



## SOCIOLOGICAL DIMENSIONS OF THE APPLICATION OF ISLAMIC INHERITANCE IN INDONESIA

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**Abstract:** Differences in place and time, shifting conditions and situations, and societal changes cannot be avoided. However, there is a view that Islamic inheritance law is specific and fixed so that it cannot be modified. This study examines the application of inheritance law using the perspective of double movement theory by looking at the sociological dimensions that developed in Indonesia. This research is a sociological, legal research using qualitative data. The approach used in this research is socio-historical, intended to determine generalizations based on specific historical facts related to the application of Islamic inheritance law. The collected data is identified and verified, then analyzed using Fazlur Rahman's double movement theory. The results showed that based on moral ideals generalized based on double movement theory, it was found that justice and benefit became the primary reference in the application of Islamic inheritance law in Indonesia. Islamic inheritance law can flexibly adjust Indonesian society's environmental and social conditions. This research presents a methodological framework for a more adaptive and flexible application of Islamic inheritance law in line with Indonesia's diverse cultural landscape and evolving social norms.

**Keywords:** double movement; justice; expediency; Islamic inheritance law.

**Abstrak:** Perbedaan tempat dan waktu, pergeseran kondisi dan situasi, serta perubahan masyarakat tidak dapat dihindari. Namun demikian, ada pandangan bahwa hukum kewarisan Islam sudah pasti dan saklek sehingga tidak dapat dimodifikasi lagi. Penelitian ini bertujuan untuk mengkaji bagaimana penerapan hukum kewarisan dengan menggunakan perspektif teori double movement dengan melihat dimensi-dimensi sosiologis yang berkembang di Indonesia. Penelitian ini merupakan penelitian hukum sosiologis dengan menggunakan data kualitatif. Pendekatan yang digunakan dalam penelitian ini adalah sosio-historis yang dimaksudkan untuk menentukan generalisasi berdasarkan fakta-fakta historis yang bersifat khusus terkait penerapan hukum waris Islam. Data yang terkumpul

diidentifikasi dan diverifikasi kemudian dianalisis dengan menggunakan teori *double movement* Fazlur Rahman. Hasil penelitian menunjukkan bahwa berdasarkan ideal moral yang digeneralisasikan berdasarkan teori gerakan ganda, ditemukan bahwa keadilan dan kemaslahatan menjadi acuan utama dalam penerapan hukum kewarisan Islam di Indonesia. Penerapan hukum kewarisan Islam secara fleksibel dapat menyesuaikan situasi lingkungan dan kondisi sosial masyarakat Indonesia. Penelitian ini berkontribusi dalam menyajikan kerangka metodologis untuk penerapan hukum waris Islam yang lebih adaptif dan fleksibel selaras dengan lanskap budaya yang beragam dan norma-norma sosial yang berkembang di Indonesia.

**Kata Kunci:** gerak ganda; keadilan; kemanfaatan; hukum waris Islam.



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## INTRODUCTION

Indonesia, the country with the largest Muslim population in the world, has a rich and diverse Islamic history and heritage. Since its first entry in the 13th century, Islam has become a religion and has integrated various aspects of people's lives, creating a unique form of Islam that is different from other countries<sup>1</sup>. The interaction between Islam and social, cultural, political, and legal elements in Indonesia has created a complex and exciting dynamic to study. The coexistence of Islamic and customary laws in Indonesia often leads to legal dualism, where different legal systems and courts apply different rules to the same issue. This dualism can result in different outcomes depending on the legal system used. For Batak people who adhere to the patrilineal system, the transfer of inheritance is carried out by prioritizing the male lineage.<sup>2</sup> Meanwhile, Minangkabau, which adheres to the matrilineal system in the family, provides provisions for the transfer of inheritance property to the female line.<sup>3</sup> Of course, this differs from the provisions in Islamic rules that allocate inheritance shares to both women and men. The ruling

<sup>1</sup> "Berislam Secara Moderat," <https://sulbar.kemenag.go.id>, accessed September 25, 2023, <https://sulbar.kemenag.go.id/wilayah/berislam-secara-moderat-QqUwo>.

<sup>2</sup> Jaja Ahmad Jayus, "Eksistensi Pewarisan Hukum Adat Batak" 12, no. 2 (January 21, 2020): 241, <https://doi.org/10.29123/jy.v12i2.384>.

<sup>3</sup> Rahmi Murniwati, "Sistem Pewarisan Harta Pusako Di Minangkabau Ditinjau Dari Hukum Waris Islam" 7, no. 1 (May 4, 2023): 104, <https://doi.org/10.31933/ujsj.v7i1.315>.

in case number 294/Pdt.G/2018/PA.Pdg is one example of how Islamic law influences customary law in inheritance distribution.<sup>4</sup>

Islamic inheritance law in Indonesia is not regulated by national legislation but rather by a presidential instruction in the 1991 Compilation of Islamic Law (KHI), which serves as a guideline for resolving cases in the Religious Courts. Although the inheritance rules in the KHI adopt the dominant principles of Islamic law, there has been criticism regarding the distribution model, which still allocates a more significant share to male heirs than female heirs. This criticism is based on the consideration that the roles and positions of women in the socio-economic dimension have changed, making unequal distribution between men and women in inheritance old-fashioned and outdated.<sup>5</sup>

Proposals for equal inheritance distribution have been made, notably by Yahya Harahap, a Supreme Court judge, who argued that equal inheritance rights between men and women do not contradict the values of Islamic law in the Qur'an. However, this proposal has been rejected by the majority of Islamic scholars. Munawir Sadzali, a former Minister of Religious Affairs, made a similar effort, but his proposal was rejected. Despite the polemic over the different inheritance shares for men and women, several innovations in the KHI contextualize it with the socio-cultural conditions of Indonesian society. Some of these innovations include provisions on joint marital property and mandatory bequests for adopted children.<sup>6</sup> Given the complexity and depth of this interaction, it is essential to understand the various sociological dimensions of Islamic inheritance in Indonesia. Understanding these dimensions is critical not only from an academic perspective but also in understanding the diversity and tolerance that characterizes Indonesia. By looking deeper into how Islam interacts with and shapes society, we can appreciate how Islamic values are translated into local contexts and how they impact Indonesia today.

Despite the differences in place and time, society's shifting conditions and situations are inevitable. Therefore, the problem of applying inheritance law becomes complex and very diverse. Of course, the social and cultural construction of Arab culture in ancient times was different from that of Indonesian society today.

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<sup>4</sup> Rizki Fajri Iasra, Yaswirman Yaswirman, and Yasniwati Yasniwati, "Penyelesaian Sengketa Waris Tanah Pusako Tinggi Sebagai Tanah Adat Melalui Pengadilan Agama Kelas 1A Padang," *UNES Law Review* 6, no. 1 (September 4, 2023), <https://doi.org/10.31933/unesrev.v6i1.859>.

<sup>5</sup> J.M. Otto, *Sharia and National Law in Indonesia*. In *Sharia Incorporated. A Comparative Overview of the Legal Systems in Twelve Muslim Countries in Past and Present* (Leiden: Leiden University Press, 2010), 468-69.

<sup>6</sup> Otto, 469-70.

Therefore, it is questionable whether classical *fiqh* products, due to the interpretation of revelation texts, can still be applied to modern society today. Moreover, there is a view that inheritance law is patent and cannot be modified anymore. The existence of women who work and even become the primary breadwinners in Indonesia is an example of a situation that leads to low acceptance and application of Islamic inheritance law. This is mainly related to the difference in inheritance share between men and women, where women receive a smaller portion than men.

This study examines and analyzes the application of inheritance law using the perspective of double movement theory by looking at the sociological dimensions that develop, especially in Indonesia. This research is necessary because it seeks to explore, identify, and explore the sociological dimensions that influence the practice of Islamic inheritance in Indonesia. In the next stage, this research aims to answer the challenges of shifts and changes in modern society in inheritance issues using Fazlur Rahman's double movement theory. Related to this study, there are several associated studies that previous researchers have conducted.

Some studies focus on the issue of gender justice, which states that the provisions for the difference between the shares of men and women are not final and cannot be changed, but they can adjust to the social conditions of society<sup>7</sup>. More than that, the study of gender in Islamic inheritance also proposes equalizing the inheritance of men and women<sup>8</sup>. Other studies related to Islamic inheritance emphasize the problematic application in society, which is influenced by the low understanding of Islamic inheritance law<sup>9</sup> and the perceived complexity of Islamic inheritance science to be applied so that people tend to use deliberative manners in the distribution of inheritance property<sup>10</sup>. As a distinction from previous studies,

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<sup>7</sup> İ Yılmaz, *An Analytical Overview on the Girl's Inheritance Share Based on Gender in Islamic Law* (philpapers.org, 2018), <https://philpapers.org/rec/YLMSHK>; A. Kususiyanah, "Keadilan Gender Dalam Kewarisan Islam: Kajian Sosiologis Historis," *Al-Mazaahib: Jurnal Perbandingan Hukum*, 2021, <http://ejournal.uin-suka.ac.id/syariah/almazahib/article/view/2293>.

<sup>8</sup> S. Hanafi and A. Tomeh, "Gender Equality in the Inheritance Debate in Tunisia and the Formation of Non-Authoritarian Reasoning," *Journal of Islamic Ethics* (brill.com, 2019), [https://brill.com/view/journals/jie/3/1-2/article-p207\\_9.xml](https://brill.com/view/journals/jie/3/1-2/article-p207_9.xml); U. Rahman et al., "Men and Women in The Distribution of Inheritance in Mandar, West Sulawesi, Indonesia," *Samarah*, 2022, <https://jurnal.ar-raniry.ac.id/index.php/samarah/article/view/9094>.

<sup>9</sup> Inna Fauziatul Ngazizah and Nabila Luthvita Rahma, "Unification of Islamic Inheritance Law Against the Plurality of Indonesian Muslims" (1st International Seminar on Sharia, Law and Muslim Society (ISLAMS 2022), Atlantis Press, 2022), 310-19, [https://doi.org/10.2991/978-2-494069-81-7\\_31](https://doi.org/10.2991/978-2-494069-81-7_31).

<sup>10</sup> ATLT Leleang and A. Z. A. Zubair, "Problematika Dalam Penerapan Hukum Waris Islam," *Al-Bayyinah*, 2019, <https://www.jurnal.iain-bone.ac.id/index.php/albayyinah/article/view/477>; Ria Rahma and Mohamed Shafei Moftah Bosheya, "Islamic Strategy Offers in The Implementation of The Science of Mawarist in Society : Study Centre of Mawarits Studies UNIDA Gontor," *Justicia Islamica: Jurnal Kajian Hukum Dan Sosial* 17, no. 1 (June 2, 2020): 92-108, <https://doi.org/10.21154/justicia.v17i1.1732>.

this research focuses more on the sociological dimension of Islamic inheritance in Indonesia, especially related to gender issues, demands for equalization of male and female shares, and the adjustment of inheritance law to the social conditions of society in Indonesia. The particular focus on using Fazlur Rahman's double movement theory as an analytical tool and how socio-cultural factors influence the interpretation and implementation of Islamic inheritance law makes this research different. This research hypothesizes that social and cultural factors in Indonesia influence people's perspectives regarding implementing and interpreting Islamic inheritance law. Moreover, Fazlur Rahman's double movement interpretation framework is one of the alternative solutions to modern inheritance problems in Indonesia, especially in the context of gender justice and the distribution of inheritance property. Furthermore, this study is expected to contribute to an in-depth understanding of the sociological dynamics of Islamic inheritance in Indonesia and contribute to the richness of Islamic inheritance literature from the perspective of Fazlur Rahman's double movement.

This research is a qualitative study using secondary data that is literature. The approach used in this research is socio-historical, intended to determine generalizations based on specific historical facts related to the application of Islamic inheritance law. Primary materials used in this research come from norms related to Islamic inheritance law and double movement theory contained in the works of Fazlur Rahman. At the same time, secondary materials come from books, journal articles, websites, and other secondary materials related to the research object. The collected data is sorted, verified, and analyzed using Fazlur Rahman's double movement theory. The use of double movement theory in addressing the sociological dimensions of Islamic inheritance, especially those in Indonesia, is expected to provide a new, more flexible interpretation of Islamic inheritance law that is considered rigid.

## **GENDER JUSTICE AND THE ADJUSTMENT OF INHERITANCE LAW TO THE SOCIAL CONDITIONS OF SOCIETY**

Previous studies have highlighted the issue of inheritance in Islam, particularly in the context of gender justice and the adaptation of inheritance law to society's social realities. Some studies have emphasized the importance of reviewing and adapting traditional inheritance laws to ensure gender justice. One study highlights the application of the inheritance distribution system according to classical *Fiqh al-Mawāriṭh* and Islamic inheritance in KHI, focusing on the analysis of gender equality

issues. Several other works show that the values of justice in current Islamic inheritance law have shifted, thus affecting the way inheritance is distributed. On that basis, the distribution of inheritance according to Islamic law is required to pay attention to the rights and responsibilities of men and women proportionally. If the obligations change, the rights will also change, adjusting to the development of societal structures.<sup>11</sup>

Some studies highlight the impact of social change on the distribution of inheritance from the perspective of Islamic law.<sup>12</sup> This study aims to understand how social change affects the implementation of inheritance law in everyday life. Based on the growing social construction, cultural assimilation, and changes in education levels, the distribution of inheritance is carried out in a bilateral system, and a balanced justice system is applied.<sup>13</sup> This allows for equal inheritance distribution between men and women. In addition, inheritance cases can be settled in a family manner, emphasizing the principle of peace.<sup>14</sup> Furthermore, gender equality in Indonesia's *ijtihad* of inheritance law has been the focus of several studies. Not only carried out by Muslim scholars in Indonesia<sup>15</sup>, *ijtihad* in the context of gender equality also penetrated the decisions of judges in the Religious Courts<sup>16</sup>.

## **PROPOSED EQUALIZATION OF MALE AND FEMALE INHERITANCE**

Inheritance in Islam is a topic that has received much attention from various circles, especially in the context of gender studies. Regarding gender issues, many researchers and women's rights activists have criticized Islamic inheritance law for not giving equal rights to women. In many cases, a man receives more inheritance than a woman. Proponents of traditional law argue that this difference can be justified because men have financial obligations towards their families, while

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<sup>11</sup> Syaikh Syaikh, "Kewarisan Islam Dalam Perspektif Keadilan Gender," *El-Mashlahah* 8, no. 2 (2018), <https://doi.org/10.23971/maslahah.v8i2.1323>.

<sup>12</sup> Miftahul Huda et al., "Tradition, Wisdom and Negotiating Marriage and Inheritance Disputes on Javanese Muslim," *Al-Istinbath: Jurnal Hukum Islam* 9, no. 1 (May 30, 2024): 25–44, <https://doi.org/10.29240/jhi.v9i1.9887>.

<sup>13</sup> Fauzi Muhammad, "Dampak Perubahan Sosial Masyarakat Terhadap Pembagian Harta Waris Perspektif Hukum Islam (Studi Di Desa Roworejo Kecamatan Negeri Katon Kabupaten Pesawaran)" (Undergraduate, Universitas Islam Negeri Raden Intan Lampung, 2022), <http://repository.radenintan.ac.id/17252/>.

<sup>14</sup> Zulham Wahyudani and Muhammad Firdaus, "Faktor - Faktor Perubahan Sosial Yang Mempengaruhi Pembagian Harta Warisan Di Banda Aceh, Indonesia," *Journal of Sharia Economics* 3, no. 1 (March 18, 2022): 13–33, <https://doi.org/10.22373/jose.v3i1.1450>.

<sup>15</sup> Nabila Afida Wahyu, "Kesetaraan Gender Dalam Pembagian Warisan (Studi Pemikiran Quraish Shihab)" (undergraduate, UIN KH Achmad Siddiq Jember, 2023), <http://digilib.uinkhas.ac.id/23999/>.

<sup>16</sup> Sugiri Permana, "Kesetaraan Gender Dalam Ijtihad Hukum Waris di Indonesia," *Asy-Syari'ah* 20, no. 2 (December 21, 2018): 117–32, <https://doi.org/10.15575/as.v20i2.3210>.

women do not. On the other hand, many modern gender studies emphasize that the current social and economic context has changed. In many cases, women also have the role of the primary breadwinner or at least a significant financial contributor to their family.<sup>17</sup> This argument supports that inheritance law should be reformed to reflect current realities.

In this context, proposals for equal inheritance distribution in Indonesia have been made, notably by Yahya Harahap, a Supreme Court judge, who argued that equal inheritance rights between men and women do not contradict the values of Islamic law in the Qur'an. However, this proposal has been rejected by the majority of Islamic scholars. Munawir Sadzali, a former Minister of Religious Affairs, made a similar effort, but his proposal was rejected.<sup>18</sup> Some other Muslim-majority countries have adopted legal reforms that reflect this view. Somalia, for example, is a Muslim-majority country that adheres to the Shafi'i school of thought, giving equal shares to men and women. The same situation also exists in Turkey, which follows the Hanafi school. Islamic inheritance reform in Somalia was influenced by adopting the socialist movement, which then influenced the country's law formation characteristics.

Meanwhile, the equalization of men's and women's shares in Turkey was influenced by secularism, which peaked during Mustafa Kemal, who ruled the country from 1924-1938.<sup>19</sup> The movement for equality in inheritance also occurred in Tunisia. This is evidenced by passing of a draft law that provides equal shares for men and women in inheritance on November 25, 2018.<sup>20</sup>

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<sup>17</sup> Sururi, "Keadilan Dalam Ketentuan 'Dua Banding Satu' Hukum Kewarisan Islam," *At-Tawasuth* 1, no. 1 (August 15, 2019): 89-102; Mohd Anuar Ramli et al., "Women's Right of Inheritance in Islam: Between the Sharia Provision and Demand of Socio-Cultural Changes," *Khazanah Hukum* 5, no. 2 (August 28, 2023): 171-82, <https://doi.org/10.15575/kh.v5i2.29181>.

<sup>18</sup> Otto, *Sharia and National Law in Indonesia*. In *Sharia Incorporated. A Comparative Overview of the Legal Systems in Twelve Muslim Countries in Past and Present*, 468-69.

<sup>19</sup> Lilik Andaryuni, "Pembaruan Hukum Kewarisan Islam Turki dan Somalia," *Hikmah: Journal of Islamic Studies* 14, no. 1 (May 20, 2018): 145-81, <https://doi.org/10.47466/hikmah.v14i1.104>.

<sup>20</sup> "Tunisia: Cabinet Approves Bill Requiring Equal Inheritance Shares for Men and Women," web page, Library of Congress, Washington, D.C. 20540 USA, accessed September 26, 2023, <https://www.loc.gov/item/global-legal-monitor/2018-12-04/tunisia-cabinet-approves-bill-requiring-equal-inheritance-shares-for-men-and-women/>.

## **THE DYNAMICS OF THE APPLICATION OF ISLAMIC INHERITANCE LAW: LOW PUBLIC UNDERSTANDING OF THE COMPLEXITY OF INHERITANCE LAW**

The application of Islamic inheritance law is often challenged in daily practice, especially among people who need an understanding of inheritance science. A study conducted by Hatriani in 2020 showed that people need to understand the division of inheritance according to Islamic law. The study assessed that not all people learn more about Islamic inheritance law, which leads to misconceptions and errors in the division of inheritance.<sup>21</sup> Another study highlights that the main subject of discussion is the level of legal awareness of the Muslim community towards inheritance law. This awareness is crucial because, without deep understanding, errors in inheritance practices can occur.<sup>22</sup> In addition to the problem of understanding, there is a public perception of the complexity of inheritance science. Inheritance law is difficult to apply because it is often considered contrary to local culture and social norms<sup>23</sup>. In Indonesia, Islamic and adat (customary) laws usually result in legal dualism, where different legal systems and courts apply distinct rules to the same issue. This dualism can lead to varying outcomes depending on the legal system used. For instance, among the Batak people, who follow a patrilineal system, inheritance is primarily transferred through the male lineage. This practice contrasts with the Minangkabau community, which follows a matrilineal system and thus transfers inheritance property through the female line.<sup>24</sup> These local customs significantly differ from the provisions in Islamic law, which allocate inheritance shares to both women and men, generally giving males a more significant portion.

The perceived complexity of inheritance science is rooted in the law of inheritance and the interaction between it and existing social and cultural norms. This complexity often arises when Islamic inheritance law meets a long-standing local customs or habits system. People tend to follow local customs or traditions

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<sup>21</sup> Nopi Hatriani, "Persepsi Masyarakat Terhadap Pembagian Harta Waris Ditinjau Dari Hukum Islam Di Kecamatan Lappariaja Kabupaten Bone" (masters, Universitas Negeri Makassar, 2020), <http://eprints.unm.ac.id/19192/>.

<sup>22</sup> Zainuddin Puteh and Dhiauddin Tanjung, "Kesadaran Hukum Masyarakat Muslim terhadap Hukum Kewarisan Islam di Indonesia: Studi Literatur," *Al-Mashlahah Jurnal Hukum Islam dan Pranata Sosial* 11, no. 01 (May 14, 2023): 29–42, <https://doi.org/10.30868/am.v11i01.3907>.

<sup>23</sup> Jamaludin, "Praktek Pembagian Harta Warisan Keluarga Muslim Dalam Sistem Kewarisan Patrilineal (Studi di Desa Sesetan Denpasar Selatan Kota Denpasar) – Fakultas Syariah UIN Maulana Malik Ibrahim Malang," accessed October 24, 2023, <https://syariah.uin-malang.ac.id/praktek-pembagian-harta-warisan-keluarga-muslim-dalam-sistem-kewarisan-patrilineal-studi-di-desa-sesetan-denpasar-selatan-kota-denpasar/>.

<sup>24</sup> Jayus, "Eksistensi Pewarisan Hukum Adat Batak," 241; Murniwati, "Sistem Pewarisan Harta Pusako di Minangkabau Ditinjau Dari Hukum Waris Islam," 104.

rather than Islamic inheritance law, especially when the two systems have fundamental differences in the division of inheritance. In the Enggano people of Bengkulu, the community is reluctant to apply Islamic inheritance law because they believe it has too many rules, which distances them from a sense of justice in the process of inheritance distribution. Meanwhile, the justice understood by the community is based on justice from customary law's perspective.<sup>25</sup> The Enggano people of Bengkulu distribute inheritance property evenly and balanced, and after deliberation, they feel it is fair and relieving for each heir.<sup>26</sup>

### **THE INFLUENCE OF SOCIAL AND CULTURAL FACTORS ON THE INTERPRETATION AND IMPLEMENTATION OF ISLAMIC INHERITANCE LAW IN INDONESIA**

Indonesia, the country with the largest Muslim population in the world, has a profound cultural and social richness. A critical aspect of community life in this country is the interpretation and implementation of Islamic inheritance law. Islamic inheritance law in Indonesia is not a static entity but rather an evolving concept shaped by various social and cultural factors that exist in society. Applying Islamic inheritance law in Indonesia can be different from its textual concept. The idea of inheritance in the Qur'an only generally regulates the basics. For example, the Qur'an only regulates the share of core heirs such as children, fathers, mothers, husbands, wives, and siblings. Meanwhile, the Qur'an does not explain the shares of other heirs, such as grandparents, grandchildren, and relatives outside the core heirs above.<sup>27</sup>

In the distribution of inheritance to the core heirs mentioned in the Qur'an, there are still differences in interpretation that give birth to differences in the application of inheritance distribution in terms of shares and technical distribution of inheritance. In the matter of parts, the provision of a third of the remainder (1/3 remainder) to the mother in the case of *gharāwayn* (one of the problems of Islamic inheritance), which is a case of inheritance whose heirs consist of one of the husband or wife, mother, and father, is one proof of the difference in interpretation. The 1/3

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<sup>25</sup> Ahmad Dasan and Mikho Ardinata, "Hukum Waris Islam Dalam Pelaksanaan Dan Pandangan Masyarakat Enggano Bengkulu," *Res Nullius Law Journal* 2, no. 2 (July 16, 2020): 87-101, <https://doi.org/10.34010/rnlj.v2i2.2990>.

<sup>26</sup> Dasan and Ardinata, 95.

<sup>27</sup> "Penerapan Hukum Kewarisan Islam Di Indonesia Oleh: Dr. Komari, S.H., M. Hum | (28/1) - Direktorat Jenderal Badan Peradilan Agama," accessed October 17, 2023, <https://badilag.mahkamahagung.go.id/artikel/publikasi/artikel/penerapan-hukum-kewarisan-islam-di-indonesia-oleh-dr-komari-sh-m-hum-261>.

remainder is not explicitly found in the Qur'an. The interpretation arises because the attempt to give the father's share as a male heir is twice as large as the mother's share as a female heir. This condition is, of course, influenced by patrilineal Arab culture. Furthermore, regarding distribution techniques, there are also differences of opinion among Islamic scholars. The pros and cons of applying *'aul* prove how different opinions differ because the Qur'an only explains the general outline.

In the context of the development of Islamic inheritance law in each country or region, it is influenced by the cultural patterns of the customs of the community life of a country or region where inheritance law is applied. The development of Islamic inheritance law in the culture of patrilineal kinship customs will be different from the development of parental or bilateral kinship customs. Islamic inheritance law in Indonesia, which mostly adheres to the parental or bilateral system, gives inheritance rights to every male and female relative. This contrasts cultures that adhere to the patrilineal system, which only gives or prioritizes male relatives in the distribution of inheritance property. On that basis, the provisions of inheritance that are not explained in the text of the Qur'an are developed by *ijtihad* based on socio-cultural analysis of the people in Indonesia.<sup>28</sup>

Social factors are one of the main aspects that influence how people perceive and implement Islamic inheritance law. Zulham Wahyudani's study on social change and its relationship with the division of inheritance from the perspective of Islamic law shows that various social dynamics are at play in interpreting this inheritance law.<sup>29</sup> In addition to social factors, local culture also plays a vital role in shaping people's understanding of Islamic inheritance law. In Indonesia, there are various ethnic groups with different traditions and customs. Although Islamic inheritance law has a strong foundation in Islamic sources, cultural norms and local traditions often influence interpretation. The Compilation of Islamic Law (KHI) maintains Sunni inheritance. Still, in practice, there are influences from local traditions such as the concept of joint property or *gono-gini*, substitute inheritance, children (male/female) hijab siblings, and mandatory wills for children or adoptive parents.<sup>30</sup> This shows how traditional norms and local beliefs can influence the interpretation and implementation of Islamic inheritance law in Indonesia.

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<sup>28</sup> Komari, "Penerapan Hukum Kewarisan Islam Di Indonesia," Direktorat Jenderal Badan Peradilan Agama.

<sup>29</sup> Wahyudani and Firdaus, "Faktor - Faktor Perubahan Sosial Yang Mempengaruhi Pembagian Harta Warisan Di Banda Aceh, Indonesia."

<sup>30</sup> Djafar Abdul Muchith, "Hukum Kewarisan Islam Menurut Kompilasi Hukum Islam," Direktorat Jenderal Badan Peradilan Agama, accessed October 24, 2023, <https://badilag.mahkamahagung.go.id/artikel/>.

Despite efforts to implement legal principles derived from the Quran and Hadith, there is still a discrepancy between theory and practice. Due to social and historical factors, some Indonesian Muslim communities have not fully implemented these principles to guide their lives.<sup>31</sup> Indonesian inheritance law is rooted in the individual and family system, which may differ from the traditional interpretation of Islamic inheritance law.<sup>32</sup> In addition, inheritance law in Indonesia is pluralistic, with Adat inheritance law applying alongside Islamic inheritance law.<sup>33</sup>

### **ANALYSING THE APPLICATION OF FAZLUR RAHMAN'S DOUBLE MOVEMENT THEORY IN THE CONTEXT OF INHERITANCE IN INDONESIA**

Fazlur Rahman's hermeneutics, known as the double movement theory, departs from the importance of distinguishing between specific legal and moral ideals. The ethical ideal referred to in the double movement theory is the primary moral goal ordered by the Qur'an. At the same time, the specific legal ideal is an explicitly determined legal provision.<sup>34</sup> Rahman states that the universal moral ideal is more appropriate than the specific legal provisions. When described, the distinction between specific legal and moral ideals will form a two-way movement that meets each other. The theory of double movement involves two movements: first, examining contemporary times and then looking back to the era of the Qur'an's revelation; second, returning to the present. This approach integrates inductive and deductive reasoning, allowing for a contextual understanding of the Qur'an's teachings. <sup>35</sup>To be clear, while the first movement starts from specifics and draws them into general principles and long-term moral values, the second movement goes the other way. The second movement begins with general principles drawn to specific views and formulated and realized in the present life. This second

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<sup>31</sup> Saifullah Basri, "Hukum Waris Islam (Fara'id) Dan Penerapannya Dalam Masyarakat Islam," *Jurnal Kepastian Hukum dan Keadilan* 1, no. 2 (July 12, 2020): 37–46, <https://doi.org/10.32502/khdk.v1i2.2591>.

<sup>32</sup> Jamaludin, "Praktek Pembagian Harta Warisan Keluarga Muslim Dalam Sistem Kewarisan Patrilineal (Studi di Desa Sesetan Denpasar selatan Kota Denpasar) – Fakultas Syariah UIN Maulana Malik Ibrahim Malang."

<sup>33</sup> Muh Idris, "Implementasi Hukum Waris Dan Pengajarannya Pada Masyarakat Kec. Poleang Tengah Kab. Bombana (Perbandingan Antara Hukum Adat, Hukum Islam dan Hukum Perdata)," *Al-'Adl* 8, no. 1 (January 1, 2015): 20–36, <https://doi.org/10.31332/aladl.v8i1.346>.

<sup>34</sup> Fazlur Rahman, *Islam*, trans. Ahsin Mohammad (Bandung: Pustaka, 1984), 38.

<sup>35</sup> Muhammad Umair and Hasani Ahmad Said, "Fazlur Rahman Dan Teori Double Movement: Definisi Dan Aplikasi," *Al-Fahmu: Jurnal Ilmu Al-Qur'an Dan Tafsir* 2, no. 1 (March 30, 2023): 75, <https://doi.org/10.58363/alfahmu.v2i1.26>.

movement requires carefully studying the present situation to assess and change these moral priorities.<sup>36</sup>

In Indonesia's inheritance context, this theory plays a vital role in understanding and adapting the principles of Islamic inheritance to current socio-economic conditions. With the existence of cultural diversity, Indonesia faces particular challenges in implementing a just and relevant Islamic inheritance law. The double movement theory allows for a more flexible and contextual interpretation of Islamic texts on inheritance, considering factors such as changes in family structure, the role of women, and contemporary economic conditions.<sup>37</sup> Double movement is an attempt to understand the meaning of a past text and its context to change the rule, whether expanding, limiting, or modifying it to be appropriate for a new situation. Thus, the provisions in the text can be generalized into a principle, which is used as a reference for formulating new rules for ever-evolving situations.<sup>38</sup>

Regarding inheritance, the Qur'anic text provides rules and limitations regarding these affairs as stated in surah Al-Nisa's verses 7, 8, 9, 10, 11, 12, and 176. Fazlur Rahman emphasizes that applying the inheritance verse must consider the current reality or where the law is enforced.<sup>39</sup> The moral ideal that can be taken from the texts of these verses is justice and *naf'* (benefit to the heirs). The ethical ideal is based on the generalization taken by Amina Wadud by using Fazlur Rahman's interpretation theory (double movement)<sup>40</sup>. According to Wadud, the distribution of inheritance to the heirs must be fair, and this justice needs to consider *naf'* (benefit) for the heirs left behind.<sup>41</sup> More clearly, this moral ideal is applied in solving the inheritance problem. First, the double movement theory is applied to the issue of adjusting inheritance law to the social conditions of Indonesian society; before discussing further how the application of double movement in this sub-section, it is

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<sup>36</sup> Adib Hamzawi, "Elastisitas Hukum Islam; Kajian Teori Double Movement Fazlur Rahman," *INOVATIF: Jurnal Penelitian Pendidikan, Agama, Dan Kebudayaan* 2, no. 2 (September 11, 2016): 14.

<sup>37</sup> "Teori Double Movement Fazlur Rahman Dan Aplikasinya Pada Ayat Waris (Kontekstualisasi Hukum Kewarisan Islam Di Indonesia)," *Pondok Pesantren Terpadu Al Kamal* (blog), February 7, 2023, <https://alkamalblitar.com/blog/teori-double-movement-fazlur-rahman-dan-aplikasinya-pada-ayat-waris-kontekstualisasi-hukum-kewarisan-islam-di-indonesia/>; Beta Firmansyah, "Aplikasi Teori Double Movement Fazlu Rahman Terhadap Kasus Poligami," *Ushuluna* 1, no. 2 (December 2015): 23-31, <https://doi.org/10.15408/ushuluna.v1i2.15157>.

<sup>38</sup> Firmansyah, "Aplikasi Teori Double Movement Fazlur Rahman Terhadap Kasus Poligami," 28.

<sup>39</sup> Fazlur Rahman, *Major Themes of The Al-Qur'an* (Chicago: The University of Chicago Press, 2009), 35.

<sup>40</sup> Amina Wadud, *Qur'an and Woman: Rereading the Sacred Text from a Woman's Perspective*, 2nd edition (New York: Oxford University Press, 1999), 4.

<sup>41</sup> Wadud, 87.

necessary to understand that justice is an essential indicator in Islamic law that has a relationship with legal and social changes. Social change is a necessity because society is constantly evolving. On that basis, the justice perceived by the community can also change along with the development of the community.<sup>42</sup> The assumption that the provisions on inheritance are patent (*qat'i*) and cannot be changed anymore will make inheritance law rigid and conservative because it cannot accommodate social changes and developments<sup>43</sup>. If scrutinized, the Companions have also made changes to the law of inheritance that are different from what is stated in the text of the Qur'an based on considerations of customs and social construction in their time.<sup>44</sup>

The *gharāwayn* case exemplifies how social construction influences text interpretation and legal change. In this case, the mother inherits with the father and the wife or husband of the testator. Based on the Qur'anic text in surah al-Nisa's verses 11 and 12, the mother gets 1/3, the father receives the remaining part (*ashabah*), and the husband gets 1/2 of the share. In the case of inheriting with the wife, the mother gets 1/3, the wife receives 1/4, and the father gets the rest of the property. An illustration of the distribution of inheritance based on the Qur'anic text in these cases is as follows:

**Table 1.** Father and mother inherit the property with the husband

Heirs	Heirs' share	Least Multiple (LCM): 6	Common
Husband	1/2	3/6	
Mother	1/3	2/6	
Father	Remaining ( <i>'ashabah</i> )	1/6	
<b>Total</b>		<b>8/8</b>	

<sup>42</sup> M. Lutfi Hakim, "Keadilan Kewarisan Islam Terhadap Bagian Waris 2:1 Antara Laki-Laki Dengan Perempuan Perspektif Filsafat Hukum Islam," *Al-Maslahah: Jurnal Ilmu Syariah* 12, no. 1 (April 10, 2016): 2, <https://doi.org/10.24260/almaslahah.v12i1.339>.

<sup>43</sup> Anugrah Reskiani et al., "Reform Methods of Islamic Inheritance Law in Indonesia in Jurisprudence," *JURIS (Jurnal Ilmiah Syariah)* 21, no. 1 (June 9, 2022): 40, <https://doi.org/10.31958/juris.v21i1.5564>.

<sup>44</sup> Wahyudani and Firdaus, "Faktor - Faktor Perubahan Sosial Yang Mempengaruhi Pembagian Harta Warisan Di Banda Aceh, Indonesia," 17.

**Table 2.** Father and mother inherit the property with the wife

Heirs	Heirs' share	LCM: 12
Wife	$\frac{1}{4}$	$\frac{3}{12}$
Mother	$\frac{1}{3}$	$\frac{4}{12}$
Father	Remaining (' <i>ashabah</i> )	$\frac{5}{12}$
<b>Total</b>		<b><math>\frac{12}{12}</math></b>

Based on the illustration above, the mother's share is twice as large as the father's share when with the husband. When with the wife, although the mother's share is not much different from the father's share, it is smaller. This share provision was considered not to fulfill justice in his time because, at that time, it was believed that the male share should be twice as large as the female. On that basis, Caliph 'Umar then took the policy of giving the remaining  $\frac{1}{3}$  share, after being taken by the surviving spouse, to the mother so that the father's share was twice as large as hers.<sup>45</sup> The illustration of the change in the mother's share in the *gharāwayn* case is as follows:

**Table 3.** Father and mother inherit the property with the husband

Heirs	Heirs' share	LCM: 6
Husband	$\frac{1}{2}$	$\frac{3}{6}$
Mother	$\frac{1}{3}$ of the remaining	$\frac{1}{6}$
Father	remaining (' <i>ashabah</i> )	$\frac{2}{6}$
<b>Total</b>		<b><math>\frac{8}{8}</math></b>

**Table 4.** Father and mother inherit the property with the wife

Ahli Waris	Bagian Ahli Waris	LCM: 12
Wife	$\frac{1}{4}$	$\frac{3}{12}$
Mother	$\frac{1}{3}$ of the remaining	$\frac{3}{12}$
Father	remaining (' <i>ashabah</i> )	$\frac{6}{12}$
<b>Total</b>		<b><math>\frac{12}{12}</math></b>

Another case during the time of the Companions, known as the *mushtarakah* case, involved heirs consisting of the husband, mother, two uterine brothers, and a full brother. Based on the text of the revelation, the husband gets  $\frac{1}{2}$ , the mother  $\frac{1}{6}$ , two uterine brothers get  $\frac{1}{3}$ , and the full brother receives the rest. With the

<sup>45</sup> Muhammad Na'îm Muhammad Hânî sâ'î, *Mausû'ah Masâil al-Jumhûr Fi al-Fiqh al-Islâmî*, 2nd ed., vol. 2 (Mesir: Dâr al-Salâm, 2007), 627.

provisions of this section, the full brother, as the recipient of the remaining share, cannot receive any portion because the inheritance has been exhausted and given to other heirs, including the two uterine brothers. This *mushtarakah* case occurred twice during the time of 'Umar bin Khattab. When it first happened, 'Umar made the decision above. But when it happened again, this kind of division was then protested by the full brother, who said that, after all, he was born from the same mother. Then, Umar bin Khattab proposed that 1/3 should be divided equally between the uterine and full brothers.<sup>46</sup> This shows that the law of inheritance is not patent and can always change along with the shifting values of justice due to social change.

In the scope of customary law, such as the Enggano community of Bengkulu, Indonesia, the inheritance that applies and is believed to be fair by the community is the customary inheritance distribution model. This model is left to the female heirs to be guarded and managed, and the results are used to benefit all heirs. They consider this inheritance distribution model relevant and does not conflict with the values of Islamic teachings.<sup>47</sup> Based on Fazlur Rahman's double movement theory, the reality of this kind of inheritance distribution can be justified because it fulfills the moral ideal elements of inheritance in the form of justice and benefit for the heirs. Rigidly applying Islamic inheritance distribution to the Enggano community has the potential to lead to disputes, quarrels, and hostility.<sup>48</sup> Islamic inheritance law in Indonesia also allows the community to distribute peacefully by deliberation, as stated in the Compilation of Islamic Law article 183. In addition, the provisions on replacement heirs in the Compilation of Islamic Law Article 185 prove that national law also accommodates the interests for the benefit of heirs as one of the main elements in inheritance.<sup>49</sup>

The explanation above shows that Islamic inheritance law is flexible. A study revealed that the texts related to Islamic inheritance are not *qat'i*, which cannot be changed anymore, but *zanni*, which are open to interpretation because they are

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<sup>46</sup> Wahyudani and Firdaus, "Faktor - Faktor Perubahan Sosial Yang Mempengaruhi Pembagian Harta Warisan Di Banda Aceh, Indonesia," 18-19; Muhammad Yusron, "Penalaran Rasional dan Masalah: Ijtihad Umar ibn al-Khattab pada Kasus-Kasus Kewarisan Islam," *Journal of Islamic Law (JIL)* 2, no. 2 (August 5, 2021): 205, <https://doi.org/10.24260/jil.v2i2.327>.

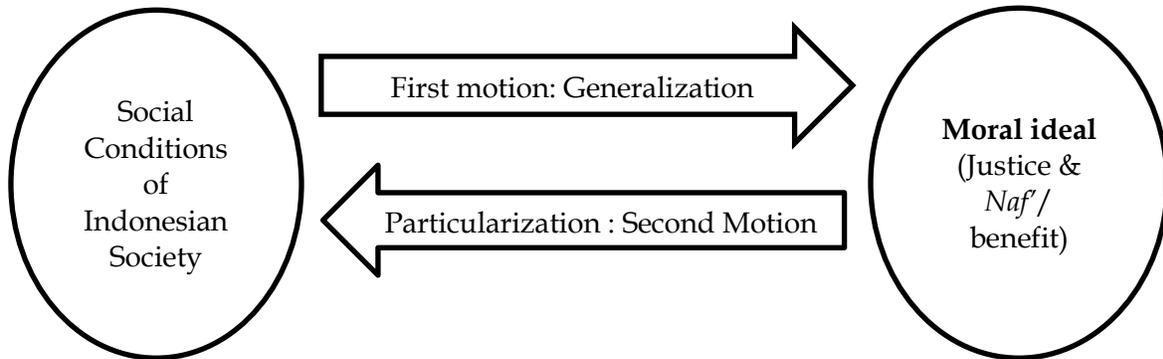
<sup>47</sup> Dasan and Ardinata, "Hukum Waris Islam Dalam Pelaksanaan Dan Pandangan Masyarakat Enggano Bengkulu."

<sup>48</sup> Dasan and Ardinata, 95.

<sup>49</sup> Wahidah Ideham, "Substitute Heirs in the Compilation of Islamic Law: An Overview from Gender Equality Perspective Case Study of the Religious Courts in Banjarmasin," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 6, no. 2 (December 31, 2022): 1062-63, <https://doi.org/10.22373/sjkh.v6i2.12466>.

related to *mu'amalah* issues, which are influenced by the social context.<sup>50</sup> Interpretation using double movement theory is one alternative to answering the challenges of the times, especially in inheritance issues. An illustration of the use of *double movement* theory in this problem is as follows:

**Chart 1.** Application of the *double movement* theory in solving the problem of adjusting inheritance law with the social conditions of society



Based on the diagram above, the first step in applying the theory of double movement involves examining the Nash (text) and its socio-historical context to derive general values or principles. The provisions regarding inheritance shares in verses 11, 12, and 176 of Surah Al-Nisa' are elaborations of verse 7, which explains that both men and women can inherit property. The specific shares are detailed in verses 11, 12, and 176. However, these specified shares are not absolute. This is evident from cases like *gharāwayn* and *mushtarakah*, which provide different shares to heirs than those outlined in the Nash to ensure justice. In the *gharāwayn* case, the mother is given one-third of the remaining estate (1/3 remaining) after the spouse's share has been allocated, whereas, according to *Nash*, the mother should receive one-third of the entire estate (1/3 of the whole). Giving the mother one-third of the remaining estate is to reduce her share, so the father's share is twice as large as the mother's. This was in line with the sense of justice in Arab society then, which held that a man's share should be twice that of a woman's. In the *mushtarakah* case, if the text is followed literally, uterine brothers would receive one-third (1/3) of the inheritance.

In contrast, full brothers, entitled to the residual or *'ashabah*, would receive nothing because the estate would have been fully distributed to the husband,

<sup>50</sup> Ratu Haika, "Konsep Qath'i Dan Zhanni Dalam Hukum Kewarisan Islam," *Mazahib*, December 30, 2016, 183-84, <https://doi.org/10.21093/mj.v15i2.632>.

mother, and uterine brothers. Umar bin Khattab ruled that the one-third share received by the uterine brothers should also be inherited by the full brothers, divided equally among them, to ensure justice for all heirs. Another verse, Surah Al-Nisa's verse 9, emphasizes not leaving heirs in a weak (especially economically) state. Thus, in the first step, it can be generalized that the principles of inheritance distribution are justice and benefit (*naʿf*).

In the second step, these general principles (justice and benefit) are applied to the technical steps of inheritance distribution today, prioritizing the current values of justice and benefit. Therefore, the application of inheritance law can be flexible according to the times. The existing shares can be used in inheritance distribution if deemed fair and beneficial for the heirs. If there is a shift in the values of justice and benefit, the technical aspects and inheritance shares can be adjusted to align with these values. This also shows that the parts of inheritance are changeable and not permanent.

They were second, applying the double movement theory to gender problems and proposals for equalization of inheritance between men and women in inheritance. When viewed sociologically, the determination of the male share is twice as large as that of the female, which is a form of adaptation to Arab culture. Based on the genealogy of the Arabs who adhere to the patriarchal tribal system, it is natural that men get a more significant portion of the inheritance. The situation and conditions of the Arab community at the time of the revelation of the inheritance verse became the main factor influencing the 2:1 share for men and women. Men have a role as head of the household and are responsible for providing for women.

Meanwhile, women are not required to earn a living when married. Even before marriage, women also get maintenance from their guardians.<sup>51</sup> The existence of women today is undoubtedly much different from the conditions in the past. There is a shift in their role. Women are not only recipients of income, but many are also breadwinners for the family.<sup>52</sup> In the case of women as breadwinners for the family, it is considered unfair if women's share is more minor than men's. For this reason, it is necessary to reinterpret the verse of inheritance by prioritizing justice and benefit for the heirs (*naʿf*).

Using Fazlur Rahman's theory (double movement), Amina Wadud explains that the division of inheritance can be flexible if justice is fulfilled. In addition to

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<sup>51</sup> Muttaqin, "Aplikasi Teori Double Movement Fazlur Rahman Terhadap Doktrin Kewarisan Islam Klasik," 201-2.

<sup>52</sup> Umair and Said, "Fazlur Rahman Dan Teori Double Movement," 78.

justice, Wadud also emphasizes the need to consider the benefits for the heirs left behind or the benefits of the inherited property itself. Wadud gave an example: if in a family consisting of a widowed mother, son, and daughter, the widowed mother is cared for and provided for by the daughter, it will be questioned if the son gets a larger share than the daughter. Looking from the side of benefit (*naf'*) for the heirs, in this case, it is not appropriate for girls to get a smaller share than boys.<sup>53</sup> In this case, women should receive a share equal to or even more significant than men's. Although the Qur'an does not discuss all the possibilities in detail, a series of scenarios clearly illustrates that many combinations of circumstances need to be considered for fairness in the distribution of inheritance.

Regarding the side of justice and benefit for heirs or the benefits of inheritance as a moral ideal taken from generalizations based on the theory of double movement, it is interesting to examine further the issue of the level of welfare of the heirs. For heirs who are already economically established, giving them a more significant share will undoubtedly be considered unfair and less beneficial than providing a more substantial share to other poor heirs. A study mentioned that the preservation of family welfare in the distribution of inheritance is by the spirit of the enactment of Islamic law. If a male heir has much wealth, while his sister has the opposite fate, then the distribution of inheritance for the female heir should be more than for the male. Conversely, if the female heir has a higher level of welfare than the male, the female gets a smaller share than the male.<sup>54</sup> Considering welfare as one aspect of benefit in the distribution of inheritance aligns with the spirit of the *Nash*, which is not to leave descendants in a weak state. As mentioned in surah al-Nisa's verse 9 as follows: Meaning, "And let those [executors and guardians] fear [injustice] as if they [themselves] had left weak offspring behind and feared for them. So let them fear Allāh and speak words of appropriate justice".

Thus, based on the moral ideal built using the double movement theory above, gender issues can be resolved because inheritance distribution focuses more on justice and expediency. Meanwhile, the demand for absolute equality in the distribution of inheritance will make inheritance law rigid because it needs to look at the sociological context and expediency. The provision of a 2:1 share for men and women is a primary reference in the distribution of inheritance. But that does not

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<sup>53</sup> Wadud, *Qur'an and Woman*, 87.

<sup>54</sup> Abdul Aziz, "Pembagian Waris Berdasarkan Tingkat Kesejahteraan Ekonomi Ahli Waris dalam Tinjauan Maqashid Shariah," *De Jure: Jurnal Hukum dan Syar'iah* 8, no. 1 (June 25, 2016): 48-63, <https://doi.org/10.18860/j-fsh.v8i1.3729>.

mean that looking for other alternative divisions is not permissible. Based on the double movement theory described above, the distribution of inheritance should be flexible, and the situation and conditions that lead to the value of justice and benefit should be examined. This flexibility in inheritance means that men only sometimes get twice the share of women. In certain circumstances, men can receive equal shares (1:1) with women and, in other conditions, get a smaller share than women.

## CONCLUSION

This study highlights the sociological dimension of Islamic inheritance in Indonesia using Fazlur Rahman's double movement theory, especially related to gender issues, demands for equalization of inheritance shares between men and women, and the adjustment of Islamic inheritance law to the social conditions of Indonesian society. This study concludes that the core values (ideal morals) in applying Islamic inheritance law are the principles of justice and benefit (*naf'*). The inheritance shares are not fixed or immutable; they must adapt to the current values of justice and benefit. If equal distribution between men and women aligns with the contemporary principles of justice and benefit, then the inheritance distribution should adjust accordingly. The *gharāwayn* and *mushtarakah* cases show how the *nashsh* (text) can be applied differently to ensure a sense of justice. This research methodologically offers how the application of inheritance law can be flexible, adapting to the ideal morals developing in society, particularly in Indonesia. This study is limited to using the double movement theory in addressing social issues related to inheritance in Indonesia. The use of other perspectives is expected to complement and validate this research as an alternative solution for the interaction of Islamic inheritance law with Indonesian social culture.

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