

Shadaqah Obligah as a Reconstruction of the Settlement of Inheritance Disputes Between Daughters and Brothers of the Heirs in the Perspective of Islamic Inheritance Law in Indonesia

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Article History Received : 2026-07-02 Revised: 2026-07-14 Published: 2026-07-30 Keywords: <i>Islamic Inheritance Law, Daughter, Heir Brother, Obligatory Shadaqah, Maslahah.</i>	Disputes over the distribution of inheritance between daughters and heiress brothers are still one of the issues that often cause conflict in the practice of Islamic inheritance law in Indonesia. The difference in views between classical jurisprudence, the Compilation of Islamic Law (KHI), and the jurisprudence of the Supreme Court has led to the lack of uniformity in the settlement of the case. On the one hand, Sunni jurisprudence gives the right to a brother as an <i>'ashabah</i> when the heir only leaves a daughter, while on the other hand, the development of Supreme Court jurisprudence places girls as heirs who can hijab the heir's brother. These differences not only cause legal uncertainty, but also trigger disharmony in family relationships. This study aims to analyze the development of regulations regarding the position of girls to male heirs in Islamic inheritance law in Indonesia and offers a settlement model that is more oriented towards substantive justice and family benefits. The research uses normative legal research methods with a statutory approach, a conceptual approach, and a case approach through an analysis of the Compilation of Islamic Law, Supreme Court decisions, classical jurisprudence literature, and contemporary Islamic legal doctrines. The data was analyzed qualitatively using the theory of <i>maslahah</i> and <i>maqāsid al-syari'ah</i> as the analysis knife. The results of the study show that both the classical fiqh approach and the Supreme Court's jurisprudence approach have not been fully able to resolve the social conflicts that arise in the practice of inheritance distribution. Therefore, this study offers a reconstruction of dispute resolution through the concept of obligatory shadaqah, which is the giving of part of the property to the heir's brother not as an inheritance right, but as a form of giving based on the principles of benefit, propriety, and family sincerity. The model is able to maintain a balance between legal certainty, substantive justice, and harmony of family relations without changing the normative provisions regarding inheritance that have been established in Islamic law.

I. INTRODUCTION

Islamic inheritance law is one of the areas of family law that is regulated in detail in the Qur'an. The provisions regarding the share of each heir as stipulated in Surah An-Nisā' verse 11, verse 12, and verse 176 show that the distribution of inheritance is a matter that has a theological as well as juridical dimension. Therefore, the majority of scholars view that the law of inheritance is included in the law of *ta'abbudi*, so changes to the provisions of the heirs must be made carefully while still paying attention to the purpose of the sharia (*maqāsid al-syari'ah*).

However, the development of modern society shows that the application of Islamic inheritance

law does not always run in accordance with the normative construction built in classical jurisprudence. Changes in social structures, family relationship patterns, increasing economic roles of women, and the development of the national legal system have led to the emergence of various inheritance problems that cannot be fully answered by textual approaches. One of the issues that is still debated is the position of the heir's brother when the heir leaves only one or several daughters.

In classical jurisprudence, especially the Sunni madhhab, the biological brother or brother of the same brother still receives a share as *'ashabah* if the heir does not leave a son. Daughters only get

the share as specified in the Qur'an, while the rest of the property is given to the heir brother. The construction is based on the interpretation of the concept of *kalalah* in Surah An-Nisā' verse 176 and is supported by several hadiths of the Prophet Muhammad PBUH regarding the position of *'ashabah*. The concept has been a key doctrine in Islamic inheritance law for centuries.

However, the development of Islamic law in Indonesia points in a different direction. A number of Supreme Court decisions have interpreted that the existence of girls has closed (*hijab*) the inheritance rights of the heir's brother. This interpretation is then strengthened through a systematic reading of Article 174 of the Compilation of Islamic Law which places the child as the main heir when all heirs are present. This paradigm shift shows a tendency to establish inheritance laws that consider the protection of the heir's nuclear family more than maintaining the construction of *'ashabah* as understood in classical jurisprudence.

On the other hand, these changes are not fully able to solve the problems that develop in society. In practice, the hijab of the heir's brother often causes new conflicts, especially in societies that still hold strong family values and kinship relationships. Not a few inheritance disputes continue to be prolonged conflicts because brothers feel that they have moral and religious legitimacy to get a share of the inheritance. On the other hand, the girls think that all inheritance is their right based on court decisions and national legal developments. This condition shows that settlement based on a normative approach alone has not fully presented substantive justice that can be accepted by all family members.

Previous studies have generally focused on the analysis of differences of opinion between classical jurisprudence, the Compilation of Islamic Law, and Supreme Court jurisprudence regarding the position of girls over male heirs. Some research focuses on the interpretation of the

concept of *kalalah*, while other research examines the development of Supreme Court decisions as a form of reform of Islamic inheritance law in Indonesia. However, these studies have not offered many alternative settlement models that are able to bridge the gap between legal certainty, substantive justice, and family benefits.

Based on these conditions, this research has novelty in the form of a reconstruction of the settlement of inheritance disputes through the concept of mandatory *shadaqah*. In contrast to the concept of inheritance which gives a share based on the status of the heir, this concept places giving to the heir's brother as a form of family policy based on the values of benefit, propriety, and sincerity without changing the provisions of the inheritance that have been stipulated in Islamic law. Thus, the concept is expected to be able to be a middle ground between the classical *fiqh* approach that still gives rights to brothers as *'ashabah* and the jurisprudence approach that hijab brothers in order to protect the rights of girls.

Theoretically, this research contributes to the development of Islamic inheritance law through strengthening the *maqāṣid al-syarī'ah* approach as the basis for the formation of laws that are responsive to social dynamics. Meanwhile, practically the results of the research are expected to be considered for Religious Court judges, academics, and policymakers in developing a model for resolving inheritance disputes that is not only oriented towards legal certainty, but also able to maintain the integrity of family relationships.

Based on this description, this study examines two problem formulations. First, how is the development of the regulation regarding the position of girls to their male heirs in Islamic inheritance law in Indonesia. Second, how the reconstruction of inheritance dispute resolution through the concept of *obligatory shadaqah* can

realize justice and benefits in the distribution of inheritance.

II. RESEARCH METHODS

This research is a normative legal research with a statutory *approach*, a *conceptual approach*, and a *case approach*. The legislative approach is used to examine the provisions of inheritance in the Qur'an, the Compilation of Islamic Law (KHI), as well as laws and regulations related to inheritance law in Indonesia. The conceptual approach is used to analyze the doctrine of Islamic inheritance law, the concepts of *ashabah*, *hijab*, *masalahah*, and *maqāṣid al-syarī'ah*, while the case approach is carried out through the analysis of several Supreme Court decisions related to the position of the heir's daughter and brother in the distribution of inheritance.

The legal materials used consist of primary legal materials in the form of the Qur'an, hadiths, Compilations of Islamic Law, and Supreme Court decisions, and secondary legal materials in the form of books, scientific journals, and relevant research results. All legal materials are analyzed qualitatively with a descriptive-analytical juridical analysis method using *masalahah theory* as an analysis knife to assess the relevance of the concept of *obligatory shadaqah* as an alternative to resolving inheritance disputes oriented towards justice, utility, and harmony in family relationships.

III. RESULTS AND DISCUSSION

A. The Position of Daughters and Heirs in Islamic Inheritance Law

Islamic inheritance law stipulates in detail the position and share of each heir as contained in Surah An-Nisā' verse 11, verse 12, and verse 176. This provision shows that the daughter is the heir of the *ashab al-furūd* who has a definite share, namely getting one-half of the inheritance if she is alone and two-thirds if there are two or more people. This provision is

a rule that is *qat'iy al-dalālah* so that its existence is not disputed by scholars (Amir Syarifuddin, 2012).

The majority of scholars from the Sunni school are of the opinion that the daughter does not hinder (*hijab hirmān*) the position of the heir brother. In the classical construction of inheritance law, the brother still gets the remaining property as '*ashabah binafsih*' after the daughter's share is given according to the provisions of the Qur'an. This opinion is based on the interpretation of the concept of *kalalah* in Surah An-Nisā' verse 176 as well as the hadith regarding the granting of residual property to the nearest male heirs (Fatchur Rahman, 1981; Hasbi Ash-Shiddieqy, 1973).

This view is different from Ibn Abbas who interpreted the term *walad* in Surah An-Nisā' verse 176 to include both boys and girls. Based on this interpretation, the existence of girls is seen as having closed the right of inheritance of the brother so that he no longer gets a share as '*ashabah*'. This opinion then became one of the foundations for the development of Islamic inheritance law thinking that was more oriented towards the protection of the nuclear family (Mudzhar, 2000).

In the context of positive Indonesian law, the Compilation of Islamic Law has not explicitly regulated whether girls can wear the hijab of their heir's brother. However, through the development of religious justice practices, several Supreme Court decisions have interpreted that the existence of girls can close the brother's inheritance rights. This interpretation is based on a systematic reading of the provisions of the Compilation of Islamic Law which prioritizes the position of children as the main heirs (Abdul Manan, 2006).

The difference between classical jurisprudence and the development of jurisprudence shows that Islamic inheritance law in Indonesia continues to experience

dynamics in accordance with the development of the needs of society. This shift is not solely aimed at changing the provisions of inheritance law, but rather to find a common ground between legal certainty, justice, and usefulness as the main goal of the formation of Islamic law (Jasser Auda, 2008).

B. Dynamics of Supreme Court Jurisprudence on the Position of Daughters and Heirs Brothers

The development of Islamic inheritance law in Indonesia shows a paradigm shift in determining the position of girls to the heir's brother. These changes can be seen through several Supreme Court decisions that give different interpretations from the construction of inheritance law in classical jurisprudence. If in Sunni jurisprudence, a brother is still positioned as an '*ashabah*' who is entitled to inherit the rest of the inheritance when the heir only leaves a daughter, then in several Supreme Court decisions, daughters are actually positioned as heirs who can inherit the inheritance rights of the heir's brother (Abdul Manan, 2006).

These changes are a form of legal development through jurisprudence that seeks to adapt the application of inheritance law to the social conditions of the Indonesian people. Judges are no longer only oriented to the textual application of norms, but also consider the value of justice, utility, and protection of the heir's nuclear family. From a progressive legal perspective, judges have room to make legal discoveries (*rechtsvinding*) if positive legal provisions have not been able to provide a fair solution to concrete problems faced by the community (Satjipto Rahardjo, 2009).

One of the decisions that is often used as a reference is the Supreme Court Decision Number 86 K/AG/1994, which basically places girls as heirs who hinder the inheritance rights of the heir's siblings. These legal

considerations show a shift from the classical fiqh approach to an approach that prioritizes the protection of the nuclear family. The judge considers that the existence of girls remains a continuation of the heir's lineage so that her interests must take precedence over heirs from the sideways line (M. Yahya Harahap, 2005).

This development was then strengthened through the Supreme Court Decision Number 184 K/AG/1995 which consistently placed girls as the main heirs. The judge's consideration is not only based on the provisions of the Compilation of Islamic Law, but also considers the sense of justice that lives in society. In practice, the judge views that the giving of all inheritance to a daughter is more of a reflection of the protection of the nuclear family which during life is the direct responsibility of the heir. Such an approach shows that the function of judges is not only as *a la bouche de la loi*, but also as a legal inventor who is able to adjust norms to the development of the needs of society (Rahardjo, 2009).

When analyzed more deeply, the Supreme Court's judgment reflects the application of *substantive justice*. Justice is no longer understood as limited to the granting of rights based on formal normative constructions, but is directed to the protection of those who are socially and economically more in need. In this context, girls are seen as heirs who have a direct relationship with the heir, so that they are morally and socially more entitled to legal protection than brothers who are in the sideways lineage (John Rawls, 1971).

However, the jurisprudence approach is also inseparable from criticism. In social practice, the absolute hijab of the heiress brother often gives rise to new conflicts in the family. Not a few inheritance disputes continue to be prolonged disputes because the brothers feel that they have a religious basis based on classical fiqh to obtain a share of the

inheritance. This condition shows that settlement through a purely juridical approach is not necessarily able to end the conflicts that develop in society. In other words, court decisions have indeed provided legal certainty, but they do not necessarily provide social benefits for all family members (Atho Mudzhar, 2000).

On the other hand, if the provisions of classical fiqh are applied textually while still giving a share to brothers as *'ashabah*, this condition also has the potential to cause injustice for girls, especially when girls have been the ones who take care of their parents and contribute to the management of family property. Therefore, both the classical fiqh approach and the Supreme Court's jurisprudence approach have their own advantages and limitations. Classical jurisprudence emphasizes legal certainty based on *nash*, while jurisprudence emphasizes substantive justice through the interpretation of law that is adaptive to the development of society.

Based on this description, it can be understood that the dynamics of the Supreme Court's jurisprudence are actually a form of reform of Islamic inheritance law in Indonesia. However, the update has not completely solved the problems that have developed in practice. Therefore, a settlement model is needed that not only provides legal certainty to girls as the main heirs, but is also able to maintain the harmony of family relationships through a benefit-oriented approach. It is in this context that the concept of obligatory *shadaqah* offered in this study becomes relevant as an alternative reconstruction for resolving inheritance disputes.

C. Reconstruction of Inheritance Dispute Resolution through the Concept of *Obligatory Shadaqah* in the Perspective of *Maslahah*

The difference in regulation regarding the position of girls and male heirs in Islamic inheritance law shows the dynamics between normative approaches and evolving societal needs. Classical jurisprudence maintains the position of a brother as an *'ashabah* who is entitled to inherit the rest of the inheritance when the heir leaves only daughters, while the development of Supreme Court jurisprudence tends to place daughters as heirs who are the heirs who are the heirs. Both approaches have a strong argumentative basis, but in practice they are not fully able to accommodate the values of legal certainty, justice, and usefulness at the same time (Amir Syarifuddin, 2012; Abdul Manan, 2006).

Normatively, the classical fiqh approach provides legal certainty because it is guided by the construction of *'ashabah* as understood by many scholars. However, the application of this doctrine in Indonesian society often raises tensions because it reduces the share of girls who in many cases are the main heirs as well as the party who has been caring for the heirs. On the other hand, the Supreme Court's jurisprudence approach that covers the *hijab* of brothers does provide more protection to the nuclear family, but it is not always able to eliminate conflicts in society. Not a few inheritance disputes continue because the brothers feel that they have religious legitimacy based on classical jurisprudence to obtain a share of the inheritance. This condition shows that a settlement that only relies on legal-formal aspects is not necessarily able to produce a settlement that is accepted by all family members (M. Atho Mudzhar, 2000).

This issue shows that inheritance disputes are not only related to the division of rights judicially, but also to social, moral, and familial relations which are part of the purpose of Islamic law. Therefore, the settlement of inheritance disputes should not stop at

determining who is entitled to receive inheritance, but also considering how the law is able to maintain family harmony after the process of distributing inheritance is completed. This view is in line with progressive legal theory that places law as a means to realize substantive justice and social benefits, not just applying norms textually (Satjipto Rahardjo, 2009).

From the perspective of Islamic law, the main purpose of the shari'a is to realize benefits (*jalb al-maṣāliḥ*) and prevent harm (*dar' al-mafāsīd*). According to Al-Ghazali, benefits are realized through the protection of the five main elements (*al-kulliyāt al-khams*), namely religion (*ḥifẓ al-dīn*), soul (*ḥifẓ al-naḥs*), intellect (*ḥifẓ al-'aql*), heredity (*ḥifẓ al-nasl*), and property (*ḥifẓ al-māl*) (Al-Ghazali, 1997). Furthermore, Al-Syatibi emphasized that every provision of Islamic law is essentially directed to realize benefits for humans in accordance with the goals of the Shari'ah (*maqāṣid al-syarī'ah*) (Al-Syatibi, 2003). Thus, the success of the application of the law is not only measured by compliance with the text, but also by the ability of the law to bring benefits to the community.

Based on this perspective, this study offers a reconstruction of the settlement of inheritance disputes through the concept of **mandatory shadaqah**. This concept is not intended to change the provisions of inheritance distribution as stipulated in the Qur'an, the Compilation of Islamic Law, or the jurisprudence of the Supreme Court, but rather as a mechanism for resolving conflicts after the rights of heirs are determined based on the applicable law. In this concept, girls still receive a share of the inheritance according to the provisions of the law, while the heir's brother can receive part of the inheritance through the *mechanism of obligatory shadaqah* which is based on the deliberation, propriety,

and sincerity of the heirs. Thus, the gift is not an inheritance right, but a form of moral and social responsibility in order to maintain family relationships.

This idea has a normative basis in Surah An-Nisā' verse 8 which commands that relatives, orphans, and the poor who are present at the time of the distribution of inheritance be given some sustenance and treated well. Although the verse does not explicitly regulate giving to brothers who do not receive a share of the inheritance, the substance of the verse shows that Islam provides space for gifts to relatives in order to maintain social relations and human values (Al-Qurthubi, 2006). Therefore, the *obligatory shadaqah* offered in this study is understood as the implementation of the ethical values contained in the sharia, not as a form of change to the provisions of inheritance law.

When analyzed using the theory of *maqāṣid al-syarī'ah*, the concept of *shadaqah obligatory* fulfills several main purposes of Islamic law. First, protect the property (*ḥifẓ al-māl*) because the distribution of inheritance is still carried out in accordance with the provisions of the applicable law so as not to reduce the rights of the heirs. Second, to maintain offspring and family relationships (*ḥifẓ al-nasl*) through gifts that can reduce conflicts between daughters and heirs' brothers. Third, realizing the common good (*al-maṣlaḥah al-'āmmah*) because dispute resolution is not only oriented to the victory of one party, but also to the creation of peace and harmony in the family (Jasser Auda, 2008).

Compared to the two approaches that have developed so far, the concept of *shadaqah* must offer a more proportionate formulation. The classical fiqh approach emphasizes legal certainty through the doctrine of *'ashabah*, while the development of Supreme Court jurisprudence emphasizes the protection of

the nuclear family. This study offers an approach that integrates these two values while maintaining the position of girls as the main heirs according to national legal developments, without neglecting the familial relationship with the heir's brother. Thus, the concept of *shadaqah obligatory* functions as a conflict resolution instrument that complements the Islamic inheritance system without changing the norms of inheritance distribution that have been set.

Based on this description, this study emphasizes that the concept of *obligatory shadaqah* is a form of reconstruction of inheritance dispute resolution that is oriented towards a balance between legal certainty, substantive justice, and benefits. The reconstruction does not change the inheritance system as stipulated in the Qur'an, the Compilation of Islamic Law, or the jurisprudence of the Supreme Court, but complements it through a granting mechanism based on family deliberation, propriety, and sincerity. Thus, the concept of *shadaqah must* be a contribution to the *novelty* of this research in the development of Islamic inheritance law in Indonesia because it offers a dispute resolution model that is more adaptive to social dynamics without ignoring the basic principles of Islamic law.

IV. CONCLUSIONS AND SUGGESTIONS

A. Conclusion

Based on the results of the research, it can be concluded that the position of girls to their male heirs in Islamic inheritance law in Indonesia still shows the dynamics between the provisions of classical fiqh and the development of law through jurisprudence. Classical jurisprudence places the brother as an *'ashabah* who is still entitled to the rest of the inheritance when the heir leaves only daughters. On the other hand, the development

of Supreme Court jurisprudence tends to place girls as heirs who are hijab to the heir's brother by considering the protection of the nuclear family and the value of justice that develops in society. These differences in legal constructions suggest that the reform of Islamic inheritance law in Indonesia has moved towards a more contextual interpretation, although it still leaves debate in the practice of resolving inheritance disputes.

This research offers a reconstruction of the settlement of inheritance disputes through the concept of *obligatory shadaqah* as a benefit-oriented settlement mechanism. This concept does not change the provisions for the distribution of inheritance as stipulated in the Qur'an, the Compilation of Islamic Law, or the jurisprudence of the Supreme Court, but complements it through giving it to the heir's brother based on the deliberation, propriety, and sincerity of the heirs. Using the perspective of *maqāṣid al-syarī'ah*, the concept of *mandatory shadaqah* is considered to be able to realize a balance between legal certainty, substantive justice, and social benefits, so that it can be an alternative to resolving inheritance disputes that are more adaptive to the needs of the Indonesian people while remaining in line with the principles of Islamic law

B. Suggestions

Based on the results of the research, it is necessary to develop Islamic inheritance law that is more responsive to the social dynamics of society without ignoring the basic principles of Islamic law. The Supreme Court and the Religious Court are expected to continue to build consistency in decisions regarding the status of the daughter and brother heirs so as to create legal certainty in resolving inheritance disputes. In addition, policymakers can consider the development of the concept of *mandatory shadaqah* as one of the

deliberation based dispute resolution mechanisms that can be accommodated in judicial practice and out-of-court dispute resolution.

Further research is expected not only to use normative legal approaches, but also to develop empirical research by involving Religious Court judges, academics, religious leaders, and the public as respondents. This approach is needed to test the effectiveness of the application of the concept of *obligatory shadaqah* in the practice of resolving inheritance disputes and evaluate the extent to which the concept is able to realize justice, benefits, and harmony in family relationships.

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