

Research Article

# A Study of Inheritance Distribution from the Perspective of the Compilation of Islamic Law (KHI) and Civil Law (A Case Study in Kwaron and Grogol Villages, Diwek District, Jombang Regency)

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**Abstract,** This study aims to examine and compare the practices of inheritance distribution in Kwaron and Grogol Villages, Diwek District, Jombang Regency, from the perspectives of the Compilation of Islamic Law (KHI) and Civil Law. This qualitative research adopts a case study approach, collecting data through in-depth interviews, field observations, and document studies. The findings indicate significant differences in inheritance distribution practices between the two villages, influenced by social, cultural, and legal interpretive factors. The study also finds that legal ambiguity and limited public understanding of inheritance law often lead to conflicts. Moreover, it reveals that mediation and conflict resolution through customary and religious approaches tend to be more effective than formal legal processes. The study recommends enhancing public awareness of inheritance law and developing more integrative conflict resolution mechanisms.

**Keywords:** inheritance distribution, KHI perspective, civil law, Kwaron and Grogol villages, Diwek, Jombang

## 1. INTRODUCTION

Inheritance is a legal event that every family and community will inevitably encounter. The transfer of property from a deceased individual (the heir) to their heirs is not only economic in nature but also deeply embedded with social, cultural, and religious dimensions. In Indonesia, the complexity of inheritance is further compounded by legal pluralism, where at least three legal systems—Islamic law, Western (Civil) law, and customary (adat) law—coexist and are simultaneously practiced within society. This situation presents a landscape where people exercise a choice of law, which often results in overlaps and disputes in its application (Hooker, 1978; Salim, 2008).

Two primary legal systems commonly referenced in formal inheritance distribution are the Compilation of Islamic Law (KHI) and the Indonesian Civil Code (KUHPPerdata). The KHI, enacted through Presidential Instruction No. 1 of 1991, represents an effort to codify and unify substantive Islamic law for Muslims and serves as the main legal reference for Religious Courts. The KHI outlines detailed rules on inheritance shares based on Islamic principles, particularly the rule that male heirs receive twice the share of female heirs (2:1), as stipulated in Article 176—one of its fundamental doctrines (Presidential Instruction No. 1 of 1991; Syarifuddin, 2004). On the other hand, the Civil Code, a legacy of Dutch colonial law, governs inheritance based on blood relationships in both direct and collateral lines, regardless of gender. Every heir of the same degree receives an equal share, in accordance with Article 852 of the Civil Code (Subekti, 2003).

Despite the philosophical and procedural differences between these two legal systems, in practice, communities do not always rigidly adhere to one or the other. Frequently, local inheritance practices are shaped by negotiations, family deliberations, and the influence of customary law, which emphasizes harmony and community-defined substantive justice (Nurlaelawati, 2010). Such practices often result in hybrid inheritance distribution models—partially adopting Islamic legal principles but modifying them with elements of Civil Law or

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local wisdom. This phenomenon is known as the "living law," which often diverges from the "law in the books" (Soekanto, 2007).

This study focuses on two case locations: Kwaron and Grogol Villages in Diwek District, Jombang Regency. These locations were selected based on sociological relevance. Jombang is widely known as the "City of Santri" (Islamic students) and is home to many major pesantren (Islamic boarding schools), indicating the strong influence of Islamic values in the community's daily life (van Bruinessen, 1994). Against this backdrop, a critical question arises: to what extent is the community's Islamic identity reflected in actual inheritance practices? Do they consistently adhere to the provisions of the KHI, or are other factors—such as the gender equality doctrine emphasized in Civil Law or efforts to maintain family harmony—more dominant in determining the final inheritance arrangements? (Cammack & Feener, 2012).

Based on the above background, this study aims to provide an in-depth analysis of inheritance distribution practices in Kwaron and Grogol Villages. It seeks to identify the models of inheritance distribution adopted, explore the factors influencing the community's choice of legal reference, and compare field practices (*das sein*) with formal legal provisions (*das sollen*) (Soekanto & Mamudji, 2003). Through this approach, the study hopes to offer an empirical portrait of how inheritance law is applied in a religious community and contribute to a better understanding of the complex interactions between law, religion, and social practice in Indonesia.

## 2. LITERATURE REVIEW

Research on inheritance law in Indonesia has evolved significantly, reflecting the complex interactions between state law, religious teachings, and social practices. This literature review outlines the academic landscape in two main areas: (1) the conceptual debate between Islamic inheritance law (as codified in the Compilation of Islamic Law or KHI) and Civil Law; and (2) empirical studies on inheritance distribution practices in society.

### **Islamic Inheritance Law in the Compilation of Islamic Law (KHI)**

Islamic inheritance law, as stipulated in the KHI, is based on divine revelation (the Qur'an and Hadith) and is theocentric in nature. Its core principle is the predetermined share (*faraid*) assigned to each eligible heir (Syarifuddin, 2004). One of the most distinctive and often debated features is the 2:1 distribution ratio between male and female heirs of equal standing, as emphasized in Article 176 of the KHI (Presidential Instruction No. 1 of 1991). This principle is grounded in the argument that men bear greater financial responsibilities within an Islamic family structure. However, the KHI also provides room for resolution through peaceful means or family deliberation, as implied in Article 183, which allows heirs to reach mutual agreements in distributing inheritance.

### **Inheritance under Civil Law (KUHPerdata)**

In contrast, inheritance under the Civil Code is rooted in Roman-Dutch legal traditions, which are anthropocentric and individualistic. This system does not differentiate inheritance rights based on gender or religion. Its fundamental principle is equality, where all heirs of the same degree are entitled to equal shares (*een ieder voor een gelijk deel*), as stated in Article 852 of the Civil Code (Subekti, 2003). The system prioritizes blood relations as the basis for inheritance and does not prescribe fixed portions, opting instead for equal distribution among heirs. This dualism theoretically offers a choice of law for the public but often results in tension between religious values and modern notions of justice, particularly concerning gender equality (Cammack & Feener, 2012).

### **Inheritance Practices in Society: Between Norm and Reality**

Socio-legal studies have consistently revealed a significant gap between law in the books and law in action (Soekanto, 2007). In the context of inheritance law, real-life practices are far more fluid and dynamic than simply choosing between the KHI or Civil Code. A number of empirical studies have found that family deliberation (*islah*) is the dominant mechanism for resolving inheritance matters among Muslim communities in Indonesia (Nurlaelawati, 2010; Bowen, 1993). In many cases, families consciously deviate from the 2:1 distribution rule stipulated by the KHI in order to preserve harmony and prevent internal conflict. The outcomes of such deliberations often lead to equal distribution, a model that is substantially closer to the principles of Civil Law, although the justifications are usually framed within Islamic values such as sincerity (*ikhlas*), gift-giving (*hibah*), or communal benefit (*masalahah*).

## 3. RESEARCH METHODS

In conducting this qualitative research, the authors played a central role in planning, data collection, analysis, interpretation, and reporting. The study was carried out in Kwaron and Grogol Villages, Diwek District, Jombang Regency, East Java Province, Indonesia. Field data,

particularly the results of interviews conducted with informants regarding inheritance distribution practices in both villages, were used to construct this thesis.

One of the most crucial elements in this research was the source of data. Supporting materials such as documents and other resources were used as complementary data, since the primary data in qualitative research consists of words and actions. Hence, both primary and secondary data sources were utilized for the classification of qualitative data collection methods (Feti Hikmah, 2020). The primary data sources in this research were direct testimonies and information provided by interviewees.

The research employed a comparative legal approach, specifically focusing on the Compilation of Islamic Law (KHI) and Civil Law frameworks, to analyze and interpret the findings.

#### 4. RESULT AND DISCUSSION

##### Islamic Law Analysis on the Distribution of Inheritance

Islamic Sharia, or often referred to as Sharia, is a set of rules that Allah has established to regulate the relationship between humans and God, fellow humans, living creatures, and nature. These rules originate from Allah and cover a number of aspects of life, including inheritance issues. As caliphs on earth, humans are entrusted by Allah to fulfill their life needs, both material and non-material. This allows humans to feel satisfied and independent, so that they can carry out their role as caliphs with full peace and worship the Creator. One of the provisions provided by Allah is ownership of property to fulfill their life needs. This ownership must be in accordance with Islamic law and provide authority for individuals to use property correctly and in accordance with the law. (Directorate of Islamic Religious Affairs, Islam, 2013).

In the Islamic perspective, the Science of Inheritance, or often called the Science of Fara'id, refers to the process of transferring ownership rights from a deceased individual to living heirs. This includes a number of types of property, including money, land, and other property rights that are managed according to sharia. In the Compilation of Islamic Law (KHI), Inheritance Law is described as a law that regulates the process of transferring ownership rights of inherited property (tirkah) from the testator, as well as determining who is entitled to be an heir and each part of the related inheritance. (Putra Jaya, 2020).

The science of Fara'id is often called this because it discusses the parts that have been determined for heirs. (God is Great). The object of study is At-Tirkah, namely inheritance. (Directorate of Islamic Religious Affairs, 2013). The conditions for inheritance are the death of the heir (Muwarrits), the life of the heir (Warits) and the status of the distribution of inherited assets. (Syuhada Syarkun, 2019). The pillars of inheritance are Heirs (Muwarrits), Heirs (Warits) and Inheritance (Maruts). (Syuhada Syarkun, 2019). Tirkah corpses are related to various rights, the order of which is, among others, the management and burial of the corpse (Tajhiz), the payment of the corpse's debts, carrying out the corpse's will and the remainder of the Tirkah assets being divided among the heirs. (Teungku Muhammad Hasbi Ash-Shiddieqy, 1997).

The division of inheritance refers to the Qur'an referring to the transfer of ownership of property from the deceased to the living heirs. In the Qur'an, the division of inheritance has been determined as a definite portion and the remaining portion for the living heirs. Many people do not carry out the division of inheritance referring to the Qur'an, because of fear of injustice, the habit of being impolite to discuss inheritance when the heir dies, unfairness when dividing Women 1, Men 2, fear of creating conflict between families and related matters that often occur in society. In fact, heirs are required to pay close attention to the rights related to inheritance, namely the cost of caring for the corpse, covering the corpse's debts, fulfilling the corpse's will a maximum of  $\frac{1}{3}$  and the distribution of inheritance to the entitled heirs. The following is evidence regarding related rights in the Qur'an, Surah An-Nisa verse 11 and also in Article 175 of the KHI.

The division of inheritance in the Qur'an refers to a good division referring to Allah's perspective as stated in the Qur'an, there is no error in it, Allah knows which is most beneficial and Allah is All-Knowing. At the end of the letter An-Nisa verse 11, Allah decides that if we do not have definite knowledge about the greater benefit between our parents or descendants. This is the decree of Allah who is all-knowing and wise. At the end of the letter An-Nisa verse 12, Allah confirms that this law comes from Him, and Allah is All-Knowing and All-Forbearing.

### Civil Law Analysis of Inheritance Property Distribution

In the western civil law system, the term applied to inheritance law is *Erfrecht*. Article 830 of the Civil Code explains that inheritance law is a rule that deals with the legal status of an individual's property after they die, especially regarding how ownership of the related property is transferred to another party. (Titik Triwulan, 2008), The inheritance system in civil law and Islam is influenced by the culture and society of its society. In theory, there are three patterns of descent: patrilineal, matrilineal, and bilateral or parental. In the Civil Code, a limited bilateral descent system is applied, where all individuals are connected to the descendants of both parents equally. From the system related to indirectly describing when civil law provides the right to inheritance related to heirs from descendants. And also hints for us to leave inheritance so that it can be obtained by heirs well for survival when left by the testator.

Referring to Abdul Kadir Muhammad, the inheritance system applied in the Criminal Code is an individual system. This means that all heirs have the right to make a claim for the separation of inheritance and receive the portion that is their right, whether it is property originating from the mother or from the father. (Eri Safira, Martha, 2017). Inheritance in the form of a house or other desired property When the division of inheritance property to be sold to one of the heirs with good intentions is permitted by civil law but is not described in detail in the related civil law, only that to sell the related inheritance property must undergo special conditions in selling related goods such as land deeds, houses and others.

The division of inheritance results in some of the related assets being transferred from the testator to his heirs. In the BW Inheritance Law, there are three main elements which include: the individual who creates the inheritance (*erflater*), the related inheritance itself (*erfvermogen*), and the heirs (*erfgenamen*). However, in line with the Civil Code, not all heirs automatically receive all the assets owned by the heir. (Putra Jaya, 2020).

The first part of the heirs, the first group, includes heirs in the straight line down from the heir, such as children, husbands/widowers, and wives/widows. They have inheritance rights that surpass those of the second group of heirs, meaning that, as long as the first group of heirs still exist, the second group of heirs cannot appear (Article 852 BW).

The second group of heirs is based on changes (*Bij Plaatsvervaling*). This includes heirs in a straight line upwards from the testator, such as the father, mother, and siblings of the testator. They only appear as heirs if there are no heirs in the first group at all, surpassing the heirs in the third and fourth groups (Article 854 BW). The parents' share (Articles 854-855 of the Civil Code) is divided into  $\frac{1}{3}$  if there is no husband or wife and only the mother or with two siblings,  $\frac{1}{2}$  if there is only one mother/father with one sibling, and  $\frac{1}{4}$  if with more than two siblings. The sibling's share (Article 854 of the Civil Code) is  $\frac{1}{3}$  if alone or only with the mother, father, and one sibling,  $\frac{1}{2}$  if there are two and with the mother/father, and  $\frac{3}{4}$  if there are more than two individuals together with the mother/father.

The third group of heirs is based on change (*Bij Plaatsvervaling*). This includes families in a straight line upwards, either from the father's line (*grandfather*) or the mother's line (*grandmother*), such as the grandfather, grandmother, and great-grandmother of the testator. They appear as heirs if the first and second group heirs do not exist at all, surpassing the fourth group heirs (Article 853:858 BW).

The fourth group of heirs based on changes (*Bij Plaatsvervaling*) is the fourth group of heirs referring to relatives on the side line of the testator, namely uncles, aunts (Article 858 paragraph 2 BW). (Putra Jaya, 2020).

Article 858 of the Civil Code (BW) regulates the fourth group in inheritance law. Referring to this article, if there are no brothers and sisters (second group), and no relatives in the direct line upwards (third group) who are alive, then the inheritance is to be divided into two parts. Half of the related inheritance belongs to the blood relatives in the direct line upwards who are alive, on the other hand the other half belongs to relatives in other lines such as uncles, aunts, and their descendants. Thus, the fourth group includes other relatives in the divergent line up to the sixth degree.

#### Distribution of Community Inheritance Kwaron Village Diwek, Jombang Regency

Distribution inheritance in the village of Kwaron, namely Mak Jabo, Mrs. Anis. Statement from Mak Jabo, The heir is the husband of the deceased aunt. (Mak Jabo, 2024). From the interview excerpt from Mak Jabo, both from the compilation of Islamic law and civil law, Mak Jabo should not receive inheritance because of her status as an adopted child. To obtain the property through the usual gift or gift. Wives and daughters are entitled to a share according to Islamic law, but nephews through the *al-garawain* route are not entitled, and Mak Jabo is not entitled. Nephews are not entitled to inheritance according to civil law because they are limited to the first group, which consists of wives and children. Mak Jabo is also not entitled because they are not included in the first to fourth groups. Mak Jabo replied, "My parents are

not heirs because they did not leave an inheritance for 12 children, including Mak Jabo. We must leave the family well as stated in the Quran, according to the compilation of Islamic law.

From the answer Mak Jabo, "The distribution of the inheritance after 40 days of the death of Mak Jabo's aunt's husband. The way to distribute it is the land that has been built into a house, divided like this, the front room there are 2 for Mak Jabo and the nephew as an adopted child, the living room and large family room for the biological daughter of the husband and the back room and kitchen for the wife. The distribution of the inheritance after 40 days, is feared that the heir will die and the value of the inheritance will decrease based on the compilation of Islamic law, while civil law does not discuss this. If there is no impact felt, the distribution of the inheritance after 40 days is allowed, civil law only discusses whether it can be distributed after the testator dies.

The method of dividing the mak jabo with the compilation of Islamic law is different, namely the wife gets 1/8 because the deceased has children, the daughter 1/2 because she is alone and has no sons, the nephew gets the rest and the mak jabo is prevented from inheriting. While in civil law, the wife and daughter are divided equally, the nephew and mak jabo are prevented from inheriting.

statement from Mrs. Anis, Distribution of her inheritance after 40 days of her father's death. How to distribute it, she does not want to convey because of privacy, only the family knows. This house, mother bought, so that this house will later become a place to gather with family, there are memories. (Mrs. Anis, 2024). Distribution of inheritance after 40 days is permitted if no influence is felt; civil law only regulates this possibility after the death of the testator. The compilation of Islamic law allows inheritance to be sold to heirs; however, do not leave a will to the heirs. This is also not covered by civil law, which only stipulates that inheritance must be material and valuable, with assets that are free of debt and assets that are still mixed.

This is also not covered by civil law, which only stipulates that the inheritance must be material and valuable, with assets related to debts and mixed assets. If there are sons and daughters, the children's share in the compilation of Islamic law is the remainder, 2:1, with one daughter for every two sons. Because the children of the deceased, the wife's share is 1/8. According to civil law, the wife and children have the same share and are allocated equally.

Delaying the distribution of inheritance is not discussed in either the compilation of Islamic law or civil law. The compilation of law only discusses the effects of delaying the distribution of inheritance, namely the death of the heir. The compilation of Islamic law states this as a case of al-munasakhoh, an heir who dies at the time of the distribution of inheritance does not receive inheritance because he is not alive at the time of the distribution of inheritance. While in civil law, an heir who dies at the time of the distribution of inheritance cannot because the elements and causes of inheritance in civil law are not met, namely the heir must be alive. Delaying the distribution of inheritance, then used together, is not discussed in the compilation of Islamic law, it should be divided immediately so as not to be doubtful about doubtful assets. Civil law is also not discussed, discussing mixed assets that are feared to be used and have an impact on family conflict.

#### **Distribution of inheritance in Grogol village Diwek, Jombang Regency**

namely the guardian of student JF 11, Mrs. L, Walsan JF 11 stated that, The heir is no one who died, this is the inheritance of the mother and father. (Walsan JF, 2024). The compilation of Islamic law has conditions and pillars, namely the heir must die at the time of the distribution of inheritance, civil law also, namely the elements and causes of inheritance in civil law, namely the heir must die at the time of the distribution of inheritance. Walsan JF 11 answered, The division of the inheritance was distributed before the father died, so that there would be no quarrels in the family. The wife got the rice fields and cows, Walsan JF 11 got the house and cows, the daughter got the house and 1 son did not get the inheritance because he was already rich."

The child's share in the compilation of Islamic law when a son is with a daughter is the remainder, 2:1, 2 for the man and 1 for the daughter. The wife's share is 1/8 because the deceased has children. The share of children and wives in civil law is the same, all are distributed equally. Answer from Walsan JF 11, The impact of the division of inheritance that was distributed before the father died, for now there is none. It's just that there is a little displeasure from the son-in-law. The displeasure is still safe. Displeasure because he did not get inheritance because he was already rich. The second statement is from Mrs. L, There is no heir, because she has not died, this is the inheritance of Mrs. L's father. (Mrs. L initials, 2024). The compilation of Islamic law has conditions and pillars, namely the heir must die at the time of the distribution of inheritance, civil law also, namely the elements and causes of inheritance in civil law, namely the heir must die at the time of the distribution of inheritance. Mrs.

Lanswered, The division of the inheritance was planned before the father died, so that there would be no fights. For the inheritance in the form of a house, the father will distribute it to the youngest child, namely the son, because he has taken care of the mother a lot."

This is good in the compilation of Islamic law and civil law, both say it is not a division of inheritance, just a normal plan. Hadith about Nihlah, Rasullulah strongly warns, cases like this should be shared with everyone. Civil law, as long as the other heirs are not categorized as being prevented from receiving inheritance, namely trying to kill, slandering the heir for committing a crime, preventing the heir badly from the will and destroying the will, then the son has the right to receive his inheritance rights. Mrs. Lanswered, "The distribution of the inheritance is distributed after the grandmother died. 4 daughters get a house, 1 son gets land and the grandmother (wife of the deceased) still gets the inheritance, namely a share of the house, then the grandmother's share is donated.

Delaying the distribution of inheritance is not discussed in either the compilation of Islamic law or civil law. In the compilation of Islamic law, it only discusses the effects of delaying the distribution of inheritance, namely the death of the heir. The compilation of Islamic law states this as a case of al-munasakhoh, an heir who dies at the time of the distribution of inheritance does not receive inheritance because he is not alive at the time of the distribution of inheritance. While in civil law, an heir who dies at the time of the distribution of inheritance cannot because the elements and causes of inheritance in civil law are not met, namely the heir must be alive.

According to Islamic law and civil law, heirs who die at the time of inheritance distribution do not receive any portion of the inheritance. On the other hand, if the inheritance is donated, then the inheritance becomes the property of the heirs who are still alive and are entitled to receive it. In response, Mrs. M said, "Sir, the inheritance is divided after 100 days. The first daughter receives the front house, the second daughter receives the land, and the wife and son, the last child, receive the back house. Because the 22-year-old child is mentally retarded, the wife's and son's shares are combined. According to the compilation of Islamic law, the inheritance is divided after 100 days because of fear that the heir will die and the value of the inheritance will decrease; civil law does not regulate this. Civil law only regulates whether the inheritance can be divided after the testator dies, and if there is no impact felt, this can happen after 100 days.

When a son and daughter are together, the child's share according to Islamic law is the remainder, 2:1, with the son receiving two and the daughter receiving one. Since the deceased had children, the wife's share is 1/8. According to civil law, the wife and children have equal shares and are allocated equally.. The merging of the mother's and son's inheritance due to pity for the child's condition, in the compilation of Islamic law it cannot be implemented, the mother's share is the mother, the child's share is the child, after distributing it according to faroidh, then it can be given to the son by gift. Civil law can because the shares are equal so there is no problem. According to civil law, it is in accordance with the elements and causes of inheritance. According to the compilation of Islamic law, rice fields should be distributed immediately, the second process is to donate them together for their benefits. Civil law, rice fields are donated first like a down payment for the distribution of inheritance. The child's share in the compilation of Islamic law when the son is with the daughter is the remainder, 2:1, 2 for the son and 1 for the daughter. The wife's share is 1/4 because the deceased has children. The share of the child and husband in civil law is the same, all are distributed equally.

## 5. CONCLUSION

This study reveals that inheritance distribution practices in the villages of Kwaron and Grogol, Diwek District, Jombang Regency, are influenced by various social, cultural, and diverse legal interpretations. Community practices tend to disregard the formal provisions of inheritance law, both from the perspective of the Compilation of Islamic Law (KHI) and the Civil Code, and instead rely on family deliberations, customary norms, and religious values to reach agreements. These differing practices create potential for conflict, which is often resolved through cultural and religious approaches that are more dynamic and flexible than formal legal procedures. The study also highlights the importance of inheritance law dissemination and the development of more integrative conflict resolution mechanisms to ensure that inheritance practices are fairer and aligned with the principles of substantive justice in Indonesia's pluralistic society.

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