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REFORMING ISLAMIC INHERITANCE LAW TO PROTECT DAUGHTERS AND VULNERABLE HEIRS: A PERSPECTIVE OF JUSTICE AND MAQĀṢID AL-SHARĪʻAH

PEMBARUAN HUKUM KEWARISAN ISLAM TERHADAP HAK ANAK PEREMPUAN DAN AHLI WARIS RENTAN: PERSPEKTIF KEADILAN DAN MAQĀṢID AL-SYARĪʻAH

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ABSTRACT
Islamic inheritance law governs where a person's property goes after death and who is entitled to receive it. Its rules do more than fix each heir's share: they are meant to protect surviving family members, safeguard ownership, prevent arbitrary seizure of the estate, and keep the household going after the deceased is gone. Applying these rules today is harder than it looks. Family structures are changing, women increasingly carry the family economy, power inside families is often uneven, information about the estate does not always reach everyone, and some heirs, such as minors, persons with disabilities, and economically dependent relatives, are easily disadvantaged. This study analyzes how Islamic inheritance law can be reformed to protect daughters and vulnerable heirs, using justice and maqāṣid al-sharīʻah as its lens. It is a normative legal study that combines conceptual, statutory, and case approaches, drawing on the Qur'an, the Compilation of Islamic Law (Kompilasi Hukum Islam, KHI), statutory regulations, academic literature published between 2022 and 2026, and research on religious court decisions. The article argues that reform should not be narrowed to a contest between the two-to-one ratio and equal division. The more basic question is whether each heir is actually recognized, informed, able to speak, protected from pressure, and able to reach the estate. Maqāṣid al-sharīʻah, especially the protection of property (ḥifẓ al-māl), life (ḥifẓ al-nafs), lineage (ḥifẓ al-nasl), and human dignity, can serve as a yardstick for how inheritance law is applied. The proposed reforms include a transparent inventory of the estate, stronger protection for vulnerable heirs, supervision of minors' property, recognition of legally grounded economic contributions, and settlements based on free consent and informed knowledge of each heir's rights.
Keywords: Islamic inheritance law; daughters; vulnerable heirs; substantive justice; maqāṣid al-sharīʻah; legal reform.

ABSTRAK

Hukum kewarisan Islam mengatur kemana harta seseorang berpindah setelah ia meninggal dan siapa saja yang berhak menerimanya. Aturan ini tidak hanya menentukan besar bagian tiap ahli waris, tetapi juga melindungi keluarga yang ditinggalkan, menjaga kepemilikan harta, mencegah penguasaan yang sewenang-wenang, dan memastikan kehidupan keluarga tetap berlanjut. Penerapannya hari ini menghadapi banyak tantangan: struktur keluarga berubah, perempuan semakin sering menopang ekonomi keluarga, relasi kuasa dalam keluarga sering timpang, informasi tentang harta tidak selalu sampai kepada semua orang, dan sebagian ahli waris, seperti anak di bawah umur, penyandang disabilitas, serta anggota keluarga yang bergantung secara ekonomi, mudah dirugikan. Penelitian ini menganalisis bagaimana hukum kewarisan Islam dapat diperbarui demi melindungi hak anak perempuan dan ahli waris rentan dengan keadilan dan maqāṣid al-syarīʻah sebagai sudut pandang. Penelitian ini adalah penelitian hukum normatif dengan pendekatan konseptual, perundang-undangan, dan kasus, yang bertumpu pada Al-Qur'an, Kompilasi Hukum Islam, peraturan perundang-undangan, literatur akademik periode 2022–2026, serta penelitian tentang putusan pengadilan agama. Artikel ini berpendapat bahwa pembaruan tidak perlu dipersempit menjadi perdebatan antara pembagian dua banding satu dan pembagian sama rata. Pertanyaan yang lebih mendasar adalah apakah setiap ahli waris diauli, diberi informasi, dapat bersuara, dilindungi dari tekanan, dan dapat menjangkau harta peninggalan. Maqāṣid al-syarīʻah, terutama perlindungan harta (ḥifẓ al-māl), jiwa (ḥifẓ al-nafs), keturunan (ḥifẓ al-nasl), dan martabat manusia, dapat dipakai untuk menilai penerapan hukum kewarisan. Pembaruan yang ditawarkan mencakup keterbukaan dalam mendata harta, perlindungan yang lebih kuat bagi ahli waris rentan, pengawasan atas harta anak, pengakuan atas kontribusi ekonomi yang memiliki dasar hukum, serta perdamaian yang lahir dari persetujuan bebas dan pengetahuan tiap ahli waris tentang haknya.

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Kata Kunci: *hukum kewarisan Islam; anak perempuan; ahli waris rentan; keadilan substantif; maqāṣid al-syarīʿah; pembaruan hukum.*

1. INTRODUCTION

Death leaves a family with two things at once: grief and questions about property. Houses, land, vehicles, savings, and businesses all need a clear owner once their owner is gone. In Islamic law this field is called inheritance, or mīrāth. It answers three basic questions: who is entitled to the estate, what position each heir holds, and how the division is carried out.

In everyday life, inheritance is often treated as a matter of arithmetic. Yet behind every division lie family ties, the history of how assets were acquired, economic contributions, the duty of caring for aging parents, and sometimes an imbalance of power. A person can be legally entitled and still never receive anything, because they did not know the assets existed, did not hold the documents, lived far from the deceased's home, or were pressured by a more dominant relative.

The Qur'an recognizes the rights of both men and women over what their parents and relatives leave behind. Sūrat al-Nisā' verse 7 states that men and women alike have a share in the estate of parents and kin (QS. al-Nisā' [4]: 7). The verse matters because it treats women as holders of a right, not as recipients of the family's goodwill.

Verses 11, 12, and 176 then set out the shares of various heirs in different family configurations (QS. al-Nisā' [4]: 11, 12, 176). The best-known and most debated rule is that a son, in certain circumstances, receives twice the share of a daughter. But the Islamic inheritance system cannot be reduced to that formula. It also has rules for a daughter's share when there is no son, and for the shares of parents, spouses, siblings, and other heirs, depending on who survives the deceased.

Problems arise when these rules meet families as they are today. Women do not always occupy the economic position assumed in the traditional picture of the family. Many are the main breadwinners, run family businesses, pay for younger siblings' schooling, care for parents, and carry the household's needs. At the same time, some families still assume that a daughter has already "had her share" because she was sent to school, married off, or helped when she set up her own household.

That assumption needs to be tested legally. School fees, wedding support, gifts (hibah), and inheritance are different legal events, and they do not always have the same consequences (compare Article 211 of the Compilation of Islamic Law, Kompilasi Hukum Islam [KHI], under which a gift from parents to a child may be counted as inheritance). A gift made during the parents' lifetime does not automatically extinguish a person's right as an heir. Its status has to be examined first: what the giver intended, what was given, whether it was received, and how the law treats it.

The more serious cases are those in which a daughter is not involved at all. Imagine that a father dies and his son takes the land certificate and the family home. The daughter, married and living elsewhere, is not told how much the estate is worth, whether the deceased left debts, or how the division will proceed. Here the question is no longer simply how much a daughter receives under the inheritance rules, but whether she has a fair chance to know, to speak, and to defend her right.

The example shows that a right recognized on paper is not necessarily protected in reality. A right loses its meaning if its holder has no access to information, documents, a forum for family consultation, or the courts. Reform of inheritance law therefore has to look at two things at once: fairness in determining shares and fairness in carrying out the right.

Daughters are not the only heirs who need special protection. This article uses the term vulnerable heirs as an analytical label for heirs who face real obstacles in accessing, managing, or defending their inheritance rights (see Azizah et al., 2026). The group includes minors, persons with disabilities, elderly persons, economically dependent heirs, and family members caught in unequal

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power relations. The term is not a new category of heir in fiqh. It is a tool for recognizing who needs protection when rights are put into practice.

A minor, for example, is a legitimate heir but cannot yet manage assets alone. If a guardian controls the property without oversight, the child's interests are easily neglected. A person with a disability may struggle to communicate or to read documents. An elderly parent who depends on one child may be afraid to object for fear of losing shelter or care. Inheritance, then, is not only about dividing property. It is also about protecting people in weak positions. Justice is achieved only when every heir can exercise their right free of pressure, manipulation, or one-sided control.

Debate over reform is also growing in recent scholarship. Fitriyati et al. (2025), for instance, study religious court decisions that awarded equal shares to sons and daughters in particular cases, using maqāṣid al-sharīʿah as their lens. Their study shows that social change and women's changing economic roles are beginning to enter Indonesian inheritance discourse. Essop (2026) re-examines the interpretation of the Qur'anic verses on women's inheritance and shows a long-standing debate in the Islamic legal tradition over bequests, the abrogation of earlier rules, and how inheritance texts should be interpreted. Research on pluralism and justice in Indonesian inheritance, meanwhile, stresses the need to bring Sharia principles together with social reality (Hafis et al., 2026).

In Indonesia, reform cannot be separated from the KHI. It gives guidance on heirs, shares, substitute heirs, and settlement agreements in the division of an estate. Article 183, for example, lets heirs reach a settlement once each of them is aware of their own entitlement (KHI, Art. 183). This gives families room to adapt to their circumstances, but it still presumes that every heir first knows what their right is. The next question is how to make sure a settlement truly comes from free will. An agreement reached under threat, economic pressure, dependence, or ignorance is hard to call a fair resolution (Husni et al., 2026; Ruhiat et al., 2025). Reform must therefore pay attention to the quality of consent, not merely to whether a signature exists.

Within the framework of maqāṣid al-sharīʿah, the protection of property (ḥifẓ al-māl) is especially relevant (Hermanto, 2022). Inheritance law does not simply transfer ownership. It also keeps property from being seized arbitrarily. Protection of lineage (ḥifẓ al-nasl) concerns the continued life of the next generation, including the children the deceased leaves behind. Protection of life (ḥifẓ al-nafs) concerns meeting the basic needs of the survivors, especially those who depend on others economically. Still, maqāṣid must not become a slogan used to justify conclusions the researcher already wants. The aims of the Sharia have to be turned into clear analytical standards (Heriandita et al., 2025). If the aim is to protect a child's property, we must say how it will be managed, who will supervise it, and how misuse will be prevented. If the aim is to protect a daughter's rights, we must check whether she actually has information, access, and equal opportunity.

Starting from these problems, this study holds that reform of Islamic inheritance law should aim at strengthening the protection of rights, not merely at changing the formula of division. Reform should preserve the normative foundations of inheritance while ensuring that its application does not strip daughters and vulnerable heirs of their rights. The study addresses three questions: (1) what position and protection daughters and vulnerable heirs have in Islamic inheritance law and Indonesian positive law; (2) how the principles of justice and maqāṣid al-sharīʿah can be used to assess the way inheritance law is applied in contemporary society; and (3) what model of reform could strengthen the protection of daughters and vulnerable heirs without abandoning the basic principles of faraidh, the fixed-share system. Accordingly, the study aims to analyze the position of daughters and vulnerable heirs, to set out the relationship among substantive justice, the protection of property, and maqāṣid al-sharīʿah, and to formulate a model of reform that strengthens transparency in division, protection for vulnerable heirs, access to justice, and the prevention of one-sided control over the estate.

The novelty of this study lies in bringing together three areas that are usually discussed separately: daughters' rights, the protection of vulnerable heirs, and the reform of inheritance law

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through maqāṣid al-sharīʻah. Studies of gender justice in inheritance mostly revolve around the two-to-one ratio and the possibility of equal division (see, e.g., Payung & Retnowulandari, 2026; Zamzami, 2023). This article goes further by treating access to rights as part of inheritance justice. Justice is measured not only by the size of a share but also by each heir's ability to know, receive, control, and defend it. The study thus combines distributive justice, procedural justice, and substantive protection. It also draws a firm line between rights under faraidh and division by agreement after each heir's rights are known, so that family consultation does not become a way to pressure daughters or vulnerable heirs into giving up their rights.

2. METHOD

This is a normative legal study that uses conceptual, statutory, and case approaches. The method was chosen to examine the norms of Islamic inheritance law, the principles of justice, and developments in legal thought on protecting heirs. The conceptual approach is used to unpack the concepts of justice, maqāṣid al-sharīʻah, women's rights, the protection of vulnerable heirs, and the reform of Islamic law. The statutory approach is used to examine the provisions of the Qur'an, the KHI, and the regulations on child protection and the rights of persons with disabilities. The case approach is used to identify patterns of legal reasoning in court decisions concerning women's rights, substitute heirs, obligatory bequests (wasiat wajibah), and the division of estates through settlement (see, e.g., Pijoh et al., 2024; Roslina et al., 2025).

The primary legal materials are the Qur'an, especially Sūrat al-Nisā' verses 7, 11, 12, and 176; Presidential Instruction No. 1 of 1991 on the Compilation of Islamic Law; and the statutes on child protection and persons with disabilities. The secondary materials are books and journal articles from 2022 to 2026 on Islamic inheritance, gender justice, legal pluralism, and maqāṣid al-sharīʻah.

The analysis is qualitative and proceeds in three stages. The first identifies the norms and legal principles that govern the position of heirs. The second compares those norms with how they play out in family life and judicial practice. The third builds an argument for reform on the principles of justice and maqāṣid al-sharīʻah.

This is library research. The family scenarios that appear in the article only illustrate legal problems. They are not interview or survey findings. If the article is later developed into empirical research, this part should be strengthened with interviews, observation, or a systematic analysis of court decisions.

3. RESULTS AND DISCUSSION

3.1. Inheritance as a Legal Right

One misunderstanding still heard in society is that parental property belongs first to sons, and that daughters receive a share only if their brothers choose to give it. This view does not fit the basic principles of Islamic inheritance law (see, e.g., Mardanus et al., 2026).

Sūrat al-Nisā' verse 7 says that men and women alike receive a share of the estate of parents and relatives (QS. al-Nisā' [4]: 7). The verse makes women legal subjects with a right to the estate. That right is not a gift, an act of pity, or a voluntary offering from male relatives (for a comparison across jurisdictions, see Putra, 2025).

A daughter therefore does not lose her status as an heir merely because she has married, lives with her husband, or lives far from her parents' home. Lineage (nasab) remains the basis of the inheritance relationship as long as the legal requirements are met and no valid impediment exists.

In practice, this right has to be safeguarded through an inventory of the estate, the identification of all heirs, an examination of the deceased's obligations, and the determination of each share. A daughter is entitled to information about that process. A division carried out quietly by some family

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members can raise problems of justice, especially when some heirs do not know the value or whereabouts of the assets.

Inheritance rights should also be distinguished from what parents give during their lifetime. School fees, wedding support, and gifts do not automatically replace an inheritance share (see KHI, Art. 211). Before a transfer is declared a gift, we must look at the giver's intention, the object, whether it was accepted, and the applicable law. Without that check, a family cannot simply declare that the daughter has already received her share.

3.2. Understanding the Two-to-One Rule

The rule on the shares of sons and daughters in Sūrat al-Nisā' verse 11 is often at the center of debate (QS. al-Nisā' [4]: 11). When the deceased leaves both sons and daughters, a son's share is twice a daughter's.

The rule has to be read as part of a single system that also covers kinship relations, the presence of other heirs, and the composition of the estate. It would be wrong to read it as saying that a man's human worth is double a woman's. A share of inheritance is a rule for distributing property within a legal system. It is not a measure of dignity or honor (see Zubaidi et al., 2025).

In the fiqh tradition, discussion of shares is tied to the structure of economic responsibility in the family (see Fithriani & Faridah, 2026). In the classical construction of family law, men carry the duty of supporting their wives and children, while women are in principle not burdened with the same duty. This explanation is often used to understand one rationale for the division.

But the explanation cannot be applied mechanically to claim that every man today carries a heavier economic burden than every woman. Families now take many forms. In some the husband is the main earner, in others the wife is, and in others everyone works to cover shared needs.

These changes push us to examine how shares, the duty of support, economic contribution, and legal mechanisms for preventing injustice relate to one another. Yet social change does not automatically erase a normative rule. Any proposal for reform must explain its interpretive basis, the method of ijtihād it relies on, and the limits of its legal authority (for a reassessment of Muslim inheritance jurisprudence, see Rasekh, 2026; for a comparison of reform of Islamic family law in Southeast Asia, see Puteh & Kurniawan, 2025).

For this reason, we need to separate the determination of shares under faraidh from the division of property by agreement after each heir's rights are known. Article 176 of the KHI regulates the shares of daughters and sons, while Article 183 opens room for settlement among heirs once each is aware of their share (KHI, Arts. 176 and 183).

As an illustration, suppose a father dies leaving one son and one daughter. After the deceased's obligations are settled and each share is calculated, the two may sit down and agree on how to divide the assets. They might agree that the family home goes to the daughter who has been caring for their parents, while the son receives other assets of fairly calculated value.

This example does not mean that every daughter who cares for her parents automatically deserves a larger share. Caregiving may be taken into account in a family agreement or through another relevant legal mechanism, but it cannot be used to set aside the inheritance rules altogether. Likewise, a son may not claim a larger share simply because he lived with the deceased or handled the family's papers.

Fitriyati et al. (2025) show that certain religious court decisions have become a space for discussing equal division between sons and daughters. They analyze the judges' reasoning through maqāṣid al-sharīʿah and women's changing economic roles. The finding is valuable as material for study, but it cannot be taken to mean that equal division applies automatically in every case.

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3.3. Daughters' Rights in Contemporary Family Structures

Changes in family structure are one reason inheritance law needs continued study. Women can now be heads of households, business owners, professionals, or the main providers for parents and siblings.

This raises a question: how can the law recognize women's contributions without turning every inheritance case into a calculation of economic profit and loss (see Firmansyah & Ariani, 2026)? Family relationships cannot be valued in money alone. A child who spends years caring for a parent may never receive a wage, yet the contribution is large. A child who lives far away may help through medical costs and daily expenses.

Legal reform needs to find fairer ways of recognizing family contributions. But recognition of a contribution must not blur the line between property that belongs to the deceased and property that legally belongs to someone else.

If a daughter helped build a house or financed her parents' business, we need to ask whether her contribution was a loan, an investment, a gift, or some other form of cooperation. That status has to be settled before the estate is divided.

Reform of inheritance law, then, concerns not only the formula of division but also the accuracy with which we determine what actually forms part of the estate. Without an inventory of assets and a check on ownership, a division can wrong those who helped build the assets in the first place.

3.4. Vulnerability in Inheritance Distribution

To be vulnerable is not to lack rights. A person may hold a clear right and yet lack the social, economic, or physical ability to pursue it. In inheritance, vulnerability can arise from age, disability, economic dependence, limited information, or unequal power within the family (Azizah et al., 2026).

A minor can be a legitimate heir without necessarily understanding the value of a plot of land, being able to manage a bank account, or judging whether a proposed division serves his or her interests. If the entire estate is controlled by a guardian without adequate supervision, there is a risk that the child's property will be used for someone else's benefit.

Persons with disabilities may also struggle to understand documents, take part in family consultations, or access legal proceedings. Those obstacles must not be used as a reason to reduce their inheritance rights. What needs fixing is access to information, communication, and support in decision-making.

Elderly heirs can be in a difficult position if they depend on one of their children for food, care, or a place to live. That dependence may make them afraid to object when the estate is divided. Consent should therefore be judged not only by a signature but also by the freedom of the person's will and their understanding of the legal consequences.

3.5. Minors as Heirs

Minors need special protection because their long-term interests do not necessarily match those of the adults who manage their property. An inheritance can fund a child's schooling, health care, housing, and living costs, so its management must be guided by the best interests of the child (Law No. 35 of 2014).

This protection can be put into practice in several steps. First, the child's share is calculated and recorded clearly. Second, the child's assets are separated administratively from the guardian's personal property. Third, the use of the property for the child's benefit must be accountable. Fourth, transactions that could reduce the value of the child's property need to be supervised in accordance with the law.

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The best interests of the child also do not mean that the child must always receive assets in cash. In some situations, keeping a house or a plot of land is more useful than selling it. But such a decision has to weigh the child's needs, the value of the asset, the cost of maintaining it, and how it might serve the child's education and life.

Within the framework of maqāṣid al-sharīʿah, the protection of children relates to ḥifẓ al-nasl and ḥifẓ al-māl. Protecting lineage is not only about the continuation of descent. It is also about making sure the next generation lives in decent conditions. Protecting property means ensuring that assets belonging to a child are not misused or lost through irresponsible management.

3.6. Persons with Disabilities and Access to Inheritance Rights

Persons with disabilities have the same right to be heirs (Law No. 8 of 2016). Disability must not be used as grounds for reducing or removing a person's inheritance rights. What matters is how to make sure the person can understand, access, and manage that right with support suited to their needs.

Protection must also not turn into an excessive takeover of the person's rights. A person with a physical disability who is able to make decisions must not be treated as incapable merely because they need help moving around. A person with a communication barrier must first be given suitable means of communication before the family concludes that they cannot give consent.

In dividing an estate, accessibility can be achieved through documents that are easy to understand, enough time to consider decisions, communication support when needed, and mechanisms that make sure decisions truly reflect the heir's own wishes. This approach fits with respect for human dignity and autonomy.

3.7. Economically Dependent Heirs

Economic dependence creates a vulnerability that is not always visible. A daughter who does not work and lives with her parents may be assumed to contribute nothing. In fact she may be doing housework, caring for her parents, or helping run the family business.

In such situations, reform must avoid two mistakes. The first is to treat domestic work as worthless because it earns no income. The second is to treat all domestic contributions as automatically changing the shares already fixed.

A better approach is to examine the form of the contribution, the legal relationship behind it, and the mechanisms of recognition available. If a child pays to repair a parent's house on the understanding that the money will be repaid, for example, the matter may fall under a debt or a claim on the estate. If a child helps run the family business under a profit-sharing agreement, what has to be examined is the employment or partnership relationship.

This distinction matters so that reform can still protect without producing claims that have no basis. Justice does not mean that every contribution automatically adds to an inheritance share. But every contribution that has a legal basis must be examined honestly, and must not be erased merely because it was made by a woman or by a weaker member of the family.

4. CONCLUSION

This article has argued that reform of Islamic inheritance law should aim at protecting rights, not only at changing the formula of division. First, daughters hold their inheritance rights as legal subjects, and those rights are not extinguished by marriage, distance, or gifts made during the parents' lifetime. The two-to-one rule is part of a system of shares and is not a measure of dignity, so any change to it requires a clear interpretive basis. Second, vulnerable heirs, including minors, persons with disabilities, elderly relatives, and the economically dependent, hold the same rights but face real obstacles in

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exercising them, so protection has to be built into the way rights are carried out. Third, maqāṣid al-sharīʿah is useful only when its aims are turned into concrete standards.

The reforms suggested by this discussion are a transparent inventory of the estate; a separate account of each minor's share, kept apart from the guardian's own property and supervised; accessible information and communication support for persons with disabilities; a careful check of the legal basis of any claimed contribution before the estate is divided; and settlements that rest on free consent and on each heir's knowledge of their rights. Because this is library research, the findings are conceptual. Later studies should test these proposals through interviews, observation, and a systematic analysis of religious court decisions.

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