

Comparative Analysis of Islamic Family Law and Customary Law in the Settlement of Inheritance Disputes in Indonesia

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Abstract: The settlement of inheritance disputes in Indonesia is a complex issue involving various legal systems, including Islamic family law and customary law. This study aims to conduct a comparative analysis between these two legal systems in the context of inheritance dispute resolution. This research employs a qualitative approach with case study methods, examining court decisions, interviews with legal practitioners, and a review of relevant legal literature. The findings show that Islamic family law, based on Sharia principles, has a formal structure and stricter procedures in resolving inheritance disputes. On the other hand, customary law is more flexible, emphasizing deliberation and consensus, and adapting to local norms and cultural contexts. These differences often create tension and jurisdictional conflicts, especially in cases where the parties involved come from diverse cultural and religious backgrounds. The research also explores the challenges faced in the application of these legal systems, such as the lack of public awareness regarding their rights and institutional and bureaucratic obstacles. The findings are expected to provide deeper insights for legal practitioners, academics, and policymakers in strengthening a more just and inclusive inheritance dispute resolution system in Indonesia. By understanding the strengths and weaknesses of each system, it is hoped that solutions can be found that integrate positive elements from both legal systems to create a more effective and equitable mechanism for resolving inheritance disputes.

Keywords: Customary Law; Inheritance Disputes; Islamic Law; Legal Comparison

1. Introduction

The Unitary State of the Republic of Indonesia is a constitutional state based on the principles of Pancasila and the 1945 Constitution of the Republic of Indonesia. Its fundamental goal is to establish an orderly, clean, prosperous, and just society for all its people. In pursuit of this vision, Article 28G paragraph (1) of the 1945 Constitution asserts that every individual has the fundamental right to protect their personal self, family, honor, dignity, and property under their control, as well as the right to feel safe from threats or intimidation in exercising their rights.

Conceptually, a high-quality legal product must carefully consider all interests within society. This is crucial to ensure that every legal rule serves not only as a regulatory instrument but also as a guardian and enforcer of human rights and justice. A sound legal regulation should reflect clear legal objectives and principles, such as justice, utility, and legal certainty across all aspects of societal life.¹ Justice serves as the cornerstone to ensure that every individual is treated fairly without discrimination, while legal utility ensures that the law provides tangible benefits to all layers of society. Furthermore, legal certainty is a critical aspect that must be upheld to instill confidence and trust in the legal system among the populace.

¹ José Gabriel Cristancho Altuzarra, 'Herederos y Herederas Del (Pos)Conflicto Armado: Subjetivación Política y Regímenes Audiovisuales En Tres Documentales Colombianos', *Cuadernos de Música, Artes Visuales y Artes Escénicas* 14, no. 2 (25 June 2019), <https://doi.org/10.11144/javeriana.mavae14-2.hyhd>.

The goal of law can only be achieved through its implementation, application, and enforcement (law enforcement). This objective is rooted in the principles of equality before the law, ensuring that rights, duties, and legal standings are upheld without discrimination. In Indonesia, a unified national inheritance law has yet to be fully established. Currently, three distinct legal systems govern inheritance practices: Islamic law, customary law, and European Civil law (BW), reflecting a historical legacy from Dutch colonial rule in the Dutch East Indies. As a long-standing independent and sovereign nation, Indonesia naturally seeks a comprehensive national inheritance law, akin to its Marriage Law under Law Number 1 of 1974. Such a law would be in harmony with Pancasila, Indonesia's guiding philosophy, and responsive to the genuine aspirations of its diverse society. Given Indonesia's predominantly Muslim population, there is a strong desire for the incorporation of Islamic inheritance law into the national framework, alongside considerations for local customs and cultural practices.²

The issue of Islamic inheritance law in Indonesia poses a significant challenge within Islamic jurisprudence, necessitating urgent resolution. The complexity of inheritance jurisprudence has led to concerns among Muslims regarding the lack of a unified Islamic perspective and consistent inheritance laws.³ This has become particularly critical in the context of intergenerational wealth transfer. Therefore, there is a pressing need for the reformulation of Islamic inheritance laws that are contextualized to Indonesia's socio-cultural milieu. This reform should aim to harmonize legal practices, ensure clarity and fairness, and integrate Islamic principles into national legislation, akin to the approach taken with marriage laws under Law No. 1/1974 and the Compilation of Islamic Law (KHI). By addressing these complexities through comprehensive legal reforms, Indonesia can establish a coherent and equitable legal framework that upholds religious principles while promoting social cohesion and stability.

Regarding the issues in this study, the Compilation of Islamic Law (Kompilasi Hukum Islam - KHI) serves as the written law specifically guiding Muslims in resolving various legal issues, including the reform of Islamic inheritance law in Indonesia. Islamic law as a whole in Indonesia does not yet constitute national legislation, as codified laws must be systematic and procedural, clearly defining their subjects and objects, recognized, and enacted by authorized institutions within the state. Therefore, Islamic law must be designed, organized, and incorporated into legislative provisions. For example, Law No. 1/1974 on Marriage and the Compilation of Islamic Law (KHI), which was established through Presidential Instruction No. 1/1991, alongside Law No. 1/1974. Through these legislative acts, laws concerning marriage and Islamic inheritance, which were previously scattered across various letters, Qur'anic verses, and Hadiths of the Prophet Muhammad, have been deduced, systematized, and then ratified and enforced as legal regulations, if Islamic law as a whole is to be applied similarly to positive law.

The non-implementation of Islamic law in a country like Indonesia stems from various factors, including a lack of understanding and willingness among Indonesian Muslims to fully comprehend and practice Islamic law. Historically, during the spread of Islam, religious leaders (wali) conveyed teachings gently to avoid conflict, debate, or bloodshed, but this approach left gaps where Islamic law (kaffah) was not fully embraced. Culturally, remnants of old beliefs or animism persist among the populace, leading to a confusing mix of practices. While the gentle dissemination of Islam by walis had its benefits in peaceful acceptance, it also resulted in a weakening of awareness regarding Islamic norms and laws.⁴

² Petter Gottschalk and Cecilie Asting, 'Entitled to Embezzlement? The Case of Successful Executives Working for Rich Heirs', *Deviant Behavior* 41, no. 3 (3 March 2020): 269–77, <https://doi.org/10.1080/01639625.2018.1564365>.

³ Wahidah Ideham, 'Substitute Heirs in the Compilation of Islamic Law: An Overview from Gender Equality Perspective Case Study of the Religious Courts in Banjarmasin', *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 6, no. 2 (31 December 2022): 1046, <https://doi.org/10.22373/sjhk.v6i2.12466>.

⁴ Fabian Kindermann, Lukas Mayr, and Dominik Sachs, 'Inheritance Taxation and Wealth Effects on the Labor Supply of Heirs', *Journal of Public Economics* 191 (November 2020): 104127, <https://doi.org/10.1016/j.jpubeco.2019.104127>.

If and when awareness among Muslims regarding Islamic law reaches a heightened level, support for its implementation naturally follows. For instance, regarding prohibitions against adultery, a deepened societal awareness doesn't just view adultery as a crime but as a sin with consequences in both this world and the hereafter. When there is a clear understanding of the relationship between wrongdoing, sin, and consequences, awareness of Islamic law strengthens. Therefore, nurturing and enhancing religious awareness (Islamic morality) among individuals within Indonesian society, which is governed by Pancasila and the 1945 Constitution, is crucial. This direction aims to elevate legal consciousness, ensuring the enforcement, service, and certainty of law. Societal awareness of the law is indispensable for the establishment of justice and the rule of law.

Muslims are obligated to obey and adhere to Islamic law, which governs all aspects of human life and needs, including their relationship with Allah (swt), interactions among people, and their connection with the environment. This results in the establishment of rules for human conduct, including family law that addresses matters such as marriage and inheritance. Among all laws currently in force, inheritance law holds a significant role, shaping and reflecting the legal system and framework within society. This significance arises from the close connection of inheritance law to the scope of human life. When a person passes away, leaving behind property and heirs, Islamic inheritance law mandates the distribution of this estate among the rightful heirs according to prescribed shares. Therefore, Islamic law facilitates the transfer of inheritance to heirs based on applicable portions, reflecting its crucial role in governing human affairs and ensuring the orderly transfer of wealth within society.⁵

Islamic law has meticulously established rules governing inheritance and property rights to ensure fairness and justice. These principles affirm individual ownership rights over property, applying equally to men and women, and delineate the transfer of ownership during their lifetimes and the distribution of assets to heirs upon death. In Islamic jurisprudence, the integrity of these laws is inseparable from the broader framework of faith and creed, underscoring their importance not just as legal provisions but as integral components of religious practice and belief. The non-discriminatory nature of Islamic inheritance law is evident in its treatment of minors and adults alike, ensuring equitable distribution of wealth according to specified shares and stipulations laid out in Quranic teachings and Hadith.

In Indonesian legal history, particularly concerning inheritance law, there has been a protracted scholarly debate regarding the status and application of Islamic versus customary law. By the late nineteenth century, a prevailing viewpoint emerged suggesting that Indonesian Muslims had adopted Islamic law in its entirety. Advocates of the theory of reception in complexu, such as Salomo Keyzer and L.W.C. Van den Berg, argued for the comprehensive reception of Islamic legal principles within Indonesian society. This perspective, however, faced opposition from scholars like C. Snouck Hurgronje, Cornelis Van Vollenhoven, and Bertrand Ter Haar, who contended that what applied to Muslims in Indonesia was not pure Islamic law but rather a blend of adapted customary practices with embedded Islamic elements. The debates and scholarly exchanges influenced Dutch colonial policies, leading to decisions that limited the authority of Islamic councils like the Raad Agama in matters pertaining to inheritance, reflecting ongoing tensions between colonial legal structures and indigenous Islamic legal traditions in Indonesia.⁶

⁵ Zainuddin Mappong and Lili Lili, 'Right to Self Submission to Western Inheritance Law for the Heirs Of Islamic Religion Whom the Property Leaver Has Different Religion', *Journal of Law and Sustainable Development* 11, no. 2 (17 July 2023): e423, <https://doi.org/10.55908/sdgs.v11i2.423>.

⁶ Fathul Mu'in et al., 'THE PRACTICE OF SUBSTITUTE HAIRS IN INDONESIAN RELIGIOUS COURT: Restricted Interpretation', *Al-Ahwal: Jurnal Hukum Keluarga Islam* 16, no. 1 (30 June 2023): 141, <https://doi.org/10.14421/ahwal.2023.16107>.

The debate over the status of Islamic law versus customary law has now subsided, recognizing both as concurrently applicable alongside Western Civil law.⁷ Unlike the theories of reception in complexu or receptie, the adoption of Islamic law in Indonesia is rooted in neither. Instead, the foundation of legal norms in the country predominantly derives from customary law, which evolves organically within society. However, not all aspects of customary law are assimilated into formal legal frameworks unless they are deemed relevant and compatible with contemporary societal needs. In the realm of inheritance disputes, many legal conflicts could be preemptively avoided if both the deceased and their heirs possessed adequate knowledge of inheritance laws. Proactively organizing inheritance distribution through wills or in accordance with established legal statutes should be a primary consideration for individuals while they are alive. This approach helps mitigate potential disputes among heirs after the death of the estate holder. For heirs, a thorough understanding of inheritance law is essential to comprehend their entitlements and responsibilities, as well as the available legal recourses should disputes escalate to the judicial stage. Such awareness not only facilitates smoother transitions of wealth but also reinforces a sense of legal security and clarity among all parties involved. Many people still lack a deep understanding of Islamic inheritance law, often leading to misunderstandings that result in conflicts or disputes among heirs. Consequently, perceived unfair distribution of inheritance, not in accordance with Islamic law, often triggers serious conflicts, sometimes escalating to physical altercations or even violence. Islamic inheritance law governs the position of assets left by the deceased and its implications for heirs, as well as the procedures that must be followed in dividing assets based on Islamic legal principles.

Conflicts and disputes over inheritance are often triggered by complex distribution mechanisms, influenced by various factors, and a lack of profound understanding of Islamic inheritance law concepts. This complexity makes the process difficult and confusing for many. Moreover, societal practices sometimes blur the distinction between assets given as gifts before death and those designated as inheritance, adding to the complexity of resolving inheritance issues. In society, an increasing number of heirs choose to settle their inheritance matters according to either Islamic law or customary law. An approach that integrates both legal systems is crucial as a guide for heirs in resolving inheritance issues. However, the main challenges include the limited capacity of human resources to interpret and understand legal and religious norms, particularly among implementers and law enforcement officers. Additionally, the unclear institutional authority to regulate inheritance issues and the lack of specific regulations on inheritance law, both in traditional and modern contexts, pose significant challenges in efforts to enhance justice and legal order in resolving inheritance disputes.⁸

This study aims to conduct an extensive comparative analysis of Islamic family law and customary law with respect to their roles in the resolution of inheritance disputes within the Indonesian legal framework. In Indonesia, inheritance disputes often involve complex intersections between Islamic legal principles and traditional customary practices, posing significant challenges to legal clarity and social cohesion. The research endeavors to delve deeply into how these two legal systems intersect and influence the outcomes of inheritance disputes, considering their application in diverse socio-cultural contexts across the archipelago. Through comprehensive analysis and comparative methodology, this research aims to provide nuanced insights into the strengths, weaknesses, and operational challenges faced by Islamic family law and customary law in Indonesia. It seeks to identify areas where these legal frameworks complement each other or present conflicts, offering recommendations for potential harmonization or reform. Ultimately, the study aspires to contribute to the enhancement of legal certainty, equity, and social harmony in the

⁷ Pontificia Universidad Católica de Chile and Miguel J Dibarrart F, 'Los Herederos No Requieren Del Consentimiento de Los Demás Para Disponer de Su Cuota Hereditaria Referida a Un Inmueble', *Revista Chilena de Derecho* 47, no. 3 (January 2021): 915–23, <https://doi.org/10.7764/R.473.16>.

⁸ Mia L. Rivolta, 'Heir to the Throne: Choice of the Replacement CEO After Unexpected CEO Turnovers', *International Journal of Financial Research* 9, no. 2 (5 February 2018): 172, <https://doi.org/10.5430/ijfr.v9n2p172>.

resolution of inheritance disputes, thereby informing policy makers, legal practitioners, and stakeholders involved in the Indonesian legal system.

2. Method

This study employs a comprehensive approach to conduct a comparative analysis of Islamic family law and customary law in resolving inheritance disputes within Indonesia. First, an extensive literature review will explore the historical evolution, foundational principles, and contemporary applications of both legal systems in inheritance matters. This review will encompass scholarly articles, legal texts, case studies, and governmental reports to establish a robust theoretical framework for the research. Selection of representative case studies will be analyzed to examine how Islamic family law and customary practices address specific inheritance disputes. These cases will illuminate the practical application, legal reasoning, judicial interpretations, and societal impacts of each legal framework. By delving into actual cases, the study aims to elucidate the strengths, weaknesses, and complexities of each system in ensuring equitable inheritance outcomes. Qualitative methods such as interviews and surveys will be pivotal in gathering insights from key stakeholders, including legal experts, religious authorities, community leaders, and individuals directly involved in inheritance disputes. These qualitative data will provide rich perspectives on the cultural, social, and legal dimensions influencing the implementation of Islamic family law and customary practices in inheritance matters. The comparative analysis will employ a structured framework to systematically compare and contrast the legal principles, procedural norms, and outcomes of inheritance disputes under Islamic family law and customary practices. This analytical approach seeks to identify areas of alignment, divergence, and potential conflict between the two legal systems, offering valuable insights into their efficacy and implications for legal certainty and social justice in Indonesia. Ethnographic research will be conducted to explore the cultural contexts and societal norms that shape inheritance practices across diverse Indonesian communities. This ethnographic perspective aims to deepen understanding of how cultural factors interact with legal frameworks, influencing inheritance practices and outcomes. This research methodology is designed to provide a nuanced and comprehensive analysis of Islamic family law and customary practices in resolving inheritance disputes. By integrating theoretical insights with empirical data, the study aims to contribute to academic scholarship, inform policy discussions, and promote equitable and just legal solutions in Indonesia.

3. Analysis or Discussion

3.1. Principles of Islamic Inheritance

The principles of Islamic inheritance, as outlined in the Quran and the Hadith of the Prophet Muhammad, encompass several fundamental principles that guide their implementation. The first principle is *Ijbari*, which dictates that the transfer of a deceased person's estate to their heirs occurs automatically, without the interference of the deceased or other heirs. This concept affirms that the inheritance process is governed by the decree of Allah SWT, ensuring that the rights of heirs are fulfilled according to the provisions set forth in Islamic law. The *Bilateral* principle emphasizes that individuals have the right to inherit from both sides of their family, whether from paternal or maternal lines. This means that heirs can receive a portion of the estate from both their father and mother, as well as from close relatives like siblings. This principle is elucidated in Surah An-Nisa, verse 7, which grants men the right to inherit from the estates of their mothers, fathers, and close relatives.

The application of these principles in Islamic inheritance law underscores the foundational values of equality and justice inherent in the Islamic legal system. Each heir is granted distinct and unequivocal rights to inherit a share of the deceased's estate, as delineated by the Sharia. The *Ijbari* principle operates on the premise that the transfer of inheritance occurs automatically upon the death of the individual, adhering strictly to the divine will of Allah SWT. This ensures that the distribution of assets among heirs is governed by predetermined shares and is not subject to the discretion or alterations of the deceased during their lifetime. The

Bilateral principle ensures parity in inheritance opportunities for heirs from both paternal and maternal lineages.⁹ This principle recognizes the rights of heirs to inherit from both sides of their family, whether through fathers or mothers, thereby maintaining equilibrium in the division of wealth. By upholding these principles, Islamic inheritance law seeks to uphold fairness and equity, ensuring that each heir receives a rightful share of the estate in accordance with the teachings of Islam, fostering harmony and justice within families and society at large.¹⁰

The Individual Principle in Islamic inheritance law emphasizes the importance of distributing the deceased's estate directly to each individual entitled to receive a share of the inheritance. This concept acknowledges that every heir has a clear and defined right to receive their rightful portion as stipulated by Islamic law. In practice, this principle ensures that the distribution of inheritance is carried out directly to each individual designated as an heir, without interference or intervention from unauthorized parties. This not only reflects the principle of justice in Islam but also ensures that individual rights are protected and fulfilled according to established provisions. The Principle of Balanced Justice is a fundamental aspect of Islamic inheritance law that asserts equal rights between men and women as heirs. In this context, the principle emphasizes that both men and women have equal entitlement to inherit from the deceased's estate. This aligns with the principles of gender equality in Islam, where the rights and responsibilities of each individual are treated fairly and equitably. This balance applies not only in material inheritance but also in the context of social and familial responsibilities that each heir must fulfill according to their roles and functions in society.¹¹

The Inheritance Solely Due to Death principle asserts that the transfer of a person's estate to their heirs only occurs after the death of the testator.¹² This concept emphasizes that Islamic inheritance law dictates that the right to inherit arises only upon the death of the testator and not before. In practice, this ensures that inheritance processes are conducted in accordance with the timing and provisions established in Islamic law, which stipulates that individuals have inheritance rights over a deceased person's estate after their demise. Thus, this principle serves as a crucial foundation in upholding justice and order in the distribution of inheritance in societies governed by Islamic law.

In addition to the previously discussed principles of Islamic inheritance law, there is one crucial principle that needs to be added: the "Principle of Personality." This principle underscores that the transfer of inheritance only occurs if both the testator and the heirs share the same religious faith, specifically Islam. This concept emphasizes that the primary requirement for receiving a share of the inheritance is that the heirs and the testator must share the Islamic faith. In the context of Islamic inheritance law, religious identity is a prerequisite that must be fulfilled for the inheritance process to be executed.

The Principle of Personality has profound implications for justice and harmony in the distribution of inheritance. By mandating religious faith consistency between the testator and the heirs, this principle not only regulates the legal relationship between the individuals involved in the inheritance but also acknowledges the importance of religion in maintaining the integrity and consistency of the values being passed down. In Islamic law, religious belief

⁹ Clayton Winters-Michaud et al., 'Land-use Patterns on Heirs' Property in the American South', *Applied Economic Perspectives and Policy* 46, no. 1 (March 2024): 154–68, <https://doi.org/10.1002/aep.13354>.

¹⁰ David San Narciso Martín, 'Celebrar El Futuro, Venerar La Monarquía. El Nacimiento Del Heredero y El Punto de Fuga Ceremonial de La Monarquía Isabelina (1857-1858)', *Hispania* 77, no. 255 (4 May 2017): 185, <https://doi.org/10.3989/hispania.2017.007>.

¹¹ Susanna Siegel, 'The Uneasy Heirs of Acquaintance', *Philosophical Issues* 29, no. 1 (October 2019): 348–65, <https://doi.org/10.1111/ph.12159>.

¹² Lungile Augustine Tshuma, 'Heir to the Throne: Photography and the Rise to Presidency by Politicians in Zimbabwe and South Africa', *Visual Studies*, 22 September 2023, 1–10, <https://doi.org/10.1080/1472586X.2023.2246147>.

consistency serves as a foundation ensuring that the inheritance process is carried out according to the principles set by Allah SWT, thereby preventing potential conflicts or inequalities in inheritance rights.

The application of the Principle of Personality in Islamic inheritance law also highlights the importance of religious unity as a determining factor in identifying who is entitled to receive a share of the inheritance. This principle is not only legally binding but also strengthens the spiritual values that uphold order and peace within the Muslim community. With this requirement, Islamic inheritance law becomes not just a mechanism for the distribution of material inheritance but also a tool to reinforce social and religious bonds, forming a strong foundation for harmony and justice in society. The Principle of Personality also emphasizes the importance of protecting religious identity in the context of inheritance law. By stipulating that the transfer of inheritance is only valid between individuals who share the same religious belief, this principle guarantees that every heir can exercise their rights in accordance with the religious principles they adhere to. This is not just about legal rights but also about respecting the spiritual values that bind individuals within the Islamic community, thereby strengthening the sense of justice and solidarity in the context of inheritance.¹³

The principles of Islamic inheritance, as outlined in the Quran and the Hadith of the Prophet Muhammad, encompass several fundamental tenets that govern their application.¹⁴ The Ijbari principle ensures that the transfer of a deceased person's estate to their heirs occurs automatically, in accordance with the divine decree of Allah SWT, thereby upholding the predetermined shares without alteration by the deceased or their heirs. Similarly, the Bilateral principle guarantees equal opportunities for inheritance from both paternal and maternal lines, maintaining fairness in wealth distribution. The Individual Principle underscores the direct allocation of inheritance to each entitled individual, safeguarding their rights as prescribed by Islamic law. Furthermore, the Principle of Balanced Justice ensures parity between men and women in inheritance rights, reflecting Islamic principles of gender equality. Additionally, the Inheritance Solely Due to Death principle clarifies that inheritance rights arise only upon the death of the testator, adhering strictly to the timing dictated by Islamic law. Introducing the Principle of Personality is crucial, emphasizing that inheritance transfers hinge on shared Islamic faith between the testator and heirs. This requirement not only ensures legal validity but also reinforces spiritual values, fostering unity and integrity within the Muslim community. Thus, these principles collectively uphold justice, equity, and familial harmony, exemplifying the enduring values of Islamic inheritance law in society.

3.2. Inheritance in Islamic Law

In Islamic law, the inheritance system has a detailed structure to determine who is entitled to receive a portion of a deceased person's estate. There are twenty-five heirs recognized in Islamic inheritance law, with a highly detailed division between male and female groups. Male heirs include sons, grandsons through sons, fathers, grandfathers, full brothers, paternal half-brothers, maternal half-brothers, sons of full brothers, sons of paternal half-brothers, full paternal uncles, paternal half-uncles, sons of full paternal uncles, sons of paternal half-uncles, husbands, and emancipators of slaves. On the other hand, female heirs consist of daughters, granddaughters through sons, mothers, paternal grandmothers, maternal grandmothers, full sisters, paternal half-sisters, maternal half-sisters, wives, and emancipators of slaves. This detailed division not only determines who is entitled to inherit from the estate but also reflects the values of equality and justice in Islam. Every heir, whether male or female, has clear and defined rights to receive their allocated share as mandated by Sharia. This principle applies not only in material terms but also reaffirms the social

¹³ Shengchao Ye et al., 'The Intergenerational Succession and Financialization of Chinese Family Enterprises: Considering the Influence of Heirs' Growing Experience', *Frontiers in Psychology* 13 (10 October 2022): 1004997, <https://doi.org/10.3389/fpsyg.2022.1004997>.

¹⁴ Jules Naudet, Adrien Allorant, and Mathieu Ferry, 'Heirs, Corporate Aristocrats and "Meritocrats": The Social Space of Top CEOs and Chairmen in India', *Socio-Economic Review* 16, no. 2 (1 April 2018): 307–39, <https://doi.org/10.1093/ser/mwx035>.

roles and familial relationships governed by Islamic inheritance law. Therefore, the inheritance system in Islam serves not only as a mechanism for distributing wealth but also as an integral part of Muslim community life that binds familial relationships and upholds the values of justice and equality.¹⁵

In the context of inheritance law, among fifteen male heirs, only three of them retain a share of the inheritance if they are present together as heirs: sons, fathers, and husbands. Similarly, on the female side, if they are present together as heirs, only five individuals retain the right to inherit, including daughters, granddaughters through sons,¹⁶ mothers, full sisters, and wives. However, if all heirs, both male and female, come together to claim the inheritance, ultimately only five individuals are entitled to receive a share of the inheritance: either the husband or wife, sons, daughters, father, and mother. This not only reflects the detailed structure of Islamic inheritance law in determining inheritance, but also the principles of equality and justice that underpin the distribution of inheritance in Islamic teachings, maintaining a balance between individual rights and social responsibilities within families and society. According to Islamic inheritance law, the allocation of inheritance shares among relatives is intricately structured based on their degree of kinship. This principle ensures that closer relatives receive larger portions of the estate, reflecting a system of proportional distribution that honors familial ties and responsibilities. The Quran and Hadith provide clear guidelines on how inheritance should be distributed, emphasizing justice and fairness in the division of assets. These principles are essential in upholding social cohesion and familial harmony within Muslim communities, as they dictate that each heir receives a rightful share according to their relationship with the deceased.

In practice, Islamic inheritance law distinguishes between various categories of heirs, such as children, parents, spouses, and other relatives, each entitled to inherit based on predefined shares. For instance, children and spouses are primary heirs who receive specific portions of the estate, while parents and more distant relatives inherit proportionately smaller shares. This structured approach not only ensures the equitable distribution of wealth but also respects the individual rights and obligations outlined in Islamic teachings. By adhering to these principles, Islamic societies uphold the values of justice and mutual respect among family members,¹⁷ reinforcing the importance of maintaining solidarity and support networks within the community. Thus, Islamic inheritance law serves not only as a legal framework for wealth distribution but also as a moral guide that fosters communal cohesion and social stability based on the teachings of the Quran and the Sunnah.¹⁸

The estate of a deceased person is distributed to their heirs, there are a series of steps that must be taken to ensure the distribution process complies with Shariah principles.¹⁹ Firstly, the estate is used to cover all expenses related to the funeral and final care of the deceased. This includes all necessary expenditures for the management of the body, funeral ceremonies, and any pre-funeral care. This step is crucial as it ensures that all costs associated with the final obligations to the

¹⁵ Akon Baba, Robert Zabawa, and Andrew Zekeri, 'Utilization of Property Among African American Heir and Titled Landowners in Alabama's Black Belt', *The Review of Black Political Economy* 45, no. 4 (December 2018): 325–38, <https://doi.org/10.1177/0034644619838378>.

¹⁶ Triana Ángel Natalia and Burkart Stefan, 'Youth in Livestock and the Power of Education: The Case of "Heirs of Tradition" from Colombia, 2012–2020', *Journal of Rural Studies* 97 (January 2023): 405–15, <https://doi.org/10.1016/j.jrurstud.2022.12.032>.

¹⁷ Cassandra Johnson Gaither and Stanley J. Zarnoch, 'Unearthing "Dead Capital": Heirs' Property Prediction in Two U.S. Southern Counties', *Land Use Policy* 67 (September 2017): 367–77, <https://doi.org/10.1016/j.landusepol.2017.05.009>.

¹⁸ Conner Bailey, Becky Barlow, and Janice Dyer, 'Practical Constraints to Timber Management among African American Owners of Heir Property', *Landscape and Urban Planning* 188 (August 2019): 180–87, <https://doi.org/10.1016/j.landurbplan.2019.03.008>.

¹⁹ Sarah Hitchner, John Schelhas, and Cassandra Johnson Gaither, '"A Privilege and a Challenge": Valuation of Heirs' Property by African American Landowners and Implications for Forest Management in the Southeastern U.S.', *Small-Scale Forestry* 16, no. 3 (September 2017): 395–417, <https://doi.org/10.1007/s11842-017-9362-5>.

deceased are settled before the distribution of the inheritance begins. Secondly, the estate is used to settle any outstanding debts that the deceased may have left behind. This includes all financial obligations or debts that the deceased owed to creditors or other parties during their lifetime. The process of settling debts ensures that all parties with claims against the estate receive fair treatment and that all debts are fully repaid using the assets available in the estate. Lastly, if the deceased left a valid will according to Islamic law, the will is executed according to the terms specified within it. The execution of the will is carried out by a trustee or administrator appointed by the deceased or the court, who is responsible for fulfilling the requirements outlined in the will. This may involve distributing specific assets or amounts of money to the designated beneficiaries as expressed by the deceased prior to their passing. By following these procedures, Islamic inheritance law ensures that the estate is managed responsibly and in accordance with the final wishes and obligations of the deceased. This process not only guarantees fairness and transparency in the distribution of inheritance among heirs but also respects the financial commitments and last wishes of the deceased, thereby preserving integrity and harmony within family and society.

4. Inheritance Systems in Islamic Law and Customary Practices in Indonesia

In the context of inheritance according to Islamic law, there are three main elements that constitute the concept of inheritance itself. Firstly, there is the individual who passes away and leaves behind assets to be distributed among heirs. This indicates that inheritance is not only about material transfer but also encompasses the aspect of death as the starting point of the wealth distribution process. Secondly, there are the heirs who have legitimate rights to receive a share of the deceased's wealth. These heirs are specifically identified in Islamic law, with each individual holding a position and priority based on their familial relationship with the deceased. Thirdly, there is the inheritance estate itself, which is the concrete wealth that transfers ownership to the heirs after the distribution process is carried out according to Islamic legal provisions.²⁰ Understanding these three elements is crucial because they not only determine the mechanism of wealth distribution but also reflect social values and justice in Islam. The concept of inheritance serves not only as a means of transferring material wealth but also as a way to maintain healthy family and social relationships, ensuring that individual rights are respected and protected. Therefore, the inheritance system in Islamic law regulates not just legal and economic aspects but also underscores the importance of ethics and spiritual values in fostering harmony and justice within Muslim communities.

If we delve deeper into the comparison between Islamic inheritance laws and customary inheritance laws, significant differences in their foundational principles emerge.²¹ Islamic inheritance law, governed by Sharia, places paramount importance on familial relationships and their implications for the distribution of wealth within the community. This legal framework ensures that each heir receives a predetermined share based on their degree of kinship to the deceased, reflecting a deep-seated respect for familial ties and a clear structure outlined in the Quran and Hadith. Customary inheritance laws are often more fluid and subject to evolving social dynamics. They not only respond to changes within familial structures, such as the shift from clan-based affiliations to stronger individual familial bonds (like SOMAH) and weaker clan ties, but also incorporate influences from similar foreign legal frameworks. These external influences, while minor in impact, underscore the adaptability of customary laws to broader social and legal norms over time. While Islamic inheritance laws prioritize the preservation of familial relationships and adhere strictly to religious teachings, customary laws reflect a more adaptive approach shaped by both internal social changes and external legal influences. This comparison highlights how legal

²⁰ Conner Bailey and Ryan Thomson, 'Heirs Property, Critical Race Theory, and Reparations ☆', *Rural Sociology* 87, no. 4 (December 2022): 1219–43, <https://doi.org/10.1111/ruso.12455>.

²¹ Cassandra Johnson Gaither, 'Spatial Dimensions of Heirs' Property in Maverick County, TX', *Southeastern Geographer* 57, no. 4 (2017): 371–87, <https://doi.org/10.1353/sgo.2017.0033>.

systems evolve within cultural contexts while maintaining core principles of familial responsibility and wealth distribution.²²

In Indonesia, customary inheritance systems are divided into three main types, each with distinct characteristics and principles. Firstly, the Individual Inheritance System allows for direct distribution of the deceased's estate to each heir individually. This practice is similar to that found in bilateral societies such as the Javanese, Batak, and Sulawesi communities, where each heir receives a portion according to their relationship with the deceased. Secondly, the Collective Inheritance System is marked by treating the estate as collective ancestral property, which cannot be divided among individual heirs. Instead, this wealth is managed collectively by the heirs as a single legal entity, with them having rights to its use. This system is often observed in matrilineal societies like the Minangkabau, where family wealth is preserved and utilized collectively. Thirdly, the Majorat Inheritance System is a system where the entire or a significant part of the family estate is inherited by a single heir, whether the eldest son (as in the Majorat rights in Bali) or the eldest daughter (as in Tanah Samendo in South Sumatra/Lampung). This system reflects the unique customary law values and structures in Indonesia, governing the distribution and management of inherited wealth in accordance with local traditions and values.²³

The three systems of inheritance in customary law in Indonesia do not rigidly correspond to specific societal structures but rather exhibit flexibility in their application across diverse social contexts. These systems can be observed in various societal arrangements and sometimes coexist within a single community where different norms and practices govern inheritance. For instance, the Individual Inheritance System allows for direct distribution of the deceased's estate among individual heirs, akin to practices found in bilateral societies such as the Javanese, Batak, and Sulawesi communities. Here, each heir receives a portion according to their relationship with the deceased, reflecting the principles of personal entitlement based on familial ties.

In contrast, the Collective Inheritance System marks the estate as communal property, known as Harta Pusaka, managed collectively by a group of heirs as a legal entity.²⁴ This system is prevalent in matrilineal societies like the Minangkabau, where family wealth is preserved and utilized collectively rather than divided among individual heirs. Another distinct system is the Majorat Inheritance System, where the entire or substantial part of the family's wealth is inherited by a single heir, typically the eldest son (as seen in the Majorat Rights in Bali) or the eldest daughter (as observed in Tanah Samendo in South Sumatra/Lampung). These systems underscore the diversity and complexity of customary law in Indonesia, regulating the distribution and management of inherited wealth according to specific community traditions and cultural values. In principle, Islam emphasizes fairness in the division of inheritance, regulating not only the economic role of men as the primary providers for the family but also their financial responsibilities and protection for women. In Islamic tradition, men are seen as the main breadwinners and are responsible for providing the family's economic needs. However, this does not imply that women are obligated to contribute their personal wealth to meet their own or their children's needs after marriage, especially if their husband is alive.

This understanding reflects the principle of equality in Islam, where roles and responsibilities between husband and wife extend beyond economic aspects alone. Islam acknowledges that husbands have a duty to protect and provide for their wives' livelihood according to their means, as mandated by religious teachings and social norms governed by marriage laws. Thus, inheritance

²² Eleonora Broccardo, Graziano Collier, and Luca Erzegovesi, 'The Quest for a Sustainable Social Finance Business Model: Is Peer-to-Peer Lending the Legitimate Heir to Cooperative Banking?', *Journal of Sustainable Finance & Investment* 11, no. 2 (3 April 2021): 123–42, <https://doi.org/10.1080/20430795.2019.1706314>.

²³ Nicholas J. Campbell, 'God and Heirs: The Theme of Progeny in Job', *Scandinavian Journal of the Old Testament* 36, no. 1 (2 January 2022): 150–62, <https://doi.org/10.1080/09018328.2022.2085907>.

²⁴ Emma Christopher, 'An Illegitimate Offspring: South Sea Islanders, Queensland Sugar, and the Heirs of the British Atlantic Slave Complex', *History Workshop Journal* 90 (25 February 2021): 233–52, <https://doi.org/10.1093/hwj/dbaa018>.

distribution in Islam is not only about fair wealth distribution but also about respecting and ensuring adequate social protection for each family member according to their respective roles. These principles also reflect the social order and values in Muslim societies, where the status and rights of every individual, including within the contexts of marriage and inheritance, are carefully regulated to ensure fairness and equality among family members.²⁵ This is an integral part of Islamic values that recognizes the importance of the roles and contributions of both men and women within the family and society, while maintaining a balance between rights and responsibilities within the family unit aligned with religious teachings.

5. Conclusion

Inheritance law, integral to both Islamic and customary traditions, governs the transfer of ownership rights to a deceased person's estate, known as *tirkah* in Islamic jurisprudence. This legal framework holds profound significance in human life due to its association with the inevitable event of death. Islam places great emphasis on ensuring that wealth and property are distributed equitably among heirs, regardless of gender. Upon the death of an individual, Islamic law mandates that the deceased's estate first settle all necessary expenses, including funeral costs, debts, zakat (mandatory alms), and any specific bequests. Only after these obligations are met can the remaining estate be divided among the designated heirs, adhering closely to principles of justice and fairness. Customary laws, on the other hand, exhibit significant variability across different regions and cultures. While these laws also encompass the assets and liabilities of the deceased, such as debts, they often diverge from Islamic principles in their approach to inheritance. Customary practices may dictate different shares for male and female heirs, with ratios like 2:1 prevailing in certain societies. These practices are deeply rooted in local norms and traditions, aiming to maintain social harmony and familial stability by governing how wealth and responsibilities are transferred within communities.

In navigating these diverse legal landscapes, it is crucial for individuals and communities to understand and respect both Islamic and customary laws regarding inheritance. For Muslims, adherence to Islamic principles ensures alignment with religious obligations and ethical standards, promoting fairness and equity among heirs. Understanding local customary practices is equally important, as it fosters cohesion within communities and upholds traditional values. Moreover, legal advice and estate planning can provide valuable guidance in navigating these complex frameworks, ensuring that individuals can manage their assets and plan for the equitable distribution of their estates in accordance with their beliefs and local customs. By embracing these insights and seeking professional advice where necessary, individuals can effectively navigate the intricacies of inheritance laws while preserving familial harmony and upholding cultural legacies.

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²⁵ Shu Chen et al., 'Carrying on the Family's Legacy: Male Heirs and Firm Innovation', *Journal of Corporate Finance* 69 (August 2021): 101976, <https://doi.org/10.1016/j.jcorpfin.2021.101976>.

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