

Review of the Priority of Men in Islamic Marriage and Inheritance Law

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Abstract. *Marriage is a legal act that is private in nature but has a broad impact on human life. The definition of marriage is a physical and spiritual bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family based on the Almighty God. (Article 1 of Law No. 1 of 1974 concerning Marriage). Marriage is one of the religious orders to those who are able to carry it out immediately. Marriage can also reduce sin, both in the form of vision and in the form of adultery. In the matter of justice, the Islamic inheritance division of 2:1 between men and women still applies. Even if there is a social change, as explained previously, the percentage is small and is casuistic. This provision is in accordance with the principle: "al-naḍīru ka al-'aḍam" (Something unusual, such as not existing). This casuistic social problem can use the concept of al-ahliyah al-wujūb in providing equality in the distribution of inheritance between men and women, namely the eligibility of a mukallaf to carry out legal acts that carry out rights and obligations, without distinguishing the status of men and women. There are two conclusions in this paper. First, the concept of distributive justice in the 2:1 inheritance section between men and women is still relevant and is a general concept. This is because the law in Indonesia still requires the provision of dowry and maintenance rights to the wife. However, if it is associated with the case of women working, this general concept can change according to the social conditions that occur in society.Indonesia. The note is that even if social change occurs, the percentage is small and is casuistic, it cannot cancel general laws.*

Keyword: *Islamic Marriage; Inheritance Law; Priority*

1. Introduction

One of the purposes of marriage is to provide offspring who will later become heirs. The desire to have children for every married couple is a human instinct and by nature these children are a mandate from Allah SWT to the husband and wife. The presence of a child is happiness and prosperity for a husband and wife

and their family, because children are the fruit of a sacred marriage and the foundation for future generations of a family. Children are a trust and gift from Almighty God, in whom the dignity and worth of being a complete human being is inherent. Children are also the shoots, potential and successors of the young generation to the ideals of the struggle of the two nations, have a strategic role and have special characteristics and characteristics that guarantee the continued existence of the nation and state in the future.

Based on the heirs of Islamic inheritance law, there is a term known as the principle of death, which means that inheritance exists if someone dies. Inheritance exists as a result of someone's death. Therefore, the transfer of one person's property to another person is only called inheritance if it occurs after the person who owns the property dies. In Islamic inheritance law, we know the concept of 2:1 (read: two to one) between men and women. This provision is stated in Qs. an-Nisā' (4) 11-12.

Historically, the concept in the verse is fair, because the reason for the revelation of the verse contains the value of equality between men and women in receiving inheritance rights, and upholds the dignity and honor of women compared to the position of women in pre-Islam. However, theoretically, Muslims must divide their inheritance according to Islam, and if there is a dispute, it must be done in front of a Religious Court hearing as The authority/power of the Religious Court is to examine, decide and resolve cases at first instance between people of the Muslim religion.

2. Research Methods

A. Formulation of the problem

1. What is the meaning of marriage law?
2. What is the meaning of Islamic inheritance?
3. How is the inheritance divided for a man?

B. Objective

1. To find out what the meaning of marriage law is
2. To find out what the meaning of Islamic inheritance is
3. To find out the distribution of inheritance for a man

3. Results and Discussion

3.1. Definition of Marriage

God does not want to make humans like other creatures, who live freely following their instincts and have relationships between males and females anarchically, and there is no single rule. But in order to maintain the honor and dignity of human glory, God has made laws according to their dignity, so that the relationship between men and women is regulated honorably and based on

mutual consent, with the *ijab qabul* ceremony as a symbol of the feeling of consent, and attended by witnesses who testify that the two male and female partners are bound to each other.

This form of marriage has provided a safe path for instinct (sex), maintaining offspring well and protecting women from being like grass that can be eaten by livestock at will.

The relationship between husband and wife is placed under the auspices of maternal and paternal instincts, so that in the future it will grow good plants and produce good fruit. Marriage regulations such as this is what Allah approves of and is immortalized by Islam forever, while the others are abrogated.

Marriage is one of the *sunnatullah* which is common to all of God's creatures, both humans, animals and plants. The word of Allah: QS. Adz-Dzariat (51):49.

And We have made all things matched so that you may give thought (Adz-Dzariat (51):49).

His Word also: QS. Yaa sin (36):36

Glory be to God who has created everything in harmony, both plants and themselves and others that they do not know (Yaa sin (36):36).

Marriage is a method chosen by God as a way for humans to have children, reproduce and preserve their lives, after each partner is ready to play a positive role in realizing the goals of marriage. God's Word in QS. Al-Hujuraat (49): 13 :

O people, be devoted to your Lord, who created you from one person, then He made you a soul mate, then He created many men and women... (An-Nisa (4): 1)

The word marriage according to Islamic law is the same as the word "nikah" and the word "Zawaj" which means to squeeze, overlap or gather. Marriage has a metaphor, namely "Wathaa" which means one body or "aqad" which means to enter into a marriage agreement. In everyday life, marriage in a figurative sense is more widely used in its real meaning, it is rarely used today.

Marriage According to the Compilation of Islamic Law (KHI) in Chapter II on the basics of marriage in Article 2 states: "Marriage according to Islamic law is marriage, namely a very strong contract or *miitsaaqon gholiidhan* to obey Allah's command and carrying it out is worship". Article 3 also explains the purpose of marriage, namely: "Marriage aims to create a household life that is peaceful, loving and compassionate."

Marriage According to Republic of Indonesia Law No.1 of 1974 concerning Marriage, in Article 1 which reads: "Marriage is an inner and outer bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family (household) based on the Godhead Almighty.

From the text of Article 1 of Law No. 1 of 1974 above, a formulation of the meaning and purpose of marriage is concluded. The "meaning" of marriage is: A physical and spiritual bond between a man and a woman as husband and wife,

while the "purpose" of marriage is: to form a happy and eternal family (household) based on the One Almighty God.

According to the author, it is clear that marriage between a man and a woman, not a same-sex marriage, if there is a same-sex marriage either a man with a man or a woman with a woman, the marriage is invalid because it violates the provisions of the Marriage Law. And also one of the purposes of marriage is to obtain legitimate offspring, how is it possible to obtain offspring if the marriage is of the same sex.

3.2. Pillars and Conditions of Marriage

Pillars and conditions determine a legal act, especially concerning the validity or otherwise of the act from a legal perspective. Both words have the same meaning in that both are something that must be held. In a marriage ceremony, for example, pillars and conditions cannot be left out, meaning that the marriage is not valid if both are not present or incomplete. Both have different meanings, that pillars are something that is in essence and is a part or element that manifests it, while conditions are something that is outside of it and is not an element. Some conditions are related to pillars in the sense of conditions that apply to each element that forms a pillar. There are also conditions that stand alone in the sense that they are not criteria for the elements of pillars.

In marriage law, in placing which is a pillar and which is a condition, there are differences among scholars, which are not substantial. The differences between these opinions are caused by differences in seeing the focus of marriage. All scholars agree on the things involved and that must be present in a marriage, namely: the marriage contract, the man who is getting married, the woman who is getting married, the guardian of the bride, witnesses who witness the marriage contract and the dowry or bride price.

The main elements of a marriage are the man and woman who will marry, the marriage contract itself, the guardian who enters into the contract with the prospective husband, two witnesses who witness the marriage contract taking place, all of which are then called the pillars of marriage.

The dowry in every marriage is not included in the pillars, because the dowry does not have to be mentioned in the marriage contract and does not have to be submitted at the time the contract takes place. Thus, the dowry is included in the requirements of marriage. The Marriage Law does not talk about the pillars of marriage at all.

The Marriage Law only discusses marriage conditions, where these conditions are more related to the elements or pillars of marriage. KHI clearly discusses the pillars of marriage as contained in Article 14, the entire pillar of which follows Shafi'i fiqh by not including dowry in the pillars.

Then, the author will briefly explain the pillars of marriage one by one, which contain the conditions for marriage, including:

1. Marriage contract

A marriage contract is an ongoing agreement between two parties entering into a marriage in the form of Ijab and Qabul. Ijab is a submission from the first party, while qabul is acceptance from the second party. The consent of the woman's guardian said: "I marry my son named A to you with a dowry of a book of the Koran." Qabul is acceptance from the husband's side with the words: "I accept to marry your son named A with the dowry of a book of the Koran."

In Islamic Law as contained in the books of fiqh, the marriage contract is not just a civil agreement. It is stated as a strong agreement mentioned in the Qur'an with the phrase; Mitsaqan Ghalidzhan where the agreement is not only witnessed by two designated witnesses or many people present at the time the marriage contract takes place, but also witnessed by Allah SWT.

Ulama agree to place ijab and qabul as the pillars of marriage. For a marriage contract to be valid, several conditions are required. Among these conditions, some are agreed upon by ulama and some are disputed by ulama. These conditions are as follows:

The marriage contract must begin with ijab and continue with qabul. Regarding whether the man's words precede the woman's words, most scholars allow it. The form of the man's words that precede the woman's, for example, the husband's words: "I marry your daughter named A with a dowry of one holy book of the Qur'an. The words of the guardian that follow later, for example: "I accept you to marry my daughter named A with a dowry of one book of the Qur'an".

1. The content of the ijab and qabul must not be different, such as the woman's full name and the form of dowry mentioned.
2. Ijab and qabul must be said continuously without interruption even for a moment. Malikiyah scholars allow the delay of the qabul from the ijab, if the delay is only for a short time.
3. The ijab and qabul must not use expressions that limit the duration of the marriage, because marriage is intended to last a lifetime.
4. Consent and qabul must use clear and straightforward pronunciation. It is not permissible to use innuendo, because to use innuendo you need intention, whereas the witnesses who must attend a marriage cannot know what someone intended. The clear pronunciation (sharih) agreed upon by the ulama is na-ka-ha or za-wa-ja or its translation which can be understood by people who have entered into a contract, such as the pronunciation of marriage in the Malay language. These two pronunciations are clearly used in the Qur'an and the Hadith of the Prophet to indicate the purpose of marriage. Apart from these two pronunciations, there are differences of opinion among the ulama, the Hanafiyah Ulama added the lafaz grant, tamlik

and shadaqah, because these three proverbs contain the meaning of surrender and are also found in the Prophet's sayings for the purpose of marriage. Malikiyah scholars added the words grant, bai' and sadaqah. Ulama Zhahiri added the words: tamlik and imkan.

The marriage law does not regulate marriage contracts or even does not discuss contracts at all. Perhaps the marriage law places the marriage contract as an ordinary agreement or contract in a civil action. This kind of placement is in line with the opinion of Hanafiyah scholars who consider the marriage contract to be the same as a marriage contract which does not require a guardian as long as the person acting is an adult and meets the requirements.

However, the Compilation of Islamic Law (KHI) clearly regulates marriage contracts in Articles 27, 28 and 29, all of which follow what is contained in Islamic jurisprudence with the following formulation:

Article 27

The acceptance and acceptance of the marriage vows between the guardian and the prospective groom must be clear and consecutive and without any gap in time.

Article 28

The marriage contract is carried out personally by the relevant marriage guardian. The marriage guardian delegates it to another person.

Article 29

- 1) The person who has the right to say the kabul is the prospective groom personally
- 2) In certain cases, the acceptance of the marriage vows can be delegated to another man, provided that the prospective groom gives express written authority that the representative's acceptance of the marriage contract is for the groom.
- 3) If the prospective bride or her guardian objects to the prospective groom being represented, then the marriage contract may not take place.

2. The Bride and Groom (Male and Female)

Islam only recognizes marriage between a man and a woman and nothing else, such as between men or between women, because this is stated in the Qur'an. The conditions are: The conditions that must be met for men and women who want to marry are as follows:

- a. Both have clear identities and can be distinguished from each other, both in terms of name, gender, existence and other things related to themselves. The existence of the proposal law contained in the Qur'an and the Hadith of the Prophet is a requirement so that both prospective brides and grooms have known each other, well and openly.
- b. Both of them are Muslims

- c. Between the two of them, it is not forbidden to carry out marriage
- d. Both parties have agreed to marry and also agreed with the party who will marry them. Regarding the permission and approval of both parties who will carry out the marriage, it is discussed at length in the books of fiqh and scholars differ in determining it. The Qur'an does not directly explain the requirements for the approval and permission of the parties who carry out the marriage. However, the Hadith of the Prophet speaks a lot regarding the permission and approval, including:

Hadith of the Prophet from Abu Hurairah, Muttafaq'alah:

... حَدِيثُ أَبِي هُرَيْرَةَ، أَنَّ النَّبِيَّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ قَالَ: لَا تُنْكَحُ الْأَيِّمُ حَتَّى تُسْتَأْمَرَ، وَلَا تُنْكَحُ الْبِكْرُ حَتَّى تُسْتَأْذَنَ. قَالُوا: يَا رَسُولَ اللَّهِ! وَكَيْفَ إِذْنُهَا؟ قَالَ: أَنْ تَسْكُتَ...

Hadith of Abu Hurairah, that the Prophet SAW said: "A widow cannot be married until she is asked for her consent, and a girl cannot be married until she is asked for her permission." The companions asked: "O Messenger of Allah, what is the (sign of) permission?" He said: "If the girl is silent (HR. Muttafaq'alah).

Hadith of the Prophet from Ibn Abbas, narrated by Muslim:

...الثيب أحق بنفسها من وليها والبكر تستأمر, وإذنها سكوتها.

A widowed woman has more rights over herself than her guardian. Girls are asked for permission and permission is their silence (HR. Muslim).

From the Prophet's Hadith, scholars agree on the requirement of permission from the woman who is being married if she is a widow and the permission must be clear, while for women who are still minors or virgins, scholars differ on the form of permission and approval, although indirectly all scholars require approval. Malikiyah scholars simply formulate that women and men who are going to get married must convey their approval.

Marriage Law Number 1 of 1974 regulates the requirements for the consent of both bride and groom in Article 6 with the same formulation as fiqh.

Article 6

- 1) Marriage must be based on the consent of both prospective bride and groom.
- 2) To get married, a person who has not reached the age of 21 (twenty one) years must obtain permission from both parents.
- 3) In the event that one of the parents has died or is unable to express his/her will, then the permission referred to in paragraph (2) of this Article must be obtained from the parent who is still alive or from the parent who is able to express his/her will.

- 4) In the event that both parents have died or are unable to express their will, permission must be obtained from the guardian, person who cares for the child or family who have blood relations in a direct line upwards as long as they are still alive and able to express their will.

The Compilation of Islamic Law (KHI) regulates the agreement of the two brides in articles 16 and 17 with the following description:

Article 16

- 1) Marriage is based on the consent of the prospective bride and groom.
- 2) The form of consent from the prospective bride can be in the form of a firm and real statement in writing, verbally or by gesture, but can also be in the form of silence, meaning as long as there is no firm rejection.

Article 17

- 1) Before the marriage takes place, the Marriage Registrar first asks for the consent of the prospective bride and groom in front of two marriage witnesses.
- 2) If it turns out that the marriage is not approved by one of the prospective bride and groom, the marriage cannot take place.
- 3) For prospective brides and grooms who are deaf or mute, consent can be expressed in writing or in signs that can be understood.
- 4) Both have reached the appropriate age to get married. The age limit for marriage is not discussed in the books of Islamic jurisprudence. In fact, the books of Islamic jurisprudence permit marriage between a young man and a young woman, whether the permit is stated clearly, such as the phrase: "it is permissible to marry a young man and a young woman" or "it is permissible to marry a young man and a young woman" as stated in the book Syarh Fath al-Qadir.

This is permissible because there is no verse in the Qur'an that clearly and specifically mentions the age limit for marriage and there is no Hadith of the Prophet that directly mentions the age limit, even the Prophet himself married Siti Aisyah when she was only 6 years old and had intercourse with her after she was 9 years old.

The rationale for the absence of an age limit for couples who are going to marry is in accordance with the views of the people at that time about the nature of marriage. According to their view, marriage is not seen from the perspective of sexual relations, but from the perspective of its influence in creating a musharah relationship. The Prophet married Aisha, the daughter of Abu Bakr at the age of 6 years, among other things, for the freedom of Abu Bakr to enter the Prophet's household, because there were his own children there.

Even though the Qur'an or the Prophet's Hadith explicitly states the age limit for marriage, there are verses of the Qur'an and Likewise, there is a Hadith of the

Prophet which indirectly indicates a certain age limit. The word of Allah in Surat an-Nisa (4): 6

And test the orphans until they reach the age of marriage...

From this verse it can be understood that marriage has an age limit and that age limit is puberty. Hadith of the Prophet from, Abdullah bin Mas'ud Muttafaqun Alaih:

From Abdullah bin Mas'ud narrated that the Messenger of Allah said, "O young men, whoever among you is able to marry, let him marry because with marriage he can lower his gaze and guard his private parts, whoever is unable, let him fast because that can reduce lust." (Narrated by Mutafaqun"Alaih).

There are such requirements in the Hadith of the Prophet to carry out marriage, namely the ability to prepare for marriage. This ability and preparation for marriage can only occur for adults.

The adult age limit for prospective brides and grooms as can be understood from the verses of the Qur'an and the Hadith of the Prophet above is clearly regulated in the Marriage Law in Article 7 with the following formulation:

Article 7

- 1) Marriage is only permitted if the man has reached the age of 19 (nineteen) years and the woman has reached the age of 16 (sixteen) years.
- 2) In the case of deviation from paragraph (1) of this article, a dispensation may be requested from the Court or another official appointed by the parents of both the man and the woman.
- 3) The provisions regarding the circumstances of one or both parents in Article 6 paragraph (3) and (4) of this Law also apply in the case of a request for dispensation in paragraph (2) of this article without reducing what is meant in Article 6 paragraph (6).

Compilation of Islamic Law (KHI) Article 15 emphasizes the requirements contained in the Marriage Law with the following formulation:

Article 15

- 1) For the benefit of the family and household, marriage may only be carried out by prospective brides and grooms who have reached the age specified in Article 7 of Law No. 1 of 1974, namely the prospective husband is at least 19 years old and the prospective wife is at least 16 years old.
- 2) Prospective brides and grooms who have not reached the age of 21 must obtain permission as regulated in Article 6 paragraph (2), (3), (4) and (5) of Law No. 1 of 1974.

3. Guardian

What is meant by a guardian in general is someone who because of his position is authorized to act towards and on behalf of another person. He can act towards

and on behalf of another person because the other person has a deficiency in him that does not allow him to act alone legally, either in matters of acting on property or on himself. In marriage, the guardian is someone who acts on behalf of the bride in a marriage contract. The marriage contract is carried out by two parties, namely the man himself and the woman who is carried out by her guardian.

The presence of a guardian in a marriage contract is a must and a marriage contract that is not carried out by a guardian is not valid. The guardian is placed as a pillar in marriage according to the agreement of the ulama in principle. In the marriage contract itself, the guardian can be positioned as a person who acts on behalf of the bride and can also be a person whose approval is asked for the continuation of the marriage.

When placing him as a person acting on behalf of the bride in carrying out the marriage contract, there are differences of opinion among scholars. Regarding the bride who is still a child, both male and female, scholars agree in placing him as a pillar or requirement in the marriage contract. The reason is that the bride who is still a child cannot carry out the contract by herself and therefore the contract is carried out by her guardian. However, regarding women who are adults, whether they are widows or still virgins, scholars have different opinions. The difference of opinion is caused by the absence of definite evidence that can be used as a reference.

Indeed, there is not a single verse of the Qur'an that is as clear as Al-Nash which requires the presence of a guardian in the marriage contract. However, in the Qur'an there is a text that does not seem to refer to the necessity of having a guardian, but from this verse it can be understood that the text clearly requires the existence of a guardian. Apart from that, there are also verses in the Qur'an which understand that women can carry out their own marriages.

Among the verses of the Qur'an that indicate the existence of a guardian are the following:

QS. al-Baqarah (2) verse 232:

If you abandon your wives and their iddah period ends, then do not prevent them from remarrying their future husbands...

There are three groups who have the right to occupy the position of guardian: lineage guardian, namely a guardian who is related by family ties to the woman who is going to marry. Mu'thiq guardian, namely a person who becomes a guardian for a former slave woman who is freed. Judge guardian, namely a person who becomes a guardian in his position as a judge or ruler.

4. Witness

The marriage contract must be witnessed by two witnesses to ensure legal certainty and to avoid objections from the parties to the contract at a later date. In placing the position of witness in a marriage, the Jumhur ulama consisting of

Shafi'iyah ulama, Hanabilah, places it as a pillar of marriage, while the Hanafiyah and Zhahiriyah ulama place it as a condition. 49 The situation is also the same for Malikiyah ulama. According to this cleric, there is no obligation to present witnesses at the time of the marriage contract, what is required is to announce it, but it is required that there be testimony through the announcement before the marriage ceremony.

A different opinion from the majority of scholars above comes from the Imammiyah Shiite scholars. For them, there is no requirement for witnesses during the marriage contract, and the contract can even take place without witnesses. The existence of witnesses for them is only sunnah.

The legal basis for the requirement for witnesses in a marriage contract is in the form of verses of the Qur'an and several hadiths of the Prophet.

QS. Surat al-Thalaq (65) verse 2:

When they are nearing the end of their iddah, then reconcile them well or let them go well and testify with two fair witnesses among you and let your testimony be established for the sake of Allah. Thus are taught those who believe in Allah and the Hereafter. Whoever fears Allah, He will surely provide a way out for him.

Witnesses at a wedding must meet the following requirements:

- a. There were at least two witnesses. This is the opinion held by the majority of ulama. For Hanafiyah clerics, the witness may consist of one man and two women, while for Zhahiriyah clerics the witness may consist of four women.
- b. Both witnesses are Muslims
- c. Both witnesses were free people.
- d. Both witnesses were men. As stated in the Hanafiyah ulama's requirements for allowing female witnesses as long as there are male witnesses among them; while the Zhahiriyah clerics allow all women with the consideration that two women have the same status as a man.
- e. Both witnesses were just in the sense that they never committed major sins and did not always commit minor sins and maintained their honor.
- f. Both witnesses could hear and see.

5. Dowry

The word "dowry" comes from Arabic and has become a commonly used Indonesian language. The Great Dictionary of the Indonesian Language defines dowry as "a mandatory gift in the form of money or goods from the groom to the bride when the marriage contract is carried out". This definition seems to be in accordance with the tradition in Indonesia that the dowry is given when the marriage contract is carried out. In Arabic, dowry is called by eight names, namely: mahar, shadaq, nihlah, faridhah, hiba', ujr,'uqar and alaiq. All of these words mean a mandatory gift in return for something received. Islamic

jurisprudence scholars provide definitions with formulations that are not substantially different. Among them, as stated by Hanafiyah scholars as follows:

هو المال يجب في عقد النكاح على الزوج في مقابلة البضع

Property that is obligatory for the husband when the marriage contract takes place as compensation for the sexual pleasure he receives.

The Arab tradition as contained in the books of fiqh, the dowry, although obligatory, does not have to be given at the time of the marriage contract, meaning it can be given at the time of the marriage contract and also after the marriage contract. The definition given by the scholars at that time was in line with the tradition that was in effect at that time. Therefore, the correct definition that can be two possibilities is: "A special obligatory gift in the form of money or goods given by the groom to the bride when or as a result of the marriage contract."

The definition implies that the obligatory gift given by the groom to the bride not on the occasion of the marriage contract or after the completion of the marriage contract is not called mahar, but nafaqah. If the gift is not done voluntarily outside the marriage contract, it is not called mahar or with the meaning of a regular gift, either before the marriage contract or after the completion of the marriage contract. Likewise, the gift given by the groom to the bride is not called mahar.

From the definition of the dowry above, it is clear that the taklifi law of the dowry is obligatory, meaning that a man who marries a woman is obliged to give the dowry to his wife and it is sinful for a husband who does not give the dowry to his wife. The basis for the obligation to give the dowry is stated in the Qur'an and the hadith of the Prophet. In the Qur'an is the word of Allah in QS. an-Nisa (4) verse 4:

Give to you part of the dowry gladly, so eat of it (as food) which is good and has good results.

6. Marriage Prohibition

Even though the marriage has fulfilled all the pillars and requirements that have been determined, it is not necessarily true that the marriage is valid, because it still depends on one thing, namely that the marriage has been freed from all things that hinder it. The obstacles to marriage are also called prohibitions on marriage. What is meant by prohibitions on marriage in this discussion are people who are not allowed to do it. Marriage. What is being discussed here is which women cannot marry a man, or vice versa, which men cannot marry women. Everything is regulated in the Qur'an and the hadith of the Prophet. There are two types of prohibitions:

- 1) The prohibition on marriage is haram forever, meaning that at any time and under any circumstances, men and women may not marry. Prohibitions in this form are called mahram muabbad.
- 2) The prohibition on marriage is temporary in the sense that the prohibition applies in certain circumstances and at certain times; at some point when the circumstances and at certain times have changed it will no longer be forbidden, which is called mahram muaqqat.

4. Understanding Islamic Inheritance

Islamic Inheritance Law only applies to people who embrace Islam, where the inheritance distribution system uses the principle of individual bilateral. So it can be said that the heirs must come from the father's or mother's line. In addition, the meaning of inheritance is if the property or assets given by the person who gave it have died, if the person is still alive the term is called a Grant, not an inheritance. The most important thing is that the person who becomes the heir must have a relationship family or lineage. For example, uncles, children, grandchildren, and so on. In addition to having kinship (family) relationships, marriage relationships and religious relationships, they are only entitled to receive inheritance legally if the following requirements are met:

- a. The person who inherited (muwarrits) has died.

Scholars distinguish between three types of death, including:

- 1) Essential death (real death).
 - 2) Legally dead, namely against a person who is legally considered dead by the court. This can happen as in the case of a person who is declared missing (al-mafqud).
 - 3) Death by accident (death according to suspicion) for example: the death of a newborn baby due to the beating of its mother's stomach or forcing its mother to drink poison. Or someone who is known to have participated in war on the battlefield or other purposes that are physically suspected of threatening his safety.
- b. The person who received the inheritance (al-warits) or heir was still alive at the time of the muwarrits' death.
 - c. There are no barriers to inheriting
 - d. Not veiled or fully covered by closer heirs.
 - e. The existence of inheritance (al-Mauruts or al-mirats) of the deceased after deducting the costs of caring for the body, paying off debts and carrying out the will.

5. Legal Basis of Islamic Inheritance

The legal basis used as a source for determining Islamic inheritance law is found in the Al-Qur'an and Sunnah as well as the ijma' of the ulama who directly

regulate inheritance. In the Qur'an, the verses that regulate the issue of Islamic inheritance include:

1) Letter an-Nisa (4) verse 7

For men there is the right to share in the inheritance of their parents and relatives, and for women there is the right to share (also) in the inheritance of their parents and relatives, whether a little or a lot according to the division that has been determined.

2) Letter an-Nisa (4) : 8

And if during the distribution there are relatives, orphans and poor people present, then give them (only a little) of the property and say good words to them.

3) Letter an-Nisa (4) : 11

Allah has ordained (shari'ah) for you regarding (distribution of inheritance to) your children. Namely: the share of one son is the same as that of two daughters; and if all the children are more than two daughters, then for them two-thirds of the property left behind; If there is only one daughter, then she gets half the property. and for two parents, for each one sixth of the property left behind, if the deceased has children; if the person who dies has no children and he is inherited by his parents (only), then the mother gets one third; if the deceased has several siblings, then the mother gets one sixth. (The distributions mentioned above) after fulfilling the will he made or (and) after paying his debts. (Regarding) your parents and your children, you do not know which of them is closer (of much) benefit to you. this is a decree from Allah. Indeed, Allah is All-Knowing, All-Wise.

4) Letter an-Nisa (4): 12

And for you (husbands) 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) having paid their debts. Wives get a quarter of the property you leave if you don't have children. If you have children, then the wives get one-eighth of the property you leave after fulfilling the will you made or (and) after paying your debts. If a person dies, whether male or female, who left no father and no children, but has a brother (only one mother) or one sister (one mother only), then for each of the two types of siblings one sixth treasure. But if there are more than one half-brother, then they are partners in that third, after fulfilling the will made by him or after paying his debts without giving harm (to the heirs). (Allah established this as) the true Shari'ah from Allah, and Allah is All-Knowing, Most Forgiving.

5) Letter an-Nisa (4) : 176

They ask you for a fatwa (regarding kalalah). Say: "Allah gives you a fatwa regarding kalalah (namely): if a person dies, and he has no children and no sisters, then for his female sibling half of the property he left behind, and his male

sibling inherits (the entire property sisters), if he has no children; but if there are two sisters, then divide both two-thirds of the property left by the deceased. And if they (the heirs consist of) brothers and sisters, then share a brother as many men as two sisters. Allah explains (this law) to you, so that you do not go astray. And Allah knows all things.

6. Principles of Islamic Inheritance

As a religious law that originates from Allah's revelation conveyed by the Prophet Muhammad SAW, Islamic inheritance law contains various principles which in some cases also apply to inheritance law which originates from human reason. Apart from that, Islamic inheritance law has its own characteristics so that it is different from other inheritance laws. Amir Syarifuddin classifies 5 principles relating to the nature of transition to heirs, including:

1. *The principle of ijbar* linguistically it means, coercion, namely doing something beyond one's own will. In the context of Islamic inheritance law, it can be interpreted as the transfer of property from a deceased person to a living person applies automatically without any effort from the deceased or the will of the recipient. The existence of this ijbari element can be understood from the group of heirs as mentioned by Allah in verses 11, 12, and 176 of the letter an-Nisa.
2. *Bilateral principle* This contains an understanding of which direction the transfer of property is given among the heirs. In the context of Islamic inheritance law, the bilateral principle means that inheritance is transferred to or through two directions. This means that each person receives inheritance rights from both sides of the male line of kinship and the female line of kinship.
3. *Individual principle* contains the meaning that each heir individually has the right to the portion he receives without depending on the other heirs. The individual nature can be seen from Surah Nisa (4) verse 7 concerning the division of inheritance, namely which confirms that both men and women have the right to receive inheritance from their parents and close relatives, regardless of the amount of the assets, with a predetermined portion.
4. *The principle of justice* balanced, namely the balance between rights and obligations. Basically, the existence of the principle of balanced justice in the context of Islamic inheritance law states that gender differences do not determine inheritance rights in Islam. The legal basis for this principle can be found, among others, in the provisions of Surah Nisa (4) verses 7, 11, 12, and 176.
5. *Just the basics* The consequences of death in Islamic inheritance law mean that the transfer of one person's property to another person only applies after the owner of the property dies.

7. Inheritance Barrier

Obstacles to receiving inheritance or called mawani' alirts are things that cause the loss of inheritance rights to receive inheritance from the inheritance of al-muwarrits. The things that hinder it that are agreed upon by scholars are three of them:

1. Murder (al-qatil)

Murder is an act that is an absolute barrier to inheritance, because of the strong evidence from the hadith of the Prophet Muhammad.

وَعَنْ عُمَرَ بْنِ شُعَيْبٍ عَنْ أَبِيهِ عَنْ جَدِّهِ قَالَ قَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ لَيْسَ لِلْقَاتِلِ مِنَ الْمِيرَاثِ شَيْءٌ (رواه النسائي والدارقطني) ^{١٣٨}

It was narrated from Amr bin Syu'aib, from his father from his grandfather, that the Prophet SAW said, "There is no inheritance whatsoever for a murderer." (HR AnNasai and Daruqathni).

From the hadith it is known that murder is an act that becomes a barrier to inheritance. However, there are various categories of murder and there are groups of scholars who argue that not all murders can revoke inheritance rights. Amir Syarifudin categorizes these types of murder into two of them:

- a) Rightful and innocent killings Included in the category of rightful and innocent killings are killings in war, qishos officers (executors) and killing to defend one's property, life and honor.
- b) Unrighteous and sinful killings Included in the category of unlawful and sinful killings are intentional killings and unintentional killings.

2. Different religions (ikhtilaf-al-din)

What is meant by different religions is that the religions embraced by the heir and the heir are different. Meanwhile, what is meant by different religions can hinder inheritance is that there is no right to inherit between a Muslim and a non-Muslim, a Muslim does not inherit the property of a non-Muslim and vice versa. Likewise, it is not included in the meaning of different religion, people of Islam of different sects. As the words of the Prophet Muhammad SAW read:

... لَا يَرِثُ الْمُسْلِمُ الْكَا فِرَوَالْأَلْكََا فِرُ الْمُسْلِمِ (متفق عليه) ^{١٤٣}

Muslims do not inherit the property of unbelievers and unbelievers do not inherit the property of Muslims. (Narrated by Muttafaqu 'Alaih)

3. Slavery (al-'abd)

In the millennium era like today, discussing and talking about slavery no longer seems relevant. Slavery has long been abolished from the face of this earth, and

Islam has also played a role in eliminating all kinds of slavery practices. Because basically Islam strongly advocates the emancipation of slaves, because slavery is not in accordance with the values of humanism and compassion (*rahmatan lil alamin*), both of which are the main principles of Islamic teachings which love peace and freedom. The Word of Allah SWT in QS. An-Nahl (16) verse 75 which reads:

Allah has made an example of a servant who is owned by someone who cannot act on anything.(QS. an-Nahl verse 75).

In general, the majority of scholars agree that a slave is prevented from receiving an inheritance, because a slave (servant) is legally incompetent in carrying out legal acts, while his property rights are controlled by his master. So when his master dies, a slave has no right to inherit, because in essence a slave is also "property" and as property, the object can automatically be inherited, the only one who has free status, namely his master. Likewise, if he is *the muwarrits*, he could not inherit his wealth before he became independent.

4. Conclusion

In the matter of justice, the Islamic inheritance division of 2:1 between men and women still applies. Even if there is a social change, as explained previously, the percentage is small and is casuistic. This provision is in accordance with the principle: "*al-naḍiru ka al-'aḍam*" (Something unusual, such as not existing). This casuistic social problem can use the concept of *al-ahliyah al-wujūb* in providing equality in the distribution of inheritance between men and women, namely the eligibility of a *mukallaf* to carry out legal acts that carry out rights and obligations, without distinguishing the status of men and women. There are two conclusions in this paper. First, the concept of distributive justice in the 2:1 inheritance section between men and women is still relevant and is a general concept. This is because the law in Indonesia still requires the provision of dowry and maintenance rights to the wife. However, if it is associated with the case of women working, this general concept can change according to the social conditions that occur in society.Indonesia. The note is that even if social change occurs, the percentage is small and is casuistic, it cannot cancel general laws.

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