



Justice Dimensions of Islamic Inheritance Law in Determining the Inheritance Rights of Parents, Children and Husband/Wife

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Abstract

The purpose of this research is to know about the dimension of justice of Islamic Inheritance Law (*faraidh*) in determining the right of parents, children and wife/ husband as *dzawil Furudh* heir. To achieve these objectives have been conducted normative legal research that is descriptive. Data analysis techniques used qualitative data analysis techniques. The result of the study obtained that Islamic Inheritance Law has the dimension of justice in determining the right of *dzawil Furudh*, that is proportional or equal justice in accordance with rights and obligations, social justice which not only pay attention to bloodline but also inheritance rights also given to the parents as *birrul walidain* and inheritance rights of them is never covered by anyone. Similarly, justice inheritance rights for the husband or wife of the inheritor, they shall be entitled to inheritance in accordance with the rights and obligations. While the dimension of justice inheritance rights of children, Islamic Inheritance Law provides a strong position. All the justice dimensions of Islamic Inheritance Law, in accordance with the objectives of Islamic law or *maqashid syariah*.

Keywords: Dimension of Justice; Right of Inheritance; Dzawil Furudh

Introduction

Civil law applicable in Indonesia is currently diverse or pluralistic (Riduan Syahrini., 2006). The legal diversity happens if there is more than one order of law applicable in a social area (Mughtar Zamzani., 2013). The pluralistic of the Civil Law was influenced by the classification of the population by the legal politics of the Dutch government in the former Colonial period, namely the provision of Article 161 *Indische Staatsregeling* which divided the population of the Dutch East Indies based on its origins in three classes: European, Bumiputra, and Eastern (Riduan Syahrani., 2006). With the categorization of citizens and the enactment of different civil law for each class of the population then the law of inheritance prevailing in Indonesia is diverse.

Irma Devita Purnamasari explains the existence of three legal systems of inheritance prevailing in Indonesia today, as follows: The Legal System of Inheritance of Islam, The Legal System of the Western Civil Law, and The Legal System of Customary Inheritance. (Irma Devita., 2014).

Islamic Inheritance Law as part of Islamic Law has been applied in the archipelago since the 7th century AD, since Islam entered the archipelago, the era of the Islamic empire, the era of colonization, the era of independence until the present era of reform era. Islamic Inheritance Law is a positive law of Indonesia, as stipulated in the Compilation of Islamic Law, the regulation No. 3 of 2006 on the Amendment of the regulation No. 7 Year 1989 on Religious Courts (Mardani., 2014).

Inheritance Law occupies a very important place in Islamic Law. The importance of this legal position can be inferred from the hadith of the Prophet of Ibn Majah: "*O Abu Hurayrah, study faraidl and teach, for in fact it is half of knowledge, and the science will be forgotten and it is the first to be uprooted from my people.*" (Book of Ibn Majah).

The provisions concerning the distribution of inheritance contained in the Qur'an and Al-Hadith is a compelling legal provision, therefore it is also obligatory for every Muslim person to carry it out (Surahwardi., 1999). In reality, however, Muslim societies do not all carry out the provisions of inheritance as prescribed by the Qur'an, because of certain underlying reasons such as maintaining harmony among the heirs, due to the existence of a testament, grant and customary reason, so that its division diverges from the Qur'an. Modern Muslim society today has a tendency to perceive that there is unfairness in Islamic Inheritance Law, especially against the rule of magnitude 2: 1 inheritance for men and women.

The tendency of Muslim society today not to carry out the provision of inheritance as the provisions in the Qur'an and the hadith of the Prophet on the grounds of unfairness as the author has described, according to Muhammad Amin Suma, it is because very few people want to care about what is Islamic Inheritance Law by searching calmly, clearly and equitably from his original source, contemplating his phallic philosophy, looking closely at his very holy, eternal and eternal goals and mainly due to the incomprehension or unwillingness to understand people to the Shariah of Islam itself (Amin Suma., 2013). The pattern of life of the Muslim community in its development seeks to escape from religious ties that are considered tradition and no longer in accordance with the development of the times, tend to be individualist and materialist. In addition, there are demands on gender equality in every line of life, so in relation to inheritance, it also contributes to the use of the provision of inheritance divisions beyond the provisions of Islamic Inheritance Law.

Justice is to provide something according to his needs, which is his right and that is equal to his responsibility or puts something in its place. The Conference on Islam and Justice held in Malaysia on June 3-4, 1993 stated that Justice in the Islamic perspective is to protect the interests and interests of individuals at the expense of the society's interest (Institute of Islamic Understanding Malaysia., 1993). Muhammad Amin Suma argues that justice is not always and should not always be interpreted as much or as little, but sometimes it must be interpreted in comparable or balanced. Especially when associated or associated with rights and obligations arising as a result of the position and responsibility of each person (Amin Suma., 2013). In the matter of inheritance, each person who becomes an heir is entitled to inheritance, but each part as mentioned in the Qur'an is not the same. Islam recognizes the difference

between fellow human beings such as Allah's word in the Qur'an *Surah Al-An'am* Verse 165 "And it is He who has made you successors upon the earth and has raised some of you above others in degrees (of rank) that He may try you through what He has given you. Indeed, your Lord is swift in penalty; but indeed, He is forgiving and Merciful." (<https://quran.kemenag.go.id>, accessed March 27, 2018 at 09:10 pm)

On the basis of the essential difference, justice does not mean that all must receive identical treatment. Justice here is a justice in which all human beings are treated equally in terms of justice to receive what is entitled, which may differ greatly, and the provision of religion is implemented. (Harun Nasution., 1996).

Based on the above description, according to the author, research on the dimension of Islamic justice in the field of inheritance is very important to be done in order to implement Islamic Inheritance Law as stipulated in the Quran and hadith of the Prophet. Based on that thought, the writer is interested to do research on the dimension of justice of Islamic Inheritance Law, in terms of determination of *dzawil furudh* inheritance rights especially in determining the right of inheritance of the mother and the father, children and husband/wife as part of *dzawil furudh*.

Methodology

This research is a type of normative legal research that refers to the legal norms contained in legislation and court decisions as well as norms that live and thrive in society. The data studied are only bibliography or secondary data, which may include primary, secondary and tertiary legal materials that relate to the dimensions of justice of Islamic Inheritance Law in determining the inheritance rights of the mother and the father, children and husband/ wife as part *dzawil furudh*. The method approach is used conceptual approach and comparative approach. Data analysis used is qualitative method toward primary data and secondary data which is analytical descriptive, covering content and structure of positive law. Thus the author will provide an explanation of the law of inheritance in Indonesia and provide an explanation of the dimensions of justice of Islamic Inheritance Law in determining the right of inheritance of the mother and the father, children and husband/wife as part of *dzawil furudh*.

Results and Discussion

Dimensions of Justice in Rights of the Father and the Mother

The Father or the mother, is one of the *ashhab al-furudh* as stipulated in the Qur'an *Surah An-Nissa* Verse 11 which contains the provisions of inheritance rights of the father and the mother as much as 1/6 (one sixth) or 1/3 (one third) part dependent circumstances along with whom they inherited at the time. As for the father, in addition to get a certain part, there will likely get an *asabah*.

Besides the inheritance that has been stipulated, Allah also commands as an obligation, to the one who has come the signs of death to him while he has a lot of treasure, to give a testament to his father and his mother, as written in the Qur'an *Surah Al-Baqarah* Verse 180 which mean: "It is prescribed for you, when (the signs) of death approaches, if he leaves wealth (is that he should

make) a bequest for the parents and near relatives according to what is acceptable – a duty upon the righteous.” (<https://quran.kemenag.go.id>, accessed March 27, 2018 at 09:10 pm).

The inheritance rights of the inheritance for the father and mother guarantee by that particular part and the mandate of God that obligates the child to give a will for his father and his mother. According to the author, it is a form of justice given by God in relation to inheritance. In a narration it is mentioned that the Messenger of Allah said to a man when he said: "My father wanted to take my property." The Prophet said: "You and your property belong to your father." (HR Ahmad). This implies that the parent has the right to the property of his son. This father's and mother's inheritance rights, will never be covered by the existence of other heirs.

Compared with the law of inheritance of the Western Civil Law, then the father and the mother belongs to the second group as the heir. The division of inheritance for the second group heirs is set in Articles 854, 855 and 856 of the Western Civil Law. According to the articles, the portion of the father and the mother of each shall not be less than 1/4 (a quarter) of the total inheritance, this means that the minimum portion of the father or the mother is respectively 1/4 (a quarter) of a part. The minimum portion of the inheritance for the father is not necessarily applicable or does not apply by itself. In this case there is the possibility that the inheritance rights for the father is closed by the child as the first group heir. This means that only if the first group of heirs (the children and the longest living wife), no longer exists, then the father and the mother as the second group who will be the heirs. Afdol argues that by taking into account the position of parents as second group heirs, meaning that if the heir leaves the child and wife or husband, then the parents are not entitled to acquire the bequest. Whereas almost every case of inheritance division is always there children and widows or widowers. Thus, in most cases the division of inheritance according to Western Civil Law, parents do not get inheritance. (Afdol., 2003).

The inheritance law of the Western Civil Law also provides for the *legitime portie* for the heirs in a straight line up and down, father-mother and so on in a straight line upwards and grandchildren and so on in a straight line downward, as provisions of Articles 913 to Article 916 of the Western Civil Law. However, the legitimacy of this portion does not guarantee the fulfillment of the mother's or the father's right of inheritance. The legitimacy of the portion must be applied for or prosecuted before the court chairman for its fulfillment. In addition, under the provisions of Article 929 of the Western Civil Law, the right to advance this claim shall be limited to the time period and shall be terminated after the expiration of three years from the day the inheritance of absolute inheritance is received. While the right to inherit the father and the mother in Islamic Inheritance Law is not the case. The right of inheritance of the father and the mother in Islamic Law of inheritance will never be closed by other heirs but it is *ijbari* which is valid by itself and obliged to be given without going through the process of demands or advance petition through the court chairman.

This is the case with Customary Law of inheritance. Tolib Setiady said that in Customary Law, the children of the inheritance are the most important heirs, because they are essentially the only heirs because other members of the family do not become heirs when the inheritance leaves the children and widows or widower. So with the existence of children and widows or widower of the Heirs then the possibility of other family members of the inheritance to become heir to be closed (Tholib Setiady., 2009), including the right of the father and the mother. Inheritance rights of the father and the mother in the life of Customary Law community are often neglected. For example in the life of parental society in Java, parents will always work hard to collect property to give a good life to their children. Parents try to

give inheritance in the form of property so that their children are not short of. However, when the child leaves the inheritance, the parent's right as the heir is covered by the child and the wife of the inheritor. As parents they are excluded as the recipients of the inheritance.

Sajuti Tholib argues, it is benefit for us as Muslims, that God firmly give special guarantee to mother in the form of *dzul faraidh*. If not, then in a sharply patrilineal society, it may be that the mother may be left aside in this inheritance. Sajuti Thalib further said that certain inheritance guarantees for parents will be felt in modern times. At this time in human progress arises a matter of concern. The elderly parents are not nurtured by their grandchildren anymore. Various psychological reasons are put forward for the justification that an elderly mother is not cared for by her grandchildren, but submitted to a dormitory or a special home for elderly people. In such parents' circumstances it becomes more and more important that they have their own wealth and possessions. And in these circumstances it is increasingly felt that it is true that they have a share of inheritance (Sajuti Tholib., 2008).

Thus we can understand that Islamic Inheritance Law in this case contains more justice value than the law inheritance of the Western Civil Law or Customary Law inheritance in relation to the determination of inheritance rights for the father and the mother of heir.

The justice of Islamic Inheritance Law in determining the right of the father and the mother, according to the author, is very much related to the position of both as a noble man who is very meritorious in our life in the world and *insha Allah* in *akherat*. The services of both parents are so great for our lives, the existence of those who are the cause of our existence in the world. The Qur'an provides an explanation of how the process of human occurrence in biological and detailed as the word of Allah in the Qur'an *Surah Al-Mu'minun* Verses 12-14 which means: "*And certainly did We create man from an extract of clay. We then placed him as a sperm-drop in a firm lodging. Then we made the sperm-drop into a clinging clot, and We made the clot into a lump (of flesh), and We made (from) the lump, bones, and We cover the bones with flesh; then We developed him into another creation.. So blessed is Allah, the best of Creators*". (<https://quran.kemenag.go.id>, accessed March 27, 2018 at 09:10 WIB) A hadith that reinforces this, that the Messenger of Allah said "... *the creation of one of you is gathered in his mother's abdomen for forty days, or forty nights, then becomes a clot in the next forty days, then becomes a lump of flesh in the next forty days*" (Narrated by Bukhari).

After the children are born into the world, God also gives duty to the father and mother to provide good care, as His word in the Qur'an *Surah Al-Baqarah* Verse 233 which mean:

"Mothers may breastfeed their children two complete years for whoever wishes to complete the nursing (period). Upon the father is the mother's provision and their clothing according to what is acceptable. No person is charged with more than his capacity. No mother should be harmed through her child, and no father through his child. And upon the (father's) heir is (a duty) like that (of the father)....." (<https://quran.kemenag.go.id>, accessed March 27, 2018 At 09.16)

The words of Allah and the hadith of the Prophet clearly describe the role of parents since in the womb until the birth into the world, even until the children become adults they are still caring, giving attention and affection to their children. Parents always strive to give their children the best, to meet their needs, to nurture and direct them to become pious and beneficial children for their religion, family and society. They never think to ask for the children's merit, they are willing to win the burden of life for the happiness of their children. Therefore, Islam positions parents in a very respectable and noble position.

Even God often juxtaposed the command of worship to Him with the command to do good to the parents. God also associates gratitude to Him who is the source of blessings, goodness, gifts and grace with gratitude to parents.

Devoted to parents, which in Islamic Law known as *birrul walidain*, is a duty for every child. *Birrul walidain* has a special position in Islam. Allah and His Messenger place parents in a very special position, so doing good on both also occupies a very noble position, and otherwise the disobedience to both occupies a very lowly position, because the services of the father and the mother is very big in the process of reproduction and regeneration of mankind. Abdullah bin Umar r.a. narrated that Rasulullah saw. said, “*Allah's approval depends on the pleasure of both parents, and His wrath also depends on the wrath of both parents*” (HR.Tarmidzi). Almost all the calls for *tauhid* to Allah are always accompanied by the command to do good to the parents. This is because the bonds of the elderly are the strongest and most important bonding bonds after the *tauhid* bond. Meaning, the bond of faith is the first bond and after that the bond of blood (Ahmad Fa'iz., 2001). With regard to God's command to do good and obedient to the parents, among others contained in the Qur'an as follows (<https://quran.kemenag.go.id>, accessed March 27, 2018 at 09.22WIB):

- 1) *Surah Al-Baqarah* Verse 83 which means: “*And (recall), when We took the covenant from the Children of Israel (enjoining upon him), do not worship except Allah; and do good to both parents*”
- 2) *Surah Al-Isra* Verse 23 which means: “*And your Lord has decreed that you should worship none but Him, and to parents, good treatment. Whether one of both of them reach old age (while) with you, say not to them (so much as) "uff" and do not repel them but speak to them a noble words.*”
- 3) *Surah Al-Ankabut* Verse 8 which means: “*And We have enjoined man goodness to parents. But if they endeavor to make you associate with Me that of which you have no knowledge of it, do not obey them. To Me is your return, and I will inform you about what you used to do*”
- 4) *Surah Luqman* Verse 14 which means: “*And We have enjoined upon man (care) for his parents. Her mother carried him, (increasing her) in weakness upon weakness, and his weaning is in two years. Be grateful to Me and to your parents. To me is the (final) destination.*”
- 5) *Surah Al-Ahqaf* Verse 15 which means: “*And We have enjoined upon man, to his parents, good treatment. His mother carried him with hardship and gave birth to him with hardship (also), and his gestation and weaning (period) is thirty months ...*”

According to the interpretation of M. Quraish Shihab in *Tafsir al-Mishbah* that the devotion of the child that presents to parents is not in essence to the mother or the father, but to himself (Quraish Shihab., 2002). Including the meaning of devotion is covering the needs of his father's father is legitimate and reasonable according to the ability of children. This can be realized one of them by providing a living to them, especially when they are elderly, who are no longer productive to earn a living. As the word of Allah stated in the Qur'an *Surah Al-Baqarah* Verse 215 which means: *They ask you (O Muhammad, what they should spend. Say, "Whatever you spend of good is (to be) for parents and relatives and orphans and the needy and the traveler.."* And whatever you do of good-indeed, Allah is Knowing of it. (<https://quran.kemenag.go.id>, accessed March 27, 2018 at 09.16 am). In *Tafsir al-Mishbah* it is also explained that the interpretation of this verse answers the question of who to whom the treasure should be spent first to the mother of the father, since they are the cause of the child's being and most of his services

(Ms. Quraish Shihab., 2002). This is as the Marriage Law, regulation number 1 of 1974, regulates the right of alimention, in the provisions contained in the Chapters of rights and obligations between parents and children, Article 46 Paragraph (2) stated that if the child is an adult, he is obliged to maintain according to his ability, parents and family in a straight line up, if they need his help. The word alimention itself comes from the Latin *alimentatio* which means provision of living based on family relationships. (<https://en.wikipedia.org/wiki/Alimentasi>, accessed December 24, 2017, At 4.05 am).

The position of the parents is placed as a person who needs to be respected and honored, so as a tribute to the parents it is appropriate that they never be set aside as heirs, even though the heirs leave children and wife or husband.

In relation to the inheritance rights for the father and the mother of inheritance their children, which has been determined by the possibility of obtaining 1/6 (one sixth) or 1/3 (one-third) portion for the mother and 1/6 (one sixth) or 1/3 (one third) portion and *asabah* for the father, according to the author, has given justice for the father and the mother by considering the old age, no longer have the responsibility to support his children, finance the school and meet the needs of his family living. In old age, father and mother only meet the needs for themselves. A portion of 1/6 (one sixth) or 1/3 (one third) portion of inheritance their child is sufficient and not excessive for them, as the meaning of justice in Islamic Inheritance Law is equal justice according to the needs and responsibilities.

Dimensions of Justice in the Inheritance Rights of the Children

The child is the trust of Allah Swt to his father and mother, he is hope and the pride of the family. The obligation of the parent to his child is not only to earn a living and to give him clothing, or worldly pleasures, but more than that the parent must direct his children to understand the truth, to educate his morals, to give him a good example and to pray for him, to love, to care for, educate and nurture well and earnestly, because basically every child, born in a state of *fitrah* or holy as the word of the Prophet: *“It is not every child born unless born in a state of fitrah. So it is both his parents who will make him Jews, Christians, or Magi ...”* (HR. Bukhari). Allah enjoins the believers to keep themselves and their families pious, to keep His commandments and to abandon His prohibitions as set out in the Qur'an *Surah At-Tahrim* Verse 6 which means: *“O you who have believed, protect yourselves and your families from the fire of hell whose fuel is people and stones, over which Are (appointed) angels, harsh and severe; they do not disobey Allah in what He commands them but do what they are commanded”*. (<https://quran.kemenag.go.id>, accessed March 27, 2018 At 10:02 pm) And the words of the Prophet which means:

“You are a leader and you will be asked about your leadership. The Imam is the leader and will be asked about his leadership. The man (husband) is the leader in his family and will be asked about his leadership. The wife is the leader in her husband's household and will be asked about her leadership. The maid is the leader in safeguarding his master's property and will be asked about his leadership. And each of you is a leader and will be asked about his leadership.”
(Narrated by Bukhari)

The verses of the Qur'an and the hadith indicate that the responsibility of parents to their children is quite severe. A father is responsible for providing for the children and his family, while the mother is

responsible for raising the children and arranging the household as the representative of her husband, his family from the fire of hell. Parents will be held accountable for their leadership in the family. Besides as a mandate, the child is also a test of God for every parent as mentioned in the Qur'an *Surah Al-Anfal* Verse 28 which means: “*And know that your properties and your children are but a trial and that Allah has with Him a great reward*”. (<https://quran.kemenag.go.id>, accessed March 27, 2018 at 10:15 pm)

It is lucky and blessed parents who have educated their children to become good children, who always help their parents, pray them, happy them, and keep the good name of both parents. Because a righteous child will always be an investment reward, so that parents will get a flow of reward from the righteous son he has. As a good parent, every parent must know what his/her duty is to the child that is the child's right.

One of the rights of the child is as an heir and earned a share of the inheritance of his parents. The emergence of inheritance relationships between children and parents is caused by the existence of bonds *nasab* or the real relatives. Islamic Inheritance Law regulates the right of inheritance of children as Allah's word in the Qur'an as follows:

- 1) Every boy or girl has a share of the treasures of his fathers as stipulated in *Surah An-Nisaa* 'Verse 7 which means: “*For men there is a share of what the parents and close relatives leave, and for women is a share of what the parents and close relatives leave, be it little or much- an obligatory share*”. (<https://quran.kemenag.go.id>, accessed March 27, 2018 at 10:15 pm).

Said Ibn Jubayr and Qatadah say that once the polytheists gave his wealth to his big children, and they did not inherit it to women and children, then Allah down his word in *Surah An-Nisaa* 'Verse 7 mentioned above. All are equal in Allah's law. they, the sons and daughters, have the right of inheritance even though there are differences according to the parts that are determined by Allah. (Tafsir Ibn Kathir., 2016).

- 2) The sons are the heirs of the *ashabah bi nafs*. *Ashabah*, the unnamed heirs of many parts in the Qur'an and As-Sunnah. The most famous understanding of *ashabah* among the *faraid* scholars is the person who controls the inheritance because he becomes the sole heir. In addition, he also received all the inheritance after *ashabul furudh* received and took each part (Muhammad Ali Ash-Shabuni., 2013). Prophetic Word: “*Share the inheritance among the righteous (dzawil furudh) according to the Book of Allah, while the rest of the inheritance for the immediate male family*”. (Narrated by Muslim).

Ashabah is divided into two namely *ashabah nasabiyah* (because of *nasab*/ blood bond) and *ashabah sababiyah* (for cause). The second type of *ashabah* is due to freeing slaves. Therefore, a master (slave owner) may become the heirs of the former slave he freed if the slave has no offspring. While the *ashabah nasabiyah* is divided into three, namely *ashabah bi nafsi* (the *nasab* does not mixed with the female element), *ashabah bil ghair* (becoming *ashabah* because others) and *ashabah ma'al ghair* (becoming *asabah* together with others). The boy in this case is the *ashabah bi nafsi*. ((Muhammad Ali Ash-Shabuni., 2013).

- 3) The boy may appeal to his female sister to take away all the rest of the treasure, as an *ashabah bil ghair*, after the heirs of *ashabul furudh* take part. According to Mustofa Hasan, this means that if there

are no sons, women take part by way of provision. With a son, a daughter can not take on a condition, but she must follow her brother by spending his or her wealth or the rest (Mustofa Hasan., 2011).

- 4) The proportion of a daughter's inheritance is 1/2 part and if more than one person gets 2/3 of part, while for a boy equal to two girls (Qur'an *Surah An-Nisaa* Verse 11).
- 5) The existence of replacement institution of heir as regulated in Compilation of Islamic Law

In the Qur'an and Hadith of the Prophet, there is not known heirs replacement institution, if the heir died earlier than the inheritor, then they were replaced by their children. According to Alyasa 'Abubakar, post-graduate lecturer at Ar- Raniry Banda Aceh, the term replacement of this place is known only in Western Civil Law and Customary Law but is not known in Islamic law. Nevertheless, with the renewal of interpretation of this inheritance law, the term replacement of the place has now been recorded in the Compilation of Islamic Law, which is now used in any dispute settlement in the Syar'iyah Court (<http://www.idlo.org/docNews>, accessed 1 January 2018 at 13:43 pm). Judging from its purpose, the reform of the inheritance law is intended to resolve the issue and avoid disputes. In relation to this, Soepomo in his book even says that the emergence of the replacement institution of heirs is based on the school of thought that the property in the family from the beginning is indeed provided as the basis of the family material and its derivatives. If a child dies while his parents are still alive, the children of the deceased will replace his father's place as the heirs of his grandfather's treasures.

The provisions concerning the heirs' replacement institutions as set forth in the Compilation of Islamic Law, Article 185 Paragraph (1) which provides that the heirs who died earlier than the inheritor may have their positions replaced by their children, except those mentioned in Article 173 about obstacles as an heir and Article 185 Paragraph (2) that the portion of the surrogate heir may not exceed that of the equivalent heirs of the replaced.

Regarding the transfer of inheritance, according to the legal system of the inheritance of the Western Civil Law, is set forth in Article 841 to Article 848. In essence, this provision provides that if an heir has several children and grandchildren, the grandson of the inheritor who has died earlier than the inheritor, replacing the inheritance rights of the parents who had originally received the estate together with their siblings. The grandchildren get together each of their parents. So they replace the inheritance rights of their own parents and not every grandchild represents as heirs (Soetojo Prawirohamidjojo and Marthalena Pohan., 1984)

The justice dimension in the inheritance right of the children can be understood that the child has a very close kinship with the parents. Inside his body flowed the blood of both parents, therefore called the offspring of his parents. When the father and/or his mother dies and leaves the inheritance of these children, the *ijbari* are their heirs. In addition, one of the objectives of Islamic Law (*maqashid shari'ah*) is to guard the offspring, in this case keeping the offspring not as weak or poor as the word of God in *Surah An-Nisaa* Verse 9 which means: "And let those fear (injustice) as if they (themselves) had left weak offspring behind and feared for them. So let them fear Allah and speak words of appropriate justice" (<https://quran.kemenag.go.id>, accessed March 27, 2018 at 10.22 am) and manifestations of the current context of economic life are increasingly tight and set bilateral system (Qur'an *Surah.An-Nisaa* Verse 7). Thus the heirs who need to take precedence are the children and the descendants of the inheritor. A. Sukris Samadi says that the most important thing in the Qur'anic idea is the question of keeping the offspring from poverty, poverty and backwardness in all spheres of life, the giving of

treasures is one way to solve the problems facing children, when children will no longer be directly assisted by parents as before (Sukris Sarmadi., 1997).

In the Islamic Inheritance Law, the existence of a child as an heir will be noticed first. The children of inheritors, will get their share as the provisions of the Qur'an. There is no gender discrimination in this regard. All children have the same rights as heirs of either men or women. But the portion they receive is balanced, according to their responsibilities. The positions of the heirs in this case are strong, meaning they will not be veiled by any other heir. This also applies in the legal provisions of the inheritance of the Western Civil Law and the inheritance of the Customary Law.

The inheritance of the Western Civil Law regulates the rights of the heirs of the heirs in Article 832, according to the law entitled to heirs are the families of both the legal and the outer married and the longest living husband or wife. Children of inheritors together with widows or widows of inheritors, are the first group as the author has described in the previous description. When the inheritance is open with the death of the inheritor, then the first step to know is whether there is a living husband or wife, then sorted down the children and grandchildren. The f inheritance Law of the Western Civil Law also regulates the legitimacy of the portion/ absolute right of the natural child of the inheritor with certain provisions that is stipulated in Article 914 of the Civil Law, as follows:

- 1) If there is only one child, the absolute part is half of the part he should receive;
- 2) If there are two children, the absolute part is two-thirds of the part they should receive;
- 3) If there are three or more children, the absolute part is three-quarters of the part they should receive.

Taking into account the provisions of such absolute rights, in Islamic Inheritance Law also regulates the matter of "absolute right", *furudh* which has been determined in the Qur'an. However, the "absolute right" prescribed in the Qur'an is not part of the part that should be accepted but the part that must be accepted and the minimal part that the heirs will get. The absolute part of the child in the legal framework of the inheritance of the Western Civil Law will be much smaller if in fact the bequest is still a mutual property/ *gono-gini* between the inheritor and his wife/ husband. In this case only half the share of the inheritor can be distributed as inheritance and which the absolute right can claim. Different circumstances of inheritance within the framework of Islamic Inheritance Law, according to this law, there is no treasure of *gono-gini* so that the distributed inheritance is a *tirkah* that is ready to be distributed to his heirs with sections as the author expressed earlier.

In the Customary Law of inheritance, the biological child also occupies the position of the most important heirs, because in essence the children of the inheritor are the heirs. The biological child is also not differentiated whether he is male or female. In other words both men and women are entitled to inherit with equal parts of the inheritance (Soerojo Wignyodipoero., 1995). However, this rule is influenced by the family arrangement that prevails in the local area whether it is matrilineal, patrilineal or parental/ bilateral.

In matrilineal society, the right to inherit is all children of the mother's line. When a husband dies, then his children are not heirs because the children are members of his mother's family. His father was not his mother's family but remained a citizen of his own family, so his inheritance was inherited by his siblings. This is because marriage in a matrilineal society is a marriage whose male is imported or

picked up by a woman, but a man does not become a clan with his wife but remains his mother's clan (Tamakiran S., 1987). Different treatment and vice versa occurs in the patrilineal family system, which is entitled to inheritance is the son, because married daughters are released from their own families and entered into the family of their husbands. But lately the practice of grants to the daughters has been done frequently. So in a patrilineal society who is entitled to inherit is the son, while the daughter get the grants only. In its development within the Batak Karo community, daughters are given the right and status to inherit their parent's bequest equals to the sons, according to Supreme Court Decision No.179/ K /Sip/1961 with consideration of humanity fair and justice and essence equality of rights between men and women (Yahya Harahap., 1993). Whereas in the parental/ bilateral community, the right to inherit is all children, both men and women, with essentially the same part. The same meaning here does not mean the amount of the bequest they will get, but rather on the basis of needs and appropriateness. But how many portions they will get as the right of inheritance there is no clear and written provision as to the rules of Islamic Inheritance Law.

Thus, it appears that Islamic Inheritance Law provides justice for the inheritor's children because the children have been placed in their position as a mandate from Allah Swt not to be left in a weak state as stipulated in *Surah An-Nisaa* 'verse 9 above and in line with the religious objective of keeping the offspring.

Dimensions of Justice in the Inheritance Rights of Husband or Wife

Allah Almighty says as stated in the Qur'an *Surah Adz-Dzariaat* Verse 49 that all things are created in pairs to remember the greatness of God. It is explained in the Tafsir of Ibn Katsir that all beings are paired, earth and sky, night and day, sun and moon, land and sea, light and dark, faith and infidel, dead and alive, wretched and happy, paradise and hell, until all living beings and plants are the same (Tafsir Ibn Katsir., 2016). Thus humans were created in pairs. This verse is one of the verses of the Qur'an which is used as the basis of marriage between men and women. Marriage is an obligation in Islam. This obligation is as the word of Allah in *Surah An-Nuur* Verse 32 which means: “*and marry the unmarried among you and the righteous among your male slaves and female slaves. If they should be poor, Allah will enrich them from His bounty, and Allah is all-Encompassing and Knowing.*” (<https://quran.kemenag.go.id>, accessed March 27, 2018 at 10.47 pm).

In a marriage arises the inner bond between husband and wife, life helps each other in realizing the marriage of *sakinah, mawadah and warahmah*. Husband and wife both have their rights and obligations respectively. The husband works to earn a living and the wife takes care of the child and take care of the household. The inheritance relationship between husband and wife is due to a legitimate marriage relationship according to Islam. The husband is the heir of his wife and the wife is the heir of her husband.

The Islamic Inheritance Law regulates and grants inheritance rights for abandoned husbands or wives. Wirjono Prodjodikoro reminded the truth about the system of mutual inheritance of husband and wife that it creates a sense of justice because of the close relationship of husband and wife (Wirjono Prodjodikoro., tt). Allah Almighty has set the terms of the inheritance for them in *Surah An-Nisaa* 'Verse 12 which means: “*and for you (husbands) is half of what your wives leave if they have no child. But if your wives have children, for you is a quarter of what they leave, after any bequest they (may have) made or*

(and) debt. And for the Wives is a quarter if you have no child. But if you have children, then for them is an eighth of what you leave, after any bequest they (may have) made or (and) debt.....". (<https://quran.kemenag.go.id>, accessed March 27, 2018 At 10:55 WIB).

Based on Allah's word above, the right of inheritance is given to the husband or the wife of the inheritor with their respective parts:

- 1) Husband gets a share of 1/2 (half) if the inheritor does not leave any child. If the inheritor leaves a child then the husband gets 1/4 (quarter);
- 2) The wife/ wives will get a share of 1/4 (quarter) if the inheritor does not leave any child. When the heir leaves a child the wife/ wives will get 1/8 (an eighth).

The portion of the bequest for husband and wives mentioned above according to the author, is very closely related to the provisions of Allah Swt in *Surah An-Nisaa* Verse 9 to not leave weak descendants, including weak in property for the necessities of life after the death of the inheritor. Although no child, widower or widow heir does not inherit all the bequests, but inherit with parents and relatives of the inheritor.

In the inheritance Law of the Western Civil Law, the widow or the widower of the inheritor shall be inherited with the children of the inheritor. The widow or the widower and the children shall be in equal position, either in inheritance rights or in inheritance share that they will obtain. Thus, if the inheritor leaves a widow and three children, then the widow and his three children each inherit a quarter. If there is no child as a heir, the widow of the inheritor will obtain all the bequest left behind. As the first group of heir, the widow of the inheritor closes the rights of the next heir including the inheritance rights of the parent of the inheritor, the siblings of the inheritor and the other heirs.

Soepomo argued that in a bilateral Customary Law system such as in Java, the widow has a special status which is still entitled to live in the house left by the inheritor with the right to hold the abandoned property, if she needs it and during her needs for her life (Soepomo., 1967). Formerly the widow was not an heir. The change is according to Soedarso for consideration to avoid the occurrence of children disputes, if then the widow mates again. In some cases the treasure is no longer in the hands of parents becomes neglected. The influence of Islamic Law that determines that the widow is the heir of the deceased (Afdol., 2003).

The rights of being an heir with part 1/2 (half) or 1/4 (quarter) for the widower of the inheritor and 1/4 (quarter) or 1/8 (an eighth) for the widow of the inheritor contains the essence of justice in the Islamic Inheritance Law that is the balance of responsibility both in terms of rights and terms of liability, as well as the balance between necessity and usability. When the inheritor does not leave the child, the widower of the heir gets the right of inheritance 1/2 (half) of the portion. According to the authors this is closely related to the possibility that the widower of the inheritor will remarry and be responsible for meeting the needs of his new family. The inheritance he earned could be his initial capital to form his new family. In addition, during the marriage with the inheritor, has a share in collecting property in marriage with the inheritor. Thus it would be fair if the widower is given the right of being an heir with a certain portion that is dependent on the existence of the inheritor's child. It seems clear finally that the widower's right as an heir contains justice which brings benefit to him and does not disadvantageous the other heirs.

Similarly, when the widow of the inheritor is given the right of inheritance with a certain portion that also dependent on the existence of the inheritor's child, according to the author, this relates to the rights and obligations in the husband and wife relationship. In Islamic Law, the wife is not required to earn a living. This obligation is entirely left to the man or husband. When the wife works, the income she earns is entirely hers. When she becomes the widow of the inheritor, the inheritance rights of the widow with a certain portion as described earlier, is a right with a fair share. When the widow remarries, she is not burdened with the responsibility to provide for her new family but she becomes the responsibility of her new husband. The inheritance gained from the inheritor is her personal treasure. Justice of the right to inherit widower or widow of the inheritor is a form of justice of God who is omniscient good for his people, that is equal justice according to his rights and obligations.

Conclusion

From the whole series of discussions in this work, it can be concluded that the dimension of justice of Islamic Inheritance Law in the determination of inheritance rights of parents, children and wife/husband as *dzawil furudh* heir is a form of God's justice that contains social elements in this case not only pay attention and grant inheritance rights to the children as the strongest heirs, but also grants the right to both parents as a form of *birrul walidayin*. Although in Islamic Law is recognized the existence of private property rights but in essence all that is a mandate of God. After the person receiving the mandate dies, the treasure returns to God as the trustee. And then Allah reregulate it with the *faraid* (Islamic Inheritance Law) in which it has been arranged in detail the right of each heir. Allah's provisions on the determination of inheritance rights for parents, children, and husband or wives as *dzawil furudh* heirs contains the value of balanced justice for the purpose of benefit for man in this world and in the Hereafter.

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