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The Construction of Islamic Inheritance Law: A Comparative Study of the Islamic Jurisprudence and the Compilation of Islamic Law

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Abstract: This article discusses the construction of inheritance law, a comparison between fiqh (Islamic Jurisprudence) and the Compilation of Islamic Law (KHI). This is a normative juridical legal study using a comparative legal approach and the theory of existence as an analytical tool. This article concludes that the fiqh rules regarding inheritance law are based on the understanding of the Qur'an and hadith based on legal construction influenced by the Arabic social and cultural order. This suggests that KHI regulates inheritance law in accordance with the socio-cultural conditions of Indonesian society. The construction of inheritance law in fiqh has both similarities and differences with KHI. The similarity between fiqh inheritance law and KHI is that respectively rely on the Qur'an and hadith as mashadir al-ahkam. Meanwhile, the difference lies in the social reality and the cultural structures of the developing community which affect the two legal systems. The Arab society is patrilineal in its kinship system, whereas in Indonesia it is more bilateral, as a result, the distribution of inheritance tends to be different. Next, when it is seen from the point of view of the existence of this law in Indonesia, the fiqh inheritance law and inheritance law based on KHI still exist. Islamic jurisprudence is recognized as an integral part and raw material for the formation of national law in Indonesia.
Keywords: Construction; Inheritance Law; Islamic Jurisprudence; Compilation of Islamic Law.

Introduction

The inheritance law is an important topic of Islamic family law, and its construction is shifted when it is applied in the context of the nation-state. This is observable in some Muslim countries, such as Egypt and in Sudan. In 1925 the two countries issued a rule that a wife who loses her husband is entitled to the remaining inheritance if there is no *ashabah*, *ashabul furudh*, or other heirs by means of returning the remaining possessions (*radd*) (Wahib, 2014: 36; Reskiani et al., 2021: 39-51).

Many Muslim-majority countries have a long history of implementing the inheritance law. For example, Syria established the family law (Syrian Law of Personal Status) related to inheritance in 1953. Morocco enacted inheritance law through civil law (Maroccan Code of Personal Status) in 1958 and Iraq established civil law (Law of personal status) in 1959, and Pakistan passed the family law in 1961 (*Pakistan Family Laws Ordinance*) (Wahib, 2014: 40; Syahrizal, 2004: 229).

In 1946 Egypt also included compulsory wills, which determined that the orphan grandchildren could inherit from the grandfathers' possessions (Abubakar, 1998). In addition, in 1956 Tunisia issued a law on the permissibility of children whose parents die to receive an inheritance from their parents if they were still alive with a maximum of one-third of the inheritance above the amount mandated by mandatory will. In 1976, Jordan issued a regulation that a grandson could inherit no more than one-third of the property (Mahmood, 1989: 162).

Meanwhile, in Turkey, there have been aspirations to encourage the practice of the equitable distribution of inheritance between men and women. This is so since there are differences in the regulation

and practices between modern inheritance law and traditional inheritance practice tends to be different. The Turkish government has proposed a series of changes related to inheritance rights, which are managed in a program of land consolidation and reorganization to allow just practices to occur. These changes result in a major impact on the economy and lead to cultural and political clashes. The significant variable is the life experiences of the stakeholders, based on the share of the inheritance (Yucer et al., 2016).

Meanwhile in Indonesia, the distribution of inheritance assets has also undergone changes through the establishment of a Compilation of Islamic Law in 1991 regulating the substitution of heirs. Children can replace the position of their deceased parents as a substitute for the heirs provided that their share does not exceed that of the parents and other heirs' (Djawas et al., 2022; Nurlaelawati, 2007).

Some of the provisions in the inheritance law, such as mandatory wills, grandchildren to be the substitute for heirs and wives who are entitled to receive the remaining inheritance from their husbands, are new to law. In Indonesia, due to the construction of Fiqh inheritance law in the context of KHI, empirically, the inheritance law is different from the customs and kinship systems adopted by most Indonesians: the bilateral/parental (Hazairin, 1982; Hadikusuma, 2003; Cammack, 2003; Rahman et al., 2022; Basri et al., 2022). This is relevant to the fact that in the Arab society, the construction of Islamic Jurisprudence is pretty much shaped by social and cultural contexts of the Arab.

For that reason, the Indonesian Islamic scholars/Muslim clerics formulated a legal rule of inheritance, which is adaptable to the Indonesian contexts. The formulation of inheritance law is contained in the KHI as a legal rule applicable in the Religious Courts throughout Indonesia, which is based on Presidential Instruction Number 1 of 1991 concerning Dissemination of Compilation of Islamic Law (Abdullah, 1994; Rofiq, 2001; Zubair et al., 2022).

So far, studies on fiqh and KHI related to inheritance law have been carried out by many, for example, Yuwamanu (2016), Bilfaqih (2016), and Lutfi (2016) conducted research on this issue. However, they failed to pay attention on the differences between *fiqh* inheritance law and KHI in the context of customs and kinship of Indonesian society which is unlike those taking place in the Arab society. Meanwhile Utama (2016), Mustofa (2017), and Zahari (2014) tend to see the KHI inheritance law partially on certain issues separately. For example, studies on KHI only focus on the issue on the substitutions of heirs. Another trend is to compare the practice of inheritance in Indonesia with three systems of inheritance law, namely custom, Islam, and the West (Berinti, 2013). These studies do not look at inheritance law issues comprehensively and do not examine contextually what is regulated in the KHI and *fiqh*. The existing studies delimit themselves to issues regulated in the KHI.

This paper is based on the assumption that the construction of *fiqh* inheritance law is based on customs and the patrilineal kinship system prevailing in Arab society, while the KHI inheritance law is influenced by the customary construction and the bilateral kinship system of Indonesian society. In addition, the KHI inheritance law is influenced by the Western inheritance law Burgerlijk Wetboek (*KUHPerdata*) which has long been practiced in society and the general court.

This study is different from previous studies, aimed at responding to inheritance law issues more comprehensively by examining the legal constructs that underlie the provisions of *fiqh* inheritance law with KHI. In line with that, the study is focused on three things: first, the construction of the formulation of inheritance law in *fiqh*; second, the construction of inheritance law in KHI, and third, a comparative analysis of the construction of *fiqh* law of inheritance with KHI. Therefore, the novelty of this research is to refine and provide additional analysis to previous studies, so that the study provides a deeper perspective on inheritance law in Indonesia.

Method

This is a normative juridical study using a comparative law approach and existence theory as a tool of analysis. The comparative law approach is used as a tool in legal studies that compares and assesses a rule and legal system, investigating similarities and differences (Amiruddin & Azikin, 2014: 130; Marzuki, 2014: 172-177). Meanwhile, the theory of existence confirms that Islamic law is recognized as being an

integral part in the national legal order in Indonesia (Ali, 2014: 82; Syahrizal, 2004: 187). The rule or legal system is the *fiqh* legal system and the national legal system in Indonesia, while the national law in the theory of existence is KHI which has become an integral part of the government regulations.

Results and Discussion

Construction of inheritance law in *fiqh*

Distribution of inheritance is an act of transferring rights and obligations from the deceased to his heirs as the beneficiary of inheritance in owning and utilizing the inheritance. A person can inherit only if he is legally bound to get heirs. In *fiqh*, there are three conditions one is eligible to inherit (Ash-Shabuni, 1979; Rahman, 1994; Haries, 2015; Asrizal, 2016):

a. A kinship: is the lineage relationship (caused by birth) between the person who inherits and the person who are inherited. A kinship can be divided into three groups: *furu'*, the offspring of *muwarris* (people who inherit); *ushul*, namely the ancestors of people who inherit; and *hawasyi*, which is a family connected to *muwarris* (people who inherit) through a sideways line (brother, uncle).
b. Marriage: a legal marriage in the Islamic law.
c. *Al-wala*: kinship because of one's help to free slaves.

These groups have similar rights to inherit as it has ben regulated in the Qur'an and hadith.

Based on these three eligibilities, heirs are then categorized as follows in the Islamic jurisprudence (Khalifah, 2007; Rofiq, 1981; Ash-Shiddieqy, 2011).

a. *Zawil furud* is the heir who is determined by *syara'* to obtain a certain share in the distribution of the inheritance. There are 13 categories: nine female heirs, consisting of daughters, grand-daughters of sons, mothers, maternal and paternal grandmothers, sisters (siblings), and wives. There are four male heirs, consisting of the father, the paternal grandfather, a thousand brothers, and the husband. They receive a share of the inheritance specified in the Qur'an and hadith as much as ½, ¼, 1/6, 1/8, 1/3 and 2/3.
b. *Zawil arham:* is a kinship that is not entitled to be the heirs as they are from female lineage and some are females from male lineage. The former includes: grandchildren and granddaughters of daughters, maternal grandparents, sisters' sons and daughters (siblings), uncle and maternal aunt, while the later includes: brothers' daughter or niece (siblings-the same father), brothers' son and daughter (the same mother), the aunt of the father's side.
c. *Ashabah:* is the heir who gets the remaining inheritance after being distributed to other heirs-they are: (1) *asabah bin nafsi* are 12 male heirs, which includes: sons, grandchildren of sons, fathers, paternal grandparents, brothers (siblings, the same father), brothers' sons (sibling, the same father), paternal uncle (fathers' sibling), son of paternal uncle (fathers' sibling); (2) *asabah bilghairi* includes female heirs when meeting with four male heirs as siblings, consisting of daughters with sons, granddaughters of sons and grandchildren of children male, female sibling with sibling brother, sister and brother; (3) *ashabahma'alghairi* are two female heirs consisting of siblings and sisters by blood when meeting daughters or granddaughters of sons.

The three categories of heirs are determined based on kinship and marital relations, not including *al-wala`*, because *al-wala`* inheritance occurs if there is no heir from these two causes (kinship and marriage). *Fiqh* also regulates the barrier to inherit, meaning that inheritance barriers are causing the heirs to lose their right to inherit (Asrizal, 2016). There are two kinds of barriers: the *washfi* and *syakhsy* barriers: the former prevents a person from getting an inheritance, because of one's social status (Ash-Shabuni, 1979; Lubis, 1980).

a. Slaves: do not have a right to inherit even though from their parents, since slaves' possessions belong to their masters.
b. Killers. If an heir kills the inheritor (for example, a child kills his father), he no longer has a right to inherit from their parents.
c. Different in faith. A Muslim cannot inherit or be inherited by a non-Muslim, regardless of religions.

While the later, the *syakhsy* barrier is the barrier of someone from inheriting either in whole or in part because there are other heirs who are more entitled to inherit. *Syakhsy* is divided into two: the *nuqshan* barrier and the *hirman* barrier. The former is the reduction of the amount of share recived by a certain heir as there are other heirs who are more closely related to the one who give inheritance. The later is a barrier that causes an heir not get any part of his inheritance at all, because there are other heirs who are more closely related to the heir (the one who give inheritance). Both the *nuqshan hijab* and the *hirman hijab* show a legal rule that rests on the kinship that prevails in a society.

Construction of Inheritance Law According to KHI

KHI inheritance law differs from that of *fiqh* in several respects. These differences include:

1. Common Assets as Assets in Marriage

KHI regulates assets in marriage, differentiating between individual assets (husband-wife) and shared assets. Individual assets are assets obtained before marriage as a result of business, gifts, grants or inheritance, etc. Joint assets are assets obtained from the results of the husband and wife's business while in the marriage bond (Ali, 2008). The KHI rules regarding assets in marriage are closely related to the status of the assets when divided as inheritance. Carried out assets are the property of each husband and wife respectively, so they are not inherited assets, except those of the deceased, while joint assets are inherited assets after being divided in half for the husband and half for the wife. The provisions of KHI regarding assets in marriage are as follows:

a. Article 85: the existence of joint assets in the marriage does not preclude the possibility of the existence of assets belonging to each husband or wife respectively.
b. Article 87: (1) The inheritance of each husband and wife and the property obtained by each as a gift or inheritance is under their respective control, as long as the parties do not specify otherwise in the marriage agreement. (2) Husband and wife have the full right to take legal actions on their respective assets in the form of a gift, present, *sadaqah* or other.
c. Article 97: a widow or divorcee is entitled to one half of the joint property as long as the marriage agreement does not specify otherwise.
d. Article 190: for heirs who have more than one wife, each wife has the right to share in the share of the household with her husband, while the entire share of the heir is the right of the heirs.

2. Barriers to Inherite

An heir should receive inheritance rights according to the applicable provisions. However, under certain conditions, his inheritance rights are null and void. There are two reasons for the loss of the heir's right to receive an inheritance according to KHI, as regulated in Article 173, namely: a person is prevented from becoming an heir if, by a judge's decision who has permanent legal force, he is punished for: (1) is accused of having killed or attempted to kill or seriously maltreated the heirs; (2) being blamed for slander for filing a complaint that the heir has committed a crime punishable by five years imprisonment or a more severe sentence.

3. The Heirs

The heirs are the parties who have been determined to get the inheritance. KHI regulates the parties who become heirs in Article 174, namely:

a. The groups of heirs consist of: (1). According to blood relations: (a) The male group consists of: father, son, brother, uncle and grandfather; (b) The female group consists of: mothers, daughters, sisters and grandmothers.
b. According to the marital relationship consisting of: widowers or widows.If all heirs are present, only children, fathers, mothers, widows or widowers are entitled to inherit.

4. Substitute Heirs

Substitute heirs are the replacement heirs as the name imply, namely people who become heirs because their parents who are entitled to inherit die earlier than the heirs so that the position of the parents is replaced by him. KHI regulates the inheritance rights of successive heirs for the heirs who deceased earlier, in Article 185, namel; (a) The heirs who die earlier than the inheritor can be replaced by their

children, except for those mentioned in Article 173; (b) The share of the replacement heirs must not exceed the share of the heirs who are equivalent to that of the replaced.

5. Mandatory Will For Children and Adoptive Parents

KHI specifically regulates inheritance rights for children and adoptive parents who do not receive a will from the heir. This inheritance right is given in the form of a mandatory will, which is an inheritance right that must be given if the heir during his lifetime does not provide a will for his property for the child or adoptive parents. This is regulated in KHI Article 209 as stated below:(a) Adopted children's inheritance is divided according to Article 176 to Article 193, while adoptive parents who do not receive a will are given a mandatory will of up to 1/3 of the wills of their adopted children. (b) Adopted children who do not receive a will shall be given a mandatory will not exceeding 1/3 of the inheritance of their adoptive parents.

A Comparative Analysis Between the Construction of Islamic Jurisprudence and KHI on Inheritance Law

There are several similarities and differences between *fiqh* and KHI's principle on the inheritance law. The similarity between *fiqh* inheritance law and KHI lies on similar references of the law: The *Qur'an* and *hadith* as the source or *mashadir al-ahkam*. The other similarity is that both *Fiqh* and KHI determine the rights of heirs, which depend on the level of responsibility of each heir in accordance with the cultural practices of certain community. The customs of the Arab community adopted by *fiqh* give full responsibility to the man to manage and support the family's needs, which then permissible for men to take full authority of the marital property. However, the KHI adopts the customs of Indonesian society which gives freedom to women (wives) to take part in managing and helping husbands to support the family's needs, so that the assets in marriage are joint assets of husband and wife and all women become heirs as men do.

A comparative analysis on the difference in inheritance law both in *fiqh* and KHI can be examined in several respects: joint property, prohibition of someone from obtaining an inheritance, the category of male heirs, the category of heirs, substitute heirs and mandatory wills.

1. Common Property

According to Anshary (2013), *fiqh* does not recognize the term collective property, because *fiqh* is developed from the values and customs of the Arab community which do not directly involve wives to take care of the family's needs. For that reason, wives are more responsible to serve the husbands specifically in personal matters related to biological relationships and services for the husbands' other needs. As for the needs of the household in general, the domestic needs are left to maids to take care off (Albar, 1994; al-Ghazali, 1998; Muhammad, 1994; Hitti, 1984; Ali, 1997; Sugiswati, 2014).

The provision of *fiqh* does not recognize the separation in the ownership of the property; this is so because *fiqh* itself is developed from the customs of the Arab community, which inherited the *Jahiliyah* custom of restricting women at home and are not entitled an inheritance right (Albar, 1994; Al-Ghazali, 1998). *Fiqh* does not recognize a joint-ownership of the property, and thus there is only a separate ownership of the property is recognized, and thus it is no need to separate assets when one deceased or divorced. However, in terms of KHI and customary practices, the Indonesian people are in a fairly good position in the distribution of assets (Bowen, 2003; Sjadzali, 1995; Daud and Akbar, 2020).

Whereas the KHI regulates the nature of separate and joint assets. The separate assets are those obtained separately by each husband and wife and become the rights and responsibilities of each, and while joint assets are obtained together by both husbands and wives' bussiness, and this kind of asset becomes the joint right and responsibility of husbands and wives. This rule is related to customs in the Indonesian society, where wives are also responsible for taking care of household affairs, even many wives are involved directly or indirectly, participating in providing for families' needs by working outside home as career women or helping husbands working full-times. As the result, wives also take parts in supporting families' needs, so that the assets obtained during the marriage become joint property of husbands and wives.

2. Barriers to Inherit

Another aspect differenting *fiqh* and KHI is the obstacle for an heir to receive inheritance rights. *Fiqh* determines that there are three reasons for an heir who in principle has the right for inheritance. However, they are negated from receiving the inheritance due to one of the following reasons: being a killer of the heir, becoming a slave, and being in different faith. Murdering is one of the main reasons that prevent someone to inherit. This is because they rush to get inheritance by killing the inheritors as he wants to immediately get an inheritance, and in accordance with the rule of law, those who rush to inherit illegally result in their ineligibility to get his share (Ash-Shabuni, 1997).

In addition, slaves cannot inherit because they themselves belong to their master along with all their belonging. Besides, some scholars suggest that slaves are incapable of acting lawfully in managing their properties and they have no longer own relationship with their families. Next, the heirs are not entitled to receive the share from the inheritor if both the heirs and the inheritor are in different faith. This is because Muslims are not allowed to give a share for non-Muslims as they may disadvantage the Muslim communities. However, some scholars suggest that Muslims may inherit non-Muslims, but not the other way around, since it is believed that "*al-Islâmu ya'lu walâ yu'la 'alaihi*" (Islam is high, none is higher than Islam) (Ash-Shabuni, 1979). The KHI suggests that the following kinds of culprits negate from becoming heirs: killing, attempting killing, seriously mistreating an heir, or slandering an heir for committing a crime that carries a sentence of five years in prison or more. This suggests that the KHI principles are exactly the same as those stipulated in the Civil Code (*KHUPerdata*) Article 838 (Government of the Republic of Indonesia, 1975):

a. Those who have been convicted of being blamed for murdering or trying to kill the person (deceased).
b. Those who by a judge's verdict have been blamed for slanderly filing a complaint against the deceased- that he has committed a crime which is punishable by a prison sentenced of five years or higher.

3. Categorization of Heirs

The other difference is that the *fiqh* inheritance law recognizes three categories of heirs: *zawil furud, zawil arham,* and *asabah*. According to *fiqh*, the categorization of heirs into three types is inseparable from the inheritance principle adopted, namely patrilineal (paternal line). This is because in the view of *fiqh* on the family law system is more of a patrilineal kinship system, in accordance with the kinship structure of the Arab society. The patrilineal kinship system is a community custom whose kinship system originates from the father's side (Hazairin, 1982; Abubakar, 1998).

In the patrilineal kinship system adopted by *fiqh*, the recognized inheritance system is that the heirs are from the father's line (male). As a result, the female heir is included in the *zawil arham* category, which is a relative of the deceased, but they are not among those who receive a share of inheritance based on the provisions of the *Qur'an* and *hadith*, nor are they included in the group (Ash-Shabuni, 1979; Rahman, 1994). In other words, they are people who are neither *zawil furud* nor *ashabah*, for example, grand-children of daughters, paternal aunts, uncles and aunts of their mothers, sons and daughters of sisters (niece), daughters of brothers (niece), and so on.

According to *fiqh*, *zawil arham* gets the share only in the absent of *zawil furud* and *ashabah*. If the *zawil furud* exist, then they are entitled to get the share as *ashabah furud*, the rest is distributed by means of *rad* when no heir gets the share of *asabah*. However, if the heir only consists of husband or wife, they then take the *furud* only, while the rest is left to *zawil arham*, because according to a number of scholars, *rad* can be granted to husbands and wives given that *zawil arham* have got their share (Khalifah, 2007).

As for the KHI adheres to the bilateral principle, and thus the legal consequence is that *zawilarham* is no longer considered as a part of heirs. As a result, KHI considers both male (father) and female (mother) as heirs. Thus there are only two categories of heirs: *zawil furud* and *ashabah*. This inheritance system is the permissible for all relatives to get their share accordingly.

4. Substitute Heirs

KHI also regulates the substitute heirs, namely the descendants of the heirs deceased earlier than the inheritor. The principle of the substitute heir eliminates the concept of *zawil arham* (Anshary, 2013). The substitute heirs are those under the category of the *zawil arham*, such as a grandson of a daughter replacing the position of his mother who dies earlier than the girls' parents (sons' grandparents), the example of which is when someone dies, leaving one son and one grandson from a daughter (Hasballah, et.al., 2021).

To settle this issue, *fiqh* determines that a son receive the share, while grandson (the son of the daughter) does not inherit as they are categorized as the *zawil arham*. By contrast, KHI decides that a grandson (the son of the daughter) is entitled to inherit an equal amount his deceased mother receives as the replacement heir. The settlement of this case is that one son becomes *asabah bilghairi* together with a grandson (the son of a daughter), provided that the son gets 2/3 of share and the grandson gets 1/3 of share, which is an accordance with the principle of the *asabah bilghairi*-that is, men get twice the share of that of women. In this case, the position of one grandson is considered a female as he is the replacement heir of the deceased mother.

Related to the provisions of the KHI which recognize two categories of heirs: *zawil furud* and *asabah*, as well as replacement heirs, the KHI inheritance law has several principles, including the bilateral principle, which does not differentiate between men and women in terms of rights to inherit, so they do not recognize *dzawil arham* relatives, and the principle of direct heir and the principle of a substitute heir (Supreme Court of the Republic of Indonesia, 2013).

5. Inheritance for Adopted Children and Adopted Parents

In addition, KHI's regulation is also different from that of *Fiqh* in regard with children and adoptive parents. The KHI regulates the inheritance rights of children and adoptive parents, in which children and adoptive parents who do not receive a will are given a mandatory will of up to 1/3 of the wills of their adopted children. The KHI principles mandate that the child and the adoptive father can mutually testify on each other's assets. If there is no will from the adopted child to the adoptive father or vice versa, the adoptive father and/or adopted child can be given mandatory wills by the Religious Court/*Syar'iya*h Court in a maximum of 1/3 of the inheritance property (Supreme Court of the Republic of Indonesia, 2013; Anshary, 2013).In principle, *fiqh* does not recognize an adoption institution (*tabanni*) and its scholars prohibit such a practice; what allowed is only a parenting role to avoid the removal of the legal lineage of the child from his/her biological parents. However, it does not mean that Islam prohibits ones to give a will for those who have have contributed to caring for the child. In fact, it is obligatory to give a certain share for the parenting roles taken by adopted parents (Abubakar, 1998).

6. Mandatory Wills

According to some *fiqh* scholars, the obligatory wills for relatives is referred to al-Baqarah, 180. However, the verse has been replaced (*manshukh*) by the revelation of an-Nisa 'verses 11 and 12 regarding the inheritance rights. Some even argue that surah al-Baqarah verse 180 concerning wills is canceled by the hadith "*lâ washiyyata li wârisin*" (it cannot be a will for the heir). However, *fiqh* scholars are in dissenting views in regard with those who are not entitled to inherit. Most Muslim clerics state that the obligatory will is related to those unfulfilled during an heirlives, such as debt, alms, and other religious obligations. Meanwhile, according to Ibn Hazm, the mandatory wills concern a relative who is not entitled to an inheritance (Syahrizal, 2004: 299). The term wills is officially referred to in the Egyptian Law in 1946 regarding the wills to inherit to a grandchildren whose fathers' death is hindered by the son of the heir. This suggests that in regard with wills, KHI refers to the Egyptian Law in regulating inheritance rights for children and adoptive parents with the consideration the rule produces a sense of justice for the Indonesian people.

The construction of *fiqh* and KHI on inheritance law as described can be seen in the following table:

Table 1. The comparison between the constructions of inheritance law in *fiqh* and in KHI

No	Fiqh Inheritance law	KHI Inheritance law	Differences
1	Does not recognize joint assets in marriage, so there is no sharing of joint assets in inheritance.	1. Recognizing the joint assets. 2. Common assets become inheritance after it is divided in half for each husband and wife.	1. *Fiqh* adheres to the traditional system of the Arab society, where the position of the wife in the household is only to serve the husband, there is no obligation to work either at home or outside the home, even breastfeeding her child can be paid to someone else. 2. KHI adheres to the customary system of the Indonesian people, where the position of the wife works at home or outside, so that a wife, directly or indirectly, contributes to the family income.
2	There are three things that prevent an heir from obtaining an inheritance, namely the slave, the murderer, and difference in faith	The KHI agues that an heir is prevented from inheriting if he is blamed for murdering, attempting to kill, seriously mistreating the heir, or slandering the heir for having committed a crime punishable by five years in prison or a harsher sentence.	1. *Fiqh* determines that an heir is prevented from obtaining an inheritance under three conditions, namely (1) if the heir is a slave. This status results in the heir not having any ownership rights, including himself being the property of his master, so that the property he owns also becomes his master's. (2) Killing the heir. The heir who kills the heir means that he wants to immediately receive an inheritance. (3) Difference in faith. Heirs of different religions and heirs are prohibited from inheriting because the assets can later be used by the person against Islam. 2. KHI refers to the Article 838 of the Civil Code suggesting (1) Those who have been convicted of being blamed for murdering, or trying to kill. (2) Those who by a judge's decision have been blamed for slanderously filing a complaint against the deceased, are a complaint that has committed a crime which is punishable by five years imprisonment or a heavier sentence.
3	Heirs are only from male relatives (father), not from female relatives (mother), except female siblings.	The heir consists of relatives of both the male (father) and female (mother) parties	1. *Fiqh* determines that there are three reasons for a person to become an heir, namely kinship (with a lineage), marriage, and *al-wala*. Heirs due to the lineage are understood only from the male lineage (father) according to the kinship system of the patrilineal Arab society. 2. KHI recognizes the heirs of kinship between male (father) and female (mother) based on the bilateral kinship system of the Indonesian society. This is emphasized in Book II of the Guidelines for the Implementation of Duties and Administration of Religious Courts, which do not differentiate between men and women in terms of lineage and inheritance, so that the provisions of Article 174 of the KHI does not differentiate between grandparents and uncles, either from the father or mother.

4	Fiqh categorizes heirs into three types, namely *zawil furud, zawi larham,* and *asabah*	KHI only recognizes two categories of heirs, namely *zawil furud* and *ashabah*	1. The *Fiqh* inheritance law adheres to the patrilineal principle adopted by the Arab community which only recognizes the lineage of the male line (father), so that the mother's descendants are not heirs, which is called *zawil arham.* 2. KHI inheritance law adheres to the bilateral principle as adhered to by Indonesian society, which does not differentiate between men and women in terms of lineage and inheritance, so they do not recognize *zawil arham's* relatives. This principle is based on: a. Article 174 KHI does not differentiate between grandparents, grandparents and uncles, either from the father or mother. b. Article 185 KHI regulates substitute heirs, so that grandchildren of daughters, daughters of brothers and daughters /sons of sisters, aunts from the father and aunts of the mother's side and descendants of the aunts are substitute heirs. c. Jurisprudence of the Supreme Court of the Republic of Indonesia.
5	*Fiqh* does not know a substitute heir, when the original heir deceased	KHI regulates the sustitute heir, if the original heir dies before the heir dies.	1. *Fiqh* inheritance law adheres to the principle "a person becomes an heir if he lives when the inheritor deceased". 2. KHI adheres to the principle of "direct heirs and the principle of substitute heirs", namely: a. The direct heir (eigenhoofde) is the heir as mentioned in Article 174 KHI. b. Substitute heirs (plaatsvervulling) are the heirs regulated in Article 185 KHI, namely the replacement heirs / descendants of the heirs mentioned in Article 174 KHI.
6	Children and adoptive parents are not heirs who are entitled to inherit, unless there is a will from the heir while alive.	KHI regulates that children and adoptive parents are entitled to receive a mandatory will, a maximum of 1/3 of the inherited property left behind, if the heir does not provide a will.	1. *Fiqh* does not recognize the term mandatory will, but what is known is wasiat, which is the gift of property which is given by the heir while alive, but the ownership is handed over after the heir dies. In addition, jurisprudence scholars prohibit adoption/adoption of children known as *tabanni*, as practiced by the Arab community by imparting the adopted child to the adoptive father, but only the care for the child is allowed. 2. KHI adheres to the principle of a compulsory will, meaning that the child and the adoptive father can mutually make a will regarding each other's assets, if there is no will from the adopted child to the adoptive father or vice versa, the adoptive father and / or adopted child can be given a mandatory will, a maximum of 1/3 of the inheritance by the Religious Court /*Syar'iyah* Court. In this case, KHI recognizes the adoption of children as a form of social kindness to help

	others, as long as the adoption does not reach the recognition of the transfer of the child's lineage to the adoptive father.

Data source: generated from multiple sources, 2022.

Referring to our discussion, it appears that there are three fundamental differences in *fiqh* and KHI: first, the KHI regulation only recognizes two categories of heirs: *zawil furud* and *ashabah*. This is because KHI adheres to a bilateral kinship system that applies to most Indonesian societies, where kinship between men and women is recognized as the beneficiary of the inheritance. Meanwhile, *fiqh* recognizes three categories of heirs: *zawil furud, zawil arham* and *ashabah*. This is because the *fiqh* adheres to a patrilineal kinship system that applies in Arab societies, so that the recipient of inheritance is only the kinship of the male lineage, while female kinship is not entitled to inherit, which is called *zawil arham*. Second, the KHI rules accommodate the inheritance rights for the deceased offspring of the heirs to receive the inheritance in place of their deceased parents. The provisions of the KHI are based on the principle of "replacement heirs", while *fiqh* does not recognisea replacement heirs, because it adheres to the principle that "the beneficiary is an heir who lives when the heir deceased". Third, the KHI rules also provide inheritance rights to children and adoptive parents, when the heir does not leave a will, based on the principle of "mandatory wills". As for *fiqh*, it does not give inheritance rights to children and adoptive parents, unless it is inherited by the heir, because *fiqh* does not recognize the concept of mandatory will.

These two sources of inheritance law exist in the Indonesian societies. Fiqh as a source of the Islamic law is an integral part of national law and its independence and status is recognized in the national law in Indonesia and is still practiced in the society. In addition, regarding the social and cultural orders of the society, which shape the construction of law, can be traced in terms of *urf* and *'adat* as one of the foundations in constructing the Islamic law. *Urf* one of the basis of the fiqh, cultural values, which is not contradicted the sharia, as a way to interprete the Qur'an and hadith (Yahya and Rahman, 1986; Jazil, 2018). Next, *'adat*, the other basis of fiqh, *al-'adat al-mahkamah*, the cultural values, which is not against the Shari'a, is also a basis for the establishment of a law that has no concrete evidence in the al-Qur'an and hadith. The social and cultural order of the community is an integral part of the *urf*, a basis for a legal consideration both in *fiqh* and in the KHI.

Furthermore, the difference in legal construction is the result of the Arab community's customary system which is different from the Indonesian community's customary system. The socio-culture of Arab society generally adheres to a patrilineal kinship system. Likewise, the Indonesian people's kinship system, which mostly adheres to a bilateral system.

Conclusion

There are similarities and differences of the *fiqh* and KHI construction of inheritance law. Both sources of law were constructed referring to the *Qur'an* and *hadith*, while their differences lie on different cultural values: *fiqh* bases itself to the Arab community while the KHI bases itself to the Indonesian cultural values. The social conditions of Arab society at that time still inherited old traditions, when Islam came these habits changed drastically, things that were contrary to the Shari'a were straightened out by the teachings of the Prophet PBUH. Customs that are not contrary to Islam and the patrilineal kinship system adopted by Arab society are still maintained, so that it has an impact on the legal products produced at that time, including the issue of inheritance law. This understandable because in the law of jurisprudence it is mentioned *al-'adat al-muhaksatria*, which is also a community custom that is not against the law. Meanwhile, KHI, which is a rule applied in Indonesia, includes the formulation of inheritance law in accordance with the customs and kinship system adopted by most Indonesians. Although the two sources of the law have similarities and differences, the two sources exist in the Indonesian society.

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