



## DIFFERENCES AND SIMILARITIES IN THE DIVISION OF INHERITANCE LAW ACCORDING TO ISLAMIC LAW AND JAVANESE CUSTOMARY LAW IN INDONESIA IN A COMPARATIVE STUDY OF LAW

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### Abstract

*The acquisition of property through inheritance is a form of legal ownership and is justified by Allah SWT. The Qur'an and Hadith have also provided explanations regarding the parties who are entitled to become heirs along with the amount or amount of distribution of inheritance. However, in everyday life in society, the distribution of inheritance often creates its own problems, the distribution of inheritance is vulnerable to conflict and prone to disputes between parties who are entitled to become heirs. The method used in this paper is the normative legal research method. Namely the type of research method that is doctrinal in nature and comes from research sources from the library. In research, it is necessary to have library sources that are relevant to the subject being studied. In Indonesia, the applicable inheritance law is still not uniform. This is because there are different laws of inheritance, including civil inheritance law, customary inheritance law, and Islamic inheritance law. However, this paper only focuses on the division of inheritance law according to customary inheritance law and Islamic inheritance law. In Indonesia, there are very diverse customary laws, so this research is more directed to Javanese customary law of inheritance which adheres to the term sepikul segendongan, namely that boys get twice the share of girls. The principle of sepikul-segendong implies that men and women both get the same inheritance rights, but each share is different, the men who are considered to have a bigger role and responsibility get more shares (sepikul) than men. women (segendong), however, as Muslims, they should obey and submit to the provisions stipulated in Islamic law.*

**Keywords: Inheritance, Inheritance Law, Indonesian Inheritance Law**

### 1. INTRODUCTION (TNR, 11 Bold)

Issues about property can often lead to disputes, for example, one of which is the distribution of inheritance. The division of inheritance is a very complicated issue and often causes disputes, disputes and even hostility between the heirs who are entitled to the distribution of inheritance (Mu'minin, 2020). The emergence of these problems is due to differences in understanding of the distribution of inheritance.

The meaning of the word inheritance comes from Arabic, Al-Mirats is the masdar form (infinitive) of the word waritsa-yaritsu-irsan-miiraatsan. In terms of inheritance is the transfer of something from one person to another. While the scholars provide an understanding of the meaning of al-mirats is the transfer of ownership rights from the deceased to the heirs who are still alive, whether the left is in the form of property (money), land, or anything in the form of legal rights according to syar'i Muhammad Ali Ash. -Shabuni: 1995). Faraidh, is another term for the mention of inheritance which is the plural of the word faridhah which means mafrudhah, which has the same meaning as muqaddara, which is something that is clearly defined (Amir Syarifuddin: 2004). In Islam the division of inheritance is related to the parts that will become the rights of the heirs have been stipulated in the Qur'an (Suwarna, 2018). Islam pays great attention to inheritance because the division of inheritance can cause things that are very undesirable in reality. Not a few inheritance divisions often lead to conflicts, disputes and even divisions in family relations between the heirs.

Inheritance Law Wirjono Prodjodokoro argues that inheritance law is a matter of whether and how various rights and obligations regarding a person's wealth at the time of his death will be transferred to other people who are still alive (Wirjono Prodjodokoro: 1991).

Inheritance laws that exist and apply in Indonesia are still diverse. This is because in Indonesia there is a division of inheritance according to Islamic inheritance law, there is also a division of inheritance according to Indonesian inheritance law (Civil) and the division of inheritance according to the applicable customary inheritance law (Yunarko, 2005). For native Indonesians, customary law applies, which differs in customs in every region in Indonesia, this is inseparable from the influence of the composition of the community whose kinship differs from one region to another. Meanwhile, for native Indonesians who are Muslims, Islamic inheritance law applies and for Chinese and Europeans, inheritance law applies in BW (Book II title 12/18, Articles 830 to 1130) (Wirjono Prodjodokoro: 1991).

However, the distribution of inheritance in Indonesian society uses Islamic inheritance law and some uses customary inheritance law. Because in Indonesian society there are various kinds of customary law, each region is different in applying the inheritance law. Except in some areas there are those who use Islamic law in the distribution of inheritance. Because in Indonesia there are very diverse customary laws, so the author in his discussion is more directed to Javanese customary law, namely Javanese customary law which adheres to the term *sepikul segendongan*, i.e. boys get twice the share of girls. The principle of *sepikul-segendong* is mostly practiced by the Javanese people. The principle of *sepikul-segendong* implies that men and women both get the same inheritance rights, but each share is different, the men who are considered to have a bigger role and responsibility get more shares (*sepikul*) than men. women (*segendong*) (Savitri et al., 2017).

As Muslims, we must obey and submit to the provisions set out in Islamic law. Because Allah SWT has determined this, Allah SWT has obligated Muslims to divide the inheritance according to his instructions. However, on the other hand, there are still many Muslims who use customary inheritance law in the distribution of their inheritance, this is because the share obtained is more so that people are more inclined to choose customary law. The diversity of people's reasons for implementing the division of inheritance law in Indonesia is proof that Indonesian society is pluralistic with its diversity of customs and cultures.

Based on the above background, the author will conduct a study on the Differences and Similarities in the Division of Inheritance Law according to Islamic Law and Javanese Customary Law in Indonesia in a Comparative Study of Law.

## 1. IMPLEMENTATION METHOD

The research method used in writing this scientific paper is library research or normative juridical research, namely critical and in-depth reading of books, literature, magazines, newspapers. As long as all of them have relevance to the problems to be discussed (Soerjono Soekanto and Sri Mahmudji: 2001). The approach used in this paper is to use a comparative law approach (Aprilan & Aprilianda, 2015). The purpose of comparative law is an effort to collect various information about foreign law, explore the experiences made in the study of foreign law in the context of legal reform (Munir Fuady: 2007). Sources of Legal Materials used are primary data sources and secondary data sources which can later be used as support in research and at the same time used as data sources for analyzing facts and problems that have been obtained and investigated. Primary source of legal material: in this case the data is obtained from legal sources including the Al-Quran and Hadith which are sources of legal reference for Muslims, especially in inheritance issues, KHI and other laws and regulations



related to the issues discussed which is the main source of reference in this paper. Secondary sources of legal material: in this case the data are obtained from books or literature, journals and scientific articles that are relevant to the problem (Soerjono Soekanto: 1999).

## 2. RESULTS AND DISCUSSION

Inheritance law that applies in Indonesia is regulated in various legal rules. These inheritance law arrangements are regulated in the Civil Code, Customary Law and Islamic Law. The current inheritance law in Indonesia still depends on the law of the heir. Namely, which inheritance law applies to people who die (Nasution, 2018). Therefore, if the deceased is part of the Indonesian population, then the customary inheritance law applies. Meanwhile, if the heir belongs to the European or Eastern Chinese population, Western inheritance law applies to them. On the other hand, there are also laws that live in society based on religious principles, especially Islam (the Qur'an) so that for heirs belonging to the Indonesian population who are Muslim, in some cases they will use inheritance law regulations. based on Islamic inheritance law.

The form and legal system of inheritance is closely related to the form of society and the nature of kinship (Kunto Dewandaru et al., 2020). Meanwhile, the familial nature that exists in Indonesian society stems from an interesting system of lineage. In Indonesia, there are generally three kinds of hereditary systems. The three heredity systems include (Eman Suparman: 2005):

a) Patrilineal system / paternal nature, namely a family system that draws the lineage of the father or the male ancestor. This system, among others, is found in the people of Tanah Gayo, Alas, Batak, Ambon, Irian Jaya, Timor and Bali.

b) Matrilineal system / maternal nature. Namely a family system that draws the lineage of the mother or the female ancestor. This system exists in the Minangkabau community.

c) Parental or Bilateral System. That is a system that draws lineage from two sides, both from the father's side and from the mother's side. Boys and girls are the heirs of their parents' inheritance. This system is found in various regions, including the people of Java, Madura, East Sumatra, Riau, Aceh, South Sumatra, all of Kalimantan, all of Sulawesi, Ternate, and Lombok.

Of the three types of hereditary systems with the characteristics of the family family, it is clear that the inheritance law system in Indonesia is very pluralistic. However, the pluralistic inheritance law system in Indonesia is not only due to the diverse family family system, but also due to the customs of the Indonesian people which are also known to be very diverse (Fauzi, 2016).

In the Contemporary Indonesian Dictionary "inheritance (n) is a person who has the right to receive the inheritance of a person who has died". "Inheritance(n) is something that is inherited." (Peter Salim: 1991).

Whereas in the Compilation of Islamic Law Article 171 (a) Inheritance law is the law that regulates the transfer of ownership rights to the inheritance (tirkah) of the heirs, determining who is entitled to become heirs and how much of each.

So it can be concluded that inheritance law is a law that regulates everything related to the transfer of rights and obligations on assets from someone who has died to his heirs.

### 2.1 Islamic Inheritance Law

Inheritance law, especially in Islamic inheritance law contains various principles. These principles include:

a) The principle of Ijbari, namely the transfer of property from the heir to the heir applies automatically in other words according to the will of Allah without depending on the will of the heir or the request of his heirs.

b) Bilateral principle, that a person receives inheritance rights from both sides of the kinship line, namely female and male lineage.

- c) Individual principle, that each heir individually is entitled to the share he gets.
- d) The principle of balanced justice, namely the balance between rights and obligations and the balance between what is obtained and the needs and uses. In terms of the number of shares obtained when receiving rights, there are indeed differences. Justice in the view of Islam is not only measured by the amount obtained when receiving inheritance rights but also related to the use and necessity.
- e) Death principle, that inheritance can only apply after the person who owns the property dies.
- f) The principle of recognition of property rights, that the property left by the testator is his full property.

Elements of Inheritance in Islamic inheritance law, including:

- a) Heir. The heir in Fiqh literature is called Al-Muwarrits, is someone who has died and left something that can be transferred to his living family. Inheritance only takes place by death. There are several kinds of death, among others (M Idris: 2000); True death (true death), is the loss of a person's life from his body which can be proven by the five senses and Hukmi Death, which is death declared according to the judge's decision.
- b) Inheritance. Namely all kinds of objects or possessions left by the heir. Assets in terms of Fiqh are called: Mauruts, Mirats, irts, turats and dates. At-tarikah (relics) which means all types of ownership left by the heir, whether in the form of property, objects, or land.

Inheritance according to Islamic law is everything left by the heirs who can legally pass on to his heirs. Therefore, the inheritance must be wholly the property of the heir.

In the Compilation of Islamic Law Book II on Inheritance Law in Chapter I on General Provisions, it is stated that:

Point d, "Inheritance assets are assets left by the heirs either in the form of property that belongs to him or his rights."

Point e, "Inheritance assets are inherited assets plus a part of joint property after being used for the purposes of the testator during illness until death, costs for managing the corpse, paying debts and giving gifts to relatives."

- c) Heirs. Heirs also called warits in fiqh terms are people who are entitled to the inheritance left by the person who died. Those who are entitled to receive inheritance are people who have kinship or marital relations with the testator. They are only entitled to legally inherit if they fulfill the following conditions, namely, the heir is still alive at the time of the death of the testator, there are no things that prevent him legally from receiving the inheritance and there is no hijab or fully covered by the heirs who are closer . In the Compilation of Islamic Law Book II on Inheritance Law in Chapter I concerning General Provisions Point c: "the heir is a person who at the time of death is related by blood or marriage to the heir, is Muslim and is not prevented by law from becoming an heir. In addition, KHI also categorizes the heirs in Article 174, namely:

(1) Group of Heirs consists of:

- a. By blood relation: The male group consists of: father, son, brother, uncle and grandfather. The women group consists of: mother, daughter, sister and grandmother.





b. According to the marital relationship consists of widowers and widows.

(2) If all the heirs are present, only children, father, mother, widow or widower are entitled to inherit.

If all the heirs mentioned above are still there, both male and female, then there are only five who are more entitled to a share of the inheritance (Main Inheritance), namely:

- a) father,
- b) mother
- c) husband or wife,
- d) boy,
- e) girls.

The amount of the fixed share of heirs in the KHI is regulated in Articles 176-182 as follows:

- 1) gets  $\frac{2}{3}$  of the share and if the daughter is with the son, then the share of the boy is two to one with the daughter.
- 2) Father, if the heir does not leave the child, he gets  $\frac{1}{3}$  of the share and if the heir leaves the child, he gets  $\frac{1}{6}$  of the share.
- 3) Mother
  - a) If there are children or two or more siblings get  $\frac{1}{6}$  share and if there are no children or two or more siblings get  $\frac{1}{3}$  share.
  - b) the mother gets  $\frac{1}{3}$  of the remainder after being taken by the widow or widower when together with the father.
- 4) Widower, if the heir does not leave the child gets share and if the heir leaves the child gets share.
- 5) Widow, if the heir does not leave the child, he gets of the share and if the heir leaves the child, he gets  $\frac{1}{8}$  of the share.
- 6) A person dies without leaving children and father, brothers and sisters of one's mother each get  $\frac{1}{6}$  share and if they are two or more people then they jointly get  $\frac{1}{3}$  share.
- 7) If a person dies without leaving father and children, while he has one biological sister or father, then he gets half the share, if the sister is together with two or more biological sisters or fathers, then they are together. gets  $\frac{2}{3}$  of the share, if the sister is together with a biological brother or father, then the share of the brother is two to one with the sister.

As for the reasons that make a person get inheritance rights, among others (Muhammad Ali: 1995):

- a. There are kinship ties, namely family relationships such as parents, children, siblings, uncles, and so on.
- b. Marriage, namely the occurrence of a legal marriage contract (syar'i) between a man and a woman.
- c. Al-Wala, ie kinship for legal reasons. The cause is the enjoyment of the liberation of slaves by someone.
- d. Because Islam, namely inheritance handed over to the Baitul Maal for the needs of the Muslims, after the absence of the heirs of these three things.

The conditions for heirs to receive inheritance are:

- a. The death of a person (heir) both intrinsically and legally.

- b. There are heirs who live essentially at the time the testator dies and all the heirs know the exact amount of their respective shares.
- c. There is an inheritance left by the testator and the property is wholly the property of the testator.
- d. There is nothing that prevents him legally from receiving the inheritance.

As for the reason that a person does not receive an inheritance distribution (loss of inheritance rights / inheritance barrier) is due to:

- a. Different religions, namely the different religions adopted between the heirs and heirs.
- b. Slave. A person who is a slave does not have the right to inherit even from his brother.
- c. An apostate is a person who has left Islam.
- d. Killing the Heir. Murder prevents a person from obtaining inheritance rights from the person he kills.
- e. Gone without news. Either it is considered legal death or death as stated by the judge's decision.
- f. Die with unknown who died first.
- g. There is virtue and Hijab. That is, a person is more entitled to inheritance than others.

In the distribution of inheritance, there are obligations that must be resolved first before dividing the property to the rightful heirs, so that problems must first be resolved, including (Moh. Anwar: 1977):

- a. The cost of holding the corps
- b. The obligation to pay zakat must be fulfilled if indeed the assets owned by the heir have met the requirements for the zakat to be issued based on the provisions of zakat.
- c. Paying off the debts of the heir must be repaid immediately before the inheritance is distributed to the heirs. And those who have receivables should immediately notify the heirs by showing evidence or witnesses before the inheritance is distributed. These debts by the Fuqoha are divided into two, namely debts to Allah such as vows, Hajj including zakat and the second debts to fellow human beings.
- d. Carry out his will, namely the granting of rights to a person or entity to own or utilize something for which the granting of the right is suspended after the owner of the right dies and without any compensation or compensation from the party who receives the grant of the right.

After the obligations on the assets left behind have been carried out and there are still assets remaining, it becomes the full rights of the entitled heirs. Then the following efforts are carried out, among others:

- a. Determine the heirs who are entitled to receive the inheritance.
- b. Determine the share of each of the heirs according to the provisions of the heirs of dzawul furudh and who also become ashabah.
- c. Determine the inheritance to be divided.
- d. If everything has been determined, then distribute it to the heirs.

## 2.2 Customary Inheritance Law



The term inheritance in the completeness of the term customary inheritance law is taken over from Arabic which has become Indonesian, so customary inheritance law is the law of passing on assets from one generation to their descendants. Some of the meanings put forward by experts of customary law, among others:

1. According to Hilman Hadikusuma, "Customary Inheritance Law is the customary law rules governing how inheritance or inheritance is passed on or divided from the heir to the heirs from one generation to the next." (Hilman Hadi: 1992).
2. According to Wirjono Prodjodikoro, "inheritance is a matter of whether and how various rights and obligations regarding a person's wealth at the time of his death will be transferred to other people who are still alive" (Wirjono: 1991).
3. According to Soepomo, "Law of Inheritance contains regulations governing the process of passing on and passing property goods and intangible goods (immaterial goederen) from a generation of humans (generatie) to their descendants. This process has started while the parents are still alive." (Soepomo: 1996)

In customary law, the distribution of inheritance is usually the delivery of certain inherited goods to a certain heir. Here the inheritance law regulates the way of forwarding and transferring rights and obligations whose objects are tangible or intangible, from the heir to his heirs. The inheritance and transfer of inheritance according to customary law vary, because this is very dependent on the social system that exists in the area. ▽

In the customary inheritance law of the Indonesian nation, which stems from the precepts of Pancasila which is the way of life of the Indonesian nation, the customary inheritance law does not only contain the principle of harmony and the principle of equality of rights in inheritance. But there are also several legal principles, including:

- a) The principle of God Almighty, where all that is owned by the heirs is sustenance from Him so that in the end it will return to God Almighty.
- b) The principle of civilized humanity as the principle of tolerance, so that in the distribution of inheritance it must be seen who is more in need.
- c) The principle of unity in the distribution of inheritance should not arise divisions and disputes.
- d) The principle of deliberation and consensus.
- e) The principle of justice, this measure of justice in the distribution of inheritance depends on the customs of each region.

In Indonesia, customary law of inheritance recognizes several inheritance systems, namely:

- a) The heredity system, among others: First, the patrilineal system/father nature. Second, the Matrilineal System / mother nature. Third, Parental System.
- b) Individual inheritance system, namely the inheritance system which determines that the heirs inherit individually. The good of this system is that with private ownership, the heirs can freely control and own their share of inheritance to be used as their living capital, while the weakness is the breakdown of inheritance and the stretching of kinship ties which can result in the emergence of a desire to own property personally and selfishly. This is what causes a lot of disputes between the heir's family members.
- c) Collective inheritance system, which is a system that determines that the heirs inherit the inheritance jointly (collectively) because the inherited assets cannot be divided between their respective heirs. The goodness of this system can still be seen if the function of wealth is intended for the survival of a large family, while the weakness is that it fosters a way of thinking that is too narrow, less open to outsiders.

- d) Majorat inheritance system, namely the inheritance system which determines that the inheritance of the testator is only inherited by a child. There are two kinds of majorat system, namely: male majority, ie if the eldest/eldest son or male descendant is the sole heir of the heir and female mayorat, ie if the eldest daughter is the sole heir of the heir. . The majority inheritance system is very dependent on the leadership of the eldest child in his position as a substitute for the parents who have died in managing wealth and using it for the benefit of all family members who are left behind and are responsible for the use of inheritance. Islamic Inheritance System, namely the implementation and settlement of inheritance when the testator has died. This system is a bilateral individual system.
- e) The Western Inheritance System, which adheres to an individual system, if the heir dies, the inheritance must be divided as soon as possible. In essence, all inherited assets including debts are transferred to the heirs and the heirs can determine their attitude including accepting it in its entirety, accepting with conditions and refusing (Hilman: 1992).

### 2.3 Implementation of Inheritance Distribution

- a) Procedure for dividing the Inheritance

The implementation of this inheritance distribution depends on the relationship and attitude of the heirs. The division of inheritance may occur in an atmosphere without dispute or vice versa in an atmosphere of dispute between the heirs. In an atmosphere without disputes, an atmosphere of brotherhood with full agreement, the implementation of the distribution of inheritance is carried out by means of: Deliberation between fellow heirs/family or deliberation between fellow heirs in the presence of village elders.

In terms of inheritance distribution in customary law, it can be done while the heir is still alive, namely by forwarding or transferring (Javanese, lintiran), appointment (Javanese, Cungan), and/or by giving orders, wills, and orders (Javanese, weling, wekas). If it is done when the testator has died, the method of control is carried out by a certain child, by a family member or the head of a relative, while the method of distribution can be deferred (Javanese, hanging), the distribution is carried out in a balanced manner, compared to or according to Islamic law.

While the heir is still alive, sometimes he has carried out forwarding or transferring or traditional positions, rights and obligations and assets to the heirs (Pongoh, 2019). Especially in Java, the method of forwarding or transferring assets from the heir to the heirs is supposed to apply according to local customs, especially the position of rights and obligations and assets to the eldest child which applies traditionally, which is carried out according to the procedures for kinship or familial deliberation and consensus. Lintiran in Javanese terms means that the heir has transferred a part of his inheritance to a certain heir as the material basis for the heirs who begin to marry in order to separate life from their parents.

Appointment, i.e. if the transfer of rights and assets means the transfer of control and ownership of assets before the heir dies from heir to heir, then the act of appointment by the heir to the heir for certain rights and assets, then the transfer of control and ownership will only take effect fully. to the heir after the heir dies.

The process of inheritance with a new will takes effect after the testator's death is clear. The number of wills may not exceed 1/3 of the entire estate of the testator.

Customary law does not know how to divide by mathematical calculations as in Islamic inheritance law, but is always based on considerations considering the shape of





the object and the needs of the inheritance concerned. Although customary inheritance law recognizes the principle of equal rights, it does not mean that each heir will inherit the same amount, with the same price value. In Javanese society, it is possible to divide it by using the Sepikul segendong method, which means that the share of the boys is twice that of the girls or by the Dum-Dum Kupat method, which means that the share of the boys and the girls are equal.

### **3. 4 Differences and Similarities in the Division of Inheritance according to Islamic Inheritance Law and Javanese Inheritance Law**

In the application of inheritance law, especially customary inheritance law and Islamic inheritance law, there are several differences, including the following:

- a) Regarding Legal Basis. It is clear that there is a difference here, because Islamic inheritance law has a legal basis that is based on the Qur'an, the Sunnah of the Prophet or Al-Hadith and the results of ijtihad or the efforts of Islamic jurists. Several verses of the Qur'an which are the main joints of the regulation of inheritance, among others, in the QS. An-Nisa' verse 7-12, verse 33 and verse 176). These verses are, the verse about the equality of rights between men and women and the statement of the difference in the share of each heir (QS. An-Nisa' verse 7). Also about the details of the part of each heir as well as the emphasis on paying off debts and the testator's will (Surah An-Nisa' verse 11-12). In addition, the verse relating to preventive guidelines from the possibility of unusual cases as mentioned in paragraphs 11 and 12 relates to substitute heirs or mawalli (QS. An-Nisa' verse 33). (Amir: 2004). Finally, regarding another possibility, if the heir does not have children and mawalli children or what is called kalalah (QS. An-Nisa' verse 176). In addition, Islamic Inheritance Law is also regulated in the Compilation of Islamic Law Book II concerning Inheritance Article 171 to Article 214.
- b) While customary law is a legal system that is known in the social life environment in Indonesia, the source is unwritten legal regulations that grow and develop and are maintained with the legal awareness of the community. Because these regulations are not written and develop, then customary law has the ability to adapt and be elastic. However, in some areas in Java there is also inheritance law based on Islamic inheritance law. This is because the majority of the people are Muslim, so they are subject to Islamic law. Islamic law is a refinement of customary law. Therefore, if there is a dispute between the two, what is used as a measure is the perfect one, namely Islamic law. In some Indonesian societies, a line of law has also developed which states that adat or customary law can apply and be implemented in society if it does not conflict with Islamic law.
- c) Inheritance process. This is what can distinguish between customary inheritance law and Islamic inheritance law. In customary law, the inheritance process can be carried out to the heirs after he died. However, in customary law, the death of the testator is not mandatory because the distribution of property can be done during his lifetime. While the heir is still alive, sometimes he has carried out forwarding or transferring or traditional positions, rights and obligations and assets to the heirs. Especially in Java, the method of forwarding or transferring assets from the heir to the heirs is supposed to apply according to local customs, especially the position of rights and obligations and assets to the eldest child which applies traditionally, which is carried out according to the procedures for kinship or familial deliberation and consensus. Lintiran in Javanese terms means that the heir has transferred a part of his inheritance to a certain heir as the

material basis for the heirs who begin to marry in order to separate life from their parents.

Appointment, i.e. if the transfer of rights and assets means the transfer of control and ownership of assets before the heir dies from heir to heir, then the act of appointment by the heir to the heir for certain rights and assets, then the transfer of control and ownership will only take effect fully. to the heir after the heir dies. So someone who gets the appointment of certain assets before the heir dies can not do anything other than the right to use and the right to enjoy. Designation for movable and fixed goods (land). There are times when the Javanese after showing plots of agricultural land or passing on their control to sons or daughters who have been looking for and living independently are required to give flattery, namely the obligation for every child who has been given the land to continue to give a certain share of the results to his parents. as long as he lives.

Either the succession or the appointment by the heir to the heir regarding the inheritance before his death is sufficient to be stated in front of the heirs and family members or close neighbors. The process of inheritance with a new will takes effect after the testator's death is clear. The number of wills may not exceed 1/3 of the entire estate of the testator.

The process of inheritance after the testator dies, i.e. if a person dies leaving his wealth behind, the question arises whether his wealth will be distributed to the heirs or not. If the property is not divided then who will control and own the property and if it is divided then who will get a share and how the distribution is carried out.

The control over the inheritance applies if the inheritance is not divided, because the inheritance is a common property provided for the common interest of the members of the heir's family, or because the distribution has been postponed due to, among others, the presence of parents, limited inheritance, certain types of inheritance. and the like, the heirs have no offspring, the heirs have no descendants, the heirs are not yet mature, there is no substitute heir, among the heirs are not present, there are no entitled heirs and the heirs' debts are unknown.

Thus, after the heir dies, the inheritance that is not divided or the distribution is suspended may be controlled by the widow, child, or other family members.

In the community, Parental widows can control their husband's inheritance for the rest of their lives or transfer them to their children after they are independent (Javanese, Independent). In fact, sometimes the widow in controlling the inheritance acts as a divider of the inheritance to the heirs without the intervention of the brothers of the deceased husband.

d) Heirs. With regard to heirs, in customary inheritance law and Islamic inheritance law there are also differences, especially if all heirs are still there, both male and female, then there are only five entitled to get a share of the inheritance (main inheritance), namely:

1. Father,
2. Mother,
3. Husband or wife,
4. Boys,
5. Girls.

Whereas in customary inheritance law, if all the heirs are still there, both male and female, then those who are entitled to get a share of the inheritance only consist of:

1. Husband or wife,
2. Boys,
3. Daughter.



The heir's parents are not entitled to an inheritance if there are still children of the heir. Only if the heir has no children at all then the inheritance will be inherited by other family members in succession according to the grouping, namely the first are the parents of the heir or mother of the heir, and if there are none then the heir's siblings or descendants, and if there are none then the grandfather and grandmother of the heir and if there are no male or female relatives of the inheritor's father and mother and if there are no more then the inheritance will be inherited by other family members.

e) Barriers to inheritance

As for the reason that a person does not get an inheritance distribution (loss of inheritance rights / barriers to inheritance) in Islamic inheritance law, it is due to:

1. Different/religious differences, what is meant is the difference in the religion adopted between the heirs and the heirs.
2. Slaves. A person who is a slave does not have the right to inherit even from his brother, all types of slaves are invalids the right to inherit and the right to be inherited because they do not have property rights.
3. An apostate is a person who has left Islam
4. Killing the Heir. Murder prevents a person from obtaining inheritance rights from the person he kills. This is based on the Hadith of the Prophet which means: "A murderer must not inherit".
5. Gone without news. Because a person is missing without any information regarding his address and place of residence for 4 (four) years or more, then that person is considered dead by law (death hukmy) and does not inherit (mafqud). Declaring the death must be by a judge's decision.
6. Die with the unknown who died first.
7. The existence of virtue and Hijab. Namely, someone is more entitled to inheritance than others, which can be caused by a closer distance to the heir compared to others, such as children being closer to grandchildren and therefore more important than grandchildren in the sense that as long as children are still around, grandchildren cannot receive inheritance rights. This virtue can also be caused by strong kinship relationships, such as siblings having a stronger relationship than only siblings, because sibling relationships go through two channels (father and mother) while those with one mother or father only go through one path (father or mother).

The existence of primacy in kinship affects the primacy of the right to inherit, with the meaning that heirs who are closer are entitled to inherit when compared to relatives who are more distant in degree of kinship. A person who is more distantly related only receives rights when the closer one is gone. Whereas in customary inheritance law, it is a barrier for someone to get the right to inherit because the heir kills the heir and the heir changes religion. In terms of the loss of inheritance rights, for those who are Muslims, the influence of Islamic teachings is very visible. However, in customary inheritance law, the reason a person loses the right to inherit which is considered the most applicable is the issue of murder.

Inheritance has been prescribed in order to establish harmonious relations and cooperation. Also to convey the principle of benefit to the relatives he left behind. The murderer who kills his close family just so that he can get a share of the inheritance or for other reasons, then this can break the ties of kinship and he has cast hatred towards the person he was ordered to guard. Therefore, Allah forbids the murderer and forbids him from taking part in owning the inheritance of the slain. Islam strictly forbids killing, especially fellow Muslims because murder is a form of crime (a major sin) and gets

punishment in the world. The punishment is Qishas, which is to take the same revenge as the killer did in the murder process, except if the killer can forgive the heirs of the killed by paying diat (compensation).

while the Equality of Inheritance Distribution according to Islamic Inheritance Law and Javanese Inheritance Law.

- a. Regarding the Definition of Inheritance. From the above description it is clear that between Islamic inheritance law and inheritance law have similarities in providing a definition of inheritance. According to the author, inheritance law is a law that regulates the inheritance of someone who has died by leaving a number of assets, both material and immaterial, which are given to those who are entitled, namely the heirs. Inheritance is the method or process of transferring wealth from the heir to the heirs after the testator dies.
- b. Principles of inheritance. From the principles applied in inheritance matters that are used as guidelines by Islamic inheritance law and customary inheritance law, it is clear that both aim to avoid disputes and fight over the inheritance left by the heirs. The division or undivided inheritance is not the goal, but the most important thing is to maintain harmony among the heirs and all other family members.
- c. Elements of Inheritance
  1. An heir is someone who has died and left something that can be transferred to his living family. Inheritance only takes place by death.
  2. Inheritance. In this regard, in Islamic inheritance law and customary inheritance law there are similarities, namely that the inheritance of the heirs that can be inherited by the heirs is the property in a clean condition. That is, the heirs are only entitled to the inheritance of the heir after deducting the payments of debts and all the obligations of the heir that have not had time to do during his life the heir.
  3. Heirs are people who are entitled to the inheritance left by the deceased. These heirs must really live at the time of the death of the testator. Besides that, there is no barrier to inheriting and he really has the right to inherit. If in certain situations a person is doubtful whether he is still alive when the testator dies, it must be declared through a judge's decision.
- d. Reasons for inheriting. Regarding the cause of a person's inheritance in Islamic inheritance law and customary inheritance law, there are similarities as well as differences. The similarities are, basically a person can inherit because of the kinship (kinship) relationship and because of the marital relationship.
- e. How to Divide Inheritance. Dividing the inheritance must be done immediately by the heirs. Because the right of ownership of the property is no longer owned by the deceased. So once the deceased dies, the property must have an owner. And the owners are the heirs. Therefore, the distribution of inheritance must be hastened.

#### 4. CONCLUSION

The division of inheritance according to Islamic inheritance law and customary inheritance law has some striking differences and similarities. These differences include: First, the process of inheritance. Second, namely the determination of heirs. Third, in terms of the share of inheritance, there is a difference that can be seen from the size of the share. In Islamic inheritance law, the amount of each heir's share has been determined definitively and fairly by Allah SWT, Allah has determined the rights and share of the heirs to the inheritance of the heir





as determined in the Qur'an QS. An-Nisa' verse 7-12, verse 33 and verse 176, while in customary inheritance law the share of male heirs is double that of female heirs, this is because boys bear responsibility for the family (Sepikul Segendongan). In this case, it is possible that customary law has adopted Islamic inheritance law which also gives the share of male heirs twice that of women, but if we look at the size of each heirs' share in Islamic inheritance law and customary inheritance law, there are clearly differences. Fourth, regarding the obstacle for someone to get an inheritance. While the equality in the distribution of inheritance according to Islamic inheritance law and customary inheritance law is the Inheritance Property that the inheritance of the heirs that can be inherited by the heirs is the property in a clean condition.

## REFERENCES

### Books

- Amir Syarifuddin. 2004. *Hukum Kewarisan Islam*, (Jakarta:Prenada Media).
- Eman Suparman. 2005. *Hukum Waris Indonesia, Dalam Perspektif Islam, Adat, dan BW*, (PT. Refika Aditama, Bandung).
- Hilman Hadikusuma. 1992. *Pengantar Ilmu Hukum Adat Indonesia*. (Bandung: PT Mandar Maju).
- Moh. Anwar. 1997. *Fara'idhl Hukum Waris Dalam Islam Dan Masalah-Masalahnya*. (Surabaya: Al- Ikhlas).
- Muhammad Ali Ash-Shabuni. 1995. *Pembagian Waris Menurut Islam*. (Jakarta:Gema Insani Press).
- M. Idris Ramulyo.2000. *Perbandingan Pelaksanaan Hukum Kewarisan Islam Dengan Kewarisan Menurut Kitab Undang-undang Hukum Perdata (BW)*. ( Jakarta: Sinar Grafika,Cetakan Kedua).
- Munir Fuady. 2007. *Perbandingan Ilmu Hukum* ( Bandung : Refika Aditama).
- Peter Salim. 1991. *Kamus Bahasa Indonesia Kontemporer*. (Jakarta:Modern English Press).
- Soerjono Soekanto dan Sri Mahmudji. 2001. *Penelitian Hukum Normatif, Umum, Suatu Tinjauan Singkat*, Cet V (Jakarta: Rajawali Pers).
- Soepomo. 1996. *Bab-bab Tentang Hukum Adat*. (, Jakarta:PT. Pradnya Paramita).
- Suhrawardi K. Lubis. 2004. *Hukum Waris Islam*, (Jakarta: PT. Sinar Grafika, Jakarta).
- Wirjono Prodjodikoro. 1991. *Hukum Warisan Di Indonesia*. (Bandung:Sumur).

### Scientific Journals And Articles

- Aprilan, Y. D., & Aprilianda, N. (2015). Pendayagunaan Tanah Terlantar Di Indonesia. *Program Studi Magister Kenotariatan Fakultas Hukum Unibversitas Brawijaya*, 1–25.
- Fauzi, M. Y. (2016). Legislasi Hukum Islam Di Indonesia. *Jurnal Pengembangan Masyarakat Islam*, 9(2), 53–76.
- Kunto Dewandaru, H., Prananingtyas, P., & Hafidh Prasetyo, M. (2020). Pelaksanaan Pembagian Waris Dalam Sistem Kewarisan Patrilineal Menurut Masyarakat Timika, Papua. *Jurnal Notarius*, 13(2), 493–503. <https://doi.org/10.14710/nts.v13i2.30884>
- Mu'minin, M. S. (2020). Konflik keluarga akibat pembagian “harta waris” dengan hibah perspektif kompilasi hukum islam. *SAKINA: Journal of Family Studies Universitas Islam Malang*, 4(3), 12.
- Nasution, A. (2018). Pluralisme Hukum Waris Di Indonesia. *Al-Qadha*, 5(1), 20–30. <https://doi.org/10.32505/qadha.v5i1.957>
- Pongoh, Pa. S. (2019). Analisis Pengaturan Hak Anak Tiri Dalam Mewaris Menurut Hukum Waris Adat. *Jurnal Hukum Lex Privatum E Journal Universitas Sam Ratulangi*, VII(2), 1–13.
- Savitri, M., Hidayat, M. N., Hukum, F., & Kanjuruhan, U. (2017). PENYULUHAN PENERAPAN UPAYA PENYELESAIAN. *Jurnal Pemberdayaan Masyarakat*, 2(2), 124–129.
- Suwarna, S. D. (2018). Fiqh Mawaris (Syariat Kewarisan) di Indonesia. *Jurnal Syariah Hukum Islam Institut Agama Islam Al Mawaddah Kolaka*, 1, 93–107.



<https://doi.org/10.5281/zenodo.2025713>

Yunarko, B. (2005). Pilihan Hukum Waris Bagi Orang Di Indonesia Beragama Islam. *Perspektif*, 10(3), 274. <https://doi.org/10.30742/perspektif.v10i3.272>