (parental).

Indonesian positive Civil Law came from the Western world, brought by the Dutch during colonialism in Indonesia. Article 830 of the Civil Code (BW) states, "Inheritance only occurs due to death". Since the heir's death, all rights and obligations of the heir are transferred to the heirs. Further to Article 831, If several people who have an inheritance relationship, die due to the same accident or die on the same day, without knowing who died first, then they are considered to have died at the same time, may inheritance from one to another. Article 832 further states that those entitled to become heirs are blood relatives, both legal according to law and those outside of marriage, and the husband or wife who has lived the longest, according to the following regulations. Suppose the blood relatives and the husband or wife who have lived the longest are not present; in that case, all the inherited assets become the property of the state, which is obliged to pay off the debts of the deceased, as long as the price of the inherited assets is sufficient for that.⁴⁴ The renewal of the Civil Code in Indonesia is an urgent matter through selecting articles that are still relevant and relatable to the times.⁴⁵

The customary inheritance law is a local law that applies in a certain area or tribe, is believed to and is carried out by the people of that region. With the existence of this customary inheritance law, Customary law is a cultural product that contains substance regarding cultural values such as creativity, initiative, and human feelings. It was born from awareness of human needs and desires to live just and civilised as the actualisation of human civilisation.⁴⁶ In certain areas in Indonesia, dispute settlements on inheritance distribution are carried out through a customary approach.⁴⁷ One of the reasons people choose this is due to the unfair inheritance portion based on religious law.⁴⁸ Customary inheritance law is closely related to the kinship system adopted by an indigenous

⁴³ Soepomo, *Bab-Bab Tentang Hukum Adat* (Jakarta: Pradnya Paramita, 2003).

⁴⁴ *Kitab Undang-Undang Hukum Perdata (burgerlijk Wetboek Voor Indonesie) 1847* (Jakarta, 1847).

⁴⁵ Gerhard Mangara dan Tazqia Aulia Al-Djufri, "Urgensi Pembaharuan Kitab Undang-Undang Hukum Perdata di Indonesia," *Jurnal Hukum Lex Generalis* 3, no. 4 (20 April 2022): 269–90, <https://doi.org/10.56370/jhlg.v3i4.248>.

⁴⁶ M. Syaikhul Arif, "Mengenal Sistem Hukum Waris Adat," *Siyasah : Jurnal Hukum Tata Negara* 5, no. 1 (29 Juli 2022), <https://ejournal.an-nadwah.ac.id/index.php/Siyasah/article/view/420>.

⁴⁷ Mochamad Icksan, "Pengaturan Pembagian Harta Warisan Terhadap Objek Waris Yang Belum Dibagi Menurut Hukum Adat," *HUKMY : Jurnal Hukum* 2, no. 1 (14 April 2022): 1–13, <https://doi.org/10.35316/hukmy.2022.v2i1.1-13>.

⁴⁸ Julian Harris Djauhary, "Pembagian Harta Waris Menurut Hukum Adat Dan Hukum Islam Di Kecamatan Cempaka Kabupaten Oku Timur," *Repertorium: Jurnal Ilmiah Hukum Kenotariatan* 5, no. 2 (24 Juli 2018), <https://doi.org/10.28946/rpt.v5i2.191>.

community.⁴⁹ So, the traditional law divides inheritances evenly between men and women.⁵⁰

Principally, Islamic law only bound Muslims, including inheritance law. However, debates have been raised on the right of non-Muslim heirs to the inheritance of a Muslim. Some Muslim scholars say it is permissible to give heirs of different religions by seeing the benefits and the beauty of religious tolerance so that they respect each other. The other scholars do not allow giving heirs of different religions with the assumption that there will be a mix of unlawful assets from the heir's inheritance.⁵¹

Settlement of Islamic inheritance cases must go through several stages, namely identifying heirs, determining shares, *ta'shil* (finding the origin of the problem), *tashhih* (finding divisors of numbers that cannot be divided even), ensuring the amount of inheritance then dividing the amount of assets by number of problem sources. As a result, the settlement of Islamic inheritance cases is categorised into four criteria: the *at-tamatsul* case, the *at-tadakhul* case, the *at-tawafuq* case, and the *at-tabayun* case.⁵² Thus, inheritance disputes must be carried out based on the principle of agreement and accommodate the gender justice principle.⁵³

The inheritance distribution system in Islamic law can be carried out by deliberation and mutual consent. All the heirs must gather in the deliberation or negotiation to prevent conflicts and misunderstandings in the future. Islam strongly recommends loving and respecting fellow brothers and sisters. Therefore, it is very important to divide the inheritance as soon as possible when the funeral has been completed, to avoid conflicts that may arise in the future. The distribution process might be delayed by several factors, including the people's habit of being late for the gathering, tough discussions between the heirs, or the process of fulfilling her obligations, including debts and wills.⁵⁴ As long as the agreement is used as a principle in the distribution of inheritance and does not cause conflict within the family, then it is permissible.

The Indonesian Islamic Law Compilation (KHI) alludes to the distribution of inheritance in Article 175: (1) The obligations of heirs are: a). manage and complete until the burial of the corpse is complete. b). settle rights and obligations of the heir, such as paying or collecting debt. c). complete the heir's will. Articles 174, 181, 182 and 185 KHI show that the heirs consist of 1). The male heirs are father, son, brother, uncle, grandfather and husband; 2). Female heirs, namely mother, daughter, sister, grandmother

⁴⁹ Firnanda Arifatul Cahyani dan Dia Aisa Amelda, "Kedudukan Perempuan Hindu dalam Sistem Pewarisan Menurut Hukum Waris Adat Bali," *Jurnal Hukum Lex Generalis* 3, no. 6 (29 Juni 2022): 448–59, <https://doi.org/10.56370/jhlg.v3i6.190>.

⁵⁰ Naskur Naskur, Effendy Tubagus, dan Fahri Fijrin Kamaru, "Pembagian Harta Warisan secara Adat pada Masyarakat Bolaang Mongondow," *Al-Mujtahid: Journal of Islamic Family Law* 2, no. 1 (30 Juni 2022): 1–15, <https://doi.org/10.30984/ajifl.v2i1.1886>.

⁵¹ Amrin Amrin, "Tinjauan Hukum Islam Terhadap Hukum Waris Beda Agama," *Syar'ie: Jurnal Pemikiran Ekonomi Islam* 5, no. 2 (18 Agustus 2022): 146–55, <https://doi.org/10.51476/syarie.v5i2.377>.

⁵² Sumper Mulia Harahap dan Raja Ritonga, "Konsep dan Metode Penyelesaian Hitungan Bagian Warisan Dalam Kasus Waris Islam; Analisis dan Aplikatif," *Al-Mizan* 18, no. 1 (30 Juni 2022): 77–98, <https://doi.org/10.30603/am.v18i1.2223>.

⁵³ Dul Jalil, "Penyimpangan Hukum Waris Di Indonesia," *Al-Mizan: Jurnal Hukum dan Ekonomi Islam* 6, no. 1 (27 September 2022): 1–19, <https://doi.org/10.33511/almizan.v6n1.1-19>.

⁵⁴ Adlan, Muhammad Ali Rusdi, dan Sunuwati, "Delaying Inheritance Distribution Behavior in Islamic Society," *Jurnal Marital: Kajian Hukum Keluarga Islam* 1, no. 2 (11 November 2022): 99–110.

and wife. In KHI, there is the term obligatory will, where this *wasiat* (testament/will) also applies to adoptive parents and adopted children, as stipulated in Article 209 of the KHI. Furthermore, even though in Islamic law a wife who has a religion other than Islam is not entitled to inherit property from her husband who is Muslim, based on the consideration of judges who use the results of *ijtihad* from *fiqh* experts who expand the provisions regarding obligatory wills which only apply to relatives who do not obtain inheritance from the heir to apply also to a wife who is a religion other than Islam is the most likely way as a middle way and an alternative to be taken to create justice.⁵⁵ In the distribution of inheritance, there is the concept of *masalah*, where this concept was coined by Najmuddin Al Thufi, namely this will can be carried out with the Peace System and Distribution of Inheritance while the Heir is still alive, of course by prioritising the Islamic concept of *rahmatan lil 'alamin*.⁵⁶ Inheritance rights of children in the womb are legally regulated in legislation, which states that the inheritance rights of children in the womb are regulated in civil law, in contrast to inheritance rights in the KHI which are not regulated explicitly.⁵⁷

The issue of inheritance law concerns three elements, namely the existence of inheritance, the existence of heirs and the existence of heirs, namely the person who receives the transfer or successor of the division of the property. In addition, the occurrence of inheritance is also caused by the death of a person. Problems will arise if the inheritance left by the heir is not directly divided. Refusal to inherit has been regulated in Article 1056 to Article 1065 of the Civil Code and Article 188 of the Compilation of Islamic Law. In Article 1045 of the Indonesian Civil Code, it is explained that no one is obliged to receive an inheritance that falls to him. A person can refuse an inheritance,⁵⁸ while an adopted child is not entitled to inherited assets but may get a portion from a will, according to Article 209 paragraph (2) of the KHI.⁵⁹

Article 27 Paragraph 1 of the 1945 Constitution concerning equality among citizens regardless of gender. So this is the government's effort to eliminate discrimination based on sex as stated in various laws and regulations.⁶⁰ Meanwhile, Law No. 7 of 1984 concerning the Ratification of the Convention Concerning the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) explains that every citizen has the same position before the law and government so that all forms of

⁵⁵ Safira Rahmi Khouw, La Ode Angga, dan Sabri Fataruba, "Kajian Hukum Islam Tentang Wasiat Wajibah Kepada Ahli Waris Beda Agama," *TATOHI: Jurnal Ilmu Hukum* 1, no. 11 (31 Januari 2022): 1120–29, <https://doi.org/10.47268/tatohi.v1i11.869>.

⁵⁶ Akhmad Naibul Kholili, Muhamad Ghofir Makturidi, dan Muharir Muharir, "Alternatif Bentuk Wasiat Bagi Anak Angkat Era 4.0 (Studi Pemikiran Najmuddin Al Thufi dan Kompilasi Hukum Islam)," *Jurnal MEDIASAS: Media Ilmu Syari'ah dan Ahwal Al-Syakhsyiyah* 4, no. 2 (24 Desember 2021): 149–64.

⁵⁷ Rinrin Warisni Pribadi, "Tinjauan Hukum Perdata Dan Kompilasi Hukum Islam Terhadap Hak Waris Anak Dalam Kandungan," *Jurnal At-Tatbiq: Jurnal Ahwal al-Syakhsyiyah* 7, no. 1 (31 Mei 2022): 53–63.

⁵⁸ Suyanto dan Wahyung Agustina, "Pembagian Harta Waris Yang Ditolak Oleh Ahli Waris," *Formosa Journal of Multidisciplinary Research* 1, no. 4 (31 Agustus 2022): 945–56, <https://doi.org/10.55927/fjmr.v1i4.907>.

⁵⁹ Vaula Surya Hannifa, Johni Najwan, dan M. Amin Qodri, "Hak Waris Anak Angkat Dalam Perspektif Kompilasi Hukum Islam Indonesia," *Zaaken: Journal of Civil and Business Law* 3, no. 1 (13 Februari 2022): 34–48, <https://doi.org/10.22437/zaaken.v3i1.15919>.

⁶⁰ Dede Kania, "Hak Asasi Perempuan dalam Peraturan Perundang-Undangan Di Indonesia," *Jurnal Konstitusi* 12, no. 4 (20 Mei 2016): 716–34, <https://doi.org/10.31078/jk1243>.

discrimination against women must be abolished. However, its application faces complications in the context of culture, religion, and regulations.⁶¹

The discussion above regarding the concept of "gender-friendly justice" in the distribution of inheritance in Indonesia may be concluded that the concept is based on the principle of agreement and accommodates the principle of gender equity for men and women.

Application of the Gender-Friendly-Based Justice Concept in the Distribution of Inheritance in Indonesia

Improving the position of women in a pluralistic society in Indonesia can be done by adjusting the social conditions of society according to current developments.⁶² This means that the difference in the share of inheritance in Indonesia should not be determined by gender.⁶³ According to the United Nations (UN) Women, strengthening women's sustainable access to justice can be done through: 1) creating a conducive environment for women's access to justice; 2) creating an effective, accountable and gender-responsive judiciary; and 3) enhancing legal empowerment of women.⁶⁴

In the context of Islamic religious texts, the term gender is sensitive, but this needs to be disseminated to further increase public awareness of women's rights and issues of gender equality in Islam.⁶⁵ The gender-balance concept is very effective in resolving inheritance disputes that may be done through negotiation, conciliation, or litigation.⁶⁶ However, the legal pluralism in Indonesia might affect legal certainty.⁶⁷ For example, in terms of inheritance disputes, it is necessary to make a comparison between the Civil Code, the Compilation of Islamic Law (KH), and local customary law.⁶⁸

The implementation of gender-friendly justice can be implemented by giving freedom to women and girls to participate equally in various aspects including 1) economic, 2) social, 3) political and 4) cultural, 5) having a leadership role, 6) ease of access to resources and services, and 7) participate in decisions making that might

⁶¹ Nursholeha Muh Salleh dan Dara Maulina Binti Jalaluddin, "Konvensyen Penghapusan Segala Bentuk Diskriminasi Terhadap Wanita (Cedaw): Satu Tinjauan Awal," *Islam Realitas: Journal of Islamic and Social Studies* 4, no. 1 (25 Juli 2018): 11–20, https://doi.org/10.30983/islam_realitas.v4i1.504.

⁶² Anjar Kususiyanah, "Keadilan Gender Dalam Kewarisan Islam: Kajian Sosiologis Historis," *Al-Mazaahib: Jurnal Perbandingan Hukum* 9, no. 1 (12 September 2021): 63–82.

⁶³ Ridwan, "Gender Equality in Islamic Inheritance Law: Rereading Muhammad Shahrur's Thought," *Al-Manahij: Jurnal Kajian Hukum Islam*, 25 November 2022, 181–92, <https://doi.org/10.24090/mnh.v16i2.6916>.

⁶⁴ UN Women, *A Practitioner's Toolkit on Women's Access to Justice Programming: Module 1: The Theory and Practice of Women's Access to Justice Programming* (United Nations, 2018), 9.

⁶⁵ Alfutri, "Women's Rights and Gender Equality Issues in Islamic Law in Indonesia: The Need to Re-Read Women's Status in the Islamic Religious Texts," *Mazahib Jurnal Pemikiran Hukum Islam* 13, no. 1 (2020), <https://journal.uinsi.ac.id/index.php/mazahib/article/view/349>.

⁶⁶ Sonny Dewi Judiasih dan Efa Laela Fakhriah, "Inheritance Law System: Considering the Pluralism of Customary Law in Indonesia," *Padjadjaran Jurnal Ilmu Hukum (Journal of Law)* 5, no. 2 (24 September 2018): 315–30.

⁶⁷ dian Aries Mujiburohman, "The Practice Of Presidential Succession In Indonesia," *Padjadjaran Jurnal Ilmu Hukum (Journal Of Law)* 7, no. 2 (30 Agustus 2020): 250–67.

⁶⁸ Imamulhadi Imamulhadi dan Nia Kurniati, "Critical Review of Indonesian Government Legal Policies on The Conversion of Protected Forests and Communal Lands of The Indigenous Batak People around Lake Toba," *Padjadjaran Jurnal Ilmu Hukum (Journal of Law)* 6, no. 3 (27 Desember 2019): 446–65.

directly or indirectly affect their lives. Gender equality, for example in gender responsiveness, can be created by involving women in all activities in everyday life.⁶⁹

Islam does not discriminate between men and women, because in the Qur'an it has been explained that humans have the same position in the eyes of Allah, whether male or female, namely a) equality as servants of Allah, b) equality as caliph of Allah, c) equality in receiving primordial agreements, d) equality in being actively involved in cosmic drama events, and e) equality in achieving achievements.⁷⁰ Asghar Ali criticizes various interpretations of the Qur'an that glorify only one gender.⁷¹ He interprets the verses of the Qur'an with two approaches, pragmatic and contextual. The purpose of this is a reinterpretation of the verses of the Qur'an based on contemporary conditions. Thus, gender justice can be achieved.⁷² Justice is an overarching humanitarian goal that must be realized and developed continuously to maintain the integrity that already exists. The emergence of gender has shown differences in roles and responsibilities, as well as functions and spaces where humans carry out normal activities. With gender justice, at least humans can establish relationships without feeling awkward with one another. However, gender balance might be tough to achieve since there are still many social values that place men higher than women.⁷³

The basis of justice in Islamic inheritance is the size of responsibility given to them. A man must provide for his family members, so it is appropriate for him to have portion twice as big as a woman.⁷⁴ Nonetheless, the development of women's emancipation as the family's breadwinner became a pretext to change the traditional Islamic inheritance portion.⁷⁵

Applying the concept of "gender-friendly justice" in the distribution of inheritance in Indonesia can be done by prioritizing the concept of *rahmatan lil'alamin*, meaning that Islam places women in a noble position. Islam is a system of life that leads humans to understand the reality of life. Islam is also a global order revealed by Allah as *rahmatan lil-'alamin*.⁷⁶ So that, in a logical consequence, if Allah's creation of His creatures, namely men and women, has a mission as *khalifatullah fil ardh*, who should save and prosper

⁶⁹ Inayatillah Inayatillah dan Mellyan Mellyan, "Gendering Covid-19: The Role of Women in Strengthening the Family Economy," *Gender Equality: International Journal of Child and Gender Studies* 8, no. 2 (30 September 2022): 123–34, <https://doi.org/10.22373/equality.v8i2.13054>.

⁷⁰ Solikul Hadi, "Bias Gender Dalam Konstruksi Hukum Islam Di Indonesia," *PALASTREN: Jurnal Studi Gender* 7, no. 1 (31 Maret 2016): 25–46, <https://doi.org/10.21043/palastren.v7i1.997>.

⁷¹ Asghar Ali Engineer, *Islam Dan Teologi Pembebasan (theoloog En Vredesactivist)* (Pustaka Pelajar, 1999).

⁷² Muhammad Adres Prawira Negara, "Keadilan Gender dan Hak-Hak Perempuan dalam Islam," *Az-Zahra: Journal of Gender and Family Studies* 2, no. 2 (27 Juni 2022): 74–88, <https://doi.org/10.15575/azzahra.v2i2.15840>.

⁷³ Nuryah Nuryah, Muhammad Ali, dan Hanifah Mifta Husa'adah, "Wanita Dan Keadilan Gender Perspektif Islam," *SETARA: Jurnal Studi Gender Dan Anak* 1, no. 02 (13 Juni 2020): 62–86, <https://doi.org/10.32332/jsga.v1i02.2170>.

⁷⁴ Kurniati Nashirun, "Konsep Keadilan Dan Kesetaraan Gender Tentang Pembagian Harta Waris Dalam Perspektif Hukum Islam," *Madani Legal Review* 6, no. 1 (28 Juni 2022): 65–78, <https://doi.org/10.31850/malrev.v6i1.1708>.

⁷⁵ Ita Ma'rifatul Fauziyah dan Yunitasari Yunitasari, "Penerapan Waris 1:1 Dalam Yurisprudensi Islam Perspektif Kesetaraan Gender," *NUSANTARA: Jurnal Ilmu Pengetahuan Sosial* 9, no. 4 (22 April 2022): 1444–56, <https://doi.org/10.31604/jips.v9i4.2022.1444-1456>.

⁷⁶ Kasmawati, "Gender Dalam Perspektif Islam," *Jurnal Sipakalebba* 1, no. 1 (2013), <https://doi.org/10.24252/jsipakalebba.v1i1.285>.

nature, to an awareness of the goal of saving human civilization. Thus, both gender, women, and men in Islam, have a comprehensive role and equal dignity as servants of Allah and carries out the same mandate. Gender theories and concepts seem easy, but their application is not an easy matter, it requires a process and full support as well as direct participation from the world community if Gender is indeed the main choice to balance individual roles in a global society.

Conclusion

From the results and discussion above regarding the issue of "gender-friendly justice" especially in inheritance distribution in Indonesia, it can be concluded that: 1) the concept of "gender-friendly justice" in inheritance distribution in Indonesia is a conception that is based on the principle of agreement and accommodates the principle of gender justice for men and women; 2) application of the concept of "gender-friendly justice" in the distribution of inheritance in Indonesia can be done by applying the concept of classical Islamic thought based on the principle of justice and by prioritizing the concept of *rahmatan lil'alamin*, where both men and women have the same position as Allah's creation, caliph, and servant, the same duties and liability.

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