

The Concept of Justice in the Distribution of Inheritance from the Perspective of Islamic Legal Philosophy

Fatimah Zahara¹⁾ & Syahrini Harahap²⁾

¹⁾Universitas Islam Negeri Sumatera Utara, Medan, Indonesia, E-mail: fatimahzahara@uinsu.ac.id

²⁾Universitas Islam Negeri Sumatera Utara, Medan, Indonesia, E-mail: syahriniharahap08@gmail.com

Abstract. *This paper aims to explain the concept of justice in inheritance law from an Islamic perspective. The first knowledge that was lost among Muslims was the knowledge of inheritance, as conveyed by the Prophet Muhammad PBUH. Not only that, there is an attempt to undermine the order of inheritance law in Islam. In the Quran, it is explained that the distribution of inheritance property has 2 provisions, namely mitslu hadzl al-untsayain (two to one) and furudhul al-muqaddarah with numbers 1/2, 1/3, 1/4, 1/6, 1/8, 2/3, this provision is part of the principle of justice. In Islamic legal philosophy, the concept of justice is formulated in maqashid al-syari'ah formulated by al-Syatibi, that the law based on justice is determined by maslahat which is divided into three, namely dharuriyyat, hajiyyat, and tahsiniyyat. This indicates that Islam is very concerned with the issue of justice. The conception of justice will continue to develop in line with social development. This type of research is library research, which is a research that focuses on literature by analyzing the content of some literature related to research from both primary and secondary sources. Then analyze how the concept of justice in the distribution of inheritance from the perspective of Islamic legal philosophy. The result of the discussion is that the meaning of justice in Islamic inheritance law must follow the provisions of Allah swt. not equal distribution. Behind the distribution of inheritance in Islam contains justice that is universal in terms of theology, economics, social, and economic.*

Keywords: Justice; Mawaris; Philosophy of Islamic Law.

1. INTRODUCTION

Diversity of Justice is a key feature of Islamic teachings. Every Muslim will receive the same rights and obligations. Based on the nature of human beings, which is the same degree between one believer and another and the only difference is the level of piety of each believer. Justice is the norm of life that everyone yearns for in their social life order. Social institutions called states as well as international institutions and organizations that gather countries also seem to have the same vision and mission towards justice, although their perceptions and conceptions may differ on the issue. Justice is a relative concept. The scale of justice varies greatly from one country to another, and each scale of justice is defined and determined by society in accordance with the social order of the society concerned.

The Qur'an as the main source of Islamic teachings, mentions justice a lot. The word al-Adl, in its various forms, is mentioned 28 times, the word al-Qisth in its various shighahs is

mentioned 27 times, and the word al-Mizan, which contains meanings relevant to both, is mentioned 23 times.¹

The many verses of the Qur'an that discuss justice show that Allah is the source of justice and has commanded justice in this world to His Messengers and all His servants. Although there is not a single Qur'anic verse that explicitly shows that al-'Adl is an attribute of Allah, there are many verses that explain His justice.² Therefore, in the study of al-Asma al-Husna, al-'Adl is one of Allah's asmas, precisely the 30th of the 99 al-Asma al-Husna.

One of the areas that really requires the role of justice is the issue of the distribution of inheritance. Through the Quran, Sunnah, and Ijtihad Sahabat, the share of each heir is determined with the aim of realizing justice in society. Even with very clear and perfect rules, Allah determines the distribution fairly and with wisdom.³ He stipulated this with the aim of realizing justice in people's lives, eliminating injustice in their lives, closing the space for the perpetrators of injustice, and not allowing complaints against those who do not get their rights in inheritance. This can be clearly seen in QS. an-Nisa' [4]: 7 that Allah swt. emphatically eliminates the form of injustice that usually befalls two types of weak human beings, namely women and children.⁴ He supports both of them with mercy and wisdom and with full justice, namely by restoring their full inheritance rights.

One type of conflict that is quite familiar today is related to the issue of inheritance. The issue of *mawaris* has been quite clearly explained in various sources of law, both from the sources of Islamic law and positive law. Starting from who is entitled and not entitled to become heirs and the size of the share of each heir. However, most Indonesian people in terms of *mawaris* use or apply customary law.

The division of inheritance using customary law certainly has different types of rules according to customary beliefs. Some prioritize the share for sons, some prioritize the share for daughters, and there are even customary rules that do not apply one of the children as heirs, maybe sons or daughters.

Seeing the many types of regulations regarding *mawaris* outside of Islamic law and positive law, causes frequent disputes between the heirs. This dispute is caused by a lack of justice in the amount of distribution, not in accordance with the requirements as an heir or because of the element of fraud, and several other reasons. But among the several types of triggers of problems in *mawaris* among the community is the distribution of inheritance. This matter is very natural to occur because of the human nature that feels dissatisfied with the part that has been determined as if it seems to want to supervise the entire inheritance.

Looking at today's reality, there are efforts to undermine the order of Islamic inheritance law that Allah has set. The reality encountered in the community in the form of deviations from the *faraid* law is the reason for the permissibility of modifying or adjusting the provisions that have been clearly outlined by the Qur'an.⁵ This is because it is related to the sociological dimension, which is the economic structure of society. Therefore, the quantity of distribution can and may change based on the principles of justice and adjustments to the sociological dimension.⁶

¹ Muhammad Fuad Abd al-Baqi, (1987), *al-Mu'jam al-Mufahras li Al-Fadh al-Qur'an al-Karim*, Bairut: Dar al-Fikr, p. 448-449 dan 544-545

² M. Quraisy Shihab, (2000), *Wawasan Islam, Mizan*, Bandung: Mizan, p. 149.

³ Zamakhshari, (1407 H), *al-Kasyaf 'an Haqâiq Ghawâmid al-Tanzil*, Vol. 2, Beirut: Darul Kutub al-Arabi, Vol. 2, p. 629.

⁴ Al-Baghawi, (1420 H), *al-Ma'âlim al-Tanzil fi Tafsîr al-Quran, al-Muhaqqiq Abdurrazak al-Mahdi*, Beirut: Darul Ihya' Turats al-Arabi, Vol. 1, hlm, 572.

⁵ Munawir Sjadzali, (1995), *Kontekstualisasi Ajaran Islam*, Jakarta: IPHI/PARAMADINA, p. 90.

⁶ Tutik Hamidah, (2011), *Fiqih Perempuan Berwawasan Keadilan Gender*, Malang: UINMaliki, p. 140.

Ironically, will take precedence over inheritance, because they have the potential to realize justice and have effectiveness in the utilization of property and the development of social relations and family relationships.⁷ Seeing the fundamental differences of justice in inheritance law above, this paper aims to explain and analyze the concept of justice in inheritance law in terms of Islamic legal philosophy to answer contradictory arguments in determining the form of justice in terms of theology, economics, and social.

2. RESEARCH METHODS

This type of research is library research, which is a research that focuses on literature by analyzing the content of some literature related to research from both primary and secondary sources.⁸ The next step is to analyze how the concept of justice in inheritance law is viewed from the philosophy of Islamic law. The purpose of this research is to reveal and explore the values of Islamic legal philosophy.

3. RESULT AND DISCUSSION

3.1 Conception of Inheritance in Islam

In Islam, the provisions on the division of inheritance receive great attention because the division of inheritance often causes unfavorable consequences. The parts of the inheritance to which the heirs are entitled have also been specified in detail in the Qur'an.⁹ The provisions regarding the division of inheritance are called the science of fara'id. The word fara'id is the plural form of the word faridah which comes from the word fardu which means decree, giving (alms).¹⁰

According to Article 171 letter (a) of the Compilation of Islamic Law, inheritance is a law that regulates the transfer of ownership rights of the heir's estate (tirkah), determining who is entitled to become heirs and how much their respective shares are. In a more general context, inheritance can be defined as the transfer of material rights from a deceased person to his living heirs.¹¹ Therefore, it is only rights and obligations that take the form of property that constitute inheritance and that will be inherited.

Islamic Shari'a has made provisions regarding inheritance that are very good, wise and fair. These provisions relate to the transfer of property owned by someone who is left after death to his heirs, both female heirs and male heirs. The provisions on inheritance law are sourced from QS. An-Nisa' (4) verse 11:

يُوصِيكُمُ اللَّهُ فِي أَوْلَادِكُمْ لِلذَّكَرِ مِثْلُ حَظِّ الْأُنثِيَيْنِ ۚ فَإِن كُنَّ نِسَاءً فَوْقَ اثْنَتَيْنِ فَلَهُنَّ ثُلُثَا مَا تَرَكَ ۚ وَإِن كَانَتْ وَاحِدَةً فَلَهَا النِّصْفُ ۚ وَلِأَبَوَيْهِ لِكُلِّ وَاحِدٍ مِّنْهُمَا السُّدُسُ مِمَّا تَرَكَ إِن كَانَ لَهُ وَلَدٌ ۚ فَإِن لَّمْ يَكُنْ لَهُ وَلَدٌ وَوَرِثَتْهُ أَبَوُهُ فَلِأُمِّهِ الثُّلُثُ ۚ فَإِن كَانَ لَهُ إِخْوَةٌ فَلِأُمِّهِ السُّدُسُ ۚ مِن بَعْدِ وَصِيَّةٍ يُوصِي بِهَا أَوْ دِينٍ ۗ وَأَبَاؤُكُمْ وَأَبْنَاؤُكُمْ لَا تَدْرُونَ أَيُّهُمْ أَقْرَبُ لَكُمْ نَعْمًا ۚ فَرِيضَةٌ مِّنَ اللَّهِ ۚ إِنَّ اللَّهَ كَانَ عَلِيمًا حَكِيمًا (١١)

Meaning: Allah has prescribed for you the division of inheritance for your children: a son's share is equal to the share of two daughters. If the children are all daughters and there are more than two of them, their share is two-thirds of the property left behind. If she (the daughter) is only one, she gets half (of the property left). For both parents, a share of one-

⁷ Muhammad Syahrur, (2008), *Metodologi Fiqh Islam Kontemporer, Terj Sahiron Syamsuddin & Buhanuddin*, Yogyakarta: eLSAQ Press, p. 321.

⁸ Maklonia Meling Moto, (2019), Pengaruh Pengguna Media Pembelajaran dalam Dunia Pendidikan, *Indonesian Journal of Primary Education*, Vol.3, No. 1, p. 20-28.

⁹Ahmad Rofiq, (1995), *Hukum Islam di Indonesia*, Jakarta: PT. Raja GrafindoPersada, p. 355.

¹⁰ Louis Makluf, (1986), *Al-Munjid fi al-Lughah wa Al-I'lam*, Beirut: Dar asyriq, p. 577.

¹¹ Ahmad Rofiq, (2002), *Fiqh Mawaris*, Jakarta : PT Raja GrafindoPersada, p. 4

sixth each of the property left behind, if he (the deceased) has children. If he (the deceased) has no children and he is inherited by his parents (only), his mother gets a third. If he (the deceased) has several brothers, his mother gets a sixth. (The inheritance is divided) after (fulfilling) the will he made or (and paying off) his debts. (As for your parents and your children, you do not know which of them will benefit you more; this is the decree of Allah. Verily, Allah is the All-Knowing, the All-Wise.

In this verse Allah provides information about the share of each heir when the heir has died. In addition to the verses mentioned above, Quranic verses relating to Islamic inheritance law are found in QS. an-Nisa' (4) verses 7, 8, 12, 33, 176, 180 and 240. While the verse relating to the position of adopted children in terms of inheritance is found in QS. al-Azhab (33) verse 4. Each legal device has its own principles or principles, no exception in Islamic inheritance law. In inheritance law, 5 principles are known, namely:

1. The principle of *ijbari*. In Islamic law, the transfer of property from a deceased person to a living person takes effect by itself without the effort of the deceased or the will of the one who will receive. This way of transferring property is called *ijbari*. Heirs immediately accept the fact of moving the testator's property to him in accordance with a predetermined amount.
2. Bilateral principle, namely that people who receive inheritance from both sides of the relatives, namely relatives of the male line and also relatives of the female line. In verse 7 of surah an-Nisa it is explained that a man and a woman are entitled to inheritance from his father's side and also from his mother's side.
3. Individual principle, namely that the property left behind by the dead person is directly divided into each heir. This individual division is based on the provision that every human being as a person has the ability to carry out his rights and obligations. Thus, the inheritance that has been divided in accordance with the stipulated provisions belongs to the heirs.
4. The principle of balanced justice, namely male and female heirs are equally entitled to inherit the property left behind by the heir as explained in QS. an-Nisa verse 7: "sons and likewise daughters have a share of the property left behind by their mothers and fathers". The word justice, which comes from the Arabic word *al-adl*, means a condition found in a person's soul that makes it straight.
5. The principle of inheritance occurs due to death. Islamic law stipulates the transfer of a person's estate to another person under the name of inheritance applies after the death of the testator. Thus, a person's property cannot be transferred as long as the owner of the property (inheritance) is still alive.¹²

According to the majority of scholars, there are three types of causes for someone to inherit the property of someone who dies; namely kinship, marriage, and *wala'*.¹³ The Malikiyah and Shafi'iyah scholars gave an additional reason for obtaining inheritance rights, namely the path of Islam (Islamic connection).¹⁴ Firstly, a marriage that is valid according to *shara'* is a bond that brings together a man and a woman, as long as the marriage bond lasts. If one of them dies while the marriage is still intact or considered intact (divorce *raj'i* which is still in *iddah*), then the marriage between husband and wife. And both will get *furâdhah muqaddarah* that has been determined by *Shara'* namely $\frac{1}{2}$, $\frac{1}{4}$, or $\frac{1}{8}$.¹⁵ As Allah says in Surah an-Nisa': "and for you (husband) one-half of the property left by your wives, if they have no children".

¹² Mahmud Yunus Daulay, Nadlrah Naimi, (2011), *Fiqh Muamalah*, Medan: Ratu Jaya, p. 137-140.

¹³ Maryam Ahmad ad-Daghistani, (2001), *al-Mawâri'its fi Syari'ah al-Islamiyah ala Madzâhib al-Arba'ah* Kairo: Universitas al-Azhar, p. 15

¹⁴ Maryam Ahmad ad-Daghistani, (2001), *al-Mawâri'its fi Syari'ah al-Islamiyah*, Kairo: Universitas al-Azhar, p. 15.

¹⁵ Sayid Sabiq, (2009), *Fiqh as-Sunnah*, Kairo: al-Fath li I'lami al-'Arabi, Vol. 3, p. 298.

Second, kinship or nasab relationship between the person who inherits and the person who inherits caused by birth. This blood relationship is the strongest reason for a person to inherit, because kinship is an element that cannot be eliminated. Kinship that gets inheritance property such as, ushul ties, namely straight up from the deceased such as mother, grandmother, father, grandfather, and so on. Furu' kinship, which is straight down from the children of the deceased, grandchildren, great-grandchildren and so on. Hawashi relationship, which is a sideways relationship from the side of the deceased such as brothers, uncles, nephews, and so on.

Third, Wala' or kinship according to the law caused by freeing a slave. If a slave owner has freed his slave, it means he has changed the legal status of the person who originally did not include having to own and manage his own property. As the Prophet Muhammad SAW said "Verily the right of wala' is for the one who frees" (HR. al- Hakim).¹⁶

In addition to the causes of inheritance, there are also causes that can cancel or prevent an heir from being entitled to inheritance rights. Factors that can hinder inheritance are actions or things that can nullify the right of a person (heir) to get inheritance along with the causes and conditions of inheritance. The things that can hinder inheritance in Islam agreed upon by the fuqaha are 3 kinds, namely: murder, religious differences and slavery.

The first factor is murder. The majority of fuqaha are of the opinion that murder prevents a person from becoming an heir. The same applies to maltreatment that kills someone. The basis of the law that prevents the murderer "Whoever kills the victim, he cannot inherit it, even if he has no heirs other than himself, whether the victim is his father or son, so the murderer is not entitled to inherit it." (HR Ahmad).

The second factor is religious difference. The legal basis for the difference in religion as a barrier to someone being able to inherit is the Hadith of the Prophet; "Muslims cannot inherit the property of disbelievers and disbelievers cannot inherit the property of Muslims." (HR. Bukhari and Muslim). As for the apostate, he cannot inherit the estate of his family, whether his family is Muslim, disbeliever or apostate. If this is the case, his property will be inherited by Baitul Mâl.¹⁷ The last factor is slaves. The status of slaves cannot inherit and neither can they be heirs. Because his status still belongs to his master absolutely.

3.2 Conception of Justice in Islam

The word "adil" is an Indonesian word derived from the word al-'adlu. In the Quran the word al-'adlu or its derivatives are mentioned more than 28 times. Some of them are revealed by Allah in the form of command sentences and some in the form of news sentences. The word al-'adlu is stated in different contexts and different directions so that it will provide different definitions according to the context,¹⁸ as well as the balance between what is obtained and its needs and uses.¹⁹

The emphasis on justice is so clear in the Quran that Islamic scholars defend al-'adlu as the most fundamental value of Islamic society. The principle of justice will automatically give birth to the principle of truth, namely al-haq min rabbika fala takunna min al-muntarin (the right that comes from God is very convincing).²⁰ Broadly speaking, Islam teaches two kinds of justice, namely:

1. Absolute justice is justice that is not bound to be universal. In this sense, humans need the function of reason to know what justice is. Fair in this case is closer to the notion of "goodness

¹⁶ *Ibid.*

¹⁷ Ibrahim al-Maslamī, (1989), *al-Mawârits fi al-Islam*, Kairo: Muthabiul Ahram al-Tighariyah, p. 195

¹⁸ Amir Syarifuddin, (2011), *Hukum Kewarisan Islam*, Jakarta: Prenamedia Group, Cet 1, p.28

¹⁹ Abdul Ghofur Anshori, (2005), *Filsafat Hukum Kewarisan Islam Konsep Kewarisan Bilateral Hazairin*, Yogyakarta: UII Press, p.153

²⁰ Beni Ahmad Saebani, (2019), *Fiqh Mawaris*, Yogyakarta: UII Press, p. 213

or truth". Because it is not bound (absolute), the law regarding justice in this sense has never been abolished throughout time, always existing from one sharia (religion) to another.

2. Justice that is only known through the Quran and Hadith. Justice in this sense is justice as stated in the holy books. In the course of the history of the religion of Allah SWT, such justice can undergo changes or abolition of the law due to new religious teachings.²¹

Another term for al-'adl is al-qist, al-misl (equal parts or equal). Terminologically, fair means to equalize something with another, both in terms of value and in terms of size, so that something becomes unbiased and does not differ from one another. Fair also means taking sides or adhering to the truth.²²

In Islam, the command to be fair is addressed to everyone indiscriminately. The right words must be conveyed as they are even if they will harm one's own relatives. The obligation to be fair must also be upheld in the Muslim family and society itself, even to infidels, Muslims are commanded to be fair. For social justice must be enforced without discrimination because rich and poor, officials or commoners, women or men, they must be treated equally and get the same opportunities.²³ In line with this, Sayyid Qutb asserts that Islam does not recognize differences that are dependent on rank and position.²⁴

Legal justice in Islam comes from God who is the Most Just, because in essence it is God who upholds justice (qaiman bil qisth), it must be believed that God does not act wrongfully (unjust) to His servants (Q.S. 10/Yunus: 449). Therefore, every human action will be accountable to Him on the day of justice (Q.S. 4/al-Nisa: 110). Fairness in the sense of equality, namely equality in rights, without distinguishing who; from which people will be given a decision by the person who is handed over to uphold justice, as referred to by Allah's word Q.S. 4/al-Nisaa': 58.

In this principle of legal justice the Prophet SAW emphasized absolute equality (absolute egalitarianism, al-musawah al-muthlaqah) before the laws of sharia. Justice in this case does not distinguish a person's social status, whether he is rich or poor, officials or commoners, and not also because of differences in skin color and differences in nation and religion, because before the law everything is the same.

3.3 The Concept of Justice in the Distribution of Inheritance from the Perspective of Islamic Legal Philosophy

The division and transfer of property in Islamic inheritance law can only be done after a person dies. The transfer of property made before a person dies is not declared inheritance, but only waqf, grants, alms, and others. The transfer through this institution can only be addressed to people who will become heirs because of marital relations and nasab relationships or to other parties for the public interest. The timing of the transfer of assets in Islamic inheritance is different from the timing in civil inheritance law and customary inheritance law. In civil and customary inheritance law, the transfer of inheritance can be done before or after the testator dies.²⁵

²¹ Mukhtar Zamzami, (2013), *Perempuan dan Keadilan Dalam Hukum Kewarisan Indonesia*, (akarta: Kencana Prenada Media Group, Cet.1, p.142

²² Abdul Aziz Dahlan, et. all, (1997), *Ensiklopedi Hukum Islam*, jilid 2, Jakarta: PT Ichtiar Baru Van Hoeve, p. 25.

²³ Juhaya S. Praja, (1995), *Filsafat Hukum Islam*, Bandung: Pusat Penerbitan Universitas LPPM UNISBA, p. 73.

²⁴ Sayyid Qutb, (1984), *Keadilan Sosial dalam Islam, dalam John J. Donohue dan John L. Esposito, Islam dan Pembaharuan*, Terj. Machnun Husein, Jakarta: CV Rajawali, p. 224.

²⁵ Syahrizal, (2004), *Hukum Adat dan Hukum Islam di Indonesia*, Lhokseumawe: Nadiya Foundation, p. 17.

In practice in real community life, the disputes that arise in inheritance are the distribution process. Inheritance disputes are disputes that can cause great divisions between blood relatives. This is very natural due to human nature which tends to be dissatisfied and wants to control the inheritance. So that it seems like an oppression because it eats up other people's rights.

In fact, Islam has regulated the process of dividing inheritance assets firmly and clearly in the Qur'an and Hadith. Apart from the main sources of Islamic law, Islam also offers a number of principles that can be used in the distribution of inheritance. The principles are;

1. Principle of Justice. If the heirs understand the provisions in the Qur'an with the sentence *mitslu hadzl al-untsayain* (two to one) then the principle of justice can be realized in the distribution of inheritance. In terms of qualitative reasons, the share of inheritance for boys is twice as much as girls because the roles and responsibilities carried by boys are certainly quite greater than the responsibilities carried by girls within the scope of the household. The man is the protector of his family, which requires him to provide security and necessities of life to his family. Regarding the share of each inheritance in the Quran in addition to the provisions of two to one there is also *furudhul al-muqaddarah* with numbers 1/2, 1/3, 1/4, 1/6, 1/8, 2/3.²⁶

2. Principle of Peaceful Agreement. The provisions of *Mitslu hadzl al-untsayain* and *furudhul al-muqaddarah* are an offer from the Quran to realize justice. But if the heirs agree to the principle of peaceful agreement in the division of inheritance, it actually opens up opportunities for the heirs to divide the inheritance not using the provisions of *furudhul muqaddarah*. The Quran does not force each heir to divide the inheritance with the provisions of *furudhul muqaddarah*, but the Quran gives freedom to the heirs to distribute the inheritance with the principle of peaceful agreement between the heirs.

Justice in inheritance law is closely related to rights and obligations and the balance between what is obtained with needs and uses. On the basis of this understanding, the principle of justice in the distribution of inheritance in Islamic law can be seen. Basically, it can be said that gender differences do not determine inheritance rights in Islam. That is, like men, women also get the same strong right to inheritance. This is clearly mentioned in Surah an-Nisa' verse 7 which equalizes the position of men and women in the right to inheritance. In verses 11-12 and 176 of Surah an-Nisa', the equal rights of inheritance between men and women, fathers and mothers (verse 11), husbands and wives (verse 12), brothers and sisters (verses 12 and 176) are explained in detail.²⁷

Regarding the number of shares obtained by men and women, there are three forms.²⁸ First, men get the same amount as women: such as mothers and fathers (both get 1/6) in the event that the testator leaves biological children. Similarly, brothers and sisters both get 1/6 (in case the testator is a person who has no direct heirs).

Second, men get more or twice the share obtained by women in the same case of sons with daughters. In separate cases the widower gets twice the share obtained by the widow, namely 1/2 versus 1/4 if the testator leaves no children; and 1/4 to 1/8 if the testator leaves children. Third, women are greater than men and the situation that women inherit men do not inherit.

In terms of the number of shares obtained when receiving rights, there is indeed inequality. However, this does not mean that it is unfair, because justice in the view of Islam is not only measured by the amount obtained when receiving inheritance rights but also related to the

²⁶ Syahrizal Abbas, (2017), *Mediasi Dalam Hukum Ekonomi Syariah, Hukum Adat, dan Hukum Nasional*, Depok: Kencana, p. 197-198.

²⁷ Fahrudin ar-Razi, (1420 H), *Mafâti'h al-Ghaib*, Beirut: Darul Ihya' Turats al-'Ilmiyah, Vol. 9, p. 502.

²⁸ Muhammad al-Salum al-Hambali,(1998), *Wasîlat ar-Râghibîn wa Baghiyat al- Mustafidîn*, Riyad: Maktabah ar-Rushd, p. 29-37.

use and needs. In general, it can be said that men need more material than women.²⁹ This is because men in Islamic teachings bear a double obligation, namely to themselves and to their families, including women⁴⁸ as Allah explains in Surah an-Nisa' verse 34; "Men are guides for women because Allah has preferred some of them over others and because they provide for them with their wealth."

If we relate the amount received to the obligations and responsibilities mentioned above, it will be seen that the level of benefit to the man is the same as that of the woman. Although the man initially receives twice as much as the woman, part of what he receives will be given to the woman in her capacity as a responsible guide. For a man, his primary responsibility is to his wife and children. This is an obligation from Allah that must be carried out according to QS. al-Baqarah [2]: 233 "...It is the duty of the father to provide food and clothing for the mother and children in a reasonable manner." With regard to other relatives, a person's responsibility is additional and not primary. He assumes this responsibility when he is able to do so on the one hand, and on the other hand the relative is in need of help. This responsibility towards relatives is mentioned by Allah in QS. al-Baqarah [2]: 215: "They ask you about what they spend; answer: Whatever money you spend, give it to your parents and relatives..."

*It should also be noted that inheritance in Islam looks at kinship, the closer the relationship the more entitled to inheritance. Not based on social or economic status. If the law of inheritance is based on social reality, it will result in the submission of Islamic teachings to the ever-changing social reality. And Islamic inheritance law eventually changes from a religion of revelation to a cultural religion that looks at the social status of society.*³⁰ The scholars have stated that the distribution of inheritance must still refer to the Qur'an and Sunnah. This is the true form of justice in the Islamic view of inheritance issues, which is balanced justice and not equal justice.

To act justly is to act correctly. Seeking justice is the same as seeking the truth. Truth is a representation of God's will to humans which is elaborated through al-ahkam al-khamsah, namely wajib, sunnah, mubah, makruh, and haram. Substantive justice in Islamic law is always linked to the will of the maker of shara' (Allah) towards humans, whether that will is understood through logical deduction (lughawiyah method), analogical deduction (qiyas), or deduction from the general principles of sharia (maqasid shari'ah).³¹

Ibn Qayyim explained that the purpose of Islamic Law is to realize the servants of the world and the hereafter. According to him, all laws contain justice, mercy, benefit and wisdom, if it comes out of the four values it contains, then the law cannot be called Islamic Law.³² The same thing was also stated by al-Syatibi, he asserted that all obligations were created in order to realize the welfare of servants. None of Allah's laws have no purpose. A law that has no purpose is the same as taklif ma la yutaq' (imposing something that cannot be implemented). In order to realize the welfare of the world and the hereafter, the scholars of Ushul Fiqh formulated the objectives of Islamic law into five missions, all of these missions must be maintained to preserve and ensure the realization of kemashlahatan. The five missions

²⁹ Ibn Katsir, (1420 H), *Tafsir al-Qur'an al-Adzim, Muhaqiq, Sami' bin Muhammad Salamah*, Darul Thayibah, Vol 2, p. 226.

³⁰ Hendri Sholahuddin, (2016), *Wacana Kesetaraan Gender dalam Pemikiran Islam di Institusi Pengajian Tinggi Islam Negeri di Indonesia: Kajian di Universitas Islam Negeri Sunan Kalijaga Yogyakarta*", Desertasi, Kuala Lumpur: Akademi Pengajian Islam Malaya, p. 395.

³¹ Abdul Wahhab Khallaf, (1978), *Usul al-Fiqh*, Beirut: Dar al-Qalam, p. 105-112.

³² Ibn Qayyim, (2009), *I'lam al-Muwaqqi'in Rabb al-'Alamin*, Beirut: Dar al-Jayl, Jilid III p.3.

(Maqashid al- Shari'ah / Maqashid al-Khamsah) referred to are maintaining religion, soul, intellect, offspring and property.³³

To realize and maintain the five basic elements, al-Syatibi divided it into three levels, dharuriyat, hajiyyat and tahsiniyat. This grouping is based on need and priority scale. The hierarchical order of these levels will show its importance and significance, when each level contradicts each other. In this context, the dharuriyyat level ranks first, followed by hajiyyat and tahsiniyyat. dharuriyat level is maintaining the needs that are essential for human life. If these needs are not met, it will threaten the existence of the five goals above. While the hajiyyat level does not threaten, it only causes difficulties for humans. Furthermore, at the tahsiniyyat level, are needs that support the improvement of one's dignity in society and before Allah SWT. For example, in maintaining the element of religion, the daruriyyat aspect includes establishing prayer, prayer is an aspect of dharuriyyat, the necessity to face the Qibla is an aspect of hajiyyat, and covering the veil is an aspect of tahsiniyyat.³⁴ These three levels, in essence, seek to preserve the five missions of Islamic law.

Ultimately, justice refers to the judge's efforts to find the truth and give a ruling in the event of an offense for which there is no formal rule of law. This is a form of procedural justice. Procedural justice is the external aspect of law, where substantive justice is realized. Without procedural justice, substantive justice will only be theories that do not touch the reality of society. However, in addition to justice, the values of legal certainty and expediency are also important to consider in law enforcement.³⁵

4. CONCLUSION

Muslims Justice has always been used as an ideal value in the making and implementation of law, although as an abstract concept justice is often understood without clear boundaries. The development of Islamic legal thought cannot be separated from the conception of justice. Justice is an abstract concept that has great power in shaping perspectives. Justice has a broad scope of meaning and enters various fields: economics, politics, law, and theology. Islam is also very concerned with the issue of justice. The conception of justice will continue to evolve in line with social development. Behind the division of inheritance in Islam contains justice that is universal in terms of theology, economics, social, and economic aspects. In terms of theology, it can be felt when believing that Allah Swt establishes inheritance laws containing justice for His servants. So there is no assumption that Islamic inheritance law is not fair and leads to discrimination against women, because we have proven this justice from the side of maslahat in the practice of dividing Islamic inheritance. The Islamic inheritance system facilitates the circulation of wealth by dividing property and prohibiting property from being concentrated in a limited number of people. So that with the Islamic inheritance system, wealth becomes widely utilized and can maintain the building of the Islamic economy from the form of hoarding wealth. The law of inheritance and the concept of maintenance in Islam cannot be separated so that people who get excess favors that Allah gives in the form of inherited property are obliged to provide for their families who are unable. This shows that Islamic inheritance law provides social security for families who cannot afford it.

5. REFERENCES

Books:

Abbas, Syahrizal. (2017). *Mediasi Dalam Hukum Ekonomi Syariah, Hukum Adat, dan Hukum Nasional*. Depok: Kencana.

³³ Imam Abi Hamid Muhammad bin Muhammad al-Ghazali, (2009), *al-Mustasfa min 'Ilm al-Usul*, Beirut: Dar al-Fikr, p. 20.

³⁴ Asafri Jaya Bakri, (1997), *Konsep Maqashid Syari'ah menurut al-Syatibi*, Jakarta: Logos wacana Ilmu, p. 72.

³⁵ Theo Huijbers, (1993), *Filsafat Hukum dalam Lintasan Sejarah*, Yogyakarta: Kanisius, p. 161.

- Ad-Daghistani, Maryam Ahmad. (2001). *al-Mawâriṭs fi Syari'ah al-Islamiyah ala Madzâhib al-Arba'ah*. Kairo: Universitas al-Azhar.
- Al-Baqi, Muhammad Fuad Abd. (1987). *al-Mu'jam al-Mufahras li Al-Fadh al-Qur'an al-Karim*. Bairut: Dar al-Fikr.
- Al-Hambali, Muhammad al-Salum. (1998). *Wasîlat ar-Râghibîn wa Baghiyat al- Mustafidîn*. Riyad: Maktabah ar-Rushd.
- Al-Maslamî, Ibrahim. (1989). *al-Mawâriṭs fi al-Islam*. Kairo: Muthabiul Ahram al-Tighariyah.
- Anshori, Abdul Ghofur. (2005). *Filsafat Hukum Kewarisan Islam Konsep Kewarisan Bilateral Hazairin*. Yogyakarta: UII Press.
- Bakri, Asafri Jaya. (1997). *Konsep Maqashid Syari'ah menurut al-Syatibi*. Jakarta: Logos wacana Ilmu.
- Daulay, Mahmud Yunus, Nadlrah Naimi, (2011), *Fiqh Muamalah*. Medan: Ratu Jaya.
- Hamidah, Tutik. (2011). *Fiqh Perempuan Berwawasan Keadilan Gender*. Malang: UIN Maliki.
- Huijbers, Theo. (1993). *Filsafat Hukum dalam Lintasan Sejarah*. Yogyakarta: Kanisius.
- Imam Abi Hamid Muhammad bin Muhammad al-Ghazali, (2009), *al-Mustasfa min 'Ilm al-Usul*. Beirut: Dar al-Fikr.
- Khallaf, Abdul Wahhab. (1978). *Usul al-Fiqh*. Beirut: Dar al-Qalam.
- Makluf, Louis. (1986). *Al-Munjid fi al-Lughah wa Al-I'lam*. Beirut: Dar asyriq.
- Praja, Juhaya S. (1995). *Filsafat Hukum Islam*. Bandung: Pusat Penerbitan Universitas LPPM UNISBA.
- Qutb, Sayyid. (1984). *Keadilan Sosial dalam Islam, dalam John J. Donohue dan John L. Esposito, Islam dan Pembaharuan, Terj. Machnun Husein*. Jakarta: CV Rajawali.
- Rofiq, Ahmad. (1995). *Hukum Islam di Indonesia*. Jakarta: PT. Raja GrafindoPersada.
- Rofiq, Ahmad. (2002). *Fiqh Mawaris*. Jakarta: PT Raja GrafindoPersada.
- Saebani, Beni Ahmad, (2009), *Fiqh Mawaris*, Jakarta: PT Raja GrafindoPersada.
- Shihab, M. Quraisy. (2000). *Wawasan Islam, Mizan*. Bandung: Mizan.
- Sholahuddin, Hendri. (2016). *Wacana Kesetaraan Gender dalam Pemikiran Islam di Institusi Pengajian Tinggi Islam Negeri di Indonesia: Kajian di Universitas Islam Negeri Sunan Kalijaga Yogyakarta*, Desertasi Kuala Lumpur: Akademi Pengajian Islam Malaya.
- Sjadzali, Munawir. (1995). *Kontekstualisasi Ajaran Islam* (Jakarta: IPHI/PARAMADINA).
- Syahrur, Muhammad. (2008). *Metodologi Fiqh Islam Kontemporer*, Terj Sahiron Syamsuddin & Buhanuddin. Yogyakarta: eLSAQ Press.
- Syahrizal. (2004). *Hukum Adat dan Hukum Islam di Indonesia*. Lhokseumawe: Nadiya Foundation.
- Syarifuddin, Amir. (2011). *Hukum Kewarisan Islam*. Jakarta: Prenamedia Group.
- Qayyim, Ibn, (2009), *I'lam al-Muwaqî'in Rabb al-'Alamin*. Beirut: Dar al-Jayl.
- Zamzami, Mukhtar. (2013), *Perempuan dan Keadilan Dalam Hukum Kewarisan Indonesia*. Jakarta: Kencana Prenada Media Group.

Journals:

- Al-Baghawi. (1420 H). *al-Ma'âlim al-Tanzil fi Tafsîr al-Quran*. al-Muhaqqiq Abdurrazak al-Mahdi. Beirut: *Darul Ihya' Turats al-Arabi*. Vol. 1.
- Ar-Razi. Fahrudin. (1420 H). *Mafâtîh al-Ghaib*. Beirut: *Darul Ihya' Turats al-'Ilmiyah*. Vol. 9
- Bar, Ibn Abdil. (1420 H), *Tamhîd li mâ fi al-Mu'atha'*. Maroko: *Waziratul Waqaf wa Syu- un al-Islamiyah*. Vol. 11
- Katsir, Ibn. (1420 H). *Tafsîr al-Qur'an al-Adzîm*, Muhaqiq, Sami' bin Muhammad Salamah. *Darul Thayibah*. Vol 2
- Moto, Maklonia Meling. (2019). Pengaruh Pengguna Media Pembelajaran dalam Dunia Pendidikan. *Indonesian Journal of Primary Education*. Vol.3, No. 1.
- Sabiq, Sayid. (2009), *Fiqh as-Sunnah*. Kairo: *al-Fath li I'lami al-'Arabi*. Vol. 3.
- Zamakhshari. (1407 H). *al-Kasyaf 'an Haqâiq Ghawâmid al-Tanzil*. Beirut: *Darul Kutub al-Arabi*. Vol. 2