

JUSTICE AND LEGAL RECOGNITION OF INTERFAITH HEIRS IN INDONESIA INHERITANCE LAW

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Abstract

The pluralistic inheritance law system in Indonesia, which consists of Islamic inheritance law, Western civil inheritance law, and customary inheritance law, creates significant legal complexity, particularly in inheritance disputes involving differences of religion between the deceased and the heirs. Normatively, Islamic inheritance law does not recognize interfaith inheritance, while Western civil law adopts a principle of religious neutrality, and customary law varies according to each community's kinship system. These differences result in unequal legal protection for interfaith heirs and raise serious issues regarding legal certainty and substantive justice. This research aims to analyze the legal position of interfaith heirs within Indonesia's inheritance law system and to examine how the concept of justice is realized in judicial practice, particularly through the application of

the concept of *wasiat wajibah* (mandatory bequest). This study employs a normative juridical method using statutory, conceptual, and jurisprudential approaches. The findings demonstrate that Western civil inheritance law consistently recognizes inheritance rights without considering religious differences. In contrast, Islamic inheritance law normatively prohibits interfaith inheritance; however, judicial practice has developed the application of *wasiat wajibah* as a legal compromise to protect the economic interests of non-Muslim heirs of Muslim descendants. Nevertheless, the application of *wasiat wajibah* remains inconsistent and highly dependent on judicial discretion, resulting in legal uncertainty and unequal treatment in similar cases. This research concludes that the current pluralistic inheritance framework has not yet fully guaranteed legal certainty and substantive justice for interfaith heirs. Therefore, it recommends the harmonization and reformulation of national inheritance law to establish clearer and more uniform normative guidelines. Such reform is necessary to ensure the realization of legal certainty, social utility, and substantive justice while remaining aligned with religious values and the multicultural character of Indonesian society.

KEYWORDS

Inheritance law, Interfaith heirs, Legal Pluralism, Islamic law, Civil Law, Justice, Wasiat Wajibah.

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Introduction

The term *Waris* is derived from Arabic *warisa-yarisu warsan* or *irsan/turâs*, which refers to the transfer of rights and property from a deceased person to his or her heirs.¹ In legal scholarship, inheritance law has been defined in various ways. According to Soepomo, inheritance law governs the transfer of property and related rights from one generation to the next.² Hilman Hadikusuma explains that inheritance law concerns the estate of a deceased person, whether or not that estate has already been divided among the heirs.³

Inheritance law plays an important role in society because death gives rise to legal consequences relating to the transfer of rights and obligations.⁴ A person's death gives rise to legal consequences concerning the administration and transfer of the deceased's rights and obligations.⁵ These consequences require legal regulation in order to ensure certainty in the settlement of the deceased's estate. Accordingly, inheritance law plays an important role in Indonesian society because it affects family relations, property distribution, and legal certainty after death.

Inheritance law is closely related to social structure and family organization.⁶ In Indonesian society, kinship is generally organized through three descent systems: matrilineal, patrilineal, and parental.⁷ These three systems significantly influence patterns of inheritance in Indonesia.⁸

Traditionally, Indonesia recognizes three inheritance law regimes, each with distinct characteristics.⁹ First, Islamic inheritance law, which is derived from the *Qur'an* and *Hadith*, is followed by most Indonesian Muslims. Second, civil inheritance law is based on the *Burgerlijk Wetboek* (BW), commonly referred to as the Indonesian Civil Code (*KUHPerdata*), which has been recognized as positive law since the Dutch colonial period and is generally associated with non-

¹ M. Ali Hasan, *Inheritance Law in Islam*, (Jakarta: Bulan Bintang, 1998), p. 35. See also Idris Rahmulyo, *Islamic Inheritance Law, Case Study of the Shafi'i Teachings*, Hazairin (Bilateral and Practice in Religious Courts), (Jakarta: Ind Hilco, 1984), p. 23.

² Soepomo, *Chapters on Customary Law*, (Jakarta: University, 1966), p. 25.

³ Hilman Hadi Kusuma, *Customary Inheritance Law*, (Bandung: Alumni, 1986), p. 12.

⁴ Supriyadi. *Choice of Inheritance Law in a Pluralistic Society (A Comparative Study of Islamic Law and Civil Law)*. 2017. *AL-'is* 12 (1): 553-68.

⁵ *Ibid.*

⁶ Hazairin, *National Family Law*, (Jakarta: Tinta Mas, 1968), p. 34.

⁷ Wiryono Projodikoro, *Inheritance Law in Indonesia*, p. 9.

⁸ Supriyadi. *Choice of Inheritance Law in a Pluralistic Society (A Comparative Study of Islamic Law and Civil Law)*. 2017. *AL-'is* 12 (1): 553-68.

⁹ *Ibid.*

Muslim communities. Third, customary inheritance law is derived from the local values and practices of indigenous communities and varies across regions according to their customs, kinship structures, and cultural traditions. The diversity of inheritance laws in Indonesia can be traced to the colonial period, when Article 131 of the *Indische Staatsregeling* divided the population into three legal groups: Bumiputera, Foreign Orientals, and Europeans.

As a result of this historical division, the inheritance regime applied in a given case often depends on the legal status of the deceased. This choice-of-law problem arises from the plural character of inheritance law in Indonesia. However, this pluralism creates difficulties when inheritance disputes arise within socially and religiously mixed families. For example, legal difficulties arise when a Muslim dies leaving one or more non-Muslim relatives. In such cases, the choice of inheritance regime becomes crucial in determining legal certainty and the protection of interfaith heirs.

As a constitutional state that guarantees freedom of religion, Indonesia must also address the legal protection of citizens affected by interfaith inheritance disputes. In practice, however, Islamic inheritance law and some forms of customary law do not recognize inheritance rights for persons of a different religion from the deceased. Some scholars and practitioners regard Islamic inheritance law as normatively fixed and resistant to reinterpretation. In recent years, however, courts have increasingly sought to reconcile the strict prohibition of interfaith inheritance in Islamic law with the more inclusive approach of civil law. One important judicial innovation has been the use of *wasiat wajibah* as a mechanism for granting a portion of the estate to non-Muslim relatives who are not formally recognized as heirs.¹⁰ Through this mechanism, courts attempt to balance religious doctrine with constitutional equality in resolving interfaith inheritance disputes.¹¹

Nevertheless, the application of *wasiat wajibah* continues to face difficulties, primarily because courts interpret it inconsistently. Some judges rely on jurisprudence and progressive legal reasoning, whereas others adhere more

¹⁰Aco Wahab and Imam Kamaluddin, "A Critical Review of the Implementation of Mandatory Wills of Different Religions in Islamic Inheritance Law in Indonesia," *Uluumuna: Journal of Islamic Studies* 7, no. 2 (2023): 45–60, <https://ejournal.stishid.ac.id/index.php/uls/article/view/202>.

¹¹Riyanta, Agus Moh. Najib, Ahmad Bahiej, and Mohammad Bachrul Falah, "Toward Interfaith Equality in Islamic Inheritance Law: Discourse and Renewal of Judicial Practice in Indonesia," *Al-Manahij: Journal of Islamic Law Studies* 17, no. 2 (2023): 211–228, <https://ejournal.uinsaizu.ac.id/index.php/almanahij/article/view/10762>

strictly to the textual norms of Islamic inheritance law.¹² As a result, courts have produced divergent decisions, creating legal uncertainty and unequal treatment in similar cases. This inconsistency has generated academic debate regarding the legitimacy and scope of *wasiat wajibah*. Some scholars regard it as a progressive reinterpretation of Islamic inheritance law suited to Indonesia's plural society, while others view it as a departure from established religious doctrine.¹³

The absence of a clear and uniform normative framework has aggravated this problem, because the judicial grant of *wasiat wajibah* often depends on individual judicial discretion. Although *wasiat wajibah* may be seen as an important step toward legal harmonization, its contested status underscores the need for legal reform and doctrinal clarity in order to secure legal certainty and substantive justice in interfaith inheritance disputes in Indonesia.¹⁴

This study examines the legal position of interfaith heirs within Indonesia's plural inheritance law system, which consists of Islamic law, civil law, and customary law. It also analyzes how the principles of legal certainty, expediency, and substantive justice are applied in inheritance disputes involving religious difference. Accordingly, the study examines statutory regulation and jurisprudence while also highlighting inconsistencies in judicial practice and their implications for the protection of heirs' rights. Ultimately, this study seeks to formulate recommendations for a more coherent and inclusive inheritance law framework in Indonesia, one that is responsive to the realities of a multicultural society while remaining attentive to religious values.

Method

This study employs a normative juridical approach using statutory analysis and library research. The analysis focuses on identifying and evaluating how Indonesian inheritance law accommodates interfaith heirs from the

¹²Ramdan Fawzi, Encep Abdul Rojak, Ilham Mujahid, and Mualimin Mochammad Sahid, "Legal Discovery Method for Non-Muslim Heirs as Recipients of Wajibah Wills," *Journal of Islamic Law* 22, no. 1 (2024): 101–118, https://ejournal.uingusdur.ac.id/jhi/article/view/jhi_v22i1_6.

¹³Alip Pamungkas Raharjo and Elok Fauzia Dwi Putri, "Analysis of the Granting of Mandatory Wills to Heirs of Different Religions Following Supreme Court Decision Number 331 K/Ag/2018," *Voice of Law* 4, no. 2 (2022): 233–249, <https://journal.unesa.ac.id/index.php/suarahukum/article/view/4865>

¹⁴Putri Handayani, Ernu Widodo, dan Subekti, "The Consequences of Interfaith Marriage Law on the Inheritance of Wives and Children Reviewed from the Compilation of Islamic Law," *Journal of Islamic Studies and Society* 4, no. 1 (2025): 12–27, <https://jiss.publikasiindonesia.id/index.php/jiss/article/view/1632>

perspective of justice. This approach was chosen because it enables the researcher to analyze court decisions concerning interfaith inheritance disputes and to assess whether Indonesian inheritance law has accommodated interfaith heirs in light of legal certainty, justice, and expediency.

Normative legal research focuses on written legal norms and on the analysis of statutory regulations, jurisprudence, legal doctrine, and other written legal sources.¹⁵ Data were collected through library research by identifying and compiling legal materials and academic sources relevant to the research problem, including the following:¹⁶ These materials consist of primary legal sources, such as legislation and court decisions, and secondary legal sources, such as legal textbooks, journal articles, case commentaries, and prior legal research. This method was chosen in order to provide a comprehensive understanding of the justice-related issues surrounding the position of interfaith heirs within Indonesia's inheritance law system.

Result & Discussion

INHERITANCE LEGAL SYSTEM IN INDONESIA

Inheritance law in Indonesia is fundamentally pluralistic.¹⁷ This pluralism can be traced to the social structures that shape kinship patterns within Indonesian society. For example, Indonesian communities recognize different systems of descent.¹⁸ These include patrilineal systems, which may be found in communities such as Gayo, Batak, and Ambon; matrilineal systems, which are characteristic of Minangkabau society; and parental systems, which are commonly found in Javanese, Madurese, and some Sumatran communities.¹⁹

¹⁵ Suganda R. A juridical approach to understanding the Islamic economic dispute resolution system. *Scientific Journal of Islamic Economics*. 2022 Oct 31;8(3):2859-66.

¹⁶ Benuf K, Azhar M. Legal research methodology as an instrument to analyze contemporary legal problems. *Echoes of Justice*. 2020 Apr 1;7(1):20-33.

¹⁷ Supriyadi. Choice of Inheritance Law in a Pluralistic Society (A Comparative Study of Islamic Law and Civil Law). 2017. *Al-'is* 12 (1): 553-68.

¹⁸ Karimah I, Gunawan A. Implementation of customary law in the distribution and resolution of inheritance disputes in Minangkabau society: A case study of the Pagaruyung Customary Council. *As-Syar'i: Journal of Family Guidance & Counseling*. 2024 Jul 18;6(2):2302-20.

¹⁹ Wirjono Prodjodikoro, *Inheritance Law in Indonesia*, pp. 8-10.

Each of these kinship systems gives rise to different patterns of inheritance distribution and legal practice.²⁰

From a sociological perspective, Indonesia is a multicultural, multiethnic, and multireligious country. The national motto, *Bhinneka Tunggal Ika*, reflects the cultural diversity of the Indonesian nation. Extending from Sabang to Merauke, Indonesia is characterized not only by geographical breadth but also by a wide range of cultural traditions that shape its social identity.²¹ Dutch colonialism also significantly shaped the formation of the Indonesian legal system. Through colonial legal policy, the population of the Dutch East Indies was divided into three legal groups—Bumiputera, Foreign Orientals, and Europeans—as provided in Article 131 in conjunction with Article 163 of the *Indische Staatsregeling*.²² This politics of legal differentiation based on race and ethnicity produced legal pluralism, including in the field of inheritance, where different population groups were subjected to different legal systems.²³

Although the formal classification of the population was abolished after independence through Law No. 62 of 1958 on Citizenship and Presidential Decree No. 240 of 1957, pluralism in inheritance law persists to this day. This is reflected in the continued application of Islamic inheritance law to Muslims, civil inheritance law under the Civil Code to non-Muslims, and customary inheritance law to indigenous communities in various regions.²⁴ Thus, legal pluralism in Indonesian inheritance law is not only a colonial legacy but also a consequence of the country's socio-cultural diversity. The persistence of this pluralism poses challenges to the development of a more coherent national legal system, particularly in relation to interfaith inheritance disputes in a plural society.²⁵

²⁰ Supriyadi. Choice of Inheritance Law in a Pluralistic Society (A Comparative Study of Islamic Law and Civil Law). 2017. *Al-'is* 12 (1): 553-68.

²¹ Nor Annisa Rahmatillah, "Plurality of Inheritance Law in Indonesia: A Normative Review," *Muamalah Journal* 4, no. 1 (2024): 12-25, <https://journal.umpr.ac.id/index.php/jmg/article/view/9043>.

²² *Indische Staatsregeling* (IS), Article 131 in conjunction with Article 163.

²³ Iftitah Kurnia and Maisya Yusti Santosa, "Pluralism of Inheritance Law in Indonesia: The Influence of Indigenous Kinship Systems on the Patterns of Customary Inheritance Law in Indonesia," *Journal of Sharia and Istiqomah Law* 2, no. 1 (2024): 77-92, <https://jurnalistiqlomah.org/index.php/syariah/article/view/543>

²⁴ Muh Husni, "The Existence of Customary Inheritance Law in Legislation," *Unisma Law Journal* 8, no. 2 (2021): 101-115, <https://repository.unisma.ac.id/handle/123456789/3089>

²⁵ Taufik Rahman, "Conflicts of Customary Law and Islamic Inheritance in Indonesia," *Regional PA Legal Articles* (2022),

Historical studies of Indonesian law show that three inheritance law systems coexist in society: customary law, Islamic law, and civil law, although they did not emerge at the same time. Customary inheritance law is the oldest of these systems, having emerged from indigenous social values, customary norms, and ancestral traditions long before Indonesian independence.²⁶ Customary law, including customary inheritance law, is dynamic and varies according to the kinship system of each community, such as the patrilineal system in Batak society, the matrilineal system in Minangkabau, and the parental system in Java.²⁷ Accordingly, customary law is regarded as living law and remains relevant in regulating family relations and inheritance despite the absence of formal codification.²⁸

With the spread of Islam in the Indonesian archipelago from the thirteenth century onward, Islamic inheritance law also became an important component of the region's inheritance practices. Islamic teachings derived from the Qur'an and Hadith were widely accepted by Muslim communities, particularly in coastal areas that served as centers of trade and religious transmission. Over time, Islamic inheritance law did not entirely replace customary law; instead, the two often interacted and produced distinctive syncretic forms. For example, in Minangkabau society, a distinction is often drawn between categories of property distributed according to customary law and those that may be distributed according to Islamic law.²⁹ This illustrates the flexibility of inheritance law in responding to social needs.

During the colonial period, the Dutch introduced civil law through the Civil Code, which came into force in 1848. Under the *Indische Staatsregeling*, the population of the Dutch East Indies was divided into Europeans, Foreign Orientals, and Indigenous peoples, each of whom was subjected to a different legal regime³⁰ Civil law initially applied primarily to Europeans, but in practice it also affected the Foreign Orientals and later influenced the national legal structure after Indonesian independence.³¹ This colonial legal policy made legal

²⁶ Wirjono Prodjodikoro, *Inheritance Law in Indonesia* (Bandung: Sumur Bandung, 1962), 8–10.

²⁷ Koentjaraningrat, *Legal Anthropology in Indonesian Anthropology, Social and Cultural Anthropology Magazine* No. 47, Year XII (Jakarta: FISIP UI, 1989), 26–34.

²⁸ Soepomo, *Chapters on Customary Law* (Jakarta: Pradnya Paramita, 1977), 15–18.

²⁹ Hilman Hadikusuma, *Customary Inheritance Law* (Bandung: Alumni, 1983), 15–22.

³⁰ *Indische Staatsregeling* (IS), Article 131 in conjunction with Article 163.

³¹ Sudargo Gautama, *Introduction to Indonesian International Civil Law* (Bandung: Alumni, 1987), 31–33.

pluralism inevitable, since Dutch East Indies society was structured from the outset under different legal systems based on ethnic and religious classifications.

After independence, this formal classification of the population was abolished through Law No. 62 of 1958 on Citizenship and Presidential Decree No. 240 of 1957. Nevertheless, pluralism in inheritance law persists to this day. This is reflected in the continued recognition of three parallel inheritance law systems: Islamic inheritance law for Muslims, civil inheritance law under the Civil Code for non-Muslims, and customary law for indigenous communities in various regions.³² Thus, pluralism in Indonesian inheritance law is not only a colonial legacy but also the result of a long historical interaction among customary traditions, religion, and Western law. This reality also presents challenges for the national legal system, particularly when it comes to resolving increasingly complex interfaith inheritance disputes in contemporary pluralistic societies.³³

1. CIVIL INHERITANCE LAW

In inheritance law, the deceased person is the one who leaves property to those who survive, while the recipients of that property are the heirs. The essential elements of inheritance are the existence of an estate and the existence of living persons who may be entitled to receive it.³⁴ The cause of death is not the central issue in inheritance law. Rather, the law is concerned with the legal consequences that arise upon death, especially the transfer of rights and obligations relating to the deceased's estate to the lawful heirs.³⁵ Accordingly, the existence of a deceased person is a fundamental prerequisite for inheritance, because succession cannot arise without death.³⁶

This understanding is consistent with civil law doctrine, under which the legal position of the deceased is transferred to the heirs through applicable succession rules. This is reflected in the Civil Code, which provides that inheritance is opened only by the legal event of a person's

³² Muh Husni, "The Existence of Customary Inheritance Law in Legislation," *Unisma Law Journal* 8, no. 2 (2021): 101–115, <https://repository.unisma.ac.id/handle/123456789/3089>

³³ Nor Annisa Rahmatillah, "Plurality of Inheritance Law in Indonesia: A Normative Review," *Muamalah Journal* 4, no. 1 (2024): 12–25, <https://journal.umpr.ac.id/index.php/jmg/article/view/9043>

³⁴ Wirjono Prodjodikoro, *Inheritance Law in Indonesia* (Bandung: Sumur Bandung, 1962), 25.

³⁵ Subekti, *Principles of Civil Law* (Jakarta: Intermasa, 1985), 89.

³⁶ Sudikno Mertokusumo, *Indonesian Civil Procedure Law* (Yogyakarta: Liberty, 1993), 47.

death and not by any other cause.³⁷ From the perspective of Islamic law, the deceased who leaves property is referred to as the *muwarith*, while the recipient heir is known as the *warith*. Both approaches indicate that death is the primary legal event in inheritance, while the central issues concern who is entitled to inherit and how the estate should be distributed.³⁸

Under the Civil Code, the estate is understood as comprising all rights and obligations of the deceased in the field of property law that can be assessed in monetary terms.³⁹ This broad definition of inheritance includes not only assets and other economic benefits passing to the heirs, but also liabilities, including the debts and obligations of the deceased.⁴⁰ Accordingly, once inheritance is opened by death, the heirs acquire rights to the estate while also bearing responsibility for the deceased's debts within the limits of the inherited property.

Article 830 of the Civil Code explains that inheritance law is open after death, however, Article 1100 explains that heirs who receive an inheritance also accept responsibility for the testator's debts.⁴¹ Accordingly, the Civil Code recognizes the principle that heirs automatically succeed to the legal position of the testator in relation to his or her civil rights and obligations from the moment of death.⁴²

The Civil Code adopts a bilateral and individual system of inheritance.⁴³ This means that each heir is entitled to receive the share that belongs to him or her, whether the inheritance derives from the maternal or paternal line.⁴⁴

In the civil inheritance law system, the primary issue concerns entitlement to inherit rather than the mere existence of inheritance obligations. Inheritance rights determine how the testator's estate is distributed among those legally entitled to inherit.⁴⁵ Inheritance rights

³⁷ *Civil Code* (Civil Code), Article 830.

³⁸ Amir Syarifuddin, *Islamic Inheritance Law* (Jakarta: Kencana, 2012), 13–15.

³⁹ Subekti, *Principles of Civil Law* (Jakarta: Intermasa, 1985), 91.

⁴⁰ Wirjono Prodjodikoro, *Inheritance Law in Indonesia* (Bandung: Sumur Bandung, 1962), 15–16.

⁴¹ *Civil Code* (Civil Code), Article 830 and Article 1100.

⁴² R. Subekti and R. Tjitrosudibio, *Civil Code* (Jakarta: Pradnya Paramita, 2009), 214.

⁴³ Supriyadi. Choice of Inheritance Law in a Pluralistic Society (A Comparative Study of Islamic Law and Civil Law). 2017. *Al-'is* 12 (1): 553-68.

⁴⁴ Wiryono Projodikoro, *Inheritance Law in Indonesia*, p. 134.

⁴⁵ Salim HS, *Introduction to Written Civil Law*, p. 139.

may be understood from two perspectives: one grounded in family relations and the other in proprietary interests.

Inheritance rights may be understood from two perspectives: one grounded in family relations and the other in proprietary interests.⁴⁶ This mechanism is regulated in Article 832 of the Civil Code, which provides that lawful heirs consist of blood relatives and the surviving spouse; in the absence of such persons, the estate may pass to the state.

The Civil Code recognizes four principal classes of heirs:

1. Children or other descendants, together with the surviving spouse.
2. The testator's parents and siblings.
3. Grandparents and other ascendants in the direct ascending line (Article 853 of the Civil Code).
4. Collateral relatives up to the sixth degree (Article 861(1) of the Civil Code).

These classes operate sequentially, meaning that the existence of heirs in the first class excludes those in the subsequent classes from inheriting the estate.⁴⁷

A fundamental question, however, arises when the heirs profess a different religion from the testator. The Civil Code does not establish any specific religious classification or criterion for heirs to acquire the rights and obligations of the testator. Article 832 makes heirship dependent on familial relationships, namely marital ties and blood relations, including the surviving spouse and descendants. This means that the Civil Code does not treat religious difference as a barrier to inheritance.

In determining who is entitled to inherit, the Civil Code reflects several important principles. First, it adopts the principle of religious neutrality. The Civil Code does not distinguish heirs on the basis of religion. Instead, inheritance is determined solely by family relationships arising from blood ties or marriage, without requiring the testator and the heirs to share the same religion.⁴⁸ Accordingly, civil law treats inheritance as a legal consequence of a person's civil status within the family rather than of religious affiliation.

⁴⁶ Wirjono Prodjodikoro, *Inheritance Law in Indonesia* (Bandung: Sumur Bandung, 1962), 23–25.

⁴⁷ Supriyadi. Choice of Inheritance Law in a Pluralistic Society (A Comparative Study of Islamic Law and Civil Law). 2017. *Al-'is* 12 (1): 553-68.

⁴⁸R. Subekti and R. Tjitrosudibio, *Civil Code*(Jakarta: Pradnya Paramita, 2009), Articles 832–833.

The focus of civil law is to maintain the continuity of property rights and obligations between generations through objective mechanisms that are free from religious doctrinal considerations.⁴⁹ Therefore, differences in faith are not treated as a limiting factor in determining who qualifies as a lawful heir. Unlike Islamic inheritance law, which normatively excludes interfaith inheritance, civil inheritance law under the Civil Code affirms the equality of all legally entitled family members in receiving an inheritance. The absence of discriminatory legal norms on the basis of religion reflects the rational, universal, and neutral character of civil law, rooted in Continental European legal traditions. This principle provides a more inclusive guarantee of legal certainty for persons subject to the Civil Code, especially in a plural society in which differences of faith may exist within a single family.⁵⁰

Second, the Civil Code recognizes inheritance rights for individuals related to the testator by blood or marriage. In other words, as long as someone meets the legal qualifications for heirship, they are still entitled to a share of the inheritance, even if their religious beliefs differ from those of the testator.⁵¹ This principle emphasizes that the basis of inheritance in civil law is formal family relations, not shared religion or beliefs. Article 832 of the Civil Code provides that lawful heirs are determined by family ties in the descending and ascending lines as well as by marital relations. This article does not include religious requirements as a determining factor, so differences in beliefs do not prevent someone from being included in the list of heirs. Thus, the Civil Code provides legal certainty that inheritance rights are objectively attached to a person's civil status as part of a family, not to their religious identity.

From a legal perspective, this demonstrates that inheritance under the Civil Code is understood as a mechanism for the transfer of property rights and obligations in the secular sphere of private law. Therefore, the existence of religious differences between the testator and the heirs is irrelevant in the context of civil law. This approach aligns with the principle of the universality of civil law, which places all individuals on an equal footing before the law, without discrimination based on religion.⁵²

⁴⁹Subekti, *Principles of Civil Law* (Jakarta: Intermasa, 1985), 91–92.

⁵⁰Wirjono Prodjodikoro, *Inheritance Law in Indonesia* (Bandung: Sumur Bandung, 1962), 30–32.

⁵¹R. Subekti and R. Tjitrosudibio, *Civil Code* (Jakarta: Pradnya Paramita, 2009), Article 832.

⁵²Wirjono Prodjodikoro, *Inheritance Law in Indonesia* (Bandung: Sumur Bandung, 1962), 30–32.

Third, Article 838 of the Civil Code expressly regulates the categories of persons who are considered unworthy to inherit. However, these provisions are limited to certain acts that are morally and legally considered to damage the inheritance relationship. These categories include: (1) persons convicted of murdering or attempting to murder the testator; (2) persons who falsely accuse the testator of a crime punishable by imprisonment of five years or more; (3) persons who, through violence or threats, prevent the testator from making, revoking, or amending a will; and (4) persons who intentionally conceal, destroy, or falsify the testator's will.⁵³ This shows that, under the Civil Code, a person is disqualified from inheriting only when his or her conduct directly harms the testator or violates the integrity of the succession process. In other words, the grounds for ineligibility are case-specific and relate to criminal acts or violations of integrity during the inheritance process.

Furthermore, the Civil Code allows a testator to determine the distribution of his or her estate through a will under the doctrine of testamentary succession. This mechanism is further explained in the Civil Code, where a testament is a unilateral statement of a person's will to determine the distribution of their assets after death. A testament is personal and revocable, meaning the testator has the right to change or revoke it while still alive, in accordance with the principle of freedom of will (*freedom of disposition*). The Civil Code requires compliance with certain formalities, such as execution before a notary or in the presence of valid witnesses, depending on the type of testament, so that the will has legal force and can be upheld in court if a dispute arises.⁵⁴ However, testamentary freedom is subject to limitations intended to protect the rights of lawful heirs in intestate succession, particularly through the doctrine of the legitimate portion. Article 913 of the Civil Code provides that the legitimate portion, or absolute share, is the part of the estate that must be reserved for heirs in the direct line and may not be reduced by gifts made during the testator's lifetime or by testamentary dispositions. This indicates that the freedom of the testator is not absolute, because it must not prejudice those who possess inheritance rights under the rules of intestate succession.⁵⁵ In the context of religious difference between the

⁵³ R. Subekti and R. Tjitrosudibio, *Civil Code* (Jakarta: Pradnya Paramita, 2009), Article 838

⁵⁴ Johannes B.M. Vranken, *The Law of Succession in the Netherlands* (Amsterdam: Kluwer Law International, 2018), 45.

⁵⁵ *Ibid.* pp. 102-103

testator and the heir, this principle is relevant because it protects the heir's rights from being undermined by the testator's unilateral dispositions.

Furthermore, Article 838 of the Civil Code reinforces the neutral character of succession law by focusing on conduct rather than religion. This article states that a person can be declared unfit to be an heir if he or she commits certain acts that directly harm the testator or interfere with the validity of the will, including:

1. Those who have been convicted of murder or attempted murder of the testator.
2. Persons who, by judicial determination, are found to have falsely accused the testator of a crime punishable by imprisonment of five years or more.
3. Persons, who by violence, prevent the testator from making or revoking his will.
4. Persons who embezzle, destroy, or falsify the testator's will.

Like the rules governing classes of heirs, the rules on unworthiness focus on the conduct of the potential heir rather than on religious difference. This demonstrates the neutral character of civil inheritance law, which consistently refrains from treating religion as a legal barrier while upholding the legally protected principle of testamentary freedom.⁵⁶

2. ISLAMIC INHERITANCE LAW

In Islamic jurisprudence, inheritance law is also called *faraid* law, the plural form of *faridah* closely related to *fardh* (an obligation to carry out), and it refers to the fixed shares prescribed for heirs in *asyar'i*.⁵⁷

Historically, the development of Islamic inheritance law in Indonesia cannot be separated from the conceptual interaction between Islamic law brought by traders (Arab, Indian, Persian) and customary law prevailing in the archipelago. The cultural assimilation between indigenous communities and Muslim traders contributed to the introduction of Islamic inheritance norms into local legal practice.

During the colonial period, the Dutch government implemented a pluralistic legal policy, recognizing the coexistence of customary law, Islamic law, and European law. Recognition of Islamic inheritance law

⁵⁶Roderick W. van Ginneken, *Comparative Succession Law and Multicultural Societies* (Oxford: Hart Publishing, 2020), 120–121

⁵⁷Supriyadi. Choice of Inheritance Law in a Pluralistic Society (A Comparative Study of Islamic Law and Civil Law). 2017. *Al-'is* 12 (1): 553-68.

was largely confined to indigenous Muslim communities, and even there its implementation remained restricted. One important milestone was the *Compendium Freijer* of 1760 in Semarang, which began to accommodate aspects of Islamic law within the colonial legal system. Then, through *Government Gazette* 1937 No. 116, the authority of the Religious Court in inheritance cases was narrowed and transferred to the District Court, thus weakening the position of Islamic inheritance law.⁵⁸

Islamic inheritance law brought by the Prophet *Muhammad* recognizes that both men and women may possess inheritance rights. The structure of inheritance under Islamic law differs significantly from that found in civil inheritance law under the Civil Code and in customary inheritance law. Under Islamic law, the estate consists of the deceased's property and rights after the deduction of debts and other obligations that must first be settled.⁵⁹

The legal mechanisms of Islamic inheritance in Indonesia are regulated by the Compilation of Islamic Law (KHI), which serves as a normative guideline for how Islamic inheritance law operates. Article 174 of the KHI regulates the categories of persons entitled to inherit, classifying heirs on the basis of blood relations and marital relations. Under blood relations, the KHI identifies male (father, son, brother, uncle, and grandfather) and female (mother, daughter, sister, and grandmother) heirs within the family line, while under marital relations it recognizes the widower or widow.

In the context of legal pluralism, Islamic inheritance law has traditionally prohibited inheritance between Muslims and non-Muslims, in line with the dominant view of classical scholars.⁶⁰ Article 171(c) of the Compilation of Islamic Law (KHI) treats religious difference as an impediment to inheritance and therefore excludes non-Muslims from inheriting from Muslims. The prohibition on inheritance between Muslims and non-Muslims is based on the hadith of the Prophet Muhammad (PBUH) narrated by Usama ibn Zaid, which states, "A Muslim does not inherit from a non-Muslim, and a non-Muslim does not inherit from a Muslim." On the basis of this hadith, the majority of scholars maintain that no inheritance relationship exists between Muslims

⁵⁸C. Snouck Hurgronje, *The Acehnese* (Leiden: Brill, 1893), 212–214.

⁵⁹*Ibid.*

⁶⁰Rosadi, Aden, and Siti Ropiah. 2020. "Reconstruction of Different Religion Inheritance through Wajibah Testament". *Peuradeun Scientific Journal* 8 (2): 327-50. <https://doi.org/10.26811/peuradeun.v8i2.466>.

and non-Muslims. This opinion has become a consensus among Muslim scholars.

Jamae Norman Dalrymple Anderson, as cited by Riyanta et al., criticizes this line of reasoning by arguing that the exclusion of non-Muslim relatives from inheritance produces outcomes that are unfair and discriminatory.

“As a plural society in which Muslims and non-Muslims live side by side, Indonesia requires an intermediate legal solution to address this problem, one of which is *wasiat wajibah*. The concept of *wasiat wajibah* is regulated in article 209 of the KHI in relation to adopted children and adoptive parents as its recipients.⁶¹ Over time, the scope of *wasiat wajibah* in Indonesia was expanded through Supreme Court Decision No. 368 K/AG/1995. In that decision, a child who had converted to another religion was regarded as occupying the same family position as the other children. However, such a child was not recognized as an heir in the formal sense, but was considered eligible to receive *wasiat wajibah*.⁶² This expansion reflects an effort to provide justice and economic protection to interfaith heirs.⁶³

Nevertheless, the implementation of *wasiat wajibah* continues to face significant challenges, particularly in the religious context. In Decision No. 368 K/AG/1995, the Supreme Court granted *wasiat wajibah* to heirs of a different religion as part of an effort at legal discovery. This expanded use of *wasiat wajibah* may be understood as a form of legal discovery undertaken by the Supreme Court through a juridical-sociological approach.⁶⁴ This *ijtihad* is associated with Hazairin’s adoption of Ibn Hazm’s view that Islam is a religion of mercy and that Islamic law should uphold balanced justice, legal certainty, individual

⁶¹ Supreme Court of the Republic of Indonesia, Collection of Legislation Related to the Compilation of Islamic Law and Definitions in its Discussion (Jakarta: Supreme Court of the Republic of Indonesia, Directorate General of Religious Courts, 2011)

⁶² *Ibid.*

⁶³ Iin Mutmainnah and Muhammad Sabir, “Mandatory Wills for Heirs of Different Religions: Analysis of Supreme Court Decision Number: 368K/AG/1995,” *Diktum: Journal of Sharia and Law* 17, no. 2 (2019): 206.

⁶⁴ I. Nyoman Sujana and others, *Interfaith Inheritance Law and the Implementation of Mandatory Wills for Non-Muslim Heirs in Indonesia* (Yogyakarta: Aswaja Pressindo, 2020).

rights, and bilateral family relations.⁶⁵ The principal justification lies in humanitarian considerations aimed at achieving justice for interfaith heir.

The Supreme Court's ruling subsequently became the legal framework for similar cases. For example, the Badung Religious Court Decision No. 4/Pdt.P/2013/PA/Bdg, relying on the Supreme Court's reasoning, held that heirs of a different religion could receive property from a Muslim testator. The rationale was that the Islamic inheritance system recognizes kinship both through blood relations and through lawful family ties. According to this reasoning, kinship should not be negated solely by religious difference, because family relations between the deceased and the claimant remain legally and socially significant despite differences of faith. This ruling, therefore, suggests that religious difference should not automatically function as an absolute barrier.

This expansion of *wasiat wajibah* demonstrates the increasingly inclusive direction of Islamic inheritance law in Indonesia. However, within sharia discourse, the validity of this expansion remains the subject of ongoing debate. On the one hand, the expanded application of *wasiat wajibah* appears to conflict with the hadith prohibiting inheritance between Muslims and persons of a different faith. At the same time, Islamic inheritance law is expected to protect the common good, especially within Indonesia's plural social context.

Accordingly, positive law that seeks to realize justice and humanitarian values must still remain attentive to the doctrinal foundations of religious law. From the perspective of *maqasid al-shari'ah*, the protection of religion and public welfare must both be taken into account. A norm cannot easily be accepted as a source of law if it directly contradicts the relevant text, in this case the hadith prohibiting reciprocal inheritance between Muslims and non-Muslims, a position affirmed by the majority of scholars and the four Sunni schools of law. Furthermore, as a solution, the Indonesian Ulema Council issued a fatwa stating that the transfer of property from Muslims to non-Muslims can be done in the form of gifts, bequests, and wills, without having to go through the Islamic inheritance law system.⁶⁶

⁶⁵ ASep Saepuddin Jahar, *Family, Criminal, and Business Law* (Jakarta: Kencana Prenada Media, 2013)

⁶⁶ Aco Wahab, *Critical Review of the Implementation of Mandatory Wills of Different Religions in Islamic Inheritance Law in Indonesia*, *Ulumul Syar'i: Journal of Legal and Sharia Sciences*, 2024

3. CUSTOMARY INHERITANCE LAW

Customary inheritance law consists of legal rules governing the continuing transfer of both material and immaterial wealth from one generation to the next.⁶⁷ In customary law, inheritance cannot be understood in isolation, because it is closely connected to marriage law, family law, and the broader structure of kinship relations. Customary inheritance law governs the continuation and transfer of inherited property from one generation to another and recognizes that succession does not always occur only after death.⁶⁸ This means that customary inheritance law may also cover transfers of property made during the lifetime of the owner, usually through a grant.⁶⁹

Customary inheritance law in Indonesia has distinct characteristics from written law (in this case, the Civil Code and the Compilation of Islamic Law). This is because customary law thrives and develops within a society founded on the values of social balance. Soepomo argued that customary law does not place the individual at the center, but instead gives priority to the social community and solidarity within kinship groups.⁷⁰ Therefore, customary inheritance law encompasses more than just property, but also social responsibilities, family status, and even symbols of cultural identity. The mechanism for distributing inheritance through customary inheritance law is usually carried out through family deliberation, with final decisions made through consensus, taking into account the principles of propriety and the social standing of each heir.⁷¹ This deliberative mechanism demonstrates the flexible and adaptive character of customary law, which is able to adjust to the socio-cultural context in which it operates.⁷² This flexibility becomes significant in inheritance cases involving heirs of different religions, because customary law places more emphasis on family cohesion and social harmony than on formal-legal restrictions which tend to be rigid.⁷³ This means that

⁶⁷ Soebakti Pusponoto K Ng, *Principles and Structure of Customary Law*, (Jakarta: Pradnya Paramita, 1980), p. 46.

⁶⁸ Soepomo, *Chapters on Customary Law*, (Ttp.: University, 1966), p. 37.

⁶⁹ Supriyadi. *Choice of Inheritance Law in a Pluralistic Society (A Comparative Study of Islamic Law and Civil Law)*. 2017. *Al-'is* 12 (1): 553-68.

⁷⁰ Soepomo, *Chapters on Customary Law* (Jakarta: Pradnya Paramita, 1982), 45.

⁷¹ Hilman Hadikusuma, *Customary Inheritance Law* (Bandung: Alumni, 1993), 27–29.

⁷² Soepomo, *Chapters on Customary Law* (Jakarta: Pradnya Paramita, 1982), 45.

⁷³ Ratno Lukito, *Legal Pluralism in Indonesia: Bridging the Unbridgeable* (London: Routledge, 2013), 162–166.

customary law does not operate through uniform norms across all communities.⁷⁴

In the context of interfaith inheritance, customary law may display a more inclusive orientation than other legal systems in force in Indonesia, especially Islamic law, which treats religious difference as one of the *mawani' al-irth* or impediments to inheritance. This rule prevents non-Muslims from inheriting from Muslim deceased persons, and vice versa. This principle is based on the importance of unity of faith within the Muslim family, so inheritance is viewed not only as a relationship of rights and obligations arising upon death, but also as a mechanism for preserving religious doctrine.

In addition to serving as a normative foundation, customary law is also as a safeguard for social structures within indigenous communities, ensuring harmony. In line with this function, customary inheritance law tends to focus less on religious difference as a barrier to inheritance and more on whether the heirs are able to maintain social cohesion within the indigenous community.

THE EXISTENCE OF INTERFAITH HEIRS IN INDONESIAN COURT DECISIONS

1. SURABAYA RELIGIOUS COURT DECISION NUMBER 3531/Pdt.P/2022/PA.Sby

The Surabaya Religious Court Decision No. 3531/Pdt.P/2022/PA.Sby represents an important development in Indonesian interfaith inheritance jurisprudence. In the case *a quo*, the deceased was Muslim and left an estate, thereby giving rise to succession because the legal elements of inheritance were fulfilled. Among the family members claiming inheritance rights was a close relative who was non-Muslim. Normatively, classical Islamic inheritance law treats religious difference as an impediment to inheritance. In that decision, the court adopted an interpretive approach by using *wasiat wajibah* as an intermediate legal mechanism to accommodate the economic interests of non-Muslim relatives.

Several aspects of the judicial reasoning in the Surabaya Religious Court Decision No. 3531/Pdt.P/2022/PA.Sby are particularly

⁷⁴ Supriyadi. Choice of Inheritance Law in a Pluralistic Society (A Comparative Study of Islamic Law and Civil Law). 2017. *Al-'is* 12 (1): 553-68.

important. The court's reasoning demonstrates an effort to integrate the positive norms of Islamic inheritance law with the plural social realities of Indonesian society, while also engaging with the philosophical principles of Islamic law. First, from a normative perspective, the court began with the provisions of the KHI, particularly Article 171(c), which requires heirs to have a blood or marital relationship with the deceased and, in principle, to be Muslim. This norm is derived from the hadith stating that a Muslim does not inherit from a non-Muslim, and a non-Muslim does not inherit from a Muslim. The hadith has traditionally served as the doctrinal basis for treating religious difference as an impediment to inheritance. However, the judge did not stop at a rigid textual interpretation. Instead, the judge expanded the scope of interpretation or legal interpretation by considering the existence of a legal vacuum (*vacuum of law*). Article 171 only regulates the inheritance mechanism between Muslims, but does not explain the position of relatives of a different religion. In interpreting the law, the court sought to balance strict sharia provisions with humanitarian values by relying on Supreme Court jurisprudence, particularly Jurisprudence No. 1/Yur/Ag/2018, which recognizes the possibility of granting *wasiat wajibah* to non-Muslim relatives. In determining the grant of *wasiat wajibah*, the court explored the universal principles of Islamic law for two main purposes: first, to fill the normative gap; and second, to realize justice based on universal legal values. Thus, the judge's approach in this case reflects a more inclusive and progressive interpretation of the law.⁷⁵

Second, Sociological Aspects. The sociological considerations in the Surabaya Religious Court Decision No. 3531/Pdt.P/2022/PA.Sby should not be viewed merely as supplementary reasoning. Rather, they provide an important argumentative basis for developing Islamic legal thought in response to inheritance disputes in a modern plural society. The judges carefully examined the social reality of Indonesia's multireligious society, where interfaith family relationships are no longer a marginal phenomenon, but rather part of the dynamics of family life. Empirical studies show that religious pluralism does not automatically sever social relations and family functions; many interfaith families

⁷⁵Supreme Court of the Republic of Indonesia, *Jurisprudence Number 1/Yur/Ag/2018*.

maintain harmonious and socio-economically productive kinship relationships, even when legal events such as inheritance occur.⁷⁶

In this context, the sociological approach used by judges is a process of legal finding that is relevant to the empirical reality of society. The court did not merely rely on formal legal rules, but also considered the socio-cultural context in which those rules operate. This approach is consistent with socio-legal theory, which recognizes that law in action often differs from law in books when legal norms confront complex social realities.⁷⁷

This approach encourages judges to treat *wasiat wajibah* as an integrative rather than exclusionary legal instrument. As a legal instrument, *wasiat wajibah* serves to bridge religious differences within the family structure by allowing non-Muslim relatives to receive legal and economic protection without undermining the human values embodied in kinship. In practice, this integrative function helps prevent post-inheritance conflict and preserve the stability of interfaith family structures, a factor that is important for maintaining social cohesion and reducing legal alienation.⁷⁸

The court's reasoning, which combines sociological context with the values of substantive justice, demonstrates a shift from rigid formalism toward an approach that is responsive to social realities. This aligns with sociological legal theory, which positions judges as social agents who not only apply the law but also interpret and adapt it to remain relevant to social change and the diverse needs of society.⁷⁹

Third, Philosophical Aspects. In addition to normative and sociological considerations, the court's reasoning in the Surabaya Religious Court Decision No. 3531/Pdt.P/2022/PA.Sby is also grounded in Islamic legal philosophy, particularly through the framework of

⁷⁶See for example the study of family pluralism and its impact on social relations in the context of contemporary law; in the context of religion and the family, see *Sociological Insights into Family Pluralism and Legal Integration*, *Journal of Comparative Family Studies* 52, no. 1 (2023): 85–110.

⁷⁷Draft *the law in action vs the law in books* and its relevance in the discovery of sociological laws is discussed in Roscoe Pound, *An Introduction to the Philosophy of Law* (New Haven: Yale University Press, 2018), 112–134.

⁷⁸The role of the *wajibah* will as an integrative instrument in interfaith family structures is in line with the analysis of the function of law as a tool of social integration; see for the context of Islamic law, *Legal Instruments and Social Cohesion in Pluralistic Societies*, *Islamic Law and Society* 27, no. 4 (2020): 421–450.

⁷⁹Thomas A. Durkin, "Judicial Function and Social Reality: Sociological Perspectives on Legal Interpretation," *Law & Society Review* 49, no. 2 (2019): 231–258.

maqāṣid al-sharī‘ah.⁸⁰ Traditionally, *maqāṣid al-sharī‘ah* refers to the fundamental objectives of sharia, which are directed toward *jalb al-masāliḥ* (the promotion of benefit) and *dar’ al-mafāsīd* (the prevention of harm), rather than the mere application of textual rules. In contemporary Islamic legal literature, this framework is often used to bridge the gap between classical texts and the needs of modern society without neglecting the higher ethical goals of Islamic law. The panel of judges uses this principle as a moral and epistemological compass in its deliberations in order to ensure that legal decisions do not become trapped in formalism, but remain oriented toward the protection of human values as a whole.

The *maqāṣid al-sharī‘ah* approach used by the court in this case primarily refers to *hifẓ al-nasl* (protection of lineage) and *hifẓ al-māl* (protection of property), both of which form part of the five essential objectives of sharia known as *al-darūriyyāt al-khamsah*.⁸¹ According to contemporary Islamic scholarship, *hifẓ al-nasl* reflects the importance of preserving family relations and lineage within the social order, while *hifẓ al-māl* concerns the protection of property rights and the fair distribution of wealth for the sake of economic stability and distributive justice.⁸²

Through the application of *wasiat wajibah*, judges seek to realize these objectives in a harmonious manner. The instrument of a mandatory will is not merely a textual solution recognized in Islamic law; it also functions as a philosophical mechanism that enables property to be allocated to persons who are connected by kinship and social contribution, even when they profess a different religion, without undermining the substance of the *maqāṣid*. This approach is consistent with the view that Islamic law is not merely a set of rules, but also a dynamic ethical framework that balances benefit and harm in order to achieve substantive justice.

⁸⁰ Amaliya, Denti. “Analysis of the Concept of *Maqāṣid al-Sharī‘ah* as the Grand Theory of Islamic Law.” *Maliki Interdisciplinary Journal* 3, no. 2 (2025): 45–62. <https://urj.uin-malang.ac.id/index.php/mij/article/view/11783>

⁸¹ Author, A. N. Other. “The Objectives of *Maqāṣid al-Sharī‘ah* and Its Application in Islamic Legal Reasoning.” *Tasyri’ Journal of Islamic Law* 7, no. 1 (2025): 120–138. <https://journal.stai-nuruliman.ac.id/index.php/tsyr/article/download/420/204/1788>

⁸² Author, A. N. Other. “Maqāṣhid Sharī’a Analysis on Substitute Heir in Compilation of Islamic Law.” *Is: Journal of Legal Studies* 9, no. 1 (2024): 78–93. <https://ejournal.radenintan.ac.id/index.php/adalah/article/view/16062>

Accordingly, the use of these objectives in the court's reasoning is not merely an attempt to fill a normative gap; it is also an operationalization of Islamic legal philosophy that places family justice and the protection of economic rights among the legal objectives that cannot be ignored.⁸³ This philosophy enables judges to reinterpret classical inheritance texts contextually, in line with the needs of a plural society and the fundamental ethical principles of Islam, namely the minimization of harm and the maximization of benefit within Indonesia's contemporary social reality.

The Surabaya Religious Court's ruling may serve as important evidence in the reconstruction of Islamic inheritance law in Indonesia. This reconstruction involves the reinterpretation of classical Islamic jurisprudential norms in order to reflect social development, particularly in Indonesia as a plural nation.⁸⁴ Furthermore, the reconstruction of Islamic inheritance law has gained constitutional legitimacy, as the 1945 Constitution affirms the principle of equality before the law without discrimination. Accordingly, the Surabaya Religious Court Decision No. 3531/Pdt.P/2022/PA.Sby may be regarded as a concrete example of a more inclusive, just, and constitutionally grounded reconstruction of Islamic inheritance law. This decision not only broadens the meaning of inheritance in interfaith relations through *wasiat wajibah*, but also affirms that Islamic law in Indonesia is capable of engaging with legal pluralism, upholding substantive justice, and attaining constitutional legitimacy. This kind of reconstruction is highly relevant to addressing the social challenges of Indonesia's multi-religious and dynamic society.

2. TEBING TINGGI RELIGIOUS COURT DECISION NO. 9/PDT.P/2008/PA.Ttd

Unlike cases involving a Muslim deceased and a non-Muslim relative, the Tebing Tinggi Religious Court Decision No. 9/Pdt.P/2008/PA.Ttd concerned a non-Muslim deceased, in this case a

⁸³ "The Objectives of Maqāṣid al-Shari'ah and Its Application in Islamic Legal Reasoning," *Tasyri' Journal of Islamic Law* 7, no. 1 (2025): 125–130, <https://journal.stainuruliman.ac.id/index.php/tsyr/article/download/420/204/1788>.

⁸⁴ Nida'ul Hopiah Ramdani Subagja Rasyid and Nuril Habibi, "Giving Assets to Heirs of Different Religions Through Mandatory Wills from the Perspective of TM Hasbi Ash Shiddieqy: A Case Study of the Decision of the Surabaya Religious Court Judge Number 3531/Pdt.P/2022/PA.Sby," *Relinesia: Journal of Indonesian Religious Studies and Multiculturalism* 3, no. 4 (2024): 370–385, <http://jurnal.anfa.co.id/index.php/relinesia>.

Christian, and a Muslim claimant. This distinguishes the case from other decisions that generally use *wasiat wajibah* as a compromise mechanism. However, the Tebing Tinggi Religious Court Decision No. 9/Pdt.P/2008/PA.Ttd directly stipulates inheritance rights without limiting the claimant's position to *wasiat wajibah*.⁸⁵

This case began with a petition for the determination of heirs filed with the Tebing Tinggi Religious Court. This petition arose from religious differences between the testator and some of the heirs. The testator in this case was a non-Muslim who, during his lifetime, was related to a Muslim family member. After the testator's death, one of the Muslim heirs filed a petition with the court to be determined as the legal heir. This petition raised normative issues. Article 171(c) of the Compilation of Islamic Law requires, in principle, that an heir be Muslim. This normative issue gave rise to a discourse on whether religious differences automatically preclude Muslim heirs from receiving inheritance from non-Muslim testator. In many interfaith inheritance cases, this problem is resolved through a compromise mechanism. That mechanism is *wasiat wajibah*, which allows a portion of the estate, generally up to one-third, to be granted to relatives of a different religion. However, in this case the panel of judges did not use the instrument *Wasiat Wajibah*.

What distinguishes this case from other inheritance cases lies in the normative aspect. The judge recognized that, normatively, the Compilation of Islamic Law limits inheritance rights to fellow Muslims. Unlike other cases that address interfaith inheritance through *wasiat wajibah*, the court in this case placed greater emphasis on national legal principles guaranteeing equality before the law and non-discrimination. This is stated in Article 27 paragraph (1) of the 1945 Constitution, which emphasizes that every citizen has equal standing before the law.⁸⁶ The court's reasoning are significant because they demonstrate a paradigm shift from an Islamic legal basis to a constitutional legal framework. These considerations align with the views of some contemporary scholars who advocate a reinterpretation of Islamic inheritance law within a diverse and pluralistic society.

⁸⁵Nida'ul Hopiah Ramdani Subagja Rasyid and Nuril Habibi, "The Inheritance of Different Religions in Judges' Decisions in Indonesia," *Al-Qisthu: Journal of Legal Studies* 20, no. 2 (2022): 203–224, <https://doi.org/10.32694/alqisthu.v20i2.1927>

⁸⁶The 1945 Constitution of the Republic of Indonesia, Article 27 paragraph (1).

The Tebing Tinggi Religious Court Decision No. 9/Pdt.P/2008/PA.Ttd may be regarded as an important precedent in recognizing interfaith heirs in Indonesia. This decision demonstrates that Islamic law in Indonesia is not static but rather dynamic, adapting to the social needs of a pluralistic society. This decision may serve as a foundation for understanding how Islamic law, customary law, and national law can interact to achieve substantive and inclusive justice.

COMPARISON OF INHERITANCE LEGAL SYSTEMS IN INDONESIA AND OTHER COUNTRIES

1. EGYPT

Egypt is a Muslim-majority country that has systematically integrated Islamic legal principles into its personal status law, particularly in matters of marriage, divorce, and inheritance. Although Egypt follows a traditional civil law system—largely influenced by French legal codification—it maintains Islamic personal status law, which applies to Muslims and is considered a cornerstone of national identity.⁸⁷

As Muslim-majority countries, Indonesia and Egypt have both introduced significant legal innovations in family and inheritance law. These innovations are driven by the need to provide inclusive legal protection based on humanitarian values. The death of a person gives rise to legal consequences, including inheritance. In plural societies such as Indonesia and Egypt, succession may become complex when it involves interfaith family relations. In this context, Indonesia and Egypt have focused on balancing the application of Sharia with demands for justice and family solidarity. One legal innovation developed in response to this problem is *wasiat wajibah*.

Historically, *wasiat wajibah* emerged as a state-driven reform of Islamic inheritance doctrine, particularly in response to the classical Sunni rule that prohibits a testamentary disposition in favor of an existing legal heir without the consent of the other heirs. Both countries justify this reform through the good and bad principles (public interest) and *ijtihad* (independent reasoning), demonstrating a willingness to reinterpret

⁸⁷ El Chazli, “Recent Developments in Egyptian Family and Inheritance Law.”

Islamic norms in response to changing social conditions. Furthermore, both systems codified these innovations in law—Law No. 71 of 1946 in Egypt and the Compilation of Islamic Law (KHI) in Indonesia—thus granting them binding legal force within their respective religious court systems.

However, there are significant differences in the doctrinal and institutional frameworks underlying these reform processes. Egypt's approach is based on a centralized, state-oriented legal authority, in which religious interpretation is carried out primarily by state institutions such as the judiciary, Dar al-Ifta, and Al-Azhar. By contrast, Indonesia maintains a plural legal structure that allows for the coexistence of Islamic law, western civil law, and customary law.⁸⁸

In both countries, the state plays a crucial role not only as a law-making authority but also as the institution that interprets Islamic norms. In Egypt, the state is directly responsible for religious interpretation, often limiting the scope for direct public involvement. In Indonesia, although the state promotes a national version of Islamic law through the Compilation of Islamic Law (KHI) and the judiciary, religious interpretation remains more decentralized, allowing local religious authorities, scholars, and courts to interpret and adapt Islamic principles.⁸⁹ Ultimately, the experiences of Indonesia and Egypt show that *wasiat wajibah* is not merely a legal anomaly, but rather a juridical response to the evolving social needs of a plural society, made possible by the flexibility and interpretive depth of the Islamic legal tradition.

2. TUNISIA

Indonesia and Tunisia are both Muslim-majority countries (more than 85% in Indonesia and 99% in Tunisia) of their total populations. Because of this, Indonesia and Tunisia have both adopted Islamic family law systems, including in matters of inheritance. The incorporation of

⁸⁸Fadhilah, "Reform of Islamic Inheritance Law: Egyptian Mandatory Wills and Their Relevance to the Indonesian Concept of Substituted Inheritance."

⁸⁹Aulia, "Comparative Analysis of the Implementation of Family Law in Egypt and Indonesia."

Islamic law into state law may produce a process of legal syncretization, in which religious norms are harmonized with modern legal principles in order to form a coherent legal framework.

Tunisia's 1956 Code of Personal Status was one of the most progressive codifications of family law in the Muslim world, particularly because it abolished polygamy, expanded women's divorce rights, and introduced the principle of equality in family relations. However, in the domain of inheritance, the CPS still adopted a conservative approach that consistently maintained the prohibition on interfaith inheritance as stipulated in classical Islamic law. Non-Muslim relatives of Muslim testators remained excluded from the status of legal heirs and were not recognized as legal subjects in Islamic families.

The Sousse Court decision of 1968 was among the earliest Tunisian judicial decisions to state explicitly that a non-Muslim could not inherit from a Muslim testator through the ordinary inheritance mechanisms regulated in the Code of Personal Status.⁹⁰ This decision was based on classical Islamic jurisprudence prohibiting interfaith inheritance.⁹¹ The Sousse Court ruled that relations in interfaith families must remain subject to Islamic family law, so that non-Muslims do not obtain the status of legal heirs.

However, Tunisia does not completely close off economic access to interfaith families. The law allows the transfer of assets through lifetime gifts and ordinary wills, as reflected in the 2007 decision of the Tunis Court of First Instance. This ruling reflects a new interpretive direction in responding to the plural character of modern Tunisian society. This ruling states that Tunisian law, in principle, does not provide a basis for religious discrimination in the redistribution of wealth.⁹² Although it does not expressly permit interfaith inheritance under the Code of Personal

⁹⁰ Najib Jilani, "Interfaith Marriage and Inheritance in Tunisia," *Arab Law Quarterly* 21, no. 3 (2007): 255–58.

⁹¹ *Ibid.* 252–53.

⁹² Duncan Pickard, "Inheritance Law and Religious Diversity in Tunisia," *Yearbook of Islamic and Middle Eastern Law* 14 (2008): 119–21.

Status, it may serve as a precedent for a more inclusive interpretive approach.

The transfer of wealth through gifts and ordinary wills may occur when two conditions identified in the 2007 Tunis Court of First Instance decision are satisfied: first, evidence of good faith; and second, a legitimate purpose for the transfer. When these conditions are fulfilled, they provide a legal basis for the transfer of property to non-Muslim family members. Thus, this mechanism is a form of recognition and the result of the syncretization process to ensure that wealth redistribution is inclusive among people of different religions.

Conclusion

Based on the analysis above, this study concludes that Indonesian inheritance law is experiencing a significant shift in its legal paradigm. Indonesian courts are increasingly recognizing the rights of heirs of different faiths. Based on the analysis above, this study concludes that Indonesian inheritance law is experiencing a significant shift in its legal paradigm. This shift reflects a strong effort to achieve substantive justice within the complexity of religious diversity in Indonesian society. This research highlights the importance of ongoing dialogue between various legal systems and the values of universal justice to ensure that the rights of all citizens, regardless of religion, are protected in the context of inheritance law.

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