

# A Comparative Study on the Execution Time of Inheritance Distribution from the Perspectives of Islamic Law and Civil Law

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Inheritance is a crucial aspect of family law, yet the prevalent socio-cultural practice of "living inheritance" (warisan hidup) in Indonesia often creates conceptual and juridical confusion between grants (hibah) and actual inheritance. This research aims to comparatively analyze the precise execution time of inheritance distribution according to normative Islamic Law and the Indonesian Civil Code (KUHPerdata) to resolve these socio-legal tensions. Employing a normative legal research method with a qualitative comparative approach, this study exclusively analyzes primary and secondary legal materials, including the Qur'an, the Compilation of Islamic Law (KHI), and the KUHPerdata. The findings reveal that neither legal system explicitly sets a rigid deadline or expiration period for distribution post-mortem. However, Islamic Law mandates a strictly sequential, *ijbārī* (compulsory) process requiring the prior settlement of funeral costs, debts, and testamentary wills before asset division. Conversely, the KUHPerdata provides a highly flexible, consent-driven mechanism that depends entirely on the heirs' free will and proactive demands. This study concludes that while Civil Law permits procedural delays, unnecessary postponement is strongly discouraged across both systems to prevent overlapping claims. Understanding these temporal boundaries is vital for society to ensure absolute legal certainty, utilize appropriate lifetime legal instruments accurately, and maintain long-term familial harmony.

**Keywords:** Inheritance Distribution, Islamic Law, Civil Law, Execution Time, Legal Certainty.

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## 1. Introduction

Inheritance is a fundamental aspect of the family legal system that regulates the transition of a deceased person's assets to their rightful heirs [1]. In the legal context, inheritance is not merely about the distribution of material wealth, but it also heavily involves the values of justice, responsibility, and social balance within family life. The provisions regarding inheritance are highly crucial because they directly touch upon the civil rights of every individual, which are strictly guaranteed by law, while also being closely related to the social and economic stability of the community [2].

However, a common phenomenon in society is the practice of distributing assets by parents to their children while they are still alive, widely known as "living inheritance" (warisan hidup). Although positive law categorizes this action as a grant (hibah) rather than inheritance, this practice creates conceptual and juridical confusion in society [3]. Many parents choose to distribute their wealth during their lifetime to prevent future conflicts among siblings. Ironically, this practice often triggers new legal problems, especially when the distribution lacks valid legal evidence or is executed disproportionately, leading to tension between normative law and empirical practices [4].

Therefore, to avoid further legal ambiguity, this research focuses specifically on the time dimension, determining the exact and legally appropriate time for inheritance distribution according to both normative Islamic law and Civil law. In Islamic law, the distribution is strictly permitted only after the testator passes

away and all obligations, such as debts and wills, are settled [5]. Conversely, under the Indonesian Civil Code (KUHPperdata), Article 830 explicitly states that inheritance only occurs due to death. This study limits its scope strictly to analyzing when the inheritance should legally be distributed based on these two normative rules.

Based on these considerations, the specific objective of this research is to conduct a comparative analysis between Islamic law and Civil law regarding the proper timing of inheritance distribution. By examining the different approaches of these two legal systems, this study aims to find common ground between legal norms and actual social practices. Ultimately, the results are expected to provide conceptual clarity, ensure legal certainty, and establish fair guidelines for the distribution of inheritance in Indonesia.

## 2. Literature Review and Problem Statement

The concept of inheritance distribution timing is fundamentally governed by two predominant legal frameworks in Indonesia: Islamic Law and the Indonesian Civil Code (KUHPperdata). Normatively, Islamic Law dictates that inheritance distribution is only legally valid after the death of the testator, contingent upon the prior settlement of the deceased's debts, burial costs, and testamentary wills (wasiat), as rooted in Surah An-Nisa verses 11–12 and Article 171 of the Compilation of Islamic Law (KHI) [6]. Similarly, Article 830 of the KUHPperdata explicitly establishes that inheritance is solely triggered by death, granting heirs the right to claim their portion post-mortem [7]. Previous studies have explored various aspects of these frameworks; for instance, Natalia (2024) analyzed the inheritance system from a purely civil perspective [8], while Fatmah (2024) examined the comparative aspects of interfaith inheritance [9]. Furthermore, Manangin (2020) highlighted the general mechanism of asset transfer in Indonesia [10]. However, these existing literatures predominantly focus on the structural division of assets and who is entitled to them, rather than deeply analyzing the specific temporal dimension namely, the exact comparative timing and the legal implications of expediting or delaying the distribution process after death.

This lack of focus on the temporal dimension highlights a significant research gap, especially when normative theories collide with empirical realities in Indonesian society. Sociologically, families frequently practice "living inheritance" (warisan hidup) distributing wealth while the parents are still alive to prevent future sibling disputes. Legally, this constitutes a grant (hibah) under Article 1666 of the KUHPperdata rather than actual inheritance, but society's tendency to equate the two often results in systemic injustice, overlapping claims, and legal confusion after the testator's death [11]. Moreover, even when assets are divided post-mortem, dilemmas persist regarding whether immediate distribution is culturally ethical or if prolonged delay risks future familial conflicts [12]. Based on this normative-empirical gap, the core problem statement of this study is formulated as follows: How do Islamic Law and Civil Law comparatively regulate the precise execution time of inheritance distribution, and how can analyzing these normative frameworks resolve the socio-legal tensions surrounding the timing of asset division in society?

## 3. Method

This study employs a normative legal research method, specifically operating as library research [13]. This method was deliberately selected due to its capability to provide accurate, stable, and consistent results when examining statutory rules, legal principles, and authoritative doctrines concerning the timing of inheritance distribution. By avoiding the processing of numerical data, this qualitative approach ensures a deep and comprehensive interpretation of the legal concepts underlying both Islamic and Civil inheritance laws. Furthermore, a comparative approach serves as the core analytical framework, enabling a systematic

evaluation of the similarities, differences, advantages, and limitations of the two legal systems regarding the exact time an inheritance should or must be divided [14].

The data utilized in this research are exclusively legal materials, entirely excluding empirical field data such as interviews or questionnaires. The primary legal materials, which act as the main research samples, consist of authoritative texts including the Qur'an (specifically Surah An-Nisa), the Compilation of Islamic Law (KHI), and the Indonesian Civil Code (KUHPPerdata) [13]. Secondary materials comprise textbooks on inheritance, relevant legal journals, and expert commentaries that discuss both Islamic and civil inheritance frameworks. Additionally, tertiary legal materials such as legal dictionaries and encyclopedias are used as supporting parameters [14]. Each legal material was carefully identified based on its hierarchical relevance to ensure its suitability for the analysis.

The research steps began with initial processing through an extensive literature review, which involved identifying, reading, and recording the pertinent laws, books, and scientific journals. Following the data collection stage, qualitative analysis techniques were applied [13]. This step required interpreting, critically examining, and systematizing the primary and secondary legal materials. The evaluation approach focused on juxtaposing the normative rules against the empirical phenomenon of early asset distribution ("living inheritance") in society. By doing so, the method robustly evaluates how each legal framework accommodates legal certainty and justice, ultimately aiming to find a conceptual meeting point between legal norms and social practices [14].

#### 4. Results

The research results are presented through a comprehensive table that summarizes the main comparative values in a structured manner, allowing the normative patterns and differences between the two legal systems to be clearly observed. This visualization makes it easier for readers to understand the distinct approaches regarding the timing of inheritance distribution that are the focus of this study. With this tabular presentation, the main findings can be identified quickly and objectively.

**Table 1.** Comparison of the Timing of Inheritance Distribution between the Civil Code (KUHPPerdata) and Islamic Law (KHI)

No	Civil Code (KUHPPerdata)	Meaning regarding the timing of inheritance rights	Compilation of Islamic Law (KHI)	Meaning regarding the timing of inheritance rights
1.	Article 830 ("Inheritance only occurs due to death")	Inheritance rights only arise after the testator dies; there is no inheritance distribution before that event.	Article 171 letter c ("Definition of inheritance")	Inheritance distribution is conducted strictly after death and after all obligations are settled.
2.	Article 833 paragraph (1) ("Heirs acquire ownership by law")	Inheritance rights arise automatically upon death, even if the physical distribution has not yet been conducted.	Article 174 paragraph (1) ("Determination of heirs")	The official determination of heirs must be conducted before the distribution of the inheritance.
3.	Article 834 ("Right to demand inheritance delivery")	Heirs possess the right to demand the distribution or delivery of the inheritance at any	Article 175 paragraph (1) ("Order of testator's obligations")	The distribution of inheritance is only permitted after funeral costs, debts, and

No	Civil Code (KUHPperdata)	Meaning regarding the timing of inheritance rights	Compilation of Islamic Law (KHI)	Meaning regarding the timing of inheritance rights
		time since the testator dies.		testamentary wills are thoroughly settled.
4.	Article 913 ("Legitime portie")	At the time the distribution is executed, the absolute rights of the heirs must not be violated.	Articles 176–193 ("Heirs' portions / faraidh")	The distribution is executed in the final stage, only after all conditions and preceding obligations are met.
5.	Article 1086 ("Inbreng inclusion grants")	Lifetime grants given by the testator are accounted for at the time of the inheritance distribution.	Sharia Principle ("Prohibition of tyranny/injustice")	Delaying the inheritance distribution without a valid, justifiable reason is not recommended.

Based on the visualization of the results in Table 1, a fundamental difference in the execution stages of inheritance distribution between the two legal systems is evident. The analysis reveals that Islamic law dictates a strictly sequential and normative process [1]. Upon the testator's death, the assets cannot be immediately distributed among the heirs [6]. The law explicitly mandates several obligatory stages that must be fulfilled first: the settlement of funeral and burial expenses, the payment of the deceased's debts (both to God and to humans), and the execution of the testator's will (*wasiat*), provided it does not exceed one-third of the total estate [15]. Only after these preceding obligations are completely resolved can the remaining assets be distributed according to the predetermined portions (*faraidh*) outlined in Surah An-Nisa verses 11-12 [6]. This process is inherently *ijbārī* (compulsory), meaning the distribution mechanism is divinely determined by sharia and does not rely on the heirs' consensus [11]. Consequently, while there is no explicit time limit for the distribution, intentionally delaying the process without a valid sharia-compliant reason is highly discouraged as it may obstruct the heirs' rights and lead to injustice [1].

Conversely, the Indonesian Civil Code (KUHPperdata) offers a highly flexible framework regarding the timing and stages of inheritance distribution, rendering it an optional civil matter [17]. Although inheritance is legally opened immediately upon the death of the testator as per Article 830, the subsequent stages heavily depend on the proactive decisions and free will of the heirs [7]. Under KUHPperdata, heirs are granted the liberty to determine their stance towards the inheritance: they can accept it outright, accept it under the benefit of inventory (*beneficiai*), or reject it entirely (Articles 1045–1050) [7]. Furthermore, the civil law permits the inheritance to remain undivided for an extended period as long as there is no demand from the heirs [17]. However, to protect individual rights, Article 1066 guarantees that no person can be forced to keep the estate in an undivided state, granting any legitimate heir the right to demand distribution at any given time [7]. This demonstrates that the timing under Civil Law prioritizes procedural certainty and freedom of will, starkly contrasting the strict moral and sequential obligations mandated by Islamic Law [17].

## Dicussion

To explicitly demonstrate the scientific contribution of these findings, it is crucial to analytically compare them with previous literature. Previous studies, such as Natalia (2024) which analyzed the civil inheritance system and Fatmah (2024) which explored interfaith inheritance, predominantly focused on the structural

division of assets namely, the specific portions and entitled parties. Furthermore, while Manangin (2020) discussed the mechanism of asset transfers, the specific temporal dimension remained significantly underexplored. This research advances the existing literature by isolating the "execution time" as the primary analytical variable. Unlike previous studies, this research proves that socio-legal tensions in Indonesian society do not merely stem from portion disputes, but directly from a conceptual clash regarding *when* distribution should occur. By establishing that Islamic Law strictly enforces a sequential, post-mortem *ijbārī* process, whereas the Civil Code accommodates extensive procedural delays based on the heirs' mutual consent, this study offers a novel temporal framework. This analytical framework effectively explains why pragmatic societal adaptations such as early wealth distribution occur and how they conflict with formal legal categories.

The fundamental difference between the two legal systems lies profoundly in the character and philosophical foundation of the time regulation for inheritance distribution. Islamic law strictly views the distribution of an estate as an *ijbārī* (compulsory) process [1]. This means the execution is a binding divine sharia command where the portions and mechanisms have been absolutely predetermined, thus it does not depend on the mutual agreement or personal desires of the heirs [1]. Consequently, under Islamic jurisdiction, intentionally delaying the distribution of an inheritance without a valid, sharia-compliant reason is highly discouraged, as it is considered contrary to the principles of justice and actively obstructs the rightful protection of the heirs' shares [1]. In stark contrast, the Indonesian Civil Code (KUHPerdara) treats the timing of inheritance distribution purely as an optional civil matter that relies heavily on the free will and proactive decisions of the parties involved [17]. Under this civil framework, the process is highly flexible; the law explicitly allows the estate to remain in an undivided state for an extended period, provided that no legitimate heir steps forward to demand their respective share [17].

Despite both normative legal systems firmly asserting that the legal event of inheritance can only be triggered post-mortem, a highly contrasting empirical phenomenon widely known as "living inheritance" (*warisan hidup*) frequently occurs across Indonesian society [3]. Driven by deep-rooted sociological motives primarily the desire to maintain family harmony and decisively prevent future conflicts among children after the parents pass away many parents consciously choose to distribute their wealth while they are still alive [4]. From a strict normative legal standpoint, both Islamic law and positive civil law (specifically Article 1666 of the KUHPerdara) unequivocally categorize this lifetime distribution as a gratuitous grant (*hibah*), rather than an actual inheritance [7].

However, this socio-cultural adaptation often generates significant conceptual and juridical confusion within the community, as society frequently equates the distinct legal concepts of *hibah* and inheritance [3]. When parents distribute their assets during their lifetime with the specific intent of permanently settling future inheritance portions, it frequently leads to severe systemic injustices among the heirs after the testator's death, primarily because such early distributions are often considered to have unlawfully "closed" or diminished the legitimate inheritance rights of other entitled parties [4]. This creates a profound tension between strict normative legal frameworks and empirical practices in the field [3]. Furthermore, society is often trapped in a sociological dilemma regarding the timing of post-mortem distribution: dividing the assets immediately after death is sometimes viewed culturally as unethical or insensitive to the grieving process, yet postponing it for too long introduces the risk of complex disputes in the future [4]. Therefore, understanding the precise legal boundaries of inheritance timing is critical to resolving these overlapping claims and ensuring legal certainty [17].

Based on the series of findings and interpretations obtained, a preliminary conclusion can be drawn that neither Islamic Law nor the Indonesian Civil Code (KUHPerdara) explicitly sets a rigid deadline or expiration period for the distribution of inheritance [17]. However, their philosophical approaches contrast sharply:

A Comparative Study on the Execution Time of Inheritance Distribution from the Perspectives of Islamic Law and Civil Law . Winni Angelia Eka Putri et.al

Islamic law mandates a strictly sequential and *ijbārī* process that must be carefully fulfilled after death [1], whereas Civil law offers a highly flexible, consent-driven mechanism [17]. These findings imply that the widespread sociological phenomenon of "living inheritance" is essentially a community's pragmatic response to avoid the potential complexities and disputes associated with delayed post-mortem distribution [3]. Furthermore, since this early asset distribution is legally categorized as a grant (*hibah*) rather than inheritance [7], the misalignment between societal understanding and statutory norms often leads to overlapping claims and perceived injustices among heirs [4]. Therefore, these preliminary insights serve as a crucial bridge for the research. They highlight the urgent need for society to properly utilize appropriate legal instruments such as formalized *hibah* or testaments to achieve both familial harmony and absolute legal certainty without violating the fundamental rights of the heirs [15].

## 5. Conclusion

This research concludes that regarding the execution time of inheritance distribution, neither Islamic Law nor the Indonesian Civil Code (KUHPerdata) explicitly establishes a specific, rigid time limit. However, the fundamental difference lies in their regulatory foundation and execution character. Islamic law dictates a normative and strictly sequential process requiring the prior settlement of funeral costs, debts, and testamentary wills and operates under an *ijbārī* (compulsory) principle where unjustified delays actively contradict the principles of justice [1], [15]. Conversely, the Civil Code provides a highly flexible framework where the timing inherently depends on the free will and mutual decisions of the heirs, legally allowing for postponement unless a legitimate heir formally demands immediate partition [2], [7].

These findings interpret the widespread sociological phenomenon of "living inheritance" (*warisan hidup*) not merely as a legal anomaly, but as a practical societal adaptation designed to avoid the uncertainties and potential familial conflicts associated with post-mortem distribution [3]. Practically, this research implies that while civil law provides flexibility, heirs are strongly advised against intentionally delaying inheritance distribution without clear and valid reasons, as prolonged undivided estates frequently trigger overlapping claims and disrupt family harmony [4]. A primary limitation of this normative study is its exclusive reliance on library research and statutory texts [11]. Therefore, future research is highly recommended to incorporate empirical field studies to directly quantify the socio-economic impacts of delayed inheritance distribution across diverse cultural contexts in Indonesia, thereby providing a more holistic socio-legal evaluation.

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