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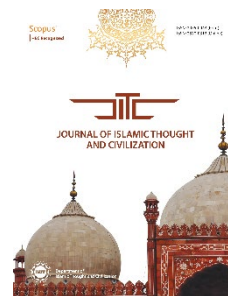
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# Instruments of Property Ownership in Islam: The Study of Inheritance Law

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## Abstract

The current study investigated the role of Islamic inheritance law as a means to ensure the right to property ownership. The "humans and property" theme has garnered widespread interest among scholars and public. Discourse on this topic may be highlighted from economic and legal aspects. Humans, as living beings, cannot be separated from material needs, such as property. In Islam, property is considered one of the trusts granted to human beings as owners in a *majāzi* sense. Therefore, this study explored the issue of property ownership that originates from inheritance regulated by Islamic law. According to Abu Zahrah, ownership by inheritance is part of special ownership. In order to elaborate this subject, library research method was used along with the analysis of literature based on madhhab doctrines. The study concluded that inheritance is one way of ownership of property through a change of ownership based on *ijbāri* (God's provisions). Inheritance is a means of acquiring property, where ownership rights are transferred from a deceased person to his/her living relatives. The transfer of ownership is based on the *ijbāri* principle (Allah's decree), rendering inheritance an instrument of property ownership that cannot be endeavored (*ikhtiyārī*) and determined by human beings. Furthermore, Islamic inheritance law encompasses the principles of bilateral and balanced justice which distinguishes the concept from other legal systems.

**Keywords:** balanced justice, *Ijbāri*, inheritance, Islamic law, ownership, rights

## Introduction

Property is a crucial aspect of human life and is often considered to be a fundamental need.<sup>1</sup> It serves as a pillar of existence and offers numerous benefits, such as facilitating prosperity, serving as a means of exchange (*barter*), and fulfilling various worldly affairs. Additionally, property has benefits as an instrument for realizing goodness, such as giving zakat, performing the hajj pilgrimage, and jihad in the way of Allah.

The relationship between humans and property is fundamental, particularly regarding the concept of ownership. In Islam, this relationship is established with the concept of "ownership," which describes the specific relationship between property and humans. Therefore, the relationship is established between humans as the owner and property as the object owned.<sup>2</sup>

Property ownership is important for some individuals as it enables them to fulfill their personal needs, such as clothing, food, and shelter. Additionally, it also fulfills the needs of others through sadaqah and zakat. The ownership cannot be separated from two crucial elements, namely humans

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<sup>1</sup>Joan Sotkin, *Build Your Money Muscles: Nine Simple Exercises for Improving Your Relationship with Money* (Santa Fe: Prosperity Place, Inc., 2006), 36.

<sup>2</sup>Abu Zahrah, *al-Milkiyyah wa Naẓariyyah al-'Aqd fi al-Sharī'ah al-Islāmiyyah* (Kairo: Dār al-Fikr al-'Arabī, 1996), 70.

and property. Therefore, the existence indicates a relationship between humans and property, as the owner and object owned, respectively.

The aspect of benefits shows two categories of property ownership in Islam, namely a) general and b) specific.<sup>3</sup> Based on the aspect of possession, property ownership is divided into two categories, namely: a) *tām*, the right to ownership of the object and its benefits and b) *nāqis*, the right to ownership of only the object or its benefits.<sup>4</sup> The source of *tām* is inheritance which serves as one of the instruments to transfer property ownership. This is due to a specific purpose considered *maslahah* (benefit) and is deemed necessary. Inheritance is a means of having property through a *jabbāriyyah* transfer of ownership (Allah's decree).<sup>5</sup> This is because the amount of share received by an individual (heir) is determined by Allah in the verses of inheritance, namely an-Nisa verses 7, 11, 12, and 176. Therefore, the first owner of the property (the testator) cannot determine the share for their heirs and the heirs, the second owner, cannot obtain any additional or reduced share. Property ownership through inheritance in Islam always adheres to the *ijbāri* principle.

## 2. Methodology

The study was conducted in the form of qualitative library research, namely, the investigation of literature by collecting the data that is required through the examination of written data, such as books of *fiqh* classics and books of *fiqh* contemporary, encyclopedia, articles, and more written resources that relate to the ownership of property in Islam. This study determined the concept of property ownership in Islam through inheritance. Following this intention, the writing method was based on a qualitative descriptive method. The data collection technique comprised secondary data from various books, documents, and writings relevant to construct the concept of writing articles and reveal the object of research.

## 3. Treasure: Islamic Perspective

The Arabic term for property is مال which encompasses all belongings owned by individuals or groups including jewelry, household items, gold, silver, and animals.<sup>6</sup> According to Isa 'Abduh, in the field of *fiqh*, it may be divided into several types, namely: 1) *Iqariyah* (immovable object) and *manquliyah* (movable object), 2) *mişly* (commonly traded object) and *qimmy* (rare object), as well as 3) *muqawwam* (permissible object according to *shara'*), and *ghair muqawwam* (non-permissible object).<sup>7</sup> Based on the aspect of how it is obtained, property in Islam can be divided into *firstly*; property earned from personal efforts, *secondly*; inheritance, *thirdly*; cultivating and developing untended land (*ihyā al-mawāt*), and *fourthly*; trading.<sup>8</sup>

Humans and objects have a relationship because an object is considered property when owned by humans, either individually or in groups. Regarding this relationship, *sharī'ah* law has established the usefulness and benefits of the property. The relationship between humans and property regulated

<sup>3</sup>Abdullāh al-Tārīqī, *al-Iqtisād al-Islāmī: Asās wa Mabādī' wa Ahdāf*, 11th ed. (Riyadh: Mu'assasah al-Jarīsī, 2011), 34–36.

<sup>4</sup>Zahrah, *al-Milkiyyah wa Nazariyyah al-'Aqd fi al-Sharī'ah al-Islāmiyyah*, 74.

<sup>5</sup>Muṣṭafā Shalabī, *al-Madkhal fi al-Fiqh al-Islāmī: Ta'rīfuh wa Tārīkhuh wa Mazāhibuh*, 10th ed. (Beirut: al-Dār al-Jāmi'iyyah, 1985), 372–74.

<sup>6</sup>Aḥmad al-Shirbāsī, *Al-Mu'jam al-Iqtisādī al-Islāmī* (Beirut: Dār al-Jayl, 1981), 448.

<sup>7</sup>Īsā 'Abduh and Aḥmad Ismā'il Yaḥyā, *al-Milkiyyah fi al-Islām* (Beirut: Dār al-Ma'ārif, 1980), 125.

<sup>8</sup>Abduh and Yaḥyā, 155–73.

by *sharī'ah* is related to ownership or the right to own.<sup>9</sup> In Islam, the relationship represents humans as owners and property as something owned.

According to *sharī'ah* humans are not the actual owners because the ownership right is only relative. Meanwhile, the real owner is Allah,<sup>10</sup> who has granted humans the right to own and benefit from the property through the means permitted.<sup>11</sup> There are several aspects related to ownership, namely the real owner is not humans because they are merely entrusted with property. Additionally, "human beings are permitted to possess and utilize property through means that are in accordance with the laws of *sharī'ah*."

#### 4. Property Ownership in Islam

As previously elucidated, human beings are not the absolute owners of property. They are considered as *majāzī* owners or trustees who are obligated to safeguard it. Fulfilling this trust entails the proper utilization of the property to obtain benefits. Islam provides a comprehensive framework for the lawful economic utilization and protection of ownership rights.<sup>12</sup>

The majority of Islamic jurists agree that three items are deemed ownership in Islamic law 1) object, perceived by the senses, 2) benefits derived from an object, and 3) material rights intended for humans based on the provisions of *sharī'ah* law.<sup>13</sup> In general, Islamic law stipulates several reasons that result in property ownership, including:

The *first* principle is the preservation of something that is considered *mubāh*. In this context, *mubāh* pertains to ownership of property that is not prohibited or forbidden by religious law. The ownership of *mubāh* property for preservation may be executed, provided it satisfies two prerequisites, 1) the property has not been owned and 2) the property is made in ownership right. *The second* is a contract (العقود) where in the general definition, it is any commitment or agreement conducted by humans and results in *sharī'ah* law.<sup>14</sup> In the specific definition, a contract is a bond between offer and acceptance or their representatives under Islamic law.<sup>15</sup> Additionally, it may be equated with an agreement and interpretation between two or more people regarding the emergence and transfer of rights.

The *third* type is *al-khalafiyah* which pertains to a replacement, wherein a new person or object is substituted for another person or object that has forfeited its right. Concerning this discourse, replacement may be classified into a) inheritance, which is the substitution of a new person for a deceased person and b) *taqmīn* or *ta'wīd*, which involves replacing old property. The *fourth* element pertains to the concept of addition or the outcome derived from owned property. Therefore, anything that arises, increases, or is created is regarded as an owned object. It follows that the original owner of the property holds a greater claim to ownership over the results or additions of the initial than any

<sup>9</sup>Zahrah, *al-Milkiyyah wa Naẓariyyah al-'Aqd fi al-Sharī'ah al-Islāmiyyah*, 70.

<sup>10</sup>Razak Lutfi Abdul and Muhammad Nabil Saupi, "The Concept and Application of Damān Al-Milkiyyah (Ownership Risk): Islamic Law of Contract Perspective," *ISRA International Journal of Islamic Finance* 9, no. 2 (January 1, 2017): 160, <https://doi.org/10.1108/IJIF-06-2017-0002>.

<sup>11</sup>Muhammad Rusfi, "Philosophy of Property: Islamic Legal Principles of Property Rights," *Al-'Adalah* 13, no. 2 (2016): 257, <https://doi.org/10.24042/adalah.v13i2.1864>.

<sup>12</sup>François Facchini, "Islam and Private Property," *Working Papers*, 2007, 13, <https://ideas.repec.org/p/hal/wpaper/hal-00270475.html>.

<sup>13</sup>Muḥamad Zarkashī al-Bardisī, *al-Mīrāth* (Kairo: Muḥamad Zarkasyi al-Bardisy, al-Mīrās (Kairo: Dār al-Nahḍah al-'Arabiyyah, 1971), 12.

<sup>14</sup>Hanāt binti Muhammad Ḥusayn, "Aqsām al-'Uqūd fi al-Fiqh al-Islāmī" (Madinah, Universitas Ummul Qurā', 1998), 34.

<sup>15</sup>Alī al-Jurjānī, *Al-Ta'rīfāt* (Beirut: Dar al-Kutub al-'Ilmiyyah, 2003), 166.

other party.<sup>16</sup> In other words, other mastery of material wealth or material rights makes use of only reserved for owners and not for others.

In Islam, the ownership of an object can be distinguished in several forms, namely *al-milk al-tām* and *al-milk al-nāqīṣ*. Additionally, ownership may be categorized into two types based on the right to own or use the property, namely individual and public.<sup>17</sup>

Complete ownership (*al-milk al-tām*) is the *sharī'ah* provision or religious law regarding the authority and control over an object and its benefits. Therefore, in *al-milk al-tām*, people who have the right to ownership of something means they have the authority and control over the object and its benefits.<sup>18</sup> Ownership of the object is only intended for the owner and not others.

Several reasons that create complete ownership over property are 1) ownership of something unknown, such as opening up land. This reason is known as *fi'li* which means the emergence of ownership right caused by an action, 2) a transfer of a right from one person to another through a contract, such as gifts and *sadaqah*, and 3) replacement (*khalaḥfiyyah*) in terms of ownership right to property, such as wills and inheritance.<sup>19</sup>

Incomplete ownership (*al-milk al-nāqīṣ*) is the *sharī'ah* provision regarding an object or its benefits.<sup>20</sup> People with ownership right through *al-milk al-nāqīṣ* can only use the object or its benefits. Therefore, *al-milk al-nāqīṣ* can be divided into two a) ownership right over the object, such as wills whose benefits are given to others and b) ownership right over benefits, such as rent, loans, and endowments.<sup>21</sup> Ideally, according to Sirajuddin and Tamsir, ownership may be divided into three types, namely individual, public, and state ownership.<sup>22</sup>

There are several types of property ownership based on the aspect of authority or power over an object or its benefits. *Firstly*, public ownership (*al-milkiyyah al-āmmah*) is the *sharī'ah* law provision in property and its benefits associated with the potential for their use by the wider society. The sources of property that fall into the category of *al-milkiyyah al-āmmah* include a) endowment objects from the will of an individual, b) natural resources, c) minerals, d) zakat, and e) taxes.<sup>23</sup>

*Secondly*, individual ownership (*al-milkiyyah al-khāṣṣah*) is a *sharī'ah* law provision regarding the granting of a special right to humans to own a property or its benefits without any prevention. Therefore, individuals with this right have the authority to own, use, spend, and benefit from the property. The sources of property that can be used as individual ownership include a) inheritance, b) sale and purchase, c) farming, d) handicrafts, e) professional skills, f) wages from work for others, g) mining products, h) gifts from others, and i) found items.<sup>24</sup>

<sup>16</sup>Shalabī, *al-Madkhal fi al-Fiqh al-Islāmī: Ta'rīfuh wa Tārīkhuh wa Mazāhibuh*, 343.

<sup>17</sup>Ahmad Suhendra, "Models of Land Ownership in Islam: Analysis on Hadis Ihyā' al-Mawāt," *ESENSIA: Jurnal Ilmu-Ilmu Ushuluddin* 18, no. 2 (October 20, 2017): 198, <https://doi.org/10.14421/esensia.v18i2.1480>.

<sup>18</sup>Shalabī, *al-Madkhal fi al-Fiqh al-Islāmī: Ta'rīfuh wa Tārīkhuh wa Mazāhibuh*, 341.

<sup>19</sup>Zahrah, *al-Milkiyyah wa Naẓariyyah al-'Aqd fi al-Sharī'ah al-Islāmiyyah*, 121–22.

<sup>20</sup>Shalabī, *al-Madkhal fi al-Fiqh al-Islāmī: Ta'rīfuh wa Tārīkhuh wa Mazāhibuh*, 341.

<sup>21</sup>Zahrah, *al-Milkiyyah wa Naẓariyyah al-'Aqd fi al-Sharī'ah al-Islāmiyyah*, 122.

<sup>22</sup>Sirajuddin Sirajuddin and Tamsir Tamsir, "Conceptual Reconstruction of Property from Islamic Economic Perspective (Critical Study of Property in Capitalist Economic System)," *LAA MAISYIR: Jurnal Ekonomi Islam* 6, no. 2 (2019): 223, <https://doi.org/10.24252/lamaisyir.v6i2.11838>.

<sup>23</sup>al-Tāriqī, *al-Iqtisād al-Islāmī: Asās wa Mabādi' wa Ahdāf*, 46.

<sup>24</sup>Ibid., 49–60.

Individual ownership is respected because it is related to responsibility in daily life. Therefore, it is a valid assertion that individuals with greater property ownership also bear a higher level of responsibility as they are accountable for their property and its impact on society.<sup>25</sup> This connection arises from the inherent principles of Islamic economics, where property ownership is intrinsically linked to social obligations and responsibilities.<sup>26</sup>

### 5. Relationship between Inheritance Law and Property Ownership

As explained above, inheritance is one of the ways to acquire property. Ownership acquired through inheritance is also known as private or individual ownership. Specifically in Indonesia, three laws concerning inheritance are practiced by the population which include customary, positive, and Islamic laws.<sup>27</sup>

According to Ter Haar, customary inheritance law is a set of legal rules governing *kaifiyat* regarding the transfer and transmission of tangible and intangible property.<sup>28</sup> According to Soepomo, customary inheritance law is a regulation governing the process of transferring and handing down tangible and intangible property from one generation to its descendants.<sup>29</sup> Based on these two definitions, customary inheritance law is a norm or rule regarding the transfer of property, from one generation to the next.

Positive inheritance law is regulated in the Indonesian Civil Code (*Burgerlijk Wetboek voor Indonesie*) and the Compilation of Islamic Law in Indonesia. In the Indonesian Civil Code, provisions regarding inheritance are regulated in CHAPTER XII Inheritance Due to Death, namely Articles 830 to 873. Meanwhile, in the Compilation of the Law, the provisions are regulated in BOOK II Inheritance Law, namely Chapters I-IV: Articles 171 to 193. The provisions are essentially the codification of Islamic inheritance law. Therefore, there is essentially no difference between the Compilation of Islamic and Islamic inheritance law.

In contrast to customary and positive inheritance laws found in the Civil Code, Islamic inheritance law provides a more profound comprehension of the human need for individual ownership and the freedom to exercise one's property rights.<sup>30</sup> According to Imam al-Ramlī, Islamic inheritance law, known as *fiqh al-mawaris*, is a set of rules for the transfer of property through replacement (*khilafah*), or *fiqh* principles and calculations to determine the share for the heirs from the property of a deceased individual.<sup>31</sup>

In line with the above statement, according to Ibn 'Abidin, Islamic inheritance law is a rule that discusses the granting of rights to heirs in the form of a part of property left for the dead by someone in the form of property or material rights. Islamic inheritance law refers to transferring property from a deceased person to living people.<sup>32</sup> Based on the above definitions, several essential factors are considered in the process of transferring ownership from the deceased to the living person through

<sup>25</sup>Amir Kia, "A Non-Technical Primer on Private Ownership in Islam," 72–77.

<sup>26</sup>Muhammad Bāqir Ṣādir, *Iqtisādunā* (Beirut: Dār al-Ta'aruf, 1987), 279-86.

<sup>27</sup>Yusuf Somawinata, *Science of Faraidh: Heirs, Share and Method of Distribution of Inheritance* (Tangerang Selatan: CV. Sintetis Ilmu Indonesia, 2013), 208.

<sup>28</sup>Barend ter Haar, *Adat Law in Indonesia* (Bhratara, 1962), 214.

<sup>29</sup>Soepomo, *Chapters on Customary Law*, 13th ed. (Jakarta: Pradanya Paramita, 1993), 72.

<sup>30</sup>Aḥmad Muḥyi al-Din al-'Ajūz, *Al-Mīrās al-'Ādil Fi al-Islām* (Beirut: Mu'assasah al-Ma'arif, 1986), 9.

<sup>31</sup>Imam al-Ramlī, *Nihāyah al-Muhtāj 'alā Sharh al-Minhāj*, vol. 6, 3 (Beirut: Dar al-Kutub al-'Ilmiyyah, 2003), 4.

<sup>32</sup>Ibn 'Abidin, *Radd al-Mukhtār 'alā al-Durr al-Mukhtār*, vol. 10 (Riyadh: Dār 'Alām al-Kutub, 2003), 391.

inheritance including the principles of Islamic inheritance law. This principle is regard as urgent. For, knowing these things, whoever distribute the inheritance remains under the regulation laid down by *naṣṣ*, such as the provisions in Q.S. al-Nisa verses 7 to 13.

## 6. Principles and Distinctions of Islamic Inheritance Law

As explained above, inheritance is a part of the transfer of property ownership from one person to another. With this, the inheritance of another is not aimed to preserve the properties of the substance and its benefits and utilization. Protecting the wealth of objects abandoned by dead people is part of the implementation of *maqasid sharī'ah* in the form of wealth preservation (*hifḍ al-māl*).<sup>33</sup> In other words, it may be concluded that transferring property rights through inheritance safeguards property, both in substance and benefits.

Islamic inheritance law, like other provisions, is based on the Qur'an and Hadith. Therefore, Islamic inheritance laws differ from the law of inheritance made by humans. A previous study mentioned that transferring property ownership to the legal inheritance system in Islam affects a thorough and more comprehensive benefit than the economic aspect, as compared to other systems.<sup>34</sup> There are at least two strong principles in the law of inheritance. *Firstly*, heirs receive a share of the inheritance after the fulfillment of the will which is not more than 1/3 of the heritage. *Secondly*, inheritance is a person's property transferred to their family after the property owner dies.<sup>35</sup> It is concluded that Islamic inheritance law has several principles, such as *ijbāri*, bilateral, individual, balanced justice, and *thuluth al-māl*.<sup>36</sup> This study only explored the *ijbāri*, bilateral, and balanced justice principles concerning the distinctions of property ownership regulated in Islamic inheritance law.

The *ijbāri* principle in Islamic inheritance law means that *sharī'ah* requires the implementation of inheritance or the transferring property ownership from the deceased person to living relatives (heirs). The transfer cannot be prevented by the owner (the testator). In certain circumstances, heirs may have the option to decline the inheritance and then transfer it to someone else with good intentions.<sup>37</sup> In other words, the testator is not allowed to prevent their heirs from receiving the inheritance. However, heirs are allowed to reject or transfer their share to others for a good purpose (*tabarru'*).

According to Juhaya S. Praja, several aspects show that Islamic inheritance law has an *ijbāri* principle. *Firstly*, property ownership must be transferred to someone else after the owner's death under Surah an-Nisa 4:7. *Secondly*, the party entitled to receive the inheritance from someone (heirs) has been determined in Surah an-Nisa 4:11- 12, and 176. *Thirdly*, the amount of inheritance given to heirs has been determined and explained in Surah an-Nisa 4:11-12, and 176.<sup>38</sup> The *ijbāri* principle lies in the time of inheritance transfer, the party or heirs, and the share received.

<sup>33</sup>Naerul Edwin Kiky Aprianto, "The Concept of Property in Maqashid Sharia Review," *Journal of Islamic Economics Lariba* 3, no. 2 (2017): 72.

<sup>34</sup>Abdul Ghafar Ismail, Bayu Taufiq Possumah, and Mohd Najib Abdul Kadir, "Inter-Generational Transfer under Islamic Perspective," ed., Professor Masudul Alam Choudhury, *Humanomics* 30, no. 2 (May 6, 2014): 115, <https://doi.org/10.1108/H-12-2013-0084>.

<sup>35</sup>E. Ann Black, Hossein Esmaceli, and Nadirsyah Hosen, *Modern Perspectives on Islamic Law* (Northampton: Edward Elgar Publishing, 2013), 195.

<sup>36</sup>Juhaya S. Praja, *Philosophy of Islamic Law* (Bandung: LPPM UNISBA, 1995), 107-12.

<sup>37</sup>Muḥammad al-Zuhaylī, *Al-Farā'id Wa al-Mawārith Wa al-Waṣāyā* (Damaskus: Dār al-Kalim al-Ṭayyib, 2001), 39.

<sup>38</sup>Praja, *Philosophy of Islamic Law*, 108.

Regarding this principle, details about the heirs are entitled to inherit and the share cannot be altered by any human power. This is because the verses about inheritance contain a compulsory understanding and meaning that the law must be implemented under Allah's decree. Therefore, the *ijbāri* principle also rejects the *on torg* principle in Western civil law.<sup>39</sup>

The existence of the *ijbāri* principle indicates that the process of transferring property ownership through inheritance can only be carried out after the owner (the *muwarriṣ*) has died, following the meaning of verses in Surah an-Nisa (4): 7, 11, and 12. In these verses, there is the expression مَا تَرَكَ which means inheritance or property left by the deceased owner (*hukmi* death).<sup>40</sup> Following the *ijbāri* principle, the property left by the deceased is reduced by debts and wills. This is under the expression in Surah an-Nisa 4:11 and 12, namely مِنْ بَعْدِ وَصِيَّةٍ يُوصِي بِهَا أَوْ دِينَ and as well as other similar expressions.<sup>41</sup> Therefore, the property is subjected to a transfer of ownership, while the original owner who is still alive cannot be deemed as an inheritance.

Surah an-Nisa (4): 7 is part of Allah's decree that shows the existence of the *ijbāri* principle in Islamic inheritance law. The verse implicitly explains that the property left by someone who has died must be transferred to the family and relatives. The transfer of ownership occurs without the need for any appointment by the person who left the property.

Regarding the parties entitled to receive the transfer of property through inheritance, Surah an-Nisa (4): 11 explains that after someone dies, their property must be transferred to the children or parents. In Surah an-Nisa (4): 12 and 176, the property of a dead person is transferred to the siblings when they do not have children or parents. According to Imam Shafi'i, the transfer of property to living relatives is a necessity carried out without human regulation established by Allah SWT.<sup>42</sup>

Based on the explanation above, the process of transferring property ownership according to Islamic inheritance law differs from others, such as customary inheritance law. For instance, in the law of Nias Island, the distribution of property is based on the agreement among family members or the results of a deliberation led by the eldest son.<sup>43</sup> Therefore, the parties entitled to receive the inheritance are determined based on the agreement of the family. This means that there is human intervention in determining the parties entitled to receive the inheritance and the share to be received.

Besides the *ijbāri*, there is also a bilateral principle in Islamic inheritance law involving two parties. Being bilateral in Islamic inheritance law means that an individual receives the transfer of

<sup>39</sup>Somawinata, *Science of Faraidh: Heirs, Share and Method of Distribution of Inheritance*, 70.

<sup>40</sup>Muḥammad ibn Jarīr Al-Ṭabarī, *Tafsīr Jamī' al-Bayān 'an Ta'wīl fi Ayy al-Qur'ān*, ed. 'Abdullah ibn 'Abd al-Muhsim al-Turkī, vol. 6 (Jizah: Dār Ḥijr, 2001), 460.

<sup>41</sup>Ḥusayn bin Mas'ūd al-Baghawī, *Ma'ālīm al-Tanzīl: Tafsīr al-Baghawī* (Beirut: Dār Ibn Ḥazm, 2002), 280.

<sup>42</sup>Abū 'Abdullāh Muhammad bin Idrīs al-Shafī'ī, *Al-Umm*, vol. 5 (Riyadh: Bayt al-Afkār al-Dawliyyah, 2009), 147.

<sup>43</sup>Fanotona Laia, "The Position of Daughters in The Customary Inheritance Law of the Nias Community" (Thesis, Universitas Sumatera Utara, 2005), 27, <https://repository.usu.ac.id/handle/123456789/33440>.



property ownership through inheritance from relatives.<sup>44</sup> Granting rights to all descendants (male and female) is a provision that can provide comfort and affect the values of life planning.<sup>45</sup>

The existence of bilateral principles may be seen in the verses that explain the transfer of property through inheritance. Surah an-Nisa (4): 7 explains that both men and women have the right to inheritance of property transferred from parents or relatives. The granting of ownership right is adjusted to the share determined by *sharī'ah*.<sup>46</sup> Imam Sarakhsi's view is that the rightful heirs entitled to inherit include descendants from both the male and female lineages.<sup>47</sup> Therefore, both men and women have the right to receive the transfer of property ownership from their close family, such as parents or children as well as from distant relatives.

Regarding the existence of the bilateral principle, Surah an-Nisa (4): 11 explains that daughters, mothers, and fathers as heirs from the female and male sides have the right to receive the transfer of property ownership through inheritance.<sup>48</sup> Furthermore, Surah an-Nisa (4): 12 states that husbands and male siblings as well as wives and female siblings have the right to receive property ownership through inheritance.<sup>49</sup> According to Ibn Qudamah, Surah an-Nisa 4:11 and 12 indicates that besides the male side, the female also has the right to inheritance.<sup>50</sup> Imam Shafi'i considered that both the male and female sides of a family relationship have the right to inheritance, provided the same religion is practiced with the deceased.<sup>51</sup> Therefore, in Islamic inheritance law, both the male and female sides have the right to receive property from their deceased relatives.

The existence of the bilateral principle differentiates Islamic and customary inheritance laws, specifically in Indonesia, which has a patrilineal kinship system. In the patrilineal kinship system, the relatives entitled to receive the inheritance from the deceased are only men.<sup>52</sup> Furthermore, in customary law that uses the patrilineal kinship system, women cannot acquire property by inheritance.

Besides the *ijbāri* and bilateral principles, balanced justice is also found in Islamic inheritance law. There must be a balance between the right obtained from the inheritance and the obligation or burden of life borne by the heirs.<sup>53</sup> Therefore, the meaning of justice is not measured by the equality of the amount received among the heirs but is determined based on the magnitude of the burden or

<sup>44</sup>B. Rini Heryant, Amri Panahatan Sihotang, and Aga Natalis, "Recognition of Traditional Inheritance Law In Indonesia: A Case Study of Sedulur Sikep Traditional Society," *PalArch's Journal of Archaeology of Egypt / Egyptology* 17, no. 10 (December 28, 2020): 769.

<sup>45</sup>Gerasimos T. Soldatos, "Inheritance and Inequality, and Aggregate Demand and Policy Issues," *International Journal of Social Economics* 44, no. 12 (December 4, 2017): 1841, <https://doi.org/10.1108/IJSE-01-2016-0021>.

<sup>46</sup>al-Baghawī, *Ma'ālīm al-Tanzīl: Tafṣīr al-Baghawī*, 276.

<sup>47</sup>Shams al-Din al-Sarakhsī, *al-Mabsūṭ*, vol. 29 (Beirut: Dār al-Ma'rifah, 1989), 139.

<sup>48</sup>Muḥammad Ḥusayn al-Ṭaba'ba'ī, *al-Mīzān fī al-Tafṣīr al-Qur'ān*, vol. 4 (Beirut: Mu'assasah al-A'lami, 1997), 214–15; Jalāl al-Dīn al-Suyūṭī, *al-Iklīl fī al-Istinbāṭ al-Tanzīl* (Beirut: Dar al-Kutub al-'Ilmiyyah, 1981), 82.

<sup>49</sup>Fakhr al-Rāzī, *Mafāṭīḥ al-Ghayb*, vol. 7 (Beirut: Dār al-Fikr, 1981), 227.

<sup>50</sup>Ibnu Qudāmah al-Maqdisī, *al-Mughnī*, 3rd ed., vol. 9 (Riyadh: Dār 'Alām al-Kutub, 1997), 12.

<sup>51</sup>al-Shafī'ī, *Al-Umm*, 5:147.

<sup>52</sup>Kenneth J. Guest, *Cultural Anthropology A Toolkit for a Global Age: Second Edition* (W. W. Norton and Company, 2016), 141.

<sup>53</sup>M. Nasikhul Umam Al-Mabruri, "The Justice of Inheritance Distribution Perspective of Islamic Law and Burgerlijk Wetboek," *Al-Mazaahib: Jurnal Perbandingan Hukum* 5, no. 1 (June 1, 2017): 129, <https://doi.org/10.14421/al-mazaahib.v5i1.1394>.

responsibility entrusted to them according to the general conditions or human life.<sup>54</sup> For instance, the provision of two appeals, one (2:1) among children (boys and girls) showed impartial fairness, as men bear responsibilities that are more substantial than the sole responsibility of women in the family.<sup>55</sup> Therefore, it was concluded that the burden is taken by someone influential on the large and small parts of the inheritance that may be received.

As explained above, a two-to-one provision reflects the principle of balanced justice. In other words, the rule offers equal treatment (equality). However, in the case and the limited public (for instance, in Tunisia), the provisions that give rise to poverty are chronic exploitation and dignity abuse. Thus, there is a need for other special rules to solve the problem, namely the provision granting the same rights to inheritance between men and women. Hopefully, there would no longer be any chronic poverty with this provision, which may increase the level of dignity in society.<sup>56</sup>

In Muslim society, men are responsible to provide for their families, which is contrary to the situation of women. In some cultures or legal systems, unmarried women may be considered the responsibility of their parents, guardians, or male siblings. Similarly, after marriage, women may be considered the responsibility of their husbands.<sup>57</sup> This means that regardless of whether women are employed or not, their basic needs for daily living may be the responsibility of their parents.

In terms of children, unmarried men are obliged to provide a dowry and all the marriage requirements imposed by the family of the prospective wives. Compilation of Islamic Law in Indonesia explained that men must contribute to dowry as imposed on them who consent to marry women (Article 30 to 32). After marriage, the burden of providing for the wives and children becomes the responsibility of the husbands. The obligation of the husbands to support their family is adjusted to their income, namely a) livelihood, clothing, and residence for the wives, b) household expenses, care, and medical expenses for the wives and children, and c) education expenses for the children (Article 80). Meanwhile, women with their share of the inheritance receive an addition to the dowry received before their marriage. According to Asma Alshankiti, after marriage, women are not burdened with the obligation to support their family, however, would even receive support from their husbands.<sup>58</sup>

Justice in Islam cannot be separated from its relationship with the concept of *maslahah* or *maqāṣid shari'ah* because *shari'ah* refers to the value of the benefit (*maslahah*). The relationship between justice and *maslahah* cannot be easily understood if it is not linked to the theological aspects that build the paradigm of Islamic law. According to most theologians, every law that Allah sets contains virtue because the mind cannot understand if a law that Allah Almighty has established does not have a value *maslahah*.<sup>59</sup> From the previous discussion it can be seen that justice is not just a

<sup>54</sup>Ziauddin Sardar, *The Future of Muslim Civilization* (Sabah: Pelanduk Publications, 1988), 301.

<sup>55</sup>Abdulmajeed Hassan Bello, "Islamic Law of Inheritance: Ultimate Solution to Social Inequality against Women," *Arab Law Quarterly* 29, no. 3 (August 10, 2015): 272, <https://doi.org/10.1163/15730255-12341301>.

<sup>56</sup>Ahmed Souaiaia, "Hope Springs Eternal: Reforming Inheritance Law in Islamic Societies," *Hawwa* 19, no. 2 (June 10, 2019): 174, <https://doi.org/10.1163/15692086-12341352>.

<sup>57</sup>Muhammad 'Ali al-Ṣābūnī, *al-Mawārīt fi al-Syarī'ah al-Islāmiyyah fi Ḍawu' al-Kitāb wa al-Sunnah* (Kairo: Dār al-Ṣābūnī, 2002), 14–15.

<sup>58</sup>Asma Alshankiti, "A Doctrinal and Law and Economics Justification of the Treatment of Women in Islamic Inheritance Laws," 2012, 73, <https://doi.org/10.7939/R32D10>.

<sup>59</sup>Hafidz Taqiyuddin, "The Islam Concept of Justice," *Aqlania* 10, no. 2 (November 28, 2019): 167, <https://doi.org/10.32678/aqlania.v10i2.2311>.

matter of considering the fair amount person receives, but must also be seen in terms of the expenses necessary for daily living. The provision of such costs is not contrary to Islamic law.

According to Chatib Rasyid, justice in the distribution of Islamic inheritance must be cumulative to support women and children.<sup>60</sup> This conclusion is based on a study that analyzed a specific aspect where justice is observed from the income earned and the expenses incurred. Based on the description, it cannot only be assessed solely from the fair amount received by a person, however, it must also be viewed from the expenses required in their daily life.

Regarding the principle of balanced justice, there is often a lack of trust in its existence due to several reasons. Firstly, only one meaning has been assigned to the word "fair," even though it has several definitions. Secondly, individuals who reject Islamic inheritance law believe that their mind is capable of solving all problems including difficult issues containing secrets, such as inequality in the distribution of property. Therefore, there is a desire to use the mind with the help of casuistic-sociological methodology.<sup>61</sup> The mind cannot represent the existence of law without revelation. This is because when mind is used to determine a law without revelation, the results obtained could be influenced by lust. Therefore, revelation functions to protect and purify the mind.<sup>62</sup>

Discussion about justice in Islamic inheritance law is inseparable from the history or reasons for the revelation of Qur'ānic verses that explain or serve as the basis for the distribution of property. Some argued that Islamic inheritance law cannot be separated from the provisions for the distribution of property before Islam came to Arabia.<sup>63</sup> Therefore, several factors may influence studies that are focused on the existence of justice in Islamic inheritance law.

There is a principle of equality and parity of status between children and other relatives in the inheritance law in verse 7 of Surah an-Nisa, without discrimination based on gender or age according to the standard in customary law, specifically in pre-Islamic and *Jahiliyyah* Arab customs. In pre-Islamic times, there were provisions that inheritance right must only be given to strong men who could fight and ride horses, while children and women were not entitled to inheritance.<sup>64</sup> In Islamic inheritance law, women are granted inheritance rights for the economic safety and stability,<sup>65</sup> they are given economic control over their property. Moreover, they are given the right to inherit from the property of their deceased husband.<sup>66</sup> According to Asma Alshankiti, women who are part of the

<sup>60</sup>Chatib Rasyid, "Justice in Islamic Inheritance Law," 2009, <http://www.badilag.net/data/ARTIKEL/KeadilandalamhukumwarisIsla-m.pdf>.

<sup>61</sup>Muhammad Amin Suma, "Measuring the Justice of Islamic Inheritance Law through the Approach of Text and Context of Al-Nushūsh," *AHKAM : Jurnal Ilmu Syariah* 12, no. 2 (August 7, 2012): 58, <https://doi.org/10.15408/ajis.v12i2.965>.

<sup>62</sup>Muhammad Taqī al-Mudarrisī, *Al-Tasyrī' al-Islāmī: Manāhijuh Wa Maqāsiduh* (Riyadh: Intisyārat al-Mudarrisī, 1991), 12–14.

<sup>63</sup>Tamar Ezer, "Inheritance Law in Tanzania: The Impoverishment of Widows and Daughters," n.d., 615.

<sup>64</sup>Ali Wahdi, "Historical of Inheritance during Jahiliyyah and Early Islam," *Al-Manhaj: Journal of Indonesian Islamic Family Law* 1, no. 2 (December 12, 2019): 95, <https://doi.org/10.19105/al-manhaj.v1i2.3075>.

<sup>65</sup>Farhana Mehmood, Manahil Yaqoob, and Nasira Mehmood, "An Anthropological Perspective of Female Share in Inheritance: An Appraisal of Gender Gap between Islamic Law and Practice," *Journal of Islamic Thought and Civilization* 12, no. 1 (June 7, 2022): 211, <https://doi.org/10.32350/jitc.121.11>.

<sup>66</sup>Raihanah Abdullah, "The Islamic Legal Provisions for Women's Share in the Inheritance System: A Reflection on Malaysian Society," *Asian Women*, March 31, 2014, 74, <https://doi.org/10.14431/aw.2014.03.30.1.29>.

family cannot be excluded as heirs including a deficit of property.<sup>67</sup> Therefore, this distinction refutes the notion that Islamic inheritance law is influenced by pre-Islamic law.

In connection with the principles of the inheritance of Islam described above, in Indonesia, especially in Palangkaraya (Central Kalimantan Province), other principles are used as the basis for the division of property inheritance by the citizens of the state whose religion is Islam. These principles were *ta'abbudi* in implementing the *Maqāṣid Sharī'ah* to maintain this property. Additionally, this inheritance practice is also based on the principle of *ta'aqquli* to respond to local wisdom in society.<sup>68</sup>

Finally, it may be concluded that there are at least three principles in Islamic inheritance law. These principles are the principle of bilateral, *ijbāri*, and balanced justice which makes the ownership of property through inheritance different from the ownership of a property through inheritance guided by the laws of inheritance in addition to Islamic law. According to Islamic inheritance law, property ownership through inheritance is also based on the principle of adherence to the rules of *sharī'ah* law and the principle of accommodating the local values of a community.

## 7. Conclusion

Inheritance is an essential instrument of property ownership that ensures the transfer of a right to own property from the deceased to their living relatives. Islamic inheritance law is distinct from others due to the existence of three critical principles, namely *ijbāri*, bilateral, and balanced justice.

The existence of the *ijbāri* principle under Allah's decree shows that the transfer of property ownership cannot be determined by human beings. This principle is manifested in terms of the time of ownership transfer where inheritance is transferred after the owner's death. Additionally, it is manifested in terms of who is entitled to receive the property and the share received by the heirs. This makes Islamic inheritance law different from the positive inheritance law in Indonesia which gives the authority to distribute property based on designation.

The necessity of the bilateral principle indicates that the right to own property through inheritance is for both men and women. This principle distinguishes Islamic inheritance law from the patrilineal family system in Indonesia and also from the *Jahiliyah* period.

The existence of the balanced justice principle in inheritance law indicates that the process of transferring property ownership from the deceased person does not provide equal right to each heir. However, the process of transfer refers to the responsibility of each heir as part of the society, specifically within the family. The presence of this principle renders Islamic law not solely reliant on the magnitude of the inheritance but the disbursements made by an individual as a constituent of the obligation prescribed by their faith.

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<sup>67</sup>Alshankiti, "A Doctrinal and Law and Economics Justification of the Treatment of Women in Islamic Inheritance Laws," 73.

<sup>68</sup>Syaikh Syaikh, "The Dispute Settlements of Inheritance in Palangka Raya: A Legal Anthropology Approach," *Mazahib*, June 30, 2019, 138, <https://doi.org/10.21093/mj.v18i1.1441>.

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