

The Creed Theory in the Allocation of Inheritance Rights Pertaining to Inherited Property: A Gender Equality Perspective

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Abstract

Problem statement: The inheritance rights of spouses over personal property within an estate remain a complex and often disputed issue in contemporary legal and social contexts. Although Islamic inheritance law (faraidh) regulates these rights, in practice, they are inconsistently applied due to assumptions that spouses do not contribute to the acquisition of family wealth. **Objective:** This study aims to explore the interpretation of faraidh in light of gender equality principles, particularly in cases involving spousal inheritance. **Methods:** Using a qualitative normative legal method, this research analyzes primary legal materials—namely Islamic inheritance law and the Compilation of Islamic Law (KHI)—supported by secondary sources such as legal journals and empirical findings. Data were gathered through literature review, in-depth interviews with key informants, and participant observations in inheritance disputes, especially involving withheld dowry (mahar). The study adopts the Credo theory and the essence of marriage as analytical lenses. **Results:** The findings reveal that spousal inheritance rights, even in short-duration marriages, are valid within the faraidh framework and should not be denied. Furthermore, an interpretation of Qur’anic verse Al-Nisa:12 demonstrates compatibility between Islamic inheritance law and gender equality. **Conclusion:** The study concludes that integrating contextual understanding of marital relationships and gender justice into inheritance practices is essential to prevent discriminatory treatment and to uphold the legal rights of surviving spouses.

Keywords: Gender Equality, Household, Inherited Property, Personal Property.

Abstrak

Hak waris suami atau istri atas harta pribadi dalam suatu harta warisan masih menjadi isu kompleks dan seringkali diperdebatkan dalam konteks hukum dan sosial modern. Meskipun hukum waris Islam (faraidh) telah mengatur hak-hak tersebut, penerapannya dalam praktik kerap tidak konsisten karena adanya anggapan bahwa pasangan suami istri tidak berkontribusi dalam perolehan harta keluarga. Penelitian ini bertujuan untuk mengkaji interpretasi faraidh dalam perspektif kesetaraan gender, khususnya dalam kasus warisan yang melibatkan pasangan suami istri. Penelitian ini menggunakan metode hukum normatif kualitatif dengan menganalisis bahan hukum primer—yakni hukum waris Islam dan Kompilasi Hukum Islam (KHI)—yang didukung oleh sumber sekunder seperti jurnal hukum dan temuan empiris. Data diperoleh melalui studi pustaka, wawancara mendalam dengan informan kunci, serta observasi partisipatif dalam kasus sengketa warisan, khususnya yang melibatkan penahanan mahar oleh keluarga pewaris. Penelitian ini menggunakan teori Credo dan teori esensi pernikahan sebagai pisau analisis. Hasil penelitian menunjukkan bahwa hak waris pasangan, bahkan dalam pernikahan berjangka pendek, tetap sah dalam kerangka faraidh dan tidak boleh diabaikan. Selain itu, interpretasi terhadap Surah An-Nisa ayat 12 menunjukkan adanya kesesuaian antara hukum waris Islam dan prinsip kesetaraan gender. Studi ini menyimpulkan bahwa pemahaman kontekstual terhadap hubungan pernikahan dan keadilan gender perlu diintegrasikan dalam praktik pewarisan guna mencegah perlakuan diskriminatif dan menegakkan hak hukum pasangan yang ditinggalkan.

Kata Kunci: Harta Warisan, Harta Bawaan, Kesetaraan Gender, Rumah Tangga.



Introduction

Inheritance, or the process of inheriting, occurs when specific conditions and requirements are satisfied. One essential condition is that the inherited property or *mauruts* must be in a 'clean' state after deductions for expenses (costs) such as funeral arrangements (*tajhiez al-mayyit*), debt repayment, and the execution of a will (Afifah & Muliana, n.d.).

The form of inherited property can encompass both personal property and joint property (*gono gini* or *parpantangan* property) between married couples. The inherited property left by the deceased consists of assets acquired during their lifetime, whether from business activities or livelihood, or as a gift (*hibah*) from another party, including the portion of property received by an individual when inheriting from a deceased relative (Ferdianto & Prakoso, 2023).

Numerous writings address the division of joint property when a marriage concludes (whether due to death or divorce), including discussions on gender equality in the interpretation of inheritance law in Indonesia. These discussions conclude that, in Islam, men and women are regarded as equals as individuals (Lestari, 2023).

Gender equality in the Qur'an, as interpreted by Hamka, seeks to elucidate why male children receive twice as much inheritance as female children. When inheritance distribution is gender-equitable, it merely indicates the necessity for a contextual reading of the inheritance verses, suggesting that the two-to-one ratio is not absolute (Auliyak & Azizah, 2021).

Similarly, the discussion surrounding the position of widows according to *faraidh* positions them as heirs based on marital relationships. Although this framework acknowledges the inheritance rights of widows (the wives of deceased individuals), it does not connect this to the issue of dowry, which constitutes part of the *tirkah* of the deceased, and whose rights are frequently overlooked in its application.

Consequently, the author asserts that it is important to investigate this issue within the context of societal responses (husband, wife, and family members of each heir), who cite reasons such as "the spouse had no contribution, the marriage was brief, it was not sincere because it could be used as marriage capital again," among others. This warrants examination through theories regarding the nature of marriage, which generates rights and obligations until the event of death, necessitating the resolution of inheritance law (Aniroh, 2020). In fact, there are instances where the surviving spouse is unable to claim their inheritance rights regarding their partner's dowry.

The arguments and reasons presented in response to this phenomenon appear to be significant factors that require clarification from the perspective of the objectives of Islamic inheritance law (*faraidh*) concerning personal property as part of the deceased's estate, which must be partially transferred to the heirs of the deceased's spouse or the deceased's heirs (Sjarif & Elmiyah, 2005).

In reality, such communities often lack an understanding that the dowry is also part of the inheritance that must be allocated to one of the spouses. The deceased's family frequently assumes that the dowry will naturally revert to the family, particularly the siblings of one of the deceased's spouses.

Regardless of the rationale, the spouse is often denied a share of the inheritance from the personal belongings left behind. This is due to the belief that neither the husband nor the wife contributed to the acquisition of the dowry. As a result, this portion of the dowry is deemed 'not inherited,' in contrast to joint property acquired by the husband and wife during their marriage (since the marriage contract).

This reality, which represents the *das sein*, clearly contradicts the intent of the provisions of *faraidh* (*das sollen*), which stipulate that inheritance, also known as *al-mirats*, encompasses the entirety of the *tirkah*/estate of the deceased. This includes the portion of property received by the husband or wife when they become heirs of their parents or relatives (Erlyanti et al., 2019).

Concerning this opinion and the community's understanding, it is undeniable that there are underlying reasons for their perceptions, which do not solely stem from a lack of comprehension of the law governing the provisions of *faraidh*. Rather, there exists a strong motive for families to feel 'unwilling' if the husband or wife, particularly newlyweds, also receives a share of the dowry. This sentiment intensifies if the dowry is considerable.

This dynamic is applicable not only in cases where the wife is bereaved of her husband but also in the converse scenario, where the husband is left by his deceased wife. The family of the deceased wife often expresses reluctance if the 'former husband' of their sister (who has passed away) is granted a share of the dowry, which could potentially serve as capital for remarriage (Hakiemah et al., 2021; Wahidah & Al Amruzi, 2022).

In light of this, a comprehensive analysis of this issue is imperative to discern and evaluate whether there exists a 'hidden' meaning behind the provisions of *faraidh* regarding the inheritance rights of husbands or wives to dowry that is part of the deceased's estate, interrelated with various perspectives, particularly those concerning gender equality or the values of justice inherent therein.

Islamic inheritance *faraidh* appears to have undergone a shift in its societal application. Arguments surrounding gender equality and/or justice have become a justification for 'engineering or modifying' the resolution of inheritance cases that encompass numerous overlapping issues.

In addressing the academic concerns related to this research topic, the author focuses on the following problem formulation: What is the meaning behind the *faraidh* provisions regarding dowry as part of the inheritance? And how are these provisions viewed from the perspective of gender equality/justice?

Consequently, the objective of this study is to elucidate the meaning behind the provisions of *faraidh* concerning the dowry left by the deceased, which constitutes part of the property to be inherited by the spouse of the deceased, and to assess how these provisions are perceived from the standpoint of gender equality or justice..

Methods

The Theory of Credo in the Granting of Inheritance Rights over Inherited Property (Gender Equality Perspective) is a descriptive study that is not intended to test specific hypotheses (Creswell & Creswell, 2017; Setiawan, 2018). In line with the theme of this paper, although the research problem is based on empirical facts, the

research method used is normative legal research. This is done by using Islamic inheritance law provisions *faraidh* as the primary legal material.

Additionally, other secondary sources include research reports and articles from various family law journals. The responses and reasons provided by each spouse (husband or wife) in the case samples, including the family members of the deceased, were also gathered to enrich the analysis by linking them to relevant theories on gender equality and justice.

A number of informants designated as key informants were interviewed using open-ended questions. This was intended to allow the subjects to freely express their responses and reasons without having to hide any answers that were unexpected. All informants were given the opportunity to express their opinions as widely as possible because the problems in this study were formulated with multiple correct (accurate) answers.

In addition to depth interviews, participant observation was also used as a technique for collecting information related to the settlement of cases of wife's dowry that were not given to the husband by the family of the deceased. The reasons for this were analysed using the theory of the essence of marriage, which has legal consequences until the event of death (Sukmadinata, 2007).

This issue is worthy of study as a contribution to consideration and thought regarding the resolution of inheritance cases; because, in a casuistic sense (in its legal application), the husband or wife does not receive their rights to the dowry left by their spouse. In other words, this fact indicates a discrepancy from the law as written in theory.

The method used is the qualitative (positivistic) method, also known as the artistic method. This is because the research process is more artistic or less structured (Setiawan, 2018). It can also be referred to as the interpretive method, because the results of this research are more related to the interpretation of primary legal materials found in the concept of *faraidh* regarding the inheritance rights of husbands or wives to the property left behind by the deceased.

The legal materials that the author collected through literature surveys and studies were then processed and analysed using a number of theories, such as: the terms *tirkah* and *mauruts*, marriage as one of the causes of inheritance, the inheritance rights of husbands and wives according to *faraidh* and the Compilation of Islamic Law (KHI), gender equality in the context of inheritance between husband and wife, and community responses regarding dowry that is part of the *tirkah* of the deceased.

The procedures (methods) for presenting and interpreting data in this study use editing techniques once the data has been collected. Subsequently, an interpretation was conducted on the primary legal sources related to the concept of *faraidh*. To facilitate interpretation in relation to presentation, the data was summarised and then analysed objectively by discussing the findings with relevant theories to draw an argumentative conclusion.

Definition of Inheritance (*Tirkah*) and Inherited Property (*Mauruts*)

The existence of inheritance is one of the fundamental principles of inheritance, alongside heirs and beneficiaries. The validity of inheritance distribution is contingent upon several conditions. Specifically, inherited property must take the form of tangible assets, real estate, or items that are "clean and free from impurities,"

as they must be settled of all expenses related to the death of the deceased (such as bathing, shrouding, performing funeral prayers, and burial), debts must be paid off, and the will must be executed (Anshori, 2018).

In this context, inherited property and bequeathed property exhibit both differences and similarities in terms of meaning (purpose). The bequeathed property of the deceased, referred to in the context of *faraidh*, is known as *tirkah* or *tarikah*, which shares the same meaning as *mirats* or *tarikah al-mayit* (the deceased's bequeathed property). Conversely, inherited property, designated as *mauruts*, is intended to denote:

المَوْرُوثُ: وَهُوَ الشَّيْءُ الَّذِي يَتْرُكُهُ الْمَيِّتُ، مِنْ مَالٍ وَعَقَارٍ وَغَيْرِهِ، وَيُسَمَّى الْمَوْرُوثُ إِزْنًا، وَتَرَاثًا، وَمِيرَاثًا، وَتَرَكَةً، وَكُلُّهَا أَسْمَاءٌ لِلشَّيْءِ الَّذِي يَتْرُكُهُ الْمَيِّتُ لِلْوَرَثَةِ.

Al-Mawrooth: It is what the deceased leaves behind, such as money, property, and other possessions. The mawrooth is also referred to as irth (inheritance), turath (heritage), mirath (inheritance), and tirkah (estate). All of these are names for what the deceased leaves to the heirs.

The Compilation of Islamic Law in Indonesia, in its second volume on Inheritance Law, Article 171 (letter d), states: "*Inherited property is property left behind by the deceased, whether in the form of tangible assets that belong to them or their rights.*"

Paragraph (e) further delineates that: "*Inherited property is the property left behind plus the portion required for the heir's needs during illness until their death, funeral expenses (tazhiz), payment of debts, and gifts to relatives.*"

Given that inherited property is defined as the property of the deceased, all items classified within this category automatically become the property of the heirs upon the owner's death. This includes property brought into the marriage by either spouse, such as the share of income derived from the couple when they inherit from their deceased parents or relatives (Hakiemah et al., 2021).

Consequently, the assertion that the share of the inheritance received by one of the spouses is not inherited is incorrect. This misinterpretation arises from the understanding that inherited property, which may encompass both personal and communal property, is part of the estate that must be distributed among all eligible heirs, including the spouse of the deceased, who is designated as the *sababiyah* heir.

The implications of the *faraidh* provision regarding personal property that forms part of the deceased's estate, which is to be inherited by the spouse of the deceased, are intrinsically linked to marriage as a significant factor in inheritance. As stipulated in the *faraidh*, marriage is recognised as a basis for inheritance, alongside *wala al-itqi* and blood ties (*nasab*), and is included as part of the *asbab al-irtsi* (Wahidah, 2021).

Marriage as a Contributing Factor to Inheritance

Faraidh establishes that the process of inheritance (*kewarisan*) occurs due to three factors, namely: *Wala al-itqi*, marriage, and lineage. Regarding the second factor, the marriage must be classified as a "valid marriage." This entails a legal (*syar'i*) marriage contract between a man and a woman, even in the absence of sexual

intercourse (dukhol, intercourse, sexual relations) (Fahimah, 2018). This provision is grounded in the following two considerations:

1. General Meaning of the Verses on Inheritance
2. The actions of the Prophet Muhammad, that he:

حدثنا عثمان بن أبي شيبة، قال: حدثنا عبد الرحمن بن مهدي، عن سفيان، عن فراس، عن الشعبي، عن مسروق، عن عبد الله، في رجل تزوج امرأة فمات عنها، ولم يدخل بها ولم يفرض لها الصداق، فقال: لها الصداق كاملاً، وعليها العدة، ولها الميراث، فقال معقل بن سنان: سمعت رسول الله صلى الله عليه وسلم «قضى به في بروع بنت واشق

Narrated by ‘Uthmān ibn Abī Shaybah: He said, Abdurrahman ibn Mahdī narrated to us, from Sufyān, from Firās, from al-Sha‘bī, from Masrūq, from ‘Abdullāh (i.e., Ibn Mas‘ūd): A man married a woman and then died before consummating the marriage and before specifying a dowry for her. Ibn Mas‘ūd said: "She is entitled to the full dowry, must observe the waiting period (‘iddah), and is entitled to the inheritance." Then Ma‘qil ibn Sinān said: "I heard the Messenger of Allah ﷺ give a ruling to that effect regarding Barwa‘ bint Wāsiq." (Narrated by Abu Dawud, Hadith No. 2114)

The validity of a marriage does not depend on the consummation of sexual relations between husband and wife, nor on the payment of dowry by the husband, but rather on whether the essential elements and conditions of marriage have been fulfilled. Consequently, a marriage that is perceived by society as temporary cannot be used as a justification to deny inheritance rights to the spouse of the deceased.

The sacred bond that unites a man and a woman through a valid marriage contract binds each party as a life partner for the other and as a helper in bearing the burdens of life together. The husband, as the responsible leader, strives diligently to accumulate wealth to provide for his wife's maintenance and necessities.

Similarly, the wife, as a life partner, shares the joys and sorrows of married life and often makes sacrifices to assist her husband by working to increase the household income for the sustenance and continuity of the family (Ramadhita & Barlinti, 2022). In light of this, it is reasonable for God to grant a specific share as compensation for the sacrifices made by the married couple. Thus, when one spouse passes away and leaves behind an inheritance, it is only fair that the surviving spouse retains the right to inherit.

If the wife dies and she has inherited property, the husband is entitled to inherit a certain portion as determined through to the exact fractional shares of inheritance (*furudh al-muqaddarah*). Similarly, should the husband die, it is equitable that the wife is also granted the right to inherit a specific portion. This is predicated on the fact that during their marriage, she was the individual he loved most. During their married life, she was the one who consistently accompanied him (Lestari, 2023). The "certain" portion that constitutes the inheritance right of both husband and wife exemplifies justice and gender equality in Islamic inheritance law (*faraidh*). This is due to the

husband, as the head of the family, being obliged to provide for his wife's physical and spiritual needs.

Furthermore, in this context, the wife also contributed to and participated in acquiring property to support the household alongside her husband. All efforts and livelihoods of the husband and wife are collectively recognised and will automatically, or *ijbary*, transfer to the surviving spouse upon death, to be received through inheritance. What the husband receives as his share of the inheritance from his wife (*the heir*) is, in essence, compensation for the sacrifices and efforts he has made. Similarly, the wife's right to her husband's estate serves as a reward for her services, as a contribution to her maintenance until another individual assumes responsibility for her support, or as capital for her future life, should her husband die leaving behind inheritance.

The author contends that, regarding "capital for future life," this principle can also be applied to the case of the wife's death (the deceased). In this scenario, the husband is entitled to utilise the portion of the inheritance he receives from his wife's estate (*tirkah*) as capital for remarriage (to pay the dowry), even if it originates from his wife's dowry (Mauzu, 2020).

According to the provisions of *furudh al-muqaddarah* outlined above, neither the husband nor the wife of the deceased can be hijabed by anyone in the context of inheritance. Even if they are subject to hijab, it is only to the extent of "*hijab nuqshan*" (if there are children or descendants of the heir), but they are not considered complete exclusion from inheritance (*hijab hirman*) or an excluded heir (*mahjub*) (Aniroh, 2020).

A husband or wife who inherits based on a valid marriage bond is, of course, closely associated with the essence of marriage itself. This is because, as a legal consequence (as stipulated in fikih munakahat), rights and obligations arise that bind the husband and wife, which are balanced and equal in context.

Spousal Inheritance Rights in Accordance with Faraiddh and the Compilation of Islamic Law (KHI) in Indonesia

Under Islamic law, a husband or wife as a gender partner in inheritance possesses equal rights and status. Both spouses are classified as a holder of prescribed Shares (*dzawi al-furudh*), inheriting based on the validity of their marriage. Their respective shares are explicitly delineated in the Quran, specifically in Surah an-Nisa, verse 12. The husband is entitled to a share of $\frac{1}{2}$ if the deceased wife has no children or descendants, and to a share of $\frac{1}{4}$ if she does. Conversely, the wife is entitled to a share of $\frac{1}{4}$ if her deceased husband leaves no children or descendants, and a share of $\frac{1}{8}$ if he does.

In other words, both individuals are eligible heirs, guaranteed a share of the inheritance, and cannot be disinherited by any party, similar to the inheritance rights afforded to the two parents of the deceased. The sole exceptions to this principle are impediments that nullify their inheritance rights, such as slavery, murder, apostasy, or adherence to a different religion than that of the deceased.

The Compilation of Islamic Law (KHI) in Indonesia also delineates similar rights concerning the spouse of the deceased. Article 174 specifies that the

categories of heirs include (b) those related by marriage, encompassing widowers and widows. Additionally, in point (2), it is stated that if all heirs are present, only the children, father, mother, widow, or widower are entitled to inherit.

Article 179 stipulates that a widower is entitled to receive half of the estate if the deceased has left no children. Conversely, if the deceased has children, the widower is allocated a quarter of the estate. Article 180 asserts that a widow is entitled to a quarter of the estate in the absence of children, while in the presence of children, the widow receives one-eighth of the estate.

In addition to their roles as gender partners, husbands and wives are also classified as *sababiyah* heirs, possessing specific rights and shares. Their status as *dzawi al-furudh* heirs necessitates that they take precedence over *ashobah* heirs, who are uncertain about the amount they will receive. This is consistent with the following statement by the Prophet Muhammad:

أَحِقُّوا الْفَرَائِضَ بِأَهْلِهَا، فَمَا بَقِيَ فَهُوَ لِأَوَّلَى رَجُلٍ ذَكَرَ

Distribute the designated shares of inheritance to those who are entitled to them, with any remaining assets allocated to the nearest male relative. s reported by Ibn Abbas and found in both *Sahih al-Bukhari* (Hadith no. 6732) and *Sahih Muslim* (Hadith no. 1615).

The inheritance rights of husband and wife, as delineated in the aforementioned verses and hadiths of the Prophet Muhammad (peace be upon him), provide assurance that they are afforded equal rights in relation to the acquisition of the estate (*tirkah*) of their spouse who is the heir. This encompasses property contributed to the marriage that forms part of the estate.

Property introduced into the marriage that pertains to the inheritance rights or share of either spouse, which was acquired prior to the marriage, will automatically and inevitably transfer ownership to the surviving spouse, as both are bound by the sacred institution of marriage as prescribed by Islamic law.

Community Response to Inherited Property Transitioning to the Estate of the Deceased

When a member of a married couple dies, the surviving spouse is typically considered the heir and is entitled to a portion of the deceased's estate. However, this matter appears to be inadequately addressed by society, which contends that the portion of the estate inherited from the deceased's relatives or parents should not be allocated to the surviving spouse.

An illustrative case is that of a woman (hereafter referred to as the wife) who died in 2019, leaving behind her husband (Hr.) and three siblings (one of whom was male), without any children. The marriage lasted only seven years prior to the wife's death. Given that the heir possessed a substantial amount of inherited property, including her share of the estate acquired from her parents upon their passing, this comprised both personal property and joint property accumulated during the marriage. The family thus allocated to the husband, as the heir, only the portion of the joint property (*gono gini*).

According to the wife's family, the dowry must be returned to the deceased's family, asserting that the husband had no role in acquiring that portion of the estate. This rationale was explicitly articulated during the deliberation regarding the

distribution of inheritance, which was attended by an ustadz (religious scholar) whom the family had invited to observe the process.

The ustadz's explanation regarding this issue did not appear to alter the opinions or understanding of the heir's family concerning the husband's rights to the dowry left by his deceased wife. To this day, more than four years later, the heir's dowry remains entirely under the control of the three siblings. Moreover, the heir's uncle (the brother of the heir's mother) has even encouraged Hr. to initiate legal proceedings or file a petition in court.

Another contributing factor is that the former husband is perceived by the wife's family (the heirs) as having unexpectedly benefited from the marriage, despite their claim that "the marriage was only brief." Such sentiments are often expressed by the heirs' family, particularly when the deceased (either husband or wife) left no heirs at the time of death. Consequently, the husband's share of the inheritance is viewed as advantageous. Furthermore, prior to the resolution of inheritance rights, the surviving spouse had already received half of the joint property or *gono-gini*.

A similar response was observed within the community concerning the situation of Yl., the heir's wife from her third marriage, who expressed that she did not feel entitled to any of her husband's inheritance. She maintained that the house in which she lived with her husband was a property from his previous marriage.

According to Yl., aside from the fact that the house was a property in which she had no stake, her marriage was short-lived (less than a year). Additionally, her husband had two children from his previous marriage. Consequently, after her husband's passing, Yl. returned to her parents' home.

Following her husband's death in 2020, the children from his previous marriage sought a fatwa on inheritance at the religious court to determine the heirs of their late father. In the court's decision letter, Yl. was recorded as stating, "*I am actually one of the heirs of my husband*," along with his two stepchildren, who were 28 and 30 years old at the time.

Yl. did not pay much attention to the religious court's determination letter. At that time, she believed that the house in question was her husband's property (inherited from his previous marriage). Therefore, she did not pursue any inquiries regarding other items or assets left by her husband apart from the house.

The factors of a brief marriage, lack of contribution to the acquisition of property, and absence of joint assets amassed during the marriage led Yl. to conclude that she had no right to the inherited property belonging to her husband. Moreover, the property in question, a residential house, had been acquired by her husband from his former wife (as the legal heir). To date, she has only received a widow's pension.

The community's response to the dowry that became the heir's *tirkah* can be elucidated through the following matrix:

No	Decedent	Heirs	Inherited Property	Community Response
1.	Wife	Husband, two sisters, one brother	One-fifth of the value of the house belonging	The estate of the deceased is bequeathed to their

			to the parents of the heir to multiple plots of land.	surviving siblings. The term 'unwilling' is used to denote the potential for this inheritance to be utilised as capital for remarriage. Furthermore, the former in-laws express satisfaction at receiving this unforeseen financial gain.
2.	Husband	Wife, two children, one boy and one girl	One house	The wife does not perceive herself as entitled to a share of the property, given her lack of contribution to its acquisition and the brevity of the marriage, which lasted less than one year.

The personal property bequeathed by the heirs (husband and wife) should also be allocated to their spouse. This is due to the fact that the portion of property acquired by an individual upon receiving their share of an inheritance from relatives, which is subsequently introduced into the marriage, also forms a part of the inheritance of the testator (*mauruts al-muwarrits*) that necessitates distribution among the heirs. This includes heirs by cause (*sababiyah*), such as the husband or wife.

Gender Equality in the Context of Spousal Inheritance Practices

Islam has delineated boundaries through verses and hadiths concerning inheritance, specifically regarding the rights of husband and wife in relation to the distribution of a deceased individual's property. The sacred bond between a man and a woman in a 'valid' marriage serves as the causal factor for inheritance between spouses upon the death of one partner, provided that the requisite elements of inheritance are satisfied.

The transfer of rights and property from the deceased is obligatory (*ijbary*), a principle of belief that is understood by society, regardless of rational justification. The case of Barwa binti Wasyq, as referenced in the hadith of the Prophet Muhammad, implies that even in the absence of sexual intercourse (*dukhu*) between a husband and wife, they retain inheritance rights from one another.

The brevity of the marriage or the lack of contribution from either spouse toward the acquisition of inherited property cannot serve as justification for denying inheritance rights to a surviving spouse. The provisions of $\frac{1}{2}$ or $\frac{1}{4}$ for the husband and $\frac{1}{4}$ or $\frac{1}{8}$ for the wife, as stipulated in verse 12 of the Qur'anic surah

al-Nisa', substantiate that gender partners in Islamic inheritance (*faraidh*) are afforded fixed shares (*muqaddarah*) based on the principles of equality and/or justice established by God.

Marriage transcends mere worldly concerns; Allah SWT has ordained through His laws that marriage, in its essence, constitutes a mutual agreement that engenders rights and obligations for both the husband and wife. The rights of the wife are obligations for the husband to fulfil, and vice versa. Through this marital contract, the husband and wife bind themselves in a relationship characterised by love and affection that encompasses not only psychological and biological dimensions but also social and economic considerations, all aimed at the continuity of their household.

As a union that amalgamates a couple into a singular physical and spiritual entity, both partners collectively form a family characterised by tranquility, love, and mercy (*sakinah, mawaddah, wa rohmah*) striving to accumulate wealth within the marriage (Asadullah & Wahhaj, 2019). Assets such as houses, money, or other properties are jointly accumulated in the names of both husband and wife. It is not uncommon for one partner to contribute property or assets inherited from a previous spouse into the marriage. However, since this property introduced into the marriage constitutes part of the couple's joint assets, it is reasonable that it automatically becomes the property of the surviving spouse upon the passing of the other partner (Bawono & Suryanto, 2019).

In light of this marital bond, both husband and wife possess equal rights and obligations in their endeavours to create a harmonious household. This is indicative of gender equality in Islam as a relationship characterised by mutual interdependence between men and women. The two partners cannot extricate themselves from one another; they require each other across various aspects of life. For instance, in the pursuit of livelihood, many wives work diligently like their husbands to contribute to the financial support of their households and families. Similarly, husbands often selflessly attend to and care for their ill wives, even at the expense of their own time dedicated to earning a living to meet household needs (Hafidzi & Amalia, 2018).

In its essence, gender equality denotes the principle of equality between men and women, encompassing husbands and wives. Consequently, gender equality should not be construed as identical rights and obligations devoid of consideration for other factors. In other words, it does not imply that all aspects of the relationship between husband and wife must be identical (Malayudha et al., 2023).

Consistent with the decrees of Allah SWT through His verses on inheritance pertaining to the rights of husbands and wives, husbands are allocated $\frac{1}{2}$ and $\frac{1}{4}$, while wives receive half of the husband's inheritance, specifically $\frac{1}{4}$ and $\frac{1}{8}$ (according to the specific structure of heirs left by the deceased in each case). The fact that male heirs receive double the share of female heirs in *faraidh* is not indicative of gender inequality or injustice in the context of inheritance, but rather serves as evidence of the equitable relationship between men and women within Islamic inheritance *faraidh*.

Conclusion

Property brought into the marriage that becomes the property of the husband or wife of the deceased and subsequently becomes inheritance (*mauruts*) will be transferred by *ijbary* to one of the spouses upon death based on the principle of love. This transfer of ownership applies reciprocally on the basis of justice, without any other grounds except the theory of 'Kredo' (Divine Sovereignty), which is explicitly stated in the verses and hadiths of inheritance.

The case of Barwa binti Wasyiq demonstrates that it is incorrect to assert that a husband or wife has no right to the property that is part of the inheritance. Various reasons, such as 'a brief marriage, no contribution from the spouse in acquiring the property, receiving unexpected wealth, or serving as marriage capital,' cannot be used as grounds to deny inheritance rights to the spouse of the deceased. The Quran, Surah al-Nisa, verse 12, serves as an alternative *fardh* for both parties and simultaneously provides concrete evidence that the provisions of *faraidh* are consistent with the theory of gender equality.

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