



Gender Equality in Islamic Inheritance Law: Rereading Muhammad Shahrur's Thought

Ridwan

State Islamic University of Profesor Kiai Haji Saifuddin Zuhri, Purwokerto

A. Yani No. 40-A Purwokerto, 53126

Email: ridwan@uinsaizu.ac.id

Submitted	: 2022-10-23	Accepted	: 2022-11-09
Revision	: 2022-11-02	Publish	: 2022-11-25

Abstract: *This article shows that the spirit of Islamic inheritance law is justice focusing on the sociological and gender roles of a man and woman in accumulation of property on their gender role. The difference in the portion of legacy is not determined by sex. Shahrur's gender responsive-reading of inheritance law text cannot be separated from its historical root and is always discussed with current social context. Legacy distribution is based on female heirs' position, while men's portion adapt to the existence of female heirs, besides kinship factor. Shahrur's idea with the theory of hudud is offered to be an alternative model of Indonesian inheritance law reform.*

Keywords: *Gender equality, Historical interpretation, Social construction, Theory of limit.*

Abstrak: Artikel ini menunjukkan bahwa spirit hukum waris Islam adalah keadilan yang menitikberatkan pada peran sosiologis dan gender laki-laki dan perempuan dalam pembagian harta pada peran gendernya. Perbedaan porsi warisan tidak ditentukan oleh jenis kelamin. Pembacaan teks hukum waris yang responsif gender oleh Shahrur tidak bisa dilepaskan dari akar sejarahnya dan selalu dibahas dalam konteks sosial kekinian. Pembagian pusaka didasarkan pada kedudukan ahli waris perempuan, sedangkan bagian laki-laki menyesuaikan dengan keberadaan ahli waris perempuan, selain faktor kekerabatan. Gagasan Shahrur dengan teori hudud ditawarkan untuk menjadi alternatif model reformasi hukum waris Indonesia.

Kata kunci: Kesetaraan gender, Penafsiran sejarah, Konstruksi sosial, Teori batas.

Introduction

The main objective of Islamic sharia is to realize the aspirations of human benefits based on social justice values on the basis of equality (egalitarian) value as Allah's creatures. The aspirations of Islamic social justice in its implementation is reflected in the juridical-normative provisions in both al-Qur'an and al-Hadith whose foundation is equality, justice and freedom value. Islamic sharia is a religious teaching concept that regulates all dimensions of human life. Therefore, Islamic sharia is a comprehensive life concept.¹

¹ A. Zaki Yamani, *Al-Syari'ah Al-Khalidah Wa Musykilat Al-'Ashr*, ed. Mahyuddin Syaff (Bandung: Al-Ma'arif, 1990), 34-5, Ridwan Ridwan, "Menggagas Fikih Tasamuh Di Tengah Masyarakat Multikultural," *Al-Manahij: Jurnal Kajian Hukum Islam* 3, no. 2 SE-ARTICLES (December 18, 2009): 185-204, <https://doi.org/10.24090/mnh.v3i2.3673>, Hasbi Ash-Shiddiqy, *Falsafah Hukum Islam*

However, most of legal provisions in both al-Qur'an and al-Hadith are stated in general language form, thus *ijtihad* is needed. Therefore, it is quite a possibility or even a necessity that various interpretations arise from religious texts. That various interpretations arise among Muslims is, according to al-Qardhawi, caused by three factors. *First*, it is Islam's character whose normative-textual basis is quite open for possible birth of various interpretations. In other words, there are various interpretations since al-Qur'an and al-Hadith give the opportunity for it. *Second*, it is human character (including *mujtahid/mufassir*) to have various interests and different perspectives in understanding textual language and reality of social context covering it. *Third*, it is language character that is a product of culture, thus the structure of religious language (Arabic) certainly allows various interpretations that it bears many meanings (*musytarak*) or general meaning (*'amm*) or, otherwise, special meaning (*khas*).

Based on the three factors, from religious teaching spreading, it is necessary to consider local aspects where Islamic law is to be applied. This measure is needed so that whatever the legal products produced will not uprooted from local cultural root and that the community will deem that the law is part of the justice aspirations living and developing in the community. When the community has positioned the law as a necessity, a collective awareness will be born to be committed and consistent to the legal products.

It is interesting to review theoretical debates on the position of Islamic inheritance law study between classical ulema who are textual based and contemporary Muslim scholars who are substantive law meaning based in association with gender equality issue. The significance of this research is the effort of Shahrur's idea offering related to inheritance distribution pattern to develop Islamic inheritance law study and possible sublimation of legal material into inheritance law material in Indonesia.

Provisions of Inheritance Law in al-Qur'an

In Arabic, the term used to refer to inheritance law is *al-irtsu* that literally means movement from a community to another.² Meanwhile, the definition of inheritance law is a law that regulates movement of testator's inheritance right (*tirkah*), determines who have the right to be the heirs and their respective portion. Inheritance law in Islam is called *farā'idh* the plural form of *faridhah* which means provision. In Islamic law, the portions of inheritance which are heirs' right have been set in al-Qur'an.

Inheritance science or *ilmu al-farā'idh* is important in Islamic law as said by the Prophet in a hadith "Ta'allamū al-Farā'id wa 'Allimūhu al-Nās fainnahu Nişf al-'Ilm" [Learn inheritance law and teach it to humans, since inheritance law is actually part of science].³ Legacy distribution will be implemented if it has met the principles and causes of inheriting. The inheritance principles are individual who leaves legacy, inheritor and inheritable property. Causes of receiving legacy are blood relationship (*nasab*), marriage and liberating slave.

(Jakarta: Bulan Bintang, 1993), 179.

² Abdul Karim ibn Muhammad al-Lahim, *Al-Faraidh* (Mesir: Wizarat al-Syu'un al-Islamiyati wa al-Auqaf wa al-Da'wah wa al-Irsyad, 1999), 2.

³ Hadith above is: تعاموا الفرائض وعاموه الناس فإنه نصف العلم. See Abu Hasan al-Dāruquthni, *Sunan Al-Dāruquthni*, 4th ed. (Beirut: Dar al-Ma'rifat, 1966), 67.

Normatively, al-Qur'an has explained legacy distribution regarding who the heirs are and the portion for each in detail and clearly in surah an-Nisa verses 11, 12, 13 and 179. The legacy distribution pattern between male and female children which is this paper's focus is surah an-Nisa verse 11. The term *al-aulad* that is the core of discussion is *ism* (noun) which means uniting many people, both men and women, male and female children. The affirmation of legacy distribution between men and women is clearly reflected in al-Quran surah al-Nisa verse 176.

Meanwhile, the meaning of الذكر and الانثى still refers to distinguishing male and female in biological sense.⁴

Surah al-Nisa verse 176 confirms that the portion of male child is equal to two female children. This provision is based on the premise that male child's gender role is as on in ehcharge of family or as one responsible for family's economy. This is stated in al-Qur'an surah an-Nisa verse 34:

Which means: Men are the caretakers of women, as men have been provisioned by Allah over women and tasked with supporting them financially. And righteous women are devoutly obedient and, when alone, protective of what Allah has entrusted them with. And if you sense ill-conduct from your women, advise them first, if they persist, do not share their beds, but if they still persist, then discipline them gently. But if they change their ways, do not be unjust to them. Surely Allah is Most High, All-Great.

Mufasssir generally interpret this verse, especially the term *qawwamun* that a husband is a leader, protector, one responsible, educator and regulator in the context of household life. This verse is even also understood as the ground to prohibit/restrict women from becoming a leader in public domain (political leadership). The definition of husband's superiority to wife is based on the definition of other phrase *bima faddhalallah* (since Allah has given one over the other).

According to Nasarudin Umar, by quoting Muhammad Abduh's opinion in his book *Al-Mannar*, that this verse does not make men's absolute leadership over women, since the verse does not use *bima faddhalahum 'alaihinna* or *bima tafdilihim 'alaihinna* (since Allah has favored them (men)) but using *faddhalallahu ba'dhum 'ala ba'din* (since Allah has given one over the other).⁵ Meanwhile, Muhammad Shahrur argues that the source of interpretation of men's superiority along with the priority of legal facilities is *fiqh ulema's* interpretation of imposing patriarchal authority as a social system, despite the fact that the system is pre-Islamic inheritance, especially the Jews.⁶ The theory proposed by Shahrur is the theory of limit (*huhud*), that is the highest limit (*had al-'la*) and lowest limit (*had al-adna*). Men's portion in legacy acquisition is the highest/maximum limit, while women's portion is the lowest limit that can move upward up to be equal to men's portion. The argumentation built by Shahrur is that female heirs are the variable factor (*al-mutahawwil*) for male children who are the participatory variable (*tabi'*).⁷

⁴ Nasaruddin Umar, *Arguments for Gender Equality: A Qur'anic Perspective* (Jakarta: Puslitbang Lektur dan Khasanah Keagamaan, Badan Litbang dan Diklat, 2014).

⁵ The research conducted by Nasarudin Umar in defining surah an-Nisa verse 34 by tracing the meaning of *ar-Rijāl* with its variative meaning based on *tafsir maudhu'i* by correlating with other verses that principally *ar-Rijāl* does not always mean male sex but individual associated with a certain social and cultural attribute. See more Muhammad Fauzinuddin Faiz, "Teori Hermeneutika Al-Qur'an Nashr Hamid Abu Zayddan Aplikasinya Terhadap Wacana Gender Dalam Studi Hukum Islam Kontemporer," *Jurnal Al-Ahwal* 7, no. 1 (2015).

⁶ Muhammad Shahrur, *Dirasat Islamiyah Mu'ashirah: Nahwa Ushul Jadidah Li Fiqh Al-Islamy* (Mesir: Dar al-Kutub al-'Ilmiyah, 2002), 202, Sahiron Syamsuddin and Burhanudin Dzikri, "Metodologi Fiqh Islam Kontemporer," *Yogyakarta: ELSAQ*, 2004, 349.

⁷ Sahiron Syamsuddin, "Metodologi Penelitian Living Qur'an & Hadis," *Yogyakarta: Sukses Offset*, 2007, 34.

The amount of male heirs' portion will remain equal, while female heirs' portion changes as per the number of female heirs. Therefore, the number of men is stated only once in inheritance verses, while the number of female children has various possibilities with varied values, from one to unlimited.

A Brief of Shahrur's Biography

Muhammad Shahrur is son of Daib and Shiddiqah. His complete name is Muhammad Shahrur al Dayyub. He was born in Damascus on 11 April 1938 AD at intersection Shalikiyah, Damaskus, Syria. Muhammad Shahrur had five children from his marriage with Azizah: Tariq, Lays, Rima, Basil, and Masun. Muhammad Shahrur started his study at *ibtida'iyyah i'dadiyah* and *tsanawiyah* schools at educational institution Abdul Rahman al Kawakib, on the outskirts in the south of Damascus city (1957), and completed his undergraduate program at civil engineering in Moscow, Soviet Union in 1964. In 1965, Shahrur became a lecturer in the University of Damascus. In 1969 he gained scholarship to continue his study at Imperial College, Dublin, and gained the Master of Science title. In 1972, he gained his doctoral title (Ph.D) specializing soil and foundation mechanics.⁸

Shahrur's thinking construction background was built in two main ideas: *first*, his view of contemporary community's reality, and *second*, his view of past ulema tradition (*turas*). There are at least some factors on which Shahrur's perspective and thinking framework are based. *First*, that there is not standard method in interpreting the religious texts of Quran and Hadith leads to polarized religious understanding/interpretation. *Second*, there is a tendency in Muslim community to refer to classical works literally without considering the dimensions of historicity, locality and sociocultural setting of the existing community and discussing them with current reality.

The position of Shahrur's thinking in the constellation of religious interpretation traffic and debate is in the middle between literalist and contextualist-secularist poles, that Shahrur calls for return to *al-Tanzil* of original text revealed by Allah swt to Prophet Muhammad p.b.u.h. in a new understanding paradigm. Shahrur calls for al-Quran understanding with a "treat al-Quran as if Prophet Muhammad p.b.u.h. just died the day before" principle. This understanding ensures Muslims understand al-Quran as per the space and time contexts they live in and not to be trapped in the products of past thinking. Finally, early generation's interpretation results do not bind current generation. In his opinion, even current generation has better knowledge instruments to understand al-Quran than early generation.

Shahrur's Interpretation of Gender Equality in Inheritance Law

In Shahrur's view, Islamic inheritance law is based on al-Quran surah an-Nisa; verses 11 to 13. Shahrur's criticism of classic ulema's interpretation related to the concept of inheritance law is associated less with will law. At the same time, past ulema force removal (*nasakh*) of will verses in Allah's words "*al-wassiyatu lil walidain wa al-aqrabin*" based on hadith "*La wasiya li warisin*".

This mixes the two different concepts, *al-haddu* (allocation in inheritance) and *al-nashib* (part in

⁸ Yassirly Amrona Rosyada, "Poligami Dan Keadilan Dalam Pandangan Muhammad Syahrur: Studi Rekonstruksi Pemikiran," *Profetika: Jurnal Studi Islam* 18, no. 2 (2019): 164-75.

will), in surah al-Nisa' verse 7. This verse is understood as a verse of inheritance law, while it explains will. According to him, the term *nashib* refers to part of will, while *al-haddu* refers to part received in inheritance.

The other aspect that Shahrur criticizes is that the concept of universal justice is not distinguished in verses of will and the concept of specific justice in verses of will. In his view, general provisions do not necessarily remove specific ones. His other criticism related to past ulema's definition is related to the meaning of *al-walad* that is understood as male child, with consequence in the law that it is male child that causes prevention or closure of other party's inheritance since such understanding reduces the real meaning of Allah's words "*Yusikumullahu fi auladikum li al-dhakari mitslu haddhil untsayain*". In his opinion, the term *al-walad* covers both sexes, male and female.

According to Shahrur, verses of inheritance are revealed and applied to all humankind collectively, instead of certain person or group. Verses on inheritance describe universal rules set forth based on mathematical rule (set theory/analysis technique/mathematical analysis) and four arithmetic operations (addition, subtraction, multiplication and division). Meanwhile, verses on will do not provide certain calculation law, but Allah only encourages prioritizing target of will to those rightful, namely close relatives who are poor and in need. Will is completed first before inheritance since will is regarding personal interest and has effectiveness in property distribution.⁹

Understanding the law and rule of legacy distribution requires auxiliary sciences, including: analysis technique (*al-handasah al-tahliliyah*), mathematic analysis (*al-tahlil al-riyadhi*), set theory (*al-majmuat*), following variable concept (*al-tabi'*) and variable factor (*al-mutahawwil*) in mathematics.

Muhammad Shahrur's opinion above is also parallel to Nasr Hamid Abu Zaid's opinion that the part for women is the principal portion (*al-ashl*) that will influence the percentage for men. Therefore, there is possible dynamics of inheritance distribution in Islam in consideration of the developing social reality towards open equal access room between men and women, thus the limitation of women's portion from minimum to maximum is a possibility by adhering to the universal goals of Islamic sharia, that is creation of justice value. This is also to get Islamic idealism closer to connect religious equality horizon to social equality horizon in an integrated manner pursuant to male and female genders' roles.¹⁰

Islam's presence gives a new spirit of humanity to women by giving them the right to inherit their father's and husband's legacy. The offer of cultural revolution through deconstruction of value system which subordinates women was initially hardly accepted by the early generation of Muslim. Their belief in inheritance was based on the principle "We do not give inheritance to those who cannot ride a horse, are not exhausted and do not injure enemy". The sociological conception which perceives women's subordinate position has consequence on the justice conception of legacy distribution implicating on Islamic inheritance law formula which puts men higher than women.

⁹ Syamsuddin, "Metodologi Penelitian Living Qur'an & Hadis.", 32

¹⁰ Adis Duderija, "Islam and Gender in the Thought of a Critical-Progressive Muslim Scholar-Activist: Ziba Mir-Hosseini," *Islam and Christian-Muslim Relations* 25, no. 4 (2014): 433-49.

Theoretical Reflection of Shahrur's Offer in Developing Islamic Inheritance Law in Indonesia

Religion and gender equality are currently important issues discussed by all elements of community, including clergy. Besides causing changes in perspective on women, the flow of modernity does not completely erase discriminative treatment for them. The reality of gender inequality does not only occur in Indonesia but is also a general phenomenon in the nations in the world as reflected in the many regulations of the state that are gender biased.¹¹

Islamic classical literatures were generally composed in androcentric culture's perspective, where man is the measure of all things. The literatures are still accepted until now as the third "holy scripture" after al-Qur'an and hadith. The *tafsir* and *fiqh* books with their many volumes, which were composed hundreds of years ago, are still reprinted until now, and some are even surpass contemporary books. Many of Islamic classical literatures, measured in modern measure, can be considered greatly gender biased. The authors can surely not be blamed that the measure of gender equality used was the paradigm and perception of gender relation according to their community's culture. Studying classical literature cannot be separated from coherent continuum, especially among the authors and their social-cultural background. This is why a hermeneutic method is needed as a correct model of text reading so that contextual meaning is not uprooted.

A text reader must be able to enter the hallway of the past, as if it is of the same era, be familiar with text author, understand the geographic objective condition and social-cultural background, since each text author is a child of his time. Furthermore, the reader will be able to do as what W Dilthey called *verstehen*, which is understanding in full internalization of text, as if the reader comes out of the hallway of the past, and makes a conclusion.¹²

In other section, Nasarudin Umar attempts to map the Middle East intellectually, where Islamic message was first taught to mankind. In his opinion, epistemological masculinization had been existing for a long time in Middle East. Far before al-Qur'an was revealed, the epistemological world had been influenced by cosmology, mythology and ancient civilizations that tended to be misogynistic. Women's image in this region was very bad. Some female mummies were found in Egypt wearing locked iron underpants and heavy and small iron shoes to restrict their travel. Green mythology describes women as female demons, who always indulge in lust. Judeo-Christianity traditions cornered women as the cause of original sin in cosmic drama, perad ban Sasania-Zoroaster concealed women in menstruation in dark caves, far from settlement, and Hindu civilization cremated (burned alive) wives beside their dead husband.

A woman's self-image in classical interpretation treasures is still biased with gender-biased interpretative touching point that it positions woman as an inferior, weak being that inherits wickedness. In Amina Wadud's view, interpreters saw essential difference between men and women from the perspectives of creation, capacity and function in the community and reward they will receive in the afterlife. The logical consequence of this biased interpretation produces a stigma that

¹¹ K H Husein Muhammad, *Perempuan, Islam, Dan Negara* (IRCISOD, 2022), 119.

¹² Nasaruddin Umar, "Metode Penelitian Berperspektif Jender Tentang Literature Islam," *Dalam Jurnal Al Jami'ah*, no. 64 (1999), 89.

it is inappropriate for women to assume certain tasks or roles in various public domains, such as in political leadership.¹³

Therefore, religious text interpretation is one of the determining factors of building patriarchic ideology by putting men as a superior reality/entity. One more concerning thing is that the religious text interpretation results are taken by some Muslims as the religious text itself that they are considered sacred, absolute and final, while the text interpretation results are basically relative and dynamic pursuant to the character of interpretation itself that is constantly moving in line with the rhythm of changes in space and time.¹⁴ Text normativity is basically gender neutral and responsive, but historicity of interpretation of text is often gender biased and distorts the text's humanity message.

It is quite significant to observe the efforts to read religious gender responsive texts, especially related to the legacy distribution law offered by Muhammad Shahrur. Both Syharur and Nasr tried to understand texts while not disconnecting from its historical root and discussing them in association with current social context. The dialectics of text and context always serves as a united basis in interpreting.

It is easy to find discriminative view of women in classical texts and even contemporary texts that put, position women theo-cosmologically as a second class being. The stereotype of women, such as in Tafsir At-Thabari, is quite clearly described related to cosmic drama of the fall of Prophet Adam from the paradise due to his wife, Eve. Therefore, Eve as the representative of women is positioned as a being whose presence is the source of defamation in life.¹⁵

With regard to discussion of the effort of Islamic inheritance law reinterpretation theoretically and methodologically as something accountable, materially, inheritance law has more dominant *mu'amalah* element since it is related to civil law.¹⁶ Therefore, it is quite possible to do *ijtihad* again in consideration of cultural locality dimension where the law is to be applied. In case of *mu'amalah* law, Muslims are given the freedom to do *ijtihad* through rational approach and considering sociological aspect. This is different from worship law where no modification is allowed that it is *tauqifi* and *ta'abuddi* as a dogmatic part of religion.

Positioning inheritance law in *mu'amalah* domain, we need to catch not only positive provisions of the portion of each heir but also the soul of the verse of legacy distribution fairly. Formulation of portions of legacy can be put as an instrument/*wasilah* to achieve *ghayah* (final goal) of certain legal provisions. The basic concept *ghayah* will never change at any time, anywhere, and in any cultural setting that it is the core of sharia. Meanwhile, the instrument to achieve *ghayah* (*wasilah*) is

¹³ Andik Wahyun Muqoyyidin, "Wacana Kesetaraan Gender: Pemikiran Islam Kontemporer Tentang Gerakan Feminisme Islam," *Al-Ulum* 13, no. 2 (2013): 490–511, See more Amina Wadud Muhsin, "Al-Qur'an dan Perempuan [Al-Qur'an and Women]" in Charles Kurzman (ed) *Wacana Islam Liberal Pemikiran Islam Kontemporer Tentang Isu-Isu Global* [Liberal Islam Discourse: Contemporary Islamic Thinking of Global Issues] (Jakarta: Paramadina, 2003), p.193..

¹⁴ To distinguish between text and result of interpretation of a text, Amin Abdullah in the preface of his book *Studi Agama Normativitas atau Historisitas* [Religious Study: Normativity or Historicity] makes a different formulation by stating Normative Islam and Historical Islam. Normative Islam is the accumulation of Islamic doctrine existing in text world thus it is sacred and has absolute truth. Meanwhile, the result of interpretation of a text is called Historical Islam, that is Islam understood and practiced in certain history, thus it is relative and dynamic. See M. Amin Abdullah, *Studi Agama Normativitas Atau Historisitas?* (Yogyakarta: Pustaka Pelajar, 1996), v.

¹⁵ Husein Muhammad, "Tafsir Gender Dalam Pemikiran Islam Kontemporer," *Dalam Pemikiran Islam Kontemporer Di Indonesia*, Adnan Mahmud (Ed.), Yogyakarta: Pustaka Pelajar, 2005, 103.

¹⁶ Munawwir Sadzali, *Islam Realitas Baru Dan Orientasi Masa Depan* (Jakarta: UI Press, 1998), 23.

something particular and can thus change according to social demand and ever changing dynamics of times.

According to Syafrudin Prawiranegara, in law science there are two characteristics of law: compulsory law (*dwingend recht*), that is absolutely prevailing law, and voluntary law (*vrijwillig recht*), that is law which prevails if the concerned ones do not use other alternatives available. In his opinion, the provisions of inheritance distribution as explained in surah an-Nisa' verse 11 is classified as voluntary law, in which the concerned ones can put away relevant law from enforcement by taking other valid measures according to prevailing law.¹⁷

The methodological bases of Islamic inheritance law reinterpretation efforts can be searched for by observing the *ijtihad* performed by the Prophet's companion Umar ibn Khattab which often resulted in polemics among the Prophet's companions. There are many cases of Umar ibn Khattab's *ijtihad* which explicitly contradicted the text meaning since he deeply understood the text based on the contextual meaning by thoroughly understanding the philosophical bases of a verse. Some cases showed that in his *ijtihad* Umar ibn Khattab based it on considerations of benefit as the core of Islamic teaching *Maslahat* (benefit) in Islamic inheritance law is fairness. Therefore, the basic spirit of Islamic inheritance law is fair division of property. Human fairness (justice) value is by nature fairness from God, since He is the theophany of God's independence. According to Hazairin, the basic value of fairness in al-Qur'an is principally immutable, while world of facts keeps changes and is a series of temporal occurrences towards eternal values.¹⁸

For Islamic law to keep actually regulate Muslims' life in the present, Islamic law is needed in its new form which does unnecessarily take over all old *fiqh*. This requires the effort of *tajdid* or reformulation of *fiqh*. One of the methods is to redefine *dalil syara'* serving as past *mujtahid*'s reference. The efforts to re-actualize Islamic law through reformulation of *fiqh* are in progress in Islamic world from the late XIX century and get more apparent in early XX century until now.¹⁹

With regard to which scope and domain Islamic law reform can be performed, there are still debates among Islamic law experts, since this is related to legal domain in which *ijtihad* can be done. According to Amin Abdullah, *ijtihad* or *tajdid* domain should not be limited to issues of religious law or *fiqh* law, but be extended to *al-'ulum al-kauniyah* and *al-hayah al-insaniyah* in general. Therefore, the room for *tajdid* and *ijtihad* is not only focused on legal domain, but also humanity issues in general. In his opinion, the working methods and products of *ijtihad* all this time is only reactive and legitimated instead of proactive.²⁰

According to Subkhi Mahmasani, the opportunity for Islamic law reform through reform effort is only about things related to worldly *mu'amalah* issues based on benefit principle, while in worship/*ubudiah* domain, the normative provisions are clear and in detail that they apply forever. Therefore, changes in time and place or changes in condition do not apply to worship.²¹ This is in

¹⁷ Sadzali, 31-2.

¹⁸ Abdul Ghofur Anshori, *Filsafat Hukum Kewarisan Islam* (Yogyakarta: UII Press, 2015), 191.

¹⁹ Amir Syarifudin, "Ushul Fiqh Metode Mengkaji Dan Memahami Hukum Islam Secara Komprehensif," *Jakarta: Dzirkul Hakim*, 2004, 253.

²⁰ M Amin Abdullah, "Dinamika Islam Kultural: Pemetaan Atas Wacana Islam Kontemporer (Bandung: Mizan, 2000)," *Islamic Studies Di Perguruan Tinggi Pendekatan Integratif-Interkoneksi*, n.d.

²¹ Subkhi Mahmasani, *Filsafat Hukum Islam* (Bandung: PT Al-Ma'arif, 1976), 118. See also, Hasbi Ash-Shiddiqy, *Pengantar Ilmu Fiqh* (Jakarta: Bulan Bintang, 1985), 194.

line with al-Syatibi's opinion that law in worship domain is *ta'abbudy* (dogmatic), while in *muamalah* domain it is *ma'qul al-ma'na*, which means it can be done rationally through *ijtihad* works.

The idea for Islamic inheritance law reform leading to change to legacy distribution formula will certainly lead to methodological issue, especially related to the concept of *qath'y ad-dalalah* (with definite meaning) and *dzanny ad-dalalah* (with indefinite meaning) verses in al-Qur'an which is scientifically an established concept in the field of *ushul fiqh* study. Therefore, the moral message of this reform idea has indirectly deconstructed the concept of *qot'y* and *dzanny* and replaces it with relativist concept.

The theoretical idea offered by Syharur related to interpretation of Islamic inheritance law texts in the context of Islamic inheritance law development is relevant to the discourse of the necessity to present inheritance law formulation in Indonesia. In Nasarudin Umar's view, Shahrur's idea with his theory of limit can be an alternative model of Islamic family law reform in inheritance law in Indonesia.²²

Positioning Islamic inheritance law study into *fiqh muamalah* category puts discourses on inheritance law into *ijtihadiyah* legal area. Non-exact and limitative arrangement of inheritors' portions does not close the room for *ijtihad*. There are many historical precedents that can be taken as the ground for creative-innovative *ijtihad* in Islamic inheritance law in Indonesia in consideration of locality of cultural fairness value in Indonesia in connection with universal fairness of the messages of inheritance verses. Creative dialogues between Indonesia's local values and universality of inheritance law in Indonesian context will lead to formulation of Indonesian Islamic inheritance law which is based on the universality of text without having it uprooted from Indonesian culture.

Conclusion

Theoretically, Islamic inheritance law study can be viewed from different perspective on the legal object related to distribution of property which is of civil law dimension and closer to the scope of *fiqh muamalah* study and related to interpersonal law. Taking such a thinking framework into consideration, Islamic inheritance law study is open to *ijtihad* and modifications of law. In the author's opinion, it is closer to *muamalah* study which is open to possible room for *ijtihad*, thus Islam law will adapt to the ever-changing conditions of the times.

According to Shahrur, verses on inheritance were revealed and applied to the whole mankind collectively instead of certain individuals or groups. Verses on inheritance describe universal rules which are set based on mathematical rules (set theory/analysis technique/mathematic analysis) and four arithmetic operations (addition, subtraction, multiplication and division). Understanding the laws and rules on legacy distribution requires auxiliary sciences, including: analysis technique (*al-handasah al-tahliliyah*), mathematic analysis (*al-tahlil al-riyadhi*), set theory (*al-majmuat*), concept of participatory variable (*al-tabi'*) and variable factor (*al-mutahawwil*) in mathematics.

It is significant to observe the efforts to read religious texts which are gender responsive, especially related to the legacy distribution law offered by Muhammad Shahrur. Shahrur tried to

²² Nasaruddin Umar and Direktur Jenderal Bimbingan Masyarakat Islam, "Hukum Keluarga Kontemporer Di Negara-Negara Muslim," in *Dalam Makalah Seminar Nasional Hukum Materiil Peradilan Agama Antara Cita, Realitas Dan Harapan*, Hotel Red Top Jakarta, vol. 19, 2010.

understand texts not to escape from its historical root and kept discussing them under the ever-changing social context in according to social-cultural construction where legal texts are interpreted.

References

- Abdullah, M. Amin. *Studi Agama Normativitas Atau Historisitas?* Yogyakarta: Pustaka Pelajar, 1996.
- Abdullah, M Amin. “Dinamika Islam Kultural: Pemetaan Atas Wacana Islam Kontemporer (Bandung: Mizan, 2000).” *Islamic Studies Di Perguruan Tinggi Pendekatan Integratif-Interkonektif*, n.d.
- al-Dāruquthni, Abu Hasan. *Sunan Al-Dāruquthni*. 4th ed. Beirut: Dar al-Ma’rifat, 1966.
- Al-Lahim, Abdul Karim ibn Muhammad. *Al-Faraidh*. Mesir: Wizarat al-Syu’un al-Islamiyati wa al-Auqaf wa al-Da’wah wa al-Irsyad, 1999.
- Anshori, Abdul Ghofur. *Filsafat Hukum Kewarisan Islam*. Yogyakarta: UII Press, 2015.
- Ash-Shiddiqy, Hasbi. *Falsafah Hukum Islam*. Jakarta: Bulan Bintang, 1993.
- Duderija, Adis. “Islam and Gender in the Thought of a Critical-Progressive Muslim Scholar-Activist: Ziba Mir-Hosseini.” *Islam and Christian-Muslim Relations* 25, no. 4 (2014): 433–49.
- Faiz, Muhammad Fauzinuddin. “Teori Hermeneutika Al-Qur’an Nashr Hamid Abu Zayddan Aplikasinya Terhadap Wacana Gender Dalam Studi Hukum Islam Kontemporer.” *Jurnal Al-Ahwal* 7, no. 1 (2015).
- Mahmasani, Subkhi. *Filsafat Hukum Islam*. Bandung: PT Al-Ma’arif, 1976.
- Muhammad, Husein. “Tafsir Gender Dalam Pemikiran Islam Kontemporer.” *Dalam Pemikiran Islam Kontemporer Di Indonesia*, Adnan Mahmud (Ed.). Yogyakarta: Pustaka Pelajar, 2005.
- Muhammad, K H Husein. *Perempuan, Islam, Dan Negara*. IRCISOD, 2022.
- Muqoyyidin, Andik Wahyun. “Wacana Kesetaraan Gender: Pemikiran Islam Kontemporer Tentang Gerakan Feminisme Islam.” *Al-Ulum* 13, no. 2 (2013): 490–511.
- Ridwan, Ridwan. “Menggagas Fikih Tasamuh Di Tengah Masyarakat Multikultural.” *Al-Manahij: Jurnal Kajian Hukum Islam* 3, no. 2 SE-ARTICLES (December 18, 2009): 185–204. <https://doi.org/10.24090/mnh.v3i2.3673>.
- Rosyada, Yassirly Amrona. “Poligami Dan Keadilan Dalam Pandangan Muhammad Syahrur: Studi Rekonstruksi Pemikiran.” *Profetika: Jurnal Studi Islam* 18, no. 2 (2019): 164–75.
- Sadzali, Munawwir. *Islam Realitas Baru Dan Orientasi Masa Depan*. Jakarta: UI Press, 1998.
- Shahrur, Muhammad. *Dirasat Islamiyah Mu’ashirah: Nahwa Ushul Jadidah Li Fiqh Al-Islamy*. Mesir: Dar al-Kutub al-‘Ilmiyah, 2002.
- Syamsuddin, Sahiron. “Metodologi Penelitian Living Qur’an & Hadis.” Yogyakarta: Sukses Offset, 2007.
- Syamsuddin, Sahiron, and Burhanudin Dzikri. “Metodologi Fiqih Islam Kontemporer.” Yogyakarta: ELSAQ, 2004.
- Syarifudin, Amir. “Ushul Fiqh Metode Mengkaji Dan Memahami Hukum Islam Secara Komprehensif.” Jakarta: Dzikrul Hakim, 2004.
- Umar, Nasaruddin. *Arguments for Gender Equality: A Qur’anic Perspective*. Jakarta: Puslitbang Lektur dan Khasanah Keagamaan, Badan Litbang dan Diklat, 2014.

- . “Metode Penelitian Berperspektif Jender Tentang Literature Islam.” *Dalam Jurnal Al Jami’ah*, no. 64 (1999).
- Umar, Nasaruddin, and Direktur Jenderal Bimbingan Masyarakat Islam. “Hukum Keluarga Kontemporer Di Negara-Negara Muslim.” In *Dalam Makalah Seminar Nasional Hukum Materiil Peradilan Agama Antara Cita, Realitas Dan Harapan, Hotel Red Top Jakarta*, Vol. 19, 2010.
- Yamani, A. Zaki. *Al-Syari’ah Al-Khalidah Wa Musykilat Al-‘Ashr*. Edited by Mahyuddin Syaff. Bandung: Al-Ma’arif, 1990.

