

# NAJMUDDĪN AL-TŪFĪ'S THOUGHTS ON THE DYNAMICS OF INHERITANCE LAW 2:1 PERSPECTIVE OF MAŞLAĤAH

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**Abstract:** *Islamic hereditary law in the reality of human life demands legal dynamism to vouch for the flexibility and adaptability of genetic law following the characteristics of modern Muslim societies. This article elaborates on the dynamics of the 2: 1 inheritance law between heirs, male and women, from the perspective of the maşlahah of Najmuddīn al-Tūfī. To analyze the conception of inheritance 2:1 division, this study attempts to dissect it with the theory of maşlahah Najmuddīn al-Tūfī. The studies and analysis have been discovered, resulting in the conclusion that the dynamics of the 2: 1 hereditary law has been subject to embodying the benefits properly. In the view of Najmuddīn al-Tūfī, the help is the goal of sharia, even the highest argument if it is contradicted between text and maşlahah. This view, when applied to the verse of the Holy Qur'an, An Nisa (4): 11, will open up opportunities for responsive reinterpretation. Based on this concept, it is understood that deviating from the law of text in the distribution of inheritance is permissible to create benefits for the heirs and avoid disputes.*

**Keywords:** *Dynamics of Thought, Islamic inheritance law, Maşlahah, Najmuddīn al-Tūfī.*

**Abstrak:** Hukum kewarisan Islam dalam realitas kehidupan manusia menuntut terjadinya dinamisasi hukum untuk menjamin fleksibilitas dan adaptabilitas hukum kewarisan yang sesuai dengan karakteristik masyarakat muslim modern. Artikel ini mengkaji dinamisasi hukum waris 2:1 antara ahli waris laki-laki dan perempuan dari perspektif maşlahah Najmuddīn al-Tūfī. Untuk menganalisis konsepsi pembagian warisan 2:1, kajian ini berupaya membedahnya dengan teori maşlahah Najmuddīn al-Tūfī. Dari kajian dan

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The Indonesian Journal of Islamic Family Law  
Volume 11, Nomor 02, Desember 2021; ISSN:2089-7480

analisis yang telah dilakukan diperoleh kesimpulan bahwa dinamisasi hukum waris 2:1 mempunyai tujuan agar aspek kemaslahatan bisa terwujud secara tepat. Dalam pandangan Najmuddin al-Tūfi, kemaslahatan merupakan tujuan dari syariah, bahkan dalil tertinggi jika dipertentangkan antara nash dan *maṣlaḥah*. Pandangan tersebut jika diaplikasikan terhadap QS. An Nisa (4):11 akan membuka peluang terjadinya reinterpretasi yang responsif. Berdasarkan konsep tersebut, menjadi maklum bahwa menyimpangi teks hukum dalam pembagian warisan diperbolehkan demi mewujudkan kemaslahatan bagi ahli waris dan menghindari terjadinya perselisihan.

**Kata Kunci:** Dinamika Pemikiran, Hukum Waris Islam, *Maṣlaḥah*, Najmuddin al-Tūfi.

## Introduction

Inheritance law is one part of civil law as a whole and is a small part of family law, so inheritance law is part of family law that plays an important role, even determines and reflects the legal system and form that applies to society.<sup>1</sup> Inheritance law has the characteristics of continuous development starting from its formation as the beginning of legal history to the present day becoming a contemporary inheritance law.<sup>2</sup>

History of Islamic law<sup>3</sup> has shown that Islamic inheritance law is part of the legal history of Arab society. Hence, Islamic

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<sup>1</sup> Syamsulbahri Salihima, *Perkembangan Pemikiran Pembagian Warisan*, (Jakarta: Prenadamedia Group, 2015), 2

<sup>2</sup> In the view of J.N.D. Anderson, Islamic inheritance law is the core of sharia because the Qur'an and hadith directly indicate it. For centuries this law has become a characteristic of Muslims and applies in almost all areas of the Islamic world and even applies among non-Muslim citizens in several Islamic countries. J.N.D Anderson, *Hukum Islam di Dunia Modern*, alih bahasa Machnun Husein, (Surabaya: Amarpress, 1990), 65-66.

<sup>3</sup> Islamic law is an order of rules used by Muslims in their lives. It is a complete and universal legal system. Implementing its laws requires a thorough understanding, because mistakes in understanding Islamic law will have an impact on getting the law away from humans, or the function of

inheritance law is not an independent form of Islamic law, but a continuation of inheritance law adapted to Islamic law. In Arab culture, inheritance law is closely related to the theory of power focused on men. Therefore, it is natural that then the transfer of one's property puts the son over the daughter.<sup>4</sup> Inheritance law is a law that regulates the transfer of ownership rights to the inheritance (tirkah) of the heirs, determining who is entitled to become heirs and how much of each.<sup>5</sup> Allah SWT has regulated the rules regarding the concept of inheritance distribution through His words contained in the Holy Qur'an. Various inheritance rules in the Qur'an that still require explanations, both affirmative and detailed, were conveyed by Muhammad SAW through his Hadith.<sup>6</sup>

However, its application still gives rise to various progressive thought discourses and discussions, which are then formulated in the form of normative teachings. Among the problems that have become discourse and debate among practitioners and theorists of modern Islamic law is the formulation of a 2:1 inheritance distribution between men and women.<sup>7</sup>

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legal institutions in society will be separated. Therefore, there are several things that allow Islamic law to run dynamically, following the times. So that Islamic law can always live according to the development of human social life. Ahmad Mukri Aji, "Dinamisasi Hukum Islam di Indonesia," *Jurnal Mizan*, Vol.4:1 (Desember 2016), 253.

<sup>4</sup> Purwosusilo dan Sugiri Permana, *Hukum Waris di Indonesia*, (Surabaya: Pustaka Saga, 2021), 7.

<sup>5</sup> See article 171 letter (a).

<sup>6</sup> Moh. Muhibbin dan Abdul Wahid, *Hukum Kewarisan Islam*, (Jakarta: Sinar Grafika, 2009), 2.

<sup>7</sup> Islamic law is an order of rules Muslims use in their lives. It is a complete and universal legal system. Implementing its laws requires a thorough understanding because mistakes in Islamic knowledge of the law will impact getting the law away from humans, or the function of legal institutions in society will be separated. Therefore, several things allow Islamic law to run dynamically, following the times. So Islamic law can always live according to the development of human social life. Diana Zuhroh, *Fiqh Mawaris*, (Surakarta: Fakultas Syariah IAIN Surakarta, 2014), 14.

One of the basic rules in Islamic inheritance law is that the share of men gets twice that of women as indicated in the word of Allah QS. An-Nisa (4): 11

*"Allah prescribes for you about (the division of inheritance for) your children. That is: the share of a son is equal to the share of two daughters."*<sup>8</sup>

In the perspective of ushul fiqh, the verse is categorized as a *qaṭ'iu al-wurūd wa al-dalālah* verse (clear transmission and firm designation). Theoretically the designation of the meaning of the *qaṭ'i* verse is no longer as fiqh whose truth quality is only at the level of prejudice (speculation) but the quality of the *qaṭ'i* verse has reached the sharia level<sup>9</sup> which in understanding and implementing it, Muslims should not be different, because sharia has been confirmed to contain clear, firm and definite laws so that it does not require interpretation and takwil anymore. Deviating from the textual meaning of the *qaṭ'i* text is clearly considered wrong because it is contrary to sharia.<sup>10</sup>

The position of women as one of the heirs who come from kinship lines is a central issue in the study of family fiqh. Although women's inheritance rights are not always smaller (less than men's inheritance rights), in certain circumstances women's inheritance rights are small (less compared to other men's rights of equal or equal strata), then it always sticks out surface and become the study of many parties.<sup>11</sup> Not a few also allege that in Islamic inheritance there is discrimination even though the world of work is no longer a monopoly of men in

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<sup>8</sup> QS. An-Nisa (4): 11

<sup>9</sup> Sharia is a regulation set by Allah or the basics set by Allah so that humans adhere to it in their relationship with God, relate to fellow human beings, relate to the universe and relate to life. Mahmud Syaltut, *Al Islam 'Aqidatan wa Syariatatan*, (Ttp: Dar al Qalam, 1996), 12.

<sup>10</sup> M. Sutomo dan Ahmad Zaenal Fanani (ed), *Menggugat Stagnasi Pembaruan Hukum Islam di Indonesia*, (Yogyakarta: UII Press, 2016), 182.

<sup>11</sup> Oyo Sunaryo Mukhkas, *Pranata Sosial Hukum Islam*, (Bandung: PT. Refika Aditama, 2015), 176.

this modern era. Islamic family law <sup>12</sup> in the modern era more shifts towards gender equality. Funding for family life is not only the obligation of men, even in certain cases, it is not uncommon for the wife's/mother's economic income to be much greater than the husband's/father's economic income.

The concept of 2:1 is often considered a problem between heirs when considering the conditions of modern society today. Today, it can be said that the concept of 2:1 does not bring benefit to the female heirs. The benefit in contemporary family law will be achieved if the 2:1 issue in inheritance is something contextual and functional, not something principal and does not at all emphasize the superiority of men over women.<sup>13</sup> 2:1 inheritance division formulation in QS. An Nisa (4):11 cannot be separated from context. The verse records how 2:1 is part of the functions played by men and women in certain social contexts, which should not be understood as a rigid mechanism, but flexible and contextual for the realization of the benefit of all heirs.

One discussion of *maṣlaḥah* thought that is quite surprising is the thought of Najmuddīn al-Ṭūfī. In the view of Najmuddīn al-Ṭūfī that if there is a conflict between *maṣlaḥah* and even *qaṭ'i* texts or *ijma'*, then a scholar must prioritize *maṣlaḥah* or *daʿu al-ḍarār*. The purpose of Islamic sharia according to Najmuddīn al-Ṭūfī is *maṣlaḥah*, departing from this concept all forms of *maṣlaḥah* because it is a *maqāṣid sharīa*, whether it obtains the legitimacy of the sharia text or not, then the benefit must be realized.<sup>14</sup>

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<sup>12</sup> To refer to Islamic family law there are several terms used by scholars and contemporary family law legislation. Family law is a provision of Allah that comes from the Qur'an and the sunnah concerning family ties (family) whether that occurs because of blood relations or because of marriage relationships that must be obeyed by every mukallaf. Mardani, *Hukum Keluarga Islam di Indonesia*, (Jakarta: Kencana, 2014), 3.

<sup>13</sup> Faqihuddin Abdul Kodir, *Qiraah Mubadalah*, (Yogyakarta: IRCiSoD, 2019), 267.

<sup>14</sup> Mustafā Zaid, *Al-Maṣlaḥah fī Al-Tashrī' Al-Islāmī Wa Najmuddīn Al-Ṭūfī*, (Kairo: Dār al Fikr, 1954), 14-15.

In the context of maintaining progender modern family law justice and accommodating social realities that develop in a pluralistic society, the dynamics of Islamic law regarding the distribution of inheritance 2:1 when viewed from a benefit perspective should be considered and may be related to the purpose of Islamic law is to realize the benefit of humans both in the world and in the world. in the afterlife.

The academic problems above raise problems that require *ijtihad*<sup>15</sup> contemporary about how the formulation of the distribution of inheritance 2:1 in the frame of *maṣlaḥah* Najmuddīn al-Ṭūfī? Is it based on the benefit aspect proposed by Najmuddīn al-Ṭūfī that the dynamics of the 2:1 division of inheritance can be applied for the realization of justice in modern family law?

If traced, studies on the formulation of the 2:1 division of inheritance have been carried out. As far as the author has studied, there are three studies that examine the formulation of 2:1 inheritance distribution. Riyanta in his research entitled *Formulation of 2:1 Inheritance Distribution in Al Jabiri's Epistemological Perspective and Its Implementation in Religious Courts* explains that according to al Jabiri, it can be concluded that the 2:1 inheritance distribution formulation is not *qaṭ'i*. It can change according to transformative function of the Qur'an. In fact, if 2:1 is considered constant, then the Qur'an is only historical, even though the truth of the Qur'an is more transhistorical.<sup>16</sup>

Ja'far Sidiq in his research entitled *Formulation of Male and Female Inheritance Shares in Relation to Family Economic Responsibilities*.<sup>17</sup> In this study, it is explained that inheritance

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<sup>15</sup> Ijtihad is the process of devoting all the capabilities of a mujtahid to seek knowledge of shari'a law. Abu Hamid Muhammad bin Muhammad al Ghazālī, *Al-Mustashfā Min 'Ilmi Al-Uṣūl*, (Beirūt: Dār al Fikr, tt), 350.

<sup>16</sup> Riyanta, *Hubungan Muslim dan Non-Muslim dalam Kewarisan*, (Yogyakarta: Kurnia Kalam Semesta, 2018), 11-12

<sup>17</sup> Ja'far Sidiq, "Formulasi Bagian Ahli Waris Laki-laki dan Perempuan Kaitannya dengan Tanggung Jawab Ekonomi Keluarga", (Skripsi--UIN Sunan Kalijaga, 2005).

regulation in Islam is contextual, meaning that the formulation of inheritance distribution does not necessarily have to be 2:1, but can be 1:1. In the case of men having responsibility for the family's maintenance, the 2:1 inheritance distribution formulation is considered fair. However, if it is a woman who is responsible for supporting the family, then the 2:1 inheritance distribution formulation will be paid in line with the changing roles played by women.

Similar to the dynamic pattern of inheritance law above, Muhammad Faudzan's research entitled *Distribution of Inheritance Rights 1:1 for Male and Female Heirs (Analysis of the Medan Religious Court Decision No. 92/Pdt.G/2009/PA.Mdn)*.<sup>18</sup> In this study, Muhamad Faudzan studied the decision of the Medan Religious Court. In his review of the decision, he also supports the dynamic pattern of Islamic inheritance law that has been carried out by the judge by providing a 1:1 inheritance distribution formulation between male and female heirs. The concept of 2:1 inheritance distribution is not something that is *qat'i*, so that the concept can be carried out by an *ijtihad* process in order to achieve justice for all heirs. The *ijtihad* is based on the facts that occur in the field (law *'illat*). Therefore, the judge was of the opinion that it would not fulfill a sense of justice if the normative provisions on inheritance distribution in the Qur'an were directly applied to all circumstances without paying attention to the legal facts that occurred in the field.

This article has a different field of study from previous research. The research method used in this study is qualitative research, which focuses on the literature related to the study of inheritance in Islam. This study focuses on the dynamics of 2:1 inheritance law from Najmuddin's perspective on Thufi's *maṣlaḥah*. The aim is to support and respond to the dynamics of 2:1 inheritance law in Islam so that the value of benefit in

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<sup>18</sup> Muhamad Faudzan, "Pembagian Hak Waris 1:1 Bagi Ahli Waris Laki-Laki dan Perempuan (Analisis Putusan Pengadilan Agama Medan No. 92/Pdt.G/2009/PA.Mdn)", (Skripsi-- UIN Syarif Hidayatullah, Jakarta, 2014).

modern family law can be achieved. Islamic inheritance law, like Islamic law in general, has the main goal of realizing benefit. The benefits of Islamic inheritance will not be achieved without a sense of justice. Likewise, the 1:1 division between male and female heirs is nothing but to distribute a sense of justice in the distribution of inheritance. In the Islamic inheritance system, it must be understood in an integrative way which is not only based on textual understanding, but must also be based on contextual understanding by looking at legal facts that occur in the field. Thus, Islamic inheritance law will remain consistent.

### **Concept of Inheritance in Islamic Law**

In Islamic law,<sup>19</sup> Inheritance law occupies a very important place. The verse of the Qur'an regulates inheritance laws clearly and in detail. It is understandable that the problem of inheritance will surely be experienced by every Muslim.<sup>20</sup> Islamic inheritance law basically applies to all Muslims around the world. However, the style of an Islamic state and life in that country or region have different influences on inheritance law, this is due to several factors, including:<sup>21</sup>

First, although basically Islam has regulated the legal basis of inheritance in detail in the Qur'an, if there is an impossibility the meaning has been explained by the Prophet. However, in terms of practical implementation there are problems contained in the Qur'an and have not been explained

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<sup>19</sup> Islamic law is a set of rules based on the revelation of Allah and the Sunnah of the Prophet regarding the behavior of the mukallaf human which is recognized and believed to be valid and binding for Muslims. The term Islamic law is not found in the Qur'an at all. The term is a translation of Islamic Law in western literature. The use of the term in the Indonesian context is ambiguous, sometimes it means sharia and at other times it means fiqh. Ismail Muhammad Syah, *Filsafat Hukum Islam*, (Jakarta: Bumi Aksara, 1992), 16-18.

<sup>20</sup> Rachmadi Usman, *Hukum Kewarisan Islam*, (Bandung: Mandar Maju, 2009), 3.

<sup>21</sup> M. Idris Ramulyono, *Perbandingan Pelaksana Hukum Kewarisan Menurut KUH Perdata dan Islam*, (Jakarta: Sinar Grafika, 1994), 6.



by the Prophet, so the law becomes open. Second, that the science of law, including Islamic law, in which the law of inheritance is included, is classified as a social science and not an exact science. Therefore, inheritance law is the place where there is a possibility of differences of opinion among the jurists themselves, especially regarding the verses that allow for more than one interpretation.

At the beginning of the development and growth of Islam, the Prophet Muhammad was the ideal idol to solve the problem of inheritance law because he occupied the most privileged position, he functioned to interpret and explain the law based on the revelation that came down to him. Then he is also authorized to make inheritance laws outside of revelation.<sup>22</sup> Islamic inheritance law contains regulations regarding various matters which include the rights and obligations regarding a person's wealth at the time of his death will be transferred to other people (heirs) who are still alive. Property left by someone who dies requires arrangements about who is entitled to receive it, how much is the share, and how to get it.<sup>23</sup>

The rules regarding the inheritance are set by Allah through His words contained in the Qur'an, especially in QS. An Nisa verses 7, 8, 11, 12 and 176, basically God's provisions regarding inheritance have clearly defined the purpose, direction and purpose. These rules are then enshrined in sheets of fiqh books and become guidelines for Muslims in solving inheritance problems.<sup>24</sup> Every person who is Muslim carries out all sharia rules (inheritance) that have been appointed by the texts, it is a must, as long as these rules are not appointed by other textual arguments that indicate their obligations.

In Islamic law literature, several terms are found to name Islamic inheritance law, such as: faraid, fiqh Mawaris, and

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<sup>22</sup> Ali Parman, *Kewarisan dalam Al-Qur'an: Suatu Kajian Hukum dengan Pendekatan Tafsir Tematik*, (Jakarta: PT Raja Grafindo Persada, 1995), 1.

<sup>23</sup> Moh. Muhibbin dan Abdul Wahid, *Hukum Kewarisan Islam*, (Jakarta: Sinar Grafika, 2009), 2.

<sup>24</sup> Amir Syarifuddin, *Hukum Kewarisan Islam*, (Jakarta: Kencana, 2004), 2.

inheritance law. This difference in naming occurs because of the difference in direction which is used as the main point in the discussion. The mention of faraid is based on the share that will be received by the heirs. The use of the diction of Mawaris emphasizes more on the assets that are transferred to the living heirs. While the use of inheritance law diction is based on the person who is entitled to receive the inheritance.<sup>25</sup> Although all these terms have different stresses, in essence they have something in common, namely the discipline that studies the matter of the transfer of inheritance to the heirs due to death.

Islamic inheritance law or known as the Islamic Law of Inheritance has its own characteristics when compared to other legal systems, such as civil law or common law.<sup>26</sup> In Islamic law, material provisions for people who are left behind by an heir have been explained in the Qur'an and Hadith comprehensively. As for the western legal system, in essence, submitting the issue of the inheritance of the heir based on the wishes of the person concerned, namely the heir by making a will during his lifetime. In other words, the will of the heir (the person who made the will) is the main thing and the new legal system interferes, if the testator does not give a valid will during his lifetime.<sup>27</sup>

If you look closely, Islamic inheritance law has fundamentally overhauled the inheritance system that was in effect in the pre-Islamic period which basically did not give inheritance rights to women and children. The inheritance

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<sup>25</sup> Ibid, 5-6.

<sup>26</sup> The form of inheritance or inheritance according to Islamic law is very different from the form of inheritance according to western law as regulated in BW and customary inheritance law. Inheritance or inheritance according to Islamic law is "a number of property and all rights of the deceased in a clean condition". This means that the inheritance inherited by the heirs is a number of property and all rights, "after deducting the payment of the heir's debts and other payments caused by the death of the heir". Eman Suparman, *Hukum Waris Indonesia: dalam Perspektif Islam, Adat, dan BW*, (Bandung: PT RefikaAditama, 2007), 13.

<sup>27</sup> Moh. Muhibbin dan Abdul Wahid, *Hukum Kewarisan Islam*, 2.

distribution system has long been abolished by Islam since the spread of Islam in the city of Medina (15 centuries ago) by prioritizing a just inheritance law without distinguishing between men and women and without distinguishing adults or children. Although the share of women only got half the share of men, however, the portion of inheritance to women at that time was a controversial legal breakthrough, because at that time women did not have the right to inherit even women were made objects of inheritance.<sup>28</sup> Thus, Islamic inheritance law has laid a foundation for legal justice in accordance with human rights and human dignity.

Islamic inheritance law as a religious law originating from revelation has its own special features that distinguish it from other inheritance law systems, namely:<sup>29</sup>

1. Balanced justice

The balance referred to in Islamic inheritance law lies in the balance between rights and obligations or between needs and uses. The existence of equal rights between men and women because both have given the same love to children. While the difference in the portion of the portion obtained between men and women (2:1) is motivated by:

- a. There are already women who bear the sustenance, namely sons, fathers, brothers, and other male families who are obliged to provide for them.
- b. Women are not required to earn a living.
- c. The obligation of sons to make a living is widely criticized and their obligation to bear a living is greater.
- d. Men are required to give a dowry.
- e. The needs of daily life such as school, the health of children and wives are the responsibility of men.

Justice in Islamic inheritance law lies not only in distributive justice, but also in commutative justice.

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<sup>28</sup> Muḥammad Aḥmad Ismā'il al-Muqarrim, *al Mar'ah Baina Takrīm al-Islāmī wa ihānati al-Jāhiliyyati*, (Kairo: Dār Ibnu al-Jauzi, 2005), 57.

<sup>29</sup> Diana Zuhroh, *Fikih Mawaris*, (Surakarta: Fakultas Syariah IAIN Surakarta, 2014), 26-27.

Distributive justice is justice that gives a certain portion to the heirs according to their services. While commutative justice is justice that gives equal portions to each heir without taking into account his services.

2. Have Legal Certainty

The transfer of property and rights of a person who dies to his heirs against his will. The heir does not have full authority to transfer his property freely according to his will. Thus the heirs will get guaranteed the right to get the inheritance as long as there are no internal or external factors that prevent it.

3. There is no privilege in giving inheritance to only one type of heir. For example, only giving to one eldest son, even though the number of children is large. But Islamic law equates the rights of the child according to their respective *furūd*.<sup>30</sup>
4. Do not refuse children who are not yet mature or women to receive inheritance as long as there are no obstacles to become legal heirs.

The holding of regulations regarding the transfer of inheritance in Islam is intended to provide a guarantee that the transfer of ownership of inheritance can proceed safely, orderly, and smoothly. Safe means that in the future there will be no disturbance in the form of a lawsuit or dispute, for example regarding the ownership of inheritance, either by heirs or third parties. While orderly and smoothly means that the transfer of inheritance is carried out based on Islamic law in the shortest possible time. The distribution of inheritance is not delayed until it drags on for a relatively long period of time or there is no distribution of inheritance at all.<sup>31</sup>

The implementation of this inheritance law is required by Islam to prevent the accumulation of wealth in small groups of people and to eliminate the gap between social classes, help maximize the distribution of inheritance and expand the

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<sup>30</sup> Mardani, *Hukum Kewarisan Islam di Indonesia*, (Jakarta: Rajagrafindo Persada, 2015), 21.

<sup>31</sup> Rachmadi Usman, *Hukum Kewarisan Islam*, 3.

equitable use of inherited assets.<sup>32</sup> Islamic inheritance law is an aspect of basic Islamic teachings and applies universally to every adherent to realize it in social life. As a universal teaching, Islamic inheritance law contains eternal values and useful elements to always be ready to overcome any problems, according to conditions, scope and time. Therefore, the purpose of Islamic law is to realize the benefit of mankind.<sup>33</sup>

The implementation of Islamic inheritance law is an order that must be carried out, according to the hadith of the Prophet narrated by Usman bin Haisim:

"Learn the Qur'an and teach it to others and learn the science of faraid and teach it to others. Because I am the one who will be snatched away (dead), while the knowledge will be reduced to the point that two people disagree about the distribution of inheritance and no one can explain it to him."

The hadith gives a signal about the concern of the Prophet that in the distribution of inheritance over the heirs' property it is not uncommon to trigger disputes between heirs. Islam has an interest in regulating so that the mission of its teachings can provide a sense of justice and welfare for its adherents. The extent to which Islamic inheritance law can be understood and manifested a sense of justice is something that requires its own wisdom.<sup>34</sup>

### **Najmuddīn Al-Ṭūfī and the Concept of *Maṣlahah***

Najmuddīn al-Ṭūfī has the full name Sulaiman (some add Abu ar Rabi') bin Abd al-Qāqī ibn al-Karīm ibn Sa'id al-Ṭūfī al-Sarsari al-Baghdādī al-Ḥambalī. Taking the name al-Ṭūfī originally attributed to the name Ṭaufa, which is a village in Sarsara close to the city of Baghdad where al-Ṭūfī was born. He has a nickname (*laqab*) Najm al-Dīn which means religious star. The name is a nickname or title that has been given by his

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<sup>32</sup> Ibid., 4.

<sup>33</sup> Syamsulbahri Salihima, *Perkembangan Pemikiran Pembagian Warisan*, 10.

<sup>34</sup> Ibid., 11.

students. On the one hand he is also often called by the name Ibn 'Abdul 'Abbās.<sup>35</sup>

Scholars differ on the year of his birth. Al-Hāfiẓ ibn Hajar determined that he was born in 657 H. Ibn Rajab and Ibn al Imad determined that al-Ṭūfī was born in 670 H. As for the year of death in 716 H, although other sources also explain that he died in 711 H.<sup>36</sup> Najmuddīn al-Ṭūfī is a famous scientist who is very thirsty and loves science. Besides being known as an intelligent person, he is also known for his strong memorization. He proved his love for science with his academic adventures by studying various disciplines of science in various places from the famous scholars of his time. Among the fields of science that he is engaged in are the science of interpretation, menstruation, fiqh, mantiq, literature, theology and various other disciplines. As for the places he had visited in his academic adventures, among others, Sarsari, Baghdad, Damascus, Cairo, and other places which at that time were known as the places of famous scholars.<sup>37</sup>

At the time of the birth of Najmuddīn al-Ṭūfī, marked by the fall of the city of Baghdad by the Mongol army. This in the following years led to an era of stagnation and decline in Islam. The fuqaha only revolved around issues that had been discussed by previous scholars by reviewing them, sorting out the strong opinions from the weak ones because at that time criticism was still considered taboo and unusual.<sup>38</sup> So it becomes clear that historically Najmuddīn al-Ṭūfī was born from the background of Islamic decline, especially Islamic law which demands reform efforts. Armed with a variety of knowledge mastered, Najmuddīn al-Ṭūfī strives to develop his thoughts and invites the scholars of his time to hold fast to the

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<sup>35</sup> Mustafā Zaid, *Al-Maṣlaḥah fī Al-Tashrī' Al-Islāmī Wa Najmuddīn Al-Ṭūfī*, 65.

<sup>36</sup> Muhammad Roy Purwanto, *Teori Hukum Islam dan Multi Kulturalisme*, (Jombang: Pustaka Tebuieng, 2016), 56.

<sup>37</sup> Mustafā Zaid, *Al-Maṣlaḥah*, 72.

<sup>38</sup> Muhammad Roy Purwanto, *Teori Hukum Islam dan Multi Kulturalisme*, 56.

Qur'an and sunnah directly in seeking the truth without being bound by the opinions of others or any school of fiqh.<sup>39</sup>

Najmuddīn al-Ṭūfī is a thinker of Islamic law who is not confined to one school. In many of his works, he claims to be a student of Ibn Taymiyyah and Ibn Qayyim al Jauziyyah who are Hanbali schools. However, he is a free thinker and does not want to be bound and consistent with only one school of thought.<sup>40</sup> This is evident in several of his opinions, he sometimes thinks very rationally in contrast to the Hanbali school in general, even tends to be Mu'tazilite, sometimes he also thinks like the Shia paradigm of thinking that glorifies the Prophet's family. On the one hand, sometimes it also uses the Mur'jiah paradigm of thought.<sup>41</sup>

In various reading literature that discusses Najmuddīn al-Ṭūfī provides information that he is a Muslim scholar who is diligent in reading and creating various works of science. More than that, he is also known as a liberalist and generalist Islamic legal thinker whose work is based on various scientific disciplines. With so many teachers and places he visited, it gave an influence on his scientific model which did not only focus on one discipline, so he was known as a scholar who mastered various sciences.

Najmuddīn al-Ṭūfī's expertise in various sciences can be traced from his many works and in various branches of science,

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<sup>39</sup> Badri Khaeruman, *Hukum Islam dalam Perubahan Sosial*, (Bandung; Pustaka Setia, 2010), 46.

<sup>40</sup> As a manifestation of freedom of thought to seek the truth of Islamic law, Najmuddīn al-Ṭūfī not only studied various books in the Sunni school of thought, but also studied various Shia books of his time. At that time the dichotomy of Sunni and Shia was very strong, Najmuddīn al-Ṭūfī was not affected by the scientific dichotomy between Sunni and Shia. Najmuddin is an Islamic legal thinker who is accustomed to thinking freely who is not only confined to certain schools of thought. Badri Khaeruman, *Hukum Islam dalam Perubahan Sosial*, 46-47.

<sup>41</sup> Muhammda Roy Purwanto, *Dekontruksi Teori Hukum Islam*, (Yogyakarta: Kaukaba Dipantara, 2014), 135.

such as the Qur'an and hadith, ushuluddin, fiqh, ushul fiqh, language, literature and logic.<sup>42</sup>

- a. The work of Najmuddīn al-Ṭūfī in the field of knowledge of the Qur'an and Hadith:
  1. *Al-Iksīr Fi Qawā'id al-Tafsīr*
  2. *Al-Ishārāt al Ilāhiyāt ilā al-Mabāhith al-Uṣūliyah*
  3. *Idah al-Bayān 'an Ma'na Ummul Qur'ān*
  4. *Mukhtaṣar Ma'ālin*
  5. *Tafsir Surah Qaf dan al-Naba'*
  6. *Bughyāt al-Waṣīl ilā Ma'rifah al-Fawāṣil*
  7. *Jadl al-Qur'ān*
  8. *Sharḥ al-Arba'in al-Nawawiyah*
- b. The works of Najmuddīn al-Ṭūfī in the field of kalam (theology):
  1. *Bughyah al-Sā'il fi Ummahāt al-Māsail*
  2. *Qudwat al-Muhtadīn ilā Maqāṣid al-Dīn*
  3. *Halāl al 'Aqdi fi Ahkām al-Mu'taqid*
  4. *Dār al-Qaul al-Qabīh fi al-Taḥsīn wa al-Taqbīh*
  5. *Al-Bāhir fi Ahkām al-Bāṭin wa al-Zāhir*
  6. *Radd 'alā al Ittiḥādiyah*
  7. *Ta'āliq 'alā al-Nājil wa Tanāqudiha*
  8. *Qaṣidah fi al 'Aqīdah wa Sharḥiha*
- c. Works in the field of Usul Fiqh include:
  1. *Mukhtaṣar al-Rauḍah al-Qudāmah*
  2. *Sharḥ al-Rauḍah*
  3. *Mukhtaṣar al-Hāṣil fi Uṣūl al-Fiqh*
  4. *Mukhtaṣar al-Maḥṣūl*
  5. *Mi'raj al-Wuṣūl ilā Ilm al-Uṣūl*
  6. *Al-Dzarī'ah ilā Ma'rifat Asrār al-Sharī'ah*
- d. The work of Najmuddīn al-Ṭūfī in the field of jurisprudence:
  1. *Al-Riyāḍ al Nawāzhir fi al-Ashbah wa al-Naẓā'ir*
  2. *Al-Qawā'id al-Kubrā*
  3. *Al-Qawā'id al-Shughrā*
  4. *Sharḥ Nisf Mukhtaṣar al-Ḥaraqī*
  5. *Muqaddimah fi Ilm al-Farā'id*

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<sup>42</sup> Ibid., 127-134.



e. Najmuddin's works in the fields of language, literature and others;

1. *Al-Sa'āqāt al Ghaḍabiyyah 'alā Munkir al-'Arabiyyah*
2. *Al-Risālah al-Ulūwiyyāt fī al-Qawā'id al-Arabiyyah*
3. *Ghaflah al-Mujtāz fī Ilm al-Haqīqāt wa al-Majāz*
4. *Sharh Maqāmah al-Harīrī*
5. *Tuḥfat ahl al-Adab fī Ma'rifat Lisān al-'Arab dan;*
6. *Daf al-Malām 'an Ahl al-Manṭiq wa al-Kalām*

Najmuddīn al-Ṭūfī in reflecting the ideas and thoughts of Islamic law is more prominent in understanding the methodology of Islamic law, namely the science of *ushul fiqh*. With the *maṣlaḥah* theory that he delivered, he was controversial among Islamic (conventional) legal thinkers at the time.<sup>43</sup> According to Najmuddin al Thufi, the term *maṣlaḥah* comes from the word *aswā'* which means goodness and truth. In a broader sense it means that something is in a perfect position according to the intended purpose or target, such as the pen is in the most appropriate position when used for writing and the sword is in the right position when used for slashing.<sup>44</sup>

Najmuddīn al-Ṭūfī's view of *maṣlaḥah* rests on the concept of *maqasid sharia* which emphasizes that Islamic law is prescribed to realize the benefit of humanity universally. Therefore, all forms of benefit are prescribed and these benefits do not need to get support from texts, either by certain texts or by the meanings contained by a number of texts. According to him, *maṣlaḥah* is the most powerful argument that can

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<sup>43</sup> Among the scholars who lived with Najmuddin al Thufi who criticized him was Ibn Rajab (W.795 H), a Hanbali jurist. Ibn Rajab accused Najmuddin al Thufi of being an immoral and hypocritical Shia Rafidhah. However, in all of his criticisms of Najmuddin al Thufi, he tries to avoid mentioning the points of Najmuddin al Thufi's *maṣlaḥah* thought. Ibid., 117.

<sup>44</sup> Najmuddīn al-Ṭūfī, *Sharh Arbain*, Taḥqīq Ahmad Haji Muhammad Usman, (Makkah: al Maktabah al Makiyyah, tth), 139.

independently be used as a reason in determining sharia law.<sup>45</sup> Najmuddīn al-Ṭūfī's view of *maṣlahah* rests on the discussion (syarah) of hadith number 32 of the book of arbain nawawi. The hadith narrated by Najmuddīn al-Ṭūfī reads:

"It can't harm and it can't be harmed"

According to Najmuddīn al-Ṭūfī this hadith is of *ḥasan* quality which was narrated with a complete chain of narration (sanad) by Ibn Mājah, al-Dāruqutni, and others, but without mentioning the first narrator (mursal). In the book of *al-Muwatṭa'* by Imam Malik Ibn Anas it is explained that this hadith was narrated from 'Amr Ibn Yaḥya, from his father, from the Prophet without mentioning the name of Abu Sa'id. According to Najmuddīn al-Ṭūfī, although the hadith is *hasan*, it is not authentic, but it is strong because there are many paths of transmission so that each reinforces the other. Furthermore, according to him, the weak hadith in terms of textual accuracy can be strengthened by a number of individual testimonies so that it reaches the level of mandatory practice.<sup>46</sup>

In the view of Najmuddīn al-Ṭūfī the words of the Prophet Muhammad which reads *la dlarara wa la dlarara* is a fragment of the perfect sentence, namely "you must not put suffering or loss on anyone and there should be no act of revenge that can cause others to suffer or lose".<sup>47</sup> Thus, according to Najmuddīn al-Ṭūfī that the basic principle is not to take an action that has an impact on loss, it must be placed at the most important level compared to other principles. This means that the essence of the teachings of Islamic law in this hadith is not to do damage to oneself and the social community.

More specifically, in explaining his *maṣlahah* thoughts, Najmuddīn al-Ṭūfī relies on four main principles. Each of these

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<sup>45</sup> Bahrul Hamdi, "Maslahah dalam Paradigma Tokoh (Antara Al Ghazali, asy Syatibi dan Najmuddīn al-Ṭūfī)," *Jurnal Alhurriyah*, Vol. 2:2 (Juli-Desember 2017), 227.

<sup>46</sup> Muhammda Roy Purwanto, *Dekontruksi Teori Hukum Islam*, 78.

<sup>47</sup> Najmuddīn al-Ṭūfī, *Syarh Arbain*, 139.

principles is the main framework on which to base its epistemology. The four principles include the following:<sup>48</sup>

1. Intellect has the ability and the right to freedom in determining *maṣlaḥah* and mafsadat, therefore reason can determine it independently without the need for texts or *ijma'*. This concept is different from the opinion of the majority of scholars who explain that although benefit and harm can be achieved by rational reason, benefit must also get support from the texts.
2. *Maṣlaḥah* is an independent legal reason in establishing a law. Therefore, the proof of *maṣlaḥah* does not require the support of other arguments.
3. The scope of *maṣlaḥah* only applies in the field of muamalah and customs, while in the field of worship or the measures determined by *syara'*, such as the four rakaat of the midday prayer, fasting Ramadan for one month does not include the object of *maṣlaḥah*. In the field of worship, it is absolutely God's right.
4. The concept of *maṣlaḥah* is the strongest *syara'* argument. Therefore, if the texts and *ijma'* conflict with the concept of *maṣlaḥah*, then the benefit must be prioritized by means of *takhsis* and *bayan* against the texts.

For Najmuddin al Thufi, the rules of *syara'* cannot be said to be more aware of the benefit of humans so that the argument must be taken. This is because the maintenance of *maṣlaḥah* is a *syara'* proposition, even the strongest and most special, so it must take precedence. The assumption of *syara'* knowing more about everything only applies in matters of worship whose benefit values are not reachable by reason and habit, while *maṣlaḥah* which regulates every mukallaf in carrying out rights and obligations is known to humans based on reason and habit.<sup>49</sup>

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<sup>48</sup> Husain Hamid Hasan, *Nazariyyāt al Maṣlaḥāt fī al-Fiqh al Islāmiy*, (Beirūt: Dār al-Nahḍah al-'Arabiyyah, 1971), 530-534.

<sup>49</sup> Badri Khaeruman, *Hukum Islam dalam Perubahan Sosial*, 49.

From the description above, it can be concluded that the tendency of Najmuddin al Thufi in prioritizing the benefit aspect compared to other *syara'* arguments is very clear. The concept of *maṣlaḥah* is the spirit (substance) of Islamic law itself. The *syara'* argument in the form of texts or *ijma'* is a medium to achieve the substance of the stipulation of a law.

## **2:1 Formulation in the Perspective of *Maṣlaḥah* Najmuddin At-Thufi**

In Islamic law, inheritance law occupies a very important place. Islamic inheritance law is one of the clear and detailed sections among the traditional Islamic fiqh formulations that are debated in the discourse of inheritance law reform. Islamic inheritance law in the reality of human life requires legal dynamics and continuous development to ensure the flexibility and adaptability of inheritance law in accordance with the characteristics of modern Muslim society. The dynamics of inheritance law will be realized when there is a dialectic between the text and the reality of life in Muslim society, so that it can bring new innovations that are adaptable and responsive in the legal discovery process. These innovations in Islamic inheritance law have no other purpose to bring benefit in the world and the hereafter.

As an effort to humanize Islamic inheritance law in the modern era, various steps have been taken so that Islamic inheritance law does not feel rigid and foreign to the social environment that surrounds it. Currently, issues have developed to reform the traditional inheritance law because it is considered too pro-male and very thick with gender bias.<sup>50</sup> Discussions on the problematic formulation of the 2:1 division

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<sup>50</sup> No one argues that from the beginning the Qur'an carried a transformative spirit to elevate the status and equality of women. In the case of inheritance, women in the pre-Islamic jahiliyyah society had absolutely no inheritance rights and were even treated like objects. Islam then came to bring change and elevate the status of women by giving them inheritance rights, even though with a smaller proportion compared to men, namely 2:1. Sidik, *Kewarisan Perempuan di Negara Muslim Modern*, (Surakarta: Fakultas Syariah IAIN Surakarta, 2013), 1-2.

of inheritance for boys and girls from the time of jahiliyyah to the modern era are still hot to be studied and criticized. So far, the views and responses of the Muslim community regarding the formulation of inheritance distribution for boys and girls are divided into two groups.

First, the group that agrees with the renewal of Islamic inheritance law. The group that agrees with the idea of reforming Islamic inheritance law is from modernists who tend to use a rational approach and consider that Islamic inheritance law as contained in traditional fiqh is no longer relevant to the conditions and context of modern pluralistic society.<sup>51</sup> So this group is of the view that the concept of a 2:1 division of inheritance between male and female heirs must be understood contextually and cannot be applied just like that (textual).

The 2:1 formulation is not something that is normative and final, but is an effort to achieve justice in the context of the social conditions of the jahiliyyah society which tends to be patriarchal and the dominance of men in the public sector is prominent. Therefore, when social conditions shift towards a bilateral community structure and the availability of equal roles for women in the public sector, the conception of justice for inheritance and material rights for women should also undergo a transformation. If not, then the substance of justice desired by the legal text will lose its relevance.<sup>52</sup>

Second, namely the group that still maintains the existing traditional Islamic inheritance law. Those who persist with these rules tend to view them normatively and assume that the inheritance provisions are God's provisions for their people which cannot be changed at any time.<sup>53</sup> With this concept of thought, they argue that the share of sons and daughters must be carried out in accordance with existing legal

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<sup>51</sup> M. Firdaus, *Pembaruan Hukum Waris Islam di Era Kontemporer*, *Jurnal Istimbath*, Vol. 14:1, (Juni 2015),112.

<sup>52</sup> Sidik, *Kewarisan Perempuan di Negara Muslim Modern.*, 2-3.

<sup>53</sup> M. Firdaus, *Pembaruan Hukum Waris Islam.*,112.

texts, namely the formulation of a 2:1 division between male and female heirs. The provisions of inheritance as contained in the Qur'an are God's shari'a which are explained in a clear and clear manner and are impossible to interpret out of their linguistic meaning, because there have been mentions of definite figures and numbers.<sup>54</sup>

The differences of opinion regarding the inheritance rights of boys and girls have not yet been compromised and have not obtained an ideal synthesis so that they can accommodate two views that are at opposite points. In fact, the two views distance themselves from each other and often lead to clashes which later become ideological issues between the two. For this reason, there are at least two things that need to be considered so that the benefit aspect can be realized in modern family law:<sup>55</sup> First, comparing with the previous social reality, where women at that time were not given the right to inherit, even became part of the inheritance. From this fact, it can be seen that the application of sharia, which gives inheritance rights to women, is clearly a very revolutionary and radical decision.<sup>56</sup> By giving inheritance rights to women's families who were previously the object of inheritance, Islam

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<sup>54</sup> They consider the proportion of 2:1 already contains justice. The amount of men's share is based on the obligations imposed on men (husbands/fathers) who have to pay a dowry (dowry) in marriage, finance a living, household and children's education costs as mandated in the Qur'an. in the letter Al Baqarah (2): 233, while women (mother/wife), legally formally, are not burdened with the obligation to finance household life, let alone payment of dowry, they only receive rights from their husbands/fathers. Mardani, *Hukum Kewarisan Islam di Indonesia*, 5.

<sup>55</sup> Muhammad Roy Purwanto, *Teori Hukum Islam*, 72-73.

<sup>56</sup> During the early presence of Islam in the Arabian Peninsula, the existence of women was not considered, births were not expected, marriages could be forced, polygamy was unlimited and without protection of justice, could be told anytime, any number of times and referred back without rules, without any certainty of rights. post-divorce rights, do not inherit but can be inherited, are usually forced into the world of prostitution and of course their thoughts and views are not taken into account at all. Faqihuddin Abdul Kodir, *Qiraah Mubadalah*, 265.

has established a norm that women and men are both subjects and can inherit each other.

Second, to answer why in quantity the share of women's inheritance is only half of that of men, it is necessary to look at the socio-economic setting, especially in family life at that time, namely that the burden of family maintenance was entirely the responsibility of men. The husband may not impose the obligation of family maintenance on the wife's inheritance or income, except at the wife's own consent. Such is the socio-economic background that underlies the concept of inheritance division with a portion of 2:1. In modern family law, the background has now changed and from one area to another it is not the same. Therefore, to ensure the flexibility and adaptability of Islamic inheritance law, legal discovery is needed so that legal texts can be contextualized and applied in every situation, because after all the differences in time, place, circumstances and habits greatly determine the validity of the law. This is in line with the statement of Jalal ad Din as Suyuti:<sup>57</sup>

"Changes in law occur due to changes in time, place, circumstances and habits"

In another expression, Jalal ad Din as Suyuti clearly states that the law will change along with changes that have an impact on human benefit, meaning where there is benefit for humans, that is where Allah's law covers it. Here is the statement:

"The law revolves around the benefit of humans, so wherever a benefit is found, that's where God's law covers it"

From the statement of the rules above, it can be understood that the rule of law in an event may only apply at a certain time, place and condition when the legal event occurs, but if the rule of law is applied to a legal event that is at a different time and place, it must be reconsidered. so that benefits can be realized. It could be that the law is no longer

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<sup>57</sup> Jalāl al-Din al-Suyūṭī, *Al-Ashbah Wa Al-Nazāir*, (Bairūt: Dār al-Fikr,t.t.),176.

adaptable and relevant to the new conditions that surround it, for that if the legal provisions no longer reflect the value of benefit as the goal of Islamic law, then the legal provisions must be changed and adapted to the place and time where the law is applied.<sup>58</sup> Because Islam was not born in a vacuum, but Islam was born to reform the local character that surrounds it, which at that time was felt far from the sense of justice.

In the current context, the meaning of QS An Nisa (4):11 becomes important in avoiding the birth of negative stigmas of law as a rigid doctrine. The spirit of open meaning in every movement of inheritance law as an effort to achieve Islam that is rahmatan lil 'alamin and shalihun likulli era wa eat. It is this spirit that leads to the process towards the development and systematization of modern inheritance law which is motivated to change (progress), and to uphold the equal rights of men and women (gender equality). Therefore, the dynamics of 2:1 inheritance law in modern family law can be done so that the benefit aspect in the distribution of inheritance can be realized properly. So if you only defend the legal text, it is the same as only defending the skin without paying attention to the substance, namely the aspect of benefit that brings the values of justice that live in modern Muslim society.

More broadly, the importance of a 2:1 modification of inheritance law is also given that socio-cultural changes and legal changes are phenomena that influence each other. Social changes can result in legal changes and conversely legal changes can result in social changes in society. On that basis, the formulation of the inheritance distribution of 2:1 in the Islamic inheritance system is the minimum limit, meaning that

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<sup>58</sup> The Qur'an itself makes an interesting metaphor for the impermanence of the old. It is narrated in the Qur'an about the behavior of Ashhabul Kahf (the youth who slept for a long time in the cave) who had to exchange coins, because the old coins were no longer sold. This gives a signal that a change in law is a necessity, because the law always rotates, moves according to the place, time and situation where the Muslims are. M. Sutomo dan Ahmad Zaenal Fanani (ed), *Menggugat Stagnasi Pembaruan Hukum Islam di Indonesia*, 191.



in certain cases it can change to 1:1 (casuistic), and it may even be that women get more. The 2:1 formulation in Islamic inheritance is a method or means while the main goal is to distribute the benefits for the heirs.

In the view of Najmuddīn al-Ṭūfī, benefit is the goal of sharia, even the highest proposition if it is contrasted between texts and *maṣlaḥah*. If this view is applied and contextualized in the formulation of 2:1 inheritance distribution, it brings fresh air to the dynamics of Islamic inheritance law in modern family law. Based on Najmuddīn al-Ṭūfī's concept of *maṣlaḥah*, Islamic inheritance law becomes more adaptable and responsive to gender equality issues. This is because the concept of *maṣlaḥah* will open up new opportunities to reinterpret traditional inheritance law products produced by previous mujtahids.

The main concept of *maṣlaḥah* Najmuddīn al-Ṭūfī by positioning *maṣlaḥah* as the goal and peak automatically allows laws based on aspects of benefit that are different from laws based on the Qur'an and hadith. This could be due to the fact that the law offered in the Qur'an or hadith is no longer relevant to the times and places where the law is applied. By prioritizing the *maṣlaḥah* aspect as the main goal, automatically Islamic inheritance law will become dynamic, communicative, adaptable, and flexible in following the developments of the times.

Starting from the concept of *maṣlaḥah* Najmuddīn al-Ṭūfī, that the issue of the benefit of 2:1 inheritance law includes benefits related to the field of muamalah. According to Najmuddīn al-Ṭūfī benefit in the field of muamalah, the role and function of reason has the authority and is welcome to understand the *maṣlaḥah* contained in it.<sup>59</sup> The value that is the

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<sup>59</sup> In Islam, religion and reason are like brothers or always establish brotherhood. In the relationship between the two, reason becomes the backbone of religious teachings mainly because of the need for reason to explain revelation. Man's obligation to use his mind is not only the inspiration contained in him, but also the teachings of the Qur'an. This holy book commands humans to think and use reason and prohibits taqlid. The Qur'an does not only give orders, but also motivates people to think

reference in istinbath *maṣlaḥah* law is to take advantage and reject madharat.

In fact, if the *syara'* does not give a decision on a problem, then it is permissible to make a decision based on the benefit aspect. Even though *maṣlaḥah* itself contradicts other arguments, in order to uphold the value of benefit, Najmuddīn al-Ṭūfī allows him to prioritize it over other arguments. This is intended for the realization of the benefit of mankind. In his view that the use of *maṣlaḥah* in legal events is essentially the practice of the Qur'an, sunnah and ijma', because all of them want the benefit aspect. Based on this concept, it is understood that deviating from the legal text in the distribution of inheritance is allowed in order to realize the benefit of the heirs and avoid disputes.

At the beginning of Islam, the distribution of inheritance 2:1 was a very revolutionary act, especially at that time Islam still gave the obligation to men to support their families. Thus, when social reality has changed, where women are sometimes also involved in bearing a living and carrying out relatively the same social obligations, the 2:1 conception of inheritance can be applied contextually. According to the author, the problem of inheritance law 2:1 in the Islamic inheritance system is something that is contextual and functional, not a normative concept that is principal and final. Thus the distribution of inheritance can be adjusted to the legal facts that occur in the field of modern society so that aspects of the benefit for the heirs can be achieved properly and appropriately.

## Conclusion

The conception of the division of inheritance for sons and daughters is explicitly explained in QS. An Nisa (4):11. Conventional scholars agree that the formulation of inheritance distribution between men and women is 2:1. They argue that the verse is a verse that has a *qaṭ'ī dīlālah*. Thus, the verse

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rationally. Dedi Ismatullah, *Sejarah Sosial Hukum Islam*, (Bandung: Pustaka Setia, 2011), 123.

cannot be interpreted out of its linguistic meaning because actual numbers and numbers have been mentioned.

Furthermore, along with the emergence of contemporary issues and modern ideas that promote gender equality, recent scholars have emerged who want an inheritance law reform adapted to the time, place, and conditions surrounding it. They tend to use a rational approach and assume that Islamic inheritance law as contained in traditional fiqh is no longer relevant to the states and context of a modern pluralistic society. The formulation of the distribution of inheritance 2:1 is not principal and final. Therefore, the socio-economic context must be understood when the inheritance law is applied.

In the current context, the meaning of QS An Nisa (4):11 becomes essential in avoiding the birth of negative stigmas of law as a rigid doctrine. Islamic inheritance law in the reality of human life requires legal dynamics and continuous development to ensure the flexibility and adaptability of inheritance law following the characteristics of modern Muslim society. The dynamics of inheritance law will be realized when there is a debate between the text and the reality of life in the Muslim community so that it can bring innovations that are adaptable and responsive in the legal discovery process. These innovations in Islamic inheritance law have no other purpose than getting benefits in the world and the hereafter.

In the view of Najmuddīn al-Ṭūfī, the benefit is the goal of sharia, even the highest proposition if it is contrasted between texts and *maṣlaḥah*. If this view is applied and contextualized in the formulation of a 2:1 inheritance distribution, it will open up opportunities for the reinterpretation of the QS. An Nisa (4):11. Based on this concept, it is understood that deviating from the legal text in the distribution of inheritance is allowed to realize the benefit of the heirs and avoid disputes.

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