

A Comparative Journal of Islamic Inheritance Distribution According to the Compilation of Islamic Law and the Civil Code

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ABSTRACT: Inheritance Law is a rule in the system of implementing the distribution of inheritance and is an important aspect of family law that is regulated differently in the legal system in Indonesia. The Civil Code stipulates that heirs are blood relatives, both legitimate and unmarried, as well as the longest surviving husband or wife. The distribution of inheritance is carried out based on the order of the heirs' groups, and if there are no heirs in one group, then the inheritance will fall to the next group. KHI or Compilation of Islamic Law applies to the Muslim community, while the Civil Code applies generally and is based on western civil law. The difference between the two lies in the legal basis, the subject of the inheritance recipient, and the proportion of the distribution. The Compilation of Islamic Law regulates the distribution of inheritance based on the principle of faraidh, which emphasizes proportional distribution according to the provisions of the Qur'an and Hadith, while the Civil Code uses the principle of inheritance based on blood and marriage relations without distinguishing the religion of the heirs who will receive the inheritance. Although quite different, the two rules have similarities in terms of regulations regarding replacement heirs and also distribution due to the death of the testator.

INTRODUCTION

Indonesia has a pluralistic legal system, where customary law, Islamic law, and Western law coexist. This legal pluralism is reflected in the inheritance laws implemented. For Muslims, the applicable inheritance law generally aligns with Islamic law, as compiled in the Compilation of Islamic Law, while for non-Muslims or the general public, the Civil Code applies. Although both regulations share the same goal, namely regulating the fair transfer of assets to heirs, the approaches and principles used are fundamentally different.

The Compilation of Islamic Law is based on the Qur'an, Hadith, and the *ijtihad* of Islamic scholars, which was formalized in positive law through Presidential Instruction Number 1 of 1991. The Civil Code is a legal product adopted from the Dutch colonial legacy of the *Burgerlijk Wetboek*, which emphasizes the principle of freedom of will and formal equality among heirs. This difference has implications for the distribution of inheritance, especially when the two legal systems are faced with cases deemed similar.

Problems can arise when there are differences in legal backgrounds within a family or when the parties are faced with different legal options. In some cases, parties tend to choose the system that is more advantageous, which can trigger disputes. Therefore, a comprehensive comparative analysis is essential to understand the similarities, differences, and implications of the two legal systems.

RESEARCH METHOD

This research uses a normative juridical method with a comparative legal approach. The data used are secondary, consisting of primary legal materials (statutory regulations such as the Compilation of Islamic Law and the Civil Code), secondary legal materials (literature, legal journals, academic articles), and tertiary legal materials (legal dictionaries, encyclopedias). The analysis is conducted qualitatively, explaining the similarities and differences between the two legal systems, as well as their implications for inheritance practices in Indonesia.

FORMULATION OF THE PROBLEM

1. How are the provisions for inheritance distribution according to the Compilation of Islamic Law and the Civil Code?
2. What are the similarities and differences in the principles, subjects and proportions of inheritance distribution in the two legal systems?

DISCUSSION

1. Provisions for Distribution of Inheritance According to the Compilation of Islamic Law and the Civil Code

The distribution of inheritance under Indonesian national law is a complex issue due to the pluralistic legal system. From the colonial period to post-independence, Indonesia has never had a single inheritance law system that applies uniformly to all citizens. Instead, this legal pluralism is maintained to accommodate the diversity of religions, cultures, and ethnicities in Indonesia. Three parallel inheritance law systems are Islamic law, compiled in the Compilation of Islamic Law, customary law, which varies according to regional customs, and Western civil law, codified in the Civil Code/Burgerlijk Wetboek.

In a comparative context, the Compilation of Islamic Law and the Civil Code are most frequently discussed, as both have a clear codification and broad application. The fundamental differences between the two reflect their differing philosophical foundations, division systems, and the degree of legal flexibility they offer.

a. Philosophical Basis

The Compilation of Islamic Law was enacted through Presidential Instruction Number 1 of 1991 as a codification of Islamic law in Indonesia. The inheritance provisions in the KHI are derived from the principles of *fiqh al-mawarits*, the science of inheritance distribution in Islamic law based on the Qur'an, Hadith, *ijma'*, and *qiyas*. Its basic philosophy is the principle of *ijbari*, which means that the inheritance of a testator automatically passes to the legal heirs upon the testator's death. This principle reflects the view that inheritance is a permanent provision of Allah SWT, so that humans can only carry out what has been outlined.

Meanwhile, the Civil Code, derived from the Dutch Civil Code, has a different philosophical foundation. This system emerged from the Roman-Dutch legal tradition, which is secular, rational, and individualistic. Its primary underlying principle is the principle of equality between heirs in the same lineage. This philosophy emphasizes justice based on the principle of equal rights and individual freedoms, including the testator's freedom to determine who is entitled to their assets through a will.

b. Distribution Mechanism

In terms of the distribution mechanism in the Compilation of Islamic Law, inheritance distribution is carried out after the inheritance is reduced by the testator's obligations, namely funeral costs, debt repayment, and the implementation of a will of a maximum of one-third of the inheritance in accordance with the provisions of Articles 195–196 of the Compilation of Islamic Law. The share of heirs has been regulated in detail and is definitive. For example, sons receive twice the share of daughters according to Article 176 of the Compilation of Islamic Law. The husband receives 1/2 or 1/4, while the wife receives 1/8 or 1/4 depending on whether or not there are children. This system does not allow for significant differences in interpretation, because each proportion is clearly stated in the provisions that have been determined.

Meanwhile, the distribution mechanism according to the Civil Code regulates inheritance with a class system in accordance with Articles 832–844 of the Civil Code:

- Group I: legitimate children and the testator's spouse, receive equal shares.
- Group II: parents and siblings.
- Group III: grandparents and their descendants.
- Group IV: relatives in the lateral line up to the sixth degree.

If there are still heirs from the first group, then the subsequent groups can be said to have no right to inheritance. This mechanism reflects the principle of equality because each child receives an equal share, without regard to gender differences. The Civil Code also allows inheritance based on a will, or testamentary, where the testator can determine who will receive the inheritance, as long as it does not ignore the legitimate portion or absolute share that must be given to certain heirs, such as children and legal spouses.

c. Flexibility and Certainty

The flexibility and certainty of the system in the Compilation of Islamic law is relatively rigid because the share of the heirs is already determined normatively in Islamic legal texts. This certainly provides a high degree of legal certainty, but it can be said to lack flexibility in adapting to specific social needs. For example, if an heir wishes to pass on a larger portion of his assets to his daughters for certain reasons, this is not possible except through a gift, which can be given before the testator's death.

Meanwhile, the Civil Code offers greater flexibility. The heir has the freedom to make a will, arrange the distribution, and even transfer a significant portion of the estate to parties outside the family. However, absolute share or legitimate portion must still be met. This flexibility aligns with the values of secularism and individual freedom, but on the other hand, it can create potential conflict among heirs, especially if the heir divides the estate unequally.

d. Problems in Practice

The pluralism of inheritance law in Indonesia raises a number of issues. For example, in cases of interfaith marriages, legal questions often arise: whether inheritance distribution will be carried out according to the Compilation of Islamic Law, the Civil Code, or customary law. The Supreme Court has emphasized in several decisions that non-Muslim heirs cannot inherit from Muslim heirs under the provisions of the Compilation of Islamic Law, but can acquire assets through the mandatory will mechanism.

Furthermore, there is the issue of a Muslim deliberately using the Civil Code as the basis for inheritance distribution due to the equality of sons and daughters. This creates a dilemma because, as a norm, religious courts will naturally apply the Compilation of Islamic Law, while the testator's personal preferences may differ.

Another issue is the community's low understanding of inheritance law, both Islamic and civil, which often results in distribution being based on family deliberation. Although the principle of deliberation aligns with Indonesian family values, in practice, injustice can occur. For example, women's rights are often neglected in both customary and Islamic inheritance laws due to the influence of patriarchal culture.

e. Comparison

Comparatively, the Compilation of Islamic Law and the Civil Code each have their own strengths and weaknesses. The Compilation of Islamic Law excels in providing legal certainty because the heirs' shares are clearly determined, but it has limited flexibility. Conversely, the Civil Code provides greater freedom for heirs to determine their will, but this flexibility often leads to disputes when heirs feel their rights are being ignored.

Thus, the choice of legal system applicable to inheritance distribution in Indonesia is heavily influenced by the testator's religious identity, as well as, in some cases, sociological considerations and court decisions. This legal pluralism, on the one hand, demonstrates respect for the diversity of the Indonesian nation, but on the other hand, poses challenges to efforts to unify national inheritance law.

2. Similarities and Differences in Principles, Subjects, and Proportions of Inheritance Distribution

a. Principles of Inheritance Distribution

Discussions about inheritance are a crucial issue in family law because they relate to the distribution of a person's assets after death. The general principle applicable in both Indonesian legal systems, the Compilation of Islamic Law and the Civil Code, emphasizes that inheritance distribution can only occur after all obligations of the testator have been fulfilled. This means that inheritance cannot be distributed immediately until there are no outstanding debts, funeral expenses, or other obligations to be met.

From the perspective of the Compilation of Islamic Law, this principle aligns with Islamic teachings, which mandate that the inheritance be used primarily to pay off debts and fulfill wills (a maximum of one-third of the estate), and then distribute the remainder to the heirs in accordance with sharia. Thus, the rights of the heirs are definite and *ijbari*, meaning they are automatically inherent because they are established by sharia, and cannot be challenged even by family agreement.

In contrast, the Civil Code views inheritance from a Western civil law perspective. The principles applied are more relaxed, with the freedom of wills. An heir can determine the distribution through a will, as long as it does not violate the legitime portion, or the absolute share due to certain heirs (e.g., legitimate children, parents, and spouses). This mechanism demonstrates a balance between the individual rights of the heir to manage their assets and the protection of the heirs, which must not be neglected.

This difference shows two faces of inheritance law in Indonesia: the Compilation of Islamic Law with a rigid religious-normative approach, while the Civil Code prioritizes flexibility and rationality.

b. Heirs Subject

Both legal systems recognize that blood and marriage relations are the basis for inheritance. Children, parents, grandchildren, grandparents, and legal spouses all have the right to inherit. However, the most significant difference lies in religious boundaries.

In the Compilation of Islamic Law, religious differences are an absolute barrier. A non-Muslim cannot inherit from a Muslim heir. This provision is based on the principle of unity of faith in Islam, which is a prerequisite for the continuity of inheritance relationships. For example, a Muslim father who has a non-Muslim child cannot directly inherit property through Islamic inheritance mechanisms. The legal relationship of inheritance is automatically severed due to this difference in faith.

Meanwhile, the Civil Code does not recognize religious restrictions. Heirs are determined solely based on family relationships, regardless of differences in faith. A child of a different religion than their parents still has the right to inherit. This demonstrates the inclusive nature of the Civil Code, which is not bound by specific religious provisions.

These differences often create practical problems, particularly in multicultural families or families with members of different religions. In such situations, the choice of legal system will significantly determine who is entitled to receive an inheritance.

c. Proportion of Inheritance Distribution

In the Compilation of Islamic Law and the Civil Code regulates the proportion of distribution based on the level of kinship, where the party who is more closely related to the testator will receive priority. Meanwhile, in the Compilation of Islamic Law, gender differences can affect the amount of the share that will be received by sons getting twice the share of daughters, husbands and wives get different shares depending on the existence of descendants. In the Civil Code, all children receive an equal share regardless of gender, and legal spouses receive a share according to their equal position in the first class of heirs, each heir will receive a share according to the provisions of the class degree.

The distribution of inheritance follows established Islamic law. One key principle is the gender-based division of inheritance: sons receive twice the share of daughters. This stems from the Islamic obligation to provide for the family, which places a greater burden

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on men. Furthermore, the share of the husband and wife is also clearly defined: a wife is entitled to 1/8 if the testator leaves children, or 1/4 if the testator has no children. Likewise, a husband receives 1/4 if the testator leaves children, or 1/2 if there are no children. The Civil Code stipulates that all children receive an equal share, regardless of gender. This principle stems from the notion of gender equality in Western law. A husband or wife receives an equal share with children in the first category, thus equaling their status with other primary heirs. This system emphasizes formal justice, meaning that everyone in equal status receives an equal share.

This difference often sparks debate about fairness. Some believe the distribution according to the Compilation of Islamic Law is fairer because it aligns with the social responsibilities of each gender in Islam. However, others believe the Civil Code system is more equitable because it eliminates gender-based discrimination.

From the perspective of heirs, the Compilation of Islamic Law limits inheritance to Muslims, making religious differences an absolute limitation. Unlike the Civil Code, the Indonesian Civil Code does not view religion as a limiting factor in the inheritance distribution system, allowing inheritance to occur across faiths. This demonstrates the exclusivity inherent in the Compilation of Islamic Law, which is absent in the Indonesian Civil Code.

The distribution system is also a key difference. The Compilation of Islamic Law stipulates a precise proportion according to sharia, such as a 2:1 ratio for sons to daughters, thus providing limited flexibility and gender considerations when determining inheritance distribution. The Civil Code is more flexible, allowing for wills to alter the distribution composition, as long as the legitime portion, or absolute share, has been met.

In terms of regulatory flexibility, the Civil Code is more adaptable to complex family situations or interfaith relationships. Conversely, the Compilation of Islamic Law adheres to fixed sharia provisions, making it more consistent but less flexible.

These differences reflect the legal pluralism prevailing in Indonesia. In practice, these differing philosophical foundations give rise to legal issues, particularly in families with different religious backgrounds or legal statuses. Therefore, a thorough understanding of both systems is essential to ensure that inheritance distribution is not only legally valid but also socially just for all parties involved.

CONCLUSION

Based on the discussion and comparative analysis between the Compilation of Islamic Law and the Civil Code in the distribution of inheritance, it can be concluded that both legal systems have the same goal, namely ensuring the distribution of inheritance fairly and equitably, providing legal certainty, and protecting the rights of heirs.

The main similarities in the obligation to settle debts before distribution and the recognition of blood and marriage relationships as the basis for inheritance. Significant differences can be seen in:

1. Principle of division: The compilation of Islamic law is *ijbari* and definite, while the Civil Code is more flexible through the mechanism of wills.
2. Subject of inheritance: The compilation of Islamic law is limited to Muslims, while the Civil Code is not religious.
3. Proportion of parts: The compilation of Islamic law distinguishes between genders (2:1), while the Civil Code establishes equality without distinguishing between men and women.
4. Sources of law: The compilation of Islamic law is religious-normative, while the Civil Code is secular-rational.

The fundamental similarities in the obligation to settle all burdens and obligations of the heir before the division of assets, as well as the recognition of blood and marriage relationships as the basis for inheritance rights. However, significant differences exist in the philosophical foundation, principles of inheritance distribution, the subject of inheritance, and the proportion of shares. The compilation of Islamic law, which is based on Islamic law, provides definite provisions for the proportion of distribution according to sharia, distinguishing the shares that will be received by men and women, and also limits inheritance to only fellow Muslims. In contrast, the Civil Code, which originates from Western civil law, establishes the principle of equality without distinction of gender or religion, and provides sufficient flexibility that is implemented through the mechanism of wills as long as it does not violate the absolute rights of heirs, also known as legitime portion.

The pluralism of inheritance law in Indonesia provides people with the option to use a system that aligns with their religious identity and legal status. However, this situation also presents challenges.

First, in families with different religious backgrounds, conflicts often arise over which system to use. For example, a Muslim father marries a non-Muslim woman and has a child from that marriage. If the compilation of Islamic law applies, the non-Muslim child does not receive a share of the inheritance. However, if the Civil Code applies, the child retains the right. This situation can trigger disputes between families.

Second, the flexibility of the Civil Code is sometimes exploited to ignore certain heirs on the grounds of wills, despite the protection afforded through legitime portion. Meanwhile, in Islamic legal compilations, the certainty of fixed proportions is sometimes deemed

inappropriate to modern socioeconomic conditions, for example, in families where all the daughters are independent and financially stable.

Third, in judicial practice, these differences in legal systems often lead to forum shopping, a tendency for certain parties to choose the legal path that is more advantageous. This demonstrates the importance of a thorough understanding of both systems to prevent inheritance distribution from leading to injustice or prolonged conflict.

The pluralism of inheritance law in Indonesia reflects the diversity of society. On the one hand, this enriches the national legal system. However, on the other hand, it has the potential to give rise to disputes if not properly understood. Therefore, a sound understanding of both legal systems is crucial to ensure that inheritance distribution is carried out legally, socially justly, and while maintaining family harmony.

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