

Inheritance Distribution in Islam Between Legal Provisions and Dynamics of its Implementation

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ABSTRACT

Faraid law is a decree from Allah SWT which persist and remains constant, as explained in Surah an-Nisa'. The distribution of inheritance to heirs according to the stipulated portions is an obligation and not a mere choice. However, from a management perspective, there is still room for flexibility that is up for discussion as long as it is in accordance with the objectives of Shariah (*maqasid syariah*) and does not violate the heirs' rights to the inheritance. This study seeks to analyze the discrepancy between the fixed rulings in faraid law and the dynamic processes involved in its distribution. It employs a documentation method of exploring the concepts of fixed (*thawabit*) and flexible (*murunah*) rulings in Islamic law, then applying these concepts in managing the inheritances. The study concludes that, from the perspective of the determination of the basic principles of inheritance law, such as the identification of heirs, inheritance methods, and the share of the inheritance, these are decrees from Allah SWT that do not change, as Islamic law has taken into account all the fundamental factors necessary for human life. Therefore, the rulings remain permanent and suitable for all people, regardless of their socio-cultural or socio-economic differences. Meanwhile, from the aspect of the management and planning of the distribution of inheritance, it is dynamic and changes in accordance with the passage of time, socio-cultural and socio-economic factors, or the welfare of the deceased and the heirs.

Keywords: inheritance, faraid law, *thawabit*, *murunah*

INTRODUCTION

One of the most important topics that is heavily emphasized by Islam is the distribution of inheritance, as it involves the transfer of one's ownerships from a deceased person to the living heirs. Precisely defining who is liable to any property owned by the deceased and determining the proper number of shares for each heir are essential. Without a clear guideline, it can lead to chaos within society and ruin relationships among family members. For this reason, Allah SWT has specifically outlined the distribution of inheritance in detail based on verses from the Qur'an in Surah an-Nisa' (11, 12, and 176). In addition, it also has been thoroughly explained through the hadith of the Prophet Muhammad SAW. Both sources are the highest references in Islamic law. Based on these evidence, Islamic scholars underscore the critical importance of discussing methods of inheritance distribution, known as the science of *Faraid*, given its foundational significance in Islamic jurisprudence. Some scholars even state that the study of *Faraid* comes second after the study of *Usuluddin*, which is a study on theology and faith in Islam, because it encompasses a significant part of the Islamic wealth management system. (al-Khin et al., 1992)

Although the law of Islamic inheritance appears to be set and fixed (*thabat*) as a direct command from Allah SWT, the act of implementing this law faces numerous challenges, with the ever-changing dynamics of the society, evolving both socially and economically. The role of Islam as ad-Din, sustained for all humanity

across geographical boundaries, time periods, and civilizations, necessitates the practice of inheritance distribution to be implemented in a more dynamic framework (*murunah*) that aligns with the present-day social circumstances. Moreover, there have been calls to reconsider Islamic jurisprudence while preserving its fundamental principles, as it deemed to be not applicable in the contemporary era, in which also included the principle of Faraid. Scholars have different opinions on whether to accept or reject the concept of reform in *fiqh* due to different interpretations of its meaning. (Rashid Su'ud al-Umari, 2008).

In Malaysia, the re-interpretation of the Qur'an was proposed during the opening speech at the 4th International Qur'an Seminar at the Islamic Centre in Kuala Lumpur, Malaysia in 1994 by Tun Dr. Mahathir bin Mohamad, who was the Prime Minister of Malaysia at the time. According to him, reinterpreting the Qur'an was the only way to restore the glory of Islam in accordance with contemporary demands, with no additional benefit for any individuals, groups, or political purposes. (Wahid Hashim, 1994). The Human Rights and Feminism movements have also challenged the position of Islamic inheritance by influencing the public to demand equal rights and justice without discrimination, which is not align with the Islamic inheritance principle that grants a double share to male relative over females, such as the husband and the son. These social movements have influenced quite a large portion of the Muslim population. On August 17, 2017, President Beji Caid Essebsi of Tunisia urged the Tunisian parliament to divide inheritance equally between men and women during his speech at the 61st National Day celebration. (aljazeera.net). This proposal was met with opposition from Islamic scholars both inside and outside of Tunisia.

Therefore, there must be a clear guideline on what is fixed (*Thawabit*) and what is dynamic, which allows for *ijtihad* or 'innovation' (*murunah*) in the management of Islamic inheritance. If this is not addressed, it could lead to unlawful *ijtihad* that goes against the fundamental principles that have been agreed upon by the Muslim scholars since the time of the Prophet Muhammad SAW. Especially if there are new matters or innovations (*bid'ah*) that are introduced to Islamic law, as the Prophet Muhammad SAW has warned in his hadith: "Beware! Stay away from newly invented matters, for every newly invented matter is an innovation, and every innovation is misguidance." (Narrated by Abu Dawud, Hadith no. 4067).

The balance between the fixed legal principles of Islamic inheritance law (*thawabit*) and the flexibility in its management (*murunah*) in the distribution of inheritance among Muslims is crucial in contemporary Islamic society. This is because today's society faces complex and ever-changing dynamics in fields such as economics, technology, and social issues, which require a more flexible understanding. In this regard, Islamic scholars and intellectuals can utilize the principle of *murunah* to produce relevant *ijtihad*, which remains grounded in *thawabit* but is open to different situations.

If one only relies on static laws without any room for change, Muslims could fall into rigid thinking and be unable to cope with the changing times. On the other hand, if too much focus is given to innovations based on the current situation, it could lead to a violation of the boundaries set by Allah SWT, as stated in His command about the distribution of inheritance to heirs, which means: "These are the boundaries (Shari'ah) set by Allah. Whoever obeys Allah and His Messenger will be admitted by Allah into Paradise under which rivers flow, to abide therein forever, and that is the most outstanding achievement. Moreover, whoever disobeys Allah and His Messenger and exceeds the limits set by His Shari'ah will be admitted by Allah into the Fire, to abide therein forever, and for him is a humiliating punishment" (An-Nisa': 13-14).

Thus, the fixed rulings in inheritance law aim to preserve the authenticity and firmness of Islamic law and maintain the identity of Islam in a multicultural society like Malaysia. Meanwhile, the flexibility in managing inheritance allows Muslims to adapt to these changes and interact effectively in an increasingly open and interconnected world. Overall, the balance between maintaining the law (*thawabit*) and the flexibility in its implementation (*murunah*) is key to ensuring that Islamic teachings

Certainty (Thawabit) and Flexibility (Murunah) in Islamic Shariah

The concept of certainty and flexibility in Islamic law is not a new idea, even though there was no specific discussion on it back in the days. In fact, it has existed since the first revelation was sent down, where fundamental principles including the pillars of faith, the pillars of Islam, and the concept of Ihsan are all fixed

and unchanging (*thabat*) in nature. This is based on the hadith of Angel Jibril asking the Prophet Muhammad SAW about these principles. All the while, the implementation of these principles changes (*taghayyar*) with circumstances. For example, the prayer of a traveler is different from the regular prayer, with fewer units (*rukhsah*), as is the prayer of a sick person who cannot stand, or the voluntary prayer performed while riding that allows the person to perform it sitting. This implementation aligns with the principles of Islamic Shariah that brings mercy to all mankind. Allah SWT says: “And We have not sent you, [O Muhammad], except as a mercy to the worlds.” (al-Anbiya: 107). Therefore, the Prophet Muhammad SAW always chose the easier option in rulings for Muslims, whenever given a choice. This is based on the hadith narrated by Aisha r.a: “Whenever the Prophet SAW was given a choice between two things, he chose the easier one, as long as it was not a sin. If it was a sin, he was the farthest from it.” (Narrated by Muslim, Hadith no. 4419).

The discussion on the concepts of *thawabit* and *murunah* in Islam began to be indirectly addressed in writings on *fiqh* and *usul al-fiqh* during the early (classical) period of Islam. This can be drawn from the writings of Imam Ibn al-Qayyim al-Jawzi (2010) in his book *Ighathah al-Luhfan*, where he explained that the law is divided into two types: The first type is the one that does not change from its original state, regardless of time, place, or *ijtihad*, such as the obligation and prohibition of haram things, the punishments prescribed by Shariah for crimes, and similar matters. There is no change or conflict regarding this. The second type is the one that changes in accordance with the public interest (*maslahah*) depending on time, place, and circumstances, such as the amount of *tazir* punishment, the type, and the nature of *tazir* itself, that varies based on public interest.

This concept developed alongside the development of these two sciences, which gave birth to the sciences of *al-Qawa'id al-Fiqhiyyah* and *al-Maqasid al-Syariyyah*. However, it existed only discreetly within the discussions of those knowledges. It wasn't until the early 20th century, when Western societies made rapid progress in various aspects of life, including advancements in thought, science, and technology as an impact of the Renaissance, that the Muslim world began to experience stagnation and decline. This situation led to calls for reform (*Tajdid*) in Islam, prompting scholars to concentrate on topics of intellectual development that were in line with the living. This situation gave rise to two groups of Islamic intellectuals (thinkers and writers): one group that focused heavily (*ta'asub*) on the flexibility and of legal rulings (dynamic), while the other group steadfastly defended the authenticity (certainty) of the law without allowing room for reform. (Yusof al-Qaradawi, 1976).

From there, it becomes a turning point and the focused discussion on *thawabit* (certainty) and *murunah* (flexibility) in Islamic law started to emerge in the writings of contemporary Islamic scholars. Notable among these are the writings of Prof. Dr. Solah al-Sowi with the title *al-Thawabit wa al-murunah fi al-Masirah al-Amal al-Islami* (1994), Prof. Dr. Yusof al-Qaradawi in *Awamil al-Si'ah wa al-Murunah fi Islam* (2002), Sheikh Jaad al-Haq with *al-Fiqh al-Islami Murunatuhi wa Tatawwaruhu* (2011), and others. In addition to general discussions on the concept of *thawabit* (certainty) and *murunah* (flexibility) in Islam, there are also writings on more specific issues but still of the same concept. These include political Islamic writings of Dalila Chaib (2020) and Sobihah Alawi Khalf (2022), who discussed the certainty and flexibility in Islamic politics and the fundamental principles of flexibility in Islamic politics. Other than that, the flexibility of legal rulings in contemporary issues of *fiqh* concerning women has been addressed by Siti Fatimah Salleh (2015), where she discussed on the social factors that calls for sustainability or transformation of legal rulings. Al-Sowi's thoughts on the certainty and flexibility of legal rulings in *al-wala' wa al-bara'* in his book have also been highlighted. (Muhamad Abdul Malik al-Furqan et.al., 2020). This proves that this concept remains an important subject in academic and scholarly discussions, especially in Islamic universities and contemporary Islamic thought forums that exist today.

Based on the above discussions, the terms *thawabit* or *thabat* (certainty) and *murunah* or *mutaghayyirat* (flexibility) are new terms which are not found in early Islamic writings. *Thabit* generally means to establish something firmly and unchangeably, meaning stable, enduring, and permanent. On the other hand, *mutaghayyir* means to change, shift, or become different from its original state. In terminology, *thabit* refers to matters that have been agreed upon and universally accepted as part of Islam that cannot be changed, while *mutaghayyir* refers to matters that are speculative and open for discussion or *ijtihad*. (Khalid Sulaiman, 2012). Therefore, it can be concluded that the discussion on certainty (*thabat*) and flexibility (*mutaghayyir*) in Islamic law is not a new matter, although the terminology is relatively modern.

According to Sheikh Yusof al-Qaradawi (1976), Islam, as the last religion from Allah SWT with its Shariah and divine message, contains both eternal and unchanging elements, as well as some elements of flexibility and adaptability. This is one of the miracles and wonders of Islam, as well as a sign of its perfection and suitability to be used at any time and place. He further stated that we can determine what is fixed and what is flexible in Islamic Shariah and its comprehensive message: fixed in the goals and objectives, but flexible in form and methods; fixed in fundamental principles and foundations, but flexible in subsidiary matters and details; fixed in religious and moral values, but flexible in worldly affairs and scientific knowledge.

THEORETICAL FRAMEWORK

The theoretical framework for *thawabit* and *murunah* in Islam is generally based on the status of Islam, which is suitable for all of humanity. This is as stated in the verse of Allah SWT: “And We have not sent you (O Muhammad SAW) except as a mercy to the worlds” (al-Anbiya’: 107). This status is built on a solid foundation so that its teachings can be applied and adapted by everyone, transcending socio-cultural and socio-economic differences in various contexts of time and place. This foundation must come from a firm, unchanging base, described as the fixed principles (*thawabit*), and its branches, which are flexible (*murunah*), because they must take into account external factors to suit all environments. The combination of these two concepts culminates in the elegance of Islamic law, characterized by its justice and equity. This can be seen in the hadith of Jibril (Gabriel) a.s., who came to teach the Muslims about Iman (faith), Islam (submission), and Ihsan (excellence) (Narrated by Muslim: Hadith no. 8).

Based on the above hadith of Jibril a.s., the concept of the fixed rulings of inheritance law (*thawabit*) and flexibility (*murunah*) in the management of inheritance is discussed by considering the basic principles in deriving Islamic law, which refers to aspects that are fixed (*thawabit*) and those that can change (*murunah or mutaghayyirat*). The fixed aspects (*thabat*) are related to the belief in the legislation of inheritance, the sources of law, the clear verses from the holy revelation of Allah SWT regarding the reasons for an inheritance, its shares, and the obligation to act upon them. The fundamental basis for these fixed aspects (*thabat*) is universal and suitable for all people.

Meanwhile, the flexible aspect (*murunah*) is related to principles or rules that can change according to the development of time, place, and society. This can be seen from the management aspect, which changes in line with economic developments such as the involvement of women in family economics, advancements in knowledge and technology like efforts to identify the latest methods of distribution and the creation of applications, and legal changes such as laws on wills, endowments, gifts, ownership, and land laws in Muslim countries. The primary basis for the flexible aspects in the management of inheritance is its ability to accept *ijtihad* based on *maslahah* (public interest), *maqasid shariah* (objectives of Islamic law), *istishab* (presumption of continuity), and local customs that do not contradict Islamic law. The approach of fixed rulings (*thawabit*) and flexibility (*murunah*) in the Islamic inheritance management system is crucial to ensure that inheritance law remains relevant and can be applied in every era.

Certainty (Thawabit) and Flexibility (Murunah) in the Division of Islamic Inheritance

The legislation of inheritance laws occurred in stages until the revelation of verses 11, 12, and 176 from Surah an-Nisa’ that explains the distribution in Islamic inheritance in great details. These verses complete the Islamic inheritance law as Allah SWT Himself has determined the rightful heirs of the deceased and their respective shares of inheritance, which leaves no room for discussions or objections. Therefore, this division will remain unchanged (Mohd Ali, 2018). Even if the world is destroyed on the Day of Judgment, this certainty will remain the same, because it is the decree of Allah SWT, supported by hadiths, and has been agreed upon by all the Muslim scholars. Therefore, no human being has the right to delay or abolish it, as it forms the foundation of the religion.

According to Qasim Nasir Husin al-Zaidy & Mustafa Ahmad Latif al-Dilami (2013), the law of inheritance (*mirath*) is the final rule from Allah SWT, which was explained directly by Allah SWT. Allah SWT has allotted shares of inheritance to those entitled, without excess or shortfall, which leaves no room for *ijtihad* by the jurists except in trivial and rare matters of the branches (*furu’*). All the proofs (*al-nusus*) for this law could be

found in the book of Allah SWT. Therefore, the obligation of adhering to the law of *faraid* (Islamic inheritance law) is compulsory because its proofs are of the highest certainty (*qat'ie thubut*) and its meanings are also certain (*qat'ie dilalah*), needing no further interpretation required, just like the obligations of prayer, zakat, and fasting (Mustafa al-Khin et.al, 1992).

Through study of the *fiqh* books of the Hanafi (Ibn Abidin, 1966), Maliki (Ibn Rushd, 1995), Shafi'i (al-Nawawi, 1992), and Hanbali (Ibn Qudamah, 1994) schools, and the writings of contemporary scholars such as Muhammad Mustafa Shalabi (1967), Sheikh Muhammad Ali al-Sabuni (1988), Muhammad al-Zuhaily (2001) in general, it can be concluded that there are three categories of fixed and flexible matters in the chapter of *faraid* or inheritance. The first category involves matters that are fixed, with no disagreement among scholars, either wholly (*kulli*) or partially (*juz'i*). This includes general principles of this law such as justice and responsibility, the prohibition of oppression against vulnerable groups like women and children, the fundamental principles of inheritance including legislation of inheritance and its proofs, the pillars of inheritance and its conditions, the fixed shares of inheritance allocated by Allah SWT, and the heirs entitled to those shares along with their conditions. These fixed matters are meant to establish social justice and ensure the welfare of the deceased's family in life after their death. These matters are permanent and will not change according to the passage of time or any interests of any party.

The second category includes matters that are generally agreed upon, but with small differences in opinion on the details. For example, there is general agreement among Muslims on the causes of inheritance, but there are differences regarding inheritance by cause of Islam or inheritance by the *baitul mal* (state treasury). In similar terms, there is unanimity that certain things, like murder, religious differences, and slavery, preclude inheritance, but there are differences of opinion about the kinds of murder that do so and whether an apostate's possessions can be inherited. Other issues in this category include inheritance by grandfather alongside paternal or full siblings, sharing inheritance between full siblings and maternal siblings in the case of *al-musyarakah*, the share of one-third balance for the mother, the issue of *al-aul* (when the total shares exceed the original division), the issue of *rad* (returning the remaining property to the heirs according to their share), matrilineal inheritance, the period for declaring the death of a missing person, the waiting period for a child in the womb, and others.

These issues have flexibility or dynamic *ijtihad* to address questions that conflict with the basic principles and interests of inheritance, such as a brother not receiving inheritance from the deceased because it has been consumed by maternal siblings in the issue of *al-musyarakah*. The companions of the Prophet Muhammad SAW were very cautious in handling such matters, especially when it involved inheritance shares, as they respected the decrees that has been outlined in the Qur'an. For instance, in the case of *al-Gharrawain*, one-third share for the mother is maintained after deducting the husband or wife one-third, even though the actual portion received is less. Similarly, in the case of *al-Aul*, which occurred during the time of Caliph Umar r.a, Umar said: "By Allah, I do not know who is preferred or prioritized by Allah SWT among you, and I find nothing more just (fair) than deciding that all parties share in the deficiency." (Mustafa al-Khin et.al, 1992). To conclude, the second category needs no further innovation or reform in rulings, as the *ijtihad* concerning these matters have matured and covered all related issues.

The third category involves matters open to *ijtihad* and innovation in the division of inheritance. One such issue is the method of calculating the shares of the heirs. In traditional and contemporary *fiqh* or inheritance books, the calculation method involves determining the origin of the problem, which is the divisor for the shares received by the heirs, using four ratios known as *tamathul*, *tadakhul*, *tawafuq*, and *tabayun*. If the origin of the problem does not resolve the distribution of shares because there are many heirs sharing the same portion, then a correction calculation (*tashih*) is made. While this method of calculation has been practiced for a long time in determining the shares of inheritance, no individual claims that this method is fixed (*thabat*) and unchangeable. On the contrary, contemporary Islamic scholars have made efforts to introduce newer, simpler calculation methods for complicated problems, such as those proposed by Iman Ihsan Sabeeh & Dr. Mawlood M. Al Rawy (undated) and Hamzah Mustafa Yaakub (2020).

The existence of this third category demonstrates the dynamics and flexibility in managing the division of inheritance, provided that the general principles of the *faraid* law are not altered. Flexibility in inheritance

management is essential, especially when dealing with legal technicalities like dividing immovable property such as land and buildings. For a simpler analogy for this issue, imagine the deceased left three plots of land and three sons as heirs. According to the *Faraid* method, each plot would be inherited by the three sons. However, if the land plots are small, only one house can be built on each, it would be more practical for each son to inherit one plot of land. In 2005, it was reported that there were 900,000 land titles still registered under the name of the deceased out of 6.2 million land titles that were registered (Rasheffa Abdul Rashid, 2005). By 2020, the value of unclaimed and frozen estate assets had surged to approximately RM70 billion, with a significant portion of this estate involving abandoned inherited land and many of the names listed on the land grants (Muhammad Razis Ismail, 2020).

To address such issues, scholars have discussed instruments such as *al-sulh* (settlement) mechanisms, like *takharuj*, *tanazul*, and agreements between the heirs for managing the inherited property. This is because the purpose of dividing the inheritance is to fairly and justly allocate the deceased's property to the heirs. Therefore, if the shares of inheritance for each heir are clearly defined, the heirs can agree on a more practical division that facilitates the process from a legal perspective. However, this agreement is subject to three conditions: first, the heirs who agree must be of sound mind, mature, and an adult; second, there must be no physical or emotional coercion; and third, they must be confident that the shares allocated by Allah SWT are the best for the heirs (Hussamuddin, 2014). For heirs who are not yet of legal age or those with mental disabilities, they will still receive the shares that Allah SWT has allocated for them.

Furthermore, flexibility is also provided for individuals to plan their estate during their lifetime, to ensure reward after their death, through mechanisms such as *wasiat* (will), *hibah* (gifts), *waqf* (endowment), and others. According to Daud, M. Z., Jamaluddin, M. H., & Mat Hussin, M. N. (2018), innovation is highly necessary for Muslims to plan and manage the division of inheritance in line with Islamic law and national laws. Most importantly, it ensures that the wishes of the property owner regarding the distribution of their assets are fulfilled using various appropriate instruments. The flexibility within these estate planning instruments helps ensure that the objectives of *maqasid al-Shari'ah* (the objectives of Islamic law) and *hifz al-mal* (the preservation of wealth) are achieved in the planning of Muslim estates. Estate planning instruments are not intended to negate the role of the inheritance system or change the fixed and permanent principles of *Faraid* knowledge. This is because estate planning is done while an individual is still alive, with the aim of easing the process of transferring ownership after death without burdening the heirs. Although Islamic inheritance law is clearly established in terms of its concepts and principles, its implementation in contemporary society faces various challenges and changes, requiring a dynamic approach to address them. According to the President of Du'ah Faraid Malaysia (DFM), Ustaz Mohd Khusairi Saleh (2024), Islam does not prohibit Muslims from planning the distribution of their wealth before death, such as through gifts (*hibah*) and wills (*wasiat*) if there is a need for such arrangements. Some of the reasons and factors that motivate individuals to plan their wealth early include having adopted children or loved ones who are not entitled to inherit, having only daughters, owning substantial wealth and wanting to distribute it equally among their children regardless of gender. However, this planning is not a trick to avoid the distribution of inheritance according to the decrees of Allah SWT, such as to prevent rightful heirs from inheriting the estate.

CONCLUSIONS

Distribution of inheritance in Islam through the *faraid* method is a fair shariah ruling and aims to protect the rights of all heirs. In principle, the *faraid* law is fixed (*thabat*) and static because it is based on clear arguments and arguments (*qat'ie thubut wa qat'ie dilalah*). The verses of the Quran that explain the *faraid* rate to the heirs are *muhkam* in nature that does not need interpretation according to the opinion of the commentators. The basic principles of inheritance distribution include the status of heirs, inheritance conditions, priority to responsibility, and the prohibition of injustice in distribution are given great attention. In this regard, these principles remain unchanged despite changes in time or place. However, from the point of view of implementation, a more dynamic and flexible approach is required in facing social and economic changes in modern society.

Among the factors of current social and economic changes that affect the Muslim inheritance distribution system is the increasing role of women who contribute to the family economy. Apart from that, legal

constraints, especially those involving complicated court procedures, can slow down the process of inheritance distribution and cause heirs to wait for a long time. Furthermore, there is a lack of public awareness of inheritance law, so many do not understand the basic concept of distribution. This is in line with the words of the Prophet Muhammad SAW, which states that the knowledge of faraid is among the earliest knowledge raised by Allah SWT. The above factors, if not handled properly, will cause problems with delaying the distribution of Muslim inheritance, or causing them to get caught up in property disputes and family conflicts after someone's death.

Therefore, the scope of inheritance management needs to be dynamic and flexible, with a focus on practicality, ease and fairness to achieve the main purpose of the Sharia law on inheritance distribution, which is to convey property rights to those who are entitled. Muslims need to act proactively in planning their assets before death occurs. This is because planning assets before death is broader in scope with various instruments recognized by Sharia such as waqf, sadaqah, hibah and will. Therefore, high awareness, an efficient legal system, and good estate planning will ensure that faraid law can be implemented fairly and harmoniously

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