

Comparative Analysis of Child Inheritance with Siblings (Classical *Fiqh* & Compilation of Islamic Law)

Mohamad Athoillah

Universitas Islam Negeri Sunan Gunung Djati Bandung, Indonesia, E-mail:
atho63hm@gmail.com

Abstract. *In Indonesia, the prevailing legal system is a plural legal system, namely customary law, Islamic law, and Western (continental) law, where the law has binding force because it is realised in the form of laws and the principle of legality. Customary law is the oldest law that has been in force since Indonesian society existed, although it was only recognised as a legal system in the early 20th century. The purpose of this study is to analyse the meaning of the words 'walad' and 'ikhwah' and their interpretations according to scholars/mufassir, as well as to explain the differences in scholarly views regarding the understanding of the word 'walad' in QS. al-Nisa/4:11, 12, and 176. This research is a comparative research, which compares one or more variables between two or more subjects at different times to find a cause-and-effect relationship. The variables compared in this study are the inheritance of children with siblings in classical Fiqh Mawaris and in the Compilation of Islamic Law (KHI). The difference of opinion regarding the inheritance of children and siblings is caused by the use of the terms walad and khwah, where the majority of scholars agree that walad in QS. Al-Nisa/4:11 and 12 includes both sons and daughters, but in QS. Al-Nisa/4:176 only refers to sons. In the Compilation of Islamic Law (KHI), walad includes both genders, which can close the inheritance rights of the deceased's siblings, while the category of ashabah recognised by Sunni scholars is not fully applied in the inheritance system in Indonesia.*

Keywords: *Child; Classical Fiqh; Compilation of Islamic Law; Inheritance.*

1. INTRODUCTION

In Indonesia, the prevailing legal system is plural, consisting of the customary legal system, the Islamic legal system, and the Western (continental) legal system. Western law has binding force because it is realised in the form of laws and regulations based on the principle of legality. Customary law is law that has existed and applies in traditional Indonesian society, reflecting local values and norms that have been internalised in the culture of the community.¹ Meanwhile, Islamic law is applied especially among Muslims, regulating aspects of life related to sharia. These three legal systems run concurrently in regulating various aspects of community life in Indonesia,

¹ Siombo, M. R., & Wiludjeng, H. (2020). *Hukum Adat Dalam Perkembangannya*. Penerbit Universitas katolik Indonesia Atma Jaya.

creating a complex and dynamic legal framework that accommodates the diversity of cultures and religious beliefs.²

The existence of this plural legal system reflects the plural social and cultural conditions of Indonesian society. Each legal system has different characteristics and principles, but they often interact and influence each other. In practice, communities often utilise a combination of these three legal systems in the resolution of disputes or legal issues they face. For example, in the case of inheritance, a Muslim may refer to Islamic law to determine the division of property, but also consider the customary norms prevailing in his or her community.³ In addition, Western law is often referenced in matters relating to legislation and formal legal procedures. Therefore, it is important to understand the interaction between these three legal systems in the context of social and legal life in Indonesia.

Customary law has existed in Indonesia since the first societies existed and is the oldest form of law in the country. However, adat law was only recognised as a formal legal system in the early 20th century, along with the development of the legal system in Indonesia. Meanwhile, Islamic law started to be recognised in Indonesia when Muslims arrived and settled in the archipelago, which is estimated to have occurred in the 7th century AD. Islamic law continues to develop and be adopted by the Muslim community in Indonesia, along with the existence of customary law and other laws.⁴

According to Hamka, Islam first entered Indonesia from Arabia in the 1st century AD, or more precisely in the 7th century. The early spread of Islam in Indonesia mainly occurred in the west coastal region of Sumatra, which became one of the entry points for Muslim traders from Arabia, India and China. This process involved not only the spread of religion, but also social, economic and cultural interactions between local communities and Muslim traders. Islam further expanded in Indonesia during the 13th century, when more Islamic kingdoms were formed and spread the teachings of Islam through various means, including education, trade and marriage.⁵

Western law, on the other hand, was introduced in Indonesia by the Vereenigde Oostindische Compagnie (VOC), a Dutch company that was granted exclusive rights to trade in the region by the Dutch government in 1602. The VOC not only focussed on trade, but also began to exercise political and administrative power on various Indonesian islands. In this process, Western law, which was part of the Dutch legal system, began to be applied in government administration, courts and other legal interactions. This Western legal influence lasted well into the Dutch colonial era, and despite Indonesia's independence, many aspects of Western law continued in the national legal system. Overall, the introduction of Islam and the introduction of

² Bauto, L. M. (2014). Perspektif agama dan kebudayaan dalam kehidupan masyarakat Indonesia. *Jurnal Pendidikan Ilmu Sosial*, 23(2), 11–25.

³ Huda, H. M., & SH, M. (2020). *Perbandingan Sistem Hukum*. CV Cendekia Press.

⁴ Mujib, M. M. (2015). Kajian Sosio Historis Hukum Adat dalam Konstitusi Indonesia. *Supremasi Hukum: Jurnal Kajian Ilmu Hukum*, 4(1), 200–218.

⁵ Bachtiar, T. A. (2018). Islamisasi Penulisan Sejarah: Survey Gagasan Hamka dan Ahmad Mansur Suryanegara. *JUSPI (Jurnal Sejarah Peradaban Islam)*, 2(2), 138–153.

Western law are two important events that have shaped the legal system and social life in Indonesia, creating the diversity of laws that exist today.⁶

Islamic inheritance is the law that regulates the transfer of ownership from a person who dies to the surviving heirs, covering various forms of property such as movable property, immovable property, as well as rights and benefits for Muslims. Since the arrival of Islam in the archipelago, the distribution of inheritance for devout Muslims has followed the guidance of Faraidh Science or *Fiqh* Mawaris, which provides specific guidance on how inheritance should be distributed in accordance with religious provisions.⁷ In 1991, the birth of the Compilation of Islamic Law (KHI) provided an additional alternative for Muslims in Indonesia to refer to in matters of inheritance distribution. KHI which was produced based on Presidential Instruction No. 1 of 1991 was an important phase that led to the unity and certainty of Islamic Law as written law in Indonesia.⁸

Fiqh mawaris and KHI serve as a reference for Muslims in the distribution of inheritance property, although sometimes there are differences of opinion between the two. These differences reflect the dynamics of Islamic law that occur by considering the Indonesian socio-structural context and the issue of gender equality. This shows that the application of inheritance law is not only related to spiritual aspects, but also relevant to the social realities that exist in society, which may affect the way the inheritance is distributed and received by the heirs.⁹

One of the fundamental problems that the author examines is the difference of opinion regarding the inheritance of children with siblings in classical mawaris *fiqh* and the Compilation of Islamic Law. The inheritance of children and siblings in mawaris *fiqh* is distinguished between male and female children or grandchildren. A son/grandson can veil a male or female sibling, a father, a mother; a daughter can make a female sibling or a father as 'ashabah ma'al ghaer and veil a mother's brother. In KHI, daughters/granddaughters are the same as sons/granddaughters who can hijab all brothers or sisters. The principle adopted in KHI is that sons and sons and their descendants (grandsons/granddaughters and so on down) hijab (a) Siblings (biological, seayah, seibu) and their descendants (nephews heirs etc.), (b) Uncles and aunts from the father and mother and their descendants (cousins heirs etc.).¹⁰ The difference of opinion above stems from the absoluteness and pentaqyidan meaning of "*walad*-son" and "*ikhwah*-brother" derived from QS al-Nisa/4 verses 11, 12, and 176. Based on this background, there are fundamental differences in views regarding inheritance between children and siblings, with the formulation of the problem: What is the meaning of the

⁶ Setiawan, E. (2014). Dinamika Pembaharuan Hukum Keluarga Islam di Indonesia. *De Jure: Jurnal Hukum dan Syar'iah*, 6(2).

⁷ Prabowo, S., Sudirman, M., & Tondy, C. J. (2023). Perlindungan Hukum Bagi Ahli Waris Terhadap Harta Warisan Yang Beralih Tanpa Persetujuan Ahli Waris. *Jaksa: Jurnal Kajian Ilmu Hukum dan Politik*, 1(3), 63–70.

⁸ Millah, S., & Jahar, A. S. (2021). *Dualisme Hukum Perkawinan Islam di Indonesia: Fiqh dan KHI* (Vol. 253). Amzah (Bumi Aksara).

⁹ Ramadhani, A. G., Ngadino, N., & others. (2019). Pelaksanaan Wasiat Wajibah Menurut Kompilasi Hukum Islam Dalam Praktek Pengadilan Agama Sambas. *Notarius*, 13(1), 37–46.

¹⁰ Ilhami, H. (2020). Kedudukan Asas Keadilan Berimbang Dalam Hukum Kewarisan Islam Dikaitkan Dengan Peraturan Mahkamah Agung Ri Nomor 3 Tahun 2017 Tentang Pedoman Mengadili Perkara Perempuan Berhadapan Dengan Hukum. *Mimbar Hukum-Fakultas Hukum Universitas Gadjah Mada*, 32(2), 243–259.

words "*walad*" and "*ikhwah*" and how they are interpreted by the scholars/mufassirs, as well as the reasons for the differences in views among scholars regarding the understanding of the word "*walad*" in QS. al-Nisa/4: 11, 12, and 176.

2. RESEARCH METHODS

The research that the author conducted is comparative research. Comparative literally means comparing. Comparative research referred to here is research conducted to compare a variable (research object), or different subjects or different times and find the causal relationship. According to Sugiono comparative research is a part of research that compares the existence of one or more variables in two or more different samples at different times. Comparative study is a form of research that compares interrelated variables by proposing differences and similarities in a policy and others.¹¹ The variables in this study are the first variable related to child inheritance with siblings in classical *Fiqh* Watris and the second variable related to child inheritance with siblings in the Compilation of Islamic Law (KHI).

The method used in this research is the comparative method, which is a method used to compare data that is drawn into new conclusions. Comparison itself is from English, namely compare, which means to compare to find similarities between two or more concepts. By using this comparative method, the researcher intends to draw a conclusion by comparing ideas, opinions and understanding in order to find out the similarities of ideas and differences from learning standards. Judging from the type of data, this research is qualitative research. Judging from the type of data, this research is qualitative research.¹²

There are two data sources used in this research, namely primary data and secondary data.

a. Primary data source

Primary data is data obtained directly from the first source, either through literature studies: Al-Quran and kutub al-turats: al-Mirats 'ala Madzahib al-Arba'ah by Husain Yusuf Ghazal, al-Munjid by Mr. Louis Ma'luf, Jalain al-Sayuti, Hasyiyah matan al-Rahbiyah by Muhammad bin Umar, Tafsir Munir Wahbah al-Zuhaeli, Tanwir al-Miqbas min Tafsir Ibn Abas, Ibn Kathir, Tafsir al-Maragi and Compilation of Islamic Law (KHI) Book II: Inheritance Law

b. Secondary Data Sources

Secondary data is data obtained from a second source, apart from those studied which aims to support the research conducted. The secondary data is obtained from books, legislation, the internet and other sources related to the research problem. Secondary data sources here include: Tafsir al-Maragi, al-Mausu'ah al-*fiqh* al-Islami by Wahbah al-Zuhaeli, Tafsir ayat al-Ahkam M Ali Sayis, Hasyiyah Shawi, Islamic Inheritance Law by Amir Syarifudin, Indonesian Islamic Inheritance Law by M. Anshary.

Data analysis

Data analysis, which is the process of organizing and sorting data into patterns, categories, and basic description units so that themes can be found and working

¹¹ Ali, Z. (2021). Metode penelitian hukum. Sinar Grafika

¹² Suyanto, S. & others. (2023). Metode Penelitian Hukum Pengantar Penelitian Normatif, Empiris Dan Gabungan. Unigres Press.

hypotheses can be formulated as suggested by the data.¹³ The stages in this data analysis are (a) Inventory of data, (b) Classification of data / categorization of data (c) Data interpretation / analysis (d) Concluding. In formulating the final conclusion, in order to avoid subjective elements, efforts can be made: (1) Complement qualitative data. (2) Develop intersubjectivity through discussion with others.

3. RESULTS AND DISCUSSION

3.1. The meaning of the word *Walad* and its Expansion

The word "al-wald, or al-wuldu, al-Waldu, al-wildu" according to lughat (language) is كل ما ولده شيء ويطلق على الذكر والأنثى والمثنى والجمع

(Everyone who is born, whether male or female, tatsniyah or plural). It is also mentioned that al-*walad* is a mudzakar whose plural form is "aulad". Wahbah al-Zuhaely explains that al-*walad* is

الولد : من ولده الإنسان قبل موته مباشرة سواء الذكر والأنثى
"al-wald" (son of man) is a person born to a human being before that person dies and is born directly, whether male or female.

The word "al-wald" in the Qur'an is found 65 times in QS. Al-Nisa/4: 11, 12 and 176

QS. Al-Nisa/4: 11

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

Allah has prescribed for you the division of inheritance for your children. Namely: The share of a son is equal to the share of two daughters; and if there are more than two daughters, then they share two-thirds of the property left behind; if the daughter is only one, then she gets half the property. And as for the two parents, to each of them one-sixth of the estate, if the deceased has children; if the deceased has no children and he is inherited by his mother (only), then his mother gets one-third; if the deceased has several brothers, then his mother gets one-sixth. (The aforementioned divisions) after the fulfillment of the will he made or (and) after paying his debts. (As for your parents and your children, you do not know which of them is more likely to benefit you, but this is the decree of Allah. Verily, Allah is All-Knowing, All-Wise.

QS. Al-Nisa/4:12

وَلَكُمْ نِصْفُ مَا تَرَكَ أَزْوَاجُكُمْ إِن لَّمْ يَكُن لَّهُنَّ وَلَدٌ فَإِن كَانَ لَهُنَّ وَلَدٌ فَلَكُمْ الرُّبْعُ مِمَّا تَرَكَنَّ مِن بَعْدِ وَصِيَّةٍ يُوصِينَ بِهَا أَوْ دِينٍ وَلَهُنَّ الرُّبْعُ مِمَّا تَرَكَنَّ إِن لَّمْ يَكُن لَّكُمْ وَلَدٌ فَإِن كَانَ لَكُمْ وَلَدٌ فَلَهُنَّ الثُّمْنُ مِمَّا تَرَكَنَّ مِن بَعْدِ وَصِيَّةٍ تُوصُونَ بِهَا أَوْ دِينٍ وَإِن كَانَ رَجُلٌ يُورَثُ كَلَّةً أَوْ امْرَأَةً وَلَهُ أَخٌ أَوْ أُخْتٌ فَلِكُلِّ وَاحِدٍ مِّنْهُمَا

¹³ Moleong, L. J. (2019). Metodologi penelitian kualitatif. PT Remaja Rosdakarya

السُّدُسُ فَإِنْ كَانُوا أَكْثَرَ مِنْ ذَلِكَ فَهُمْ شُرَكَاءُ فِي الثُّلُثِ مِنْ بَعْدِ وَصِيَّةِ يُوصَىٰ بِهَا أَوْ دَيْنٍ غَيْرِ مُضَارٍّ وَصِيَّةً مِنَ اللَّهِ وَاللَّهُ عَلِيمٌ حَلِيمٌ

And for you (husbands) one-half of the property left by your wives, if they have no children. If your wives have children, then you get a quarter of the property they leave behind after fulfilling the will they made or (and) after paying their debts. The wives get a quarter of the property you leave if you have no children. If you have children, then the wives get an eighth of the property you leave after fulfilling the will you make or (and) after paying your debts. If someone dies, whether male or female, leaving no father or children, but has a brother (one mother only) or a sister (one mother only), then for each of the two types of brothers a sixth of the property. But if the brothers are more than one, then they shall be united in the third, after the fulfillment of his will or the payment of his debts, without causing any harm to the heirs. (Allah has decreed this as a true law from Allah, and Allah is All-Knowing, All-Merciful).

The word "al-wald" whose plural form is "*aulad*" in QS al-Nisa: 11 and 12 is used for boys or girls. Wahbah Al-Zuhaely explains that

لما قال تعالى (في أولادكم) يتناول كلّ ولد كان موجوداً أوجنيناً في بطن أمه من الطبقة الأولى أو بعدها من الذكور أو الإناث ما عدا الكافر

Allah's word QS. Al-Nisa/4:11 The word "*auladkum*" includes human children who have been born or are still in the womb of their mothers, whether male or female, first generation or later, apart from those who disbelieve.

As for the meaning of kalalah as explained by Abu Bakr when he was asked by other companions about al kalalah he replied:

أقول فيها برأى فان يكن صواباً فمن الله وان يكن خطأ فمضى ومن الشيطان من لا ولد له ولا ولد بريئان منه : الكلاله والله ورسوله

It means: I answer that based on my own opinion, and if my opinion is correct then it is from Allah, but if it is wrong then the error is from me and from the Shaytaan, and Allah and His Messenger are not involved in that error. What is meant by kalalah is a person who dies without leaving children or a father.

The expansion of the meaning of the word "*walad* or *aulad*" is not limited to the meaning of children alone but includes grandchildren as Imam Jaluddin al-Sayuti when interpreting QS al-Nisa: 11

لِكُلِّ وَجِدٍ مِّنْهُمَا السُّدُسُ مِمَّا تَرَكَ إِنْ كَانَ لَهُ وَلَدٌ

mentioned that

وَأَلْحَقَ بِالْوَلَدِ وَلَدَ الْأَبْنِ وَبِالْأَبِ الْجَدَّ

Grandchildren of sons are equated to children while grandfathers are equated to fathers

In line with Imam Jalaluddin al-Sayudi, Muhammad Ali Sayis explains

وقال العلماء إنّ اولاد الإبن وأولادهم يقومون مقام الأولاد إذا عدموا

The scholars said that the sons (male or female) of sons and their children can take their place when they are no longer around. This means: The grandsons or granddaughters of sons and their children can take the place of the father or mother and so on upwards when they are no longer around.

Basically, the scholars agree that the meaning of "walad" is children, both male and female. However, they differ in opinion when interpreting "walad" in QS 11-Nisa/4: 176 as follows

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

They ask you for a fatwa (on kalalah). Say: "Allah has given you a fatwa on kalalah: If a man dies, and he has no children, and he has a sister, then his sister shall have one-half of the estate he leaves behind, and his brother shall have dominion over the sister's estate, if she has no children; but if there are two sisters, then they shall have two-thirds of the estate left behind by the deceased. And if they (the heirs consist of) brothers and sisters, then the share of a brother is as much as the share of two sisters. Allah has explained this to you, so that you may not go astray. And Allah knows all things.

The majority of scholars are of the opinion that "walad" in QS. Al-Nisa/4:176 refers to sons. Ibn Abas, Ibn Zubae and Imam al-Dhahiri said that "walad" includes sons and daughters, as Ibn Kathir explained as follows.

وقد نقل ابن جرير وغيره عن ابن عباس وابن الزبير أنهما كانا يقولان في الميِّت ترك بنتا وأخت إنه لا شيء للاخت لقوله تعالى إِنْ امْرُؤٌ هَلَكَ لَيْسَ لَهُ وَلَدٌ وَلَهُ أُخْتٌ فَلَهَا نِصْفُ مَا تَرَكَ قَالَ فَإِذَا تَرَكَ بِنْتًا فَقَدْ تَرَكَ وَلَدًا فَلَا شَيْءَ لِلأخت . وخالفهما الجمهور فقالوا في هذه المسئلة للبتن النصف بالفرض وللأخت النصف الآخر بالتعصيب بدليل غير هذه الآية

Ibn Jarir and others narrated the opinion of Ibn Abas and Ibn Zubaer who said about the deceased who left a daughter and a sister that the sister does not get anything (veiled by the daughter) based on the word of Allah "if a man dies, and he has no children and has a sister, then for his sister the female half of the property left behind". This is contrary to the view of the majority of scholars who said: "The daughter gets half and the other half goes to the sister as an asobah (ashabah ma'al ghaer)", not because of this verse. The evidence for this is the hadeeth narrated by al-Bukhari from al-Aswad who said that Mu'adz bin Jabal once gave this ruling: "The daughter gets half and the sister gets the other half.

Wahbah al-Zuhaeli berkata

وجمهور الصحابة والتابعين غير ابن عباس وداود الظاهري يجعلون الأخوات وداود فلا يجعلون عصبة مع البنات وإن لم يكن معهن أخ. أمّا ابن عباس الأخوات عصبة مع البنات لظاهر قول الله تعالى إِنْ امْرُؤٌ هَلَكَ لَيْسَ لَهُ وَلَدٌ وَلَهُ أُخْتٌ فَلَهَا نِصْفُ مَا تَرَكَ... (النساء:176) ولم يورثوا الأخت إلا إذا لم يكن ولد . قالوا : ومعلومة أن الإبنة من الولد فوجب ألا ترث الأخت مع وجودها

The majority of the Companions and Taabi'een, apart from Ibn 'Abbas and Daud al-Dhahiri, regard sisters (biological or paternal) as *ashabah ma'a al-ghaer* if they are with their daughters and not with their brothers (as their mua'sib). But Ibn Abbas and Daud al-Dhahiri did not make sisters as *ashabah ma'a al-ghaer* because of the word of Allah, "innim ruun halaka ..." al-Nisa: 176. And they do not regard sisters as heirs who get a share except when there are no children. They said: "It is known that the daughter is the *walad* who is entitled to inherit, and the sister does not inherit if there are children (sons or daughters).

The legal issues mentioned above have been formulated in the Compilation of Islamic Law articles 181 and 182 which reads:

Article 181

If a person dies without leaving children and father, then brothers and sisters of the same mother each get a sixth part. If they are two or more then they together get a third share.

Article 182

If a person dies without leaving father and children, and he has one biological or paternal sister, then she gets half the share. If the sister is together with two or more biological or paternal sisters, they shall share two-thirds together. If the sister is together with biological or paternal brothers, then the brother's share is two to one with the sister.

The word "wald" in QS al-Nisa/4: 12 and 176 or "child" in the Compilation of Islamic Law is not limited to male children but also includes female children. In the decisions of the Supreme Court of the Republic of Indonesia, such as Decision No. 86K/AG/1994 dated July 20, 1995 and Decision No. 184K/AG/1995 dated September 30, 1996, the legal reasoning is that as long as there are children, both sons and daughters, brothers (of all kinds) are prevented from inheriting. The Supreme Court's opinion is based on the interpretation of Ibn Abbas, the Prophet's companion.¹⁴

3.2. Understanding the Meaning of "Akhun" and *Ikhwah* and "Ukhtun" and "Akhawat"

Ikhwah (إخوة) is the plural of mufrad (tuggal) mudzakar lafal akhun (أخ) which means brother. While akhawaatun ((أخوات)) is the plural of mufrad muannas lafal ukhtun (أخت) which means sister. This linguistic understanding cannot be fully applied when connected with the word *Ikhwah* (إخوة) in the inheritance verse QS al-Nisa/4:11 as Ahmad Musthafa al-Maraghi interprets:

(فَإِنْ كَانَ لَهُ إِخْوَةٌ فَلِأُمَّهِ السُّدُسُ) أَي فَإِنْ كَانَ لِلْمَيِّتِ مَعَ إِرْثِ أَبِيهِ لَهُ إِخْوَةٌ فَلِأُمَّهِ السُّدُسُ مِمَّا تَرَكَ سِوَاءَ كَانَ الْإِخْوَةُ ذَكَورًا أَوْ إِنَاثًا مِنَ الْأَبْوِينِ أَوْ أَحَدٍ هُمَا فَكُلٌّ جَمْعٌ مِنْهُمُ يُحْجَبُ الْأُمُّ مِنَ الثَّلَاثِ إِلَى السُّدُسِ. وَحُكْمُ الْأَخْوِينِ أَوْ أُخْتَيْنِ حُكْمُ الْإِخْوَةِ عِنْدَ أَكْثَرِ الصَّحَابَةِ... يَرِيدُ عَثْمَانُ أَنَّ النَّبِيَّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ وَالْخُلَفَاءُ الرَّشِيدِينَ أَقَامُوا لِإِثْنَيْنِ مَقَامَ الْجَمَاعَةِ فِي اعْتِبَارِ الشَّرْعِ

¹⁴ MK, M. A. (2013). Hukum kewarisan Islam Indonesia: Dinamika pemikiran dari *fiqh* klasik ke *fiqh* Indonesia modern. Penerbit Mandar Maju.

لا فى اعتبار اللغة... وخالف فى ذلك ابن عباس والأخوان فى لسان قومك ليسا بإخوة ؟

If the deceased has several brothers, then his mother gets one-sixth. (QS al-Nisa/4:11). This means that if the deceased leaves a mother, father and several brothers or sisters, the mother and/or father get 1/6 (one-sixth). Each group of brothers (male, female or mixed) hinders the mother's share from 1/3 (one-third) to 1/6 (one-sixth). The ruling of two brothers or two sisters is considered *ikhwah* according to most of the companions of the Prophet... Ustman meant to mention that the Prophet and khulafa al-Rashdin put two (people) in the plural position based on shara' not looking at the language (lughat) In contrast to the opinion of Ibn Abbas that the word al-akhwan (أخوان) which means two brothers cannot be equated with the plural *Ikhwah* (إخوة).

The word "*ikhwah*" is not only used for brothers but also for sisters as in QS al-Nisa/4:176.

وَإِنْ كَانُوا إِخْوَةً رِّجَالًا وَنِسَاءً فَلِلَّذَكَرِ مِثْلُ حَظِّ الْأُنثَيَيْنِ

And if they (the heirs consist of) brothers and sisters, then the share of a brother is as much as the share of two sisters.

Specifically, the inheritance of "akhun" and "ukhtun" used for brothers and sisters is mentioned in QS. Al-Nisa/4:12

وَإِنْ كَانَ رَجُلٌ يُورَثُ كَلَلَةً أَوْ امْرَأَةً وَلَهُ أَخٌ أَوْ أُخْتٌ فَلِكُلِّ وَجِدٍ مِّنْهُمَا السُّدُسُ فَإِنْ كَانُوا أَكْثَرَ مِنْ ذَلِكَ فَهُمْ شُرَكَاءُ فِي الثَّلَاثِ

If a man or woman dies, leaving no father and no children, but has a brother (a mother only) or a sister (a mother only), then for each of the two kinds of brothers a sixth of the property. But if the brothers are more than one, then they shall be united in the third,

The majority of scholars understand the plural form of the word *ikhwah* (QS. Al-Nisa / 4: 11) which means brothers or sisters can shift the mother's share from 1/3 (one third) to 1/6 (one sixth). The plural form is not the usual plural of at least 3 or more people but two brothers or sisters are already included in the category of *ikhwah*. In addition, the brother in question is a full or mixed brother or sister, whether biological, paternal or maternal.¹⁵ The use of the word *ikhwah* here is based on the consideration that Shara does not look at the language which only includes brothers. However, the Dzahiri scholars, spearheaded by Ibn Abbas, took a different view, namely that two brothers are not included in the category of *ikhwah*.

The word "akhun" (brother) in QS al-Nisa/4:12 is different from verse 176. According to the majority of scholars, the word "akhun" (brother) in QS. Al-Nisa/4:12 is a maternal brother, while in QS. Al-Nisa/4:176 is siblings or fathers. As for the word إخوة (*ikhwah*) in the inheritance of brothers with grandfathers, it means two or more brothers or sisters, either biological or paternal. It does not include brothers and sisters, because brothers and sisters are disqualified from inheriting because they are veiled by the grandfather.¹⁶

¹⁵ Sukron, M. (2018). Tafsir Wahbah Al-Z Uhaili Analisis Pendekatan, Metodologi, Dan Corak Tafsir Al-Munir Terhadap Ayat Poligami. Tajdid: Jurnal Pemikiran Keislaman dan Kemanusiaan, 2(1), 261–274.

¹⁶ Handy, M. R. N., & Fatimah, S. N. (2019). Biography of Syekh Muhammad Nafis Al-Banjari: An Investigation of Value in the Spread of Islam as a Learning Source on Social Studies. The Kalimantan Social Studies Journal, 1(1), 40–50.

3.3. A Comparative Analysis of Child Inheritance with Siblings in Classical *Fiqh* and the Compilation of Islamic Laws

The difference of opinion of the scholars regarding the inheritance of children with siblings stems from the understanding of the meaning of "*Walad* and *Ikhwah*" in QS al-Nisa/4: 11, 12 and 176

The mufassirin and the majority of suni scholars agree that the word "*aulad* or *walad*" in QS. al-Nisa / 4: 11 and 12 is a son or daughter who both affect the share of other heirs, can hijab nuqshan even hijab hirman to others. For example, children can reduce the father's and mother's shares, namely the father's original share as *ashabah* plus 1/6 (one-sixth) becomes 1/6 (one-sixth) if there is a son, the mother's share is reduced from 1/3 to *seperenem*. The husband's share which was originally 1/2 (half) of the estate because there is a child becomes 1/4 (a quarter), the wife who was originally 1/4 (a fourth) becomes 1/8 (an eighth). Likewise, a brother or sister, both male and female, who originally got 1/6 (one-sixth) or if two or more people together got 1/3 (one-third) became hijab hirman if there are sons or daughters (*farul inheritance*) or father (male inheritance proposal).

The word "*walad*" in QS al-Nisa / 4: 176 according to the majority of Sunni scholars is limited to sons only, while Ibn Abas and Ibn Zubaer and Imam al-Dhahiri said that "*walad*" includes sons and daughters. The difference of opinion in understanding the word "*walad*" in QS al-Nisa: 176 is due to two things

The word "*walad*" is linked to the word "*kalalah*" which explicitly states that a "*kalalah*" is someone who dies without leaving a "*wald*". The majority of scholars interpret "*kalalah*" to mean someone who has no father and no sons. They are not consistent with the meaning of *walad* that they have understood in the previous verse (QS. Al-Nisa: 11 and 12) which is as a *musytarak* pronunciation for two types of children, boys and girls. Amir Syarifuddin explains that the group of scholars who consistently interpret *walad* with sons and daughters is Shia. Based on this Shi'ah opinion, daughters can veil both male and female siblings, as is the opinion of Ibnu Abas, Ibn Zubaer and al-Dzahiri. The definition of *kalalah* according to Shi'ah is a person who has no sons and/or daughters. Consistent with the *lughawi* and *shar'i* meanings. Not influenced by the understanding of *kalalah* according to *ahlu sunnah* and the previous understanding of *adat/uruf*.¹⁷ The majority of scholars limit the notion of "*walad*" to sons based on the *hadith* of Ibn Masud which explains that sisters can inherit along with daughters as '*ashabah ma'a al-ghaer*', in the sense that daughters do not hijab sisters. According to Amir Syarifudin, in this situation, of course the heir is not "*kalalah*", it seems more appropriate to understand *kalalah* from the instructions of the Qur'an, namely people who do not have children, either male or female, not understanding *kalalah* from outside the Qur'an. The strongest understanding of the word "*walad*" in QS. Al-Nisa/4: 176 is sons and daughters.¹⁸

The essence of QS. Al-Nisa/4: 12 and 176 as well as KHI articles 181 and 182 which states that if someone dies and leaves no children then the brother and sister of the heir gets a share of the property left by the heir. The *a-contrario* interpretation (*Mafhum mukhalafah*) of the verse is that if a person dies and he leaves children (both male and female), then his brother, both male and female, is not entitled to inherit

¹⁷ Khasanah, R., Yuwinda, B. E., Syarifudin, M., & others. (2023). Pemahaman Masyarakat Dusun Sawit Terhadap Hukum Waris Islam. *Jurnal Indragiri Penelitian Multidisiplin*, 3(1), 51–56.

¹⁸ Murlisa, L. (2017). Konsep Ahli Waris Pengganti dalam Hukum Kewarisan Islam dan Implementasinya dalam Hukum Adat dan Kompilasi Hukum Islam. *AT-TASYRI': JURNAL ILMIAH PRODI MUAMALAH*, 149–162.

(terhijab).¹⁹ Therefore, the implications of the interpretation of the word "*walad*" and the a-contrario interpretation mentioned above, the three categories of 'ashabah recognized by the majority of sunni scholars, namely *Ashabah bi al-nafs*, *ashabah bi al-ghaer* and *'ashabah ma'a al-ghaer*, it turns out that the existence of ashabah ma'al ghaer is not desired to be applied in the Islamic inheritance system in Indonesia.

Basically, a word is understood according to its birth, unless there is a strong shara' argument that requires reversal of the birth meaning. In this case, what underlies the opinion of the majority of scholars is the understanding of 'urf and a piece of the Prophetic sunnah which al-Zhahiri considers not strong. Furthermore, Amir Syarifudin emphasized that the strongest understanding of the meaning of "*walad*" in QS al-Nisa/4: 176 is sons and daughters as applies to the word "wald" in other verses.²⁰ Therefore, the word "wald" in the Quran refers to both sons and daughters. Evra Willya explains that the word child when intended with sons only in the Qur'an is usually used Ibn while when devoted to girls used the word "bintun". Because girls are the same as sons, daughters or granddaughters can hijab siblings absolutely, namely brothers and sisters whether siblings, fathers or mothers.²¹

4. CONCLUSION

The difference of opinion regarding the inheritance of children and siblings is caused by the use of the terms '*walad*', whose plural form is '*aulad*', and '*akhun*', whose plural form is '*ikhwah*'. The majority of scholars agree that the word '*walad/aulad*' in QS. Al-Nisa/4: 11 and 12 refers to sons or daughters, while in QS. Al-Nisa/4:176 refers only to sons. According to Ibn Abbas, Ibn Zubair, and Imam al-Dhahiri, the word '*walad*' includes both genders. Meanwhile, the word '*akhun*' in QS. Al-Nisa/4:12 refers to the mother's brother, but in QS. Al-Nisa/4:176 refers to the sibling or the father's sibling. The plural form of إخوة (*ikhwah*) in QS. Al-Nisa/4: 11 and 176 does not refer to a minimum number of three, but two brothers are considered as '*ikhwah*'. However, the Dzahiri scholars, spearheaded by Ibn Abbas, argue that two brothers are not included in the category of '*ikhwah*'. In the Compilation of Islamic Law (KHI), the definition of '*walad*' includes sons or daughters, both of which can close the inheritance rights of the deceased's siblings, whether biological, fathers, or mothers, based on an a-contrario interpretation of Articles 181 and 182 of the KHI. The implication of this interpretation and the interpretation of the word '*walad*' by KHI is that the categories of 'ashabah recognised by the majority of Sunni scholars - *Ashabah bi al-nafs*, *ashabah bi al-ghaer*, and *ashabah ma'a al-ghaer* - are not fully applied in the Islamic inheritance system in Indonesia. The Jumhur Ulama seem inconsistent in their understanding of the word '*walad*', which in QS. Al-Nisa/4: 176 means son, but in QS. Al-Nisa/4: 11 and 12 means both sons and daughters. This is heavily influenced by the 'urf or customs of the Arab community beforehand, although lughawi and shar'i the word "*walad*" includes both sexes.

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¹⁹ Noviarni, D. (2021). Kewarisan dalam Hukum Islam di Indonesia. 'Aainul Haq: Jurnal Hukum Keluarga Islam, 1(1), 62–75.

²⁰ Aisyah, N. (2020). Anak Angkat Dalam Hukum Kewarisan Islam Dan Hukum Perdata. El-Iqthisady: Jurnal Hukum Ekonomi Syariah, 101–113.

²¹ Fakhyadi, D. (2021). Patriarkisme Hukum Kewarisan Islam: Kritik Hukum Waris Islam dan Kompilasi Hukum Islam. Hukum Islam, 21(1), 1–16.

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