

Maslahah and Justice in Islamic Inheritance: A Normative and Jurisprudential Inquiry

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ABSTRACT

Provisions in the transfer of property from people who died to those who were left behind, by the Fuqaha' are named as al-faraid, and or in Indonesia it is better known as Islamic inheritance law. The concept of justice in the distribution of inheritance is still a topic of discussion among the public. The zahir provisions of the Koranic texts that give men a larger share of inheritance than women and ignore equality pose a complicated problem faced by Muslims in various countries. This is because of the invisible Maslahah that is obtained by each heir. This study aims to analyze the concept of benefit in justice contained in Islamic inheritance law to answer contradictory arguments in determining benefit in the form of justice in Islamic inheritance law. This research is a literature review/research with documentation as a data collection method. Philosophical and normative approaches are being used in analyzing data, especially Islamic legal norms which are sourced from the Koran and Hadith. The results of this study indicate that in the distribution of inheritance, Islam is very concerned and even prioritizes the principles of Maslahah and justice for each heir. There is no assumption that Islamic inheritance law does not apply fairly and leads to discrimination against women, because justice has been proven on the side of benefit in the practice of dividing Islamic inheritance.

Ketentuan dalam proses pemindahan harta dari orang yang telah meninggal kepada ahli waris yang ditinggalkan, menurut para Fuqaha, disebut sebagai al-faraid, atau yang lebih dikenal di Indonesia sebagai hukum waris Islam. Konsep keadilan dalam pembagian warisan masih menjadi topik perbincangan di kalangan masyarakat. Ketentuan zahir dalam teks Al-Qur'an yang memberikan bagian warisan lebih besar kepada laki-laki dibandingkan perempuan, serta tampak mengabaikan prinsip kesetaraan, menimbulkan persoalan kompleks yang dihadapi umat Islam di berbagai negara. Hal ini disebabkan oleh adanya masalah yang tidak tampak secara langsung, namun diperoleh oleh masing-masing ahli waris. Penelitian ini bertujuan untuk menganalisis konsep kemaslahatan dalam keadilan yang terkandung dalam hukum waris Islam, guna menjawab argumen-argumen kontradiktif dalam menentukan bentuk keadilan sebagai wujud kemaslahatan dalam hukum waris Islam. Penelitian ini merupakan studi pustaka dengan metode dokumentasi sebagai teknik pengumpulan data. Pendekatan filosofis dan normatif digunakan dalam menganalisis data, khususnya norma hukum Islam yang bersumber dari Al-Qur'an dan Hadis. Hasil penelitian menunjukkan bahwa dalam pembagian warisan, Islam sangat memperhatikan dan bahkan mengutamakan prinsip kemaslahatan dan keadilan bagi setiap ahli waris. Tidak ada anggapan bahwa hukum waris Islam tidak berlaku adil atau menyebabkan diskriminasi terhadap perempuan, karena keadilan telah terbukti melalui sisi kemaslahatan dalam praktik pembagian warisan menurut hukum Islam.

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1. Introduction

One of the important and fundamental concepts in the paradigm of Islamic law is the concept of Maqasid Al Syaria¹ which emphasizes that Islamic law is required to maintain and realize human benefit.² Maslahah becomes ruh al tasyri' (shariaspirit) like in the time of the companions of the Prophet Muhammad and as one of the methods of istinbat in Islamic law at that time.³ The Companions of the Messenger of Allah did not argue in determining the principles and applying them in the process of finding the law (istinbat) and forcing themselves to follow the model that was popular and favored by the group, but they consulted in majlis, deciphered the laws and commented on them based on considerations of the general benefit.⁴

The provisions or regulations for the transfer of property from the deceased to those left behind, by the Fuqaha' are called by Islamic law of inheritance.⁵ The provisions of inheritance have been regulated in detail and specific in the Koran and hadith, these provisions have also been established as a legal basis that is qathi' by many scholars.⁶ Settlement of inheritance in Islam is Ijibari (forced). This can be seen from various aspects, namely; first; in terms of the transfer of property, occurs after the person dies⁷; second, in terms of the amount of property (its share) which has been determined for each heir⁸; third, in terms of the recipients of the inheritance (heirs) that have been determined with certainty⁹.

¹Hammadi al-Ubaidy argues that the person who first discussed *Maqâshid al-Syari'ah* was Ibrahim an-Nakha'i (d. 96 H.), a *tabi'in* and teacher of Hammâd bin Sulaimân who became Ab Hanîfah's teacher. After that came al-Ghazâlî, Izz al-Dîn Abd al-Salâm, at-Thûfi and the theories of the scientists above were perfected by Imam Syathibî in his *al-Muwafaqat*. (Abbas Arfan, "Maslahah dan Batasan-batasannya menurut Al Buthi: Analisis Kitab Dawabit Al Maslahah Fi Al Shari'ah Al Islamiyyah", *De Jure, Jurnal Syariah dan Hukum*, Vol. 5 No. 1, June, (2013) p. 87-96 <https://doi.org/10.18860/j-fsh.v5i1.2999>).

²Muhammad Harfin Zuhdi, "Formulasi Teori Maslahah dalam Paradigma Pemikiran Hukum Islam Kontemporer", *Istinbath*, Vol. 12, No. 1, December, (2013)p. 287. <http://repository.uinmataram.ac.id/id/eprint/2441>

³Ibn Subukî (tt), *Thabaqât al-Syâfi'iyyah*, Juz V, p. 165.

⁴Muhammad 'Abid al-Jâbirî, *al-Dîn Wa al-Daulah Wa Tathbiq al-Syari'ah*, terj. Mujiburrahman, *Agama, egara dan penerapan Syari'ah*, Fajar Pustaka Baru, Yogyakarta, ed. I, (2001)ph. 51.

⁵Hafidz Taqiyuddin, *Argumen Keadilan dalam Hukum Waris Islam: Studi Konsep 'Awl dan Raddu*, Ciputat, Cinta Buku Media, First Printing,(2014) p. 2.

⁶Ismail Muhammad Syah), *Filsafat Hukum Islam*, Jakarta: Bumi Aksara,(1992) p. 229-230.

⁷This is reflected in the Qur'an Surah IV (*An Nisa'*) verse 7. In this surah explained that for men there is a fate or share (inheritance) of the property left by their parents and close family, and the same is true for women. there is a fate or share (inheritance) of the property left by the parents and their close family. From the word fate, it can be understood that in a number of assets left by the heir, there is a share or right of the heir.

⁸This is reflected in the word *mafrudan* (in Surah An Nisa' verse 7) whose original meaning is "determined or calculated".

⁹ Namely those who have blood relations and marital ties with the heirs as detailed in the grouping of heirs in Surah IV (*An Nisa'*) verses: 11, 12 and 176. (See: Mohammad Daud Ali (1993), *Azas-azas Hukum Kewarisan Dalam Kompilasi Hukum Islam* , Mimbar Hukum, Jakarta: Yayasan Al Hikmah – Ditbinbapera, , p. 6.

2. Methods

This type of research is literature review/research with documentation as a method of collecting data taken from various relevant sources, books, journals, or other scientific articles. The data analysis used by the author is descriptive analysis by illustrating and describing the concept of benefit in justice contained in Islamic inheritance law. The author uses a philosophical and normative approach in analyzing data, especially Islamic legal norms sourced from the Koran and Hadith, intended to provide an overview for the reader about the wisdom contained in the determination of the Sharia of Islamic Inheritance Law and the urgency of its application in the society.

3. Result and Discussion

3.1. The Concept of Benefits in the Determination of Islamic Law

3.1.1. Understanding of Benefits

Linguistically, the word "al-maslahah" means goodness which is the singular form of the word "al-masalih". The word comes from the formation of the three letters sha, la and ha. From these three letters the words "shalaha", "shaluha", "ashlaha", "shalaha", "isthalaha", "istaslah", "salahiyah" and "ash-Shulhu"¹⁰ are formed. The opposite of the word is "istafsada" (looking for damage).

Terminologically, Maslahah has been given a meaning by several *usl al-fiqh* scholars, including:

1. Al-Gazâli (d. 505 H), for example, says that the meaning of Maslahah is to attract/realize benefits or get rid of/avoid harm (*jalb manfa'ah* or *daf' madarrah*). According to him, it is to maintain and realize the goals of *Syara'* in the form of preserving religion, soul, mind, lineage, and wealth. He emphasized anything that can guarantee and protect the existence of these five things is qualified as *maslahah*; on the other hand, anything that can disturb and damage the five things is considered as *mafsadah*; then, preventing and eliminating something like that is qualified as *maslahah*.¹¹
2. According to Muhammad Said Ramadlân al-Bûthî, *al-maslahah* is "Something useful that is intended by *al-Shari'* (Allah and His Messenger) for the benefit of His servants, both in protecting their religion, soul, mind, lineage and property, according to in a certain order contained in the maintenance category."¹²

The definition of Maslahah according to Al Buthi and Al Ghazali shows the similarity of perception between the two, namely: first, that what is meant by *al-maslahah* in terms of terminology must be within the scope of the goals of *syara'*; should not be based on the desire of reason alone moreover on the desire of lust. In other words, they focus on *al-maslahah* with the aim of *syara'*. Second, that *al-maslahah* must contain two important elements, namely achieving benefits and avoiding *madharrah* (*Mafsadah*).¹³

¹⁰Ibrohim Musthofa, et al, *al Mu'jam al Wasith*, Cairo: Maktabah ash-Syuruq ad-dauliyah, cet. 4.), (2004). 520

¹¹Abû Hâmid Muhammad al-Gazâli, *al-Mustasfa min 'Ilm al-Usl, tah}qîq wa ta'liq Muhammad Sulaimân al-Ashqar*, Beirut: Mu'assasat al-Risâlah, 1st Juz, (1997), p. 416-417.

¹²Sa'id Ramadhan Al-Bûthî, *Dlawabith al-Mashlahah fi al-Syarî'ah al-Islâmiyyah*, Cet. VI; Baerut-Lebanon: Muassasah al-Risâlah, (1992), p. 27.

¹³Abbas Arfan, "Maslahah dan batasan-Batasannya Menurut Al Buthi, Analisis Buku Dlawabith al-Mashlahah fi al-Syarî'ah al-Islâmiyyah", *de Jure, Journal of Sharia and Law*, Volume 5 Number 1, June, (2013p. 87-96, p. 91. <https://doi.org/10.18860/j-fsh.v5i1.2999>

3. Al-Khawarizmi(W. 997H) provides a definition that Maslahah is maintaining the purpose of Islamic law by rejecting disasters/damage/things that are detrimental to creatures (humans).¹⁴
4. Al-Thufi (657 H-716 H) formulates the definition of Maslahah according to 'urf (general understanding that applies in society) is the cause that leads to Maslahah (benefits), such as business causing a person to make a profit. According to the view of Islamic law, Maslahah is the cause that brings effect to the achievement of the objectives of Shari'a, both in the form of worship and custom/mu'amalat. Then the Maslahah is divided into two: (1) the Maslahah desired by Shari'a as His prerogative such as worship, and (2) the Maslahah which is meant for the benefit of creatures/human beings and the regularity of their affairs.¹⁵
5. Abd al Wahab Khalaf stated that the definition of Maslahah mursalah is a benefit where the syar'i does not require a law to realize that benefit, and there is no evidence that shows whether this benefit is recognized or not. This Maslahah is called mutlaqah because it is not bound by arguments that blame or justify.¹⁶

From the several definitions of Maslahah above, it can be understood that the benefits provided by Shar'i (Allah SWT) as a law maker for His servants include efforts to protect religion, soul, mind, lineage and property. So that it will avoid loss (mafsadah) both in this world and in the hereafter.

3.1.2. Kinds of Benefits

The scholars of ushul fiqh suggest several distributions of benefits based on different views, including:

- a. Benefits in terms of strength, quality and importance¹⁷ are divided into:
 - 1) Al-dharuriyat which mean the Maslahah existence is very much needed by humans, both in religious and world affairs, if this Maslahah does not exist then his worldly life will be damaged, and in the hereafter he will lose pleasure and get tormented. This type of benefit consists of safeguarding religion, soul, mind, lineage, honor and property. All things that can damage this type of Maslahah are forbidden by Allah ta'ala.
 - 2) Maslahah Al Hajiyat which mean the Maslahah existence will eliminate the narrowness of humans. This type of benefit is under Al-dharuriyat because its absence does not necessarily eliminate the protection of religion, soul, mind, lineage, honor and property.
 - 3) Maslahah Tahsiniyyat or Kamaliyyah which mean the Maslahah existence will produce goodness and glory for human life. This benefit is under Al-daruriyat and al-hajiyat, because its absence does not directly damage the protection of religion, soul, reason, lineage, honor and property.
- b. Judging from the aspect of coverage associated with the community (jam'ah) or individuals.¹⁸ It is divided into two categories, they are:

¹⁴Al-Shaukani, Ers}ad, (tt), *al-Fudul ila Tahqiq al-Haq min 'Ilm al-Us}ul*, Egypt: Idara al-Tiba'ah al-Muniriyyah, tt p. 312.

¹⁵Najmuddin al-Thufi, *al-Ta'yin fi sharh}i al-Arba'in*, Beirut Lebanon: Mu'assasah al-Rayyan al-Maktabah al-Malikiyyah, (1998), p.239.

¹⁶Abd al Wahab Khalaf, *Principles of Islamic Law*, (trans.) Noer Iskandanr and Moh. Tholhah Mansur cet. V Jakarta: Raja Grafindo, (1994) p. 84.

¹⁷Wahbah Zuhayli, *Usul al-Fiqh al-Islami*, Juz 2, Beirut: Daar Al Fikr, Jami' Al Huquq Al Mahfudhoh, Print: 23, (2019) p. 309-312.

¹⁸Wahbah Zuhayli, *Usul al-Fiqh al-Islami*, Juz 2, Beirut: Daar Al Fikr, Jami' Al Huquq Al Mahfudhoh, Print: 2, (2019)p. 317.

- 1) Kulliyat Maslahah, universal benefits whose goodness and benefits return to many people. For example, defending the country from enemy attacks, and guarding hadith from attempts at falsification.
 - 2) Maslahah juz'iyat, in Maslahah that is partial or individual, such as the sharia of various forms of mu'amalah.
- c. Judging from the level of strength of the arguments that support it.¹⁹ The benefits in this case are divided into three:
- 1) Maslahah that is qat}'i is something that is believed to bring benefits because it is supported by arguments that are no longer possible to interpret, or are shown by quite a lot of arguments that have been carried out through inductive research, or reason can easily understand the existence of the Maslahah .
 - 2) Maslahah that is zanni, which is Maslahah that is decided by reason, or Maslahah indicated by the zanni argument from syara'.
 - 3) Maslahah that is wahmiyah in nature, which is Maslahah or imagined goodness, will be achieved, even though if you think about it more deeply, what will emerge is madharat and mafsadat.
- d. Viewed from the side of being recognized or not recognized by sharia (makers of shari'a), Maslahah is divided into three,²⁰ they are:
- 1) Al-Masalih al-Mu'tabarah, the benefits that get guidance from the shari'a, either directly or indirectly, that there are benefits that are the reason for establishing a law. In terms of direct and indirect guidance (proof) of a benefit, al-maslahah almu'tabarah is divided into two: almunâsib al-mu'ats}ir and almunâsib al-mulâ'im.
 - Al-munâsib al-mu'atshir, there are direct instructions from the Shari' (makers of the Shari'a) who pay attention to these benefits. That is, there are shariainstructions in the form of texts or ijma' which stipulate that the benefit is used as a reason in establishing the law.
 - Al-munâsib al-mulâ'im, which is a benefit for which there is no direct instruction from the Shariain the form of text or ijma' regarding the attention of the Shariato the benefit, but indirectly exists. That is, although the Shariadoes not directly stipulate a situation as a reason for enacting the law, but there are indications of the Shariatthat the condition is what Shariaprescribes as a reason for such a law.
 - 2) Al-maslahah al-mulgâh, or rejected benefits, is benefits that are basically considered good by the mind, but are not considered by the Shari'a, there are even Shariainstructions that reject it. Shariastipulates laws that are different from what is desired by the benefit.
 - 3) Al-Masaalih al-Mursalah, Maslahah for which there is no information from sharia regarding the recognition or non-recognition of this type of benefit. For this type of benefit, scholars differ on whether or not it is permissible to use it as a source of law.
- 3.1.3. Limitations of Benefits
- Al-Bûthi said that al - Maslahah can be used as a source of law if it fulfills five criteria which he termed Dlawâbith al-maslahah. The five criteria are:
1. included in the scope of Al-Maqashid al-Shari'ah which is five. Its means summarized in five things: religion, soul, intellect, descent, and property, all of which contain these five things are called Maslahah, and which contains damage to these 5 things is called

¹⁹Wahbah Zuhayli, Usul al-Fiqh al-Islami, p. 318

²⁰Wahbah Zuhayli , Usul al-Fiqh al-Islami, p. 33-35,

- mafsadat. As for the behavior in guarding these five things, sometimes it is daruriyat²¹, Hajiyyat²², and Tah}sinat²³.
2. does not conflict with the Koran, the benefit should not take precedence over the nash or zahir understanding of a verse. Many Muslim and orientalist thinkers do not pay attention to these signs so that they often prioritize benefit over the texts of the Koran or Sunnah, which is a benefit that is based on authentic qiyas²⁴.
 3. does not conflict with al-Sunnah, the meaning of sunnah is all hadiths (words, deeds or statutes) that are authentic in their sanad either reaching the degree of mutawatir or ahad. The benefits that are considered contrary to the Sunnah cannot be separated from one of two kinds; First, pure benefit determined by thought²⁵.
 4. does not conflict with al-Qiyas, must consider or maintain benefit, but not every maintenance of benefit means qiyas. This benefit can be called Maslahah mursalah, which is the benefit that is reasoned by the mujtahid in a matter for which there is no evidence (martyrdom) to justify and there is no argument that invalidates it.
 5. does not conflict with other higher/stronger/more important benefits. The main goal is to have attention that the higher or important benefits must take precedence over the lower benefits. For example, choosing worldly mafsadah to obtain Maslahah ukhrawi, if both are in the same object of legal connection (manat).²⁶

3.2. The Concept of Benefit and Justice in Islamic Inheritance Law

The word 'adl according to Ibn Mandzur in Lisan al-'Arab that's means something that is established on the soul in a straight state, the opposite is deviated.²⁷ Accordingly, in the Encyclopedia of Islamic Law, fair means impartial or equating one with another (al-musawah). Meanwhile, in terminology, fair means equating something with another, both in terms of size, so that something is not one-sided and does not differ from one another. And justice is more focused on understanding, putting things in their place²⁸

²¹That is the benefit associated with the basic needs of mankind in this world and in the hereafter. In the sense that without its presence (the existence of this benefit) will cause damage in this world and in the hereafter., this benefit is something that must exist in maintaining the five maqasid syariah, by carrying out their implementation, and maintaining their implementation, such as faith, shahada, jihad, basic necessities eating and drinking, marriage, custody, the prohibition of adultery, had adultery, the prohibition of drugs, and so on.

²²Hajiyyat is something under emergency. The benefits needed in perfecting the previous primary benefit. in the form of waivers to maintain and maintain basic human needs, as well as giving him the flexibility to expand his goals (tawassu' al-maqashid). So if the hajiyyah is not considered together with the dharuriyah then, humanity as a whole will face difficulties. However, the destruction of the hajiyyah does not mean that the universality of the benefit will also be damaged. In other words, if this secondary level of benefit is not achieved, then humans will have difficulty maintaining their religion, soul, mind, lineage, and property. This benefit group is closely related to relief (*rukhsah*) in the science of fiqh.

²³Tahsinat is maintaining the five main elements by achieving and establishing appropriate and worthy things from good life habits and avoiding things that are viewed otherwise by common sense, and if they are not present or we leave it will not have an impact on life's difficulties, such as the unclean law, simple life, *Kufu* law in terms of marriage, and others.

²⁴Sa'id Ramadhan Al-Bûthî, *Dlawabith al-Mashlahah fi al-Syarî'ah al-Islâmiyyah*, Cet. VI; Baerut-Lebanon: Muassasah al-Risâlah, (1992) p. 174

²⁵Sa'id Ramadhan Al-Bûthî, *Dlawabith al-Mashlahah*, p. 193.

Sa'id Ramadhan Al-Bûthî, *Dlawabith al-Mashlahah* p. 107-241

²⁷Abu al-Fadl Jamal al-Din Muhammad bin Mukram bin Manzur r al-Ifriqi al-Misr, (tt) *Lisan al-Arab*, Juz 32 Beirut: Dar al-Sadr, t.th., p. 2838.

²⁸Abdul Aziz Dahlan (et.al), *Ensiklopedi Hukum Islam*, Volume I (Cet. I; Jakarta: Ichtiar Baru van Hoeve, 1996), p. 25.

In the Koran there are several terms regarding justice, including al-'adl²⁹, al-qist³⁰, الميزان/ al-mizân and the opposite word *ẓulm*. Sayyid Qutb (d: 1966) emphasizes the meaning of al-'adl as equality which is the principle of humanity that is owned by everyone. According to him, justice is open, not specific to certain groups, even though for example the one who determines justice is a Muslim for non-Muslims.³¹

Justice in Islamic law depends on justice that has been determined by Allah SWT, because it is impossible for humans to know justice correctly and precisely. In Islamic law, faith is the main foundation, because it has been determined that everything that Allah (swt) has decreed must be fair. Meanwhile, justice in positive law is entirely dependent on human reasoning. Therefore, it is included in the realm of legal philosophy, and because of that the notion of justice always changes from one society to another, depending on the flow of legal philosophy adopted by the community.³² Among the manifestations of justice in Islam

1. Law and government: namely making fair policies in various fields of government and in various lines of life.
2. Family system: i.e. making and ordering the family on the basis of justice in the various relationships that govern the relationship between husband and wife, and the relationship of parents with their children in a system of rights and obligations that represent the distinctive character of the Muslim family.
3. Relationships between people with each other: be it in the relationship between fellow Muslims, or in the relationship between the Muslim community and other communities.
4. Fairness in financial transactions: of all kinds and forms; selling, buying, leasing and pawning.
5. Justice in employment and employment opportunities: and justice in the criteria for the distribution of wealth, and this is what is known as social justice in Islam.

According to the results of the study of M. Quraish Shihab (b: 1994), there are at least four meanings of justice. The following will explain the four meanings of justice in the Koran, namely: First, Justice in the same sense, Equality in question is "equality in obtaining rights", this understanding is the most widely found in the Koran³³. One of them is QS. Al nisa verse 58: In this verse it can be understood that the word "fair" in the verse means "equal", which is only related to the attitude and treatment of the judge during the decision-making process. Therefore, this verse leads the judge to place the disputing parties in the "equal position", for example in matters of seating, mention of names, cheerfulness of faces,

²⁹The word 'adl with all its change in the Qur'an is repeated 28 times, which is based on various things. *Al-'adl*, which means the same, gives the impression of two or more parties; because if only one party, there will be no equality. The disclosure of the word fair as a form of masdar (infinitive) is repeated 14 times, while the disclosure of the word fair as a form of the verb (fi'il) namely fi'il al-mudari' is repeated 12 times and fi'il al-amar is repeated 2 times. . See Muhammad Fuad 'Abd al-Baqi, (tt) *Al-Mu'jam al-Mufahras li Alfaz al-Qur'an al-Karim* Cairo: Dar al-Rayyan li al-Turas}, t.th. h. 448-449.

³⁰The word al-qis with all its changes in the Qur'an is repeated 25 times taken from the root word consisting of the letters qaf, sin and tha. The meaning revolves around the opposite. *Al - qist* means fair from this meaning born the meaning of the part. *Al - qist* the original meaning is "part" (which is reasonable and proper). This does not necessarily lead to the existence of "equality". "Equality" which is the original meaning of the word "fair" is what makes the perpetrator "impartial", and basically a just person "is on the side of the right". Because both right and wrong must get their rights. See, Nurdin, *Quranic Society, Menelusuri Konsep Masyarakat Ideal Dalam Al-Qur'an*, Jakarta: Erlangga, (2006), pp. 111-112.

³¹Winarto, "Term-Term Keadilan Perspektif Al Qur'an", *Jurnal Studi Al Qur'an dan Hukum*, Vol. III No. 01, May, (2018), p. 2

³²Bustanul Arifin, *Pelembagaan Hukum Islam di Indonesia*, Jakarta: Gema Insani Press, (1996), p. 45-46.

³³ QS al-Nisa/4: 3, 58 and 129, QS al-Shura/42: 15, QS al-Ma'idah/5: 8, QS al-Nahl/16: 76, 90, and QS. al-Hujurat/49: 9

seriousness of listening, and thinking about their words, as well as other matters including in the decision-making process. If the equality in question includes the necessity to equate what they receive from the decision, then at that time the equality becomes a real form of injustice.

Second, the meaning of justice in the Koran is "balanced". This understanding is found in QS al-Maidah/5: 95³⁴ and QS al-Infitar/82: 7³⁵. The balance in question is found in a group in which there are various parts that lead to a certain goal, as long as certain conditions and levels are met by each part. With the gathering of these conditions, the group can survive and run to fulfill the purpose of its presence.³⁶

The concept of justice in Surah Al Infithar verse 7 : This term is interpreted to make balance, because the verse informs humans that the body as a whole is arranged according to the principles of balance.³⁷ In this case it can be formulated that if one member of the human body is excessive or less than the level or condition that it should be, then there will definitely be an imbalance (justice).

Third, fair in the sense of "attention to individual rights and giving those rights to their owners". It means "to put something in its place", or "to give the other party its rights through the closest route. The opposite is "tyranny", in the sense of violating the rights of other parties. Thus, watering the plants is justice and watering the thorns is the opposite. This understanding of justice, in turn, will give birth to the concept of "social justice". Social justice is related to social charity, in this case the continuation of being fair in the form of doing good. Therefore, doing justice becomes the minimum standard for human behavior.³⁸

The fourth, Adl in the sense of "attributing to the Divine." The meaning of fair here means "maintaining reasonableness for the continuation of existence, not preventing the continuation of existence and obtaining grace when there are many possibilities for it." All beings have no right to Allah, Divine justice is basically His grace and goodness. His justice has the consequence that the mercy of Allah swt. unbearable to be obtained as far as the creature can reach. Fair in the sense as formulated above, can be understood from the nature of God as the Most Just, namely "Allah al-'Adl" and "Allahu Al-Muqsit}". And the most essential attribute of Allah is "Just".³⁹

In Islam, inheritance takes the order of obligatory so every Muslim must follow its limits and have no right to remove heirs from his inheritance. Anyone who studies the provisions of the Koran created by Allah will find that the Rules relating to inheritance in the Koran address an important issue in human reality, as it relates to the issue of property, and wealth becomes very important for humans, because humans will race to find it, and try

³⁴ It means:

O you who believe, do not kill the game while you are in ihram. Whoever among you kills him on purpose, then his fine is to replace the cattle in proportion to the game he killed, according to the judgment of two just people between you as had-yad brought to the Kaaba or (the fine) to pay kaffarat by feeding poor people or fasting in balance with the food that is issued, so that he will feel the bad consequences of his actions. Allah has forgiven what was past. And whoever returns to it, Allah will punish him. Allah is almighty and has (the power to) torment.

³⁵ Meaning:

Who created you and then perfected your events and made your (body composition) balanced.

³⁶ M. Quraish Shihab, *Wawasan al-Qur'an: Tafsir Maudhu'i atas Pelbagai Persoalan Umat*, Cet. VII; Bandung: Mizan, (1998), p. 115

³⁷ M. Quraish Shihab, *Wawasan al-Qur'an: Tafsir Maudhu'i atas Pelbagai Persoalan Umat*, Cet. VII; Bandung: Mizan, (1998) p. 115; see also M. Dawam Rahardjo, (*Ensiklopedi al-Qur'an; Tafsir Sosial Berdasarkan Konsep-konsep Kunci*, Cet. I; Jakarta: Paramadina, 1996), p. 373

³⁸ Akhmad Bazith, "Keadilan Dalam Perspektif AL Qur'an", *Jurnal Ilmiah Islamic Resources*, Vol. 16 No.1 JILFAI-UMI/8/2019 ,(2019) p. 6-8

³⁹ M. Quraish Shihab, (2005) *Menyingkap Tabir Ilahi; Asma al-Husna dalam Perspektif al-Qur'an* , Cet. VII; Jakarta: Lentera Hati, p. 151-152

to protect it. And because of that also divisions and quarrels between humans often occur. As for the heirs, they are people who are closest to each other, and Islamic Sharia with all its provisions is eager to maintain and support social relations in Muslim society, especially between the closest relatives, and wants to avoid hostility, enmity and hatred between them.

As Muslims, we should be able to recognize that equality is between people who are alike: like equality between two sons, or between two workers with equal degrees, or as equality between men and women, and we call this "justice". As for the equality of rights and obligations between two people with different characteristics, functions, and abilities, it is neither clear nor implied, and the differences in rights and obligations between two people are based on differences in their abilities and functions.

As for the division of inheritance, it is a divine division without the intervention of a servant, so that He, Most Holy, bestows it with all grace, justice and wisdom, in the distribution of inheritance according to His justice. As for human intervention in the distribution of inheritance, it will involve injustice and confusion, and failure to communicate rights to the owner in a way that achieves justice and balance between heirs. Therefore, God issued this division in the words "will" to show the perfection of His mercy and justice, Allah says "Allah has decreed (required) to you concerning (the division of inheritance for) your children, (ie) the share of a son is equal to the share of two daughters". (An Nisa: 11) So the meaning of the word is Allah mewashiyat, meaning that Allah commands.

Historically, the concept in the verse is fair, because the revelation of the verse contains the value of equality between men and women in receiving inheritance rights, and upholding the dignity of women compared to the position of women in pre-Islam. The current social conditions uphold equality of status and women's rights in the name of gender. With changing social conditions when the decline. an-Nisā' (4) 11-12, whether the concept of inheritance of 2:1 between men and women is still fair or not.

To respond to this statement, it is necessary to look at legal studies, so that a construction of legal thought can be put forward. The main provisions (fariidhah) in the verse are: (1) giving rights and positions to all children (boys and girls) to inherit the inheritance of their parents, (2) a daughter's share is "at least" half a child's share. boys, (3) if the awareness of Muslims wants it, the minimum share can be increased, and (4) but the increase in the minimum share is the maximum equal to that of boys.⁴⁰

The opinion mentioned above is based on the "shari'ah spiral" hypothesis put forward by Zainuddin Sardar, which states that: "Islamic law can flex, just like a spiral, but what can be flexed is the "hudud", not "the norm"⁴¹. Likewise, it is said that every legal formulation contained in the Koran and as-Sunnah consists of two elements, namely: (1) the first element contains normative provisions, is eternal and universal, applies to all places and times, does not change. and cannot be changed, and (2) the second element contains hudud provisions, which are elastic, according to time, place and social conditions

Among the wisdom of determining that the inheritance share of men is the same as that of two women is because men, apart from needing a living for themselves, also need a living for their wife, children or family. As for women, she will only provide for herself, while if she gets married, her husband's livelihood will be guaranteed. Therefore, there is a

⁴⁰Yahya Harahap, "Kedudukan Wanita dalam Hukum Kewarisan (Bagian Kedua)," *Mimbar Hukum* no. 19 yrs. VI 1995, p. 6

⁴¹If the spiral theory is used as an approach to QS-an-Nisa' (59): verse 7, then what is eternal and universal is the norm regarding the rights and position of sons and daughters to inherit the inheritance of their parents, while regarding the size of the share is flexible hudud rules.

saying that women's share of inheritance will still be higher than that of men when it comes to the issue of providing a living.⁴²

While some of the reasons put forward by a handful of commentators linking the share of female heirs to only half of the male on the basis that women's minds are inferior and the same is true of their weakness in lust, these are weak opinions and must be rejected. Because what is meant by the word weak here is related to physical ability where physically women are generally not as strong as most men. Including in terms of conducting economic business, especially in industrial sectors that rely more on the ability of stamina and considerable energy than solely relying on the ability of intelligence or other skills.⁴³

Muhammad Ali Ash S}abuni (d: 2021) said that among the wisdom of multiplying the male inheritance share which is equal to the share of two daughters or the husband's share which is twice as large as the wife's share, is that the husband/father's need to finance his household life is far greater than the assets needed by his wife/daughter. He (the man) really needs more/bigger life expenses along with a number of obligations (responsibilities) that are heavier than the responsibilities of women. Therefore, men need wealth more than women.⁴⁴ The lesson from this is that husband and father are legally burdened with the responsibility of supporting household life which is not legally burdened at all, let alone obliged to the wife/mother (women). So, the son's share which is bigger than the daughter's share is inseparable from the status of a son who in time will become the husband of his wife, or even the father of his children. On the other hand, daughters will later become wives of their husbands or mothers of their children, who are most likely to receive a living from their husbands or fathers.⁴⁵

Among the wisdom of Allah making the share of sons equal to the share of two women is based on the consideration that the man in addition to needing to finance his own life, also bears the responsibility of financing to support his wife and children, so God gave two shares for the husband and one share for the wife. Meanwhile, the wife, with living expenses from her husband, does not require living expenses for herself. Apart from that, she also has absolutely no obligation to pay for her children and especially her husband. After all, if there is a wife whose husband dies and then marries another man, then she will definitely get the right to finance her life from her new husband, whereas if it is her husband who remarries then the husband is required to pay for the life of his new wife in addition to having to pay for the expenses. herself.⁴⁶

Allah hints at the reason for the balancing of the different inheritance distributions in another verse, namely QS. an-Nisa' (4): 34. According to ash-Syanqithi, this verse positions men (fathers/husbands) as al-qa'im ala gairih (enforcers and protectors for other people in terms of kinship). Meanwhile, women (wife/mother) are positioned as al-maqu>m 'alaih in the sense of being protected, namely those who are entitled to receive protection and protection (al-munfaq alaih). Thus, according to the function and role of men as al-qa'im ala gairih, the husband or father is de jure fully responsible for the financing of household life which causes men's assets to always decrease, even in the end, while the assets of women who are positioned as al-maquum 'alaih, by themselves will always increase or at least not decrease because they are not burdened with any expenditure obligations or for any expenditure purposes.⁴⁷

⁴²Rashid Rida, *Tafsir al-Ahkam (Tafsir al-Manar)*, vol. 4, p. 406.

⁴³M. Nasikhul Umam Al Mabruhi, Keadilan Pembagian Harta Warisan Perspektif Hukum Islam dan Burgerlijk Wetboek, *Al-Mazahib*, Volume 5, Number 1, June, (2017) p. 113-114.

⁴⁴Muhammad Ali As-Sabuni, (tt) *Shaafwah al-Tafsir*, vol. 1, Beirut: Dar al-Fikr, tt, p. 265.

⁴⁵Muhammad Ali As-Sabuni, (tt) *Shaafwah al-Tafsir*, p. 263.

⁴⁶Ahmad Musthafa al-Maraghi(tt) , *Tafsir al-Maraghi* , vol. 2, p.196.

⁴⁷Muhammad al-Mukhtar as-Shinqithi, (tt) *Adwa' al-Bayan fi-Idah Al-Qur'an bi-Qur'an*, vol. 1, Beirut: Alam al-Kutub, p. 308.

Muhammad Mutawalli ash-Sya'rawi, one of the leading muftis of his time, stated that the difference in the share of inheritance between men and women was mainly based on consideration of the differences in their respective functions in which men functioned as *qawwamah ar-rijal ala an-nisa'*. The meaning of *qawwamah ar-rijal ala an-nisa'* as contained in the QS. an-Nisa' (4) verse 34 means that men are burdened with the responsibility to care for, protect and work hard for women, and to be respectful to them, or in general men are fighting to the last drop of blood for women (wife or mother of their children). Thus, what is meant by *al-qawwamah* is a *taklif* burden for men. One thing that needs to be reminded here is that what is meant by the meaning of *bi ma faddala Allahu ba'duhum ala ba'din* is not the free advantage that Allah has given to men over women as people generally understand this verse. If that is the intention, the editor of the verse will change to *bi ma faddala ar-rijal ala an-nisa'*. This shows that *al-qawwamah* (protection) has advantages that must be fought for by the men themselves, with no light sacrifices, which must be done with hard work and even by risking everything, including their lives.⁴⁸

Thus, the Koranic instructions that differentiate between men and women on certain inheritance and witness rights, when viewed from the perspective of justice must be understood in the sense of "balance", not equality. Because justice in inheritance does not mean dividing the inheritance equally among all heirs, but taking sides with the truth as outlined by the Koran. If men earn more than women, this is related to men's greater responsibility than women to finance the household. If it deviates from what has been outlined in the Koran, it means that the distribution is considered unfair. Justice in this sense gives rise to the belief that Allah, the All-Wise and All-Knowing, creates and manages all things with a certain size, level, and time in order to achieve a goal.

In essence, the provisions for the division of inheritance in the Koran, including the distribution for sons and daughters, do not discriminate at all against women because of the sociological and economic context. The division of inheritance must be reinterpreted taking into account changing conditions and new awareness among women.⁴⁹ In fact, in some cases wills are prioritized over inheritance, because they have the potential to achieve justice and have effectiveness in the use of assets and the development of social and familial relations.⁵⁰

In the life of Muslim society, men are responsible for the maintenance of their families, in contrast to women. If the woman is a girl/still unmarried, then she becomes the responsibility of her parents or guardian or her brother. Then, after a woman marries, then she moves will be the responsibility of her husband (male).⁵¹

At the child level, unmarried men are required to give a dowry⁵² and all the marriage requirements imposed by the family of the prospective wife to him. After marriage, the burden of providing for his wife (and children) will be placed on his shoulders.⁵³ On the other hand, the daughter with the portion she received (in the form of inheritance) will receive an addition to the dowry that she will get when she gets married. Furthermore,

⁴⁸Muhammad Mutawalli ash-Sya'rawi, *al-Fatawa Kullu ma} Yahumm al-Muslim fi-Hayatihi wa-Yaumih wa-Gaddihi* (Beirut-Lubnan: Dar al-Qalam, [tt]), p. 400.

⁴⁹Asghar Ali Engineer, *Hak-hak Perempuan dalam Islam*, trans., Farid Wajidi and Cici Farikha Assegaf, (Yogyakarta: Benteng Budaya Foundation, t.th), p. 101-106.

⁵⁰Muhammad Syahrur, *Metodologi Fiqh Islam Kontemporer*, Terj Sahiron Syamsuddin & Buhanuddin, Yogyakarta: eLSAQ Press, (2008), p. 321.

⁵¹Muhammad 'Ali al-Sabuni, (2002) *al-Mawaris fi al-Shari'ah al-Islamiyah fi Daw' al-Kitab wa al-Sunnah* (Cairo: Dar al-Sabuni, p. 14-15.

⁵²The obligation to give a dowry is given to a man who wants to marry a woman with the provisions of the dowry based on the agreement of both parties. See the Kompilasi Hukum Islam Book I chapter V chapters 30 to 32.

⁵³"According to his income, the husband bears: a) a living and a place to live for his wife, b) household expenses, maintenance and medical expenses for his wife and children, c) education costs for children." (Kompilasi Hukum Islam Article 80 paragraph 4).

according to Asma Alshankiti, after she gets married, (basically) she is not burdened with the obligation to provide for her family; on the contrary she will receive a living from her husband.

In addition, the principle of justice is very visible in every provision contained in the inheritance law, for example in the concept of 'Awl and Radd. The concept of 'Awl, is a manifestation of the principle of justice that is desired, because it is to avoid conflicts that could occur between the heirs.⁵⁴

In Islamic Inheritance, the language of Awl is defined as Az zulmu and Al Jaur (Imperfection and Deviance), Al Irtifa' and Az Ziyadah (Increase). Meanwhile, in terms, it means increasing the original number of the total inheritance for each heir.⁵⁵ Ibn Hazm views that 'Aul is a gathering of Dhawil Furud which has a definite share, while it is not enough to be distributed.⁵⁶ Abu Zahrah also defines that 'Aul is where the amount of inheritance is less than the needs of the heirs. In this condition, each heir does not receive a full share, but it is smaller than the property that should be received.⁵⁷ Meanwhile, Radd is the opposite of 'Aul, namely the condition where the inheritance left behind exceeds the needs of the heirs, while the heirs of 'Asabah are not found.⁵⁸ According to Ali al Haskifi radd is to give the rest of the property to the heirs who have a definite share, except husband and wife, this condition is carried out if no heirs of "Asabah are found.⁵⁹ Thus, it can be said that the provisions in 'Aul and Radd cannot be separated from the principle of justice, with this principle being put forward, every heir gets his rights in the distribution of inheritance, whether the inheritance is in a condition less and or more than the needs of the heirs.

The principles of justice and benefit are also present in the provisions of the will, which is a legal event in the form of a unilateral engagement, so sincere intentions and desires are the essence of the implementation of the will in accordance with the objectives of Islamic law, namely by paying attention to the benefits and benefits for the beneficiary of the will, so that it is truly has religious value for him. The legal illat of implementing a will is that there are factors in the condition of the recipient, such as to improve the economic system on the basis of kinship, the existence of juridical factors that prevent it, but on the other hand it can be pursued and there is a factor of justice. Therefore, it is a right action if the implementation of a will to close relatives in need and oriented to human values, benefits and benefits really needs to be realized in the life of a pluralistic religious community.⁶⁰

The inheritance rights of children and parents have been determined by the size of the distribution of each heir based on the principle of expediency. The division of inheritance is rational, because there is an element of truth and justice when it is associated with the provisions on the rights and obligations of husband and wife in marriage law and the obligations of a son in the management and maintenance of his parents after marriage. So that doubts about the loss of justice and benefit in the distribution of inheritance must be removed in the minds of every Muslim. Islam prioritizes the benefit of heirs, this is because

⁵⁴Hafiz Taqiyuddin, *Argumentasi Keadilan dalam Hukum waris Islam, : Studi Konsep 'Aul and Radd*, Ciputat: Cinta Buku Media, (2014), p.3.

Muh}ammad 'Ali al-Sabuni, *al-Mawaris fi al-Shari'ah al-Islamiyah fi D}aw' al-Kitab wa al-Sunnah* Cairo: Dar al-Sabuni, (2002) p. 97.

⁵⁶Syabbul Bachri, Pro Kontra 'Aul Dalam Kewarisan Islam: Studi Komparatif Antara Pandangan Sunni dan Syiah", *De Jure: Jurnal Hukum dan Syari'ah*, vol. 10, no. 2, (2018) p. 52.

⁵⁷Muhammad Abu Zahrah, *Ahkam al-Tirakat wa al-Mawarith* (Cairo: Dar al-Fikr al-'Arabi, 1963), p. 153.

⁵⁸Abdullah Ibn Qudamah al-Jamma'ili al-Dimishqi, al-Mughni, edited by 'Abdullah ibn 'Abd al-Muhsin al-Turki, chapter 9, cet. Third (Riyad:, Dar 'Alam al-Kutub, 1997), p. 35.

⁵⁹Muhammad ibn 'Alial-Haskifi, *al-Durr al-Mukhtar*, edited by 'Abd al-Mun'im, Beirut: Dar al-Kutub al-'Ilmiyah, (2002) p. 766-67.

⁶⁰Akhmad Hisni, *Hukum Waris Islam*, Semarang, Unissula Presm Printed August, (2013) p. 90

Islam is not willing to make mafsadah for them, and Islam prioritizes justice for heirs, because each heir does not have the opportunity to oppress each other.

3.3. Implementation of Maslahah in Islamic Inheritance Law

Some people think that it is beneficial to equate the inheritance rights of boys and girls, but this conclusion is contrary to the provisions of the Shari'a, in Surah al-Nisa' verse 11 which states that the distribution of inheritance rights for boys is twice that of girls. This contradiction shows that what is considered problematic by reason is not a problem in the sight of Allah.⁶¹

In this case, the refusal of the syarak is not clearly stated, but it is clearly contrary to the Koran. Maslahah like this is called problematic mulghah. Common sense can consider it Maslahah by reason, but it is considered fake because it is contrary to the provisions of the Shari'a. However, the Shari'a rejects it or contradicts what is outlined by the Shari'a.⁶²

Among the wisdom of inheritance distribution in Islam is the existence of Maslahah that wants to be protected, namely the first protection of the existence of religion (hifdh al-din) as a symbol of obedience to Allah; Second, the protection of offspring (hifdh al-nasl), as a means of maintaining family integrity, so that there is no longer any division between families due to fighting over the parts and also guarantees the heirs so that they can live well after being abandoned by the heir; and Third, protection of property (hifdh al-mal) as a means of distributing wealth fairly.⁶³

In Indonesia, there are three kinds of inheritance system⁶⁴, namely:

1. Individual inheritance system, the characteristic of which is that the inheritance can be divided among the heirs as in the bilateral ⁶⁵society in Java and in the patrilineal society in the Batak Land,
2. Collective inheritance system, the characteristic of which is that the inheritance is inherited by a group of heirs who are a kind of legal entity in which the property, which is called inheritance, may not be distributed among them, as in the matrilineal⁶⁶ society in Minangkabau, and
3. Majorat inheritance system, in which the eldest child at the time of death of the heir has the sole right to inherit a number of principal assets from one family, as in the patrilineal⁶⁷ society that shifts in Bali (the majority rights of the eldest son).

In Islamic law the prevailing nature of kinship is parental⁶⁸, therefore citizens who follow Islamic inheritance have followed the parental kinship system according to the instructions of the Koran. As for the distribution of Islamic inheritance, the benefits can be seen in several ways: the distribution of inheritance in a peaceful manner, the division of inheritance when the heir is still alive, the division by a collective system, and the division of inheritance of joint property between husband and wife.⁶⁹

⁶¹Satria Effendi M. Zein, *Ushul Fiqh*, (Jakarta: Kencana, (2015), p. 149

⁶²Mukhsin Nyak Umar, (*Al Maslahah Al mursalah: Kajian Atas Relevansinya Terhadap Pembaharuan Hukum Islam*, Banda Aceh: Turats, 2017, 2017) page 140

⁶³ Sri Lum'atus Sa'adah, "Maqashid al Syari'ah dalam Hukum Kewarisan Islam", *Al-Ahwal*, Vol. 7, No. 1 April 2015, p 143

⁶⁴ Suparman Usman dan Yusuf Somawinata (*Fiqh Mawaris, Hukum Kewarisan Islam*, Cet. Pertama, (Jakarta, Gaya Media:, 1977), p.189

⁶⁵ That is not to distinguish between male and female heirs in terms of inheritance.

⁶⁶ namely the nature of kinship that draws kinship up and down solely through the maternal or female line.

⁶⁷ namely the nature of kinship that draws the line of kinship upwards and the outbreak is only through the father or male line.

⁶⁸ namely the nature of kinship that determines the line of descent up and down through the mother and also through the father.

⁶⁹ Ahmad Rafiq *Fiqh Mawaris*, Cet. Keempat, Jakarta: PT. Raja Grafindo Persada, (2002), p. 4 – 5.

First, the distribution of inheritance in a peaceful manner. Normatively, the distribution of inheritance can only be done in accordance with the provisions stated concretely in the Koran and as-Sunnah which shows (dalalah) qath'i. But in reality, people often do it repeatedly in a peaceful manner.⁷⁰ It may be because in reality the heirs who receive a large share are economically well off, while the heirs who receive a small share are still in a state of deprivation. Habits that occur repeatedly in society and lead to benefits are called "urf" or "adat" which means habit. And this is in line with the rule of Islamic law "al-adat muhakkamah" (the habit can be made into law). Sociologically, in society there is often an action that occurs repeatedly and can bring good.⁷¹

Thus, the result of a reconciliation that divides inheritance with an equal system, then the decision becomes an applicable law, and it is not an update that violates the rules set by the Nash. In fact, in principle, the peace system is an inheritance dispute resolution approach that has been stipulated in the nas. The Koran termed it as-sulh or al-is}lah.⁷²

Second, the division of inheritance when the heir is still alive. Normatively, the distribution of inheritance can only be done when the testator actually dies, then the inheritance can be distributed to the heirs. However, in the reality that develops in society, the parents (heirs) want that after their death, their children and other heirs can still live in fraternity in harmony, there will be no disputes and feuds between the heirs regarding the share they get from the inheritance. To fulfill this wish, a grant method was adopted, namely dividing the assets while the heir was still alive.⁷³ What needs to be considered in the distribution of inheritance when the heir is still alive is justice, to maintain equality in the right to acquire property from his parents, so that there is no difference between children, some are given a gift from their parents and some are not given a grant from their parents, so that parental grants to their children can be counted as inheritance.⁷⁴

This division is in accordance with the qaidah: dar al mafasid awla min jalb al mashalih (Prevention of harm takes precedence over creating benefit). The purpose of this rule is that if in a case where there is benefit with mafsadat, then preventing mafsadat takes precedence. Mafsadat in the Mawaris case is the occurrence of disputes between heirs when the heirs have died which could have led to bloodshed and the breakdown of friendship, protracted inheritance that is not distributed according to the mandate of the heir, embezzlement of inheritance due to unclear list of heirs' assets, and other harm. To prevent this negative impact, a system of inheritance distribution is established as long as the heirs are still alive through grants.⁷⁵

⁷⁰In Indonesia, this regulation is contained in Article 183 of the Compilation of Islamic Law: "The heirs can agree to make peace in the distribution of inheritance after each has realized his share ". See: Departemen Agama RI, Tanya Jawab Kompilasi Hukum Islam, (Jakarta: Direktorat Jenderal Pembinaan Kelembagaan Agama Islam, 1997), p. 181.

⁷¹Ahmad Rafiq, *Fiqh Mawaris*, Cet. Keempat, Jakarta: PT. Raja Grafindo Persada (2002), p.198.

⁷²In Arabic, peace is termed al-sulh. Linguistically, al-sulh } } means to stop a dispute, while in shari'a it means a contract to end a dispute between two disputants. See the same definition in the following references: Ibn al - Mandur, *Lisan al - 'Arabic* (Qairah, Dar al Ma'arif)tt, 5390 . See also: Muhammad Amin Al Shahir ibni 'Abirin (1994), *Radd al - Mukhtar 'Ala Dar al - Muhktar Sharh Tanwir al - Absar*, Volume 8, Beirut: Dar Al Kutub a l - 'Ilmiyah, 405. See Also: Wahbah Zuhayli, (1997) *Fiqh a l - Islami Wa Adillatuh*, Volume 6, Dimashqa: Dar Al Fikr Al 'Science,4330

⁷³Article 212 of the Indonesian Act (a Compilation of Islamic Law /KHI) accommodates this, which states: "Grants from parents to their children can be counted as inheritance".

⁷⁴This is in line with the *fiqhiyyah* rule: that prevention of damaged cases takes precedence over creating benefit. (see: Ahmad Rafiq, *Fiqh Mawaris*, Cet. Keempat, Jakarta: PT. Raja Grafindo Persada, (2002), p. 201.)

⁷⁵ Mayaddah, "Konsep Maslahat AlTufy dan Penerapannya dalam Kasus Kewarisan di Indonesia", *Jurnal Al'adl* Vol. 11 No. 2, Juli, (2019), p. 125

Third, the division with a collective system, which is in the form of inheritance from the heirs which the heirs do not share, but the value or results of the inheritance are shared (collectively) or called the collective ownership system.⁷⁶

Fourth, the distribution of inheritance in the gono-gini system, which is also known as joint property, namely assets obtained by husband and wife during their marriage, whether the wife is formally working in a certain profession outside the home or as a housewife. In practice, before the inheritance is distributed to the existing heirs, it is divided in half, half is given to the spouse who lives longer.⁷⁷

In Indonesia, where the majority of the population is Muslim, normatively, inheritance distribution can only be carried out according to what is stipulated by the texts. But in reality, the community often resolves inheritance problems through peaceful means. This may be because sometimes the heirs who get more shares are people who are economically well off, while the heirs who get less shares are in a difficult economic situation.⁷⁸

The practice of inheritance in several cities in East Java, Indonesia, where the majority of the people are Muslim, uses customary law, where the determination of heirs is only for the children of the deceased is considered fairer because a child is more meritorious in caring for his parents. This is in accordance with the context of *Maslahah mursalah* in the form of *Maslahah al-mula'imah*, namely although there are no specific texts, it is in accordance with the objectives of *syara'* in the general scope by prioritizing the benefit, namely prioritizing the fulfillment of a sense of justice than there will be a dispute because the sense of justice is not fulfilled. . If there is an inheritance dispute, then the heirs are deliberation and consensus. This is in accordance with the context of *Maslahah al-mula'imah*, that the settlement of inheritance disputes can be done with the agreement of the disputing parties which aims to prioritize peace and a sense of kinship.⁷⁹

In Makassar, Sulawesi, the management of inheritance falls to sons, and certain assets such as rice fields, ponds, money and gold are still distributed to other heirs. This aims to provide provisions for the heirs, it's just that the share of inheritance for the eldest son is more. Although the Indigenous peoples there have not implemented Islamic inheritance law as a whole, they adhere to the concept of deliberation for the creation of community peace and the realization of benefit, so that the distribution can be accepted sincerely and voluntarily.⁸⁰

In Pandawan Sub-district, South Kalimantan, in the practice of distributing inheritance, there are two systems of distribution patterns, the first is the *faraidh* (Islamic inheritance) distribution pattern, and the second is the *islah* pattern, namely the consensus of

⁷⁶This is accommodated by the Indonesian Act (a Compilation of Islamic Law /KHI) with pragmatic considerations. Article 189 paragraph (1) states: "If the inheritance to be divided is in the form of agricultural land with an area of less than two hectares, it must be maintained as before, and used for the common interest of the heirs concerned". In the same article paragraph (2) it is stated: "if the provisions in paragraph (1) of this article are not possible because among the heirs concerned there is a need for money, then the land can be owned by one or more heirs who are entitled according to the each, in a way that the owner of the land replaces or provides compensation equal to or equal to the share of the heirs who need it

⁷⁷This is regulated in Article 96 of the Indonesian Act (a Compilation of Islamic Law /KHI) paragraph (1) which states: "In the event of a death divorce, half of the joint property becomes the right of the spouse who lives longer".

⁷⁸ Ahmad Rafiq, *Fiqh Mawaris*, Cet. Keempat, Jakarta: PT. Raja Grafindo Persada, (2002), p. 198

⁷⁹ Wasis Prabowo Yuliansyah, (2021) "Tinjauan *Maslahah Mursalah* Terhadap Pembagian Waris di Desa Pucang rejo, Kecamatan Sawahan, Kabupaten Madiun, IAIN Ponorogo

⁸⁰ Haeruddin, "Tinjauan Hukum Islam terhadap Sistem Kewarisan Adat Desa Ampekale, Kecamatan Bontoa, Kabupaten Maros", *Thesis*, Pascasarjana UIN Alauddin, Makassar, (2017),

heirs. The second pattern is widely used for the realization of benefits and peace between the family and avoiding disputes.⁸¹

In East Nusa Tenggara, the distribution of inheritance to the Leuwerung tribal community is divided into two ways: first, the distribution is carried out before the heir dies by direct appointment of the heir and using a grant letter. Second, the distribution is carried out after the heir dies by means of a family deliberation led directly by the eldest child or the meker child. The level of distribution of each heir is not determined numerically (in writing), but is returned to the family deliberations when the distribution is after the heir dies and direct appointment by the heir when the heir is still alive.⁸²

The practice of dividing inheritance among indigenous peoples is strongly influenced by two forms of indigenous peoples; First, patrilineal inheritance in the form of inheritance, only boys are entitled to receive or the first child is the control or mandate over the property and the youngest child is entitled to a house from the inheritance of the heir so that the rights of girls do not get inheritance. The two forms of bilateral or parental indigenous peoples are heirs and all heirs have the right to inherit without exception, both men and women, it's just that the Leuwerung tribe is returned to the sense of awareness and sincerity of the boys to be able to give a little rights to the child. girls little share for girls.⁸³

In several cities in Central Java, the practice of distributing inheritance is carried out before the heir dies and begins when the heir's children are married. Assets are distributed equally to the heirs through deliberation, so that all heirs are willing to share. The division of inheritance is not included in the division of inheritance, but is a grant. This is because the level of the amount of the division is equal, given by parents to their children, to avoid disputes and conflicts in the future.

Although the practice of dividing inheritance is much different from the distribution of inheritance in Islam, indigenous peoples use the concept of deliberation to reach consensus in determining each part. This is done to achieve benefit and avoid conflict. This is in accordance with the *fiqhiyyah* rule "*Maa laa udraku kulluhu laa yutraku kulluhu*" which means that what cannot be achieved by all, must not be abandoned altogether. In this case, if you have not been able to implement the teachings of Islam as a whole, then you should do what can be done for the common good.

4. Conclusion

In the distribution of inheritance according to Islam, it contains the principles of justice and benefits for the heirs left behind. Allah swt stipulates that the inheritance law contains justice for His servants. So there is no assumption that Islamic inheritance law does not apply fairly and leads to discrimination against women, because justice has been proven from the side of benefit in the practice of dividing Islamic inheritance.

The practice of dividing Islamic inheritance, especially in Indonesia, is supported by customary law clerics (*'urf*) who are accustomed to distributing inheritance through deliberation. The wisdom of the division of inheritance, is for the benefit of the family left behind, and the protection of offspring. This facilitates the circulation of wealth by dividing wealth and prohibits wealth from being concentrated in a limited number of people. The division of inheritance also provides social security for underprivileged families.

⁸¹ Khalida Fitriana, "Tinjauan Hukum Islam terhadap Praktik Waris Adat di Kecamatan PAndawan, Kabupaten Hulu Sungai Tengah, Kalimantan Selatan", State Islamic University Sunan Kalijaga, Yogyakarta, (2020)

⁸² Khairun Latif, "Pembagian Harta Waris Suku Leuwerung Perspektif Hukum Islam, Studi KASus Desa Kalikur, Weikoro Laleng, Buyasuri, Lembata, NTT, Universitas Muhammadiyah Jakarta (2020)

⁸³ Muhammad Aufan Ni'am, Praktik Adat Harta Gantungan Dalam Pembagian harta waris di Undaan Lor Kudus, dan Lerevansinya dengan KHI, State Islamic Universiti Sunan Kalijaga, Yogyakarta

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