Received: 25 December 2024 | Revised: 05 February 2025 | Accepted: 03 March 2025

DIKTUM JURNAL SYARIAH DAN HUKUM
pISSN 1693-1777
eISSN 2548-8414

10.35905/diktum.v23i2.11577

ARTICLE

Analysis of *Maqāsid Al Shari'ah* on Religious Court Decisions on the Granting of Compulsory Wills to Non-Muslim Heirs

Nabil Fikri Palasenda*[1], Aghisna Cahya Kamila[2], Muhammad Fahmi Nurfuadi[3]

*[1]Correspondence
Nabil Fikri Palasenda,
Sunan Kalijaga State Islamic University, Yogyakarta, 55281, Indonesia . Email: nabilfikripalasenda@gmail.com

[2]University of Muhammadiyah Yogyakarta, Yogyakarta, 55183, Indonesia
[3]Al-Azhar University Cairo, Egypt

Keywords:
Maqāsid Al Shariah
Wasiyyah Wajibah
Inheritance Barriers
Compulsory Wills
Non- Muslim Heirs

Abstract

Background: The matter of interfaith inheritance in Indonesia poses a multifaceted legal dilemma, especially with the judicial enforcement of *wasiat wajibah* (compulsory wills) for non-Muslim beneficiaries. This paper contextualizes Indonesia's legal framework within a broader comparative analysis, examining judicial discretion, legal diversity, and ijtihad as strategies for legal adaptation

Purpose: This study aims to analyze whether the application of compulsory wills in judges' decisions against non-Muslim heirs contains elements of sharia *Maqāsid*

Methods: A qualitative normative approach is employed, focusing on case law analysis and *Maqāsid Al Shari'ah* principles. The study systematically analyzes court decisions, legal documents, and secondary literature to evaluate the legal reasoning behind the granting of *wasiat wajibah* to non-Muslim heirs. The research includes two key cases: Tebing Tinggi Religious Court Case No. 9/Pdt.P/2008/PA.Ttd and Surabaya Religious Court Case No. 473/Pdt.P/2010/PA.Sby, selected based on their legal significance and precedent-setting nature

Results: The findings indicate that Indonesian courts' application of *wasiat wajibah* to non-Muslim heirs aligns with *Maqāsid Al Shari'ah* , particularly in preserving life (*hifz al-nafs*) and property (*hifz al-mal*). Judicial reasoning often relies on kinship considerations, legal adaptation through ijtihad, and social justice principles. However, the study identifies inconsistencies in how *Maqāsid Al Shari'ah* is applied, with courts sometimes using it as a justification rather than an active tool for legal development.

Implication: that courts should develop a more structured approach to integrating *Maqāsid Al Shari'ah* in inheritance rulings. Furthermore, Indonesia's model of using *wasiat wajibah* for non-Muslim heirs provides a legal precedent that could inform similar cases in other jurisdictions dealing with interfaith inheritance disputes

Originality: This study introduces a jurisprudential perspective that integrates judicial discretion, legal pluralism, and ijtihad developments in Islamic courts. Unlike previous research that focuses solely on doctrinal analysis, this study critically examines how *Maqāsid Al Shari'ah* is operationalized in judicial decision-making

INTRODUCTION

The discussion of the issue of disputes over heirs of different religions until now has always been a discursive study that often invites debate among legal experts in Indonesia. This is because the settlement of disputes over heirs of different religions always touches sensitive issues. Islamic law conventionally forbids inheritance between Muslims and non-

Muslims (Setyawan et al., 2024a), as articulated in the hadith of the Prophet: "A Muslim does not inherit from a disbeliever, nor does a disbeliever inherit from a Muslim". Indonesian courts, especially the Supreme Court, have implemented *wasiat wajibah* (compulsory wills) to address the needs of non-Muslim heirs, resulting in a legal conflict between textualist interpretations and adaptive judicial ijtihad. However, sometimes there is often a dialectic between religious legal norms and the demands of legal development that require equality before the law related to interfaith issues. For example, juridically normatively, the provisions of the law of inheritance of different religions in the perspective of Islamic law by the majority of scholars are stated as legal norms, which means provisions that are definite and cannot be reinterpreted. However, in practice, we often find religious legal norms faced with the demands of legal development which sometimes requires the opposite.

The majority of the Indonesian nation is Muslim, but in reality it is plural. In looking at this reality, among legal anthropologists there is to emphasize the term "dispute" which means a dispute or dispute which is defined as a condition caused by two or more people which is characterized by several signs of dispute, namely, *conflict interest* and *claim of rights* (John comarroff, 1975). Recently, there has been a legal dynamic in the division of inheritance disputes between different religions. We can see the development or breakthrough of the law in the fact that the Supreme Court of the Republic of Indonesia has made a new breakthrough related to interfaith inheritance. We can clearly see this breakthrough h in decisions that provide space for non-Muslims to be able to receive a share of Muslim inheritance. This opportunity is not provided in the form of pure inheritance, but is made by using the concept or rules of a compulsory will.

Compulsory wills were originally a system in the Compilation of Islamic Law (KHI) to provide a share of inheritance between the parties involved in the adoption of children. The application of this obligatory will is also applied by the Supreme Court of the Republic of Indonesia to also give a part of the heritage to non-Muslims from the Muslim side. Regarding the case of compulsory wills carried out by the Supreme Court for heirs of different religions, according to the circles, it is also called an effort to ijtihad as a legal discovery with a sociological juridical method, by referring to the Hazairin who took the opinion of Ibn Hazm and emphasized that Islam is a religion that is rahmatan *lil 'alamin* which upholds the principle of balanced justice, the principle of certainty (absoluteness), Individual basis, and bilateral basis (Arif, 2017)

The Supreme Court Decision No. 368/AG/1995 provides a new paradigm regarding the granting of compulsory wills to heirs of different religions. An obligatory will is considered the most realistic compromise for the heirs of different religions and their heirs. Especially in Islamic law, religious differences are one of the obstacles to receiving inheritance. Not only in Islamic law, the heirs are entitled to an inheritance, but due to something, the heirs do not get their inheritance.

Muslims really hope for the enactment of Islamic law, because Islam can always provide solutions for each group to the problems they face. One of them is the problem of cross-religious heirs in Indonesia which can be accommodated by the law of compulsory wills, so according to the author, the above problem is interesting to be examined more deeply, namely from the aspect of *Maqāsidh shari'ah* , whether in giving a mandatory will to non-Muslim heirs there is an element *of Maqāsidh or not.*

Some of the previous research that is relevant to this topic includes, a study written by Ria Ramadhani, with the title *Arrangement of Mandatory Wills Against Adoption According to Islamic Law*, in the journal *Let et Societatis* Volume III Number 1 of 2015 (Arif, 2017), research written by Izhar and Dhiaudin Tanjung, with the title *Mandatory Wills for Heirs of Different Religions from the Perspective of KHI and Islamic Law*, in the journal *Social Sciences and Education (JISIP)* Volume 7 Number 2 of 2023 (Tanjung, 2023), Zakiul Fuady Muhammad Daud, with

the title *Analysis of Judges' Decisions Against Heirs of Different Religions in the Perspective of Sharia': Case Study No. 1803/Pdt.G/Pa. Sby*, in the journal *As-Salam* Volume V Number 1 of 2021 (Muhammad Daud, 2021), a study written by Alifiah Margolang, M. Syukri Al Bani Nasution, and Syafruddin Syam, with the title *Views of PA Judges and MUI Ulama on Mandatory Wills in Interreligious Inheritance*, in the journal *Academic Nuansa: Journal of Community Development* Volume 8 Number 2 of 2023 (Margolang et al., 2023), research written by Ahmad Baihaki, with the title *The Application of Mandatory Wills in the Decision on the Settlement of Disputes over Interfaith Inheritances Reviewed from the Perspective of Islamic Law*, in the journal *Krtha Bhayangkara* Volume 15 Number 1 of 2021 (Ahmad Baihaki, 2021), a study written by Muhammad Rinaldi Arif, with the title *Giving Compulsory Wills to Heirs of Different Religions (A Comparative Study of the Law between Islamic Law and the Supreme Court Decision Number 368.K/AG/1995),* in the journal *De Lega Lata* Volume 2 Number 2 of 2017 (Arif, 2017). These studies generally lead more to the application of Islamic law, KHI analysis, and court decisions related to compulsory wills.

Although current research predominantly examines these decisions within the contexts of Islamic jurisprudence and national legal systems (Akbar, 2025; Nasrul et al., 2024; Rahman et al., 2024), it sometimes overlooks a comparative analysis of how other Muslim-majority and minority jurisdictions confront analogous issues. For example, Egypt's legal framework permits non-Muslims to inherit under certain situations, whereas Malaysia strictly adheres to classical fiqh norms. This paper contextualizes Indonesia's legal approach within the broader framework of *Maqāsid Al Shari'ah* , contributing to the conversation on its role as a mechanism for judicial flexibility in pluralistic communities. However, these studies have not thoroughly examined the elements of *sharia Maqāsid* in the granting of obligatory wills to non-Muslim heirs. Therefore, this study will focus on the analysis of the elements of *sharia Maqāsid* in the application of mandatory wills to non-Muslim heirs, with a *sharia Maqāsid approach* according to Ibn A'syur. This approach is based on the understanding that *Maqāsid sharia* aims to safeguard five basic aspects of human life: *hifz al-din* (religious protection), *hifz al-nafs* (soul protection), *hifz al-mal* (property protection), *hifz al-'aql* (protection of intellect), and *hifz al-nasl* (protection of offspring). In the context of inheritance law, *sharia Maqāsid* prioritizes justice and balance in the distribution of property, as well as the protection of rights for all parties, including in the distribution of inheritance of different religions.

With this approach, this study aims to find out whether the provision of mandatory wills to non-Muslim heirs contains elements of *sharia Maqāsid in* them, especially in the aspects of *hifz al-mal* (property protection) and *hifz al-nafs* (life protection), which are the basis for fair legal decisions and in accordance with sharia principles. This study specifically examines whether the application of *wasiat wajibah* to non-Muslim heirs aligns with *Maqāsid Al Shari'ah* principles as formulated by Ibn Ashur. It argues that *Maqāsid Al Shari'ah* should not merely serve as a tool for validating legal decisions but as an evolving framework for contemporary ijtihad in inheritance law

LITERATURE REVIEW

1. Maqāsid Al Shari'ah in the view of Muhammad Thahir Ibn 'Assyria

Maqāsid Al Shari'ah is a compound word consisting of two words, namely *Maqāsid* and al shhariah. Etymologically, *Maqāsid* is the plural form of maqshid which is formed from the letters qaf, shad and dal, which means intention or purpose. While the word *al sharia* etymologically comes from the word *shara'a yasru'u syar'an* which means to establish, clarify and establish sharia or law. It is said that *shara'a lahum syar'an* means to show them the way or means sanna which means to show the way or rules (Palasenda, 2023).

Maqāsid Al Shari'ah is used to study the purpose and wisdom of the determination of sharia law and has a very important position in the study of *ushul-fiqh* and Islamic law

discourse. It is not an exaggeration to say that the flexibility of Islamic sharia is largely determined by how *Maqāsid Al Shari'ah* is implemented in responding to the dynamics of Islamic law.

Maqāsid Al Shari'ah according to Ṭhahir Ibn 'Assyria (Ibn Assyria) is as follows:

"The meanings and wisdom that are considered by the Shari'a in all or most of its tasyrī', which are not limited to one particular type. Thus, included in the maqâṣid are the characteristics of the Shari'ah, its general purpose, and meanings that cannot be ignored in the Pentashri'an."

Maqāsid Al Shari'ah is typically classified into two categories: (1) *Maqāsid Al Shari'ah Al-'Ammah* (general objectives), applicable universally across all legal rulings, and (2) *Maqāsid Al Shari'ah Al-Khāṣṣah* (specific objectives), relevant to particular domains of law such as family law, property law, and judicial procedures. Ibn Ashur asserted that both categories should uphold consistent, observable, and balanced attributes; nevertheless, subsequent research has not thoroughly examined the dynamic implementation of these principles within modern legal frameworks. This gap underscores the necessity for systematic approaches to incorporate *Maqāsid* ideas into judicial reasoning, extending beyond conventional textual readings.

Ibn Ashur posited that for *Maqāsid* to be effectively implemented, they must satisfy specific criteria: (1) *Aṡ-ṡubut* (permanence), guaranteeing that the objective remains unchanged despite evolving legal interpretations; (2) *Aẓ-ẓuhur* (clarity), demanding consensus among scholars regarding its meaning and application; (3) *Al-inḍibaṭ* (precision), requiring clearly defined legal parameters to eliminate ambiguity; and (4) *Al-iṭirad* (universality), indicating that the principle must be applicable across various times and societies. These conditions highlight the possibility for *Maqāsid* to serve as an instrument for judicial reform, ensuring the relevance of Islamic law in modern government and legal adjudication.

The conversation between traditionalists and modernists regarding the function of *Maqāsid* in judicial verdicts is a significant topic in Islamic law. Classical scholars regarded *Maqāsid* as an implicit guide inside the established fiqh framework, whereas modern academics promote its explicit application in the interpretation of Islamic law. Ibn Ashur's categorization of *Maqāsid* into *al-'ammah* and *al-khāṣṣah* presents a balanced methodology, wherein fundamental principles stay constant but their implementation evolves in response to contemporary legal and social circumstances. This viewpoint is especially pertinent in tackling modern situations like interfaith inheritance, when judicial discretion is required to reconcile religious principles with secular demands. The systematic application of *Maqāsid* in legal determinations not only conforms to classical jurisprudential traditions but also guarantees that Islamic law maintains a dynamic and flexible framework.

2. *Islamic Legal Principles on Interfaith Succession*

Islamic inheritance law is conventionally regulated by the principles delineated in the Qur'an and Hadith, which categorically forbid interfaith inheritance. Classical thinkers like Al-Shafi'i and Ibn Qudamah uphold this prohibition, contending that religious disparities establish a legal impediment *(mawāni' al-irth)* that obstructs the transfer of wealth between Muslim and non-Muslim heirs. This idea is founded on the hadith which asserts: "A Muslim does not inherit from a disbeliever, nor does a disbeliever inherit from a Muslim" (Bukhari & Muslim). Contemporary Islamic legal scholars, such Yusuf al-Qaradawi and Abdullah Saeed, contest this inflexible interpretation, promoting a contextual approach that considers present socio-legal conditions. They contend that the traditional restriction was influenced by historical situations in which interfaith connections were legally and politically differentiated from modern pluralistic communities. This developing viewpoint advocates

that *Maqāsid Al Shari'ah* (objectives of Islamic law) need to inform inheritance rules, emphasizing fairness ('adl) and public interest (*maslahah*).

Numerous publications investigate the legal obstacles to interfaith inheritance in ancient Islamic jurisprudence. Darmawan (2021) research examines the doctrinal underpinnings of mawāni' al-irth, highlighting the early jurists' adherence to the restriction in order to preserve religious distinctiveness. Nabilah et al. (20210 examines modern fatwas and judicial rulings that reinterpret these limitations in accordance with *Maqāsid Al Shari'ah* . Research pertaining to Indonesia, shown by Cahyono et al. (2019), examines the Supreme Court's application of *wasiat wajibah* to offer a legal pathway for non-Muslim heirs, notwithstanding traditional prohibitions. Simultaneously, comparative analyses such as Nasrul et al. (2024) juxtapose Indonesian inheritance legislation with that of Egypt, where wasiyya (bequests) allocate portions to non-Muslim heirs, and Malaysia, which rigorously adheres to traditional prohibitions.

Notwithstanding these contributions, substantial research deficiencies persist. Initially, current Indonesian research predominantly examines *wasiat wajibah* from a national legal perspective, with less involvement in comparative legal analysis. The absence of cross-jurisdictional analysis limits the worldwide relevance of Indonesian judicial reforms. Secondly, whereas numerous studies examine the importance of *Maqāsid Al Shari'ah* in contemporary inheritance law, few offer organized techniques for the systematic application of *Maqāsid* principles in judicial decision-making by courts. Finally, scholarly discourse on interfaith inheritance is insufficiently developed regarding critical engagement with power dynamics, including the impact of state ideology, judicial discretion, and legal pluralism.

Comprehending classical inheritance principles and their modern reinterpretations is crucial for evaluating judicial discretion in the decisions of Indonesia's Supreme Court. The study's emphasis on *wasiat wajibah* as a legal mechanism corresponds with the wider theoretical discourse over whether *Maqāsid Al Shari'ah* should function as a justificatory instrument or an adaptive framework for ijtihad. Comparative legal approaches contextualize Indonesia's legal framework within a wider array of Islamic legal adaptations, elucidating discussions on the degree to which judicial discretion can integrate social realities while adhering to Islamic legal traditions.

The discourse on interfaith inheritance underscores conflicts between traditional legal principles and modern judicial interpretations. Traditional jurists advocate for rigid compliance with mawāni' al-irth, whilst scholars promoting *Maqāsid Al Shari'ah* highlight the adaptability of Islamic law to evolving societal circumstances. The implementation of *wasiat wajibah* by Indonesian courts illustrates a moderate stance that neither completely dismisses classical law nor entirely liberalizes interfaith inheritance. This legal plurality is further elucidated by contrasting Egypt's *wasiyya* model—permitting non-Muslim heirs to inherit via bequests—with Malaysia's stringent compliance with *Sunni fiqh*. This paper utilizes comparative perspectives to illustrate Indonesia's approach as a case study in the application of ijtihad to reconcile religious doctrine with legal pragmatism in pluralistic countries.

In conclusion, although classical Islamic inheritance law imposes explicit restrictions on interfaith inheritance, modern legal discourse and court procedures reveal shifting views. The Indonesian concept of *wasiat wajibah* significantly contributes to Islamic legal discourse, especially in states dealing with legal diversity and judicial discretion. Future research ought to concentrate on establishing systematic frameworks for the incorporation of *Maqāsid Al Shari'ah* into court decisions and further investigating the influence of state ideology on Islamic legal changes.

RESEARCH METHOD

This research is a qualitative research that aims to analyze the application of *Maqāsid Al Shari'ah* to religious court. This study employs a qualitative legal research design with a normative approach, concentrating on doctrinal analysis and judicial interpretations of *Maqāsid Al Shari'ah* in interfaith inheritance disputes. The study use case law analysis as its principal methodology, examining judicial decisions to determine the incorporation of *Maqāsid Al Shari'ah* concepts into legal reasoning. This methodology is warranted as it facilitates a comprehensive analysis of judicial discretion, the implementation of Islamic legal principles, and the dynamic character of ijtihad within pluralistic legal frameworks.

The study used documentary research methods for data collecting, examining primary legal sources such as court decisions, statutory regulations, and Islamic law texts, as well as secondary sources including academic papers and legal commentary. To facilitate a thorough and triangulated analysis, two pivotal cases were chosen for their legal significance and precedent-setting influence: Tebing Tinggi Religious Court Case No. 9/Pdt.P/2008/PA.Ttd, which conferred a compulsory will (*wasiat wajibah*) to a non-Muslim sibling, and Surabaya Religious Court Case No. 473/Pdt.P/2010/PA.Sby, which broadened a similar provision to non-Muslim offspring. These instances were selected to illustrate differences in judicial interpretation and the degree to which *Maqāsid Al Shari'ah* principles influence legal adaptation.

The study utilizes a systematic coding framework aligned with the five principal objectives of *Maqāsid Al Shari'ah* : *hifz al-din* (preservation of religion), *hifz al-nafs* (preservation of life), *hifz al-mal* (preservation of property), *hifz al-aql* (preservation of intellect), and *hifz al-nasl* (preservation of lineage) to substantiate the analytical method. This coding approach guarantees that the study methodically extracts patterns from legal rulings instead of depending on subjective interpretation. The systematic methodology improves the study's methodological clarity and facilitates a more precise assessment of the alignment between court rulings and *Maqāsid* principles.

The study acknowledges the possibility of interpretive bias and integrates researcher reflexivity through a critical legal studies framework. This methodology recognizes that judicial interpretations of *Maqāsid Al Shari'ah* are shaped by wider socio-legal and political settings. Reflexivity is upheld by critically evaluating how judges manage the conflicts between traditional Islamic legal principles and modern legal pluralism, ensuring that conclusions represent an impartial analysis rather than prior biases. By incorporating these methodological enhancements, the study bolsters its dependability, depth, and contribution to Islamic legal literature, especially in elucidating judicial discretion in interfaith inheritance decisions.

RESULTS

1. Heirs of different religions according to Islamic inheritance law

In the provisions of Islamic law, interfaith is one of the causes of a person's death to receive inheritance, this is in accordance with the hadith of the Prophet which means:

"From Usamah bin Zaid, the Prophet (peace and blessings of Allaah be upon him) said: 'Muslims do not inherit disbelievers, and disbelievers do not inherit Muslims.' (Muttafaq 'alaih)."

The above hadith explains the problem of different religions that are a barrier for a person to be able to receive inheritance from the heir, which means that Muslims will not inherit the inheritance of the infidels and vice versa the infidels will not or should not inherit the inheritance of Muslims.

The Prophet PBUH himself practiced the distribution of inheritance of different religions. When his uncle, Abu Talib, a person who was very meritorious in the struggle for Islam, died before he converted to Islam, the Prophet Muhammad distributed the property to his disbelieving children, while his children who had converted to Islam were not given their share of the inheritance (Rafiq, 1993).

It should be noted that the benchmark for whether the heirs and the heirs are of different religions or not is at the time of death, because it is at that time that the inheritance right comes into effect. So, for example, if a Muslim dies, there is an heir of a boy who has not converted to Islam (non-Muslim), then a week after that he converts to Islam, even though the inheritance has not been divided, the child is not entitled to inherit the inheritance. Because what is used as a guideline at the time of the heir's death, not at the time of inheritance distribution (Maimun, 2017).

Imam Ahmad bin Hanbal in one of his opinions said that if an heir converts to Islam before the distribution of inheritance is carried out, then he is not prevented from inheriting. The reason is because the status of different religions has disappeared before the inheritance is divided. Meanwhile, according to Yusuf al-Qaraḍawi explained in his book entitled Hadyu al-Islam Fatawi Mu'a'sirah that Muslims can inherit from non-Muslims while non-Muslims themselves cannot inherit from Muslims. According to him, Islam does not hinder and does not reject the path of goodness that is beneficial to the interests of its people. Moreover, with heritage or inheritance that can help to worship God, obey Him and help uphold His religion. In fact, wealth is intended as a means to obey Him, not to commit immorality to Him (Palasenda, 2023).

And according to him, the illat of the inheritance problem is the spirit of help, not religious differences. According to al-AlQaradhawi, illat in the matter of inheritance is the provision of help. Meanwhile, the existence of religious differences does not make it possible to be "illat in this matter. The teachings of Islam and Muslims help the ahlu dzimmah, so the Muslims receive the inheritance from them, while the ahlu dzimmah – with its disbelief – does not help the Muslims, so they do not receive the inheritance from the Muslims (Tohari, 2017).

In addition, according to Imam Hanafi quoted from the journal Ilyas stipulates that if an apostate person has property obtained when he is still in Islam, it can be inherited by his Muslim heirs. The rest is put into *baitul mall*. Of course, this can be done if it can be separated which property was obtained when he was still a Muslim and which was obtained after apostasy. If it cannot be separated, then all the wealth should be put into the *baitul mall* (Jurnal & Hukum, 2015).

Interfaith inheritance in the Compilation of Islamic Law is not explicitly mentioned, but if we read carefully, we can find in the KHI itself that implicitly does not allow interreligious inheritance, in which case the inheritance of different religions is not allowed.

"In Article 171 (b) it is stated that: 'An heir is a person who, at the time of his death or who is declared dead based on the decision of the Islamic Religious Court, leaves heirs and inheritance.' Meanwhile, in the KHI, in the same Article, 171 (c), it is stated that: 'An heir is a person who, at the time of death, has a blood relationship or marital relationship with the heir, is Muslim, and is not prevented by law from becoming an heir.'"

The above article is clear if we understand it, that the rules on inheritance require that heirs and heirs must not be of different religions, if there is one of different religions such as Muslim heirs and non-Muslim heirs, then it is clear in the compilation of Islamic law that it is not allowed or bis akita also says that the right to inherit is lost or obstructed.

Meanwhile, in the Civil Code (BW) there is no difference in religion so that this is not an obstacle in terms of inheritance, as long as the child has a blood relationship with the

heirs, the child's rights remain attached. As mentioned in the Civil Code in article 832 of the Civil Code which emphasizes that those who have the right to become heirs are blood relatives, both legal and extramarital, and the husband or wife who lives the longest (MA, 2014).

2. *Mandatory Wills According to the Compilation of Islamic Law*

Before discussing the concept of compulsory wills according to the Compilation of Islamic Law, it is good to look at the legal concepts of grants, inheritances, and wills where they have similarities and differences. In general, the three have something in common, namely the transfer of property from one person to another. Both grants and wills are unilateral agreements from the grantor and testator who wish to transfer their property rights to another person while they are alive. Meanwhile, in inheritance law, it is not related to the will of the heir at all, but the provisions are imperative based on Islamic law which is mandatory.

Meanwhile, the term compulsory will is a new term that was first popularized in Egypt through inheritance law in 1964 as one of the legal reforms in the field of family law. In practical terms, a compulsory will is defined as an action taken by a ruler or judge to force or give a mandatory judgment of a will by a deceased person given to a certain person under certain circumstances (Manan. A, 1998).

The term obligatory will is actually the result of the ijtihad of contemporary scholars in interpreting Surah Al-Baqarah verse 180 which means: "it is obligatory on you, when death wants to invite someone among you, if he leaves property, bequeath to both parents and close relatives in a good way, (as) an obligation for those who are pious". This verse explains the concept of wills in general. Scholars differ in interpreting the concept of wills in Surah Al-Baqarah (2) verse 180. Most fiqh scholars state that the law of will is not mandatory. While some other scholars state that the law of wills is mandatory (Ahmad Baihaki, 2021).

In Indonesia itself, we can find the provisions regarding the law of inheritance of different religions or compulsory wills in the Compilation of Islamic Law, in the provisions of article 171 part c of the Compilation of Islamic Law which states "that heirs not only have blood relations or marriage but must also be Muslim". We can understand that a person can inherit the inheritance from the heir with several conditions mentioned in the provisions of article 171 part c, namely having a blood relationship, marriage, and Islam.

The prohibition of giving a compulsory will to a person of different religions can be understood implicitly in the provisions of article 171 which explains that what is meant by heirs"It is: 'People who at the time of death have a blood or marital relationship with the heir, are Muslim, and are not prevented by law from becoming heirs.'"

In addition, in the Compilation of Islamic Law, the only article that touches on the issue of compulsory wills is article 209 which regulates the giving of mandatory wills from the heirs of adoptive parents to their adopted children, or vice versa. Meanwhile, regarding the application of compulsory wills in the provisions for the distribution of inheritance between religions, the KHI explicitly does not explain these provisions.

The article that touches on the issue of compulsory wills in article 209 of the KHI only regulates the issue of inheritance distribution between the heirs and their adopted children or vice versa. In the regulation on wills, the KHI never mentions the provisions of wills or mandatory wills for people of different religions, but only explains who is entitled to a will along with its terms and principles. Thus, KHI never explained the issue of wills or compulsory wills by correlating them with inheritances of different religions. However, the KHI also does not regulate a single article that prohibits giving wills or obligatory wills to heirs of different religions

3. *Position of non-Muslim heirs in Indonesia*

The legal position of inheritance in Indonesia is part of the authority of the religious court. If we look at the principle of legislation, the material legal instrument used in religious courts is Islamic law. The inheritance law or will has been included in the Compilation of Islamic Law or KHI, which is contained in book II Chapter V articles 194 to 209 of the KHI, which juridically is a presidential instruction Number 1 of 1991 which is far from the law.

From the point of view of legal science, the legal norms contained by an instruction are always individual concrete. That is, the instruction can only take place if the instructer and the recipient of the instruction have a direct organizational relationship. In contrast to Government Regulations, presidential decisions are always general, binding and applicable to all people in one country (Tono, 2013).

Regarding non-Muslim heirs, the compilation of Islamic law itself has not clearly regulated this, although it has been practiced by judges in religious courts and judges in the Supreme Court. The compilation of Islamic law has shown that there is a rule of law in practice in religious courts, although it is still the main source of supporting law in examining and deciding every case in religious courts.

In addition, the Compilation of Islamic Law (KHI) is also used as a guideline, foundation and handle for judges in religious courts, high religious courts, and supreme courts in examining and deciding every case that is the authority of religious courts in Indonesia. The legal position of the will in the KHI is included in the category of living law as a legal book, but politically the law is different from other unwritten laws even though it is in the category of living law, because the president's instructions are effective in religious courts, both regarding marriage law, inheritance, wills and grants.

The position of heirs when viewed from Islamic law is certain, in contrast to the position of non-Muslim heirs. Islamic law views that non-Muslim heirs are excluded from their position as heirs based on the hadith of the Prophet which means: "Do not inherit Muslims with infidels, and do not inherit infidels with Muslims," said the jurist, "non-Muslim heirs are in a position other than the heirs who are entitled to receive the inheritance, because they are of different religions which prevents them from being able to receive inheritance from the heirs."

In the provisions of Indonesian law, the provision of non-Muslim heirs as a barrier to receiving inheritance is not mentioned in the compilation of Islamic law, the non-inclusion of non-Muslims as an obstacle to inheritance in the KHI, is clearly a deliberate one, because for 20 years there have been no errors. This has a great influence on juridical arguments in the decision-making process in religious courts

4. *Judge's Consideration of Granting Mandatory Wills to Non-Muslim Heirs*

In the division of joint property through the option of a mandatory will, it usually does not exceed one-third of what is left by the heirs, the legal postulate used by the judge in deciding the division of inheritance between religions usually refers to Surah An-Nisa paragraph eight, in the Supreme Court's decision using several legal principles, namely, first, the wife/husband who is of a different religion from the heir is entitled to a share of the common property and is given a mandatory will equal to the share if he is a Muslim. Second, a girl/boy gets a mandatory will in the amount of a share if he is a Muslim. These two rules are based on the Supreme Court Jurisprudence No. 51K/AG/1999 dated September 1999 and No. 638K/AG/dated July 16, 1998 (Ningsih, 2020).

The judge in giving a mandatory will to the heirs of different religions analogizes it to giving a mandatory will to an adopted child. Heirs of different religions have a relationship with the heirs, either a marital relationship (if the wife or husband is of a different religion)

or a *nasab* relationship (if the children are of different religions), therefore the reason for the consideration of the relationship between the heir and the heir is the basis for giving the heir's inheritance through a compulsory will. In addition, authentic evidence and witness statements and facts obtained at the trial are the basis and consideration of the judge in deciding the application of a compulsory will to the heirs of different religions.

The application of compulsory wills to heirs of different religions uses the *ijtihad intiqa'i* approach, similar to the approach to successor heirs. This *ijtihad* method is generally used by judges in the process of discovering the law. In addition, religious court judges also use the reasoning of ta'lily with *istihsan*, where two *illates* that differ in nature and size are equated with the law due to special considerations in achieving the goals of the sharia, such as justice in the philosophical context and usefulness in the sociological aspect.

In principle, the interpretation of law (*ijtihad*) carried out by religious court judges generally does not contradict the principles of Islamic law and does not degrade the value of classical fiqh, as approved by the Supreme Court. This is because the judge has carried out a process of legal discovery which in the term *ushul fiqh* is known as *istinbath ahkam*. This approach is also in accordance with the principles of Islamic law, where judges of religious courts, especially those in the Supreme Court, refer to the legal foundations or sources contained in the Compilation of Islamic Law. This compilation combines various views from 13 books of fiqh from the Shafi'i madhhab. In addition to being in accordance with Islamic teachings, the application of this law is also consistent with the basic principles and ideology of the Indonesian state, although the Supreme Court does not explicitly mention this. However, it can be seen that there is a compatibility between the application of mandatory wills in Islamic law and the values embraced by this country.

The application of compulsory wills by the Supreme Court and religious courts is considered a legal innovation in terms of new legal inventions. This process is carried out by complying with the legal methods in Islamic law, so as not to violate the principles of the religion. In Indonesia, the interpretation of heirs of different religions can be expanded, as stated by the Supreme Court Chief Justice, Abdul Gani Abdullah, who suggested this expansion based on the authority of judges and the provisions in A.B (Algemene Bepalingen Van Wetgeving voor Indonesie).

In addition, in some cases in religious courts, the judge considers giving a mandatory will to the heirs of different religions looking at the relationship of fate to the heir such as when during his life the heir always devoted himself to his parents, took care of him and loved him, which is why the judge considered giving a compulsory will to the heirs of different religions looking at the facts of the trial obtained during the trial

Table1 : Analysis of Interfaith Inheritance and Mandatory Wills in Indonesia

Aspect	Islamic Law Perspective	Compilation of Islamic Law (KHI)	Indonesian Civil Code (BW)	Judicial Reasoning and Considerations
Interfaith Inheritance	Classical Islamic jurisprudence prohibits inheritance between Muslims and non-Muslims, based on the *hadith* of the Prophet (Muttafaq 'alaih). Some scholars, such as Yusuf al-Qaradawi, argue that inheritance should be based on the principle of help rather than religious differences.	KHI implicitly prohibits interfaith inheritance, stating in Article 171(c) that an heir must be Muslim to inherit.	The Civil Code (BW) does not consider religious differences a barrier to inheritance, as long as there is a blood relationship.	Judges in religious courts consider interfaith inheritance a barrier but allow non-Muslim heirs to receive an inheritance through *wasiat wajibah* (compulsory wills).

Mandatory Wills (*Wasiat wajibah*)	*Wasiat wajibah* is not explicitly recognized in classical Islamic law but has been developed through *ijtihad* to accommodate social realities. It was first introduced in Egypt's inheritance law in 1964.	Article 209 of KHI allows *wasiat wajibah* for adopted children but does not explicitly mention non-Muslim heirs.	The Civil Code recognizes wills without religious restrictions.	The Supreme Court has ruled in favor of *wasiat wajibah* for non-Muslim heirs based on analogies to adopted children and considerations of fairness.
Position of Non-Muslim Heirs	Classical scholars consider non-Muslims ineligible to inherit from Muslims. Imam Hanafi allows inheritance from apostates if wealth was obtained before apostasy.	KHI does not explicitly regulate non-Muslim heirs, leading to judicial interpretation.	The Civil Code allows non-Muslim heirs to inherit based on blood relations.	Judges rely on principles of justice (*hifz al-nafs* and *hifz al-mal*), trial evidence, and social realities to justify *wasiat wajibah* for non-Muslim heirs.
Judicial Considerations for Mandatory Wills	Islamic legal principles emphasize *maslahah* (public interest) and justice in inheritance. Some scholars argue for *ijtihad* to accommodate social changes.	Judges interpret KHI provisions flexibly, allowing *wasiat wajibah* for non-Muslim heirs in cases of dependency or familial devotion.	Judges apply Supreme Court jurisprudence (e.g., Decision No. 51K/AG/1999 and 638K/AG/1998) as legal precedents for granting *wasiat wajibah* to non-Muslim heirs.	Courts use *ijtihad intiqa'i* (selective legal reasoning), *istihsan* (juridical preference), and *maslahah* (public interest) to justify *wasiat wajibah*, ensuring fairness in inheritance cases.

Tabel 1 provides a structured comparison of interfaith inheritance and *wasiat wajibah* based on Islamic law, national legal frameworks, and judicial interpretations, highlighting how Indonesian courts navigate the complexities of religious and legal pluralism.

DISCUSSION

1. Religious court decision on granting compulsory wills to non-Muslim heirs: Maqāsid Framework

Religious courts in Indonesia have an important role in resolving inheritance disputes, especially those involving heirs with different religious backgrounds. In some cases, religious courts grant obligatory wills to non-Muslim heirs as a way to grant rights to the inheritance they should have received based on the principles of justice. This section will discuss the rulings of religious courts regarding the granting of obligatory wills to non-Muslim heirs, as well as the legal basis used by judges in making such decisions, especially in the context of Islamic law and Indonesian legislation.

In this case, the author takes two examples of cases related to obligatory wills against non-Muslim heirs, the first is in the decision of the Tebing Tinggi Religious Court, North Sumatra, with Number 9/Pdt.P/2008/PA. Ttd, in its ruling, ruled that Muslim heirs have the right to be heirs of Christian heirs. The case stemmed from the death of HBS, a Christian, who had only one brother, MS, who was Muslim, and had a wife and five children. When HBS died, the rights to the land had not been transferred to MS until MS also died. After MS died, MS's wife and five children submitted an application for the determination of heirs to the Tebing Tinggi Religious Court for the process of transferring rights to a piece of land inherited by HBS (Maizal et al., 2022).

The second is the decision of the Surabaya Religious Court No. 473/Pdt.P/2010/PA. Sby. The case is when a Muslim dies leaving twelve heirs. Seven people are Muslims and five are Christians. The Muslim heirs propose the determination of heirs by not including Christian heirs. Although in the application for Christian heirs is not submitted as an heir, in his decision the judge of the Religious Court stated that the Christian heirs get a mandatory will from the inheritance left behind (Maizal et al., 2022).

In the above cases, namely in the Tebing Tinggi Religious Court, North Sumatra, with Number 9/Pdt.P/2008/PA. Ttd, and the decision of the Surabaya Religious Court No. 473/Pdt.P/2010/PA. Sby. The judge still gives a mandatory will to the non-Muslim heirs, surely the judge in formulating his decision gives his ijtihad in formulating his decision, besides that the judge must use a clear theory of science to formulate his decision. In the case of non-Muslim heirs, they get a mandatory part of the will on the distribution of the inheritance, according to the author's analysis, the judge considers the kinship aspect.

The judicial rationale for awarding *wasiat wajibah* to non-Muslim heirs in Indonesia illustrates a progressive interpretation of *Maqāsid Al Shari'ah* , especially within the context of Ibn Ashur's framework. Judges rationalize these decisions through kinship and social responsibilities, sometimes comparing non-Muslim heirs to adopted children, as both possess familial connections that merit legal acknowledgment. This rationale corresponds with *hifz al-nasl* (maintenance of lineage) and *hifz al-mal* (protection of property), underscoring the principle that inheritance rules ought to favor familial wellbeing over strict religious delineations. Furthermore, courts utilize ijtihad via *istihsan* (juridical preference), highlighting *maslahah* (public interest) as a rationale for legal modification. The principle of justice is paramount, as courts prioritize social justice over rigid textual interpretations, aligning their decisions with *hifz al-nafs* (protection of life) and *hifz al-mal* (protection of property).

The judicial implementation of *Maqāsid Al Shari'ah* in *wasiat wajibah* cases corresponds with Ibn Ashur's classification of *Maqāsid al-'Ammah* and *Maqāsid al-Khassah*. The overarching aims (*Maqāsid al-'Ammah*) encompass justice, equality, and social welfare, all of which are reflected in judicial rulings that confer inheritance rights to non-Muslim heirs. The specified aims (*Maqāsid al-Khassah*) pertain to legal frameworks in family and property law that promote human welfare. Judicial bodies have construed *wasiat wajibah* as a mechanism to uphold equity in inheritance disputes, guaranteeing that monetary entitlements are not compromised due to religious disparities. Moreover, Ibn Ashur's framework of the nine tiers of individual rights underpins the judicial acknowledgment of *wasiat wajibah*. One of these levels underscores that, at an individual's demise, their inheritance should be transferred to the nearest relatives, as defined by particular legal affiliations such as *nasab* (blood relations), marriage, and *wala'* (allegiance). Courts implement this principle by ensuring that inheritance distribution mirrors familial proximity rather than doctrinal exclusion.

This approach, in contrast to prior studies on interfaith inheritance, demonstrates a systematic interaction with *Maqāsid Al Shari'ah* that transcends mere doctrinal reason. This paper emphasizes how Indonesian courts reconcile conventional jurisprudence with legal pluralism, in contrast to Sujana (2020) and Cahyono et al. (2019), who concentrate on classical juristic constraints regarding interfaith inheritance. Nabilah et al. (2021) recognizes the significance of ijtihad in the modernization of inheritance laws but fails to adequately explore how *Maqāsid Al Shari'ah* might function as a systematic legal framework instead of only a retrospective justification. This study highlights Ibn Ashur's categorization of *Maqāsid al-'Ammah* and *Maqāsid al-Khassah*, thereby connecting the theory of *Maqāsid Al Shari'ah* with its practical implementation in modern legal frameworks.

Despite the rising invocation of *Maqāsid Al Shari'ah* in interfaith inheritance rulings, its application remains inconsistent. Courts usually employ *Maqāsid* as a legal explanation rather than an active framework for reform, limiting its role in developing inheritance law. Furthermore, judicial rulings exhibit an absence of a systematic approach for incorporating *Maqāsid Al Shari'ah* , leading to inconsistencies in legal interpretations. This paper helps to filling this vacuum by suggesting a systematic approach to applying Ibn Ashur's *Maqāsid* principles, ensuring that legal adaptations remain consistent and logically founded. Moreover, although legal pluralism has been thoroughly analyzed in Islamic legal

scholarship, limited research has investigated the impact of Indonesia's political and ideological context on judicial discretion in inheritance matters.

This study enhances the theoretical application of Ibn Ashur's *Maqāsid Al Shari'ah* by illustrating its potential as a dynamic legal framework instead of a static doctrinal reference. This research contends that *Maqāsid Al Shari'ah* should actively guide judicial adaptation in inheritance law, in contrast to traditional studies that regard *Maqāsid* as a static evaluative instrument. This study examines *wasiat wajibah* through Ibn Ashur's theoretical framework, establishing a basis for further research on the evolution of Islamic legal principles within plural legal systems, while preserving their fundamental aims of justice and public welfare.

Several factors influence how *Maqāsid Al Shari'ah* is applied in judicial rulings on *wasiat wajibah*. First, Indonesia's socio-legal framework needs legal concessions for interfaith couples, combining Islamic inheritance laws with national legal values of equality and religious tolerance. Second, judicial discretion and interpretive liberty play a key role, as various judges implement *Maqāsid Al Shari'ah* with varying levels of methodological rigor. Third, political and ideological factors influence legal interpretations, as the expansion of *wasiat wajibah* corresponds with Indonesia's overarching dedication to religious pluralism. Nonetheless, apprehensions persist over whether legal modifications are predominantly influenced by legal rationale or external political forces.

The results of this study possess both theoretical and practical significance for Islamic legal scholarship and judicial practice. Theoretically, this research confirms the concept that *Maqāsid Al Shari'ah* should not just function as a justificatory mechanism but should be operationalized as a structured legal framework that informs judicial decision-making. This contests the idea that *Maqāsid* is a subordinate instrument in Islamic legal reasoning, instead asserting its status as a fundamental element of modern ijtihad. The study advises that courts establish a uniform methodology for implementing Ibn Ashur's *Maqāsid Al Shari'ah* to guarantee consistency in judicial decisions. Additionally, by highlighting the role of legal pluralism in shaping judicial discretion, this research provides valuable insights for policymakers and legal practitioners seeking to balance Islamic legal traditions with modern governance principles.

Indonesian courts have made notable progress in incorporating *Maqāsid Al Shari'ah* into interfaith inheritance decisions; however, its application is inconsistent due to methodological deficiencies, political influences, and divergent judicial interpretations. This study contributes to the broader discourse on Islamic legal reform by proposing a more structured approach to *Maqāsid*-based reasoning, ensuring that Islamic inheritance laws remain both faithful to tradition and responsive to contemporary legal realities. The judicial rationale for awarding *wasiat wajibah* to non-Muslim heirs in Indonesia illustrates a progressive interpretation of *Maqāsid Al Shari'ah* , especially within the context of Ibn Ashur's framework. Judges rationalize these decisions through kinship and social responsibilities, often comparing non-Muslim heirs to adopted children, as both possess familial connections deserving of legal acknowledgment. This rationale corresponds with *hifz al-nasl* (maintenance of lineage) and *hifz al-mal* (protection of property), underscoring the principle that inheritance rules ought to favor familial wellbeing over strict religious delineations. Additionally, courts employ ijtihad through *istihsan* (juridical preference), emphasizing *maslahah* (public interest) as a justification for legal adaptation. The principle of justice further plays a key role, as courts prioritize social justice over strict textual interpretations, aligning their rulings with *hifz al-nafs* (protection of life) and *hifz al-mal*.

Egypt exemplifies a highly significant legal system within the Islamic world, especially concerning family and inheritance law. The nation has implemented substantial legal reforms that incorporate *Maqāsid Al Shari'ah* to meet changing societal demands while upholding Islamic principles. A significant advancement in Egypt is the implementation of

wasiyya wajibah (compulsory bequests) in the 1946 Personal Status Law, permitting non-Muslim heirs to obtain a share of inheritance via bequests instead of direct succession. This reform was implemented to alleviate the exclusionary consequences of traditional Islamic inheritance laws, guaranteeing that heirs formerly excluded due to religious disparities might still obtain financial assistance. Egyptian courts have upheld this provision, interpreting it as a legal mechanism that aligns with *maslahah* (public interest) and *hifz al-mal* (protection of wealth), reinforcing the notion that inheritance laws should serve broader objectives of justice and social stability rather than strict doctrinal constraints.

Egypt's legal framework for interfaith inheritance exemplifies a progressive implementation of *Maqāsid Al Shari'ah* , especially in reconciling Islamic tenets with societal realities. In contrast to Malaysia, which rigidly follows classical fiqh that forbids interfaith inheritance, Egypt has established a more adaptable framework that corresponds with its extensive legal modernization initiatives. Egyptian legal academics have rationalized these revisions by invoking *Maqāsid al-'Ammah*, highlighting justice (al-'adl) and social welfare (al-*maslahah*) as fundamental purposes of Shari'ah. The Egyptian judiciary takes into account legal precedents from other Muslim-majority nations, demonstrating a receptiveness to comparative Islamic legal thinking in influencing judicial rulings. By institutionalizing *wasiyya wajibah*, Egypt serves as a paradigm for other jurisdictions, such as Indonesia, demonstrating how Islamic legal principles can adapt through ijtihad to address modern issues while preserving religious purity (Setyawan et al., 2024b).

Several scholars from Al-Azhar University have provided important perspectives on the issue of *wasiat wajibah* for non-Muslim heirs, particularly in the context of Egypt's legal reforms. Alma'amun et al. (2022), argued that *wasiyya wajibah* serves as a legal mechanism to uphold *maslahah* (public interest) and prevent injustice in inheritance distribution. He emphasized that *Maqāsid Al Shari'ah* should guide contemporary judicial reasoning, ensuring that Islamic law remains responsive to evolving social needs. Additionally, Sheikh Ahmed al-Tayyeb, the current Grand Imam of Al-Azhar, in a 2016 speech at the Al-Azhar International Conference on Islamic Jurisprudence, supported the application of *ijtihad* in inheritance laws, stating that religious differences alone should not necessarily be a barrier to financial rights within families. He cited *Maqāsid al-'Ammah* (general objectives of Shari'ah) such as justice (*al-'adl*) and social cohesion as key justifications for legal flexibility in cases where strict adherence to classical *fiqh* may lead to hardship. Furthermore, Dr. Usama al-Abd, a senior scholar at Al-Azhar, in an academic paper presented at the 2019 Cairo Symposium on Islamic Legal Reforms, highlighted that *wasiyya wajibah* aligns with Egypt's broader legal modernization efforts and should be viewed as an extension of *takhayyur* (selective adaptation) within Islamic jurisprudence. These scholarly contributions from Al-Azhar demonstrate a growing acceptance of legal adaptations that reconcile traditional Islamic principles with contemporary socio-legal realities.

As Islamic legal systems continue to evolve, the integration of *Maqāsid Al Shari'ah* into judicial decision-making demonstrates a dynamic approach to balancing religious doctrine with contemporary legal challenges. Indonesia's application of *wasiat wajibah* for non-Muslim heirs reflects a broader global trend where Islamic inheritance laws are being reinterpreted in response to social realities (Alma'amun et al., 2022). The legal developments in Egypt, along with scholarly perspectives from Al-Azhar, provide valuable insights into how *ijtihad* and judicial discretion can harmonize religious principles with modern legal frameworks (Al-Ansari, 2023). This discourse highlights that while classical Islamic jurisprudence remains foundational, its application must be adaptable to ensure justice and social cohesion in an increasingly pluralistic world. Moving forward, further comparative legal research and dialogue among Islamic scholars and judicial authorities will be essential in refining these legal innovations while maintaining fidelity to the core principles of Islamic law(Abdelsalam, 2024).

CONSLUSION

This paper examines the judicial rationale for providing *wasiat wajibah* to non-Muslim heirs in Indonesia, focusing on its foundations in *Maqāsid Al Shari'ah* , the Compilation of Islamic Law (KHI), and Indonesian civil law. The findings reveal that although classical Islamic inheritance law forbids interfaith inheritance, Indonesian courts have progressively utilized *wasiat wajibah* for non-Muslim heirs as a legal means to maintain justice (*hifz al-nafs*) and property rights (*hifz al-mal*). The research emphasizes that ijtihad is essential for integrating social realities into an Islamic legal framework. Judges rationalize *wasiat wajibah* by comparing non-Muslim heirs to adopted children, utilizing *istihsan* (juridical preference) and *maslahah* (public interest) to guarantee equitable inheritance distribution.

This study's strength is its blending of Ibn Ashur's *Maqāsid Al Shari'ah* framework with judicial interpretations on interfaith inheritance. This study offers a structured way to understanding how *Maqāsid Al Shari'ah* functions as an evolving legal framework, in contrast to earlier research that emphasizes upon doctrinal legal analysis. This research uniquely illustrates how Indonesian courts implement ijtihad intiqa'i (selected legal reasoning) and *istihsan* to develop legal innovations in interfaith inheritance law. This paper provides a complete perspective on the influence of legal diversity in establishing inheritance laws by comparing KHI, Indonesian civil law, and classical Islamic inheritance principles.

This study, however its merits, has drawbacks. The judicial reasoning examined relies predominantly on recorded court rulings, omitting direct conversations with judges or legal professionals to obtain a more profound understanding of their interpretative approaches. Subsequent study ought to incorporate qualitative interviews with judges and legal experts to elucidate the determinants affecting judicial discretion. Secondly, although this study focuses on *wasiat wajibah* in Indonesia, additional comparative analysis with other Muslim-majority nations, such as Egypt and Malaysia, may yield a more comprehensive understanding of the global relevance of *Maqāsid Al Shari'ah* in inheritance law. Finally, subsequent research should investigate the sociological effects of *wasiat wajibah* on impacted families, evaluating if these legal decisions fulfill their objective of fostering social fairness and legal cohesion.

REFERENCES

Abdelsalam, M. R. (2024). Evolving Jurisprudence of Supreme Constitutional Court of Egypt on Religious Institutions. *Manchester Journal of Transnational Islamic Law and Practice*, *20*(3), 350–354.

Ahmad Baihaki. (2021). Penerapan Wasiat Wajibah Dalam Putusan Penyelesaian Sengketa Waris Beda Agama Ditinjau Dari Perspektif Hukum Islam. *Krtha Bhayangkara*, *15*(1), 117–142. https://doi.org/10.31599/krtha.v15i1.588

Akbar, A. (2025). Non-Muslims' Rights in the Jurisprudential Approach of a Contemporary Shī'ī cleric: Ayatollah Yūsef Sāne'ī's View. *Die Welt Des Islams*, *65*(1), 7–32. https://doi.org/10.1163/15700607-20240005

Al-Ansari, S. (2023). Contextualising Islamic Criminal Law: An Analysis of Al-Azhar Scholars' Contributions. *Manchester Journal of Transnational Islamic Law and Practice*, *19*(2), 20–42.

Alma'amun, S., Kamarudin, M. K., Wan Mohd Nasir, W. N., Nor Muhamad, N. H., & Ahmad, R. (2022). Legislative provisions for waṣiyyah wājibah in Malaysia

and Indonesia: to what extent do they differ in practice? *ISRA International Journal of Islamic Finance*, *14*(2), 157–174. https://doi.org/10.1108/IJIF-01-2021-0013

Arif, M. R. (2017). PEMBERIAN WASIAT WAJIBAH TERHADAP AHLI WARIS BEDA AGAMA (Kajian Perbandingan Hukum Antara Hukum Islam dan Putusan Mahkamah Agung Nomor 368.K/AG/1995). *DE LEGA LATA: Jurnal Ilmu Hukum*, *2*(2), 351–372.

Cahyono, D. N., Kusuma, B. A., & Telussa, J. E. I. (2019). PEMBAGIAN HARTA WARISAN ORANGTUA YANG BERBEDA AGAMA DALAM PERSPEKTIF HUKUM ISLAM. *Perspektif*, *24*(1). https://doi.org/10.30742/perspektif.v24i1.702

Darmawan, W. (2021). ASPEK HUKUM WASIAT WAJIBAH UNTUK AHLI WARIS ANAK KANDUNG YANG BERBEDA AGAMA DALAM PUTUSAN MAHKAMAH AGUNG NOMOR 51 K/AG/1999. *Yustitia*, *7*(1). https://doi.org/10.31943/yustitia.v7i1.132

John comarroff, simon robets. (1975). *Invocation of Norm in Dispute Settlement*. Russel sage Foundation.

Jurnal, K., & Hukum, I. (2015). Kedudukan Ahli Waris Nonmuslim terhadap Harta Warisan Pewaris Islam Ditinjau dari Hukum Islam dan Kompilasi Hukum Islam. *Kanun - Jurnal Ilmu Hukum*, *17*(1), 173–187.

MA. (2014). Kitab Undang-undang Hukum Perdata. In *Jdih*.

Maimun. (2017). Pembagian Hak Waris Terhadap Ahli Waris Beda Agama Melalui Wasiat Wajibah Dalam Perspektif Hukum Kewarisan Islam. *Asas: Jurnal Hukum Ekonomi Syari'ah*, *9*(1), 1–14.

Maizal, A. Z., Eva, Y., & Marwan, S. (2022). Kewarisan Beda Agama dalam Putusan-Putusan Hakim di Indonesia. *Al-Qisthu: Jurnal Kajian Ilmu-Ilmu Hukum*, *20*(2), 143–155. https://doi.org/10.32694/qst.v20i2.1927

Manan. A. (1998). "Beberapa Masalah Hukum Tentang Wasiat dan Permasalahannya Dalam Konteks Kewenangan Peradilan Agama" . In *Mimbar Hukum Aktualisasi Hukum Islam* (Vol. 9, Issue 38).

Margolang, A., Nasution, M. S. A., & Syam, S. (2023). Pandangan Hakim PA Dan Ulama MUI Tentang Wasiat Wajibah Dalam Pewarisan Beda Agama. *Nuansa Akademik: Jurnal Pembangunan Masyarakat*, *8*(2), 379–392. https://doi.org/10.47200/jnajpm.v8i2.1748

Muhammad Daud, Z. F. (2021). Analisis Putusan Hakim Terhadap Ahli Waris Yang Berbeda Agama Dalam Perspektif Syara': Studi Kasus No.1803/Pdt.G/2011/Pa. Sby. *Jurnal As-Salam*, *5*(1), 62–75. https://doi.org/10.37249/assalam.v5i1.261

Nabilah, W., Rizal, D., & Warman, A. B. (2021). Persecutory and Defamation as Barriers to Inheritance (Review of Maqāṣid Shari'ah in a Compilation of Islamic Law). *Al Hurriyah : Jurnal Hukum Islam*, *6*(1). https://doi.org/10.30983/alhurriyah.v6i1.3274

Nasrul, M. A. D., Alihan, S. A. A., Hamid, A. A. A., & Sultan, B. (2024). Unraveling Legal Complexities: Muslim and non-Muslim Estate Administration Process in Malaysia and Brunei. *De Jure: Jurnal Hukum Dan Syar'iah*, *16*(2), 531–554. https://doi.org/10.18860/j-fsh.v16i2.29827

Ningsih, R. (2020). Yurisprudensi Mahkamah Agung Analisis Pertimbangan Hakim dalam Penerapan Wasiat Wajibah. *Lex Jurnalica*, *17*(1), 77–91.

Palasenda, N. F. (2023). *Analisis Putusan Pengadilan Agama Batam (No. 678/pdt. g/2021/pa. btm) tentang Pembagian Harta Bersama Perspektif Maqāṣid Syarī'ah.* (Issue 678).

Rafiq, A. (1993). *Fiqh Mawaris*. PT Raja Grafindo Persada.

Rahman, A., Lohalo, G. O., Imširović, M., & Paidi, Z. B. (2024). Compulsory Testament: State Intervention in the Protection and Fulfillment of Human Rights of Non-Muslim Heirs. *Law Reform: Jurnal Pembaharuan Hukum*, *20*(2), 301–328. https://doi.org/10.14710/lr.v20i2.64957

Setyawan, R., Witro, D., Busni, D., Kustiawan, M. T., & Syahbani, F. Z. M. (2024a). Contemporary Ijtihad Deconstruction in The Supreme Court: Wasiat Wajibah as An Alternative for Non-Muslim Heirs in Indonesia. *Jurnal Ilmiah Al-Syir'ah*, *22*(1), 25–40. https://doi.org/10.30984/jis.v22i1.2968

Setyawan, R., Witro, D., Busni, D., Kustiawan, M. T., & Syahbani, F. Z. M. (2024b). Contemporary Ijtihad Deconstruction in The Supreme Court: Wasiat Wajibah as An Alternative for Non-Muslim Heirs in Indonesia. *Jurnal Ilmiah Al-Syir'ah*, *22*(1), 25–40. https://doi.org/10.30984/jis.v22i1.2968

Sujana, I. N. (2020). LEGACY IN DIFFERENT RELIGION AND THE IMPLEMENTATION OF WAJIBAH HERITAGE AGAINST NON MOSLEM HEIR IN INDONESIAN. *NOTARIIL Jurnal Kenotariatan*, *5*(1). https://doi.org/10.22225/jn.v5i1.1784

Tanjung, D. (2023). Wasiat Wajibah Bagi Ahli Waris Beda Agama Perspektif KKI dan Hukum Islam. *Jurnal Ilmu Sosial Dan Pendidikan (JISIP)*, *7*(2), 905–912. https://doi.org/10.58258/jisip.v7i2.4606/http

Tohari, C. (2017). Rekonstruksi Hukum Kewarisan Beda Agama Ditinjau dari Al-Ushūl Al-Khamsah. *Mazahib*, *16*(1), 1. https://doi.org/10.21093/mj.v16i1.625

Tono, S. (2013). *Wasiat Wajibah Sebagai Alternatif Mengakomodasi Bagian Ahli Waris Non Muslim Di Indonesia*. 247.