

KALĀLAH AND HUMAN RIGHTS AN ISLAMIC LEGAL PERSPECTIVE

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Abstrak

Konsep *kalālah* dalam hukum waris Islam menyangkut hak-hak waris individu yang meninggal tanpa meninggalkan ayah atau anak. Topik ini penting karena pembagian harta waris dalam *kalālah* sering menimbulkan perdebatan terkait dengan kesetaraan gender dan hak asasi manusia (HAM). Artikel ini bertujuan untuk mengeksplorasi bagaimana hukum waris Islam, khususnya dalam konteks *kalālah*, dapat diselaraskan dengan prinsip-prinsip HAM seperti kesetaraan gender dan nondiskriminasi. Metode penelitian melibatkan analisis teks-teks Al-Qur'an, Hadis, dan interpretasi ulama klasik dan kontemporer, dikombinasikan dengan studi kasus dari beberapa negara Muslim. Hasil penelitian menunjukkan bahwa meskipun hukum waris Islam memiliki ketentuan yang ketat, masih ada ruang untuk reformasi melalui ijtihad dan adaptasi hukum terhadap konteks sosial yang berubah. Kesimpulannya, penerapan prinsip-prinsip HAM dalam hukum waris Islam dapat dicapai melalui revisi hukum, pendidikan dan sosialisasi yang intensif, dan peran aktif ulama dan pemimpin agama dalam mempromosikan interpretasi hukum yang lebih inklusif dan adil. Penelitian ini memberikan wawasan baru terhadap literatur tentang hukum waris Islam dan SDM dengan menawarkan rekomendasi praktis untuk reformasi hukum yang lebih inklusif dan adil.

Kata Kunci: *Kalālah, Hak Asasi Manusia, Perspektif Hukum Islam.*

Abstract

The concept of kalālah in Islamic inheritance law concerns the inheritance rights of individuals who die without leaving a father or child. This topic is significant because the distribution of inheritance in kalālah often raises debates related to gender equality and human rights (HR). This article aims to explore how Islamic inheritance law, particularly in the context of kalālah, can be harmonized with HR principles such as gender equality and non-discrimination. The research method involves analyzing the texts of the Qur'an, hadith, and the interpretations of classical and contemporary scholars, combined with case studies from several Muslim countries. The results indicate that although Islamic inheritance law has strict provisions, there is room for reform through ijtihad and the adaptation of the law to changing social contexts. In conclusion, the application of Human Right principles in Islamic inheritance law can be achieved through legal revisions, intensive education and socialization, and the active role of scholars and religious leaders in promoting more inclusive and just legal interpretations. This research contributes new insights to the literature on Islamic inheritance law and HR by offering practical recommendations for more inclusive and equitable legal reform.

Keywords: *Kalālah, Human Rights, Islamic Legal Perspective*

Introduction

The concept of *kalālah* in Islamic inheritance law is significant as it pertains to the inheritance rights of individuals who die without leaving behind a father or children¹. *Kalālah* is essential to research due to specific provisions in the Qur'an concerning inheritance distribution, which often spark debates regarding gender equality and human rights². This article investigates how Islamic inheritance law, particularly *kalālah*, can be harmonized with human rights principles, especially gender equality and non-discrimination³.

The issue arises from the fact that Islamic inheritance law prescribes different inheritance shares for men and women. Surah An-Nisa' verses 12 and 176 provide guidelines for inheritance in *kalālah* cases, where brothers receive a larger share than sisters. This distribution is often seen as gender discrimination, conflicting with internationally recognized human rights principles such as those in the Universal Declaration of Human Rights (UDHR) and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)⁴.

Previous studies have presented various views and approaches to this issue. For instance, Esposito and DeLong-Bas⁵ examined how Islamic inheritance law could be aligned with international human rights norms through legal reforms and reinterpretation. They highlighted the potential for reforming Islamic inheritance law to reflect social and economic changes in modern societies.⁶ also noted that some Muslim countries have successfully implemented more inclusive and equitable legal reforms, such as in Tunisia, where inheritance laws have been modified to provide more equal shares between men and women.

This research aims to fill a gap in the literature by providing an in-depth analysis of how the concept of *kalālah* can be harmonized with human rights principles within Islamic inheritance law. The study also emphasizes the importance of *ijihad* (independent reasoning) and contextual interpretation of religious texts to create a more just and equitable legal system.

Post previous research has focused on theoretical and normative analyses of Islamic inheritance law and human rights. For example,⁷ in his book *Shariah Law: An Introduction* emphasized the need for adapting Islamic law to changing social contexts through *ijihad*. He argued that fundamental Islamic principles such as justice and equality should guide the interpretation of inheritance law. Additionally,⁸ research on *International Human Rights and Islamic Law* demonstrated that Islamic law has internal mechanisms that allow adaptation to international human rights standards.

Furthermore, several studies have addressed the issue of *kalālah*. These include research by⁹) titled *Konsep Kalālah dalam Kewarisan Islam (Studi Pemikiran Muhammad Syahrur dan Faḥlur Rahman)*, an article by¹⁰ titled *Perbandingan Penerapan Konsep Kalālah dalam Pemikiran Hukum Waris Islam*, an article by¹¹ titled *Problematisa Hak Waris Saudara dalam Kewarisan Kalālah*, an article by Akbaru Wustho Arham and Elfia¹² titled *Pemikiran Muhammad Syahrur tentang Kewarisan Kalālah dan*

¹ M. H. Kamali, *Shariah Law: An Introduction* (Oxford: Oneworld Publications, 2016).

² (Esposito & DeLong-Bas, 2018)

³ S. S. Ali, *Modern Challenges to Islamic Law* (Cambridge: Cambridge University Press, 2016).

⁴ M. A. Baderin, *International Human Rights and Islamic Law* (Oxford: Oxford University Press, 2003).

⁵ (2018)

⁶ Ali (2016)

⁷ Kamali (2016)

⁸ Baderin's (2003)

⁹ Devarizi Anjasmara (2023)

¹⁰ Syabbul Bachri (2022)

¹¹ A. Sarjan (2021)

¹² (2020)

Relevansinya Terhadap Pembaruan Hukum Islam, an article by Ahmad Suganda¹³ titled *Konsep Kalâlah dalam Fiqih Waris*, and an article by Tanti Rostiana Herdiani, Jaka Ghianovan, Khoirun Nidhom¹⁴ titled *Kalâlah Inheritance in Q.S. al-Nisa [4]: 176: A Comparative Study of the Interpretation of Ibn al-'Arabi and Wabbah az-Zuhaili*.

However, this research offers new contributions by focusing on empirical analysis of the implementation of *kalâlah* inheritance law in various Muslim countries, including Indonesia. This study not only discusses the legal reforms that have been made but also explores the challenges and obstacles faced in implementing human rights principles within Islamic inheritance law.

The primary objective of this research is to explore how human rights principles can be integrated with the concept of *kalâlah* in Islamic inheritance law. The study also aims to identify practical steps that governments and civil society organizations can take to support more inclusive and equitable legal reforms. Additionally, the research seeks to provide insights into the role of scholars and religious leaders in promoting more progressive and contextual interpretations of the law.

This research is important as it contributes new insights to the literature on Islamic inheritance law and human rights by providing empirical analysis and practical policy recommendations. The findings of this study are expected to serve as a guide for policymakers, academics, and legal practitioners in creating a more just and equitable inheritance law system.

The main hypothesis of this research is that Islamic inheritance law, particularly in the context of *kalâlah*, can be harmonized with human rights principles through legal reforms and contextual interpretation. The research argues that the application of *ijtihad* and the adaptation of the law to changing social contexts can help create a more inclusive and just legal system.

Furthermore, the research argues that education and socialization about fair and equal inheritance rights are crucial in overcoming cultural and customary barriers that often hinder legal reforms. The study also emphasizes the importance of women's participation in decision-making and inheritance dispute resolution processes to ensure that their rights are respected and protected. Thus, this research not only provides a theoretical analysis of the relationship between *kalâlah* and human rights but also offers practical recommendations for improving the alignment between these concepts within Islamic inheritance law.

Method

This research employs qualitative data gathered from various classical and contemporary Islamic legal sources, including fiqh books and academic journals. These sources were selected for their in-depth and historical perspectives on the topic of *kalâlah* in Islamic inheritance law. The research model was developed based on textual and contextual analysis of the collected data. This approach allows the researcher to identify the main themes and sub-themes relevant to the research topic. The model development process involves three main stages: data collection, coding, and thematic analysis. Data were collected from the aforementioned sources and then coded using open coding techniques to identify key categories and themes¹⁵. Following this, thematic analysis was conducted to link these categories and generate findings relevant to the research objectives.

The methods used in this research involve several practical steps to ensure the validity and reliability of the collected data. Data were collected through literature reviews, including classical

¹³ (2020)

¹⁴ (2024)

¹⁵ (Corbin & Strauss, 2015)

Islamic legal texts and accredited academic journals¹⁶. Careful data coding was performed to ensure that every relevant theme and sub-theme was accurately identified and categorized¹⁷. In selecting the theoretical framework for this research, the researcher employed an interpretive approach that allows for an in-depth analysis of Islamic legal texts. This approach was chosen for its flexibility in understanding the varying meanings and legal implications in different social and cultural contexts. Additionally, this approach enables the researcher to combine textual analysis with contextual insights obtained from the literature review¹⁸.

Results and Discussion

The Concept of Kalālah in Islamic Inheritance Law

a. Definition of Kalālah

Kalālah is a term with a specific meaning in Islamic inheritance law. The term originates from the root letters *kaf* and *lam*. According to Ibn Faris, the basic meaning of this word revolves around three concepts: “*blunt (versus sharp)*”, “*encircling something with something*”, and “*one of the body organs (chest)*”. The first is exemplified by the phrase “*kalla as-saifu*” meaning “*the sword became blunt*” and “*kalil*” meaning “*a blunt sword*”. The second is exemplified by “*iklil*” meaning “*headband or crown*”, named so because of its circular shape around the head. Besides these meanings, Sayyid Thanthawi provides another interpretation, meaning “*losing energy due to fatigue*”¹⁹.

Classical scholars’ interpretations of the concept of *kalālah* often refer to primary fiqh books in Islamic law. One such book is Al-Mughni by²⁰, which explains that *kalālah* refers to a condition where a Muslim dies without leaving the closest heirs, namely children and a father. In this case, the maternal and full siblings become the rightful heirs to the deceased’s estate. There are views interpreting *kalālah* as a person who dies without having children and without having a father, or someone who dies without direct ascendants as heirs, such as a father, grandfather, etc. Nor do they have descendants like sons, daughters, granddaughters, or grandsons from sons, continuing downwards²¹.

Muhammad Syahrur defines *kalālah* as a state where there is no longer a spouse and the brother is the sole heir. Syahrur emphasizes that in all inheritance laws and the determination of shares for each heir, the conditions are determined with the inclusion of two genders, male and female, as heirs. If there is only one gender, the inheritance is divided equally²². Hazairin argues that *kalālah* refers to the condition of dying without having children, whether male or female. In other words, *kalālah* is the condition of someone dying without children. Hazairin’s interpretation introduces a new perspective besides that provided by classical scholars and other jurists. It refers to someone who dies, either male or female, who has never married throughout their life and leaves no parents except only their siblings²³.

Thus, *kalālah* in Islamic inheritance law refers to a person who dies without leaving behind a father or children. Both classical and modern interpretations provide an understanding that

¹⁶ (Braun & Clarke, 2006)

¹⁷ (Corbin & Strauss, 2015)

¹⁸ M. Q. Patton, *Qualitative Research & Evaluation Methods: Integrating Theory and Practice* (Thousand Oaks, CA: SAGE Publications, 2015).

¹⁹ Muhammad Quraish Shihab, *Yang Hilang dari Kita, Akhlak*, II (Tangerang Selatan: Lentera Hati, 2017).

²⁰ Ibn Qudamah (1997)

²¹ Muhammad Thaha Abul Ela Khalifah, *Hukum Waris: Pembagian Waris Berdasarkan Syariat Islam* (Solo: Tiga Serangkai, 2007).

²² (Arham and Elfia, 2020)

²³ Sarjan, “Problematisasi Hak Waris Saudara Dalam Kewarisan Kalalah.”

maternal or full siblings become the heirs. This definition aligns with the provisions of the Qur'an, hadith, and scholars' ijtihad.

b. Sources of Kalâlah Law

Kalâlah is a concept explained in the Qur'an through two key verses in Surah An-Nisa, namely verses 12 and 176. Verse 12 of Surah An-Nisa provides guidelines for inheritance distribution in situations where a person dies without leaving behind children or a father but has a maternal sibling. This distribution gives rights to maternal siblings, whether male or female, to receive a certain share of the inheritance²⁴. Verse 176 of Surah An-Nisa provides further details on the inheritance distribution for *kalâlah*.

Hadith also provides explanations regarding *kalâlah*. In a hadith narrated by Al-Bukhari and Muslim, the Prophet Muhammad gives instructions on the distribution of inheritance for those who die without leaving close heirs like children or a father²⁵. This hadith forms the basis for scholars to determine inheritance distribution in *kalâlah* cases²⁶. The hadith explanation strengthens the provisions in the Qur'an and helps provide a more complete guide for inheritance distribution in complex situations²⁷.

For example, in a hadith narrated by Abu Hurairah, the Prophet Muhammad said: "Whoever leaves wealth, it is for his heirs, and whoever leaves debt or weak children, come to me, for I am his protector" (Narrated by Bukhari). This hadith emphasizes that the responsibility for managing the inheritance and the children left behind lies with the family, but if there is no family, then society, through its leaders or state, must take over²⁸. These hadiths highlight the importance of giving special attention to inheritance distribution and the protection of the heirs left in *kalâlah* situations²⁹.

The interpretation of the concept of *kalâlah* in Islamic inheritance law is not limited to the Qur'an and hadith but also involves fatwas and scholars' views. Classical scholars like Ibn Qudamah³⁰ in *Al-Mughni* and Al-Mawardi³¹ in *Al-Hawi Al-Kabir* have provided in-depth guidance on inheritance distribution in *kalâlah* cases. They emphasize the importance of following clear texts from the Qur'an and hadith in determining inheritance shares. In the modern context, fatwas and contemporary scholars' views also play an important role. For instance, research by Esposito and DeLong-Bas³² emphasizes the importance of understanding the social and historical context when determining inheritance shares for *kalâlah*. They argue that in some cases, the distribution of inheritance can be adjusted according to the socio-economic conditions of the family concerned to achieve better justice.

Thus, the sources of *kalâlah* law in Islamic inheritance law involve a combination of the Qur'an, hadith, as well as classical and contemporary scholars' fatwas and views. A comprehensive and inclusive understanding of the concept of *kalâlah* can help create a more just and equitable inheritance system in accordance with the fundamental principles of Islam and human rights.

²⁴ Kamali, *Shariah Law: An Introduction*.

²⁵ Kamali.

²⁶ (Esposito & DeLong-Bas, 2018)

²⁷ Baderin, *International Human Rights and Islamic Law*.

²⁸ Kamali, *Shariah Law: An Introduction*.

²⁹ (Esposito & DeLong-Bas, 2018)

³⁰ (1997)

³¹ (1999)

³² (2018)

c. Inheritance Distribution of Kalālah

Kalālah is a term in Islamic inheritance law referring to someone who dies without leaving behind direct male heirs such as children or a father. In this situation, the heirs categorized under *kalālah* are the deceased's siblings, whether maternal, full siblings, or paternal siblings. According to Ibn Qudamah in *Al-Mughni* (1997), heirs in *kalālah* cases consist of full siblings (whether paternal or maternal), maternal siblings, and paternal siblings. The inheritance distribution in *kalālah* cases differs from the general inheritance distribution due to the absence of direct male heirs like sons or fathers. Al-Mawardi in *Al-Hawi Al-Kabir* (1999) also explains that in *kalālah* cases, maternal siblings receive a specific share as determined by the Qur'an. If there are no maternal siblings, the full siblings or paternal siblings will receive a larger share according to shariah provisions.

The inheritance distribution in *kalālah* cases is clearly outlined in the Qur'an, particularly in Surah An-Nisa' verses 12 and 176. These verses explain that if someone dies without leaving behind children or a father but has a sister, the sister receives half of the inheritance. If there are two sisters, they receive two-thirds of the inheritance. If there are both brothers and sisters, the share of a brother is equivalent to that of two sisters.

Human Rights Principles in Islamic Law

a. Definition and Main Principles of Human Rights

Human Rights (HAM) encompass fundamental rights inherent to every individual regardless of race, gender, nationality, ethnicity, language, religion, or any other status. The main principles of human rights include universality, non-discrimination, gender equality, and social justice. In Islamic law, these principles are also recognized and applied, although their interpretation and application may vary depending on social and cultural contexts³³. The principle of universality asserts that human rights are universal and apply to everyone without exception. Non-discrimination is at the core of universality, ensuring that no individual is treated differently based on irrelevant reasons such as race, gender, or religion³⁴.

Research by Baderin³⁵ shows that the principles of universality and non-discrimination can also be found in various contemporary scholars' interpretations and fatwas, emphasizing the importance of respecting human rights in all aspects of life. Baderin asserts that these principles must be consistently applied to ensure justice and welfare for all individuals. Gender equality and social justice are two crucial principles of human rights also recognized in Islamic law³⁶. Gender equality refers to fair and equal treatment of all genders, while social justice relates to the equitable distribution of resources and opportunities within society³⁷. These principles indicate that Islamic law has internal mechanisms to ensure all individuals are treated fairly and equally and have equal access to resources and opportunities³⁸.

Research by Ali³⁹ shows that despite different interpretations regarding gender roles in Islamic law, there is consensus that gender equality is an integral part of Islamic teachings. Ali also emphasizes that several Muslim countries have enacted legal reforms to enhance gender equality, such as laws protecting women's rights and providing greater access to education and employment.

³³ A. A. An-Naim, *Islam and the Secular State: Negotiating the Future of Sharia* (Cambridge, MA: Harvard University Press, 2010); Baderin, *International Human Rights and Islamic Law*.

³⁴ (Esposito & DeLong-Bas, 2018; Kamali, 2016)

³⁵ (2003)

³⁶ Baderin.

³⁷ Kamali, *Shariah Law: An Introduction*.

³⁸ (Esposito & DeLong-Bas, 2018)

³⁹ (2016)

Research by Esposito and DeLong-Bas ⁴⁰ shows that social justice is a central principle in Islamic law, emphasizing the importance of distributing wealth fairly and helping those in need. They assert that these teachings can serve as a basis for social and economic reforms in Muslim countries to ensure the welfare and justice for all members of society.

b. Human Rights in the Qur'an and Hadith

The principles of justice and individual rights protection are core elements in Islamic teachings as reflected in the Qur'an and hadith. The Qur'an emphasizes the importance of justice in various aspects of life, including the protection of individual rights. One verse that emphasizes the principle of justice is Surah An-Nisa' verse 58. This verse emphasizes that justice must be upheld in every aspect of life, including in law and governance ⁴¹. Justice is also the core of individual rights protection, meaning that every individual must be given their rights without discrimination ⁴². This principle aligns with Islamic teachings that promote social justice and the protection of individual rights as part of a fair and balanced legal system ⁴³. The Prophet Muhammad's hadith also underscores the importance of justice and individual rights protection. In a hadith narrated by Al-Bukhari and Muslim, the Prophet said: "None of you [truly] believes until he loves for his brother what he loves for himself." This hadith emphasizes the importance of mutual respect and the protection of each other's rights within society.

According to research by An-Naim ⁴⁴, the principle of justice in Islam is not limited to legal aspects but also encompasses social and economic justice. An-Naim emphasizes that the Qur'an and hadith provide comprehensive guidance to create a just and prosperous society. Implementing human rights in Islamic law involves translating the principles of universality, non-discrimination, gender equality, and social justice into the framework of sharia law. Despite differing interpretations, many Muslim scholars and intellectuals strive to integrate human rights principles with Islamic law. Kamali ⁴⁵ explains that human rights principles can be found in various aspects of Islamic law, ranging from criminal law to family law. For instance, in Islamic criminal law, there are principles that ensure the protection of defendants' rights, such as the right to a fair trial and the right not to be tortured.

In the context of gender equality, the Qur'an states in Surah An-Nisa' verse 32: "And do not wish for that by which Allah has made some of you exceed others. For men is a share of what they have earned, and for women is a share of what they have earned. And ask Allah of His bounty. Indeed, Allah is ever, of all things, Knowing." This verse shows that both men and women have equal rights to the results of their efforts. Research by Badawi ⁴⁶ shows that many Muslim countries have enacted legal reforms to strengthen gender equality and protect women's rights, such as laws prohibiting domestic violence and providing equal rights in education and employment.

In the aspect of social justice, the Qur'an often emphasizes the importance of distributing wealth fairly and helping those in need as explained in Surah Al-Baqarah verse 177. Esposito and DeLong-Bas ⁴⁷ assert that the application of social justice in Islamic law is an integral part of the religion. They state that these teachings can serve as a basis for social and economic reforms in

⁴⁰ (2018)

⁴¹ Kamali, *Shariah Law: An Introduction*.

⁴² Baderin, *International Human Rights and Islamic Law*.

⁴³ (Esposito & DeLong-Bas, 2018)

⁴⁴ (2010)

⁴⁵ Kamali, *Shariah Law: An Introduction*.

⁴⁶ (2015)

⁴⁷ (2018)

Muslim countries to ensure the welfare and justice for all members of society. Therefore, the principles of justice and individual rights protection and the application of human rights in Islamic law are essential parts of Islamic teachings. A deep and inclusive understanding of these principles can help create a more just and equal legal system, in accordance with the fundamental values of Islam and international human rights standards.

Analysis of Kalālah from a Human Rights Perspective

a. Impact of Kalālah on Gender Equality

In the context of Islamic inheritance law, *kalālah* refers to situations where a person dies without leaving behind a child or a father as heirs. The distribution of inheritance in *kalālah* cases is clearly outlined in the Qur'an, particularly in Surah An-Nisa' verses 12 and 176. These verses establish different proportions of inheritance for brothers and sisters⁴⁸. For example, if a person dies and leaves only a sister, she is entitled to half of the inheritance. However, if there is a brother, his share is greater than that of the sister⁴⁹. This explanation shows a disparity in the distribution of inheritance that often leads to debates regarding gender equality in Islamic law⁵⁰.

Critics argue that the inheritance distribution favoring males over females is a form of gender discrimination that does not align with human rights principles⁵¹. However, proponents of this system argue that the distribution is based on the different roles and responsibilities of men and women in traditional Islamic societies, where men are considered the primary breadwinners responsible for supporting their families⁵².

The issue of gender discrimination in the distribution of *kalālah* inheritance is increasingly relevant in modern discussions on human rights and Islamic law reform. Many scholars and human rights activists argue that Islamic inheritance law needs to be reformed to eliminate discriminatory elements and ensure gender equality. For instance, Badawi⁵³ highlights that inheritance laws in many Muslim countries still discriminate against women by giving them smaller shares compared to men. Research by Ali⁵⁴ shows that some Muslim countries have undertaken legal reforms to address these discrimination issues. In Tunisia, for example, inheritance laws have been changed to provide more equal shares between men and women. These reforms aim to reflect the social and economic changes in modern society, where women increasingly play roles as breadwinners and major contributors to the family economy.

However, despite these reforms, implementing gender equality in Islamic inheritance law still faces many challenges. Some conservative scholars reject these reforms, claiming they contradict the fundamental principles of sharia. They argue that the inheritance distribution outlined in the Qur'an should be respected and adhered to without change⁵⁵. In this context, it is important to find a balanced approach that accommodates sharia principles while also meeting international human rights standards. An-Naim⁵⁶ emphasizes the importance of *ijtihad* (independent reasoning) and legal reform to create a more inclusive and just legal system. He argues that the interpretation of religious texts must be flexible and responsive to social and economic changes.

⁴⁸ Kamali, *Shariah Law: An Introduction*.

⁴⁹ (Esposito & DeLong-Bas, 2018)

⁵⁰ Baderin, *International Human Rights and Islamic Law*.

⁵¹ (Esposito & DeLong-Bas, 2018)

⁵² Kamali, *Shariah Law: An Introduction*.

⁵³ (2015)

⁵⁴ (2016)

⁵⁵ Baderin, *International Human Rights and Islamic Law*.

⁵⁶ (2010)

Thus, the analysis of *kalâlah* from a human rights perspective reveals both challenges and opportunities in achieving gender equality in Islamic inheritance law. While some traditional interpretations may seem discriminatory, there is room for reform and reinterpretation that can support principles of equality and justice.

b. Contemporary Cases

The distribution of inheritance in *kalâlah* cases has been the subject of debate and reform in various Muslim countries. Some countries have taken steps to align Islamic inheritance law with human rights principles and gender equality, while others maintain traditional interpretations ⁵⁷. In Tunisia, inheritance laws have undergone significant reform. Tunisia is known as one of the most progressive Muslim countries in terms of women's rights. Inheritance laws in Tunisia have been amended to provide women with larger and more equal shares of inheritance. Research by Charrad ⁵⁸ shows that these changes reflect Tunisia's efforts to harmonize Islamic law with international norms on gender equality. The Tunisian government has adopted a more inclusive approach, considering the socio-economic context and the role of women in modern society.

In Egypt, inheritance law is still based on traditional sharia, which gives larger shares of inheritance to men compared to women. However, there are discussions and reform efforts to enhance gender equality in inheritance law. Research by Sonneveld ⁵⁹ shows that despite resistance to change, many Egyptian women fight for their rights through the legal system and non-governmental organizations. These efforts reflect social shifts and increased awareness of the importance of gender equality in Muslim society. In Pakistan, inheritance law is also based on sharia, but there are variations in its application across different regions and communities. Research by Quraishi ⁶⁰ shows that although sharia law grants larger inheritance shares to men, local practices sometimes provide more equitable shares to women. However, Quraishi also notes that further reforms are needed to ensure greater gender equality and protect women's rights.

Indonesia, as the country with the largest Muslim population in the world, faces unique challenges in implementing fair and equal inheritance laws. Inheritance law in Indonesia is governed by the Compilation of Islamic Law (KHI), which is based on sharia principles but also reflects the influence of customary and national law (Bowen, 2003). The KHI stipulates that in *kalâlah* cases, the distribution of inheritance must follow the sharia provisions outlined in the Qur'an and hadith. However, the implementation of this law often faces challenges in the modern context. Research by Bowen ⁶¹ shows that in many areas of Indonesia, customary practices still significantly influence inheritance distribution. These practices sometimes conflict with principles of gender equality and human rights.

Additionally, there are challenges in terms of public understanding and awareness of inheritance rights. Many people do not understand their rights under Islamic and national law, leading to injustices in inheritance distribution. Research by Feener ⁶² shows that education and socialization about fair and equal inheritance laws are crucial to addressing these challenges. There are also reform efforts within the Indonesian legal system to enhance gender equality in inheritance distribution. Research by Hooker ⁶³ shows that there is increasing awareness and support for more

⁵⁷ Ali, *Modern Challenges to Islamic Law*.

⁵⁸ (2014)

⁵⁹ (2012)

⁶⁰ (2011)

⁶¹ (2003)

⁶² (2007)

⁶³ (2008)

inclusive and fair legal reforms. However, these reforms often face resistance from conservative groups that adhere to traditional sharia interpretations.

In Indonesia, the implementation of fair inheritance laws also requires cooperation between various institutions, including the government, religious organizations, and civil society. The Indonesian government has taken steps to increase awareness and understanding of inheritance rights through education and socialization programs. However, much work remains to be done to achieve greater gender equality in inheritance distribution. Thus, contemporary cases in Muslim countries, including Indonesia, show the challenges and opportunities in implementing fair and equal inheritance laws. Legal reforms and increased public awareness are important steps to ensure that human rights and gender equality principles can be effectively applied in the context of Islamic law.

c. Evaluation and Criticism

The application of the *kalālah* concept in Islamic inheritance law is often criticized for violating human rights principles (HAM), particularly regarding gender equality and non-discrimination. This criticism primarily focuses on the inheritance distribution that grants larger shares to men compared to women, which can be seen as a form of gender discrimination⁶⁴. Research by Badawi⁶⁵ reveals that the inheritance distribution in *kalālah* cases, which gives brothers twice the share of sisters, contradicts the principle of gender equality recognized in many international human rights instruments. This principle is stated in the Universal Declaration of Human Rights (UDHR) and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), which emphasize that all individuals are entitled to equal treatment without discrimination.

Another criticism comes from research by Esposito and DeLong-Bas⁶⁶, which states that the inheritance distribution in *kalālah* does not consider the economic and social roles of women in modern society. In many cases, women also become primary breadwinners and significantly contribute to the family economy, so giving them smaller inheritance shares is unfair and does not reflect the existing social realities. One major criticism is that the traditional inheritance system in Islam, including the concept of *kalālah*, often ignores the contemporary social and economic context that has changed since the time of the Prophet Muhammad. Research by Baderin⁶⁷ emphasizes that traditional interpretations must be revised to reflect principles of social justice and equality more suited to the modern context. Baderin argues that inheritance law reforms in Islam are necessary to ensure that all individuals, both men and women, receive equal and fair rights.

Despite the criticisms of the application of *kalālah*, many Muslim scholars and academics seek ways to harmonize sharia principles with human rights. This view is based on the belief that the fundamental principles of Islam, such as justice and equality, align with human rights values and that legal interpretation should be flexible and responsive to social changes⁶⁸. Kamali⁶⁹, in his book *Shariah Law: An Introduction*, states that Islamic law has internal mechanisms to adapt to changing social contexts. Kamali emphasizes the importance of *ijtihad* (independent reasoning) to address contemporary issues and ensure that Islamic law remains relevant and fair. He argues that underlying sharia principles, such as justice and equality, should be the main guide in the

⁶⁴ Ali, *Modern Challenges to Islamic Law*.

⁶⁵ Badawi, *Women Under Islam: Gender Justice and Legal Reform in Muslim Countries*.

⁶⁶ (2018)

⁶⁷ (2003)

⁶⁸ An-Naim, *Islam and the Secular State: Negotiating the Future of Sharia*.

⁶⁹ (2016)

interpretation of inheritance law. An-Naim ⁷⁰ also argues that there is great potential to reform Islamic inheritance law to better align with human rights principles. In his book *Islam and the Secular State: Negotiating the Future of Sharia*, An-Naim suggests that the interpretation of Islamic law must consider the social context and actual needs of modern society. He argues that the fundamental principles of Islam support fair and equal treatment for all individuals and that legal reform is a crucial step to achieve this goal.

Overall, scholars and academics show that although there are challenges in applying *kalâlah* consistent with human rights, there are also significant opportunities for legal reform and adjustment. By adopting a more flexible and contextual approach, Islamic inheritance law can be aligned with the principles of justice and equality recognized internationally.

Challenges and Solutions

a. Challenges in Integrating Kalâlah and Human Rights (HR)

One of the primary challenges in integrating *kalâlah* with human rights principles is the strong cultural and customary norms within Muslim societies. In many countries, culture and customs significantly influence how inheritance laws are applied, including in *kalâlah* cases ⁷¹. These norms often conflict with HR principles, particularly concerning gender equality ⁷². This creates significant barriers to reforming inheritance laws to be more just and aligned with international HR values ⁷³. In Indonesia, for example, many communities still practice customary law in inheritance distribution. Research by Bowen ⁷⁴ indicates that customary norms often grant larger inheritance shares to males than females, contrary to internationally recognized gender equality principles. These customary norms can be significant obstacles to legal reform efforts aimed at integrating HR principles into Islamic inheritance law.

Additionally, cultural norms that prioritize males as heads of households and primary breadwinners reinforce the view that males should receive larger inheritance shares. This view remains strong in many Muslim societies and can impede efforts to create a more equitable inheritance system ⁷⁵. These norms often result in females receiving smaller inheritance shares, deemed unjust according to international human rights standards ⁷⁶. Research indicates that changes in cultural and customary norms are necessary to support more inclusive and equitable legal reforms ⁷⁷. Research by Feener ⁷⁸ reveals that in many cases, communities are more likely to respect and follow local traditions than national or international laws. This creates challenges for governments and institutions attempting to promote gender equality and human rights in inheritance distribution.

Another significant challenge is the lack of understanding and education about HR in the context of inheritance law among Muslim communities. Many individuals do not understand their rights under HR principles or how these rights can be integrated with Islamic law ⁷⁹. Insufficient education and socialization about inheritance rights and gender equality principles often become

⁷⁰ (2010)

⁷¹ Bowen, *Islam, Law, and Equality in Indonesia: An Anthropology of Public Reasoning*.

⁷² Feener, *Muslim Legal Thought in Modern Indonesia*.

⁷³ Hooker, *Indonesian Syariah: Defining a National School of Islamic Law*.

⁷⁴ (2003)

⁷⁵ Feener, *Muslim Legal Thought in Modern Indonesia*.

⁷⁶ Baderin, *International Human Rights and Islamic Law*.

⁷⁷ Hooker, *Indonesian Syariah: Defining a National School of Islamic Law*.

⁷⁸ (2007)

⁷⁹ Ali, *Modern Challenges to Islamic Law*.

barriers to inheritance law reform⁸⁰. Research shows that more intensive and inclusive educational programs are needed to raise awareness and understanding of human rights among Muslim communities⁸¹.

Research by Ali⁸² indicates that the lack of education and socialization about fair and equal inheritance rights is a major barrier to achieving effective legal reform. Many people still believe that inheritance distribution favoring males is an unchangeable religious decree, without understanding that there is room for *ijtihad* (independent reasoning) and reinterpretation within Islamic law. In Indonesia, the government and civil society organizations have worked to increase awareness and understanding of inheritance rights through education and socialization programs. However, research by Hooker⁸³ shows that much work remains to be done to ensure this information reaches all societal levels, especially in rural and remote areas.

One solution proposed by experts is to enhance educational programs emphasizing the importance of gender equality and human rights in the context of Islamic inheritance law. This education should include explanations of how HR principles can be integrated with Islamic teachings and the importance of *ijtihad* in adapting laws to changing social contexts⁸⁴. Additionally, the role of scholars and religious leaders is crucial in this process. They can be agents of change by teaching and promoting more inclusive and just interpretations of Islamic law. Research by Kamali⁸⁵ shows that progressive scholars open to *ijtihad* can help overcome resistance to legal reform and encourage broader acceptance of HR principles in inheritance law.

Thus, the challenges in integrating *kalālah* and HR involve strong cultural and customary norms and a lack of understanding and education about human rights in the context of inheritance law. Solutions to these challenges include enhancing education and socialization and the active role of scholars and religious leaders in promoting inclusive and just legal reform.

b. Solutions for Enhancing Alignment

One of the primary solutions to enhance the alignment between Islamic inheritance laws, particularly *kalālah*, and human rights (HR) principles is through legal reform. This reform must consider HR principles such as gender equality, non-discrimination, and social justice⁸⁶. The main objective of this reform is to ensure that all individuals, both men and women, receive equal rights in the distribution of inheritance⁸⁷. This reform can involve adjusting existing laws to reflect changing social contexts and applying *ijtihad* (independent reasoning) to reinterpret religious texts within the framework of social justice⁸⁸. Such efforts are crucial to creating a more inclusive and fair inheritance system for all parties involved⁸⁹.

Legal reform should include revising inheritance provisions that give larger shares to males compared to females. Instead, the law should be designed to reflect the economic and social roles of women in modern society. Research by⁹⁰ indicates that inheritance law reforms that consider women as primary breadwinners can help achieve gender equality in inheritance distribution.

⁸⁰ Feener, *Muslim Legal Thought in Modern Indonesia*.

⁸¹ Kamali, *Shariah Law: An Introduction*.

⁸² (2016)

⁸³ (2008)

⁸⁴ Kamali, *Shariah Law: An Introduction*.

⁸⁵ (2016)

⁸⁶ Ali, *Modern Challenges to Islamic Law*.

⁸⁷ (Esposito & DeLong-Bas, 2018)

⁸⁸ Kamali, *Shariah Law: An Introduction*.

⁸⁹ An-Naim, *Islam and the Secular State: Negotiating the Future of Sharia*.

⁹⁰ Ali (2016)

Moreover, legal reform should be supported by more progressive and contextual interpretations of religious texts. Kamali ⁹¹ emphasizes the importance of *ijtihad* in addressing contemporary issues and ensuring that Islamic law remains relevant and just. Religious scholars and leaders must be involved in this reform process to ensure that the new legal interpretations are accepted by the broader community.

In addition to legal reform, education and socialization efforts are essential to ensure alignment between *kalâlah* and HR principles. This education should include explanations of fair and equal inheritance rights and how HR principles can be integrated with Islamic teachings (Kamali, 2016). Research by Feener ⁹² indicates that a lack of understanding of inheritance rights and HR principles is a major barrier to effective legal reform. Educational and socialization programs need to be widespread and intensive, particularly in rural and remote areas where customary norms remain strong.

In Indonesia, the government and civil society organizations have worked to raise awareness and understanding of inheritance rights through educational and socialization programs. Research by Hooker ⁹³ shows that these programs should include explanations of how HR principles can be integrated with Islamic teachings and the importance of *ijtihad* in adapting laws to changing social contexts. The role of scholars and religious leaders is also crucial in this education and socialization process. They can act as agents of change by teaching and promoting more inclusive and just interpretations of Islamic law. Research by Kamali ⁹⁴ shows that progressive scholars open to *ijtihad* can help overcome resistance to legal reform and encourage broader acceptance of HR principles in inheritance law.

Furthermore, law enforcement officials must receive adequate training on HR principles and how to apply them in the context of Islamic inheritance law. This training should include explanations of the importance of gender equality and non-discrimination in inheritance distribution. Research by Bowen ⁹⁵ shows that well-trained law enforcement officials can help ensure that legal reforms are implemented effectively and fairly.

Thus, solutions to enhance alignment between *kalâlah* and HR involve legal reforms that consider HR principles, as well as intensive education and socialization efforts for the community and law enforcement. These steps can help create a more inclusive and just legal system, consistent with the fundamental values of Islam and international HR standards.

c. Policy Recommendations

To integrate human rights (HR) principles into the concept of *kalâlah* in Islamic inheritance law, several practical steps can be taken. These steps should be based on internationally recognized principles of equality, justice, and non-discrimination. *First*, revise existing inheritance laws to reflect gender equality principles. Inheritance laws should be amended to ensure that women receive inheritance shares equal to men. Research by Esposito and DeLong-Bas ⁹⁶ shows that more equitable inheritance distribution can be achieved by adjusting existing Sharia provisions to align with HR principles. For example, the inheritance share given to sisters in *kalâlah* cases should be increased to reflect their role in supporting the family economically.

⁹¹ (2016)

⁹² Feener, *Muslim Legal Thought in Modern Indonesia*.

⁹³ Hooker, *Indonesian Syaria: Defining a National School of Islamic Law*.

⁹⁴ (2016)

⁹⁵ (2003)

⁹⁶ (2018)

Second, apply *ijtihād* or independent reasoning in interpreting Islamic law. *Ijtihād* allows scholars and legal experts to reinterpret religious texts in the context of changing social conditions. Research by Kamali ⁹⁷ shows that *ijtihād* can be used to address contemporary issues such as gender equality in inheritance law. This allows Islamic law to be updated to better reflect principles of justice and equality. *Third*, develop fair and inclusive dispute resolution mechanisms. These mechanisms should be designed to ensure that all individuals, both men and women, have equal access to justice. Research by Ali ⁹⁸ shows that fair and transparent dispute resolution can help reduce discrimination in inheritance distribution and ensure that the rights of all individuals are respected.

The government and civil society organizations play a crucial role in supporting Islamic inheritance law reforms that integrate HR principles. The government is responsible for developing policies and programs that support legal reform, while civil society organizations can help raise awareness and educate about inheritance rights. The government can take the following steps to support inheritance law reform: *first*, hold public consultations and dialogues with stakeholders. These consultations should involve scholars, legal experts, academics, and community representatives to ensure that all perspectives are considered in the reform process. Research by Baderin ⁹⁹ shows that broad public participation can help create more inclusive and just policies. *Second*, develop and implement education and socialization programs. These programs should be designed to increase public understanding of HR principles and fair inheritance rights. Research by Feener ¹⁰⁰ shows that effective education can help overcome cultural and customary barriers that often hinder legal reform. *Third*, strengthen the capacity of law enforcement and judicial systems. Law enforcement officials must be trained to apply principles of equality and non-discrimination in the context of inheritance law. Research by Hooker ¹⁰¹ shows that well-trained law enforcement officials can help ensure that legal reforms are implemented effectively and fairly.

Civil society organizations also have an important role in supporting inheritance law reform: *first*, raise awareness and education. Civil society organizations can conduct campaigns and educational programs to increase awareness of fair inheritance rights and gender equality. Research by Bowen ¹⁰² shows that civil society organizations can play a key role in changing discriminatory cultural attitudes and norms. *Second*, provide legal assistance and support to marginalized individuals. Civil society organizations can offer legal aid to individuals facing discrimination in inheritance distribution. Research by Ali ¹⁰³ shows that legal assistance can help individuals fight for their rights and obtain justice. *Third*, encourage women's participation in decision-making processes. Civil society organizations can work to ensure that women have a voice in the legal reform process and in resolving inheritance disputes. Research by Kamali ¹⁰⁴ shows that women's participation in decision-making can help create more inclusive and just policies.

Therefore, practical steps to integrate *kalālah* and HR in the Islamic inheritance law system involve legal revision, the application of *ijtihād*, and the development of fair dispute resolution mechanisms. The government and civil society organizations play an essential role in supporting these reforms through public consultation, education, law enforcement training, and legal

⁹⁷ (2016)

⁹⁸ (2016)

⁹⁹ (2003)

¹⁰⁰ (2007)

¹⁰¹ (2008)

¹⁰² (2003)

¹⁰³ (2016)

¹⁰⁴ (2016)

assistance. Collaborative efforts can help create a more inclusive and just legal system, consistent with the fundamental values of Islam and international HR standards.

Conclusion

This article has explored the relationship between the concept of *kalālah* in Islamic inheritance law and human rights (HR) principles. Through the analysis of Quranic verses, hadiths, and the interpretations of classical and contemporary scholars, this research finds that while Islamic inheritance law has specific provisions regarding the distribution of inheritance, there is potential to harmonize HR principles, particularly gender equality and non-discrimination, within these practices. The findings indicate that the application of *ijtihad* and progressive legal reforms can be key to creating a more just and inclusive inheritance system.

As a recommendation, this research encourages practical steps to reform Islamic inheritance law, including revising inheritance provisions to ensure gender equality. Intensive education and socialization for the public and law enforcement are also crucial to enhancing understanding of fair and equal inheritance rights. The government and civil society organizations should collaborate in developing educational and training programs that emphasize the importance of gender equality and HR principles in inheritance law.

Additionally, scholars and religious leaders are expected to actively promote more inclusive and contextual interpretations of Islamic law. By adopting an approach responsive to social changes, Islamic inheritance law can be aligned with the fundamental values of Islam and international HR standards, thus creating justice for all individuals, both men and women, in the distribution of inheritance.

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