

IMPELEMENTATION OF ISLAMIC INHERITANCE LAW IN THE SYSTEM INDONESIAN CIVIL LAW (Case Study of Inheritance Dispute Resolution)

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ARTICLE INFO

History of the article:

Received: 04/10/2025

Corrected: 09/10/2025

Accepted : 30/10/2025

Published: 30/10/2025

Keywords:

Inheritance Law, Islam, Civil Code

ABSTRACT

The implementation of Islamic inheritance law in the Indonesian civil law system is not directly applicable, as the two have different foundations and principles. However, Islamic inheritance law can be applied to Muslims through Compilation of Islamic Law (KHI), which was submitted by religious courts. Where inheritance distribution is based on Islamic law. Meanwhile, the Indonesian civil law system (KUHPerdata) applies to non-Muslims and regulates inheritance distribution based on gender-neutral regulations. The research conducted is normative research with using library research methods to examine secondary data. This type of research data is secondary data. Primary and secondary legal materials are systematically compiled and analyzed qualitatively. The legal provisions for inheritance rights according to the Compilation of Islamic Law apply to Muslims and emphasize equitable distribution according to Islamic law, with different portions for certain heirs (for example, two sons for two daughters). Meanwhile, civil law (KUH Perdata) applies to non-Muslims, with the basic principle of equal distribution for heirs of the same rank, regardless of gender. The main differences lie in the principles of justice, equality, and different categories of heirs. The dynamics of inheritance law related to inheritance rights according to the Compilation of Islamic Law and civil law lie in the legal basis, criteria for heirs, and distribution mechanisms

1. Introduction

Every human being will inevitably experience an event, which is a legal event called death. When someone dies, this is a legal event that also has legal consequences, namely how to manage and continue the rights and obligations of the deceased.

Islam as a perfect religion, Islam regulates all aspects of human life, even in matters related to the transfer of property left by a person after the person dies. One of the areas regulated in Islamic law is the fields concerning inheritance which is then referred to as Islamic inheritance law, the regulations regarding Islamic law include the parts of people who are entitled to be heirs and the portion of the inheritance that has been written down and clearly stated in the Quran, and there are also those who are heirs but do not explicitly state the size of the portion that is entitled to be given to the heirs.



The law that discusses the transfer of property in legal science is called inheritance law, or also known as faraid law. Inheritance law in Islamic teachings is called faraid. The word faraid is the plural form of faridah which comes from the word fardu which means decree, giving (Alms). In Islamic teachings, all assets left by a deceased person, whether material or legal, are referred to as Tarikah/Tirkah. This marriage does not automatically become an inheritance that will be passed on to heirs.

Islamic law states that women have the right to inherit property since the revelation of Surah An-Nisa verse 7, which means: "Men have the right to inherit property from the inheritance of their parents and women also have the right to obtain a share of the inheritance of their mothers, fathers and relatives."

The implementation of Islamic inheritance law in the Indonesian civil law system occurs when a Muslim or a Muslim family chooses to settle inheritance according to Islamic law, even though civil law (KUH Perdata) also applies in Indonesia. This is usually done in Religious Courts based on the Compilation of Islamic Law (KHI), rather than in District Courts that adhere to the civil law system. Islamic inheritance law is applied by distributing inheritance assets according to sharia provisions, while civil law distributes inheritance equally without distinction of gender.

Formally, civil law (the Civil Code) does not automatically govern all inheritance cases in Indonesia. For Muslims, the Islamic inheritance law system, through the Religious Courts and the Compilation of Islamic Law (KHI), can be a legitimate resolution option, especially if all heirs agree

2. Research Method

The nature of the research is descriptive analytical. Research using descriptive analytical methods is research that merely describes the state of an object or event without any intention of drawing general conclusions. The type of legal research used is normative juridical, namely research that places norms as the object of research, both legal norms in statutory regulations and legal norms derived from statutes. Also known as doctrinal legal research, it is legal research that uses secondary data. Normative legal research is known as qualitative legal research

3. Results And Discussion

Heirs in Islamic law are people who have the right to inherit due to kinship (nasab) or marital relationship (nikah) with the testator, are Muslim and are not prevented by law from becoming heirs. Not all heirs have the same status, but have different levels in an orderly manner according to their relationship to the





testator. Heirs can be classified with various formulas. According to their point of view, some group them from the perspective of the causes, the parts they receive, the distance of the kinship relationship, and from the perspective of the heir's gender.

The provisions of inheritance are a manifestation of the recognition of the existence of individual property rights, both to movable and immovable property, because inheritance law automatically recognizes the transfer of rights and ownership of the testator to his heirs when death occurs.

When the rights and obligations are resolved as a result of the legal event of death, a person's inheritance will be regulated by inheritance law. Therefore, it is necessary to stipulate inheritance regulations in detail so that there are no disputes between fellow heirs after the death of the person whose property is inherited. Islamic Sharia has established inheritance rules in a very regular and fair form. It stipulates the transfer of rights and ownership of assets for all heirs, whether male or female, large or small, small or large assets left behind by relatives (heirs).

The most important principle in inheritance science is principleisnamely the principle of justice. The hallmark of God's justice is that He does not neglect or disregard the rights of every heir. In fact, with very clear and perfect rules, God determines the distribution of the rights of each heir fairly and wisely. God established this with the aim of realizing justice in human life, eliminating injustice between men and women, completely closing the door for perpetrators of injustice, and fostering a spirit of equality for all people living on earth.

For someone to receive an inheritance, there must be a valid reason for the person to be entitled to receive the inheritance, namely a lineage, whether direct, upward, or lateral. Furthermore, marriage is also a reason for someone to receive an inheritance. An heir will not receive the inheritance if there are things within themselves that prevent them from receiving the inheritance.*faraidh*, the barrier is called*mawani' al-irtsi*. Say'*mawani'*is the plural form of*semen*which according to etymology means a barrier between two things and terminology means something that requires the absence of something else.

A person who is prevented from inheriting is called*mamnu'ormahrum*. This term must be distinguished from the term*Mahjub*which also has the same meaning as*mamnu'ormahrum*. The difference between the two lies in the absolute absence of inheritance.*Mahjub*is an heir who is prevented from receiving an inheritance because there are other heirs who are more closely related to the testator. Heirs who*Mahjub*its nature is only temporary because if the heir who prevented him is no longer there then he will appear as the heir.*mamnu'ormahrum*is an heir who is hindered because his position is forbidden by Islam and this applies forever.

Legacy barrier (*mother/mother*) results in the loss of the heir's right to receive inheritance from the testator's estate even though the distance of kinship with the testator is very close, such as a child who kills his parents or a child who has a different religion from his parents who left the inheritance.

Hanafi scholars mention four well-known obstacles to inheritance: slavery, murder, religious differences, and differences in nationality. Al-Quduri added

apostasy to the list. Meanwhile, others added uncertainty about the time of death, such as fire or drowning, because one of the requirements for inheritance is that the deceased be alive at the time of death, and inheritance cannot be carried out if there is doubt.

Some Hanafi scholars say there are ten obstacles to inheritance, namely religious differences, slavery, deliberate murder, *Lian*, adultery, doubt in determining death *muwarris*, pregnancy, doubts about the life of a child, doubts in determining which death comes first between *muwarris* and heirs, and doubts in determining male or female gender.

Shafi'i and Hanabilah scholars state that there are only three obstacles to inheritance: slavery, religious differences, and murder. However, some Shafi'i scholars add three more obstacles to inheritance: first, differences in disbelief between non-Muslims *dhimmi* and infidel *sharabah* (infidel *dhimmi* and infidel *sharabah* do not inherit from each other due to the breaking of the bond of guardianship between them); second, *pleasure*. Apostates cannot inherit the property of Muslims or non-Muslims, nor can their property be inherited or handed over to the Baitul Mal.

Basically, the three types of obstacles to inheritance agreed upon by jurists are slavery, different religions, and murder. Slavery is an obstacle to inheritance not because of one's human status, but solely because of one's formal status as a slave. The majority of scholars agree that a slave is prevented from receiving an inheritance because they are deemed incapable of performing legal acts.

A servant or slave cannot act on anything because he is under the authority of his master. He is incapable of dealing with property rights in any way. In the case of inheritance, inheritance occurs when one party relinquishes material ownership rights and the other party receives material ownership rights. Therefore, the obstruction of slaves in inheriting inheritance can be viewed from two directions, namely inheriting inheritance from their heirs and passing on inheritance to their heirs.

A slave does not inherit the inheritance of his heirs because firstly, he is deemed incapable of managing the property, and secondly, his family status with his relatives has been broken and he has become a stranger to his family. Therefore, if a servant dies and has inherited assets, then his assets cannot be passed on to his own heirs because he is considered destitute and does not have any inheritance. Basically, everything a slave owns belongs to his master so he does not inherit or pass on what he has.

According to Article 173 letters a and b of the Compilation of Islamic Law, it talks about barriers to inheritance which reads: A person is prevented from becoming an heir if, by a judge's decision which has a permanent law, he is punished for:

1. Accused of having killed or attempted to kill or seriously assaulted the testator;
2. Accused of slanderously filing a complaint that the testator has committed a crime punishable by 5 years imprisonment or a heavier sentence.

Letter a regulates the obstacles to someone becoming an heir, which are basically crimes against the heir, namely murder, attempted murder, and serious assault. Other obstacles, as agreed upon by the jurists, namely religious differences, are not clearly stated in this article. However, the KHI only emphasizes the indicators to say that someone must be Muslim as in Article 172 below: "An heir is considered to be Muslim if it is known from an identity card or confession or practice or testimony, while for a newborn or a child who is not yet an adult, the religion is according to his father or his environment."

Inheritance disputes can be triggered by various factors, including the absence of a will or the existence of a will whose contents are considered unclear or open to multiple interpretations. Furthermore, disagreements often arise regarding who constitutes the legal heirs, as well as unequal distribution of inheritances, which fuel feelings of injustice among the heirs. Accusations of manipulation or embezzlement of inheritance assets by one of the parties are also not uncommon, further complicating the situation.

An example of an inheritance dispute in court is a case that occurred at the Medan Religious Court where the applicants with their application letter dated April 19, 2024 submitted an application for the determination of the heirs of the late H.Muchtar Rangkuti to the Medan Religious Court which was registered at the Medan Religious Court Case Clerk's Office on April 19, 2024 with Register Number: 40/Pdt.P/2024/PA.Mdn.

Based on the facts mentioned above, it has been legally proven that the late Muchtar Rangkuti died due to illness and was a Muslim and left behind a wife, a biological daughter and 10 (ten) siblings. The provisions of Article 174 paragraph (2) of the Compilation of Islamic Law (KHI) determine that if there are all heirs, then the only ones who get a share are the husband or wife, children, and father and mother. The provisions of article 174 paragraph (2) of the Compilation of Islamic Law (KHI) are also in line with the opinion of legal experts (doctrine) contained in the Book of Taisir al-Ma'tsur Fi 'ilmi al-Faraidh, which was taken over by the Assembly as a legal consideration, which means the following: "If all the heirs come together (in an inheritance), then there are five groups who have the right to receive inheritance, namely: father, mother, son, daughter, husband or wife."

In accordance with the opinion of Ibn Abbas, an interpreter among the companions of the Prophet Muhammad SAW, Walad's words contained in verse 176 of Surah an-Nisak are interpreted to include both sons and daughters and if there are biological children, both sons and daughters, the inheritance rights of people who are still related to the heir by blood will be covered (hijab) except for parents, husbands and wives in accordance with the decision of the Supreme Court of the Republic of Indonesia No. 86.K/AG/1994 dated 27 July 1995. Based on the considerations above, the Panel of Judges could only determine Petitioner I and Petitioner II as absolute heirs of the late H.Muchtar Rangkuti and the rest were rejected.

Based on the above determination, judges in religious courts adhere to the provisions of the Compilation of Islamic Law (KHI) in resolving legal cases. The



Compilation of Islamic Law, which is one of the sources of inheritance law in Indonesia and serves as the primary reference or guide for inheritance matters in Indonesia, represents contemporary jurisprudence that is always open to *ijtihad* by scholars and judges of Religious Courts in Indonesia, so that it can develop in line with the development of Islamic law in the Muslim world

4. Conclusion

The legal provisions for inheritance rights according to the Compilation of Islamic Law apply to Muslims and emphasize equitable distribution according to Islamic law, with different portions for certain heirs (for example, two sons for two daughters). Meanwhile, civil law (KUH Perdata) applies to non-Muslims, with the basic principle of equal distribution for heirs of the same rank, regardless of gender. The main differences lie in the principles of justice, equality, and the different categories of heirs

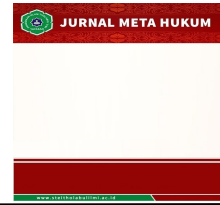
The dynamics of inheritance law related to inheritance rights according to the Compilation of Islamic Law and civil law lie in the legal basis, criteria for heirs, and distribution mechanisms. The Compilation of Islamic Law bases inheritance distribution on religious provisions contained in the Qur'an and Hadith, while civil law (KUH Perdata) stipulates distribution based on the principle of kinship with a sequence of heir classes. The Compilation of Islamic Law adheres to a more specific inheritance system based on *faraidh*, while civil law has a more general distribution based on blood relations and marriage.

The judge's considerations in resolving inheritance disputes in court are the applicable law (juridical), the facts revealed in court (juridical), and philosophical and sociological considerations. The judge will analyze the case based on positive law, such as the Compilation of Islamic Law (KHI) for Muslims and the Civil Code (KUH Perdata) for non-Muslims, as well as considering justice, social conditions, and the impact of the decision

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