



AL-BANJARI'S CONCEPT OF INHERITANCE BASED ON GENDER AND JUSTICE AND ITS IMPLICATIONS FOR FAMILY DIVISION IN BANJAR SOCIETY

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Abstract: This research discusses justice in the distribution of Islamic inheritance by examining the concept of *ashabah bil ghair* in the book of *Is'af al-Khaaid* by Shaykh Muhammad Syukri Unus. The main focus of this research is how this concept gives inheritance rights to women in the Islamic inheritance system, which is often considered unfair from a gender perspective. Using the literature research method, this study finds that the concept of *ashabah bil ghair* provides an opportunity for women to get a fairer share of inheritance than the basic rules of *faraidh*. The study also links the concept to the issue of gender equality in Islamic law and the challenges of its implementation in modern Muslim societies.

Abstrak: Penelitian ini membahas tentang keadilan dalam pembagian waris Islam dengan mengkaji konsep *ashabah bil ghair* dalam kitab *Is'af al-Khaaid* karya Syekh Muhammad Syukri Unus. Fokus utama dari penelitian ini adalah bagaimana konsep ini memberikan hak waris kepada perempuan dalam sistem kewarisan Islam yang sering dianggap tidak adil dalam perspektif gender. Dengan menggunakan metode penelitian kepustakaan, penelitian ini menemukan bahwa konsep *ashabah bil ghair* memberikan peluang bagi perempuan untuk mendapatkan bagian warisan yang lebih adil dibandingkan dengan aturan dasar *faraidh*. Penelitian ini juga mengaitkan konsep tersebut dengan isu kesetaraan gender dalam hukum Islam dan tantangan implementasinya dalam masyarakat Muslim modern.



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INTRODUCTION

Inheritance law is the law that regulates the transfer of property (rights) from the heir to the heirs to be divided.¹ The causes of inheritance are three: Nasab, marriage ties, and former masters of slaves². The division of inheritance has been regulated in the Qur'an *qath'i*, both parts of sons, daughters, fathers, mothers, wives, husbands and others have determined their respective parts. The shares obtained by the heirs differ from one another, for example, boys get twice the share of girls.

There are several verses of the Qur'an that underlie Islamic inheritance law. Among them is mentioned in Q.S. an-Nisa/2:11.

يُوصِيكُمُ اللَّهُ فِي أَوْلَادِكُمْ لِلذَّكَرِ مِثْلُ حَظِّ الْأُنثَىٰ ۚ

"Allah has prescribed for you the inheritance of your children: the share of a son is equal to the share of two daughters".

In the above verse Allah distinguishes the share of inheritance of sons and daughters, namely men get two parts of women. This is because men need money to provide for their families. So, it is appropriate that men are given twice the share given to women.³

Biologically, women and men are different, hence different social or work functions in society. Men are always associated with functions and tasks outside the home, while women who give birth to children are at home. Women are primarily responsible for raising children, while men have many responsibilities such as earning a living. So that the share of inheritance they get is different too.

As is known that the heirs are divided into two parts, there are those who get the property by way of *fard* and are called *ahlul furud*, there are also those who are entitled to inheritance by way of *ta'sib* (rest) and are called *'ashabah*, they are those who do not have a certain share agreed upon by the scholars of their rights to the inheritance of the testator.⁴

'*Ashabah* is divided into three parts :

¹ Hasan bin Ahmad Al Kaf, *Al Taqdir Al Sadidah*, (Yemen: Dar Al Almiras Wannabawi, 2013), pp. 203

² Ibn Rushdie, *Bidayatul Mujtahid*, (Lebanon: Dar Al Kutub Al Ilmiah, 2017), p.720.

³ Muhammad Nasib Ar-Rifa'i, *Ease from Allah Summary of Tafsir Ibn Kathir*, translated by Shihabuddin (Jakarta: Gema Insani, 2012), p. 498. 498.

⁴ Segaf bin Hasan Baharun, *How to Divide Your Inheritance Correctly*, (Pasuruan: Yayasan Pondok Pesantren Darullughoh Wadda'wah, 2016), pp. 44

1. '*Ashabah binafsih*, which is asobah who becomes '*ashabah* by itself not because of the presence of others, or togetherness with others. They are all male heirs other than the husband and the mother's brother of *the deceased*.
2. '*Ashabah bil ghoir*, they are people who were not '*ashabah* but because they are with one of the asobah *binafsih* then they also become '*ashabah*, they are daughters if they are with sons or sisters if they are with brothers.
3. '*Ashabah ma'al ghoir*, they are those whose origin is not '*ashabah* but they gather with a group of heirs whose origin is also not '*ashabah*, then he becomes *ashabah* with him, they are, if siblings or fathers gather daughters or granddaughters of sons, then he is entitled to inheritance by way of *ta'sib* and *his asobah* is called '*ashabah ma'al ghoir*.⁵

It is often understood that one of the conditions of '*ashabal bil ghair* is one degree (equal in terms of *lineage*) and does not give justice to women with the division of one male versus two female parts, but in the book of *Is'af al khaaid* it actually provides understanding, that it is permissible to be unequal related to the case of granddaughters of sons with great-grandchildren of sons on condition that the granddaughter does not get *fardu* (1/2, 1/3 or 1/6) and has *takmilah* 2/3 part. This problem if we look at it actually raises the dignity of women, who used to not get a share now even get a share, even this is even detrimental to men with this division, because men have to give one part for women.

This issue is certainly very interesting if it is related to the rampant discussion of women's issues, the discourse of contemporary Islamic formation related to women's issues. Actually, gender issues are not new in Islamic thought because historically almost every Islamic thought has always discussed exclusively about women. So that the discourse related to women's matters or also known as the discourse of feminism has even become controversial, this is mostly triggered by the construction of feminism itself which is built on the awareness of women's oppression.⁶

⁵ Muhammad Ali As Shobuni, *Al Mawaris*, (Jakarta: Dar Al Kutub Al Islamiyah, 2010), p. 61

⁶ Siti Ruhani Dzuhayantin et al, *Reconstruction of Methodological Discourse on Gender Equality in Islam*. (Yogyakarta: Student Library, 2002), pp. 2-4.

Gender at this time is indeed not a new discourse anymore in some communities. Even various conversations have been held to socialize gender concepts by means of seminars, discussions and so on, which in the end gender issues are increasingly widespread in society.

Currently gender is still an issue that is the center of attention that is often discussed, gender is seen as a social construction that highlights humanitarian issues related to the problems of justice and equality of men and women.⁷

Discussions about gender often result in uncomfortable feelings, be it from women-only forums or general forums (involving both men and women). This is because gender is still considered a product of western culture. Because of this, in our society there is still a misconception that gender itself is synonymous with women.⁸

Although the conversation in terms of gender has been very widespread, but in terms of concepts there is still a lot of misunderstanding both from laymen, even among the educated, the term gender is often interpreted with sex which results in confusion of understanding, even more so aimed at the female sex, this is clearly not true, because often when gender is mentioned, what is imagined in their minds is only female sex, even though in terms of gender this includes both female sex and male sex.⁹

The meaning of sex is the hormonal and pathological biological differences between men and women, while gender is a set of attitudes, roles, responsibilities, rights, and behaviors attached to men and women due to cultural formation.¹⁰

So it can be interpreted that gender is a concept that refers to the roles and responsibilities of men and women as a result of social construction.¹¹

In fact, gender differences are not a problem as long as they do not give birth to gender injustice, but in reality it is often said that gender differences have given birth to various injustices, especially for women.

The presence of Islam in the world is none other than to liberate humans from various forms of injustice, if there are norms that are used as a guide in law then the norm

⁷ Kadaruzman, Religion, *Gender Relations and Feminism* (Yogyakarta: Kreasi Wacana, 2005), p. 21

⁸ Mufidah. Ch, *Gender Issues* (Malang: UIN MALIKI PRESS IKAP, 2010), p. 1

⁹ Siti Musdah Mulia et al, *Justice and Gender Equality from an Islamic Perspective* (Jakarta: Gramedia: LKG, 2003), pp. 7-9

¹⁰ *Ibid*, p. 12

¹¹ *Ibid*, p. 13

must be rejected, Islamic law recognizes the existence of customary law as long as it is in line with Islamic teachings, this is evidenced by the words of the Prophet SAW narrated by Imam Ahmad which reads: "Whatever is considered by people who are right in their Islam then it is good, and whatever is considered not good by people who are right in their Islam then it is not good". But not everything that exists and applies according to the ratio of society then it always contains goodness. Therefore, the presence of the science of inheritance in Islam is actually a form of real evidence of justice in Islam, but often there is an opinion that the injustice of Islam includes the division of one man versus two women. In this case, if we examine more deeply related to cases that occur two-to-one division, we will find that women get inheritance just because of men such as the case of *Akhun Mubarak*, and the existence of male great-grandchildren can make *'ashabah bil ghair* to granddaughters of sons.

The existence of the case in the Malay book of *Is'af al khaaid* related to the concept of the distribution of inheritance of great-grandchildren of men who are able to make granddaughters of sons become *'ashabah bil ghair* is a proof that Islam pays attention to women, even the existence of this case is very detrimental to men because their share of the inheritance is reduced because it is given to women, The effect that arises because this case has a positive impact on women, especially when viewed in terms of Islamic justice towards gender, this case raises the dignity and dignity of women in terms of inheritance, and provides a very fair law in terms of gender, what else if it is related to the historical emergence of the concept of inheritance as well as expressions and theories of justice that exist in the sources of Islamic law, namely the Qur'an and Hadith.

Cases of family division of inheritance are also considered part of gender justice from some researchers. So that various cases that occur in inheritance issues want to be re-examined by researchers from the opinion of Shaykh Muhammad Shukri Unus, the author of the Book of *Is'aful Khaaid* with a gender justice approach.

METHOD

The type of research that the author uses in this research is *library research*, which is research that uses written materials.¹² For this research, the author uses library studies to examine the book and the opinion of Shaykh Muhammad Syukri Unus directly as additional complementary data from the methods offered.¹³ This method is still qualitative because it wants to emphasize the results of analysis from the book and confirmed regarding al-Banjari's opinion on the distribution of inheritance in an equitable manner.

RESULT AND DISCUSSION

Justice in the distribution of inheritance for men and women

Shaykh Muhammad Shukri Unus said that based on the hadith of the Prophet SAW that **Farā'id** is one half of knowledge, in this case Sayyid Bakri Shatha in his book called *Tanah Ath Thalibin* that the reason why it is called two sciences is because it is related to death, where death is the antonym of life.

Imam Al Qurtubi in his commentary commented on the verse of inheritance contained in the Qur'an, that this verse is one of the pillars of the pillars of religion, and one of the pillars of the law, the mother of the mother verses of the Qur'an, because the knowledge of **Farā'id** is very great in position, to the extent that he is said to be a thousand knowledge. And indeed said the Prophet Muhammad :

تعلموا الفرائض وعلموها الناس، فإنني امرؤ مقبوض، وإن العلم سيقبض، وتظهر الفتن حتى يختلف اثنان في الفريضة، فلا يجدان من يقضي بينهما.

I am a person who will pass away, and knowledge will be taken away, and fitnah will be rampant, to the extent that there will be a dispute between two people in terms of their fard share, so that neither of them will find anyone who is able to give a just decision between them.

When this is established, you should know that the knowledge of **Farā'id** is the majority of the knowledge of the Companions, and it is the most discussed of the Companions, but many people neglect it.

According to the author (me personally), if we look carefully and we understand it in terms of the text (looking at the implied text), it may be that the futility of **Farā'id** science is not because it is not studied, but the pattern of distribution of heirs has been interfered with by the provisions set by

¹² Rahmadi, *Introduction to Research Methodology*, Cet. 1, (Banjarmasin: Antasari Press, 2011), pp. 13

¹³ Ibid, pp. 13

humans living in academic circles by embracing scientific methods, then producing new distribution formulations that are at odds with the context of the inheritance verses in the Qur'an.

والإرث حقابل للتجزى يثبت لمستحقه بعد موت من هو له. وأركانه ثلاثة مورث بكسر الراء المشددة ووارث وحق موروث. وشروطه ثلاثة تحقق موت المورث وتحقق حياة الوارث بعد موت المورث والعلم بالجهة المقتضية للإرث. وأسبابه ثلاثة النسب والنكاح والولاء, وموانعه ثلاثة الرق والقتل واختلاف الدين.

برمولا موارث ايله حق يغ منريم بك د بك يغ ثابت بك يغ ممفر اوله حق ترسبوت سسوده ماتي اورغيج فوث حق. دان سكللا ركن موارث اد تيك فرتم مورث (اورغيج موارثكن/اورغيج دوارث/اورغيج ماتي). كدوا وارث (اورغيج موارث/اورغيج هيدف), كتيك حق موروث (بندا يغ دوارث). دان شرط 2 موارث اد تيك فرتما يقين ماتي مورث (اورغيج دوارث), كدوا يقين هيدوف سوارث سوده ماتي يغ دوارث, كتيك متهوى دغن جهة 2 يغ منونتت بك موارث. دان سبب 2 موارث اد تيك فرتم كارن نسب (كترونن), كدوا كارن نكاح, كتيك كارن مغاصباهي عبد يغ دمردكاكن. دان سكللا يغ منكه موارث اد تيك فرتام جادى عبد, كدوا كارن مبهونه, كتيك كارن برساهن اكام.

The beginning of inheritance is the right that receives the share that remains for the one who acquires the right after the death of the person who has the right.

And all the pillars of inheritance are three: first *muwarris* (the person who inherits / the person who inherits / the person who dies), second inheritance (the person who inherits / the living person), third *maurus* rights (objects inherited).

The conditions for inheritance are threefold: the first is the certainty of the death of the heir, the second is the certainty of the life of the heirs after the death of the testator, and the third is the knowledge of the seizures that require inheritance.

And the causes of inheritance are three: first because of descent, second because of marriage, third because of mengashabahi a slave who is freed.

And everything that prevents inheritance is three: first because of being a slave, second because of killing the heir, third because of different religions. Inheritance *ashabah bil ghair* for daughters with sons, granddaughters of sons with grandsons of sons or with great-grandsons of male lineage provided that he is with two daughters.

يغ موارث جادى عصبه بالغير اذا أمفة (4) :

1 - بنت دغن ابن

2- بنت ابن دغن ابن ابن اتو دغن ابن ابن بيلا اذا بنتان

3- أخت شقيقة دغن أخ شقيقة

4- أخت لأب دغن أخ لأب

مقصود جادى عصبة بالغير يائت جادى عصبة دغن اورغ لائن سفرقى بنت دغن ابن مكا بنت جادى عصبة بالغير دغن سبب اد ابن دان
مبكيث بكي بنت سفارو دار ابن كارن آية لذكر مثل حظ الأنثي. ارتيث بكي لآكي 2 دواكالى بكيان فرمفوان.

"Second: There are four 'aṣabah bil gair (heirs):

1. Girls with boys.
2. Granddaughters with grandsons of sons, or with great-granddaughters of sons if there are two daughters.
3. Siblings with siblings.
4. Sister of the same father with brother of the same father.

The meaning of being 'aṣabah bil gair is being 'aṣabah with another person, such as a daughter with a son, so the daughter becomes 'aṣabah bil gair because there is a son and the daughter shares one half of the son, because the verse للذكر مثل حظ الأنثين means "The share of the man is twice that of the woman".

Analysis

The Arabic language has many words that indicate the meaning of male or female, of course there is a very strong reason for the word used by the Qur'an why it uses the word zakar instead of rajul even though the meaning is the same indicating male, and also why the word used by the Qur'an is unṣa not mar'ah, in the use of this word, Sayyid Mahmud Al Alūsi mentions in his book called *Rūh Al Mā'ani*, that the word zakar covers the male gender, whether he is a child or an adult, while the word rajul cannot reach men who are young, and the word mar'ah does not cover women who are young. Based on this expression from the Qur'an, of course, it has rejected the inheritance law of the jahiliyyah period which explicitly states that young children do not get inheritance, not only girls but also boys.¹⁴

Mahjub granddaughter of a son

كليم - كوكور (محبوب) دغن ادا اورغ بنت اتو لبيه سلام تيدق ادا ابن مك جادى عصبة بالغير.
كأم - كوكور (محبوب) دغن سبب ادا ابن.

¹⁴ Sayyid Mahmud Al Alūsi, *Rūh Al Mā'ani*, (Lebanon: Beirut, 1993), p.339.

Fifth - it is extinguished by the presence of two or more daughters, so long as there are no grandsons of sons, it becomes *ashabah bil gair*.

Sixth- forfeiture (*mahjub*) on account of a son.

Analysis

The reason why the granddaughter of a son is *mahjub* in the presence of two daughters is because the share of female heirs from the line of descent downwards is *fardu 2/3*, while the granddaughter's situation is from the line of descent downwards. As for her inheriting with the grandson of a son, or below, she inherits as *ashabah bil gair* (not *fard*).

As for the reason why granddaughters are *mahjub* with sons, it is because the degree of grandchildren is more distant kinship ratio when compared with children.

The amazement of the brothers;

biological sister

كليم - كوكور دغن ادا ابن دان ابن دان سكليفون كباوه دان ادا أب.

Fifth- it is waived by the presence of a son or by the presence of a grandson of a son, even if it is downward, and it is also waived by the presence of a father.

half-sister

كليم - كوكور (محبوب) دغن ادا ابن دان ابن سكليفون كباوه. دان دغن ادا اب دان أخ شقيق دان أخت شقيق افيلا أخت شقيق جادی عصبة مع البنت (عصبة مع الغير).

Fifth - it is extinguished by the presence of a son, or by the presence of a grandson of a son even if he is below, and by the presence of a father, or by the presence of a biological brother and a biological sister if the biological sister is *ashabah* with the daughter (*ashabah bil gair*).

Analysis

The reason why a female sibling is *mahjub* in the presence of a biological brother is because biological brothers have a stronger relationship from two lines of descent, namely from the father and mother, while the reason biological sisters can *hijab* sisters is

because when they become *ashabah ma'al gair* they have the same power as biological brothers, both in inheriting and *hijab*.

one-mother sister.

کتیک - کوکور مریک ایت دغن اداث ولد (یعنی انق لاکئی 2 اتو فرمفوان یعنی ابن اتو بنت) دان اداث ولد الابن (چوچو لاکئی 2 اتو فرمفوان دار انق لاکئی 2 یعنی ابن ابن اتو بنت ابن) دان اداث باف (أب) دان اداث کاءي (جد).

Thirdly - their death is due to the *walad* (son or daughter) and the *walad al ibn* (grandson or granddaughter of the male line), and it is also due to the father or the grandfather.

CONCLUSION

This study concludes that the concept of *ashabah bil ghair* in Islamic inheritance law provides a fairer solution for women, especially in the case of inheritance of granddaughters with great-grandchildren. The discussion in the book of *Is'af al-Khaaid* shows that Islam has a flexible mechanism in the distribution of inheritance that can be adjusted to social conditions. Therefore, the assumption that the Islamic inheritance system discriminates against women needs to be studied more deeply by understanding the social aspects and justice in Islamic law.

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