



Repositioning of Female Children's Inheritance in Indonesia Through Jurisprudence in the Perspective of *Mubadalāh* Theory

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Abstract: Although Indonesia has made legal reforms in the field of inheritance, in practice there are nevertheless problems with the position of girls. The role of Religious Court judges is very large in providing protection for the inheritance rights of girls. If there is a division of inheritance that is treated discriminatory, judges must dare to make breakthroughs in reform. The goal is so that the position and status of inheritance of girls does not experience discrimination. This issue is interesting because some inheritance teachings differentiate between boys and girls, so that they have received criticism from women activists, although from Islamic law experts. This study aims to determine the arguments of the Supreme Court in interpreting the word *walād*. The method used is qualitative, with a normative approach, which is analyzed using the *mubādalāh* theory, which emphasizes the distribution of inheritance on the principles of cooperation, mutuality, reciprocity and gender justice. The results of this study indicate that jurisprudence has responded to equality between boys and girls in the contemporary inheritance system, although in its application it has not been fully followed by Religious Court judges. In determining the position of heirs, it is no longer based on gender, therefore must be repositioned on the basis of the closeness of the bloodline relationship between the heir and the testator.

Keywords: Jurisprudence, *Mubādalāh* Theory, Repositioning of Inheritance, Women.

Abstrak: Meskipun Indonesia telah melakukan pembaruan hukum di bidang kewarisan, dalam tataran praktiknya masih didapati problematika kedudukan anak perempuan. Peran hakim Pengadilan Agama sangat besar dalam memberikan perlindungan terhadap hak kewarisan anak perempuan. Apabila terdapat pembagian kewarisan diperlakukan secara diskriminatif, hakim harus berani membuat terobosan pembaruan. Tujuannya agar kedudukan dan status kewarisan anak perempuan tidak mengalami diskriminatif. Isu ini menarik karena beberapa ajaran kewarisan membedakan antara anak laki-laki dengan anak perempuan, sehingga mendapat kritikan dari aktivis perempuan, bahkan dari para pakar hukum Islam. Penelitian ini ingin mengetahui, argumentasi Mahkamah Agung dalam memaknai kata *walād*. Metode yang digunakan adalah kualitatif, dengan pendekatan normatif yang dianalisis menggunakan teori *mubādalāh*, yang menitik beratkan pembagian kewarisan pada prinsip kerjasama, kesalingan, timbal balik dan berkeadilan gender. Hasil penelitian ini menunjukkan yurisprudensi telah merespon kesetaraan antara anak laki-laki dan perempuan dalam sistem kewarisan kontemporer, meskipun dalam aplikasinya belum sepenuhnya diikuti oleh hakim Pengadilan Agama. Dalam menentukan kedudukan ahli waris bukan lagi didasari atas jenis kelamin, melainkan harus direposisi atas dasar kedekatan hubungan *nasāb* antara ahli waris dengan pewaris.

Kata Kunci: Perempuan, Reposisi Kewarisan, Teori *Mubādalāh*, Yurisprudensi.

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Introduction

One of the legal issues that is always relevant to study is in the field of Islamic inheritance law, especially the debate surrounding the distribution and position of heirs. Inheritance disputes in Religious Courts are usually also related to the position of the heirs themselves, because inheritance problems will be experienced by everyone and are something that can easily give rise to disputes and cross-disputes between heirs or with third parties ([Mandasari, 2022:146](#)). It is undeniable that in the field of inheritance law, there has also been significant development, due to the increasingly complex legal needs in society, as well as patterns of thought that are constantly changing in accordance with the developments of the times that are passed ([Mandasari, 2022: 147](#)). Therefore the essence of Islamic law in the field *hypothetical* is the regulation of the process of transferring assets (*tirkah*) from heir to heir. In Islamic inheritance law, both father, mother, son, and daughter as well as brothers and sisters, husband and wife, all have the same rights in inheriting from the testator, they all receive a share as regulated by the norm in QS. an-Nisa [4]:11. This norm was once by Muhammad Taufiq, former Deputy Chief Justice of the Supreme Court (July 18, 1938-October 30, 2015), he wanted to reconstruct Islamic inheritance law like inheritance law according to Western Civil Code by giving equal shares between men and women, the aim is to realize justice in the distribution of inheritance based on the perspective of gender equality ([Al Mabruri, 2017:113-114](#)).

This discourse on reconstruction is certainly contrary to the *zahir nash*. The Qur'an has stipulated that the share for boys is twice that for girls. This desire has apparently given rise to a rather complicated problem, between maintaining the physical appearance *nash* which has clearly stipulated the share of boys two to one with girls by ignoring gender equality, or making contextual interpretations therefore that the inheritance distribution is equal between boys and girls. In the view of Muhammad Tahrir, in his review, he stated that Indonesia as a country with a majority Muslim population, as in Southeast Asian countries such as Malaysia, Brunei and in Middle Eastern countries such as Morocco and Egypt have made updates to their inheritance rules ([Tahrir, 1987:24](#)). The urgency of this update as an effort to sustain the Islamic family law order (*al-ahwala al-syaksiyah*) as a form of accommodating the demands of the times where therefore far the position of marginalized groups such as women and children has always been ignored in various legal systems. In Indonesia, the renewal of inheritance law can be seen from the rules contained in the Compilation of Islamic Law. The purpose of this renewal is to improve justice for women and their legal position in inheritance ([Tahrir, 1987: 25-37](#)).

However, inheritance law nevertheless leaves some problems, which cause confusion for the heirs. In the context of each heir's share and which of the heirs can *hijab* other heirs, is a problem that certainly requires interpretation in its application. The interpretation mainly concerns the position and rights of daughters to the inheritance of their parents, both when the daughter inherits alone (single) or when she inherits together with other heirs such as the testator's siblings, of course with all the consequences for the inheritance rights of other heirs due to the existence or position of the daughter. Therefore, Islamic law has provided provisions on orderly and systematic inheritance rules, all of which are determined according to the concept of justice, both in the ownership of property for each individual, male and female in a legal manner ([Abdillah, 2022: 286](#)).

The renewal of inheritance law contained in the material of Book II of the Compilation of Islamic Law regulated by Presidential Instruction Number 1 of 1991, is not automatically accepted or understood by various groups of the wider community, and has even become a topic that is endlessly debated and criticized by practitioners, academics, scholars and even by judges of the Religious Court in deciding inheritance disputes. In the context of Indonesian Fiqh, it has also offered justice and equal status between boys and girls, however of course

this desire does not immediately manifest itself as mere equality of portions, however it can also be seen that there is equality of position in preventing other parties from receiving inheritance from their parents ([Arskal, 2009:80](#)).

Starting from this issue, the idea of renewal in the field of inheritance for girls in practice according to the inheritance teachings used in Indonesia, especially related to the share of girls together with the heir's siblings (both with brothers and sisters) has not fully received a positive response from various groups. Although the Qur'an has explained in detail, in reality there are nevertheless differences of opinion in its implementation, especially in determining the position of heirs and completing their distribution.

The debate on the position of the daughter's inheritance together with the heir's siblings can be viewed from several important aspects, among which the siblings have the right to inherit property when the heir has no descendants at all. It will be different when the heir leaves a daughter, will the heir's brothers be-*hijab* nevertheless have inheritance rights, and how this is practiced in the inheritance system that applies in Indonesia.

Playback to the past history before Islam came, the civilization of the ignorant people had known the existence of a system in the distribution of inheritance, however the provisions they used were detrimental to women. At that time only adult men had the right to inheritance ([Hasbi, 2018:13](#)). Then when Islam came, it overhauled the inheritance law system used by the ignorant Arab nation, while also changing ownership of property, especially heirloom property, by replacing it with a fair inheritance law system ([Saleh, 2019:56](#)). Every individual has the right to own property, including women who have the right to receive and inherit their property like men.

The new paradigm is related to the portion of inheritance received based on the position of lineage to the testator, whether as a child, father, mother, husband, wife, grandfather, grandmother, uncle and grandson or even half-sibling. In reality, inheritance law as a provision of Islamic law is widely ignored by Muslims, in reality there are nevertheless inheritance laws that are used in ways that are actually no longer relevant to the demands of the times, although in fact the inheritance law system that has been formulated by Islam is nothing other than the most solution-oriented administrative form in measuring and implementing welfare ([Anzaikhan, 2019:56-80](#)). This study has significance therefore that the distribution of inheritance news accommodates gender equality which has therefore far been too focused on gender and based on its construction in the family. The concept of gender equality aims to eliminate discrimination against women with the concept of justice based on closeness to lineage to the testator ([M. Anwar., H. S. A. Nawawi, 2022](#)). It is hoped that there will be no difference between boys and girls, whether small or large, given the same portion therefore that they get their rights according to their respective provisions.

Studies on the inheritance of daughters are carried out systematically *previous researches* basically it has been put forward a lot, especially it can be read from various classical fiqh books, comparative fiqh (*occurring*), contemporary fiqh and the Compilation of Islamic Law. Other materials are discussed in various scientific study forums and written in journals that review them specifically as in previous studies including: *First*, research conducted by Euis Nurlaelawati, which discusses the position of daughters versus with siblings of the heir towards inheritance equality in Indonesia. In her research, it was concluded that there was confusion among judges when understanding the rules and the reluctance of judges to apply the rules, who considered that only established rules that were considered correct and appropriate could be used in the application of inheritance division as well as the inheritance position of daughters ([Nurlaelawati, 2012:75-90](#)). *Second*, research written by Imam Jauhari about the position and inheritance rights of daughters in Islamic inheritance, which is emphasized either alone or together with other relatives and the influence for other heirs with the existence of daughters. The conclusion states that the position of daughters is equal to the

degree of sons therefore that they can become meng-*hijab* siblings of the heir, and grandchildren of the male off spring have the same status as the female offspring as *dzāwil furūd* and both can be *ashābah* ([Jauhari, 2016:9-17](#)). *Third*, research by Tedi Supriadi raises the theme of reinterpretation of women's inheritance, which tries to highlight the inheritance of girls which is different from boys, thus giving rise to the stigma of Islamic inheritance law which tends to be discriminatory and gender biased, whereas the formulation of inheritance in the fiqh book is nothing other than the interpretation of scholars whose social setting the scholars live in. The results of this study construct inheritance rights between men and women to be one to one with the note that women are the backbone of the family economy, applied in certain conditions or in emergency conditions and through agreements between heirs ([Supriadi, 2016:65-78](#)). *Fourth*, research that raises the topic of inheritance justice in the position of girls *ashe calls out* against the heirs based on the Supreme Court decision written by Kamarusdiana and friends. The results of this research concluded that the Supreme Court in deciding the matter took the opinion of Ibnu 'Abbas ra. which equates the inheritance position of daughters with sons therefore that it can prevent the heirs ([Kamarusdiana, 2021:221-232](#)). *Fifth*, research that examines the meaning *walād* inheritance based on theory *hudūd* Syahrur and the Islamic jurisprudence scholars, who were studied by Jamaluddin, based their study results on the theory *hudūd* then the word *walād* interpreted as boys and girls, while Islamic jurists interpret it as only boys, and girls cannot be *ashābah* ([Jamaluddin, 2024:113-129](#)).

Scientific research on the inheritance position of daughters together with the testator's siblings has actually been widely studied in various discussion forums and scientific works, as well as research on the inheritance jurisprudence of daughters together with the testator's siblings. Whereas, research that emphasizes and focuses on the repositioning of inheritance of daughters in Indonesia through jurisprudence that specifically studies it from the perspective of the theory of inheritance. *I asked*, can it can be said that no one has discussed it specifically. This author's research has differences when compared to previous research, such as the five literature reviews above, and it is hoped that this research can provide a real contribution to the unification of national inheritance law in Indonesia. From the description above, the main issue in this article is: What is the position of the inheritance of daughters in the inheritance teachings that apply in Indonesia? What is the position of daughters *asashābahin* the jurisprudence of the Supreme Court of the Republic of Indonesia from a theoretical perspective *be fruitful*.

Methods

This study was analyzed using qualitative methods, the author intends to analyze in depth the inheritance of daughters based on the jurisprudence that has been decided by the Supreme Court of the Republic of Indonesia. From the presentation of existing data, then explored from the conceptual dimension for daughters in their position as heirs to the inheritance rights of the testator's siblings. By using qualitative methods, research can provide a deeper understanding of how inheritance law is practiced in social reality, and how the Supreme Court's decision impacts women and society as a whole. Whereas, this type of research is library research (*library research*), then the data source is obtained from library data, namely by reviewing several references contained in the Qur'an, hadith, scriptures, books, laws and reputable journal articles that are relevant to this research study, especially those discussing Islamic inheritance law, especially the position of inheritance of female children. The data source is a normative analysis framework for analyzing the Supreme Court Decision, especially regarding women's inheritance, therefore this normative analysis is to explore how judges apply the law, and how these legal regulations impact women. In this study, the data to be explored is qualitative descriptive data, therefore the data processing and analysis techniques used are qualitative analysis by collecting data obtained that are

correlated with the research theme. Furthermore, therefore that this paper is oriented and focused, a gender-just legal approach is used, namely using the theory *mubādalāh*.

Results

Understanding and History of Islamic Inheritance Law

Islamic Inheritance Law, also known as inheritance law, *farāidl* science, and *mawārist* fiqh, according to Amir Syariffudin is an effort to resolve the division of the inheritance of a deceased family member ([Syariffudin, 2004:35](#)). *Al-faradlah* plural form of *al-faridlah* with meaning *al-mufrūdlah* which means 'something that has been made obligatory', with the meaning of 'divisions that have been determined in terms of their portions or amounts' ([Addys, 2004:11](#)). The word *sub-mirror*, masdar form *warásta*, *yarístu*, *mirástan*, ورث means 'transfer of something from one person to another' ([Ash-Shabuniy, 1995:48](#)). In terms of inheritance law, it is the process of transferring the property rights of a deceased person to the living heirs, which can be in the form of movable and immovable objects, or rights according to the provisions of sharia' ([Ash-Shabuniy, 1985:31](#)).

According to Wahbáh Az-Zuhailí, it is something left by the deceased in the form of wealth and rights that become the rights of the heirs according to the provisions of the law after the death of the heirs ([Az-Zuhailí, 1989:243](#)). Based on the description above, it can be concluded that Islamic inheritance law is the legal science that governs the transfer of the property of a person who has died to his heirs in the form of movable and immovable objects or the rights attached to them.

When examined, it turns out that the history of inheritance law is inseparable from the pre-Islamic Arab civilization, if observed, the social structure is rigid and patriarchal, the rules in customs and tribal traditions regulate various aspects of community life absolutely, including in terms of inheritance distribution. The inheritance system does not provide a concept of justice for weak groups such as daughters and parents ([Kemenag, 2013:5](#)). Inheritance is only given to men, because they are considered the successors of the family, have the ability to lead or defend the tribe. The inheritance system at that time was based on the theory of power and ability to defend their tribe, not blood relations or kinship. Daughters do not have inheritance rights, are treated as part of the property that can be inherited, they are in a subordinate position in the social structure ([Zikri, 2024:15](#)). According to Maimun Nawawi, the position of daughters is not considered as heirs at all, because they are considered to have no role in protecting or defending the tribe ([Nawawi, 2011:47](#)). In the end, a woman depends on men in all matters including the family economy.

However, there were also some Arab tribes during the Jahiliyah period that gave certain rights to women, and that also applied to women who had a noble position or a certain tribe. Therefore in the pre-Islamic inheritance system there was inequality because women's rights were ignored, and the wealth of the family or tribe had to be guarded tightly by men as an instrument in maintaining the power of their tribe.

Law of Inheritance of Daughters in Islam

For centuries, women's positions were under the dominance of male power relations, women were used as palace puppets to satisfy the ruler's lusts, were bought and sold, and in households became the power of their husbands. This condition almost occurred in all world civilizations at that time, not only in the pre-Islamic Arab nation, however also in the Greek, Chinese, Persian, Indian and therefore on ([Shaikh, 1991:3](#)). Islam came with a noble mission, namely to reform the inheritance system, a mission of legal principles that do not see differences between men and women, obtaining the same rights as heirs, however only the comparison of the distribution is different. Through QS. an-Nisá [4]:19 opened a new paradigm for the Arab nation regarding inheritance for women:

يَا أَيُّهَا الَّذِينَ آمَنُوا لَا يَحِلُّ لَكُمْ أَنْ تَرِثُوا النِّسَاءَ كَرْهًا وَلَا تَعْضُلُوهُنَّ لِتَذْهَبُوا بِبَعْضِ مَا آتَيْتُمُوهُنَّ إِلَّا أَنْ يَأْتِيَنَّ بِفَاحِشَةٍ مُبَيِّنَةٍ ۚ وَعَاشِرُوهُنَّ بِالْمَعْرُوفِ ۚ فَإِنْ كَرِهْتُمُوهُنَّ فَعَسَى أَنْ تَكْرَهُوا شَيْئًا وَجَعَلَ اللَّهُ فِيهِ خَيْرًا كَثِيرًا ۙ ١٩

It means: “O you who have believed, it is not lawful for you to inherit women by compulsion, nor do you oppress them, wanting to take back from them some of what you have given them, unless one of them has committed an abomination. And associate with them in a manner that is proper. If you dislike them, (be patient), for it may be that you dislike a thing while Allah has placed in it a great deal of good”.

This verse is a form of inheritance law reform where women cannot be equated with property that can be inherited, it is not halal to inherit it under any pretext and any means. A fundamental change occurred, women have the right to inherit property inherited from their late husband. Husband and wife can finally inherit from each other, if the husband dies and leaves children then the wife gets 1/8 (one eighth) of the share and if there are no descendants, she gets 1/4 (one fourth) of the share with the descent of QS. an-Nisa [4]:12. Therefore that finally a woman can inherit the inheritance from the marriage line (*al-musaharah*), kinship (*al-qarabah*) and set free the slave (*al-walá'*).

In the book of *munakah*, the position of men is given a special place as the head of the family. It does not stop there, the position of women is marginalized by *fiqh* and can also be found in cases of inheritance disputes. The provisions regarding inheritance according to QS. an-Nisa [4]:11 have stated that the share of women is half the share of men, therefore that for some groups the evidence is *nash*. This has been used as an absolute justification for men having absolute advantages when compared to women, without using a sociological basis. Thus, the classical concept of Islamic jurisprudence, in inheriting the property left by parents, for daughter *sshulbiyah* there are three possibilities, namely:

1. Receive half (1/2) of the share, with the provision that if the child is an only daughter, and does not inherit together with her brothers, which makes her the *ashábah* with the boys. If he is with his brother then his position is *asshábah bil gáir*, namely receiving the remaining assets from you drill in *ashá* or take the entire property *tealif* the testator has no heirs you drill in *ashá* with the provision that she receives half (1/2) of the share (Umam, 2006:89). A daughter does not receive half (1/2) of the inheritance if the son receives the share *ashábah*, because if he gets half (1/2) then for a daughter it could be the same as a son or even moreover, and Islamic law does not permit this type of inheritance distribution model.
2. Receive two-thirds (2/3) of the share, entitled to receive it if there are two or more daughters, on condition that there are no sons *asahábah bil gáir* (Aldizar, 2004:116).
3. Daughter *assahábah bil gáir*, requires the presence of others to make it *asashábah* and jointly acquire the rest of the property (*ushábah*) which is distributed to the other heirs. For female children, if they are together with their male siblings, whether they are only one daughter or many, and whether they are only one son or many, then the female child's position becomes *assahábah bil gáir* with the provision that boys receive twice the share of girls (QS. an-Nisá [4]:11 and an-Nisá [4]:176).

Therefore the inheritance law in classical *fiqh* adheres to a bilateral individual inheritance system, namely that which is drawn from the lineage of two sides (father and mother) therefore that between men and women there is no difference in inheritance rights, thus daughters receive a share of their parents' inheritance, however what is different is the portion of each share.

The legal revolution carried out by the Prophet Muhammad SAW was a form of granting inheritance rights by Islam to women, through QS. an-Nisá' [4]:7, which is a historical milestone that provides equality for men and women, having the same rights to enjoy the inheritance of the heir, whether they are related. *nasábor* marriage. The transfer of property for women is regulated by providing a limit on the share for boys who only get twice the rights

of girls. This provision also applies to fathers and mothers, where the father gets twice the share of the mother as in the case of Umaryatain which was resolved by Caliph Umar Ibnú Khátab ra. Likewise, this provision applies to siblings, if the siblings consist of a man and a woman ([Permana, 2018:17](#)).

Inheritance Law of Girls in Indonesia

In practice, the inheritance system in Indonesia adheres to three systems, namely Islamic Inheritance Law, Customary Inheritance Law, and Inheritance Law according to the Civil Code. (*Civil Code*), specifically for Muslims subject to the Islamic legal inheritance system, the basis of which is Article 49 of Law Number 3 of 2006 concerning Amendments to Law Number 7 of 1989 concerning Religious Courts. At the implementation stage, a person cannot use two forms of inheritance systems at once, inheritance settlement may only use one inheritance law provision. In Indonesia, the inheritance law of Muslims has been regulated in the KHI which is basically derived from the opinions of the majority of scholars including the opinions of the Syafi'i school of thought ([Somawanita, 2009:142](#)).

The renewal of inheritance law through the Compilation of Islamic Law in Indonesia through the regulation of Presidential Instruction Number 1 of 1991, the comparison of male inheritance rights has twice the share of females as stated in Article 176 of Book III of the KHI, if there is one (single) daughter, then her share is half ($\frac{1}{2}$), if there are two or more people they together receive a share of two-thirds ($\frac{2}{3}$), and if together with a son, the son's share is two to one with the daughter.

Then through Article 182 of the KHI, the share of both male and female siblings is determined by whether or not there are children from the testator, the existence of the word *walád* in the Qur'an, while the majority of scholars interpret it as a boy only ([Nasution, 2017:5](#)). Whereas, the KHI does not explain whether *walád* interpreted as a boy only, or a boy and also a girl, and is also in line with the opinion of Ibn 'Abas ra. therefore as long as there are children, both boys and girls, the inheritance rights of those who have blood relations with the testator, except for parents, husband and wife become veiled as per Article 182 ([Somawanita, 2009:145](#)). This is a breakthrough that provides steps as well as understanding where girls have obtained an equal position with boys, in relation to *hijab mahjúb* when daughters jointly inherit with siblings. Thus, inheritance law through KHI has basically given special attention to the inheritance position of women in Indonesia.

In general, Indonesia tends to place a nuclear family model consisting of father, mother and child without involving siblings ([Khisni, 2011:26](#)). It turns out that the heir's siblings do not have any responsibility towards their nieces, because they are considered to have responsibility towards their respective families, in this era Indonesian society has changed towards an individualistic attitude, uncles no longer care about their nieces ([Nasution, 2017:16](#)). Therefore that the daughter can *hijab* siblings of the heir, in a modern society that provides balance between men and women, including in the inheritance system in Indonesia.

Long before, Hazairin had long seen the reality of the implementation of Islamic inheritance in Indonesia, then initiated an inheritance system that was moreover in accordance with the conditions of Indonesian society, namely the bilateral inheritance system where everyone can draw their descendants through their father or mother ([Tohari, 2018:66](#)). The point is that as long as there are nevertheless descendants, both male and female, they absolutely *hijab* brother to be the heir.

The Urgency of Mubadalah Theory in Interpreting Inheritance Texts

Theory *mubādalāh* has only recently emerged which allows Islamic texts to be understood with the spirit of monotheism which places men and women in an equal position as full subjects in human life ([Kadir, 2019:35](#)). As the founder reading *mubādalāh* Faqihudin Abdul Kodir defines the term as *mubādalāh* an understanding in the relationship between two

parties that carries the spirit and contains the value of partnership, reciprocity, cooperation, reciprocity and reciprocal principles ([Kadir, 2019:59-60](#)).

In Indonesian, the term *mubādalāh* interpreted as 'equality between men and women', both of which benefit each other ([Lestari P, 2020:54](#)). The expression *mubādalāh* It itself is used moreover for the movement to resist all forms of values that are hegemonic and tyrannical (Asnawi, 2024). *Mubādalāh* born from the results of intensive interaction with the activities of women's empowerment movement institutions from an Islamic perspective, an intellectual process for the birth of concepts and method *blessed* which was published by Faqihuddin Abdul Kodir as the initiator of the method *mubādalāh* for the first time ([Kadir, 2019:19](#)).

The urgency of using theory *mubādalāh* in order to realize a new perspective that is humanistic, fair and *equality* because we see the modern socio-cultural context today, by trying to re-examine the moral ideas contained in the Qur'an, especially the text of the verses and hadiths on in heritage (Asnawi, 2022). *Recitation It is a blessing* as a new form of interpretation initiated by Faqihuddin Abdul Kodir, currently known as reciprocal interpretation, he was inspired by verses of the Qur'an and hadith about the mutual relationship between men and women, which in Indonesian is understood as mutually beneficial reciprocity.

Root *mubādalāh* used in the Qur'an approximately 44 times in various forms of words, in the cosmology of the Qur'an, humans are *caliph* Allah SWT., on the face of the earth to look after, preserve, treat and preserve all its contents. Verses that use general redaction, which inspire reciprocity and cooperation in human relations, among them Q. S. an-Nisāa' [4]:1, Q. S. al-Mā'idah [5]:2, Q. S. al-Anfāl [8]:72, Q. S. al-Hujarāt [49]:13 and Q. S. at-Taubāh [9]:71. These verses teach reciprocity between men and women, one is a helper, supporter, lover and supporter of the other.

While there are many hadith texts that serve as inspiration in the principle of mutuality between each other, especially between men and women. These hadith texts teach a value to love each other, help each other, cover up each other's faults, and not initiate criminal acts and bad things to each other, including the hadith of helping each other and therefore on (for example Sahih Bukhari number 13, Sahih Muslim number 179, Sunan at-Turmudzi number 2705, Sunan an-Nasai number 5034, Sunan Ibn Majah number 69, and Musnad Ahmad number 14083).

Whereas the principle *mubādalāh* that men and women are both servants of Allah, and *khalifah* on the face of the earth. *Mubadah* a perspective and understanding in the relationship between two parties, which contains the value and spirit of partnership, reciprocity, cooperation, reciprocity and reciprocal principles. Focused on the provisions of the relationship between men and women in the domestic and public space ([Kadir, 2019:59-60](#)).

How meaning works *mubādalāh* towards Islamic source texts consists of three steps that must be taken ([Kadir, 2019:64-70](#)), namely:

1. The first step is to find and confirm the principles of Islamic teachings from universal texts as a foundation for meaning, which is general in nature throughout all themes (*al-mabadi'*) and is specific to a particular theme (*al-qawā'id*), as a basis for inspiration for the meaning of a series of methods *be fruitful*.
2. The second step is to find the main idea recorded in the texts to be interpreted. This can be done simply by removing the subject and object in the text and the predicate in the text to become the meaning or idea to be interpreted *mubādalāh*-between the two sexes.
3. The third step is to derive the ideas found in the text to genders that are not mentioned in the text. The text does not stop at just one gender, however also includes other genders. Therefore that the method *mubādalāh* this confirms that texts for men are also for women, and vice versa.

As a method of fair interpretation, the theory *mubādalāh* has an urgency in interpreting the texts of verses and hadiths, especially regarding the inheritance of daughters, because this life, including the inheritance of the testator, is intended not only for sons however also for daughters, and its benefits must be felt by both of them in their position as heirs.

Discussion

Position of Daughters as Companions in Jurisprudence

Article 182 of the KHI is a form of family law reform in the field of inheritance law in Indonesia, which has given equal status to sons and daughters in terms of *hijab mahjūb*. If we trace the practice in the jurisprudence of the Supreme Court of the Republic of Indonesia, it has given special attention to the inheritance status of female children. In general, judges in the Religious Court environment refer to the KHI in resolving cases of requests for determination of heirs (PAW) or in inheritance dispute lawsuits, this can be seen from various kinds of decisions and decisions in the directory of decisions of the Supreme Court of the Republic of Indonesia at the link www.putusan3.mahkamahagung.go.id.

Indonesia, although the majority is Muslim, in reality Islamic inheritance law is not fully implemented. With the diversity of cultures and people's understanding of the inheritance system, it also affects the application of inheritance law that has been regulated in the Compilation of Islamic Law, in practice there is no uniformity of inheritance law in Indonesia ([Saifuddin, 2020:95](#)).

However, there are also some judges who do not use the KHI in applying material law when resolving inheritance disputes, some of whom nevertheless use and refer to the books of *farāidl* or classical *mawārist* fiqh. The portrait of the Religious Court's decision in family law cases is not uniform, due to different judges' references, and if they only refer to the KHI and fiqh alone, it is unlikely that the decision will side with women ([Warman, 2019:24](#)). It could be that the deviation from the provisions of the KHI is solely to create *kamashlahatan* and legal justice, because each case, although of the same type, the facts of the incident and the legal reasons are certainly different, and the sociological aspect also allows it to be a separate consideration for judges, and moreover use of legal reasons following *nash* Shari'a is the main foundation, the existence of fiqh books is nevertheless strong in influencing judges' decisions in Indonesia, because it nevertheless strongly adheres to the traditions that surround it ([Kharlie, 2013:312](#)).

There are at least twelve Supreme Court jurisprudence principles that contain breakthroughs in the renewal of Islamic inheritance law in Indonesia. Among them, through the decision dated July 27, 1995 with registration number 86K/AG/1994/MA, this is one example of an inheritance case involving the inheritance of a daughter together with the testator's brothers and sisters. Whereas, in case registration number 184K/AG/1995/MA, dated September 30, 1996, it involved the inheritance of a daughter together with several of the testator's sisters. Through this jurisprudence, the Supreme Court is of the opinion that a daughter can *hijab* siblings (both brothers and sisters of the testator). As long as the testator leaves behind children (whether sons or daughters), then the rights of the heirs who are related *nasāb* with the heir except for parents and husband or wife who are blood relatives of the heir become *hijab*. Hereas, in decision number 122K/AG/1995/MA dated 30 April 1995, it was stated that girls can become *hijab hermanor* prevent the heir's siblings, and the decision dated 26 February 1998 with case register number 327K/AG/1997/MA stated that the daughter could dispose of the assets (*ashābah*), by not giving *ashābah* to the uncle therefore that the daughter can *hijab* uncle to receive inheritance from the testator as his brother.

The argument used is that as long as there are sons and daughters of the testator, then the inheritance rights of those related by blood to the testator will be blocked except for parents, widowers and widows. This jurisprudence does not view gender differences as a manifestation of the concept of gender justice in the distribution of the testator's inheritance.

To strengthen this concept of balanced justice, the Supreme Court has issued a regulation in the form of Supreme Court Regulation Number 3 of 2017 concerning Guidelines for Trying Women in Conflict with the Law ([Ilhami, 2020:245](#)). Implicitly in this regulation, in essence the principle of balanced justice does not differentiate rights to inheritance based on gender differences and does not give rise to discrimination against women ([Ilhami, 2020:258](#)).

At first glance, this jurisprudence is indeed visible, and is considered to violate the norms of inheritance law as in the tradition of mawárist fiqh or the book of *faráidl*, therefore that the meaning *walád*. In the context of inheritance, it will certainly have implications for the Islamic inheritance law system in Indonesia, including the position of daughters being able to *hijab* who originally got the share of inheritance together with the daughter, ended up not getting a share at all, such as a brother or sister of the heir. In fact, this method of jurisprudence brings the daughter's position to the position of being the heir who gets it *ashábah*, the consequence is that the daughter herself can receive all the inheritance from her parents ([Lubis, 2024:20-25](#)).

Its application, in terms of resolving inheritance disputes in the Religious Court environment, has been followed and implemented by some judges in resolving inheritance disputes, with the aim of realizing legal certainty between heirs. This means that in terms of practice until now, it is basically nevertheless flexible because it is not solely based on classical Islamic jurisprudence provisions. *per se*, However, the legal basis can be accommodated by paying attention to the sociological aspects of the justice-seeking community. Therefore that the judge can interpret it to provide *mashláhat* for heirs through sociological interpretation. This sociological interpretation is of course an interpretation by looking at the social factors that influence the disputing parties. This factor is inseparable from Indonesia's diversity which causes inheritance law to develop following the current trend of modern family law reform, the concept is therefore that the law that is made must pay attention to the law that lives in society (*living law*) This means that when inheritance law is applied, the reference is inheritance law which refers to the socio-cultural aspects of society ([Maylissbet, 2019:17-18](#)).

The jurisprudential principles as studied above are basically contrary to the provisions of the mawáris jurisprudence which have been quite well established and used by Muslims in Indonesia, where the inheritance rights of female children are given according to their respective portions *asashaabul furúdl*, unless you get through *ashábah* together with other heirs. In terms of inheritance *kalálah* most scholars think that *walád* interpreted to only apply to boys, in line with what was practiced by the Prophet Muhammad SAW. Which gives sisters the same share as daughters ([Coulson, 1971:66](#)). Whereas his friend Ibnu 'Abbas ra., perform and extend the meaning *walád* as narrated by Ibn Jarir ra. Who said that Ibn 'Abbas and Ibn Zubair were of the opinion that sisters do not get a share *marriage* if the testator leaves a daughter ([Thalhah, 1992:536](#)). This is an interpretation of the word '*walad*' which is contained in the inheritance verse which is not only interpreted as a son however also includes a daughter. The provisions in QS. an-Nisa [4]:176 have the same root as *walád* used by the Qur'an is not only used for boys however also for girls as used in QS. an-Nisa [4]:11 by using a *poet plural (plural)* from *walád* ([Jauhari, 2016:14](#)).

The provisions for the division of inheritance of the testator in QS. an-Nisa [4]:11, is a norm that is generally used in mawáris fiqh, as well as that legalized by the Compilation of Islamic Law in Article 176, and the two-to-one division model between sons and daughters is nevertheless valid, even if there is a social change, the percentage is small and only in cases ([Rofiq, 2000:374](#)). Not much different in practice in the current Religious Court environment, which also applies a two-to-one inheritance division model. However, sometimes the resolution of inheritance disputes does not use the two-to-one model, it can be the other way around or one-to-one. Behind the text of QS. an-Nisa [4]:11, there is actually a moral message contained in this verse, namely that patriarchal domination must be gradually eroded,

because all forms of rules that do not benefit a woman must be set aside, as well as the concept *ashābah bin nafsi*.

In practice, both in society and some in the decisions of the Religious Courts, if we examine further the model of inheritance distribution for daughters when referring to the Islamic inheritance law system in Indonesia, we obtain data that there are three models, namely the distribution model according to the teachings of the Sunni Imam Syafi'i School which is patrilineal, according to the bilateral Hazairin concept, and according to the concept of the Compilation of Islamic Law. Regarding the share of daughters as long as there is no father, mother, widower and widow, by using these three teachings, it turns out that there are differences in their application. Both daughters and sons as heirs always receive a share of their parents' inheritance, these heirs cannot be *hijab* by anyone as long as they exist, therefore daughters have the right to receive inheritance. Daughters are a category *yawl furd* namely as an heir who receives a portion that has been determined in accordance with *qath'i* both in the Qur'an and in the hadith. Daughters when together with sons, become *asahābah bil gair* belong again *ashab al furudh* because together with the male heirs he is classified *asashābah* (Mustari, 2013:117).

If there is only one daughter then she gets half ($\frac{1}{2}$) share *teal* in the inheritance section of an only daughter, there is no difference between the three inheritance teachings (patrilineal Syafi'i, bilateral Hazairin and KHI). However, what about the remaining half ($\frac{1}{2}$) part, in the patrilineal teachings of the Syafi'i School, if there are no other heirs, it means that there is *iskalālah*. According to the patrilineal teachings of the Shafi'i School, *kalālah* that is if the testator dies without leaving any sons and descendants through sons and the testator's father dies first, therefore that in this teaching the remaining half ($\frac{1}{2}$) of the portion can be distributed to *baitul* case. When using Hazairin's bilateral teaching, it does not happen *kalālah* although there are other heirs besides the father, mother, widower and widow. Then half ($\frac{1}{2}$) of the remaining assets occur *order* (return of remaining assets) namely by returning it to the daughter, therefore that the daughter uses up all the asset *asshābah*. In the teachings of KHI this does not happen *kalālah* although there are other heirs besides the father, mother, widower and widow, the KHI does not mention who the remaining half ($\frac{1}{2}$) portion is given to.

If the testator leaves a sister who is of the same blood as the daughter. Here the sister receives her share *assahābah maal gairi*, namely half ($\frac{1}{2}$) of the remaining assets after deducting the share of a daughter, namely half ($\frac{1}{2}$) of the share if there are two or more people then the half ($\frac{1}{2}$) of the share is divided equally between them, as in the concept of the Sunni inheritance teachings of the Syafi'i School and KHI, while according to the bilateral teachings of Hazairin, a daughter can spend all the assets as a share *ashābah* and through *rad*, although together with the testator's brother. If the testator has left a brother who is of the same blood along with the daughter. Here the brother gets his share as *Ashābah bin Nafsi*, after the daughter gets half ($\frac{1}{2}$) of the share.

Repositioning of Women's Inheritance in Jurisprudence from a Mubadalāh Perspective

The issue of inheritance in the terminology of *mawārist* fiqh or the science of *farāid* basically there are different points of view in the division of inheritance. The civil law dimension is moreover dominant in the study of *mu'amalah* fiqh and horizontal interpersonal relations. *Mawārist* fiqh is very open to opportunities to be carried out *ijtihad*, which has a strong basis in *Qaidāh al Fiqiyah* (Almanhaj, Rule 50) which reads:

الأصل في الشرع في المعاملات الحِلُّ والإباحة إلا بدليل

It means: "The original law when determining the conditions, in *mu'amalah* is *halal* and permissible unless there is evidence that prohibits it".

This is a principle in the context of the *mu'amālah* space which certainly has a relatively broad potential for developing legal concepts in a moreover dynamic direction therefore that legal rules are moreover progressive and can adapt to the development of the times. Like wise with other fiqh such as mawārist fiqh which tends to be in touch with socio-cultural relations and the development of society that often emerges and experiences changes, therefore that a reinterpretation of the provisions of verses or hadiths regarding the distribution of inheritance, especially the position of daughters, is needed. Basically, the verses on inheritance are nothing other than a form of response to the socio-historical conditions of Arab culture, where women in the traditions of pre-Islamic Arab customs were not given any portion of inheritance rights at all, in fact women themselves were made like goods or objects that could be inherited.

The main purpose of revealing the inheritance verses was none other than to raise awareness in the Arab society of the *Jahiliyah* era, as an implied message where women were not objects of law however rather subjects of law. Socio-sociologically, the inheritance verses were the initial step to carry out reforms brought by Islam for the improvement and positioning of women as equals to men. The steps to improve inheritance should not stop there however must be adjusted to space and time along with the development of the legal culture of society, by using various theories and disciplines of science, one of which is by using the theory be fruitful.

The existence of criticism from various activists including modern family law thinkers, especially women activists regarding the distribution of inheritance which nevertheless contains discrimination and injustice for women, needs to be responded to, especially in the distribution of disputes in the Religious Court as the spearhead in the implementation of Islamic law in Indonesia. In theory *mubādalāh* the Supreme Court's decision on the inheritance of daughters is in accordance and in line with the spirit of the struggle for gender justice, of course it is very different from the inheritance model according to Sunni jurisprudence or according to the Compilation of Islamic Law which is nevertheless patrilineal, where daughters only get $\frac{1}{2}$ (half) of the share, and if two or moreover people get $\frac{2}{3}$ (two-thirds) of the share. The concept of a two-to-one inheritance division in theory *mubādalāh* implemented only in a flexible manner, this model can be changed one to one to suit the conditions of the heirs themselves, therefore that there is no difference between boys and girls. Likewise, the position of girls must be the same as boys, namely both can become *ashābah* and can-*hijab* other heirs as long as there is a child, except father and mother, widow or widower.

In line with the theory be fruitful, Muhammad Shahrur has his own view on the division of inheritance, if referring to the provisions of the verses regarding inheritance, because its application in the division of inheritance until now nevertheless leaves unresolved problems ([Shahrur, 2004:149](#)). Therefore, Shahrur tries to offer his limit theory which is better known as the theory *hudūd*, In carrying out the provisions of the law of Allah SWT, there is a maximum limit (*al-hadd al-adna*) and its minimum limits (*al-hād al-a'la*) (A. Nawawi et al., 2021). According to Shahrur, the laws of Allah must be based on provisions that are elastic or dynamic in nature, the most important thing is that they are nevertheless within the maximum area or limits and are within the minimum limits that have been determined. Furthermore, Shahrur said that the area *ijtihad* must be between the minimum and maximum limits, then as long as *ijtihad* it's in the frame *hududullah* namely in accordance with the limits of Allah's provisions, it is not permissible to deviate from the laws established by Allah SWT ([Shahrur, 2004:151](#)).

In the context of theory *hudūd* this Shahrur can be applied in inheritance law in Indonesia, regarding the provisions for the division of inheritance property, namely a division of two to one (2:1) between the male and female portions, where two portions are the

maximum portion for males, and one is the minimum portion for female children, in theory *hudūd* this is not far from the theory *mubādalāh* the existence of mutuality, equality and equity means one to one can also be applied in the distribution of inheritance either through reconciliation between heirs or through a decision of the Religious Court.

While in line with the theory *mubādalāh* Hazairin offers a theory of grouping heirs using the theory *maqāshid asy syarī'ah* And *ibrāh an nās (mantúq)*. *Maqāshid asy syarī'ah* is a requirement from syar'i that can only be known through a study whose emphasis is on the provision of the values of harm for mankind in every burden of law that Allah SWT., lower (Rusli, 1999). While about *ibrāh very nas* the study obtained from pronunciation clues regarding the intended meaning, whether it is original or not, one pronunciation is sometimes created to indicate that the intended meaning is the original (Rahman, 1986). *Ibrāh very nas* can be seen from the provisions of QS. An-Nisa [4]:11 when determining the portion for boys, as well as the portion for girls together with boys, with the provision of two to one using *dlalāh ghairú lafzīyah*.

This theory has given rise to the grouping of heirs, in Hazairin's view, into three groups (Hazairin, 1981:18), namely:

1. Group *dwazíl furúdl* then the heirs consist of daughters without sons, mother, father if there are children, widowers, widows, brothers in the case of *kalālah*, sister in law *kalālah*.
2. Group *dzawil al-qarabah* then the heirs consist of sons, daughters together with sons, sisters together with brothers in *kalālah*.
3. Group *mawáli* (replacement heir) namely as an heir replacing someone's position in obtaining a portion of the inheritance that would have previously been obtained by the person being replaced because of blood relations in the descending line, the ascending line or the lateral line.

The theory of grouping heirs proposed by Hazairin is very different from the concept of heirs that has been introduced to Muslims in Indonesia in general or according to classical fiqh, not only the difference in the grouping of heirs, however also in the application of the division (A. Nawawi et al., 2021). In classical fiqh inheritance, heirs are grouped with *dzawil furudl*, *Companions*, and *dzawil arham*. *Ijtihad* in the field of inheritance law, what Hazairin did was almost the same as the concept of the theory *mubādalāh* which aims to ensure equality or gender justice between the inheritance shares of boys and girls.

As is well known, the concept of inheritance of Imam Syafi'i ra., which the majority of Muslims in Indonesia have made into a normative inheritance concept that is patrilineal in nature, while the concept of gender justice was introduced by Hazairin with the concept of bilateral inheritance through groups. *Mawáli* because this concept is in line with the standardization of gender justice in theory *mubādalāh*. This theory is the latest understanding in the concept of inheritance, especially in Indonesia, which is not known in the concept of Sunni inheritance and the concept of Shia inheritance. Hazairin as a pioneer or originator of the concept *mawáli* as a new theory, although it also uses the concept *dzawil furúdl* however he rejected the concept *ashābah*, he prefers the terminology *dzawil qarābah* namely the heirs of the closest relatives. The concept of bilateral inheritance as an embodiment of the form of equality of male and female inheritance, as a form of implementing gender equality.

On the other hand, Siti Musda Mulia, also openly criticized the inheritance distribution model practiced by Muslims in Indonesia therefore far, she interpreted and recontextualized the inheritance verse according to the social culture of society in Indonesia. In this case, an example is given regarding the distribution of inheritance, the property is given to the heirs who have closer access to the testator. In the tradition of Indonesian society, it is customary for daughters to always care for their parents when they are old, when their parents are sick or in good health. However, in practice, the inheritance portion for sons is actually greater than for daughters. According to her, this method of distribution is an injustice that must be

given attention ([Musda, 2012:133](#)). In theory *mubādalāh* the concept of a larger share of male inheritance with a female child can no longer be applied because it is contrary to the concept of gender justice. The reason that male children have heavier and greater responsibilities when compared to female children therefore that it must affect the size of the inheritance they receive is not justified at this time and should be repositioned into a form of balance and equality without having to look at the big role however must be based on the closeness of the heir to the testator.

When the inheritance verse was revealed compared to the current socio-historical conditions, it was very different. Where women have now become the backbone of the family, working and providing a living has become something that is normal and commonplace, when compared to the Arab nation before the inheritance verse was revealed, according to the culture of the Arab nation of ignorance, girls were not given access to the public sector, now girls have participated in the public sector.

Furthermore, Siti Musda Mulia reviewed the verse about '*li adz dzákari mislú hadzi al untsayáen*' (part for boys such as part for two girls), this norm can only be applied in certain cases. Therefore that in the division of inheritance is not included in the static provisions, however experiences continuous movement in various cases that have and will occur. In this case, an example of the mother's inheritance can be taken, there are several versions, thus it can be understood that the division of inheritance is actually dynamic, therefore the condition of Arab society at the time the inheritance verse was revealed in the seventh century AD with its sociological conditions cannot be applied in the twenty-first century ([Musda, 2012:137](#)).

Basically, the revelation of the inheritance verse actually provides a new paradigm about the concept of justice in the distribution of inheritance that can be accepted by society. Through this verse, Islam actually wants to realize a bilateral kinship system, meaning that both men and women have the same position before the law, and also moreover specifically in the field of private law such as inheritance law. Even therefore, the existence of an inheritance distribution model that refers to using a two-to-one model does not mean that it does not see socio-historical phenomena, at the same time there is also the idea of a one-to-one division of boys and girls, therefore such a model cannot be said to have deviated from the spirit and norms of the text of QS. an-Nisa [4]:11, in theory *mubādalāh* because women also have the same and equal position including in the field of inheritance law. The crucial issue in the inheritance law system in Indonesia is the issue of gender justice, the empirical historical reality of Religious Court decisions on inheritance nevertheless places the role and status between men and women as unequal, although in several other cases the jurisprudence principle has been applied.

In deciding inheritance cases, it is hoped that judges have the authority to make breakthroughs *ijtihad* therefore that it interprets the inheritance law which is biased. One way is by using interpretation the *qiraah* is useful, this theory offers a rereading of the texts contained in ushul fiqh, and this theory goes even further back into the text of inheritance law (*beyond legal text*), an inevitability to ensure that women also become subjects of texts, not objects, and can receive benefits just like men. Discourse theory *mubādalāh* where the subject in the content of the inheritance text, both male and female, is the same, therefore that there is no superiority or inferiority to one gender in interpreting the inheritance law text. As a new term in the academic realm *mubādalāh* however has a strong theological basis, its presence in the framework of completing the dynamics and reality of traditions that do not show that men and women are equal in inheritance law. The meaning of inheritance law texts in the current contemporary context in the study of theory *mubādalāh* along with placing women on equal footing with men.

One of the text of the heir's verse that is a pro and a con is terma *walád* in QS. an-Nisá [4]:176, in classical Islamic jurisprudence studies it is interpreted as a boy therefore that only

boys can be *ashābah*, as a party that does not receive a certain portion (*ashābul furūd*), and its position becomes the cause of the obstruction and closure of the heir's brother becoming an heir. This kind of interpretation is applied and accepted by the majority of Muslims in Indonesia for centuries. Paradigmatically, it has become a very strong epistemological foundation in the tradition of Muslims and perhaps also for judges of the Religious Court therefore that the text of the verse cannot be deviated from.

Through the jurisprudence of the Supreme Court, one of which is in decision number 86K/AG/1994 dated April 28, 1995, the decision can be said to be a new breakthrough because it is contradictory to the legal norms of sharia quality. In the perspective *the qiraah is good* this jurisprudence has made updates in the field of inheritance law in Indonesia, which has been considered established because it broadens the meaning of the term *walād* from just boys to the meaning of girls. In theory *mubādalāh* interpretation of the syari' text makes it possible to interpret the text explicitly which is directed at men, then it can also be interpreted for women and vice versa. This means that the term *walād* must be read for both genders, because in Arabic boys use the term '*Tbn*' while girls use '*binti*'. Thus both boys and girls are equal in terms of *walād* therefore that both of them can veil the heirs.

Contemporary inheritance law, the main principle must adhere to the principle of balanced equality, no longer distinguishing inheritance rights according to gender differences and discrediting women, and no longer based on the magnitude of each heir's responsibility, however must be repositioned based on the closeness of the heir's kinship with the testator. Jurisprudential methods and theories *mubādalāh* always continuously socialized therefore that from the decisions of the Religious Courts the repositioning of the inheritance of female children can be realized as part of the modern inheritance law system. The renewal of inheritance law does not only stop by using the doctrine of the rules of Islamic jurisprudence however can be studied from different angles, because the division of inheritance is moreover into the dimensions of civil law and the study of Islamic jurisprudence of muamalah and horizontal relationships between individuals, therefore that there is room for interpretation through various theories and interdisciplinary, one of which is the theory of gender equality in this case the theory be fruitful.

In the Qur'an, the verses about inheritance are concentrated in three verses, namely QS. an-Nisa [4]: 11, 12 and 176, the word *walād* the plural *awlad* jurists have accepted it with the meaning of daughter, as used by QS. an-Nisa [4]:12 ^{وَلَوْ أَنَّهُ كَانَ فِيقَهُنَّ مِثْرَةٌ مِّنْ يَوْمَئِذٍ مِّثْرَةٌ} (if you have a child) must be interpreted as a boy or a girl. in the interpretation *the qiraah is good* the word is generally interpreted as a boy and a girl. There is a concept of reducing the rights of husband and wife with the existence of children with the term *walād* in practice it means not distinguishing between genders, however in the case of inheritance of siblings, the heirs together with the daughters are not like that, in the study *mubādalāh* this is not in accordance with the dynamic and humanist Islamic pattern and concept because it nevertheless contains discrimination (Habib Ismail, 2020), must be eliminated and does not have to be followed. In the study the *qiraah is good* jurisprudence methods are in line with the spirit of gender equality as the development of Islamic inheritance law in Indonesia as long as there are children (boys and girls) then the heirs are limited by the presence of daughters in receiving inheritance and their position is the same as that of sons therefore the repositioning of daughters' inheritance is the same in terms of *hijab mahjūb* namely as *hijab hirman* and as *ashābah bi Nafsi* as with sons, the heir's siblings are thus hindered by the presence of daughters.

Conclusion

After reading the description above, the author will draw the following conclusions: First, the jurisprudence method of the Supreme Court has actually brought a breakthrough in the reform of the law of inheritance for daughters in Indonesia therefore that the position can veil

the heir's brother if there is nevertheless a daughter, however it is not fully applied by the Religious Court in resolving inheritance disputes, cultural diversity and the understanding of judges is very influential on the application of the position of daughters in the law of inheritance. Second, the spirit and spirit of theoretical interpretation *mubādalāh* in line with the method found in the jurisprudence of the Supreme Court of the meaning of words *walād* which in the tradition of Islamic jurisprudence this norm is interpreted to only mean male children, while in theory *mubādalāh* legal text can be interpreted as both male and female children, thus the repositioning of female children's inheritance has occupied the same position in contemporary inheritance, namely as *Ashābah bin Nafsi*, as long as there are daughters, other heirs cannot appear as heirs except for fathers, mothers, widows and widowers. This theory and method gave birth to the principle of gender equality inheritance, namely the principle of balance by not differentiating inheritance according to gender differences, no longer based on the magnitude of responsibility between sons and daughters however rather based on closeness of lineage. As a final session, the author recommends the following regarding the inheritance of daughters: First, the role of Religious Court judges is very strategic in renewing Islamic inheritance law in Indonesia because they have the authority to do therefore, therefore in resolving inheritance disputes, the theory can be used *mubādalāh* especially the inheritance of daughters. Second, the Indonesian state until now does not have a unified national inheritance law, it is expected for policy makers and or law makers to immediately design a law on the applied law of the Religious Court, especially in the field of inheritance.

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