

# The Position of Childless Widows as Heirs to Husband's Inheritance (Comparative Analysis of Compilation of Islamic Law and Civil Inheritance Law)

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## ARTICLE INFO

Date received: 2 Januari 2023

Date revised: 10 Februari 2023

Date accepted: 20 Maret 2023

*Keywords:*

*Position of Widow, Childless, Heir, Husband's Inheritance*

## ABSTRACT

This study aims to analyze the share of inheritance for childless widows according to Islamic law and civil law and to analyze the position of childless widows as heirs to the husband's inheritance according to Islamic law and civil law. The research method used in this study is that the type of research used in this research is normative legal research as a process to find legal rules, legal principles, and legal doctrines to answer the legal issues at hand. The results of this study indicate that the position of widows without children as heirs to the husband's inherited assets according to Islamic law and civil law. According to the Civil Code, the position of a widow as an expert is included in the group of ab-intestato heirs. As ab-intestato heirs, the widow belongs to Group I heirs. Based on the position of the widow as ab-intestato heirs of Group I, the widow inherits based on her own position. The widow's position appears as an heir based on primacy, thus closing other groups. Widows can inherit the entire inheritance by excluding parents, siblings, and so on, if there are no descendants who have the right to inherit. Meanwhile, the position of the widow as an expert according to Islamic inheritance law is due to the marital relationship between the heir and the widow. Meanwhile, in terms of her rights to inheritance, the widow is included in the heirs of Dzawil Furudl. The position of the widow as the heir of Dzawil Furudl is the heir of priority so that she is not hindered (hijab) by other heirs.

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## INTRODUCTION

Indonesia as a rule of law adheres to three legal systems that live and develop in society, namely the civil law system, the customary law system, and the Islamic legal system. The three legal systems are complementary, harmonious and romantic. Law in Indonesia is a mixture of European systems, religious law, and customary law. Religious law because the majority of Indonesian people adhere to Islam, the domination of Islamic law or sharia is more, especially in the areas of marriage, family, and inheritance.

The inheritance system is divided, namely, the inheritance system according to civil law, according to religious law (Islam) and according to custom. According to custom, the division is

divided into three types, namely: the patrilineal system, which is based on the male or paternal lineage, then the parental or bilateral system, which is based on the lineage of the father and mother.

According to civil law, the inheritance system does not distinguish between sons and daughters, between husband and wife, they are all entitled to inherit, and the share of sons is the same as that of daughters, the share of a wife or husband is equal to the share of the next child, the Law Civil inheritance or western inheritance law is regulated together with property law and it is emphasized that the division of inheritance can only be carried out in the event of death. So if the owner of the property is still alive, the property cannot be transferred through the ratification of the inheritance procedure or provisions on who has the right to become an heir according to the Civil Code.

Article 832 stipulates people who are entitled to become heirs, namely: group I: family that is in a straight line down, namely the husband or wife who is abandoned, children and offspring along with the husband or wife who lives longer. group II families that are in a straight line up, such as parents and siblings and their offspring. group III: consists of grandparents, and ancestors. group IV: family members who are on the line to the side and other families up to the sixth degree. in accordance with the contents of Article 830 of the civil law code (KUHperdata), western civil inheritance law, it is emphasized that the division of inheritance can only be done if there is death. so if the owner of the property is still alive, the property cannot be transferred through the ratification of inheritance procedures or provisions

The party who becomes the natural heir. those appointed according to law, including husband/wife, children, grandparents, and others as included in group I to group IV. This right is called ab intestato. the party appointed specifically as the heir according to the contents of the testament belonging to the testator. generally called a will, this letter still needs to be ratified by a notary. This right is called a testamentary. children who are still in the womb even though not yet born, their status can be legalized directly as heirs if necessary. this right is strengthened by the provisions of Article 2 of the Civil Code. Regarding class I heirs in civil terms, they are families that are in a straight line downwards, namely husbands or wives who are abandoned, children and offspring along with husbands or wives who live longer and the division treasure inheritance according to Islam arranged based on the letter An-nisa verses 11 – 12:

يُوصِيكُمُ اللَّهُ فِي أَوْلَادِكُمْ لِلذَّكَرِ مِثْلُ حَظِّ الْأُنثَيَيْنِ ۚ فَإِن كُنَّ نِسَاءً فَوْقَ اثْنَتَيْنِ فَلَهُنَّ ثُلُثَا مَا تَرَكَ ۚ وَإِن كَانَتْ  
وَاحِدَةً فَلَهَا النِّصْفُ ۚ وَلِأَبَوَيْهِ لِكُلِّ وَاحِدٍ مِّنْهُمَا السُّدُسُ مِمَّا تَرَكَ إِن كَانَ لَهُ وَلَدٌ ۚ فَإِن لَّمْ يَكُنْ لَهُ وَلَدٌ وَوَرِثَتْهُ أَبَوُهُ  
فَلِلْأُمِّهِ الثُّلُثُ ۚ فَإِن كَانَ لَهُ إِخْوَةٌ فَلِلْأُمِّهِ السُّدُسُ ۚ مِن بَعْدِ وَصِيَّةٍ يُوصِي بِهَا أَوْ دِينٍ ۚ لِأَبَائِكُمْ وَأَبْنَاؤِكُمْ لَا تَدْرُونَ أَيُّهُمْ  
أَقْرَبُ لَكُمْ نَفْعًا ۚ فَرِيضَةٌ مِّنَ اللَّهِ ۚ إِنَّ اللَّهَ كَانَ عَلِيمًا حَكِيمًا

It means:

Allah prescribes (obliges) you regarding (the distribution of inheritance for) your children, (namely) the share of a son is equal to the share of two daughters. And if the children are all girls whose number is more than two, then their share is two-thirds of the assets left behind. If she (daughter) is only one, then she gets half (of the assets left behind). And for both parents, the share of each is one-sixth of the assets left behind, if he (the deceased) has children. If he (the deceased) does not have children and he is inherited by both his mother and father (only), then his mother gets one third. If he (the deceased) had several brothers, then his mother got one sixth. (The divisions mentioned above) after (fulfilled) will made or (and after payment of) the debt. (About) your parents and your children, you do not know which of them is of more benefit to you. This is Allah's decree. Indeed, Allah is All-Knowing, All-Wise." (QS An-Nisa': 11)

While in (QS An-Nisa': 12) states:

﴿وَلَكُمْ نِصْفُ مَا تَرَكَ أَزْوَاجُكُمْ إِنْ لَمْ يَكُنْ لَهُنَّ وَلَدٌ فَإِنْ كَانَ لَهُنَّ وَلَدٌ فَلَكُمْ الرُّبْعُ مِمَّا تَرَكَنَّ مِنْ بَعْدِ وَصِيَّةٍ يُوَصِّينَ بِهَا أَوْ دَيْنٍ وَلَهُنَّ الرُّبْعُ مِمَّا تَرَكَتُمْ إِنْ لَمْ يَكُنْ لَكُمْ وَلَدٌ فَإِنْ كَانَ لَكُمْ وَلَدٌ فَلَهُنَّ النَّمَنُ مِمَّا تَرَكَتُمْ مِنْ بَعْدِ وَصِيَّةٍ تُوَصُّونَ بِهَا أَوْ دَيْنٍ وَإِنْ كَانَ رَجُلٌ يُورَثُ كَلَلَةً أَوْ امْرَأَةٌ وَهِيَ آخٌ أَوْ أُخْتٌ فَلِكُلِّ وَاحِدٍ مِّنْهُمَا السُّدُسُ فَإِنْ كَانُوا أَكْثَرَ مِنْ ذَلِكَ فَهُمْ شُرَكَاءُ فِي الثُّلُثِ مِنْ بَعْدِ وَصِيَّةٍ يُوصَى بِهَا أَوْ دَيْنٍ غَيْرِ مُضَارٍّ وَصِيَّةً مِنَ اللَّهِ وَاللَّهُ عَلِيمٌ خَلِيمٌ﴾

It means:

"And your share (husbands) is half of the property left by your wives, if they do not have children. If they (your wives) have children, then you get a quarter of the property left after (fulfilled) will that they made or (and after paying) their debts. Wives get a quarter of what you leave if you don't have children. If you have children, then the wives get one-eighth of the property that you leave (after being fulfilled) will that you make or (and after being paid) your debts. If a person dies, both male and female who have not left a father or children, but have a brother or a sister, then each of the two types of siblings is one-sixth of the treasure. But if there are more than one mother's brothers and sisters, then they shall be together in that one-third portion, after made or (and after being paid) the debt without causing trouble (to the heirs). Such is God's provision. Allah is All-Knowing, All-Forbearing." (QS An-Nisa': 12).

According to the Instruction of the President of the Republic of Indonesia Number 1 of 1991 concerning the dissemination of the Compilation of Islamic Law. Inheritance distribution system in Islam, namely assets given from people who have died to those closest to them such as family and relatives. Al-Qur'an, in surah An Nisa which states that the division of inheritance in Islam has been determined, there are 6 types of percentage distribution of inheritance, there are those who get half (1/2), a quarter (1/4), one eighth (1/8), two-thirds (2/3), one-third (1/3), and one-sixth (1/6) (Ministry of Religion, 2007).

According to Islamic law, there are three classes of heirs, namely (1) dzawil faraid or dzul faraid heirs, (2) asabah heirs, and (3) dzawil arham heirs or dzawil faraid heirs are heirs whose share of the inheritance It has been determined, both by the Koran, Sunnah, and Ijtihad, that the wife and/or husband, both in civil law and in Islamic law, are class I heirs, so that the husband and wife are entitled to the inheritance if one of them dies. Islamic inheritance laws apply to Muslims everywhere in the world. This is because the law of inheritance is very closely related to the scope of human life. Indonesia as a constitutional state regulates heirs.

Constitutionally it is explained that legal heirs may not be deprived of their rights. The law has strictly regulated the distribution, as well as Islamic law has regulated the law of inheritance, who has the right to be the heir and how much each share. Islamic Shari'a stipulates inheritance rules in a very regular and fair form, including the position of widows in inheritance law, demanding Islamic inheritance law, widows are heirs whose rights cannot be hindered by other heirs.

In fact, even though the distribution of inheritance is clear according to the legal system in force in Indonesia, both the Islamic legal system and the civil legal system, regarding the inheritance distribution system for widows, there are still things that cannot be resolved from this distribution of inheritance, for example If the marriage is broken up due to death and the marriage is not given offspring/children, then the widow/wife who lives together or has the longest has the right to her husband's assets because the position of the widow whose husband dies has the same position as the child's heir, so that the position of the widow according to the position of the expert inheritance, but on the other hand the Compilation of Islamic Law Article 87 Paragraph

(1) states: "the inherited assets of each husband and wife and the assets obtained by each as a gift or inheritance are under the control of each, as long as the parties do not specify otherwise in the marriage agreement".

According to the Compilation of Islamic Law the husband's assets are included in the inheritance, then for a widow who is one of the husband's heirs, the widow has inheritance rights left by her husband as long as they are not hindered as heirs including her husband's inherited assets, while based on article 119 Civil Code which states that from the moment the marriage takes place, for the sake of law a unanimous union between the assets of the husband and wife applies, just regarding that the marriage agreement does not make other provisions, the union as long as the marriage cannot be abolished or changed by any agreement between husband and wife (Holida, 2012).

Based on the description above, the division of inheritance for widows over husband's inherited property is a polemic in itself, why? Due to the absence of clear provisions in the distribution of inheritance originating from inherited assets for widows, especially in civil law, there are many decisions that are not in accordance with what is regulated in the Civil Code and also the considerations of judges who differ in their decisions, such as the decision of the Supreme Court of the Republic of Indonesia No. 3190 K/Pdt/1985 that based on some of the above decisions that are used as jurisprudence by several subsequent decisions that decide cases regarding the position of widows on inheritance or husband's inheritance that are different, plus there are also thoughts in society that sometimes choose a legal system that according to them can be profitable and provide justice for them, for example, a person who is Muslim must be subject to the inheritance system according to Islamic law, but sometimes according to some people this does not provide justice, therefore they choose the civil or civil law system in resolving their cases in terms of inheritance, in other words, the choice of law by submitting themselves.

Based on the description of the background above, the study aims to analyze the share of inheritance for childless widows according to Islamic law and civil law and to analyze the position of childless widows as heirs to the husband's inheritance according to Islamic law and civil law.

## **METHODS**

This type of research is a normative type, which is a research method that where law is conceptualized as what is written in laws and regulations (law in books) or law is conceptualized as a rule or norm which is a standard of human behavior that is considered appropriate. Normative research is a legal method that is carried out by examining library materials or mere secondary materials (Mughtar, 2015).

This study uses a statutory approach, (Law No. 1 of 1974 concerning Marriage, the Compilation of Islamic Law (*KHI*) and the Civil Code (*KUH Perdata*) with a conceptual approach. Specifically, in this case it concerns the analysis of the rights of widows without children to property husband's inheritance in the form of inheritance according to the the Compilation of Islamic Law and the Civil Code. This type of research is a normative type, namely a research method that where law is conceptualized as what is written in laws and regulations (law in books) or law is conceptualized as a rule or norm which is a standard of human behavior that is considered appropriate. Normative research is a legal method that is carried out by examining library materials or mere secondary materials (Mughtar, 2015).

## **RESULTS AND DISCUSSION**

### **Analysis of the Position of Widows According to the Islamic Inheritance Law System and the Civil Inheritance Law System**

Marriage is the cause of the emergence of an inheritance relationship, between husband and wife based on the following two conditions: a valid marriage according to Islamic law, namely the conditions and pillars of marriage are fulfilled, and recorded at the marriage registrar. The marriage is still intact, namely the husband and wife are still bound by marital ties when one of the parties dies, including in this provision the wife is still in the status of the iddah talak raj'i period (Muthiah, 2017).

Husband and wife continue to inherit from each other in addition to the fact that both of them have entered into a legal marriage contract according to the Shari'ah. Also, between husband and wife who are married, there has not been a divorce when one of them dies. This means that the husband and wife were not divorced when one of them died. Included in the "not yet divorced" category are divorces in the form of talaq raj'i, while the wife is still experiencing an iddah period, therefore the inheritance rights between husband and wife who have been talaq raj'i still exist (Muthiah, 2017). Inheritance applies on the basis of marriage with the meaning that the husband becomes the heir for his wife who died and the wife becomes the heir for the husband who died. Al-Quran in the group of heirs, there are as many as eight people, plus the four people mentioned in the hadith of the Prophet. So that's twelve people. They are; Only daughter, Mother, Father, Widower, Widow, Brother (in kalalah), Brothers and sisters are shirikah (in kalalah), Sister in terms of kalalaha, Son's granddaughter, Grandfather, Grandmother, and Father's sister (Anshori, 2002)

There are two kinds of heirs, the first is nasabiyah heirs, namely heirs whose inheritance relationship is based on blood relations (kinship). The two sababiyah heirs, namely heirs whose inheritance relationship is due to a cause, namely because of marriage and freeing slaves, in the compilation formula, heirs are people who at the time of death have blood relations or marital relations with the heir, are Muslim and are not hindered because law to become heirs (Article 171 letter c KHI) thus, what is meant by heirs by compilation, are those who clearly have inheritance rights when the heir dies, there are no obstacles to inheriting (Noviarni, 2021).

The position of a widow according to the Koran is found in surah An-Nisa verse 12 which means as follows: "for your wives as widows your inheritance is a quarter of your inheritance, if you have no children, for your wives as widows your inheritance is one-eighth of your inheritance, if you have children" (Ritonga, 2021). In essence, according to the provisions of Islamic law, the position of the widow/widow (wives) of her deceased husband is the same as the position of the husband, the position of the father and mother, sons and daughters who have never been magnified or hindered, as stated by As. 'ad Yunus (1992:52) namely: Husband or wife, Sons, Daughters, Father, and Mother (Lolaroh, 2019).

The widow (wife) of her late husband will never lose her inheritance rights and heirs. It's just that what happens as mentioned in the verses of the Koran stated above is a change in the amount of the portion that is obtained. Sometimes a widow gets a quarter of her husband's inheritance if she has children and an eighth if she has no children (Lolaroh, 2019). According to marital relations consists of widows. If all the heirs are there, only children, fathers, mothers and widows are entitled to inheritance. Inheritance rights can apply on the basis of marital relations, with the understanding that the husband is the heir of his deceased wife and the wife is the heir of her deceased husband. In Islamic inheritance law, a widow is the heir of a husband or wife who has passed away.

The first part of suarah An-Nisa'(4):12 states the inheritance rights of husband and wife. If the inheritance relationship applies between those who have a kinship relationship because of

a natural relationship between the two, then there is a legal relationship between husband and wife (Yuliasri, 2018). Compilation of Islamic law (KHI) Article 96 paragraph (1) states: "in the event of a divorce and death, then half of the joint property belongs to the spouse who lives longer". And article 171, states that "inheritance is inherited property plus part of the joint property after it is used for the heir's needs during illness until death, costs for managing the body (tajhiz), paying debts and giving to relatives".

According to Islamic law both according to bilateral (hazairin) and patrilineal (syafii), widowers or widows can always appear as heirs, both together with children and their offspring and parents (group priority I), with siblings in terms of kalaalah (group priority II), with father as dzawu'l qarabat, then as dzawul faraa-id in the third priority group, as well as with grandparents (group priority IV).

The widow who lives the longest cannot get rid of (hijab) and cannot be removed (hijab) by anyone. Only the presence or absence of children affects the share of the widower or widow (Ramulyo, 2016). Thus, if a wife (widow) is left to die by her deceased husband where both of them have assets acquired during the marriage period which are referred to as joint property, then the widow gets half of the joint property plus a quarter if there are no children of the deceased her husband, or an eighth if you have children from half the joint property that is united with the husband's inheritance.

According to the Civil Code before 1935 in Indonesia, widowers or widows were included in the 12th degree, whereas after 1935 according to article 832 in conjunction with article 852 included in the first group along with children of different ancestry. So widowers and widows get rid of parents in receiving inheritance because parents appear as heirs who inherit inheritance, when there is no longer a husband or wife along with their children and offspring (Ramulyo, 2016).

Civil law does not differentiate between male and female widows. Both male and female widows are heirs with no difference from other heirs such as offspring or siblings of the deceased. This inheritance right was only included in the law in 1935, namely by st.1935: 486 which equated the widow with a legitimate child.

The consequence of this right, is if there are no children at all. This widow excludes other family members, for example: if the inheritance leaves a child and a second wife, then the share of this second wife may not exceed that of a child and a maximum of  $\frac{1}{4}$  of the inheritance (article 852 a.BW). Article 852 b. BW (Tamakir, 2000). Heirs because of their own position are heirs as referred to in Article 852 paragraph (1) of the Civil Code (Al-Ghazali, 2016), namely children born from the same marriage or from different marriages who inherit to both parents, to grandparents and the next family according to a straight line up, without distinguishing between men and women, or between those who were born first and those who were born later. Likewise, the right of a husband or wife who is abandoned, who gets a large part of a legitimate child from the heir (vide article 852 (a) of the Civil Code.

Article 852 b BW widows have the right to take and continue to hold what is called "inboedel" from the inheritance if there are no other heirs, and "inboedel" according to Article 514 BW is movable property, except for cash, receivables, shares in various companies, property trade, factory tools, ships and so on. So inboedel includes home furnishings, household contents and furniture for daily living which can be restricted by the widow, although some of these items according to inheritance law from BW must be inherited by other heirs (Article 515 BW). If the furniture is included in the inheritance, the price must be deducted from the widow's inheritance (Article 852 paragraph 2-3) (Al-Ghazali, 2016). The wife or widow has the right to inherit the inheritance of her husband.

His wife's share is a quarter if she leaves no children or grandchildren. If there are children or grandchildren, the share of the wife or widow is only  $\frac{1}{8}$ . The husband has the right to inherit the property left by his wife. The husband's share is  $\frac{1}{2}$  if he does not leave children or grandchildren. But if there are children or grandchildren, the husband's share is only  $\frac{1}{4}$ . No other heir can block (hijab) their inheritance rights or shift (hijab) the amount of their share except for the child of the deceased (Al-Ghazali, 2016).

### ***Distribution of Inheritance for Widows in the Perspective of Islamic Law and Perspective of Civil Inheritance Law***

The division of inheritance for widows according to the Civil Code and inheritance laws are similar. In the event of a divorce and death, the joint assets are divided into  $\frac{1}{2}$  each for the male widow or the female widow. Then the remaining  $\frac{1}{2}$  as part for the heir, is the inheritance that will be distributed to heirs, including the widow as the heir. Provisions regarding the share of inheritance for widows according to the Civil Code are regulated in article 852 letter a of the Civil Code which determines as follows:

"In the case of the inheritance of a husband or wife who died first, the wife or husband who lived the longest, in carrying out the provisions of this chapter, is equated with a legitimate child of the deceased."

If the heir leaves a husband or wife who has lived the longest and left no offspring, then the husband or wife who has lived the longest is entitled to the entire inheritance. Likewise, even though the other Group I are still there but for one reason or another cannot appear as a person entitled to inherit, the wife or husband as Group I inherits all of the heir's assets (Suparman, 2022). According to the Supreme Court Decision No. 3764/K/Pdt/1992 dated March 30, 1995 stated as follows: "a widow will receive  $\frac{1}{2}$  (half) of the joint property and the remaining  $\frac{1}{2}$  (half) will become the inheritance of her late husband, who will divided between the widow and her children, and each gets an equal share" (Meliala, 2008). The requirements for determining the inheritance share are as follows (Anshori, 2002):

#### Priority

What is meant by primacy is a principle to prioritize one heir over another. In the initial process of dividing inheritance, this must be known in advance. Which heirs must come first to get the inheritance and which heirs occupy the next position.

The existence of primacy between heirs can be caused by two things, namely, the closeness of the relationship between the heir and the heir, and the strength and weakness of the kinship between the heir and the heir. The principle of primacy in Islamic inheritance law is reflected in the sound of QS Al-Anfal (8): 75 and Al-Ahzab (33): 6, which emphasizes that there are people (heirs) who take precedence over others (Maqbullah, 2018).

#### Headscarf

Etymologically, the hijab is protecting certain people from receiving all or part of the inheritance because there is someone else. This hijab must be distinguished from the understanding of a person's barrier to becoming an heir (inheritance barrier). Not receiving a share of the inheritance is caused only by external factors, namely the existence of heirs who are closely related to the heir, while the inhibiting factors for inheriting are caused by factors from within the prospective heir, because of the actions, attitudes and actions he has committed. Like because of the murder he committed, ready to choose a different religion from the heir and so on.

#### Husband has more than one wife

If a husband with more than one wife dies, the offspring of the first wife/widow are sometimes prioritized compared to other widows. The provisions regarding the distribution of joint assets can be emphasized again that if the marriage is broken up, due to divorce or death, then the joint assets are divided into 2 (two) for the husband and wife. If the marriage is broken up due to divorce, then the joint property is divided  $\frac{1}{2}$  for the husband and  $\frac{1}{2}$  for the wife.

However, if the marriage is broken up due to divorce and death, then the joint property is divided  $\frac{1}{2}$  for the widow as the husband or wife who lives the longest, and  $\frac{1}{2}$  for the inheritance which will be shared among the heirs of the heir. According to Islamic inheritance law regarding joint assets is regulated in Article 96 paragraph (1) and Article 97 KHI. According to article 96 KHI states that in the event of a divorce and death, then half of the joint property belongs to the spouse (husband or wife) who lives longer, in this case the widow (Fitrida, 2014).

In accordance with the provisions in the Civil Code and Islamic Inheritance Law which regulate joint property in the event of a divorce and death, half of the joint property can be used as inheritance, because the other half belongs to the widow. So that it can be used as an inheritance as a whole, namely the inheritance (personal) assets of the heir and  $\frac{1}{2}$  of the joint assets after deducting the debts of the heir. Regarding this provision, inheritance law according to the Civil Code and Islamic Inheritance Law regulates the same. The position of this joint property in the event of a divorce is as follows: death divorce, husband or wife missing, divorced (Thayeb, 2022).

The formation of the law through Article 181 and Article 852 a intends to reduce this huge difference in numbers by limiting the benefits of the husband or wife who lives the longest, namely the maximum benefit is only the smallest share received by the heir in the previous marriage or a maximum of  $\frac{1}{4}$  of the husband's property, if there is an excess of benefits, then the excess benefits will only be distributed to the legitimate children of the heir without questioning which marriage they were born in (Naskur, 2016).

### ***An Analysis of the Share of Inheritance of a Widow without Children on Her Husband's Inheritance According to the Compilation of Islamic Law and the Civil Code***

A widow in her understanding is a woman who is married but eventually separated from her husband either because of divorce or because of death (divorce). Divorced widows living within the law get a share of the assets from their marriage which is generally known as joint property which is divided into mutual assets after the official divorce. Furthermore, if the widow is left dead (divorced) will get a share of the inheritance from her late husband.

Divorced widows have the right to joint property and do not talk about inheritance because inheritance should only be for widows who are divorced and die, whereas if divorced, they will get joint property obtained during marriage, the distribution of which is equal unless in another agreement, in this case there is a prenuptial agreement or a previous marriage agreement between husband and wife.

This research is a normative research using the law, concept and comparison approach. carried out by the author, where the author wants to describe in detail the rules in the legislation in this case Islamic law which refers to the Compilation of Islamic Law which is abbreviated as KHI and Civil Law which refers to the Civil Code which is abbreviated as the Civil Code concerning the part of a the widow of her late husband's inherited property.

Regarding the share of inheritance for widows who are deceased (divorced) in the perspective of the Compilation of Islamic Law (KHI), Based on the results of a literature search the authors describe in article 97 of the Compilation of Islamic Law (KHI) where in this article states that the widow or widower has the right to divorce each one-half of the joint property as long as it is not specified otherwise in the marriage agreement (Gunawan, 2016). Furthermore, the provisions regarding the share of inheritance for widows according to the Civil Code are regulated in article 852 (a) of the Civil Code which determines as follows, "Regarding the inheritance of a husband or wife who dies first, the wife or husband who lives the longest, in carrying out the provisions in this chapter, equated with a legitimate child of the deceased."

The meaning of the words "a husband or wife who dies first" is the one who dies earlier than the widow, while what is meant by "the wife or husband who lives the longest" is the widow who is still alive, who lives longer than the husband or wife who die. As for the size of a wife's or husband's share of the heir's inheritance originating from the deceased husband's inheritance, in Article 852a of the Civil Code it is determined as equal to the share of one legitimate child (Khisni, 2017).



According to the author, the share of widows who are left to die is clearly regulated and divided in Islamic Law, which refers to the KHI in this case, where widows with children or without children get an inheritance but the amount is different. Based on the above, the author describes that a widow's share of inheritance comes from her late husband's inheritance, it is different if the widow has children or the widow does not have children, what is the mechanism for regulating the distribution of inherited marital assets according to Islamic Law and the Book of Laws? Civil. Furthermore, the author will describe based on the results of the search and the author's research regarding the share of childless widows in inheritance according to KHI and the Civil Code.

### ***Share of Inheritance Derived from Husband's Inherited Assets for Widows Who Do Not Have Children Based on Compilation of Islamic Law***

Several statutory regulations and jurisprudence regulate the share of a widow on her husband's inherited property which becomes an inheritance. Based on Articles 179 and 180, the Compilation of Islamic Law (KHI) explains the portion of inheritance for widows and widowers in general without explaining the remaining (excess) assets or radd. The problem of remaining (excess) assets or radd in the distribution of this inheritance will cause a dispute in terms of heirs, if it is not clearly regulated who the heirs are entitled to receive.

In connection with the writing in this study, the authors raised two problems. The first is how the position of a widow without offspring to her husband's inheritance according to Islamic law. second is how much is the inheritance for widows without children according to Islamic Inheritance Law.

In this research, the author uses normative legal research methods, to find legal rules, legal principles and legal doctrines, that the share of inheritance for widows without children is 1/4 part of the inheritance. According to Islamic jurisprudence, 1/4 of the share is taken from all assets left behind because in Islamic jurisprudence it does not recognize joint assets, whereas according to KHI, 1/4 of the share is taken after being deducted from joint assets by the wife/widow if there is joint property. that a widow who has no offspring cannot control all the inheritance left by her husband, because there are still rights from the biological family to the heir based on Islamic inheritance law (faraidh and Compilation of Islamic Law).

Based on Article 180 KHI where KHI determines the amount of inheritance for the widow as follows: The widow gets a quarter (1/4) of the share if the heir does not leave children, and if the heir leaves children, then the widow gets one-eighth (1/8) of the inheritance. late husband. This is also reinforced by the existence of Supreme Court Jurisprudence No. 301/K/Sip/1961 dated December 27, 1961 which states that a widow is the heir of her late husband and is entitled to a share of the original assets, which portion is the same as that of her husband's biological child.

This is different if the husband is left by his wife, the heir (widower) will get half (1/2). A husband has the right to get 1/2 if the wife who dies does not have children, both male and female, so if a husband who dies does not leave only a wife without children, the heir will fall to the first inheritance right or dzawil furudh, namely wife ¼ share, father, mother from husband ⅓ if you don't have children or grandchildren and ⅙ if you have children or grandchildren, along with siblings.

### **Analysis of the Position of Childless Widows as Heirs to Husband's Innate Assets According to Islamic Law and Civil Law**

In today's society, the inheritance because of wala' has lost its meaning. From a practical point of view, in general, today, slavery no longer exists. Meanwhile, the Compilation of Islamic Law Article 174 paragraph 1 only distinguishes two reasons, namely blood relations or marriage relations. In the compilation of Islamic Law, the relationship between the heir and the heir is regulated in Article 174 paragraph 1 of the Compilation of Islamic Law. The complete contents of Article 174 of the Compilation of Islamic Law emphasizes as follows: The heir groups consist of: (Gunawan, 2016)

- a. According to blood relationship;
  - 1) the male group consists of: father, son, brother, uncle and grandfather.
  - 2) The women's group consists of: mothers, daughters, sisters and grandmothers.

- b. According to marital relations consists of widowers or widows.

If all heirs are present, only children, fathers, mothers, widows or widowers are entitled to inheritance. What distinguishes it from the science of faraidh is that in KHI there are substitute heirs contained in Article 185 concerning substitute heirs which are formulated as follows:

1. Heirs who die earlier than heirs can be replaced by their children, except for those mentioned in Article 173.
2. The share of the heirs of the replacement may not exceed the share of the heirs who are equal to those being replaced.

This article requires attention because in Article 1 children expressly acknowledge the substitute heir. It is wise in this Article to use the word can which does not imply an imperative. This means that in certain circumstances where the benefit requires the existence of a substitute heir can be recognized.

### **1. Position of Childless Widows as Heirs to Husband's Innate Assets According to Islamic Law**

Inheritance according to Islamic law is everything that was owned before death, either in the form of objects or debts, or in the form of rights to property. In addition, there are those who say that inheritance is the right that a deceased has because of his death, such as fines for killing himself. Inheritance is an inheritance which in fara'id terms is called tirkah, which is something left by a deceased person, either in the form of money or other material that is justified by Islamic law to be passed on to his heirs.

The definition of inherited property in Article 171 of the Compilation of Islamic Law letter d is: Assets left by the heir, both in the form of objects that are his or his rights. Meanwhile, the definition of inheritance in Article 171 of the Compilation of Islamic Law letter e is: Inheritance is inherited property plus part of the joint property after being used for the heir's needs during illness until death, costs for handling the corpse (tajhiz), paying debts and gifts to relatives. And in Article 1 of the Compilation of Islamic Law letter f is: Marital assets or syirkah are assets that are acquired either individually or jointly by husband and wife while in a marriage bond, hereinafter referred to as joint property, without questioning whether it is registered in the name of anyone.(Fitrida, 2014).

Joint assets are not found in marriages that enter into a marriage agreement, based on Article 48 of the Compilation of Islamic Law(Gunawan, 2016):

- a. If a marriage agreement is made regarding the separator of joint assets or company assets, then the agreement may not eliminate the husband's obligation to meet household needs.
- b. If a marriage agreement is made that does not comply with the provisions referred to in paragraph (1), it is considered that there is still a separation of joint assets or company assets with the husband's obligation to bear household expenses.

On joint property, husband or wife have the right to joint property during marriage, which is regulated in Article 96 of the Compilation of Islamic Law(Naskur, 2016)vvkom:

- a. In the event of a divorce and death, half of the joint property belongs to the spouse who has lived longer.
- b. Distribution of joint assets for a husband or wife whose wife or husband owes a debt must be suspended until there is certainty of essential death or legal death on the basis of a decision of the Religious Court.

Based on the description above, according to the author, the share that the widow or widower gets in the distribution of joint assets is regulated in Article 97 of the Compilation of Islamic Law, namely: The divorced widow or widower is each entitled to half of the joint property as long as it is not specified otherwise in the marriage agreement. In addition to joint assets in marriage, there are also inherited assets regulated in Article 87 of the Compilation of Islamic Law:

- a. The inherited property of each husband and wife and the assets obtained by each as a gift or inheritance are under the control of each, as long as the parties do not specify otherwise in the marriage agreement.
- b. Husband and wife have the full right to carry out legal actions on their respective assets in the form of grants, gifts, *sodaqah* or others.

Basically, in Islamic law, there is no mixing of personal assets into joint assets, but it is recommended that there be mutual understanding between husband and wife in managing these personal assets, so that this management does not cause damage to the relationship resulting in divorce. Therefore, Islamic law allows for a marriage agreement before the marriage is carried out.

The agreement can be in the form of merging individual private property into joint property, it can also be stipulated that there is no merging of private property into joint property. If the agreement is made before the marriage is executed, then the agreement is valid and must be enforced.

The view of Islamic law that separates the assets of husband and wife actually facilitates the separation of which belongs to the husband's property and which belongs to the wife's property, which are the husband's assets and which are the wife's assets before marriage, which assets are acquired by the husband and which are acquired by the wife individually during marriage, as well as which joint assets are jointly acquired during the marriage.

This separation will be very useful in separating the husband's property from the wife's property if there is a divorce in their marriage. The provisions of Islamic law remain valid until the end of the marriage or one of the two dies. Regarding inheritance, Islamic law considers that inheritance left by husband or wife is divided based on the provisions of Islamic inheritance law.

The inherited property that is divided is the property of each husband and wife who has passed away, that is, after being separated from the assets of the husband and wife who are still alive. Wife's property is not included as inheritance that must be divided. In fact, the wife still has the right to own her own personal property, and she is also entitled to a share of the inheritance of her husband's property.

In the Compilation of Islamic Law (KHI) there are arrangements regarding joint assets. The definition of joint property is contained in Article 1 of the Compilation of Islamic Law letter f as follows: Marital assets or *syirkah* are assets that are acquired individually or jointly by husband and wife while the marriage bond lasts, hereinafter referred to as joint property, without questioning whether it is registered in the name of anyone. Joint assets are not contained in a marriage that enters into a marriage agreement, based on Article 48 KHI:

- a. If a marriage agreement is made regarding the separator of joint assets or company assets, then the agreement may not eliminate the husband's obligation to meet household needs.
- b. If a marriage agreement is made that does not comply with the provisions referred to in paragraph (1), it is considered that there is still a separation of joint assets or company assets with the husband's obligation to bear household expenses. B

Based on the description above, according to the author, the share that the widow gets in the distribution of joint assets is regulated in Article 97 of the Compilation of Islamic Law, namely: The divorced widow or widower each has the right to half of the joint property as long as it is not specified otherwise in the marriage agreement.

The division of inheritance for widows is regulated in the Qur'an Surah An-nisa' verse 12 which reads: "And for you (husbands) half of the property left by your wives, if they do not have children. If your wives have children, then you get a quarter of the property left by them after fulfilling the will they made or/and after paying their debts. Wives get a quarter of what you leave if you don't have children. If you have children, then the wives get one-eighth of the property that you left after fulfilling the will that you made and/or after paying your debts.

The rights of widows in Islamic Law have been stipulated in Articles 96 and Article 97 of the Compilation of Islamic Laws that the widow or widower of a divorcee or divorcee is each entitled to half of the joint property as long as it is not specified otherwise in the marriage agreement. After getting half of the marital property, the widow still gets a share of the inheritance. Article 180 of the Compilation of Islamic Law determines the amount of inheritance for a widow as follows: The widow gets a quarter if the heir leaves no children, and if the heir leaves children, then the widow gets an eighth share.

A marriage bond based on Islamic Law gives rise to marital assets, namely all assets acquired during the marriage. This marital property becomes the joint property of the husband and wife. In Article 1 letter f Compilation of Islamic Law It is stipulated that: Marital assets or *syirkah* are assets acquired either individually or jointly by the husband and wife while the marriage bond is in progress and hereinafter referred to as joint property, without questioning whether it is registered in the name of anyone.

As for what is meant by joint assets are assets acquired during the marriage, which according to Article 91 Compilation of Islamic Law is stated as follows:

- a. Joint property as referred to in Article 85 above can be in the form of tangible or intangible objects;
- b. Tangible shared assets can include immovable objects, movable objects and securities;
- c. Intangible shared assets can be in the form of shared rights or obligations; and Joint assets can be used as collateral by one of the parties with the approval of the other party.

According to the provisions of the Indonesian Islamic Law Compilation, according to the provisions of the Indonesian Islamic Law Compilation, it is stated that the inheritance of a person who has passed away consists of:

- a. Inheritance;
- b. Half (1/2) of the joint property (if there is no marriage agreement).

And if there is a marriage agreement in accordance with the contents of the marriage agreement they entered into. In Islamic Law (*Fiqh*) does not regulate joint property and marital assets, it only explains the existence of male or female property rights as well as a dowry when the marriage takes place, which is mentioned in the Qur'an surah an-Nisa' verse 32: "For men men have a share of what they earn, and for women there is a share of what they earn. In the Islamic law inheritance system, even without offspring, the widow does not inherit all of the inheritance, but the widow inherits it with her parents and heir siblings.

## **2. Position of Childless Widows as Heirs to Husband's Inherited Assets According to Civil Law**

It is stated in Article 832 of the Civil Code that the widow or wife who lives the longest is one of her husband's heirs. As stated in Article 119 of the Civil Code, that starting from the moment the marriage is carried out by law, a unanimous union between the assets of the husband and wife applies. If in the marriage agreement it is stated that the inherited property of the husband cannot be transferred because for example the property is a family inheritance that cannot be owned by anyone other than blood relatives, as stated in Article 120 of the Civil Code then the assets promised are not included in the inheritance of the heir who will transfer to the heir, namely the wife who lives the longest, or it is agreed that only part of the husband's assets will not be included in the inheritance if the heir dies, then part of the property will be included in the husband's inheritance that will be transferred to the widow who is left dead.

The position of the husband's inheritance in inheritance for the widow if there is a marriage agreement, then the arrangement depends on the contents of the marriage agreement made. If no marriage agreement is made, then all the assets of the deceased husband including his inheritance will become an inheritance which will be transferred to the expert. the heir, in this case, is the widow (the wife who lived the longest).

In the Civil Code, when a marriage occurs, automatically the assets belonging to both husband and wife will become unanimous union assets if no other agreement is made in a marriage agreement. Whereas in the Compilation of Islamic Law a marriage does not result in a union of assets, the personal property belonging to the husband remains the property of the husband and the personal property of the wife remains the property of the wife and is controlled by each of them. According to the Civil Code, the position of inherited property in inheritance depends on whether or not there is a marriage agreement made by the husband and wife to regulate the inheritance. Meanwhile, in the Compilation of Islamic Law, inherited assets are included in inherited assets.

The Civil Code and the Compilation of Islamic Law both stipulate that inherited property can become joint property, and then if a divorce occurs, half of the joint property belongs to the spouse who has lived the longest and the other part becomes the inheritance of the deceased. As for the differences in the share of the widow's inheritance to her husband's assets, according to the Civil Code and the Compilation of Islamic Law in the Civil Code, if the heir does not leave any children, the widow gets all of the inheritance from the heir because she inherits alone. Whereas in the Compilation of Islamic Law, if the heir does not leave children, the widow gets  $\frac{1}{4}$  share and inherits together with other heirs. In the Civil Code, the existence of a widow as an heir closes the inheritance rights of class 2, group 3, and group 4 heirs.

Based on the description above, according to the author quoting thoughts from Suwarti that "The division of inheritance does not need to come to tragic terms because in fact the legacy left to each heir already has its own share. The distribution of inheritance in Indonesia is clear and regulated in Islamic Law (Islamic syari'at), Western law/BW (Code of Civil Code) and Customary Law. Where the law regarding inheritance has laid down the inheritance rules on the best, wisest and fairest wealth management system." (Suwarti, Khunmay, & Abannokovya, 2022).

Then, in the Compilation of Islamic Law (KHI) the widow's position as heir does not cover the inheritance rights of other heirs. If all the heirs are there, then the widow inherits along with the heir's children and parents. Equal Inheritance of Widows Against Husband's Assets According to the Civil Code and Compilation of Islamic Law Both make the widow the main heir. Where as long as there are widows, no one can replace the position of the widow as her husband's heir. And equally give half of the heir's inheritance which is joint property to the wife who lives the longest.

## CONCLUSION

The position of childless widows as heirs to the husband's assets according to Islamic Law and Civil Law The Position of Widows as Experts According to the Civil Code. The position of the widow as an heir is included in the group of ab-intestato heirs. As ab-intestato heirs, the widow belongs to Group I heirs. Based on the position of the widow as ab-intestato heirs of Group I, the widow inherits based on her own position. The widow's position appears as an heir based on primacy, thus closing other groups. Widows can inherit the entire inheritance by excluding parents, siblings, and so on, if there are no descendants who have the right to inherit.

The Position of Widows as Experts According to Islamic Inheritance Law. The position of the widow as the heir is due to the marital relationship between the heir and the widow. Meanwhile, in terms of her rights to inheritance, the widow is included in the heirs of Dzawil Furudl. The position of the widow as the heir of Dzawil Furudl is the heir of priority so that she is not hindered (hijab) by other heirs. However, even though there are no children, the widow does not inherit the entire inheritance, but the widow inherits it with her parents and siblings.

The share of inheritance for widows without children according to Islamic law and civil law is the portion that is obtained if there is no marriage agreement and or other provisions, then the wife gets half of the joint property plus a share of half of the joint property which belongs to the

husband, the distribution of which is equal to the heirs other. In KHI article 171 letter e, it is stated that the inheritance plus the share of the joint assets of the heir will entirely become an inheritance that will be transferred to the widow as one of the heirs, after deducting the things that burden the property. The share of inheritance that the widow gets is  $\frac{1}{4}$  if there are no children, and  $\frac{1}{8}$  if the heir leaves children 1. The position of childless widows as heirs to the husband's inherited assets according to Islamic Law and Civil Law.

The position of a widow as an expert according to the Civil Code The position of a widow as an heir is included in the group of ab-intestato heirs. As ab-intestato heirs, the widow belongs to Group I heirs. Based on the position of the widow as ab-intestato heirs of Group I, the widow inherits based on her own position. The widow's position appears as an heir based on primacy, thus closing other groups. Widows can inherit the entire inheritance by excluding parents, siblings, and so on, if there are no descendants who have the right to inherit.

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Journal of SocialScience

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