

## INHERITANCE AND GENDER EQUALITY

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**Abstrak:** *Format hak untuk warisan anak putra dan putri, yaitu 2: 1, didasarkan pada kebenaran secara keseluruhan dalam bentuk keadilan dengan disertai hak dan kewajiban. Format tersebut dapat dilakukan secara kuantitatif jika hak dan kewajiban antara putra dan putri berjalan sebagaimana mestinya. Jika ada pertimbangan yang menjamin lebih banyak keadilan, angka tersebut dapat diartikan secara kualitatif, yaitu angka 2 (bagian putra) adalah angka maksimum dan nomor 1 (bagian putri) adalah angka minimum. Keduanya ditujukan untuk memastikan terwujudnya maqashid al-syarī 'ah dalam bentuk keadilan. Ini juga sejalan dengan kearifan lokal asitinajang (prinsip kesopanan).*

**Kata kunci:** *Warisan, maqashid al-sharī 'ah, kearifan lokal, keadilan.*

**Abstract:** *The format of inheritance rights of sons and daughters, namely 2:1, is based on universal truths in the form of justice with accompanying rights and obligations. The format can be carried out quantitatively if the rights and obligations between sons and daughters go as they should. If there are considerations that guarantee more justice, the numbers can be interpreted qualitatively, namely number 2 (the share of sons) is the maximum number and number 1 (the share of daughters) is the minimum number. Both are aimed at ensuring the realization of maqashid al-syarī'ah in the form of justice. This is also in line with the asitinajang local wisdom (principle of decency).*

**Keywords:** *Inheritance, maqashid al-sharī'ah, local wisdom, justice.*

### INTRODUCTION

Format of inheritance in Islam distinguishes between the rights of sons and the rights of daughters explicitly. In the Qur'an, it is explicitly stated that the share of a son is equal to that of two daughters. This has drawn criticism from various circles, especially gender activists. The inheritance format determined by the Qur'an, on their view, is considered gender-biased. In fact, the criticism does not only come from outside Islam, but even Islamic figures try to interpret the Qur'anic texts concerning the concept of inheritance so those are judged to be gender-fair. The faraidh (inheritance) becomes urgent to guide the commencement of legislations or regulations governing inheritance.

The discourse of thinking about gender equality in Islam has placed the problem of the division of inheritance as one of the topics of heated debate. The 2: 1 format (two to one) which was used to be the subject of

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questions, has now turned into a “lawsuit” by the parties. In the 1980s, for example, Munawir Sjadzali - the Indonesian Minister of Religion at the time - made the idea that in the division of inheritance, Indonesian Muslims should provide equal share for sons and daughters.<sup>3</sup> This idea, among others, referred to the difference of the context when the verse was derived from the current context. However, this idea was strongly opposed by the scholars in Indonesia on the grounds that it was contrary to the Qur’anic verses.

Departing from the differences in addressing this, tracing the interpretations set forth by the Bugis ulema community in their interpretation of the matter mentioned above was carried out and was intended to explore the values of the Bugis community’s local wisdom associated with it. Because, the existence of local wisdom (*al’urf*) has room to be considered in formulating the conclusions of *syar’i* laws. Because of the vast breadth of inheritance and the provisions regarding heirs, this study focused on the inheritance rights of sons and daughters.

## **QURANIC INSTRUCTIONS ABOUT INHERITANCE**

Provisions regarding the inheritance format are so clear. If textual understanding is accepted, then the question of inheritance is almost without problems. However, when confronted with socio-cultural reality, the issue of inheritance format again becomes the subject of discussion. Moreover, if the rights and obligations of family members are not enforced, the demand for a sense of justice again becomes a necessity. There are several verses and hadiths which become the normative basis. At least 14 verses are found speaking about inheritance in the Qur’an. These verses speak of the ability of a person to inherit a portion of his wealth to his daughter (Surat al-Baqarah/2: 180), the firmness of the existence of shares of daughters and sons (QS al-Nisā/ 4: 7), the need to provide shares of inheritance for orphans if they are present when it is distributed (QS al-Nisā/ 4: 8), the need for inheritance for abandoned children (QS al-Nisā/4: 9), guarding the inheritance of orphans who cannot guard it (QS al-Nisā/4: 10), the level or number of share obtained respectively (QS al-Nisā/ 4: 11-12), there should be no jealousy between one another following the distribution of inheritance (QS al-Nisā/ 4: 32-33), the inheritance for *kalālah* (QS al-Nisā/ 4: 176), and in QS al-Anfāl/ 8: 72 concerning the criteria of

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<sup>3</sup> Munawir Sjadzali, *Dari Lembah Kemiskinan; Kontekstualisasi Ajaran Islam* (Jakarta: IPHI dan Paramadina, 1995), 97.

having the equality of fate and responsibility, and concerning the signal that family relationship is the most important position in terms of getting the inheritance (Surah Al Anfāl/ 8: 75), and the affirmation that besides the Prophet, no one has the right to obtain inheritance, except relatives (QS al-Aḥzāb/33: 6).

One of the verses that is specifically used as the basis for the inheritance sharing format for sons and daughters is Q.S. al-Nisā/4: 11 and 176.

يُوصِيكُمُ اللَّهُ فِي أَوْلَادِكُمْ لِلذَّكَرِ مِثْلُ حَظِّ الْأُنثَيَيْنِ ...

*“Allah instructs you concerning your children: for the male, what is equal to the share of two females....”*

The verse above talks about the rights of daughters and the rights of sons in terms of inheritance, not about the rights of all women or all men, and not in all matters. Strictly speaking, the verse above distinguishes the quantity of inheritance shares for sons and daughters, namely 2: 1. Before breaking down and placing it proportionally, some deep reflection is needed.

In relation to that verse, almost all *mufasseer* (interpreters) admitted that textually the share of inheritance for a son is equal to the share of two daughters, including the views of Bugis scholars who stated

*“hkEn nriewer an aorowaenew bega lEpiduwn began an mkuRaiey, nsb aiyro an aorowenew nblCai aeln. prElutoai nblCai baienn. naiy an makuRaiey aelnmi nblCai. nerko purni mlkai riblCaisi rilakain.”<sup>4</sup>*

transliteration:

*Hakna nariwereng ana' orowane-e bagian leppiduana bagianna ana' makkunraiye nasaba iyaro ana' buranewe nabalancāi alena. Parellutoi nabalancai bainena. Naiya ana makkunraiye alenami nabalancai, narekko purani mallakkai ribalancaisi rilakkainna.*

Meaning:

A son have the right to get the share of inheritance that is equal to that of two daughters, because the son provides for himself and provides for his wives and family. Meanwhile, daughters have no responsibility, and if they are married, they are given a living instead.<sup>5</sup>

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<sup>4</sup> MUI Sulsel, *Tafesere Akorang Mabbasa Ogi*, jilid 2 (Ujung Pandang. MUI Sulsel, 1988), 217.

<sup>5</sup> Formulasi tejemah penulis

If the dead person left one daughter only, then the daughter gets half of the assets left by her parents, and the rest is given to other heirs.<sup>6</sup> According to this interpretation, this verse explains that it is not permissible for the daughter to inherit all inheritance left by her parents. While a son, if he is alone, then he gets all the inheritance of his parents.<sup>7</sup>

## VIEW OF THE SCHOLARS

The terms and format as above depart from the rule of "*al-'Ibrah bi 'umūm al-Lafz lā bikhuṣūṣ al-sabab*" (the standard is based on the generality of *lafaz* not the specificity of the reason (background)". Based on the above explanations, as if the scholars intended to say that the distribution of inheritance must be adjusted to religious instructions, as stated in the texts, namely the Qur'an and the Prophet's hadith. The distribution of inheritance between men and women, namely 2:1, was still very relevant to the context of the community at the time the verse was revealed. It can be understood that the interpretation of MUI does not contextualize the problem of inheritance distribution like this considering to the context of the reading community, namely ordinary people who are actually very textual. Of course, when this interpretation reveals the change in the meaning of the text, it may not receive a positive response from the public, let alone the Bugis community who view that the distribution of inheritance must follow the Shari'a, as often stated that "*mallempa 'buranewe, majjujung makkunraiye*" (a man carries two), (woman carries one). In practice, it is often not like that, but following what is agreed by the family, so that the inheritance is distributed equally. Both parties (sons and daughters) get the same share. In fact, sometimes daughters get more due to the culture of some Bugis people who give girls a place to live (houses, shop houses). The Bugis community usually distribute inheritance according to the tradition that has been running. If there feels an injustice in the distribution, then it can be solved by several alternatives; divided equally in ratios of 1:1 and 2:1 or according to tradition. This last alternative is usually daughters inherit the house, while sons inherit other property.

The view of the scholars above is the same as those of other interpreters. For example, according to M. Quraish Shihab, the inheritance for sons is equal to the share of two daughters, not only

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<sup>6</sup> MUI Sulsel, *Tafesere Akorang Mabbasa Ogi*, Jilid 2, 218.

<sup>7</sup> MUI Sulsel, *Tafesere Akorang Mabbasa Ogi*, Jilid 2, 218.

because of men- when married - are obliged to give dowry and livelihood to their wives and families, but also because men - in general - have special features in the field of emotional control compared to women. This shows that the control of properties on the basis of reason must take precedence over controlling it on the basis of emotion.<sup>8</sup>

Apparently, what was said, both by the interpretation of the MUI and M. Quraish Shihab, had not tried to get out of the understanding that was in accordance with the text, and even seemed to be very strong in defending the thoughts expressed by the previous interpreters, namely when discussing the 2: 1 ratio in inheritance. The arguments used as a guide include the responsibility of men over women when they will and after becoming husbands, the different roles between men and women in the family's economic activities, as well as the differences in potential possessed by both.

When a man gets married, he is obliged to give a dowry to his wife and after marriage, his capacity as a husband gives him the responsibility to support his wife. That is among the various reasons of that in inheritance men must get a greater share than women. The condition in which a son get a share equal to that of two girls will be reversed after getting married. The share of men is reduced by the dowry, while the women's share increases by accepting dowry. Thus, women's desire to get more is truly realized. Adherents of this opinion see here the fairness of inheritance rules lies.<sup>9</sup>This is the thought expressed by the above scholars, including the Bugis ulama in the MUI team.

This is also confirmed in the MUI interpretation when the team explained verse 176 of Q.S. al-Nisā/4 about *kalālah* (the person who died does not leave father and son to inherit his property). In the interpretation, it was stated that if the deceased does not have children but has only one sibling, that is female, then the share of the sister is only half of the property that deceased, and if the deceased leaves only one sibling, that is male, then all the inheritance fell to the brother.<sup>10</sup>Further explained that if there is a man and a woman, the male's share is equal

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<sup>8</sup> M. Quraish Shihab, *Perempuan; Dari Cinta Sampai Seks, Dari Nikah Mut'ah sampai Nikah Sunnah, Dari Bias Lama sampai Bias Baru* Cet. I (Jakarta: Lentera Hati, 2005), 262.

<sup>9</sup> Asghar Ali Engineer, *Hak-Hak Perempuan dalam Islam*, Terj. Farid Wajdi dan Cicik Farkha Assegaf, dari *The Rights of Women in Islam*, (Yogyakarta: Lembaga Studi dan Pengembangan Perempuan dan Anak), 111-112; Said Ramadhan al-Buthi, *Perempuan antara Kezaliman Sistem Barat dan Keadilan Islam*, terj. Darsim Ermaya Imam Fajruddin dari *al-Mar'ah Bayn al-Ṭuḡyān an-Nizāmiyyah al-Gharbiyya Liṭā'if at-Tasyrī' al-Rabbānī*, (Solo: Era Intermedia, 2002), 120-125.

<sup>10</sup> MUI Sulsel, *Tafesere Akorang Mabbasa Ogi*, Jilid 2, 504.

to that of two females.<sup>11</sup> That is, this understanding still adheres to a ratio of 2: 1. So, what is revealed by the MUI through its interpretation still remains in the principle of rules of *us\ūl"al-'ibrah bi 'umūm al-lafz lā bi khus\ūs\ al-sabab"*.

Basically, the arguments given by the scholars about the distribution of inheritance are rational views, but it does not mean that the arguments have no weakness. The arguments that depart from the correlation of inheritance with dowry, the weakness will appear when faced with a special situation (case) when a woman - for special reasons - is not married. If the distribution is at the level of practice "*tanfīz \*", then what form of justice is relevant, but does not apply in absolute terms.

At a practical level, the Bugis in distributing inheritance are divided into three forms; first, each son and daughter gets the same share (1: 1). Second, a son gets more than the share of a girl, but the amount is not determined and according to eligibility. Third, a son gets a share equal to that of two daughters, which is 2: 1, (*mallempa 'boranewe nenniya manjjujung makkunraiye*). However, in the tradition of the Bugis community, the house left by parents and most of the contents in the form of furniture is share of daughters.

Legal provisions are always based on general matters. Specific situations or rare things should not be taken into consideration or benchmark (*al-nādiru lā yu'tabar*). Social facts show that the number of women who are not married - of course for various reasons - is also not small. In dealing with this fact, the interpreters can take bold steps to abandon textual meaning and capture the message of an ideal-substantive moral to end injustice.<sup>12</sup>

Another weakness is inheritance is often defined as property left by the deceased.<sup>13</sup> If this definition is associated with financing the marriage of a man by his parents before the parents die - in this case, including his dowry -, are all the funds and the dowry included in the category of inheritance? Are the funds that have been used in the wedding procession automatically reducing their share of future inheritance. This question is worth asking because there is no provision that a man must marry after his parents die. If the question above is answered with "yes", then it violates the definition of inheritance. Meanwhile, if answered "no" - then it naturally shows the weakness

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<sup>11</sup> MUI Sulsel, *Tafesere Akorang Mabbasa Ogi*, Jilid 2, 504.

<sup>12</sup> Bandingkan Nasaruddin Umar, *Argumen Kesetaraan Jender* (Jakarta: Paramadina, 2001), 17.

<sup>13</sup> M. Ali Hasan, *Hukum Warisan dalam Islam* (Jakarta: Bulan Bintang, 1996), 12.

of the above argument. This needs to be questioned, because in many Muslim societies, especially in Indonesia, the marriage of men with parental funding is very much happening, even considered as an obligation for parents.

In the context of Indonesia, arguments linking inheritance with the responsibility of giving dowry or other things by men to women before marriage should be reviewed. The problem is that the dowry and other things are usually not large. In many traditions in Indonesia, dowry is usually only a set of prayer equipment. Even if there are additions in the form of money, the amount is not much, in contrast to what happens in Saudi Arabia or Egypt where men besides having to give dowry, are also required to prepare other necessities such as the availability of a house before marriage.

There is one question; "What about the arguments related to the position of men as providers of living and women who are given?" This argument also contains weaknesses, among others, when faced with the question "Is it possible for an acquisition of the past to be divided based on criteria of the future that are full of uncertainty? Meanwhile, a woman whose father died when she was teenager or child is not sure to marry later. When it is ascertained that she will not get married, does she have to return to sue the inherited property based on the assumption that there will be no husband to give her a living?" Another disadvantage is, if it is related to living, a husband should not inherit from a deceased wife, or vice versa, the death of a husband requires his wife to get more.

Departing from that reality, some contemporary scholars view a possibility that inheritance rules can be contextualized. They disagree with the various reasons suggested by conservatives, including the categorization of Qur'anic verses to *qaṭ'ī* and *zannī*. This disagreement is quite reasonable, because the categorization is none other than the formulation of the ulama themselves whose truth is still relative. In reality, the second caliph, Umar bin Khattab himself treated the verses - which were then considered *qaṭī* - in contrast to the text and made the context a consideration for leaving the textual meaning of the verses. Umar did not enforce the law of cut off to a hand of a thief with consideration of the famine season and did not give the zakat to some converts, because their faith was already strong.

Asghar Ali Engineer argued that the only condition for successful Quranic division is not to treat Shari'ah as final, as formulated by the *fuqahā* in the early days. It needs to be interpreted or even reformulated

in the true spirit of the Quran, taking into account the conditions that have changed and new awareness among women. Asghar in this case did not blame the previous formulation of the *jurists*, he only tried to convince that changing the legal format by contextual consideration without leaving its spirit is not forbidden. It is precisely a necessity in order to achieve the true ideal of the Quran.<sup>14</sup>

A contemporary female figure, who also approved contextualization, is Aminah Wadud Muhsin. According to her, the Quran does not elaborate on all the possibilities that can occur in terms of inheritance, but by providing various scenarios, it is quite clear that many combinations that may occur due to several things that must be considered for the sake of a fair share of inheritance. In her explanation, she further emphasized the benefits of wealth for people left behind as a primary consideration.<sup>15</sup>

#### a. View of Islamic Scholars of *Ushul*

Syafiq Hasyim in a brief entry "*fiqh al-mawāris*" explained that socio-historically, the verse that sets 2:1 is actually a form of humanitarian awareness that women, like men, also have the right to own property. Islam provides two alternative ways for women to obtain property, namely by inheritance and through dowry. With this understanding, in reality, 2:1 is actually a reflection of socio-historical-cultural reality that depends on time and space.<sup>16</sup>

The three opinions presented above met in one conclusion that the format of 2:1 and other rules in inheritance are not one thing that is absolutely applied (*ḡannī al-tanfīz*)|. Formulation and reinterpretation based on several considerations, including space, time and various conditions, will lead to quranic justice. The text that sets the format of 2:1 is *qatyiī al-wurū d* and *ḡ annīy al-tanfīz*|. Thus, in fact, the spirit of the verse carries a mission of justice. In connection with the Arab Jahiliyah tradition in pre-Islamic times which did not give inheritance to daughters, then this verse actually gradually wanted to abolish the wrongdoing.

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<sup>14</sup>Asghar Ali Enggineer, *op.cit.*, 116; Hasan Turabi, *Fiqh Demokratis*, Terj oleh Nashrullah dari *Tajdid al-Fikri al-Islamiy* (Bandung: Arasy, 2003), 51-52.

<sup>15</sup>Aminah Wadud Muhsin, *Qur'an Menurut Perempuan; Meluruskan Bias Jender dalam Tradisi Tafsir*, Terj oleh Abdullah Ali dari *Qur'an and Women; Rereading The Sacred Text from a Woman's Perspectives* (Jakarta: PT. SerambiIlmuSemesta, 2001), 158.

<sup>16</sup>Syafiq Hasyim, *Hal-Hal yang Tak Terpikirkan tentang Isu-isu Keperempuanan dalam Islam; Sebuah Dokumentasi* (Bandung: Mizan, 2001), 238.



It can also be understood from the text that 2:1 is a sign of gender justice in the distribution of inheritance. Two (2) are the maximum parts that can be inherited by sons, and one (1) is the maximum amount that must be obtained by daughters. Thus, inheritance can be divided equally (1:1) if it does not cause problems or negative risks, especially if it shows more a form of justice. Because, religion comes to provide benefits and prevent harm to humans, and bring a mission of justice.

In addition, on the basis of benefit and justice, the verse text can also be applied by referring to the benefit if a society applies 2:1 textually with a note that if a sister is not married, which means not getting a dowry, then the brother who gets more has the responsibility to support his sister. In the context of the Bugis community, the value of *assitinajang* (decency) is also considered a parameter.

In order not to cause debate and not create a sense of jealousy in terms of the distribution of inheritance, it is not enough just to read the verse, but also see other verses. As mentioned in verse 32 Q.S. al-Nisā that in order not to cause jealousy between the two parties, the Quran reminds

وَلَا تَتَمَنَّوْا مَا فَضَّلَ اللَّهُ بِهِ بَعْضَكُمْ عَلَى بَعْضٍ لِلرِّجَالِ نَصِيبٌ مِمَّا كَسَبُوا وَلِلنِّسَاءِ نَصِيبٌ مِمَّا كَسَبْنَ  
وَأَسْأَلُوا اللَّهَ مِنْ فَضْلِهِ إِنَّ اللَّهَ كَانَ بِكُلِّ شَيْءٍ عَلِيمًا

And do not wish for that by which Allah has made some of you exceed others. For men is a share of what they have earned, and for women is a share of what they have earned. And ask Allah of his bounty. Indeed Allah is ever, of all things, Knowing.

Justice and faith are the key words to end the dispute over the distribution of inheritance. Jealousy can occur due to unfair treatment. This sense of injustice can also arise because of greed, and that greed can be resolved if faith in God has become a neutralizer in the matter. The MUI interpretation in its explanation of the above verse says that women cannot feel jealous of what men get, and on the contrary men cannot also be jealous of what women get.<sup>17</sup>So, both must be satisfied with what they have, because behind the provisions of Allah, there must be meaning contained and humans have not been able to reach the understanding behind the rule. This kind of understanding is more of a normative understanding, that is, to think positively of God's purpose behind the text.

However, such understanding sometimes collides with the socio-cultural reality of society, because not all societies are immediately

<sup>17</sup>MUI Sulsel, *Tafesere Akorang Mabbasa Ogi*, Jilid 2, 265.

subject to the text. Resistance applies not only because people do not want to be subject to the text, but also because the spirit of the verse, in the form of justice, is not obtained due to various factors. It is possible that a brother has received more shares before the distribution of inheritance because his parents have paid more for their sons. Especially at this time, there may be boys getting higher education whose funding comes from the assets of their parents so they can earn a decent living. Meanwhile, the sisters did not get a high education and therefore they do not get adequate income. It could also be because the sisters are not married and culturally married brothers are no longer responsible for the unmarried sisters as recommended by religion.

### INTERPRETING THE NUMBERS QUALITATIVELY

Apart from the arguments stated above, there were the group of ulama who still maintain the sound of the verse text and the group of ulama who try to contextualize the distribution of inheritance by referring to the values of justice, but the above verse is clearly *qat'ī*, so the solution can be taken is the concept suggested by Muhammad Shahrur,<sup>18</sup> namely *al-ḥadd al-a'lā* (maximum limit) and *al-ḥadd al-adnā* (minimal limit), where the determination of 1: 2 is, for the female part, the minimum is 1 and may be more, and for the male part, the maximum is 2 and not more than that wherever possible. Shahrur wants to give a middle way to the two axes of thought between textual and contextual. The spirit of the verse is actually the spirit of justice.

Such an opinion is more likely to make room for movement that is not excessive but is elastic at the operational level (*ẓannīyy al-tanfīz \ wa qat'īyy al-wurūd*). This is in line with the previous authors' view that the number two (2) is the maximum number and the number one (1) is a minimum number which certainly provide an elastic opportunity. This kind of understanding can be considered as an alternative.

Apart from many views of Shahrur in various aspects of Islam, he provided an alternative to arrive at an elastic meeting point in resolving various conflicts of Muslim families in the matter of inheritance. The provisions of inheritance format are understood in two approaches, namely quantitative approach (2: 1) and qualitative approach (2 as maximum limit and 1 as minimum limit). Both aim at achieving justice in the distribution of inheritance rights for sons and daughters.

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<sup>18</sup>Syahiron Syamsuddin (ed), *Prinsip-Prinsip dan Dasar Hukum Islam Kontemporer* (Cet. I, Yogyakarta: ElSaq Press, 2007), 242.

## CONCLUSION

The verses that regulate the format of inheritance aim to uphold the rights of justice. Justice has a resemblance to the equation. However, justice and equality have significantly different meanings. Justice is closer to proportionality in rights and obligations. Behind inheritance rights – which are different but proportional – there are obligations that must be upright proportionally as well. Behind the share of boys, which are twice of that of girls, there is an obligation of boys to guarantee the life and livelihood of their sisters, and to become guardians of the successors of their father who is retired, both alive and after death. If a brother is married, he must give a dowry to his wife, while his sister receives the dowry from her husband. If a boy is married, he is obliged to give a living for his wife and children. Conversely, if a daughter has been married, then she is given a living by her husband. This is what is meant by the idiom of the Bugis “*Mallempa ‘ana’ oranewe, majjung ana ‘makkunrai’e’*” as the verse’s moral message on the format of 2:1. If the obligation cannot be upheld, the rights will be affected, so the solution, that is the format of 2:1, can be quantified to be that 2 is the maximum limit of the rights of boys and 1 is the minimum rights of girls. This condition allows to be resolved by the *asitinajang* cultural approach (principle of decency) by deliberation (*assamaturuseng*).

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