



# Reconstructing Islamic Inheritance Law in Indonesia: Negotiating Classical *Fiqh Mawarith* and Contemporary Legal Challenges

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## Abstract

The transformation of family structures and the growing demand for gender justice have generated significant controversy in the application of Islamic inheritance law (*fiqh mawarith*) across Muslim-majority societies, particularly in Indonesia. Classical Islamic inheritance provisions, while providing a detailed normative framework, often encounter tension when applied to contemporary social realities characterized by legal pluralism and changing familial dynamics. This study examines the reconstruction of Islamic inheritance law in Indonesia through the negotiation between classical *fiqh mawarith* doctrines and contemporary legal challenges within modern Muslim society. This research employs a normative juridical approach using statutory, conceptual, comparative, and case approaches. Primary legal materials include Qur'anic verses on inheritance (QS. An-Nisa: 7, 11, 12, 176), classical *fiqh mawarith* literature, the Compilation of Islamic Law (KHI), Religious Court decisions, and Indonesian legal regulations related to inheritance disputes. Secondary materials consist of contemporary journal articles and scholarly works discussing Islamic legal reform, *maqasid al-shariah*, and legal pluralism. The findings reveal that Indonesian Islamic inheritance law has undergone substantial reconstruction through judicial interpretation, particularly in the expansion of *wasiat wajibah* (mandatory bequest) to non-Muslim heirs and the recognition of substitute heirs. The Indonesian Supreme Court's progressive jurisprudence demonstrates contextual *ijtihad* that integrates *maqasid al-shariah* principles with constitutional demands for justice and equality. This research concludes that the reconstruction of Islamic inheritance law in Indonesia represents a dynamic model of contextual Islamic jurisprudence that balances doctrinal fidelity with social responsiveness, offering valuable insights for other Muslim-majority societies navigating similar legal reforms.

**Keywords:** Islamic inheritance law; *fiqh mawarith*; legal reform; *maqasid al-shariah*; legal pluralism

## Abstrak

Transformasi struktur keluarga dan meningkatnya tuntutan keadilan gender telah memunculkan kontroversi signifikan dalam penerapan hukum waris Islam (*fiqh mawarith*) di berbagai masyarakat mayoritas Muslim, khususnya di Indonesia. Ketentuan waris Islam klasik, meskipun menyediakan kerangka normatif yang terperinci, seringkali menghadapi ketegangan ketika diterapkan pada realitas sosial kontemporer yang ditandai dengan pluralisme hukum dan dinamika perubahan

keluarga. Penelitian ini mengkaji rekonstruksi hukum waris Islam di Indonesia melalui negosiasi antara doktrin fiqh mawarith klasik dan tantangan hukum kontemporer dalam masyarakat Muslim modern. Penelitian ini menggunakan pendekatan yuridis normatif dengan pendekatan perundang-undangan, konseptual, komparatif, dan kasus. Bahan hukum primer meliputi ayat-ayat Al-Qur'an tentang waris (QS. An-Nisa: 7, 11, 12, 176), literatur fiqh mawarith klasik, Kompilasi Hukum Islam (KHI), putusan Pengadilan Agama, dan peraturan perundang-undangan Indonesia terkait sengketa waris. Bahan sekunder terdiri dari artikel jurnal kontemporer dan karya ilmiah yang membahas reformasi hukum Islam, maqasid al-syariah, dan pluralisme hukum. Hasil penelitian menunjukkan bahwa hukum waris Islam Indonesia telah mengalami rekonstruksi substansial melalui interpretasi yudisial, khususnya dalam perluasan wasiat wajibah kepada ahli waris non-Muslim dan pengakuan ahli waris pengganti. Yurisprudensi progresif Mahkamah Agung Indonesia menunjukkan ijihad kontekstual yang mengintegrasikan prinsip-prinsip maqasid al-syariah dengan tuntutan konstitusional akan keadilan dan kesetaraan. Penelitian ini menyimpulkan bahwa rekonstruksi hukum waris Islam di Indonesia merupakan model dinamis yurisprudensi Islam kontekstual yang menyeimbangkan kesetiaan doktrinal dengan responsivitas sosial, menawarkan wawasan berharga bagi masyarakat mayoritas Muslim lainnya yang menghadapi reformasi hukum serupa..

**Kata kunci:** Hukum waris Islam; fiqh mawarith; reformasi hukum; maqasid al-syariah; pluralisme hukum

## Introduction

The application of Islamic inheritance law in Muslim-majority countries has become increasingly contested due to the growing tension between classical jurisprudential doctrines and contemporary social demands.<sup>1</sup> Indonesia, as the world's largest Muslim-majority nation, presents a particularly instructive case where this negotiation between traditional fiqh mawarith and modern legal challenges has generated significant legal innovations. The implementation of Islamic inheritance law in Indonesia continues to face interpretive challenges in balancing classical jurisprudence with contemporary demands for gender justice, interfaith family dynamics, and evolving family structures.<sup>2</sup>

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<sup>1</sup> Iman Jauhari Roslina Roslina Syahrizal Abbas, Ilyas Ismail, "Reinterpreting Islamic Inheritance: Supreme Court Jurisprudence and Gender Justice in Indonesia," *Jurnal Ilmiah Peuradeun*, ahead of print, 2025, <https://doi.org/10.26811/peuradeun.v13i3.1593>.

<sup>2</sup> B. Basri, "Inheritance Distribution in Islamic Family Law: A Juridical Study of the Principle of Gender Justice," *Journal of Nafaqah*, ahead of print, 2025, <https://doi.org/10.62872/mvxrfe02>.

The urgency of this legal issue stems from several interconnected social transformations affecting Indonesian Muslim society. Family structures have undergone substantial changes, with increasing numbers of interfaith marriages, blended families, and non-traditional household arrangements that classical inheritance rules did not anticipate.<sup>3</sup> The growing economic participation of women has challenged traditional assumptions about male economic responsibility that historically justified the two-to-one inheritance ratio between sons and daughters.<sup>4</sup> These social realities have created practical difficulties in applying inheritance provisions that were formulated within different social contexts and family configurations.

Globally, scholarly attention to Islamic inheritance reform has expanded considerably, examining how various Muslim-majority countries adapt classical provisions to contemporary circumstances.<sup>5</sup> Studies have analyzed Egypt's methodology of inheritance law reform through institutional *ijtihad*, including the establishment of obligatory bequests (*wasiyyah wajibah*) for orphaned grandchildren and the restriction of homicide as an impediment to inheritance. Comparative research has examined how Turkey, Saudi Arabia, and Indonesia approach children's inheritance rights differently, with Turkey and Indonesia emphasizing the social dimension of reinterpreting men and women's portions, while Saudi Arabia maintains a conservative approach.<sup>6</sup> However, existing scholarship has insufficiently examined the distinctive Indonesian model of legal reconstruction that operates through judicial interpretation within a plural legal framework.

Within the Indonesian context, research has documented the

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<sup>3</sup> M. Yahya Zamzam Al-Fathoni Fillah M. A. Adly, Heri Firmansyah, "Wali Adhol in Islamic Family Law and Its Relevance to Indonesian Marriage Law," *Jurnal Hukum Keluarga*, ahead of print, 2026, <https://doi.org/10.63731/jhk.v3i01.23>.

<sup>4</sup> Ummah Karimah Sadari Lazuardi Fadhlan Arrazy, "Reinterpreting Gender Justice in Islamic Inheritance Law: A Critical Analysis of The Compilation of Islamic Law," *Yudisia. Jurnal Pemikiran Hukum Dan Hukum Islam*, ahead of print, 2025, <https://doi.org/10.21043/yudisia.v16i2.26359>.

<sup>5</sup> Royan Utsany Husnul Khitam Siti Muna Hayati, Anif Rahmawati, "Methodology of Egyptian Inheritance Law Reform," *KALOSARA: Family Law Review*, ahead of print, 2025, <https://doi.org/10.31332/kalosara.v5i2.11024>.

<sup>6</sup> Shubhan Shodiq Asep Saepudin Jahar, "SOCIAL AND RELIGIOUS DIMENSIONS OF CHILDREN'S INHERITANCE IN TURKEY, SAUDI ARABIA AND INDONESIA," *MIQOT Jurnal Ilmu-Ilmu Keislaman*, ahead of print, 2022, <https://doi.org/https://doi.org/10.30821/miqot.v46i1.870>.

development of progressive jurisprudence through Supreme Court decisions and Religious Court practices.<sup>7</sup> Studies have analyzed how the Compilation of Islamic Law (KHI) represents a form of contextual *ijtihad* that accommodates gender-responsive mechanisms such as consensual inheritance agreements and substitute heirs without departing from Islamic legal principles. Yet significant gaps remain in understanding the theoretical foundations and practical mechanisms through which Indonesian courts negotiate between classical doctrine and contemporary justice demands.<sup>8</sup>

Based on this background, this research formulates the following questions: First, how has Indonesian Islamic inheritance law been reconstructed through the negotiation between classical *fiqh mawarith* and contemporary legal challenges? Second, what factors have influenced judicial interpretation and legal innovation in Religious Courts and the Supreme Court? Third, what are the implications of this reconstruction for Islamic legal reform theory and practice? These questions address the need for systematic analysis of Indonesia's distinctive approach to inheritance law reform.

The theoretical relevance of this study lies in its engagement with multiple analytical frameworks. *Fiqh mawarith* provides the foundational normative framework governing inheritance distribution according to Islamic jurisprudence. *Maqasid al-shariah* offers evaluative criteria for assessing whether legal adaptations serve the higher objectives of Islamic law, particularly the protection of wealth (*hifz al-mal*), family (*hifz al-nasl*), and human dignity.<sup>9</sup> Legal pluralism theory illuminates how Islamic law, state law, and customary law

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<sup>7</sup> Habib Shulton Asnawi Hervin Yoki Pradikta Aan Budiarto, "History of Development and Reform of Family Law in Indonesia and Malaysia," *KnE Social Sciences*, ahead of print, 2024, <https://doi.org/https://doi.org/10.18502/kss.v9i12.15863>.

<sup>8</sup> Fina Farhani Arhan Basid Juhra Muhammad Arib, Imam Sucipto, Yasin Yetta, "Semantic Integration of Ul Al-Fiqh Principles in Islamic Family Law: Reconstructing Inheritance Norms through Judicial Practice," *Al-Mujtahid: Journal of Islamic Family Law*, ahead of print, 2025, <https://doi.org/10.30984/ajifl.v5i2.3883>.

<sup>9</sup> Tri Wahyu Hidayati Miftahul Huda, "The Concept of Muḥammad Shaḥrūr on Gender Parity in Inheritance Legislation," *El-Usrah Jurnal Hukum Keluarga*, ahead of print, 2023, <https://doi.org/https://doi.org/10.22373/ujhk.v6i2.18121>.

interact within Indonesia's complex legal landscape.<sup>10</sup>

This research aims to analyze the reconstruction of Islamic inheritance law in Indonesia through three interconnected objectives: first, to describe the evolution of inheritance provisions from classical *fiqh* through contemporary judicial practice; second, to critically examine the factors driving legal innovation and the tensions between doctrinal fidelity and social responsiveness; and third, to develop a transformative model that positions Indonesian inheritance law reform as a reference for other Muslim-majority societies.

The distinctive contribution of this research lies in its argument that Indonesian inheritance law does not operate through textual application alone but develops through ongoing negotiation between classical *fiqh mawarith*, *maqasid al-shariah* principles, judicial interpretation, and contemporary social needs.<sup>11</sup> This research positions Indonesia as a model of contextual Islamic legal reform that demonstrates how traditional Islamic inheritance norms can be reconstructed while preserving substantive justice principles.<sup>12</sup>

## Method

### Research Design

This research employs a normative juridical approach, which constitutes a systematic method for examining legal norms, principles, and doctrines through analysis of authoritative legal sources.<sup>13</sup> The normative juridical method was selected because this study focuses on

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<sup>10</sup> Abdurrauf Umar Wahyudi, "Integration of Islamic Law and Customary Law and Its Application in the Indonesia Legal System: Opportunities and Challenges," *Sortuz*, ahead of print, 2026, <https://doi.org/10.35295/sz.iisl.2422>.

<sup>11</sup> Siti Asiah Samman Muthmainah Muthmainah Ali Mutakin, Abdul Aziz, Samingun Ngalim, "Reconstruction Of Political Theory Of Islamic Law In The Context Of Legal Pluralism In Indonesia," *Al Hairy | Journal of Islamic Law*, ahead of print, 2025, <https://doi.org/10.64344/hry.v1i2.66>.

<sup>12</sup> Cipto Sembodo, "POLA RESOLUSI KONFLIK HUKUM ISLAM-ADAT DALAM KHI SEBAGAI JEMBATAN REFORMASI HUKUM KELUARGA ISLAM DI INDONESIA," *Indonesian Journal of Shariah and Justice*, ahead of print, 2026, <https://doi.org/10.46339/ijjs.v5i2.238>.

<sup>13</sup> Uswatun hasanah Erni Sulhati Roudho Siregar, "Problematika Nikah Siri Di Indonesia (Tinjauan Hukum Islam Dan Hukum Nasional)," *DEMOKRASI*, ahead of print, 2026, <https://doi.org/10.62383/demokrasi.v3i1.1507>.

analyzing legal texts, court decisions, and doctrinal developments rather than observing social behavior directly. This approach allows for rigorous examination of the normative foundations underlying Indonesian Islamic inheritance law and the judicial reasoning employed in landmark decisions.<sup>14</sup>

The research integrates multiple analytical approaches to achieve comprehensive understanding. The statutory approach examines relevant legislation including the Compilation of Islamic Law, Religious Courts Law, and related regulations to identify the formal legal framework governing inheritance disputes. The conceptual approach engages with theoretical frameworks including *fiqh mawarith*, *maqasid al-shariah*, and legal pluralism to provide interpretive lenses for understanding legal developments.<sup>15</sup> The comparative approach examines Indonesian practices alongside developments in other Muslim-majority jurisdictions, particularly Egypt, to identify distinctive features of the Indonesian model. The case approach analyzes landmark judicial decisions to understand how courts have interpreted and applied inheritance provisions in concrete disputes.<sup>16</sup>

## Unit of Analysis

The primary unit of analysis consists of Indonesian legal provisions and judicial decisions concerning Islamic inheritance law. This includes the Compilation of Islamic Law (KHI) as the principal codification of Islamic family law for Indonesian Muslims, particularly provisions on

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<sup>14</sup> M. Baihaqi, "Mandatory Bequest (Wasiat Wajibah) in Interfaith Inheritance Cases (A Study of Indonesian Supreme Court Decision No. 16 K/AG/2010 from the Perspective of Maqāṣid al-Sharī'ah)," *QURU': Journal of Family Law and Culture*, ahead of print, 2026, <https://doi.org/10.59698/quru.v4i1.576>.

<sup>15</sup> Fahmi Nurfuadi N. Palasenda Aghisna Cahya Kamila, "Analysis of Maqasid Shari'ah on Religious Court Decisions on the Granting of Compulsory Wills to Non-Muslim Heirs," *Diktum*, ahead of print, 2025, <https://doi.org/10.35905/diktum.v23i2.11577>.

<sup>16</sup> Ahmad Zaini Mohamad Yamin Fauzan Ali Rasyid, Ending Solehudin, "The Expansion of Wasiat Wajibah: Protecting Legal Certainty and Fairness in Indonesian Inheritance Law," *FIKRI Jurnal Kajian Agama Sosial Dan Budaya*, ahead of print, 2026, <https://doi.org/10.25217/jf.v10i2.7265>.

inheritance, substitute heirs, and mandatory bequests.<sup>17</sup> The analysis also encompasses Supreme Court decisions that have established precedents for inheritance law interpretation, including landmark cases on interfaith inheritance and the expansion of *wasiat wajibah*.<sup>18</sup>

## Data Sources

This research utilizes both primary and secondary legal materials organized according to standard legal research methodology:

**Table 1: Classification of Legal Materials**

Category	Source Type	Specific Materials
<b>Primary Legal Materials</b>	Qur'anic Provisions	QS. An-Nisa: 7, 11, 12, 176
	Indonesian Legislation	KHI (Inpres No. 1/1991), UU No. 7/1989, UU No. 3/2006, UU No. 50/2009
	Judicial Decisions	MA No. 368 K/AG/1995, MA No. 51 K/AG/1999, MA No. 16 K/AG/2010
	Supreme Court Circulars	SEMA No. 03/2015
<b>Secondary Legal Materials</b>	Classical Literature	Fiqh Al-Mughni (Ibn Qudamah), Bidayat al-Mujtahid (Ibn Rushd), Al-Fiqh al-Islami wa Adillatuhu (Wahbah al-Zuhaili)
	Contemporary Scholarship	Journal articles, books, and legal commentaries on Islamic inheritance reform
	Comparative Sources	Egyptian inheritance laws, international Islamic family law studies
<b>Tertiary Legal Materials</b>	Reference Materials	Legal dictionaries, encyclopedias, bibliographies

<sup>17</sup> Titi Martini Harahap Nur Saniah, "The Application of Substitute Heirs in Indonesian Islamic Inheritance Law: The Interplay of Fiqh, Customary Law, and Civil Law," *Al-Qadha*, ahead of print, 2025, <https://doi.org/10.32505/qadha.v12i2.11736>.

<sup>18</sup> Mohamad Yamin, "The Expansion of Wasiat Wajibah: Protecting Legal Certainty and Fairness in Indonesian Inheritance Law."

## **Data Collection Techniques**

Data collection proceeded through systematic library research involving identification, compilation, and organization of relevant legal materials.<sup>19</sup> Primary legal materials were obtained from official government publications, court databases, and legal repositories. The research accessed Supreme Court decisions through the *Direktori Putusan Mahkamah Agung* database, which provides comprehensive access to judicial decisions across Indonesian courts.

## **Data Analysis Techniques**

The collected data underwent qualitative analysis using descriptive-analytical methods appropriate for normative legal research. The analysis proceeded through several stages. First, legal materials were systematically organized and classified according to source type and relevance to research questions. Second, prescriptive analysis examined the normative content of legal provisions to identify governing principles and rules. Third, interpretive analysis examined judicial reasoning in landmark decisions to understand how courts have applied, extended, or modified inheritance provisions.

The analysis employed triangulation of primary and secondary legal sources to ensure validity of findings. Theoretical frameworks including maqasid al-shariah and legal pluralism guided interpretation of legal developments, enabling assessment of whether judicial innovations serve Islamic law's higher objectives while accommodating legal diversity.

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<sup>19</sup> Allya Shifa Akhsanty, "The Concept of Wasiat and Wasiat Wajibah in Indonesia From The Perspective of The Compilation of Islamic Law (KHI)," *Journal of Private and Commercial Law*, ahead of print, 2025, <https://doi.org/10.20885/jpcol.vol2.iss1.art4>.

## Results

### The Normative Framework of Islamic Inheritance Law in Indonesia: Classical Foundations and Codified Provisions

The analysis reveals that Indonesian Islamic inheritance law operates through a layered normative structure combining Qur'anic provisions, classical jurisprudential doctrines, and state-codified regulations. The primary Qur'anic sources establish the foundational inheritance shares, with Surah An-Nisa verses 11, 12, and 176 providing detailed prescriptions for distributing estates among heirs.<sup>20</sup> These verses specify fixed shares (*furudh al-muqaddarah*) for designated heirs including spouses, parents, children, and siblings, creating a comprehensive scheme that classical jurists systematized into the science of faraid.<sup>21</sup>

The Compilation of Islamic Law (KHI), enacted through Presidential Instruction Number 1 of 1991, represents Indonesia's most significant codification of Islamic inheritance provisions for Muslim citizens.<sup>22</sup> The KHI incorporates classical inheritance doctrines while introducing distinctively Indonesian innovations, including the concept of substitute heirs (*ahli waris pengganti*) in Article 185 and mandatory bequests (*wasiat wajibah*) in Article 209.<sup>23</sup> These provisions reflect the state's *ijtihad* in responding to tensions among sharia norms, customary practices, and Indonesian Muslim society.

The normative framework demonstrates three principal patterns of conflict resolution between Islamic law and customary law in the KHI's formation. First, normative compromise between classical *fiqh* and customary practices gave rise to the distinctively Indonesian

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<sup>20</sup> Faishal Agil Al Munawar Adam Wahid Pangaji, "A Reassessment of Ibn 'Abbās's Inheritance Views and Their Contemporary Legal Relevance in Indonesia," *Journal of Modern Islamic Studies and Civilization*, ahead of print, 2026, <https://doi.org/10.59653/jmisc.v4i01.2092>.

<sup>21</sup> Arhan Basid, "Semantic Integration of Ul Al-Fiqh Principles in Islamic Family Law: Reconstructing Inheritance Norms through Judicial Practice."

<sup>22</sup> Nur Saniah, "The Application of Substitute Heirs in Indonesian Islamic Inheritance Law: The Interplay of Fiqh, Customary Law, and Civil Law."

<sup>23</sup> Sembodo, "POLA RESOLUSI KONFLIK HUKUM ISLAM-ADAT DALAM KHI SEBAGAI JEMBATAN REFORMASI HUKUM KELUARGA ISLAM DI INDONESIA."

concept of *wasiat wajibah*. Second, the adoption of customary institutions aligned with Islamic law principles, as marital joint property (*harta bersama*) demonstrated. Third, the adjustment of customary norms within a sharia framework, exemplified by the concept of substitute heirs. These patterns reveal the methodological and reflective nature of legal development within Indonesian legal pluralism.

The Indonesian Supreme Court has played a crucial role in developing inheritance jurisprudence through landmark decisions that extend beyond the KHI's explicit provisions. Through decisions such as No. 86 K/AG/1994 and No. 184 K/AG/1995, the Court has redefined inheritance principles by granting daughters the legal authority to block the inheritance rights of the testator's siblings.<sup>24</sup> This represents a departure from majority juristic opinion (*jumhur al-fuqaha*) toward the minority position of Ibn Abbas, which equates the inheritance positions of sons and daughters in certain circumstances.

### **Judicial Innovation and the Expansion of Islamic Inheritance Provisions: Critical Analysis of Driving Factors**

The critical analysis identifies multiple factors driving judicial innovation in Indonesian Islamic inheritance law. The primary factor involves the tension between classical inheritance rules and contemporary social structures, particularly the emergence of interfaith families, blended households, and non-traditional family arrangements.<sup>25</sup> Religious Courts have faced increasing numbers of cases involving non-Muslim heirs, adopted children, stepchildren, and children from unregistered marriages who fall outside the classical categories of legitimate heirs.<sup>26</sup>

The expansion of *wasiat wajibah* illustrates this innovative trajectory. Article 209 of the KHI normatively limits mandatory bequests to adopted children and adoptive parents, with a maximum

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<sup>24</sup> Roslina Roslina, "Reinterpreting Islamic Inheritance: Supreme Court Jurisprudence and Gender Justice in Indonesia."

<sup>25</sup> Miftahul Huda, "The Concept of Muḥammad Shaḥrūr on Gender Parity in Inheritance Legislation."

<sup>26</sup> A. Rasyid et al., "Contestation of Customary Law and Islamic Law in Inheritance Distribution: A Sociology of Islamic Law Perspective," *Al-Ahkam*, ahead of print, 2024, <https://doi.org/10.21580/ahkam.2024.34.2.20843>.

allocation of one-third of the testator's property.<sup>27</sup> However, judicial practice has progressively extended this mechanism to include non-Muslim heirs (Supreme Court Decision No. 51 K/AG/1999), stepchildren, children born outside registered marriages, and most recently, *sirri* (unregistered) wives in polygamous marriages. This expansion creates a gap between written norms and judicial practice that reflects ongoing negotiation between doctrinal requirements and justice demands.

The factors driving this expansion include the principle of substantive justice over formal legal certainty, the influence of *maqasid al-shariah* reasoning, and the Constitutional Court's recognition of civil rights for children born outside registered marriages.<sup>28</sup> Supreme Court Decision No. 16 K/AG/2010 exemplifies this approach, determining that parties barred from inheriting due to religious difference may still receive a portion of the estate through mandatory bequest based on considerations of justice, humanity, and social welfare. The decision is considered consistent with Islamic law's objectives, particularly the protection of religion, life, and property.

Analysis of Religious Court decisions reveals a disparity between lower court and Supreme Court approaches. First-instance and appellate-level decisions tend to use normative law conservatively, whereas cassation-level decisions employ a progressive legal paradigm involving contextual *ijtihad*. This disparity reflects different institutional orientations toward legal interpretation, with the Supreme Court more willing to engage in legal discovery (*rechtsvinding*) that aligns with *maqasid al-shariah* principles.

The case of substitute heirs further demonstrates judicial innovation amid doctrinal controversy. Article 185 of the KHI stipulates that grandchildren whose parents have passed away can replace their parents' position and inherit from their grandparents. While this concept is not found in classical *fiqh* texts and was rejected by the majority Shafi'i school, the KHI accommodates the Hanafi and Maliki positions that recognize transmission of inheritance rights

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<sup>27</sup> Mohamad Yamin, "The Expansion of Wasiat Wajibah: Protecting Legal Certainty and Fairness in Indonesian Inheritance Law."

<sup>28</sup> Ilylyana Che Rosli Norhasliza Ghapa N. Hamid, Noraida Harun, Rusmilawati Windar, "A Comparative Study on the Position and Rights of Illegitimate Children in Malaysia and Indonesia," *Legality: Jurnal Ilmiah Hukum*, ahead of print, 2026, <https://doi.org/10.22219/ljih.v34i1.43944>.

through both vertical and collateral lines of descent. Religious Court implementation of substitute heirs remains contested due to differing interpretations and local tradition influences.<sup>29</sup>

## Toward a Contextual Model of Islamic Inheritance Law Reform: Transformative Implications

The transformative analysis reveals that Indonesian Islamic inheritance law reconstruction offers a distinctive model for contextual Islamic jurisprudence within plural legal systems. The Indonesian approach demonstrates that Islamic law reform can proceed through judicial interpretation and gradual doctrinal development rather than comprehensive legislative overhaul.<sup>30</sup> This judicial route to reform has enabled adaptation to changing social circumstances while maintaining continuity with classical principles and avoiding political controversies that might accompany statutory amendments.



<sup>29</sup> Arhan Basid, “Semantic Integration of Ul Al-Fiqh Principles in Islamic Family Law: Reconstructing Inheritance Norms through Judicial Practice.”

<sup>30</sup> Nursania Dasopang Sawaluddin Siregar, “Kewarisan Beda Agama Dalam Perspektif Hukum Islam Dan Kompilasi Hukum Islam: Analisis Normatif Terhadap Putusan Pengadilan Di Indonesia,” *Journal of Legal, Political, and Humanistic Inquiry*, ahead of print, 2026, <https://doi.org/10.65310/v877cw64>.

The conceptual framework illustrates how Indonesian inheritance law operates through negotiation between classical *fiqh mawarith* doctrines on one side and contemporary challenges including gender justice, interfaith relations, and family transformation on the other. This negotiation is guided by *maqasid al-shariah* principles from above and operates within the constraints and opportunities of legal pluralism below. The outcomes include KHI reform, progressive judicial interpretation, expanded *wasiat wajibah*, and recognition of substitute heirs.

The Indonesian model suggests several transformative implications for Islamic legal reform theory. First, it demonstrates the viability of what scholars term "*ijtihad qada'i*" or judicial *ijtihad*, where courts serve as primary agents of legal development rather than legislative bodies or religious authorities. Second, it shows how *maqasid al-shariah* can function as an operative framework for judicial reasoning rather than merely a theoretical construct. Third, it illustrates how legal pluralism can serve as a resource for legal innovation rather than merely a source of normative conflict.<sup>31</sup>

The practical implications of this model extend to Religious Court practice, KHI revision efforts, and inheritance planning by Indonesian families. Scholars have recommended clarifying the regulation of *wasiat wajibah* in the KHI to include heirs of different religions and issuing Supreme Court technical guidelines to ensure consistent rulings.<sup>32</sup> The expansion of judicial innovations requires accompanying measures including judicial training, public education, and digital verification systems to sustain procedural, distributive, and sharia justice.<sup>33</sup>

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<sup>31</sup> Zahratul Idami Mursyid Djawas Abidin Nurdin, Muslim Zainuddin, Idham Idham, "Harmonization of State, Custom, and Islamic Law in Aceh: Perspective of Legal Pluralism," *Hasanuddin Law Review*, ahead of print, 2024, <https://doi.org/10.20956/halrev.v10i1.4824>.

<sup>32</sup> Baihaqi, "Mandatory Bequest (Wasiat Wajibah) in Interfaith Inheritance Cases (A Study of Indonesian Supreme Court Decision No. 16 K/AG/2010 from the Perspective of Maqāṣid al-Sharī'ah)"; Janwar Hippy Akbar Daud A. Yahya, M. Kadir, Nurul Fazri Elfikri, Ramadhan Usman, "Perselisihan Waris Dan Validitas Surat Keterangan Hibah: Kajian Hukum Dalam Penyelesaian Sengketa," *Journal of Law, Human Rights, Immigration, and Corrections*, ahead of print, 2025, <https://doi.org/10.65101/lawric.v1i1.216>.

<sup>33</sup> Wikandaru Soni Puspantoro, "Pertimbangan Hakim Dalam Perluasan Wasiat Wajibah Di Luar Ketentuan Kompilasi Hukum Indonesia," *Journal of Law Society*

The model also has relevance for other Muslim-majority countries navigating similar legal challenges. Egyptian inheritance law reform methodology, which includes institutional *ijtihad* through cross-madhab selection (*takhayyur*) and contextual application (*tatbiq*), provides a comparative reference point. The Indonesian and Egyptian approaches share an orientation toward substantive justice and *maqasid al-shariah*, though they differ in institutional mechanisms: Egypt primarily through legislative codification and Indonesia primarily through judicial interpretation.<sup>34</sup>

## Discussion

This research has identified three interconnected dimensions of Islamic inheritance law reconstruction in Indonesia. The descriptive dimension reveals a layered normative framework combining Qur'anic provisions, classical *fiqh* doctrines, codified regulations in the KHI, and progressive judicial jurisprudence that extends beyond statutory provisions. The critical dimension identifies multiple factors driving judicial innovation, including social structural changes, the principle of substantive justice, *maqasid al-shariah* reasoning, and the disparity between conservative lower court approaches and progressive Supreme Court orientations. The transformative dimension positions Indonesian inheritance law reform as a model of contextual Islamic jurisprudence that operates through judicial *ijtihad* within plural legal structures.

These findings must be understood within Indonesia's distinctive legal-political context. Indonesia represents what scholars characterize as a "religiously governed enclaves" model where religious law governs personal status matters including marriage, divorce, and inheritance for Muslim citizens while state law applies to other domains. The Compilation of Islamic Law functions as the primary reference for Religious Courts, though it operates through Presidential

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*and Islamic Civilization*, ahead of print, 2025, <https://doi.org/10.20961/jolsic.v13i2.109134>.

<sup>34</sup> Edy Setyawan Ilham Bustomi, "A Comparative Study of Compulsory Bequests (Wasiat Wajibah) in Islamic Inheritance Law: The Cases of Indonesia and Egypt," *El-Aqwal: Journal of Sharia and Comparative Law*, ahead of print, 2025, <https://doi.org/10.24090/el-aqwal.v4i2.13840>.

Instruction rather than formal legislation, creating flexibility for judicial interpretation. This institutional arrangement enables courts to engage in contextual *ijtihadh* without confronting rigid statutory barriers.

The findings also reflect Indonesia's ongoing negotiation of legal pluralism. The research confirms that legal conflicts arise among customary laws within matrilineal, patrilineal, and parental kinship systems, particularly in inheritance matters. However, based on several court decisions, inheritance distribution resulting from differences in legal systems is resolved through prioritization of Islamic law and state law over customary arrangements that contradict these frameworks. This hierarchy enables progressive interpretation of Islamic provisions while constraining customary practices that might undermine gender justice or religious pluralism accommodation.<sup>35</sup>

The findings support theoretical frameworks emphasizing the dynamic and context-sensitive nature of Islamic law rather than static textual application. Deconstruction exposes rigid binaries such as divine versus human authority and text versus context, while *maqasid al-shariah* provides a normative compass for ethical reconstruction oriented toward justice, welfare, and human dignity. Indonesian judicial practice, particularly innovation in inheritance law, exemplifies this dynamic negotiation between doctrinal fidelity and social reality.

The *maqasid al-shariah* framework proves particularly valuable for understanding judicial reasoning in expanded *wasiat wajibah* cases. Courts consistently invoke the protection of wealth (*hifz al-mal*), family (*hifz al-nasl*), and life (*hifz al-nafs*) to justify extending mandatory bequests to parties excluded under classical rules. This demonstrates *maqasid*'s transition from abstract theological principle to operative judicial criterion that shapes concrete legal outcomes.

Legal pluralism theory illuminates how multiple legal orders interact in inheritance adjudication. Indonesia's legal system incorporates state law, Islamic law, and customary law within a framework where formal law provides structure while substantive justice draws on all three sources. The harmonization of state, custom,

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<sup>35</sup> Fitri Al Kadumi et al., "The Reconstruction of Islamic Family Law in Indonesia: A Normative-Comparative Analysis of Gender Justice and Legal Modernity," *ASEAN Journal of Islamic Studies and Civilization (AJISC)* 1, no. 1 (2024): 1–19.

and Islamic law in Aceh demonstrates successful integration where Islamic sharia has succeeded in manifesting legal harmonization within the context of legal pluralism.

The negotiation between classical fiqh and contemporary challenges operates through specific mechanisms that this research has identified. First, the minority juristic opinions within classical scholarship provide resources for progressive interpretation without abandoning the classical heritage. The Indonesian Supreme Court's reliance on Ibn Abbas's interpretation of "*walad*" in Qur'an 4:176 as encompassing both sons and daughters illustrates this selective retrieval of classical diversity.<sup>36</sup> Second, the concept of judicial *ijtihad* (*ijtihad qada'i*) legitimizes court innovation as a continuation of Islamic legal methodology rather than departure from it. Third, *maqasid al-shariah* functions as a bridge between classical principles and contemporary demands, enabling courts to justify innovations as serving Islamic law's higher objectives.

These findings extend and refine previous scholarship on Indonesian Islamic inheritance law. Earlier studies documented the emergence of progressive jurisprudence but did not systematically analyze the theoretical foundations enabling judicial innovation. This research identifies the specific mechanisms through which courts negotiate between doctrinal requirements and justice demands, including selective retrieval of minority opinions, *maqasid*-based reasoning, and judicial *ijtihad* legitimization.

The findings also align with comparative research showing that Indonesia and Turkey emphasize the social dimension of reinterpreting inheritance portions while Saudi Arabia maintains conservative textual interpretation. However, this research demonstrates that Indonesia's progressive approach operates primarily through judicial interpretation rather than legislative reform, distinguishing it from Turkey's comprehensive statutory modernization. The comparison with Egypt reveals shared *maqasid* orientation but different institutional pathways, with Egypt relying on parliamentary legislation and Indonesia on

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<sup>36</sup> Adam Wahid Pangaji, "A Reassessment of Ibn 'Abbās's Inheritance Views and Their Contemporary Legal Relevance in Indonesia."

Supreme Court jurisprudence.<sup>37</sup>

## Conclusion

This study demonstrates that the reconstruction of Islamic inheritance law in Indonesia is characterized by a dynamic interaction between classical *fiqh al-mawarith* doctrines and contemporary social realities. Rather than pursuing radical legislative reform, Indonesian Islamic law has evolved through judicial interpretation that incorporates principles of social justice, legal certainty, and *maqāṣid al-sharī'ah*. The findings show that Religious Courts and the Supreme Court have developed progressive jurisprudence through mechanisms such as *wasiat wajibah*, substitute heirs, and inheritance protection for parties traditionally excluded under classical inheritance rules. These developments illustrate that Islamic inheritance law can remain faithful to its normative foundations while adapting to changing family structures and societal needs.

The study further contributes to Islamic legal theory by demonstrating the practical role of *maqāṣid al-sharī'ah* as a judicial reasoning framework. Indonesian judges increasingly employ higher objectives of Islamic law to justify legal innovation in inheritance disputes. In this context, legal pluralism functions not as a source of normative fragmentation but as a productive mechanism that enables the integration of Islamic law, state law, and customary norms into contextually relevant legal solutions. The Indonesian experience therefore provides an important model for understanding how Islamic law can evolve through institutionalized judicial *ijtihad* without sacrificing doctrinal legitimacy.

The implications of this research extend to both policy and practice. The findings support ongoing efforts to reform the Compilation of Islamic Law (*Kompilasi Hukum Islam*) by incorporating jurisprudential developments that have emerged through judicial practice, particularly regarding interfaith families and the application of *wasiat wajibah*. More broadly, this study highlights the importance of strengthening *maqāṣid*-based legal interpretation and judicial capacity

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<sup>37</sup> Husnul Khitam, "Methodology of Egyptian Inheritance Law Reform."

in responding to increasingly complex inheritance disputes. Future research should examine the empirical impact of these judicial innovations on Muslim communities and undertake comparative analyses with other Muslim-majority jurisdictions to further explore the relationship between legal reform, social transformation, and the continuing development of Islamic inheritance law.

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