



CONSIDERING GHARARWAIN'S SPECIAL INHERITANCE IN THE MIDST OF GENDER JUSTICE ISSUES

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Abstract:

Ghararwain inheritance is a special case of inheritance in Islam that has a fixed heir structure and deviates from faraidh (inheritance law). The application of its calculation method can disadvantage the mother's inheritance rights in two situations. Amidst the issue of gender equality, various perspectives from different professions, expertise, and viewpoints show diverse responses, yet adaptive to change. This ijthadi product, although possessing wisdom related to maqashid al sharia (the objectives of Islamic law), needs to be reconsidered for its use as a provision for inheritance settlement in positive law in Indonesia, especially concerning the tsuluts al baqi portion (one-third of the remaining estate) which serves as a privilege in the Ghararwain case.

Keywords: Special Inheritance, Ghararwain, Ashobah, Tsuluts al Baqi, Gender Equality

Abstrak

Warisan Ghararwain merupakan kasus warisan istimewa dalam Islam yang memiliki struktur ahli waris baku dan deviasi dari faraidh (ilmu waris). Penerapan metode perhitungannya dapat merugikan hak waris ibu dalam dua situasi. Di tengah isu keadilan gender, berbagai sudut pandang dari profesi, keahlian, dan perspektif berbeda menunjukkan respon yang beragam, namun adaptif terhadap perubahan. Produk ijthadiyah ini, meskipun memiliki hikmah terkait maqashid al syariah (tujuan syariat Islam), perlu dipertimbangkan kembali penggunaannya sebagai ketentuan penyelesaian warisan dalam hukum positif di Indonesia, terutama terkait bagian tsuluts al baqi (sepertiga dari sisa harta) yang menjadi hak istimewa dalam kasus Ghararwain.

Kata Kunci: Warisan Istimewa, Ghararwain, Ashobah, Tsuluts al Baqi, Keadilan Gender

INTRODUCTION

In accordance with the hadith, the distribution of inheritance begins with giving inheritance rights to *ashbabul furudh*, and then to *ashobah* heirs whose share is not certain. They can get everything, or less, or even get nothing, because it has been used up (spent) for *dzawil furudh* heirs (Pusvita, 2018). Heirs who receive the rest on behalf of themselves, in the science of *faraidh* are known as *Ashobah bi al Nafsi*.

In this context with *Ashobah*, the two signs that are specific to this special case, by some opinions are sometimes considered as something that is not *gender* fair because the

deviation of the settlement of the distribution of inheritance from *faraidh*, in fact, is more favorable to the men (Fahmi, 2018). Although on the other hand, this opinion should still be followed by an in-depth study of the background of the case as a whole, including various other aspects and perspectives.

In the case of *Ghararwain*, the privilege is found in the (sort of) attempt to make the father as a man get twice the share of the woman, namely the mother of the testator. In fact, if the inheritance case is resolved according to the guidance of *faraidh*, the result is the opposite, the mother gets twice the father's share, especially in a case where the structure of the heirs consists of the husband, mother, and father of the testator (Anwar, 1981).

The reality of the results of such a settlement by the initiator of the main idea, then find a way out of how the Qur'anic concept "*li al dzakari mitslu hazh al untsayain*" can be applied in two cases whose structure consists of: Husband, mother, and father, or wife, mother and father (Mubarak, n.d., p. 11).¹ Strictly speaking, *ghararwain* is the case of inheritance of a person who dies, and he leaves his spouse (husband / wife), along with both parents (mother and father) of the heir.

So strong are the gender differences, and in turn affect the rights/acquisitions of male and female heirs who are different genders, it is certainly interesting to examine comprehensively, while linking it to the community's response and various perspectives related to the settlement of the case. Because there are still many Muslim communities who do not know about the existence of this special / special inheritance division settlement, which sometimes will actually benefit the heirs. Favorable or even detrimental rights their inheritance rights because of the reduced portion that will be received due to gender justice considerations. It is recognized that the issue of inheritance in Islam is very synonymous with problem (gender issues).

Accusations of inequality accusations of inequality or injustice are constantly raised regarding the difference in inheritance rights between men and women. Moreover, with the settlement of this special inheritance case, our minds are considered to have gone back a dozen centuries, especially in the context of the adoption of the term "one-third remainder" in one of the articles of the Compilation of Islamic Law (KHI) in Indonesia, in book II on Law. Inheritance (Muadz, 1994).

Therefore, the question that arises then is whether *ijtihad*, which has become *ijma ulama*, and in fact has gone against the principle of equality / justice in the midst of *gender* issues as it is today, can be ignored. Or is it just a non-binding alternative for the heirs to resolve the inheritance case according to the *faraid* methods that have been understood so far.²

In the midst of *gender* justice issues, these special inheritance cases are interesting to discuss. It may be that not many people know that there is a solution to the settlement of inheritance cases that seems to "favor men," while the *faraidh* settlement already hints at gender equality. If this is what has been perceived by the community, then it is not surprising if there are later accusations that *faraidh* Islamic inheritance is *patrilineal*.³

The discussion of the issue of Islamic inheritance in a gender perspective, usually leads more to the general question that is often asked, namely: Why is the woman's share only half of the man's share? So that some circumstances of inequality of rights or acquisition of heirs of different genders are always illustrated with pairs of daughters and

sons only. In fact, for special inheritance cases such as *gharawain*, gender pairs (mother and father of the heir) show the fact that men do not always get twice the share of women, but it will be reversed.

Therefore, research on this special inheritance case of *gharawain* becomes urgent to provide verification of the truth of these assumptions/understandings. Indeed, there have been many writings or studies that highlight the issue of "two to one" for male and female heirs, but always the results of the analysis prove that the formulation of the division with the pattern (2: 1) does not go against the principles of justice in the partnership (Basyir, n.d.). Or it always focuses on proving that there is no inequality or injustice in the concept of *faraidh* Islamic inheritance law.

Until now, Indonesia still does not have a unified law in the field of inheritance. The Compilation of Islamic Law (KHI) itself in its status which was born based on a Presidential Instruction (Inpres), by some circles is not considered a binding law, although there are uniformity efforts for all Religious Courts in Indonesia to make it a guideline for resolving family law, one of which is about inheritance issues.

In context with this special case, explicitly there is only one provision in the Compilation of Islamic Law (KHI), namely with the adoption of the term one-third remainder in the rules of inheritance, and even then, according to the author, it is still *abstruse*. In addition to Farid Muadz's allegations above, it is natural (perhaps), if implicitly the issue of the privileges of other cases is not regulated.

Ulama as figures and role models in the Muslim community, their opinions are often a reference for people to solve the problems of inheritance cases, including these special inheritance cases. For this reason, their opinions become urgent to know regarding the understanding of gender justice issues in society. Moreover, the contribution of their thoughts is clear evidence of the presence of the Compilation of Islamic Law (KHI) in Indonesia.

Based on this background; ulama, leaders of Islamic boarding schools, *faraidh* teachers/teachers, academics, legal practitioners (judges), psychologists, or sociologists, should be known for their opinions regarding the current issue of gender justice, which is related to the settlement of special inheritance cases of *gharawain*. They are very suitable/relevant to be used as data sources in the context of research. Because from them, sometimes the "legal" ruling will be obtained.

Both are part of the *faraidh* legal products, so the analysis of gender justice in various aspects is a necessity related to the settlement of this special inheritance *case* *gharawain*. This is absolutely necessary to produce a conclusion that can satisfy all parties (family / heirs) in the structure of the raw case, while still adhering to the rules and *principles* of *faraidh* which are believed to be true, because they come from the Most Just and Wise *Musyarrif*'as mentioned in His inheritance verses.

On this basis, the problem formulated in this paper is:

1. How is the settlement of special inheritance cases of *Gharawain* according to Islamic inheritance law of *faraidh*?
2. What is the community's response (opinion) about *gender* justice

in the settlement of *special* inheritance cases of Ghararwain?

METHOD

This research employs a qualitative approach using a case study method. This approach is chosen because it allows the researcher to gain an in-depth understanding of the complexities of the Ghararwain case and its implications for gender equality in Islamic inheritance law.

Data will be collected through:

- Literature review: Reviewing literature related to the Ghararwain case, faraidh, gender equality, and Islamic inheritance law.
- Interviews: Conducting in-depth interviews with Islamic legal experts, gender experts, and women's activists to obtain various perspectives and viewpoints.
- Qualitative data analysis: Analyzing data obtained from the literature review and interviews to understand the complexities of the Ghararwain case and formulate conclusions.

Qualitative data analysis will be conducted using the following techniques:

- Content analysis: Analyzing texts and documents related to the Ghararwain case to understand their meaning and interpretation.
- Discourse analysis: Analyzing interviews with informants to understand the social construction and discourse surrounding the Ghararwain case.
- Comparative analysis: Comparing different perspectives and viewpoints on the Ghararwain case to formulate comprehensive conclusions.

This research utilizes a theoretical framework that combines:

- Faraidh: Islamic inheritance rules that govern the distribution of inheritance to heirs.
- Gender equality: The principle of equality between men and women in various aspects of life, including inheritance.
- Ijtihad: The process of reasoning and interpretation of Islamic law to address various contemporary issues.

This research is expected to contribute significantly to the understanding of the Ghararwain case and its implications for gender equality in Islamic inheritance law. The research results are also expected to assist in formulating solutions to ensure gender equality in the Ghararwain case and Islamic inheritance law as a whole.

RESULTS AND DISCUSSION

The *Gharawain* inheritance case is also known as *al 'Umariah*. The majority of jurists refer to it as *al 'Umayyain* (the two problems of 'Umar). This is due to the fact that two issues in *faraidh* are attributed to 'Umar ibn Khattab (RA) as the main initiator of the idea. This is because he was the first person to decide on these two issues (al Ramli, n.d.).

These two problems are also called *Al Gharrawain* problems because they resemble brilliant stars because of their fame, and they are also called *Al Gharibatain problems* because they are foreign (Al Bajuri, 2006), and there is nothing like them. The two forms of the problem are structured in terms of inheritance cases:

In the first case, husband, mother and father. The *second case*, wife, mother, and father (Al-Musawy, n.d.).

The rulings relating to the issue of *Al 'Umariyah* are that a mother's share in the *fard* prescribed by the Qur'an may be 1/6 or 1/3. However, in this particular case, the mother receives 1/4 or 1/6, but not under the conditions stipulated in the inheritance verse (Al Tarimy, n.d.).⁴

The structure of special inheritance cases in *faraidh* science is characterized by two things, namely the structure of the case is standard, and there are deviations from *faraidh* regarding the provisions of the shares / rights of some of the heirs (Anwar, 1981). The special case of *gharawain* is one of the concrete examples of the settlement of inheritance, which requires the settlement of the distribution of inheritance according to methods outside the rules or provisions of *faraidh*.

The two case structures are: Husband, mother, and father, or wife, mother, and father. In this *gharawain* case, the mother is given preferential inheritance rights, namely by giving a share of *tsuluts al baqi* (one third of the remainder) in order to fulfill the *faraidh* concept of "two to one" for men and women, which in this case is between the father and mother of the heir. In this special inheritance case of *gharawain*, the mother and father as a gender pair get a share (right) of inheritance as in the following matrix:

First structure of <i>Gharawain's</i> special inheritance case					
Settlement by Ordinary Means				Settlement by Special/Special	
N o.	Exper t legacy	<i>Fardh</i>	<i>Problem origin</i> = 6	<i>Fardh</i>	<i>Problem origin</i> = 6
1	Husband	1/2	3	1/2	3
2	Mom	1/3	2	1/3 remainder	1/3 x 3 = 1
3	Father	<i>Ashobah</i>	1	<i>Ashobah</i>	2

The mother gets two shares, in contrast to the father of the heir, even though The Qur'anic concept states "li al dzakari mitslu hazh al untsayain."	The father gets double the mother's share, by privileging the mother's share into "tsuluts al baaqi." That is one-third remaining after the husband take their rights/shares.
Second Structure of <i>Gharawain's</i> Special Inheritance Case	
Settlement by Ordinary Means	Settlement by

4 Such as: If the testator leaves descendants (children/grandchildren and so on downwards), or because there are multiple siblings (two people/more).

				Special/Special	
N o.	Exper t legacy	<i>Fardh</i>	<i>Problem origin</i> =12	<i>Fardh</i>	<i>Problem origin</i> =4
1	Wife	1/4	3	1/4	1
2	Mom	1/3	4	1/3 remainder	1/3 x 3 = 1
3	Father	<i>Ashobab</i>	5	<i>Ashobab</i>	2
The mother gets four shares, less than the father's share. However, the father still does not get twice the share of the heir's mother.				The father gets double the mother's share, by privileging the mother's share to be "tsuluts al baaqi." That is, one-third left over after the wife take their inheritance rights/shares.	

On the basis of the settlement of this special inheritance case of *Gharawain*, it is clear that there is a desire to make the figure of male inheritance must indeed get more shares (twice) than the share of women, although then it does not correspond to the consequences of the *ashobab heirs* who should get an indeterminate share. Because *ashobab* as the residual beneficiary heir, only waiting for the results of the distribution of inheritance for *dzawil furudh*.

Community Response to the <i>Gharawain/Umrayatain</i> Case	
Identity (Status)	Response

MUI	<p>It is valid to apply ijtihad or not. Because it is very much related to the benefit in the family, and is conditional. In many cases <i>ashobab</i> itself is often "overstated."</p> <p>Two to one for the father and mother heirs is still gender fair. <i>This is fine</i> if you want to equalize (<i>ishlah</i>), without ignoring the definitive ruling of Allah SWT. Because <i>furudbul muqaddarah</i> is certain (<i>laisa labu ta'wil</i>).</p>
Teacher / Ustaz Faraidh	<p>It remains with the general provisions of <i>faraidh</i>, although the father's share is less due to the consequences of <i>ashobab</i>.</p> <p>There is also no problem with the remaining 1/3 for the mother, because this opinion was supported by Abbas bin Abdul Muttalib. Even his son Ibn 'Abbas rejected it, but his rejection was</p> <p>It was delivered after the death of Umar (may Allah be pleased with him).</p>
Academics	<p>The original law of men is indeed two parts. If the woman "plays the same role as a man" then it is a case in point (not a</p>

	<p>benchmark).</p> <p>Adjusted proportions (conditional). Can be (2:1, 1:1, 1:2).</p> <p>Keeping with the stipulation, the mother is 1/3 of the share not 1/3 of the remainder (respect for the mother must take precedence).</p> <p>In other words, it cannot be reversed (consequence of <i>ashobab</i>).</p> <p>Umar's Ijtihad was agreed upon by the majority because of its benefit value.</p> <p>Fair if divided according to the proportion and responsibility borne. (father and mother of the heir) respectively.</p>
Practitioner	<p>The mother is <i>ashobab ma'a ghairih</i> with the father, so it is two to one for both of them.</p> <p>Gender justice issues cannot change their legal position. Fathers and mothers remain with their <i>furudh</i>, not to be compared with the position of sons and daughters.</p> <p>in cases of inheritance of <i>ashobab bi al ghair</i>.</p>
Psychologist	<p>Umar's ijtihad could not be separated from the framework of Arab culture at that time which was patterned "patriarchy."</p> <p>There is no problem with this ijtihad, when the testator's parents are still in an intact family. Because they are both is actually "shirkah".</p>

Sociologist	It remains with the provisions of Islamic inheritance law. Women cannot change the "sharia" to get more shares. Because gender is only related to social issues (world) only.
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The responses of these informants, when connected to the current issue of gender justice, can basically be grouped into two variants of opinion. *First*, this special inheritance case is the result (product) of *ijtihad fukaha*, so it is valid to be applied or not. This is because it is more conditional (casuistic). So it can be chosen which one gives more *maslahat* in the middle of the case (family / heirs). *Secondly*, sticking to the general provisions of *faraidh*, because what has been outlined in this context is basically in accordance with the concept of justice, and always (still) remains gender fair.

Modification efforts in the technical settlement of the division of inheritance of people of different genders in this special case of *ghararwain*, namely between mother and father are intended: *First*, so that the principles of justice and equality can be adjusted in line with changing times or current conditions. This is because the concept of the division of inheritance with a pattern of "two to one" for men and women in gender differences is considered by some opinions to still not reflect a sense of justice contextually.

Secondly, logically this two-to-one division formulation for men and women is not the final form of Islamic inheritance law. As part of Islamic law, *faraidh* itself *is* also intended for the purpose of realizing justice and upholding trust in society.

In context with the issue of gender justice issues in the special case of *ghararwain*, Syahrur with his *Theory of Limit* has formulated, that the limits (*hudud* Allah) related to the male share twice that of women, are essentially the maximum limit and cannot be added anymore, while women are the minimum limit. So in certain contexts and conditions, a woman may actually have more inheritance rights (shares). If faced with Amina Wadud's criticism of the old interpretation model, which considers that the formulation of the division of inheritance with a comparison pattern of "two and one" for people of different genders (men and women), is actually (also) not the only formulation that can be used for inheritance is mathematical. Because the theory is not entirely correct.⁵

Amina Wadud's opinion cannot be denied, of course, because in reality, the concept of "two to one" is only known in the discussion of *faraidh* when it is related to the status and consequences of *ashobah bi al ghair* heirs, and that is limited to only four gender pairs.⁶ So it is true that a female heir, her right is one-half of the inheritance left by her heir.

Along with the changing times, there is a desire or other opinions related to the interpretation of the verses of inheritance in the context of the acquisition of male and female heirs in the midst of gender justice issues such as today, then the views (theory) of Ibn al Qayyim al Jauziah may be taken into consideration. According to him, so many fatwas have been issued by the Companions, the *thabi'in*, and the *muftis* regarding this change in law.

These fatwas have given rise to different rulings on the same subject matter. This is, of course, very understandable because of the diversity or differences in knowledge (fields of expertise) and viewpoints (perspectives) of each. Or even regarding changes in the situation and conditions, place, and time of the incident.

An example of this is the policy of Umar bin Khattab, who was then the caliph and *qadli*.⁷ He in several concrete cases of this special inheritance, and one of them is the case of *gharawain* special inheritance, has determined the concept of "two to one" for the father and mother of the heir.

From various theories and perspectives, the settlement of concrete inheritance cases should no longer be contested regarding *ijtihadiah* issues, especially regarding the "specialty / specificity" of an inheritance case. Because basically, the *ijtihad* that has been produced compromisingly, and has even become *ijma* ulama, is certainly a treasure of thought that should be considered. Especially in the midst of gender justice issues like today, the public response delivered by various elements such as the Indonesian Ulema Council, *faraidh* teachers/ustadims, academics, practitioners, psychologists, and sociologists), seems very "adaptive."

This is evidenced by the sentences they expressed. Such as: "conditionally, according to proportion, not absolutely (must) use the pattern of solving the division with "two to one, or one to two," more casuistic, *ishlah / peaceful*, *ijtihad* can be applied / not, still gender fair ... "⁸

This is also the case when connected to Syahrur's theory; that "the male share is twice that of the woman" is a maximum limit that cannot be increased anymore, while women are the minimum limit. Therefore, it is possible that in certain conditions/cases a woman could potentially obtain more inheritance rights or shares. In *faraidh*, this is proven directly through the special case of *gharawain*.

According to Nasaruddin Umar, the important point in Islamic inheritance is not the portion obtained by female heirs. Because in the current context, do women always get one half of the male heirs, or in actual practice, women are actually given and receive the same rights as male heirs. This has also been proven by *faraidh* through the resolution of special inheritance cases such as the *Akdariyah* case.⁹

The justice of Islamic inheritance law and gender equality in the context of *faraidh*, is used as a solution to avoid family conflict. So that this special inheritance case, if reviewed from various perspectives, such as psychological, sociological and economic, will be able to refute what has been alleged or signaled about *faraidh* Islamic inheritance law.

These are gender issues caused by "seeing sex" in *faraidh* as a *stereotype* or subordination of women who are actually (none other than) partners of men. (Wahidah, 2018, pp. 111-113)

On this basis, the theory offered by Munawar Sadjali regarding the need for a review of the concept of "two to one for men and women" (Sadjali, 1990) according to researchers is not too urgent in the context of the desire to reformulate the

distribution of inheritance for those of different genders. Including ijthad products regarding this special inheritance case in the midst of gender justice issues like now.

What has been produced by famous mujtahids through their ijthad products related to the settlement of these special inheritance cases, at least has become a treasure of Islamic inheritance law thought that has been responded to by many groups such as: The Indonesian Ulema Council, *faraidh* teachers, academics, practitioners (Religious Court Judges), psychologists, and sociologists with the statement that until now *faraidh* is still "gender fair."

As part of Islamic law as a whole, *faraidh* which has been regulated in detail, and in accordance with the purpose of this Islamic inheritance law (*maqashid al sharia*), then the benefit, equality, and justice for each heir for his rights / acquisition of the inheritance of his heir, can be felt and proven directly through the settlement of this special case concretely in the midst of quite varied community responses.

The analysis shows that the issue of gender justice cannot be separated from the discussion of *faraidh*. This is because it is closely related to the discussion of heirs from two different gender groups (men and women). In addition, *maqashid al sharia* clearly and unequivocally shows that justice, equality and maslahat are part of the principles of Islamic law, including *faraidh*.

In many aspects and perspectives, the special case of *ghararwain* can basically be chosen or not to be used as a solution to the distribution of inheritance. Because this really depends on the condition and status of the mother and father as the heir's parents in the context of their intact or divorced household life. The mother, who in this case will be "deceived" by this special settlement method, of course (it is very possible) will refuse to be given the remaining 1/3 part which is "strange."

In the midst of gender justice issues, the community responded to the settlement of the *ghararwain* special guardianship case with the same impression as it did a dozen centuries ago. The pros and cons with each reason, legal basis according to profession, expertise and perspective (psychological, sociological, and economic), remain in diversity even though it still seems very adaptive.

In accordance with the purpose of this Islamic inheritance law, then the benefit, a sense of equality and justice for each heir, especially in the field of inheritance.

These two basic case structures for the right or acquisition of inheritance can both be perceived and understood from any point of view (Berahim, 2015).

However, it is not an exaggeration to say that *tsuluts al baqi*, which is the specialty of the *ghararwain* case, should not be used as part of the provisions (rules) of inheritance that are binding later (Sarmadi, 1997). Especially if it must be included in an article, especially when the awaited inheritance law has been established.

In addition to the reason for legal changes that become a "necessity," in the current context, people seem to no longer question the issue of the formulation of the division of inheritance for men and women, which is often voiced with the term "two to one for men and women." Because in practice, people sometimes use *faraidh-isblab* settlement patterns, or *isblab* alone (Ministry of Religious Affairs of the Republic of Indonesia, 2010, pp. 82-83).

Based on this fact, article 178 KHI and other related articles such as article 177 of book II on inheritance law, should be reconsidered in relation to provisions that are binding for the parties (the case of heirs: husband, mother, and father, or wife, mother, and father). This will (at the very least) eliminate the impression that "faraidh is biased, or unfair to gender" with the adoption of the remaining 1/3 share for the mother of the heir in two special cases.

Because the version of the Compilation of Islamic Law (KHI), the results of the settlement of these two special cases, show the same results as what already exists in the provisions of the settlement of special cases *gharawain*. Not to mention that the solution becomes "abstruse" when the father of the heir is given different inheritance rights in two cases, namely 1/3 and *ashobah* as in the following matrix:

First Case Structure			Second Case Structure		
Heirs	Section	<i>Origin Problem 6</i>	Heirs	Section	<i>Origin Problem</i>
Husband	1/2	3	Wife	1/4	1
Mom	1/3 remainder	1/3 x 3 = 1	Mom	1/3 remainder	1/3 x 3 = 1
Father	1/3*	2	Father	Ashobah	2
*Father 1/3 share, according to article 177 KHI which is strengthened by SEMA Number 2 Taun 1994.			In this second case structure, the father's share is not mentioned with a fractional number. This is because SEMA No. 2/1994 only suggests that for the first case structure only.		
Regarding article 178 point (b) about 1/3 of the remainder for the mother of the heir in two special cases of this version of the Compilation of Islamic Law, according to researchers, it becomes "abstruse". when linked to article 177 regarding the share of the father of the heir.					

Based on the above discussion, every Muslim should "oblige" himself to always understand and explore the aspects of *maqashid al sharia* in relation to this Islamic inheritance issue. This is because what has been produced by the fukaha in their time, is not necessarily "the same / suitable" with the results of current thinking with many changes in the attitude or culture of the legal culture of the community.

However, it is still important to understand that "the law should change with the times, or the times should follow the law". This is because fiqh is always dynamic, while Sharia is fixed with absolute truth from the Most Just and Wise (according to His word).

CONCLUSION

Gharawain is one example of a special case of inheritance in *faraidh*. In addition to the structure of the case being standardized (fixed), the settlement of the

distribution of the inheritance, there are "deviations" in the context of the rights / shares received by the heirs. This is also a sign (condition) of the specialty of the case. *Tsuluts al Baqi* (one-third remainder) in the case of *gharawain*, making the mother in two cases "cheated" because her share is reduced from 1/3 to 1/4 or even 1/6 of the inheritance.

In the midst of gender justice issues, the community responded to the settlement of this special inheritance case of *gharawain* with the same impression as it did a dozen centuries ago. Differences of opinion with each reasoning according to profession, expertise and perspective, remain diverse but highly adaptive.

In accordance with the *maqashid al sharia*, the benefit, equality, and justice for each heir for his rights / acquisition of the legacy of his heir, can equally be felt and understood the wisdom from any point of view. However, it would not be an exaggeration to say that the remaining one-third, which is a privilege in the case of *gharawain*, should not be used as a binding settlement provision.

In addition to the reasons for changes in circumstances, the practice of resolving concrete inheritance cases in the community, also (already) no longer questions the formulation of the distribution pattern "Two to one for men and women." Moreover, if correlated with psychological aspects in this context. The mother and father of the heir, cannot be equalized with gender differences in the context of *ashobah bil ghair* as determined by *faraidh*.

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