



## **The Legal Construction of Daughter as *Ashabah* in Aceh from An Islamic Law Perspective**

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### **Abstract**

Regarding the issue of inheritance rights for daughters only receiving certain shares or portions, this has been described and explained in the Qur'an. This study aims to identify and clearly explain the legal construction of the position of daughters as *ashabah* in the Islamic inheritance law system. This study uses an empirical legal method with a statutory and Islamic legal approach. Data relies on in-depth interviews and document studies. The study concludes that the opinions of Islamic scholars regarding the decision of the Supreme Court of the Republic of Indonesia which determined daughters as *ashabah* and understands the legal impact arising from the results of the Supreme Court's decision on the inheritance of daughters who wear the hijab of their siblings and uncles and receive the entire inheritance. Meanwhile, contemporary Islamic jurisprudence scholars are of the view that when it comes to the law of *dhanni dilalah*, judges may conduct *ijtihad* or make legal discoveries to fulfill a sense of justice for the parties. However, classical Islamic jurisprudence scholars are of the view that judges should still refer to the majority of scholars, especially since the majority view is the majority used by society, this is to avoid causing friction within society. The legal impact of the Supreme Court's ruling, which granted inheritance rights to a daughter as a relative's veil wearer and simultaneously disposed of all remaining inheritance assets, represents a new legal breakthrough for Islamic inheritance law in Indonesia. This ruling will serve as a reference for subsequent judges in similar cases (jurisprudence), although there is no obligation for judges to follow it. Furthermore, the impact of these two rulings is that the public generally does not approve of them because they are considered to deviate from the provisions of Islamic jurisprudence, which they consider to be stronger than the rulings of judges.

**Keywords:** Legal construction, daughter, *ashabah*, legal system, Islamic inheritance

### **Abstrak**

*Mengenai permasalahan hak waris anak perempuan hanya memperoleh saham atau bagian tertentu, memang telah digambarkan dan dijelaskan di dalam al-Quran. Penelitian ini bertujuan untuk mengidentifikasi dan mengungkapkan secara jelas menyangkut konstruksi hukum kedudukan anak perempuan sebagai ashabah dalam sistem hukum kewarisan Islam. Kajian ini menggunakan metode hukum empiris dengan pendekatan perundang-undangan dan hukum Islam. data mengandalkan wawancara mendalam dan studi dokumen. Penelitian tersebut menyimpulkan bahwa pendapat ulama mengenai putusan Mahkamah Agung Republik Indonesia yang menetapkan anak perempuan sebagai ashabah dan mengetahui dampak hukum yang timbul akibat hasil putusan Mahkamah Agung terhadap warisan anak perempuan yang berhijab saudara dan pamannya serta mendapatkan seluruh harta warisan. Sementara itu ulama fikih kontemporer, berpandangan bahwa bila berkaitan dengan hukum yang dhanni dilalah, maka hakim boleh berijtihad atau melakukan penemuan hukum demi memenuhi rasa keadilan bagi para pihak. Namun ulama fikih klasik berpandangan bahwa hakim seharusnya tetap mengambil rujukan dari jumbuh ulama, terutama karena pandangan jumbuh adalah mayoritas digunakan oleh masyarakat, hal ini agar tidak menimbulkan gesekan di dalam masyarakat. Dampak hukum yang ditimbulkan oleh hasil putusan dari Mahkamah Agung yang telah memberikan hak waris anak perempuan sebagai penghijab saudara dan sekaligus penghabis seluruh sisa harta warisan membuat suatu terobosan hukum baru untuk hukum kewarisan Islam di Indonesia. Karena hasil putusan tersebut nantinya akan menjadi rujukan untuk hakim-hakim selanjutnya dalam kasus yang sama (yurisprudensi), walaupun tidak ada kewajiban hakim untuk mengikutinya. Serta dampak yang dilahirkan oleh kedua putusan tersebut adalah masyarakat secara umum belum menyetujuinya karena dianggap telah melenceng dari ketentuan fikih, yang oleh mereka fikih dianggap lebih kuat kedudukannya dari hasil putusan oleh hakim.*

**Kata Kunci:** Kontruksi hukum, anak perempuan, ashabah, sistem hukum, kewarisan Islam

### **Introduction**

The Islamic inheritance law governs the transfer of an estate by determining the legitimate heirs, specifying the shares allocated to each heir, and regulating the timing of distribution to those entitled to inherit.<sup>1</sup> Although Islamic law provides detailed and explicit provisions on inheritance in both the Qur’an and the Hadith of

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<sup>1</sup>Ridwan, “Gender Equality in Islamic Inheritance Law: Rereading Muhammad Shahrur’s Thought,” *al-Manahij: Jurnal Kajian Hukum Islam* 16, No. 2 (2022). Ali Abubakar, et.al., “The Postponement of the Implementation of Inheritance Distribution in The Seunuddon Community, North Aceh in The Lens of ‘Urf Theory and Legal Pluralism.” *El-Usrah: Jurnal Hukum Keluarga* 6, no. 2 (2023), p. 411-429.

the Prophet Muhammad PBUH, a number of inheritance-related issues continue to generate debate in the contemporary society. One of the most frequently discussed issues concerns women's inheritance rights. Questions are often raised regarding the perceived fairness of a daughter receiving half the share of a son, as well as the rule that a single daughter may inherit only one-half of the estate, or two-thirds, when there are multiple daughters.<sup>2</sup>

These provisions have led to the perception that men and women occupy unequal positions in the law of inheritance, a view that some regard as incompatible with modern notions of justice when compared to earlier Islamic societies.<sup>3</sup> As a result, women are sometimes viewed as being disadvantaged relative to men. Another related issue concerning cases in which daughters inherit in the absence of sons, where their collective share is limited to two-thirds of the estate, with the remainder allocated to other heirs.

Despite the Qur'anic verses that explicitly regulate the inheritance rights of daughters, these rules were not accepted without critique by all early scholars. For example, a small number of scholars question the distribution of inheritance by daughters, arguing that the relevant verses, which limit their rights and prevent them from inheriting the entire inheritance, are not fully in line with the objectives of Islamic law (*maqāṣid al-sharī'a*).<sup>4</sup> This criticism arises from the contrast with sons, who, under certain circumstances, may inherit the entire estate.

The division of *kalālah* inheritance in countries such as Egypt and Syria generally follows the Ḥanafī school's view. According to this perspective, the inheritance rights of siblings, both full and half-siblings, are blocked (*mahjūb*) by the presence of sons or grandsons. However, siblings are not excluded by the presence of daughters. In addition, the inheritance of siblings is also precluded by the presence of fathers and grandfathers.<sup>5</sup>

Several Islamic countries have adopted inheritance laws and reforms that do not strictly adhere to the classical *madhhabs*, introducing modifications that impact the role of daughters and other relatives. For instance, reforms have addressed the

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<sup>2</sup>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 Ilmiah Syariah)* 21, No. 1 (2022). Hendi Sugianto, et.al., "Islamic Law and Gendered Inheritance: An-Taradhin as Breakthrough for Women's Rights Disputes in Java, Bali, and Sumatra," *Istinbath: Jurnal Hukum Islam* 10, No. 2 (2025).

<sup>3</sup>Defel Fakhyadi, et.al., "Reconstructing Gender Relations for Family Resilience in Minangkabau: Integrating Islamic Law and Customary Law," *al-Ahkam* 35, No. 1 (2025). Rahmi Hidayati Al-Idrus, et.al., "Flexibility of Women's Inheritance Distribution in Jambi Malay Society: Compromising Islamic and Customary Law," *El-Usrah: Jurnal Hukum Keluarga* 7, no. 1 (2024), p. 42-61.

<sup>4</sup>Rajab, et.al., "Islamic Inheritance Law in Saruaso and Sawah Tengah Villages Based on Islamic Principles." *Jurnal Ilmiah Islam Futura* 22, No. 2 (2022), p. 225-243.

<sup>5</sup>Wahbah Al-Zuhaili, *Fiqh Islam Wa Adillatuhu*, Jilid 10, Jakarta: Gema Insani, 2011, p. 405.

exclusion of siblings by the presence of sons and permitted daughters to potentially block the inheritance of more distant relatives.

The Egyptian Inheritance Law of 1946 introduced the institution of *al-washiyyah al-wājibah* (mandatory testamentary provision). Similarly, Tunisian inheritance regulations of 1959 recognize daughters' rights through the radd mechanism and accept obligatory wills (*wasiyyah wajibah*). Iraqi inheritance law of 1964 stipulates that descendants may fully exclude other heirs, while any remainder, in the absence of *‘aşābah*, is distributed equitably among the heirs. These examples illustrate that while classical jurisprudence forms the basis of inheritance law in many Islamic countries, modern legislation has adapted the rules to address social equity, gender considerations, and contemporary family structure.<sup>6</sup>

In Malaysia, inheritance distribution does not strictly adhere to classical Islamic law, where men receive two shares and women receive one share. Some women receive more than men, although this is a case-by-case basis and based on the principle of mutual consent (*musalahah*). In general, inheritance distribution under Islamic law is considered fair. However, sociocultural changes sometimes occur, leading to equal rights for men and women, as well as alternative solutions to this issue within the context of Islamic society in Malaysia.<sup>7</sup>

Their legal justification was grounded in the interpretation of the Qur'anic term *walad* as used in QS. *an-Nisā'* (4: 176). In this interpretation, *walad* is understood to refer to children in general, encompassing both sons and daughters. This view differs from the position adopted by scholars of *ahl al-Sunnah wa al-Jamā'ah*, who traditionally restrict the meaning of *walad* to male offspring only. The interpretation that recognizes daughters as both residual heirs (*‘aşabah*) and as heirs who can exclude siblings has been relied upon by judges of the Supreme Court in several landmark decisions, including Supreme Court Decision (MARI) No. 86 K/AG/1994 dated 27 July 1995, No. 184 K/AG/1995 dated 30 September 1996, No. 122 K/AG/1995 dated 30 April 1996, No. 327 K/AG/1997 dated 26 February 1998, and No. 241 K/AG/2002.

These decisions represent a fundamental shift in the development of Islamic inheritance law, particularly in the Indonesian legal context. In these rulings, the Supreme Court held that daughters, in the absence of sons, are entitled to inherit the entire estate and simultaneously act as heirs who exclude siblings from inheritance. The legal principle underlying these decisions is that as long as there is a child, whether male or female, the inheritance rights of collateral blood relatives of the deceased, with the exception of parents and spouses, are excluded.

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<sup>6</sup> Al Yasa Abubakar, *Ahli Waris Sepertalian Darah: Kajian Perbandingan terhadap Penalaran Hazairin dan Penalaran Fikih Mazhab*, Jakarta: INIS, 1998, p. 5.

<sup>7</sup> Mohd Anuar Ramli, et.al., "Women's Inheritance Rights According to Syarak Law and The Division of Its Division According to The Local Cultur Dynamism," *Jurnal Islam dan Masyarakat Kontemporari* 18, No. 1 (2018), p. 181-194

This study aims to identify and clearly explain the legal construction of the status of daughters as *ashabah* within the Islamic law system.<sup>8</sup> This study uses empirical legal methods with a statutory and Islamic legal approach. Data collection relies on in-depth interviews and document studies. The informants interviewed are scholars with expertise in Islamic inheritance law. Literature data is legal regulations, journal articles, books and opinions of scholars regarding inheritance in Islam.

### **Legal Construction of the Position of Daughters as Ashabs in the Islamic Inheritance System**

Islamic legal provisions concerning the inheritance rights of daughters when they inherit alongside the deceased's siblings are addressed in Surah an-Nisā' (4:176), which discusses the concept of *kalālah*, referring to a deceased person who leaves neither parents nor children and is survived only by siblings. The interpretation of the term *walad* (child) in this verse has been a subject of scholarly disagreement. Some scholars maintain that *walad* refers exclusively to sons, thereby allowing daughters to inherit concurrently with the testator's siblings. Consequently, the majority of scholars distinguish between sons and daughters in this context, holding that daughters do not exclude (*yahjubūn*) the siblings of the deceased. According to this view, collateral relatives are excluded only in the presence of sons, whereas daughters are entitled to inherit jointly with siblings.

The Qur'an regulates the law of *kalālah* in Surah an-Nisā'; however, its exposition remains relatively concise. With regard to the chronology of revelation, a hadith narrated by Imam al-Bukhārī states that the ruling on *kalālah* contained in verse 176 was among the final verses revealed and serves as the concluding verse of Surah an-Nisā'. Al-Barā' ibn 'Āzib reported: "*Yastaftūnaka qulillāhu yufītkum fī al-kalālah* is the last verse that was revealed" (Narrated by al-Bukhārī).

Similarly, Tafsīr al-Ṭabarī records several narrations indicating that verse 176 of Surah an-Nisā' belongs to the group of verses revealed toward the end of the Prophet's mission.<sup>9</sup> In contrast, the revelation of Surah an-Nisā' (4: 12) is associated with an earlier incident, as reported in a hadith narrated by Jābir ibn 'Abd Allāh, which recounts that the wife of Sa'd ibn al-Rabī' came to the Prophet Muhammad PBUH accompanied by her two daughters, stating that:

"A hadith narrated through several transmitters reports that 'Abd ibn Ḥumayd related from Zakariyyā ibn 'Adī, from 'Ubayd Allāh ibn 'Amr, from 'Abd Allāh ibn Muḥammad ibn 'Aqīl, from Jābir ibn 'Abd Allāh, who stated that the wife of Sa'd ibn al-Rabī' came to the Prophet Muhammad (peace be upon him) accompanied by her two daughters. She said: "O Messenger of Allah, these are the two daughters of Sa'd ibn al-Rabī', who was martyred at the Battle of Uḥud under your command. Their paternal uncle has taken their

<sup>8</sup>Zainuddin Ali, *Metode Penelitian Hukum*, Jakarta: Sinar Grafika, 2015.

<sup>9</sup> Abu Ja'far Muhammad bin Jarir Ath Thabari, *Tafsir Ath-Thahari*, Jilid 8, Penerjemah: Akhmad Affandi, Jakarta, Pustaka Azzam, 2008, p. 201.

property and has not left them any means of support.” The Messenger of Allah replied: “Allah will decide this matter.” Subsequently, the verse concerning inheritance was revealed. The Prophet then ordered that the children’s uncle be summoned and instructed him: “Give two-thirds of the estate to Sa‘d’s two daughters, one-eighth to their mother, and the remainder to yourself.” This hadith is reported by Aḥmad, al-Tirmidhī, Abū Dāwūd, and Ibn Mājah, and is cited in *Nayl al-Awtār* and *Mishkāt al-Maṣābīḥ*.

With respect to the inheritance rights of daughters in conjunction with the deceased’s brothers, the Qur’anic provision is set out in Surah an-Nisā’ (4:176). Historical reports indicate that this issue was subject to discussion from the time of the Companions. According to al-Jaṣṣāṣ, ‘Umar ibn al-Khaṭṭāb repeatedly asked the Prophet Muhammad PBUH to clarify the meaning of *kalālah*. However, the Prophet did not provide a detailed explanation, instead indicating that verse 176 of Surah an-Nisā’ was sufficient in itself.

From this narration, al-Jaṣṣāṣ drew two important conclusions. First, *kalālah* should not be interpreted solely on the basis of its linguistic meaning but requires systematic legal inquiry. Had it been a purely linguistic term, it would have been readily understood by the Companions, particularly by figures such as ‘Umar ibn al-Khaṭṭāb, who was known for his linguistic competence. Second, the Prophet’s response may be understood as evidence that the Companions were permitted to engage in *ijtihād* when faced with legal texts that were not entirely explicit, and that not all legal matters were elaborated in detail, thereby leaving interpretive space for juristic reasoning.<sup>10</sup>

Scholarly differences of opinion among the Companions and later jurists concerning the concept of *kalālah* primarily relate to the status of daughters when they coexist with the deceased’s siblings. These differences may be outlined as follows:

### 1. According to the Majority of Scholars

The Shāfi‘ī school is a major tradition of Islamic jurisprudence (*fiqh*) founded by Muḥammad ibn Idrīs al-Shāfi‘ī (d. 204 AH), widely known as Imam al-Shāfi‘ī. In addition to founding the Shāfi‘ī school, Imam al-Shāfi‘ī is regarded as a principal pioneer of the discipline of *uṣūl al-fiqh*, which sets out the methodology for legal *istinbāṭ*, namely the derivation of detailed legal rulings from foundational sources such as the Qur’an and the *Sunnah*. The Shāfi‘ī school has had significant influence on the practical application of the Islamic law in Indonesia. As with other schools of law, each *madhhab* possesses distinct methodological features. Notwithstanding these methodological differences, there is no significant divergence among the four *Sunni* schools with regard to inheritance rights involving daughters and brothers. The majority of jurists agree that one of the categories of ‘*aṣabah* in

<sup>10</sup> Al Yasa Abubakar, *Ahli Waris Sepertalian Darah: Kajian Perbandingan terhadap Penalaran Hazairin dan Penalaran Fikih Mazhab*, Jakarta: INIS, 1998, p. 94.

Islamic inheritance law is *'aṣabah bi al-naḥs*, which includes brothers, provided that they are (*maḥjūb*) by heirs who are more closely related to the deceased. In this framework, daughters do not exclude brothers from inheritance; rather, brothers remain entitled to inherit as *'aṣabah* in the presence of daughters.

According to the majority of scholars, the concept of *kalālah* refers to a deceased who leaves behind siblings but has no sons or other male descendants, nor a surviving father. In mainstream Islamic jurisprudence, there is also the notion of *'aṣabah ma' al-ghā'irī*, which refers to a sister who inherits the residual estate in the same position as a daughter or granddaughter of a son. Consequently, according to the majority views, even a daughter does not exclude (*yaḥjub*) a sister from inheritance, let alone a brother.

Minor variations exist within the majority opinions regarding *kalālah*. The Hanafī school, for example, adopts a broader definition, considering *kalālah* to arise when the deceased leaves only siblings without sons, grandsons, a father, or a grandfather. In this formulation, the grandfather is treated as a factor that can preclude the classification of an estate as *kalālah*.

Sunni jurists across the four major schools generally interpret the term *al-walad* in Surah an-Nisā' (4:11) as encompassing direct male descendants. However, in relation to verse 176, the four schools narrow its meaning to include only sons and grandsons through the male line. Scholars argue that the interpretation of *al-walad* in this verse cannot be equated with its broader usage in other Qur'anic contexts that include daughters. This conclusion arises from careful consideration of the Qur'an, Hadith, and customary practice (*isti'māl*) in society.<sup>11</sup> The term *kalālah* in Sunni jurisprudence is recognized as a complex legal concept that requires detailed analysis. After examining its usage in the Arab society, jurists concluded that it refers to an individual without direct descendants. Using the principle of specification (*takhsīs*) from hadith, Sunni scholars further defined it as a deceased person who has no surviving father and whose heirs are limited to male descendants.<sup>12</sup>

The views of the majority of Islamic jurists are generally consistent with those of the majority of the Companions, who interpreted *kalālah* based on the principle of *isti'māl*, that is, a *kalālah* refers to a deceased who leaves neither children nor parents. This understanding was later reinforced and specified through hadith, limiting *kalālah* to those who leave no surviving sons or fathers. The presence of daughters or mothers does not affect this classification.<sup>13</sup> Broadly speaking, there is no significant divergence in the overall distribution of inheritance among scholars of the different schools of thought, as the foundational rules are clearly outlined in the Qur'an and Sunnah. Differences of opinion emerge primarily in specific

<sup>11</sup> Al Yasa Abubakar, *Ahli Waris Sepertalian Darah*, p. 46. Arbanur Rasyid, et. al., "Contestation of Customary Law and Islamic Law in Inheritance Distribution: A Sociology of Islamic Law Perspective," *Al-Ahkam* 34, No. 2 (2025).

<sup>12</sup> Al Yasa Abubakar, *Ahli Waris Sepertalian Darah*, p. 49.

<sup>13</sup> Al Yasa Abubakar, *Ahli Waris Sepertalian Darah*, p. 97.

circumstances, such as the inheritance of a daughter in comparison to that of a sibling, and these differences are closely linked to the interpretation of the Qur'anic verses on *kalālah*.

## 2. According to Ibnu Abbas

According to Ibn 'Abbas, the Qur'anic verses on inheritance were revealed to eliminate the unjust practices of the pre-Islamic *Jahiliyyah*, in which inheritance was restricted to sons while parents and other relatives were often excluded. He explained that the Qur'an establishes specific inheritance shares for daughters, stipulating, for instance, that two daughters collectively receive the equivalent of one son.

Regarding the inheritance of daughters alongside siblings, as addressed in Surah an-Nisā' (4:176), Ibn 'Abbās argued that the term *walad* (child) in the verse is general, meaning that the presence of children, whether sons or daughters, precludes siblings from inheriting. Ibn 'Abbās's interpretation is grounded in the broader Qur'anic usage of *walad*. For example, in Surah an-Nisā' (4:11), the verse states: "Allah has enjoined upon you *awlād* (children); for a son, the share is like that of two daughters," where *awlād* clearly refers to both sons and daughters.<sup>14</sup> By analogy, Ibn 'Abbās applied the same interpretation of *walad* in verse 176, concluding that daughters can, therefore, block the inheritance of siblings. This view was later endorsed by Daud and adopted by some other jurists.<sup>15</sup>

Ibn 'Abbās also rejected inheritance based on the principle of *'aṣābah ma' al-ghayr*, and specifically opposed the division suggested by Ibn Mas'ūd. He argued that the hadith relied upon by Ibn Mas'ūd, which allocated a residual share to a sister under *'aṣābah ma' al-ghayr*, had been abrogated by verse 176 of Surah an-Nisā'. Furthermore, he noted that verse 176 was among the last verses revealed, reinforcing its authoritative application in determining the inheritance rights of daughters.

## 3. According to the Compilation of Islamic Law

In the Compilation of Islamic Law (*Kompilasi Hukum Islam/KHI*), inheritance law is generally based on Islamic legal principles derived from the relevant Qur'anic verses and guided by the opinions of the majority of scholars, particularly those schools of thought followed by the community at large. For example, the KHI affirms that the inheritance share of a son is equivalent to that of two daughters, and that the nearest male sibling receives a portion of the estate in the absence of direct descendants. The KHI also establishes rules that go beyond classical Islamic law, including provisions on *wasat wajibah* (obligatory inheritance) and alternate heirs. In accordance with Islamic jurisprudence, the KHI stipulates that

<sup>14</sup> Satria Effendi M. Zein, *Problematika Hukum Keluarga Islam Kontemporer*, Analisis Yurisprudensi dengan Pendekatan Ushuliyah, Jakarta: Kencana, 2010, p. 303

<sup>15</sup> Syaikh Imam Al-Qurthubi, *Tafsir Al Qurthubi*, Jilid VI, Penerjemah: Ahmad Khotiv, Jakarta: Pustaka, 2008, p. 68.

siblings inherit only if the testator has no children. The majority of scholars interpret “child” in this context as an *ibn* (son), implying that a son can exclude siblings (*yahjub*). Under this framework, siblings inherit only if the testator leaves behind a *bint* (daughter) and no sons. Some contemporary Indonesian scholars have argued that such rules may produce gender bias.<sup>16</sup>

The KHI is structured around general inheritance principles, as reflected in Articles 181 and 182, which state that a sibling’s entitlement depends on the presence of children. However, the KHI does not elaborate on the precise meaning of “child,” referring only to sons or sons together with daughters. The interpretation of *walad* (child) varies among Islamic jurists, which has at times led to confusion for judges in resolving inheritance disputes. According to the majority of scholars, uncles are excluded from inheritance only by the presence of sons, whereas Ibn ‘Abbās’s interpretation allows both sons and daughters to exclude siblings.<sup>17</sup> Article 176 of the KHI further stipulates that a single daughter is entitled to half of the inheritance. In practice, judges often refer to Islamic texts to safeguard public interest, uphold justice, and ensure equitable distribution. Nevertheless, some judicial decisions diverge from the positions of classical scholars, reflecting the influence of the KHI’s drafters, particularly the legal scholar *Hazairin*, who held distinctive views on several aspects of Islamic inheritance law.

### **Scholars’ Perspectives on the Status of Daughters as *Ashabah***

The question of women’s inheritance rights has long been a subject of debate within Muslim communities.<sup>18</sup> The respective entitlements of sons and daughters have often been contested. For instance, in the 1980s, Munawir Sjadzali, then Minister of Religious Affairs of the Republic of Indonesia, advocated for equal inheritance rights for sons and daughters.<sup>19</sup> Among Islamic jurists, opinions differ regarding daughters’ inheritance, particularly concerning the interpretation of the term *walad* in Surah An-Nisa, verse 176. In the Quranic context, *walad* or *awlaad* is generally associated with sons in matters of inheritance. However, some scholars interpret *walad* more broadly to include both sons and daughters. The children mentioned in various inheritance verses refer not only to immediate offspring but also to their descendants.

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<sup>16</sup> Euis Nurlaelawati, *Problematika Hukum Kewarisan Islam Kontemporer di Indonesia*, edisi 1, cet 1, Jakarta: Badan Litbang dan Diklat Kementerian Agama RI, p. 215. Abdul Rohim Al Wafi, et.al., “Rethinking Substitute Heirs: Reforming Indonesia’s Inheritance System Amid the Absence of Direct Heirs,” *Petita* 10, No. 2 (2025).

<sup>17</sup> Euis Nurlaelawati, *Problematika Hukum Kewarisan Islam*, p. 224.

<sup>18</sup> Halimah Basri, et.al., “Inheritance Rights of Women in Makassar Society: A study of living Qur’an and its implications for Islamic Law.” *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 6, no. 2 (2022), p. 537-555.

<sup>19</sup> Muhammad Yusuf and Ismail Suardi Wekke. “Inheritance and Gender Equality.” *Justicia Islamica* 15, no. 1 (2018), p. 1-12.

Quranic evidence on inheritance is typically classified into two categories: *qath'i dilalah* (definitive rulings) and *dhanny dilalah* (speculative or context-dependent rulings). Interpretive differences predominantly arise in verses considered *dhanny dilalah*, which establish legal guidance that is not entirely certain, thereby allowing scope for *ijtihad* (independent juristic reasoning) by *mujtahids* (scholars of Islamic jurisprudence). From the perspective of property transfer, inheritance law falls under the broader category of *muamalah* law. However, inheritance-related *muamalah* differs from transactional relationships such as rental, sale, or exchange. Some inheritance verses classified as *qath'i dilalah* leave no room for interpretation, providing clear legal directives. Conversely, other verses remain *dhanny dilalah*, for example, those addressing *kalalah* (inheritance involving daughters and siblings), which allows jurists to exercise interpretive reasoning and *ijtihad* to resolve complex inheritance issues.<sup>20</sup>

Regarding the inheritance of daughters, particularly in cases involving the *hijab* of their uncles or siblings, scholars differ in their interpretation of the term *walad* in Surah An-Nisa, verse 176, as well as in other inheritance-related verses. These differences have led to varying legal rulings concerning *kalalah* (inheritance involving children without direct heirs). Many scholars interpret *al-walad* as encompassing children and male-line descendants. Among Indonesian legal experts, Rasyid Ridha is notable for citing an Arabic poem and a hadith concerning the special status of Hasan and Husayn, who were the grandchildren of the Prophet Muhammad PBUH through his daughter. Contrasting with this dominant view, Tabataba'i, a scholar of the Ja'fari school, argues that *al-walad* includes both sons and daughters, reasoning that the term inherently refers to birth and the familial relationship between parent and child. This inclusive perspective is also supported by *Hazairin*.<sup>21</sup>

A biological brother becomes an *ashabah* when there are no male descendants, fathers, or grandfathers, based on Surah An-Nisa, verse 176. In such cases, he may also inherit alongside sisters if they exist, a classification known as *ashabah bil ghair*. The majority of scholars hold that all brothers inherit together with sisters under this rule, since all are *zawil furudh* mentioned in the Quran and, like *ashabah bin nafs*, may become *ashabah bil ghair*. In instances where only daughters or granddaughters of sons exist alongside sisters, the brothers occupy the position of *ashabah ma'al ghair*, as supported by a hadith from Ibn Mas'ud. However, this view was rejected by Ibn Abbas, who firmly opposed the concept of *ashabah ma'al ghair*.<sup>22</sup>

Regarding the term *al-walad*, the majority of scholars interpret verse 11 of Surah An-Nisa as referring to children in general, male or female, and their male-

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<sup>20</sup>Interview with Tgk. Shalahuddin Muhammad, Chairman of the Langsa City Ulema Council, July 8, 2024.

<sup>21</sup>Al Yasa' Abubakar, *Ahli Waris Sepertalian Darah*, p. 136.

<sup>22</sup>Al Yasa' Abubakar, *Ahli Waris Sepertalian Darah*, p. 157-158.

line descendants. In contrast, the meaning of *al-walad* in verse 176 is interpreted more narrowly to denote sons only. This understanding arises from careful study of Arabic linguistic traditions and is corroborated by several hadiths, particularly those narrated by Ibn Mas'ud. The term *kalalah* is generally considered by scholars to be illustrative rather than prescriptive. Based on these interpretations and the supporting hadiths, especially those of Ibn Mas'ud and Jabir, scholars have concluded that the *kalalah* rule applies only when the deceased leaves no male descendants or father.<sup>23</sup>

This issue relates to differing interpretations of Decision Number 86K/AG/1994, which arise from the application of inheritance law based on varying references within Islamic jurisprudence. Furthermore, the Compilation of Islamic Law (*Kompilasi Hukum Islam/KHI*) does not provide a precise definition of the term "child" in the context of inheritance alongside siblings. Although the KHI, issued as a presidential instruction in 1991 for dissemination within the Ministry of Religious Affairs, lacks formal legal force within the statutory hierarchy, it functions empirically as living law and serves as a practical reference to prevent social friction. Its development involved deliberations among Indonesian Islamic scholars and legal experts, with final approval by the President for distribution to subordinate officials.<sup>24</sup>

The Supreme Court ruling in this case does not contravene Islamic law, as it aims to clarify the application of Islamic principles while adapting to contemporary legal conditions. The decision may, however, be interpreted differently in modern contexts. In this instance, the judge reasoned that awarding all assets to the daughter fulfilled a sense of justice, given that the deceased's brother had neglected his responsibility to distribute the inheritance. By deviating from the majority opinion and adopting the perspective of Ibn Abbas, the ruling can also be viewed as a corrective measure for the brother's negligence. Consequently, the judge awarded the entire estate to the daughter. Although this decision was not based on injustice, the daughter received the inheritance solely according to the judge's interpretation, since the absence of justice is not a valid reason to withhold inheritance. The property granted entirely to the daughter in this case does not constitute *ashabah bin nafs* (direct inheritance of the deceased) but is instead classified under the concept of *radd*.<sup>25</sup>

Assets classified as *radd* do not apply to the inheritance of a husband or wife. Originally, the concept of *radd* in the Islamic law was employed only by the Hanafi and Hanbali schools of thought. Over time, however, it was also recognized and practiced by the Maliki and Shafi'i schools. Historically, if an heir had no successors, the remaining assets would revert to the *Baitul Maal* (the Muslim treasury). Due to

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<sup>23</sup> Al Yasa' Abubakar, *Ahli Waris Sepertalian Darah*, p. 209.

<sup>24</sup> Interview with Tgk. Hasnuddin, Member of the Lhokseumawe City Ulema Consultative Assembly, July 9, 2024.

<sup>25</sup> Interview with Tgk. M. Nasir, Member of the Lhokseumawe City Ulema Consultative Assembly, July 9, 2024.

the collapse of the Baitul Maal system, the Maliki and Shafi'i schools eventually issued *fatwas* restricting the application of *radd*.<sup>26</sup> In Indonesia, however, the concept of *radd* continues to be recognized and applied in numerous court cases

Judges exercise independence in their rulings but must adhere to applicable Indonesian law. Since the determination of inheritance rights for daughters and siblings of the deceased is not explicitly addressed in the Compilation of Islamic Law or its commentary, judges have discretion to render decisions based on their interpretations and the specific circumstances of each case. This discretion does not create legal uncertainty, as no rigid rules constrain the exercise of inheritance rights. Furthermore, such decisions may serve as precedents for other judges in handling similar cases, contributing to the development of judicial jurisprudence in inheritance matters.<sup>27</sup>

Differences in the interpretation of a judge's decision are not primarily due to changes in the legal basis itself. Rather, they often arise from legal developments prompted by social changes, which may lead judges to issue rulings that differ from standard inheritance practices. Shifts in socio-cultural conditions can thus result in decisions, such as awarding the entire inheritance to the daughter, that respond to contemporary circumstances.<sup>28</sup>

According to classical Islamic jurisprudence, particularly the perspectives of the four schools of thought (*mazahib al-arba'ah*: Shafi'i, Maliki, Hanbali, and Hanafi), which form the primary reference for the majority of Indonesians, a brother, whether biological or paternal, is not prevented from inheriting alongside a daughter. In such cases, the daughter inherits jointly with her uncle, receiving half as a *zawil furudh* (fixed obligatory share), while the uncle receives the remaining half as *ashabah* (residuary heir).<sup>29</sup>

In practice, those adhering to the classical schools of thought have not specifically addressed the permissibility of a daughter assuming the *hijab* of a sibling. Traditionally, siblings are only protected through the male descendants of the testator. Judges who dissent from this majority view have often disregarded the prevailing scholarly consensus, instead following interpretations that equate the status of sons and daughters in matters of sibling protection.

Case No. 86K/AG/1994 deviates from the opinion of the majority of scholars, which remains the reference for most Muslims in Indonesia. In handling the case, the judge relied on his own interpretation, thereby departing from the dominant scholarly view. Nevertheless, the judge's approach aligns with the opinion of Ibn

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<sup>26</sup> Wahbah Al-Zuhaili, *Fiqih Islam Wa Adillatuhu*, Jilid 10, Jakarta: Gema Insani, 2011, p. 373.

<sup>27</sup> Interview with Tgk. H. Faisal Ali, Chairman of the Aceh Ulema Consultative Assembly, August 5, 2024.

<sup>28</sup> Interview with Tgk. H. Hasbi Albayuni, Deputy Chairman I of the Aceh Ulema Consultative Assembly, August 5, 2024.

<sup>29</sup> Interview with Dr. Tgk. M. Rizwan, Member of the Lhokseumawe City Ulema Consultative Assembly, July 9, 2024.

Abbas, providing a scholarly basis, albeit one that is less widely adopted. This decision reflects the judge's consideration of public interest, which in this instance outweighed adherence to the majority opinion. However, when applying the Islamic law, it is generally appropriate for judges to follow the legal norms widely practiced in the society, to prevent social conflicts and avoid perceptions of injustice within the community.<sup>30</sup>

Based on the previous discussion, there is a difference of opinion among Islamic jurists regarding the inheritance rights of daughters and siblings. However, none of the scholars maintain that daughters can be considered *ashabah bin nafsi* (residuary heirs of the family), as the Quran explicitly categorizes daughters as *zawil furudh*, entitled to a fixed share in inheritance law.

Problems arise in cases such as the one discussed above, where a judge ruled that a daughter obstructed the inheritance rights of her uncle or half-brother alongside the testator. This issue relates to the concept of *kalalah* as mentioned in Surah An-Nisa, verse 176, and centers on the interpretation of the term *walad*. Some scholars interpret *walad* broadly as "child," implying that both sons and daughters can obstruct the inheritance of siblings. Others contend that a daughter does not obstruct an uncle's inheritance. In either interpretation, daughters are entitled to inherit according to established provisions: a single daughter receives half of the estate, while multiple daughters share two-thirds. A brother, as the nearest male relative of the testator, inherits the remainder of the estate after the fixed shares (*furudh*) have been distributed. This majority view is held by the Shafi'i, Hanbali, Maliki, and Hanafi schools of thought.

An alternative interpretation, advanced by the *Zahariah* school, holds that daughters can obstruct the inheritance of sisters but cannot block the inheritance rights of male heirs. One prominent figure among anthropological legal scholars in Indonesia, Prof. Hazairin, the originator of the concept of bilateral inheritance, also offered his perspective on the issue of *kalalah*. Hazairin rejected the concept of *ashabah* and argued that *kalalah* should be understood in accordance with the opinions of Umar and Ibn Abbas, encompassing children in general. His views, however, were largely abandoned due to criticism from contemporaries, and even among the four major schools of Islamic jurisprudence, his interpretation was never further developed. Had Hazairin's perspective been widely accepted, it would have had significant implications for inheritance jurisprudence, particularly concerning the established interpretations of the school scholars (*ulama*).<sup>31</sup>

Regarding Hazairin's views, other experts in inheritance and customary law in Indonesia have not embraced his approach. This is primarily because his arguments were not grounded in the traditional methods of *ushul fiqh* (Islamic legal

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<sup>30</sup>Interview with Tgk. Amri Jalaluddin, Chairman of the Takengon Ulema Consultative Assembly, July 10, 2024.

<sup>31</sup>Al Yasa' Abubakar, *Ahli Waris Sepertalian Darah: Kajian Perbandingan terhadap Penalaran Hazairin dan Penalaran Fikih Mazhab*, Jakarta: INIS, 1998, p. 6.

theory) and scholarly study. Consequently, the issue of *kalalah* has received limited attention from experts, as the majority of Indonesian inheritance law specialists continue to follow the established provisions of Islamic jurisprudence (fiqh) according to the recognized schools of thought.<sup>32</sup>

In Supreme Court Decision No. 86K/AG/1994, the case review indicated that the heirs consisted solely of a daughter and a full brother of the testator. According to the majority view, particularly the Shafi'i school of thought, which is predominant in Indonesia, the inheritance should follow the distribution determined by the Mataram High Religious Court, whereby the daughter receives half and the remaining half goes to the brother. However, at the cassation level, the Supreme Court judge reinterpreted the term *walad* in the context of inheritance involving daughters and brothers, ultimately resulting in the daughter obstructing the brother's share. This decision represents a form of legal reform in Indonesian inheritance law, emphasizing the principle of *maslahah* (public benefit) in its application. It also underscores the relevance of *maslahah mursalah* in reforming Islamic legal practices.<sup>33</sup>

Although the majority of scholars in Indonesia follow the Shafi'i school, which does not fully recognize *maslahah mursalah* as a primary source of legal evidence, its application requires strict conditions. Nonetheless, in light of contemporary legal developments, its use has become necessary to address evolving legal needs. *Maslahah mursalah*, in principle, promotes public welfare and does not conflict with established legal evidence. In the context of case No. 86K/AG/1994, the judge applied this principle, as there was no clear legal precedent regarding the division of inheritance in a *kalalah* scenario involving a daughter. Consequently, the judge opted to award the entire estate to the daughter, on the grounds that the testator's brother or uncle had neglected his responsibilities toward her.

The Supreme Court of Indonesia also held that the inheritance rights of individuals related to the heir are subject to *hijab* (obstruction) as long as the heir has children, male or female, excluding parents and spouses. This interpretation aligns with the view of Ibn Abbas, a companion of the Prophet Muhammad (peace be upon him), regarding the meaning of *walad* in QS. An-Nisa, verse 176. This position contrasts sharply with the prevailing opinion among most Indonesian ulama and *fuqaha*, who maintain that *hijab* only applies when the heir has a son, and that daughters cannot obstruct the inheritance of siblings. In the present case, the heir possessed only a daughter, who, according to the majority view, would traditionally not have been able to obstruct her siblings' inheritance.

In this case, the judge prioritized a sense of justice by exercising *ijtihad* that incorporated considerations of social justice, although this approach is not absolute.

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<sup>32</sup> Al Yasa' Abubakar, *Ahli Waris Sepertalian Darah*, p. 6.

<sup>33</sup> Hanan, et.al., "Anak Perempuan Sebagai Penghijab Saudara Kandung Ayah (Analisis Terhadap Putusan Pengadilan Agama Medan Nomor 40/Pdt. P/2017/PA Medan)." *Jurnal Preferensi Hukum* 4, no. 3 (2023), p. 321-328.

Traditionally, in interpreting the word *walad* in Surah An-Nisa, verse 176, which is generally understood to refer only to male children, scholars applied the principle *al-'ibaratu bi-'umumil lafadh laa bi-khususisabab*, meaning that the legal ruling of a Quranic verse is derived from its general wording rather than its specific context or cause. To address the demands of justice, however, the Supreme Court adopted a more context-sensitive approach, giving weight to the specific circumstances (*khususisabab*) rather than the general form (*'umumil lafadh*).

Accordingly, the legal reasoning and considerations were grounded in the principle of *al-hukmu yadurru ma'illah*, which holds that the existence of a legal ruling is contingent upon the presence of its *'illah* (underlying cause). As a result, the references and interpretive methods employed by the majority of scholars diverged from those used by the Supreme Court judges, who sought to uphold justice based on the values of social equity derived through *ijtihad*.

### **Legal Impact of the Supreme Court's Decision**

Based on the foregoing discussion, it is evident that, to address differing opinions regarding the inheritance rights of daughters who can obstruct (wear the hijab) while simultaneously receiving the entire remaining estate, the Supreme Court issued rulings granting such rights. Notable decisions include Supreme Court Decision No. 86K/AG/1994, dated July 20, 1995, and No. 184K/AG/1995, dated September 30, 1996. Similar rulings were rendered in related cases, such as the Cilegon Religious Court Decision No. 198/Pdt.P/2013/PA.Clg and the Aceh Sharia Court Decision No. 42/Pdt-G/2008/Msy-Prov, among others. According to the Compilation of Islamic Law (*Kompilasi Hukum Islam/KHI*), daughters are generally entitled to half of the remaining inheritance if there is only one, and two-thirds if there are two or more children.<sup>34</sup>

These Supreme Court decisions, along with related rulings, effectively grant daughters equal inheritance rights to sons, including the authority to obstruct the inheritance of siblings (*hijab*) and to receive the entire remaining estate. However, the Quran clearly stipulates that daughters are entitled only to a fixed share, which cannot be exceeded or reduced. This principle is further supported by the hadith of the Prophet Muhammad PBUH and the views of his companions, including Abu Bakr, Umar, Zaid, and Mu'ad ibn Jabal.

These rulings have significantly altered the legal provisions governing inheritance between daughters and siblings within the Indonesian Islamic inheritance law system. They now serve as legal precedents for similar cases in the future. Although judges in Indonesia are generally free to decide cases, as noted by Bagir Manan, the Indonesian judicial system does not formally adhere to the doctrine of precedent, meaning that judges are neither strictly bound by nor prohibited from deviating from previous decisions of higher or equivalent courts. In practice,

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<sup>34</sup>Presidential Instruction No. 1 of 1991 concerning the Compilation of Islamic Law (Article 176).

however, judges often follow established jurisprudence, particularly that of the Supreme Court, since judicial decisions in Indonesia function as a recognized source of law alongside statutes, customary law, and expert opinions (doctrine).

For example, as summarized by Satria Efendi,<sup>35</sup> when the Mataram High Religious Court determined that a brother was an *ashabah* and a daughter a *zawil furudh*, the decision aligned with the majority opinion of scholars, even though the court did not explicitly cite its reasoning based on the interpretation of verse 176. In reality, the outcome reflected the interpretation of the majority of scholars. However, the court did not explain why it prioritized the majority opinion and disregarded the view of Ibn Abbas. Conversely, the Supreme Court explicitly adopted Ibn Abbas's interpretation of the verse but similarly did not provide justification for overlooking the majority opinion applied by the Mataram High Religious Court..

Satria Efendi also noted that in the Islamic law, in addition to rulings agreed upon by scholars and established in the Quran and Sunnah, there exist laws derived from *ijtihad*, which may vary among jurists. Consequently, according to scholars of *ushul fiqh* (Islamic legal theory), several factors must be considered when assessing a judge's stance and determining which opinion to adopt, including.<sup>36</sup>

1. Established Law: If one of several opinions has been codified as the law in a country or society, that opinion is considered binding within that society. Consequently, both judges and *muftis* must adhere to it, and their decisions cannot be influenced by opinions from other schools of thought or by views not recognized in the law..
2. Community Agreement: If a law has not yet been codified, but there exists a consensus within a community to apply the opinion of a particular school of thought or legal scholar in court, this agreement becomes binding on that community. Judges must align their decisions with the agreed-upon opinion, and deviations based on other schools of thought or conflicting opinions are not permitted
3. Customary Practice: If no law exists and there is no community agreement regarding which school of thought should be applied, judges should follow the school or opinion most commonly practiced within the community. When a particular opinion has been consistently applied over time, it becomes a customary law (*urf*), which, according to *ushul fiqh*, holds the same weight as written law. In such cases, jurisprudence plays a crucial role in guiding court practices, unless the customary argument is unclear or flawed.
4. Judicial Discretion: New judges are permitted to deviate from established or customary opinions, provided their rulings do not conflict with the Quran and Sunnah. In certain cases, where the application of commonly used legal

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<sup>35</sup> Satria Effendi M. Zein, *Problematika Hukum Keluarga Islam Kontemporer*, Analisis Yurisprudensi dengan Pendekatan Ushuliyah, Cet. III, Jakarta: Kencana, 2010, p. 296-306.

<sup>36</sup> Satria Effendi M. Zein, *Problematika Hukum Keluarga Islam*, p. 304-306.

considerations would contradict public interest (*maslahah*) or the objectives of Sharia (*maqasid al-sharia*), alternative rulings may be applied, such as those derived from the principle of *istihsan* (juridical preference) in the Hanafi school of thought. *Istihsan* may be understood as a legal principle that allows for exceptions to generally applicable rules in specific circumstances where alternative considerations, consistent with the objectives of the *maqāsid al-sharī'ah*, are required. However, when adopting such an approach, a judge must provide a clear and reasoned justification for departing from the rule ordinarily applied in similar cases and for issuing a decision that may not be widely recognized or accepted within society.

Analyzing the opinion of Satria Efendi, the first point emphasizes that once the opinion of a school of thought has been codified as law, it must be enforced. In the context of this research, however, Indonesia has no law providing detailed regulations on inheritance; rather, inheritance law is applied according to religious guidelines within the community. The legal framework for inheritance is found only in Book II of the Compilation of Islamic Law (*Kompilasi Hukum Islam/KHI*). While the Shafi'i school of thought is generally followed in Indonesia, this does not imply that all inheritance cases must strictly adhere to Shafi'i interpretations. The KHI, developed by Indonesian scholars, offers a more bilateral approach to inheritance, in contrast to the patrilineal focus of the Shafi'i school.

Therefore, the Supreme Court's ruling represents a significant breakthrough for the implementation of the inheritance law in Indonesia. It is not only practically applicable but also accommodates the diverse cultures and customs of Indonesian society. Moreover, in accordance with the fourth point outlined by Satria Efendi, judges may apply the principle of *istihsan* (juridical preference) to adapt rulings to the specific circumstances of each case. However, many people still perceive judicial decisions based on *ijtihad* (reasoned interpretation) or jurisprudential reasoning that diverges from established fiqh (Islamic jurisprudence) as incorrect. This perception arises because the society often regards fiqh as more authoritative and superior to other forms of legal reasoning.

These rulings illustrate that judges, as enforcers of the law, must occupy a central role in upholding legal justice, including in matters of Islamic inheritance law. Beyond the obligation to act fairly, judges must interpret existing laws and provisions, such as inheritance regulations for daughters and siblings as outlined in the Quran and Hadith, in a manner that responds to the societal needs and contemporary developments. In doing so, judges must balance considerations of justice, legal certainty, and public benefit (*maslahah*). Through their decisions, judges not only apply statutory law, serving as its mouthpiece, but are also called upon to implement legal reforms when confronting issues that are either unregulated or no longer aligned with current societal conditions..

Judges in Religious Courts, including those serving in Sharia Courts in Indonesia, function as enforcers of Islamic law and are tasked with fulfilling their

role as adjudicators in every case brought before them. The Supreme Court's decisions represent a form of reform within the Indonesian Islamic law, which future judges are expected to review and consider. Essentially, the outcomes of *ijtihad*, often referred to as *fiqh*, are provisional and continually evolving. The Supreme Court's rulings are therefore natural and appropriate within the Indonesian context, given the nation's ethnic and cultural diversity, while its legal system remains unified under Indonesian law. Consequently, legal interpretations and frameworks established by Sunni scholars in the Arab world may not always be directly applicable to Indonesia. In addition to serving as a mechanism of control, the law also functions to provide comfort and justice to society.

Therefore, the commonly held view that judicial decisions or jurisprudential reasoning are inferior to the long-established *fiqh* of Islamic scholars is not acceptable. Judges, when issuing rulings, inherently consider the benefits for the community in which they operate. In Indonesia, judges engage in legal *ijtihad*, guided by the *maqasid al-sharia* (the objectives of *Sharia*), fostering innovations and legal developments that ensure Islamic law is relevant and appropriate for the Indonesian people.<sup>37</sup>

In conclusion, the impact of the Supreme Court's rulings in inheritance cases can be both negative and positive. The negative impact arises from the fact that Islam in Indonesia is predominantly Shafi'i (Sunni), and some members of the public view these rulings with distrust, considering them potentially deviating from established religious principles. While similar rulings occurred during the time of the Prophet's Companions, the general population remains largely unaware of such historical precedents.

On the positive side, considering that Indonesia is a unified nation governed by a single legal system despite its diverse ethnic and cultural groups, the application of existing laws must be tailored to the realities of the society. Arab inheritance laws, which stipulate that daughters cannot obstruct (wear the hijab) for their siblings and thus are limited in disposing of the remaining estate, are not entirely suitable for implementation in Indonesia. The primary objective of inheritance in Indonesia is to ensure justice for each heir. In the Arab context, patrilineal kinship systems grant siblings greater authority to delegate responsibility to their nieces and nephews, often resulting in special inheritance shares. In contrast, in Indonesia, siblings may not maintain such close relationships with nieces and nephews, and thus inheritance practices differ. Consequently, Supreme Court rulings are often case-specific, reflecting the unique social and familial contexts of the Indonesian society.

## Conclusion

The inheritance rights of daughters, as well as those of siblings, are primarily shaped by the interpretation of the term "*walad*" (child) in verse 176 of Surah An-Nisaa, a matter on which scholars have expressed differing opinions. The majority

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<sup>37</sup> Satjipto Rahardjo, *Hukum dan Perubahan Sosial*, Bandung: Alumni, 1983, p. 193

of scholars interpret “*walad*” to mean “son,” thereby allowing a son to act as a *hijab* (blocking) for his siblings and enabling a daughter to inherit alongside her brother. However, other schools of thought offer alternative interpretations. Contemporary scholars of Islamic jurisprudence argue that, in matters of *dhanni dilalah* (probable inheritance law), judges may exercise *ijtihad*, independent legal reasoning, to ensure equitable outcomes for all parties. In contrast, classical scholars maintain that judges should adhere to the majority opinion to preserve communal harmony and prevent potential disputes. The Supreme Court’s decision in Indonesia, which recognized daughters’ inheritance rights as a form of *hijab* for siblings while distributing all remaining assets, represents a significant legal development in the country’s Islamic inheritance law. These rulings set an important precedent (jurisprudence) for future cases, even though subsequent judges are not legally bound to follow them. Nevertheless, the broader public has expressed reservations regarding these decisions, perceiving them as divergent from established Islamic jurisprudential principles, which they regard as more authoritative than judicial determinations.

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