



The Concept of Muḥammad Shaḥrūr on Gender Parity in Inheritance Legislation

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Abstract

The distribution of inheritance by Islamic law is carried out equitably, namely by allocating shares to both males and females. Nevertheless, the current discussion surrounding the allocation of inheritance is facing challenges, particularly about the inequitable division of inheritance, where two males receive twice as much as one female. This disparity is perceived as unjust by certain individuals. Various experts have extensively analyzed both male and female issues. This analysis provides a thorough examination of Muḥammad Shaḥrūr's ideology, focusing on its normative legal aspects, particularly about gender and legal concepts. As per Muḥammad Shaḥrūr, Allah assigns at least fifty percent of a man's share to a woman. This minimum level applies in cases where the mother does not provide any financial support for the family's maintenance. Nevertheless, if women actively participate in creating revenue and contribute to the family's financial support, their share of contribution becomes comparable to that of males. Muḥammad Shaḥrūr contends that both men and women can obtain equal portions of inheritance within the framework of gender and legal principles. However, this equality is dependent on certain conditions and must not violate the specified limits set by Islamic law.

Keywords: Justice, gender, inheritance, Muhammad Shaḥrūr, Islamic law

Abstrak

Hukum Islam telah mengatur pembagian warisan dengan sangat adil yaitu permasalahan bagian laki-laki dan perempuan. Namun, wacana pembagian warisan mulai mengalami banyak problem, terutama dalam hal pembagian warisan 2: 1 antara laki-laki dua dan perempuan satu, yang dianggap tidak adil oleh sebagian masyarakat. Permasalahan bagian laki-laki dan perempuan mendapat perhatian dari berbagai ulama. Kajian merupakan studi hukum normatif tentang pemikiran Muḥammad Shaḥrūr dengan menggunakan teori-teori gender dan hukum. Menurut Muḥammad Shaḥrūr Allah memberikan setengah bagian laki-laki kepada perempuan sebagai batas minimal, dan batas minimal ini berlaku jika perempuan sama sekali tidak ikut dalam menafkahi keluarga. Namun, jika perempuan ikut dalam menafkahi keluarga, maka persentase bagian perempuan semakin mendekati bagian laki-laki tergantung seberapa besar keterlibatannya dalam mencari nafkah. Kajian ini dalam konteks gender dan hukum bahwa menurut Muḥammad Shaḥrūr persamaan kewarisan dalam hal bagian antara laki-laki dan perempuan tetapi hanya dalam keadaan khusus selama tidak melewati batas hudud.

Kata Kunci: *Keadilan, gender, waris, Muhammad Shaḥrūr, hukum Islam*

Introduction

Islam is a comprehensive religion that governs all aspects of human life through Islamic law, ensuring fairness and the absence of discrimination based on socioeconomic status, race, language, and gender. The purpose of Islamic law, as decreed by Allah, is to offer individuals clear direction towards righteousness and advantageous results. According to a principle in Islamic jurisprudence, it is obligatory for all individuals to consistently demonstrate a just conduct.¹

The analysis of justice in Islam is inextricably interconnected with inheritance law. The inheritance law refers to the legal provisions that control the distribution of assets left by deceased individuals.² Inheritance, or *fara'id*, is the distribution of a certain portion among eligible individuals (heirs) in line with the *Sharia* law.³ Justice in the inheritance law attains a balanced state between the rights obtained and the obligations or difficulties that the heirs must bear

¹ Ramadhita Ramadhita et.al, "Gender Inequality and Judicial Discretion in Muslims divorce of Indonesia," *Cogent Social Science* 9, No. 1 (2023). Harnides Harnides, et.al., "Gender Justice in Inheritance Distribution Practices in South Aceh, Indonesia," *Samarah: Jurnal Hukum Keluarga dan Hukum Islam* 7, No. 2 (2023).

² Mursyid Djawas, et.al., *The Construction of Islamic Inheritance Law: A Comparative Study of The Islamic Jurisprudence and The Compilation of Islamic Law*," *JURIS: Jurnal Ilmu Syar'iyah* 21, No. 1 (2022). Effendi Perangin, *Hukum Waris*, (Jakarta: Raja Grafindo Persada, 2013).

³ Beni Ahmad Saebani, *Fiqh Mawaris*, (Bandung: Pustaka Setia, 2019).

throughout their lives.⁴ Therefore, the concept of justice in the inheritance law is not based on the equal division among beneficiaries, but rather on the assignment of their obligations or duties. Therefore, the concept of justice in the inheritance law is not based on the equal division among beneficiaries, but rather on the assignment of their obligations or duties.⁵

The allocation of inheritance rights based on gender in Islamic law is meticulously regulated to achieve equitable distribution, encompassing both males and females. According to verse 11 of the Quran, Surah Al-Nisa (4), Allah has clearly outlined the allocation of inheritance for two sons and one daughter. In addition, more members have been acknowledged, including father, mother, uncle, grandfather, grandmother, and child.⁶

Yusuf Qardhawi's interpretation of this verse implies that Allah SWT is impartial and does not show favoritism towards either males or females. However, Allah SWT acknowledges the unique challenges faced by males, since they carry a heavier load. Essentially, inheritance rights are not determined by gender. This shows that both males and females have rights of equal strength. The concept of achieving gender equality in the allocation of inheritance is further elucidated in Qur'an Verse 7 of al-Nisa creates gender parity between males and females. In Surah al-Nisa of the Quran, notably in verses 11, 12, and 176, the concept of providing equal inheritance rights to both males and females, as well as to various family members, is elucidated.⁷

The inherited law adheres to the principle of a 2:1 ratio between male and female descendants in order to ensure fair allocation of inherited privileges. The Surah al-Nisa' (4) verses 11-12 provide explicit provisions pertaining to this issue. This chapter promotes equity by establishing gender-neutral inheritance rights for individuals of all genders, as examined from a historical perspective. Moreover, it emphasizes the need to protect the honesty and dignity of women. This is evident in the customs of the Jahiliyah society, where it is universally acknowledged that children and women are not entitled to inheritances. Moreover, certain persons perceive the widow of a deceased spouse as a form of inheritance.⁸

Currently, researchers are actively engaged in developing novel approaches to interpret the chapters of the Qur'an, particularly those about the inheritance law. These methods involve establishing connections between the text and its surrounding circumstances. The hermeneutic technique is a viable approach that can be employed. This approach involves the reassessment of texts by contemporary religious academics within the framework of present circumstances.

⁴ Abdul Ghofur Anshori, *Filsafat Hukum Kewarisan Islam: Konsep Kewarisan Bilateral Hazairin* (Yogyakarta: UII Press, 2005).

⁵ Afidah Wahyuni, "Keadilan Waris Dalam Alquran (Justice Inheritance in The Koran)," *Mizan* 5, no. 3 (2020), p. 248–53.

⁶ Tim Penyempurnaan Terjemahan Al-Qur'an, *Al-Qur'an Dan Terjemahannya Edisi Penyempurnaan 2019, Juz 1-10* (Jakarta: Lajnah Pentashihan Mushaf Al-Qur'an, 2019).

⁷ Wahyuni, "Keadilan Waris Dalam Alquran (Justice Inheritance In The Koran)."

⁸ Fatchur Rahman, *Ilmu Waris*, (Bandung: Alma'arif, 1994),

This technique represents a significant advancement in addressing the intricate issues associated with inheritance matters in contemporary times. The problems arise from the wide array of perspectives and conflicting opinions regarding the distribution of inheritance. Over time, the level of intricacy regarding inheritance matters escalates. Indeed, in many countries, the distribution of inheritance between males and females is equitable and impartial, to avoid societal inequalities, conflicts, and disintegration of family structures, while contradicting the teachings of QS. An-Nisa (4): 11.⁹

Moreover, the growth of progressively advanced cognition also led to various factions or persons who questioned the justice of the Islamic inheritance system. This critique focuses on gender-based discrimination, primarily directed towards women when the prevailing norm is a ratio of 2:1 in favor of men. This objection is based on the premise that the ratio of 2:1 is no longer relevant in modern times. The discrepancy in stock ownership between males and females can be traced to the conventional belief that males assume the role of principal breadwinners for their households. Nevertheless, this viewpoint has become more subjective in contemporary society, as there are now situations in which women take on the responsibility of being the primary provider for their families, even when they are single parents.¹⁰

The author intends to provide a thorough examination of the concept of inheritance and tackle the listed problems by integrating the viewpoints of Muḥammad Shahrūr. This study analyzes the thoughts of Muḥammad Shahrūr by considering gender and legal theories, specifically focusing on normative legal analysis. In general, this character strives for fair and just treatment of both males and girls. Gender parity should be guaranteed in relation to inheritance, ensuring that both men and women possess equal standing and entitlements. To effectively tackle contemporary inheritance challenges, it is essential to acquaint oneself with the concepts and interpretations put forth by Muḥammad Shahrūr.

The Notion of Inheritance in the Islamic Jurisprudence

Imam al-Gazali asserts that the Qur'an serves as a comprehensive legal manual for all individuals, designed to promote their well-being and moral excellence. The concept of "interest and goodness" refers to matters of utmost importance, including the safeguarding of children, rationality, spirituality, religious beliefs, property management, and the persistent pursuit of benefits for humanity. The Qur'an establishes various regulations, including inheritance law, to ensure consistent and fair treatment.¹¹

⁹ Riyadlul Ahyatusyifa, "Studi Komparatif Pemikiran Hazairin Dan Muhammad Syahrur Tentang Persamaan Waris Laki-Laki Dan Perempuan" (Institut Agama Islam Negeri Purwokerto, 2020).

¹⁰ Muhammad Hasnan Nahar, "Re-Thinking QS. An-Nisa Ayat 11 (Pendekatan Hermeneutika Asghar Ali Engineer)," *Al-Mufasir* 3, No. 1 (2021), p. 33-43,

¹¹ Abu Hamid al-Ghazali, *Al-Mustashfa Min 'ilm Al Ushul* (Lebanon: Dar al Kutub al Ilmiyah, 2010).

The basis of inheritance law, as delineated in the Qur'an, is expounded in Surah al-Nisâ verses 7, 8, 11, 12, and 176. To fully comprehend the meaning of *Asbâ al-nuzûl*, one must take into account the cultural milieu of the society of that era, which was marked by a lack of knowledge and prejudice toward women. In the *jahiliyah* tradition, inheritance is governed by the legal distribution of ancestral property. According to this tradition, children and women are not eligible to receive inheritance from their heirs. In conventional cultures, children and women frequently face exclusion from inheritance and are not recognized as legitimate beneficiaries. Widows, regardless of their gender, are regarded as inheritable assets that can be bequeathed to heirs.¹²

According to Quraish Shihab's interpretation, the reason for the revelation of Surah QS. An-Nisa (4) verse: 8 is related to the case of Umm Kujjah, the wife of Aus bin Thabit. She approached the Prophet to complain about her husband's inheritance. Aus bin Thabit had passed away during the battle of Uhud, leaving behind his wife and three daughters. Nevertheless, his three daughters were deprived of their husbands' properties, as all the assets were taken by their paternal uncle, leaving nothing behind. During that period, the Messenger of Allah was unable to respond to the complaint and advised the individual to be patient, resulting in the revelation of the QS. Al-Nisa 4: 8 establishes the provision for daughters to inherit property.¹³ After some time, he returned once more and expressed dissatisfaction over the identical matter. These verses were revealed at that particular moment. The Prophet commanded Sa'ad's sibling to allocate two-thirds of his assets to his offspring and one-eighth to his mother while retaining the remainder for himself.¹⁴ Examining the situation from this perspective, it becomes evident that the Qur'an ensures that women have their rights protected in their roles as daughters, wives, or mothers of inheritors.

Ibnu Kathir explained that Surah QS. Al-Nisa (4) verse: 8 clarifies the fair right of both genders to inherit, regardless of the difference in the amounts received. Both males and females, irrespective of their age, have the right to receive inheritance. The distribution of inheritance is dictated by the regulations specified in the Qur'an, and it applies to individuals of all ages, including both children and adults.¹⁵

In addition, the Qur'an addresses the matter of distributing shares amongst men and women in Surah QS. Al-Nisa (4) Verse: 11. QS Al-Nisa (4) verse 11 provides specific guidelines for the allocation (*Fardh*) of each recipient. This part pertains to the allocation of assets among beneficiaries, as seen from the verse that highlights how people are not the sole beneficiaries. Regardless of whether they are

¹² Muhammad Husayn Al-Thabathaba'i, *Al-Mîzân Fî Tafîr Al-Qur'ân*, Cet. 1. (Jakarta: Lentera, 2010).

¹³ M. Quraish Shihab, *Tafsir Al-Misbah*, Vol. 2 (Jakarta: Lentera Hati, 2022).

¹⁴ Fakhruddin Al-Râzi, *Tafsîr Al-Kabîr*, Jilid. V (Beirut: Dâr al-fîkr, 1990),

¹⁵ Ibn Kathîr al-Qurshî Al-Dimashqî, *Tafsîr Al-Quran Al-Azhim*, (Kairo: Dar al-Hadits, 2010).

mothers, fathers, children, or siblings. As indicated in the concluding line of this verse:

أَوْ دَيْنٍ غَيْرِ مُضَارٍّ وَصِيَّةً مِنَ اللَّهِ وَاللَّهُ عَلِيمٌ حَلِيمٌ

According to Al-Dimashqī's tafsir Al-Baidawi, the human population is divided into one male and two females, with additional individuals in a ratio of 2:1. Hence, the existence of two males is tantamount to the existence of six females. Males are deliberately singled out and allocated a larger share than females, to showcase masculine supremacy. This is based on the belief that men bear a higher burden than women, as men are anticipated to be the primary source of support for their families. An equitable allocation would involve assigning men a bigger proportion, namely a ratio of 2:1 in comparison to women.¹⁶

Surah Annisa (4) verse 12 also discusses the distribution of inheritances. This passage explains the predetermined rights of spouses, including the inheritance rights that come from the marriage relationship. Additionally, it illuminates persons who hold the *Kalalah* status. In the absence of offspring, a husband is entitled to fifty percent of the face value of his wife's bequest. Upon the birth of their children, the spouse is entitled to one-sixth of the assets. In contrast, when husbands abandon their spouses, the wives are entitled to legally claim 25% of the inheritance. Nevertheless, if the spouses who have been deserted possess offspring, their share of the inheritance is elevated to one-eighth. This distribution may be carried out following the resolution of testamentary affairs and the satisfaction of debts. This verse also discusses the division of inheritance for persons categorized as *Kalalah*, meaning those who lack a father or children. Additional clarification regarding the concept of *Kalalah* may be found in verse 176 of Surah An-Nisa (4).¹⁷

يَسْتَفْتُونَكَ قُلِ اللَّهُ يُفْتِيكُمْ فِي الْكَلَالَةِ إِنِ امْرُؤٌ هَلَكَ لَيْسَ لَهُ وَلَدٌ وَلَهُ إِخْوَةٌ فَلَهَا نِصْفُ مَا تَرَكَ وَهُوَ يَرِثُهَا إِنْ لَمْ يَكُنْ لَهَا وَلَدٌ فَإِنْ كَانَتَا اثْنَتَيْنِ فَلَهُمَا الثُّلُثَانِ مِمَّا تَرَكَ وَإِنْ كَانُوا إِخْوَةً رِجَالًا وَنِسَاءً فَلِلذَّكَرِ مِثْلُ حَظِّ الْأُنثِيَيْنِ يُبَيِّنُ اللَّهُ لَكُمْ أَنْ تَضِلُّوا وَاللَّهُ بِكُلِّ شَيْءٍ عَلِيمٌ

Meaning: They ask you for a fatwa (regarding *kalalah*). Say: "Allah gives you a fatwa regarding *kalalah* (namely): if a person dies, and he has no children and no sisters, then to his female sibling half of the property he left behind, and his male sibling inherits (all the property). sister), if he has no children; but if there are two sisters, then divide both two-thirds of the property left by the

¹⁶ Ibn Kathīr al-Qurshī Al-Dimashqī, *Tafsir Al-Quran Al-Azhim*, Juz II (Kairo: Dar al-Hadits, 2010).

¹⁷ Ibn Kathīr al-Qurshī Al-Dimashqī, *I'anaḥ Al-Thalibin 'ala Hilli Alfazhi Fath Al-Mu'in*, juz 3 (Beirut: Dar al-Fikr, 1997).

deceased. And if they (the heirs consist of) brothers and sisters, then they share one brother as many as two sisters. Allah explains (this law) to you so that you do not go astray. And Allah is All-Knowing of everything. (QS. Al-Nisa: 176).

This verse confirms the conclusive essence of the idea of partition in inheritance. The allocation of inheritance is determined in the Qur'an, considering the proximity of the successor to the deceased, and is further customized to meet the individual needs of each heir. The verdict is fair and consistent with the fundamental traits of human beings. Anyone who violates it will suffer a humiliating punishment.¹⁸

An examination of the verses on inheritance as viewed by Muḥammad Shaḥrūr

The principles of inheritance in Islam are outlined in a comprehensive and intricate legal treatise. Over time, the science of knowledge led to the emergence of ideas and sparked arguments about comprehending science, including the science of Islamic inheritance. Moreover, this debate sparked discussions around gender, namely the issue of gender equality in relation to the unequal 2:1 ratio of inheritance shares, which is deemed unjust.¹⁹

Muḥammad Shaḥrūr observes that contemporary fiqh, as it is practiced in daily life, encompasses diverse groups of people. First, focusing on matters related to the distribution of inherited assets and the corresponding legal regulations, while disregarding the legal provisions concerning testaments and their execution. Second, the elimination of the passages pertaining to wills, specifically the verse: *al-waṣīyatu li al-wāliḍayni wa al-aqrabīn* (no wills for parents and relatives), is grounded on the *munqathi' hadith* transmitted by ahlul *maghāzī*, namely: *lā waṣīyyata li wāriḥin* (there is no will for heirs). Third, the confusion arises from conflating two distinct notions, namely *al-haẓẓ* (the portion of inheritance) and *al-naṣīb* (the portion designated in a will), leading to a muddled comprehension of the verses pertaining to inheritance and wills.

In the Qur'an, Allah states, "الرِّجَالُ نَصِيبٌ مِّمَّا تَرَكَ الْوَالِدَانُ وَالْأَقْرَبُونَ" that men are entitled to a portion of the inheritance left by their parents and relatives, while women are also entitled to a portion of the inheritance left by their parents and relatives, regardless of the amount, as determined by the prescribed division. (Quran Surah al-Nisā' [4]: 7). This passage pertains to the concept of inheritance, specifically focusing on the topic of wills. Fourth, it fails to distinguish between the concept of justice in inheritance laws and the concept of justice in wills, even though general provisions do not necessarily invalidate specific ones.

¹⁸ Jalaluddin Al-Mahalli and Jalaluddin Al-Suyuthi, *Tafsir Al-Jalalain* (Jakarta: Perpustakaan Nasional RI, 2015).

¹⁹ Abu Hamzah, *Relevansi Hukum Waris Islam: Bias Isu Gender, Egalitarianisme, Pluralisme dan HAM* (Jakarta: As-Sunah, 2005).

Fifth, the phrase from Allah's scripture, "فَإِنْ كُنَّ نِسَاءً فَوْقَ اثْنَتَيْنِ" is commonly interpreted as "if there are more than two women." However, it is illogical to interpret the verse in such a nonsensical manner. Sixth, in the context of inheritance verses, the phrase '*al-walad*' is commonly interpreted as referring specifically to sons. This interpretation suggests that only sons can impede and restrict the inheritance rights of other individuals. This understanding is a simplified interpretation of the divine commandment from Allah SWT: "يُوصِيكُمُ اللَّهُ فِي أَوْلَادِكُمْ لِلذَّكَرِ مِثْلُ حَظِّ الْأُنثَيْنِ" which means that Allah instructs you on the division of inheritance to your offspring. That is, the share of one man is the same as the share of two women." This is because in this case, the term *al-walad* covers both sexes, both men and women. Apart from that, this reductive meaning also violates one of the features of the Arabic language which has masculine vocabulary which also contains feminine meaning. Seventh, Maintaining the concepts of '*awl*' (refining the percentage upwards) and '*radd*' (refining the percentage downwards), these two concepts force the application of four calculation patterns ('*amaliyyāt al-ḥisāb al-arba'*) which resulted in several other parties losing their rights unfairly. Eighth, grandchildren, even though they are orphans, are not allowed to receive a share of the inheritance from their grandfather when their father has died, even though grandchildren are also mentioned in the inheritance clause. Ninth, giving certain shares to parties -parties who are not mentioned at all in the inheritance clause, such as uncles (from the father's side) etc. The determination of these provisions is the result of past patriarchal social and political reasoning.²⁰

The intricacy of comprehending inheritance jurisprudence is further intensified by these matters. Muḥammad Shaḥrūr has offered a new interpretation of the scriptures about inheritance and wills. This research begins by differentiating between the broad notion of inheritance and the particular notion of wills, to reinstate the will's proper position by Allah's purposes as stated in *at-Tanzil al-Hakim*. Within this framework, Muḥammad Shaḥrūr elucidates inheritance as the transmission of assets to a designated heir whose portion is pre-established and contingent upon meeting the stipulations outlined in the will. If a will is not present, the share's value is established by the laws of inheritance. However, as to Shaḥrūr's interpretation of *at-Tanzil al-Hakim* in the Al-Qur'an, wills are considered more important than inheritance since they have a higher capacity to ensure fairness and are more effective in utilizing assets, promoting family ties, and enhancing social connections. Moreover, this also demonstrates the testator's thoughtfulness towards other individuals concerned.²¹

In addition, Muḥammad Shaḥrūr addressed the challenges arising from the implementation of verses related to wills and inheritance. He stressed the importance of addressing these challenges, particularly the issue of interpreting and applying these verses, which may differ from prevailing social or scientific

²⁰ Muḥammad Shaḥrūr, *Metodologi Fiqh Islam Kontemporer*, ed. Sahiron Syamsudin dan Burhanudin, cet. 6 (Yogyakarta: eLSAQ Press, 2004).

²¹ Shaḥrūr, *Metodologi Fiqh Islam Kontemporer*.

concepts. Shaḥrūr emphasized that the verse on wills serves as legal evidence that either nullifies or establishes the Shari'ah for an individual. It functions as a means to regulate the transfer of property ownership from one person to another, as specified in the will. However, in the absence of a will, the applicable verse on inheritance law governs the situation.²²

Muḥammad Shaḥrūr argued that the Qur'anic verses about inheritance were meant for the entire human race, rather than being directed towards particular individuals or families. These chapters present a set of universal rules that are based on mathematical principles, including a set theory and mathematical analysis tools, as well as the four fundamental arithmetic operations. Muḥammad Shaḥrūr uses the variable (y) to symbolize men and the variable (x) to symbolize women. Within this particular framework, women play a fundamental role in the calculation of inheritance, with the allocation for men being calculated after the allocation for women has been established. The value of the follower variable (y) varies and adapts in response to changes in the women's share (x). In QS An Nisa (4) verse: 11, the mention of men is limited to a single occurrence, whereas the mention of women spans a wide range of values, extending from one to infinite.²³

In this case, Muḥammad Shaḥrūr formulated a theory known as the theory of limits. The theory of boundaries is a scientific and mathematical framework employed for interpreting the Qur'an. This theory remains relatively obscure in the field of interpretation due to the fact that classical commentators relied on *ashab nuzul*, historical context, *nasikh mansukh*, *munasabah*, and linguistic rules that have not yet been incorporated into modern science.²⁴ Consequently, Muḥammad Shaḥrūr advanced contemporary interpretive thinking through the development of the *hudud* theory.²⁵

Muḥammad Shaḥrūr categorized *hudud* into two main types.²⁶ The first type is restrictions on pure worship (*al-Hudud fī al-Ibadah*), which includes activities like prayer, fasting, and Hajj. In this case, there is no room for interpretation or personal judgment (*Ijtihad*). The second type is restrictions in law (*al-Hudūd fī al-Aḥkām*), which can be further divided into six forms of *Hudud*. Before delving into these six forms, it is important to note that Muḥammad Shaḥrūr approached the concept of *hudud* using a mathematical method (*al-tahlil al-riyadi*). This approach was actually inspired by Newton's theories, particularly the concept of functions, where $Y=f(x)$ represents a single variable. However, in the case of two variables, the function becomes $Y+F(X,Z)$.²⁷ Understanding this mathematical

²² Shaḥrūr, *Metodologi Fiqh Islam Kontemporer*.

²³ Shaḥrūr, *Metodologi Fiqh Islam Kontemporer*.

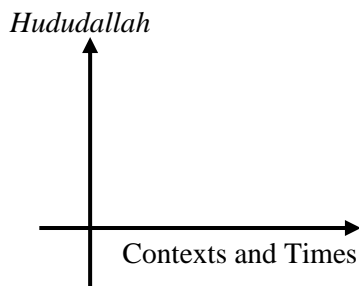
²⁴ Abdul Mustaqim, "Teori Hudūd Muhammad Syahrur Dan Kontribusinya Dalam Penafsiran Al-Qur'an," *AL QUDS : Jurnal Studi Alquran Dan Hadis* 1, no. 1 (2017): p. 1–26.

²⁵ Asmara, Kurniawan, and Agustian, "Teori Batas Kewarisan Muhammad Syahrur Dan Relevansinya Dengan Keadilan Sosial."

²⁶ Mustaqim, "Teori Hudūd Muhammad Syahrur Dan Kontribusinya Dalam Penafsiran Al-Qur'an."

²⁷ Mustaqim, *Teori Hudūd Muhammad Syahrur*.

function is crucial for comprehending Islam, which encompasses two opposing yet interconnected aspects: the constant and steadfast side (*al-tsabit or al-istiqomah*) and the dynamic and adaptable side (*hanfiyyah or al-mutaghayyir*).²⁸ This can be visualized in the graph below.



Muhammad Shaḥrūr explains that the horizontal line represents a fixed requirement that is objectively applicable in relation to time and history. On the other hand, the vertical line represents a flexible requirement that can change dynamically within the boundaries of Allah's Law. In this context, Shaḥrūr identifies six principles of Allah's Law (*Hududallah*) in relation to the X axis (context of time and human history).²⁹ These six principles of Allah's Law are:³⁰

1. *Halât hadd al-a`lâ* (Maximum limit)

The function $Y = F(x)$ represents a concave downward curve with a single maximum turning point that is parallel to the X axis. In this situation, there is only one upper limit, and it is not allowed to go beyond this limit. However, it is possible to minimize the value within this limit.³¹

2. *Hâlah hadd al-adnâ* (Minimum Limit)

More precisely, the line function has only one inflection point that is located parallel to the X axis. This leads to the formation of a parabolic curve that is open. The Qur'an has set a minimum threshold to limit the range of permitted Ijtihad beyond this lower boundary.³²

3. *Hâlah al-ḥadd al-adnâ wa al-ḥadd al-a`lâ ma'an 'alâ nuḡṡah wāḥidah* (A condition where the lowest and highest boundaries coexist at a single spot).

The lack of a minimum and maximum value is a result of the parallelism of the lines that represent these values. The equation $Y=N1$ is graphically represented as a straight horizontal line. In such conditions, the Qur'an does not prescribe any precise boundaries, hence eliminating any possibility of other choices outside of

²⁸ Mustaqim, Teori Hudūd Muhammad Syahrur.

²⁹ Hannani, "Eksekusi Mati Di Indonesia (Perspektif Teori Hudud Muhammad Syahrur)," *Diktum: Jurnal Syariah Dan Hukum* 15, no. 1 (2017): p. 94–108,

³⁰ Muḥammad Shaḥrūr, *Al-Kitāb Wa Al-Qur'ān: Qirāah Mu'aṣirah* (Bairut: Sharikah al-Maṭbū'āt; I at-Tawzī wa an-Nashr, 2000).

³¹ Mustaqim, "Teori Hudūd Muhammad Syahrur Dan Kontribusinya Dalam Penafsiran Al-Qur'an."

³² Mustaqim, Teori Hudūd Muhammad Syahrur.

what is mandated by the Koran. This indicates that the law remains unaltered regardless of the passage of time.³³

4. *Halah al-hadd al-a"la bi kha muqarib li mustaqim duna lamas bi al-hadd* (The upper limit tends to approach the nearest straight line without making contact).

More precisely, the position of this area creates an unbounded curve that asymptotically approaches the Y axis and extends indefinitely. The initial position, however, is situated in an unbounded area and aligns perfectly with the X axis. The maximum boundary of the territory is nearby but does not physically touch, except in the infinite region. The same illustration can be observed in the dynamic between a male and a female, wherein the connection commences with a casual contact lacking physical intimacy, gradually advancing towards the threshold until adultery occurs.³⁴

5. *Halah al-hadd al-adna wa al-hadd al-a"la ma'an* (Halah refers to the simultaneous presence of both the lowest limit and the maximum limit).

Specifically, the curve area exhibits both a minimum and maximum turning point, resulting in a wave-like curve. The turning point aligns with a straight line that runs parallel to the X axis. This phenomenon is described by a trigonometric function. Within these boundaries, legal judgments are rendered. An illustrative example can be found in the inheritance law outlined in QS An Nisa (4) verses 11-12.³⁵

6. *Halahal-hadd al-a"la mujaban wa al-hadd al-adna saliban* (the maximum limit is positive, while the lowest limit is negative).

This position can be represented by a wave curve, with the highest point in the positive region and the lowest point in the negative region. Both points align with a straight line that is parallel to the curve.³⁶

The concept of hudud theory, specifically about inheritance law, is discussed in verses 11-14 and 176 of Surah An-Nisa in the Quran. This theory encompasses the notions of Halah al-hadd al-adna wa al-hadd al-a'la ma'an, which refer to the minimum and maximum limits of inheritance simultaneously. According to Muḥammad Shaḥrūr, men have a maximum limit imposed on them, while women have a minimum limit. Consequently, if men bear the entire weight of the family's responsibilities, then the law of Allah SWT, namely verse 2:1, is enforced. The highest percentage is 66.6% for men, and the lowest number for women is 33.3%. Hence, allocating 75% to men and 30% to women would transgress the boundaries established by Allah SWT. Nevertheless, dividing the population into 60% men and 40% women remains compliant with the legal boundaries set by Allah SWT. According to Muḥammad Shaḥrūr, this refers to the

³³ Mustaqim, Teori Hudūd Muhammad Syahrur.

³⁴ Mustaqim, Teori Hudūd Muhammad Syahrur.

³⁵ Mustaqim, Teori Hudūd Muhammad Syahrur.

³⁶ Mustaqim, Teori Hudūd Muhammad Syahrur.

ability to move freely within the boundaries set by the law. The community establishes these restrictions based on the specific requirements of each group. Muḥammad Shaḥrūr asserts that the application of law should not be bound by the literal interpretation of ancient texts in the context of the contemporary world.³⁷

Muḥammad Shaḥrūr's view adheres to the rules and emphasizes the importance of fairness about the obligations fulfilled by heirs based on their circumstances. If the distribution of 40% for women and 60% for males does not contravene the terms of inheritance law, it will effectively establish a balanced distribution mix by the actions and duties undertaken. Muḥammad Shaḥrūr discusses the concept of limitations in the context of Allah's provisions, which are inviolable but subject to *ijtihad*, allowing for flexibility, dynamism, and elasticity. Muḥammad Shaḥrūr highlighted that Allah SWT has established a means for humanity to navigate a curved trajectory within the confines of the Al-Quran, which governs all human and natural behaviors. According to his interpretation, the specific legal modifications outlined in the Qur'an suggest a maximum threshold rather than an unconditional restriction.

Muḥammad Shaḥrūr developed the *hudud* theory based on the teachings found in *Surah An Nisa* (4), namely in paragraph 13, which pertains to the division of inheritance. In verse 13 of QS An Nisa (4), the sentence "تِلْكَ حُدُودُ اللَّهِ" has the word "حُدُودُ" in its plural form. The word "حُدُودُ" is derived from the singular form "حد" which indicates limit. Muḥammad Shaḥrūr's view adheres to the rules and emphasizes the importance of justice in the duties performed by heirs based on their circumstances. If the allocation of 40% for women and 60% for males adheres to the provisions of inheritance law without violating them, it will result in a well-balanced distribution that takes into account both the actions performed and the responsibilities assumed. Muḥammad Shaḥrūr discusses the concept of limitations in the context of Allah's provisions, which are inviolable but allow for flexibility, dynamism, and elasticity within the realm of *ijtihad*. Muḥammad Shaḥrūr highlighted that Allah SWT has established a means for mankind to traverse a curved trajectory within the confines of the Al-Quran, which governs all human and natural behaviors. As per his statement, the intricate legal modifications outlined in the Qur'an suggest a maximum threshold rather than an unyielding boundary. Muḥammad Shaḥrūr developed the *hudud* theory based on the teachings of the Qur'an, namely in *Surah An Nisa* (4), verse 13, which pertains to the division of inheritance. In verse 13 of QS An Nisa (4), the line "تِلْكَ حُدُودُ اللَّهِ" has the term "حُدُودُ" in its plural form, derived from the singular form "حد" which denotes limit.³⁸

The term "plural" signifies the existence of multiple provisions of Allah SWT, and it is the responsibility of humans to exercise *Ijtihad* in order to determine the appropriate boundaries based on their respective circumstances, needs, and

³⁷ Shaḥrūr, *Prinsip Dan Dasar Hermeneutika*.

³⁸ Muhammad Ali Murtadlo, "Keadilan Gender Dalam Hukum Pembagian Waris Islam Perspektif The Theory Of Limit Muhammad Syahrur," *Tafáqquh: Jurnal Penelitian Dan Kajian Keislaman* 6, no. 1 (2018), p. 76–89.

conditions, as long as they remain within the limits prescribed by Allah SWT. Muḥammad Shahrūr argues that the law cannot be confined to a single interpretation or perspective. Rather, laws should be adaptable to the ever-changing human condition. According to him, Allah SWT has established the minimum and maximum parameters of a law, while human *ijtihad* is unrestricted, and individuals are even obligated to refine their laws in accordance with consensus and justice.³⁹

Muhammad Shahrur categorizes the boundaries of Allah's rule in dividing inheritance into three legal limits, based on the application of the *hudud* theory in inheritance law as outlined in QS. Al-Nisa (4) verses 11-12 and 176.⁴⁰

1. The first restriction of inheritance law is that the male receives a share equal to that of two females; *li adh-dhakari mithlu hazzi al-unthayayni*.⁴¹

This restriction is a legal constraint that limits the portion of inheritance the children of the deceased receive when there is one male child and two female children. Furthermore, it functions as a standard that can be utilized in situations where the quantity of women is twice the quantity of men. Should we be driven to enforce limitations in unsuitable domains, we will inevitably become ensnared in the very issues that Allah has cautioned us to steer clear of, as explicitly stated:

يُبَيِّنُ اللَّهُ لَكُمُ الْآيَاتِ وَاللَّهُ بِكُلِّ شَيْءٍ عَلِيمٌ

“Allah explains (this law) to you so that you do not go astray. And Allah is All-Knowing of everything.” (QS. al-Nisā' [4]: 76).⁴²

The division in this case can be formulated with the equation

$$F/M = 2$$

F: The number of (*female*)

M: The number of (*male*)

The number of heirs	Allotment for Males	Allotment for Females
1 Male + 2 Females	50% for 1 male	50% for 2 females
2 Males + 4 Females	50% for 2 males	50% for 4 females
3 Males + 6 Females	50% for 3 males	50% for 6 females

2. The second limitation of the inheritance law is that if we are dealing with female heirs, their share cannot exceed that of two male heirs: *fa'in kunna nisā'an fawqa ithnatayni*.⁴³

³⁹ Murtadlo, Keadilan Gender Dalam Hukum Pembagian Waris Islam.

⁴⁰ Shahrur, *Metodologi Fiqh Islam Kontemporer*.

⁴¹ Shahrur, *Metodologi Fiqh Islam Kontemporer*.

⁴² Shahrur, *Metodologi Fiqh Islam Kontemporer*.

⁴³ Shahrur, *Metodologi Fiqh Islam Kontemporer*.

These legal restrictions impose limitations on the inheritance of children in specific scenarios. If there is one boy and three girls, or any other combination with more than two women, the inheritance is divided such that men receive 33% and women receive 67%, regardless of their exact number. This limitation applies whenever the number of women is more than twice the number of men.

Messured through the following procedure

$F/M \geq 2$

F: The number of (female)

M: The number of (male)

The number of heirs	Allotment for males	Allotment for females
2 males + 5 females	33% for 2 males	67% for 5 females
1 male + 7 females	33% for 1 male	67% for 7 females

3. The third limit of the inheritance law states that if there is only one inheritor, they receive half of the inheritance: *wa in kānat wāḥidatan fa lahā an-niṣfu*.⁴⁴

This third legal restriction pertains to the limitation on children's inheritance when the number of male parties is equal to the number of female parties, as determined by a specific equation:

$F/M < 2$

F: The number of (female)

M: The number of (male)

The number of heirs	Allotment for males	Allotment for females
1 male + 1 female	50% for 1 male	50% 1 female
2 males + 2 females	50% for 2 males (@25%)	50% 2 females (@25%)
3 males + 3 females	50% for 3 males (@ 16,67%)	50% 3 females (@ 16,67%)

The three aforementioned constraints pertain to the legal bounds set by Allah for the allocation of inheritance, and they conform to the limitations specified in the verses on inheritance. The intricate complexities in the Islamic jurisprudence have resulted in varying opinions among different schools of thought on several issues. These include the matters of *radd* and *aul*, surplus male heirs, women being unable to act as *hajib*, more than two female heirs, and the allocation of 33.33% or 50% of the remaining assets, including the recipients and destinations, as dictated by the aforementioned legal constraints.⁴⁵

⁴⁴ Shaḥrur, *Metodologi Fiqh Islam Kontemporer*.

⁴⁵ Shaḥrur, *Metodologi Fiqh Islam Kontemporer*.

Examining the Notion of Gender Equality in Inheritance Legislation

The verses mentioned above address gender equality in inheritance. The traditional 2:1 division between men and women is often considered outdated. Justice is a key principle in the inheritance system, which means that the share received should be proportional to the obligations and responsibilities of the heirs. Therefore, justice in inheritance is not determined by the similarity of the heirs' status, but rather by the magnitude of the burdens and responsibilities they assume.

Concerning the 2:1 distribution (2 men and 1 woman), it is important to note that while it may not achieve equality, it does not necessarily imply unfairness. In Islamic principles, justice is not solely determined by the quantity of inheritance rights, but also takes into account the individual's needs and utilization. Generally, men require more material possessions than women due to their extensive responsibilities in Islam, which encompass their own well-being as well as that of their families. This is stated in verse 34 of Surah An-Nisa (4).⁴⁶

الرِّجَالُ قَوَّامُونَ عَلَى النِّسَاءِ بِمَا فَضَّلَ اللَّهُ بَعْضَهُمْ عَلَى بَعْضٍ وَيَمَا أَنفَقُوا مِنْ أَمْوَالِهِمْ
فَالصَّالِحَاتُ قَانِتَاتٌ حَافِظَاتٌ لِّلْغَيْبِ بِمَا حَفِظَ اللَّهُ وَالَّتِي تَخَافُونَ نُسُوزَ هُنَّ فَعِظُوهُنَّ وَأَهْجُرُوهُنَّ
فِي الْمَضَاجِعِ وَاضْرِبُوهُنَّ فَإِنِ أَطَعْنَكُمْ فَلَا تَبْغُوا عَلَيْهِنَّ سَبِيلًا إِنَّ اللَّهَ كَانَ عَلِيمًا كَبِيرًا

Men, as husbands, are designated as protectors of women, their wives, due to Allah's preference for some men over women and their provision of financial support. Pious women are those who demonstrate obedience to Allah and take care of themselves in the absence of their husbands, as Allah has provided for them. In cases where concerns arise regarding a woman's disobedience (*nusyuz*), it is advised to offer counsel, consider separate sleeping arrangements, and, if necessary, resort to physical discipline. However, if the woman complies, it is unnecessary to seek reasons to trouble her. It is important to acknowledge that Allah is the Most High and the Most Great. (QS. Al-Nisa: 34).

The difference lies not in gender, but rather in the greater responsibility imposed on men compared to women in the context of Islamic society. This is by the standard conventional theory that states “the greater the burden on men, the greater the rights they obtain,” as the costs associated with fulfilling these responsibilities are substantial.⁴⁷ According to Hazairin, there are no issues with inheritance in Islam that require reform, as the allocation of inheritance is clearly defined. However, in emphasizing the concept of justice, Hazairin argues for a bilateral inheritance system desired by the Qur'an, which rejects the patrilineal

⁴⁶ Maryati Bachtiar, “Hukum Waris Islam Dipandang Dari Perspektif Hukum Berkeadilan Gender,” *Jurnal Ilmu Hukum* 3, no. 1 (2012): p. 1–43.

⁴⁷ Asmara, Kurniawan, and Agustian, “Teori Batas Kewarisan Muhammad Syahrur Dan Relevansinya Dengan Keadilan Sosial.”

concept still adhered to by jurists. The bilateral system aims to equalize the position of sons and daughters, without excluding any of the heirs.⁴⁸

Within the bilateral system, justice aims to achieve gender equality by allowing women to assume the status of heirs in lower priority groups. This means that if there are still higher priority heirs (regardless of gender), the lower priority group (comprised of the siblings of the heir, regardless of gender) are excluded from inheriting the status of heirs.

For instance, consider a scenario where an individual passes away and leaves behind an heir, one brother, one daughter, and one grand-daughter from a son. According to the principles of *Ahlussunnah*, the distribution of inheritance would be as follows: the brother receives a share equal to that of *Aṣabah*, the daughter receives half of the inheritance, and the grand-daughter receives one-sixth.⁴⁹ Therefore, the fairness of inheritance between males and females is not determined by the quantity of individuals, but rather by the rights granted to each gender. Both males and females are entitled to inheritance as stipulated in the Qur'an, and both can also serve as a safeguard for disadvantaged groups.

Muhammad Shaḥrūr developed the concept of *Hudud*, which refers to the limits set by Allah SWT that must not be violated. However, Shaḥrūr introduced the idea of *Ijtihad*, which is a flexible and dynamic interpretation of these limits. Shaḥrūr derived the theory of *Hudud* from verse 13 of Surah Al-Nisa in the Quran, which discusses the distribution of inheritance. The verse contains the phrase "لَكُمْ فِي حُدُودِ اللَّهِ" where "حُدُودُ" is the plural form of "حد," meaning limit.⁵⁰ The plural form suggests that there are multiple boundaries set by Allah SWT, and humans can use *Ijtihad* to determine these boundaries based on their specific circumstances, needs, and conditions, as long as they remain within the limits prescribed by Allah SWT.

Regarding inheritance, Muhammad Shaḥrūr believes that justice should be determined based on the overall distribution rather than individual rights. He argues that the inheritance laws set both a minimum and maximum limit, with the maximum limit for males being 66.6% and the minimum limit for females being 33.3%, as stated in QS. Al-Nisa (4) verse 11. This implies that justice is achieved through the allocation of shares, taking into account the weight of responsibilities and burdens carried by the heirs. The greater the responsibility and burden, the larger the share, as long as it remains within the limits set by Allah SWT.⁵¹

Conclusion

The presence of issues about justice within the Islamic inheritance law, particularly with the 2:1 divide, which is presently a subject of discussion in gender matters, is to be expected, as in the present period women can also serve as the

⁴⁸ Saebani, *Fiqh Mawaris*.

⁴⁹ Ahyatusyifa, "Studi Komparatif Pemikiran Hazairin Dan Muhammad Syahrur Tentang Persamaan Waris Laki-Laki Dan Perempuan."

⁵⁰ Murtadlo, "Keadilan Gender Dalam Hukum Pembagian Waris Islam Perspektif The Theory Of Limit Muhammad Syahrur."

⁵¹ Shaḥrūr, *Prinsip Dan Dasar Hermeneutika Al Qur'an Kontemporer*, Terj. Sahiron Syamsuddin & Burhanudin Dzikri.

foundation of the family. Nevertheless, it is unattainable to expect an equal measure of justice, as the provisions of Allah outlined in the Qur'an are definitive and exceedingly equitable. Within the realm of human *Ijtihad*, the assessment of inheritance fairness is solely based on the principle of gender equality, as exemplified in Muhammad Shaḥrūr's *Ijtihad*. The *Ijtihad* of Muhammad Shaḥrūr advocates for justice. The inheritance law can modify the distribution of inheritance shares between males and females by employing the principles of *hudud* theory. The distribution of inheritance by the Islamic law is determined by the responsibilities and obligations of the heirs. It specifies a maximum limit of inheritance for men (66.6%) and a minimum limit for women (33.3%). The restriction is subject to modification, but it must not surpass the maximum or minimum threshold. The proportion of men remains larger than that of women. From a philosophical standpoint, the Islamic inheritance law delineates the duties undertaken by the successors, with the level of obligation increasing in proportion to the part they receive. This exemplifies the significant obligation that men have towards their family, as their portion will ultimately be utilized for their benefit as well as that of their children and spouse.

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