

The Differences of Men's and Women's Shares in Islamic Inheritance Law Defense to Criticism and Blasphemy

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Abstrack: *This study aims to provide an explanation of the defense against criticism and blasphemy for the differences in the male and female divisions and their arguments. This research is a normative study with a conceptual approach. The primary and secondary data collected were then analyzed using a content analysis approach to provide an overview of the defense and arguments for the application of male and female share differences in Islamic inheritance law. The results of the study show that criticism and blasphemy from those who reject the difference in inheritance distribution between men and women cannot be justified because not in all cases do women get a smaller share than men. There are many cases where women get the same and even bigger share than men. Moreover, justice also cannot be interpreted as equal distribution, considering that in scientific terms, the term distributive justice is also known. The interpreters argue that the provisions of section 2:1 between men and women are a decree from Allah that must be carried out by arguing that the statements in the verses of the Qur'an are clear and qath'i. The demand for new ijti had cannot be justified considering that in ushul fiqh there are rules which state that there should be no ijti had in the provisions of qath'i texts.*

The Introduction

The application of Islamic Inheritance received special attention from Islamic law experts because of the detailed explanation of the Qur'an regarding this issue. The Qur'an provides a detailed description of the portions of the heirs as stated in Surah al-Nisa(4) verses 11, 12, and 176. In addition, the Prophet's suggestion also gave encouragement to Muslims to not only study it but also teach it to humans in general which of course to be later implemented or applied. In this case, the Prophet SAW said to Abu Hurairah:

يَا أَبَا هُرَيْرَةَ تَعَلَّمُوا الْفَرَائِضَ وَعَلِّمُوهَا، فَإِنَّهُ نِصْفُ الْعِلْمِ وَهُوَ يُنْسَى، وَهُوَ أَوَّلُ شَيْءٍ يُنَزَعُ مِنْ أُمَّتِي
 “O Abu Hurairah, learn the science of faraid (inheritance) and teach it. Indeed, the faraid is half of knowledge and it will be forgotten. It is the first knowledge that will be revoked from my ummah” (Ibn Majah Abu Abdillah Muhammad bin Yazid al-Qazwiny, 1997, p. 908).

In an effort to protect the needs of Muslims for inheritance law, the government legislates the Islamic inheritance law as evidenced by the emergence of laws and regulations governing inheritance law in Islamic family law rules both in Indonesia and in Muslim countries. (Erniwati, 2018; Wahib, 2014, pp. 6–9). Along with the development and codification of Islamic inheritance law in legislation, reforms in this field have also emerged as responses to the problems of the people that occur and require solutions, while these problems are not explained in the Qur'an in detail. Among these reforms, such as the problem of joint property (Darussamin & Armansyah, 2017, pp. 348–350; Nurdin, 2019), surrogate heirs (Dilapanga et al., 2021), mandatory will (Erniwati, 2018), and the issue of female descent hinders the testator's brothers and sisters to inherit as a manifestation of the renewal of the interpretation of the concept of *kalalah* (Kaswadi, 2021).

Although reforms related to inheritance issues have emerged as mentioned, Muslim countries still maintain the provisions of section two to one (2:1) between men and women which are in line with the Qur'anic texts. Meanwhile, only Turkey and Somalia have made extreme fundamental changes in this regard by implementing the equality of share one to one (1:1) between men and women even though this is clearly contrary to the text of the Qur'an. It appears that the actions of the Somali state are the result of the socialist movement adopted by the country which then affects the characteristics of its legal formation. (Andaryuni, 2018, p. 169). Meanwhile, Turkey did this as a result of the policies of the Mustafa Kemal regime with the idea of secularism embraced so that it then copied the rules of the Swiss Civil Code of 1912. (Fuad, 2019).

If the new breakthroughs in Islamic inheritance in the past were related to problems outside the texts that needed a solution, today the problems actually arise in problems that have already been explained in the texts and have even been carried out by the early generations of Islam during the time of the prophet's companions of the Prophet, the tabi'in and so on until now. The difference in the share of men and women in Islamic inheritance has received a lot of criticism and blasphemy because it is considered inappropriate with the value of equality before the law, especially for those who adhere to gender understanding. (Islamiyati, 2015, p. 105; Muhammad Amin Suma, 2013, pp. 4–7). On the other hand, nowadays, our society is also faced with the reality of many working women who even have better professions and earn higher incomes than men so that the two to one division between men and women is considered no longer appropriate with the contemporary conditions and demands (Sururi, 2019).

Based on the facts above, it is interesting to study further as the focus of discussion in this research regarding how criticism, blasphemy, and arguments against the application of the differences in the male and female

shares in Islamic inheritance law, as well as to examine how the arguments for the defense against these criticisms. This is meant to examine the truth so that there is no doubt in the application of Islamic inheritance law because it is based on appropriate and strong arguments.

Research Methods

This research is a normative study with a conceptual approach to provide a description of the criticism and blasphemy on the differences in the inheritance of men and women and the arguments. At the same time also to further provide arguments for the defense supporting the rule application against these criticisms. The primary data of this study comes from criticism and blasphemy as well as arguments against the provision of male and female inheritance in Islamic inheritance law which is supported by secondary data from books, journal articles, and other sources related to the focus of the discussion. The collected data is then analyzed using a content analysis approach to provide an overview of the defense and arguments for the application of share differences between men and women in Islamic inheritance law.

Discussion and Results

Application of the Principle of Two to One (2:1) in Islamic Inheritance

The provisions for the difference between male and female shares with a ratio of 2:1 are based on the holy text of the Qur'an Surah Al-Nisa' verses 11-12 as follows::

يُوصِيكُمُ اللَّهُ فِي أَوْلَادِكُمْ لِلذَّكَرِ مِثْلُ حَظِّ الْأُنثَيَيْنِ ۚ 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 وَوَرِثَهُ أَبُوهُ فَلِأُمِّهِ الثُّلُثُ ۚ فَإِن كَانَ لَهُ إِخْوَةٌ فَلِأُمِّهِ السُّدُسُ ۚ مِن بَعْدِ وَصِيَّةٍ يُوصِي بِهَا أَوْ دِينٍ ۚ أَبَاؤُكُمْ وَأَبْنَاؤُكُمْ لَا تَدْرُونَ أَيُّهُم أَقْرَبُ لَكُمْ نَفْعًا ۚ فَرِيضَةٌ مِّنَ اللَّهِ ۚ إِنَّ اللَّهَ كَانَ عَلِيمًا حَكِيمًا ﴿١١﴾ وَلَكُمْ نِصْفُ مَا تَرَكَ أَزْوَاجُكُمْ إِن لَّمْ يَكُنْ لَهُنَّ وَلَدٌ ۚ فَإِن كَانَ لَهُنَّ الرَّبْعُ مِمَّا تَرَكَنَّ مِن بَعْدِ وَصِيَّةٍ يُوصِي بِهَا أَوْ دِينٍ ۚ وَلَهُنَّ الرُّبْعُ مِمَّا تَرَكَنَّ إِن لَّمْ يَكُنْ لَكُمْ وَلَدٌ ۚ فَإِن كَانَ لَكُمْ وَلَدٌ فَلَهُنَّ الثُّمُنُ مِمَّا تَرَكَنَّ مِن بَعْدِ وَصِيَّةٍ يُوصِي بِهَا أَوْ دِينٍ ۚ وَإِن كَانَ رَجُلٌ يُورِثُ كَلَّةً أَوْ امْرَأَةً وَوَلَهُ أَخٌ أَوْ أُخْتُ فَلِكُلِّ وَاحِدٍ مِّنْهُمَا السُّدُسُ ۚ فَإِن كَانُوا أَكْثَرَ مِن ذَلِكَ فَهُمْ شُرَكَاءُ فِي الثُّلُثِ ۚ مِن بَعْدِ وَصِيَّةٍ يُوصِي بِهَا أَوْ دِينٍ غَيْرِ مُضَارٍّ ۚ وَصِيَّةً مِّنَ اللَّهِ ۚ وَاللَّهُ عَلِيمٌ حَلِيمٌ

" Allah chargeth you concerning (the provision for) your children: to the male the equivalent of the portion of two females, and if there be women more than two, then theirs is two-thirds of the inheritance, and if there be one (only) then the half. And to each of his parents a sixth of the inheritance, if he have a son; and if he have no son and his parents are his heirs, then to his mother appertaineth the third; and if he have brethren, then to his mother appertaineth the sixth, after any legacy he may have bequeathed, or debt (hath been paid). Your parents and your children: Ye know not which of them is nearer unto you in usefulness. It is an injunction from Allah. Lo! Allah is Knower, Wise. And unto you belongeth a half of that which your wives leave, if they have no child; but if they have a child then unto you the fourth of that which they leave, after any legacy they may have bequeathed, or debt (they may have contracted, hath been paid). And unto them belongeth the fourth of that which ye leave if ye have no child, but if ye have a child then the eighth of that which ye leave, after any legacy ye may have bequeathed, or debt (ye may have contracted, hath been paid). And if a man or a woman have a

distant heir (having left neither parent nor child), and he (or she) have a brother or a sister (only on the mother's side) then to each of them twain (the brother and the sister) the sixth, and if they be more than two, then they shall be sharers in the third, after any legacy that may have been bequeathed or debt (contracted) not injuring (the heirs by willing away more than a third of the heritage) hath been paid. A commandment from Allah. Allah is Knower, Indulgent."

The provisions of the paragraph above regulate the share of inheritance for sons and daughters, parents, husbands, and wives. The basic difference regarding the share of heirs based on the verse is: First, the share of a son is the same as that of two daughters. Second, if the heir does not have children, the mother will get 1/3 of the inheritance and the father will get the remainder or *ashabah*. Third, the husband gets 1/2 share if the testator (wife) has no child and gets 1/4 share if the testator has descendants. Meanwhile, the wife gets 1/4 share if the testator (husband) has no children and gets 1/8 if the testator has descendants.

Based on the above provisions, it can be understood that the share of sons is always twice as much as the share of daughters, as verse 11 of Surah al-Nisa' indicates a 2:1 ratio for sons and daughters. Likewise, the husband's share is always twice as much as the wife's. Meanwhile, the share of the mother and father in certain cases when they are with their husband or wife without the presence of children, the share of the father is not twice that of the mother. However, the *ijtihad* of the Companions of the Prophet (PBUH) required the mother's share in this case to get the remaining 1/3, thus ensuring that the father's share was twice as large as the mother's. The formulation of the parent's share in the case is known in Islamic inheritance as the *gharawayn* case or *'umariyatayn* (Fitrah & Firdaus, 2020). Furthermore, based on verse 176 of Surah al-Nisa' it can be understood that the share of a full brother when together with a full sister and the share of consanguine brothers together with consanguine sisters also applies the provisions of a 2:1 ratio for the male and female parties.

The stipulation that women get half of the men's share as stated earlier, is not an all-encompassing one. This stipulation is only valid in certain cases (Elbalti, 2018, p. 3). Situations, where women get half the share of men, are: First, when a son is with a daughter, it is included when a son's son is with a son's daughter. An illustration of the case is as follows:

Heirs	share (2:1)	Inheritance (IDR 60 Million)	Total
Son	2/3	2/3 x 60 M	40 M
Daughter	1/3	1/3 x 60 M	20 M

Second, when a full brother is with a full sister or when a consanguine brother is with a consanguine sister. As the following illustration:

Heirs	Share	Inheritance (IDR 60 Million)	Total
Husband	1/4	$\frac{1}{4} \times 60 \text{ M}$	15 M
Full brother	residuary (with ratio of a 2:1 for male and female)	$\frac{2}{3} \times 45 \text{ M}$	30 M
Full Sister		$\frac{1}{3} \times 45 \text{ M}$	15 M

Third, when the father is with the mother without the presence of children and husband/wife. As the following illustration:

Heirs	Share	Inheritance (IDR 60 Million)	Total
Father	2/3	$\frac{2}{3} \times 60 \text{ M}$	40 M
Mother	1/3	$\frac{1}{3} \times 60 \text{ M}$	20 M

In the case of parents together with their husband or wife, the *Gharawayn* case will apply where the mother gets the remaining 1/3 share, as illustrated below:

Heirs	Share	Inheritance (IDR 60 Million)	Total
Wife	1/4	$\frac{1}{4} \times 60 \text{ M}$	15 M
Mother	1/3 of residuary	$\frac{1}{3} \times 45 \text{ M}$	15 M
Father	Residuary	The rest of the property after being taken by the wife and mother	30 M

Fourth, the wife's share when the husband has no children is 1/4 and when he has children, the wife will get 1/8 of the share. Meanwhile, the husband's share in the same case, the husband gets twice as much as the wife, i.e. the husband gets 1/2 if the wife has no children and 1/4 if the wife has children, as the following illustration:

Heirs	Share	Inheritance (IDR 60 Million)	Total
Husband	1/4	$\frac{1}{4} \times 60 \text{ M}$	15 M
Son	Residuary	$60 \text{ M} - 15 \text{ M}$	45 M

In the same case if the wife is with a son then the illustration is as follows:

Heirs	Share	Inheritance (IDR 60 Million)	Total
Wife	1/8	1/8 x 60 M	7,5 M
Daughter	residuary	60 Jt – 7,5 M	52,5 M

So only in the four (4) circumstances above, do women get half the share of men. In many cases, women can get the same share as men or even get more than men's share.(Elbalti, 2018) For example, women get the same share as men, namely when the heirs consist of a father, mother with a son/two daughters/with a daughter in certain cases, as illustrated below:

Heirs	Share	Inheritance (IDR 60 Million)	Total
Father	1/6	1/6x 60 M	10 M
Mother	1/6	1/6 x 60 M	10 M
Son	Residuary	The rest of the property after being taken by father and mother	40 M

In the illustration above, it is known that the mother and father get the same inheritance. In other circumstances, father and mother get the same share when they are with 2 daughters or with husband and daughter. In another case, the maternal grandmother when together with the father and son also gets the same share as the father, which is 1/6, even though the maternal grandmother is in a more distant degree of relationship to the heir than the father. The same thing happens in the inheritance of a mother and sister. Even though they are of different gender, they share the inheritance equally. Even in the case of heirs consisting of a mother's sister, mother's brother, father's brother, and husband, then all the brothers will get the same share. For more details, see the following illustration:

Heirs	Share	LCM: 6	Total
Husband	1/2	3	3/6 x 60 M = 30 M
Uterine sister	1/3 (devided equally for both)	1	1/6 x 60 M = 10 M
Uterine brother		1	1/6 x 60 M = 10 M
Full Brother	Residuary	1	1/6 x 60 M = 10 M

Furthermore, related to cases, women can get a bigger share than men, namely in separate cases with the inheritance of 60 million and the heirs consist of husband, mother, father, and 2 daughters. On the other hand, in a separate case, the heirs consist of husband, mother, father and 2 sons. In the above case, the share of daughters will be more than the share of sons. More details are illustrated as follows:

Case 1				Case 2			
Heirs	Share	LCM:12	'Aul 15	Heirs	Share	LCM: 12	Total
Husband	1/4	3	3/15 x 60 M = 12 M	Husband	1/4	3	3/12 x 60 M = 15 M
Mother	1/6	2	2/15 x 60 M = 8 M	Mother	1/6	2	2/12 x 60 M = 10 M
Father	1/6	2	2/15 x 60 M = 8 M	Father	1/6	2	8/12 x 60 M = 10 M
2 Daughters	2/3	8	8/15 x 60 M = 32 M	2 sons	Residuary	5	5/12 x 60 M = 25 M

Based on the illustration of the table above, it can be seen that 2 daughters get a share of 32 million from the property left behind so each will get a share of 16 million. Whereas in the same case, 2 sons will get a share of 25 Million or each will get a share of 12.5 Million. Thus, of course, the share of daughters is greater than the share of boys. It is the same with the situation above, namely if the heirs consist of a husband, mother, two full brothers, and a uterine sister. In this case, the uterine sister's share is greater than that of the full brothers, because the uterine sister will get 1/6 of the inheritance while the two siblings will get 1/6th share to be divided equally between the two. This means that each of these full brothers will get a 1/12th share of the inheritance. In other words, a full brother gets half less than the share of a uterine sister.

Criticism and Blasphemy Differences in the Parts of Men and Women in Islamic Inheritance

History records that Islam has raised the position of women, especially in inheritance matters by giving inheritance shares to those who before the Islamic era did not get any share in inheritance (Jawad, 1998, p. 61), and even among the five (5) people who cannot be prevented from receiving an inheritance consisting of husband/wife, father, mother, son and daughter, three of whom are women. (Husein, 2019). More than that, Islamic law stipulates that there are 12 *ashhabul furud* or recipients whose share is determined based on the Qur'an and 8 of them are women (Suliyono, 2020). Despite this fact, there are criticisms and blasphemy regarding discrimination and perceived injustice regarding the inheritance share of women who are valued less than men.

Criticism of the difference in the share of inheritance between men and women in Islamic inheritance is presented with the argument that: First,

a 2:1 ratio between the share of male and female is considered unfair and discriminatory. As Joseph Schacht argues that Islamic law discriminates against women in terms of inheritance (Elbalti, 2018, p. 4). Supporters of the movement for the equal share of men and women in inheritance have sprung up in various parts of the world, especially countries with a majority of the Muslim population. In Tunisia, for example, the movement for equality in inheritance was even proposed by President Beji Caid Essebsi as a response to the demands of women's associations in his country which was stated on August 13, 2018, allowing equality of inheritance between men and women (Brésillon, 2018; Hanafi & Tomeh, 2019). As a result, on 25 November 2018, the Tunisian Cabinet gave its approval to a draft law that provides equal shares for men and women in inheritance. Furthermore, Beji Caid Essebsi added; "Tunisian men and women have the same rights and obligations and the Tunisian government has an obligation to defend women's rights". (*Tunisia*, n.d.)

As a follow-up to the movement in Tunisia, in Egypt, many social media users flocked to replace their photos with frames bearing the slogan, "equality in inheritance is a right not a privilege" which means that equality in inheritance is a common right, both for men and women. It is not a special right for certain groups or groups of men only (*Pro-Equality Groups Aspire for More Dialogue on Fair Inheritance*, 2018). In Indonesia, as a country with a majority Muslim population, proposals for an equal distribution of inheritance have also been made. Munawir Sadzali, who served as Minister of Religion in the 1980s, created the idea at that time to provide equal inheritance between sons and daughters. However, Munawir Sadzali's idea was rejected due to opposition from Indonesian scholars with the argument that it was contrary to the verses of the Qur'an (Yusuf & Wekke, 2018, p. 2). Furthermore, in Morocco demands for equal distribution of men and women also exist. Inheritance that places men twice as large as women in Morocco is considered to show the view of Moroccan women who are completely submissive to a hegemony that systemically devalues women's contributions to social and economic life. Therefore, it is deemed necessary to have a new *ijtihad* to protect equal rights to inheritance for women's groups (Bettach, 2021).

Second, the rejecters of Islamic inheritance law view that Islamic inheritance law is an independent provision and is not related to the rules of other sciences or other family laws (Muhammad Amin Suma, 2013, p. 74). As a result, they judge by using reason alone and consider inequality in inheritance as a form of social justification for the hegemony of men over women. Asghar Ali Engineer, in relation to this matter, argues that the hegemony of men over women has existed for a long time and has penetrated various aspects of social life in society. The destructive impact is the emergence of social justification, meaning that women are indeed under the command of men. As a result, this phenomenon initiated the doctrine of gender inequality (Rahmawati, 2020, p. 362).

Moreover, Muhammad Fadel, in looking at Islamic jurisprudence in particular, claims that some Islamic laws can be integrated into the public sphere, but certain rules are problematic. Many of these problems, according

to him, can be reintegrated into the public sphere through the use of common sense itself. Fadel addresses the issue of inheritance explicitly. He alludes to Fazlur Rahman's idea that the verses of the Qur'an are not binding forever, but should be seen as an adjustment to the status of women in a certain time and place, and that because the Qur'an emphasizes the fundamental equality between men and women, the argument for equality in inheritance is reasonable (Hanafi & Tomeh, 2019).

Defense Against Criticism of Application of the Principle of Ratio Two to One (2:1) in Islamic Inheritance Law

As mentioned, those who reject the application of the 2:1 principle in Islamic inheritance for men and women argue that this provision is discrimination and a form of injustice to women's inheritance rights. It's as if they think that justice is equality. Of course, this is a misunderstanding. Justice does not mean that everyone should be treated identically. Justice is meant that all humans are treated equally in terms of receiving what is their right which may be very different based on religious provisions (Rachmawati & Harahap, 2018, p. 288). Moreover, in the realm of science, justice does not have to be interpreted as identical or equal. Aristotle, in this case, provides an explanation that justice is divided into two categories, namely; commutative justice and distributive justice. Commutative justice requires everyone to be given an equal share regardless of their roles and services. Meanwhile, distributive justice means that a person gets his share according to his role and services so that the share of one person with another person can be different and does not have to be the same (Endyka et al., 2020, p. 28).

In line with Aristotle's distributive justice, the Islamic commentators also provide an explanation regarding the case of the difference in the share of men and women in inheritance that the role of men as the person in charge of the family is given the obligation to provide a living for his wife and children. Meanwhile, women are not given a burden to make a living so that the property owned is none other than for themselves. This difference in roles is one of the lessons in itself why men get a bigger share than women in certain circumstances. Muhammad Ali al-Shabuni, for example, revealed that the application of the 2:1 principle to men and women in inheritance contains a wisdom. This is because, men have more financing needs than women both for household life, management of trading assets, work and other responsibilities (Muhammad 'Ali al-Shabuny, 1997, p. 240). Meanwhile, the women are not legally burdened with the responsibility for the maintenance. A similar statement was also conveyed by Ahmad bin Mushtafa al-Maraghi in his work *Tafsir al-Maraghy* (Ahmad bin Mushtafa al-Maraghy, 1946, p. 196).

Muhammad Mutawally al-Sya'rawy, in responding to accusations of tyranny over the share of women's inheritance who then demanded equality in the distribution, stated: "Look at the justice here. A man is required to provide for his wife, and a woman is required to be provided for by a man, so that half of the man's share will be sufficient for her if she lives without marriage. If she married, her share of the inheritance would remain with her, and she would still have a husband to support her. So which one has more

parts? Of course women". (Muhammad Mutawally al-Sya'rawy, 1997, p. 2025) Thus, it can be understood that the provisions of the 2:1 principle are fair decisions based on the different roles and responsibilities of men and women. Moreover, even based on reason and science, the 2:1 principle cannot be said to be unfair because in science itself the concept of distributive justice is also known.

Furthermore, in responding to the accusation of inheritance law which is considered independent from other family law rules, then we must look at the fact that in addition to getting a woman's inheritance in its entirety without any obligation to support it, she will also get a dowry when she gets married. Besides, married women will get a living from their husbands. The rules of Islamic law do not oblige a woman if she is married to spend her wealth for the benefit of herself, her children and her family, because that responsibility based on Islamic law is borne by men as husbands (Nurhadi, 2019, pp. 5–7). This condition shows that inheritance is very closely connected with other family law rules. The legal provisions regarding the dowry, the rules of obligation for maintenance, the roles and functions of men and women in household affairs are sub-systems of family law related to Islamic inheritance law.

The accusation of the hegemony of men who then initiated gender inequality which in this case is related to Islamic inheritance, of course cannot be justified. Because not in all cases women get a smaller share than men. There are many situations where women get an equal share with men and even in some circumstances women can get a bigger share than men as explained in the previous chapter. On this basis, the demand for an equal share (1:1) in Islamic inheritance law cannot be justified. Deputy of Al-Azhar, Abbas Shuman, in this case said that equality in inheritance apart from being unfair, is contrary to the provisions of *sharia* law. He further stated:

“The call for equality in inheritance between genders is unfair because women can already inherit more than men in some instances”. (“Calls for Gender Equality in Inheritance Is against Islamic Teachings,” 2017)

Responding to new *ijtihad* demands (Bettach, 2021) and reinterpretation as put forward by Muhammad Fadel (Hanafi & Tomeh, 2019), which is more supportive of gender equality, then regarding the distribution of inheritance with the 2:1 principle, of course, it must not use mere reason. This is because in determining the law based on existing arguments must also refer to the provisions of *ushul fiqh* as a guide. Furthermore, in understanding the arguments of the texts or verses of the Qur'an, it is also necessary to have adequate tools of knowledge of interpretation so that the interpretations carried out do not seem to only use reason and lust, for which of course we must also look at how the previous *mufassirin* interpreted.

The statement نصيبا مفروضا in Surah al-Nisa' (4) verse 7, as explained by al-Zamakhsyari, implies that Allah gives a predetermined share of inheritance that must be carried out. (Abu al-Qasim Mahmud bin 'Umar bin Ahmad al-Zamakhsyari, 1407H, p. 476) The word *mafrūḍhan*, according to Quraish Shihab, is the root word of *faradha* which shows the meaning of an

obligation that comes from the Highest, namely Allah. It is different from the word obligatory which does not have to come from God, because a person can also oblige himself. Thus, it can be seen that the provisions of the inheritance are things that have been determined and come from God, so there is no reason to deny or make changes to it. (M. Quraish Shihab, 2007, p. 353) In another verse regarding inheritance, in verse 11 of Surah al-Nisa' (4), there is also the expression *فَرِيضَةً مِّنَ اللَّهِ إِنَّ اللَّهَ كَانَ عَلِيمًا حَكِيمًا* which indicates that the provisions of the inheritance shares, including the ratio of 2:1 share for son and daughter, are the provisions from Allah that must be carried out and Allah is the One Who knows what He has prescribed which of course contains wisdom, *maslahah*, and benefits. (Muhammad 'Ali al-Shabuny, 1997, pp. 240–241)

Furthermore, in the inheritance verses Allah also uses the word “will” with the expression *يُوصِيكُمُ اللَّهُ* and also the sentence *وَصِيَّةً مِّنَ اللَّهِ* in Surah al-Nisa'(4) verse 11 and verse 12, which shows the understanding that the provisions for the distribution of inheritance are a will from Allah which must be implemented because from the One who is higher than anyone. Aly al-Shabuny, in this case, explained that the use of the word "will" is stronger than the word "command", because it implies a demand to maintain and hold fast to something which in this matter is about the provisions of the inheritance (Muhammad 'Ali al-Shabuny, 1997, p. 240). On that basis, it is not surprising that Islamic law experts determine the *ijbari* principle as one of the principles in applying Islamic inheritance law. With this *ijbari* principle, the transfer of property from the testator to his heirs is coercive, in the sense that it occurs automatically according to the determined provisions without requiring any will or legal action from the testator (Jamhir, 2019, p. 5).

Those who reject the principle of the male and female portions should also consider that the inheritance verse in the Qur'an, especially regarding the 2:1 principle, is included in the *qath'i* verse which implies that the verse has a clear meaning and cannot be interpreted differently. Thus, the provisions in the paragraph are binding or coercive to be applied as is without modification (Ilhami, 2020, pp. 248–249). Efforts to carry out new *ijtihad* can only be required in two circumstances, namely in cases where there are no textual provisions at all and in cases where there are texts that are not *qath'i*. In the case that there are already provisions of the text of *qath'i*, then *ijtihad* cannot be justified because in the rules of *ushul fiqh* there is also provision: لا مسأغ للاجتهد فيما فيه نص صريح قطعي (there is no justification for *ijtihad* in a clear and *qath'i* text) (Abd al-Wahab Khalaf, n.d., pp. 216–217). Furthermore, according to Ahmad bin al-Shaykh Muhammad al-Zarqa, the provisions of the texts that are *qath'i* are giving confidence (*yaqiny*) while *ijtihad* is conjecture (*dzanny*). On that basis, things that are convincing cannot be abandoned because things that are prejudice or *dzanny*. (Ahmad bin al-Syaikh Muhammad al-Zarqa, 1989, p. 147)

Conclusion

Islamic inheritance law stipulates that there are differences in the inheritance share of men and women with a ratio of 2:1 in a number of circumstances. Those who reject the provisions of this section think that the

inheritance provisions in Islam are unjust and discriminatory against women. Criticisms and demands for change have been raised by a number of groups in countries with a majority Muslim population, including Indonesia. They demand a change from the concept of inheritance distribution which is more supportive of gender equality with the argument of justice which they think is more identical to the same distribution. They demand to carry out a new *ijtihad* or a new interpretation of the inheritance verse, so that the equality of inheritance distribution can be realized. Criticisms and blasphemy against the unequal distribution of inheritance between men and women cannot be justified because in reality not all cases women get a smaller share than men. There are many cases where women get the same and even bigger share than men. More than that, justice also cannot be interpreted as equal distribution, considering that in scientific terms, the term distributive justice is also known. The Islamic commentators argue that the provisions of section 2:1 between men and women are a decree from Allah that must be carried out by arguing that the statements in the verses of the Qur'an are clear and *qath'i*. The demand for new *ijtihad* cannot be justified considering that in *ushul fiqh* there are rules which state that there should be no *ijtihad* in the provisions of *qath'i* texts.

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