

# Legal Implications of Inheritance Renunciation in Islamic Jurisprudence and the Indonesian Civil Law System

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## Abstract

This research discusses the legal implications of the rejection of inherited property in the perspective of Islamic law and the Indonesian civil law system (Civil Code). In Islamic law, the rejection of inherited property is understood as the resignation of an heir or several heirs from their right to receive a share of the inheritance, provided that it can be accompanied by the provision of compensation either from the inherited property itself or from other heirs, as stipulated in Article 183 of the Compilation of Islamic Law (KHI). Meanwhile, in the Civil Code Article 1057-1058, the refusal is made expressly through an official statement before the Registrar of the District Court in the jurisdiction where the inheritance is open. This research uses a normative juridical method with a comparative approach to analyze the doctrines of classical Islamic inheritance law and the provisions of positive Indonesian legislation. The results show that in Islamic law, rejection does not erase the status of heirs, but only serves as a voluntary relinquishment of rights. In contrast, in the civil law system, rejection causes a person to be considered never to be an heir so that all rights and obligations, including the obligation to pay off the testator's debt, are canceled. This difference indicates a difference in legal philosophy: Islamic law emphasizes family management and balance of justice between heirs, while civil law emphasizes procedural certainty and protection of third parties, especially creditors. This study emphasizes the importance of harmonizing the principles of the two legal systems within the framework of Indonesia's pluralistic inheritance law to prevent inheritance disputes.

**Keywords:** Inheritance Renunciation; Islamic Law; Civil Code; Compilation of Islamic Law; Legal Implications.

## Abstrak

Penelitian ini membahas implikasi hukum penolakan harta warisan dalam perspektif hukum Islam dan sistem hukum perdata Indonesia (KUH Perdata). Dalam hukum Islam, penolakan harta warisan dipahami sebagai pengunduran diri seorang ahli waris atau beberapa ahli waris dari haknya untuk menerima bagian warisan, dengan ketentuan dapat disertai pemberian imbalan baik dari harta warisan itu sendiri maupun dari ahli waris lainnya, sebagaimana diatur dalam Pasal 183 Kompilasi Hukum Islam (KHI). Sementara itu, dalam KUH Perdata Pasal 1057–1058, penolakan dilakukan secara tegas melalui pernyataan resmi di hadapan Panitera Pengadilan Negeri pada wilayah hukum terbukanya warisan. Penelitian ini menggunakan

metode yuridis normatif dengan pendekatan perbandingan untuk menganalisis doktrin-doktrin hukum waris Islam klasik dan ketentuan perundang-undangan positif Indonesia. Hasil penelitian menunjukkan bahwa dalam hukum Islam, penolakan tidak menghapus status ahli waris, tetapi hanya berfungsi sebagai pelepasan hak yang bersifat sukarela. Sebaliknya, dalam sistem hukum perdata, penolakan menyebabkan seseorang dianggap tidak pernah menjadi ahli waris sehingga seluruh hak dan kewajiban, termasuk kewajiban melunasi utang pewaris, menjadi gugur. Perbedaan ini menunjukkan adanya perbedaan filosofi hukum: hukum Islam lebih menekankan pada pengelolaan keluarga dan keseimbangan keadilan antar ahli waris, sedangkan hukum perdata menekankan kepastian prosedural dan perlindungan terhadap pihak ketiga, khususnya kreditor. Kajian ini menegaskan pentingnya harmonisasi prinsip-prinsip kedua sistem hukum dalam kerangka hukum waris di Indonesia yang bersifat majemuk untuk mencegah sengketa warisan.

**Kata Kunci:** Peningkaran Waris; Hukum Islam; Kitab Undang-Undang Hukum Perdata; Kompilasi Hukum Islam; Implikasi Hukum.

## Introduction

When a person dies, obligations arise for others related to the handling of the deceased. Another legal consequence is the transfer of the deceased's assets to those designated as entitled to receive them.<sup>1</sup> This process of transferring ownership of assets from the deceased to the living is regulated by inheritance law, including who is entitled to receive the assets and their respective portions. This is known in Islamic law as the *farā'id* science.<sup>2</sup> In Indonesia, inheritance law originates from Islamic law, formalized in Presidential Instruction of the Republic of Indonesia Number 1 of 1991 concerning the Compilation of Islamic Law in Book II on Inheritance Law.<sup>3</sup> Furthermore, there is the Civil Code, also known as the *Burgelijk Wetboek* (BW). The inheritance law referred to in this BW is found in Book II Concerning Objects (*Van Zaken*), from Chapters XII to XVIII, covering the general court (civil) sphere.<sup>4</sup>

In Islam, heirs can be divided into three groups according to their lineage, namely *ashābul furūd* (the group of heirs who have been determined in the al-Qur'an along with the portion of the inheritance they will receive), *'aṣabah* (the group of heirs who receive the

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<sup>1</sup> Nursyamsudin Nursyamsudin, "Pembagian Harta Waris Sebelum Muwaris Meninggal Dunia Menurut Perspektif Hukum Waris Islam," *Mahkamah: Jurnal Kajian Hukum Islam* 3, no. 1 (2018): 69–85, <https://doi.org/10.24235/mahkamah.v3i1.2747>.

<sup>2</sup> Harrys Pratama Teguh, *Teori Dan Praktik Pembagian Harta Kekayaan Dalam Perkawinan-Metode Pembagian Harta Kekayaan Antara Yang Hak Dan Batil* (Yogyakarta: Andi Publisher, 2023).

<sup>3</sup> Rahayu Naluripa, "Perbandingan Penolakan Menjadi Ahli Waris Menurut Hukum Islam Dan Kitab Undang-Undang Hukum Perdata (BW)" (Universitas Islam Indonesia, 2018), <https://dspace.uui.ac.id/handle/123456789/9965>.

<sup>4</sup> Brayen Yunzo Punuh, "Ahli Waris Pengganti Dalam Hukum Waris Dan Penerapannya Dalam Putusan Mahkamah Agung Nomor: 2870K/PDT/2012," *Lex Privatum* 13, no. 1 (2024): 1–12, <https://ejournal.unsrat.ac.id/index.php/lexprivatum/article/view/53617>.

remainder after the inheritance has been divided), and *zul arḥām* (the heirs who do not receive a portion unless *ashābul furūd* and *'aṣabaḥ* do not exist).<sup>5</sup>

According to Civil Law, there are three positions, one of which must be determined by the heirs regarding inheritance: accepting the inheritance in its entirety, accepting the inheritance with certain conditions, or rejecting the inheritance.<sup>6</sup> Dividing inheritances often leads to various conflicts, some even before the testator dies. This is due to a lack of public knowledge about the legal system governing inheritance distribution. According to the Civil Code, an heir can accept or reject an inheritance. This inheritance includes the testator's assets, such as land, houses, cars, and anything else that can be valued in money. It also includes the testator's debts. If an heir is unwilling to pay the testator's debts, they can reject the inheritance, but they will not be able to receive any portion of the assets that would have previously belonged to them.

In Islamic law, if someone does not want to receive an inheritance, he can resign as an heir. The heirs can agree on the resignation of one or several people to receive their inheritance after they receive compensation from one or several other heirs. If the heir has abundant assets so that he no longer needs the inheritance, then he is obliged to accept the assets, and then it is up to the heirs to donate the assets or use them for other purposes.

Furthermore, the author explains how the concept of inheritance renunciation is based on Islamic law and the Civil Code. In order to make it easier to understand, the author presents a comparative analysis of the differences and similarities regarding how Islamic law and the Civil Code view inheritance renunciation.

## Research Methods

This research was a normative-juridical study using a statutory, conceptual, and comparative approach. This normative-juridical study was chosen because the focus of the research was the analysis of legal norms governing inheritance renunciation from the perspective of Islamic jurisprudence and the Indonesian civil law system. The data sources used in this research consisted of primary data in the form of relevant laws and regulations, such as the Civil Code, the Compilation of Islamic Law, and classical and contemporary *fiqh*

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<sup>5</sup> Wahibatul Maghfuroh, "Tinjauan Hukum Terhadap Ahli Waris Yang Mengundurkan Diri Sebagai Penerima Hak Waris Atas Harta Warisan Menurut Kompilasi Hukum Islam," *IUS: Jurnal Ilmiah Fakultas Hukum* 8, no. 2 (2020): 58–70, <https://doi.org/10.51747/ius.v8i2.690>.

<sup>6</sup> Naluripa, "Perbandingan Penolakan Menjadi Ahli Waris Menurut Hukum Islam Dan Kitab Undang-Undang Hukum Perdata (BW)."

literature related to inheritance law. Meanwhile, the secondary data were obtained from scientific works, legal journals, previous research results, and other legal documents supporting the analysis.

The data collection was conducted through library research by examining primary and secondary legal materials to gain a deeper understanding of the practice and implications of inheritance renunciation. Then, the data was processed using a descriptive-analytical method, presenting and comparing the provisions of Islamic law and the Civil Code regarding inheritance renunciation. These data were then critically analyzed, taking into account the principles of justice and welfare within Indonesia's pluralistic legal system.

## Discussion

### 1. The Concept of Inheritance Renunciation by Heirs in Islamic Law

Based on the principles of Islamic inheritance, Islamic law does not recognize the word "inheritance renunciation." This is according to the principle of *ijbāri*, which means that the transfer of assets from a person who dies to his heirs takes place automatically according to Allah SWT's decree without depending on the will of the heirs.<sup>7</sup> The element of "coercion" (*ijbāri* = compulsory) in Islamic inheritance law can be seen from the obligation of the heir to accept the transfer of the heir's inheritance to him in accordance with the amount determined by Allah SWT outside of his own will.<sup>8</sup>

This *ijbāri* principle is reflected in the provisions of Islamic inheritance law itself, provisions regarding inheritance rules that have been explained in detail by Allah SWT in several verses of the al-Qur'an, including Surah al-Nisā' verses 7 to 14.<sup>9</sup> This verse explains that the obligation for every Muslim to settle the distribution of inheritance is based on the law that has been established by Allah SWT without being allowed to change it.<sup>10</sup>

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<sup>7</sup> Syamsumardi Syamsumardi, "Pembagian Harta Waris Di Desa Kalaotoa (Studi Komparasi Hukum Adat Dan Hukum Islam)" (Universitas Nahdlatul Ulama Indonesia, 2021), <https://repository.unusia.ac.id/id/eprint/143/>.

<sup>8</sup> Miftakhul Kharima, "Faktor Tidak Dilaksanakannya Pembagian Waris Berdasarkan Hukum Islam (Studi Kasus Di Desa Sribasuki, Kecamatan Batanghari Kabupaten Lampung Timur)" (Institut Agama Islam Negeri Metro, 2022), <https://repository.metrouniv.ac.id/id/eprint/7008/>.

<sup>9</sup> Elfia Elfia, "Resistensi Ulama Terhadap Konsep Takharuj Dalam Fikih Hanafiyah," *Al-Istinbath: Jurnal Hukum Islam* 3, no. 1 (2018): 1–22, <https://doi.org/10.29240/jhi.v3i1.420>; Rilwan Raji Al Faruqi, "Pertimbangan Hakim Dalam Menetapkan Status Mafqud Pada Bidang Kewarisan (Analisis Penetapan Nomor 0374/Pdt. P/2019/PA. BL)" (UIN Syarif Hidayatullah Jakarta, 2024), <https://repository.uinjkt.ac.id/dspace/handle/123456789/78485>.

<sup>10</sup> Windo Putra Wijaya, "Ayat-Ayat Waris Dalam Tinjauan Tafsir Maudhu'i Dan Penyimpangannya Di Indonesia: Ayat-Ayat Waris Dalam Tinjauan Tafsir Maudhu'i Dan Penyimpangannya Di Indonesia," *Wardah* 21, no. 1 (2020): 106–22, <https://doi.org/10.19109/wardah.v21i1.5826>.

In practice, scholars and mujtahids do not strictly adhere to these established rules. In resolving several cases involving inheritance distribution, they sometimes deviate from the established rules. This is based on concerns about the benefits that would result from the distribution.<sup>11</sup> For example, someone with a large inheritance is considered wealthy but actually has no need. Conversely, someone with a small inheritance is considered poor and in greater need. However, legally, an heir has no obligation to assist other heirs. With these considerations, it is possible to reduce or add to several provisions that already exist in inheritance law, which means that several normative aspects of the Islamic inheritance system can be set aside.

In Islamic law, an individual or group of individuals can withdraw from being an heir.<sup>12</sup> By rejecting an inheritance, the heir agrees to withdraw or be withdrawn from being an heir by the other heirs in exchange for receiving their share of the inheritance in exchange for a certain reward or compensation, either from the inheritance or from other sources. Another term for this withdrawal is *takhāruj*.

*Takhāruj* comes from the word "*kharaja* (خرج)" which means "to exit" or "to leave". When this word is combined with the *wazan tafā'ul* (*shigat musyarakah*), – يتخارج – تخارج (*takhāraja – yatakhārju – takhārujān*), it means "to leave each other or to withdraw from each other". This means that the heirs leave their positions as heirs in receiving their share of the inheritance. According to Sharia, this is permissible if all the heirs are *riḍa*.

Some terms related to the meaning of *takhāruj* are *al-qīṣmah* (something that differentiates between rights),<sup>13</sup> *al-ṣulḥu* (a contract that resolves disputes between two disputing parties),<sup>14</sup> and *al-bā'i* (exchanging property that has value by means of ownership and mutual ownership).

According to al-'Alamah Ali bin Muhammad bin 'Ali al-Jurjani al-Hanafiy, in the book *at-Ta'rifāt*, *takhāruj* is an agreement between the heirs regarding the resignation of some of

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<sup>11</sup> Muhammad Ade Furqon, "Problematisasi Penerapan Pembagian Waris Terhadap Anak Kandung Menurut Hukum Islam (Studi Kasus Di Desa Cibadung, Kecamatan Gunung Sindur, Kabupaten Bogor 2024)" (Universitas Darunnajah, 2024), <https://repository.darunnajah.ac.id/id/eprint/72/>.

<sup>12</sup> Indah Sabarina and Deny Febriansyah, "Analisa Penolakan Ahli Waris Terhadap Hasil Warisan Menurut Hukum Islam Dan Hukum Perdata," *JURNAL AZ-ZAWAJIR* 2, no. 1 (2019): 14–27, <https://doi.org/10.57113/jaz.v2i1.109>.

<sup>13</sup> Elfia, "Resistensi Ulama Terhadap Konsep Takharuj Dalam Fikih Hanafiyah."

<sup>14</sup> Imam Taqiyuddin Abu Bakar Bin Muhammad al-Husaini, *Kifāyah al-Akhyār*, (Beirut: Dār al-Fikri) Juz II, h. 271.

them in return for a certain portion of the inheritance.<sup>15</sup> The concept of inheritance renunciation according to Islamic law in the *takhāruj* method consists of the following:<sup>16</sup>

- a. The heirs have realized their respective portions of the inheritance inherited by the testator.
- b. After each heir is aware of his share of the inheritance, the inheritance is then distributed to each heir.
- c. Once the distribution has been carried out, the heirs must first receive the inheritance.
- d. After the heir receives and has the inheritance, the heir can hand over their inheritance rights to the inheritance that they should receive to the other heirs.

If the testator dies in a state of Islam and has no heirs because all of his heirs reject or return their inheritance, then the inheritance of the testator will be handed over to Baitul Mal for the benefit of Islam and public welfare, the process of which is through a decision of the Religious Court. This is based on Article 191 of the Compilation of Islamic Law, which states: "If the testator does not leave any heirs at all or the existence of his heirs is unknown or not, then the property is handed over to Baitul Mal for the benefit of Islam and public welfare based on the decision of the Religious Court."

In essence, refusing to accept an inheritance is permissible through deliberation among the heirs to reach an amicable agreement so that no one is harmed and the bonds of friendship between them can be maintained. An heir's reason for refusing an inheritance does not mean that they are considered a *mahjūb* (prevented) heir, *mamnū'* (forbidden) heir, or that they owe a debt to the testator, but rather they may express this stance out of a sense of pleasure and sincerity, solely for religious purposes, a feeling of financial fulfillment, or an inability to manage the inheritance given to them, such as land that must be cultivated or a garden that must be continuously maintained.

The argument states that the existence of *takhāruj* is the result of *ijtihād* (*āṣar* friends) regarding events that occurred during the reign of Caliph Uṣmān bin 'Affān. The *Āṣar* states: "*From Abi Yusuf, someone who told him, from 'Amru bin Dinār from Ibn 'Abbās: One of the wives of 'Abdurrahmān bin 'Auf was invited to reconcile by the heirs regarding an estate amounting to eighty-three thousand by excluding her from the division of the inheritance.*"<sup>17</sup>

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<sup>15</sup> Mohammad Adib Hamzawi, "Takharuj; Solusi Syar'i Pembagian Waris Secara Damai," *INOVATIF: Jurnal Penelitian Pendidikan, Agama, Dan Kebudayaan* 9, no. 2 (2023): 252–69, <https://doi.org/10.55148/inovatif.v9i2.906>.

<sup>16</sup> Fajar Nugraha, Fisuda Alifa Mimiandanda Radinda, and Ricka Auliaty Fathonah, "Akibat Hukum Pewaris Yang Menolak Warisan," *DIVERSI : Jurnal Hukum* 6, no. 1 (2020): 1–21, <https://doi.org/10.32503/diversi.v6i1.634>.

<sup>17</sup> Muhammad Nashir al-Din Albaniy, *Irwa' al-Ghaili Fī Takhrij Ahādīs Manar Juz II*, Cet. II (Beirut: Maktab al-Islāmiy, 1985), Hadis ke-98.



From the companions' accounts, the distribution of inheritance using the principles of deliberation and peace is carried out by the widows and children of 'Abdurrahman bin 'Auf by one of the widows declaring her right to receive her husband's inheritance, but in exchange for payment of 83,000 (eighty-three thousand).

The legal basis for *takhāruj* can also be found in Article 183 of the Compilation of Islamic Law, which states that "The heirs may agree to make peace in the division of inheritance after each is aware of his share." Article 183 of the Compilation of Islamic Law explains the problems related to peace efforts that result in different divisions but are based on mutual consent between the heirs. Although formally violating the provisions of Islamic jurisprudence, it is acceptable to use the *takhāruj* approach, which is justified in the Hanafi school of thought (*maḏhab*).<sup>18</sup> Article 183 is formed from the community's habit of often dividing inheritance by compromising with customary law to anticipate the formulation of legal values not found in the al-Qur'an.<sup>19</sup> These customary values, in fact, bring benefits, order, and harmony to community life.

The legal consequences that can arise from an heir who rejects his inheritance or withdraws from his position as an heir are as follows:<sup>20</sup>

- a. An heir who rejects an inheritance or withdraws (*mutakharrij*) from receiving the inheritance no longer has the right to receive the inheritance.
- b. An heir who rejects an inheritance or withdraws (*mutakharrij*) is no longer considered an heir. They are no longer considered an heir because they have rejected the inheritance but have not severed blood ties or kinship within the family.
- c. An heir who rejects or withdraws (*mutakharrij*) will have their portion of the inheritance transferred to another heir. After the inheritance is rejected, the resigning heir must be willing to have their portion transferred to the other heirs.
- d. If the withdrawal process goes to court, there will be other legal consequences, including:
  - 1) If the heirs resign before the inheritance is divided, the court will force the heirs to divide the inheritance based on Islamic law criteria because Islamic law is mandatory, and its relevance to the Compilation of Islamic Law in Article 188, which states: "The heirs, either jointly or individually, can submit a request to the other heirs to divide

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<sup>18</sup> Ibnu Al-Humam, *Syarah Fathu Al-Qadir Juz II* (Kairo: Dārul Fikri, n.d.), 440.

<sup>19</sup> Achmad Irwan Hamzani, *Hukum Islam: Dalam Sistem Hukum Di Indonesia* (Jakarta Timur: Prenada Media, 2020).

<sup>20</sup> Maghfuroh, "Tinjauan Hukum Terhadap Ahli Waris Yang Mengundurkan Diri Sebagai Penerima Hak Waris Atas Harta Warisan Menurut Kompilasi Hukum Islam."

the inheritance. If any of the heirs does not agree to the request, the person concerned can file a lawsuit through the Religious Court to divide the inheritance."

- 2) Suppose the heir resigns after the inheritance has been divided, and the heir who resigned already knows his share. In that case, the heir who has committed to resign in accepting his inheritance rights, both the heir in question and his descendants, will never be able to ask for the inheritance that he has rejected, based on the principle of *fiqh*, which means: "every Muslim is bound by the agreement they made, except for agreements that are forbidden, and its relevance to Article 183 of the Compilation of Islamic Law which states: "The heirs can agree to make peace in the division of inheritance after each is aware of his share."

## **2. The Concept of Inheritance Renunciation by Heirs in the Indonesian Civil Code**

Article 1023 of the Indonesian Civil Code states that an heir is given the opportunity to choose their stance regarding inheritance, as well as the ability to think and make decisions based on the circumstances of the inheritance before accepting it.<sup>21</sup>

In the Civil Code, heirs have three options for determining their inheritance:<sup>22</sup>

- a. Accepting the inheritance in full or purely (*Zuivere Aanvaarding*). According to Article 1031 of the Civil Code, a person can be said to have accepted the inheritance purely if:
  - 1) They knowingly and intentionally, and in bad faith, fail to include items included in the inheritance in the list of assets.
  - 2) They misappropriately embezzle items included in the inheritance.
- b. Accepting inheritance with conditions (*Beneficiare Aanvaarding*). Article 1032 of the Civil Code states the consequences of conditional acceptance, namely:
  - 1) The heir is not obligated to pay debts and inheritance burdens exceeding the value of the assets included in the inheritance. They can even exempt themselves from such payments by surrendering all assets included in the inheritance to the creditors.
  - 2) The heir's personal assets are not mixed with the inheritance, and they retain the right to collect personal debts from the inheritance.
- c. Rejecting inheritance (*Verwerpen*). According to Article 1057 of the Civil Code, heirs can reject inheritance. Inheritance rejection or renunciation to be an heir must be stated explicitly. The statement of rejection must be made at the local District Court clerk's office.

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<sup>21</sup> Oemar Moechthar, *Perkembangan Hukum Waris Praktik Penyelesaian Sengketa Kewarisan Di Indonesia* (Jakarta Timur: Prenada Media, 2019).

<sup>22</sup> Suparman Usman, *Ikhtisar Hukum Waris Menurut Kitab Undang-Undang Hukum Perdata (Burgelijk Wetboek)*, Cet. I (Serang: Darul Ulum Press, 1992)., 128.



With the rejection by the heirs, they no longer have any connection with the inheritance of the testator, and no one can be fully recovered for an inheritance renunciation unless the rejection has occurred as a result of fraud or coercion.<sup>23</sup>

The law stipulates that a person's inheritance is not only in the form of assets but also includes liabilities, meaning that it is not only in the form of objects or material rights but also includes all debts that are a burden or obligation for the heirs to pay off their debts. This is as stated in Article 1100 of the Civil Code: "The heirs who have received an inheritance are required to bear a portion that is equal to what each of them received from the inheritance in terms of paying debts, gifts, wills, and other burdens."<sup>24</sup>

In this regard, to avoid placing a heavy burden on heirs, they have the right to consider their position.<sup>25</sup> The consideration period is four months. The District Court has the authority to extend this period one or more times upon request. This is explained in Article 1024 of the Civil Code.

If an heir declares his refusal, he can no longer receive the inheritance. This is stated in Article 1058 of the Civil Code: "An heir who refuses his inheritance is deemed to have never been an heir." People can refuse because they want to free themselves from the debt of the inheritance. People can refuse because they hate the heir and their children and grandchildren, but they can also refuse to benefit other heirs.<sup>26</sup>

The conditions for inheritance renunciation are:<sup>27</sup>

- a. The condition for inheritance renunciation is that it must be done after the inheritance has been opened or after death. According to Article 1334, paragraph 2, "It is not permissible to relinquish an inheritance that has not been opened." Although a marriage contract may state that the inheritance can be divided while both parties are still alive, this cannot be used as a reason for someone to relinquish or transfer the inheritance. This requirement is implemented to ensure the heir's survival while they are still alive. If the inheritance is opened first, there is a risk that the heir will not be able to use the assets

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<sup>23</sup> Subekti and Tjitrosudibio, *Kitab Undang-Undang Hukum Perdata (Burgelijk Wetboek)* (Jakarta: PT Pradnya Paramita, 2004), 271-273.

<sup>24</sup> Subekti and Tjitrosudibio., 285.

<sup>25</sup> Usman, *Ikhtisar Hukum Waris Menurut Kitab Undang-Undang Hukum Perdata (Burgelijk Wetboek)*., 121.

<sup>26</sup> Andi Fitra, "Tanggung Gugat Ahli Waris Notaris Terhadap Pewaris Yang Dijatuhi Hukuman Ganti Rugi," *Al-Qanun: Jurnal Pemikiran Dan Pembaharuan Hukum Islam* 20, no. 2 (2017): 326-53, <https://doi.org/10.15642/alqanun.2017.20.2.326-353>.

<sup>27</sup> Amanat Anisitus, *Membagi Warisan Berdasarkan Pasal-Pasal Hukum Perdata BW* (Jakarta: PT. Raja Grafindo Persada, 2001), 48.

themselves. The inheritance system requires the death of the testator to open the inheritance.<sup>28</sup>

- b. Inheritance renunciation must be made while the heir is still alive. If the heir who rejects the inheritance dies first, their child can take their place. This replacement is not only done to receive the inheritance but can also be done to declare rejection of the inheritance made by the parents.
- c. Inheritance renunciation must be made firmly before the clerk of the District Court where the inheritance is located. Heirs who reject their share of the inheritance must come directly to the District Court to submit an application for a deed of rejection. If the heir in question is unable to attend, then he can authorize the rejection of the inheritance to a person he trusts so that the person who has obtained the power of attorney will attend and carry out the trial process for and on behalf of the heir in question.
- d. After the period of time stipulated by law has ended, namely four months, the heirs are given the opportunity to think about their position on rejecting the inheritance (Articles 1024 and 1029).

After these conditions are met, the heirs can be declared to have rejected the inheritance that has fallen to them.

The legal basis in Article 1045 of the Civil Code states that "No one is obliged to accept an inheritance that falls into his hands," which means that an heir can accept or reject the inheritance that is his share. In addition, the legal basis for rejecting an inheritance is also regulated in Articles 1057 to 1065 of the Civil Code. Based on the provisions of the Civil Code above, the heir has the right to reject an inheritance, provided that the rejection of the inheritance must be stated in writing through the authorized District Court.

The legal consequences that can arise from inheritance renunciation are:

- a. A person will lose their right to inherit, thus being deemed never to have been an heir (Article 1058 of the Civil Code), and their legitimate share of the inheritance will be lost.<sup>29</sup>
- b. The heir who refuses is declared to have never been an heir, and consequently, the inheritance portion of the person who refused the inheritance falls into the hands of the person who was originally entitled to that portion if the person who refused was not

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<sup>28</sup> Aden Lukmandan and Moch Djais, "Implementasi Hak-Hak Ahli Waris Erstelling Terhadap Harta Warisan," *Notarius* 12, no. 1 (2019): 174–86, <https://doi.org/10.14710/nts.v12i1.26886>.

<sup>29</sup> Perangin Effendi, *Hukum Waris* (Jakarta: Rajawali Pers, 2008), 12.

present at the time of the testator's death. This has been confirmed in Article 1059 of the Civil Code.

- c. A person who has rejected an inheritance cannot be represented by a replacement heir if he is the only heir in his rank, or if all heirs reject their inheritance, then their children become heirs because of themselves and inherit the same share (Article 1060 of the Civil Code).

The overall legal consequences of an heir's refusal of an inheritance, as explained above, are highly complex. Furthermore, if the judge grants the refusal, the heir's refusal of the inheritance becomes effective immediately upon the testator's death and cannot be revoked. This is because the law considers refusal of an inheritance to be the will and conscious effort of the heir concerned. To respect this will, no one can force the heir to accept their portion.<sup>30</sup>

### 3. Differences Between Islamic Law and the Civil Code in Viewing the Inheritance Renunciation by Heirs

The inheritance renunciation by heirs is a crucial issue in inheritance law studies in Indonesia, given the plurality of legal systems in force. Within the context of national law, there are two primary approaches used by society, namely Islamic Law and the Civil Code. Both have different perspectives on inheritance renunciation in terms of philosophy, procedure, and legal consequences.

Islamic law recognizes the concept of *takhāruj*, which allows an heir to relinquish their inheritance rights for the common good while maintaining moral values and family ties. In contrast, the Civil Code views the renunciation of inheritance as a more individualistic and formal administrative action.

To clarify the differences and similarities between the two legal systems, the following is a comparative table containing the main aspects related to the rejection of inheritance by heirs:

Table 1. Differences between Islamic Law and Civil Code in Rejection of Inheritance Property

Aspects	Islamic Law	Civil Code
<b>Meaning</b>	Rejection/renunciation means resigning as an heir, usually in exchange for a certain compensation,	Rejection means relinquishing the right to inheritance without affecting the inheritance of

<sup>30</sup> Nugraha, Radinda, and Fathonah, "Akibat Hukum Pewaris Yang Menolak Warisan."

	either from the inheritance or other heirs	other heirs and without compensation
<b>Technical Implementation</b>	Simply by word of mouth or action in front of the other heirs, accompanied by an agreement/consensus	This must be clearly stated in a written statement at the local District Court clerk's office
<b>Obligations of Heirs</b>	Heirs are still obliged to help pay the testator's debts even if they resign as heirs	They are free from all obligations, including paying the testator's debts, if they reject the inheritance
<b>Application of Law</b>	Applies to Muslims using the <i>takhāruj</i> method	Applies to those of non-Muslim religions in Indonesia
<b>Source of Law</b>	Derived from the <i>āṣr</i> friends and Article 183 of the Compilation of Islamic Law	Derived from Article 1057 of the Civil Code
<b>Attitude of Heirs</b>	Done sincerely ( <i>riḍa</i> )	Rejection is a legitimate option for determining one's attitude toward inheritance
<b>Rejection Procedure</b>	Must first accept the inheritance and then pass it on to other heirs	You can reject the inheritance immediately without having to accept it first

Table 2: Similarities between Islamic Law and Civil Code in Rejection of Inheritance Property

Aspects	Description
<b>Transfer of Inheritance</b>	The rights and obligations of the heir are transferred to the heirs upon their death
<b>Benefit</b>	Rejection or resignation can benefit other heirs or the next group of heirs
<b>Legal Subject</b>	Both involve the heir and the heir in the process of releasing and accepting rights and responsibilities
<b>Legal Consequences</b>	An heir who rejects an inheritance loses their rights and cannot reclaim the inheritance
<b>Decision-Making</b>	There is no element of coercion; the decision to accept or reject an inheritance is entirely the right of the heirs

## Justice

Both emphasize the principle of justice in the distribution of inheritance

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The fundamental difference between Islamic law and the Civil Code in viewing the inheritance renunciation by heirs lies in their philosophy and implementation mechanisms. In Islamic law, inheritance renunciation (*takhāruj*) is understood as a form of resignation based on the principles of *rida* (willingness) and collective benefit. Heirs still have a moral obligation to assist in the repayment of the testator's debts, even if they relinquish their inheritance rights. This process can be accomplished simply through a verbal agreement between the heirs, thus emphasizing the values of kinship and the flexibility of Islamic law.

In contrast, the Civil Code interprets the rejection of an inheritance as a firm administrative action that relinquishes the rights of the heirs without any moral obligation to the testator. Rejection must be formally stated through a written statement in the District Court, thus providing legal certainty and preventing disputes. Heirs who reject an inheritance are also freed from responsibility for the testator's debts, reflecting the individualistic nature of civil law.

However, there are similarities between the two. Both legal systems recognize that renunciation of inheritance is free and without coercion and affirm the loss of the heir's right to their share of the inheritance upon renunciation. Both uphold the principles of justice and welfare as the primary objectives of inheritance regulation, albeit with different normative approaches.

## Conclusion

Inheritance renunciation from the perspective of Islamic jurisprudence and the Indonesian civil law system demonstrates fundamental differences in terms of meaning, technical implementation, heirs' obligations, legal application, legal sources, and the attitudes and procedures for rejection by heirs. In Islamic jurisprudence, inheritance renunciation is known as *takhāruj*, which is the heir's voluntary resignation (*rida*) through a peaceful agreement while still assuming moral responsibilities such as paying the testator's debts. Whereas in the Civil Code, rejection is viewed as an individual's right to expressly relinquish their portion of the inheritance through a statement in the District Court, releasing the heir from all obligations. Nevertheless, both legal systems share common ground in upholding the values of welfare, justice, and legal certainty by giving heirs the freedom to decide whether to accept or reject an inheritance addressed to them. These differences and similarities reflect

the pluralism of inheritance law in Indonesia, which accommodates the diversity of religions and applicable legal systems.

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