

# **Construction of Inheritance Distribution Based on Gender Equality in Thematic Tafsir Studies**

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## **Abstract:**

Gender equality in inheritance is an issue that is often debated today. One of the controversial verses is verse 11 of surah al-Nisa' which regulates that the men's portion is equal to two women's parts. This study aims to examine the verses of the Qur'an regarding gender equality in inheritance through thematic studies and spark a shift in the concept of inheritance which demands equal parts through the interpretation of the meaning of verse 11 surah al-Nisa'. This research is literature research with descriptive qualitative type through thematic tafsir approach and syar'i approach. This research found that the verses of the Qur'an regarding

gender equality in inheritance based on thematic studies produced the theme, namely the verses about men and women being equally entitled to inherit and the share of men and women heirs, as well as the share of men and women. Through thematic studies, the concept of inheritance based on gender equality can be explained more comprehensively. The concept of inheritance in verse 11 of surah al-Nisā' has gradually shifted in meaning from section 2:1 to become an equal part marked by the birth of the concept of bilateral inheritance which fully supports gender equality in inheritance. It's just that it is still possible for disputes to occur so fiqh mawāris becomes a solution. So it is recommended that before dividing the inheritance with the principle of gender equality, it must first be divided based on the provisions of the mawāris fiqh and then an agreement can be made so that the rights of the heirs are considered.

Kesetaraan gender dalam kewarisan adalah isu yang sering menjadi perdebatan dewasa ini. Salah satu ayat yang kontroversial yaitu ayat 11 surah al-Nisā' yang mengatur bagian laki-laki sama dengan dua bagian perempuan. Penelitian ini bertujuan mengkaji ayat-ayat al-Qur'an tentang kesetaraan gender dalam kewarisan melalui kajian tematik dan memantik pergeseran konsep kewarisan yang menuntut kesetaraan bagian melalui interpretasi makna ayat 11 surah al-Nisā'. Penelitian ini merupakan penelitian pustaka dengan jenis kualitatif deskriptif melalui pendekatan tafsir tematik dan pendekatan syar'i. Penelitian ini menemukan bahwa ayat-ayat al-Qur'an tentang kesetaraan gender dalam kewarisan berdasarkan kajian tematik menghasilkan tema yaitu ayat tentang laki-laki dan perempuan sama-sama berhak mewarisi serta bagian ahli waris laki-laki dan perempuan. Melalui kajian tematik, konsep kewarisan berbasis kesetaraan gender dapat dijabarkan lebih komprehensif. Konsep kewarisan pada ayat 11 surah al-Nisā' lambat laun mengalami pergeseran makna dari bagian 2:1 menjadi bagian samarata ditandai lahirnya konsep kewarisan bilateral yang sepenuhnya mendukung kesetaraan gender dalam kewarisan. Hanya saja masih memungkinkan terjadi sengketa sehingga fikih mawāris menjadi solusi. Maka direkomendasikan sebelum membagi harta warisan dengan prinsip kesetaraan gender, terlebih dahulu harus dibagi berdasarkan ketentuan fikih mawāris kemudian dapat dilakukan kesepakatan sehingga hak-hak ahli waris diperhatikan.

**Key words:** *Gender Equality; Inheritance Law; Al-Qur'an; Thematic Studies*

## **Introduction**

Discussions related to gender equality are interesting and actual discussions are being discussed by Islamic thinkers and gender activists. In this

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contemporary era, discussions about gender are increasingly widespread and at least in the last ten years have given rise to many thoughts.<sup>1</sup> It's just that there are still frequent misconceptions about gender, especially about the concept of gender in the view of Islamic law. The concept of gender in the Qur'an is also still undergoing transformations of interpretation from various paradigms.<sup>2</sup> In its implementation, the concept of gender is always tested against the principle of equality in various aspects of life. Even the concept of gender nowadays has entered the realm of thinking in terms of the formulation of Islamic law such as the possibility of sharing inheritance based on gender equality.<sup>3</sup>

The discussion regarding the division of inheritance in the paradigm of gender equality is still a polemic. According to Taufiqurohman and Mohammad Ruslan, problems in society never stop even though they have been raised by previous scholars. The thing that is most widely discussed is the difference in the 2:1 inheritance provisions for boys and girls which is considered unfair by feminists.<sup>4</sup> The polemic finally led to demands for an equal share of inheritance between male and female heirs. Even though in QS al-Nisa' verse 11 it has been determined that the male part is equal to the two female parts it raises the interest of Muslim scholars and gender activists to re-measure the essence of the verse.

Research related to gender equality in inheritance continues to be carried out with various paradigms and concepts used. The study of Islamic inheritance from the perspective of gender justice was conducted by Syaikh<sup>5</sup> and Endang Sriani<sup>6</sup> who think that the concept of inheritance 2: 1 in the Koran is not something final and can adapt to the context of changing times. Furthermore,

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<sup>1</sup> Abd. Halim K, "Konsep Gender Dalam Al-Quran (Kajian Tafsir Tentang Gender Dalam Qs. Ali Imran [3]: 36)", *Jurnal Al-Maiyyah*, Vol. 7 No. 1 (2014), <<https://www.neliti.com/publications/285726/konsep-gender-dalam-al-quran-kajian-tafsir-tentang-gender-dalam-qs-ali-imran-336>>.

<sup>2</sup> Agus Hermanto, "Integrasi Laki-Laki Dan Perempuan (Paradigma Teori Gender Kontemporer)", *Studia Quranika*, Vol. 1 No. 2 (2017) <<https://doi.org/10.21111/studiquran.v1i2.844>>.

<sup>3</sup> Jamal Abd Naser, "Equalitas Gender (Konsep Dan Aktualisasinya Dalam Islâm Serta Implikasinya Atas Rumusan Hukum Islâm)", *AL-IHKAM: Jurnal Hukum & Pranata Sosial*, Vol. 2, No. 2 (2019) <<https://doi.org/10.19105/al-ihkam.v2i2.2623>>.

<sup>4</sup> Taufiqurrahman Fauzi and Mohammad Ruslan, "Tinjauan Al-Qur'an Terhadap Kesetaraan Gender Dalam Pembagian Warisan", *El-Furqania: Jurnal Ushuluddin Dan Ilmu-Ilmu Keislaman*, Vol. 8, No. 2 (2022), p. 22. <<https://doi.org/10.54625/elfurqania.v8i02.5911>>.

<sup>5</sup> Syaikh Syaikh, "Kewarisan Islam Dalam Perspektif Keadilan Gender", *El-Mashlahah*, Vol. 8 No. 2 (2019) <<https://doi.org/10.23971/Maslahah.V8i2.1323>>.

<sup>6</sup> Endang Sriani, 'Fiqh Mawaris Kontemporer: Pembagian Waris Berkeadilan Gender', *TAWAZUN: Journal of Sharia Economic Law*, 1.2 (2018), 133 <<https://doi.org/10.21043/tawazun.v1i2.4986>>.

Reni Nur Aniroh emphasized the idea of gender equality in the bilateral inheritance system after Hazairin, which also strengthened the concept of equal distribution.<sup>7</sup> Meanwhile, what has not been achieved in previous research is a more comprehensive interpretation of the verses of inheritance. Due to the paradigm shift in the division of inheritance, it must be addressed carefully so that it does not go out of its way and does not have implications for their conflicts due to differences in understanding.

The interpretation of the Qur'an regarding gender equality in inheritance has been carried out by Ainun Hakiemah, Farida Nur Afifah, and Siti Muliana through an analysis of Hamka's thinking which refers to the opinion of classical mufassir which states that responsibility for property is more heavily borne by men than women.<sup>8</sup> Even gender equality in inheritance viewed from the perspective of the Koran by analyzing the meaning of QS al-Nisā' verse 11 has also been carried out by Mohammad Ruslan and Taufik Aris Saputra by interpreting the 2:1 division of justice because the burden on men is greater and boys -a man who is obliged to earn a living for his family.<sup>9</sup> However, this research only discusses justice or the laws that arise and has not been able to effectively resolve anxiety in contemporary inheritance fiqh, while to overcome the problem of dividing inheritance between men and women it must be implemented implementively. In addition, a thematic study is needed to find out the basics of inheritance rights for men and women and further discuss the concept of inheritance 2: 1 in QS al-Nisa' verse 11 so that the debate on gender equality in inheritance can produce common ground.

At least studying through thematic interpretation and reinterpretation of the contents of verse 11 in QS al-Nisa', can prevent heirs from conflicts in the distribution of inheritance. The impact of the shift in the concept of classical inheritance from the 2:1 concept to the concept of bilateral inheritance with an equal concept is still prone to causing conflict among heirs. This happens when the heirs have different opinions in determining the share, for example, some agree with the 2:1 concept but some want it to be equal so that the distribution of

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<sup>7</sup> Reni Nur Aniroh, "Mempertegas Ide Kesetaraan Gender Dalam Sistem Kewarisan Bilateral : Sistem Waris Bilateral Pasca Hazairin", *Al-Ahwal: Jurnal Hukum Keluarga Islam*, Vol. 13, No. 2 (2020).

<sup>8</sup> A Hakiemah, F N Afifah, and S Muliana, "Kesetaraan Gender Dalam Al-Qur'an (Studi Atas Pemikiran Hamka Terkait Kewarisan)", *Refleksi*, Vol. 20 No. 1 (2021), p. 1.

<sup>9</sup> Mohammad Ruslan and Aris Saputra Taufik, "Tinjauan Al-Qur'an Terhadap Kesetaraan Gender Dalam Pembagian Warisan (Studi Analisis Pada Surah Al-Nisa Ayat 11)", *JADID: Journal of Quranic Studies and Islamic Communication*, Vol. 3 No. 1 (2023), p. 17-50 <<https://ejournal.unkafa.ac.id/index.php/JADID/article/view/617>>.

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inheritance is not conducive. The two concepts are justified by considering their benefits. However, the debate regarding the two concepts will continue to occur if the heirs do not give in and there is no meeting point in the settlement. Therefore, the goal that is no less important to achieve in this study is to have a meeting point in responding to shifts in the concept of inheritance which until now still generates debate, especially among gender activists.

The problem of inheritance based on gender equality which is being debated today must be answered normatively through thematic studies of the Qur'anic concept of gender equality in inheritance. Furthermore, the study will be specified in verse 11 in QS al-Nisa' which regulates the division of men and women with the concept 2: 1 so that the possibilities of *ijtihad* can be measured in it and analyze errors in its application. Through re-reading the text of the Koran, new ideas can emerge that can answer the challenges of the shift in the concept of inheritance that has occurred.

**Method**

This research is a library research which is included in the descriptive qualitative type based on the method of data collection and data analysis. The approach used is an interpretation approach, especially thematic interpretation through thematic studies of inheritance verses and interpretation of the concept of inheritance in verse 11 of QS al-Nisa' to find common ground in the debate regarding the shifting portion of male and female heirs, so that in responding to this problem requires a normative approach based on *syar'i* in formulating the laws that are produced. The data obtained is in the form of primary data sourced from the Qur'an and its interpretation and secondary data obtained from journals and research results that are relevant to the issues discussed. As for answering the formulation of the problem, researchers used qualitative methods. The data analysis technique uses descriptive qualitative analysis, namely analyzing relevant texts or documents and synthesizing the pros and cons found in the interpretation of verse 11 in QS al-Nisa'. The method of interpretation used is the *maudhui* method or thematic interpretation because it is to study the Qur'anic concept of a problem, and to explore the implied meanings and messages in the Qur'an in order to obtain comprehensive answers and present solutions from a problem. problems, especially gender equality in inheritance.

**Discussion**

### The Basic Concept of Gender Equality in Inheritance Law

Etymologically, the word gender comes from English which means gender. The use of the term gender is the placement of equal positions between men and women to create an egalitarian social order. Gender is used as an indicator in measuring the roles of men and women in social life based on the reconstruction of society.<sup>10</sup> According to Sarifa Suhra, gender is a concept meant to identify differences between men and women based on socio-cultural influences. The meaning of gender in this case is a form of social engineering that does not pay attention to something natural so in this context, gender must be distinguished from sex. Gender is an attribute or division of two human sexes that are biologically determined to be attached to a particular sex. The concept of gender is a trait that is inherent in men or women who are socially constructed. For example, women are known to be gentle, beautiful, and motherly, while men are known to be strong, rational, and strong.<sup>11</sup>

The concept of gender in Islam through the verses of the Qur'an does not distinguish between men and women in various aspects. The difference between men and women only concerns differences in human nature which aims to be able to complement and perfect each other, as well as differences in terms of the level of piety before Allah swt.<sup>12</sup> Thus, it can be concluded that the concept of gender in Islam places more emphasis on differences in human nature, while gender in general places more emphasis on aspects of the inherent nature of humans.

Inheritance law in general is a law that regulates the process of transferring ownership of inheritance (tirkah) left by someone who dies, in this case, the heir to his heirs, determining who is entitled to become the heir and determining what portion each will receive heir.<sup>13</sup> According to Muhammad Amin Suma, inheritance law is a law that regulates the transfer of inheritance or inheritance of heirs, determines whom the heirs are entitled to, determines how many shares each heir has, and regulates when the division of the heir's assets will be carried

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<sup>10</sup> Sri Isnani Setiyaningsih, "Bias Gender Dalam Verba: Sebuah Kajian Leksikon Dalam Bahasa Inggris", *Sawwa: Jurnal Studi Gender*, Vol. 11 No. 1 (2017), p. 29. <<https://doi.org/10.21580/sa.v11i1.1445>>.

<sup>11</sup> Sarifa Suhra, "Kesetaraan Gender Dalam Perspektif Al-Qur'an Dan Implikasinya Terhadap Hukum Islam", *Jurnal Al-Ulum*, Vol. 13. No, 2 (2013), p. 377.

<sup>12</sup> Adiyana Adam, Hasyim Haddade, and Rahmi Damis, "Wawasan Al-Quran Tentang Kesetaraan Gender Wawasan Al-Quran Tentang Kesetaraan Gender", *Jurnal Pendidikan Islam*, Vol. 8 No. 2 (2022), p. 169-179.

<sup>13</sup> Supardin Supardin, *Fikih Mawaris Dan Hukum Kewarisan Islam Di Indonesia: Studi Analisis Perbandingan*, Cet. I (Makassar: Alauddin University Press, 2016), p. 56.

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out.<sup>14</sup> So it can be concluded that Islamic inheritance law is a technical division of inheritance that contains the determination of the rightful heirs, determining the portion that is obtained by the heirs, and regarding the obligations inherent in the distribution of inherited assets.

If the terms gender and inheritance are connected, a concept called inheritance based on gender equality will emerge. Gender-equal inheritance is the division of inheritance with equal parts for men and women. The concept of gender-equal inheritance is very synonymous with the bilateral inheritance system whose share is based on gender equality. The bilateral inheritance system is an equal division of inheritance between male and female heirs. From the perspective of legal history, the idea of bilateral inheritance law has developed in the context of Indonesian society. The majority of Indonesian society adheres to a parental kinship system based on lineage from the father and mother which also influences the inheritance system.<sup>15</sup> Thus, the concept of gender equality in inheritance is a manifestation of the concept of bilateral inheritance which equalizes the share of male and female heirs so that the position of justice in this concept lies in equality.

Attention to gender equality in the distribution of inheritance is demonstrated by the position of men and women who are equally entitled to inheritance.<sup>16</sup> This includes several traditional inheritance systems that do not differentiate between men and women.<sup>17</sup> For example, in Polewali Mandar, West Sulawesi, men and women receive equal shares because they are influenced by society's views which place equal positions between men and women, including in inheritance.<sup>18</sup> Likewise with the inheritance of the Bugis community of South

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<sup>14</sup> Muhammad Amin Suma, *Hukum Keluarga Islam Di Dunia*, Cet. I (Jakarta: RajaGrafindo Persada, 2004), p. 108.

<sup>15</sup> Tarmizi Tarmizi, and Asni Zubair. "Toleransi Hukum Islam Terhadap Sistem Kewarisan Adat Di Indonesia." *ADHKI: Journal Of Islamic Family Law* 4.2 (2022), p. 131-147.

<sup>16</sup> Wahidah Ideham, 'Substitute Heirs in the Compilation of Islamic Law: An Overview from Gender Equality Perspective Case Study of the Religious Courts in Banjarmasin', *Samarah*, 6.2 (2022) <<https://doi.org/10.22373/sjhk.v6i2.12466>>.

<sup>17</sup> Johannes Kaska, 'Equal but Not Identical. Modes of Partible Inheritance in Early-Modern Schlanders (South Tyrol) and Medieval Lambach (Upper Austria) Compared', *History of the Family*, 27.1 (2022) <<https://doi.org/10.1080/1081602X.2022.2026802>>; Siah Khosyi'ah and Ayi Yunus Rusyana, 'Inheritance Settlement of Descendants of Children and Siblings in Islamic Law with Local Wisdom in Indonesia', *Cogent Social Sciences*, 8.1 (2022) <<https://doi.org/10.1080/23311886.2022.2126615>>.

<sup>18</sup> Ulfiani Rahman and others, 'Men and Women in the Distribution of Inheritance in Mandar, West Sulawesi, Indonesia', *Samarah*, 6.1 (2022) <<https://doi.org/10.22373/sjhk.v6i1.9094>>.

Sulawesi<sup>19</sup> and the Aceh region<sup>20</sup> which equalizes the shares of men and women according to the customary inheritance system. The traditional inheritance system is one of the factors that influences gender equality and supports women's rights in the distribution of inheritance.

### Thematic Study of Verses Concerning Gender Equality in Inheritance Law

Several verses in the Qur'an and hadith discuss inheritance and can be linked to gender equality. The verses are more specifically classified into several themes which are pursued through thematic interpretation methods. Based on the search results on inheritance verses related to gender equality in inheritance distribution, there are interesting central themes to study, namely, men and women both have the right to inherit property and provisions for the share of male and female heirs.

#### 1. Men and women both have the right to inherit

The rights of men and women to become heirs and inherit the heir's assets are explained in QS al-Nisā'/4: 7.

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

For men there is a right to a share of the inheritance of their parents and relatives, and for women there is a right to share (also) from the inheritance of their mother, father and relatives, whether a little or a lot according to a predetermined portion.<sup>21</sup>

Because the revelation of the verse was narrated by Abu Shaykh and Ibn Hibban in the book *al-farā'id* from the al-Kalbi path from Abi Salih from Ibn Abbas r.a. said, that in the past the ignorant people were reluctant to give their daughters and sons who were still small their inheritance until they grew up, then one of the Ansar people died namely Aus bin Šabit and he left two daughters and

<sup>19</sup> Andi Sukmawati Assaad and others, 'Gender Equity in Inheritance System: The Collaboration of Islamic and Bugis Luwu Customary Law', *Al-Ihkam: Jurnal Hukum Dan Pranata Sosial*, 17.2 (2022) <<https://doi.org/10.19105/al-Ihkam.v17i2.6761>>; Tarmizi Tarmizi, 'Inheritance System of Bugis Community in District Tellu Siattinge Bone, South Sulawesi (Perspective of Islamic Law)', *SAMARAH: Jurnal Hukum Keluarga Dan Hukum Islam*, 4.1 (2020) <<https://doi.org/10.22373/sjhk.v4i1.6784>>.

<sup>20</sup> Harnides, Syahrizal Abbas, and Khairuddin, 'Gender Justice in Inheritance Distribution Practices in South Aceh, Indonesia', *Samarah*, 7.2 (2023) <<https://doi.org/10.22373/sjhk.v7i2.16688>>.

<sup>21</sup> Al-Nisā'/4: 7

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one boy who was still small, then came two of his uncle's children namely Khalid and Urfah and they were both his family, and they both took all his inheritance. So Aus's wife came to Rasulullah to see. complained about this, the Messenger of Allah said, "I don't know what to say", then the word of Allah came down, "for men, there is a right to share in the inheritance of their parents and relatives, and for women, there is a right to share".<sup>22</sup> The reason for the revelation of the verse shows the importance of giving inheritance to the rightful heirs even though the heirs are still small.

Furthermore, the explanation in this verse can also be exemplified by QS al-Nisa'/4: 33, the essence of which is explained regarding every property left by an heir, there is an heir.

وَلِكُلِّ جَعَلْنَا مَوَالِي مِمَّا تَرَكَ الْوَالِدَانِ وَالْأَقْرَبُونَ ۚ وَالَّذِينَ عَقَدَتْ أَيْمَانُكُمْ فَآتُوهُمْ نَصِيحَتَهُمْ ۚ إِنَّ اللَّهَ كَانَ عَلَىٰ كُلِّ شَيْءٍ شَهِيدًا

For every inheritance from the assets left by parents and close relatives, we make them heirs. And (if there are) those whom you have sworn allegiance to, then give them their portion. Verily Allah witnesses all things.<sup>23</sup>

In addition to the Qur'an, the command to distribute inheritance to the rightful heirs is also explained in HR Bukhari: 6746.

عَنْ ابْنِ عَبَّاسٍ عَنِ النَّبِيِّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ قَالَ أَلْحِقُوا الْفَرَائِضَ بِأَهْلِهَا فَمَا تَرَكَتِ الْفَرَائِضُ فَلِأَوْلَىٰ رَجُلٍ ذَكَرٍ. (رواه البخاري)

From Ibn 'Abbas from the Prophet ṣallallāhu 'alāihi wasallam, he said: "Give the farāiḍ (predetermined inheritance) portion to those who are entitled, then the remaining portion goes to the closest male heir (his lineage).<sup>24</sup>

Based on the above verses and hadiths, it is the normative basis for the inheritance distribution system in Islam which regulates the division of men and women textually. From the verse above which emphasizes the position of men and women equally entitled to inherit property from their heirs, it is then strengthened by the hadith of the Prophet which obliges to give a share to the

<sup>22</sup> Imam As-Suyuti, *Asbabun An-Nuzul*, Terj. Andi Mahmud Syahril Dan Yasir Maqasid, *Asbabun Nuzul: Sebab-Sebab Turunnya Ayat Al-Qur'an*, Cet. I (Jakarta: Pustaka Al-Kautsar, 2014), p. 128.

<sup>23</sup> Al-Nisā'/4: 33

<sup>24</sup> Muḥammad ibn Ismā'il ibn Ibrāhīm ibn Muḡīrah Al-Bukhāri, *Ṣāḥih Al-Bukhāri*, Vol. 4 (Beirut: Dār al-Kutub al-Ilmiyah, 2005), p. 269.

rightful heirs. So gender equality in inheritance rights according to the Qur'an is a matter of great concern and is the reason for the revelation of QS al-Nisa'/4: 11 to abolish the practice of inheritance in the jahiliyah era which ignored the rights of women.

## 2. Provisions on the share of men and women heirs

The share received by sons and daughters in the division of inheritance is explained in QS al-Nisā'/4: 11 "Allah prescribes for you regarding (the distribution of inheritance for) your children. Namely: the share of one son is equal to the share of two daughters; and if the children are all girls more than two, then for them two-thirds of the assets are left behind; if the daughter is only one, then she gets half the property. And for two parents, each one is one-sixth of the property left behind, if the deceased has children; if the person who dies does not have children and he is inherited by his parents (only), then his mother gets a third; if the deceased had several siblings, the mother gets one-sixth. (The distributions mentioned above) after fulfilling the will he made or (and) after paying his debts? (about) your parents and your children, you do not know which of them is closer (much) of benefit to you, this is a decree from Allah. Verily, Allah is All-knowing, All-Wise."<sup>25</sup>

Meanwhile, the portion obtained by the husband or wife in the division of inheritance is described in QS al-Nisā'/4: 12 as "And for you (husbands) half of the property left by your wives, if they do not have children. If your wives have children, then you get a quarter of the property left by them after fulfilling the will they made or (and) paying off the debt. Wives get a quarter of what you leave if you don't have children. If you have children, the wives will get one-eighth of the property that you left after fulfilling the will that you made or (and) after paying your debts. If a person dies, whether a man or a woman who has not left a father or children, but has a brother (only one mother) or a sister (only one mother), then each of the two types of siblings is one-sixth treasure. But if there are more than one mother's siblings, then they partner in that third, after fulfilling the will made by them or after paying their debts without causing harm (to the heirs). (Allah determines that as) the true shari'ah from Allah, and Allah is All-Knowing, Most Forbearing."<sup>26</sup>

The most specific verses that explain in detail the portion of the heirs are verses 11 and 12 of QS al-Nisa'. Regarding the reason for the revelation of the verse according to Imam al-Tabarī as quoted by al-Yasa Abu Bakr the direct cause

<sup>25</sup> Al-Nisā'/4: 11

<sup>26</sup> Al-Nisā'/4: 12

was the complaint of Sa'd's wife to the Apostle, because Sa'd's brother had taken all of the inheritance without leaving any for his sister. Another history explains that the verse was sent down to cancel the practice of jahiliyah, whose inheritance is only given to adult sons who can join the war.<sup>27</sup> The practice of dividing inheritance that was carried out before Islam came did not reflect justice so the verse was revealed to cancel it. With the enactment of Islamic law, all practices of distributing inheritance that are not by the provisions are not permissible.

### **Interpretation of Determination of Inheritance Part in Verse 11 of Surah al-Nisa'**

Many verses of the Qur'an specifically describe the conception of inheritance including the number of distributions. It is this basic conception that presents an understanding that the verses concerning inheritance are qath'i (fixed) and do not require reinterpretation. Because Islam comes with the principle of rahmatan lil 'ālamīn including building family welfare through inheritance law.<sup>28</sup> Even so, interpretation of the inheritance verses still needs to be done to reinterpret the intent and purpose of the verses being revealed and become a solution to the debate regarding the division of inheritance which is considered to be gender biased. This is what underlies the importance of reinterpreting the determination of inheritance in QS al-Nisa' verse 11 as an implementation of the thematic study of the concept of gender equality in inheritance and a resolution of dualism in the concept of dividing inheritance which is still being debated so far.

Starting from the interpretation of verse 11 of QS al-Nisā' by interpreting the text *li al-dzakari mišlu hadd al-unšayaīn*, namely the distribution of inheritance to boys and girls is not an equal distribution because as in the text, boys get double the share of girls. According to Taufiqurrahman Fauzi and Mohammad Ruslan, the 2:1 division is considered fair because the burden on sons is greater and sons are also obliged to provide a living for their families.<sup>29</sup> This opinion is also in line with the interpretation of QS al-Nisa' verse 34 that "Men are leaders for women, because Allah has made some of them (men) superior to others (women), and because they (men) have spent part of their wealth..."<sup>30</sup>

The argument raised by this verse is that there are two reasons why men become leaders of women. First, because Allah's provision has made some of them

<sup>27</sup> Al-Yasa Abu Bakar, *Ahli Waris Sepertalian Darah: Kajian Perbandingan Terhadap Penalaran Hazairin Dan Penalaran Fikih Mazhab* (Jakarta: Inis, 1998), p. 82-83.

<sup>28</sup> Ahmad Rajafi, "Kewarisan Produktif (Meramu Makna Adil Melalui Waris Produktif)", *Al-Risalah*, Vol. 16 No. 2 (2018) <<https://doi.org/10.30631/al-risalah.v16i02.313>>.

<sup>29</sup> Fauzi and Ruslan, p. 194.

<sup>30</sup> Al-Nisā'/4: 34

(men) superior to some others (women). Second, because men are responsible for providing maintenance to women (as wives). Commentators say that *qawwām* means leader, regulator, the person in charge, educator, and so on. This categorization is not a crucial issue, as long as it is placed fairly and does not imply discriminatory assumptions. In general, commentators argue that this superiority was created by Allah SWT. so it can't be changed. The advantages of men over women, as stated in the verse above, are said by the commentators of the Qur'an because of their intellect and physique. For example, Al-Razi in his commentary stated that the advantages of men include two things, namely knowledge/mind and ability. This means that men's intelligence exceeds that of women, and men are more capable of hard jobs.<sup>31</sup>

However, according to Endang Sriani, the division of inheritance in Islam should not stop with just referring to classical fiqh. It is known that the laws contained in the Qur'an are certain but the interpretation of the Qur'an can be wrong so that it is not absolute and cannot be made law in a different place and time. The Islamic inheritance law that was passed down was a special response to things that happened when the revelation was revealed so it has a broad scope for *ijtihad* because it is classified as a *muamalah* activity. So to know the purpose of *shari'a*, it is necessary to reinterpret the text of the proposition to produce a just law. Thus, the concept of inheritance 2:1 is not absolute and could be 1:1 according to the social conditions of the people who built it.<sup>32</sup> This opinion can be justified because the current conditions are far different from the early days of Islam.

According to Abdul Aziz, currently, the enactment of Islamic inheritance law is in line with the enforcement of the law (*maqāṣid al-syarī'ah*), which is to provide justice and welfare to the heirs. Contemporary division of inheritance refers more to distributive justice or proportional justice, according to the level of economic welfare of the heirs. If the male heir already has a decent job and a lot of wealth, while his sister experiences the opposite fate, then the division of inheritance for the woman should be more than that of the man. And vice versa, if the welfare level of men is lower than women, then men get more shares than women. This is the essence of implementing Islamic law, which is to create benefit

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<sup>31</sup> Risna Mosiba, "Wawasan Al-Qur'an Tentang Gender (Sebuah Kajian Dengan Pendekatan Tafsir Tematik)", Vol. 8 No. 1 (2019), p. 19-31.

<sup>32</sup> Sriani, p. 133.

and avoid harm.<sup>33</sup> This means that the shift in the concept of inheritance in society has come to a new principle, namely prioritizing collective agreements rather than determinations as in the *mawāris* fiqh and prioritizing heirs who need them through a deliberation process.<sup>34</sup> This conception is then measured through the flexible nature of Islamic law which can adapt to conditions and changes in society.

Syaikhu argues that currently, the values of justice in Islamic inheritance law have experienced a shift. Because in the distribution of inheritance according to Islamic inheritance law, it is required to pay attention to the rights of men and women who are equally strong. Equal rights between men and women have led to the emergence of a hot issue in gender bias which prioritizes justice based on rights and obligations (distributive justice). That is, if the obligations change, then the rights can also change according to developments in society.<sup>35</sup> The shift in values that occur in Islamic inheritance law encourages Islamic thinkers to carry out reconstruction so that Islamic law can be applied according to time and place.<sup>36</sup> Therefore, the division of inheritance by taking into account the condition of the heirs is the right thing to answer the problems that occur.

The concept of equal distribution of inheritance is also a concept initiated by Hazairin which is known as bilateral inheritance. Seeing the condition of Indonesian society, where the majority adheres to a parental family system, the concept of bilateral inheritance carried out by the community is justified. Hazairin believes that this bilateral inheritance system is a basic characteristic of Islamic inheritance law. After Hazairin, the concept of bilateral inheritance was reinforced by several Indonesian Muslim scholars.<sup>37</sup> The initiator of the concept of bilateral inheritance was also followed by other figures such as Munawir Sjadzali with his quantitative equation, Muhammad Syahrur, and Yahya Harahap with the concept

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<sup>33</sup> Abdul Aziz, "Pembagian Waris Berdasarkan Tingkat Kesejahteraan Ekonomi Ahli Waris Dalam Tinjauan Maqashid Syariah", *Journal de Jure*, Vol. 8 No. 1 (2016), p. 48. <<https://doi.org/10.18860/j-fsh.v8i1.3729>>.

<sup>34</sup> Tarmizi Tarmizi, Supardin Supardin, and Kurniati Kurniati, "Kaidah Pembagian Harta Warisan Masyarakat Di Kecamatan Tellu Siattinge Kabupaten Bone Dalam Pandangan Hukum Islam", *Jurnal Al-Qadau: Peradilan Dan Hukum Keluarga Islam*, Vol. 7 No. 2 (2020), p. 303. <<https://doi.org/10.24252/al-qadau.v7i2.15330>>.

<sup>35</sup> Syaikhu, p. 40-41.

<sup>36</sup> Zakiul Fuady Muhammad Daud and Raihanah Bt Azahari, "Menyoal Rekontruksi Maqashid Dalam Pembaharuan Hukum Kewarisan Islam", *Jurnal Ilmiah Islam Futura*, Vol. 18 No. 1 (2019), p. 21-22. <<https://doi.org/10.22373/jiif.v18i1.2843>>.

<sup>37</sup> Aniroh, p. 48.

of boundary theory.<sup>38</sup> In addition, the culture of the people must be considered in the formulation of inheritance law, because it is a distinctive feature of Indonesian society which is rich in culture and customs.<sup>39</sup> The development of thinking in Islamic inheritance law signifies a transformation for better implementation of Islamic law and contemporary thinking continues to show concern for gender equality in inheritance.

Women's rights continue to be a concern, marked by the emergence of movements that voice gender equality and provide significant influence.<sup>40</sup> Like the National Movement of Rural Women (NMRW) which unites rural women to create a forum for rural women to fight oppression and equal rights to land ownership, this organization is also involved in resolving cases such as inheritance disputes.<sup>41</sup> Things that might happen, for example, in European rural communities strengthen gender equality in economic, agricultural, or livestock activities.<sup>42</sup> Including inheritance, women's rights must be accommodated because women are not only passive family members, but also a symbol of honor and family continuity.<sup>43</sup> Women's rights in inheritance can now be voiced and it is hoped that they will receive attention so that certainty of equality can be achieved.

It's just that what needs to be considered in dividing inheritance with the concept of gender equality, namely the importance of prioritizing distribution based on Islamic inheritance law and then agreeing after approval from each heir. This is

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<sup>38</sup> Tarmizi Tarmizi, Gustika Sandra, Jumra Jumra and Sakti Yadi, "The Dynamics Of Determining Men And Women Parts In Matters Of Inheritance: A Study Of Islamic Law", *Jurnal Diskursus Islam*, Vol. 10 No. 2 (2022), p. 271-289 <<https://doi.org/https://doi.org/10.24252/jdi.v10i2.30172>>.

<sup>39</sup> Hamzah, Hamzah. "Peranan Peradilan Agama Dalam Pertumbuhan Dan Dinamika Hukum Kewarisan Di Indonesia". *AL-SYAKHSHIYYAH Jurnal Hukum Keluarga Islam dan Kemanusiaan*, Vol. 2 No. 2 (2020), p. 122-139.

<sup>40</sup> Canan Aslan Akman, 'Women Officials of the Turkish Diyanet: Gendered Transformations and Predicaments of Empowerment?', *Asian Journal of Women's Studies*, 27.2 (2021) <<https://doi.org/10.1080/12259276.2021.1932115>>; Alejandra Castellanos Breton and Jose Guillermo Ricalde Perez, 'Entanglements between Gender Equality and Multiculturalism Discourses: The Case of Sweden', *Journal of Gender Studies*, 2021 <<https://doi.org/10.1080/09589236.2021.1937963>>.

<sup>41</sup> Keneilwe Radebe, 'Custom-Based or Gender-Based Approach? Considering the Impact of the National Movement of Rural Women as Amicus Curiae in Litigation Involving Rural Women', *Agenda*, 33.2 (2019) <<https://doi.org/10.1080/10130950.2019.1613077>>.

<sup>42</sup> Martine Segalen, 'Gender and Inheritance Patterns in Rural Europe: Women as Wives, Widows, Daughters and Sisters', *History and Anthropology*, 32.2 (2021) <<https://doi.org/10.1080/02757206.2021.1905239>>.

<sup>43</sup> Mohammad Hipni, 'The Study of Maqashidi Sharia Toward Maduresse Traditional Inheritance by Using System Approach', *AL-IHKAM: Jurnal Hukum & Pranata Sosial*, 14.1 (2019) <<https://doi.org/10.19105/al-ihkam.v14i1.2159>>.

intended so that each heir's rights are considered as a form of prudence so that the heirs can willingly give up each other's shares.<sup>44</sup> Inheritance sharing with a bilateral inheritance system that supports gender equality can be carried out well if there are no conflicts in its implementation.<sup>45</sup> For this reason, underlying the act with the rules that have been set before making peace in the distribution of inheritance can be one of the efforts to prevent conflicts between heirs.

## Conclusion

The division of inheritance based on gender equality is applied to a bilateral inheritance system that equalizes the share of male and female members. The bilateral inheritance system is in line with the concept of gender equality, so it is widely applied in society. Especially in a community environment that upholds equality, kinship, and mutual agreement in dividing inheritance.

If studied thematically, the verses of the Qur'an related to gender in inheritance law produce several themes, such as verses about men and women who are equally entitled to inherit and verses about the share of male and female heirs. That is, gender equality in inheritance is justified in the Qur'an so that no heir's rights are ignored.

Over time, the concept of inheritance in verse 11 of QS al-Nisa' has shifted in meaning from the concept of 2:1 to an equal share through *ijtihad*, thus indicating a reinterpretation of the determination of male and female shares according to conditions and social structure in society. It's just that in practice it still often causes disputes, especially if deliberations are not reached. For this reason, Islamic inheritance law will again become a solution to conflicts when they are resolved in court. So it is recommended that before dividing the inheritance with the principle of gender equality, it must first be divided based on the provisions in Islamic inheritance law and then agree to divide it amicably. This is important because the rights of each heir must be considered so that the division of inheritance that is carried out is not in doubt. Therefore, further studies are needed by observers of gender and inheritance law, especially regarding the implementation of inheritance

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<sup>44</sup> Asni Zubair, Hamzah Latif, and Al Furqon Dono Hariyanto, 'The Construction of Inheritance Law Reform in Indonesia: Questioning the Transfer of Properties through Wasiat Wājibah to Non-Muslim Heirs', *Samarah*, 6.1 (2022) <<https://doi.org/10.22373/SJHK.V6I1.12628>>.

<sup>45</sup> Ikhfa Nur Afriani, Rohmansyah, and Nur Avita, "Parental Grants to Children and Their Relation to Inheritance in the Perspective of Positive and Customary Laws of Indonesia", *Al-Bayyinah*, Vol. 7 No. 1 (2023), p. 31-44.

based on gender equality with a more specific scope of location and a different approach.

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