

Faraid - As the Basis of the Islamic Law on Inheritance and the Features of its Economic Consequences

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Abstract

The article describes the Islamic law of Faraid on inheritance, as well as the foundations of its emergence and systematic influence on the development of mankind. Faraid plays a fundamental role as a driving force in the development of science, which has a great economic impact on the development of social welfare. The article aims firstly to raise awareness of the importance of the Islamic law of inheritance for the development of knowledge and the social prosperity of mankind. Secondly, an attempt is made to reveal the concepts of Hikmah, the basis of the rules of Faraid and its economic consequences. Thirdly, to show the consciousness of their compliance with Shariah and benefit to humanity.

Keywords: *Faraid, Hikma, Mawaris, Mannan, Maududi, Annisa, Mujmala, Ayat Mufassil, Ayat al-Mawaris, Ihva, Kahin, Al-ahwal, Ash-shahsiyya, Al-movad-dul-sharia, Shafiit.*

The Islamic law of succession (Faraid) is an integral part of Sharia. This is the science of distributing the inheritance of a deceased person in accordance with the law and teachings of the Sharia, also known as Ilmu Mawaris, or the science of inheritance. Based on the Holy Qur'an, Islam wisely ordains the Islamic law of inheritance. Quantitatively, Faraid has a systematic effect on the development of knowledge and quality of life, which is evident in the true hadeeth, which states that Faraid is half of full knowledge. Historical facts have shown that the Islamic law of inheritance underlies the emergence of Algebra.

Faraid and its role as a tool for creating a proper economic order in society were most often discussed by Muslim economists in the late 60s - late 80s of the twentieth century. notable studies revealing Faraid's economic role was Mannan (1970). He noted that from an economic point of view, Faraid plays an important role in involving women in complex economic practices so that men and women together can raise the wealth of the nation and the well-being of society. In addition to this, he also provided evidence for Faraid's anti-capitalist outlook, as he keeps wealth properly distributed among heirs, rather than being monopolized in one hand or concentrated in one place.

Qualitative studies dominating the field of Islamic economics that discuss Faraid's role in society's economy include Maududi (2011), Khan (1989) and Mannan (1987). It should be kept in mind here that qualitative research is research that uses an interpretive, naturalistic approach to its subject matter, and is therefore intended to bridge the gap between scientific implementation. According to Maxwell, qualitative research is useful for the following purposes: Understanding the meaning of the events, situations, and actions in which a phenomenon occurs (Meaningfulness is also known as the "interpretative" approach to the social sciences, as Bredo and Feinberg (1982) argue)). The rationale for qualitative research in Faraid is related to the nature of Faraid, which is related to the many dimensions of human life in relation to the social life and economic order of society.

Thus, qualitative research is considered more appropriate for this area of the discipline. The Islamic law of inheritance was formulated and fixed from the moment of its revelation until the era of the Companions. Since Faraid is religious in nature, his future depends much more on the Muslim community (Mannan, 1987). However, Muslim awareness of Faraid as a role for individual Muslims and society is still low. This condition made the fact that Faraid's established rules could be accepted by the non-Muslim community with little adjustment to create a proper economic order in society become elusive. Thus, we find two gaps in the development of society through the practice of Faraid, Muslim awareness of the importance of it as a religious obligation and science and the importance of Faraid as one of the disciplines for society, especially in the field of economics.

In addition, this study is exploratory in nature. This is because the information about Faraid that was made in the past was limited to theoretical discussion, according to which recent research on Faraid is more about the study of Faraid as one of the obligatory requirements of Muslims and how to deal with him as one of the them. tool in personal wealth and asset management and planning. Similarly, the exploratory study is in line with the purpose of this study, which is to raise awareness of the practice of Faraid as a duty for Muslims and as a tool for creating a proper economic order in society.

Literature reviews and collected information are used for analysis and further conclusions. Literature reviews highlight the Islamic inheritance law as one of the duties of Muslims and its role as one of the tools for the redistribution of wealth in society. However, it is worth noting that the result of this study is a proposal for a general model. That is, there should be no legal restrictions on the part of local governments and regulators on the structure mechanism. Therefore, it is assumed that this model can be applied in any legal jurisdiction, so the legal perspective is not included in the discussion.

The collected data is mainly taken from books, journal sources and internet sites. Maxwell (2005) categorizes this type of data collection into theoretical categories, the encoded data can be derived from either prior theory or inductively developed theory, and typically represent the researcher's concepts.

Islamic inheritance law is based on the primary sources of Islamic law, the Al-Quran and the Sunnah of the Prophet Muhammad (peace be upon him) in a detailed and comprehensive structure. According to Arab customs, that is, in pre-Islamic history, only men can use the inheritance, with the exception of babies. One day, the widow of Aus bin Malik, who remained a husband with two daughters and a young son, informed the Prophet Muhammad (peace and blessings be upon him) that her husband's cousin took all the property and left nothing for her and her children. After that, through revelation, Allah commanded the right of inheritance for women, as stated in Al-Quran Annis 4:7.

“For men, this is the share of what parents and close relatives leave, and for women, the share of what parents and close relatives leave, a little or a lot, is an obligatory share.”

This verse has the character of Mujmal, i.e. it does not discuss in detail the rights of beneficiaries. Another category is Ayat Mufassil or Ayat al-Mawaris, i.e. Allah gives a detailed explanation regarding the beneficiaries as well as the share for each of them. The revelation of verses 11 and 12 of An Nisa completed the detailed explanation of the rule of succession after a similar incident happened to the widow of Saad ibn Rabi.

In addition, the sequence of revelation regarding the rule of inheritance is explained in Al-Quran chapter An Nisa 4 verse 176. According to Ayatam Mufassil, the main beneficiaries are in some cases parents, children, spouse and ihwa (iwah can refer to full and/or paternal and/ or siblings).

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The proportion of children and parents is explained in verse 11, the spouse in verse 12 and the proportion of brothers and sisters in the second half of verse 12 and continues in verse 176 with the following explanation.

“Allah guides you in this regard (inheritance) of your children: for a man - a share equal to the share of two women; if only there are two or more daughters, then their share is two-thirds of the inheritance; if only one, her share is half. For parents - a sixth share of the inheritance to each, if the deceased has children; if there are no children and the parents are the (sole) heirs, the mother has a third; if the deceased has brothers (or sisters), the mother has a sixth. (Distribution in all cases(s) after payment of inheritance and debts. You do not know whether your parents or your children are closest to you in favor” (An Nisa 4:11).

A summary of the share of children and parents is presented in the table below:

Table 1. Share of children in Islamic succession law

Beneficiaries	Shares
Son, sons, daughter and daughters	The proportion of men is twice that of women
only daughter	1/2 share
Daughters (two or more)	2/3 share

Table 2. Share of parents in Islamic inheritance law

Beneficiaries	Share for each inheritance		
	Proportion of men with offspring	Share of hereditary heir	Yihwa heir share
Share of women in inheritance	1/6 share	Asaba (confidant)	1/6+asabs (for an adopted person)
Mother	1/6 share	1/3	1/6

Mother 1/6 share 1/3 1/6

“In what you leave, your share is half, if they do not leave children; but if they leave a child, you will get a fourth; after payment of inheritance and debts. In what you leave, their share is a fourth, if you do not leave children; but if you leave a child, they will get an eighth; after payment of inheritance and debts. If the man or woman whose inheritance is in question has left no descendants, but has left a brother or sister, then each of the two shall receive a sixth part; and if there are more than two, then they share a third; after payment of inheritance and debts; that no harm be done (to anyone). So it is ordained by Allah; and Allah is Knowing, Patient” (An Nisa 4; 12).

“They are asking you for a judgment. Say: “Allah commands (thus) those who have left neither descendants nor descendants as heirs. If a man dies, leaving a sister, but without a child, she will own half of the inheritance: if (such a deceased was) a woman who did not leave a child, her brother will receive her inheritance: If there are two sisters, they must have two thirds of the

inheritance (between them) : if there are brothers and sisters, (they share), the man has twice the share of the woman. This is how Allah (His Law) makes clear to you so that you do not err. Allah has knowledge of all things. (An Nisa 4:176).”

Al-Qur'an explains the share of spouse and siblings in Nisa chapter 4 verse 12 with further explanation in verse 176 as above. From part of verse 12 we can summarize that the spouse's share is as follows:

Table-3. Spouse's share in Islamic inheritance law

Beneficiaries	Distribution of conditions	
	No male or female offspring	Having male or female offspring
Husband	1/2 share	1/4 share
Wife	1/2 beat	1/8 share

There are two different conditions regarding the share of siblings: when the man or woman whose inheritance is in dispute has left neither ancestors nor descendants, but has left a brother or sister, or both, he or she has left neither descendants nor ancestors in as beneficiaries. Thus, their share of you can be obtained as follows:

Table-4. Share of Subordinates in Islamic Succession Law – Condition I

Beneficiaries	Shares
Brothers	1/6
sisters	1/6
Brothers and sisters	Equity parts 1/3

Table-5. Share of brothers and sisters in Islamic inheritance law - condition II

Beneficiaries	Shares
Brothers	Asaba
Sister	3/2
sisters	1/2
sisters	2/3 share
Brothers and sisters	Remainder; men have twice as much as women

In all these verses, Allah mentions "after the payment of inheritance and debt" after each succession of the share of beneficiaries, i.e. twice in verse 11 and three times in verse 12. This command can be interpreted as Allah's emphasis on the importance of order and order in the division of inheritance. The division of the inheritance can be made only after the fulfillment of the following obligations of the testator:

This is the first order to be taken from the inheritance in moderation. This amount is spent on clothing and funeral expenses, such as soap, camphor, shroud, laundress's fee, buying land for the grave of the deceased, if there is no free plot, and so on.

The duty mentioned in the verses refers to and includes both the duty to people and to Allah, i.e. zakat, shadaku-l fitr, hajj, fulfillment of vows, etc. The beneficiaries have to repay these outstanding debts on behalf of the deceased person, as stated in the following hadeeth, as reported by Aisha (Shahin Bukhari, Shahin Muslim): “Whoever dies and has any fast, his heir must observe these fasts from his name. The hadeeth of Shahin Bukhari Muslim, narrated from Ibn Abbas, narrated by Salamah bin al Akwa, also emphasizes the importance of repaying a debt; how the

Prophet (peace and blessings of Allaah be upon him) refused to carry out the funeral of a deceased person who has debts, unless someone guarantees to pay them off.

The deceased is allowed to transfer no more than one third of his property to whomever he wishes, except for the beneficiaries determined in the Qur'an by means of a will before his/her death. He can even carry out his will for non-Muslims, for charity or to create a waqf fund. The number one third is derived from the hadeeth of Shahin Muslim narrated by Amir bin Sa'd from the words of his father Sa'd bin Abi Waqqas.

This distribution follows the Islamic law of inheritance as clearly stated in the previous verses.

The beneficiaries mentioned in Al-Qur'an are known as obligatory and primary heirs/beneficiaries or ashaboul faraid (plural)/wil furood (singular). However, along with all these primary beneficiaries, there are still other successors who are entitled to receive the remainder of the inheritance after the rights of the primary beneficiaries are exercised or in the absence of primary beneficiaries in relation to certain conditions established by the Shari'ah. The order of distribution of property and succession under Islamic law of inheritance after the repayment of the debt of the deceased and the will is explained in the following table:

Table 6. Sharia order of succession

Inheritance order	Share of property	Heir	Description
1	Fixed share	Ashabul Faraid or Zavil Furud	Heirs of the first order
2	Remainder (or if there are no mandatory heirs)	Asabah:	
		Asaba Nasabi	
		Asaba Sababi	by consanguinity
3	Remainder	Asabul Faraid	By special regard
4	Remainder	Zawil Arkham	If there is no asabat (residual beneficiaries), then the main heirs receive all the property
5	Remainder	Mavlat Muvalat	Relatives
6	Remainder	Al-muqirun Lahi bin nasab	Contractual successor
7	Remainder	Al Musa Lahu	Recognition of relatives
8	Remainder	Bait ul-Mol	One-time heirs of one third of the inheritance

First of all, the net property or property of the deceased person must be distributed among the heirs / beneficiaries, whose shares are prescribed by Sharia. The next successor is asabat (plural), asaba (singular). There are two types of asabs: asaba nasabi (blood relative) and asaba sababi (for a special reason), as well as maulakitak (master of a freed slave). Asabat receives the remainder or remains of the property after Ashabul Faraid has received his share. In the absence of ashabul faraid, asabat inherits all property.

In the absence of asaba nasabi and sababi, the wilt (distant relatives) are inherited by those who are blood relatives of the deceased, who are neither asaba nasabi nor asaba nasabi. If there is no zawil arham, the mavlal (legal successor under the contract) receives a share of the inheritance. If the above category is not available, then the inheritance will be given to al-muqirun lahu bin nasab

(recognised relatives), the person with whom the deceased has confirmed kinship, for example, he is my uncle or my brother, and until the day of his death he does not withdraw his application.

In the absence of all these categories of heirs, the inheritance passes to Al Musa Lahu, people to whom the deceased bequeathed more than a third of the property of the deceased. Thus, in the absence of these previous categories, Al Musa Lahu inherits in full. Finally, if none of the categories already mentioned above are available, then the property of the deceased will be transferred to Bait-ul-Mal. Prior to the beneficiaries mentioned in Al-Qur'an chapter 4, Annisa, verses 11, 12 and 176, we can see that the respective people receive the inheritance of the deceased before their special relationship with the deceased, i.e. blood relations, marriage and the last. what is not mentioned in these verses is the maulak so (master of a freed slave).

In some cases, the beneficiaries may not inherit from the deceased, i.e. if the beneficiary is a slave who is not entitled to own any wealth, unable to receive the transfer of ownership of the things of the deceased, the murderer. The murderer cannot inherit anything from his murdered relatives, as the prophet (peace and blessings be upon him) said: "The murderer does not inherit, religious differences; A Muslim does not inherit relatives from non-believers, and vice versa, according to the hadith of the Prophet (peace and blessings be upon him): A Muslim does not inherit from an unbeliever, and an unbeliever from a Muslim" (Shahih Bukhari). However, Sharia permits a Muslim to bequeath to a non-Muslim, and vice versa, unborn, illegitimate and adopted children; illegitimate children do not inherit from the father and vice versa, even children can inherit from the mother and the mother's family and vice versa, and adopted children inherit only by will or testament until death.

The "right of personal status" did not arise immediately, but gradually, at one of the stages in the evolution of Muslim law. A brief overview of the history of Islamic law and its main institutions will help to clarify its roots and origins. Such an approach, it seems, will also contribute to a better understanding of its essence and characteristic features.

Islamic law was created by Islam, but the building material from which it was formed was heterogeneous. It was tested by religious and ethical standards, gradually becoming universal. The operation of these standards, however, did not cover all spheres of Muslim life equally. While subtle in some cases, they have led to the creation of new institutions in others. Thus, in early Islam, legal institutions were insufficiently adapted to the Islamic religious and ethical obligations of man, while retaining some distinctive features.

Arab law in Muhammad's time was not entirely rudimentary. Really primitive was the customary law of the Bedouins, some traces of which survive in pre-Islamic and early Islamic poetry and tribal tales. According to some scientists, it was preserved unchanged, but this is not true, which is confirmed by literary sources. Thus, Mecca was a trading city with close commercial relations with South Arabia, Byzantine Syria and Sassanian Iran, and Medina was an oasis of palm trees with a strong colony of Jews, mostly from converted Arabs. The legal systems of these cities contained foreign elements and were at a higher level than Bedouin law, regulating mainly commercial and agricultural relations. The customary commercial law of Mecca was applied by merchants in their midst, in most cases in the same form as commercial law in Western Europe.

As for the Medina and other settlements, it can be assumed that their agricultural contracts and land law corresponded to the legal systems of the settled population of the southeastern Mediterranean.

The law of family relations and inheritance, and in general criminal law, however, both among the Bedouins and the settled population, was based on the dominance of the ancient Arab tribal system.

This system implied no legal protection for individuals outside of his tribe, no developed concept of criminal justice, and no classification of crimes to sue.

The absence of politically organized power in Arab society was the reason for the absence of an organized legal system. This does not mean that private justice prevailed in litigation relating to property rights, inheritance and torts not related to murder. In cases where protracted negotiations between the parties did not lead to a result, it was common to turn to an arbitrator (hakam). The Arbiter did not belong to any caste; the parties were free to appoint any person as arbitrator, but, as a rule, he was not the head of the tribe. The arbitrator was appointed for his personal qualities, knowledge, wisdom, honesty, reputation and last but not least, for supernatural abilities. Therefore, as arbitrators most often used predictors - kahins.

Modern legislation and doctrine of the countries of the Middle East consider the so-called personal status of Muslims to be the main area of application of Muslim law in the field of civil relations, extending mainly to marriage and family relations, inheritance and donation relations, institutions of charitable property "waqf" and some others. Moreover, the "right of personal status" is, in fact, the only legal area where only the norms of Islamic law are almost completely applied. As Islamic ideologists point out, the Qur'an's instructions regarding worship and the "right of personal status" are unambiguous and set out in it in a concrete form as independent of the development of the environment, since they reflect the interests and needs of Muslims that are not subject to change. "It is no coincidence," notes L.R. Syukiyainen, "if in the middle of the 19th century. In most of the developed ones, Muslim law, which previously occupied a dominant position in the legal system, gradually began to give way to legislation that borrowed Western European legal bourgeois models, then this restructuring did not affect the "right of personal status" as a whole. Social changes in the life of Muslim countries, which took place under the significant influence of capitalist countries, naturally demanded changes in this branch of Islamic law. Evidence of this are the legislative acts adopted in most Muslim countries in the field of personal status, based on the norms of Muslim law, and in those countries where such acts have not been adopted, the relevant norms of Muslim law have become an integral part of the civil codes. This conclusion is confirmed by one of the authors of the fundamental study "Muslim law and jurisprudence", published in 1990: "During my long practice, I realized that, with the exception of personal status cases, the use of Sharia is minimized, especially in commercial matters."

Based on these authoritative statements, two conclusions can be drawn. On the one hand, the "right of personal status" is a legal institution that preserves the norms of Islamic law in modern conditions. On the other hand, while maintaining a close connection with the religious norms enshrined in the Koran, and therefore not subject to change, the "right of personal status" is an obstacle and a deterrent to the natural creative development of law as a living matter.

In a number of Muslim countries in the Middle East, Asia and Africa, there is a process of returning to legal codes, mainly based on the Koran and traditions, after almost a century of functioning of quasi-European legal systems. This process is also taking place on the territory of the former USSR.

For example, in Chechnya, Sharia is proclaimed the main legal regulator, polygamy is officially recognized by the decree of the President of Ingushetia - one of the main institutions of Muslim law, etc.

In addition, Muslim communities in Europe and other parts of the world and increased commercial and political integration with the Muslim world are forcing Muslim legal concepts to be adapted

outside the Muslim world as well. All this, of course, arouses the growing interest of scientists, especially lawyers and the general public.

Personal status (al-ahwal al-shahsiyya) is a modern legal term in Arabic, unknown to classical Islamic jurists and not found in classical texts of Islamic jurisprudence. In 1880, when the first bill of Sharia courts was issued, the Egyptian legislator used the phrase "sharia provisions" (al-movad-dul-sharia) to refer to matters of personal status.

In fact, this concept does not seem to have been known to the early Islamic jurists, for whom Sharia consisted of two main divisions: belief in religious tenets and adherence to rules regarding actions in private and public life. The latter, in turn, was divided into rituals and transactions to regulate actions between persons, such as contracts, marriage, kinship institutions, or acts related to property, that is, sale and rent. The Shafiites have singled out marriage and matters related to it as a separate category of law, along with three other categories: ritual, transactions, and the science of punishments and prisons.

Disclosure of the macroeconomic goal of the concept of Faraid, as a systematic provision of the redistribution of wealth and the distribution of the concentration of wealth in each individual generation. The literature review and collected information is used for analysis and further conclusions. Literature review clarifies the magnificence of Faraid and his real contribution to the development of mankind: in economics and other disciplines. Faraid promotes equity in the distribution of wealth, protects property rights, enables women to participate in economic activities, and in general, Faraid also promotes economic growth. Ultimately, through the practice of Faraid, wealth is created and returned to the production of factors through the many hands of those who deserved it after the death of the testator.

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