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Comparative analysis of inheritance rights of children with different religions from their heirs according to Islamic law and civil law

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ABSTRACT

Social and legal complexities that arise due to religious differences in the family, where the issue of inheritance rights often causes conflict and injustice. This study aims to analyse the comparison of the inheritance rights of children of different religions from their heirs according to Islamic Law and Civil Law in Indonesia. The research method used in this study is a comparative method with a qualitative approach. Data was obtained through literature review, including analysis of legal texts and related literature. The results show that in Islamic Law, religious differences are an obstacle for children to receive inheritance rights, thus requiring alternative solutions such as grants and mandatory wills. In contrast, Civil Law provides a more flexible approach, where all heirs, regardless of religion, have equal rights to inheritance. Through this analysis, this research reveals the importance of understanding and an inclusive approach in the regulation of inheritance rights, and emphasizes the need for mediation and dialogue to reach a fair agreement in families that have members with different religious beliefs. The findings are expected to contribute to the understanding of inheritance law in Indonesia and support harmonization efforts in family relationships.



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Introduction

Inheritance law is part of all civil law and part of family law. The law of inheritance is closely related to the scope of human life because everyone will inevitably experience death. The legal consequences that arise when a person dies include the question of how the rights and obligations of the deceased person are treated and continued. The settlement of rights and obligations for the death of a person is regulated by the Law of Inheritance (Rahmadhani et al., 2019); (Ticā u-Suditu, 2021).

There are still several legal systems in the Indonesian legal system. Thus, three systems of inheritance law are applied and accepted in Indonesian society, namely the inheritance law system, Islamic inheritance law, and Western inheritance law (Judiasih & Fakhriah, 2018). The existence of these three systems is the result of historical development and is influenced by the diversity of Indonesian society consisting of several tribes and religions. Pluralism refers to a social system in which each group participates in the national society as a whole. These three systems of inheritance, each of which indirectly refers to a particular form of social structure, in

which the inheritance system applies, because the system occurs in different forms of social structure or one form of social structure more than one heritage system is referenced.

The form and system of inheritance law is closely related to the form of society and the nature of the family. Meanwhile, the family system of Indonesian society is based on the generation design system, which is related to the line design system, as commonly known in Indonesia, there are at least three types of descendants (Poespasari & SH, 2018; Wati, 2020). The three systems of heredity are the matrilineal or paternal system, the matrilineal or natural system, and the bilateral or parental system or paternity.

The matrilineal or paternal system is a system that uses the paternal pedigree or male ancestry. In Indonesia, the system exists in the Gayo, Alasi, Batak, Amboni, Papuan, and Balinese communities. The matrilineal system or nature is a system that traces the lineage of female ancestors. This maternal kinship in Indonesia is only found in one of the regions, namely Minangkabau. While the bilateral or parental system or paternity is a system that traces descent both through the paternal and maternal lines, so that in such families there is essentially no difference between the mother and the father, this system exists in Indonesia, in various regions including Java, Madura, East Sumatra, Riau, Aceh, South Sumatra, all of Kalimantan, all of Sulawesi, Ternate, and Lombok (Musafa'ah et al., 2023).

Inheritance rights have legal certainty, namely according to Van Kan legal certainty is a state legal instrument that can guarantee the rights and obligations of every citizen. Legal certainty is closely related to legal positivism. Whoever claims that the only source of law is law, then justice is only the application of law to certain events (Ahmad et al., 2018). Inheritance law is the rules and principles governing the transfer of property and the rights and obligations of the deceased (Hasibuan & Manurung, 2023). Indonesia's inheritance law system includes inheritance law based on the Civil Code (Burgerlijk Wetboek) and Islamic inheritance law (Malayudha et al., 2023).

Civil inheritance law is regulated in Chapters XXII–XXVIII of Civil Law/BW Book II. Regarding the provisions of the Law of Inheritance, Article 830 of the Civil Code can be said that inheritance is only due to death. So, the understanding of inheritance law according to the Civil Code is that if no one dies and the property is not lost, then there is no inheritance problem. According to 833 (1) of the Civil Code, all heirs are automatically legally entitled to all property left by the testator. Article 874 of the Civil Code also states that all property left by the testator becomes the property of all heirs after deducting a will based on a valid decision.

Part of the Inheritance Law of the Civil Code, namely heirs and inheritance. The heir is the one who died (Satyawati & Putrawan, 2014). Inheritance is inheritance left by heirs, which can be in the form of property, intellectual property rights, trademarks/trademarks, and property rights. While heirs are people who are entitled to receive inheritance from their heirs. Heirs consist of primary heirs, direct heirs, and legal heirs. The actual heirs are the actual heirs, i.e. the children and spouses of the testator. Close heirs are heirs who are close to the relatives of the heir. However, legal heirs are heirs who are recognized and/or regulated by law, religious law (Palayukan, 2021).

The position of inheritance law in Islamic law belongs to the field of family law. In the complication of Islamic law, Islamic inheritance law is the law governing the transfer of ownership of inheritance property that determines who is entitled to inherit and how much will be distributed. It usually deals with family law, where some provisions regarding inheritance are regulated in the Qur'an surah An-Nissa verse: 33 (Assyafira, 2020; Noviarni, 2021).

Courts in Indonesia have issued several rulings, both in the first instance (Religious Courts), High Religious Courts, and Supreme Courts, on cases relating to different religious heritage. The study used five cases that were considered representative of each case level. First, the decision of the Tebing Tinggi Religious Court of North Sumatra Number 9 / Pdt.P / 2008 / PA.Ltd. In his ruling, the judge determined that Muslim heirs were the heirs of Christian heirs. Because HBS who was a Christian died with his only heir being a Muslim brother named MS, with a wife and 5 children. If HBS dies, the land use rights do not transfer to MS until MS dies. After MS passed away, MS's wife and five children applied for the determination of heirs to the Tebing Tinggi Religious Court to arrange the transfer of rights to HBS's inheritance land.

Cassation Decision No. 51/K/AG/1999. This decision concerns a Muslim who died childless. He is survived by his wife, three siblings, and six grandchildren, four of whom have also died. The heirs' wives and siblings are all Muslims, but some of the nephews of the deceased siblings follow religions other than Islam. In this case, the Supreme Court ruled that all remaining relatives, both Muslim and non-Muslim, are entitled to a share of the heirs' estate, provided that the wife's heirs get 1/4 share and the remaining heirs get 3/4 share, including non-Muslims. Muslim heirs inherit as per the will.

Some of these phenomena indicate that there is legal uncertainty regarding the inheritance rights of children of different religions, especially in the context of Indonesia's pluralist society. Therefore, research on this issue is important to find a fair and inclusive legal solution, considering that Indonesia has high religious diversity, and every individual has the right to legal certainty.

The need for a comparative study between the Islamic legal system and Civil Law in Indonesia is essential to understand how the two systems handle the inheritance rights of children of heirs of different religions. Through comparative analysis, we can explore the differences and similarities in the treatment of this issue, and see how the two legal systems provide solutions in the context of religious diversity. Islamic law tends to disinherit children of different religions, while Civil Law allows for a more flexible interpretation of the principles of justice and equality. This study will provide a critical view of how the law is applied differently in the same situation and may offer more inclusive recommendations to create a fair legal balance in a pluralist society.

The topic of inheritance for children of different religions has become increasingly relevant in the modern Indonesian context, given the plurality of religions and the rise of interfaith marriages. In an increasingly pluralistic society, differing legal views between Islamic Law, which prohibits children of different religions from inheriting from Muslim heirs, and the more inclusive Civil Code, cause legal uncertainty and often lead to family conflict. This can significantly affect children's rights, with children from interfaith marriages or conversions losing their inheritance rights, resulting in injustice and potential family tensions. In this regard, it is important to explore legal solutions that accommodate religious pluralism, in order to protect the rights of all family members and maintain family stability in Indonesia's increasingly diverse society.

This research aims to compare how the inheritance rights of children of different religions from the testator are treated under Islamic Law and Civil Law in Indonesia. By analysing the two legal systems, it seeks to identify whether there is potential to develop more inclusive legal solutions, ensuring legal certainty and justice for all parties.

Understanding Inheritance Law in Islam

Taken from ka *Faraid*, which is the plural form of the word *Faridah*, and taken from the word *Faradaw* which means provision. Thus, the word *faraid* can be interpreted as provisions regarding who is entitled to be an heirs and entitled to receive inheritance, heirs who are not entitled to inheritance, and some parts of eachn (Rachmawati & Harahap, 2018). In addition, Chapter II of the Compilation of Islamic Law (KHI) regulates the law of inheritance, based on the provisions of Article 171(a). The compilation of Islamic Law (KHI) which is understood as the law of inheritance is a law that regulates the transfer of property rights of heirs of inheritance (*tirkah*) and determines who is entitled to heirs and how high each share is.

Definition of Inheritance

The word heirloom comes from the Arabic *miras*. The plural form is *mawaris* which means that the estate of the deceased person will be divided among the heirs of that person (Faizah et al., 2021). Although the definitions they give differ editorially, they have the same meaning. For example, Hasbi al-Shiddieqy defines it as follows:

"A science that studies who gets an inheritance and who does not get it, the rate received by each heir, and how it is divided".

In the Compilation of Islamic Law (KHI) (Dhiyan, 2023), inheritance law is "a law that regulates the transfer of property rights to the inheritance (*tirkah*) of heirs, determines who is entitled to inherit and the amount of each inheritance."

Basics of Inheritance

The basis of inheritance in Islamic law includes a) the basis of *ijibari*, b) the bilateral policy, c) the individual policy, d) the basis of balanced justice, and e) the basis of death (Farid Ardiansyah, 2022). 1) The basis of *Ijibari* in Islamic inheritance law means that the transfer of property from the deceased to heirs takes place according to the will of Allah and does not depend on the will and will of the heirs and heirs. 2) The principle of Islamic inheritance law which is bilateral means that a person receives inheritance rights or parts from both parties, namely brothers and sisters. 3) The individual basis in Islamic inheritance law means that inheritance can be divided among each heir. 4) The basic principle of balanced justice in Islamic inheritance law means a balance between rights acquired with the necessity and usefulness to fulfill obligations. In Islamic inheritance law, we see the principle of two to one, meaning that sons get twice the share of girls. 5) The basis for death in Islamic inheritance law means that the right of inheritance exists at the time of death. Inheritance exists after the death of a person. Therefore, the transfer of property from one person to another is called inheritance, which occurs after the death of the owner of the property.

Basic Law of Inheritance in Islam

In Islam, the basis for every applicable provision is guided by the Qur'an and Hadith of the Prophet Muhammad SAW, laws and regulations, the compilation of Islamic law, and the opinions of the companions of Rasulullah as well as the opinions of Islamic jurists. The legal basis of the Qur'an that is revealed is a verse in the Qur'an that discusses a provision regarding heirs and also inheritance and so on. Here are the verses that reveal about it:

Qur'anic verses governing Islamic Inheritance Law**QS. An-Nissa': 7**

لِّلرِّجَالِ نَصِيبٌ مِّمَّا تَرَكَ الْوَالِدَانِ وَالْأَقْرَبُونَ وَلِلنِّسَاءِ نَصِيبٌ مِّمَّا تَرَكَ الْوَالِدَانِ وَالْأَقْرَبُونَ مِمَّا قَلَّ مِنْهُ أَوْ كَثُرَ ۚ نَصِيبًا مَّفْرُوضًا ﴿٧﴾

Means: "For men there is a right to a share of the estate of his parents and relatives, and for a woman there is a right to a share (also) of the estate of his parents and relatives, either a little or a lot according to the portion that has been determined".

This verse emphasizes the principle of justice in the distribution of inheritance. Men and women, whether directly related as children, close relatives, or distant ones, have rights to their family inheritance. This distribution is carried out based on God's decree, with no discrimination in ownership rights, although the shares of inheritance for men and women may differ in certain conditions.

QS. An-Nissa': 8

وَإِذَا حَضَرَ الْقِسْمَةَ أُولُو الْقُرْبَىٰ وَالْيَتَامَىٰ وَالْمَسْكِينُ فَأَرْزُقُوهُمْ مِنْهُ وَقُولُوا لَهُمْ قَوْلًا مَعْرُوفًا ﴿٨﴾

It means: "And if during the division there are relatives, orphans and the poor, then give them out of the treasure (simply) and speak to them good words".

This verse emphasizes the importance of taking care of those in need, such as distant relatives, orphans, and the poor, when the distribution of inheritance is done. Although they are not entitled to a fixed share of the inheritance, they are still encouraged to be given a small portion of the property, and to be treated with respect and given kind words.

QS. An-Nissa: 11

يُوصِيكُمُ اللَّهُ فِي أَوْلَادِكُمْ لِلذَّكَرِ مِثْلُ حَظِّ الْأُنثَيَيْنِ فَإِنْ كُنَّ نِسَاءً فَوْقَ اثْنَتَيْنِ فَلَهُنَّ ثُلُثَا مَا تَرَكَ وَإِنْ كَانَتْ وَاحِدَةً فَلَهَا النِّصْفُ وَلِأَبَوَيْهِ لِكُلِّ وَاحِدٍ مِّنْهُمَا السُّدُسُ مِمَّا تَرَكَ إِنْ كَانَ لَهُ وَلَدٌ فَإِنْ لَمْ يَكُنْ لَهُ وَلَدٌ وَوَرِثَهُ أَبَوُهُ فَلِأُمِّهِ الثُّلُثُ فَإِنْ كَانَ لَهُ إِخْوَةٌ فَلِأُمِّهِ السُّدُسُ مِنْ بَعْدِ وَصِيَّةٍ يُوصِي بِهَا أَوْ دَيْنًا وَأَوْكُمُوا أَيْهَمُ أَقْرَبُ لَكُمْ نَفْعًا فَرِيضَةً مِّنَ اللَّهِ إِنَّ اللَّهَ كَانَ عَلِيمًا حَكِيمًا ﴿١١﴾

It means: "Allah decrees (obliges) you about (the division of inheritance for) your children, (that is) the share of a son is equal to the share of two daughters. If the children are all girls who add up to more than two, their share is two-thirds of the property left behind. If she (the daughter) is alone, she gets half (the property left behind). For both parents, each share is one-sixth of the property left behind, if he (the deceased) has children. If he (the deceased) has no children and he is inherited by both parents (only), his mother gets one-third. If he (the deceased) had several siblings, his mother got one-sixth. (The inheritance is divided) after (fulfilled) the will made by him or (and repaid) his debts. (About) your parents and your children, you don't know which of them will benefit you more. This is God's decree. Verily, Allah is All-Knowing, All-Wise."

This verse details the division of inheritance between children and parents. A son's share is twice that of a daughter. If the deceased has two or more daughters, then they get two-thirds of the estate, if only one, he gets half. Parents also get a certain share, according to the condition of whether the deceased has descendants or not. This rule shows Allah's wisdom in organizing a fair distribution.

QS. An-Nissa' : 12

وَلَكُمْ نِصْفُ مَا تَرَكَ أَرْوَاجُكُمْ إِنْ لَمْ يَكُنْ لَهِنَّ وَلَدٌ فَإِنْ كَانَ لَهُنَّ وَلَدٌ فَلَكُمْ الرُّبْعُ مِمَّا تَرَكَنَّ مِنْ بَعْدِ وَصِيَّةٍ يُوصِينَ بِهَا أَوْ دَيْنٍ وَلَهُنَّ الرُّبْعُ مِمَّا تَرَكَتُمْ إِنْ لَمْ يَكُنْ لَكُمْ وَلَدٌ فَإِنْ كَانَ لَكُمْ وَلَدٌ فَلَهُنَّ الثُّمُنُ مِمَّا تَرَكَتُمْ مِنْ بَعْدِ وَصِيَّةٍ تُوصُونَ بِهَا أَوْ دَيْنٍ وَإِنْ كَانَ رَجُلٌ يُورَثُ كَلَلَةً أَوْ امْرَأَةٌ وَلَهُ أَخٌ أَوْ أُخْتُ فَلِكُلِّ وَاحِدٍ مِّنْهُمَا السُّدُسُ فَإِنْ كَانُوا أَكْثَرَ مِنْ ذَلِكَ فَهُمْ شُرَكَاءُ فِي الثُّلُثِ مِنْ بَعْدِ وَصِيَّةٍ يُوصَى بِهَا أَوْ دَيْنٍ غَيْرِ مُضَارٍّ وَصِيَّةً مِّنَ اللَّهِ وَاللَّهُ عَلِيمٌ خَلِيمٌ ﴿١٢﴾

It means: "To you (husbands) one-second of the property left by your wives if they have no children. If they (your wives) have children, you get a quarter of the property they leave behind after (fulfilling) the will they made or (and after being paid) the debt. To them (wives) a quarter of the property you leave if you have no children. If you have children, to them (the wives) one-eighth of the property you leave (after fulfillment) is the will you make or (and after being paid) your debts. If a person, whether male or female, dies without leaving father and son, but has a brother (seibu) or a sister (seibu), each of the two types of brothers is one-sixth of the property. However, if they (the mother's brothers) are more than one, they are together in that one-third share, after (fulfilled the will) made by him or (and after being paid) his debts without distress (heirs). Such is God's provision. Allah is All-Knowing, All-Knowing, All-Guide".

This verse explains the division of inheritance between husband and wife. If the wife dies and has no children, the husband gets half the property she leaves behind. If there are children, the husband gets a quarter. Conversely, the wife gets a quarter if the husband dies without children, and an eighth if the husband has children. This rule shows the balance between the rights of husbands and wives in inheriting property.

QS. An-Nissa' : 33

وَلِكُلٍّ جَعَلْنَا مَوَالِي مِمَّا تَرَكَ الْوَالِدُ وَالْأَقْرَبُونَ وَلِلَّذِينَ عَقَدْتَ أَيْمَانُكُمْ فَأَنُؤُوهُمْ نَصِيِبُهُمْ إِنْ اللَّهُ كَانَ عَلَى كُلِّ شَيْءٍ شَهِيدًا ﴿٣٣﴾

It means: "For each (male and female) We have established heirs for what is left behind by both parents and close relatives. Those whom you have sworn allegiance to, give that share to them. Verily Allah is All-Witnessing of all things".

This verse makes it clear that everyone has a right to the inheritance left behind by his or her closest relatives. In addition, if there are people involved in oaths of loyalty or special bonds, they also have the right to a share of the inheritance. This confirms the existence of clear rules regarding inheritance, and Allah is All-Knowing of every human action in this regard.

Hadith of the Prophet on Islamic Inheritance Law

Hadeeth of Rasulullah Dari Sa'ad bin Waqash

From Sa'ad ibn Waqqash (r). He said, that "While in Makkah the Prophet Muhammad (peace be upon him) came to him to visit him while the Prophet refused to die in the land from which he migrated from Him, the Prophet (peace be upon him) said:

يَرْحَمُ اللَّهُ ابْنَ عَفْرَاءَ قُلْتُ: يَا رَسُولَ اللَّهِ أَوْصِي بِمَا لِي كَلِّهِ قَالَ: لَا، قُلْتُ: فَالْشَّطْرُ؟ قَالَ: لَا، قُلْتُ: الثُّلُثُ، قَالَ: فَالْثُّلُثُ، وَالثُّلُثُ كَثِيرٌ إِنَّكَ أَنْ تَدَعَ وَرَثَتَكَ أَغْنِيَاءَ خَيْرٌ مِنْ أَنْ تَدْعَهُمْ عَالَةً يَتَكَفَّفُونَ النَّاسَ فِي أَيْدِيهِمْ، وَإِنَّكَ مَهْمَا أَنْفَقْتَ مِنْ نَفَقَةٍ فَإِنَّهَا صَدَقَةٌ حَتَّى اللَّقْمَةُ الَّتِي تَرْفَعُهَا إِلَى فِي امْرَأَتِكَ، وَعَسَى اللَّهُ أَنْ يَرْفَعَكَ فَيَنْتَفِعَ بِكَ نَاسٌ وَيُضَرَّ بِكَ آخَرُونَ وَلَمْ يَكُنْ لَهُ يَوْمَئِذٍ إِلَّا ابْنَةٌ.

Which means: "May Allah have mercy on Ibn 'Afra (Sa'd). I said, 'O Messenger of Allah, I will with all my treasures?' He said, 'No.' I said, 'Half of it?' He said, 'No.' I said, 'One-third of that?' He said, 'Yes, one-third, and one-third is a lot, because if you leave your heirs rich it is better than leaving them poor, they beg others. (Besides, if you live) even if you give your property to your family, it will still count as alms, until the food you feed to your wife's mouth. May Allah lift you, benefit some people, and harm others.' At that time Sa'd had no heir except a daughter."

This hadith teaches about wisdom in bequeathing wealth. Sa'd bin Waqash wanted to bequeath all his wealth, but the Prophet Muhammad ﷺ advised him not to give all the wealth, even half was too much. The Prophet

suggested one-third, and that was already considered a lot. The Prophet emphasised that it is better to leave the heirs well off than to leave them poor and dependent on others. This hadith highlights the importance of striking a balance between meeting the needs of the heirs and giving away wealth through wills or charity.

This Hadish is narrated by Bukhari

Understanding Civil Inheritance Law

European inheritance law contained in BurgerlijkWetboek (hereinafter BW) is a collection of regulatory provisions regarding property due to the death of a person, especially at the time of transfer of the deceased's estate and the consequences of the transfer of people who understand it, both in relationships between them and third parties (Suparman, 2022). In the definition of inheritance above, wealth is a collection of assets left by someone who died in the form of a Collection of Assets and Liabilities. However, it is the process of transferring the wealth of one's property to one's heirs, called inheritance.

The inheritance only takes place due to death, this is also listed under Article 830 of the Civil Code. Therefore, the elements of inheritance have 3 requirements, namely: 1) Passed Away (Erflate). 2) The existence of Life, that is, as a living person and declared as an heir who will inherit (Erfegenaam). 3) The Existence of Inheritance (Property) Left Behind.

Legal Basis of Civil Inheritance

The Civil Code (BurgerlijkWetboek), especially Article 528 on inheritance law which is equated with material rights, refers to the provisions of Article 584 of the Civil Code Inheritance rights as a way of obtaining property rights. Therefore, the Article was included in Book II of the Civil Code (relating to objects). The classification of inheritance law in Book 2 of the Civil Code raises pros and cons among jurists because it states that it is not the only thing that happens in inheritance law not only in substantive law but also in various other aspects of law, such as personal and family law.

According to the Staatsblad 1925, No. 145 jo. 447 with amendments, plus, etc., lastly with S. 1929 No. 221 Art. 131 ios. Article 163, the inheritance law provided for in the Civil Code, applies to such Europeans. With Staatsblad (1917) number 129 jo. Staatsblad 1924 number 557 of the Law of Inheritance in the Civil Code Article is intended for foreign nationals of East China. Based on Staatsblad 1917 number 12 about being subject to European law, Indonesians can also apply inheritance law contained in the Civil Code (BurgerlijkWetboek), which applies to: 1) Europeans and those who are equated with Europeans include the British, Germans, French, Americans, and including the Japanese. 2) Chinese Foreign Easterners. 3) Other Foreign Easterners and indigenous peoples subject to the Law.

The legal basis for heirs to inherit a certain amount of their property according to the BW inheritance law system is as follows (Ali, 2008): 1) By the provisions of the Act. 2) Written to be addressed in a will. This legal basis stipulates that the management of the legal status of the property of the deceased person must be as much as possible under the wishes of the person. This law is based on the principle that everyone has the right to freely determine his wishes regarding property after death. But if the plaintiff cannot determine the fate of his property during his lifetime, then in this case the law will determine the division of the person's estate. A person can bequeath all or part of his property under a will, and the rest becomes the share of heirs according to law (heirs without a will). Therefore, the granting of a potential heir to a person under a will is not intended to eliminate the succession of the will.

Method

This research uses a normative juridical research method with a comparative approach. The normative juridical method or doctrinal legal research is conducted by examining relevant legal rules through library research. This research focuses on examining the concepts, norms, and legal rules governing the inheritance rights of children of different religions in the context of Islamic Law and Indonesian Civil Law. The purpose of this normative approach is to analyze the applicable legal rules and explore the differences and similarities in inheritance arrangements under the two legal systems.

A comparative approach is used to compare two legal systems, namely: Islamic Law, examining the provisions of inheritance rights in Islamic Law as regulated in the Al-Quran, Hadith, and the Compilation of Islamic Law (KHI), especially regarding inheritance rights for children of different religions with their heirs. Then Civil Law, examining the provisions of inheritance rights in Indonesian Civil Law which are regulated in the Civil Code and related laws, as well as how the legal treatment of children of different religions in terms of inheritance. The data used in this research consists of primary data which includes the main legal sources used as references. Islamic Law includes the Al-Quran, Hadith, Compilation of Islamic Law (KHI), as well as fatwas or views of related scholars. Civil law includes the Civil Code (KUHPerdata) and court decisions related to cases

of inheritance of children of different religions. In addition, secondary data consisting of supporting literature such as scientific journals, academic books, dissertations, and articles relevant to inheritance issues in Islamic Law and Civil Law. This secondary data is used to deepen the understanding of the principles of inheritance law in both legal systems.

Data collection techniques in this study include documentation studies, namely data collection carried out by reviewing and examining relevant legal documents, such as laws and regulations, court decisions, and academic literature related to inheritance in Islamic Law and Civil Law. Data obtained from various sources were processed through stages: First, data reduction is carried out by filtering the most relevant data with a focus on inheritance provisions in Islamic Law and Civil Law, especially those relating to children of different religions. Second, data editing is done by further processing the data to make it more systematic, consistent, and ready for analysis. Third, data presentation is done by presenting the data that has been processed in the form of clear, logical, and systematic descriptions, facilitating comparison between the two legal systems.

Analysis is carried out using qualitative analysis with the aim of describing and explaining how Islamic Law and Civil Law regulate inheritance rights for children of different religions with their heirs. Each rule of law is understood in its normative context, then the results of the analysis are written in the form of a clear and in-depth narrative. In addition, Content Analysis is used to identify legal concepts in both legal systems, as well as interpret their meaning, relevance, and implications for the inheritance rights of children of different religions. To ensure the validity of the research, this study uses an in-depth comparative approach by referring to authoritative legal sources. Each analysis of Islamic Law and Civil Law is based on primary sources, and supported by academic literature and relevant court decisions. This is done to ensure that the resulting interpretation is valid and reflects the actual state of the law. Thus, this research method aims to provide a clear and structured picture of the differences and similarities in the regulation of inheritance rights of children of different religions according to Islamic Law and Civil Law.

Results and Discussions

Inheritance Rights of Children of Different Religions According to Islamic Law

Islamic law has very clear provisions regarding the distribution of inheritance, including inheritance rights for heirs who are of different religions from the testator. According to the view of scholars and based on the arguments in the Qur'an and Hadith, religious differences between the heir and the heir can be a barrier (hijab) for a person to receive a share of inheritance. This is based on the principle that religious relationship is one of the main bases in the inheritance relationship, so that someone who is not of the same religion as the testator is not entitled to a share of the inheritance. This provision is generally based on scholars' interpretation of a number of verses and hadith.

Three things stand in the way of inheritance in Islamic law: murder, religious differences, and slavery (Moechthar et al., 2022). Religious differences occur when between heirs and heirs, one of whom is Muslim and the other is not Muslim. If a person dies and his property is divided among heirs of different religions, then there is no inheritance between the two people. The postulate underlying this law is the Word of the Prophet Muhammad (PBUH), namely:

لا يرث المسلم الكافر ولا الكافر المسلم (متفق عليه)

It means: "It is not entitled to a Muslim to inherit the property of an infidel, nor has an infidel has been entitled to inherit the property of a Muslim". (HR. Bukhari and Muslim).

This Hadith explicitly states that religious differences are a barrier for a person to receive inheritance from a testator who has a different religion. Based on this Hadith, scholars agree that a child who is of a different religion from his parents is not entitled to receive inheritance from his Muslim parents. From the point of view of conventional jurisprudence, a Muslim cannot inherit the property of a non-Muslim and conversely, a non-Muslim cannot inherit the property of a Muslim. There is a difference of opinion among scholars. Some scholars argue that Islamic heirs can inherit the property of non-Muslim heirs. They claim to hold to the opinion of Mu'adz ibn Jabal (r) which states that a Muslim may inherit the property of an infidel, but should not bequeath his property to an infidel. Other scholars say they cannot inherit. Among the scholars who hold this view are four Mujtahid Imams, namely Imam Abu Haneefah, Imam Malik, Imam Ash-Shafi'i, and Imam Ahmad bin Hanbal.

Judging from Islamic inheritance law, children born from interfaith marriages or heirs who are different religions from their heirs, are not entitled to inheritance if they are not of the same religion as their heirs, in this case, the heirs are Muslims. Although Islamic inheritance law does not provide for joint inheritance between people of different religions (between Muslims and non-Muslims), some provisions provide that the gift of

property between people of different religions cannot only take the form of concessions and concessions, treaties, and gifts.

The following are the provisions in the Fatwa of the Indonesian Ulema Council (MUI) No: 5/MUNAS VII/9/2005 concerning the inheritance of different religions, which confirms that: 1) Islamic inheritance law does not regulate joint inheritance rights between persons of different religions (between Muslims and non-Muslims). 2) Property donations between people of different religions can only be made in the form of grants, wills, or gifts (MUI, 2005). Therefore, if the heir is a Muslim and the child is a non-Muslim heir, then the child is not entitled to inherit according to Islamic law.

In addition, the compilation of Islamic Law focuses more on the views of classical scholars who emphasize that religious differences between heirs and heirs become obstacles to the inheritance process in the inheritance rights of individuals of different religions. This is stated in Article 171 Letter b of the Compilation of Islamic Law (KHI) which reads as follows: "An heir is a person who at the time of death or who is declared dead based on the decision of the Islamic Court, leaves heirs and relics." Meanwhile, in the KHI the same article, namely Article 171 letter c states that: "the heir is a person who at the time of death has a blood relationship or marital relationship with the heir, is Muslim and is not hindered by law from becoming an heir." The religious provisions of a person can be determined through his identity, this is clear in the KHI in Article 172 which reads "heirs who are considered Muslim if known from identity cards or confessions or practices or testimonies, while newborns or immature children, religion refers to their father or environment".

While Article 171 letter c of the KHI stipulates that heirs and heirs must be Muslims, meaning that if one of them is not Muslim, then both cannot inherit the other, then the provision of inheritance rights regarding religious differences automatically ends. Although the IHL does not explicitly state that religious differences are a barrier to inheritance, they do state that religious differences are a barrier.

Inheritance Rights of Different Religions According to Civil Law

Indonesian Civil Law, especially as regulated in the Civil Code (KUHPerdata), tends to be neutral towards religious differences in terms of inheritance. In this civil law system, there is no provision that explicitly states that religious differences between the testator and the heirs are a barrier to inheritance. Civil inheritance law applied in Indonesia focuses more on family relationships and legal status, without considering religious beliefs as a limiting factor in inheritance rights. One of the articles in the Civil Code that becomes a reference related to inheritance rights is Article 832 of the Civil Code, which states that those who are entitled to become heirs are blood relatives, both legal and recognised, and legal spouses. There is no specific discussion on religion in this article, which indicates that religious differences are not used as a reason to prevent inheritance rights. Thus, children who have different religions from the testator still have the right to receive part of the inheritance in accordance with the applicable provisions.

In addition, in the Civil Code, the principle of freedom of religion stipulated in the Indonesian constitution is also recognised in the context of inheritance relationships. This can be seen from the attitude of civil law that does not link inheritance rights with religious identity. As a law derived from the secular Dutch legal system, Indonesian civil inheritance law prioritises legality and family relations, without being affected by differences in belief. This view is different from inheritance law in Islam, which explicitly considers religion as a barrier to inheritance rights.

In addition, The Civil Code specifies certain circumstances that prevent heirs from obtaining inheritance, as outlined in Article 838. 1) Persons found guilty on charges of murder or attempting to kill a deceased person. 2) Those who, based on the judge's decision, are charged with defamation against the deceased, namely a complaint that he has committed a criminal offense punishable by imprisonment of five years or a more severe crime. 3) Those who by force or act obstruct the deceased person from making or canceling his will. 4) Those who embezzle, tamper with or falsify the will of the deceased. Overall, Indonesian Civil Law through the Civil Code is inclusive and does not discriminate against inheritance rights based on religion. In this context, the Civil Code provides a neutral and more appropriate legal framework for people who choose not to follow specific religious laws in the division of inheritance. This reflects the Indonesian legal system's efforts to respect diversity and provide legal solutions that are universally applicable to all citizens.

Alternative Solutions in the Settlement of Interfaith Inheritance Disputes

In Islamic Law, religious differences between the test at orand the heirs become an obstacle in the distribution of in heritance. How ever, to overcome this problem, there are several solutions that can be applied, including the concept of grants, mandatory wills, and giving property outside the contex to finheritance. These solution soffer a way for heir stoensure that children of different religions still benefit from their assets, with out violating the Shari'ah provision so ninheritance rights.

Hibah is one of the most commonly used solutions in Islamic Law. Hibah is a voluntary gift of property from a testator to someone, which is usually done while the testator is still alive. In this case, the testator can give property to children of different religions as a form of attention and affection, without having to follow the provisions of the distribution of inheritance that hinders. This grant can be made with certain conditions, so that the testator still has control over the property given. The granting process must also be carried out in a transparent manner so as not to cause conflict in the future (Binti Ab Rahman et al., 2023).

Wasiat wajibah is also a solution regulated in Islamic Law. This concept refers to a will given by the testator to give rights to heirs who are not entitled to receive inheritance according to Islamic law, such as children of different religions. In this context, the testator can designate a portion of the estate to be given to the child, provided that the estate does not exceed one-third of the total estate. In this way, the compulsory testament becomes a way for the testator to ensure that children of different religions still get a fair share of the assets owned (Lestari et al., 2018).

In addition, giving assets outside the context of inheritance can also be an effective solution. A testator can give property or assets to a child of a different religion in a way that is not directly related to the distribution of inheritance. For example, heirs can give land, house, or other assets as gifts outside the inheritance provisions. This gift can be made directly or through an agreement, so that the relationship between the testator and the child of a different religion is maintained properly.

Overall, Islamic Law offers various solutions to overcome the problem of inheritance rights for children of different religions. The concepts of grants, mandatory wills, and gifts of property outside the context of inheritance provide flexibility for the testator to ensure that all children, regardless of religious differences, can benefit from the property owned. With this approach, Islamic Law not only preserves the principles of sharia but also creates fairness and mutual respect in family relationships (Yassir et al., 2023).

Indonesian Civil Law, regulated in the Kitab Undang-Undang Hukum Perdata (Civil Code), offers a more flexible approach to the division of inheritance than Islamic Law, where inheritance rights are not limited by religious factors. All heirs, regardless of their faith, have equal rights to the estate. This creates room for a more open settlement of inheritance disputes, either through court or mediation (Khadapi et al., 2023). Courts serve to assess each party's claims based on evidence and arguments, where mediation offers a more efficient, quick, and inexpensive alternative to reach a fair agreement among heirs.

The mediation process prioritises open communication and participation of all parties, helping them find a joint solution that takes into account the emotional and social relationships within the family. The outcome of mediation not only prioritises justice, but also maintains harmonious family relationships. In this context, Civil Law promotes the principles of deliberation and consensus, in line with Indonesian cultural values that emphasise harmony within the family. Thus, Civil Law does not only focus on the legal aspects, but also on the social and emotional aspects of inheritance division.

Conclusions

This research shows that there are differences in the regulation of the inheritance rights of children of different religions between Islamic Law and Civil Law. In Islamic Law, religious differences are a barrier for the children of the testator to obtain inheritance rights, thus requiring alternative solutions such as grants, mandatory wills, or giving assets outside the context of inheritance. In contrast, Indonesian Civil Law is more flexible, allowing all heirs, regardless of religion, to have equal rights to inheritance. This creates room for a more open settlement of inheritance disputes through the court or mediation, prioritizing the principles of justice and harmony within the family. By understanding these differences, it is important for society to adopt a more inclusive and fair approach to inheritance rights arrangements, especially for families that have members with different religious beliefs. Efforts to facilitate dialogue and mediation among heirs can help reduce the potential for conflict and create mutually beneficial agreements. In addition, a better understanding of these two legal systems can raise people's awareness of the importance of protecting inheritance rights for all parties, promoting harmony and mutual respect in family relationships.

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