

# ISLAMIC INHERITANCE SYSTEMATICS IN THE CITY OF BINJAI (CASE STUDY OF THE DIVISION OF INHERITANCE OF DAUGHTER AND BIOLOGICAL UNCLE)

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**Abstract:** The problem of inheritance that is often a problem in society is when a dead leaves only daughters so that the father's brother gets the inheritance because there are no barriers to inheritance. In general, the dead's wife and daughter are not willing to leave the inherited properties due to the roles of the father's biological brother as long as the dead ( father ) does not play a maximum role as guardian. However, if the biological uncle's share is not given, it is feared that there will be damage to the family relationships between the biological uncle and the dead daughter. So later, in Binjai City, the biological uncle was still given the inheritance, but only part of the actual portions. This study analyzes the practice of inheritance settlement between uncles and daughters in the Binjai City community and the legal arguments of religious leaders who play a role in it. The research method used is field-qualitative with a normative approach and legal sociology. This research found that in solving the distribution of inheritance between daughters when dealing with paternal brothers in Binjai City, there are generally two ways of settlement, namely: First, the clergy want to remain consistent in applying the provisions of inheritance law by traditional fiqh, namely the father's biological brother gets the share of the heir when dealing with an only daughter. Second, scholars try to update the meaning of Islamic inheritance law by placing the position that a daughter can wear the hijab from her father's brother.

**Keywords:** *inheritance; daughter; biological uncle*

**Abstrak:** Masalah waris yang kerap menjadi persoalan di tengah masyarakat adalah ketika mayit hanya meninggalkan anak perempuan, sehingga saudara laki-laki dari pihak ayah mendapatkan harta warisan disebabkan tidak terdapat penghalang waris. umumnya pihak isteri si mayit dan anak perempuannya tidak rela harta warisan keluar dari rumah disebabkan peran saudara laki-laki kandung pihak ayah selama si mayit (ayah) tidak berperan maksimal sebagai wali. Namun jika bagian paman kandung tidak diberikan, dikhawatirkan terjadi rusaknya hubungan keluarga antara paman kandung dengan anak perempuan mayit. Maka kemudian di Kota Binjai, paman kandung masih diberi harta warisan namun hanya sebagian dari bagian sebenarnya. Penelitian ini menganalisis praktik penyelesaian kewarisan antara paman dan anak perempuan pada masyarakat Kota Binjai dan argumentasi hukum tokoh agama yang berperan di dalamnya. Metode penelitian yang digunakan adalah kualitatif-lapangan dengan pendekatan normatif dan sosiologi hukum. Penelitian ini menemukan bahwa penyelesaian pembagian waris antara anak perempuan disaat berhadapan dengan saudara laki-laki dari pihak ayah di Kota Binjai, umumnya terdapat dua cara penyelesaian, yaitu: Pertama, ulama ingin tetap konsisten menerapkan ketentuan hukum waris sesuai dengan fikih tradisonal yaitu saudara laki-laki kandung dari pihak ayah mendapatkan bagian dari ahli waris ketika berhadapan dengan anak perempuan tunggal. Kedua, ulama mencoba memperbarui makna hukum kewarisan Islam itu sendiri dengan menempatkan posisi anak perempuan dapat menghijab saudara laki-laki dari pihak ayah.

**Kata Kunci:** *waris; anak perempuan, paman kandung.*

## Introduction

The emergence of ideas and criticisms in Islamic inheritance law cannot be separated from scholars' paradigm and interpretation approaches. This has given birth to several different groups of thought contradicting Islamic inheritance law's current dynamics.<sup>1</sup>

First, scholars who want to consistently apply the provisions of inheritance law under traditional fiqh in the distribution of inheritance. This opinion follows what is specified textually in the Koran and cannot be disputed or changed. Second, scholars try to renew the meaning of Islamic inheritance law itself. According to them, the law of inheritance should not be seen from the numbers assigned but from the spirit of justice hidden behind the numbers.<sup>2</sup>

Third is the view of researchers who try to get out of these two points. Agree with the opinion of the second group of scholars that the law of inheritance should not be seen from the numbers set but from the spirit of justice that is stored behind that number.<sup>3</sup> But it was still maintaining family values because it is undeniable that in most cases in society, especially in the City of Binjai, a father's brother is not given an inheritance by a daughter. After all, she is veiled, which will impact the loss and damage the family relationship between the two. Therefore, in the city of Binjai, religious leaders play a role in giving shares to brothers by taking the sadaqah path as a solution to maintain family relations between uncles and daughters of the deceased so that when dividing inheritance, daughters are required to give a portion of

assets inheritance to uncle (brother from the father's side) through charity with an amount based on propriety to maintain family values.

As explained by M. Amin: When dividing the inheritance when the deceased left only daughters without sons, and when dealing with the father's brother. Then the solution is that the father (father's brother) is given a share of the inheritance through charity based on decency. This practice has been going on for a long time and to this day. This is based on justice and benefits to maintain the integrity of family relationships..<sup>4</sup>

Rosmah, the wife of the late Abdurahman, explained that when her husband died, she only gave her brother-in-law (her husband's biological brother) a share based on affection through the concept of alms to maintain friendly relations, even though they did not have sons. Men are only daughters but do not place the brothers of their deceased husbands as ashabah.

Because according to her (Rosmah), she and her daughter can be responsible for managing the deceased's estate for the needs of the family without burdening her husband's family, especially her in-laws, so according to her, it is inappropriate if her brother-in-law is still given the ashabah share of her husband's property. It was further explained through the distribution of inheritance that only shows the husband's brother by giving Asaba until now, the family relationship between them is maintained because they can understand each other.<sup>5</sup>

An explanation regarding the distribution of inheritance when biological uncles deal with daughters was explained by Ruslan that when his brother died, he did not leave sons, only daughters, and at the

<sup>1</sup> Syarief Husien and Akhmad Khisni, 'Hukum Waris Islam Di Indonesia (Studi Perkembangan Hukum Kewarisan Dalam Kompilasi Hukum Islam Dan Praktek Di Pengadilan Agama )', *Jurnal Akta*, 5.1 (2017) <<https://doi.org/10.30659/akta.v5i1.2533>>.

<sup>2</sup> Ismail Ismail, 'The Philosophical Values of Islamic Inheritance Law', *INNOVATIO: Journal for Religious Innovation Studies*, 20.2 (2020) <<https://doi.org/10.30631/innovatio.v20i2.112>>.

<sup>3</sup> Fadlih Rifenta and Tonny Ilham Prayogo, 'Nilai Keadilan Dalam Sistem Kewarisan Islam', *Al-Manahij: Jurnal Kajian Hukum Islam*, 13.1 (2019) <<https://doi.org/10.24090/mnh.voi1.2117>>.

<sup>4</sup> Wawancara dengan M. Amin selaku tokoh masyarakat dan agama di Kota Binjai. Tanggal 12 September 2021.

<sup>5</sup> Wawancara dengan Rosmah selaku masyarakat Kota Binjai yang memberikan bagian harta warisan berdasarkan konsep sedekah kepada saudara laki-laki suaminya saat berhadapan dengan anak perempuan. Tanggal 02 Juli 2022.

moment of inheritance distribution, our extended family gathered and carried out the distribution of inheritance as a family. Because it so happened that the children of the deceased had grown up.<sup>6</sup>

When the distribution of inheritance was explained that I fiqh got a share of my brother's inheritance, at that time, it was explained how much I should have received, but now I have forgotten. However, it was also demonstrated that according to the country's law, I had no right to receive it because state law did not differentiate between boys and girls. However, to maintain my family relationship, my brother's family gave me based on their agreement. When giving out assets from my brother's inheritance, I was asked if we were sincere with each other; of course, I said yes.

Actually, for me, the most important thing is that family relations are maintained and assets can be searched for; besides, honestly, I don't hope for these assets because I realize there is no sweat for me there from my brother's help, so why should I force myself to get them? Meet the needs of his family life. Until now, the family relationship between us, Alhamdulillah, is still well maintained.<sup>7</sup>

This problem is what is base on researcher For feels need do study specifically related inheritance in the analysis Islamic law in the formwork write scientific with the title : Systematics Distribution of Islamic Inheritance in the City of Binjai, Case Study Distribution Against Daughters And Biological Uncles.

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<sup>6</sup> Nur Qalbi Husain and Musyifikah Ilyas, 'PRAKTIK HUKUM KEWARISAN PADA MASYARAKAT ISLAM (Studi Kasus Tahun 2017-2019)', *Qadauna: Jurnal Ilmiah Mahasiswa Hukum Keluarga Islam*, 1.2 (2020) <<https://doi.org/10.24252/qadauna.v1i2.12966>>.

<sup>7</sup> Wawancara dengan Ruslan selaku masyarakat Kota Binjai yang menerima bagian harta warisan berdasarkan konsep sedekah dari keluarga almarhum saudara laki-lakinya disaat berhadapan dengan anak perempuan. Tanggal 06 Juli 2022.

## Literature Review

### The division of inheritance when daughters face brothers from the father's side according to Imam Syafii's patrilineal teachings

#### 1. Share of inheritance for a daughter.

According to Amir Syarifuddin, daughters or sons are heirs who will always get a share of the inheritance. They will not be veiled (obstructed) by any heirs. Therefore, this daughter is entitled to a percentage of the inheritance.<sup>8</sup> Furthermore, Neng Djubaedah explained daughters in Islamic inheritance law are dzawul faraidh, namely heirs whose share of inheritance has been determined with certainty in the Quran and Hadith. If the heir leaves a daughter, the daughter gets half (1/2) of the inheritance left behind..<sup>9</sup>

#### 2. Share of inheritance for several siblings.

The discussion regarding the share of inheritance for you cannot be separated from defeat. This is because you can only appear as heirs if the heir dies in a state of loss or dies.<sup>10</sup>

Based on Syafii's patrilineal teachings, it is said to be kalalah if the heir dies without leaving male children and male offspring through sons and the heir's father has died first.<sup>11</sup> In this case, there is only one daughter, so that several siblings can appear as heirs.<sup>12</sup>

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<sup>8</sup> Akhmad Haries, 'Analisis Tentang Studi Komparatif Antara Hukum Kewarisan Islam Dan Hukum Kewarisan Adat', *FENOMENA*, 6.2 (2014) <<https://doi.org/10.21093/fj.v6i2.169>>.

<sup>9</sup> Zakiul Fuady Muhammad Daud and Raihanah Bt Azahari, 'MENYOAL REKONSTRUKSI MAQASHID DALAM PEMBAHARUAN HUKUM KEWARISAN ISLAM', *Jurnal Ilmiah Islam Futura*, 18.1 (2019) <<https://doi.org/10.22373/jiif.v18i1.2843>>.

<sup>10</sup> Evra Willy, 'Kalalah in Alquran and Its Interpretation According to Suni and Syiah Imâmiyyah.', *Ahkam: Jurnal Ilmu Syariah*, 14.1 (2014) <<https://doi.org/10.15408/ajis.v17i1.1250>>.

<sup>11</sup> Akbaru Wusto Arham and Elfia, 'Pemikiran Muhammad Syahrur Tentang Kewarisan Kalalah Dan Relevansinya Terhadap Pembaruan Hukum Islam', *Journal Al-Ahkam*, Vol. XXI N (2020).

<sup>12</sup> Naila Farah, 'Hak-Hak Perempuan Dalam Islam', *Yinyang: Jurnal Studi Islam Gender Dan*

### The division of inheritance when daughters face brothers from the father's side according to Hazairin's Bilateral Teachings

#### 1. Share of inheritance for a daughter.

In the portion of inheritance for children, there is no difference between the three teachings of Islamic heritage. Thus, a daughter's share is  $\frac{1}{2}$ ; the same is true according to Shafii's patrilineal inheritance teachings.<sup>13</sup>

#### 2. Share of inheritance for several siblings.

According to Amir Syarifuddin, based on Hazairin's bilateral inheritance teachings, kalalah is an heir who dies without leaving sons and daughters and their offspring.<sup>14</sup> In this case, the heir leaves behind a daughter, so some of the siblings left behind by the heir cannot appear as heirs.<sup>15</sup> Using Hazairin's bilateral teaching, the assets left by the heirs are somewhat divided. Therefore, it happens rad. In the opinion of Mohammad Daud Ali, rad is the return of the remaining (excess) assets to the existing heirs according to the level of each part.<sup>16</sup>

### The division of inheritance when daughters face brothers from the father's side according to KHI

#### 1. Share of inheritance for a daughter.

It is stated in Article 176 KHI that only

one girl gets half of the share ( $\frac{1}{2}$ ). Thus, based on the KHI, a child receives  $\frac{1}{2}$  of the inheritance.

#### 2. Share of inheritance for several siblings.

Returning to Neng Djubaedah's opinion, according to KHI, kalalah is a person who dies without leaving children, both sons and daughters, and their offspring, and the father of the heir has died before the heir.<sup>17</sup>

In this case, there is a daughter so there is no kalalah.<sup>18</sup> Thus, these siblings cannot appear as heirs. It can also be seen that the settlement of this case is the same as using Hazairin's bilateral teaching; the assets left by the heirs are not entirely divided. Because the treasure left behind is not used up, then there is a radd.<sup>19</sup>

### Methods

This research is qualitative field research<sup>20</sup> with a normative approach and legal sociology.<sup>21</sup> Primary data is taken from religious and community leaders as direct actors in inheritance distribution in Binjai City. Data was collected through interviews, observation, and documentation, then analyzed with evaluation, interpretation, construction, and argumentation techniques.<sup>22</sup>

Anak, 2020  
<<https://doi.org/10.24090/yinyang.v1i2.3953>>.

<sup>13</sup> Muh Sudirman, 'MUNASAKHAH DALAM SISTEM KEWARISAN ISLAM Oleh: MUH . SUDIRMAN Dosen Fakultas Ilmu Sosial Universitas Negeri Makassar Email: Sumantri123@yahoo.Com', *Supremasi*, XI.Jurnal Pemikiran, Penelitian Ilmu-ilmu Sosial, Hukum, dan Pengajarannya (2016).

<sup>14</sup> Muhammad Hasbulloh Huda, 'KONSEP MASHLAHAH DALAM PEMBAGIAN AHLI WARIS PENGANTI', *MAQASHID Jurnal Hukum Islam*, 2.2 (2019)  
<<https://doi.org/10.35897/maqashid.v2i2.194>>.

<sup>15</sup> Andi Tenri Leleang Tenri Leleang and Asni Zubair Asni Zubair, 'PROBLEMATIKA DALAM PENERAPAN HUKUM WARIS ISLAM', *Al-Bayyinah*, 3.2 (2019) <<https://doi.org/10.35673/al-bayyinah.v3i2.477>>.

<sup>16</sup> Iwannudin, 'Ahli Waris Pengganti Menurut Hazairin', *Mahkamah*, 1.2 (2016).

<sup>17</sup> Ira Hasnita and Asni Zubair, 'TINJAUAN HUKUM ISLAM TERHADAP AMPIKALE DALAM SISTEM KEWARISAN MASYARAKAT BUGIS ', *AL-SYAKHSIYYAH Jurnal Hukum Keluarga Islam Dan Kemanusiaan*, 1.2 (2019)  
<<https://doi.org/10.35673/as-hki.v1i2.476>>.

<sup>18</sup> PA Fatimah, 'Waris Kalalah Dalam Pandangan Wahbah Az-Zuhaily (Tafsir Qs. Al-Nisa'(4) Ayat 12 Dan Ayat 176)', *Repository.Uinjkt.Ac.Id*, 4, 2011.

<sup>19</sup> Husien and Khisni.

<sup>20</sup> Yoki Yusanto, 'Ragam Pendekatan Penelitian Kualitatif', *JOURNAL OF SCIENTIFIC COMMUNICATION (JSC)*, 1.1 (2020)  
<<https://doi.org/10.31506/jsc.v1i1.7764>>.

<sup>21</sup> Ioannis Kampourakis, 'Empiricism, Constructivism, and Grand Theory in Sociological Approaches to Law: The Case of Transnational Private Regulation', *German Law Journal*, 21.7 (2020) <<https://doi.org/10.1017/glj.2020.82>>.

<sup>22</sup> Yuli Nurmallasari and Rizki Erdiantoro, 'Analisis Deskriptif Kualitatif', *Quanta*, 4.1 (2020).



## Result and Discussion

### The practice of completing inheritance between uncles and daughters in the Binjai City community

About the share of daughters when dealing with uncles (father's siblings) in Binjai City, there are 2 (two) ways of resolution. First, most scholars in Indonesia think that if a daughter is dealing with a sibling from the father's side, then the daughter gets  $\frac{1}{2}$  of the inheritance, and the sibling from the father's side gets  $\frac{1}{6}$  and added asabah if there is any remaining assets, this is following the provisions of traditional inheritance fiqh (Syafi'i school). Second, some religious leaders/ulama wear the hijab of their father's siblings when dealing with daughters, based on the value of justice.

Thus, it can be concluded that the practice of dividing inheritance between uncles and daughters in the people of Binjai City. With an only daughter) in the distribution of an estate. This opinion follows what is specified textually in the Koran and cannot be disputed or changed. Second, the scholars who try to renew the meaning of Islamic inheritance law themselves say that inheritance law should not be seen from the set numbers but from the spirit of justice hidden behind them.

As explained by the first informant:

M. Amin: When dividing the inheritance when the deceased left only daughters without sons and when dealing with the father's brothers. Then the solution is that the father (father's brother) is given a share of the inheritance through charity based on decency. This practice has been going on for a long time and to this day. This is based on justice and benefits to maintain the integrity of family relationships..<sup>23</sup>

Second informant:

Rosmah, the wife of the late Abdurahman, explained that when her husband died, she only gave her brother-in-law (her husband's biological brother) a

share based on affection through the concept of alms to maintain friendly relations, even though they did not have sons, only daughters but did not place her deceased husband's brother as ashabah. Because according to her (Rosmah), she and her daughter can be responsible for managing the deceased's estate for the needs of the family without burdening her husband's family, especially her in-laws, so according to her, it is inappropriate if her brother-in-law is still given the ashabah share of her husband's property. It was further explained through the distribution of inheritance, which only provides the husband's brother by giving asaba. Until now, their family relationship has been maintained because they can understand each other.<sup>24</sup>

Second informant:

An explanation regarding the distribution of inheritance when biological uncles deal with daughters was explained by Ruslan that when his brother died, he did not leave sons, only daughters, and at the moment of inheritance distribution, our extended family gathered and carried out the distribution of inheritance as a family. , because it so happened that the children of the deceased had grown up. When the distribution of inheritance was explained that I fiqh got a share of my brother's inheritance, at that time, it was explained how much I should have received, but now I have forgotten. However, it was also demonstrated that according to the country's law, I had no right to receive it because state law did not differentiate between boys and girls. However, to maintain my family relationship, my brother's family gave me based on their agreement. When giving out assets from my brother's inheritance, I was asked if we were sincere with each other; of course, I said yes.

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<sup>23</sup> Wawancara dengan M. Amin selaku tokoh masyarakat dan agama di Kota Binjai. Tanggal 12 September 2021.

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<sup>24</sup> Wawancara dengan Rosmah selaku masyarakat Kota Binjai yang memberikan bagian harta warisan berdasarkan konsep sedekah kepada saudara laki-laki suaminya saat berhadapan dengan anak perempuan. Tanggal 02 Juli 2022.

In fact, for me, the most important thing is to maintain family relations; property can be searched for; in fact, I don't really hope for this treasure because I realize that from my brother's property, I don't sweat it there, so why should I force myself to get it, wasn't it my brother when he was still alive? Work hard solely to meet the needs of his family life. Until now, the family relationship between us, Alhamdulillah, is still well maintained.<sup>25</sup>

As for the impact of family relations arising from the hijab of a father's brother by a daughter, especially in North Sumatra, from the results of research conducted, it can be explained as follows:

First informant: "Our parents only have two daughters, me and my sister. After my father passed away during the division of the inheritance, we (mother, I and my younger sibling) did not agree that the inheritance should be given to my father's brother (uak). Because I understand that you will receive an inheritance if you are still a child, so you need a guardian to look after your father's assets when you die so that the assets managed by you can be productive and used for our needs, and you are given a portion of the inheritance as a service to you, who has a responsibility towards us. But now we are in an adult position, which means that we are legally considered competent to manage assets so that my father has no right to receive from the inheritance left by my father. Of course after that our relationship with Uak did not improve (we didn't talk and no longer kept in touch with each other) even with his children." From the impact of the distribution of inheritance, it is true that our family relationship with our uncles/uncles cannot be said to be harmonious or like when my father was still around, this was marked when my youngest brother seemed that all uncles/uncles avoided him when he

was needed at his wedding.<sup>26</sup>

The second informant, Julaiha:

In 2011, we divided the inheritance in the family from the assets left by the father. When my father passed away, we were a family left behind consisting of my mother, me (Julaiha) as the oldest daughter, and my two younger sisters. When dividing the inheritance, it was only shared with us (the deceased's mother and children), while we did not give it to our father's brothers and sisters. Because we thought that all this time, when our father died, our uncle and uncle didn't want to know about our condition, this means that the father's brother (uncle/uncle) does not carry out his role as our uncle/uncle, which sometimes has an obligation in that role. Therefore, when our uncle/uncle came to us and said that they had rights to the property left by our father, we told that there was no share of uncle/uncle there because so far, uncle/uncle has not carried out his role/obligations as an uncle/uncle, so There are also no uncle/uncle rights because we consider obligations and rights to be two things that cannot be separated from each other.<sup>27</sup>

The third informant, Puspita Sari: When dividing the inheritance left by our father, we do not give a share to the late father's brothers, namely his younger siblings. Even though people tell us that our father's siblings have the right according to Islamic religious law, we consider it the opposite; that is, they have no right to the property left by our father; why do I say that? Because

<sup>26</sup> Informan dalam penelitian ini berinisial M, yang tidak ingin identitasnya dipublikasikan, sebab dianggap aib dalam hubungan berkeluarga. Keterangan yang sama juga peneliti peroleh dari wawancara berinisial H dan S yang juga tidak berkeinginan identitasnya diketahui. Kota Binjai, 22 Februari 2023. Hal yang sama juga peneliti temukan dari keterangan informan lainnya seperti L dan S, yang keduanya juga tidak izin identitasnya diketahui, Kota Binjai, 08 Februari 2023.

<sup>27</sup> Faridah, pelaku waris anak perempuan yang menghibab saudara laki-laki dari pihak ayah, masyarakat Kota Binjai. Wawancara, Tanggal 14 Februari 2023.

<sup>25</sup> Wawancara dengan Ruslan selaku masyarakat Kota Binjai yang menerima bagian harta warisan berdasarkan konsep sedekah dari keluarga almarhum saudara laki-lakinya disaat berhadapan dengan anak perempuan. Tanggal 06 Juli 2022.

when my father died, our economic conditions were not so good; even though we were not classified as poor people, we were left orphans by our father, and when we were orphans, it was our mother who fought for us alone, from farming and gardening which was said to be enough to send us to school and at times like that it was the mother who had to be nimble in looking for additional businesses such as selling side at home. We don't see our father's brothers during our troubles. Now, when one of the lands left by my father and part of the garden was sold at a high price due to the presence of the Kualanamu airport, the sale money was opened for a business to eat and drink in the form of a cafe. It was in demand, and that's when we saw my father's relatives coming, saying that they also had rights there and hoping to get a share of the inheritance left by my father, so we didn't give it away at all, even though in the end until now our relationship is no longer as good as the relationship between nephew and uncle, in general, should be.<sup>28</sup>

From the explanation, the informant that the practice of dividing inheritance between daughters when dealing with brothers from the father's side, with the condition of daughters blocking the father's brothers, has an impact on kinship/family relations that are not getting along and harmonious, because the families left behind feel that the father's brother does not have the property rights left by his father, because during and or when after the father passed away, the brother did not carry out his role and responsibility as uncle/uncle to his nephew, so on that basis, if it is still given an inheritance to the father's brother, the simayit children feel cheated or unfair. And vice versa, when the father's brother is not shown part of the inheritance left by his brother, and the daughter is positioned in a hijab without a son, they feel wronged

because, according to their understanding, in Islamic inheritance, they (brothers) father) has the right to the property left by his brother by occupying the position of ashabah, because his brother only leaves daughters without sons and other ashabah who are more closely related to Simayit than them.

### **The role and legal arguments of religious leaders in the settlement of inheritance between uncles and daughters in the people of Binjai Cit**

Religious figures have a significant role in solving inheritance problems in Indonesia. This is because the culture of society still respects a person's character, such as leaders of Islamic organizations, organizational leaders, and other influential figures. Binjai City religious leaders have argued that daughters can wear the hijab from their uncle (father's brother), as explained by Nurbentuah as a Nahdlatul Ulama figure in Binjai City:

"The discussion about the position of daughters with siblings in Islamic inheritance law is related to the condition in which a person dies leaving daughters (one or more) with siblings, both male and female. The position of a daughter can be hijab (reducing or completely eliminating the inheritance rights of siblings to obtain inheritance. Q.S An-Nisa verse 11 has unequivocally stipulated that daughters are heirs who already have a certain share (ash habul furud). That is, if the daughter inherits alone, then the daughter gets  $\frac{1}{2}$  of the share, while if the daughter inherits in a situation of more than one person, then she gets  $\frac{2}{3}$  of the inheritance. Meanwhile, if the daughter inherits together with the inheritors' siblings, there is no texts which regulate strictly. To examine the position of daughters inheriting with siblings, it is necessary to examine the meaning of the word walad found in paragraphs 11, 12 and paragraph 176 which are interrelated."<sup>29</sup>

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<sup>28</sup> Puspita Sari, pelaku waris anak perempuan yang menghijab saudara laki-laki dari pihak ayah, masyarakat Kota Binjai. Wawancara, Tanggal 22 Maret 2023.

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<sup>29</sup> St. Hadijah Wahid and Eril, 'PELAKSANAAN HUKUM KEWARISAN ISLAM PADA MASYARAKAT ADAT KARAMPUANG DI

If you look at Q.S An-Nisa verse 11, the position of a daughter is that she is an heir who can wear the hijab of several other heirs and does not say the verse says that a daughter can wear the hijab hirman uncle (father's brother).<sup>30</sup> This means that having a daughter heir will reduce inheritance rights, several other heirs, namely:<sup>31</sup>

1. The mother will get 1/3 of the inheritance rights if the heir has no children, and if she has offspring, she will get 1/6 of the inheritance
2. The husband will get 1/2 of the inheritance rights if the heir has no children, and if he has offspring, he will get ¼ of the inheritance.
3. The wife will get 1/4 of the inheritance rights if the heir has no children, and if he has offspring, he will get 1/8 of the inheritance.

Furthermore, Nurbentuah explained that;

"The position of daughters when inheriting with siblings is a big discussion in the development of Indonesian inheritance law, this is due to differences in perceptions of fiqh and the legal order built in Indonesia, namely the KHI and the Rulings of the Religious Courts in Indonesia."<sup>32</sup>

This explanation is also under several decisions of the Religious Courts, which ruled that daughters can wear hijab to uncles (paternal brothers); some of these jurisprudences include;

1. Supreme Court Cassation Decision No. 86 K/AG/1994 dated 20 July 1995

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KECAMATAN BULUPODDO KABUPATEN SINJAI', *Jurnal Al-Ahkam: Jurnal Hukum Pidana Islam*, 2.1 (2020) <<https://doi.org/10.47435/al-ahkam.v2i1.326>>.

<sup>30</sup> Ahmad Suganda, 'Konsep Kalālah Dalam Fiqh Waris The Concept of Kalālah in Inheritance Jurisprudence Ahmad', *At-Tatbiq*, 04.1 (2020).

<sup>31</sup> Wahidah Wahidah, 'RELASI SETARA ANTARA LAKI-LAKI DAN PEREMPUAN DALAM KASUS KEWARISAN ISLAM (FARAIDH)', *Syariah Jurnal Hukum Dan Pemikiran*, 18.1 (2018) <<https://doi.org/10.18592/sy.v18i1.2144>>.

<sup>32</sup> Hairul Ulum and STIS, 'Analisis Komparatif Perspektif KHI Dan Fiqh Imam Syafi'i Tentang Hukum Ihdad Bagi Perempuan', *Qolamuna*, 4 (2018).

2. Supreme Court Cassation Decision No. 184 K/AG/1994 dated 30 September 1995

3. Supreme Court Cassation Decision No. 327 K/AG/1994 dated 26 February 1995

Mukhtarivansyah as, a religious figure and lecturer in the Islamic Family Law Study Program at STAI Syekh H. Abdul Halim Hasan, explained that;

"The position of relatives whose daughters veil is inseparable from the implicit understanding of the provisions of Article 174 paragraph (2) of the Compilation of Islamic Law, which states that: If all heirs are present, only children, fathers, mothers, widows or widowers are entitled to inheritance. Extensive interpretation (expanded interpretation) of the provisions of Article 174, paragraph 2 of the Compilation of Islamic Law, provides an understanding that the presence of a child as an heir will cause you to be veiled. It is even more conical when you understand the inheritance provisions in Article 181 and Article 182 of the Compilation of Islamic Law, where you will become the heir when you have no children."<sup>33</sup>

Differences in the method of settlement of inheritance between daughters and uncles (brothers from the father's side) also occur between Sunni inheritance law interpreting verses of Surah An-Nisa verses 11 and 12, that this verse was revealed regarding the distribution of inheritance to heirs consisting of a wife, two daughters and two heirs, where the two siblings receive inheritance rights as 'ashabah.<sup>34</sup>

Whereas abolishing sibling inheritance rights when there are daughters is an idea that equates daughters with sons in preventing siblings, as this idea originates

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<sup>33</sup> Rohidin Rohidin, 'Historisitas Hukum Kewarisan Islam Perspektif David S. Powers Dan Implementasinya Di Indonesia', *Pandecta: Research Law Journal*, 14.1 (2019) <<https://doi.org/10.15294/pandecta.v14i1.18954>>.

<sup>34</sup> Hendri Hermawan Adinugraha, Fakhrohin, and Ahmad Anas, 'Reaktualisasi Hukum Islam Di Indonesia (Analisis Terhadap Teori Hudūd Muhammad Syahrur)', *Islamadina Jurnal Pemikiran Islam*, 19.1 (2018).



from the attitude of Ibn 'Abbas and Ibn Jubair, who interpreted the word *walad* in Surah an-Nisa verse 76 as sons and daughters so that the word *kalalah* is a person who has no children (boys and girls) and doesn't have parents.<sup>35</sup> According to Ibn 'Abbas, if a *kalalah* occurs when there are no children and relatives, then the *mukhalafah* understands when there are children, then siblings have no inheritance rights.<sup>36</sup> This understanding was followed by Ibn Hazm who stated that there was no difference between sons and daughters when placing the husband or wife's part regarding the presence of children.<sup>37</sup> The construction of thinking used by Ibn Hazm<sup>38</sup> followed by Shia<sup>39</sup> which states that,<sup>40</sup> sons and daughters will hinder sibling inheritance.

The contradiction of Ibn Abbas's opinion with the *Jumhur Ulama* in stipulating that daughters can wear the hijab for their siblings means expanding the theory of *fiqh* regarding the position of these daughters. Placement of daughters as heirs who wear the hijab will have implications for changes in several inheritance law principles, including (a) eliminating the position of a male relative as *'ashabah* together with the heir's daughter; and (b) eliminating the term *'ashabah ma'al ghari* when daughters are with sisters.<sup>41</sup>

<sup>35</sup> Naskur Naskur, 'ASAS-ASAS HUKUM KEWARISAN DALAM ISLAM (Studi Analisis Pendekatan Al-Qur'an Dan Al-Hadis Sebagai Sumber Hukum Islam)', *Jurnal Ilmiah Al-Syir'ah*, 10.2 (2016) <<https://doi.org/10.30984/as.v10i2.253>>.

<sup>36</sup> Ahmad Suganda, 'Konsep Kalalah Dalam Fiqh Waris', *At-Tatbiq*, 04.1 (2020).

<sup>37</sup> Muhammad 'Ali Ibn Ahmad Ibn Sa'id Ibn Hazm, *Al-Muhalla*, Juz IX, (Mesir: Al-Muniriyyah, 1351 H.), h. 256.

<sup>38</sup> Amir Syarifuddin, *Hukum Kwarisan Islam*, 159. Ibn 'Arabi, *Ahkam Al-Qur'an*, Jilid 1, (Jakarta: Kencana Prenada Media 2006), h.184.

<sup>39</sup> Muhammad Jawwad Al-Mugniyyah, *Al-Fiqh 'ala Madhahib Al-Khamsah*, (Teheran: Muassasah Al-Shadiq, 1998), h.547.

<sup>40</sup> Wahbah Al-Zuhayli, *al-Fiqh Al-Islami wa Adillatuh*, Juz VIII, (Beirut: Dar Al-Fikr, 1985), h. 320.

<sup>41</sup> Wahidah.

## Conclusion

In the practice of resolving inheritance distribution between daughters when dealing with paternal brothers in Binjai City, there are generally two ways of resolution, namely: First, scholars who want to remain consistent in applying the provisions of inheritance law by traditional *fiqh* (siblings from the father's side get the share of the heir when dealing with an only daughter) in the distribution of inheritance. This opinion follows what is specified textually in the Koran and cannot be disputed or changed. Second, scholars who try to renew the meaning of Islamic inheritance law itself by placing a daughter's position can block uncles (paternal brothers).

The legal argument by religious leaders from the city of Binjai about the hijab of biological brothers from the father's side when dealing with daughters is inseparable from the implicit understanding of the provisions of Article 174 paragraph (2) of the Compilation of Islamic Law, which states that: If all heirs are present, only children, fathers, mothers, widows or widowers are entitled to inheritance. Extensive interpretation (expanded interpretation) of the provisions of Article 174, paragraph 2 of the Compilation of Islamic Law, provides an understanding that the presence of children as heirs will cause the hijab of siblings. Even more conical when understanding the inheritance provisions contained in Article 181 and Article 182 of the Compilation of Islamic Law, where you will become the heir when you have no children.

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