

Normative Analysis Approach: Status and Rights of a Daughter under Islamic Inheritance Law in Indonesia

Iman J*

Faculty of Law - Syiah Kuala University, Darussalam-Banda Aceh, 23111, Indonesia

*Corresponding author: Iman J, Faculty of Law - Syiah Kuala University, Darussalam-Banda Aceh, 23111, Indonesia, Tel: +62 651 7553205; E-mail: imanjahhari1966@gmail.com

Received date: July 29, 2016, Accepted date: October 26, 2016, Published date: November 6, 2016

Copyright: © 2016 Iman J. This is an open-access article distributed under the terms of the Creative Commons Attribution License, which permits unrestricted use, distribution, and reproduction in any medium, provided the original author and source are credited.

Abstract

Status and rights of a daughter under Islamic inheritance law form disagreement among scholars. Therefore, it becomes important to study more about it. The method used is the content analysis of references relevant to the problems. Differences of opinion among scholars attributed to differences in understanding the meaning of *lafadh* and expanding the scope of *walad* that are contained in the verses of inheritance and influenced by pre-Islamic Arab culture (*jahiliyah*). According to the Sunni Imam, a daughter does not block (*hijab*) her brothers or sisters. Meanwhile, the Shia Imam believes that *walad* include boys and girls, so a daughter can also block her brothers and sisters. The presence of Islamic Law Compilation has shifted the earlier system of Islamic inheritance, which was patrilineal system, to the system of bilateral that withdraws the lineage from both sides, from relatives of men and women. Bilateral inheritance system is more in line with the kinship system in Indonesia and the development of today's society.

Keywords: Daughter's rights; Inheritance law; Normative analysis

Introduction

Regulation on property inheritance after one's death becomes important in order to maintain the benefit for all parties, for one who has died, his heirs, as well as for third parties. Although someone has died, but the obligations are not automatically erased. Some liabilities related to inheritance of the deceased need to be fulfilled (by people who are still alive), related to debts, charity, wills and inheritance. Relating with the division of inheritance, it is important to get detail arrangements in order to avoid the seizure of the estate among the heirs as well as changes in prospective benefits and does not transform into difficulties and impartial justice.

Law of inheritance regulates everything pertaining to the transfer of rights and/or obligations on a person's wealth after he had passed away to his heir. In Compilation of Islamic Law, law of inheritance is the law governing the transfer of rights ownership to inherit (*tirkah*) heir, determine anyone who deserves to be the heirs and their respective sections (parts). Thus, the law of inheritance regulates the transition of deceased's property to the living in accordance with set of regulations.

Al-Quran as the primary source of Islamic law has laid down the regulation on the issue of inheritance in relatively detail, both with regard to the legal subject (all heirs) and amount of the inheritance, as stated in Al-Qur'an chapter (QS) An-Nisa 'verse 7-14, QS. An-Nisa 'verse 33, QS. An-Nisa 'verse 176 and QS. Al-Anfal verse 75 [1]. However, there are times when Al-Quran still require further explanation.

Such explanation was also given directly by the Apostles through the *sunnah* (Hadith) and scholars' interpretation. When the Apostle was still alive, he would receive queries on current cases that occur in the community, but after Rasullullah death, his companions received queries to settle cases, however differences rose among them such as

Abu Bakar, Umar bin Khathhab, Zaid bin Thabit or Ibn Abbas and some others. This is due to a different interpretation of Al-Quran or hadith, and also strongly influenced by the context of society at that time. The differences rise again after the emergence of various schools of thought in Islam. This was due to differences in understanding the general verses of the holy Al-Quran or in determining the meaning of a words or al-hadith of the Apostle [2,3].

In Indonesia, shift in system of Islamic inheritance from strictly following the original opinions of Islamic scholars to a mixture of several opinions (merging several schools) as set forth in the Compilation of Islamic Law. This was said to be part of the embodiment of Indonesia jurisprudence which was the result of Islamic scholars of Indonesia [4]. When examined closely the provisions of Book II Compilation of Islamic Law [5]. Many new things were set on the law of inheritance which differs from the opinion Islamic scholars. These can be seen in article 174 which regulates the composition or sequence of the heirs, article 181 and 182 on *kakalah*, article 185 on the substitute heirs, article 209 on compulsory will.

Despite the opinion of Islamic scholars and provision in Compilation of Islamic Law accommodate the rights of both men and women; they pose male heirs much more dominant than the heiress compared to as set in Compilation of Islamic Law. This is seen in the equality of children (both male and female) as heir, the replacement heir and setting of compulsory will for the child and the adoptive parents in the inheritance system according to the Compilation of Islamic Law. However, such inheritance system is not known by the scholars [4].

Some new aspects on the law of inheritance set in the Compilation of Islamic Law do need further studies and deep and comprehensive critical thinking to obtain justice oriented legal conception and benefits for the people and in accordance with dynamic development of the structure and culture in Indonesia. This action is necessary to

answer the public demand for progressive legal and in accordance with the sense of justice that live and thrive in the community.

One of the issues that need further studies and critical thinking is on the status and rights of girls in the law of inheritance. Under normative analysis approach, Islam points out the problem when she inherits together with a brother or uncle; whether the girl receives entire property or just get a third (1/3) when she is a sole heir, or get two third (2/3) when there are two or more. Last issue is who will take the rest of the property if no heirs position as 'ashabah (right to receive all the rest).

Based on this background, the issues discussed in this paper are the principles of Islamic inheritance law, position of women's and children's rights in the Islamic inheritance law.

The method used in this paper is "content analysis" of legal materials relevant to the issues discussed, and real-time, accurate data, the position of children and women's rights in the law of Inheritance.

Principles in Islamic Inheritance Law

To understand deeper about the issues of inheritance under Islamic law, principles in Islamic inheritance law should be stated first. This will be a starting point that characterizes inheritance systems from stel sel of Islamic inheritance law itself.

The main sources of Islamic inheritance law is the Qur'an and Sunnah (Hadith). Later, Islamic scholars developed it in detail through their *ijtihad*. As law which source is directly from divine revelation and explained by the Prophet Muhammad with the sunnah, the Islamic inheritance law contains principles and its own style. This is part of Islam where it's implementation cannot be separated from faith or *aqidah*.

Ali Parman suggested that there are at least three principles embodied in Islamic inheritance law, namely, the principle of justice, the principle of certainty/absoluteness and principles of individuality [6]. According to Ali [7] and Syarifuddin [8] there are five principles in Islamic inheritance law, namely the principle of *ijbari*, principle of bilateral, principle of individuality, principle of impartial justice and principle of executable due to death. While Anshary [9] added the principles of Islamic personalities in addition to the principles stated by Muhammad Daud Ali and Amir Syarifuddin mentioned above. Based on some opinions on the above, the following will explain some of the principles concluded in the Islamic inheritance law.

The Principle of *Ijbari*

Ali Parman also called the principle of *Ijbari* as the principle of certainty/absoluteness. It implies transition property from a deceased to those who are still alive (heirs). As regulated by Allah, this does not depend on the demand or the will of heirs.

Ijbari also means "force" (compulsory) which is doing something out of oneself will. *Ijbari* principle is apparent, especially from the obligation of the heirs to accept transfer of property (wealth) in accordance with a predetermined amount by God, not under one's will. Likewise, property owner does not need to think and plan anything about his property or wealth after he died. This is because one property will automatically have transfer mechanism set by Allah for the process.

The existence of the principle of *ijbari* in law of inheritance can be seen in the transition property, amount to be transferred, and to whom the property will switch ownership.

Principle of bilateral

Principle of bilateral in the law of inheritance means that the estate is transferred to and through two ways. One, a person receives or inherits rights of property from both sides, male or female lineage [9]. This is obvious as seen in Surah An-Nisa 'verse 7, 11, 12, and 176 [1].

Illustration depicted in Al-Quran clearly explained transfer of property in the Islamic law of inheritance applies downward (kids), up (father and mother) and to the side (siblings) both from female or male lineage. Similarly, in accepting the inheritance, two family lineages, male and female, are also recognized. This is called a bilateral inheritance. Compilation of Islamic Law [5] also adopts the principle of bilateral on the law of inheritance, we can see this in Article 174 paragraph (2) which reads: "If all the heirs exist, then only child, father, mother, widow or widower are entitled to the inheritance". In this article the word "child" was mentioned explicitly with no regards of gender, boys or girl.

Principle of individuality

The principle of individuality in the law of inheritance means that inheritance is distributed to the rightful heirs for private ownership. Each heir personally receives his share, without being tied to other heirs because their shares have been predetermined in detail. In this regards, heir is entitle ask for his rights or not to do so [10].

The principle of Individuality can be seen clearly as stated in Surat an-Nisa 'verse 7, 11, 12 and 176 [1]. Based on the verses of the Qur'an, we can understand that heirs, men and women, are entitled to the inheritance of their relatives within set amount by Allah (*furudhul muqaddarah*) regardless amount of wealth one left behind.

This individual division is set and binding regulation which all Moslem must obey. Violating the regulation results in sanctions in hereafter. Allah mentioned this in Surat an-Nisa 'verse 13 and 14. Similarly, deliberately mixing up a wealth without calculations and making the inheritance as a collective right, means eliminating the principle of individuality and violating the provisions of Islamic inheritance law.

Principle of balanced right

"Just" means balanced in the sense of proportion. "O mankind, what has deceived you concerning your Lord, the Generous, Who created you, proportioned you, and balanced you?"(QS. Infithaar 6-7). This means that justice is commonly applied in inheritance law of Islam. For example: the claim of son over daughter is twice a portion due to their heavier responsibility. The son would become a husband and father, so that they will had an obligation to spent more expenses than daughter who would become a wife or mother who always get their due from a husband or children [11].

Principle of balanced right means balance of right and responsibility in the inheritance process. There is a balance between what they receive and use. This is the concept of justice in the context of the division of the inheritance law of Islam.

In this case, it can be said that gender differences do not affect the right of inheritance in Islam. Both men and women have equal rights

to get the inheritance, comparable between the rights and the assumed obligation should be fulfilled in family and community.

On regards of amount to be received, there are difference between men and women; (please refer to Surah Annisa' verse 1 and 176'). However, this does not mean unfair. Justice in Islamic perspective sees deeper than just a number, it also looks into use, needs and responsibilities.

In the Islamic inheritance system, the inheritance received by the heirs is essentially the continuing the responsibility of the heir to their family. Therefore, amount to be received by each heir ties closely with different role and responsibilities of each family member [8]. Generally speaking, men need more material than women, because in Islam, men bear the responsibility and obligation for himself, family, and relatives (including women).

This is true as has been described by Allah in the Quran surah Al-Baqarah verse 177, verse 215 and verse 233, and Surah An-Nisa 'verse 34 [1]. This obligation must be executable, either if his child or wife is able or not, need help or not. Based on the balance between the rights and responsibilities acquired, levels of benefits perceived by men are actually similar to that of by women. Although initially a man receives twice of a woman, he will share some of them to woman as his capacity as responsible supervisor. This is the concept of justice in Islam.

The principle of executable due to death

The principle means that wealth transfer is only applicable due to one's death. Therefore, based on this principle all forms of wealth transfer when property owner is still alive cannot be categorized as inheritance under Islamic law [9].

Based on this principle, then the Islamic inheritance law does not recognize will-based or appointment inheritance. Will-based inheritance made when the person is alive is known in the West as civil inheritance law or testament-based inheritance.

Thus, if someone gives away his wealth when he was still alive, although intended as inheritance, it is not called as an inheritance but grants, if the delivery is done when the donor is alive. If it is done after the demise of the donor, it is called will. In Islamic law, will and grant institutions are separated transitional institutions from law of inheritance.

Principles of Islamic personality

In the Islamic inheritance law, a person may inherit each other when they share common religion, Islam. A Muslim can only inherit the possessions of Muslims and cannot do so to non-Muslims. This is what is meant by the principle of Islamic personality [8]. The provisions governing this can be seen in Article 171 letter b and c in Compilation of Islamic Law [5] which states that both of the heir and heirs must be Muslim. Based on these explanations, it can be understood that Muslims and non-Muslims do not inherit each other. This is in accordance with the hadith of Usamah Bin Zaid narrated by Bukhari and Muslim that means: "A non-Muslim does not inherit a Muslim and a Muslim does not inherit non-Muslims"

On this regards, Supreme Court of the Republic of Indonesia No. 172K/Sip/1974 stating that the inheritance law use religious affiliation of the deceased. This means that the division of inheritance, regulation will be essentially determined by the religion of the heir. If the heir is Moslem, the division of inheritance is based on Islamic law.

Positions and Rights of Child of Women in Islamic Inheritance Law

Although the provisions regarding inheritance law of Islam has been regulated in detail in Al-Quran and backed up with a direct explanation of the Prophet in several hadiths, in some cases, they still cannot resolve all the queries that occur in the community. In certain cases, logic is necessarily used to interpret verses and hadith in search of proper solution. When no definite instruction of verses and hadiths is found, ijtihad must be taken to address inheritance issue occurred in the community.

Among the unresolved problems and thus require interpretation is status and rights of females towards their father's property, both when inheriting on her own or along with her other siblings as well as its effects on other heirs.

The position of daughter

The rights of children in the Islamic view is generally classified into a form that covers:

- a. The rights of children before and after birth.
- b. The rights of children in the sanctity of their lineage.
- c. The rights of children to receive the provision of a good name.
- d. The rights of children to be breast-fed/suckle
- e. The rights of children in childcare, nursing, and maintenance.
- f. The rights of children in education.
- g. The rights of children to own property or inheritance rights, for the survival of children [12].

The discussion about the position of females in Islamic inheritance law is concerned with a condition in which a person dies leaving a daughter (along with her sisters) and siblings, men or women. The issue arising here is whether the presence of girls creates hijab (block or reduce) to the right of her other relatives to accept the inheritance. This may be the issue because Surah An-Nisa verse 11 clearly stated the rights of both men and women along with their shares. One female receives $\frac{1}{2}$, more than one $\frac{2}{3}$, however, no text defining the amount she/they will receive when they inherit the property with other siblings.

To address this issue, we need to study clear definition of aulad mentioned in Surah An-Nisa verse 11 and 12 and its relations with Surah An-Nisa verse 176.

Aulad is a plural word of walad which means child, male or female. Ibn, on the other hand, represents only for male child (son). Similarly, binti is the word that used to address female only [8]. Plural word here means both horizontally and vertically. Horizontally when it talks about some children in the same line, or vertically which means the child and his descendants (grandchildren, great-grandchildren, and so on) [13].

"Children" in Arabic is called "Walad" a word that contains observations, as creatures of God who are studying the development towards a pious man of God. The views of Ibn Abbas, one of the expert commentators among the companions of the Prophet Muhammad, interprets the words "Walad" in Surat An-Nisa verse 176 which have a meaning that includes both boys and girls. Definition of "Walad" in Nash could refer to boys, and girls [14].

Scholars agree that the words *Walad-Aulad* found in Surah an-Nisa' verse 11 and 12 mean of boys and girls. Consequently, as described in the preceding paragraph, the presence of children as heir (male or female) will reduce the rights of mother from 1/3 to 1/6, the right of husband from 1/2 to 1/4, the right of wife from 1/4 to 1/8. In addition, father's position as 'ashabah is blocked by the presence of son, however their role as 'ashabah is still open when a deceased leaves only female offspring.

Scholars, however, have arguments whether or not the word *walad* found in Surah an-Nisa verse 176 contains the meaning of *Kalalah*. Ahlus Sunnah (Sunni Ulama) scholars believed that the word *Walad* in this verse means male offspring and it does not include the female. Therefore, according to Sunni scholars, females do not block (hijab) their siblings (men or women) to receive the inheritance. Meanwhile, according to scholars of the Shia Imam, the word *Walad* in that verse includes both boys and girls. In this notion, both man and woman can block (hijab) their siblings [5].

Inconsistencies of opinion in defining the word *walad* can be seen especially on Sunny cleric's side (embrace by majority of Moslem in Indonesia). The word *walad* is defined as both male and female, however in the term of mentioned in Surah an-Nisa verse 176 is defined as only male.

Ahlu Sunnah scholars' opinions are strongly influenced by patrilineal inheritance system they follow. The system draws the line from father or male side. This follows the patrilineal system or influenced by the traditional family system of pre-Islamic Arabs adapted with to the provisions of inheritance in Islam [5].

Provisions regarding inheritance law set forth in the Compilation of Islamic Law need further examination because they have become guiding principle to solve issues rising in the community. They have become the law applied (one material law) for the religious courts/ Court Syar'iyah in adjudicating and resolving disputes or cases submitted to it.

When examined carefully on provisions included in Article 174, 177 to 182 in Compilation of Islamic Law, we will see that Compilation of Islamic Law does not limit the interpretation of the word *Walad* to male only, but also female, as well as their offspring's [8]. This is obvious in the formulation of the content of these articles which only mention children without differentiating between male or female. Except in the case of affirmative determination of heirs, the rights of each heir and their rights to inherit as reflected in Article 174 paragraph (1) and Article 176 [5]. Similarly, similar views provided to the case of adopted child as stipulated in Article 209. No differentiation is given to male or female foster child.

Based on several articles in the Compilation of Islamic Law, we can understand that the birth of Compilation of Islamic Law has brought significant changes on inheritance system in Indonesia. Compilation of Islamic Law has changed the patrilineal inheritance system adopted by the scholarly and has always been grown in Indonesia, into bilateral inheritance system in accordance with Qur'an Surat An-Nisa 'verse 7 and 11, where both son and daughter, as well as grandchildren of sons and daughter, can all be the heir. This is in accordance with the expanded opinions of children with offspring which includes any child under a straight line down from both boys and girls.

Interpreting the word *walad* with child (includes male and female) was also used by the Chief Justice of the Supreme Court of the Republic of Indonesia. There are several decisions of the Supreme

Court of the republic of Indonesia that have become established jurisprudence, it specifies that the child, male or female, block (hijab) rights of inheritance both male and female siblings. Such decisions include:

1. The Supreme Court of the Republic of Indonesia Reg. No. 86 K/AG/1994 dated July 20, 1995
2. The decision of the Supreme Court of the Republic of Indonesia Reg. No. 184 K/AG/1995, dated 30 September 1996

From the above court decree, it is clear that the Indonesian Supreme Court has given the rights and full and permanent positions to girls as heir to block (hijab) her male or female siblings. Therefore, the Supreme Court has shifted the establishment developed patrilineal inheritance Sunni cleric stelsel towards bilateral inheritance or parental sound noble justice and harmony.

Differences in understanding the meaning of word *Walad* in the verses on inheritance among scholars have also resulted in different applicable law towards the resolution of cases of inheritance. Aside from what has been described above, differences in understanding a word, was also influential in determining inheritance rights to daughters and grandchildren of offspring. On the one hand, the grandson of girls are recognized as relatives or people who have affinities uterus with the heir, as grandson of the descendants of the boys, but in determining the class of heirs according to Ahlus Sunnah scholars, the grandchildren of female descendants are classified as *Zawil Arham*, which is also classified as the ones who will not receive an inheritance.

In this case, Shia scholars disagree with Sunni clerics. According to them, female's offspring or their grandchildren are legitimate heir as *Zawil Furudh* just like male offspring or grandchildren. Rational reasons of the Shiite cleric that Allah has equalized male and female in obtaining inheritance rights, therefore, why should humans discriminate them.

The right of daughter

Al-Quran surah An-Nisa 'verse 11 clearly and firmly defined on the rights of women in inheritance law; 1/2 if she is alone, 2/3 if there are more than one female heir.

At a glance, no issues in the portion of inheritance shares of a woman, especially on the rights of one woman. Regulation on this has been mentioned clearly. No problems are seen the provisions and portion of inheritance for daughters in verse 11 surah An-Nisa. Textually, the rule of law set forth in that paragraph has been very clear and unequivocal. However, if studied and analyzed deeper and more detail, the text can lead to multiple interpretations, or at least bi interpretation (two kinds of interpretation), especially regarding the regulation for more than one girls. The meaning of the verse reads: "... when the girls were more than two people, they got two-thirds" [5].

Based on the actual text enacting above paragraph, it is clear that the 2/3 right of inheritance (*furudh*) is for female heirs numbering of 3 people or more, because the word *fawgasnataini* means more than two people. Thus, 2 people are excluded here. Such interpretation is in accordance with the opinion of Ibn Abbas who stated that if there were two girls only, they get 1/2 (half) part and not entitled to 2/3 (two thirds).

On contrary, majority of other scholars argue that although there are only two daughters, they are entitled to 2/3 (two thirds). Essentially

a hadith narrated by Ahmad Jabir Bin Abdullah explained that the Prophet ever establishes the right part 2/3 (two thirds) to two daughters of Sa'ad bin Rabi'. Besides, based on the hadith, scholars also analogize these rights to the provisions of paragraph 176 of Surah an-Nisa 'which explains the law on the right part of the two sisters is 2/3 (two thirds). Therefore, the two daughters are also entitled of 2/3 (two thirds) of the inheritance left by their parents [5].

When compared between the opinions of Ibn Abbas and scholars' opinions mentioned above, according to the authors, scholars' opinion is stronger, because their opinion is supported by strong arguments, hadith. Should we follow opinion of Ibn Abbas which establishes the right of two daughters is 1/2 (half) part, we will sense injustice and discriminatory when compared with the portion received by two sisters, 2/3 (two thirds) as specified in paragraph 176.

In the Quran, it has been described that Dzu fardhin (heirs) get a portion, namely: 1/2 (half), 1/4 (quarter), 1/8 (one-eighth), 2/3 (two thirds), 1/3 (one-third), 1/6 (one-sixth). The following is the arrangement of the Heir Dzu Fardhin, namely:

- 1) Daughter, 1/2 atau 2/3 (Q.S. An-Nisa': 11)
- 2) The daughter of a son (granddaughter), 1/2 or 2/3 (Q.S. An-Nisa': 11)
- 3) Mother, 1/6 atau 1/3 (Q.S. An. Nisa': 11)
- 4) Mother of mother (maternal grandmother), 1/6 (HR. Abu Daud, Tirmidzi, and Ibnu Majah)
- 5) Mother of father (paternal grandmother), 1/6 (HR. Malik and HR. Daruquthin)
- 6) Father, 1/6 (Q.S. An. Nisa': 11)
- 7) Father of father (grandfather), 1/6 (Q.S. An Nisa': 11)
- 8) Sister of the same mother father, 1/2 and 2/3 (Q.S. An Nisa': 176)
- 9) Sister of the same father, 1/2 or 2/3 (Q.S. An. Nisa': 176)
- 10) Sister of the same mother, 1/6 and 1/3 (federate), (Q.S. An. Nisa': 12)
- 11) Husband, 1/4 or 1/2 (Q.S. An. Nisa': 12)
- 12) Wife, 1/4 or 1/8 (Q.S. An Nisa': 12) [15].

Meanwhile, according to the applicable Compilation of Islamic Law in Indonesia, inheritance is divided as follows:

- a. Widower, get a half portion if it does not have children.
- b. Widower, get a fourth part, when having a child.
- c. Widow, get a fourth part if it does not have children.
- d. Widow, get 1/8 part when having a child.
- e. Mother, get 1/3 if testator did not have children, or more than one sibling.
- f. Mother, get a third part of the remainder, after the widow or widower when taken together with the father.
- g. Mother, get a 1/6 portion, if testator had children or more than one siblings.
- h. Father, get 1/3, if testator did not have children.
- i. Father get 1/6 portion if testator had children.

- j. Daughter, get a half portion if she is an only child.
- k. Daughter, get 2/3, if testator has more than one daughter.
- l. Daughters, when heir along with sons, portions of daughters is 1 parts of 2 parts son.
- m. Grandchildren, replace the position of his/her parents, as a substitute heirs, their share should not exceed the portion of equal heirs being replaced.
- n. Siblings of the same mother, get a 1/6 portion if testator does not leave of children and father.
- o. Siblings of the same mother, together get a 1/3 when there are more than one sibling of the same mother.
- p. Siblings or half-siblings get a share when testator has no children of the father.
- q. The sisters, together with two or more siblings of her, or her half-sister, they receive 2/3.
- r. Sisters together with male siblings, or her half-brother, then the portion of brothers are twice of sister portion [15].

The impact of the decision of the Supreme Court which had given the inheritance rights of daughter as a barrier of her siblings as well as complementary for the rest of heritage, has making a breakthrough on Islamic inheritance law in Indonesia. Since the results of the decision will become a reference for subsequent judges in the same case (jurisprudence). Although there is no obligation for judges to follow as well as the impact caused by both the verdict has not yet been accepted by public [16-19].

Conclusion and Suggestion

Position of girls in Islamic inheritance law is equal in rank with boys. They can block (hijab) male and female heir. Grandson of the male descendants has equal footing with that of females. They are both as *zawul furudh* and not *zawil arham* and they are both can be *'ashabah* (receive residuary heir)

In the law of Islamic inheritance, one daughter receives 1/2 right and if there are two or more girl, they will jointly receive 2/3 (two thirds) of the deceased estates. Differences of opinion among scholars in determining the rights and status of girls is attributed to differences in understanding the meaning and expansion of words *walad* contained in the verses of inheritance and influenced by pre-Islamic Arab culture in determining the position of girls and their descendants.

The presence of Compilation of Islamic Law has shifted earlier system of Islamic inheritance developed by scholars, patrilineal, into a more bilateral system drawing lineage from both male and female sides. It is more appropriate with the kinship system of current Indonesian community.

Supreme Court when setting the inheritance daughter as barrier for her brother took the legal basis from the Al-Quran Surah An-Nisa 'verse 176 that is about *kalalah*, as well as the arguments issued by the Supreme Court was while there is still a child, then the inheritance rights of people who still have blood relations to the heir will be closed except the parents, husband and wife. Ulama is still in dispute with this problem, for example, Sunni scholars say that the brother has the right as a barrier as well as complementary of the rest of heritage, whereas daughter did not deserve it. While Shi'ite cleric argued that both son and daughter are equally having the right as barrier and

complementary of the rest of the estate. The decision issued by the Supreme Court has not been fully accepted by the people of Indonesia, some of them argued that the outcome of the decision aims positively since it is more likely to uphold justice for the people of Indonesia, which consists of various races and cultures, while there are also some people considered that the verdict cannot be used because it has deviated the provisions of Sunni jurisprudence and even assume that there has been deviated from religious requirements.

Therefore, considering the magnitude of role of inheritance law on the tranquility of people living and ensuring the fulfillment of the rights of each individual on the estate left by next to kins. it is suggested that all parties can learn and understand rules and laws in the field of Islamic inheritance.

References

1. Al-Quran and its translation
2. Zein SEM (2005) *Problematika Hukum Keluarga Islam Konteporer*, Prenada Media, Jakarta.
3. Thalib S (2004) *Hukum Kewarisan Islam di Indonesia*, Sinar Grafika, Jakarta.
4. Firdaus Muhammad Aswan *Keahliwarisan Dalam Kompilasi Hukum Islam, Sebuah Pengatura Yang Belum Tuntas*, *Majalah Hukum Suara Uldilag No. 13 Mahkamah Agung Republik Indonesia Urusan Lingkungan Peradilan Agama*, Jakarta, Juni 2008 M/Jumadil Awal 1429 H.
5. Ma'arif S (2012) *Kompilasi Hukum Islam*, Jakarta: Nuansa Aulia.
6. Parman A (1995) *Kewarisan Dalam Al-Quran, Suatu Kajian Hukum Dengan Pendekatan Tafsir Tematik*, Raja Grafindo Persada, Jakarta.
7. Ali MD (1999) *Hukum Islam Pengantar Ilmu Hukum Dan Tata Hukum Islam Di Indonesia*, Raja Grafindo Persada, Jakarta.
8. Syarifuddin A (2004) *Hukum Kewarisan Islam*, Kencana, Jakarta.
9. Anshary MK (2009) *Pembaharuan Sistem Hukum Kewarisan Islam Di Indonesia*, Madani Press, Bogor.
10. Ali MD (1993) *Asas-Asas Hukum Kewarisan Dalam Kompilasi Hukum Islam*, *Majalah Mimbar Hukum No. 9*, Yayasan Al-Hikmah, Direktur Badilag, Departemen Agama, Jakarta.
11. Jauhari I (2016) "Adil Menurut Al-Quran", *Fikih Kemasyarakatan (Ketentuan, Pemahaman, Gagasan dan Solusi)*, Perdana Publishing, Binjai.
12. Jauhari I, dan Muhammad Ali BT (2013) *Kapita Selektta Hukum Pedata, Kajian Advokasi Hak-Hak Anak*, Cita Pustaka Media Perintis, Bandung.
13. Kathir (2000) *Tafsir Ibn Kathir (2ndedn)* Texas: Dar-us-Salam Publications.
14. Khallaf AW (2010) *Ilmu Ushul Al-Fiqh : Maktabah Al-Dakwah Al-Islamiyah Shabah Al-Azhar*, Cairo.
15. Lubis HM (2011) *Ilmu Pembagian Waris*, Al Manar, Medan.
16. Jauhari I (2011) *Perlindungan Hak-Hak Anak*, Pustaka Bangsa Press, Medan.
17. Siddik A (1984) *Hukum Waris Islam Dan Perkembangannya Di Seluruh Dunia*, Wijaya, Jakarta.
18. Hazairin (1976) *Hukum Kewarisan Bilateral Menurut Al-Quran dan Hadist*, Tinta Mas, Jakarta.
19. As-Sayis MA, *Ayat-Ayat Ahkam T*, Alih Bahasa Oleh R. Lubis Zamakhsari; Al-Ma'arif, Bandung, volume II, 1980.