

UNDERSTANDING THE EQUALITY OF HEIRS IN *TAFSIR AL-MAR'AH BAYN
AL-ṬUGYĀN AL-NIDĀM* BY MUHAMMAD SA'ĪD RAMĀDAN ALBŪṬI;
ANALYSIS OF QS. 4 :11

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Abstract:

The article discussed the philosophy of *Muhammad Sa'īd Ramādan al-Būṭi* in his the book of *Tafsir Al-Mar'ah Bayn al-Ṭugyān al-Nidām*. The article focused to highlight the works of *al-Būṭi* in construing the heirs' distribution of Qur'ān verses between the son and daughter, which raised disputes among the scholars. By employing a qualitative method and content analysis, the article projected a conclusion about *al-Būṭi* practices with *al-Tasāwī* (equal) before the distribution rights for both parties, hence, it should not have to be marginalized and subordinated one to another, particularly, the daughter, the women position. It is expected that there are equal distributions by applying the *al-tasāwī* concept. Referring to the *al-Būṭi*, the superiority of male (*ar-Rijal*) over female (*an-Nissa*), not grounded on the nature of superiority or creation, nonetheless it is anticipated on the management capability, wisdom, and cultural awareness distinction among people. Therefore, according to the *al-Būṭi*, the heirs Law in Islam is not classified to the similar layers of the beneficiaries, however, it categorizes based on extend or load of responsibility to be conceded within their role in life.

Keywords: *Inheritance, Women, Equality, Tafsir Al-Mar'ah, and Al-Buthi.*

Abstrak

Artikel ini bertujuan untuk mengkaji pemikiran Muḥammad Sa’īd Ramāḍan al-Būṭī dalam kitabnya Tafsir Al-Mar’ah Bayn al-Ṭuḡyān al-Nidām. Fokus kajian ini ditekankan pada bagaimana al-Būṭī menafsirkan ayat-ayat tentang pembagian warisan antara laki-laki dan perempuan yang selama menjadi perdebatan diantara para ahli. Dengan menggunakan metode kualitatif dan *content analysis* dapat disimpulkan bahwa dalam menyelesaikan pembagian warisan antara anak laki-laki dan perempuan al-Būṭī menawarkan konsep al-tasāwī (persamaan) dalam pembagian harta waris antara laki-laki dan perempuan, sehingga tidak ada marginalisasi dan subordinasi yang dialamatkan kepada satu pihak, dalam hal ini kaum hawa. Dengan konsep ini diharapkan antara laki-laki dan perempuan mandapat harta waris yang seimbang. Menurutnya, superioritas atau kelebihan kaum lelaki (*ar-rijal*) atas kaum wanita (*an-nisa*) bukan didasarkan pada kelebihan alami atau faktor penciptaan, tetapi didasarkan pada kualitas manajemen, kebijaksanaan dan tingkat kebudayaan serta kesadaran yang berbeda-beda diantara manusia. Menurutnya, hukum waris Islam tidaklah diukur dari kesamaan tingkatan antara ahli waris, tetapi ditentukan berdasarkan besar kecilnya beban atau tanggung jawab yang diembankan kepada mereka, ditinjau dari keumuman keadaan/kehidupan mereka.

Kata kunci: *Waris, Perempuan, Kesetaraan, Tafsir Al-Mar'ah, dan Al-Buthi.*

Introduction

The heirs’ distribution has a strong relation to verses interpretation for the equal before the ownership rights. Accordingly, the provisions of distributions also vary. Some people referring to religious Islamic Law, some others to customary Law, and there are some people who take the old Dutch-Legacy Law (the Burgerlijk Wetboek Law or usually is called as BW-Law).¹ Correspondingly, if the legal subject proceeds of distribution shares and provision for the beneficiaries, the Heirs Law categories will have different purposes. According to Islamic verses on heirs’ provisions, the son receives twice portions as equal one portion of the daughter, (2/1), conversely, for customary law, the portions somehow may have a different or even versa. The heirs’ distribution has a strong relation to verses interpretation for the equal before the ownership rights.²

The heirs’ shares issue, the provisions for two by one (2/1), the son and the daughter, for the social status the son, the man, who has responsibility to provide for

¹Bentham, J, 1838-1843, *Anarchical Fallacies: A Critical Examnation of The Declaration of Right*, In P. Hayden, 2001, 12.

²R. Haniru, “Hukum Waris Di Indonesia Perspektif Hukum Islam Dan Hukum Adat,” *Al-Hukama: The Indonesian Journal of Islamic Family Law* 04, no. 02 (2014): 456–74.

his wife and family, however, the daughter, the women, vice versa. Theoretically, the daughter will poseses two portions; as heirs, and allowance receiver.

In social life, principally, the application of heirs' law guarantees order and justice for property shares between lineages. Nowadays, the current pattern of social life, where the position of men and women have faced several living aspects, demands equality from one to another. Hence, the contemporary reality emergence new reform the heirs' distribution to meet social equity. The emergence leads to a disagreement for who intends to stay with the controversial perspective which deriving the Qur'ān source verse to aligned with the equal share for both the son and daughter.

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The issue of “two by one” for witnesses and heirs is contextual and functional terminologies, not related to the male superiority before the female. It is an Islamic tradition symbol, which does not degrade, annex, and hegemonic the female as a human being. For this reason, on behalf of Islam as a religious tradition, either it does not justify inferiority of male to female,⁵ or, the fatwas and regulations which have been issued to demarginalize the female position. Therefore, the actual action is directed to humanize females as actual human nature. It includes the term “two by one” in share distributions.

The concept of heirs' distribution of “two by one” is mostly related to the past social conditions of Muslims who still distinguish the male dignity status of women. Additionally, the fiqh faraidh works of literature support these classical traditions, as if, this literature did not put a balance measure for heirs' distribution status.⁶ Conversely, when the case reissued today, while the pattern of interpretations has been experienced a cultural shift, it emergences to be a contemporary sensitive issue. This sensitive issue is echoed by contemporary Islamic scholars who also work for the interpretation of the Qur'ān literature. Even though, recently, the interpretation of the Qur'ān literature that grow and interact with other fields, i.e. social, political,

³ Halya Millati, “The Reconstruction Of Kaidah Al-TazKīr And Al-Ta'nīs In Paradigm Of Gender Equality Interpretation,” *Jurnal At-Tibyan: Jurnal Ilmu Alqur'an Dan Tafsir* 5, no. 2 (2020): 259–80, <https://doi.org/10.32505/jurnal>.

⁴ Syafieh Syafieh and Nurbaiti Nurbaiti, “Potret Karakteristik Kepemimpinan Perempuan (Analisis Semiotika Surat Al-Naml: 23-44),” *JURNAL At-Tibyan: Jurnal Ilmu Alquran Dan Tafsir* 3, no. 1 (August 9, 2018): 42–55, <https://doi.org/10.32505/tibyan.v3i1.477>.

⁵ Endah Amalia and Ashif Az Zafi, “Penyetaraan Gender Dalam Hal Pembagian Warisan,” *Ahkam* 8, no. 2 (2020): 213–32.

⁶ Labib Muttaqin, “Aplikasi Teori Double Movement Fazlur Rahman Terhadap Doktrin Kewarisan Islam Klasik,” *Al-Manahij: Jurnal Kajian Hukum Islam* 7, no. 2 (2013): 195–206.

economic, scientific, and so on, osculates humanity layers. The verses discourse for gender and feminist have a little portion to the classical tafsir scholars, however, the contemporary tafsir scholars have considered essential, particularly for female rights in heirs distributions.⁷ Thus, there are numerous issues that have not substantive transformed, nonetheless, there are several new distinction points to study on the issue.

To respond these groups influences, both East and West, *Muhammad Sa'īd Ramāḍan al-Būṭi* elaborated scientifically his explanation to address the issue and shared unfavorably critics for those who do over generalize the Qur'ān interpretation that taken into gender equality violation as if enough to discriminate feminists. For *Sa'īd al-Būṭi*, Islamic inheritance law is not measured by the level of equality between heirs, but it is determined based on the size of the responsibility that developed for them, in terms of life.⁸

Reviewing the issue of heirs in Islamic tradition, there have been several studies conducted by researchers, i.e. Andi Tenri Leleang and Azni Subair discussed the emergence of problems in the application of Islamic law for heirs.⁹ Moreover, Ahmad Haries conducted field research in Hulu Sungai Utara Regency, South Kalimantan, which focused on the division of inheritance in Islam in the family of Banjar Scholars.¹⁰

Another study, conducted by Rahmat Haniru, discussed inheritance law in Indonesia from the perspective of Islamic law and customary law. According to Rahmat Haniru, Referring to Local Custom Law in Indonesia, and the shares are consecutively distributed and employed in corresponding the heirs' conditions.¹¹ While in Islamic inheritance law, the parts of the heirs have been determined. The same research was also conducted by Afidah Wahyuni.¹² According to Afidah Wahyuni, Islamic inheritance law distinguishes between male and female heirs. Meanwhile, the Civil Code does not distinguish between the rights of men and women.

There are several studies that focus on figures, such as Muhammad Iqbal Piliang and M. Najib Tsauri who discuss the modern interpretation of inheritance verses in the

⁷ Muhammad Mahsus, "Tafsir Kontekstual Dan Eksistensi Perempuan Serta Implikasinya Terhadap Penyetaraan Bagian Waris Laki-Laki Dan Perempuan," *JIL: Journal of Islamic Law* 1, no. 1 (2020): 25–44, <https://doi.org/10.24260/jil.v1i1.19>.

⁸ Sa'id Ramadhan Al-Būṭi, *Al-Mar'ah Bayn al-Ṭuḡyān al-Niḍām Cct VI*. (Bacrut: Muassasah Ar-Risalah, 1992), 222

⁹ Andi Tenri Leleang Tenri Leleang and Asni Zubair Asni Zubair, "Problematika Dalam Penerapan Hukum Waris Islam," *Al-Bayyinah* 3, no. 2 (2019): 220–34, <https://doi.org/10.35673/al-bayyinah.v3i2.477>.

¹⁰ Ahmad Haries, "Pembagian Harta Warisan Dalam Islam," *Diskursus Islam* 2, no. 2 (2014): 191–208.

¹¹ Haniru, "Hukum Waris Di Indonesia Perspektif Hukum Islam Dan Hukum Adat."

¹² Afidah Wahyuni, "Sistem Waris Dalam Perspektif Islam Dan Peraturan Perundang-Undangan Di Indonesia," *SALAM: Jurnal Sosial Dan Budaya Syar-I* 5, no. 2 (2018): 147–60, <https://doi.org/10.15408/sjsbs.v5i2.9412>.

view of Muhammad Syahrur and Munawir Sjadzali.¹³ Meanwhile, Muhammad Mauluddin raised the interpretation of inheritance verses from the perspective of *Tafsīr Maqāshidī* Ibn 'Āsyūr.¹⁴ According to Ibn 'Āsyūr, the inheritance verse interpretations have relevance to the *maqāshid syarī'ah* method. The method appears the interpretation of the inheritance verses are *Al-fitrāh* (the Essence) for *Al-Maslāḥah* (the Problem), and *Al-Musāwah* (the Equity).

Employing the qualitative method which focuses on understanding the literature data, and analyzes to formulate a critic's point of views character. The article describes the essential philosophy of *Muhammad Sa'īd Ramāḍan al-Būṭi* to correspond and criticize the group of scholars who take and see the interpretation of the Qur'ān literature partially.

A Brief Biography Of Muhammad Sa'īd Ramāḍan Al-Būṭi

Muhammad Sa'īd Ramāḍan al-Būṭi was born in 1929, Jilka Village, Buthan Island, Turkey. Later on, he migrated to Damascus, Syria, with his father, *Shaykh Mulla Ramāḍan*, when he was four years old. *Al-Būṭi* completed his secondary education at *Ma'had at-Taujīh al-Islāmī* (Institute of Islamic Tradition), Damascus. He obtained his bachelor's degree in 1955 from the Faculty of Shari'ah, al-Azhar University. Within the following year, he earned a master's degree in the Arabic Language from al-Azhar University as well. In 1960, *Al-Būṭi* received a mandate to become a lecturer, teaching at the Syari'ah Faculty of the University of Damascus.¹⁵ With al-Azhar University Scholarship grant, *Al-Būṭi* completed his doctoral study in degree in the field of Islamic Law Epistemology. Therefore, in the same year, he was appointed to the Dean of Shari'ah Faculty of Damascus University.

Al-Būṭi was a prolific writer and had produced no less than 40 works. He was known as one of the Islamic scholars who defended the *Manḥāj Ahlussunnāh wal Jamā'ah* (four *mazhab* and the *Ash'aria* principle). Because of his persistence in defending the *Manḥāj*, *Al-Būṭi* faced strong challenges from other Islamic scholars. *Al-Būṭi* first two works, *as-Salāfiyah* and *La mazhābiyyāh*, catapulted his name as one of the guard defenders of *Ahlussunnāh wal Jamā'ah*. With these two books, he debated Naṣīruddin al-Albāni, a salafi-wahabi figure, in 1970. In addition, he was also active in social media and television to challenge materialism, against Marxist intellectuals' philosophy. The three of his works, *Lā Ya'tihī al-Bāṭil*, *Kubrā al-Yaqīniyyah* and *Fiqh*

¹³ Muhammad Iqbal Piliang and M. Najib Tsauri, "Penafsiran Modern Ayat-Ayat Waris: Perbandingan Muhammad Shahrūr Dan Munawir Sjadzali," *Refleksi* 18, no. 1 (2019): 78–116, <https://doi.org/10.15408/ref.v18i1.12677>.

¹⁴ Moh. Mauluddin, "Tafsir Ayat-Ayat Waris Perspektif Tafsir Maqashidi Ibn 'Ashur" (Universitas Islam Negeri Sunan Ampel Surabaya, 2018).

¹⁵ Aziz Anwar Fachruddin, *Menampar Propoganda "Kembali Kepada Al-Qur'an": Keruntuhan Argumenatasi Paham Madzhab dan Anti-Taqlid* Terj. Muhammad Said Ramadhan Al-Būṭi, *al-Lamadzhabiyyah; Akhtarū Bid'ah Tuhaddidu asy-Syaar'ah al-Islamiyyah*. (Yogyakarta, Pustaka Pesantren, 2013), 219.

*as-Sirāh*¹⁶, are lauded by many scholars as phenomenal works to against the orientalists who widely spread doubts about the authenticity of the Qur'ān, Islamic faith, and the Prophet biography.¹⁷

Al-Būṭi is considered one of the competent *Ahlusunnah* scholars who fight for the Islamic faith. *Al-Būṭi* follows the Islamic scholars' predecessors footsteps, who also was greatly admired, i.e. *As-Shafī'i*, the scholars who are the initiator to the *mazhab* which *Al-Būṭi* choose to hold, and *Al-Ghazali* who is the originator to the sources which his reference and inspiration. Devouring his bold perceptiveness intellectual, *Al-Būṭi* accomplished to combine the traditional and contemporary Islamic philosophy.

What is more, not surprising in 2004, the world organization of the Qur'ān study crowned *Al-Būṭi* for *Shaykhul 'alām al-Islām* (inclines prominent Islamic Scholars).¹⁸ It was acclaimed *Al-Būṭi's* capability to reveal an integral study and prominent enlightenment scholars.

Al-Būṭi next achievement was the accomplishment to establish a rich classical resource as fundamental action to face the contemporary era. Supporting with these resources, *Al-Būṭi* achieved the distinguishing recognition for his works from the Center of Islamic Studies, Jordan, (the *Markāz al-Islāmī al-Malīky Lī Dirāsāt al-Islāmiyah*). The achievement enlisted *Al-Būṭi* among 500 Islamic Scholars who share a pronounced contribution to Islam tradition. To be exact, therefore, *Al-Būṭi* has published approximately 60 books for various Islamic studies; Education, History, Sufism, Philosophy, Mantiq, Fiqh, and so on.¹⁹

Al-Būṭi is hectic to participate in various world-class seminars and conferences in various countries, the Middle East, America, and Europe. He served as a member of the Islamic cultural institute of the Jordan Kingdom, a member of the University Senate, and in the Al Azhar University of Egypt as well.

The Heirs' Law In Islamic Tradition: An Historical Approach

The word “*waris*” is derived from the Arabic words; *warasa - yurisu – warisan*, which literally means for the process of property handover possession from one to another after death. Referring to the Qur'ān, there are various words of *warasa* which also means replacing position, giving or bestowing, and receiving an inheritance. Consequently, according to Islamic scholars, *al-Miras* means the transfer of ownership rights from the death to the heirs who are alive, whether the inheritance materials;

¹⁶Ahmad Zaki Mubarak, *Pendekatan Strukturalisme Linguistik dalam Tafsir al-Qur'ān Kontemporer “ala” M. Syahrur*, 20.

¹⁷Aziz Anwar Fachruddin, *Menampar Propoganda “Kembali Kepada Al-Qur'an”: Keruntuhan Argumenatasi Paham Madzhab*, 220.

¹⁸*Al-Būṭi, Al-Mar'ah Bayn al-Ṭugyān*, 220

¹⁹*Al-Būṭi*, 230.

property, land, or anything in the form of legal property rights according to Islamic sharia.²⁰

The literature of Islamic Law holds several terms to address inheritance references, i.e. *faraidh*, *Mawaris Fiqh*, and *Al-mawaris* principles. According to Mahally, the term “*faraidh*” is the plural noun from “*faridha*” which means “*mafrudah*” or “*muqadarah*” that resemble onto the settlement provisions. It is called *faraidh* - Law for settling the provisions that are unspecified parts in the Qur’ān. The inheritance (*al-miras*) also called *faraidh* means a certain part of the inheritance as regulated in the Qur’an and al-Hadiṣ. So, the inheritance is the transfer of rights and obligations regarding the wealth of someone who had died to people who are still alive with a share.²¹

For instance, the social system which still prevailed in pre-Islamic Arab society was Bedouin culture which was often referred to as nomad society.²² Bedouin culture is designed throughout migrations. They travel thousands of kilometers a year to support themselves and their shepherds. They do so proudly while humming songs praising the heroes and virility of their clans, glorifying war and love, longing for the pleasures of wine. The themes are always the same; blood, love, and wine.²³

The following glimpse of the Arab Bedouin society culture before Islam gives a strong enough influence in their inheritance law.²⁴ Before Islam tradition is revealed, women did not have the right to receive an inheritance from the inheritance of the heirs (parents or relatives). The reason is that women cannot participate in fighting to defend their people and tribes. The Arabs Jahiliyah firmly stated, “*How can we give inheritance to people who cannot and have never ridden a horse, incapable carrying weapons, and have not fought wars against the enemy*”. The Arabs Jahiliyah forbid women from receiving an inheritance, just as they forbid it to small children.

According to Ali Parman, in these following cases the distribution of pre-Islamic inheritance as follows:

- a. The Lineage relationship with priority in men who are strong at war. At that time no inheritance was given to weak sons and even women were not given inheritance at all, so that men were more dominant than women, with the order of priority that children,

²⁰Habiburrahman, *Rekonstruksi Hukum Kewarisan Islam di Indonesia* (Jakarta: Kencana, 2011), 17

²¹Habiburrahman, 19-20.

²²Ahmad Rofiq, *Hukum Islam di Indonesia*, cet. ke-IV. (Jakarta: PT RajaGrafindo Persada, 2000), 359.

²³Ada bunyi sair kuno, yaitu “Kalau kami tak temukan klan musuh, kami perang saja tetangga dan sahabat, supaya nafsu perang kami jadi reda”. Lihat: Fuad Hashem, *Sirah Muhammad Rasulullah* (Bandung: Mizan, 1989), 31.

²⁴Dasar-dasar kewarisan yang berlaku pada masa pra-Islam: Pertama, *Al-Qarabah* (pertalian kerabat), yaitu hanya ahli waris laki-laki dewasa saja yang diberi hak menerima warisan, karena ia secara fisik mampu memainkan senjata dan menghancurkan musuh. Sedangkan perempuan dan anak laki-laki tidak mendapatkan warisan. Kedua, *Al-Hilf Wa al-Mu’āqodah*, yaitu perjanjian saling mewarisi apabila salah satu pihak meninggal. Ketiga, *Al-Tabanni* (adopsi), yaitu anak angkat mendapat warisan. Lihat: Rofiq, *Hukum*, 362-367.

- b. The adoption of other people's children to be their own children and then made as heirs, as the main program of the ignorant people with the aim of the war power.
- c. An agreement between two parties in certain cases can strengthen between them as heirs.²⁵

In the early days of Islam, brotherhood, like what the glory prophet, Muhammad *Pbuh* did, to unity the Muhajirin and Ansar, also became the cause or reason for an inheritance, then obliterated hijrah and brotherhood as causes of inheritance, as the word of Allah SWT in QS. Al-Ahzab [33]: 6

النَّبِيُّ أَوْلَىٰ بِالْمُؤْمِنِينَ مِنْ أَنفُسِهِمْ وَأَزْوَاجُهُ أُمَّهَاتُهُمْ وَأُولُوا الْأَرْحَامِ بَعْضُهُمْ أَوْلَىٰ
بِبَعْضٍ فِي كِتَابِ اللَّهِ مِنَ الْمُؤْمِنِينَ وَالْمُهَاجِرِينَ إِلَّا أَنْ تَفْعَلُوا إِلَىٰ أَوْلِيَآئِكُمْ مَعْرُوفًا
كَانَ ذَلِكَ فِي الْكِتَابِ مَسْطُورًا ﴿٦﴾

The translation: “The Prophet is more important for the believers than themselves and their wives are their mothers. People who are related by blood to each other have more rights (inheritance) in the Book of Allah than believers and emigrants, unless you want to do good to your brothers (religious). Thus it is written in the book (of Allah)” (QS. Al-Ahzab [33]: 6).²⁶

Thus, the issue of inheritance according to Islamic law is based on "kinship", according to the detailed information in the Qur'an and Sunnah, as well as an explanation of distribution which has been determined by Islamic law. Those who receive an inheritance are women and children. Thus, Islam has abolished the tradition or inheritance system of the jahiliyyah Arabs which forbids the acceptance of inheritance to women and children. Apart from kinship reasons, Islam also stipulates "marriage" as one of the causes of inheritance. Thus, husband and wife can inherit from each other.²⁷

In order to renew the application of pre-Islamic inheritance law, the Qur'an revealed several inheritance verses. One of them is QS. 4: 7

لِّلرِّجَالِ نَصِيبٌ مِّمَّا تَرَكَ الْوَالِدَانِ وَالْأَقْرَبُونَ وَلِلنِّسَاءِ نَصِيبٌ مِّمَّا تَرَكَ الْوَالِدَانِ
وَالْأَقْرَبُونَ مِمَّا قَلَّ مِنْهُ أَوْ كَثُرَ نَصِيبًا مَّفْرُوضًا ﴿٧﴾

²⁵Ali Parman, *Kewarisan dalam Al-Qur'an: Suatu Kajian Hukum dengan Pendekatan Tafsir Tematik* (Cet. I; Jakarta: PT RajaGrafindo Persada, 1995), 61

²⁶Kementerian Agama RI, *Al-Qur'ān dan Terjemahnya* (Surabaya: Pustaka as-Salam, 2010), 592.

²⁷SyamsulBahri Salihima, *Perkembangan Pemikiran Pembagian Warisan dalam Hukum Islam dan Implementasinya pada Pengadilan Agama* (Cet. II; Jakarta: Prenadamedia Group, 2016), 190.

The translator: “For men there is a right to share from the inheritance of their parents and relatives, and for women there is a right to share (also) from the inheritance of their parents and relatives, either a little or a lot according to the share that has been determined” (QS. Al-Nisa [4]: 7)

The QS. 4:7 was revealed in connection with the case of *Aws ibn Šabit al-Anšāri*, who has passed away, and left heirs, one wife (*UmKahah*), three daughters, and two younger brothers (*Suwaydand Ar-fajah*) aka the third uncle of the daughter of *Aws*. According to the Arabs Jahiliya customary law, the heirs who have rights to inherit the inheritance (*tirkāh*) of al-al-Anšāri are only *Suwayd* and *Arjafah*. While the other four heirs, each *Umm Kahah* (*Aws*'s wife) and three daughters, did not get anything.

Observing the fact customary inheritance law pre-Islamic ignorance uneven even discriminatory and unjust, that it *Um Kahah* (wife of *Aws*) fight for the rights by advocating to the prophet, Muhammad *PHBUH*. As she recounts the case of inheritance is experienced, both by herself and especially by her three daughters who was a girl or still young who did not obtain any share, *Um Kahah* on a complaint that, the prophet, Muhammad *PHBUH*, call *Suwayd* and *Arjafah* to confront the issue. They provide answers that customary law that they know, are eligible to receive the inheritance only male heirs who have grown to the sizeable to make a living and if necessary by war. While them (*Um Kahah* and the three daughters' al-Anshari), all of the women, said *Suwayd* and *Arjafah*, unable to bear arms.²⁸

Although, the prophet, Muhammad *PHBUH* asking them to return, until the revelation is revealed on, in this case, the QS. 4:7. Essentially, this surah abolishes (*naskh*) the customary law of jahiliyyah inheritance which gave inheritance rights only to certain heirs, in this case, adult men, and even then the measurement instrument is based more on physical standards. In this case the ability to fight and maturity is no longer an absolute reference. On the other hand, this verse provides legal guarantees and protection to the attitude of the heirs without distinction of gender (male and female) or age (old age or childhood, even the fetus that is still in the mother's womb, is guaranteed and their inheritance rights are protected by the verse.²⁹

The Critics of “Two By One” Heirs’ Distribution Rights: The Equal: An Overview Of Equality Perspectives

The distribution of heirs in Islam take “Two by One” principle to the practices between male and female, which recently raised a critical debated by the scholars. Actually the critics is not a new question, because it has been doubted and echoed the

²⁸Muhammad Amin Suma, “Menakar Keadilan Hukum Waris Islam Melalui Pendekatan Teks dan Konteks al-Nushus”, *Ahkam* 13 2, (2012): 52. Sebagaimana dikutip dalam Abd al-‘Azhim Ma’anidan Ahmad al-Ghundur, *Ahkam min al-Qur’ānwa al-Sunnah*, (Mishr: Dar al-Ma’arif, 1387 H/1967 H), 133.

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

early age of Islam era, by many followers, or even pass on the wife of the Prophet, Muhammad *Pbuh*.³⁰

People or parties who dispute the Islamic inheritance balance “2 by 1”, strongly agree to change this balancing method to “One for One”, as is the case with the western inheritance law system and some customary inheritance laws. That is, a girl must get the same share as a boy. Equally, the wife's share must be equal to or equal to the husband's share, and the mother's share must also be equal to the father's share. And so on, including the share of the sister which must be equal to the share of the brother, and the share of the granddaughter which must also be equal to the share of the grandson.

The accusers of the “Two by One”, to “One for One” balance of inheritance distribution generally argue that the “Two by One” is balance for men and women is an unfair balance of shares. Especially when related to the development of today's era, the role of women and men's war is almost the same in running the family economy. Women who were previously only dichotomized as co-winking who only served in household affairs had experienced a shift in values along with the changing times.³¹

In the past, women were only as men's companions in earning a living, now there has been a shift. Now women are not the least, but even become the backbone of the family's economy. This change has made the social changes that used to be women as second-class beings have now equated their position with men.³² Similarly, in the claim for the distribution of inheritance. Because in the Islamic inheritance law system, there is an unequal division between men and women.

Along with gender bias, feminists always ask for the same position as men, because in principle the law does not discriminate between men and women. The increasing number of demands of feminists on masculines also affects the legal system that applies in society. The meaning of justice has also undergone a very significant change, which used to be men who were responsible for every problem in the household, but now has undergone significant changes. Mean

This shift in the roles of men and women is a gender issue in society. The demands of women for their rights are in accordance with the role of women in the family so that Islamic inheritance law must also be able to accommodate the community's needs for laws that can provide justice for women today. Where there is a difference in the calculation of the distribution of Islamic inheritance law. Where men get more shares than women.

³⁰ Suma.

³¹ Maryati Bachtiar, “Hukum Waris Islam Dipandang Dari Perspektif Hukum Berkeadilan Gender,” *Jurnal Ilmu Hukum* 3, no. 1 (2012): 1–43.

³² Herry Santoso, *Idiologi Patriarki dalam Ilmu-Ilmu Sosial, Proyeck Penelitian*, (Yogyakarta: PSW UGM. 2001), 78

between the rights obtained and inheritance with obligations or the burden of life that must be borne or paid among the heirs.³³ Therefore, the meaning of justice to be conveyed is that Islamic inheritance law is not measured by the level of equality between heirs, but is determined based on the size of the burden or responsibility that is developed for them, in terms of the general condition of their lives.³⁴

On the other hand, the Philosophy of *al-Būṭi* pointed out the principle is employed on Muslim community, particularly, male responsibility for their family, compare to women. If the woman is a girl or unmarried, then she becomes the responsibility of her parents or guardian or brother. Whereas after moving a woman marries, then she moves will be the responsibility of her husband.³⁵

Along with the introduction of the time, the social situation has begun to change. Many of the women have already started work and entered into the public sphere, as well as assist in providing a living husband obligation households. This is the result of the influence of the industrialization of Europe. With the legal and social change, whether Qur'an elevates women are still relevant to the concept of inheritance section "Two by One" male to female or not?

In answer to the social circumstances change, *Muhammad Sa'id Ramadan al-Buti* explained the concept of inheritance law is still relevant to recent social world. Because of the law and responsibility inherent in each one of a man who still had an obligation in giving dowry to women and the right maintenance to wife.³⁶

The point is, in the author's opinion, even though today's society has experienced a shift in values, for example, women work or have a career, the responsibility to provide a living does not just shift, because they are only limited to helping lighten the burden on their husbands. However, key roles, such as providing dowry, being the head of the family, and being in charge of the family economy, remain the responsibility of the husband.³⁷ In this case, the general concept, the fair distribution of inheritance in Islam "Two by One" between men and women is still valid and relevant to currents and social changes.

Muhammad Sa'id Ramāḍan al-Būṭi also describes several examples regarding the division of law in the Qur'an which he considered to be quite relevant to the recent times. QS. 4:11 as the only concept in understanding the concept of inheritance division in Islam.

The examples presented by *Muhammad Sa'id al-Būṭi* are as follow:

1. If a deceased leaves a child, father, and mother, then the inheritance obtained by the father and mother is 1/6, this division regardless of the side between men and women, nor the father status and mother as family for absolut right,

³³ Al-Būṭi, *Al-Mar'ah Bayn al-Ṭuḡyān*, 210

³⁴ Al-Būṭi, 222.

³⁵ Al-Būṭi, 228

³⁶ Al-Būṭi, 300.

³⁷ John L Esposito et.al. *The Oxford Encyclopaedia of Modern Islamic World*, 25.

which referred in QS. 4:11 (للذكر مثل حظ الأنثيين)³⁸. It considered the glorious Qur'ān of Allah *swt* Said (ولأبويه لكل واحد منها السدس).

2. If a deceased leaves a brother and a sister who are sibling by one mother of birth, and no bound in between for them to obtain an heir then each of them will own 1/6 of the inheritance of each, this provision is also without looking in terms of division between men and women without necessarily having to refer to (للذكر مثل حظ الأنثيين)³⁹. It considered the glorious Qur'ān of Allah *swt* Said (وله اخ او اخت فلكل واحد منها السدس...)
3. If a deceased leaves there more brothers and sisters by one mother of birth, so these siblings brother inherits 1/3, as well as the sister, this distribution also without having to look from the gender side whether he a man or a woman. And also without looking at what people consider to be an absolute law in its four applications⁴⁰. i.e. (للذكر مثل حظ الأنثيين), because it have been answered, Allah the Almighty Says (فإن كانوا أكثر من ذلك فهم شركاء في الثلث)
4. If a deceased leaves a wife, two daughters, and a brother, then the wife gets 1/8 of the inheritance, and the two daughters get 2/3 of the inheritance, while the rest is obtained by the uncle. In this case, if carefully, then the two daughters of the deceased get more inheritance than the deceased's brother (uncle).⁴¹

Muhammad Sa'īd Ramāḍan al-Būṭī's perspective on the following four examples indicates the QS. 4:11 an universal concept which has possibility to be apply to heirs distribution.

As for the illustration analysis, the samples clarifies a “One by One” share for the father and mother without derived to genders. These are the equality share which is projected by the Qur'ān, by considering the responsibility, and relevant to recent world.

The fourth point, by borrowing the ratio of activists who understand that women are quite discriminated against in the concept of inheritance distribution. In the case of the 4th point, Jutru is inverted with their perception and understanding. It can be seen that the division towards the daughter is much greater when compared to the brother of the deceased.⁴²

The verses of inheritance divide human beings into groups that have equality, sometimes based on their gender, men and women, based on age, i.e. not yet or have reached puberty, and based on social status, ie married, single, divorced, or widowed, so too when the views of the groups explain the other divisions of society. Formerly, it also based on the principle of religion that society is divided into Muslims and

³⁸ Al-Būṭī, *Al-Mar'āh Bayn al-Ṭugyān*, 308.

³⁹ Al-Būṭī, 308-309.

⁴⁰ Al-Būṭī, 400.

⁴¹ Al-Būṭī, 300-304.

⁴² Al-Būṭī, 304.

atheists.⁴³ Muslims are divided into believers, Christians, and Jews. Christians are also divided into Catholics, Orthodox, and Protestants, and so on. Then based on the hope of the profession that society is divided into several groups, such as architects, doctors, workers, and farmers, which groups are divided according to their role at the next level such as architects in the field of mining, building, and electricity. This is further divided on another level to other groups.⁴⁴

The QS. 4:11 says:

يُوصِيكُمُ اللَّهُ فِي أَوْلَادِكُمْ لِلذَّكَرِ مِثْلُ حَظِّ الْأُنثِيَّاتِ ... ﴿١١﴾

Translate: “Allah has prescribed for you concerning (the division of inheritance for) your children. That is: the share of a son is equal to the share of two daughters”. (QS. Al-Nisa [4]: 11)

Al-Būṭi's perspective, the fiqh scholars recite the words *مِثْلُ* by applying *harakat dammah*, however, in the application of heirs, the scholars agree to use *harakat fathah* to the word. Accordingly, it raised a comprehension the son portion is twice a much to the daughter. It suggest the verse should be taken the portion similar one to another.

Consequently *al-Būṭi* conducted to re-read the the Qur'ān, especially the verses related to the issue of *waṣīyah* and *warāṣah*. *Al-Būṭi* offered the concept of *al-tasāwī* (equality) in the division of inheritance between men and women, so that no disregarding and subordinating for one side, which in the case, it is the women. Therefore, it is expected that between men and women can acquire similar portion of heirs.⁴⁵

According to *al-Būṭi*, the superiority or superiority of men (ar-rijal) over women (an-niṣa ') is not based on natural advantages or factors of creation but is based on the quality of management, wisdom, and level of culture and awareness that differ among human beings. Along with the development of technology, the muscular strength possessed by men as the legitimator of his leadership to professionalize in the sectors of industry, commerce, agriculture, and the like has shifted so that women are no longer fit to be barred from.⁴⁶

The feminist perspective reported the rules of division of inheritance in Islam are very discriminatory among women and distribute advantages to men. Nevertheless in reality, the provision actually transports women's rights from the pressure of men when the provision does not exist or is not implemented. Afrouza Bulbul conducted research in Bangladesh which said that the inheritance distribution system in the country has

⁴³ Asghar Ali Engineer, *The Rights of Women in Islam*, 12.

⁴⁴ Muhammad Syahrur, *Al-Islam: Al-Ashlu wa Ash-Shurah*, (London: Thuwa li Ats-Tsaqafah wa An-Nasyr wa Al-I'lam, 2014), 100.

⁴⁵ Al-Būṭi, *Al-Mar'ah Bayn al-Ṭugyān*, 305

⁴⁶ Al-Būṭi, 306.

adopted Islamic sharia as legal legality, but the practice in the field does not work because of the local social culture and their limitations with this science, plus the lack of legal tools to deal with it. The problems might result in the deprivation of women's rights in the legacy by men. In fact, Bulbul recommended the futher and implementation of Islamic sharia in each zone of life for the achievement of citizens who are far from the conflict and full of peace. Amina Wadud also criticized this problem with the words "*Fadhhdhala*" (Give advantage) which is in the message of QS. 4:34. For her, the advantage given by the God, Allah *swt*, to men is not absolute he reinforced the subject by relating the word "*Ba'dh*" (Partial) in the verse. This word is used to connect the facts that have been intertwined. Not all men can outperform all women in some respects, nonetheless approximately men outperform some women in some respects, and just as some women can outperform some men in some respects. Until God himself confirms this is not an absolute problem.⁴⁷

Conclusion

Socio-historically, the Qur'an offers the division of inheritance which is an attempt to elevate the rank of women who are considered weak so that they do not have the right to receive inheritance. The Qur'ān responds to the tradition of Arab culture at that time by giving inheritance rights to women that is half with what men get.

In the development of the concept of division of inheritance in Islamic law has undergone a fairly fundamental reconstruction of some groups who try to understand The Qur'ān scripture in accordance with the concept of equality and justice. The assumption concept of inheritance distribution in Islam is no longer relevant in its application, on the other hand this concept is also enough to discriminate against women over the dominance of men. Therefore, there is an effort to conduct the Qur'an studies in accordance with the social changes that occur in society.

In this concept of division of inheritance *Al-Būṭi* offers the concept of *al-tasāwī* (equality) in the division of inheritance between men and women, so that there is no marginalization and subordination addressed to one party, in this case the women. With this concept, it is expected that men and women will get a balanced inheritance. According to him, the superiority or superiority of men (*ar-rijal*) over women (*an-nisa'*) is not based on natural advantages or factors of creation, but is based on the quality of management, wisdom and level of culture and awareness that differ among human beings. For *Sa'īd al-Būṭi*, Islamic law of inheritance is not measured by the equality of rank between the heirs, but is determined by the magnitude of the burden or responsibility developed on them, judging from the generality of their circumstances.

⁴⁷ Afrouza Bulbul, "*Implication of Islamic Law of Inheritance: Ultimate Solution to Family Conflict*," Asian Journal of Applied Science and Engineering 2, 12.

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