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RESEARCH ARTICLE

JUSTIFICATION OF INHERITANCE DISTRIBUTION FOR WOMEN ACCORDING TO ISLAMIC INHERITANCE LAW

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Abstract

The issue of justice in inheritance distribution in Islamic inheritance law is often questioned by certain quarters especially among rights advocates of gender equality who claim that there exists a discrimination between men and women which denies women social justice in the context of inheritance distribution as compared to men with a ratio of 2:1. In truth, the ultimate aim of Islamic inheritance law is to dignify justice in inheritance distribution at all levels and to eligible heirs without discrimination in terms of gender, age and physical body adequacy. Therefore, the objective of this article is to articulate and thus raise the concept of justice in inheritance distribution according to Islamic inheritance law which is often disputed and disregarded by some who hold the view that Islamic inheritance law implementation is a form of discrimination to women. To achieve this objective, this study employed a content and data analysis study which were obtained from document analysis and are explained and delivered descriptively. Results of this study found that the determined eligibility and proportion are appropriate with the role of each member of the family especially the men who have to bear various responsibilities financially and provision-wise. Besides, distribution principle with a ratio of 2:1 between men and women is 'non-binding' from certain aspects. In fact, there are situations where the women allocation exceeds that of men.

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Introduction:-

The creator and definitive owner of all properties in the universe in any form or type as well as all of its content is Allah SWT. Hence, it is clear that in reality ownership belongs to Allah SWT, while the capacity and ability of man to own in this world are due to His blessings (Ahmad & Ibrahim 2006). Therefore, authority over a property is more of a responsibility rather than absolute ownership and in the context of inheritance it is a responsibility to manage and govern the inherited property responsibly so that justice is served to the eligible heirs for the sake of Allah's

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SWT pleasure. This is in line with the aim of each shariah rule decreed by Allah SWT which is to give *maslahah* and *al-'adalah* (justice) to all mankind (Ahmad et al. 2014). The concept of justice in Islamic inheritance distribution is to give rights to each heir suitable with his or her position, status and responsibility in the family, society and religion and not on the basis of gender (Ahmad & Laluddin 2017).

Foundational Basis of Islamic Inheritance Law

The main foundations upon which Islamic inheritance law is based are al-Qur'an, *al-Sunnah* and *al-Ijma'*. There are two categories of verses in the Qur'an related to inheritance which are *mujmal* and *mufassal* verses. The former explains the rights of heir in inheritance in general without determining the allocation for each heir such as verse 7 chapter al-Nisa', verse 75 chapter al-Anfal and verse 6 chapter al-Ahzab.

For verses in the latter category, they are verses in chapter al-Nisa' namely verses 11, 12, and the final verse of the same chapter which is verse 176 in which Allah SWT has outlined in detail the heirs and their respective share in the distribution. The three verses are known as *al-mawarith* verses and form the basis in *fara'id*. It is these verses which determine the Islamic ruling and inheritors according to shariah as well as their share which are characteristically *qat'i* and cannot be changed or amended even marginally.

Justice through the Principle of 'The Share of A Male Heir Equals Double that of A Female Heir'

As mentioned earlier on, the foundational basis of Islamic inheritance law has been determined by Allah SWT as the Creator who brings into existence, forms and strengthens shariah principles who is also all-knowing as to the fitrah needs and requirements of mankind, more knowledgeable than any philosopher, thinker or social researcher who is involved in formulating social policies (al-Hashimi 2007).

Before the arrival of Islam, a system termed as *jahiliyyah* had been the core of inheritance practice among the Arabs depending on the local situation, customs such as adult males or only the first child were eligible to receive inheritance and other traditions which influenced the way inheritance is divided for the women. This system was abolished after the emergence of Islam (al-Zuhayli 2001). With regards to inheritance for women, Meccan society was more appreciative and highly recognized their rights to inheritance without the need for them to contribute to their clan. The situation in Madinah, meanwhile, was the opposite which was that some of the Arabic tribes did not recognize women's rights to inheritance as they were more adherent to a custom in which inheritance basis commensurate with their contribution to the tribe and their involvement in war. Some of them even killed their own daughters to protect the dignity of the clan due to adherence to such extreme custom (Sulong 2006).

With the emergence of Islam, women are given due respect through recognition of their rights to inheritance regardless of their age, ethnicity, race beyond any borders throughout the world. Therefore, the philosophy behind the distribution with a ratio of 2:1 (a son's share is equal to twice that of a daughter's) determined in al-Qur'an in chapter al-Nisa' is solely to balance the responsibilities and obligations of the male in the household, family, society and religion (Awang 2008). According to Islam, the status of men's and women's rights in inheritance distribution is referred to the various responsibilities of the men to the finance and provisions as determined by the shariah (Hanafi 2007) and this illustrates the close-linked structure of familial relationship as well as the duties in Islamic society (Coulson 1971).

Nevertheless, there are certain quarters who claim that, 'man's share is equal to double that of a woman', is an unfair ruling, oppressive to and a discrimination against women (Awang 2008) as well as denying their rights to social justice in the case of property ownership through inheritance distribution (unequal gender distribution). The manifestation of this can be seen in the existence of Article 16, Convention on Elimination of All Forms of Discrimination Against Women (CEDAW) (1979) provisions based on the UN Resolution 34/180. These are in conflict with shariah rulings and laws applied in member states especially in Muslim countries in the contextual matters of property management including inheritance distribution (Awal & Ismail 2007), which ascertain women receive less inheritance compared to men in accordance with *fara'id* (Islamic inheritance law). Condemnation from feminists which state that men do not solidly bear all the burdens of providing for the family while in fact women's role nowadays in such is more prominent and self-reliant (Shaharom & Samah 2017). However, according to (Ramli et al. 2018), such claim, even though is realistically rational, should give consideration from the aspect of Islamic ruling as not all Islamic ruling can change as socio-cultural changes in society occur.

To those who disagree with justice elements which form the core framework of Islamic inheritance system, their arguments are solely based on rational thinking and logic of the mind. In this case, al-Qaradawi (1993) stated that claims uttered by them are as if Allah SWT overlooked in His rulings while in this case Allah SWT affirms in His words in chapter al-Nisa', verse 11 which means: "Allah instructs you concerning your children: for the male, what is equal to the share of two females...". Further, Allah SWT says in chapter al-Nisa', verse 176 which means: "... and if there are brothers and sisters, the male will have the share of two females...".

It is clear that, when all male and female heirs gather, a male heir will get his share in the inheritance which is equal to twice the share an equivalent female heir will get, or in other words the female heir's portion is half of that allocated for the male heir (Shaltut 1987). Such negative claims and perceptions are prejudiced, clearly rebutted by verse 7 of chapter al-Nisa' which carries the meaning: "For men is a share of what the parents and close relatives leave, and for women is a share of what the parents and close relatives leave, be it little or much - an obligatory share".

The principle 'a male heir's part is equal to two parts of a female heir' is actually 'non-binding' from certain perspectives. This principle is only applicable if the female and male are of the same equivalence which is in the case of '*asabah bi al-ghayr*'. Furthermore, this principle is suitable for a distribution method to widower and widow whereby the widower receives $\frac{1}{2}$ if the dead (wife) does not have any children while the widow receives $\frac{1}{4}$ if the deceased (husband) does not have a child. If the deceased (wife) has child/children, the widower receives $\frac{1}{4}$ as opposed to if the deceased (husband) has child/children, the widow(s) shall receive $\frac{1}{8}$.

This means that, in cases other than those of the above, there are cases in which the allocation for female heir equals or exceeds that for the male. In the case of inheritance for a female heir equalling that for a male is when a situation of parents in certain circumstances (inheriting together with the deceased's children), respectively receiving $\frac{1}{6}$ as well as for siblings of the same mother (male and female), each sharing $\frac{1}{3}$ if inheriting together with another or more and $\frac{1}{6}$ if inheriting alone.

Meanwhile, a scenario can also exist in which female portion of the inheritance exceeds that of the male. For example, a woman dies leaving a husband, a sister of the same parents and a brother of the same father. In this case, the husband or rather the widower receives $\frac{1}{2}$, the sister of the same parents receives $\frac{1}{2}$ because she is alone while the brother of the same father does not receive anything because as '*asabah*' he should receive the remainder of the inheritance whereas all of it has been allocated to the husband and the sister of the same parents (al-Qaradawi 1993). There is situation where a female heir deprives male heirs. For example, when a sister of the same parents becomes an inheritor of '*asabah ma'al ghayr*' (her status is the same as a brother of the same parents or of the same father who can deprive other heirs the same as the brother can) when she is left together with a daughter of the deceased and a brother of the deceased of a same father. Hence, the daughter shall receive $\frac{1}{2}$ of the inheritance, the sister of the same parents shall receive the other $\frac{1}{2}$ while the brother of the deceased of the same father is deprived from receiving any inheritance because he is deprived by the sister of the same parents.

A husband is responsible to provide for the family with respect to their shelter, food, clothes, education, medication and others including dowry for the wife (al-Sabuni 1987). Al-Sabuni (1987) is also of the opinion that a female is guaranteed with regards to her needs and expenses as she is not responsible to provide for anybody. This is because, according to al-Jaburi and Hamish (2007), if a female is unmarried, then she will be provided for by the father or the grandfather and if she is married, then she shall receive a dowry and be provided for by the husband. Al-Qaradawi (1993) further explained a situation that they do not need to use their own money for themselves even though they are rich or wealthy. In fact, according to Abu 'Id (1998) a woman is always respected and honoured either at her father's or husband's home. He added that man is also responsible for the welfare of his parents, helping his siblings (male or female) who are poor and in poverty.

In summary, Islamic inheritance law does not put an obligation upon women to spend out of her own money or property on themselves even though they are rich or wealthy, as long as they have a husband. Therefore, it is upon the husband the responsibility lies to providing for the wife and children including a home, food and clothing. Fairness in Islamic inheritance distribution is in line with the specific eligibility and responsibility determined by Allah SWT upon men and women as well as their role in society (Khan 2005). Therefore, the secret and wisdom blessed by Allah SWT in the basis of distribution is not based on the notion that men are more honourable than women (al-Qaradawi 1996; Ramli et al. 2018) but on one that is founded on burdens and responsibilities decided

upon them which have to be carried and fulfilled from all aspects including economically and financially (Hanafi 2007). They also serve as a safeguard and protector of women (Sahib 1979) in the household, family, society and religion.

In addition to this, fairness in the decision of a man's share is equal to two parts of woman or a widower's share of the inheritance equals to twice that of a widow's is apparent when the rights of female heirs including widows to inheritance are not made compulsory to be spent on their and members of the family living cost including children even though they come from a wealthy family. According to Ahmad (2017), should there be a dispute among eligible inheritors, the mechanism of *takharuj* in Islamic inheritance can be applied to give opportunity for the heirs to choose the best solution to the distribution of their inheritance.

The comprehensiveness and exceptionality of the Islamic inheritance law is well-recognized and given respect by some non-Muslim societies who adopt the Islamic inheritance law as a mechanism which can solve inheritance problems among them as happened in Christian communities in Syria (al-Hashimi 2007).

Conclusion:-

Fundamentally, the concept of justice in Islamic inheritance law within the context of inheritance distribution to eligible heirs can be justified with evidence from al-Quran al-Karim which recognizes the status of heirs at all levels with the aim of attaining happiness and well-being of all mankind. The basis of distribution from Allah SWT to heirs is a manifestation of balance of role, responsibility and contribution of each heir which carries a unique degree of wisdom and philosophy of its own.

Islamic inheritance law which has a clear basis and is characteristically *shumul* recognizes women by giving them their due rights in a just and equitable distribution of inheritance which signifies their household and family roles. Also, recognition of a male heir's allocation which is more than the female one's on a basis of 'a male heir's allocation is double that of a female' is in line with the various responsibilities he has to bear especially in terms of finance and family sustenance. The basis however is non-binding in certain cases, whereby there are situations in which proportion given to women is more than to the men and also, in some cases, a male heir is prevented from getting the inheritance.

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References:-

1. Abu 'Id, 'Arif Khalil. (1998). *al-Wajiz fi al-Mirath*. Amman: Dar al-Nafa'is li al-Nasr wa al-Tawzi'.
2. Ahmad, M.Y. & Laluddin, H. (2010). Pengurusan harta pusaka: Permasalahan sikap masyarakat Islam di Malaysia dan penyelesaiannya menurut perspektif Islam [Inheritance management: Issue of Muslim society's attitude and its solution according to Islamic perspective]. *Shariah Law Reports* 4: 30-54.
3. Ahmad, M.Y. (2017). Amalan muafakat dan aplikasi *takharuj* menurut perspektif undang-undang pusaka Islam [Practice of *muafakat* and application of *Takharuj* in inheritance distribution according to Muslim inheritance law perspective]. *Islamiyyat: The International Journal of Islamic Studies* 39(1): 21-28.
4. Ahmad, M.Y., Isa, N.Y. & Omar, A.F. (2014). Analysis of heir pre-investigation mechanism: According to Shari'ah perspective. *Mediterranean Journal of Social Sciences* 5(29 Special Issue): 107-112.
5. Ahmad, Y. & Ibrahim, I.A. (2006). Konsep Harta menurut perspektif undang-undang Islam dan undang-undang sivil: Satu tinjauan [The concept of property according to Islamic and civil laws perspectives]. *Jurnal Pengajian Umum Asia Tenggara* 7: 99-114.
6. al-Hashimi, M.A. (2007). *The Ideal Muslim Society*. Transl. al-Khattab, Nasiruddin. Riyadh: International Islamic Publishing House.
7. Awal, N.A.M. & Ismail, S.H.S. (2007). The Convention on Elimination of All Forms of Discrimination Against Women (CEDAW). A Report on Research on CEDAW and Syariah Law by SUHAKAM.
8. Awang, M.R. (2008). Isu-isu keadilan dalam pengagihan harta pusaka [Issues of justice in inheritance distribution]. In Zakaria, Z., Nasohah, Z. & Omar, A.F. (eds.). *Isu Fiqh dan Persoalan Semasa [Fiqh Issues and Current Problems]*. Bangi: Department of Syariah, Faculty of Islamic Studies, Universiti Kebangsaan Malaysia.
9. Coulson, N.J. (1971). *Succession in the Muslim Family*. London: Cambridge University Press.

10. Hanafi, H. (2007). Gender perspective of the *faraid* system. It is bias against women? *Jurnal Syariah* 15(2): 85-98.
11. al-Jaburi, 'Abd Allah & Hamish, 'Abd al-Haqq. (2007). *Ahkam al-Mawarith wa al-Wasaya fi al-Shari'ah al-Islamiyyah*. Sharjah: Jami'at al-Shariqah.
12. Khan, M.M. (2005). *Islamic Law of Inheritance: A New Approach*. New Delhi: Kitab Bhavan.
13. Ramli, M.A., Jamaludin, M.H. & Jamaludin, M.A. (2018). Hak pusaka wanita menurut hukum Syarak dan keharusan pembahagiannya mengikut dinamisme budaya tempatan [Women's rights to inheritance according to the Shariah and the permissibility of its distribution according to local culture dynamism]. *Jurnal Islam dan Masyarakat Kontemporari* 18(1): 195-209.
14. al-Qaradawi, Yusuf. (1993). *Malamih al-Mujtama' al-Muslim alladhi Nanshuduh*. Cairo: Maktabat Wahbah.
15. al-Qaradawi, Yusuf. (1996). *Markaz al-Mar'ah fi al-Hayat al-Islamiyyah*. Cairo: Maktabat Wahbah.
16. al-Sabuni, Muhammad 'Ali. (1987). *al-Mawarith fi al-Shari'ah al-Islamiyah fi Dhaw' al-Kitab wa al-Sunnah*. Damascus: Dar al-Qalam.
17. Sahib, M.M.H.B. (1979). *The Law of Inheritance in Islam*. Singapore: Al-Islam Publishers and Book Sellers.
18. Shahrarom, F. & Samah, M. (2017). Ratifikasi CEDAW di Malaysia: Kesan menurut undang-undang dan hukum Syarak [CEDAW ratification in Malaysia: Its implications according to Shariah law and ruling]. *Journal of Shariah Law Research* 2(2): 207-234.
19. Shaltut, Muhammad. (1987). *al-Islam, 'Aqidah wa Shari'ah*. Cairo: Dar-al-Shuruq.
20. Sulong, J. 2006. Kedudukan wanita dalam pembahagian pusaka [The status of women in inheritance distribution]. *Jurnal Syariah* 14(2): 121-143.
21. al-Zuhayli, Muhammad. (2001). *al-Fara'id wa al-Mawarith wa al-Wasaya*. Beirut: Dar al-Kalam al-Tayyib.