

Gender Equality in Imamate Shia and Sunni Inheritance Jurisprudence: A Comparative Analysis of Legal Doctrines and Familial Relationships

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Abstract

The issue of inheritance has always been a focal point in society, particularly when addressing the bilateral principle, which ensures property distribution to male and female heirs in Islamic law. The difference in inheritance rights between men and women remains a subject of debate in both Sunni and Shia applications. Shia inheritance law emphasizes equity by granting women recognized inheritance rights alongside men at all levels, while Sunni law follows specific Quranic guidelines that often result in unequal shares. Shia jurisprudence accords women the same status and rights as men in terms of their recognition as legitimate heirs within the family hierarchy. This research examines the mechanisms of inheritance distribution in Shia jurisprudence through a gendered lens, focusing on its implications for women's rights and their position in Islamic inheritance frameworks. This normative legal research adopts a gendered approach to Islamic inheritance law. The secondary data related to Sunni and Shia inheritance rules were traced manually and online from OJS websites. The data were analyzed using content analysis and then narrated through data reduction, display, and verification techniques. The research found that the Shia concept of inheritance distribution involves two categories of heirs: *dzawil furudh* (heirs with fixed shares) and *qarabah* (relative heirs). Heirs not included as *dzawil furudh* (heirs with fixed shares) as specified in the Qur'an and Hadith are classified as *qarabah*, which includes both male and female relatives based on proximity to the deceased. In determining their rights, Shia

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addresses the issue of gender while still applying the provisions of the texts regarding the share of men and women. Men and women at the levels of descendants (*furu'*), parents (*ushul*), siblings, and parents' siblings (*hawasyi*) have recognized inheritance rights, with shares determined based on Quranic guidelines. Second, Shia inheritance law consistently applies the bilateral principle, ensuring that women are granted inheritance rights alongside men in accordance with the Quranic 2:1 distribution ratio. This highlights that from a gender perspective, Shia jurisprudence demonstrates a more inclusive approach toward women's inheritance rights, emphasizing equity and recognition within its legal framework.

Keywords: Inheritance, Shia Jurisprudence, Bilateral Principle, Gender Equity, Islamic Law.

Introduction

The distribution of inheritance often raises questions about the perceived disparities in gender roles, particularly regarding the differing shares allocated to men and women as outlined in Islamic law. Discussions around inheritance division frequently involve concerns about gender equity, particularly in contexts where cultural practices or legal interpretations may prioritize male heirs. These issues are shaped by varying societal and legal frameworks, both historically and in contemporary settings. The term gender is defined as the social and cultural divide between men and women. Ann Oakley coined the term "gender" by characterizing it as: "Behavior differences between women and men that are socially constructed created by men and women themselves; therefore they are a matter of culture".¹ Examining women's roles within societies that predominantly follow patrilineal systems reveals

¹ Mansour Faqih, *Posisi Kaum Perempuan Dalam Islam: Tinjauan Dari Analisis Gender* (Surabaya: Risalah Gusti, 1996).

structural challenges, where the emphasis on male lineage can limit women's inheritance rights and opportunities. While culturally ingrained, this dynamic is addressed and balanced to some extent in Islamic inheritance laws. Prior to the arrival of Islam, many Arab tribal societies practiced inheritance customs that marginalized women, often treating them as property to be inherited rather than as legitimate heirs. Islam reformed these practices, granting women inheritance rights and recognizing their dignity as individuals. In fact, in pre-Islamic Arab culture, women were not valued, therefore they were considered as items to be inherited rather than as recipients of an inheritance. This pattern persisted until Islam came along and liberated women from many sorts of tyranny.² Islam upholds the dignity and value of both men and women, as evident in Quranic injunctions such as Surah An-Nisa (4:7), which explicitly grants inheritance rights to both genders, marking a significant departure from pre-Islamic customs. Women also have human rights because they are descended from the Prophet Adam and Eve. Islam's elevation of women's status, including their right to inherit, represented a significant advancement in gender equity. However, the prescribed differences in inheritance shares—such as the 2:1 ratio between sons and daughters in Surah An-Nisa (4:11)—reflect broader responsibility principles and financial obligations within Islamic law.³

The theological and political differences between Sunni and Shia traditions, which emerged during the early caliphate, have influenced various aspects of Islamic jurisprudence, including inheritance laws, leading to

² Yusûf Al-Qardlawy, *Anatomi Masyarakat Islam*, (Jakarta: Pustaka al-Kautsar, 1999).

³ Neni Nuraeni, "Tafsir Ayat Ahkâm Gender," *Asy-Syari'Ah* 16 (2014).

distinct interpretations and practices in each tradition. These two religious groups developed due to political disputes over who had the most right to succeed the Prophet Muhammad SAW as head of state or leader of the people. The discord between Sunni and Shia is evident in various fundamental differences in perspectives and beliefs. One of the main differences is the Shia view of several companions of the Prophet Muhammad SAW. For instance, the Shia faction known as "الرافضة" (*Rafidhah*) asserts that the companions apostatized due to their failure to pledge allegiance to Ali bin Abi Thalib as caliph following the Prophet Muhammad SAW. This perspective opposes the Sunni belief that regards the companions, particularly the *Muhajirin* and *Ansar*, as adherents and part of the upright Muslim community. Furthermore, there exist radical factions within the Shia who are deemed to have deviated from Islam by the Sunni, such as the "السبئية" (*Saba'iyyah*) who considered Ali as God, and this group was incinerated by Ali himself [4]. These discrepancies indicate a deep theological and historical conflict between the two groups.⁴

When the *tahkim* incident occurred, it caused a division among Ali bin Abi Thalib's group, leading to the emergence of three distinct groupings of Muslims, including: first, the faction that rejected Ali and defected from his group, known as *Khawarij*, a group that opposed Ali.⁵ Second, Shia, a sect that did not recognize Muawiyah as Caliph but wholeheartedly backed Ali as Caliph. Third,

⁴ Al-Baghdadi, n.d. *Al Baghdadi, Al Asfarayaini, At-Tamini, Al Farq Bayna Al Firaq*, Libanon, Beirut, h.20,21,359

⁵ Saidin Hamzah and Hamriana, "Khulafah Al-Rasyidun: Masa Kepemimpinan Ali Bin Abi Thalib," *CARITA: Jurnal Sejarah Dan Budaya* 1, no. 1 (2022).

Sunni groups, which were not included in either the supporting or opposing groups.⁶

The beginning of the differences between Sunnis and Shias is on the issue of the Imamate. The notion of imamate in this context denotes the belief that the community is obligated to appoint an imam. This *imam* is responsible for appointing judges and security personnel, regulating borders, commanding forces, distributing spoils, and enforcing justice for the oppressed. In addition, in the issue of dividing the group of heirs, Sunnis and Shias also have difference.⁷ This is due to the fact that the underlying analysis of inheritance law in the Qur'an differs. In Sunni jurisprudence, kinship in inheritance is primarily traced through the male lineage, reflecting both pre-Islamic Arab customs and interpretations of Quranic directives that emphasize the male role as a provider and protector within the family structure. Whereas Imamate Shia has another premise that is founded on the interests of women so that men and women have equal standing.⁸ The existence of blood flow defines kinship. To determine the amount to which a person has a relationship with kinship lines, some claim that kinship can only be seen in the line or lineage from the male side, which is known as the patrilineal system.

Furthermore, others believe that kinship can only be established through the female line or lineage, which is referred to as the matrilineal system. A parental kinship system exists when kinship occurs directly from the two lines at the same time. The link between inheritance and

⁶ Sirajuddin Abbas, *I'iqad Ahlussunnah Wal Jama'ah* (Jakarta: Penerbit Pustaka Tarbiyah, 1989).

⁷ Al-Baghdadi, *op.cit.*, 191

⁸ Ahmad Siddik, *Hukum Waris Islam Dan Perkembangannya Di Seluruh Dunia Islam* (Wijaya, 1980).

kinship can be categorized as patrilineal when traced exclusively through the male lineage, but Islamic inheritance laws introduce a more nuanced bilateral approach, granting inheritance rights to both male and female relatives, as seen in Surah An-Nisa (4:7, 4:11). Meanwhile, it is also referred to as unilateral matrilineal if it just passes through the female blood flow. It is said to be bilateral if it flows in both directions, namely men and women.⁹

The most appropriate method to prove the existence of bilateral inheritance is to look at the flow of inheritance at the grandchildren's level rather than the children's level. *Inheritance division across both genders exemplifies bilateral inheritance, as the Qur'an mandates property distribution to the deceased's lineage without gender exclusivity.* However, the true bilateral - as contained in the Qur'an - is the lineage of grandchildren, both grandchildren through sons or through daughters, as well as the upward line (*ushul*), father and mother, and sideways line (brothers and sisters) or *hawasyi*. This shows that the line-up and to the side have followed a bilateral path. As a result, it is extremely proper to remark that in the Qur'an, kinship is parental, whereas inheritance is bilateral. This bilateral principle can be observed in Allah's words in Surah an-Nisa verses 7, 11, 12, and 176. These verses indicate that the bilateral principle applies between children and their parents, as well as between siblings if the deceased do not have any children or parents. In verse 7, it is also stated that a man has the right to inherit from his father and mother.

⁹ Yaswirman, *Hukum Keluarga: Katakarakteristik Da Prospek Doktrin Islam Dan Adat Dalam Masyarakat Matrilineal Minang Kabau* (Jakarta: PT Raja Grafindo, 2011).

Similarly, a woman has the right to inherit from her father and mother.¹⁰

The issue of gender is clearly visible in the Imamate Shia group's inheritance system through the concept of *qarabah* heirs. Shia proposed categorizing heirs who are entitled to inherit into two categories. *First* is the *ashabul furudh*, whose share is explicitly stated in the Quran and hadith. Shia scholars believe that the provisions for *furudh*'s inheritance are identical to the Sunni scholars' understanding of the term *ashabul furudh*. *Second*, there are relative heirs. All heirs who are not included as *ashabul furudh*, whether linked to the deceased through male or female lineage, are included in the *qarabah* heirs. If it is connected to the grouping of Sunni scholars on heirs, this group of heirs of relatives is a combination of *asabah* and *zawil arham* heirs. Shia scholars believe that the heirs entitled to the remaining property covered a wider category than solely men, as is observed among Sunni scholars.

Consequently, they do not use the term *aşabah* to refer to the heirs with the rights to the residuary as Sunni scholars assume.¹¹ As a result, they do not refer to heirs who are entitled to the remaining properties as *asabah*.¹² Shia uses Allah's command in Surah an-Nisa verses 11 and 176 as the foundation for the heirs of the remaining properties. Even if these two verses mention that a woman has the right to inherit the remaining property if

¹⁰ Amir Syarifuddin, *Hukum Kewarisan Islam* (Jakarta: Kencana, 2004).

¹¹ Harisman.

¹² Moh. Alfin Sulihkhodin, Muhammad Asadurrohman, and Aris Wibowo, "The Reality of Mut'ah Marriage in Indonesia: Reinterpretation of the Opinion of Shia Scholars," *TAJDID* 29, no. 2 (2023), <https://doi.org/10.36667/tajdid.v29i2.710>.

she is with her brother, she can also inherit the remaining property if she is not with her brother.¹³

The Shia group classifies *qarabah* heirs into three categories. The first category is parents and children. This level includes father, mother, sons, daughters, and so forth down. The second level consists of paternal and maternal relatives, which include the father's father, the mother's father, the father and the mother's mother, siblings or paternal or maternal siblings, both male and female, and children of siblings, both male and female. The third level consists of the father's and mother's siblings, including biological siblings or paternal or maternal-half siblings, whether male or female, and their children, both male and female; mother's siblings, who are biological, paternal or maternal siblings, male or female, and their children, both male and female.¹⁴

In the current context, scientists from various backgrounds have conducted research on Shia. The study can be divided into five categories: First, Sunni and Shia relations in Indonesia. Widyadara's study delves into the Sunni-Shia theological conflict in Indonesia.¹⁵ While Mulyono's research examines the upheaval within Shia-Sunni theology. Five key areas are targeted in this study: Imamate, the Quran's authenticity, the Abu Bakr caliphate, the rights of Ali versus the caliphate, and the interpretation of *ah al-bait*.¹⁶ Subhan explores the legal arguments surrounding *mut'ah* marriage in the Sunni and

¹³ Syarifuddin, *Hukum Kewarisan Islam*.

¹⁴ Ishak Kasim, "Kedudukan Hak Waris Anak Menurut Hukum Adat, Hukum Islam, Hukum Perdata Sebagai Perbandingan," *Lex Et Societatis* 4, no. 5 (2016). Ja'far bin Husein, II, h. 22

¹⁵ Resta Tri Widyadara, "Konflik Sunni-Syiah Di Indonesia," *Religi Xi* (2015): 109–24.

¹⁶ Slamet Mulyono, "Pergolakan Teologi Syiah-Sunni: Membedah Potensi Integrasi Dan Disintegrasi," *Ulumuna* 16 (2012): 245–75.

Shia dialectic.¹⁷ Syarief explained the relationship between Sunni and Shia traditions, focusing on the *tahjin* ritual.¹⁸ Anshori, and Fahamsyah also focuses on the sunni-shia tradition but takes a different location.¹⁹ The second category is Shia Political Movement. This topic was investigated by Yakin. Yakin's study examines the Sunni-Shia conflict throughout history, particularly highlighting Al-Ghazali's critique of the Barhiniah School.²⁰ The same issue is also a theme in Yaqin's research.²¹ Kadir emphasizes Shia and politics, focusing on the Islamic Republic of Iran.²² Makhsum examines the stigmatization and propaganda against Shia,²³ while Pamungkas analyzes intra-religious reconciliation among Shia Sampang and Ahmadiyah Mataram refugees.²⁴ Irmawati explores the ideology and social movement of

¹⁷ Subhan, "Dialektika Sunni Dan Syi ' Ah (Melacak Argumentasi Hukum Nikah Mut'ah)," *At-Turas* V, No. 1 (2018): 1–20.

¹⁸ Syarif, "Relasi Tradisi Sunni-Syi ' Ah: Studi Atas Tahjin Ressem Pada Masyarakat Madura Di Kota Pontianak," *Islamuna* 4 (2017): 112–34.

¹⁹ Dadang S. Anshori, "Wacana Keagamaan Syiah-Sunni Dalam Majalah," *Litera* 13 (2014): 14–28. Fadlan Fahamsyah, "Jurnal Al-Fawa ' Id," *Al-Fawaid* XI, no. 1 (2021): 28–37.

²⁰ Syamsul Yakin, "Syamsul Yakin , Kritik Al-Ghazali Terhadap Aliran Bathiniyah," *Refelksi* 16 (2017): 105–30.

²¹ Nasrullah Ainul Yaqin, "Menagih Hak Beragama Muslim Ahmadiyah Dan Syiah Sampang Dalam Perspektif Nalar Maqâsidi," *Religi: Jurnal Studi Agama-Agama* 16, no. 2 (2020): 208–27, <https://doi.org/10.14421/rejusta.2020.1602-05>.

²² Abd. Kadir, "Syiah Dan Politik: Studi Republik Islam Iran," *Politik Profetik* 5 (2015): 1–15.

²³ Ali Makhsum, "Stigmatisasi Dan Propaganda Anti-Syiah: Sorotan Deskriptif Gerakan Annas," *Cmes* Xii (2019): 182–91.

²⁴ Cahyo Pamungkas, "Mencari Bentuk Rekonsiliasi Intra-Agama: Analisis Terhadap Pengungsi Syiah Sampang Dan Ahmadiyah Mataram," *Epistime* 113 (2018): 113–47, <https://doi.org/10.21274/Epis.2018.13.1.113-147>.

Shia Islam in Makassar City through the lens of prophetic sociology.²⁵

Third, Inheritance according to Shia was researched by Wilya. Wilya examines Sunni and Shia Imamiyyah interpretations of *kalalah*.²⁶ Research with the same issue was also conducted by Cheema, Ali dan Macuch.²⁷ While Tariqirrama's research explores the existence of daughters in Shia inheritance,²⁸ which is also relevant to Suma's research on the justice of Islamic inheritance law.²⁹ Shania examines the provisions of Islamic inheritance law implemented.³⁰ Basri, Mukhtar dan Devy explains how inheritance rights for women in Makassar and Aceh are determined based on local customary law.³¹ Sewang's

²⁵ Syahban Nur; Irmawati, "Ideologi Dan Gerakan Sosial Islam Syiah (Kajian Sosiologi Profetik) Di Kota Makassar," *J.Equilibrium* VII (2019): 164–72.

²⁶ Evra Wilya, "Konsep Kalalah Dalam Al-Quran Dan Penafsirannya Menurut Studi Suni Dan Syiah Imamiyyah," *Ahkam: Jurnal Ilmu Syariah* XIV, no. 1 (2014): 135–44. Shania, "Muslim Law of Inheritance," *Jus Corpus Law Journal* 2, no. 3 (2022): 725–37.

²⁷ Shahbaz Ahmad Cheema, "Shia and Sunni Laws of Inheritance: A Comparative Analysis," *Pakistan Journal of Islamic Research* 10 (2012): 69–82. Muhammad Ali, "A Comparative Analytics of Sunni and Shia Laws of Inheritance," *Al-Ittifaq*, 2022, 1–16. Maria Macuch, "Descent and Inheritance in Zoroastrian and Shi'ite Law: A Preliminary Study," *Islam -Zeitschrift Fur Geschichte Und Kultur Des Islamischen Orients* 94, no. 2 (2017): 322–35, <https://doi.org/10.1515/islam-2017-0022>.

²⁸ Faby Toriqirrama, "Eksistensi Anak Perempuan Dalam Hukum Kewarisan Syiah," *Al-Hukama'* 9, no. 1 (2019): 24–46, <https://doi.org/10.15642/alhukama.2019.9.1.24-46>.

²⁹ Muhammad Amin Suma, "Menakar Keadilan Hukum Waris Islam Melalui Pendekatan Teks Dan Konteks Al-Nushūsh," *AHKAM: Jurnal Ilmu Syariah* 12, no. 2 (2012): 47–58, <https://doi.org/10.15408/ajis.v12i2.965>.

³⁰ Shania, "Muslim Law of Inheritance," *Jus Corpus Law Journal* 2, no. 3 (2022): 725–37.

³¹ Halimah Basri et al., "Inheritance Rights of Women in Makassar Society: A Study of Living Qur'an and Its Implications for Islamic Law," *Samarah* 6, no. 2 (2022): 537–57,

research focuses on the division of inheritance for men and women in Mandar West Sulawesi.³² Fourth, The Concept of Gender Equality in Inheritance as found in the research by Permana and Nuraeni. Studies by Permana and Nuraeni examine gender interpretations in relation to inheritance rights and women's leadership.³³ As for Muttaqin and Shopya analyze gender bias in religious lectures on social media.³⁴ Problems in Shia Inheritance were discussed by Asy'ari. Asy'ari discusses the controversy over the position of *ashabah* in Shia Islamic inheritance.³⁵ Bachri compares the pros and cons of *aul* in Islamic inheritance from Sunni and Shia perspectives. This topic is also explored in the research of Jaffar,

<https://doi.org/10.22373/sjhc.v6i2.13882>. Marduati Mukhtar; Mohamed Ali Haniffa; Zuhlilmi bin Paidi; Mawardi M. Thaib, "Involvement of Families as Owners of Cultural Heritage Improving Religious Tourism in Banda Aceh: Perspective of Maslahah Theory," *Samarah* 6, no. 2 (2022): 655–77,

<https://doi.org/10.22373/sjhc.v6i2.12537>.

Soraya Devy; Syamsul Bahri; Selamat Ariga; Muhammad Aslam Ahmad; Mumtazinur Buchary Budiman; Yenny Sri Wahyuni, "The Role of Witness as Evidence in Divorce Cases at the Banda Aceh Syar'iyah Court," *Samarah* 5, no. 2 (2021): 579–97, <https://doi.org/10.22373/sjhc.v5i2.10879>.

³² Ulfiani Rahman; Idham; M.Dalip; Makmur; Anwar Sewang, "Men and Women in the Distribution of Inheritance in Mandar, West Sulawesi, Indonesia," *Samarah* 6, no. 1 (2022): 156–75, <https://doi.org/10.22373/sjhc.v6i1.9094>.

³³ Sugiri Permana, "Kesetaraan Gender Dalam Ijtihad Hukum Waris Di Indonesia," *Asy-Syari'ah* 20, no. 2 (2018): 117–32, <https://doi.org/10.15575/as.v20i2.3210>. Nuraeni, "Tafsir Ayat Ahkâm Gender."

³⁴ Ahmad Muttaqin, "Women's Identity in the Digital Islam Age: Social Media, New Religious Authority, and Gender Bias," *Qudus International Journal of Islamic Studies* 8, no. 2 (2020): 353–88, <https://doi.org/10.21043/qjhis.v8i2.7095>.

³⁵ A. Hasyim Asy'ari, "Kontroversi Kedudukan 'Ashabah Dalam Hukum Waris Islam Menurut Madzhab Syi'ah Itsna 'Asy'ariyyah," *Asy-Syari'ah* 16, no. 1 (2014).

Hasan, Malik, Naghibi, and Sibyanji.³⁶ The Fifth, category is the Implementation of Bilateral Principles in Inheritance, which was found in research by Bahar, Sari and Budhiraja.³⁷

Meanwhile, this present paper focuses on the mechanism for distributing inheritance according to Shia based on gender perspectives and the implementation of inheritance rights. Many studies on gender have also been carried out, including Yunus,³⁸ who examined the share of women's inheritance and women's leadership based on the interpretation of the verses. Another study was conducted by Ahkam,³⁹ which explained that enormous religious lectures with gender bias on social media not only deal with the textual understanding of religious texts

³⁶ Syabbul Bachri, "Pro Kontra 'Aul Dalam Kewarisan Islam: Studi Komparatif Antara Pandangan Sunni Dan Syiah," *De Jure : Jurnal Hukum Dan Syariah* 10, no. 2 (2018). Khalida Shamim Akhtar; Ghulam Jaffar, "Inheritance Rights of a Childless Widow of a Shia Husband," *مجلة الإداري، معهد الإدارة العامة، سلطنة عمان، مسقط* 147, no. March (2016): 11–40. Adeel Hasan; Maha Malik, "Revolutionising Inheritance Laws for the Shia Sect: A Case for the Protection of Childless Widows of Shia Husbands," *LUMS Law Journal* 8, no. January (2021): 71–80. Alghasem Naghibi, "Shia Jurisprudence Idea on the Wife's Portion of Inheritance," *Family Law and Jurisprudence Journal* 13 (2010), <https://doi.org/https://doi.org/10.30497/flj.2008.67992>.

Sibyanji, "Zina Dan Hak Waris Menurut Syi'ah Imamiyah" (Institut Agama Islam Negeri (IAIN) Sunan Kali Jaga Yogyakarta, 2002).

³⁷ Muchlis Bahar; Elfia; Faisal, "Penerapan Asas Bilateral Dalam Kewarisan Islam Menurut Ulama Sunni Dan Syi'ah Imamiyyah," *Al-Ahwal: Jurnal Hukum Keluarga Islam* Xxii, No. November (2021): 117–32. Rini Sari, "Studi Analisis Pemikiran Hazairin Tentang Kewarisan Bilateral Dan Implikasinya Terhadap Pembaharuan Hukum Islam Indonesia" (Universitas Islam Negeri (Uin) Sumatera Utara, 2012). Gurneet Singh Budhiraja, "Inheritance Under Shia Law: Principles And Its," *Indian Journal Of Integrated Research In Law* Ii, No. I (2022): 1–10.

³⁸ Nuraeni, "Tafsir Ayat Ahkâm Gender."

³⁹ Muttaqin, "Women's Identity In The Digital Islam Age: Social Media, New Religious Authority, And Gender Bias."

but also with the problem of religion's commodification. Febriandi revealed the experiences of female victims of sexual violence in Aceh seeking justice through the Qanun Jinayat. The concept of legal pluralism adopted in Aceh has limitations in facilitating justice for women and other marginalized communities.⁴⁰

The division of inheritance has been explained in the Qur'an and Hadith as a guide for humans in formulating divisions based on each level of *thabaqat* in the family. Nonetheless, this does not constitute a mutual agreement between Sunni and Shia scholars on the division of inheritance rights. The problem faced is the difference of opinion between Sunni and Shia scholars regarding the application of the bilateral principle and the principle of closest kinship. In Sunni inheritance law, male heirs often have priority in terms of inheritance share, following a largely patrilineal approach. Nonetheless, Sunni law also allocates specific portions to female heirs, as outlined in the Qur'an, though these portions often differ from those of male counterparts. On the other hand, Shia scholars prioritize closest kinship, which means that determining lineage and inheritance also considers family relationships through maternal lineage (through mother, grandmother, and so on).⁴¹

The Sunni inheritance distribution system, particularly in the treatment of female heirs, is disproportionate to other heirs, whether they have equal status or not. Sunni inheritance law places a strong value on male superiority. Even while sons and daughters have the same status, there is still an imbalance in their rights

⁴⁰ Yogi Febriandi; Muhammad Ansor, "Seeking Justice Through Qanun Jinayat: The Narratives Of Female Victims Of Sexual Violence In Aceh , Indonesia," *Qijis* 9, No. 1 (2021): 103–40.

⁴¹ Faisal, "Penerapan Asas Bilateral Dalam Kewarisan Islam Menurut Ulama Sunni Dan Syi'ah Imamiyyah."

to inheritance. Shia jurisprudence accords women the same status and rights as men in terms of their recognition as legitimate heirs within the family hierarchy.⁴²

Some of the differences mentioned above in the Shia inheritance system, which are influenced by various factors, impact the placement and determination of women's rights in inheritance. This research aims to investigate the mechanism of inheritance distribution from the Shia gender perspective, as well as the consequences for women's rights in Islamic inheritance.

Sunni and Shia Scholars' Classification of Heirs

Sunni and Shia scholars have different views regarding the grouping of heirs. Sunni scholars categorize heirs into three classes: first, *dzawil furudh*, who are entitled to specific shares explicitly mentioned in the Qur'an (e.g., Surah An-Nisa: 4:11-12) and further clarified by Sunnah and Ijma' (consensus). These shares ensure that each heir's portion is predetermined by divine ordinance. Both Sunni and Shia scholars acknowledge the category of *dzawil furudh* as foundational to Islamic inheritance law, as detailed in Surah An-Nisa: 4:11-13. However, their application differs, with Sunni scholars adhering to strict predefined shares and Shia scholars integrating gender equity within their interpretation of *furudh*. The heirs mentioned in these verses are individuals who receive a part of the inheritance due to kinship or causality. Their parts that have been stipulated in the Qur'an will not change because this has been stipulated definitely or *qath'i*, unless they receive more in the case of *radd* due to excess wealth, or decrease in the

⁴² Toriqirrama, "Eksistensi Anak Perempuan Dalam Hukum Kewarisan Syiah."

case of *'aul*.⁴³ The parts of *Dzawil Furudh*'s heirs have been specified in the Qur'an, namely $\frac{1}{2}$, $\frac{1}{4}$, $\frac{1}{8}$, $\frac{1}{3}$, $\frac{2}{3}$, and $\frac{1}{6}$.

Second, *ashabah* are heirs who inherit the remaining estate after the shares of *dzawil furudh* are distributed. Their entitlement, derived from Quranic principles (Surah An-Nisa: 4:11 and 4:176), Sunnah, and Ijma', prioritizes male relatives through the paternal line, emphasizing the preservation of family lineage. This is a group of heirs whose share is not determined in the same way as *dzawil furudh*. *Ashabah* are residual heirs in Sunni jurisprudence who inherit the remainder of the estate after the shares of *dzawil furudh* have been allocated. They are predominantly male relatives, and their shares are determined by their proximity to the deceased, reflecting the patrilineal emphasis of Sunni inheritance law. They get a share after the parts that have been determined (*faraidh*) are distributed, and they get the rest of the inheritance.⁴⁴ 'Jumhur scholars identify *Ashabah* as an heir from the male side of the deceased who is not confined by women between the deceased and heirs. Surah An-nisa verses 11 and 176 specify the provisions for sharing the inheritance among the *'ashabah*. This is supported by the Prophet's Sunnah, which indicates that an *'ashabah* is an individual who has a close kinship link with the deceased through the male lineage rather than the female lineage.⁴⁵

The majority of Sunni scholars divided *'ashabah* into three categories, notably *'ashabah bi nafsih*, heirs who are positioned as *'ashabah* because of themselves. *Ashabah*

⁴³ Wahbah Al-Zuhayli, *Fiqh Al-'Islam Wa 'Adillatuhu* (Damaskus: Dar al-Fikr, 1985).

⁴⁴ Muhammad bin Salim bin Hafidh, n.d., *Takmilat Zubdat al-Hadith*.

⁴⁵ Al-Zuhayli.

binafsih receives the whole or the rest of the inheritance after the inheritance is distributed to the main heir, namely *dzawil furudh*. This *ashabah* consists of the male group only: son, grandson, father, grandfather, siblings, paternal half-sibling, children of siblings, children of a paternal half-sibling, uncle, and uncle's children, both biological and paternal. The next category is '*ashabah bighairihi*', namely heirs from the female group who initially serve as *dzawil furudh*, then become '*ashabah*' because they are present with equal male heirs who are already in the position of '*ashabah*' when distributing inheritance. *Ashabah bighairihi* consists of four daughters and sons, granddaughters and grandsons, female siblings and male siblings, and paternal half-sisters and paternal half-brothers. The last category is '*ashabah ma'a ghayrihi*', which is a biological sister or paternal half-sister who is originally a *dzawil furudh* but turns into '*ashabah*' because she has a daughter, an heir who makes her an '*ashabah*'.

Third, *dzawil arham*. Linguistically, *dzawil arham* is an heir resulting from a womb relationship. Terminologically, it is an heir who has a family relationship with the deceased, who will receive an inheritance if there are no primary and secondary heirs, namely *dzawil furudh* and '*ashabah*'.

Twelver Shi'ism (*Imamiyah*) does not recognize the concept of *ashabah* (residual heirs) in its inheritance structure, prioritizing equitable distribution within the same kinship class (*thabaqat*). The Zaidi Shia school, however, partially acknowledges the concept of *ashabah* but interprets it differently from Sunni jurisprudence. Twelver Shi'ism diverges significantly from Sunni jurisprudence by rejecting the concept of *ashabah*. However, it does recognize *dzawil arham* (distant kin) as

heirs in cases where no closer relatives (dzawil furudh or *qarabah*) are present. Twelver Shi'ism categorizes heirs into dzawil furudh (heirs with fixed shares), *qarabah* (close kin), and includes dzawil arham (distant relatives) as eligible heirs when closer kin are absent. In Shia jurisprudence, the concept of *ashabah* is not applied. Instead, any remaining inheritance is redistributed proportionally among heirs within the same *thabaqat* (class of kinship).

Shia scholars allocate the remaining estate proportionally among all heirs within the same *thabaqat* (class of kinship), rejecting the Sunni concept of *ashabah*. This ensures that male and female heirs within a *thabaqat* share the inheritance equitably, aligning with their interpretation of kinship and Quranic equity principles.⁴⁶ This is stated by the Shia group as expressed by Khamaynī in his book *Tahrīr al-Wasilah* in the chapter on inheritance, stating that there is no inheritance of '*asabah* in Islam. Similarly, in the principal Shia hadith book, *Wasa'il al-Syi'ah*, there is a separate chapter that gathers hadiths regarding it and consists of 11 hadiths,⁴⁷ Imam Khamayni stated unequivocally the legal position of '*ashabah*, saying, "Giving in '*ashabah* and '*awl* is null and void".⁴⁸ Similarly, Muhammad bin Hasan Al-Hurrī underlined '*ashabah*'s legal standing in the chapter on cancellation of distribution by '*ashabah*. In determining the cancellation of '*asabah* in Islamic inheritance, the two perspectives above use the term *ta'shīb*. Jamaluddin further negated the '*ashabah*, stating that they possess

⁴⁶ A. Hasyim Asy'ari, "Kontroversi Kedudukan 'Ashabah Dalam Hukum Waris Islam Menurut Madzhab Syi'ah Itsna 'Asy'Ariyyah," *Asy-Syari'ah* 16, No. 1 (2014), <https://doi.org/10.15575/As.V16i1.627>.

⁴⁷ A. Hasyim Asy'ari.

⁴⁸ Khamayni, *Tahrīru Al-Wasilah* (Libanon: Dār Al- 'Ilmu, 1889).

no rights to inheritance, with the addition of size of share, except in the absence of heirs who are closer relatives than them.⁴⁹

In Shia jurisprudence, kinship heirs are redefined to include both paternal and maternal relatives without prioritizing male lineage, effectively merging elements of *ashabah* and *dzawil arham* as understood in Sunni law. This approach reflects their inclusive interpretation of Quranic guidance on inheritance.⁵⁰ Surah An-Anfal verse 75 is the legal basis to determine the existence of relative heirs. This is connected to Shia scholars' notion that those with kinship relationships are more entitled to inheritance. According to Shia scholars, the distribution of heirs is as follows: First, *dzawil furudh*. The details of the division of inheritance of *dzawil furudh* according to Shia are Share $\frac{1}{2}$; daughter if she is the only child and there are no other children who are not prevented from inheriting; biological sister or paternal half-sister if there is no brother with her; husband if there are no children and so on down. Share $\frac{1}{4}$; husband with children and so on down; wife if there is no child with her and so on down. Share $\frac{1}{8}$; wife if there are children with her and so on down. Share $\frac{1}{3}$; mother if the deceased does not have children and so on down, also the deceased does not have any brothers or sisters either male or female. Share $\frac{2}{3}$; two daughters without a son; two biological sisters or paternal half-sisters. Finally, share $\frac{1}{6}$; father together

⁴⁹ Jamaluddîn Al-Makky Al-Amily, *Al-Bahiyah Fi Syarh Al-Lumath Al-Damsyiqy* (Beirut: Dâr al-Kutûb, 1992).

⁵⁰ I Muhardinata, "Perbedaan Pandangan Dalam Pengembangan Ahli Waris Menurut Sunni, Syi'ah Dan Hazairin," *El-Ahli: Jurnal Hukum Keluarga Islam*, 2020.

with absolute children; a mother with children and several heirs, either male or female.⁵¹

Second, the relative heirs. Shia scholars do not accept the existence of *'ashabah* as heirs as stated by Sunni scholars. From the Shia perspective, inheritance is only obtained from one lineage, judging by how close the kinship relationship between the deceased and the heir is, it can be seen whether it is based on the male lineage or the female lineage. In his explanation, Muhaqqiq Al-Hilly mentioned that the *qarabah* is an heir whose share is uncertain. Relative heirs are not restricted to men; women also have the right to them.⁵² Shia scholars divide relative heirs into three categories. First, a straight line up and down, with the parent lines ascending and the children lines descending. Second, grandparents and their descendants, as well as their siblings and descendants. Third, uncles, aunts, their descendants, grandparents' siblings, and their descendants. This decision is based on Surah An-Nisa verse 11.⁵³

The difference in understanding between Shia and Sunni can be seen in two points. The first is the absence of *'asabah* heirs through male relatives and at the level of relatives. Second, Shia scholars opine that relatives in the male lineage have the same position as female ones. This decision is based on Surah Al-Anfal verse 75. The verse reveals that apart from close relatives cannot and do not have the right to inherit, hence this also applies to slaves who do not inherit except with their relatives. Third, Shia scholars prioritize relatives since relatives are the owners

⁵¹ Khamayni, *Tahrîru Al-Wasilah*. 340

⁵² E Hendrako, Edo Hendrako, and E Hendrako, "Hak Waris Anak Perempuan Terhadap Harta Peninggalan (Studi Kasus Putusan Ma Ri No. 4766/Pdt/1998)," *Lex Privatum* 21, no. 1 (2015).

⁵³ Malik, "Revolutionising Inheritance Laws for the Shia Sect: A Case for the Protection of Childless Widows of Shia Husbands."

of *qarabah* in the family. Both Sunni and Shia refer to Surah An-Nisa as the fundamental rule for inheritance. The Shia interpretations of Surah Al-Anfal verse 75 differ yet complement other verses and are not regarded as a separate legal basis.

They reasoned that Surah Al-Anfal verse 75 is based on Surah An-Nisa verse 33, which describes the inheritance system in use during the time of ignorance. In Surah Al-Anfal verse 75, the law of inheritance discusses the inheritance of the Muhajirin and Ansar from each other. Surah Al-Ahzab verse 6 and Surah Al-Anfal verse 75 have also sanctioned this verse. Here, Shia is of the view that *dzawil 'arham* is more prioritized over the Muhajirin.

Shia considers surah al-Anfal 75 (concerning *ulu al-arham*) to be the fundamental premise of many verses in the Quran about inheritance. Meanwhile, several books of jurisprudence composed by Sunni explain that the discussion of Islamic inheritance law always begins with Surah an-Nisa' verses 11-12 concerning heirs who receive a definite share (*dzawil furudh*). Sunni and Shia interpretations of *dzawil arham* or *ulu al-arham* differ greatly, despite the fact that Surah al-Anfal 75 is used equally by both groups. Shia considers *ulu al-arham* to be a close relative of the deceased rather than a distant relative. Sunnis regard *ulu al-arham* as a distant relative. This verse was used as an argument when Ali bin Abi Talib sent a letter to Muawiyah bin Abi Sofyan that he was worthy of the position of "imam" or caliph.

The most significant distinction between Sunni and Shia inheritance schemes is that all heirs with a blood relationship to the deceased are merged into a single binding hierarchy. There are significant differences between Sunni and Shia inheritance schemes in the

Islamic inheritance system, especially concerning the grouping of heirs and the prioritization of the inheritance distribution. While there is a general principle in common that heirs with a blood relationship to the deceased have the right to inherit, there are essential differences in the details of the division. In Shia law, there is a tendency to group all heirs with a blood relationship to the deceased into a binding hierarchy. This means that priority is given to heirs who are closest to the deceased, both in terms of family relationships and generational proximity. However, both men and women have equal rights to inherit, with the principle that inheritance rights are granted based on the closeness of their family relationship to the deceased. The statement that men and women have "equal" inheritance rights needs further clarification because, in reality, there is still a difference in the proportion of inheritance between men and women. The most frequently cited example is the provision where sons receive two portions of the inheritance, while daughters receive one portion (a 2:1 ratio). This applies in some situations under Sunni inheritance law and is also acknowledged in Shia law. Therefore, the word "equal" here refers more to the basic right to inherit, not the amount received. In this context, "equality" does not always mean identical distribution; rather, it refers to the fact that both men and women are equally recognized as legitimate heirs, but the amount they receive still follows the rules prescribed by Islamic law.⁵⁴ In Shia inheritance, no one is excluded or veiled just because of their gender or because they are associated with the heirs who are related to the deceased through the female line. The next

⁵⁴ Lucy Carroll, "The Ithna Ashari Law of Intestate Succession: An Introduction to Shia Law Applicable in South Asia," *Modern Asian Studies* 19 (1985). 86

distinction is that preference is given to heirs who are still within the boundaries of the nuclear family or the deceased's nuclear family and their direct descendants. In general, the gender ratio of 2 : 1 is still enforced. However, children's lineage is still prioritized over other heirs who are related by blood to the deceased.⁵⁵

According to the authors, the Shia rejection of *'asabah* inheritance is an implication of the kinship paradigm (*qarabah*), which serves as the foundation of Shia inheritance law. Shia distinguishes heirs based on their relationship to the deceased rather than their gender. As a result, as long as male and female heirs have an equal close relationship with the deceased, they have equal inheritance rights. If they are not related, the nearest heir will win, as stated by al-Maskhini: "If (someone) dies and leaves a daughter, then all his inheritance is inherited by that daughter. If (someone) dies and leaves multiple daughters, all of his property will be divided among the daughters".⁵⁶

Sunni and Shia Scholars' Understanding of the Meaning of Walad

Sunni and Shia's scholars have differing interpretations of the term *walad* in Surah An-Nisa verse 11. In Sunni jurisprudence, *walad* broadly refers to descendants, including sons and daughters. However, in the context of inheritance, *walad* is often understood to prioritize male descendants as lineage carriers, particularly sons and grandsons through the male line. Sunni scholars often interpret *walad* in inheritance as

⁵⁵ Carroll. 86

⁵⁶ Samahah Ayatullah Al-Mashkini, *Al-Fiqh Al-Ma'thur Wa Al-Usul Al-Mutalaqqah* (Beirut: al-Hadi, 1989). 389

male descendants who are not separated by a female in their lineage, such as sons and grandsons through male heirs. Female-line descendants, like the children of daughters, are generally categorized as *dzawil arham* and inherit only in the absence of closer heirs.⁵⁷

In Imamate Shia jurisprudence, *walad* encompasses all descendants, regardless of whether they come from the male or female lineage. This broader interpretation ensures that male and female-line descendants are treated equitably in inheritance distribution, reflecting the principle of close kinship outlined in Surah An-Nisa: 4:7. Shia scholars associate this viewpoint with Imam Abi Abdallah Ja'far Assidiq's and his father Imam Muhammad Al-Baqir's interpretation of the word *walad*. They believe that women have the same position or status as men concerning inheritance. When sons and daughters inherit together, both Sunni and Shia schools apply the Quranic principle of a 2:1 ratio, as stipulated in Surah An-Nisa: 4:11. This rule reflects the financial responsibilities traditionally assigned to male heirs, such as providing for the family, which justifies their larger share.⁵⁸

The differing interpretations of *walad* between Sunni and Shia jurisprudence have significant implications for the inheritance rights of the deceased's grandchildren, particularly those descending through daughters. In Sunni jurisprudence, the concept of *walad* primarily applies to male-line descendants, meaning that grandchildren through sons are prioritized as heirs, while grandchildren through daughters inherit only as *dzawil arham* in the absence of closer heirs. In Shia

⁵⁷ Abū Zahrah, *Al-Mirats 'Inda Al-Ja'Fariyyah* (Beirut: Dār al-Kutub, 1955). 79

⁵⁸ Muhammad Ali Ash-Shabuni, "Pembagian Waris Menurut Islam," *Gema Insani Press* 4, no. 1 (1995).

jurisprudence, all descendants (*walad*) of the deceased, whether through male or female lineage, are recognized as heirs. This inclusive approach ensures equitable inheritance distribution within the *dzawil furudh* and *qarabah* framework. This distinction arises from the Sunni interpretation of *walad* as prioritizing male-line descendants for inheritance, in contrast to Shia jurisprudence, which adopts a broader definition of *walad* that includes both male and female-line descendants.

The Concept of Relative Heirs (*Qarabah*) in Shia

In Shia jurisprudence, the concept of relative inheritance (*qarabah*) operates on a bilateral principle, recognizing both male and female lineage equally. This system applies at all levels of heirs, including grandchildren, parents, and siblings, ensuring equitable distribution based on proximity to the deceased. Shia inheritance law emphasizes that heirs inherit from both male and female relatives equally, reflecting the Quranic mandate for equity in Surah An-Nisa: 4:7. This principle is applied within the hierarchical *thabaqat* structure, where closer relatives inherit before more distant ones. The same is true for close heirs such as grandchildren from both the daughter's and son's sides. They receive their own share in the distribution of daughters in accordance with the provision.⁵⁹ In Shia jurisprudence, the kinship system for inheritance is divided into three *thabaqat* (hierarchical levels): (1) direct descendants (parents and children), (2) siblings of the deceased and their descendants, and (3) paternal and maternal uncles and aunts, along with their descendants.⁶⁰

⁵⁹ Al-Thabrasi Al-Hasan.

⁶⁰ Muhammad Husein bin Ali Al-Thusiy, *Al-Mabshutu Fi Fiqh Al-Imamiyyah* (Teheran: Matba'ah al-Murtadawiyah, 1985). 64-67

The Quran provides general guidance on the inheritance rights of relatives, including both close and distant kin, as seen in Surah An-Nisa: 4:7 and 4:12. However, Shia scholars emphasize kinship proximity and equity, which govern the inheritance of indirect relatives. The inheritance of grandchildren is related to the word *walad* (*awlad*), which appears in Surah an-Nisa verse 11. The meaning of grandparents is also based on the scope of *ab/um* which is also contained in the Surah an-Nisa. While surah an-Nisa verse 7 states that both men and women have the right to inherit from both parents and relatives. It is also mentioned in Surah al-Anfal verse 75 that those who have kinship (*dzawil arham*) are more important (have the right) than others. Thus, heirs whose relationship with the deceased is not direct are not founded on the Qur'an.

There are two issues with the kinship system. When it comes to the legal basis of the Qur'an, the kinship system is inextricably linked with marriage. Inheritance provisions that address kinship clarify who is eligible to receive inheritance. In this instance, both men and women have equal inheritance rights. This demonstrates that Shia inheritance law recognizes the rights of heirs regardless of gender, while the distribution of shares adheres to Quranic principles. The Quran establishes equal status for male and female heirs within the kinship system, as reflected in Surah An-Nisa: 4:7 and 4:11. Shia scholars interpret these verses as advocating for a bilateral kinship system, ensuring gender equity in inheritance while adhering to the 2:1 ratio outlined in the Quran.

There are also discrepancies in Sunni and Shi'a scholars' understanding of the implementation of the bilateral principle or what is known as paternal

inheritance. Sunni scholars embrace inheritance as one of their guiding principles. They have a basis for bilateral or paternal inheritance rules, making this principle one of the concepts in the distribution of inheritance from the deceased to the heirs. Bilateralism is inheritance reserved for male and female lines, as when a father dies, his children, whether male or female, inherit from the father. It is apparent that Sunni scholars here rigidly observe the bilateral principle without regard for male or female lineages. However, there is a difference from the prior notion at a later stage, notably in the inheritance of children and grandchildren. In terms of inheritance, As stated above, they are one of *Dzawul al-Arham* and they inherit. If we pay serious attention, we can see that Sunni scholars are not consistent in their views on equality between men and women, as previously indicated.

According to Shia scholars, the words of Surah Annisa verses 7 to 11 show that men and women have equal rights in inheriting inheritance rights. If they are on the same right, there is no reason to exclude their rights. This interpretation of the Shia scholars seems to be more appropriate and in accordance with the goals envisioned by Shari.⁶¹ Men and women have equal inheritance rights over their parents' and relatives' property. In fact, their share takes precedence over that of their close relatives. This is clearly understandable and logically accepted.

In practice, not all heirs have predetermined shares, such as those allocated to *dzawil furudh*. Relatives without fixed shares inherit based on proximity and kinship, as defined under the Shia principle of *qarabah*. However, suppose it is accepted based on the meaning of the text or the *mafhum dilalah*. In that case, their share

⁶¹ Rifa'i Abu Bakar, *Pergulatan Syi'ah Dalam Konstelasi Politik Keagamaan Di Indonesia*, Cetakan Pe (Yogyakarta, 2020).

shall be deducted from the remaining assets after they are distributed to *dzawil furudh*. This is the concept of inheritance in the "*Al-Qarabah*" system, not through the line of '*ashabah*' heirs. According to Shia scholars, Al-Uluwiyah in Surah Al-Anfal verse 75 means relatives, namely the closest relatives and close relatives. In this circumstance, Allah SWT determines that all relatives (*dzawil arham*) have inheritance rights from the inheritance of their relatives. In fact, some of them are given precedence over others.⁶²

Meanwhile, Al-Karami offers a different viewpoint. He said the verse demonstrates that distant relatives do not have a higher priority in inheritance rights as long as close relatives are still alive. They are even confined by relatives who have already been there. According to this understanding, inheritance rights are carried out in stages in the sequence specified. This type of inheritance system causes Shi'a scholars to reject '*asabah*' since it still applies the concept of differences. The Shia interpretation shows that they are stronger in using kinship as an absolute reason for inheritance through blood relations. The deceased's closest relative shall have priority inheritance rights over the others, whether he has a position as *dzawil arham*, '*ashabah*', or not including both.

Shia scholars believe that kinship has nothing to do with the inheritance system from a patrilineal point of view. They believe grandchildren from the female line have equal inheritance rights as grandchildren from the male line. The son's grandson will replace the son's position and the daughter's grandson will replace the daughter's position. Likewise, there is no difference in position

⁶² Al-Thabrasi Al-Hasan,. *Tafsir Al-Jami'*. Teheran: Jami'ah Teheran, 1992Al-Hasan, *Tafsir Al-Jami'*. 72

between grandparents and grandmothers. The paternal grandparents will replace the father's position, while the maternal grandparents will take the place of the mother.⁶³

Differences in opinion and understanding between Sunni and Shi'a scholars regarding the concept of bilateral or paternal principles in inheritance result in various outcomes that significantly impact inheritance laws and practices. For example, according to the Sunni concept of inheritance, when a father dies, sons and daughters are equally entitled to inherit from him. This demonstrates that Sunni equates women with men. However, when it comes to inheritance share at the level of children from children or grandchildren, Sunni argues that daughters' grandchildren have no entitlement to inheritance. In contrast, children of sons or grandchildren of male lineage are still eligible for inheritance. Daughters' grandchildren, in their opinion, are classified as *dzawil arham*. *Dzawil arham* is a group that will receive an inheritance if there is no *ashabul furudh* and *'ashabah* at the heir level. As a result, children descended from the daughter's line have fewer chances of inheriting rights than children descended from sons. Sunni defines *'asabah* as those who are solely from the male lineage, not women. Thus, women have low opportunities in terms of inheritance.

Second, Shia scholars hold different viewpoints from Sunni scholars. People who have close kinship with the deceased and have blood or familial relations with the deceased are considered relative heirs or *qarabah*. As a result, they have the chance to obtain an inheritance in terms of inheritance rights. Relative heirs will receive a share of the inheritance after the share for *dzawil furudh*

⁶³ Muhammad Jawad Mughniyyah, *Tafsir Al-Kasyaf* (Beirut: Dar al-‘Ilm Lil Malayin, 1996). 81

is given. Shia scholars do not distinguish between male and female heirs in the concept of inheritance. The most important concept they use is that the right of inheritance for the closest relatives takes precedence over relatives with only a relationship with the deceased.

In real terms, the notion of inheritance used by Shia scholars significantly impacts people's lives, particularly those who are very strong in implementing the matrilineal concept in their descendant order. If the Sunni model is adopted, women's positions will be at the *Arham dzawil* level. This means that the children of daughters may have little chance of inheriting anything. However, when it comes to the Shia concept of inheritance and the matrilineal system of descent, children of daughters or grandchildren of females will have a better chance of inheriting more. The difference of opinion between Sunni and Shia scholars in explaining Surah al-Anfal verse 75 shows that all groups related by lineage to the deceased are called relatives, and they have the right to inherit, but they differ in the amount of inheritance to be obtained. Meanwhile, in the absence of *dzawil furudh* and *'ashabah*, *dzawil arham* will inherit. However, in the notion of inheritance sharing for Sunni scholars, those who are entitled to receive an inheritance are prioritized above others and therefore the concept of *hirman* can apply in this case.

The resolution of inheritance issues among Sunni and Shia scholars can be illustrated through various cases: First, if an individual passes away leaving behind granddaughters as heirs from both female (daughter) and male (son) lines, Shia scholars argue that the daughter of a son receives a half share, whereas the daughter from the female line is classified under *zawil arham* category. Her opportunity to inherit arises in the absence of

ashabul furudh and *ashabah*. Meanwhile, according to Shia, granddaughters and grandsons, whether through a son or daughter's lines, receive a share as if they were children, taking their father's position. Nonetheless, the distribution continues to adhere to the 2:1 ratio for men and women. Grandchild, female or male, takes child position, her or his father position. However, the share obtained still applies the provision of 2:1 between men and women. Child of sons (whether 1 or more) receive a $\frac{2}{3}$ share, while children of daughters receive a $\frac{1}{3}$ share. This gives both groups from the male or female lineage a portion, even if the amount is different. Indirectly, this demonstrates that the Shia is likewise concerned with the position of women, without distinguishing their gender.

Second, if a person dies with a daughter and a son's daughter, according to Sunni, the daughter receives $\frac{1}{2}$ of the inheritance and the son's daughter receives $\frac{1}{6}$ of the inheritance, with the remaining part being handed to the *'asabah*, if any. From the Shia perspective, the share of daughter is $\frac{1}{2}$ as *ashabul furudh*, which is the same as Sunni scholars' stance, and for daughters from sons, all assets are awarded to daughters as the heirs closest to the deceased.

Gender Issues in Shia Inheritance System

The Quran does not explicitly mention grandchildren as independent heirs but recognizes them through the principle of substitution when their parent (the child of the deceased) has passed away. This is supported by Quranic directives in Surah An-Nisa: 4:11 and further clarified through the interpretations and *ijtihad* of scholars. In the Compilation of Islamic Law (KHI), grandchildren are recognized as substitute heirs (*wasiat wajibah*) for their deceased parents. This principle ensures that grandchildren maintain their lineage-based inheritance rights when their parent predeceases the deceased.⁶⁴

In Sunni inheritance law, the emphasis on patrilineal descent reflects both pre-Islamic customs and the Quranic structure of inheritance shares. Shia scholars, however, apply a bilateral approach, granting inheritance rights equally to relatives from both the male and female lines within a hierarchical framework.⁶⁵ Inheritance system is extremely tightly related to lineage, where the process of inheritance occurs for two reasons, namely marriage and family or blood relations.

In Islam, men and women are regarded as equals in their spiritual and legal rights, but their roles and obligations differ based on practical considerations. In inheritance, this is reflected in the Quranic 2:1 ratio for male and female heirs (Surah An-Nisa: 4:11), which

⁶⁴ Hazar Kusmayanti; Lisa Krisnayanti, "Hak Dan Kedudukan Cucu Sebagai Ahli Waris Pengganti Dalam Sistem Pembagian Waris Ditinjau Dari Hukum Waris Islam Dan Kompilasi Hukum Islam," *Jurnal Ilmiah Islam Futura* 19, no. 1 (2019): 68–85, <https://doi.org/10.22373/jiif.v19i1.3506>.

⁶⁵ Imam Muhardinata, "Perbedaan Pandangan Dalam Pengembangan Ahli Waris Menurut Sunni, Syi'ah Dan Hazairin."

balances financial responsibilities traditionally borne by men. In terms of inheritance, the Quran explicitly grants women the right to inherit from their parents. Scholars use *ijtihad* primarily to interpret and address contemporary issues, ensuring the equitable application of these rights. In Indonesian legal thought, figures like Hazairin have advocated for equal inheritance rights for grandchildren from both the male and female lines, reflecting a broader humanitarian approach within the framework of local *ijtihad*.⁶⁶

In Shia inheritance law, women are treated with dignity (*muru'ah*) and equity, reflecting the Quranic principles of gender justice. While men may receive larger shares in certain cases, this is balanced by their financial responsibilities. In essence, God created humans without any differences. In Sunni inheritance law, men may receive larger shares than women in certain cases, such as the 2:1 ratio for sons and daughters. This reflects the financial obligations placed upon men rather than an inherent prioritization. In Shia inheritance law, the closest blood relatives are prioritized for inheritance. This is implemented through a hierarchical system of *thabaqat* (classes), ensuring that relatives in the first class (e.g., children and parents) inherit before those in subsequent classes.

Conclusion

The Shia approach to grouping heirs, interpreting the term *walad*, and applying the concept of *qarabah* significantly enhances women's rights in Islamic inheritance by ensuring equitable recognition and distribution based on proximity and gender neutrality.

⁶⁶ Permana, "Kesetaraan Gender Dalam Ijtihad Hukum Waris Di Indonesia."

While Shia inheritance law recognizes women's rights at all levels, the division of shares adheres to the Quranic stipulation of a 2:1 ratio between male and female heirs, ensuring equity in alignment with their respective financial responsibilities. Shia inheritance law adheres to the principle of bilateral kinship, granting inheritance rights to both male and female lineage. However, the distribution of shares respects the Quranic guidelines. This is evidenced by the recognition of both male and female descendants as heirs at all levels, including *ushul* (straight line up), *furu'* (downward line), and *hawasyi* (sideways line), with their inheritance shares determined in accordance with Quranic provisions. Their inclusion as heirs within the *qarabah* system ensures equitable opportunities to inherit, particularly after the shares of *dzawil furudh* have been distributed. While elements of the patrilineal system prevalent in Pre-Islamic Arab culture are present in Sunni inheritance law, Shia law mitigates this influence by granting inheritance rights to both male and female lineage within a bilateral framework.

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