

## THE DISTRIBUTION OF CHILDREN'S INHERITANCE IN THE ISLAMIC LAW AND CUSTOM LAW'S PERSPECTIVE

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### **Abstract**

*The families who leave the world forever, especially the parents of children, will leave an inheritance, but inheritance becomes a problem of disputes between children which can cause a rift between blood relatives. This research aims to discuss in legal studies regarding the distribution of child inheritance, as well as discuss the parties entitled to inheritance. The research approach method is in the form of a normative approach to concepts, theory, and law, the research is descriptive analysis in nature, uses library research, and is analyzed using secondary legal materials in the form of books, journals, or laws. The results and conclusions of this study are that the provisions of Islamic inheritance law tend to divide inheritance among as many heirs as possible, by dividing a certain portion among several heirs, while the customary law of distribution is carried out on the principle of harmony on the will of the heirs in a friendly atmosphere.*

**Keyword:** Custom; Inheritor; Islam; Justice.

### **A. INTRODUCTION**

The inheritance law in Indonesia is still very pluralistic (various). In the territory of the Unitary State of the Republic of Indonesia various inheritance law systems apply, namely customary inheritance law, Islamic inheritance law and Western inheritance law as listed in the Burgerlijk Wetboek (BW). This legal diversity is increasingly visible because the applicable customary inheritance law is in fact not single in nature, but also varies according to the form of society and the family system of Indonesian society.<sup>1</sup>

Inheritance is a way of settling legal relations in society, which creates more or less difficulties due to the death of a person. Settlement of rights and obligations as a result of a person's death is regulated by inheritance law. The Indonesian Muslim community is trapped in a difficult condition when faced with the problem of inheritance distribution. On the one hand, they want to apply Islam in a *kaffah* manner, including in the distribution of inheritance, but on the other hand, they feel that there is "injustice" in the distribution of inheritance according to Islam or that society is more familiar with the *faraidh* system.

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<sup>1</sup> Mohammad Yasir Fauzi, Legislasi Hukum Kewarisan DI Indonesia, *Jurnal Pengembangan Masyarakat Islam*, Vol.9, No. 2, 2016, page.54.

In Amir Syariffudin's opinion, he uses the term inheritance law related to *faraidh* science and defines it as a set of written regulations based on the revelations of Allah SWT and the sunnah of the Prophet SAW regarding matters concerning the transfer of assets or tangible assets from those who have died to those who are still alive, which are recognized and believed to still be valid and binding on all Muslims.<sup>2</sup>

According to Islamic law, an heir is someone who dies, leaving either assets or liabilities. In customary law, an heir is someone who has left or has not left property for his descendants. So in customary law the death of a person is not a mandatory requirement in an inheritance.<sup>3</sup>

The science of *faraidh* provides an explanation of the division of inheritance in Islam. The science of *faraidh* itself is a science that has a high position in the eyes of Allah SWT, so that Allah himself determines his measure. The distribution of inheritance can cause jealousy and envy of each heir, both in terms of calculation and fairness in the distribution of inheritance. Therefore it takes accuracy in calculations and fairness in distributing inheritance. Allah SWT orders his people in Q.S An-Nisa: 11-12 to share their wealth according to the Shari'a, because Allah SWT knows what is best for His people.

Talking about inheritance arrangements in Indonesia, there are several sources, the first is in western law, the second is Islamic inheritance law which refers to faraid derived from Islamic jurisprudence and the compilation of Islamic law issued through Presidential Instruction number 1 of 1991 which regulates inheritance in the second book from articles 171 to 214. Meanwhile customary law of inheritance is integrated within customary law which lives in many ethnic groups with patrilinear, matrilinear and bilateral kinship.<sup>4</sup>

The issue of inheritance is important and has always been one of the main subjects of discussion in Islamic law because this is always present in every family and this inheritance problem is vulnerable to problems/conflicts in society due to divisions that are considered unfair or parties who feel disadvantaged. The distribution of inheritance is a problem that is prone to conflict in the family, due to the distribution of inheritance that is unequal or unfair. Factors causing inheritance disputes are the absence of division of inheritance over a long period so that the assets are destroyed and slander arises, this is supported by the ignorance of the heirs and the unilateral control of one of the heirs.

One of the most complicated issues is related to the distribution of parental inheritance to their children or people who have died to people who are entitled to receive it and this often creates problems for family members. It is customary in society for problems to arise usually from the

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2 Achmad Yani, *Faraidh dan Mawaris: Bunga Rampai Hukum Waris Islam*, Jakarta, Kencana, 2016, page. 4

3 Oemar Moechtar, *Perkembangan Hukum Waris Praktk Penyelesaian Sengketa Kewarisan di Indonesia*, Jakarta, Prenadamedia Group, 2019, page. 16.

4 Sulistyowati Irianto, *Pluralisme Hukum Waris dan Keadilan Perempuan*, Jakarta, Yayasan Pustaka Obor Indonesia, 2016, page. 11.

practice of dividing inheritance, because both parties usually feel that there is no justice in the distribution of inheritance.

Inheritance problems often cause problems in everyday life. This problem often arises due to the existence of one of the heirs who is dissatisfied with the distribution of the inheritance he receives. This arises from the greedy nature of humans who desire to always get more than what has been obtained. To get the inheritance following the amount desired, the heirs take all possible ways to achieve their goals, both through legal means and employing breaking the law.

The regulation regarding inheritance law is one of the arrangements that are quite complicated and we often encounter problems in everyday life. The unfair division of inheritance often creates conflicts between relatives and families which then lead to disputes in court. For this reason, we need to understand a little about the arrangements regarding inheritance law in Indonesia. It would be better if the issue of inheritance rights is not brought to court if Muslims are mutually aware and believe that there is an aspect of justice in Islamic law.

Unfair distribution of inheritance is a problem that can be experienced by anyone, including Muslims. Whereas in the Al-Quran, Allah SWT has provided guidelines for the distribution of fair inheritance. Islam has regulated the share of each heir to bring about justice for mankind. Regarding the distribution itself, it has been stated through the verses of the Al-Quran, Sunnah, and Ijtihad. Heirs who feel aggrieved to obtain their inheritance rights can file a lawsuit with the District Court.

The cause of family conflict in terms of inheritance can be caused by a lack of knowledge so that the heirs do not understand what their rights or obligations are towards the inheritance. A lack of knowledge can also make it difficult to reach an agreement on inheritance distribution. Moreover, if the new inheritance will be divided after passing through the next several generations, it will cause complications in determining the legal heirs and calculating the parts. Conflicts between heirs also often occur due to selfish attitudes that want to win alone in getting the biggest or best share of the inheritance.

The problem in this research is the unfair distribution of inheritance in the community, especially the distribution of inheritance by children. This study aims to examine the law of inheritance how it is divided according to Islamic law and customary law governing in Indonesia.

## **B. RESEARCH METHODS**

The approach method used in this study is to use a normative approach, meaning an approach based on legal concepts and theories in the distribution of inheritance. This research is descriptive analysis in nature, namely research that studies the problem of dividing children's inheritance according to the legal provisions governing inheritance by using the concept of legal justice. While the type of research used is library research, namely by collecting references related to the division of children's inheritance to obtain legal justice. The references used are in the form of books, journals,

scriptures, and laws and regulations. In analyzing the data and material presented by the researcher using qualitative analysis, the researcher tries to analyze the legal provisions in the distribution of inheritance to obtain legal justice.

## C. RESULT AND DISCUSSION

### 1. Distribution of Children's Inheritance According to Islamic Law

Islamic law has laid down the rules of inheritance and laws regarding property as well as possible and as fair as possible. Because Islam stipulates a person's property rights over property, both men and women such as transferring property to his heirs after he dies. In Islamic law, the distribution of inheritance will be divided after cleaning from the management of the remains, debts, zakat, and wills, the debts of the heir as liabilities from the inheritance. Likewise in terms of the share of each heir, Islamic law distinguishes between male and female heirs.<sup>5</sup>

Inheritance law (*fiqh Mawaris*) has determined that the share of inheritance between sons and daughters has a different ratio. In Q.S. An-Nisa verses 11 and 12 have determined the law of inheritance which is clear and easy to understand regarding the parties entitled to inherit and the inheritance of each heir. In Q.S. An-Nisa Verse 11 has clearly stated the division of inheritance between sons who receive an inheritance share that is twice as large as that of daughters.<sup>6</sup>

The division of inheritance based on Islamic law is called *Faraidh*. This distribution of inheritance is based on the Al-Quran Surah An Nisaa verse 11 which reads: "Allah has decreed for you regarding (the distribution of inheritance for) your children. Namely: the share of one son is equal to that of two daughters; 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, for each 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 have been fulfilled by the will he made or (and) after the debt has been paid."<sup>7</sup>

The position of girls in Islamic inheritance law is the same as boys, they can wear the *hijab*, both male and female. Grandchildren of Pancar or descendants of sons have the same position as grandchildren of Pancar or descendants of daughters, both are heirs to the *Zawil Furudh* class, not *Zawil Arham* and both can spend assets or as recipients of *asabah*. In Islamic inheritance law, daughters are entitled to

5 Afidah Wahyuni, Sistem Waris Perspektif Islam dan Perundang-Undangan Di Indonesia, *SALAM: Jurnal Sosial & Budaya Syar-i*, Vol. 5, No. 2, 2018, page. 158.

6 Endah Amalia, dan Ashif Az Zafi, Penyetaraan Gender Dalam Hal Pembagian Warisan, *Ahkam Jurnal Hukum Islam*, Vol. 8, No. 2, 2020, page. 227.

7 Fitria Agustin, Hasuri, dan Najmudin, Kedudukan Hukum Islam Dalam Pelaksanaan Waris Di Indonesia, *Mizan Journal of Islamic Law*, Vol. 6, No. 1, 2022, page. 112.

$\frac{1}{2}$  (half) a share and if the daughters are two or more people, then they form a partnership (together) and get  $\frac{2}{3}$  (two-thirds) of the inheritor's inheritance.<sup>8</sup>

The problem of dividing inheritance among heirs according to Islam is something that must be done immediately after the obligations of the heirs to the heirs are fulfilled, such as funerals, settling debts, or carrying out the heir's will. Provisions in Islam the distribution of inheritance will be carried out as soon as possible after the burial ceremony. Usually at night after the burial, the family will summon religious leaders to witness and give directions on how inheritance is divided according to Islam.<sup>9</sup>

Islamic inheritance law divides heirs into two types, namely: Nasabiyah heirs, namely heirs whose kinship arises because of blood relations. So because nasab shows a family relationship between the heir and the heirs and heirs of sababiyah, namely the inheritance relationship that arises because of a legal marriage and frees slaves or because of an agreement to help each other. The size of the portion received for each heir can be described as follows. The division of inheritance in Islam has been clearly defined in the Qur'an Surah an-Nisa' and it can be concluded that there are 6 types of percentage distribution of inheritance, namely there are parties who get half ( $\frac{1}{2}$ ), a quarter ( $\frac{1}{4}$ ), one-eighth ( $\frac{1}{8}$ ), two-thirds ( $\frac{2}{3}$ ), one-third ( $\frac{1}{3}$ ), and one-sixth ( $\frac{1}{6}$ ).<sup>10</sup>

In the An-Nisa letter, the division of inheritance has provisions, for the husband to get  $\frac{1}{2}$  of the property left by his wife if he does not have children, and  $\frac{1}{4}$  part if he has children after fulfilling the will made and after paying his debts, the wife gets  $\frac{1}{4}$  of the property left by the husband if you don't have children and  $\frac{1}{8}$  part if you have children after fulfilling a will and paying off debts. If someone dies (male/female) who does not leave father and children, but has a brother or sister (only one mother) then for each of them they get  $\frac{1}{6}$  of the property, but if more than one then partners in  $\frac{1}{3}$  after fulfilling the will and paying the debt by not giving harm (to the heirs).<sup>11</sup>

Islamic inheritance law tends to distribute inheritance to as many heirs as possible, by distributing a certain portion to several heirs. For example, if the heirs consist of a father, mother, husband, or wife and children, they are all entitled to the inheritance. Islamic inheritance law distinguishes the size of a certain part of the heir according to his needs in everyday life, besides looking at his close relationship with the

8 Iman Jauhari, Kedudukan Dan Hak-Hak Anak Perempuan Dalam Hukum Kewarisan Islam, *Konfrontasi Journal: Culture, Economy, and Social Changes*, Vol. 3, No. 2, 2016, page. 16.

9 Agus Sudaryanto, Aspek Ontologi Pembagian Waris Dalam Hukum Islam Dan Hukum Adat Jawa, *Mimbar Hukum*, Vol. 22, No. 3, 2010, page. 539.

10 Anang Hadi Kurniawan, dan Ade Darmawan Basri, Analisis Terhadap Pembagian Harta Warisan Ditinjau Dari Hukum Perdata Dan Hukum Islam, *Alauddin Law Development Journal (ALDEV)*, Vol. 2, No. 2, 2020, page. 260.

11 Ahmad Ridho Habibie, Ahmad Saufi, dan Tri Bagus Saputra, Hukum Pembagian Warisan Dalam Islam Dengan Hitungan Pecahan Matematika. *Religion: Jurnal Agama, Sosial, dan Budaya*, Vol. 1, No. 1, 2023, page. 16.

deceased (heir). The specific parts of the treasure are  $\frac{2}{3}$ ,  $\frac{1}{2}$ ,  $\frac{1}{3}$ ,  $\frac{1}{4}$ ,  $\frac{1}{6}$ , and  $\frac{1}{8}$ . These provisions include things that are ta'abbudi in nature, which must be carried out because it has become a provision of the Qur'an surat An Nisaa' verse 13, the existence of provisions on the part of the heirs that are ta'abbudi is one of the characteristics of Islamic inheritance law.<sup>12</sup>

Inheritance according to KHI is regulated in article 176, concerning the size of the share. If there is only one daughter, she gets half the share, if two or more people, they jointly get two-thirds of the share, and if the girl is with the son, then the son's share is two to one of the daughter's.<sup>13</sup>

Heirs in Islamic law are broadly divided into three major groups, namely:<sup>14</sup>

- a. Heirs according to the Qur'an or those that have been determined in the Qur'an are called dzul farâ'idh so that their share remains certain and does not change forever;
- b. Heirs drawn from the father's line are called *asabah*, namely, the class of heirs who get an open or remaining portion. So, the part of the heir that is first issued is dzul farâ'idh, after that the rest is given to the ashabah;
- c. The heir according to the mother's line is called dzul arhâm. This group will only inherit if there is no dzul farâ'idh and no ashabah.

Important things must be considered before the assets are distributed to heirs who are entitled to inherit, namely:<sup>15</sup>

- a. All costs related to the burial of the corpse, this is related to the interests of the deceased, in this case, other costs for organizing the funeral, the costs must not be too excessive, within the limits permitted according to Islamic teachings;
- b. A will from a person who died, a will is the last will of the deceased regarding his inheritance which might bring goodness at the end of his life. In today's practice, a will is made in the form of an authentic deed, which is made notarially, made before a notary, or stored in a notary's protocol;
- c. Debts left by the deceased, in this case, related to the rights of creditors who have provided loans to the dead during his lifetime which the deceased has not had time to pay off, this debt must be paid off first before the inheritance is distributed to the heirs.

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12 Saifullah Basri, Hukum Waris Islam (Fara'id) dan Penerapannya dalam Masyarakat Islam, *Jurnal Kepastian Hukum dan Keadilan*, Vol. 1, No. 2, 2020, page. 41.

13 Isniyatin Faizah, Sivana, dan Febiyanti Utami, Bagian Ahli Waris Laki-Laki Dan Perempuan Dalam Kajian Hukum Islam, *The Indonesian Journal of Islamic Law And Civil Law*, Vol. 2, No. 2, 2021, page. 169.

14 Adelina Naasution, Pluralisme Hukum Waris Di Indonesia, *Al-Qadha: Jurnal Hukum Islam Dan Perundang-Undangan*, Vol. 5, No. 1, 2019, page. 26.

15 Sarjiyati, Pembagian Warisan Menurut Hukum Islam, *DAYA-MAS : Media Komunikasi Hasil Pengabdian dan Pemberdayaan Masyarakat*, Vol. 4, No. 1, 2019, page. 4.

## 2. Distribution of Children's Inheritance According to Customary Law

Customary inheritance law on inheritance can be indivisible or the implementation of the distribution is postponed for a long time or only part of it is divided. Customary inheritance law gives adopted children the right to support from the assets left by their adoptive parents. In customary inheritance law, the division is a joint action, running in harmony in a friendly atmosphere with due regard to the special circumstances of each heir. Girls, especially in Java, if there are no sons, can claim the right to share in the inheritance of their grandparents and their parents' siblings.<sup>16</sup>

Efforts to unify inheritance law into one national inheritance law will have an impact on the disintegration of the nation. Therefore the national inheritance law consists of customary inheritance law and Islamic inheritance law, where customary inheritance law consists of the inheritance law of each indigenous people. Related to the problem of inheritance is the law of kinship. The inheritance system of indigenous peoples is strongly influenced by the structure of the affinity they adhere to. In a society that takes lineage based on the arrangement of matrilineal ties, the inheritance system will be different from that of patrilineal and parental societies. Because national inheritance law is the inheritance law of each indigenous people, the existence of kinship law or family law cannot be separated from customary inheritance law.<sup>17</sup>

Customary inheritance law does not recognize legitimate portie, but customary inheritance law establishes the basis of equal rights, these equal rights contain the right to be treated equally by their parents in the process of forwarding and transferring family property. Inheritance may not be divided by heirs. In addition to the basis of equal rights, customary inheritance law also lays the basis of harmony in the process of implementing the distribution in harmony with due regard to the special circumstances of each heir. Customary inheritance law is known as an inheritance replacement system.<sup>18</sup>

The most important thing to note, in customary law the children of the heir are the most important class of heirs because they are the only class of heirs. So, with children, the possibility of other family members of the heir to become the heir is closed. If the inheritance cannot be carried out in descending order, the inheritance can be carried out in an upward manner. If there is no upwards, go to the side. This means that if there are no children, the inheritance will go to the father, grandmother, and so on and up.<sup>19</sup>

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16 Rahmat Haniru, *Hukum Waris Di Indonesia Perspektif Hukum Islam Dan Hukum Adat*, *AL-HUKAMA: The Indonesian Journal of Islamic Family Law*, Vol. 4, No. 2, 2014, page. 471.

17 Lastuti Abubakar, *Revitalisasi Hukum Adat Sebagai Sumber Hukum Dalam Membangun Sistem Hukum Indonesia*, *Jurnal Dinamika Hukum*, Vol. 13, No. 2, 2013, page. 326.

18 Ellyne Dwi Poespasari, *Pemahaman Seputar Hukum Waris Adat Di Indonesia*, Jakarta, Prenadamedia Group, 2018, page. 9.

19 N.M. Wahyu Kuncoro, *Waris: Permasalahan Dan Solusinya*, Jakarta, Raih Asa Sukses, 2015, page. 15

The existence of customary law is one of the laws that is used as a reference and basis in the process of dividing inheritance. The existence of children in the distribution of inheritance has a very important position, where the existence of children will directly cause the process of inheritance between parents to their children. The existence of customary law must be maintained and preserved as culture and noble values that develop and grow as a standard in people's lives.

Distribution of inheritance in customary inheritance law, namely:<sup>20</sup>

- a. Patrilineal System
  - 1) The wife as the heir, there is no heir;
  - 2) The husband is the heir, and the heir is a son, but in certain areas, the heir is the eldest son (Bali, Lampung, which is in the kingdom, Yosudarso Bay, and Jayapura).
- b. Matrilineal System
  - 1) The wife is the heir, the heir is a daughter;
  - 2) The husband is the heir, the heir is the husband's sister.
- c. Parental or Bilateral System.
  - 1) The wife is the heir, and the heirs are sons and daughters;
  - 2) The husband is the heir, the heirs are sons and daughters;
  - 3) Specialization;
    - a) For Gresik, Madura, and Tuban areas, if the wife or husband is the heir, then the heirs are sons: daughters = 2:1;
    - b) For the Sidoarjo and Malang regions, the heirs are sons : daughters = 1:1;
    - c) For the Java region, if the heir is the husband, then the heir is the son, and if the heir is the wife, then the heir is the daughter.

Customary inheritance law is known as the principle of deliberation and consensus, that is, the heirs share their inheritance through deliberations led by the heirs who are older and if there is an agreement in the distribution of inheritance, the agreement is sincere which is put forward in good words and comes out of the conscience. The distribution is carried out based on harmony and consensus by the mutual will of the heirs in a friendly atmosphere by taking into account the special circumstances of each heir. Usually, the division is with the knowledge of all the boys and girls.<sup>21</sup>

One example of the distribution of inheritance according to custom is the division of inheritance in the Sundanese customary community generally divided into 2 kinds of ways which are distributed to the younger generation, namely:<sup>22</sup>

20 Suaidin Naim, Penerapan Asas Proporsionalitas Pembagian Warisan Dalam Hukum Adat, *Al-Ittihad: Jurnal Pemikiran dan Hukum Islam*, Vol. 2, No. 2, 2016, page. 87.

21 Akhmad Haries, Analisis Tentang Studi Komparatif Antara Hukum Kewarisan Islam Dan Kewarisan Adat, *Fenomena*, Vol. 6, No. 2, 2014, page. 226.

22 Anwar Hidayat, Deny Guntara, dan M. Garry Gagarin Akbar, Kajian Perbandingan Dalam Pembagian Waris Berdasarkan Pada Hukum Islam Dan Hukum Adat, *Jurnal Justisi Hukum*, Vol. 3, No. 1, 2018, page. 99.



- a. The division before the death of the older generation means that the older generation refers to the fathers and mothers of the younger generation. Distribution before the death of the older generation is done by agreement between the husband and wife. Inherited assets are distributed equally among their children, this division does not look at gender, for example, a son gets one while a daughter gets half. If the distribution has been determined by the size and amount of the inheritance, then the legal documents will be drawn up and arranged at the village administration;
- b. Distribution after the death of the old generation, namely the distribution is carried out if both parents, mother, and father inherit after death. If only the mother dies, the division cannot be made, if the father dies while the mother is still alive, then the right to power over all falls to the mother (wife) and this governs everything regarding the assets of the husband who died.

In general, the distribution of inheritance according to customary law in Indonesia takes two forms, namely the inheritance is distributed when the heir is still alive and the inheritance process is carried out after the heir dies. In addition to kinship or kinship which is a system of dividing inheritance according to customary law in Indonesia, other systems are oriented towards the nature of ownership of inherited assets after being passed on by heirs, namely:<sup>23</sup>

- a. The individual inheritance system, characterized by the inheritance property can be divided among the heirs as in the bilateral community in Java;
- b. The collective inheritance system, is characterized by the inheritance of the inheritance by a group of heirs who together constitute a kind of legal field in which the property, which is called an inheritance, may not be divided among the intended heirs and may only be distributed to the user (only have use rights) as in the matrilineal society in Minangkabau;
- c. The mayoral inheritance system, characterized by the inheritance of all or part of the children, is the case in Bali where there is a mayoral right for the eldest son, and in Tanah Semendo, South Sumatra, where there is a mayoral right for the eldest daughter.

### **3. Legal Justice in Obtaining Inheritance**

The word justice is found in the Qur'an and has a very important position in the Islamic legal system, including the law of inheritance in it. The Islamic teaching system of justice is the starting point for the process and purpose of all human actions. With the material regulated in inheritance law, justice can be interpreted as a balance between rights and obligations, a balance between what is obtained with its needs and

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<sup>23</sup> Wasikoh Soleman, Saharuddin Ambo, dan Malpha Della Thalita, *Fiqh Mawaris Dan Hukum Adat Waris Indonesia*, *Al-Mujtahid: Journal of Islamic Family Law*, Vol. 2, No. 2, 2022, page. 99.

uses.<sup>24</sup>

Justice in inheritance law, especially Islamic inheritance law is one of the urgent principles in Islamic inheritance law, which is concluded from an in-depth study of the basic principles contained in the law regarding inheritance. The principle of justice in Islamic inheritance law implies that there must be a balance between the rights obtained from inherited assets and the obligations or burdens of life that must be borne/carried out by the heirs. Therefore, the meaning of justice in Islamic inheritance law is not measured by the similarity in the level of acceptance among heirs but is determined based on the size of the burden or responsibility assigned to them, in terms of the general condition or human life.<sup>25</sup>

The word fair to material rights, especially regarding inheritance. Fairness in the distribution of inheritance in Islamic law is defined as a balance between rights, obligations, and a balance between what is obtained with needs and uses. Based on the above understanding, it can be seen that the principle of justice in the distribution of inheritance is in Islamic law. Fundamentally it can be said that gender differences do not determine inheritance rights in Islam. This means that both men and women have the same strong right to inherit.<sup>26</sup>

In terms of the number of shares received when receiving the rights, there are indeed differences. However, this does not mean it is unfair, because justice in the Islamic view is not only measured by the amount obtained when receiving inheritance rights but also related to uses and needs. In general, it can be said that men need more materials than women. This is because men in Islamic teachings bear a double obligation, namely for themselves and for their family, including women.<sup>27</sup>

Justice according to Aristotle, namely cumulative justice, is defined as the treatment of someone who does not see the services he does, that is, everyone gets his rights. The application of cumulative justice is seen in the equal distribution of inheritance regardless of gender and the services of certain parties for class one, class three, and group four to the sixth degree. While distributive justice is the treatment of a person according to the services that have been made, that is, each person gets the capacity with their potential. The application of distributive justice can be seen in the distribution of inheritance to the second class, in which the father's and mother's share cannot be less than a quarter of the inheritance because they consider the great services both of them have for their children.<sup>28</sup>

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24 Suryati, *Hukum Waris Islam*, Yogyakarta, Penerbit ANDI, 2017, page. 39.

25 Hafidz Taqiyuddin, Argumen Keadilan Dalam Hukum Waris Islam, *Waratsah: Jurnal Ilmu-Ilmu Keislaman dan Sosiolinguistik*, Vol. 1, No. 1, 2015, page. 174.

26 Amir Syarifuddin, *Hukum Kewarisan Islam Edisi Kedua*, Jakarta, Kencana, 2011), page. 26.

27 Fadlih Rifenta, dan Tonny Ilham Prayogo, Nilai Keadilan Dalam Sistem Kewarisan Islam, *Al-Manāhij: Jurnal Kajian Hukum Islam*, Vol. 13, No. 1, 2019, page. 118.

28 M. Nasikhul Umam Al-Mabruri, Keadilan Pembagian Harta Warisan Perspektif Hukum Islam Dan Burgerlijk Wetboek, *Al-Mazahib*, Vol. 5, No. 1, 2017, page. 127.

Concerning the principle of justice in Islamic inheritance law, there is often distrust of the existence of justice contained in Islamic inheritance law. This, according to Amin Suma, can occur for several reasons, namely: first; gives the meaning of the word fair with only one meaning, namely as much or the same. Second; those who reject Islamic inheritance laws think that reason is capable of solving all problems, including complex issues that contain secrets that reason cannot reach, such as the unequal distribution of rights in receiving inheritance.<sup>29</sup>

Islamic inheritance law, the inheritance received by the heirs from the heirs is essentially a continuation of the heir's responsibilities towards his family. Therefore, the portion received by each heir must be balanced with the differences in their respective responsibilities towards their families. Understandably, the sense of justice in Islamic law in inheritance is that the son's share is twice that of the daughter based on differences in responsibilities, in essence, each of them feels the same benefit from the difference in distribution.<sup>30</sup>

Age is also not a determining factor in the distribution of inheritance. In terms of immediate needs, namely when receiving rights, it can be seen that the equality in the number of receipts between the large and the small is not fair, but the view of the needs is not when the distribution of inheritance takes place but for a long time until adulthood, the small ones need material as many as adults. If it is related to the magnitude of the needs of adults with the duration of the needs for immature children and it is also linked to the same acquisition of inheritance rights, then the result is that both of them will get the same level of benefits for what they receive.<sup>31</sup>

Islamic Shari'a lays down inheritance law to regulate the distribution of inheritance to achieve justice for all heirs who are entitled, both men and women and children or adults. The science of faraidl has provided detailed limits on the share levels for each heir which are globally divided into three categories, definite (*fardl*), soft (*ta'shib*), or kinship (*dzu rahm*) parts, and besides that, obstructed conditions (*hijab*), and haram to inherit (*man'u min al-irts*).<sup>32</sup>

Justice that is realized for non-Muslim heirs is more of a substantive justice. Although according to statutory regulations non-Muslim heirs are not entitled to inherit from Muslim heirs, non-Muslim heirs are still entitled to a share of the inheritance from Muslim heirs, the same as other Muslim heirs, even though they are recipients of a mandatory will, and not as heirs. This is under Aristotle's distributive

29 Hafidz Taqiyuddin, *Hukum Waris Islam Sebagai Instrumen Kepemilikan Harta, Asy-Syari'ah*, Vol. 22, No. 1, 2020, page. 15.

30 Nur Lailatul Musyafaah, *Filsafat Kewarisan Dalam Hukum Islam, Al-Qānūn: Jurnal Pemikiran dan Pembaharuan Hukum Islam*, Vol. 20, No. 1, 2018, page. 72.

31 Maryati Bachtiar, *Hukum Waris Islam Dipandang Dari Pespektif Hukum Berkeadilan Gender, Jurnal Ilmu Hukum*, Vol. 3, No. 1, 2012, page. 39.

32 Mohammad Syifa Urrosyidin, Mohammad Syamsul Arifin, dan Devid Frastiawan Amir. *Esensi Keadilan Dalam Ilmu Waris Islam, Ijtihad: Jurnal Hukum dan Ekonomi Islam*, Vol. 15, No. 2, 2021, page. 270.

justice, but the basis of rights is not the services that have been performed, but the existence of a family relationship, either by lineage or marriage, with the heir.<sup>33</sup>

#### **D. CONCLUSION**

The division of inheritance based on Islamic law is called *Faraidh*. Islamic inheritance law tends to distribute inheritance to as many heirs as possible, by distributing a certain portion to several heirs. For example, if the heirs consist of a father, mother, husband, or wife and children, they are all entitled to the inheritance. The distribution of inheritance in customary law is carried out on the principle of harmony and consensus by the mutual will of the heirs in a friendly atmosphere with due regard to the special circumstances of each heir. Usually, the division is with the knowledge of all the boys and girls. In addition to kinship or kinship which is a system for dividing inheritance according to customary law in Indonesia, other systems are oriented towards the nature of ownership of inherited assets after they have been passed on by heirs.

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