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Islam, State, and Local Wisdom: An Examination of Widowhood Inheritance Law in Indonesia

Muhammad Hidayat*

State Islamic University of North Sumatra, Indonesia

E-mail: muhammadhidayat@uinsu.ac.id

*Corresponding Author

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Abstract

This article highlights the urgency of applying the common property distribution approach prior to the distribution of inheritance in the Indonesian context, which is influenced by local wisdom practices. This research aims to emphasize the rights of wives as widows over joint property through the application of the Compilation of Islamic Law (KHI), so that widows can obtain a fairer share before the distribution of their inheritance rights in accordance with the principles of fiqh. The method used in this research is a normative-juridical approach, with document analysis of legal regulations and their application in the context of local wisdom in Indonesia. The findings show that the distribution of joint property, before the distribution of inheritance, is very important to protect the rights of women who are often marginalized in a society that prioritizes the tradition of male lineage. The affirmation of giving half of the joint property to the widow at the beginning of the distribution before the widow receives her inheritance rights can be equated with *shirkah* that in the context of marriage the wife also contributes to the collection of property. The discussion in this study emphasizes that the integration of fiqh principles and KHI provisions in the distribution of inheritance, by first recognizing the widow's right to joint property, then the widow receives her inheritance rights after the joint property is distributed, this form of model not only ensures that the widow receives a fair share, but also strengthens the position of women in inheritance issues for the welfare of her family.

Keywords: Local Wisdom, KHI, Inheritance, Widowhood

Abstrak

Artikel ini menyoroti urgensi penerapan pendekatan distribusi harta bersama sebelum pembagian warisan dalam konteks Indonesia, yang dipengaruhi oleh praktik kearifan lokal. Penelitian ini bertujuan untuk menegaskan hak-hak istri sebagai janda atas harta bersama melalui penerapan Kompilasi Hukum Islam (KHI), sehingga janda dapat memperoleh bagian yang lebih adil sebelum distribusi hak warisnya sesuai dengan prinsip-prinsip fikih. Metode yang digunakan dalam penelitian ini adalah pendekatan normatif-yuridis, dengan analisis dokumen terhadap regulasi hukum dan penerapannya dalam konteks lokal wisdom di Indonesia. Hasil temuan menunjukkan bahwa distribusi harta bersama, sebelum pembagian warisan, sangat penting untuk melindungi hak-hak perempuan yang sering kali terpinggirkan dalam masyarakat yang mengedepankan tradisi garis keturunan laki-laki.



Penegasan pemberian setengah dari harta bersama kepada janda diawal pembagian sebelum janda menerima hak warisnya dapat diqiyaskan dengan *syirkah* bahwa dalam konteks pernikahan istri juga berkontribusi dalam pengumpulan harta. Pembahasan dalam penelitian ini menekankan bahwa integrasi prinsip-prinsip fikih dan ketentuan KHI dalam distribusi warisan, dengan terlebih dahulu mengakui hak janda atas harta bersama, kemudian janda menerima hak warisnya setelah harta bersama dibagikan, bentuk model ini tidak hanya memastikan bahwa janda menerima bagian yang adil, tetapi juga memperkuat posisi perempuan dalam masalah warisan untuk kesejahteraan keluarganya.

Kata Kunci: Kearifan Lokal, KHI, Kewarisan, Janda

Introduction

Inheritance has been regulated with diverse principles, and has its own unique side in the context of the causes and shares of male and female inheritance.¹ *Fiqh* of inheritance (*al-farā'id*) bases its rules on verses of the Al-Qur'an and Al-Hadiths which emphasize the distribution of inheritance property to heirs with a predetermined portion.² According to classical *fiqh*, the division of inheritance for women is generally smaller than that of men, which states that a son gets twice the share of a daughter.³ However, this does not mean putting women in an inferior position.

While inheritance matters are regulated in the Compilation of Islamic Law (KHI), which is the result of the codification of Islamic law in Indonesia, there is a greater emphasis on achieving justice in the division of inheritance for women. The KHI, which is applicable in religious courts in Indonesia, not only adopts *fiqh* law, but also considers the socio-cultural context as well as the protection of women's rights in the division of inheritance.⁴

In pre-Islamic times, the condition of widows in inheritance law gave a bad impression, especially the inheritance of women who were not given their inheritance rights, besides that women were treated as part of the "inherited property" that could be inherited like merchandise. In the Arab tradition, a son of a husband who had several wives could "inherit" his father's widow, showing the low status of women in the social structure at that time. The presence of Islam gave the widow an honorable position, she was considered an heir equal to her children and other heirs.⁵

¹ Abdul Qodir Zaelani et al., "An Implementation of the Joint Inheritance Division of Ethnic Groups in Lampung, Indonesia," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 7, no. 3 (July 14, 2023): 1373, <https://doi.org/10.22373/sjhk.v7i3.9125>.

² Muhammad Alwin Abdillah and M. Anzaikhan, "Sistem Pembagian Harta Warisan Dalam Hukum Islam," *Al-Qadha: Jurnal Hukum Islam Dan Perundang-Undangan* 9, no. 1 (June 30, 2022): 285-305, <https://doi.org/10.32505/qadha.v9i1.4134>.

³ Isniyatin Faizah, Febiyanti Utami Parera, and Silvana Kamelya, "Bagian Ahli Waris Laki-Laki Dan Perempuan Dalam Kajian Hukum Islam," *The Indonesian Journal of Islamic Law and Civil Law* 2, no. 2 (December 28, 2021): 152-169, <https://doi.org/10.51675/jaksya.v2i2.166>.

⁴ Gisca Nur Assyafira, "Waris Berdasarkan Hukum Islam di Indonesia," *Al-Mashlahah Jurnal Hukum Islam Dan Pranata Sosial* 8, no. 01 SE-Articles (May 26, 2020): 68-81, <https://doi.org/10.30868/am.v8i1.771>; Naskur Bilalu et al., "Compilation of Islamic Law as Judge's Consideration at a Religious Court in North Sulawesi, Indonesia," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 6, no. 2 (October 3, 2022): 514, <https://doi.org/10.22373/sjhk.v6i2.12441>.

⁵ Retni Setiyawanti, "Pembaruan Islam Dalam Bidang Hukum Keluarga (Era Tradisi Arab (Pra Islam), Era Setelah Datangnya Islam, Era Kodifikasi)," *El-Faqih: Jurnal Pemikiran Dan Hukum Islam* 10, no. 2 SE-Articles (July 29, 2024), <https://doi.org/10.58401/faqih.v10i2.1343>.

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The wife's inheritance rights are guaranteed through clear provisions, namely *zawil furud*, where the wife is included in the group of heirs who cannot be excluded. This change marks the recognition of women's rights and dignity, ending oppressive practices and placing women as subjects of law with equal rights to inheritance. Thus, Islam not only provides a fair distribution of inheritance but also affirms women's position as respected individuals.⁶

The phenomenon in Indonesia is that the practice of inheritance distribution is still influenced by the dynamics of customary law that applies with different kinship systems.⁷ Especially in patrilineal practices, widows usually control all of their husband's inheritance, both for personal interests and for the needs of their children. This phenomenon is often encountered by the community Batak⁸, Aceh⁹, and Bugis.¹⁰ Control over the property usually ends when all her children have grown up or settled down, or until the property is handed over to them. On the other hand, in matrilineal practice, the widow has absolute control over all of her husband's property without division for other parties, with the aim of meeting the needs of her life and her children.¹¹ However, the management of the property is supervised and assisted by the eldest brother of the widow. Meanwhile, in a parental society, the wife (widow) also has the right to control her husband's inheritance and can hand it over to her children after they have grown up.¹² In fact, the wife (widow) can act as a divider of the inheritance to the heirs without the intervention of her husband's family.¹³

The issue of inheritance is comprehensively addressed in the KHI, particularly in Articles 171 to 214, which provide a legal framework for inheritance distribution in accordance with Islamic principles. Article 174, paragraph 2, states that the wife (widow) is among the heirs whose rights cannot be excluded. Thus, regardless of the number and type of other heirs, the wife is entitled to her share under Islamic law. Specifically, she receives a

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- 6 Khairuddin Hasballah, Dhaiful Mubarrak, and Saddam Rasanjani, "Disparity in Judge Decisions in Resolving Rad Inheritance Disputes: Case Study at the Sharia Court in Banda Aceh City," *El-Usrah: Jurnal Hukum Keluarga* 6, no. 2 (December 30, 2023): 249, <https://doi.org/10.22373/ujhk.v6i2.8612>.
- 7 Rr Dewi Anggraeni, "Islamic Law and Customary Law in Contemporary Legal Pluralism in Indonesia: Tension and Constraints," *Ahkam: Jurnal Ilmu Syariah* 23, no. 1 (2023): 25–48, <https://doi.org/10.15408/ajis.v23i1.32549>.
- 8 Azhari Akmal Tarigan, "Pelaksanaan Hukum Waris Di Masyarakat Karo Muslim Sumatera Utara," *Ahkam: Jurnal Ilmu Syariah* 25, no. 2 (2014): 199–212.
- 9 Arfiansyah, Nanda Amalia, and Anton Widyanto, "Matrifocality and its Implication to the Practice of Islamic Family Law in the Patriarchal Muslim Society of Gayo , Indonesia," *Jurnal Ilmiah Islam Futura* 23, no. 2 (2023): 380–403.
- 10 Andi Sukmawati Assaad et al., "Gender Equity in Inheritance System : The Collaboration of Islamic and Bugis Luwu Customary Law," *Al-Ahkam: Jurnal Hukum Dan Pranata Sosial* 17, no. 2 (2022): 458–479.
- 11 Nofialdi Nofialdi and Siska Rianti, "The Distribution of Pusako Randah Property in Minangkabau Society: Between Cultural Tradition and Islamic Law Provision," *Mazahib* 23, no. 1 (June 25, 2024): 271–304, <https://doi.org/10.21093/mj.v23i1.7257>.
- 12 Ilyas Ilyas et al., "The Accommodation of Customary Law to Islamic Law: Distribution of Inheritance in Aceh from a Pluralism Perspectives," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 7, no. 2 (May 28, 2023): 897, <https://doi.org/10.22373/sjhk.v7i2.15650>.
- 13 Azhari Akmal Tarigan, *Hukum Yang Bergerak Studi Pluralisme Hukum Waris Pada Masyarakat Muslim Karo*, cet. I (Medan: Perdana Publishing, 2018), 106-107

quarter (1/4) share if the deceased husband leaves no children, and an eighth (1/8) share if there are children, as outlined in Article 180 of the KHI.

The distribution of inheritance, especially concerning the rights of widows, is a complex issue involving customary law, Islamic jurisprudence (*fiqh*), and the KHI.¹⁴ In patrilineal societies men are often prioritized as the primary inheritors, leading to the marginalization of women and widows.¹⁵ In many cases, widows receive only the right to live in or use the property, lacking full ownership rights. Traditional views often limit a widow's responsibilities to household management, undermining her significance in inheritance matters. Although Islamic law guarantees widows a specific share of their deceased husband's estate, the distribution still results in inequities, particularly in patrilineal societies, where male heirs receive larger portions compared to females, in accordance with Surah An-Nisa'/4:11. Consequently, while *fiqh* recognizes a widow's inheritance rights, the actual distribution often fails to address the needs of women who lose their primary source of livelihood upon their husband's death.¹⁶

This research focuses on the local wisdom approach to inheritance distribution in Indonesia, which is generally only applied during divorce, but rarely discussed when the husband dies. The research highlights that in local contexts, whether in patrilineal, parental or matrilineal societies, joint property is often fully controlled by the wife. The focus of this research is the division of inheritance for widows who are often marginalized, especially in terms of joint property acquired during marriage. Thus, this research aims not only to strengthen the rights of widows in obtaining inheritance, but also to strengthen the position of women in inheritance law based on local wisdom. The interest in exploring local wisdom in Islamic inheritance law in the context of local wisdom arises from the observation that many previous studies have empirically researched the issue of inheritance distribution in the context of local wisdom.¹⁷ and division of inheritance conceptually.¹⁸

¹⁴ Retnowulandari Wahyuni, "Gender Perspective in Customary and Islamic Inheritance Law," in *Proceedings of the First Lekantara Annual Conference on Public Administration, Literature, Social Sciences, Humanities, and Education, LePALISSHE 2021, August 3, 2021, Malang, Indonesia* (Malang: EAI, 2022), <https://doi.org/10.4108/eai.3-8-2021.2315073>.

¹⁵ T. Omas Ihromi, "Inheritance and Equal Rights for Toba Batak Daughters," *Law & Society Review* 28, no. 3 (April 2, 1994): 525-537, <https://doi.org/10.2307/3054072>.

¹⁶ Sulistyowati Irianto, "Inheritance Legal Pluralism and Gender Justice: A Court Room Study in Indonesia," *Legal Pluralism and Critical Social Analysis*, August 4, 2024, 1-20, <https://doi.org/10.1080/27706869.2024.2379738>.

¹⁷ Afidah Wahyuni and Harisah Harisah, "Humanism in Inheritance Distribution in Sampang Madurese Culture," *AHKAM: Jurnal Ilmu Syariah* 19, no. 2 (December 30, 2019), <https://doi.org/10.15408/ajis.v19i2.13899>; Siah Khosy'ah and Ayi Yunus Rusyana, "Inheritance Settlement of Descendants of Children and Siblings in Islamic Law with Local Wisdom in Indonesia," *Cogent Social Sciences* 8, no. 1 (December 31, 2022), <https://doi.org/10.1080/23311886.2022.2126615>; Rasidin Barasa et al., "Local Wisdom of Urban Muslims in Inheritance Distribution," *Akademika: Jurnal Pemikiran Islam* 28, no. 02 (2023): 206-218, <https://doi.org/10.32332/akademika.v28i2.7745>; Thriwaty Arsal, Dewi Liesnoor Setyowati, and Puji Hardati, "The Inheritance of Local Wisdom for Maintaining Peace in Multicultural Society," *Journal of Aggression, Conflict and Peace Research* 15, no. 2 (April 4, 2023): 137-151, <https://doi.org/10.1108/JACPR-01-2022-0673>.

¹⁸ Sidik Tono et al., "The Harmonious Relationship Between Minangkabau Custom and Islam in the Distribution of Inheritance," *Al-Shajarah: Journal of the International Institute of Islamic Thought and Civilization* (ISTAC) 0, no. 0 (November 29, 2019): 39-55,

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79 Related research that has been conducted by several previous researchers still talks about the distribution of inheritance in general based on practices that occur in the field,¹⁹ as well as the division of inheritance in *fiqh* law or also the division of inheritance carried out in KHI in court.²⁰ So expressly on the novelty of this paper there are differences from research that has discussed the issue of the distribution of inheritance property in the view of KHI where the wife (widow) gets its own privileges rather than *fiqh* law, although KHI has adopted *fiqh* law in inheritance issues. To be able to answer and understand the issue of the distribution of inherited property in this case focuses on the issue of inherited property that can be distinguished in the perspective of *fiqh* law and KHI by asking the question of how the concept of joint property affects the inheritance rights of widows about the cohenrensi of this method of dividing inheritance law.

28 Based on the description that has been stated above, this research wants to describe more specifically related to the distribution of inheritance for widows. To answer the above problems, this paper uses qualitative studies with content analysis methods related to the inheritance of widows in Islamic inheritance law in Indonesia, the data sources used are primary data sources from KHI and *fiqh* law, and secondary data such as journals, books, the web becomes the author's consideration in providing arguments. The data that has been collected is then analyzed in depth with the stages of data reduction, data presentation, providing valid and factual conclusions to describe the privileges widows in Indonesian Islamic inheritance law.

Pre-Islamic Practice of Widow Inheritance

38 Women's inheritance in the Pre-Islamic period that women experienced deep discrimination in terms of inheritance rights and social status.²¹ In the tradition of pre-Islamic Arab society, women, including widows, were not given the right to inherit their husband's or family's inheritance. This practice reflected a strong patriarchal structure, where women

4 <https://doi.org/10.31436/shajarah.v0i0.931>; Sartika Intaning Pradhani, "Pendekatan Pluralisme Hukum Dalam Studi Hukum Adat: Interaksi Hukum Adat Dengan Hukum Nasional Dan Internasional," *Undang: Jurnal Hukum* 4, no. 1 (June 5, 2021): 81-124, <https://doi.org/10.22437/ujh.4.1.81-124>; Nurhamzah Nurhamzah et al., "Inheritance Model-Based Character Values of Local Wisdom," in *Proceedings of the International Conference on Islamic Education (ICIE 2018)* (Paris, France: Atlantis Press, 2018), <https://doi.org/10.2991/icie-18.2018.39>; Yeni Salma Barlinti, "Inheritance Legal System in Indonesia: A Legal Justice for People," *Indonesia Law Review* 3, no. 1 (April 30, 2013), <https://doi.org/10.15742/ilrev.v3n1.28>.

19 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): 1046, <https://doi.org/10.22373/sjhk.v6i2.12466>.

20 Najamudin Najamudin et al., "Religious and Cultural Diversity in Inheritance Law: A Discussion on the Impact of Judicial Will Considerations on the National Legal System in Indonesia," *Al-Qadha: Jurnal Hukum Islam Dan Perundang-Undangan* 11, no. 1 (July 13, 2024): 32-48, <https://doi.org/10.32505/qadha.v11i1.8833>.

21 Wardah Nuroniyah, "Perempuan Arabia Dalam Lingkaran Perkawinan Di Era Pra-Islam," *Yinyang: Jurnal Studi Islam Gender Dan Anak* 14, no. 2 (December 10, 2019): 175-200, <https://doi.org/10.24090/yinyang.v14i2.3044>.

were considered objects and had no economic or social power.²² In the context of inheritance, both boys and girls were prohibited from inheriting property. This led to cruel practices, with women being used as slaves and goods to be traded at will.²³

83 Women get such behavior due to the prevailing social system in Arab society which is strongly influenced by Bedouin culture or nomadic societies.²⁴ This social system not only shapes cultural identity, but also influences power structures and gender interactions. Women are perceived more as social and economic assets than individuals with equal rights.²⁵ This view suggests that in the midst of a complex and dynamic culture, women lacked voice and power in matters of inheritance and social status, which led to the discriminatory treatment they experienced.

Ibn Kathir's explanation citing a narration from Ibn Abbas illustrates this practice clearly. When a man died and left a widow, his heirs would throw clothes in front of the widow. This was to discourage others from marrying her. If the widow was considered beautiful, she was quickly married off by her heirs. However, if the widow was considered unattractive, she would be held until her death and her estate would be inherited by the heirs.²⁶

These practices show how low women's position is in the prevailing social and legal structures. Women are not only deprived of inheritance rights, but also of their bodies and life choices. Such attitudes and treatment reinforced entrenched gender discrimination in society, and posed a challenge to the social reforms brought about by Islam.²⁷

It was narrated by Ibn Jarir and Ibn Abi Hatim from Abi Umamah bin Sahal bin Hanif that after Abu Qais bin al-Aslat died, his son intended to marry his father's wife (his stepmother). This kind of marriage was a prevalent tradition in the Jahiliyyah era, where women were treated as inherited property.²⁸ However, Allah revealed a verse that strictly prohibits this practice: "*laa yahillu lakum an taritsun nisaa'a karha*," which confirms the prohibition of making women the object of inheritance as in QS. An-Nisa/4:19. This verse marks a paradigm shift in the way women are viewed, and emphasizes that women should not be considered as property that can be inherited, but rather as individuals who have rights and dignity."²⁹

11 22 Hijriatu Sakinah and Suyuti Dahlan Rifa'i, "Islam dan Gender: Relevansi Pembaharuan Islam Bidang Keluarga Dan Tuntutan Egaliter," *Tahkim (Jurnal Peradaban Dan Hukum Islam)* 4, no. 1 (March 27, 2021): 21–40, <https://doi.org/10.29313/tahkim.v4i1.7017>.

33 23 Mahmudunnasir, "Islam Konsepsi Dan Sejarahnya," ed. Penerjemah; Adang Afandi (Bandung: Remaja Rosdakarya, 2005), 401.

61 24 Fuad Hashem, *Sirah Muhammad Rasulullah* (Bandung: Mizan, 1989), 28.

89 25 Hanna Salsabila and Akhdiat, "Penafsiran Ayat-Ayat Larangan Pembunuhan Anak (Metode Tafsir Maudhu'i Abdul Hayy Al-Farmawi)," *Ulumul Qur'an: Jurnal Kajian Ilmu Al-Qur'an Dan Tafsir* 4, no. 1 SE-Articles (March 31, 2024): 140–55.

95 26 Ibn Katsir, *Tafsir Al-Qur'an Al-Karim*, Juz 1 (Cairo: Dar Ihya al-Kutub al-Arabiyyah, n.d.), 465.

42 27 Abu al-Fida' Ismail bin Katsir, *Tafsir Al-Qur'an Al-Karim*, Jilid 3 (Maktabah Awlad asy-Syaikh li at-Turats, 2000), 397.

50 28 Fatchur Rahman, *Ilmu Waris* (Bandung: al-Ma'arif, 1981), 12.

39 29 Abu Ja'far Muhammad bin Jarir at-Thabari, *Jami' Al-Bayan 'an Ta'wil Ayi Al-Qur'an*, Juz VIII (Cairo: Maktabah Ibn Taimiyah, n.d.), 105.

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Causes of Widow Inheritance in Islam

Heirs can be divided into two main categories: *nasabiyah* heirs and *sababiyah* heirs.³⁰ *Nasabiyah* heirs through the male line are father, grandfather, son, grandson (male line), brother (sibling, father, mother), brother's son (sibling, father), uncle (sibling, mother), uncle's son (sibling, father). *Nasabiyah* heirs from the female line, namely mothers, grandmothers (maternal and paternal lines), daughters, granddaughters (male line), sisters (mother, father, mother) are based on family ties that have been recognized socially and legally.³¹ On the other hand, *sababiyah* heirs are married couples who have entered into an Islamic marriage.³²

24 The development of inheritance law in Indonesia shows that the *nasabiyah* system is more dominant in community practice. This is due to the influence of a patrilineal culture that prioritizes blood relations as the basis for legitimizing inheritance.³³ In this context, women are often discriminated against, especially in patrilineal inheritance systems, where their rights to inheritance are limited.³⁴

Heirs according to KHI are clearly regulated in article 171 letter c is an individual who has a blood relationship or marriage relationship with the testator, is Muslim, and is not hindered by law to receive inheritance. The existence of blood relations or marriage ties, being Muslim and there are no legal obstacles (*mawani' al-irs*) that can prevent inheritance rights. So it can be emphasized that recognition as an heir does not only depend on biological or social relationships, but also on compliance with the norms of Islamic law governing inheritance. This is important to ensure justice in the distribution of inheritance and to protect the rights of individuals in accordance with the applicable provisions.³⁵

24 The heir, according to KHI, is defined as an individual who at the time of his death, or who is declared dead based on a court decision, leaves heirs and property in accordance with the provisions in Article 171 letter a. Furthermore, Article 171 letter b of KHI explains that the status of the heir does not only depend on his physical condition, but also includes legal aspects recognized by the judicial system. The clarity of the legal status of the heir in the context of inheritance, with the heirs left behind, the rights to inherit property become valid and guaranteed. In addition, the emphasis on the testator being Muslim reflects that the testator must be subject to sharia law in regulating the distribution of the property left

30 Ahmad Rofiq, *"Fiqh Mawaris"* (Bandung: Raja Grafindo Persada, 2002), 59.

31 Ernawati, *Hukum Waris Islam*, ed. Aas Masrurroh, 1st ed. (Bandung: Widina Bhakti Persada Bandung, 2022), 45.

32 Reka Desrina Wati, "The Marriage Agreement in Article 29 of Law Number 1 of 1974 Is Reviewed According to Islamic Law," *Al Hurriyah: Jurnal Hukum Islam* 7, no. 2 (December 31, 2022): 116, <https://doi.org/10.30983/alhurriyah.v7i2.4125>.

33 ni Made Sumerti Asih and Made Emy Andayani Citra, "The Position of Daughters in Balinese Customary Inheritance System From Gender Equality Perspective," *International Journal of Law Reconstruction* 5, no. 2 (September 9, 2021): 186, <https://doi.org/10.26532/ijlr.v5i2.12668>.

34 Sovia Santika and Yusnita Eva, "Kewarisan Dalam Sistem Kekerabatan Matrilineal, Patrilineal Dan Bilateral," *Al-Mashlahah Jurnal Hukum Islam Dan Pranata Sosial* 11, no. 02 SE-Articles (November 7, 2023), <https://doi.org/10.30868/am.v11i02.4874>.

35 Haniah Ilhami, "Kedudukan Asas Keadilan Berimbang Dalam Hukum Kewarisan Islam Dikaitkan Dengan Peraturan Mahkamah Agung R.I. Nomor 3 Tahun 2017 Tentang Pedoman Mengadili Perkara Perempuan Berhadapan Dengan Hukum," *Mimbar Hukum - Fakultas Hukum Universitas Gadjah Mada* 32, no. 2 (October 15, 2020): 243, <https://doi.org/10.22146/jmh.40268>.

behind. This serves to ensure that the inheritance process is carried out with the provisions stipulated in Islamic law.³⁶

The KHI is the main guideline that formulates the principles of inheritance distribution, which is based on Islamic provisions and adapted to the social and legal context prevailing in Indonesia.³⁷ The division of each heir's inheritance is based on these two perspectives. Inheritance assets (*tirkah*) refers to all the assets left by the testator, both in the form of property and rights. Traditionally, inheritance is given based on blood relations (*nasabiyah*) and causal relations (*sababiyah*), namely marriage or the freeing of slaves. In *fiqh*, this concept is regulated in greater detail by scholars based on the Al-Qur'an, hadith and ijtihad. The distribution of inheritance in Islam has two main categories of heirs based on the way of receiving inheritance, namely *aṣḥāb al-furūd al-muqaddarah* and *aṣḥāb al-'uṣūbah*. Both serve to ensure fairness in the distribution of inheritance, especially in accommodating *nasab* (lineage) relationships as well as considering the needs of individuals within the family structure.³⁸

The *asabah* principle also provides flexibility in the distribution of inheritance, where male heirs will get a larger share if the female heirs who have a fixed share are smaller. This is in line with the greater economic responsibility of men in the family, as mentioned in QS. An-Nisa' (4):34, that men are *qawwam* (leaders and protectors) for women, including in terms of providing maintenance.³⁹

The heirs of '*asabah bi nafsih*' include (a) Sons, if a testator leaves a son, then the son will become the main '*asabah*' and receive the entire remaining property after distribution to the heirs with a fixed share. (b) Grandson from the son's line, if the testator does not have a son, the grandson of the son will replace him as the recipient of the remaining portion. (c) Siblings, if the testator has no children or grandchildren, siblings become '*asabah*' who are entitled to the rest of the inheritance. (d) A father's brother, if the testator has no children, grandchildren, or siblings, a father's brother will replace him. The heir who is most closely related to the testator is entitled to receive the rest of the inheritance. If there is more than one '*asabah*' heir with the same degree of kinship, they will share the rest of the property.⁴⁰

Women's Share in Indonesian Inheritance Law

In Islamic inheritance law, the widow is included in the *ashab al-furudh* group,⁴¹ that is heirs who have a certain share that has been determined in the Al-Qur'an. As part of this group, the wife cannot be veiled (*hirman*) by other heirs in receiving her share, regardless of

³⁶ Marzuki Wahid, *FIQH Indonesia Kompilasi Hukum Islam Dalam Bingkai Politik Hukum Indonesia* (Bandung: Nuansa Cendikia, 2021), 139.

³⁷ Sri Astuti A. Samad, "Kajian Hukum Keluarga Islam Dalam Perspektif Sosiologis Di Indonesia," *El-Ussrah: Jurnal Hukum Keluarga* 4, no. 1 (June 23, 2021): 138, <https://doi.org/10.22373/ujhk.v4i1.9899>.

³⁸ Muhammad Lutfi Hakim and Mutmainah Mutmainah, "Inheritance Portion of The Heir of Women Is More Than Men in Islamic Legal Perspective," *Jurnal Mahkamah : Kajian Ilmu Hukum Dan Hukum Islam* 6, no. 1 (June 22, 2021): 37–50, <https://doi.org/10.25217/jm.v6i1.1426>.

³⁹ Khairuddin Hasballah, Tarmizi M. Jakfar, and Mursyid Djawas, "Perlindungan Hak-Hak Perempuan Melalui Kepemilikan Harta Warisan Menurut Hukum Islam," *Kafa'ah: Journal of Gender Studies* 11, no. 1 (June 29, 2021): 41, <https://doi.org/10.15548/jk.v11i1.420>.

⁴⁰ Sayuti Thalib, *Hukum Kewarisan Islam Di Indonesia* (Jakarta: Sinar Grafika, 2022), 105.

⁴¹ Adefariz Ade Fahrullah, "Ahli Warisdalam Perspektif Hukum Islam dan KUH Perdata (Burgerlijk Wetbook)," *Hukum Islam* 21, no. 1 (July 26, 2021): 59, <https://doi.org/10.24014/jhi.v21i1.9321>.

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the presence or absence of heirs who are closer in kinship. This has also been regulated in KHI.

Table 1: Women's share of inheritance in the KHI

No	Description of Female Heirs	Inheritance Part	Article KHI
1	Single Daughter (no son)	Receives half (1/2) of the inheritance	176
2	Two Daughters (no son)	Receive two-thirds (2/3) of the inheritance	176
3	One Daughter with Son	The daughter receives half (1/2) of the son's share	176
4	Mother (when the deceased has children)	Receives one-sixth (1/6) of the inheritance	177
5	Mother (when the deceased has no children)	Receives one-third (1/3) of the inheritance	178
6	Wife (when the husband dies and has children)	Receives one-eighth (1/8) of the inheritance	180
7	Wife (when the husband dies and has no children)	Receives one-quarter (1/4) of the inheritance	179
8	Single Full Sister (no brother)	Receives half (1/2) of the inheritance	181
9	Two Full Sisters (no brother)	Receive two-thirds (2/3) of the inheritance	181
10	Single Paternal Sister (no brother)	Receives half (1/2) of the inheritance	182
11	Two Paternal Sisters (no brother)	Receive two-thirds (2/3) of the inheritance	182
12	Full or Paternal Sister with Brother	The sister receives half (1/2) of the brother's share	183

From the table above, it can be seen that the inheritance property in accordance with article 171 KHI letter is an asset owned by the testator at the time of death, this inheritance property (*tirkah*) is distinguished from the inheritance property that is ready to be divided to the heirs. The inheritance property consists of the inherited property of the testator plus a share of the joint property, after deducting to fulfill several important needs, such as the cost of treating the testator during illness, the cost of managing the body (*tajhiz*), paying debts, and distributing to other relatives. This is explained in article 171 letter e KHI, which emphasizes that the distribution of inheritance must consider various obligations that must be completed before the property is distributed to the heirs..

The wife's share of her husband's estate has been clearly regulated, namely 1/4 of the husband's estate if the husband has no children and 1/8 if the husband has children. This share is recognized in both *fiqh* and KHI. However, there are important differences between the two in terms of interpreting the distributed inheritance. KHI provides a broader understanding, according to KHI, what is meant by inherited property is inherited property plus part of the joint property after being used for the needs of the testator during illness until death, the cost of managing the body (*tajhiz*), payment of debts and gifts to relatives in article 171 letter e where the wife gets a share of the joint property, in addition to her fixed

share of the inherited property, thus increasing the amount she receives. This shows that KHI provides more protection for wives in terms of property distribution, strengthening their rights to ownership of joint property obtained during the marriage period.

It is explained that in KHI, the widow gets a larger share of the inheritance compared to the division based on *fiqh*, although nominally the provisions for the wife in both systems are the same, namely 1/4 if the husband has no children and 1/8 if the husband has children. However, the main difference arises from how KHI and *fiqh* define the inheritance to be distributed. In *fiqh*, the inheritance to be distributed is the inheritance of the testator (husband) after deducting the costs of handling the body, debts, and other obligations.⁴² The wife only receives her share of the remaining assets after all deductions have been made.

The approach of inheritance law to local wisdom in Indonesia shows an effort to adjust careful practices through *fiqh*, local wisdom, and KHI. The three are interrelated and play an important role in shaping inheritance practices that are more in line with the needs of the distribution of inheritance rights for widows can be confirmed through analyzing the role of *fiqh*, local wisdom, and KHI.⁴³

The distribution of widow's inheritance according to *fiqh* bases its distribution of inheritance on the Al-Qur'an and Hadith with very specific provisions, namely getting 1/4 of the inheritance if there are no children and 1/8 if there are children. This concept provides legal certainty in the distribution of inheritance, but does not recognize the concept of joint property obtained during marriage.⁴⁴ While this division is considered fair according to sharia, it does not take into consideration the emotional and financial contributions made to the widow during the marriage, which contribute to the economic well-being of the joint family. In this regard, *fiqh* has limitations in addressing the socio-economic needs of widows in modern times.⁴⁵

Local wisdom in the practice of inheritance distribution related to joint property as confirmed in Article 97 of the KHI Law is entitled to a distribution of 1/2.⁴⁶ This concept carries a strong dimension of local wisdom, considering that in various parts of Indonesia, especially in patrilineal societies, the position of widows in obtaining inheritance rights is often marginalized. Customary societies, which have a tendency to maintain family property in the male line, often do not pay sufficient attention to the welfare of widows as individuals who play an active role in the collection of property during marriage. Thus, the fulfillment of

⁴² Aminah Tanjung and Mariadi Mariadi, "Implications of Postponing the Distribution of Inheritance from an Islamic Legal Perspective," *Al-Qadha : Jurnal Hukum Islam Dan Perundang-Undangan* 10, no. 2 (December 31, 2023), <https://doi.org/10.32505/qadha.v10i2.7200>.

⁴³ Ibnu Elmi AS. Pelu and Ahmad Dakhoir, "Marital Property within the Marriage Law: A Debate on Legal Position and Actual Applications," *Al-Jami'ah: Journal of Islamic Studies* 59, no. 2 (November 11, 2021): 287–316, <https://doi.org/10.14421/ajis.2021.592.287-316>.

⁴⁴ Muhammad Misbakhul Ulum, Zaenul Mahmudi, and Moh. Toriquddin, "Wasiat Sebagai Penyeimbang Pembagian Warisan Menurut Hazairin Perspektif Teori Keadilan Distributif Aristoteles," *Al-Adl : Jurnal Hukum* 14, no. 2 (July 21, 2022): 432, <https://doi.org/10.31602/al-adl.v14i2.6019>.

⁴⁵ Elimartati Elimartati and Elfia Elfia, "Kritik Terhadap Kompilasi Hukum Islam Tentang Ketentuan Harta Bersama Dalam Perkawinan," *JURIS (Jurnal Ilmiah Syariah)* 19, no. 2 (December 18, 2020): 231, <https://doi.org/10.31958/juris.v19i2.2283>.

⁴⁶ Zaelani et al., "An Implementation of the Joint Inheritance Division of Ethnic Groups in Lampung, Indonesia."

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the widow's right to half of the joint property before the distribution of inheritance according to *fiqh* provides a balance based on the value of social justice.⁴⁷ Scholars argue that joint property can be equated with *shirkah* that the wife becomes an inseparable part in collecting property during marriage.⁴⁸

Furthermore, after the widow obtains half of the joint property, the distribution of inheritance is carried out based on *fiqh* principles regulated in KHI. The share of inheritance for widows in *fiqh* law, which is 1/4 or 1/8 of the husband's remaining property, serves as an addition to the property to which she is already entitled. This method not only maintains justice in the context of Islamic law, but also shows the adjustments needed to overcome patriarchal practices in the division of inheritance, especially in societies that have not fully recognized women's rights as equal heirs.⁴⁹ Thus, the KHI not only gives the widow the rights under the husband's inheritance provisions, but also recognizes her contribution during the marriage. This KHI approach reflects the broader principle of distributive justice,⁵⁰ where each party gets a share that is proportional to their contribution. It is emphasized that KHI seeks to maintain a balance between sharia principles and socio-economic needs in Indonesia and provide protection for widows in the practice of the socio-cultural context.⁵¹

As an illustration, a person (husband) dies, his heirs are his wife, a son and 2 daughters, then the share obtained by the wife is if the husband leaves inherited property of Rp. 200,000,000, - and together with his wife collects joint property of Rp. 700,000,000, -, with the total cost of hospitals and funeral arrangements Rp. 100,000,000,-, then the property to be inherited according to *fiqh* is Rp. 800,000,000, -. The wife gets 1/8 of this total property, which is Rp. 100,000,000,-. Whereas based on KHI, the inheritance distributed includes the inheritance of the heir plus half of the joint property obtained during the marriage period. After deducting hospital expenses, funeral arrangements, and other obligations, this property is distributed to the heirs. KHI takes into account half of the joint property, which is Rp. 300,000,000 (half of Rp. 600,000,000), which is added to the inherited property of Rp. 200,000,000, bringing the total inheritance to Rp. 500,000,000. The wife then gets 1/8 of this amount, the result. Rp. 62,500,000, plus her right to joint property, bringing the total estate to Rp. 362,500,000.

The application of KHI to inheritance law shows the suitability of local practices, that the division of joint property is first carried out, after the widow receives it as an heir and then divides it in *fiqh* which emphasizes that KHI creates an inheritance law system for the

⁴⁷ Siah Khosyi'ah, "Keadilan Distributif Atas Pembagian Harta Bersama Dalam Perkawinan Bagi Keluarga Muslim Di Indonesia," *Al-Manahij: Jurnal Kajian Hukum Islam* 11, no. 1 (February 22, 2018): 35–48, <https://doi.org/10.24090/mnh.v11i1.1266>.

⁴⁸ Happy Susanto, *Pembagian Harta Gono-Gini saat Terjadinya Perceraian, Pentingnya Perjanjian Perkawinan untuk Mengantisipasi Masalah Harta Gono-Gini* (Jakarta: Visimedia, 2008), h. 59.

⁴⁹ Zaiyad Zubaidi, "Tanggapan Ulama Dayah Terhadap Pembagian Harta Bersama Menurut Pasal 97 KHI," *Media Syari'ah* 22, no. 1 (May 6, 2020): 30, <https://doi.org/10.22373/jms.v22i1.6615>.

⁵⁰ John Rawls, *A Theory of Justice*, ed. Rev (Cambridge, Mass: Belknap Press of Harvard University Press, 1999), 52–53.

⁵¹ Aisyah Aisyah and Novia Alexia, "Keberadaan Hukum Waris Adat Dalam Pembagian Warisan Pada Masyarakat Adat Batak Toba Sumatera Utara," *Mizan: Jurnal Ilmu Hukum* 11, no. 1 (June 14, 2022): 1, <https://doi.org/10.32503/mizan.v11i1.2323>.

benefit of the widow,⁵² which not only prioritizes compliance with religious rules, but also ensures social justice for widows, especially those who are economically dependent through joint property to protect the rights of widows, while strengthening the welfare of their families.⁵³

Conclusion

The conclusion of this article highlights the urgency and relevance of implementing a shared property distribution approach prior to inheritance division within the Indonesian context, which is influenced by local wisdom practices. By affirming a widow's rights to shared marital assets through the application of Article 97 of the Compilation of Islamic Law (KHI), it is evident that widows can receive a fairer share before the distribution of inheritance according to *fiqh* principles. In the context of local wisdom, this distribution of shared property is crucial for protecting women's rights, as they are often marginalized in communities that uphold male lineage traditions. Granting the widow half of the shared assets first reflects the flexibility of Islamic law in addressing the welfare needs of widows and embodies a fundamental principle of justice in Sharia. This study concludes that integrating *fiqh* principles and KHI regulations in inheritance distribution, by first acknowledging a widow's right to shared property, provides a more inclusive legal framework. This approach not only ensures that widows receive a just share but also strengthens the position of women in inheritance matters, demonstrating that Islamic law in Indonesia can effectively adapt to the needs of local wisdom to promote social justice.

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⁵² Abidin Nuridin, "Pembagian Harta Bersama Dan Pemenuhan Hak-Hak Perempuan Di Aceh Menurut Hukum Islam," *EL-USRAH: Jurnal Hukum Keluarga* 2, no. 2 (August 10, 2020): 139, <https://doi.org/10.22373/ujhk.v2i2.7652>.

⁵³ Isnawati Rais and Ya Rakha Muyassar, "The Construction of Religious Court Judges' Decisions in the Case of Joint Assets Based on Islamic Law and Legal Development," *Jurnal Cita Hukum* 10, no. 2 (August 25, 2022): 205–222, <https://doi.org/10.15408/jch.v10i2.27800>.

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