

## **Women's Right of Inheritance in Islam: Between the Sharia Provision and Demand of Socio-cultural Changes**

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### **ABSTRACT**

Women's inheritance is a never-ending issue. This issue has been frequently debated amongst academicians, especially involving distribution of women's inheritance, which is half of what men received. This polemic arises due to the changes in social system of Muslim society, which is now different than the early time of *wahy* (revelation) conveyance. This is due to the distribution ratio of 2:1 is already seen unreasonable, though still to be seen in the context of Islamic law and the fundamentals in determining this law. Hence, this article will focus on the polemic of women inheritance from the perspective of Islamic law to determine whether the men to women ratio of 2:1 is rigid, or whether there are other areas that place women before men. The global discourse on women's rights includes various discussions such as gender-based violence, economic empowerment, reproductive rights and others. Nevertheless, the topic of women's rights in the context of inheritance is the sole matter that will be addressed throughout this study. This article also discusses how far this right can change and the alternative solution to the issue in the context of current Islamic society. Other issues, on the other hand, are open for discussion in the context for further research. A descriptive qualitative approach was adopted with the primary data obtained through several relevant sources. Data analysis was carried out using a legal approach, a sociological approach, and a philosophical approach. This study concluded that with better education, more women have career and they also contribute to the family economy. This scenario has changed the marriage landscape. In other words, women no longer involve in a narrow domestic space; they are even capable to be alongside men in the public sphere. In accordance with this phenomenon, demand exists for equal inheritance right between man (son) and woman (daughter). Nevertheless, not all Islamic law can be changed due to the changes in the society sociocultural

Keywords: Gender Bias, Inheritance, Islamic Law, Shari'ah, Women

### **ABSTRAK**

Permasalahan mengenai pembagian warisan perempuan merupakan salah satu masalah yang sering diperdebatkan di kalangan akademisi, terutama menyangkut pembagian warisan perempuan, yang separuhnya diterima oleh laki-laki. Polemik ini muncul karena adanya perubahan sistem sosial masyarakat muslim yang sekarang berbeda dengan masa awal dakwah Islam. Pembagian rasio 2:1 sudah terlihat tidak masuk akal, meski tetap harus dilihat dalam konteks hukum Islam dan asas-asas dalam menetapkan hukum ini. Pembahasan global tentang hak-hak perempuan mencakup berbagai pembahasan seperti kekerasan berbasis gender, pemberdayaan ekonomi, hak-hak reproduksi dan lain-lain. Namun, pembahasan dalam penelitian ini terbatas pada hak-hak perempuan dalam konteks warisan. Kajian ini akan berfokus pada polemik waris perempuan dari perspektif hukum Islam untuk menentukan apakah perbandingan laki-laki dan perempuan 2:1 itu sebuah hal kaku, atau adakah wilayah lain yang menempatkan perempuan di atas laki-laki dan sejauh mana hak tersebut dapat berubah serta solusi alternatifnya dalam konteks masyarakat Islam saat ini. Adapun, isu-isu lain yang terkait dengan hak-hak perempuan konteks lain dapat menjadi sebuah penelitian penelitian lebih lanjut. Jenis penelitian ini adalah deskriptif kualitatif dengan menggunakan pendekatan hukum, pendekatan sosiologis, dan pendekatan filosofis. Kajian ini berkesimpulan bahwa dengan tingkat pendidikan yang lebih baik, lebih banyak perempuan yang berkarir dan mereka juga berkontribusi pada ekonomi keluarga. Skenario ini telah

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mengubah lanskap pernikahan. Dengan kata lain, perempuan tidak lagi terlibat dalam ruang domestik yang sempit yang mana mereka bahkan mampu mendampingi laki-laki di ranah publik. Walaupun demikian, tidak semua hukum Islam dapat diubah karena adanya perubahan sosiokultural masyarakat.

Kata kunci: Bias Gender, Waris, Hukum Islam, Syariat, Perempuan

## INTRODUCTION

The achievement of equality between women and men and the removal of any and all types of discrimination against women are the primary goals of the movement known as women's rights, which is a subset of the larger human rights movement. It is vital to recognise the historical struggles and accomplishments of women throughout the world in order to have any chance of comprehending the contemporary conversation on women's rights. The emergence of the feminist movement in the latter half of the 19th century and the early 20th century was an important step in the process of questioning gender norms and inequality, as well as advocating for the rights of women. For example, the suffrage movement campaigned for women's ability to vote, which was a huge step forward in the struggle towards gender equality. In the history of previous civilisation, women have not been given due rights within the society (Mustofa, 2019).

This includes denial of rights towards ownership and property, in fact it was even worse that women were treated like asset and that they can be inherit. In the practice of world societies, there are two forms of property inheritance that are parallel to the society's systems themselves, which are bilateral and unilateral system. Societies that practice bilateral system (parental) imply that men and women can rightfully inherit, where else in societies based on unilateral system, only men of patrilineal societies have the right to inherit. On the other hand, only women inherit in matrilineal societies (Mustofa, 2019; Sriani, 2018). Islam is an all-encompassing way of life, including spiritual, social, political, economic, and others. Islam taught people that men and women are created and treated equally in all respects as mentioned in the Quran.

كُلُّ نَفْسٍ بِمَا كَسَبَتْ رَهِينَةٌ

"Every soul is hostage to what it has earned." (Quran 74 : 38)

فَاسْتَجَابَ لَهُمْ رَبُّهُمْ أَنِّي لَا أُضِيعُ عَمَلَ عَامِلٍ مِّنْكُمْ مِّن ذَكَرٍ أَوْ  
أُنْثَىٰ ۖ بَعْضُكُمْ مِّن بَعْضٍ

"Then their Lord answered them, 'I do not waste the work of any worker among you, whether male or female; you are all on the same footing.'" (Quran 3:195)

مَنْ عَمِلَ صَالِحًا مِّن ذَكَرٍ أَوْ أُنْثَىٰ وَهُوَ مُؤْمِنٌ فَلَنُحْيِيَنَّاهُ حَيَاةً  
طَيِّبَةً ۖ وَلَنَجْزِيَنَّهُمْ أَجْرَهُمْ بِأَحْسَنِ مَا كَانُوا يَعْمَلُونَ

"Whoever acts righteously, [whether] male or female, should he be faithful, We shall revive him with a good life and pay them their reward by the best of what they used to do." (Quran 16:97)

Allah (SWT) is the one who created man and woman from a single source, and he has done away with all of the unjust rules that existed in the past that considered women to be lower in quality and nature.

Equal treatment of men and women, both in terms of rewards and punishments as well as in terms of financial transactions and possession of property, is a fundamental principle of Islam (Kususiyanah, 2021).

Pre-Islamic inheritance system basically relied on the elements of *nasab* and causes. *Nasab* was usually focused on men due to their contributions towards family's safety especially their involvement in war and in struggle to conquer water catchment area. Meanwhile, the element of cause consists of oath of loyalty and upholding the children (Haque et al., 2020). With the arrival of Islam, al-Quran clearly provides estate rights to women. Instead of just being regarded as commodities, Islam has provided various rights of inheritance to women (Hoque et al., 2013). There are distributions of  $1/2$ ,  $2/3$ ,  $1/4$ ,  $1/6$ , and  $1/8$ .

This distribution that was previously seen as managed to liberalize women and upholding their dignity, is now however seen as irrelevant to the current changes of socioculture. Besides changes of socioculture, the social differences between the Muslim societies in the Middle East with the Muslim societies in the East, especially Nusantara (Malay Archipelago) are among factors contributing to this irrelevance. Women in Nusantara are seen actively involving in the economic sector and in public commitment. The distribution of rights of women inheritance that is different compared to men has also garnered attention of feminist. They are of the opinion that inheritance related Islamic laws needs to be revamped to suit current development. Having equal rights between men and women needs to be given priority in order to assure justice and gender equality in the Muslim society (Abdullah et al., 2014).

In spite of that, if changes of socioculture do happen in the society in which women become the main breadwinner or just supplementing, are the fundamentals of Islamic teachings or text provision can be changed for the purpose to guarantee the justice of gender equality? Are the Islamic teachings the causes of gender inequalities? Are there un-Islamic sociocultural settings in the society that cause so? Hence, which ones of the causes are required to be changed and amended to guarantee gender equivalence? Is it the rigid *nass* provision or the discriminative structure and system of society?

Therefore, as a comprehensive system of life, Islamic Sharia has provided a holistic guidance. The practices in the life of Muslim society need to be seen integrated, not separated from one another. In the context of family inheritance, the right to property is closely related with family responsibilities. The advantages of rights are balanced with the advantages of responsibilities. Men hold the obligation to take care of women and many other obligations, thus men have more advantages in the family inheritance. The distribution ratio of 2:1 is also suitable with the minimal responsibilities given to women. This is the basis that has been determined by Islam although it is seen unequal by some feminists. Thus, in today's culture, there has been a growing emphasis placed on gender equality and the promotion of women's self-determination, which has led to an increase in the prominence of the global debate on women's rights.

## RESEARCH METHOD

The authors employ a qualitative methodology, one of the most used approaches to explore assumptions in the disciplines of Sharia, social sciences, and humanities. The primary objective of qualitative research is to generate new information by focusing on identifying and comprehending situations, both in the text and their surrounding contexts. Qualitative research aims to investigate a social phenomenon that emerges from the cause of a case, such as societal norms and values or even issues that come up in everyday life. The authors make an effort to provide a constructive, intricate, and detailed report by utilizing the qualitative technique. They do this by examining the words from the perspective of several different respondents and by conducting exploratory investigations on natural settings (Rukin, 2019). The research was primarily concerned with critically examining material derived from primary and

secondary resources, including textbooks, journal articles, seminar papers, and relevant data from supporting documents to the topic. The authors employ the literature approach to the ongoing research addressing the issue of women's right to inheritance in Islam. Then, the data gathered from the findings were analyzed descriptively by using a legal approach, a sociological approach, and a philosophical approach. This conversation will likely develop into a more productive discipline study than any prior study or research.

## RESULT AND DISCUSSION

### Inheritance According to Islamic Sharia

In the discussion of classic or even contemporary *fiqh*, the questions of inheritance are not much different whether in the listing of beneficiaries or the rate that is agreed upon by both men and women. The similarity in the law occurs because of the provision that connects with inheritance that is mostly based on the *nass* in the Quran and Hadith (Mahmudi, 2013). The evidences in the Quran in relation to inheritance can be found in only one surah, i.e., surah al-Nisa' (4), verse 7, 11, 12, and 176. In surah al-Nisa' (4), verse 7, the translation reads:

“From what is left by parents and those nearest related there is a share for men and a share for women, whether the property be small or large—a determinate share.”

In verse 11, surah al-Nisa' (4), the translation reads:

“Allah (thus) directs you as regards your Children's (Inheritance): to the male, a portion equal to that of two females: if only daughters, two or more, their share is two-thirds of the inheritance; if only one, her share is a half. For parents, a sixth share of the inheritance to each, if the deceased left children; if no children, and the parents are the (only) heirs, the mother has a third; if the deceased left brothers (or sisters) the mother has a sixth. (The distribution in all cases ('s) after the payment of legacies and debts. Ye know not whether your parents or your children are nearest to you in benefit. These are settled portions ordained by Allah, and Allah is All-knowing, All-wise.”

The Quranic verses above make it clear that in early Islamic inheritance, relatives eligible to receive an inheritance did not consist solely of men but also included children and women. Besides, due to the existence of hijrah and brotherhood ties, it was also possible to get an inheritance; however, there were no promises of pre-loyalty or adoption in Islamic inheritance. However, currently inheritance issue has become a hot polemic in discourse on gender.

This phenomenon arises from today's changes of society's socioculture that is different from society during the conveyance of *wahy*. In today's society, women no longer merely sit at home. Women are also involved in the responsibility to earn for the family. In other words, women are also involved in the daily transaction outside of their homes. The changes in the functions and responsibilities of today's women have initiated re-evaluation to the Islamic law (Mehmood et al., 2022).

Hence, the ratio of men to women of 2:1 in family inheritance is said to be no longer relevant in today's context as it does not secure justice to women despite that fact that Islam is a religion that promotes fairness (Nahar, 2021). Based on this argument, how far can changes be made to *fiqh* of inheritance? It should be noted that most provisions and ratios in inheritance are clearly stated by the *texts* in the Quran and Hadith and these texts become the guides in *fiqh* of inheritance.

#### Inheritance from Exegeses' Perspective

In pre-Islamic Arabian society, women's inheritance practices were generally characterized by a lack of clear and consistent guidelines. It was common for there to be a lack of standardized laws

controlling inheritance, and the practices that were considered to be the norm differed significantly between different groups of people and geographic areas. The rights of women to inherit were severely restricted, and they were frequently seen more as items of property than as people who possessed unique entitlements to legal protections. In many communities before the rise of Islam, women were frequently denied the ability to inherit or were given only a portion of what male heirs were given. Women were frequently barred from inheriting property or riches because inheritance was traditionally male-dominated and carried on through male lineages. It was common for the male relatives of deceased husbands to inherit their deceased wives, a practice that was referred to as "inheritance by marriage." In many cases, this resulted in the woman becoming a member of the deceased husband's family rather than maintaining her inheritance rights (Musta'id, 2023).

The arrival of Islam brought about substantial shifts in the ways in which inheritance was handled in the Arabian Peninsula (Lone, 2023). The Quran provided particular standards for inheritance to guarantee an equitable distribution of wealth among all family members, including women. Therefore, legal experts engaged in in-depth debates and offered their interpretations on various facets of Islamic law, including the inheritance rights of women. One of the most essential resources for these talks is the Quran, namely Surah An-Nisa of the Quran, which outlines the guidelines for inheritance (Suraiya, 2017). Classical scholars such as Imam Abu Hanifa, Imam Malik, Imam Shafi'i, and Imam Ahmad ibn Hanbal, among others, formed their opinions of how inheritance should be allocated among family members, including women. Their understanding of the Hadith (the sayings and deeds of the Prophet Muhammad) and the Quran provided the foundation for these interpretations, which were built on legal reasoning. According to the verse 11 of surah al-Nisa', classic exegeses were unanimous in acknowledging the ratio of 2:1 between men and women as the verse clearly indicates the ratio (Nahar, 2021).

So does the opinion of majority contemporary exegeses that are also acknowledging this distribution. Nevertheless, there are some Muslim scholars who have given different interpretation to the verse based on gender bias interpretation. Exegeses such as al-Tabari, 'Abduh & Rida, al-Razi, al-Qaradawi, Wadud, and Muhammad Syahrur have contributed to numerous parts of Islamic jurisprudence, including women's inheritance. Muhammad ibn Jarir al-Tabari was a prominent Islamic scholar from the early centuries who is most known for his exhaustive exegesis of the Quran. His work, known as "Tafsir al-Tabari," remains extensively viewed and considered important in Islamic academia. His primary focus was on exegeting the Quran. However, his interpretations contributed to the jurisprudential discussions of his time by providing insights into legal concepts and the application of Quranic teachings. This was although exegesis of the Quran was his primary area of study (Bhat, 2022). Muhammad 'Abduh and Rashid Rida were reformist intellectuals who endeavored to bring Islamic doctrine in line with contemporary thought and values. They highlighted the significance of rationality, *ijtihad*, defined as "independent reasoning" and the relevance of adapting Islamic doctrine to contemporary settings (A. N. Amir, 2021; A. nabil Amir, 2020).

Their contributions extended far beyond the realm of jurisprudence. However, they were crucial in redefining the approach to Islamic law by arguing in favor of more reasonable interpretations and addressing the prevalent sociopolitical challenges during their time. Fakhr al-Din al-Razi was influential in philosophy, theology, and law. His extensive body of work covers a broad spectrum of subjects, such as religion, philosophy, ethics, and jurisprudence, among other areas. In his approach to jurisprudence, he frequently looked for hidden meanings within Islamic law writings and tried to reconcile ethical and rational considerations with legal decisions (Baharuddin et al., 2018). Yusuf al-Qaradawi is a prominent modern scholar who is famous for offering interpretations that are both moderate and progressive. His

contributions to Islamic law include offering solutions to a variety of modern problems and dilemmas. While addressing moral and social concerns in a manner that respects the fundamentals of Islamic jurisprudence, he emphasizes striking a balance between modernity and tradition (Baharuddin et al, 2018).

In addition, Amina Wadud is a contemporary feminist academic whose research focuses on Islam concerning gender issues. Her book "Qur'an and Woman: Rereading the Sacred Text from a Woman's Perspective" challenged the conventional understandings of gender roles and brought attention to the requirement of gender-inclusive interpretations of Islamic texts. Within an Islamic framework, Wadud's contributions have affected conversations on women's rights and gender equality (Esack, 2015; Riyani, 2017). Muhammad Syahrur was a prominent figure in contemporary Islamic thinking. He was recognized for his progressive views on Islam and his support for reform within the Muslim community. Muhammad Syahrur was a Syrian Muslim thinker. He was a prolific writer, and his works include volumes on Islamic political philosophy, Islamic theology, and Islamic political theory. Muhammad 'Abduh and Rashid Rida were two significant Islamic reformers who sought to reconcile Islamic teachings with modernity. Their work impacted Syahrur's thoughts, and they helped shape Syahrur's ideas (Herlambang, 2023).

Syahrur believed in reconsidering Islamic law in the light of modernity and firmly believed in the significance of *ijtihad*, which can be translated as "independent reasoning." His work on women's issues was particularly influential, and he fought for gender equality and challenged established readings of Islamic texts and practices. Syahrur's work on women's issues was particularly influential. In addition, he was famous for his hermeneutical interpretation of the Quran, which strongly emphasized the significance of historical research and context while attempting to decipher the book. Syahrur has promoted Islamic reform and progressivism (Khasanah et al., 2020). These scholars have made their imprint on Islamic law by presenting a variety of perspectives that represent the developing character of Islamic philosophy. Their contributions range from classical exegesis to contemporary reinterpretations, and the community of Islamic scholars continues to draw inspiration from their writings, which leads to ongoing discussions and disputes. The discussion regarding women's inheritance, Al-Tabari as a notable Islamic scholar who held the belief that women should get an inheritance equal to that received by men, but only half of it. His reasoning was based on a verse in the Quran that says, "Allah instructs you concerning your children: for the male, what is equal to the share of two females".

Muhammad 'Abduh and Rashid Rida were significant figures in Islamic reform who held the view that women and men should be entitled to an equal part of their ancestors' estates. They contended that the verse in the Quran, "Allah instructs you concerning your children: for the male, what is equal to the share of two females", was written to ensure that women received an equal share of the inheritance. Thus, al-Tabari and 'Abduh & Rida concluded that the 2:1 ratio is not discriminatory towards women and does not show women's inferiority as compared to men (Al-Tabari, 2001; M. 'Abduh & M. R. Rida, 1947). This ratio is based on a reciprocal justice between right and obligation. Meanwhile Al-Razi believed that women should be given an inheritance equal to that of men but only half as much. He argued that this was founded on the notion of *qawama*, which refers to the idea that men are responsible for providing for their families and that women are responsible for caring for the home and children.

Besides, Razi also had opined that the different ratio is due to men having much perennial morale, mind, and religion than women. Men are responsible towards financial matters and earnings (M. R. Rida, 1948) and women are said to be less smart, desires are plentiful, and that these can cause damages (Fakhrudin, 2012). This opinion is however rejected by Abduh (1947). Further, according to al-Qaradawi, this advantage is not because of men are more noble than women, but because it is in line with increase in

responsibilities (al-Qaradawi, 1996). In a frame to come up with "gender equality" interpretation, Wadud stresses that the distribution must take into account the benefits and justice to the beneficiaries (Wadud, 1992). Muhammad Syahrur in his book, *al-Kitab Wa al-Quran* on the other hand stresses the 2:1 ratio of inheritance is the minimal limit (*al-hadd al-adna*) for women and maximum limit (*al-hadd al-a'la*) for men in that context. This limitation can be adapted based on the economic condition, family's responsibilities, the atmosphere of the place, and certain time. The ratio can change into becoming equal (Shahrur, 1994). This casting of solution is well received in searching for interpretation that is 'fair gender' oriented, but it is rejected by Muslim scholars.

### **Inheritance Practices in Nusantara (Malay Archipelago) Society**

In the practice of Nusantara society, inheritance comes in several forms that are based on legal customs. There are parts of the society that prioritise paternal lineage, there are parts of the society that prioritise maternal lineage, and there are parts of the society that consider both lineages. Among them are as follows:

1. In the Indonesian society of Minangkabau, men do not become inheritor for high inheritance. Only the father bequeaths (or *hibah*) the earning estate to the children (Kato, 2005).
2. In the Indonesian society of Tapanuli, women do not become inheritor.
3. In the Indonesian society of Sabu, daughters inherit from their mothers while sons inherit from their fathers.
4. In the Indonesian society of Makassar, men and women have equal rights. The sons inherit estates such rice fields and orchards, while the daughters inherit house, ornaments, and women's accessories. If the estate cannot be equal, the estate is then sold and the proceed is equally distributed (Hamid, 2005).

In the practice and tradition of Malay society, there are a few alternative approaches of distribution besides the *Faraid* method. These approaches are done as a symbol of love towards children without taking into consideration the gender difference. For examples, the *hibah* (gift) to the daughters before passing away or in other circumstances, and the give-and-take approach by the male in the family as a way of giving away rights for the rights to be given equally to the female. The *muafakat* or *musolahah* approach is not contrary to Sharia as it involves gifts and the waiver of rights voluntarily.

According to Quraish Shihab, it is allowed in principal if all of the beneficiaries agree to waive their rights and distribute according to a different ratio that is agreed upon by all. However, if even one of them disagrees, then the distribution must be executed according the demand of religion (Shihab, 2004). Even so, if the equal distribution commences from the intent that the evaluation of the distribution rate that has been determined by Allah SWT is unfair and confusing, the inheritors can be deemed as *murtad* (apostate) as they are considered as rejecting the provision of Allah SWT (Shihab, 2004).

In an effort to actualise Islamic law in Indonesia, Munawir Syadzali had considered changes in socioculture of society based on his particular experience in bringing the new sum of 1:1, in which son and daughter receive equal inheritance. His opinion was based on the concept of *maslahah* (public interest) by al-Tufi. If there is contradiction between *nass* and *maslahah*, the latter is to be upheld (Azizy, 2003). His opinion raised controversy and many parties expressed dissatisfaction and rebutted his conclusion as it was considered going against the provision of *nass* (Wahyudi, 2007).

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## Rationality of Women Inheritance in Islam

Justice (*'adil*) in Islam needs to be seen as a whole. This is because when men get married, the inheritance that is acquired from the parents will be utilised to pay for *mahr* (dowry) and wife's income. When the couple have children, the estate is utilised to support the children ('Ashur, 1988) even if there is no financial obligation towards the daughter (Khan, 2005). When the daughter gets married, the inheritance obtained from her parents is not utilised as she is already supported by her husband, and she has even received the *mahr* from her husband (Arifin, 1996). As such, daughters are not obligated to find earnings as compared to sons (Bano, 2003). This difference in terms of percentage is not due to women's inferiority, instead, in some other circumstances, daughters will receive same percentage or even more than men.

In spite of that, the 2:1 ratio for the inheritance distribution between men and women is not considered standard or uniform in all circumstances. In certain conditions, women's portion is as same as men (Sha'rawi, 2001). For examples:

1. Portion of both parents is the same, i.e., 1/6 if the deceased has children (Zahrah, 1963). This distribution is based on the decree by Allah SWT in surah al-Nisa' (4), verse 11. The translation of the verse reads: "For parents, a sixth share of the inheritance to each, if the deceased left children."
2. Portion of uterine brothers and sisters (of same mother) is 1/6 in the condition that they inherit from the deceased (men or women) if the deceased does not have parents or children. This distribution is based on the decree by Allah SWT in surah al-Nisa' (4), verse 12. The translation of the verse reads: "If the man or woman whose inheritance is in question, has left neither ascendants nor descendants, but has left a brother or a sister, each one of the two gets a sixth."

Examples of the circumstances in which women's portion is much higher than men are as follows:

1. When a woman dies and leaves behind husband, her mother, two consanguine brothers of same parents, a consanguine brother of same father, and a uterine sister of same mother. In this condition, the uterine sister of same mother receives 1/6 while the two consanguine brothers of same parents share 1/6.
2. When a woman dies and leaves behind husband, a consanguine sister of same parents, and a consanguine brother of same father. In this condition, the husband gets 1/2, the consanguine sister receives half of the balance after deducting husband's portion, and the consanguine brother of same father does not receive inheritance because of *'asabah* (residuary) and there is no more balance. If there is a consanguine sister at his place, she will receive 1/6 that is returned to her (*al-'awl*) (Al-Jundi, n.d.).

Salah al-Din Sultan (1999) has classified these conditions more precisely as follows:

1. There are four conditions in which women are entitled to 1/2 of inheritance distribution, which are as follows:
  - a. When the heir is a daughter (1) with sons (2)
  - b. When the heir is a father (2/3) with a mother (1/3) and the deceased does not have children, husband or wife.
  - c. When the heir are sisters of the deceased of same mother and father or of same father (1) with brothers of the same mother and father or of same father (2).
  - d. When in the *nisab* circumstances that has been determined women 1/2 of men, in which the heir is the husband or wife whether they have children (1/4-1/8) or of does not have children (1/2-1/4).



2. There are four conditions in which women are entitled to get equal inheritance distribution as men, which areas follows:
  - a. In circumstance in which the heir is a father (1/6) together with a mother (1/6) in which the deceased has one son, or 2 daughters or more, or one daughter in certain cases (if the deceased is a woman leaving behind husband, mother, father and one daughter).
  - b. In circumstance in which the heir are uterine sisters together with uterine brothers in every situation.
  - c. In circumstance in which there is only one sole heir, either male or female, as he or she will take the whole estate left behind by the deceased. Therefore, the amount of estate inherited is the same, with no difference between men and women.
  - d. In other circumstances such as:
    - Same amount of estate inherited by consanguine sisters of same parents with consanguine brothers of same parents.
    - Same amount of estate inherited by uterine sisters of same mother with consanguine brothers of same parents without sharing.
    - Same amount of men and women that will surely receive the estate (not *mahjub* forever).
3. There are four conditions in which women are entitled to receive more inheritance distribution than men, which are as follows:
  - a. Female heir receiving 2/3 more of her portion than the *'asabah* that the male heir received, in certain cases.
  - b. Female heir receiving 1/2 more of her portion than the *'asabah* that the male heir received, in certain cases.
  - c. Female heir receiving 1/3 sometimes bigger portion than the *'asabah* that the male heir received, in certain cases.
  - d. Female heir receiving 1/6 sometimes bigger portion than the *'asabah* that the male heir received, in certain cases.
4. There are also circumstances in which only women inherit while men do not. One of them is grandmother's inheritance. This inheritance involves the issue of determining lawful grandfather from the aspects of inheritance knowledge and determining lawful grandmother. Determining lawful grandfather that is not alternate at the mother's *nasab* would mean that the father to the mother would be regarded as a broken grandfather (cannot inherit). On the other hand, grandmother is broken only when her *nasab* is alternated with previous broken grandfather. This shows that the grandmother will inherit the estate in all conditions, unlike grandfather.

The diversity in the distribution represents the justice of Islamic Sharia for being flexible in determining the rights of men and women. Suitable with the principle of justice in Islam, which denotes to put things in their rightful place, the advantages and the lacks of inheritance are in accordance with their responsibilities. Hence, Islamic inheritance system with the ratio of 2:1 between men and women needs to be seen as a complement to the Muslim family system although it is seen mathematically unfair. The responsibility to earn becomes the family's system of guarantee (al-takaful al-'a'ili) towards women, be it daughter and downwards descendants, wife, sisters, mother, and above; this responsibility is subjected to men (Sha'rawi, 1998).

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## CONCLUSION

Sharia has outlined a complete guide in arranging relationship between humans, so as between genders. In Islamic laws pertaining inheritance, no laws could be changed, especially relating to the distribution ratio of 2:1. This law has been clearly explained by *nass* in the Quran and there should be no possibility for *ijtihad* on fundamental that is already clear. Based on this fact, the changes in socioculture and sociohistories in this context do not cause the changes in Islamic law. The changes in role pattern between men and women in the family institution have caused the polemic for changes in Islamic law, especially in terms of inheritance. Despite the changes and the polemic caused, the questions on inheritance have already been clarified in the Quran.

In this context, the eternal verse of the Quran could never be changed for the sake of equalising the distribution ratio to become 1:1. In this circumstance, discussion should revert to the give-and-take amongst the heir/beneficiaries especially for men to release some of their rights to be equally distributed to women. This *muafakat* (consensus) approach has long been practised in the Malay society. Corresponding the above, the questions of injustice is not actually based on the 2:1 stipulation, instead it should be based on the socio-culture of society. The society, especially among men, should revert to the fundamental that has been determined in Islam, i.e., for them to carry the responsibilities to earn. Men should regard these responsibilities as an advantage that has been awarded by Allah SWT, and thus the advantage in inheritance correlates with these responsibilities held by them.

Therefore, the differentiation of the 2:1 ratio is purposely blown out of proportion either by the orientalist or by the feminists, when in fact the distribution of inheritance generally does not involve similar cases all the time. There are circumstances in which men and women are seen as having equal right. In fact, women would sometime have higher rights than men, but this is not exaggerated. Hence, based on these facts, the continued fight for gender equality and the acknowledgement of women's rights as essential human rights is reflected in the worldwide discourse on women's rights, which is taking place all over the world. The modern world is witnessing tremendous efforts to address numerous issues relating to women's rights, such as gender-based violence, financial freedom, rights related to reproduction, and intersectionality. Among these topics are also intersectionality. Despite the fact that progress has been made, there are still obstacles to be addressed. It is essential for individuals, communities, and governments to continue campaigning for the rights of women and working towards the creation of a society that is more inclusive and welcoming to all people.

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