

A Comparative Analysis of Islamic Inheritance Law and Civil Inheritance Law in Promoting Justice and Legal Certainty in Indonesia

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Received:	Revised:	Accepted:	Available Online:	Published:
10/10/2025	23/12/2025	24/12/2025	25/12/2025	25/12/2025

Abstract

Inheritance law constitutes a fundamental component of the legal system governing the transfer and distribution of a deceased person's assets to their heirs. In Indonesia, inheritance law operates within a pluralistic legal framework characterized by the coexistence of Islamic inheritance law and civil inheritance law, which differ in their legal foundations, principles, distribution mechanisms, determination of heirs, and dispute resolution procedures. Islamic inheritance law is derived from the Qur'an, Hadith, and the Compilation of Islamic Law (Kompilasi Hukum Islam), while civil inheritance law is regulated by the Indonesian Civil Code (Kitab Undang-Undang Hukum Perdata). These differences frequently generate legal uncertainty and inheritance disputes in practice, particularly in communities affected by overlapping legal norms. This study aims to comparatively analyze Islamic inheritance law and civil inheritance law in Indonesia in order to identify their similarities, differences, and implications for the realization of justice and legal certainty in inheritance distribution. The research employs a normative legal research method with a comparative law approach, examining statutory regulations, legal doctrines, and authoritative legal sources related to inheritance law. The findings demonstrate that Islamic inheritance law is characterized by a mandatory and predetermined distribution system (ijbari) that emphasizes normative certainty based on divine provisions, whereas civil inheritance law provides greater flexibility through testamentary freedom, subject to the principle of legitime portie. Although both systems pursue equitable inheritance distribution, their divergent normative foundations pose challenges in practical application, thereby necessitating harmonization efforts and clearer legal guidance to enhance justice and legal certainty within Indonesia's plural inheritance law system.

Keywords: Inheritance Law; Islamic Law; Civil Law; Comparative Law.

Abstrak

Hukum warisan merupakan komponen mendasar dari sistem hukum yang mengatur pengalihan dan distribusi aset orang yang meninggal kepada ahli waris mereka. Di Indonesia, hukum waris beroperasi dalam kerangka hukum pluralistik yang ditandai dengan koeksistensi hukum warisan Islam dan hukum waris perdata, yang berbeda dalam dasar hukum, prinsip, mekanisme distribusi, penentuan ahli waris, dan prosedur penyelesaian sengketa. Hukum warisan Islam berasal dari Al-Qur'an, Hadis, dan Kompilasi Hukum Islam, sedangkan hukum warisan sipil diatur oleh Kitab Undang-Undang Hukum Perdata. Perbedaan ini sering menimbulkan ketidakpastian hukum dan sengketa warisan dalam praktiknya, terutama di masyarakat yang terkena dampak norma hukum yang tumpang tindih. Penelitian ini bertujuan untuk menganalisis secara komparatif hukum warisan Islam dan hukum warisan perdata di Indonesia untuk mengidentifikasi persamaan, perbedaan, dan implikasinya terhadap terwujudnya keadilan dan kepastian hukum dalam



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pembagian warisan. Penelitian ini menggunakan metode penelitian hukum normatif dengan pendekatan hukum komparatif, meneliti peraturan perundang-undangan, doktrin hukum, dan sumber hukum otoritatif terkait hukum warisan. Temuan tersebut menunjukkan bahwa hukum warisan Islam ditandai dengan sistem distribusi wajib dan telah ditentukan sebelumnya (ijbari) yang menekankan kepastian normatif berdasarkan ketentuan ilahi, sedangkan hukum warisan sipil memberikan fleksibilitas yang lebih besar melalui kebebasan wasiat, tunduk pada prinsip *legitime portie*. Meskipun kedua sistem mengejar distribusi warisan yang adil, fondasi normatifnya yang berbeda menimbulkan tantangan dalam penerapan praktis, sehingga memerlukan upaya harmonisasi dan panduan hukum yang lebih jelas untuk meningkatkan keadilan dan kepastian hukum dalam sistem hukum warisan jamak Indonesia.

Kata Kunci: Hukum Warisan; Hukum Islam; Hukum Perdata; Hukum Perbandingan.

INTRODUCTION

Inheritance law is an important part of the legal system in Indonesia because it functions to regulate the distribution of a deceased person's assets to his/her heirs.¹ Clarity in the regulation of inheritance law is essential to avoid conflicts or disputes between heirs that could harm all parties. In addition, inheritance law also plays a role in ensuring justice and legal certainty in the distribution of inheritance to get their rights by applicable legal provision.² Given that Indonesia is a country with a pluralistic legal system, there is more than one inheritance law system used by the community, namely Islamic inheritance law which applies to Muslims, and Civil inheritance law which applies to those who are not subject to Islamic law.³

The history of Indonesia's legal development, which incorporates a number of legal systems such as Islamic law, customary law, and Western law carried over from the colonial era, is the foundation of the country's diversity of inheritance law systems.⁴ Islamic inheritance law is based on the laws of the Qur'an and Hadith, which were later enshrined in the Compilation of Islamic Law (KHI), whereas civil inheritance law refers to the Civil Code (KUHP), which is derived from the European legal system.

The fundamental ideas of inheritance law act as rules for the inheritance procedure. The primary tenet of Islamic inheritance law is the principle of divine provisions (NAS), according to which the Qur'an and Hadith dictate how inheritance is distributed. This principle emphasizes that the distribution of inheritance cannot be done carelessly, but must follow the settled provisions, such as a two-to-one share between men and women in certain cases.⁵ In addition, there is the principle of justice and balance, which means that the distribution of inheritance not only considers the rights of the heirs but also pays attention to the obligations towards the family left behind. Islamic inheritance law also recognizes the principle of *Jabari*, which means that the distribution of inheritance occurs automatically after the testator dies without the need for the heirs' consent. However, in

¹ Marleen Natania and Jordanno Lesmana, "Analisis Sistem Pewarisan Di Indonesia Dalam Prespektif Hukum Perdata," *Jurnal Kewarganegaraan* 8, no. 1 (2024): 990–99.

² Tarmizi Tarmizi, "Upaya Penyelesaian Konflik Pembagian Harta Warisan Masyarakat Di Indonesia," *Al-Adl: Jurnal Hukum* 16, no. 1 (2024): 41–60.

³ Afidah Wahyuni, "Sistem Waris Dalam Perspektif Islam Dan Peraturan Perundang-Undangan Di Indonesia," *SALAM: Jurnal Sosial Dan Budaya Syar-I* 5, no. 2 (2018): 147–60.

⁴ Iim Fahimah, "Sejarah Perkembangan Hukum Waris Di Indonesia," *Nuansa: Jurnal Studi Islam Dan Kemasyarakatan* 11, no. 2 (2018).

⁵ Maryati Bachtiar, "Hukum Waris Islam Dipandang Dari Perspektif Hukum Berkeadilan Gender," *Jurnal Ilmu Hukum Riau* 2, no. 02 (2012): 9058.

some conditions, the testator can leave a will with a maximum limit of one-third of his total assets, following the principle of limited wills.⁶

The inheritance process is governed by the core principles of inheritance law. The idea of divine provisions (NAS), which holds that the Qur'an and Hadith determine how inheritance is divided, is the main pillar of Islamic inheritance law, as long as it does not conflict with applicable law.⁷ In addition, Civil inheritance law adheres to the principle of kinship, where heirs are grouped based on blood relations and closeness to the testator, which are divided into four main groups.⁸ In contrast to Islamic inheritance law which limits wills to only one-third of assets, in Civil law, the testator has more freedom in determining his heirs, but must still consider absolute rights or legitime portie, which guarantees that certain heirs still get a certain portion of the inheritance.⁹ Civil Law also prioritizes the principle of freedom of choice of law, which allows individuals in certain circumstances to choose the legal system to be used in the distribution of inheritance.¹⁰

The differences in principle between the two legal systems can create legal uncertainty for society, especially in situations where heirs have different legal backgrounds or in cases where a person has a choice of laws that can be applied. Therefore, a comparison between Islamic inheritance law and Civil inheritance law is important to study. By understanding the similarities and differences between these two legal systems, a fairer solution can be found in the distribution of inheritance, as well as providing recommendations for possible harmonization of the law to reduce the potential for inheritance disputes in society. It is anticipated that this study would further knowledge of the ramifications of the distinctions between Islamic and civil inheritance laws and how they affect the attainment of justice in Indonesia's inheritance distribution.

RESEARCH METHODS

This study employs a normative legal research methodology, concentrating on the examination of Indonesian laws and legal concepts pertaining to Islamic and civil inheritance law. This method is used to examine the legal norms contained in primary legal sources, such as the Civil Code (KUHPer), Compilation of Islamic Law (KHI), and various other related regulations. In addition, this study also uses a comparative law approach, which aims to examine the differences and similarities the differences between the civil and Islamic systems of inheritance law, both in terms of principles, inheritance distribution mechanisms, and dispute resolution that arise between heirs. The data sources in this study consist comprises secondary legal documents, including books, scholarly journals, and pertinent legal articles, as well as fundamental legal materials, such as laws and regulations. Data collection through library research by reviewing legal literature related to the research topic. After the data is collected, the analysis is conducted using the analytical descriptive method, namely by describing the applicable legal provisions, and then analyzing them systematically to find comparisons, advantages, and

⁶ Moh Muhibbin and Abdul Wahid, *Hukum Kewarisan Islam: Sebagai Pembaruan Hukum Positif Di Indonesia (Edisi Revisi)* (Sinar Grafika, 2022).

⁷ Ahmad Bunyan Wahib, "Reformasi Hukum Waris Di Negara-Negara Muslim," *Asy-Syir'ah: Jurnal Ilmu Syari'ah Dan Hukum* 48, no. 1 (2014).

⁸ Ade Fariz Fahrullah, "Ahli Waris Dalam Perspektif Hukum Islam Dan Kuhperdata (Burgerlijk Wetbook)," *Jurnal Hukum Islam*, 2021, 59–77.

⁹ Erwien Adisiswanto and Wahibatul Maghfuroh, "Tinjauan Hukum Terhadap Bagian Mutlak (Legitime Portie) Ahli Waris Terhadap Harta Warisan Menurut Kitab Undang-Undang Hukum Perdata," *IUS: Jurnal Ilmiah Fakultas Hukum* 9, no. 01 (2022): 39–46.

¹⁰ Sri Khayati, "Pembagian Harta Warisan Berdasarkan Metode Hukum Waris Islam Dan Kompilasi Hukum Islam," *Arus Jurnal Sosial Dan Humaniora* 3, no. 1 (2023): 15–24.

disadvantages of each inheritance law system. By using this method, research can provide a more comprehensive understanding of Islamic inheritance law and Civil inheritance law, as well as provide recommendations regarding the possibility of harmonizing the two legal systems to better suit the legal needs of the Indonesian people.

RESULTS AND DISCUSSION

Similarities and Differences between Islamic Inheritance Law and Civil Law

Civil and Islamic inheritance law are related in a number of ways, one of which is in the concept of inheritance. The transfer of a deceased person's property to his heirs is governed by both legal systems.¹¹ In Islamic inheritance law, this concept is based on the provisions of the Qur'an (Surah An-Nisa: 11, 12, and 176) and the Hadith which explain who has the right to inherit and how each heir's share is calculated.¹² Meanwhile, in Civil inheritance law regulated in the Civil Code (KUHPPer) Article 830, it is explained that inheritance only occurs after a person dies and his inheritance falls to the legitimate heirs.¹³

Furthermore, both civil and Islamic inheritance laws regulate grants and wills as a form of transfer of assets before or after the testator dies. In Islamic law, grants are regulated in the Compilation of Islamic Law (KHI) Articles 210-214, where the testator can make grants to others, including his heirs, while he is still alive. Likewise with wills regulated in KHI Articles 194-195, which state that a person can make a will to his heirs with a maximum limit of one third of the total assets he owns.¹⁴ Meanwhile, in Civil inheritance law, Article 875 of the Civil Code regulates that a person can make a will that is valid after he dies, and grants are regulated in Article 1666 of the Civil Code, which states that a grant is a gift made while the grantor is still alive. Thus, both legal systems recognize the existence of grant and will mechanisms as alternative methods of distributing assets, although there are differences in their limitations and implementation.¹⁵

Civil and Islamic inheritance laws are not the same, despite certain parallels. The principle of inheritance distribution is the primary distinction between Islamic and civil inheritance law.¹⁶ The inheritance system under Islamic law is known as *ijbari*, which indicates that the testator cannot alter the sharia-based inheritance distribution. The Qur'an explicitly governs the allocation of inheritance to male and female heirs, as mentioned in Surah An-Nisa: 11–12, 176. In contrast, in civil law, the heir has more discretion over how his assets are divided, particularly through the will process outlined in Article 875 of the Civil Code. Nonetheless, the idea of valid *portie* the absolute share that must be distributed to certain heirs and cannot be diminished by the testator through

¹¹ Peni Rinda Listyawati and Wa Dazriani, "Perbandingan Hukum Kedudukan Ahli Waris Pengganti Berdasarkan Hukum Kewarisan Islam Dengan Hukum Kewarisan Menurut KUHPPerdata," *Jurnal Pembaharuan Hukum* 2, no. 3 (2015): 335–44.

¹² Endah Amalia Amalia, "Penyetaraan Gender Dalam Hal Pembagian Warisan," *Ahkam: Jurnal Hukum Islam* 8, no. 2 (2020): 213–32.

¹³ Diana Anisya Fitri Suhartono et al., "Sistem Pewarisan Menurut Hukum Perdata," *Jurnal Hukum, Politik Dan Ilmu Sosial* 1, no. 3 (2022): 204–14.

¹⁴ Djulya Eka Pusvita Juli et al., "Hibah Dan Hak Waris: Studi Perbandingan Undang-Undang Dan Kompilasi Hukum Islam (KHI)," *Al Maqashidi: Jurnal Hukum Islam Nusantara* 7, no. 2 (2024): 106–20.

¹⁵ Risalan Basri Harahap, "Penarikan Hibah Dalam KUH Perdata Dengan KHES," *Jurnal Al-Maqasid: Jurnal Ilmu Kesyarahan Dan Keperdataan* 5, no. 2 (2019): 216–29.

¹⁶ Vinna Lusiana, "Hukum Kewarisan Di Indonesia," *Jurnal Alwatzikhoebillah: Kajian Islam, Pendidikan, Ekonomi, Humaniora* 8, no. 2 (2022): 291–306.

a will is still recognized under civil inheritance law, as stated in Article 913 of the Civil Code.

Another difference is regarding the heirs. In Islamic inheritance law, heirs are determined based on blood relations and closeness to the testator, with a priority order to determine the sharia. The main heirs consist of children, parents, husband or wife, and certain relatives, with portions that have been determined in the Qur'an and KHI Article 174. In Islam, boys receive twice as much as girls based on An-Nisa: 11, given that men are more accountable for supporting their families. On the other hand, heirs are divided into four categories under civil inheritance law, which is governed by Civil Code Articles 832–838. Children and their offspring make up the first group, followed by parents and siblings in the second, grandparents and other ancestors in the third, and uncles, aunts, and other distant relatives in the fourth. They have the same inheritance rights because civil law, in contrast to Islamic law, does not distinguish between inheritance shares based on gender.¹⁷

Another difference concerns the dispute resolution mechanism. In resolving inheritance disputes, Islamic law and Civil law have different legal paths. According to Law Number 3 of 2006 respecting Religious Courts, Article 49, the Religious Court, which declares that the Religious Court has the power to hear inheritance matters for Muslims, Islamic law settles inheritance issues. Dispute resolution can be conducted through mediation or court decisions based on Islamic law.¹⁸ According to Article 833 of the Civil Code, which stipulates that heirs have direct rights to inheritance without the necessity for a specific resolution, inheritance disputes are settled in the District Court under civil inheritance law. However, if a dispute occurs, the heirs can file a lawsuit in the District Court to resolve the problem.¹⁹ In some cases, inheritance disputes in Civil law can also be resolved through a notary, where the heir can determine the distribution of assets through a valid will before a notary as regulated in the Civil Code Articles 931–938.²⁰

From this comparison, it can be said that Islamic inheritance law is stricter and bound by sharia provisions in the distribution of inheritance, while Civil inheritance law provides more flexibility for the heir in determining his heirs and the mechanism for distributing inheritance. The differences in the position of heirs and the dispute resolution mechanism show that these two legal systems have unique characteristics according to the legal basis that underlies them.

Efforts to Overcome Differences in Islamic Inheritance Law and Civil Law

To overcome the gap between Islamic inheritance law and civil inheritance law, a harmonization approach is very important. Although the legal basis is different, the government and legal experts can identify common ground to implement harmonization. Strengthening regulations governing the selection of a legal system based on religion and legal status can facilitate this process. In addition, in certain cases, a mediation mechanism can also be an effort to accommodate elements of both legal systems, thereby

¹⁷ Hisam Ahyani et al., “Prinsip-Prinsip Keadilan Berbasis Ramah Gender (Maslahah) Dalam Pembagian Warisan Di Indonesia,” *Al-Mawarid Jurnal Syariah Dan Hukum (JSYH)* 5, no. 1 (2023): 73–100.

¹⁸ Ilham Thohari, “Konflik Kewenangan Antara Pengadilan Negeri Dan Pengadilan Agama Dalam Menangani Perkara Sengketa Waris Orang Islam,” *Universum* 9, no. 2 (2015): 173–88.

¹⁹ Charisse Evania Tansir et al., “Sengketa Pembagian Waris Berdasarkan Hukum Perdata Di Indonesia,” *Journal of Accounting Law Communication and Technology* 2, no. 1 (2024): 366–73.

²⁰ Defita Permata Sari, “Wasiat Yang Ideal Dalam Ruang Lingkup Hukum Pembuktian Di Indonesia,” *Officium Notarium* 4, no. 1 (2024): 1–12.

ensuring justice for all parties. With harmonization, the community will gain a better understanding and application of inheritance law, aligning it with their needs and beliefs while reducing legal uncertainty.²¹

In addition, the government has a critical role in providing legal certainty regarding inheritance. One way is to clarify the regulations and procedures for the distribution of inheritance, both in Islamic law and civil law, so that there is no overlap or confusion among the community. Strengthening judicial institutions, both Religious Courts and District Courts is needed to ensure that inheritance disputes can be resolved fairly and efficiently. In addition, clear regulations regarding the role of notaries in the ratification of inheritance need to be strengthened so that all legal processes can run more transparently and accountable. With legal certainty, it will be easier for the public to manage their inheritance rights without facing administrative obstacles or prolonged legal conflicts.²²

Public education regarding the choice of inheritance legal system is necessary so that each individual understands their rights and obligations in the distribution of inheritance. Many people still do not know that they can choose a legal system that suits their status, both Islamic inheritance law for Muslims and Civil inheritance law for non-Muslims. Therefore, socialization from the government, academics, and legal practitioners is very much needed, both through seminars, educational campaigns, and legal materials that are easily accessible to the public. With a good understanding, the public can be wiser in planning and managing inheritance, thereby reducing the potential for inheritance disputes in the future.²³

CONCLUSION

The concepts and procedures used to determine inheritance distribution differ between Islamic and civil inheritance law, as may be seen by a comparison of the two. The Qur'an and the Compilation of Islamic Law (KHI) serve as the foundation for Islamic inheritance law, or *ijbari*, which stipulate that the heir cannot alter the inheritance distribution that has been decided upon in accordance with Islamic law. In contrast, Civil inheritance law provides greater flexibility to the heir to determine how his inheritance will be divided, especially through the will mechanism regulated in Civil Code Article 875. In addition, there are differences in the position of heirs, dispute resolution mechanisms, and the role of notaries in the inheritance administration process. Despite their fundamental differences, these two legal systems still aim to regulate the equitable allocation of inheritance in conformity with their different ideals.

In its application in Indonesian society, these differences in inheritance law have a significant impact, especially for Muslim and non-Muslim families. Muslims are required to follow Islamic inheritance law as stipulated by Sharia, while non-Muslims can use Civil inheritance law with greater freedom. However, in practice, there are still various obstacles, such as the lack of public understanding of the applicable legal system, overlapping authority between the Religious Court and the District Court, and the potential for disputes due to disagreements between heirs. Therefore, efforts are needed

²¹ Yahya Ibadu Rahman and Zainal Abidin, "Pengakuan Status Anak Luar Kawin Dalam Perspektif Hukum Islam Dan Hukum Positif," *Lisyabab: Jurnal Studi Islam Dan Sosial* 5, no. 2 (2024): 178–91.

²² Suherman Suherman and Idul Adnan, "Analisis Penyelesaian Sengketa Waris Perpektif Hukum Islam Dan Hukum Perdata Di Indonesia," *Al-Muqaronah: Jurnal Perbandingan Madzhab Dan Hukum* 3, no. 1 (2024): 13–30.

²³ Dipo Wahjoeono et al., "Sosialisasi Dan Pemberianbantuan Hukum Tentang Hukum Waris Di Desa Candipari, Kabupaten Sidoarjo," *Jurnal Penyuluhan Dan Pemberdayaan Masyarakat* 3, no. 2 (2024): 131–36.

to harmonize the law and increase public education so that the inheritance law system can be implemented effectively and reduce the potential for conflict in the distribution of inheritance.

ACKNOWLEDGMENTS

This section contains acknowledgments to institutions and individuals who have contributed to the implementation of the research and the preparation of this manuscript. The authors would like to express their sincere gratitude to all parties who have provided support, guidance, and assistance throughout the research process, including academic advisors, funding institutions, and other individuals or organizations whose contributions were invaluable to the completion of this study.

FUNDING INFORMATION

None.

CONFLICTING INTEREST STATEMENT

The authors state that there is no conflict of interest in the publication of this article.

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