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**HARMONIZATION OF ISLAMIC INHERITANCE LAW  
AND THE CIVIL CODE IN INDONESIA FROM THE PERSPECTIVE  
OF THE PRINCIPLES OF JUSTICE AND LEGAL CERTAINTY**

**Wahibatul Maghfuroh, Herdy Pratama Susantyo, Azis Setyagama**

This study aims to formulate a model for harmonizing Islamic inheritance law and the Indonesian Civil Code based on the principles of justice and legal certainty. Indonesia has a pluralistic legal system that encompasses Islamic law, customary law and Western civil law, thus giving rise to dualism of norms, conflicts of inheritance rights and the practice of choosing judicial authority subdivisions. Islamic inheritance law emphasizes substantive justice through the faraidh system, while the Civil Code emphasizes individual freedom through testamentary freedom, so that these differences in principle create tensions between distributive justice and formal justice, as well as between legal certainty and legal flexibility. The study uses normative methods with legislative, conceptual and comparative approaches, as well as qualitative analysis of primary, secondary, and tertiary legal materials. The results of the study indicate the need for harmonization of inheritance law through three levels: normative integration of the principles of substantive justice and legal certainty, preparation of systematic national regulations and implementation of empowering judges in the application of progressive law. The paper offers a conceptual contribution in the form of an adaptive and applicable model of harmonization of inheritance law, as well as practical recommendations for regulatory.

**Keywords:** Indonesia, harmonization of inheritance law, Islamic inheritance law, Civil Code, principle of justice, legal pluralism.

## **ГАРМОНИЗАЦИЯ ИСЛАМСКОГО НАСЛЕДСТВЕННОГО ПРАВА И ГРАЖДАНСКОГО КОДЕКСА В ИНДОНЕЗИИ НА ОСНОВЕ ПРИНЦИПОВ СПРАВЕДЛИВОСТИ И ПРАВОВОЙ ОПРЕДЕЛЕННОСТИ**

**Вахибатул Магфурох, Херди Пратама Сусанте, Азис Сетьягама**

Целью данного исследования является разработка модели гармонизации исламского наследственного права и Гражданского кодекса Индонезии на основе принципов справедливости и правовой определенности. Индонезия имеет плюралистическую правовую систему, которая включает в себя исламское право, обычное право и западное гражданское право, что приводит к дуализму норм, коллизиям прав наследования и практике выбора подразделений судебной власти. Исламское право наследования подчеркивает материальную справедливость через систему фараида, в то время как Гражданский кодекс подчеркивает индивидуальную свободу через свободу завещания, так что эти принципиальные различия создают напряженность между распределительной справедливостью и формальной справедливостью, а также между правовой определенностью и правовой гибкостью. В исследовании применяются нормативные методы с использованием законодательного, концептуального и сравнительного подходов, а также качественный анализ первичных, вторичных и третичных правовых материалов. Результаты исследования указывают на необходимость гармонизации наследственного права на трех уровнях: нормативная интеграция принципов справедливости по существу и правовая определенность, подготовка систематизированных национальных нормативных актов и расширение прав и возможностей судей в применении прогрессивного законодательства. Статья предлагает концептуальный вклад в виде адаптивной и применимой модели гармонизации наследственного права, а также практические рекомендации по нормативному регулированию.

**Ключевые слова:** Индонезия, гармонизация наследственного права, исламское наследственное право, Гражданский кодекс, принцип справедливости, правовой плюрализм.

## **Introduction**

Inheritance law is an important branch of the civil law system that regulates the transfer of rights and obligations over a person's assets after death to their heirs. Inheritance law functions not only as a mechanism for wealth distribution but also as an instrument to ensure justice, legal certainty, and the protection of human rights within the family [q.v.: 17]. Therefore, inheritance law regulations cannot be separated from the philosophical legal values that develop in society, including the values of substantive justice and legal certainty as normative principles in every legal system [10].

In Indonesia inheritance law is highly complex due to its existence within a framework of legal pluralism – the coexistence of more than one legal system in society. The Indonesian inheritance law system encompasses Islamic inheritance law, customary law and Western civil law derived from the Civil Code (KUHPerdata), each operating within a distinct social context. This pluralistic environment presents new challenges because the three different legal regimes often produce different legal outcomes even in the same case, creating problems in inheritance practices [3].

Legal pluralism has triggered the phenomenon of forum shopping, namely the selection of a particular legal regime by heirs to obtain the distribution results that are considered most legally or socially advantageous. This practice has the potential to result in normative conflicts, legal inconsistencies, and legal uncertainty for the parties involved and has a negative impact on distributive justice in society [20]. For example, research shows that the difference in principles between Islamic inheritance law, which is determinative through the faraidh system, and civil law, which provides testamentary freedom, has the potential to give rise to inequality in the distribution of inheritance rights due to different principles in determining the heirs' shares [14].

Islamic inheritance law regulates the distribution of inheritance in detail based on the principle of proportionality and balance between the rights and obligations of heirs in accordance with Islamic law. This system prioritizes legal certainty and substantive justice, as each heir's share is clearly defined in the rules of faraidh. Civil law, on the other hand, adopts a more individualistic approach, granting the heir the

freedom to determine the distribution of his or her assets through a will, thus emphasizing elements of testamentary freedom and formal justice from a Western legal perspective. This philosophical difference reflects the tension between two distinct models of legal justice: distributive substantive justice and individualistic formal justice.

The lack of clarity between different inheritance legal regimes in practice often gives rise to disputes in society. In some cases, legal disharmony has resulted in complex inheritance rights conflicts, partly due to overlapping and inconsistent normative rules, thus increasing uncertainty in the national legal system. For example, inheritance conflicts in families with different sociocultural backgrounds have demonstrated that differences in legal systems often result in inconsistent decisions between courts [q.v.: 20].

The issue of pluralism in inheritance law is not only relevant in Indonesia but has also attracted global attention. Countries with multicultural societies face similar challenges in balancing adherence to religious, customary, and state law in resolving inheritance disputes, necessitating a contextual and adaptive approach to legal harmonization.

Theoretically, harmonization of inheritance law can be achieved through the integration of basic principles from various applicable legal systems, with the principles of justice and legal certainty as the two main pillars that must serve as the basis for normative and legal processes. The principle of justice serves as a moral foundation in determining the proportional distribution of rights, while the principle of legal certainty ensures clarity, consistency, and predictability in the application of the law. Thus, good legal harmonization not only aligns regulations but also results in the application of the law that is fair and easily understood by the public.

Several previous studies have examined the pluralism of inheritance law in Indonesia, but most remain descriptive and have not offered comprehensive normative solutions or the construction of an applicable harmonization model based on legal principles. In other words, there is a significant research gap in the study of Indonesian inheritance law regarding how to formulate a systematic harmonization

model between Islamic inheritance law and the Civil Code with a strong legal foundation and social relevance. This study aims to fill this gap by developing a harmonization approach based on the integration of the principles of substantive justice and legal certainty that is applicable to Indonesia's pluralistic national legal system.

### **Methodology**

This research is a normative legal study (normative juridical) that focuses on the analysis of legal norms, legal principles, and legal doctrines related to the harmonization of Islamic inheritance law and the Civil Code. The normative approach was chosen because this research aims to formulate a concept of legal harmonization based on applicable legal principles, not empirical facts on the ground.

*The primary data sources are:*

1. The Qur'an and Hadith relating to marriage and the status of children.
2. The Civil Code.
3. Compilation of Islamic Law (Presidential Instruction Number 1 of 1991)

[17].

*The research uses three main approaches:*

1. Statute approach conducted by examining laws and regulations relating to inheritance law in Indonesia, both Islamic law and civil law. This approach helps understand the normative structure and position of each legal system within the national legal framework [10].

2. Conceptual approach used to analyse basic concepts related to the principles of justice and legal certainty as the basis for harmonization. This approach also examines legal theories, such as the theory of justice, legal certainty and legal pluralism [13].

3. Comparative approach conducted by comparing the principles of Islamic inheritance law and the Civil Code, as well as the practice of legal harmonization in several countries with pluralistic legal systems. This approach enriches the analysis and helps formulate a more comprehensive harmonization model [5].

*The analysis is carried out in the following manner:*

1. Review existing legal norms.
2. Identify the differences in principles between Islamic inheritance law and the Civil Code.
3. Formulate a concept for legal harmonization based on the principles of justice and legal certainty.

In the analysis process, a legal interpretation approach and deductive reasoning are used to produce systematic conclusions [7].

### **Results and discussion**

The concept of Islamic inheritance law from the perspective of justice and legal certainty

Islamic inheritance law in Indonesia is derived from the Qur'an, Hadith and the Compilation of Islamic law, which clearly and measurably defines each heir's share, providing a high level of legal certainty. This faraidh system emphasizes distributive justice that takes into account economic responsibilities within the family. For example, the division between men and women is considered in accordance with men's greater economic responsibilities, thus maintaining substantive justice.

However, the rigidity of faraidh norms faces challenges in modern society, such as changes in family structures and demands for gender equality, which can create tension between legal certainty and the need for contextual justice [q.v.: 16].

Inheritance law in the civil code from the perspective of legal certainty and Individual freedom

The Civil Code emphasizes the principle of individual freedom through the concept of testamentary freedom, where the heir has the right to determine the distribution of his or her assets according to his or her will, as long as it does not violate the provisions of the absolute share. In terms of legal certainty, the Civil Code has clear procedural rules; however, this flexibility can trigger conflict when the distribution of inheritance does not align with the heirs' perceptions of justice [19].

This system tends to be individualistic and does not take into account social and family dimensions, so that even though it is formally legally valid, it can give rise to substantive injustice [18].

In civil matters concerning inheritance, Indonesians can choose which legal source will guide the mechanism and system for inheritance distribution. In Muslim communities, Islamic law should be used as a guideline for inheritance matters. However, if an agreement is reached within a family, other legal sources can be chosen to guide inheritance matters.

An inheritance dispute arises when a family member refuses to accept the agreed-upon inheritance. In Islamic societies, inheritance disputes should be resolved through deliberation and consensus. This is based on the provisions of Q.S. Ali Imran, verse 159, which stipulate that a person should consult with each other in all matters. Deliberation can be conducted by bringing all family members together internally or through mediation, such as summoning the family group leader as a mediator. If no agreement is reached among the heirs, the inheritance dispute can be brought to court. If the family adheres to Islamic law, the inheritance dispute is submitted to the court.

Inheritance law in Islam is an important branch of family law that aims to regulate the distribution of a person's inheritance to their heirs after death. The basic principle of Islamic inheritance law is based on distributive justice, which means granting rights to each heir according to their position in the family. This principle aims to maintain harmony within the family and prevent conflicts that can arise from unfair distribution of assets [q.v.: 6].

In addition to justice, Islamic inheritance law also emphasizes the principle of mutual consent among heirs. In certain situations, heirs are permitted to agree on a distribution that differs from the faraidh provisions, provided all parties agree and no rights are neglected. This concept demonstrates the flexibility of Islamic law in adapting to the needs and socio-economic conditions of families. However, this flexibility is often abused, especially in societies with limited understanding of inheritance law.

Another fundamental principle is the prohibition against depriving someone of their inheritance rights, especially women and children. In some cases, patriarchal societies tend to ignore women's rights in inheritance distribution, citing local traditions or customs. However, the Quran explicitly forbids such actions. This emphasizes that Islamic inheritance law aims not only for material justice but also to safeguard the dignity and rights of each individual within the family [4].

Analysis of the differences between Islamic inheritance law and the Civil Code

The fundamental difference between these two systems lies in the paradigm of justice: Islamic inheritance law is based on divine values and distributive justice, while the Civil Code is based on legal rationality and individual freedom. Tensions are evident between legal certainty and flexibility, and distributive justice versus formal justice [2].

In the context of Indonesian legal pluralism, this dualism gives rise to forum shopping practices that can undermine the principles of justice and legal certainty. Therefore, harmonization based on the principles of justice and legal certainty is a normative necessity to prevent conflict and uncertainty [16].

Inheritance law is a crucial component of family and civil law, governing how a person's assets are transferred to heirs after death. In Indonesia the inheritance law system is pluralistic, as two main systems prevail: Islamic inheritance law and civil inheritance law derived from the *Burgerlijk Wetboek* (BW). This pluralism is a legacy of Dutch colonial history and a reflection of Indonesia's social and religious diversity. However, the existence of these two legal systems, which apply to different social groups, often gives rise to conceptual and applicative differences in the regulation of inheritance rights and distribution.

Philosophically, Islamic inheritance law is derived from the Qur'an, Hadith, *ijma'* and *qiyas*, so its decisions are normative-religious and have a dimension of worship – namely, the distribution of inherited assets is considered the implementation of Allah SWT's command that must be absolutely obeyed. In contrast, BW civil inheritance law is rooted in the continental law tradition, which prioritizes secular rationality and the freedom of property owners, including the

freedom to make a will and flexibility in determining heirs (testamentaire beschikking). This principle prioritizes individual justice and the testator's freedom of will over specific divine norms [q.v.: 14].

This issue is significant in the Indonesian context because the two legal systems apply simultaneously but have different principles and philosophies, which, if applied without a philosophical understanding, can lead to legal uncertainty. These differences are evident, for example, in the structure of inheritance, the proportion of inheritance shares and the legal flexibility in determining wills. In practice, this often leads to conflict and confusion in society, especially when the heirs or beneficiaries exist within a pluralistic religious and legal context.

Islamic inheritance law is derived from the Qur'an, Hadith and the *ijtihad* of religious scholars, which are binding on Muslims. Inheritance provisions in Islam are positioned as part of sharia, which not only regulates civil relations but also contains values of worship and spiritual responsibility. Verses of the Qur'an, particularly Surah An-Nisa, explicitly define the categories of heirs and the amount of each party's share. These provisions demonstrate that inheritance distribution in Islam is normative and not left entirely to human will [6].

Philosophically, Islamic inheritance law emphasizes the principles of substantive justice and social balance within the family. Differences in inheritance shares between heirs under certain circumstances are understood as a form of adjustment to differing social roles and responsibilities. For example, differences in inheritance shares between men and women are linked to the financial obligations and responsibilities imposed on men within the Islamic family structure. Thus, justice in Islamic inheritance law is not interpreted as mathematical equality, but rather as a balance between rights and obligations.

In contrast, civil inheritance law (BW) in Indonesia is derived from the Dutch legal system, which developed within the Continental European legal tradition. This legal system is secular and not based on specific religious values. Inheritance distribution in civil law is viewed as a civil legal relationship aimed at ensuring legal certainty and protecting individual rights to their assets. Therefore, civil inheritance

law positions the law as a rational instrument that neutrally regulates relationships between individuals [q.v.: 11].

*Implications for inheritance practices in Indonesia*

The inconsistency between Islamic inheritance law and the Civil Code creates significant uncertainty. This discrepancy is often exploited by certain parties for profit, thereby neglecting the principle of social justice [2].

Vulnerable groups, especially women and children, often do not receive optimal protection because legal pluralism without harmonization can create structural injustice [18].

The pluralism of inheritance law in Indonesia is rooted in the long history of the formation of a national legal system influenced by religion, custom and colonial heritage. Islamic inheritance law applies to the Muslim community and is derived from religious teachings institutionalized through the compilation of Islamic law (KHI). On the other hand, civil inheritance law derived from the Burgerlijk Wetboek (Certain Laws) is still used primarily by non-Muslims or by those who voluntarily choose it [9].

The diversity of religious and cultural backgrounds in Indonesian society results in heterogeneity in inheritance distribution practices. In Muslim communities, Islamic inheritance law is often used as a normative reference, although in practice, adjustments are made based on family agreements. Meanwhile, non-Muslim communities tend to use civil inheritance law or customary law prevailing in their communities. This situation demonstrates that pluralism in inheritance law is not only a normative phenomenon but also a reflection of the social dynamics of Indonesian society [8].

In an institutional context the state has clearly defined the division of judicial authority. Religious Courts have absolute authority to examine, adjudicate and decide inheritance cases for Indonesian Muslim citizens, as stipulated in Law Number 3 of 2006 concerning Religious Courts. This provision affirms that Islamic inheritance law is binding positive law for Muslims in the judicial sphere [q.v.: 1].

In contrast, the District Court has the authority to resolve inheritance cases for non-Muslims using relevant civil inheritance law or customary law. This division of authority is intended to provide legal certainty and respect the diversity of legal systems existing in society. However, in practice, issues often arise when the parties have differing views on which law should be applied, particularly in families with diverse religious or cultural backgrounds [15].

Choice of law (*rechtskeuze*) is a mechanism that allows parties to determine the law to be used in resolving certain legal relationships, including inheritance. In the Indonesian context, choice of law often arises implicitly through the actions of the parties, for example, by filing a case with the Religious Court or District Court. These actions indirectly reflect the parties' choice of law [q.v.: 1].

Efforts to Harmonize inheritance Law Based on the Principles of justice and legal certainty

*As a solution, harmonization of inheritance law can be achieved through three levels:*

1. Normative level: Integrating the substantive justice of Islamic law with the legal certainty of the Civil Code as a fundamental principle.
2. Regulatory level: Developing national regulations that systematically and non-contradictorily accommodate both systems.
3. Implementative level: Empowering judges to apply the law progressively with a substantive justice approach [19].

To minimize conflict, efforts are needed to harmonize inheritance distribution practices in Indonesian society. One widely used approach is the family deliberation approach, which emphasizes mutual agreement and a sense of substantive justice. This approach often serves as a bridge between normative legal provisions and the social realities faced by heirs.

Furthermore, the role of the judiciary is also crucial in rendering decisions that are not only based on legal certainty but also consider justice and expediency. In the context of Islamic inheritance law, the application of the concept of *ṣulḥ* (peace) can

be a relevant solution, while in civil law, mediation is an important instrument in resolving inheritance disputes peacefully [q.v.: 12].

Thus, the application and choice of inheritance law in Indonesia reflect the dynamics between legal pluralism, the authority of judicial institutions and the societal need for justice. The choice-of-law mechanism provides flexibility but also requires an adequate understanding of the law to avoid protracted conflict.

### **Conclusion**

Based on the research results, it can be concluded that Islamic inheritance law and the Civil Code have fundamental differences both philosophically and normatively. First, Islamic inheritance law emphasizes substantive justice through the faraidh system that provides high legal certainty, while the Civil Code emphasizes individual freedom through the principle of testamentary freedom that provides flexibility, but has the potential to cause inequality in inheritance distribution. Second, these differences in principles create tension between justice and legal certainty in inheritance practices in Indonesia, especially in the context of legal pluralism that does not yet have a clear harmonization framework. Third, these conditions have an impact on the emergence of legal uncertainty, conflict between heirs, and potential injustice, especially towards vulnerable groups.

This study shows that the differences between Islamic inheritance law and civil inheritance law (*Burgerlijk Wetboek*) in Indonesia are rooted in differences in philosophical principles, legal sources, and the objectives of their regulations. Islamic inheritance law is built on the basis of religious values derived from the Qur'an, Hadith, and *ijtihad* of scholars, so that inheritance distribution is understood as part of the implementation of worship and divine justice with predetermined provisions. Meanwhile, civil inheritance law stems from the secular Western legal tradition and emphasizes individual justice, freedom of will, and legal rationality through heir classifications and mechanisms. In the context of its application in Indonesia, the pluralism of inheritance law provides legal choice for the public, but also raises the potential for differences in practice and disputes if not accompanied by adequate legal understanding.

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**Data about the authors:**

Wahibatul Maghfuroh – Lecture of Law Faculty, Panca Marga University (Probolinggo, Indonesia).

Herdy Pratama Susantyo – Lecture of Social and Humanities Faculty, Nurul Jadid University (Probolinggo, Indonesia).

Azis Setyagama – Doctor of Law, Associate Professor of Law Faculty, Panca Marga University (Probolinggo, Indonesia).

**Сведения об авторах:**

Вахибатул Магфурох – преподаватель юридического факультета Университета Панча Марга (Проболинго, Индонезия).

Херди Пратама Сусанте – преподаватель факультета социальных и гуманитарных наук Университета Нурула Джадида (Проболинго, Индонезия).

Азис Сетьягама – доктор права, доцент юридического факультета Университета Панча Марга (Проболинго, Индонезия).

**E-mail:** [wahibatulmaghfuroh@upm.ac.id](mailto:wahibatulmaghfuroh@upm.ac.id).

**E-mail:** [herdy@unuja.ac.id](mailto:herdy@unuja.ac.id).

**E-mail:** [setyagama.azis@gmail.com](mailto:setyagama.azis@gmail.com).