

Judicial *Ijtihād* and *Maqāṣid*-Based Adjudication in Interfaith Inheritance: Reconstructing *Wasiat Wajibah* in Indonesian Islamic Law

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Abstract: Islamic inheritance law in Indonesia encounters persistent normative tension when applied to interfaith family structures. Classical *farā'id* doctrine categorically prohibits inheritance across religious boundaries, a rule that frequently generates substantive injustice within plural legal and social contexts. In response, Indonesian Supreme Court jurisprudence has progressively developed *wasiat wajibah* (mandatory will) as a judicial mechanism for protecting non-Muslim family members who are excluded from intestate succession. Therefore, this study aimed to examine the jurisprudential development, legal construction, and normative limits of *wasiat wajibah* through doctrinal analysis of authoritative Supreme Court decisions issued between 1995 and 2018, supported by statutory interpretation and relevant Islamic legal scholarship. A normative-juridical approach was adopted, incorporating doctrinal, jurisprudential, and comparative legal analysis, while a limited empirical interview with a Religious Court judge was included solely to provide contextual illustration rather than as representative evidence of national judicial practice. The results showed that Indonesian courts have gradually transformed *wasiat wajibah* from a discretionary equitable remedy into an institutionalised judicial doctrine applied through purposive interpretation, subject to a one-third quantitative limitation and procedural safeguards. The analysis further indicated that this jurisprudential development reflects a form of judicial *ijtihad qadha'i* grounded in *maqāṣid al-sharī'ah*, particularly the protection of wealth, family integrity, and human dignity. At the same time, an unresolved normative issue was identified concerning the judicial extension of Article 209 of the Compilation of Islamic Law to non-Muslim beneficiaries, indicating continuing debates over the scope of judicial law-making (*rechtsvorming*) within Indonesian Islamic inheritance law. Indonesian courts use *wasiat wajibah*, a supplementary legal mechanism designed to reconcile classical inheritance doctrine with substantive justice in a plural legal system, instead of redefining non-Muslims as legal heirs.

Keywords: Islamic inheritance law; *wasiat wajibah*; judicial *ijtihad*; *maqāṣid al-sharī'ah*; interfaith inheritance; legal pluralism

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1. Introduction

Inheritance law in Indonesia represents one of the most complex intersections between classical Islamic jurisprudence and the country's plural legal system. Within the framework of Islamic inheritance law (*farā'id*), religious difference (*ikhtilāf al-dīn*) constitutes a recognised legal impediment to succession. This principle is codified in Article 171(c) of the Compilation of Islamic Law (*Kompilasi Hukum Islam*; KHI), which restricts legal heirs to Muslims. The doctrinal position reflects the dominant opinion of classical Sunni jurists that inheritance presupposes religious unity between the deceased and the beneficiary. At the same time, Indonesia's constitutional order recognises religious diversity, equal legal protection, and the preservation of family rights, thereby placing Islamic inheritance law within a broader framework of legal pluralism that often requires reconciling religious doctrine with constitutional justice.¹

The practical significance of this doctrinal tension has become increasingly apparent in judicial practice as Religious Courts have adjudicated disputes arising from interfaith marriages, religious conversion within families, and multi-religious household structures. Rather than representing isolated incidents, these cases demonstrate broader socio-legal changes accompanying Indonesia's religious diversity and constitutional development. Previous studies showed that interfaith inheritance disputes have become one of the most challenging issues in Indonesian Islamic family law due to the need for judges to balance the authority of classical *farā'id* doctrine with constitutional principles of equality, access to justice, and family protection.² Consequently, the issue extends beyond doctrinal interpretation and raises broader questions concerning the adaptability of Islamic inheritance law within a modern democratic legal system.

In response to these challenges, Indonesian Supreme Court jurisprudence has progressively developed *wasiat wajibah* (mandatory will) as a judicial mechanism for protecting non-Muslim family members who are excluded from intestate succession.

¹ Lawrence M. Friedman, *The Legal System: A Social Science Perspective* (Russell Sage Foundation, 1975); John Griffiths, "What Is Legal Pluralism?," *The Journal of Legal Pluralism and Unofficial Law* 18, no. 24 (1986): 1–55, <https://doi.org/10.1080/07329113.1986.10756387>; Yeni Barlinti, "Inheritance Legal System in Indonesia: A Legal Justice for People," *Indonesia Law Review* 3, no. 1 (2013): 23–41, <https://doi.org/10.15742/ilrev.v3n1.28>.

² Friedman, *The Legal System*; Y. Sonafist and Henny Yuningsih, "Islamic Law, the State, and Human Rights: The Contestation of Interfaith Marriage Discourse on Social Media in Indonesia," *JURIS (Jurnal Ilmiah Syariah)* 22, no. 2 (2023): 381–91, <https://doi.org/10.31958/juris.v22i2.10934>; Yusna Zaidah, "Judicial Discretion in Inheritance Case Resolution: Towards Progressive Legal Justice in Indonesia," *Syariah: Jurnal Hukum dan Pemikiran* 24, no. 1 (2024): 136–47, <https://doi.org/10.18592/sjhp.v24i1.13012>.

Article 209 KHI originally regulates *wasiat wajibah* only for adopted children and adoptive parents. However, a consistent line of Supreme Court decisions, including Decision Nos. 368 K/AG/1995, 51 K/AG/1999, 16 K/AG/2010, 721 K/Ag/2015, 218 K/Ag/2016, and 331 K/Ag/2018 have extended the application to certain non-Muslim beneficiaries on considerations of justice, family solidarity, and public welfare. This jurisprudential expansion represents one of the most significant developments in contemporary Indonesian Islamic inheritance law because it introduces legal protection for individuals who remain outside the classical category of legal heirs (*warith*) without formally abolishing the doctrine of *ikhtilāf al-dīn*.³

Despite the consistency of jurisprudential development, the doctrinal legitimacy remains a debate. The judicial extension of Article 209 KHI raises an important theoretical question concerning whether the interpretation constitutes a legitimate exercise of judicial *ijtihād* or instead represents judicial law-making (*rechtsvorming*) exceeding the intended scope of legislative authority. This issue has received only limited scholarly attention, although it directly concerns the constitutional relationship between judicial interpretation, statutory law, and classical Islamic jurisprudence. Recent studies on Islamic legal reform, legal pluralism, and *maqāsid al-sharī'ah* emphasise that contemporary Islamic law increasingly develops through contextual interpretation rather than legislative amendment. However, the studies rarely examine the doctrinal limits of judicial authority when courts expand statutory provisions beyond original legislative design.⁴

Although a growing body of jurisprudence has developed concerning *wasiat wajibah*, important doctrinal and judicial questions remain unresolved. Existing studies have largely evaluated interfaith inheritance from the perspectives of Islamic legal reform, human rights, legal pluralism, or judicial discretion. However, limited attention has been paid to examining whether the judicial extension of Article 209 of the

³ Burhanuddin Burhanuddin, "The Benefits of Jurisprudence Rules for Legal Reform on Successor Heirs in Indonesia," *ADLIYA: Jurnal Hukum Dan Kemanusiaan* 17, no. 2 (2023): 2, <https://doi.org/10.15575/adliya.v17i2.29271>; Muhammad Lutfi Hakim, "Between Hibah and Wasiat Wājibah for Non-Muslims: Expansive Legal Interpretations by Indonesian Religious Judges in Inheritance Cases," *Al-Ahwal: Jurnal Hukum Keluarga Islam* 17, no. 2 (2024): 147–66, <https://doi.org/10.14421/ahwal.2024.17201>.

⁴ Asmuni Asmuni et al., "Dynamics Response of Indonesian Islamic Law to the Protection of Intellectual Property Rights," *Ulumuna* 27, no. 2 (2023): 876–904, <https://doi.org/10.20414/ujs.v27i2.749>; Mutawali, "Maqāsid Al-Sharī'a as the Foundation of Islamic Moderation: Theo-Philosophical Insight against Extreme Religious Ideology," *Ulumuna* 27, no. 1 (2023): 1, <https://doi.org/10.20414/ujs.v27i1.560>; Muharir Muharir and Sérgio António Neves Lousada, "Maqāsid Al-Sharī'ah in the Digital Era: Challenges in Islamic Family Law and Halal Lifestyle in Indonesia," *Munakahat: Journal of Islamic Family Law* 1, no. 1 (2024): 34–45, <https://doi.org/10.5281/zenodo.20802201>.

Compilation of Islamic Law (KHI) to non-Muslim beneficiaries constitutes a legitimate exercise of judicial *ijtihād* or an instance of judicial law-making (*rechtsvorming*) that exceeds the intended scope of statutory authority. The doctrinal legitimacy of granting *wasiat wajibah ex officio*, the interaction between mandatory bequests and the one-third quantitative limitation, as well as the implications of this jurisprudential development for legal certainty within the Indonesian Religious Court system, remain insufficiently explored. The unresolved issues constitute the principal gap addressed in this study.

Accordingly, three interrelated questions were addressed, namely (1) How has Indonesian Supreme Court jurisprudence constructed the doctrinal basis for extending *wasiat wajibah* to non-Muslim family members under Article 209 of the Compilation of Islamic Law? (2) Does this judicial development represent a legitimate form of judicial *ijtihād* grounded in *maqāṣid al-sharī'ah*, or does it amount to judicial law-making (*rechtsvorming*) beyond the proper limits of judicial authority? (3) What are the legal implications of this jurisprudential development for legal certainty, judicial discretion, and the future reform of Islamic inheritance law in Indonesia?

Based on the discussion above, this study aimed to analyse the jurisprudential development, doctrinal construction, and normative limits of *wasiat wajibah* through a comprehensive examination of Indonesian Supreme Court decisions, statutory provisions, and relevant Islamic legal doctrine. Doctrinal legal analysis was integrated with limited empirical insights from judicial practice to clarify the pathway through which Indonesian judges reconcile the classical prohibition of interfaith inheritance with the constitutional commitment to substantive justice. The results ultimately contribute to contemporary debates on judicial *ijtihād*, *maqāṣid*-based adjudication, Islamic inheritance law, and the evolving relationship between judicial interpretation and legislative authority within a plural legal system.

2. Methods

A normative-juridical approach was adopted with a doctrinal and jurisprudential orientation, focusing on the analysis of legal norms, authoritative judicial decisions, and Islamic legal principles governing inheritance law in Indonesia. In particular, the application of *wasiat wajibah* in interfaith inheritance disputes was examined, situating judicial reasoning within the framework of positive Islamic family law and the interpretative development by the Supreme Court (*Mahkamah Agung*). The normative approach was used to analyse statutory law as codified in the Compilation of Islamic Law (*Kompilasi Hukum Islam / KHI*), while the jurisprudential method was employed to assess how judges engage in legal interpretation (*ijtihād qaḍā'ī*) and address normative gaps arising from religious pluralism. Accordingly, this study is primarily

doctrinal in nature, and the principal object of analysis is the development of Supreme Court jurisprudence rather than the empirical practices of Religious Courts throughout Indonesia.⁵

The primary legal materials consist of statutory provisions and judicial decisions. Statutory analysis is based on Article 171 KHI concerning the religious requirement of heirs and Article 209 KHI governing *wasiat wajibah*. Meanwhile, judicial materials comprise a selected corpus of Supreme Court decisions that explicitly address interfaith inheritance disputes through *wasiat wajibah*, namely Decisions No. 368 K/AG/1995, No. 51 K/AG/1999, No. 16 K/AG/2010, No. 721 K/Ag/2015, No. 218 K/Ag/2016, and No. 331/K/Ag/2018. These decisions were selected based on doctrinal relevance, consistency of legal reasoning, and recognition in academic literature as constituting a rising and coherent line of jurisprudence on *wasiat wajibah* for non-Muslim beneficiaries. Secondary legal materials include scholarly books, peer-reviewed journal articles, and academic commentaries on Islamic inheritance law, *maqāṣid al-sharī'ah*, judicial discretion, and legal pluralism. These materials were used to support doctrinal interpretation and situate Supreme Court reasoning within broader theoretical debates on justice, moderation (*wasatiyyah*), judicial law-making (*rechtsvorming*), and the objectives of Islamic law.⁶ The chronological scope of the judicial decisions (1995–2018) enables the study to trace the progressive development and consolidation of judicial doctrine concerning the extension of Article 209 KHI to non-Muslim beneficiaries.⁷

To complement the doctrinal analysis, this study incorporated a limited empirical component: a semi-structured interview with Dr Basarudin, Vice Chairman of the Nabire Religious Court, conducted on 21 January 2026. The interview was included solely to provide contextual insight into judicial reasoning regarding the application

⁵ Soerjono Soekanto and Sri Mamudji, *Penelitian hukum normatif: suatu tinjauan singkat* (Penerbit CV. Rajawali, 1986); Peter Mahmud Marzuki, *Penelitian Hukum: Edisi Revisi* (Prenada Media, 2017).

⁶ Burhanuddin, “The Benefits of Jurisprudence Rules for Legal Reform on Successor Heirs in Indonesia”; Hakim, “Between Hibah and Wasiat Wājibah for Non-Muslims”; Ramdan Fawzi et al., “Legal Discovery Method for Non-Muslim Heirs as Recipients of Wasiat Wajibah,” *Jurnal Hukum Islam* 22, no. 1 (2024): 161–88, https://doi.org/10.28918/jhi.v22i1_6.

⁷ Arip Purkon et al., “The Role of Supreme Court Jurisprudence in Development of Islamic Family Law in Indonesia,” *Al-Qadha : Jurnal Hukum Islam Dan Perundang-Undangan* 9, no. 2 (2022): 362–76, <https://doi.org/10.32505/qadha.v9i2.4111>; Rahmad Setyawan et al., “Contemporary Ijtihad Deconstruction in The Supreme Court: Wasiat Wajibah as An Alternative for Non-Muslim Heirs in Indonesia,” *Jurnal Ilmiah Al-Syir'ah* 22, no. 1 (2024): 1, <https://doi.org/10.30984/jis.v22i1.2968>; Iyus Rostia Fiqiyah et al., “The Digital Marketization of Nikah Siri in Indonesia: Legal Pluralism and the Limits of Marriage Governance,” *Justitia Nova: Indonesian Journal of Modern Law* 1, no. 2 (2025): 64–78, <https://doi.org/10.5281/zenodo.21316725>.

of Articles 171(c) and 209 KHI and was not intended to serve as representative evidence of judicial practice throughout Indonesia. The selection of the Nabire Religious Court was based on the interviewee's judicial experience in Islamic family law and familiarity with the practical implementation of the Supreme Court's jurisprudence on *wasiat wajibah*. Consequently, the interview functions only as explanatory material supporting the doctrinal analysis and does not constitute a primary evidentiary basis. This study does not claim empirical generalisation regarding the practices of Religious Courts nationwide, nor does it attempt a quantitative mapping of interfaith inheritance cases, as its principal objective is to examine the doctrinal development of Indonesian Supreme Court jurisprudence.⁸

3. Result and Discussion

3.1. The Doctrinal Foundation of Wasiat Wajibah under Article 209 of the Compilation of Islamic Law

The doctrinal foundation of *wasiat wajibah* in Indonesian Islamic inheritance law is set out in Article 209 of the Compilation of Islamic Law (Kompilasi Hukum Islam/KHI), which expressly regulates mandatory bequests for adopted children and adoptive parents who are not recognised as legal heirs under the classical law of succession. The provision was introduced as part of the broader codification of Islamic family law to provide an equitable mechanism for individuals who maintain close familial relationships with the deceased but are excluded from inheritance under the traditional rules of *farā'id*. Neither the text of Article 209 nor the original legislative purpose expressly extended the institution of *wasiat wajibah* to non-Muslim family members. Consequently, any judicial application beyond adopted children and adoptive parents necessarily raises an important doctrinal question regarding the permissible scope of judicial interpretation under Indonesian Islamic law. This issue is particularly significant because Article 171(c) KHI simultaneously restricts the status of heirs to Muslims, thereby creating an apparent normative tension between the prohibition of interfaith inheritance and the judicial pursuit of substantive justice through *wasiat wajibah*.⁹

⁸ Interview with Dr Basarudin (Vice Chairman, Nabire Religious Court, Nabire, 21 January 2026); Friedman, *The Legal System*; John W. Creswell, *Qualitative Inquiry and Research Design: Choosing Among Five Approaches* (SAGE, 2007); Jasser Auda, *Maqasid Al-Shariah as Philosophy of Islamic Law: A Systems Approach* (International Institute of Islamic Thought) (IIIT), 2008).

⁹ Zaenul Mahmudi et al., "The Charity Values within Islamic Law of Inheritance in Malang: Maqāṣid al-Sharī'ah and Social Construction Perspectives," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 8, no. 3 (2024): 3, <https://doi.org/10.22373/sjhk.v8i3.19986>.

The doctrinal debate surrounding *wasiat wajibah* indicates that classical Islamic jurisprudence did not develop a single, unanimous position regarding the entitlement of individuals who are excluded from ordinary inheritance. Classical jurists generally agreed that testamentary disposition (*waṣiyyah*) is permissible up to one-third of the estate based on the Prophetic tradition narrated by Sa'd ibn Abī Waqqāṣ. However, the jurists differed regarding whether a mandatory bequest (*waṣiyyah wājibah*) could arise by operation of law in the absence of an express testament. The majority of classical Sunni jurists from the Ḥanafī, Mālikī, Shāfi'ī, and Ḥanbalī schools maintained that the obligation to make a bequest had been superseded by the Qur'ānic inheritance verses (Q.S. al-Nisā' [4]:11–12), thereby treating testamentary disposition as a recommended rather than compulsory legal act. Conversely, several contemporary Muslim jurisdictions and modern jurists have revived the doctrine of *waṣiyyah wājibah* through purposive interpretation, particularly to protect vulnerable family members who are excluded from succession under the classical law of inheritance. The divergence shows that the doctrine of *wasiat wajibah* has historically evolved by juristic interpretation (*ijtihād*) rather than through an uncontested rule of classical fiqh. This provides important doctrinal background for assessing subsequent developments in Indonesian Islamic law.¹⁰

Although Article 209 of the Compilation of Islamic Law (Kompilasi Hukum Islam/KHI) constitutes the principal statutory foundation for *wasiat wajibah* in Indonesia, the original legislative design was considerably narrower than the subsequent judicial application. Article 209 expressly regulates mandatory bequests only for adopted children (*anak angkat*) and adoptive parents (*orang tua angkat*) who are not entitled to inherit under the ordinary rules of *farā'id*. The drafting history of the KHI indicates that this provision was introduced as a limited legislative compromise intended to accommodate long-standing Indonesian social practices concerning adoption while preserving the classical doctrine of Islamic inheritance. Both the Presidential Instruction No. 1 of 1991 establishing the KHI as well as the accompanying academic discussions did not explicitly contemplate extending *wasiat wajibah* to non-Muslim spouses, children, or other relatives excluded by reason of

¹⁰ Wahbah Zuhaili, *Al-Fiqh al-Islami Wa Adillatuhu* (Dar al-Fikr, 2004); Encep Taufik Rahman et al., “Religious Moderation Approach through Islamic Family Law and Siyāsah Fiqh: Challenges of the Digital Era in Banjar City, West Java, Indonesia,” *Munakahat: Journal of Islamic Family Law* 1, no. 1 (2024): 12–22, <https://doi.org/10.5281/zenodo.20785998>; Imron Hamzah et al., *Syariah 5.0 Kajian Maqasidi Atas Transformasi Wakaf, Mawarits, Dan Hukum Keluarga Islam Modern* (Widina Bhakti Persada, 2025); Husamuddin Mz et al., “The Application of Syajarah Al-Mirāts in the Study of Islamic Inheritance Law: A Study of Islamic Boarding School Students and Islamic Study Groups in West Aceh,” *El-Usrah: Jurnal Hukum Keluarga* 9, no. 1 (2026): 473–91, <https://doi.org/10.22373/ujhk.v9i1.34133>.

religious difference. Consequently, the subsequent expansion of Article 209 through Supreme Court jurisprudence raises an important doctrinal question concerning the proper limits of judicial interpretation. The question is centred on whether the courts interpreted an open legal norm only in a manner consistent with the objectives of Islamic law, or effectively created a new legal rule beyond the legislature's original intent (*rechtsvorming*). This unresolved issue constitutes one of the central doctrinal debates in contemporary Indonesian Islamic inheritance law and provides the analytical starting point for examining the legitimacy of judicial *ijtihad* in the development of *wasiat wajibah*.¹¹

The extension of *wasiat wajibah* to non-Muslim beneficiaries through Supreme Court jurisprudence raises a fundamental constitutional and jurisprudential question concerning the limits of judicial authority. From a positivist perspective, since Article 209 KHI expressly confines mandatory bequests to adopted children and adoptive parents, extending the application to non-Muslim spouses or children may be viewed as a form of judicial law-making (*rechtsvorming*) that exceeds the textual scope of the legislation. This criticism is grounded in the principle that judges are required to interpret and apply existing law rather than create new substantive legal rights not expressly contemplated by the legislature. However, an alternative perspective within Indonesian judicial practice maintains that these decisions do not constitute ultra vires judicial legislation but rather represent purposive interpretation (*teleological interpretation*). The interpretation is guided by the constitutional obligation of judges to discover and develop the law (*rechtsvinding*) when statutory provisions are incomplete or fail to resolve evolving legal problems. Within this framework, Article 5, paragraph (1) of Law No. 48 of 2009 on Judicial Power obliges judges to explore, follow, and understand the legal values and sense of justice living within society. Consequently, the extension of *wasiat wajibah* is interpreted as the contextual application of an existing legal mechanism to achieve substantive justice while preserving the classical prohibition of inheritance across religious boundaries. The legitimacy of judicial *ijtihad* ultimately depends upon whether the Court reasoning remains anchored in the objectives of Islamic law (*maqāṣid al-sharī'ah*), constitutional justice, and the normative structure of the KHI, rather than replacing the legislative function.

¹¹ Salwa Zahra Zulfiani Fitriyah and Nurul Ilyana Muhd Adnan, "Integrating Rukyatul Hilal Practices and Islamic Family Law: Case Study in Banjar City, Indonesia," *Munakahat: Journal of Islamic Family Law* 1, no. 2 (2025): 13–24, <https://doi.org/10.5281/zenodo.21051991>; Andrey V. Kotyazhov and Habibi Habibi, "Upholding Democracy through Constitutional Courts: A Comparative Study of Indonesia and Germany," *Justitia Nova: Indonesian Journal of Modern Law* 1, no. 1 (2025): 16–31, <https://doi.org/10.5281/zenodo.21306463>.

The foregoing discussion demonstrates that the doctrinal evolution of *wasiat wajibah* in Indonesian Islamic inheritance law cannot be understood solely through a literal reading of Article 209 KHI. Instead, it reflects the dynamic interaction between statutory interpretation, classical Islamic jurisprudence, constitutional principles, and judicial responsibility to achieve substantive justice. The development of Supreme Court jurisprudence extending *wasiat wajibah* to non-Muslim family members should be viewed as part of a broader process of judicial *ijtihad*, in which judges reconcile the normative rigidity of classical inheritance rules with the constitutional values of equality, family protection, and legal certainty within Indonesia's plural legal system. The legitimacy of this doctrinal development depends upon clear juridical reasoning, adherence to procedural safeguards, and consistency with the fundamental structure of Islamic inheritance law. In particular, the doctrine continues to recognise that non-Muslim beneficiaries do not acquire the legal status of heirs (*warith*) but receive protection through an independent testamentary mechanism. Accordingly, the subsequent analysis examines how the Supreme Court operationalises this doctrinal construction in practice. This includes the legal basis for granting *wasiat wajibah ex officio*, the application of the one-third quantitative limitation, as well as the procedural safeguards designed to preserve both doctrinal coherence and legal certainty.¹²

3.2. Legal Construction and Quantitative Limits of Wasiat Wajibah

The practical implementation of *wasiat wajibah* in Indonesian Religious Court jurisprudence demonstrates that judicial innovation extends beyond recognizing non-Muslim beneficiaries. It also offers the establishment of a coherent legal framework governing the scope, procedural basis, and quantitative limits of the mandatory bequest. Rather than granting unrestricted judicial discretion, the Supreme Court has consistently developed *wasiat wajibah* through carefully structured legal reasoning intended to preserve the integrity of Islamic inheritance law while mitigating inequitable outcomes arising from the strict application of the doctrine of *ikhtilāf al-dīn*. Therefore, three interconnected legal questions become central to understanding this jurisprudential construction. The first question is whether judges may grant a *wasiat wajibah ex officio* without an explicit request from

¹² Barlinti, "Inheritance Legal System in Indonesia"; Imamuddin Imamuddin and Sabarudin Sabarudin, "Implementation Of Decisions On Inheritance Disputes Resolved Through Mediation At The Lhoksukon Syar'iyah Court: Case Study On Decision Number: 493/PDT.G/2015/MS-LSK," *AT-TAFAHUM: Journal of Law* 1, no. 2 (2017): 144–49, <https://doi.org/10.47006/attafahum.v1i2.664>; Mhd Nurhusein Daulay, "Reformulation Of The Arrangement Of Dzawil Arham In The Compilation Of Islamic Law To Realize Legal Certainty Of Inheritance," *Jurnal Sahabat ISNU SU* 2, no. 1 (2025): 78–85, <https://doi.org/10.70826/jsisnu.v3i1.1535>.

the parties. The second question is how the one-third limitation is justified doctrinally and legally. Finally, the third question is how the mandatory bequest should be distributed where multiple non-Muslim beneficiaries exist simultaneously. These issues determine whether judicial *ijtihad* remains within the permissible boundaries of interpretation or risks creating procedural and substantive inconsistency within Indonesian inheritance law.

One of the most debated procedural issues is the authority of Religious Court judges to award *wasiat wajibah ex officio*, particularly where the parties have not expressly requested relief in pleadings. Under Indonesian civil procedural law, judges are generally bound by the principle of *ultra petita partium*, which prohibits courts from granting remedies beyond those requested by the litigants. At first glance, the judicial award of *wasiat wajibah* to a non-Muslim beneficiary who has not formally submitted a claim appears to conflict with this procedural limitation. However, Supreme Court jurisprudence demonstrates that Religious Court judges justify the practice by relying upon the complementary doctrines of *iura novit curia* and the *ex officio* authority in family law adjudication. These principles recognise that judges are not only passive arbiters of the parties' claims but bear an affirmative responsibility to apply the law correctly, safeguard vulnerable legal interests, and prevent manifest injustice where the applicable legal framework provides an appropriate remedial mechanism. Therefore, the judicial award of *wasiat wajibah* is not construed as creating an entirely new substantive right beyond the pleadings. It is the legal consequence of correctly applying Islamic family law in circumstances where strict adherence to the classical rules of inheritance would frustrate the constitutional objectives of justice, proportionality, and family protection. This procedural interpretation also reflects Article 5 paragraph (1) of Law No. 48 of 2009 on Judicial Power, which obliges judges to explore and apply the legal values and sense of justice living within society while remaining faithful to the applicable legal system.¹³

Beyond procedural authority, the jurisprudential legitimacy of *wasiat wajibah* also depends upon the quantitative limitation imposed on the mandatory bequest. Supreme Court decisions consistently maintain that the value of *wasiat wajibah* granted to non-

¹³ Munirotul Hasanah Sipayung et al., "The Concept of Child Adoption from a Legal Perspective in Indonesia," *Jurnal Cendikia ISNU SU* 1, no. 3 (2024): 215–22, <https://doi.org/10.70826/jcisnu.v2i2.849>; Anisa Mutiara Kartini Nasution et al., "Analysis of the Recognition and Validation of Children Born Out of Wedlock and the Legal Consequences According to Civil Law and Rights Provisions," *Jurnal Cendikia ISNU SU* 2, no. 1 (2025): 09–14, <https://doi.org/10.70826/jcisnu.v2i2.838>; Syafrida Ayudhia, "Comparative Study of Islamic Inheritance Law and Customary Inheritance Law in the Community in Natal District, Mandailing Natal Regency," *ISNU Nine-Star Multidisciplinary Journal* 3, no. 1 (2026): 90–99, <https://doi.org/10.70826/ins9mj.v3i1.1484>.

Muslim beneficiaries may not exceed one-third of the deceased net estate, thereby preserving the quantitative limits traditionally recognized in Islamic testamentary law. This limitation stems from the well-established Prophetic tradition concerning Sa'd ibn Abī Waqqāṣ, where the Prophet Muhammad permitted testamentary disposition up to one-third of the estate while emphasising that "one-third is sufficient, and even one-third is substantial." By retaining this classical maximum, the Court demonstrates that the extension of *wasiat wajibah* does not alter the substantive structure of *farā'id*, but instead operates within a longstanding doctrinal framework governing voluntary testamentary dispositions. Consequently, the one-third limitation functions as a constitutional and doctrinal safeguard, ensuring that judicial protection of non-Muslim family members does not prejudice the proprietary rights of Muslim heirs or undermine the mandatory inheritance shares prescribed by Islamic law. This approach indicates that judicial *ijtihad* is exercised within clearly defined normative boundaries rather than via unrestricted judicial discretion, reinforcing legal certainty while simultaneously accommodating the objectives of justice and family solidarity. The quantitative restriction serves not only as a mathematical formula but also as an institutional mechanism for balancing individual equity, family cohesion, and fidelity to the classical principles of Islamic inheritance law.¹⁴

A more complex legal issue arises where multiple non-Muslim family members simultaneously qualify as recipients of *wasiat wajibah*. An example is a surviving non-Muslim spouse together with several non-Muslim children, whose combined interests exceed the one-third ceiling permitted under Islamic testamentary law. Although the Compilation of Islamic Law and existing Supreme Court jurisprudence do not prescribe a detailed statutory formula for allocating the mandatory bequest among multiple beneficiaries, the underlying principles of proportionality (*al-'adl*), equity (*al-musāwāh*), and public benefit (*maṣlahah*) provide an appropriate framework for judicial distribution. In these circumstances, the aggregate value of all *wasiat wajibah* awards should remain within the one-third limitation, while the respective shares of individual beneficiaries may be determined proportionally according to the relationship with the deceased, degree of dependency, contribution to the welfare of the deceased during

¹⁴ King Albar Pandapotan Simatupang and Bunga Amalia Nasution, "Contemporary Islamic Jurisprudence Study on Inheritance from the Perspective of Islamic Law," *Jurnal Sahabat ISNU SU* 2, no. 3 (2025): 200–205, <https://doi.org/10.70826/jsisnu.v2i3.897>; Khotibul Umam et al., "Comprehensive Study of Inheritance Law Arrangements: Principles, Heirs, Heirs, and Management of Inheritance Boedel," *ISNU Nine-Star Multidisciplinary Journal* 2, no. 1 (2025): 01–07, <https://doi.org/10.70826/ins9mj.v2i1.755>; Zahra Mehrabi et al., "Fatwa and Legal Reasoning on Inheritance in Temporary Marriage: A Critical Fiqh Analysis of Sayyid Murtaḍā's Legal Thought," *Parewa Saraq: Journal of Islamic Law and Fatwa Review* 5, no. 1 (2026): 18–32, <https://doi.org/10.64016/parewasaraq.v5i1.62>.

lifetime, and other relevant equitable considerations established during judicial proceedings. This proportional approach preserves the integrity of the classical quantitative limitation while allowing judges sufficient flexibility to accommodate the factual complexity of contemporary interfaith family structures. At the same time, it prevents one beneficiary from exhausting the entire mandatory bequest to the detriment of other equally deserving non-Muslim family members, promoting both procedural fairness and substantive justice. Therefore, the judicial allocation of *wasiat wajibah* should be understood as an exercise of equitable distribution within a fixed legal ceiling rather than an automatic entitlement to predetermined inheritance shares comparable to those enjoyed by lawful Muslim heirs (*warith*).¹⁵

The analysis demonstrates that the legal construction of *wasiat wajibah* in Indonesian Religious Court jurisprudence is characterised by a carefully balanced interaction between procedural law, statutory interpretation, and Islamic legal doctrine. Instead of exercising unlimited judicial discretion, the Supreme Court has consistently confined the operation of *wasiat wajibah* within identifiable normative safeguards. These include the requirement that non-Muslim beneficiaries do not acquire the status of legal heirs (*warith*), the strict observance of the one-third quantitative ceiling, and the application of equitable distribution principles where multiple beneficiaries are involved. Collectively, the safeguards ensure that judicial innovation remains compatible with the structure of the Compilation of Islamic Law while responding to the practical realities of Indonesia's religiously plural society. The Court jurisprudence illustrates that judicial *ijtihad* is not intended to replace the legislative framework of Islamic inheritance law, but to preserve coherence by resolving normative gaps through contextual interpretation grounded in justice, legal certainty, and proportionality. This doctrinal construction provides the essential foundation for understanding why subsequent judicial reasoning increasingly relies on *maqāṣid al-sharī'ah* as the principal normative framework for reconciling classical inheritance doctrine with constitutional

¹⁵ Muhammad Amar Adly and Ghairil Amri, "Changes In Javanese Customary Law From The Perspectives Of Legal Sociology And Anthropology," *AT-TAFAHUM: Journal of Law* 7, no. 1 (2023): 6–9, <https://doi.org/10.47006/attafahum.v7i1.29227>; Refy Faridatul Azqia et al., "Negotiating Divine Shares: Comparative Dynamics of Islamic Inheritance Law in Yemen and Indonesia," *Nahdlatul Fikr: International Journal of Islamic Studies, Education, and Humanities* 2, no. 1 (2025): 17–33, <https://doi.org/10.5281/zenodo.20077648>; Audy Zakiatul Kamilah et al., "Strengthening Islamic Fiscal Governance: Socio-Legal Analysis of Culinary Taxation in Asia, Africa, Europe," *Nahdlatul Fikr: International Journal of Islamic Studies, Education, and Humanities* 2, no. 1 (2025): 34–54, <https://doi.org/10.5281/zenodo.20102204>; Anisa Mutiara Kartini Nasution et al., "Analysis of the Recognition and Validation of Children Born Out of Wedlock and the Legal Consequences According to Civil Law and Rights Provisions," *Jurnal Cendikia ISNU SU* 2, no. 1 (2025): 09–14, <https://doi.org/10.70826/jcisnu.v2i2.838>.

values, family harmony, and the protection of human dignity, examined in the following section.

3.3. Justice, Family Harmony, and *Maqāṣid*-Based Judicial Adjudication

The jurisprudential expansion of *wasiat wajibah* to non-Muslim family members ultimately raises a broader question concerning the nature of judicial adjudication within Islamic inheritance law. Rather than treating Article 209 KHI as a rigid textual provision confined exclusively to adopted children and adoptive parents, the Supreme Court interpreted the provision purposively to resolve situations in which strict application of Article 171(c) KHI would produce manifest inequity. This interpretative approach demonstrates that judicial *ijtihad* in Indonesian Religious Courts is directed not toward altering the substantive rules of inheritance, but preserving justice within the existing legal framework. Accordingly, the Court's reasoning reflects *maqāṣid*-oriented adjudication, in which legal interpretation aims to harmonise textual fidelity with substantive fairness.¹⁶

This judicial approach cannot be understood solely through the perspective of *maqāṣid al-sharī'ah*. It must also be examined within the framework of judicial authority and civil procedural law. Indonesian judges remain bound by the principle of *ultra petita*, which generally prohibits courts from granting relief beyond the claims submitted by litigants. However, Religious Court jurisprudence has consistently justified the ex officio award of *wasiat wajibah* by relying upon the judicial obligation to apply the law (*iura novit curia*) and the special character of family law disputes. In this context, judges possess broader authority to safeguard justice and prevent manifest hardship. The judicial grant is understood not as a procedural excess but as an exercise of responsibility to ensure the equitable settlement of inheritance disputes.¹⁷

¹⁶ Mohammad Hashim Kamali, *Principles of Islamic Jurisprudence* (Islamic Texts Society, 2003); Auda, *Maqasid Al-Shariah as Philosophy of Islamic Law*; Akhmad Jalaludin et al., "Cultural Negotiations in the Vernacularization of Islamic Inheritance Law in Indonesia: A Socio-Legal and Maqāṣid al-Sharī'ah Approach," *Jurnal Hukum Islam* 24, no. 1 (2026): 133–66, <https://doi.org/10.28918/jhi.v24i1.05>; Dwi Fadilatul Mukaromah et al., "Leveraging Artificial Intelligence for Efficient and Transparent ZISWAF Management: Comparative Insights from Indonesia and Malaysia," *Munakahat: Journal of Islamic Family Law* 1, no. 2 (2025): 25–37, <https://doi.org/10.5281/zenodo.21235737>.

¹⁷ Rahmadanil and Rifka Zuwanda, "Application of Inheritance Law in Minangkabau According to Islamic Law," *Jurnal Hukum Islam* 19, no. 2 (2021): 349–65, <https://doi.org/10.28918/jhi.v19i2.5087>; Muhammad Syafi'i et al., "Peace Agreement on Masalahah in Distribution of Inheritance in Sasak Tribe's Muslim Community," *Jurnal Hukum Islam* 23, no. 1 (2025): 73–104, <https://doi.org/10.28918/jhi.v23i1.03>; Omar Aghbalou, "Family Law, Maqāṣid al-Sharī'ah, and State Resilience: A Comparative Study of Legislative Reform in Muslim Jurisdictions," *Mazahibuna: Jurnal Perbandingan Mazhab*, April 1, 2026, 39–56, <https://doi.org/10.24252/mazahibuna.vi.64188>.

The empirical interview conducted with Dr Basarudin further shows how adjudicative philosophy operates in practice. According to the interview, judges frequently encounter inheritance disputes in which strict adherence to Article 171(c) KHI would completely exclude non-Muslim spouses or children who had lived together with, cared for, and economically supported the deceased for many years. In these circumstances, judges do not regard *wasiat wajibah* as creating a new category of heirs but rather giving legal effect to a moral obligation that the deceased would reasonably have fulfilled through an express testament. The consistent observance of the one-third ceiling further demonstrates judicial restraint, ensuring that the interests of lawful Muslim heirs remain protected while preventing disproportionate interference with classical inheritance rules.¹⁸

From the perspective of *maqāṣid al-sharī'ah*, this adjudicative model advances several interconnected objectives of Islamic law. The protection of property (*ḥifẓ al-māl*) is preserved by maintaining the quantitative limitation established in classical testamentary doctrine. Family continuity (*ḥifẓ al-nasl*) is strengthened by recognising enduring familial relationships despite religious differences, while human dignity and social harmony are promoted by preventing the unnecessary exclusion of close family members. Rather than prioritising formal legal categories alone, the Supreme Court adopts proportional reasoning that balances certainty, justice, and public welfare (*maṣlahah*). This reasoning demonstrates that *maqāṣid* operates not as an abstract ethical doctrine but as a concrete judicial methodology for interpreting positive Islamic family law.¹⁹

Overall, the examined jurisprudence indicates that Indonesian Religious Courts have developed a distinctive model of *maqāṣid*-based judicial adjudication. The Court neither abolishes the classical doctrine of *ikhtilāf al-dīn* nor transforms non-Muslims into statutory heirs. Instead, judges employ *wasiat wajibah* as a carefully limited equitable solution grounded simultaneously in Article 209 KHI, established Supreme Court precedent, and the higher objectives of Islamic law. This adjudicative model illustrates a balanced form of judicial *ijtihād* that preserves doctrinal integrity while responding to the realities of Indonesia's plural society. In this context, *wasiat wajibah*

¹⁸ Interview with Dr Basarudin, Vice Chairman of the Nabire Religious Court, Papua, 21 January 2026.

¹⁹ Auda, *Maqasid Al-Shariah as Philosophy of Islamic Law*; Hakim, "Between Hibah and Waṣiat Wājibah for Non-Muslims"; Rizaldy Anggriawan, "Jināyah Al-Bī'ah (Environmental Crimes): A Maqāṣid-Based Reconceptualization of Ecocide as Ḥirābah in Indonesia's Integrative Legal Framework," *Mazahibuna: Jurnal Perbandingan Mazhab*, June 17, 2026, 208–28, <https://doi.org/10.24252/mazahibuna.vi.65807>; Hisam Ahyani et al., "DSN-MUI Fatwas and Islamic Retirement Planning: A Maqāṣid al-Sharī'ah Review of Financial Security among Non-Civil Servant Lecturers in Indonesia," *Parewa Saraq: Journal of Islamic Law and Fatwa Review* 5, no. 1 (2026): 102–20, <https://doi.org/10.64016/parewasaraq.v5i1.78>.

functions not only as a mechanism of wealth distribution but also as an instrument through which Islamic inheritance law continues to realise justice, legal certainty, and family harmony within the constitutional legal order.

3.4. Comparative Perspectives on Judicial Ijtihād and Mandatory Bequests in Selected Muslim Jurisdictions

The Indonesian development of *wasiat wajibah* for non-Muslim family members represents a distinctive model of judicial adaptation within contemporary Islamic inheritance law. Compared to many Muslim jurisdictions where reforms were primarily introduced through legislative enactments, Indonesian Religious Courts have gradually expanded the interpretation of Article 209 of the Compilation of Islamic Law (KHI) through a consistent line of Supreme Court decisions. This jurisprudential evolution demonstrates that legal development may arise through judicial interpretation (*ijtihād qaḍā'ī*) while maintaining fidelity to the classical doctrine prohibiting inheritance across religious differences (*ikhtilāf al-dīn*). Rather than recognising non-Muslims as statutory heirs, Indonesian courts utilise the equitable legal mechanism of *wasiat wajibah* to reconcile doctrinal certainty with substantive justice, thereby illustrating a restrained model of judicial legal development within a plural legal system.²⁰

Comparative examination shows that Muslim-majority jurisdictions adopt different institutional mechanisms to achieve similar objectives of protecting family welfare while preserving the integrity of Islamic inheritance law. Malaysia generally emphasises voluntary Islamic estate planning through *hibah*, *Hibah Amanah*, and *Declaration of Hibah*, thereby reducing the necessity for judicial intervention after death. Egypt introduced *wasiat wajibah* through statutory codification in the Personal Status Law, making mandatory bequests a legislative rather than judicial institution. Tunisia also regulates testamentary succession through codified family legislation, while Pakistan recognises statutory mandatory succession under specific legislative provisions governing Muslim family law. Consequently, the principal distinction among these jurisdictions lies not in the commitment to Islamic legal principles but in the institutional pathways through which legal adaptation is achieved.

²⁰ Mohammad Hashim Kamali, *Shari'ah Law: An Introduction* (Oxford: Oneworld Publications, 2008); Muhammad Lutfi Hakim, "Between Hibah and Waṣiat Wājibah for Non-Muslims: Expansive Legal Interpretations by Indonesian Religious Judges in Inheritance Cases," *Al-Ahwal: Jurnal Hukum Keluarga Islam* 17, no. 2 (2024): 147–166.

Table 1. Comparative Approaches to Mandatory Bequests and Judicial Discretion in Selected Muslim Jurisdictions

Aspect	Indonesia	Malaysia	Egypt	Tunisia	Pakistan
Primary legal basis	Supreme Court jurisprudence interpreting Article 209 KHI	Islamic estate planning under State Islamic legislation	Personal Status Law	Codified Personal Status legislation	Statutory Muslim Family Law
Main legal mechanism	<i>Wasiat wajibah</i> through judicial adjudication	<i>Hibah</i> , <i>Hibah Amanah</i> , Declaration of Hibah	Statutory mandatory bequest	Statutory testamentary regulation	Statutory mandatory succession
Nature of reform	Judicial interpretation	Preventive estate planning	Legislative reform	Legislative reform	Legislative reform
Judicial discretion	High	Limited	Moderate	Limited	Moderate
Protection of non-Muslim relatives	Through judicial <i>wasiat wajibah</i>	Through voluntary asset transfer	Limited statutory mechanism	Limited statutory mechanism	Subject to statutory conditions
Legal philosophy	Maqāṣid-based judicial adjudication	Private Islamic estate planning	Legislative realization of public welfare	Codified legal certainty	Statutory legal harmonization

Source: Author’s compilation based on primary legal sources and academic literature (2026).

The comparison demonstrates that Indonesia occupies a unique position within contemporary Islamic legal development. Although Egypt, Tunisia, and Pakistan primarily rely upon legislative reform to regulate mandatory bequests, and Malaysia emphasizes preventive estate planning before death, Indonesia entrusts the adaptation of inheritance law largely to judicial interpretation. This distinctive model allows Religious Court judges to balance constitutional values, family solidarity, and the objectives of Islamic law (*maqāṣid al-sharī‘ah*) without formally amending the text of the KHI. At the same time, the Supreme Court consistently maintains the quantitative limitation of one-third of the estate, thereby ensuring that judicial innovation remains constrained by classical testamentary doctrine and established jurisprudential principles rather than unlimited judicial discretion.²¹

²¹ Administration of Islamic Law Enactments (various Malaysian states); Abdul Rashid Abdul Aziz et al., *Islamic Estate Planning in Malaysia* (Kuala Lumpur: IBFIM, 2019); Muhammad Lutfi Hakim (2024)

The comparative analysis also provides an important perspective on the longstanding debate concerning *rechtsvorming* and the constitutional limits of judicial authority. The Indonesian experience indicates that the extension of *wasiat wajibah* should not be understood as judicial legislation replacing statutory law, but rather purposive interpretation intended to resolve normative gaps left by the KHI in responding to interfaith family disputes. In contrast, Egypt, Tunisia, and Pakistan have largely delegated policy choices to legislative institutions, while Malaysia minimizes judicial intervention through comprehensive Islamic estate planning mechanisms. These different approaches demonstrate that Islamic inheritance law possesses significant institutional flexibility while remaining grounded in shared jurisprudential principles. Indonesia contributes a distinctive model of *maqāṣid*-based judicial adjudication in which precedent, constitutional values, and classical Islamic jurisprudence interact to achieve substantive justice without abandoning doctrinal coherence.²²

Overall, the comparative evidence confirms that no single institutional model dominates contemporary Islamic inheritance law. Instead, Muslim jurisdictions employ different combinations of judicial interpretation, legislative reform, and private estate planning to address comparable socio-legal challenges arising from religious diversity and changing family structures. Indonesia experience is distinctive because legal adaptation is driven principally by authoritative Supreme Court jurisprudence rather than statutory amendment. The development of *wasiat wajibah* illustrates how judicial *ijtihād* may function as a legitimate mechanism of legal harmonisation within a plural constitutional order, while remaining subject to procedural safeguards, quantitative limitations, and the overarching objectives of *maqāṣid al-sharī'ah*. This comparative perspective reinforces the central assertion that judicial adjudication can operate as an effective bridge between classical Islamic inheritance doctrine and the contemporary demands of justice in plural societies.²³

²² Noel James Coulson, *Succession in the Muslim Family* (Cambridge University Press, 1971); James Norman Dalrymple Anderson, *Islamic Law in the Modern World* (Greenwood Press, 1975); Wael B. Hallaq, *Shari'a: Theory, Practice, Transformations* (Cambridge University Press, 2009); Abbas Langaji et al., "Reconstructing Marriageable Age in Tafsīr Al-Aḥkām: A Comparative Uṣūliyyah Analysis of Tāj al-Dīn al-Subkī and Classical Madhhab Perspectives," *Mazahibuna: Jurnal Perbandingan Mazhab*, June 18, 2026, 229–52, <https://doi.org/10.24252/mazahibuna.vi.66663>.

²³ Zaprulkhan Zaprulkhan, "Maqāṣid Al-Shariah in the Contemporary Islamic Legal Discourse: Perspective of Jasser Auda," *Walisono: Jurnal Penelitian Sosial Keagamaan* 26, no. 2 (2018): 445–72, <https://doi.org/10.21580/ws.26.2.3231>.

3.5. Strengthening Judicial Consistency through Maqāsid-Based Guidelines for Wasiat Wajibah

The development of *wasiat wajibah* through Supreme Court jurisprudence has significantly contributed to achieving substantive justice in interfaith inheritance disputes. However, the absence of explicit procedural guidelines continues to create uncertainty regarding the uniform application of this doctrine among Religious Courts. Supreme Court precedents consistently recognise judicial authority to grant *wasiat wajibah* to non-Muslim family members under specific circumstances, but no regulation (*Peraturan Mahkamah Agung*—PERMA) or circular letter (*Surat Edaran Mahkamah Agung*—SEMA) presently provides standardised criteria governing judicial discretion in these cases. Consequently, future adjudication remains highly dependent on individual judicial interpretation, potentially leading to inconsistent outcomes across different Religious Courts.²⁴

To enhance legal certainty, this study proposes that future judicial policy should establish a structured framework governing the application of *wasiat wajibah* in interfaith inheritance disputes. The guidelines should clarify that the doctrine constitutes an exceptional equitable remedy rather than a general substitute for Islamic inheritance rules. At minimum, judges should examine several cumulative requirements before granting mandatory bequests, including the existence of a genuine family relationship, long-term care or economic contribution by the non-Muslim beneficiary, the absence of evidence indicating hostility toward the deceased, preservation of the rights of Muslim heirs, and strict compliance with the classical one-third limitation. Establishing these objective criteria would reduce uncertainty while ensuring that judicial discretion remains transparent, predictable, and consistent with the objectives of Islamic law.²⁵

The proposed framework also addresses concerns regarding judicial authority and procedural legitimacy. As discussed in previous sections, granting *wasiat wajibah* ex

²⁴ Purkon et al., “The Role of Supreme Court Jurisprudence in Development of Islamic Family Law in Indonesia”; Setyawan et al., “Contemporary Ijtihad Deconstruction in The Supreme Court”; Amelia Setyawati et al., “Locus of Control, Environment, and Small-Medium Business Performance in Pilgrimage Tourism: The Mediating Role of Product Innovation,” *Heliyon* 10, no. 9 (2024): e29891, <https://doi.org/10.1016/j.heliyon.2024.e29891>.

²⁵ Sabari Barus et al., “The Position of Foreign Investment in the Indonesian Economic System Based on Pancasila and the 1945 Constitution of the Republic of Indonesia,” *Journal of Law and Sustainable Development* 11, no. 12 (2023): e2007–e2007, <https://doi.org/10.55908/sdgs.v11i12.2007>; Arief Budiman et al., “Wājibah Will for Non-Muslim Heirs in Indonesia: A Legal Political Perspective Based on Justice and Welfare,” *Ijtihad: Jurnal Wacana Hukum Islam Dan Kemanusiaan* 24, no. 2 (2024): 223–50, <https://doi.org/10.18326/ijtihad.v24i2.223-250>.

officio should not be understood as unlimited judicial activism or unauthorised judicial legislation (*rechtsvorming*). Instead, judicial intervention must remain firmly grounded in Article 209 KHI, authoritative Supreme Court precedent, the doctrine of *iura novit curia*, and the equitable principles governing family law adjudication. By articulating explicit procedural standards through PERMA or SEMA, the Supreme Court could provide clearer guidance concerning the circumstances in which judges may exercise ex officio authority without violating the *ultra petita* principle or undermining procedural fairness. This clarification would strengthen both judicial accountability and public confidence in Religious Court decisions.²⁶

Beyond procedural consistency, standardised judicial guidelines would contribute to broader legal harmonisation within Indonesia's plural legal system. Clear adjudicative standards assist judges in balancing constitutional guarantees of equality, protection of family unity, and respect for Islamic inheritance doctrine without generating unnecessary doctrinal conflict. Moreover, harmonised judicial practice minimises disparities among Religious Courts while preserving sufficient interpretative flexibility to accommodate diverse factual circumstances. This balanced approach reflects the essence of *maqāsid al-sharī'ah*, in which legal certainty (*al-istiqrār al-qānūnī*) and substantive justice (*al-'adl*) are pursued simultaneously through principled judicial reasoning rather than mechanical application of legal texts.²⁷

Overall, the results indicate that the future development of *wasiat wajibah* in Indonesia should proceed through institutional refinement rather than fundamental doctrinal revision. The formulation of judicial guidelines through PERMA or SEMA would strengthen consistency in Religious Court jurisprudence while preserving the Supreme Court-established approach to *maqāsid*-based adjudication. This reform would not alter

²⁶ Khudzaifah Dimyati et al., "Indonesia as a Legal Welfare State: A Prophetic-Transcendental Basis," *Heliyon* 7, no. 8 (2021): e07865, <https://doi.org/10.1016/j.heliyon.2021.e07865>; Mukhlisin Mukhlisin et al., "The Effect of Indonesia Philanthropy's Regulation Towards the Welfare State," *BESTUUR* 10, no. 2 (2022): 2, <https://doi.org/10.20961/bestuur.v10i2.63527>; Sugeng Wibowo et al., "Islamic Nomocracy: From the Perspectives of Indonesia, Spain and Russia," *Legality: Jurnal Ilmiah Hukum* 31, no. 1 (2023): 1, <https://doi.org/10.22219/ljih.v31i1.25358>.

²⁷ Auda, *Maqasid Al-Shariah as Philosophy of Islamic Law*; Hisam Ahyani et al., "Building the Values of Rahmatan Lil 'Alamin for Indonesian Economic Development at 4.0 Era from the Perspective of Philosophy and Islamic Economic Law," *Al-Ihkam: Jurnal Hukum & Pranata Sosial* 16, no. 1 (2021): 1, <https://doi.org/10.19105/al-ihkam.v16i1.4550>; Mariani Amberi, "Efforts to Prevent Child Age Marriage in The Study of Islamic Legal Philosophy and Indonesia Positive Law," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 7, no. 1 (2023): 1, <https://doi.org/10.22373/sjhk.v7i1.12404>; Geri Pratama Andika et al., "Concept and Procedures for the Distribution of Joint Inheritance for Heirs of Classes I, II, and III According to the Civil Code (Burgerlijk Wetboek)," *Jurnal Cendikia ISNU SU* 2, no. 1 (2025): 25–31, <https://doi.org/10.70826/jcisnu.v2i2.841>.

the classical prohibition of inheritance across religious differences or redefine non-Muslims as statutory heirs. Instead, it provides a coherent procedural framework ensuring that judicial *ijtihād* remains principled, proportionate, and responsive to the realities of Indonesia's plural constitutional order. Accordingly, *wasiat wajibah* may continue to function as a legitimate bridge between classical Islamic inheritance law and contemporary demands for justice, legal certainty, and family harmony.

3.6 Synthesis of Judicial Ijtihād, Maqāṣid al-Sharī‘ah, and Institutional Development of Wasiat Wājibah

The preceding sub-sections (3.1–3.5) demonstrate that the development of *wasiat wājibah* in Indonesia constitutes a multi-layered legal transformation that cannot be reduced to a single doctrinal or institutional explanation. Sub-section 3.1 established the normative basis of Article 209 of the Compilation of Islamic Law (KHI), while Sub-sections 3.2–3.3 traced the expansion through Supreme Court jurisprudence. Sub-section 3.4 situates Indonesia within a broader comparative framework, and Sub-section 3.5 introduces the necessity of procedural standardisation through *maqāṣid*-based judicial guidelines. Collectively, these developments indicate that the evolution of *wasiat wājibah* is shaped by the dynamic interaction between classical fiqh, statutory interpretation, and judicial creativity within Indonesia plural legal system.²⁸

From a doctrinal perspective, this trajectory reflects a controlled form of judicial *ijtihād qaḍā’ī* rather than a departure from Islamic inheritance orthodoxy. Classical juristic discourse, including positions articulated by Ibn Ḥazm, al-Zuḥaylī, and contemporary scholars, provides conceptual space for exceptional distributive mechanisms in cases of social necessity and family protection. In this context, Islamic legal theory does not reject interpretive adaptation, but rather situates it within the broader framework of *maṣlaḥah*-oriented reasoning and moral responsibility in family relations. Empirical studies of Indonesian inheritance practice further show that judges frequently rely on contextual reasoning to reconcile doctrinal rigidity with evolving family structures and socio-legal realities.²⁹

²⁸ Yusna Zaidah et al., “Unveiling the Role of Local Cultural Considerations in Judicial Discretion: An Analysis of Inheritance Decisions in the Religious Courts of South Kalimantan,” *Al-Risalah: Forum Kajian Hukum dan Sosial Kemasyarakatan* 23, no. 1 (2023): 47–58, <https://doi.org/10.30631/alrisalah.v23i1.1351>.

²⁹ M. Tamudin and Yusida Fitriyati, “Implementation of Professional Zakat Based on the Regional Regulation of Palembang City Number 4 of 2017 at the Palembang City Government Office,” *Nurani: Jurnal Kajian Syari’ah Dan Masyarakat* 21, no. 2 (2021): 291–306, <https://doi.org/10.19109/nurani.v21i2.10092>; Wahidah Heryadi and Farihatni Mulyati, “An In-Depth Examination of Judicial Interpretations of ‘Radd’ in Spousal Inheritance within the Religious Courts of Sampang and Tanjung,” *Syariah: Jurnal Hukum dan Pemikiran* 24, no. 1 (2024): 206–23,

Comparatively, the Indonesian model is distinctive in that legal adaptation is driven primarily by judicial precedent rather than legislative codification or private estate planning mechanisms. In Malaysia, inheritance protection is predominantly achieved through instruments such as *hibah*, *Hibah Amanah*, and trust-based estate planning, reflecting a preventive legal strategy rather than post-mortem judicial intervention. Conversely, jurisdictions such as Egypt, Tunisia, and Pakistan rely more heavily on statutory reform to institutionalise mandatory bequests within codified legal frameworks.³⁰ This diversity demonstrates that Islamic inheritance law is not institutionally monolithic, but rather reflects multiple pathways of legal modernisation shaped by different state–religion configurations and legal traditions.³¹

Within this comparative spectrum, Indonesia occupies a hybrid but distinctive position where judicial institutions function as primary agents of normative development in inheritance law. Studies on judicial discretion in Religious Courts confirm that judges often exercise interpretive authority grounded in *maqāṣid al-sharī'ah*, particularly to ensure fairness and prevent hardship in family disputes.⁶ However, scholarship also underscores the risks of inconsistency when judicial discretion is not supported by standardised procedural guidance. Therefore, as suggested in Sub-section 3.5, the formulation of PERMA- or SEMA-based guidelines is not merely a procedural reform but a necessary institutional response to maintain coherence in judicial reasoning while preserving flexibility in adjudication.

Overall, the synthesis of doctrinal, comparative, and institutional analyses indicates that *wasiat wājibah* in Indonesia represents an evolving jurisprudential construct situated at the intersection of Islamic legal theory and modern judicial governance.

<https://doi.org/10.18592/sjhp.v24i1.12889>; Syamsarina Syamsarina et al., “Dynamics of Different Religious Inheritance Decisions: The Case Study of the Religious Court Judges Ijtihad,” *Syariah: Jurnal Hukum Dan Pemikiran* 25, no. 1 (2025): 1–21, <https://doi.org/10.18592/sjhp.v25i1.15717>; Yusida Fitriyati et al., “Reconsidering Inheritance Equality: Gender Justice in Religious Court Decisions through the Lens of Maqashid Al-Shariah,” *Nurani: Jurnal Kajian Syari'ah Dan Masyarakat* 25, no. 1 (2025): 122–40, <https://doi.org/10.19109/nurani.v25i1.27133>.

³⁰ Asman Asman, “The Red Yarn of Contemporary Islamic Law Reform: A Critical Study of Abdullahi Ahmed An-Na'im's Thought,” *Syariah: Jurnal Hukum Dan Pemikiran* 21, no. 1 (2021): 17–44, <https://doi.org/10.18592/sjhp.v1i1.4193>; Muhamad Mu'izz Abdullah et al., “The Analysis of Trust Instruments in Malaysia as Islamic Estate Planning: The Challenges and Effects,” *UUM Journal of Legal Studies* 13, no. 1 (2022): 107–29.

³¹ Muhammad Lutfi Hakim, “Sharī'a, Fiqh, and Qānūn: A Portrait of the Cognitive Nature of Islamic Law in Indonesia,” *Asy-Syir'ah: Jurnal Ilmu Syari'ah dan Hukum* 55, no. 1 (2021): 1, <https://doi.org/10.14421/ajish.v55i1.953>; Sainun Sainun et al., “From Religious Understanding to Tradition: The Role of Tuan Gurus in the Fidyah Practice within the Sasak Muslim Community,” *JURIS (Jurnal Ilmiah Syariah)* 23, no. 2 (2024): 337–49, <https://doi.org/10.31958/juris.v23i2.13126>; Hakim, “Between Hibah and Wasiat Wājibah for Non-Muslims.”

The development illustrates that judicial *ijtihād*, when guided by *maqāṣid al-sharī'ah* and constrained by procedural norms, can operate as a legitimate mechanism of legal adaptation within a plural constitutional order. This result reinforces the central assertion that Islamic inheritance law is not static but is dynamically reinterpreted by institutional actors who mediate among textual doctrine, social change, and normative justice.

4. Conclusion

In conclusion, this study addresses three interrelated questions concerning the doctrinal construction, judicial legitimacy, and legal implications of *wasiat wājibah* in Indonesian Islamic inheritance law. First, Indonesian Supreme Court jurisprudence has progressively constructed *wasiat wājibah* as an interpretive extension of Article 209 of the Compilation of Islamic Law (KHI), despite the original normative scope being limited to adopted children and adoptive parents. Second, this judicial development is best understood not as judicial law-making (*rechtsvorming*), but as a form of controlled judicial *ijtihād qaḍā'ī* grounded in *maqāṣid al-sharī'ah*, particularly the protection of wealth (*ḥifẓ al-māl*), lineage (*ḥifẓ al-nasl*), and human dignity (*ḥifẓ al-nafs*). Third, the jurisprudential expansion enhances substantive justice in interfaith inheritance disputes while simultaneously raising concerns about legal certainty and the boundaries of judicial discretion within the Religious Court system.

The results further confirm that the Indonesian model of *wasiat wājibah* represents a distinctive institutional pathway in contemporary Islamic legal development. Malaysia relies primarily on preventive estate-planning instruments such as *hibah*, *Hibah Amanah*, and trust-based mechanisms, whereas Egypt, Tunisia, and Pakistan rely predominantly on legislative codification of mandatory bequests. On the other hand, Indonesia places the Supreme Court at the centre of doctrinal development through consistent jurisprudence. This demonstrates that Islamic inheritance law evolves through multiple institutional logics, where judicial interpretation, legislative reform, and private legal instruments operate as alternative but interrelated mechanisms of legal adaptation.

The novelty of this study is grounded in the reconceptualisation of *wasiat wājibah* as a judicially constructed doctrine of *ijtihād qaḍā'ī* that operates at the boundary between statutory interpretation and judicial law-making (*rechtsvorming*) within a plural legal order. Compared to previous investigations that primarily framed *wasiat wājibah* as either a statutory anomaly or a human rights accommodation, this study suggests that doctrinal development is structurally rooted in Supreme Court jurisprudence and can be systematically explained through a *maqāṣid*-based adjudicative framework.

Accordingly, judicial reasoning in Indonesian inheritance law should not be viewed as a deviation from classical *farā'id*, but an adaptive interpretive mechanism that preserves doctrinal continuity while responding to socio-legal transformation.

The theoretical contribution is to strengthen the conceptual relationship between *maqāṣid al-sharī'ah* and judicial interpretation (*ijtihād qaḍā'i*) in the context of Islamic inheritance law, particularly by demonstrating how purposive reasoning can operate within statutory constraints without undermining doctrinal coherence. The practical contribution is grounded in the formulation of a normative basis for developing Supreme Court guidelines (PERMA or SEMA) to ensure consistency, predictability, and transparency in the application of *wasiat wājibah* across Religious Courts in Indonesia. This institutionalisation is necessary to balance judicial flexibility with legal certainty in a plural constitutional system.

Despite the significant contributions, this study has several limitations. First, the analysis is limited to selected Supreme Court decisions between 1995 and 2018 and does not include a comprehensive empirical mapping of all Religious Court judgments across Indonesia. Second, the empirical component is limited to a single illustrative judicial interview, which is not intended to represent nationwide judicial practice. Third, the study focuses primarily on doctrinal and jurisprudential development rather than on the socio-economic outcomes of implementing *wasiat wājibah*. These limitations open avenues for future studies that may employ broader empirical datasets and comparative socio-legal methodologies.

In conclusion, this study affirms that *wasiat wājibah* in Indonesia represents a hybrid legal construct situated at the intersection of classical Islamic inheritance doctrine, statutory law, and judicial innovation. The development illustrates that judicial *ijtihād*, when guided by *maqāṣid al-sharī'ah* and supported by procedural safeguards, can function as a legitimate mechanism for harmonising Islamic legal tradition with the demands of a plural and modern constitutional order. This result underscores the central assertion that Islamic inheritance law is not static, but dynamically reconstructed through judicial interpretation aiming to balance doctrinal fidelity with substantive justice.

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