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## **Critical Study of Amina Wadud's Thought in the Issue of Inheritance**

**Fauzan Zenrif**

UIN Maulana Malik Ibrahim Malang, Indonesia

[zenrif@syariah.uin-malang.ac.id](mailto:zenrif@syariah.uin-malang.ac.id)

**Syabbul Bachri**

UIN Maulana Malik Ibrahim Malang, Indonesia

[syabbulb@uin-malang.ac.id](mailto:syabbulb@uin-malang.ac.id)

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### **Abstract:**

This study aims to examine the main arguments presented by Amina Wadud on inheritance in her book "Quran and Women" and evaluate the validity of her arguments. The scope of this research will include an analysis of Wadud's method of interpreting the Quran as outlined in the book Quran and Women which influenced her thoughts on Islamic inheritance and a critical study of her thoughts. This research is a type of qualitative research with a critical study approach. The results of the study show that a critical study of Wadud's thinking shows that she generalizes the 2:1 provision on the shares of men and women which actually only applies in certain cases. In addition, Wadud's demands for reinterpretation cannot be done without adequate interpretive science tools. Science explains that justice need not be interpreted as equality. There are two categories of justice, according to Aristotle: commutative justice and distributive justice. So that there can be no justification for questioning the Quran's just inheritance allocation. Furthermore, the provisions in the inheritance verse in the Quran are *qath'i* provisions so there is no justification for doing *ijtihad* which is presumptive (*dzanny*) in a reassuring text (*qath'i*). In addition, Wadud's thoughts are also considered less specific and do not provide a real format for how the redistribution she proposes. Therefore, Wadud's rereading in terms of inheritance is considered incomplete or incomprehensive of the Qur'an.

**Keywords:** inheritance; women; equality.

### **Introduction**

Amina Wadud is an American Muslim theologian and scholar of Islam, who has written extensively on the role of women in Islam. She was born and raised as a Methodist in Bethesda, Maryland, and converted to Islam in 1972 while studying at

the University of Michigan, where she later earned her Ph.D.<sup>1</sup>. Wadud's groundbreaking work focuses on clarifying the equality of Muslim women within a religious framework. She is also an African-American activist and professor of Islamic studies at Virginia Commonwealth University<sup>2</sup>. Her scholarly work is rooted in Islamic feminism and progressive Islamic thought, inclusive worship, the Divine Feminine, and reformist praxis<sup>3</sup>.

The controversy surrounding Amina Wadud's views on inheritance stems from her belief that the Quranic principle guaranteeing equal inheritance rights between men and women should be applied in contemporary Muslim societies. She argues that traditional interpretations of Quranic verses on inheritance that give a greater portion to men than women are based on cultural bias and patriarchy rather than the actual meaning of the text. Wadud's views on inheritance have received mixed reactions from Muslim scholars and society, with some welcoming her progressive interpretation and others strongly opposing it<sup>4</sup>.

Some of the previous studies on Amina Wadud's thoughts are more related to her broader views on gender and Islamic scripture than specifically on inheritance. Afifi's research, for example, examines Islamic feminist interpretation through the works of Amina Wadud and Asma Barlas. The selection of Wadud and Barlas is based on their contributions to Islamic feminist hermeneutic theory in theology, philosophy, experience, and language. Both have revised their earlier works on Qur'anic hermeneutics and have responded to criticisms of their feminist readings of the Qur'an. Their revisions include an evolution of their earlier ideas and a reformulation of the "universal and particular" hermeneutical binary.<sup>5</sup> Riyani's research suggests a Muslim feminist hermeneutical method to the Qur'an in response to conservative interpretations that support patriarchy. This approach shows the Qur'an supports gender equality and is compatible with modernity. Amina Wadud's 'tawhidic paradigm' proposes a feminist hermeneutical method for interpreting the Qur'an, which considers context, grammar and worldview.<sup>6</sup>

Furthermore, Katharina Völker in her study explains that Western Islamology views liberal Islamic intellectuals as exotic, but contemporary freethinkers use concepts from postcolonial Muslim emancipatory and refer to philosophical thought from various traditions. Amina Wadud and Mouhanad Khorchide provide an authentic version of Islam that is cosmopolitan and humanistic, focusing on hermeneutics and freedom. Both authors aim to keep Islam relevant for today and

<sup>1</sup> "Amina Wadud," dalam *Wikipedia*, 13 Maret 2023, [https://en.wikipedia.org/w/index.php?title=Amina\\_Wadud&oldid=1144324445](https://en.wikipedia.org/w/index.php?title=Amina_Wadud&oldid=1144324445).

<sup>2</sup> "Amina Wadud (2005)," diakses 25 Maret 2023, <https://hwpi.harvard.edu/pluralismarchive/amina-wadud-2005>.

<sup>3</sup> "Books and Publications," *Amina Wadud* (blog), diakses 25 Maret 2023, <https://aminawadud.com/books-publications/>.

<sup>4</sup> Roohi Stack, "An Analysis of Muslim Women's Rights Based on the Works of Amina Wadud, Fatima Mernissi, and Riffat Hassan," 17 Juli 2020, <https://dash.harvard.edu/handle/1/37365037>.

<sup>5</sup> Mahmoud Afifi, "Islamic Feminist Interpretation: A Reformulation of the Universal-Particular," *Islamic Studies Review* 1, no. 1 (23 Desember 2022): 39–66, <https://doi.org/10.56529/isr.v1i1.3>.

<sup>6</sup> Irma Riyani, "Muslim Feminist Hermeneutical Method to the Qur'an (Analytical Study to the Method of Amina Wadud)," *Ulumuna* 21, no. 2 (29 Desember 2017): 298–314, <https://doi.org/10.20414/ujis.v21i2.320>.



should be given more weight in the landscape of Islamic philosophy<sup>7</sup>. Meanwhile, Mansouri Imen analyzes Amina Wadud's book "Quran and Women" using Van Luween's critical discourse analysis model to reveal social actors in texts and social practices. The research is divided into three chapters: defining the concepts of gender, translation, and feminism in the Quran; introducing the chosen theme and Amina Wadud; and analyzing the data using Van Luween's theory. The results show that Wadud's translation and interpretation of the Quran have to some extent liberated the text from the burden of patriarchy and presented new interpretations of gender-related verses that promote gender equality<sup>8</sup>.

This study aims to examine the main arguments presented by Amina Wadud on inheritance in her book "Quran and Women" and evaluate the validity of her arguments. The scope of this study will include an analysis of Wadud's method of Quranic interpretation as outlined in the book Quran and Women that influenced her thinking on Islamic inheritance and a critical study of her thinking. The study is expected to contribute to the debate surrounding Amina Wadud's thoughts, particularly on inheritance and to provide an understanding of the strengths and weaknesses of her thoughts.

## Method

The research method used in writing an article about Amina Wadud's thoughts on Islamic inheritance in her book "Qur'an and Women" is a critical study approach. The steps in this method include identification of the topic and problem, collection of materials and data, critical analysis of the materials collected, determination of the research approach, preparation of arguments, use of a qualitative approach for data analysis, and discussion of findings and implications. In this case, the researcher will critically evaluate the arguments made by Wadud, as well as look at the implications of these arguments in a broader context. Finally, the results of the research will be summarized thoroughly and contribute to the existing body of knowledge on Wadud's thoughts on Islamic inheritance.

## Result and Discussion

### Islamic law on the equal distribution of property between male and female heirs

Based on verses 11 and 12 of surah Al-Nisa' in the Qur'an, the following is a summary of the distinctions between men and women regarding inheritance distribution: First, a son's share is equal to that of two daughters. Second, if the testator has no children, the mother will inherit one-third of the estate, while the father will receive the remaining portion, known as *ashabah*. Thirdly, the husband receives one-half of the inheritance if there are no children and one-fourth if there are children. In contrast, the wife receives one-fourth of the estate if there are no children and one-eighth if there are children.

In accordance with the 2:1 ratio stated in verse 11 of surah al-Nisa', the portion of the male descendants is twice as large as the share of the female descendants. The

<sup>7</sup> Katharina Völker, "Freedom in amina wadud's Tawhīdic Hermeneutics and Mouhanad Khorchide's Theology of Mercy," *Islam and Christian-Muslim Relations* 32, no. 3 (3 Juli 2021): 261–78, <https://doi.org/10.1080/09596410.2021.1914405>.

<sup>8</sup> Imen Mansouri, "The Re-Translation of the Qur'an from a Feminist Perspective," 2018, <http://e-biblio.univ-mosta.dz/handle/123456789/8862>.



same holds true for the husband's share, which is always double the size of the wife's. In situations where there are no offspring, however, the mother's and father's shares are not multiplied. Nevertheless, according to 'Umar bin Khattāb, the mother's share in such instances was 1/3 of the remaining assets, ensuring that the father's share remained twice as large as the mother's. In Islamic inheritance, such cases are referred to as gharawayn cases<sup>9</sup>. In addition, based on verse 176 of surah al-Nisa', there is also a division of inheritance of brothers who get twice the share of sisters.

As previously stated, the stipulation that women receive half of a man's share does not apply in every circumstance. It is only applicable in a few instances<sup>10</sup>. Women receive half of a man's share in the following situations: first, when sons are with daughters; second, when a biological brother is with a biological sister or a paternal brother is with a paternal sister; third, when the father is with the mother in the absence of the children and spouse; fourth, the wife's portion is one-fourth when the spouse does not have children, and one-eighth when he has children. In the same situation, the spouse receives twice as much as the wife, namely one-half if the wife does not have children and one-fourth if the wife does have children. The following examples illustrate the cases:

**Table 1.** Islamic Inheritance Case 1

Heirs	Share (2:1)	Inheritance property (IDR 24 Million)	Result
Son	2/3	2/3 x IDR 24 M	IDR 16 M
Daughter	1/3	1/3 x IDR 24 M	IDR 8 M

**Table 2.** Islamic Inheritance Case 2.

Heirs	Share	Inheritance property (IDR 120 Million)	Result
Husband	1/4	1/4 x 120 M	IDR 30 M
Full brother		2/3 x 90 M	IDR 60 M
Full sister	Residuary after Husband's share (2:1)	1/3 x 90 M	IDR 30 M

**Table 3.** Islamic Inheritance Case 3

<sup>9</sup> Nur Fitrah dan Firdaus Firdaus, "Pembagian Warisan Dengan Metode al Gharawain Menurut Hukum Kewarisan Islam," *Jurnal Tana Mana* 1, no. 1 (28 Juni 2020): 31–45.

<sup>10</sup> Béligh Elbalti, "Equality between Men and Women in the Islamic Law of Inheritance," SSRN Scholarly Paper (Rochester, NY: Social Science Research Network, 2018), 3, <https://doi.org/10.2139/ssrn.3327773>.



Heirs	Share	Inheritance property (IDR 36 Million)	Result
Father	2/3	2/3 x 36 M	24 M
Mother	1/3	1/3 x 36 M	12 M

In the event that both parents inherit alongside the husband or wife, the Gharawayn case will apply, with the mother receiving the residual one-third. This provision allows the father to receive a double share of his mother's estate

**Table 4.** Islamic Inheritance Case 4.

Heirs	Share (2:1)	Inheritance property (IDR 24 Million)	Result
Husband	1/4	1/4 x 24 M	IDR 6 M
Son	Residuary	24 M – 6 M	IDR 18 M

Consequently, only in four (4) of these situations do women receive half of a man's share. In many instances, women receive the same or even a larger share than males<sup>11</sup>. In certain situations, a woman receives the same share as a male, such as when the heirs consist of a father, mother with a son / two daughters / with a daughter, as exemplified below:

**Table 5.** Islamic Inheritance Case 5

Heirs	Share	Inheritance property (IDR 12 Million)	Result
Father	1/6	1/6x 12 M	IDR 2 M
Mother	1/6	1/6 x 12 M	IDR 2 M
Son	Residuary	Residuary after being taken by father and mother	IDR 8 M

In the preceding example, it is known that the mother and father receive equal inheritance shares. In other situations, fathers and mothers receive equal portions when they are accompanied by two daughters or by spouses and daughters. Even though the maternal grandmother is more distantly related to the testator than the father, she receives the same portion as the father, which is one-sixth of the estate, when she inherits alongside the father and son. The identical inheritance pattern occurs between uterine sisters and uterine brothers. Despite being of distinct genders, they equitably divide the inheritance. Even if the heirs include uterine sisters, uterine

<sup>11</sup> Elbalti, "Equality between Men and Women in the Islamic Law of Inheritance."

brothers, the mother, and the spouse, each sister and brother will receive the same share.

Moreover, relating to instances in which women can receive a larger share than males, namely in distinct cases involving inheritance assets such as IDR 120 million and successors including the husband, mother, father, and two daughters. In a separate instance, the heirs consist of a husband, mother, father, and two sons. In the scenario presented, the daughter's share will be greater than the son's. The following examples illustrate further details:

**Table 6.** Islamic Inheritance Case A

Heirs	Share	Least Common Multiple (LCM) : 12	'Aul 15 (Inheritance property: IDR 120 Million)
Husband	1/4	3	$3/15 \times 120 \text{ M} = \text{IDR } 24 \text{ M}$
Mother	1/6	2	$2/15 \times 120 \text{ M} = \text{IDR } 16 \text{ M}$
Father	1/6	2	$2/15 \times 120 \text{ M} = \text{IDR } 16 \text{ M}$
2 Daughters	2/3	8	$8/15 \times 120 \text{ M} = \text{IDR } 64 \text{ M}$

**Table 7.** Islamic Inheritance Case B

Heirs	Share	Least Common Multiple (LCM) : 12	Result (Inheritance property: IDR 120 Million)
Husband	1/4	3	$3/12 \times 120 \text{ M} = \text{IDR } 30 \text{ M}$
Mother	1/6	2	$2/12 \times 120 \text{ M} = \text{IDR } 20 \text{ M}$
Father	1/6	2	$2/12 \times 120 \text{ M} = \text{IDR } 20 \text{ M}$
2 Sons	Residuary	5	$5/12 \times 120 \text{ M} = \text{IDR } 50 \text{ M}$

According to the illustration in the preceding table, two daughters receive a total of 64 million dollars from the estate, or 32 million dollars each. In contrast, in the same scenario, each of the two sons will receive a share of 25 million dollars. Consequently, the daughter's share is obviously greater than the son's share. Similar to the preceding scenario, if the successors are a spouse, mother, two siblings, and one sister. In this case, the seibu sister will receive a larger share than the siblings, as she will receive 1/6 of the estate while the siblings will receive 1/6 of the estate to be divided equally between them. This implies that each sibling will receive one-twelfth of the estate, which is one-half less than the sister's share.

### Biography of Amina Wadud



Amina Wadud is a prominent American Muslim theologian who has made significant contributions to the field of Islamic studies, especially in terms of the role of women in Islam. She was born on September 25, 1952, and raised as a Methodist in Bethesda, Maryland. Wadud converted to Islam in 1972 while studying at the University of Michigan.<sup>12</sup> Wadud received her Ph.D. in Arabic and Islamic Studies from the University of Michigan in 1988.<sup>13</sup> Her dissertation focused on the relationship of gender and Islam, and she later published her work, "Qur'an and Woman: Rereading the Sacred Text from a Woman's Perspective," which provides a gender-inclusive approach to Quranic exegesis. In this book, she sought to decipher certain texts and key words that have been used to limit women's public and private roles, even justifying violence against women. Her understanding of the Qur'an affirms women's equality and makes it the basis for challenging the unequal treatment that women have experienced<sup>14</sup>.

Wadud's work deals extensively with the role of women in Islam, and her work has been influential in the Muslim feminist movement. She argues that it is not religion but patriarchal interpretations that limit the role of women in Muslim societies. Wadud's work has sparked controversy, and she has faced criticism from some conservative Muslim scholars for her interpretation of Islamic texts. In 2006, she led a community prayer at a New York mosque, becoming the first woman to lead a mixed-gender congregation in prayer in the United States. Sheik Yussef al-Qaradawi, a member of the Muslim Brotherhood, issued a fatwa (religious edict) in which he condemned Wadud to death<sup>15</sup>.

### **Gender Signification in Tafsir Methodology according to Amina Wadud**

According to Wadud, the reading of the Qur'anic text is strongly influenced by the reader. This is because the reading of the Qur'anic text partly reflects the intention of the text itself and partly reflects the prior text of the reader. Thus, according to Wadud, the reading of the same text by different readers can lead to diverse understandings<sup>16</sup>. Furthermore, according to Wadud, there is no truly objective interpretation. Some of the interpretations of the Qur'anic commentators are subjective and do not reflect the intent of the Qur'anic text itself. Wadud classifies interpretations of women in the Qur'an into the categories of traditional, reactive and holistic interpretations<sup>17</sup>.

Traditional interpretation is described by Wadud as an atomistic model of interpretation, because it does not recognize themes and examine the relationship between verses of the Qur'an thematically. The few brief reviews of the relationship between verses and other verses given are perfunctory without establishing hermeneutical principles. Ironically, traditional interpretations, according to Wadud,

<sup>12</sup> "Amina Wadud," 13 Maret 2023.

<sup>13</sup> "Meet amina wadud: The Rock Star of Islamic Feminists | musliminstitute.org," diakses 2 April 2023, <https://musliminstitute.org/freethinking/politics/meet-amina-wadud-rock-star-islamic-feminists>.

<sup>14</sup> Amina Wadud, *Qur'an and Woman: Rereading the Sacred Text from a Woman's Perspective*, 2nd edition (New York: Oxford University Press, 1999).

<sup>15</sup> "Amina Wadud," diakses 2 April 2023, <https://en.gariwo.net/righteous/civil-courage/amina-wadud-7561.html>.

<sup>16</sup> Wadud, *Qur'an and Woman*, 1999, 1.

<sup>17</sup> Wadud, 1.



are all written by men. So the interpretations are naturally influenced by men and men's experiences. In other words, the interpretations are tailored to men's vision, perspective, will and needs without involving women and women's experiences.<sup>18</sup> Reactive interpretation of women's issues, as described by Wadud, tends to come from the strong ideals of feminists who provide justification on the basis of women's status against reactions to reject the message of the Qur'an without being based on comprehensive analysis. Thus, their interpretation style emphasizes the improvement of women's position without providing reasons in line with the Qur'an about women<sup>19</sup>. For Wadud, holistic interpretation is the model of interpretation she wants in studying women's issues from the perspective of the entire Qur'an. According to her, the holistic interpretation method is a form of interpretation that reconsiders all methods of interpreting the Qur'an concerning various fields such as social, moral, economic and modern politics, especially those concerning women's issues<sup>20</sup>.

### **Amina Wadud's Hermeneutical Model**

Wadud's study uses the hermeneutic method. This method deals with three aspects: 1. the context in which the text was written (in the case of the Qur'an, where it was revealed); 2. the grammatical composition of the text (how it says and what it says); and 3. the whole text, its *Weltanschauung* or worldview. The object of study of wadud is not all texts in the Qur'an as in traditional tafsir. Rather, it is only words in the Qur'an that according to Wadud actually have universal meaning but are interpreted in a gender-biased manner by classical mufassirs. For this reason, these words need to be reinterpreted by providing historical information from the aspect of the time and period of the revelation of the Qur'an. Wadud uses Fazlur Rahman's theory of interpretation. In interpreting the text of the Qur'an, the historical aspect of the revelation of the Qur'anic verse must be considered. Then look for the ideal concept of moral/spirit of the Qur'an<sup>21</sup>. Each interpreted verse is analyzed: 1. the context in which the verse was revealed; 2. discussions of similar topics in the Qur'ān; 3. based on aspects of the same language and syntactic structure used in other verses in the Qur'ān; 4. based on key principles in the Qur'ān; and 5. the Quranic *Weltanschauung*<sup>22</sup>. This model is named Hermeneutics of Tawhid by Amina Wadud.

According to Wadud, understanding the text can be done by reading the "Prior Text" of the "individual reader" in terms of language and cultural context in which the text is read. Prior text will add to the knowledge of the "reader" to bridge between the text and its readers with different contexts. Wadud considers that there is a cultural imposition in understanding the Quran even though the Quran claims that it is universal, so it can be read in a variety of cultural contexts.<sup>23</sup> The use of feminine and masculine forms in language is the focus of Wadud's study. In particular, the understanding of feminine or masculine behavior, and the role of men and women in society, is based on one's cultural context. In Prior text Arabic, everything is classified as male and female. Wadud's reading of Arabic, as the language of the

<sup>18</sup> Wadud, 1–2.

<sup>19</sup> Wadud, 2.

<sup>20</sup> Wadud, 3.

<sup>21</sup> Wadud, 4.

<sup>22</sup> Wadud, 5.

<sup>23</sup> Wadud, 6.



Qur'an uses an outsider's perspective in order to free herself from the cultural paradigm that distinguishes gender. The Qur'an has its own Weltanschauung. Every word must be understood within its contextual limitations. Language has limitations in revealing the words found in the Qur'an. Wadud uses the book *The Glorious Qur'an: Text and Translation* by Muhammad Marmaduke Pickthall for translation and A. Yusuf Ali in *The Holy Qur'an: Text, Translation and Commentary*. For long texts, Wadud translates herself with key words.

### **A Review of Amina Wadud's Views on Islamic Inheritance**

In Amina Wadud's view, the mathematical formula that assumes that men always get twice the share of women is wrong and represents an oversimplification of the study of inheritance in the Qur'an. According to her, the 2:1 provision between the shares of men and women is not absolute because it is considered as one of the variations of the Islamic inheritance distribution model. As in reality, a woman will get half of the inheritance. The diversity of inheritance distribution models based on the consideration of the existence of parents, siblings, distant relatives and descendants in varying combinations in the distribution of inheritance shows that the 2:1 ratio between male and female inheritance is not absolute and is only one of the models for determining the distribution in inheritance issues<sup>24</sup>.

Based on the diversity of the inheritance model, further according to Wadud, it shows that: First, women are not deprived of inheritance at all even though they are included in the category of distant relatives. Secondly, the distribution of inheritance as a whole must be fair by considering the benefits for those left behind. Wadud puts forward her demand to pay attention to the details in the provisions of the Qur'an as a whole so as to lead to the redistribution of inheritance according to the circumstances of the testator and his heirs. According to her, the distribution of inheritance must look thoroughly at, members, combinations and benefits. Furthermore, Wadud gave an example by illustrating the case of a family consisting of one son and two daughters. If the widow of the testator is supported by one of the daughters of the testator, giving a larger share to the son is considered by Wadud as a decision that does not pay attention to the real benefits of the heirs<sup>25</sup>.

According to Wadud, although the Qur'an does not provide an overall description of the possibilities arising from various scenarios, it is quite clear that various combinations must exist and require consideration of the fair distribution of inheritance. Furthermore, according to Wadud, one-third of the wealth can be inherited, without restrictions on who the beneficiaries are and without reducing the share of the remaining wealth. In fact, this proposal is quite flexible as long as equality is fulfilled. Wadud asserts that the issue of inheritance involves the following considerations: 1) Distribution to surviving male and female relatives; 2) Some wealth can be inherited; and 3) Consideration must be given to the circumstances of the heirs left behind, their benefit to the deceased (testator), and the benefit of the wealth inherited<sup>26</sup>.

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<sup>24</sup> Wadud, *Qur'an and Woman*, 1999, 87.

<sup>25</sup> Wadud, 87.

<sup>26</sup> Wadud, 87–88.

### Critical Analysis of Amina Wadud's views on Islamic Inheritance Law in the Book "Al-Qur'an and Women".

Amina Wadud criticizes the thinking that considers the provision of differences in the shares of men and women in a ratio of 2: 1 as an absolute. This statement is controversial because the provisions of the Qur'an in the inheritance verse are qath'i provisions<sup>27</sup> and nuanced *ta'abbudi* (worship to God) that, of course, must be carried out by Muslims. Amina Wadud's generalization regarding the 2:1 provision on the share of male and female heirs in her statement cannot be justified because the Qur'anic verse states the provisions related to 2:1 only in certain cases, namely when sons are with daughters and when brothers or fathers are with biological or fathers' sisters. So that the absoluteness of the provisions of the 2:1 part only applies in these cases, not in other cases.

Wadud's demand for redistribution of inheritance distribution that is more supportive of justice for male and female heirs<sup>28</sup> seems to have two meanings. First, Amina Wadud demands a reinterpretation of the 2:1 provision in the Qur'an; and second, Amina Wadud doubts the justice of the 2:1 ratio stipulated in the Qur'an. The demand for redistribution necessitates a reinterpretation of the Qur'an, for which reason alone is insufficient. This is because, when determining the law, it must also consult the provisions of *ushul fiqh* as a guide for determining the law in light of existing arguments. Furthermore, adequate interpretation tools are required for comprehending the arguments of the *nash* or verses of the Qur'an, so that the interpretations made do not appear to rely solely on reason and emotion. According to al-Zamakhsyārī, the statement in Surah al-Nisa' (4) verse 7 signifies that Allah assigns a portion that must be carried out.<sup>29</sup>

According to Quraish Shihab, the term "mafrudhan" is the origin of the word *faradha*, which signifies an obligation that comes from God. Unlike the word "wajib", which does not have to come from God because a person can oblige himself, the word obligatory must originate from God. Consequently, there is no justification for denying or altering the provision of inheritance, which has been predetermined and derived from God<sup>30</sup>. This phrase appears in another verse about inheritance (Surah al-Nisa', verse 11) and indicates that the inheritance portion provisions, including the 2:1 ratio for sons and daughters, are a decree from Allah that must be carried out, and Allah is the One who knows best what He has prescribed, which certainly contains wisdom, advantages, and benefits<sup>31</sup>.

It is clear that the provisions of the division of inheritance are Allah's will, which must be carried out because His Essence is Greater than all others, because Allah uses the word "will" in the verses of inheritance, both in the expression in al-Nisa' (4) verse 11 and 12. According to Alī al-Shabunī, the desire to retain and maintain something (inheritance provisions in this example) makes the word "will"

<sup>27</sup> Abd al-Wahab Khalaf, *Ilm Ushul al-Fiqh*, 8th ed., Juz 1 (Kairo: Dar al-Qalam, t.t.), 216–17.

<sup>28</sup> Wadud, *Qur'an and Woman*, 1999, 87.

<sup>29</sup> Abu al-Qasim Mahmud bin 'Umar bin Ahmad al-Zamakhsyary, *al-Kasysyaf 'an Haqaiq ghawamidh al-Tanzil*, 3rd ed., Juz 1 (Beirut: Dar al-Kitab al-'Araby, 1407H), 476.

<sup>30</sup> M. Quraish Shihab, *Tafsir al-Mishbah*, vol. 2 (Banten: Lentera Hati, 2007), 353.

<sup>31</sup> Muhammad 'Ali al-Shabunī, *Shafwat al-Tafasir*, 1st ed., Juz 1 (Kairo: Dar -Al-Shabunī, 1997), 240–41.



more powerful than the term "command" in this context<sup>32</sup>. Therefore, it is not surprising that *ijbari* is considered by Islamic law academics to be a principle for carrying out Islamic inheritance law. Coercive in the sense that it occurs automatically in line with the stipulated rules without the testator's will or legal action, this *ijbari* principle governs the transfer of property from the testator to his heirs<sup>33</sup>.

The rejection of the principle of equalizing the shares of men and women should also take into account that the inheritance verse in the Qur'an, particularly regarding the 2:1 principle, is a *qath'i* verse, which implies that the verse has a distinct meaning and cannot be interpreted otherwise. Therefore, the provision in the verse must be applied as written, without modification<sup>34</sup>. Attempts to formulate new *ijtihad* are only permissible in two situations: when there is no *nash* provision at all and when there is a *nash* that is not *qath'i*. It is not permissible to use *ijtihad* when a *qath'i* text is already available because the *ushul fiqh* principles state: "there is no justification for *ijtihad* in unambiguous and *qath'i* texts" (لا مساعٍ للاجتهد فيما فيه نص صريح قطعي).<sup>35</sup> In addition, according to Ahmad bin Muhammad al-Zarqā, the provisions of the *qath'i* text are reassuring (*yaqiny*), whereas *ijtihad* is presumptive (*dzanny*). On this basis, compelling arguments cannot be rejected because of presumptive or *dzanny* arguments.<sup>36</sup>

Furthermore, in responding to Wadud's demand to give fair consideration to heirs<sup>37</sup> who seem to doubt the justice of the 2:1 ratio in the Qur'an, in this case it is certainly necessary to examine the concept of justice itself. Justice does not mean that all people should receive identical treatment. Justice means that all human beings are treated equally in terms of receiving what they are entitled to, which may be very different based on religious provisions<sup>38</sup>. Furthermore, in the domain of science, justice need not be defined in terms of equal quantities. In this instance, Aristotle explains that there are two types of justice: commutative justice and distributive justice. Commutative justice requires that everyone receives the same proportion, regardless of their responsibilities and services. Distributive justice, on the other hand, means that a person is given his or her share based on his or her

<sup>32</sup> Muhammad 'Ali al-Shabuny, 240.

<sup>33</sup> Jamhir Jamhir, "Hukum Waris Islam Mengakomodir Prinsip Hukum yang Berkeadilan Gender," *Takammul: Jurnal Studi Gender dan Islam Serta Perlindungan Anak* 8, no. 1 (8 Juli 2019): 5, <https://doi.org/10.22373/takammul.v8i1.4862>.

<sup>34</sup> 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 (15 Juni 2020): 248–49, <https://doi.org/10.22146/jmh.40268>.

<sup>35</sup> Abd al-Wahab Khalaf, *Ushul al-Fiqh*, 216–17.

<sup>36</sup> Ahmad bin al-Syaikh Muhammad al-Zarqā, *Syarh Qawaid al-Fiqhiyah*, 2nd ed., Juz 1 (Damaskus: Dar al-Qalam, 1989), 147.

<sup>37</sup> Wadud, *Qur'an and Woman*, 1999, 87–88.

<sup>38</sup> Emy Rachmawati dan Burhanudin Harahap, "Justice Dimensions of Islamic Inheritance Law in Determining The Inheritance Rights Of Parents, Children and Husband/Wive," *International Journal of Multicultural and Multireligious Understanding* 5, no. 3 (13 Juli 2018): 288, <https://doi.org/10.18415/ijmmu.v5i3.338>.



function and services, so it is possible that one person's share with another can be distinct and does not need to be identical<sup>39</sup>.

In accordance with Aristotle's theory of distributive justice, interpretation experts also provide explanations regarding the case of differences in the inheritance shares of males and female, based on the role of men as family providers who are expected to provide for their wives and children. In the meantime, women are not responsible for such upkeep, so the property they own is solely theirs. This difference in duties is one of the separate philosophies explaining why, in certain situations, males receive a larger share than females. In addition, Muhammad Alī al-Shabunī revealed that the application of the 2:1 principle for males and females in inheritance contains a measure of wisdom. This is because males have greater financial needs than females for household upkeep, trade asset management, employment, and other responsibilities.<sup>40</sup> Meanwhile, women are not legally held accountable for this duty. In his work *Tafsir al-Maraghī*, Ahmad bin Mustafā al-Maraghī made a similar assertion<sup>41</sup>.

Muhammad Mutawallī al-Sya'rawī stated, in response to the accusation of inequity regarding women's inheritance share by those who demanded equality in distribution, "Look at the justice here. The man is obligated to provide for his wife, and the woman is obligated to be provided for by the man; therefore, the man's half share for the woman will be ample for her if she remains unmarried. If she marries, she will retain her share of the inheritance and will still have a spouse to provide for her. So which has the greater share? Certainly the lady. The 2:1 concept is a reasonable one, taking into account the diverse spheres of influence held by men and women. Furthermore, the 2:1 principle cannot be deemed unjust on the basis of reason and science, as science acknowledges the idea of distributive fairness. Abbas Shuman, in this regard said that equality in inheritance is not only unfair, but also against Islamic law. He went on to argue that women can already inherit more than males, therefore calls for gender equality in this area are unjust.<sup>42</sup>

Wadud's argument by citing the case of a daughter who provides for her mother, certainly cannot be used as a basis for generalizing regarding the redistribution of the 2:1 provision in inheritance. This is because the example is only a case in point. In addition, it is also because the child's maintenance to his mother is a form of *bir al-walidayn* (doing good to parents) which is a dimension of worship. So it becomes ironic if a form of worship is projected as a transactional form which is then used as an excuse to demand more inheritance from other heirs. More than that, Wadud's idea by suggesting considerations that must be made in the distribution of inheritance is weak because it only explains the indicators of consideration suggestions which include<sup>43</sup>; 1) Distribution to surviving male and female relatives;

<sup>39</sup> Yovi Cajapa Endyka, Muhamad Muhdar, dan Abdul Kadir Sabaruddin, "Environmental Justice in Intra Generations: An Overview of Aristotle's Distributive Justice to Coal Mining," *Indonesian Comparative Law Review* 3, no. 1 (31 Desember 2020): 28, <https://doi.org/10.18196/iclr.v3i1.11234>.

<sup>40</sup> Muhammad 'Ali al-Shabunī, *Shafwat al-Tafasir*, 240.

<sup>41</sup> Ahmad bin Mushtafa al-Maraghy, *Tafsir al-Maraghy*, 1 ed., Juz 4 (Mesir: Syarakah Maktabah wa Mathba'ah Mushtafa Al-Baby al-Halby wa Awladih, 1946), 196.

<sup>42</sup> "Calls for Gender Equality in Inheritance Is against Islamic Teachings: Al-Azhar," *Egypt Independent* (blog), 16 Agustus 2017, <https://www.egyptindependent.com/calls-gender-equality-inheritance-islamic-teachings-al-azhar/>.

<sup>43</sup> Wadud, *Qur'an and Woman*, 1999, 87–88.



2) Some wealth can be inherited; and 3) Consideration must be given to the circumstances of the heirs left behind, their benefit to the deceased (heir), and the benefit of the wealth inherited. The weakness of this idea is that it does not provide a tangible format that is more specific about how Wadud wants to redistribute. If Shahrur gives his idea of redistribution with his theory of *hudud*<sup>44</sup>, Amina Wadud only provides recommendations that need to be considered in the distribution of inheritance without providing specifications for the form of redistribution of inheritance that she wants. Of course, this shows an incomplete or incomprehensive reading of the Qur'an in terms of inheritance.

### Conclusion

For Wadud, the 2:1 provision between male and female shares is not absolute because it is considered as one of the variations of the Islamic inheritance distribution model. Wadud calls for a reinterpretation of inheritance and a more equitable distribution of inheritance to women by proposing the following considerations: 1) Distribution to living male and female relatives; 2) Some wealth may be inherited; and 3) Consideration must be given to the circumstances of the heirs left behind, their benefit to the deceased (heir), and the benefit of the wealth inherited. A critical study of Wadud's thoughts on inheritance shows that Wadud seems to generalize the 2:1 provision on the share of men and women. In fact, the provisions related to 2:1 are only in certain cases, namely when sons are with daughters and when brothers or fathers are with biological or fathers' sisters. Wadud's demand for reinterpretation to produce a redistribution of inheritance shares cannot necessarily be done just like that considering that to do so requires adequate interpretive science tools so that the results obtained are not based on free reason alone. Moreover, the Qur'anic provisions in the inheritance verse are *qath'i* provisions so that there is no justification for conducting *ijtihad* which is *dzanny* in clear or *qath'i* texts. In relation to the call for a more equitable distribution of women's inheritances, It's important to realize that fairness scientifically isn't necessarily construed in terms of equality. In this instance, Aristotle explained that there are two types of justice: commutative justice and distributive justice. Wadud's ideas in terms of inheritance are weak because they do not provide a tangible format that is more specific about how redistribution is desired based on the considerations she proposes. This shows an incomplete or incomprehensive reading of the Qur'an in terms of inheritance.

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<sup>44</sup> Muhammad Syahrur, *Nahw Ushul Jadidah lilfiqh al-Islami* (Damaskus: Al-Ahali li al-Thabā'ah wa al-Nasyr wa al-Tauzi', 2000).



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