

SCIENTIFIC SOCIALISM IN THE INHERITANCE LAW IN SOMALIA**Qurratul Uyun**

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ABSTRACT

This paper discusses the influence of scientific socialism ideology on Islamic inheritance law in Somalia which is regulated in The Family Code 1975. This paper begins with a discussion of scientific socialism as a state ideology, then its influence on Islamic family law in Somalia and the application of scientific socialism ideology in inheritance law. The method used is descriptive with a theoretical approach that is explored through information media. The results of this study indicate that the deviation of family law regulations in Somalia from what is described in the Qur'an begins based on the concept of a state of scientific socialism that they apply. The purpose of implementing the ideology of scientific socialism in Somalia was to shift rigid customary rules and as a form of political cooperation with the Soviet Union. As a result, the application of the rules of family law has changed, especially in terms of inheritance. For example, there is no difference in the share of inheritance between husband and wife, sons and daughters, grandfather and grandmother, father and mother, even siblings, and half-siblings.

Keywords: Scientific Socialism; Inheritance; Somalia



INTRODUCTION

Somalia is a country located in the Horn of Africa,¹ Before being formed as a country, Somalia was the target of Western colonialism such as Portugal, France until it was under British and Italian colonies from the sixteenth century until the last century. During the colonial period, Somalia was not a single country but a country whose territory was divided between Northern British Somaliland (Zeila and Berbera region) and Southern Italian Somaliland (Southern Somalia region).² After World War II, northern Somalia won its independence on June 26, 1960 and was then followed by Southern Somalia on June 30, 1960. The Republic of Somalia was formed on July 1, 1960 which was the result of a combination of North and South Somalia, but since its founding Somalia has experienced political instability. and the occurrence of inter-tribal conflicts that led to the split that resulted in the establishment of the two countries in May 1991.³

The majority of Somali citizens are Muslim and adhere to the Shafi'i school of thought, so some of the rules are based on classical fiqh books based on the Shafi'i school of thought. Post-independence, Somalia adheres to a western legal system that is combined with Islamic law but is still adapted to the beliefs of the Somali people. This combination is the result of the legacy of the British and Italians who had previously controlled Somalia. Historically, Islam's influence has not

¹ The Horn of Africa is a peninsula in East Africa located along the southern Gulf of Aden and its position protrudes towards the Arabian Sea. Has a large area covering Somalia, Djibouti, Ethiopia, Somaliland, and Eritrea. See Wikipedia, "Horn of Africa," https://id.wikipedia.org/wiki/Tanduk_Afrika, accessed on 4 May 2022.

² V. M. Buyanov, *Somalia- The Untold Story, Angewandte Chemie International Edition*, 6(11), 951–952., 1967. p. 2

³ Post-independence, Somalia uses an Italian-type parliamentary democracy and a dictatorial regime as a system of government. The 1960s was a political period based on a democratic structure, so that civil politics became uncivilized and led to a shift from authoritarianism to autocracy in 1969. Although the Somali bureaucratic system has a tendency to have independent parliamentary and judicial functions, its presence still feels foreign to the public, even the foundation of democratic governance the free and fair election was so damaged, that the presence of democracy turned out to be a disaster which resulted in its total collapse. The Rise, *Mohamed Haji Ingiriis - The Suicidal State in Somalia_ The Rise and Fall of the Siad Barre Regime, 1969-1991 (2016, UPA)*, p. 1.



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been so great at political junctures in Somalia, Islam has never been able to overcome a stronger clan organizing force. Even today, various types of Islamic activism (Sharia Court) tend to be organized by clans and work within clan parameters. So that the application of Islamic law and customs was not so thick, even during the reign of Siyyad Barre⁴ some civil law and customary law related to family law have replaced sharia law.⁵ This began with the overthrow of the Somali civilian government led by Siyyad Barre.

At 3 am on October 21, 1969, Mogadhisu radio announced that there had been a coup against a group of Somalia's civilian government and succeeded the prime minister and members of his government, as well as former president Aden Abdulle Osman and other politicians. Meanwhile, Somalia's supreme leader, President Abdirashid Ali Shermarke, was shot dead by his own bodyguard while visiting Las Anod on October 15, 1969.⁶ Barre used the vacant seat of leadership to take power. While serving as President Barre made a socialist party "Somali Socialist Revolutionary Party"⁷ as the only party that could exist, then

⁴ Military ruler and president of Somalia (1969-1991), he led a military coup on October 21, 1969 and won the support of the masses, urban intellectuals, professionals and the military for his promises to end ethnicity, corruption, establish a modern socialist state, support the African Liberation Movement and force adoption of the script for the Somali language. But during his reign, the press was censored and the institution of trade unions banned, he also placed a large part of the economy under state control. In the late 1980s, internal as well as international pressure forced Barre to offer reforms that allowed a multiparty system, legalized the narcotics qat, revoked the equal inheritance for women, and liberalized the economy. However, it was too late. On 26 January 1991, Mogadishu was taken over by opposition forces loyal to the United Somalia Congress and Barre fled to Garbaharrey. See Mohamed Haji Mukhtar, *Historical Dictionary of Somalia*, *Choice Reviews Online*, 2003, p. 158.

⁵ Ken Menkhaus, "Political Islam in Somalia," *Middle East Policy*, Vol. 9:1, (2002), p. 111.

⁶ Joko Tri Hadimantoyo, "Konflik Di Berbagai Negara Dan Upaya Penanganannya," *Buletin Virajati Media Komunikasi Online Seskoad*, 2021. p. 33.

⁷ *Socialist revolutionary party* was formed by the military regime of Siad Barre under the guidance of the Soviet Union, this party established relations with foreign communist parties such as the Komunis Party of The Soviet Union and the Communist Party of Germany, but it did not last long this party was then dissolved in 1991 along with the fall of the Barre regime. See Wikipedia, "*Somali Revoulutionary Socialist*



made scientific socialism the state ideology, which then had an impact on the reform of family law.⁸

Family law reform was initiated in 1972, three years after the incident took power, and was enacted in 1975 under the name The Family Code 1975. The contents of The Family Code 1975 cannot be separated from the influence of scientific socialism, even at the time of its formation President Siyyad Barre took part and involved several elite governments, one of which was Abdisalem Sheikh Hussein as the secretary of state for justice.⁹ At independence, the rule of law in Somalia was already in contact with western law, but because the Somali people adhered to Islamic teachings and also highly respected clans, at that time, there were four types of legal rules used, namely English common law, Italian law, Islamic Law and Customary Law.

Since it was proclaimed as a socialist state, the contents of the legislation have changed and adapted to the ideology of the state, so that several articles in the family code 1975 reflect the concept of a socialist state that upholds equality without distinguishing between men and women. Such as the distribution of inheritance between widowers or widows who have the same share, i.e. both get 1/2 if the person concerned does not have children and gets 1/2 if the person concerned has children, this is stated in The Family Code 1975 Article 160. Not only that, Article 161 also stipulates that the share of the heirs, both sons and daughters, has no difference, if he is alone, he will get the inheritance in full, but if he has relatives, the inheritance is divided equally regardless of sibling's gender, whether the sibling is a boy or a girl. This is clearly different from what is written in the Q.S. an-Nisa verses 11-12, as well as those contained in the traditional fiqh adopted by the Somali society, where the inheritance of men is different from that of women.¹⁰

Party”, https://en.wikipedia.org/wiki/Somali_Revolutionary_Socialist_Party, accessed on 6 May 2022.

⁸ V. M. Buyanov, *Somalia- The Untold Story*.

⁹ Amatul Roihanah. Jadidah, “Pembaruan Hukum Keluarga Di Somalia,” *Maqoshid: Jurnal Hukum Islam*, Vol. 2:2 (2019), p. 39.

¹⁰ *Ibid.*, p. 40.



METHOD

The method used by the author in this research is descriptive qualitative research using a theoretical approach that is explored and studied through information media.

Research on Islamic inheritance law in Somalia was mentioned in several articles, such as the article by Roihanah and Amatul Jadidah with the title "*Pembaruan Hukum Keluarga di Somalia*".¹¹ which focuses on the process of family law reform from the discourse to its stipulation. Then the article written by Lilik Andaryuni with the title "*Pembaruan Hukum Kewarisan di Turki dan Somalia*"¹² who made inheritance the focus of his study and articles written by Ahmad Syafi'i SJ and Suad Fikriawan who discussed "*Pembaruan Hukum Keluarga Islam: Studi Kasus The inheritance law di Somalia*" which discusses inheritance in Somalia using a legal political approach¹³. Meanwhile, this article discusses scientific socialism in inheritance law in Somalia, which focuses on the influence of socialism in the inheritance law order in Somalia.

RESULT AND DISCUSSION**Scientific Socialism in Islamic Family Law**

In the 19th-20th century, Britain as the colonizer imposed customary justice by enacting the marriage Ordinance of 1928 and the Qadi Judiciary Ordinance of 1937. In 1944, the issuance of the Low Court Ordinance to revoke the Qadi Judicial Ordinance, which was originally enacted in 1937, the aim was to limit the jurisdiction of the Qadi Court is only in matters of personal status. On the one hand, Italy, which was also an occupier in southern Somalia at that time, began to develop the Qadi justice system which then made its jurisdiction around civil and minor criminal cases.¹⁴

¹¹ *Ibid.*, p. 41.

¹² Lilik Andaryuni, "Pembaruan Inheritance law Islamdi Turki Dan Somalia," *Hikmah: Journal of Islamic Studies*, Vol. 14:1, (2018).

¹³ Suad Fikriawan Ahmad Syafi'i Sj, "Pembaruan Hukum Keluarga Islam: Studi Kasus Hukum Waris Di Somalia," *Journal of Law and Family Studies*, Vol. 2:1, (2021).

¹⁴ Miftahul Huda, *Potret Keragaman Perundang-Undangan Di Negara-Negara Muslim Modern*, Tahkim, 1976. p. 53.



After independence, Somalia adheres to four different types of law, namely English common law, Italian law, Islamic law, and Somali customary law.¹⁵ However, the existing regulations are running slowly and not as expected, apart from still groping at the applicable laws, the government is also complacent with the new powers it has assumed. This is evidenced by Siyad Barre's indignation against the civilian government which is deemed no longer worthy of being in the seat of government. The coup was carried out after the death of President Abdirashid Ali Shermarke at his residence and overthrew the civilian government. Siyad Barre also took on the role of replacing the previous president, policies after policies began to be made, one of which was to declare Scientific Socialism as the state ideology.

In terms of scientific socialism, it is defined as an attempt to rationalize the stages of community development through a sociological approach. This term was first used by Friedrich Engels to describe the socio-political-economic pioneered by Karl Marx. The ideals of scientific socialism are to place humans in their true perspective, namely humans who create economic, political and civilized means, where humans are able to grow and develop themselves perfectly in work activities,¹⁶ with the main characteristics are; ownership of all means of production, distribution and exchange by the public or the state and the elimination of private or private ownership; economic equality and provision of basic living needs for all citizens; materialism with an emphasis on economic factors; totalitarian state and dictatorship of the proletariat; suppression of civil liberties and so on.¹⁷ It is called scientific socialism because it is based on the method by scientists, the theory used has an empirical standard that is very much prioritizing observation on its development and resulting in changes and/or the falsibility of the elements of the theory.¹⁸ The

¹⁵ *Ibid.*, p. 54.

¹⁶ Misbahul Ali, "Kontribusi Pemikiran Sosialisme Ilmiah Karl Marx Dan Sosio Ekonomi Al-Ghazali Untuk Ekonomi Dunia", Vol. 2:2, (2021), p. 108.

¹⁷ Hoirul Amri, "Kelemahan Sistem Ekonomi Kapitalisme Dan Sosialisme Menurut Muhammad Sharif Chaudhry Dalam Karyanya Fundamental of Islamic Economic System," *Economica Sharia*, Vol. 2:2, (2017), p. 4.

¹⁸ Wikipedia, "Sosialisme Ilmiah", https://id.wikipedia.org/wiki/Sosialisme_ilmiah, accessed on 12 May 2022.



theory of scientific socialism or better known as the theory of communism has three basic concepts, namely: dialectics, historical materialism and class opposition. Dialectics is used to see historical developments through conflicts or interactions between actions and reactions. Historical materialism is a theoretical perspective on social, political and economic development that views human history through an economic lens, and class conflict, namely the relationship between individuals and the means of production, for example political power. Thus, it can be concluded that the basic concept of scientific socialism or Marx's communism is anthropocentric in nature, namely that the communism system prioritizes one human being as the main leader (dictator) in political affairs and public life, and if it is too severe it will make the main leader as God in his spiritual life.¹⁹

By the end of the 19th century, socialism had become an opposition to capitalism and advocated a post-capitalist system based on a form of social ownership of the means of production. In the 1920s, social democracy and communism became the two dominant political tendencies in the international socialist movement. It was during this period that socialism emerged as the most influential secular movement of the 20th century worldwide. The Soviet Union was a country that first made scientific socialism the state ideology. The rise of the Soviet Union as the world's first nominally socialist state led to the widespread association of socialism with the Soviet economic model that served as a form of state capitalism, unplanned administration, or a command economy.²⁰ The Soviet Union as a country formed from the idea of a socialist society, placed communism as the state ideology and the position of the party was very central, where mono-party was considered a necessity.²¹

Before being controlled by Britain and Italy, the relationship between Somalia and the Soviet Union had already been established, this was due to Somalia's dependence on aid from the United States

¹⁹ Fadhillah Rachmawati, "Kritik Terhadap Konsep Ideologi Komunisme Karl Marx," *Jurnal Sosiologi Agama Indonesia (JSAI)*, Vol. 1:1 (2020), p. 71.

²⁰ Wikipedia, "Sosialisme", <https://id.wikipedia.org/wiki/Sosialisme>, accessed on 12 May 2022.

²¹ Irfan Hanafi, "Perbandingan Sosialisme Joseph Stalin Dan Leon Trotsky Di Uni Soviet 1924-1929" (Universitas Pendidikan Indonesia, 2016).



and the Soviet Union, which at that time were fighting for influence to provide assistance to poor countries.²² The Soviet Union really wanted to control the Horn of Africa Region, because of its strategic location, close to the main shipping lanes of the Indian Ocean, even the Soviet Union was willing to spend a lot of money to control the region.²³ After World War II ended, America and the Soviet Union were considered as super powers that were much stronger than other countries in the world. The two countries competed with each other and tried to expand their influence and strengthen military power and weapons, resulting in tensions between the two which were based on suspicions that led to the cold war.²⁴

The Soviet Union, which was at war with America, needed a land to serve as a naval base in order to expand its territory in the Red Sea and Indian Ocean. Immediately, Siyad Barre offered some areas of Somalia that could be used as bases to the Soviet Union, but all of that was not immediately done. Siyad Barre offered the territory on the condition that the Soviet Union must train Somali soldiers and equip them with weapons to fight.²⁵ Siyad Barre, who was just serving as president at that time, had a desire to unite Somalia, which has been divided into several regions. Policy after policy was made, including reforming the legal system and legislation which at that time still used the remnants of the British and Italian heritage. Legislation reforms were carried out, including the establishment of family law legislation. The formation of legislation was considered quite important, apart from the fact that Somalia is dominated by a Muslim population, the ideology of the newly established state is also very contrary to the source of family law which has been used as a benchmark in resolving cases. To that end, Siyad Barre hastened reforms by forming a commission tasked

²² Michael E. Brown and Richard N Rosecrance, *The Cost of Conflict, prevention, and cure in the global arena*. Maryland: Rowman 7 little field publishing inc, 1999, p. 77-78.

²³ Talia Oktavia Diaz, "Strategi Ethiopia Dalam Mempertahankan Wilayah Ogaden Dari Somalia (1977-1978)" (Universitas Muhammadiyah Yogyakarta, 2019), p. 50.

²⁴ Murtamadji, "Gagalnya Perang Antara Amerika Dan Uni Soviet Di Era Perang Dingin," *Humanika: Kajian Ilmiah Mata Kuliah Umum*, 2014, p. 3.

²⁵ Roihanah. Jadidah, "Pembaruan Hukum Keluarga Di Somalia."



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with formulating a family law draft, consisting of Abdisalem Sheikh Hussein as the secretary of state for justice and religious affairs, and several Somali government officials. In its preparation, this bill has never been separated from the supervision of Siyad Barre, the aim is that the draft law being formulated can be in accordance with the ideology of the state and seeks to abolish customary law which is considered to be old-fashioned and too rigid. Until finally on January 11, 1975, the enactment of a family law called the family law 1975.²⁶

*The family law 1975 consists of 4 chapters with 173 articles. Chapter I contains rules regarding marriage and divorce which include the basis of marriage, age of marriage, prohibition of marriage, guardianship, annulment of marriage, dowry, maintenance, talaq, determination of death and iddah. Chapter II contains about children and maintenance which includes the role of parents, namely father and mother, father's responsibilities, childcare, and child's living expenses. Chapter III on guardianship and representation covers the supervision and representation of guardians, teaching and guardianship, protection of people under guardianship, death, and adoption. And chapter IV contains rules regarding wills and inheritance including the pillars and conditions of inheritance, rejection and acceptance of inheritance, who has the right to be an heir, the amount of inherited property, the share obtained by the heirs, the cause of the occurrence of *mahjub* in inheritance, and also contains special provisions.²⁷ Since this law is based on the concept of a socialist state, the main issue in its regulation is regarding equality between men and women. Thus, in the formulation there are several articles that no longer apply the legal provisions of the Shafi'i school. However, it is said that if there are rules that have not been stated in the law, it will be based on the dominant opinion in the Shafi'i school and based on legal principles in social justice.²⁸*

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²⁶ Miftahul Huda, *Potret Keragaman Perundang-Undangan Di Negara-Negara Muslim Modern*, p. 54.

²⁷ Roihanah. Jadidah, "Pembaruan Hukum Keluarga Di Somalia."

²⁸ Afiful Huda, "Hukum Keluarga Di Negara Jordan," *Studi Pendidikan Dan Hukum Islam* 6 (2020), p. 45.



Post-independence, Somalia tried to make the diversity of law (English Common law, Italian law, Islamic law, and customary law) into one system. Thus, uniform codification of criminal law and criminal procedure is carried out, as well as regulation of the organization of the judiciary by adopting the Italian legal system based on the application of judicial decisions and interpretations of codification law, as well as establishing English common law and equity doctrine in matters not regulated in legislation. Islamic law applies only to cases of marriage, divorce, family disputes and inheritance. While Somali customary law is applied optionally in several cases, namely land, water, planting rights and payment of *diyat*.

At the beginning of the government Siyad Barre promised to apply the concept of a state that is just, has equality and social progress based on what is contained in the Qur'an. However, the longer his term of office goes on, the more distant issues are heard regarding the concept of a state based on the Qur'an. Until finally Siyad Barre announced that Somalia would be oriented to the Soviet Union and make scientific socialism the state ideology. Various policies were made and one of them was the reform of Islamic family law, which from the time the draft was made to the completion and enactment of the law was opposed by the Somali community. They believe that Siyad Barre has a desire to undermine the structure of society in Islam. In Mogadishu (the capital of Somalia) there are 23 religious leaders who voiced their protest against government policies, the protest led to the execution of 10 religious leaders, because they were considered to have violated state security and acted on the influence of foreigners. To prevent this from happening again, the government also provides classes related to scientific socialism training for religious leaders.

The ideology of scientific socialism applied in the Somali inheritance law has a great impact on society. Many people think that Siyad Barre does not like Islam and plans to keep Islam away from the lives of the Somali people. Religious leaders who felt that the family law was not appropriate to be used peacefully protested but was greeted cynically by Siyad Barre and ended in execution. Siyad Barre did not like the existence of an Islamic movement in Somalia, this started at the beginning of the independence period where there were so many



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contemporary Islamic movements with various styles. Several college alumni in the Middle East were pioneers who promoted their Islamic ideas and formed a number of Islamic movements in Somalia. Because of this movement, a radical and moderate Islamic movement was born which is considered a threat in the state order. This is evidenced by the number of activists who put up their bodies and risk their lives to oppose the military-socialist regime.

Since Siyad Barre took office as president, the Muslim community felt that they did not have freedom of religion, the rules were changed, many places of worship were closed, and the Islamic movement was disbanded. So that the Somali people at that time thought that the colonial era was still better than the era of Siyad Barre's reign. The much-anticipated reform of the family law even had a controversial article that sparked protests. These controversial articles are considered very far from the provisions of the Shafi'i school and even have differences with the textual provisions contained in the Qur'an. Like the articles in terms of inheritance and wills below, namely: **First**, Article 141 which says that it is illegal to give a will to an heir without the approval of the other heirs. Meanwhile, for people who are non-heirs, they may get a will with the condition that it should not exceed 1/3 of the inheritance left behind. However, everything is handed over to the other heirs, if they agree, then the will may be carried out even though it exceeds the amount of 1/3 of the existing assets; **Second**, Article 160 paragraph 1 regulates the share per heir, namely the widower (husband) or widow (wife) gets the same share of inheritance, regardless of whether he/she is husband or wife, i.e. they both get 1/2 share of the inheritance if the person concerned dies childless, but if the person concerned dies having children, the widower (husband) or widow (wife) share becomes 1/4 of the inheritance. If there is more than one widow, then the 1/2 or 1/4 share is divided equally; **Third**, Article 160 paragraph 2 contains a provision which states that if the heirs consist of a widower (husband) or widow (wife), mother and father, then the widower or widow gets a share of of the inheritance, while the remaining assets are divided in half between the father and mother; **Fourth**, Article 161 which says that if the person concerned only leaves an only child, the child is entitled to get the entire



share of the inheritance, but if the heir leaves more than one child, the inheritance is divided equally without distinction of gender. And this also applies if all that is left is only grandchildren, he will get all the property if he owns it, and divide the property equally if there are more than one person; **Fifth**, Article 162, if the only heir is the father, then the father has the right to get the entire share of the inheritance, but if the heirs consist of grandfather and children or grandchildren, then grandfather gets 1/6 while children or grandchildren get *ashabah*, this provision also applies to the grandfather's share; **Sixth**, the provisions in article 163 are classified as the same as the provisions in article 162, namely, if the heirs are only one mother, then the mother is entitled to get the entire share of the inheritance, but if the heirs consist of mothers and their children or grandchildren, the mother gets 1/6 of the inheritance. inheritance while children or grandchildren get *ashabah*; **Seventh**, Article 164 contains a provision which states that if the heir is only a brother or sister, then he/she is entitled to all parts of the inheritance, but if the heirs consist of two or more brothers, the property will be divided equally without distinction of both gender types. On the other hand, if the heirs do not only consist of relatives, but there are grandfathers or grandmothers, then the grandfathers or grandmothers get 1/6 of the property, while the rest is the share of the siblings.

The articles above are a series of articles that have received the most attention from religious leaders and the Somali community. Starting from the provisions of the will, which is the right of the heir, which should be entitled to be given to whoever he wants as long as it is not more than 1/3 of the inheritance, but becomes restricted and does not have the freedom to be given to anyone unless he has obtained approval from the heirs. In addition, what makes this even more complex is that it is permissible to give a will more than 1/3 of the inheritance, whereas in the Prophet's hadith it is said that a will may be given as long as it does not exceed 1/3 of the inheritance²⁹, because it is feared that it will make the heirs poor and end up begging others. In addition, regarding the part that does not distinguish between husband

²⁹ Achmad Jarchosi, "Pelaksanaan Wasiat Wajibah," *ADHKI: Journal of Islamic Family Law*, Vol. 2:1 (2020), p. 82.



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or wife, son or daughter, brother or sister, whether of the same age, father or mother, and grandfather or grandmother, this rule is very unreasonable to be accepted and applied. The provisions of the Islamic inheritance law have been regulated in such detail and clearly in the Qur'an, that it is impossible to change them just like that. Because changing it is a form of denial of the Qur'an. The Qur'an is the word of God which must be applied wherever and whenever humans are. So that people must follow what is said in the Qur'an, not the other way around, namely the contents of the Qur'an are changed and adapted to the will of the authorities.

CONCLUSION

Somalia is a country where the majority of the population is Muslim by adhering to the Shafi'i school of thought. Somalia was colonized by two countries namely Britain and Italy. Post-independence, the Somali government is still vacillating and somewhat groping. Finally in October 1969, a coup was carried out and led by Siyad Barre who later took power as The President of Somalia. Chaos has become increasingly common since his reign, starting with the declaration of the scientific socialist concept of the state that he advocated. One by one, the rules began to shift from the understanding of the community which was originally oriented to the Qur'an. And the most memorable thing is, regarding changes to the inheritance law which are far and even contrary to what is stated in the holy book of the Qur'an, such as the share of inheritance for men and women whose share is equalized.

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