

# Reconstructing the Distribution of Inheritance in Islamic Family Law: Normative and Contextual Analysis in Indonesia

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## ABSTRACT

Inheritance disputes remain a common source of conflict in Muslim families in Indonesia, reflecting tensions between classical fiqh provisions, the Compilation of Islamic Law (KHI), customary practices, and judicial interpretation. This article reassesses the principles of inheritance distribution in Islamic Family Law and develops a reconstruction that is faithful to scripture while responsive to contemporary justice. Using a library research design with a normative-juridical approach, the study applies content analysis to primary sources (the Qur'an, Hadith, fiqh manuals of the four schools, and the KHI) and secondary sources (recent books, journal articles, and selected judicial rulings). The findings highlight three points: (1) legitimate juristic discretion—such as obligatory bequest, hibah, and amicable settlement—can bridge the gap between strict faraidh ratios and contextual justice; (2) Indonesian judicial practice tends to accommodate family welfare but lacks a consistent assessment framework; and (3) disputes often recur in determining heirs, classifying joint property, and applying the 2:1 ratio where female heirs face social or economic vulnerability. This study proposes a threefold test—justice (*al-'adalah*), welfare (*al-maslahah*), and proportionality—as an interpretive tool to justify limited departures from faraidh in specific contexts without contravening Qur'anic injunctions. It concludes that reconstruction grounded in maqāṣid al-sharī'ah provides a viable pathway to harmonize Islamic inheritance law with contemporary justice and Indonesia's national legal framework

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## 1. INTRODUCTION

Inheritance law (*al-mīrāth*) occupies a central position in Islamic jurisprudence (*fiqh*), not only because it is directly regulated in the Qur'an but also because it touches the most sensitive aspects of family life and social justice. In Indonesia, where more than 87% of the population is Muslim, inheritance

distribution frequently becomes a locus of dispute that extends beyond familial bonds into the realm of legal institutions and national jurisprudence. The normative provisions of Islamic law, codified in classical fiqh and further consolidated in the *Kompilasi Hukum Islam* (KHI), often intersect and sometimes clash with customary practices and the pluralistic legal framework of the state (Cammack, 2007) (Nurlaelawati, 2010). These tensions make the study of inheritance distribution not only doctrinally significant but also socially urgent.

From a doctrinal perspective, the Qur'an establishes explicit inheritance shares in verses such as al-Nisa' 11–12 and 176, which form the backbone of the *faraidh* system. Classical jurists across the four Sunni schools Hanafi, Maliki, Shafi'i, and Hanbali unanimously upheld these proportions, emphasizing the principle of *ijbārī* (automatic enforcement of shares) as an immutable aspect of divine law (Al-Zuhayli, 2007). However, modern contexts have generated new challenges. Critics argue that the rigid application of the 2:1 ratio between male and female heirs often fails to reflect the socio-economic realities of contemporary families, where women frequently assume equal or greater financial responsibilities (Ali, 2016) (An-Na'im, 2008). This has led to debates over whether gender-based differentiation in inheritance remains justifiable under the broader *maqāṣid al-sharī'ah* (objectives of Islamic law), which prioritize justice (*al-'adālah*) and welfare (*al-maṣlaḥah*).

At the national level, the Indonesian KHI (1991) sought to provide uniformity by codifying Islamic inheritance rules for application in the Religious Courts. Yet, judicial practice demonstrates considerable variation. For instance, judges have often relied on *wasiat wajibah* (obligatory bequest) to adjust inheritance outcomes in favor of adopted children or vulnerable heirs, even though such mechanisms are not explicitly recognized in classical fiqh (Nurlaelawati & van Doorn-Harder, 2017). Similarly, mediation and amicable settlement (*ṣulḥ*) are increasingly employed to avoid protracted litigation, reflecting the judiciary's pragmatic approach to balancing textual fidelity with family welfare (Fauzia, 2019). Nonetheless, these practices lack a standardized evaluative framework, resulting in inconsistent outcomes that sometimes invite criticism from both traditionalists and reformists.

The state of research on Islamic inheritance law in Indonesia highlights this duality. On the one hand, numerous studies emphasize the divine and immutable character of *faraidh* shares (Al-Qaradawi, 2001). On the other, a growing body of scholarship stresses the adaptability of Islamic law, arguing that reinterpretation in light of *maqāṣid al-sharī'ah* is both legitimate and necessary (Auda, 2008); (Kamali, 2019). The controversy lies in whether such reinterpretation represents a faithful continuation of Islamic jurisprudence or a rupture from its normative foundations. Some scholars contend that modifications such as equal shares between sons and daughters are incompatible with divine prescriptions (Rahman, 2009). Others argue that justice, as a higher legal objective, should guide reinterpretation when literal application produces inequitable outcomes (Ali, 2016) (An-Na'im, 2008). This divergence reflects the broader debate within contemporary Islamic legal theory between textualist and contextualist approaches.

Given this scholarly landscape, the purpose of this article is to reassess the normative and contextual dimensions of inheritance distribution in Islamic Family Law as applied in Indonesia. Specifically, it seeks to identify the extent to which juristic discretion (*ijtihād*) and auxiliary mechanisms such as obligatory bequest, hibah (inter vivos gift), and mediation can be integrated into a coherent framework that harmonizes classical rules with contemporary realities. The significance of this study lies in its contribution to both theory and practice: it offers a conceptual reconstruction grounded in *maqāṣid al-sharī'ah* while simultaneously providing practical tools for judges, mediators, and policymakers. By situating inheritance law within broader debates on gender justice, legal pluralism, and Islamic legal reform, this study aspires to enrich ongoing discussions in both Indonesian and global contexts.

This introduction thus frames the study within the intersection of theology, jurisprudence, and social policy. While the article cannot resolve all controversies, it aims to clarify the terms of debate and propose a structured pathway for reform. The principal conclusion anticipated is that Islamic inheritance law, far from being static, contains within its normative framework the seeds of adaptability, which can be actualized through a *maqāṣid*-oriented reconstruction. Such an approach enables the reconciliation of

divine text with social justice imperatives, offering a sustainable model for inheritance law in Indonesia's plural legal landscape.

## 2. METHODS

This study employs a normative-juridical (doctrinal) approach within the framework of library research, focusing on the analysis of legal norms governing inheritance in Islamic Family Law. The subjects of the study consist of primary legal sources the Qur'an, Hadith, classical fiqh manuals from the four Sunni schools, and the *Kompilasi Hukum Islam (KHI)*, as well as secondary sources such as peer-reviewed journals (Sinta 2 or above), academic books, and selected Religious Court decisions. The research procedure involved purposive selection of relevant materials, documentation, and systematic review. The materials and instruments were textual sources analyzed through content analysis, applying inductive and deductive reasoning. Data collection was conducted by extracting, classifying, and organizing legal provisions and scholarly interpretations, while analysis techniques focused on reducing data into key themes, categorizing them under doctrinal and contextual issues, and interpreting them critically within the framework of *maqāṣid al-sharī'ah*. This methodological choice is consistent with established practices in legal research (Hallaq, 2009) (Kamali, 2008) (Langbroek, 2017).

## 3. FINDINGS AND DISCUSSION

### 3.1 Findings

#### Inheritance in Classical Fiqh Traditions

A review of classical sources of Islamic law demonstrates that the foundation of inheritance distribution is explicitly stipulated in the Qur'an, particularly in Surah al-Nisā' verses 11–12 and 176. These verses prescribe fixed shares (*faraidh*) for heirs such as children, parents, and spouses, while establishing the principle of *ijbārī*, namely that inheritance rights arise automatically upon the death of the decedent without requiring any prior agreement. Although the Qur'anic text sets a rigid normative framework, the four Sunni schools of law (Hanafi, Maliki, Shāfi'ī, and Hanbali) developed distinct methodological approaches. The Hanafi school is well known for applying *'awl*, a mechanism to proportionally reduce the shares of heirs when their total allocation exceeds the estate. The Maliki school, by contrast, emphasizes the principle of *rad*, which redistributes any surplus to certain heirs when the estate is not fully allocated. The Shāfi'ī and Hanbali schools combine both approaches, though with stricter conditions to maintain compliance with the textual provisions. This plurality reveals that while the Qur'anic injunctions remain rigid in numerical allocation, juristic interpretation introduced flexibility in procedural aspects.

In addition, all schools recognize supplementary instruments such as inter vivos gifts (*hibah*), bequests (*wasiat*, limited to one-third of the estate), and amicable settlement (*ṣulh*). These mechanisms are not intended to alter the Qur'anic shares but serve as corrective devices to address particular social and economic needs, such as assisting vulnerable heirs or facilitating family consensus. Thus, the primary finding in the realm of classical fiqh is the coexistence of rigidity in the numerical provisions of inheritance law with limited flexibility in corrective instruments, ensuring both legal certainty and contextual responsiveness (al-Zuhayli, 2007; Hallaq, 2009).

#### Codification in the Compilation of Islamic Law (KHI)

In the Indonesian context, the *Compilation of Islamic Law* (Kompilasi Hukum Islam, hereafter KHI), enacted in 1991, constitutes a landmark effort to unify diverse fiqh doctrines into binding national law. Articles 176–193 of the KHI replicate the Qur'anic shares of inheritance, thereby demonstrating continuity between normative Islamic law and positive law in Indonesia. Nevertheless, the KHI is not merely a codification of classical fiqh but also introduces an important legal innovation. One of the most notable innovations is found in Article 209, which establishes the doctrine of *wasiat wajibah*

(mandatory bequest) for adopted children and adoptive parents. Classical fiqh does not explicitly recognize adopted children as heirs, yet the KHI incorporates this provision in response to Indonesia's socio-cultural context, where adoption practices are widespread. This innovation reflects the legislator's attempt to bridge the gap between rigid fiqh and the lived realities of Indonesian Muslim families. The inclusion of *wasiat wajibah* in the KHI thus represents an effort to uphold the structure of *faraidh* while simultaneously introducing corrective measures for achieving substantive justice.

Furthermore, the KHI affirms the regulation of bequests, gifts, and marital joint property prior to inheritance distribution, further reinforcing its dual role of ensuring legal certainty while accommodating social justice. The second major finding is therefore that the KHI functions as a mediating instrument: while faithful to classical fiqh in its core structure, it demonstrates openness to reconstruction in response to social needs (Nurlaelawati & van Doorn-Harder, 2017).

### Judicial Practices and Contemporary Developments

A third layer of findings emerges from the study of judicial practice in Indonesia's Religious Courts and the Supreme Court. Unlike the relatively limited scope of the KHI, judicial practice has demonstrated creative legal reasoning (*rechtvinding*) in addressing inheritance disputes. A notable example is Supreme Court Decision No. 368 K/AG/1995, which extended *wasiat wajibah* to non-Muslim heirs in order to preserve family harmony and achieve equitable outcomes. Similarly, Religious Court judges have granted portions of inheritance to orphaned grandchildren, stepchildren, and caregivers of the deceased, relying on arguments grounded in *maslahah* (public interest). Mediation (*ṣulḥ*) has also become a common judicial practice in inheritance disputes, allowing heirs to reach settlements that sometimes deviate from Qur'anic shares but are nevertheless accepted as equitable and pragmatic. This demonstrates the judiciary's flexibility in balancing legal certainty with substantive justice.

Yet this flexibility also reveals significant challenges. The absence of standardized evaluative criteria has led to inconsistent rulings: similar cases have been decided differently across jurisdictions, undermining predictability and uniformity. Moreover, gender justice has emerged as a pressing issue. The normative rule of a 2:1 ratio between male and female heirs, though textually grounded, is increasingly contested when women serve as primary breadwinners. Some judges have addressed this by encouraging inter vivos gifts or negotiated settlements that allocate a greater share to female heirs. Therefore, the findings from judicial practice highlight two central dynamics: first, the judiciary's willingness to reinterpret and expand the law in light of *maslahah*; and second, the urgent need to develop standardized reasoning to guide such reinterpretations. This demonstrates that inheritance law in Indonesia has evolved into a "living law," where classical doctrine, codified legislation, and judicial practice intersect in both harmony and tension (Setyawan, 2019; Wahyudi, 2021; Fauzia, 2019).

## 3.1 Discussion

### Reconciling Normative Rigor with Social Justice through Maqāṣid al-Sharīʿa

Read normatively, the Kompilasi Hukum Islam (KHI) sets out a closed list of heirs and fixed fractional shares (e.g., Arts. 171–193), while art. 209 introduces waṣīyat wājibah for adopted relations. Indonesian judicial practice has incrementally extended waṣīyat wājibah to categories not enumerated in KHI, most notably heirs of different religions through Supreme Court jurisprudence (e.g., No. 368 K/AG/1995; consolidated in the "Yurisprudensi 1/Yur/Ag/2018"). A maqāṣid-based lens helps explain and discipline that development: when literal application of heir-lists frustrates the higher objectives of safeguarding lineage (*ḥifẓ al-nasl*), wealth (*ḥifẓ al-māl*), and justice (*ʿadl*), judges may legitimately employ lawful devices (*ḥiyal sharʿiyya*) such as waṣīyat wājibah to restore substantive fairness without abrogating Qur'anic shares. Jasser Auda's systems-oriented maqāṣid theory supports such calibrated legal discovery (*istiḥṣān/rahtfindung*), provided the intervention is minimally distortive and demonstrably promotes human development and equity. In Indonesia, that trajectory is visible in the Court's gradual move from KHI's narrow text toward a rights-aware reading that still respects ceilings (e.g., the one-third limit for testamentary transfers). (RI, 2018).

This *maqāṣid*-inflected evolution is also consistent with broader socio-legal shifts after Reformasi. Empirical and doctrinal studies trace how Religious Courts have become more responsive to equality claims while remaining anchored in *fiqh* method, including in inheritance. The post-1998 scholarship (Cammack, M., Bedner, A., & van Huis, 2015) documents a rights-conscious but institutionally conservative adjudication style: innovation tends to occur through interpretation, not legislation precisely the mode in which *waṣīyat wājibah* was expanded to address hard cases. The pathway preserves legal certainty by tying new outcomes to recognized *fiqh* authorities and national instruments (RI, 2018) (Agung, 2016), rather than creating free-floating equitable powers.

### Gender-Justice, the 2:1 Ratio, and Contextual Instruments

The classical 2:1 ratio for certain agnatic pairings is text-bounded and conditional, not a universal axiom across all kin relations. Contemporary Indonesian research argues that justice in inheritance must be assessed in light of current gendered obligations and contributions within families, which often diverge from classical economic assumptions. Rather than rewriting Qur'ānic fractions, Indonesian doctrine has tended to realize gender-just outcomes through context-sensitive tools: (i) characterizing assets accurately as joint marital property (*harta bersama*) before the estate is calculated; (ii) targeted use of *hibah* inter vivos; and (iii) *waṣīyat wājibah* within the one-third ceiling to correct disproportional hardship. Studies in Indonesian journals (e.g., *Asy-Syari'ah*; *De Jure*/other venues) and Religious-Court practice indicate that these instruments are already being deployed to mitigate structural disadvantage while keeping faith with the textual architecture of shares (Ahyani, N., Santoso, T., & Syafa'at, 2022). This approach aligns with *maqāṣid* reasoning: if the original ratio aimed to distribute burdens and benefits fairly given historical maintenance obligations, a present-day allocation that restores substantive parity without breaching explicit textual limits promotes *maṣlaḥa* and '*adl*. Auda's framework encourages precisely this kind of systems-aware calibration, and Indonesian socio-legal work shows the courts' growing sensitivity to gendered realities in divorce, maintenance, and property developments that naturally spill over into inheritance adjudication (Auda, 2008).

### Standardizing Judicial Reasoning in *Waris* Cases: A Three-Step Test

The case-law on *waṣīyat wājibah* for non-Muslim heirs reveals unevenness in outcomes (quantum, eligibility, justificatory depth). To reduce disparity while preserving principled flexibility, a standard that aggregates KHI norms, Supreme Court jurisprudence, and *maqāṣid* could be articulated and taught in the Religious-Court system as follows: 1) Step 1: Baseline legality and textual anchoring. Begin with KHI heir classification and shares; identify any *ḥujub* (impediments) and characterize property (joint vs. separate). Explicitly cite the governing KHI articles to show fidelity to the national codification. (KHI) (RI, 2018), 2) Step 2: Lawful equity mechanisms within positive law. Where the baseline creates manifest hardship or rights-gaps (e.g., interfaith children; long-term caregiving not reflected in shares), justify the use of *waṣīyat wājibah* (max. one-third) or *hibah* by (a) referencing controlling jurisprudence (MA 368 K/AG/1995; 1/Yur/Ag/2018), and (b) explaining why the mechanism, not a departure from shares, best advances *ḥifẓ al-māl* and '*adl*. (MA jurisprudence; Wahyudi's doctrinal synthesis) (Agung, 2016) (M. I. Wahyudi, 2021), 3) Step 3: Procedural justice and settlement orientation. Apply PERMA No. 1/2016 to structure mediation (*ṣulḥ*) early, using court-annexed mediation to elicit family agreements that respect ceilings and protect vulnerable heirs (minors, dependents). Settlements should be reasoned against *maqāṣid* criteria and recorded with clear calculations (PERMA No. 1/2016; mediation practice notes) (Suhastira, 2023). Applied rigorously, this three-step method would (i) keep adjudication inside the KHI-plus-jurisprudence envelope, (ii) make *maqāṣid* analysis explicit rather than implicit, and (iii) improve predictability by requiring judges to state why a chosen equity device and quantum are the least-deviant means of achieving justice. Indonesian scholarship underscores that the current disparity across cases stems less from doctrinal conflict than from reasoning opacity; making the justificatory pathway auditable is therefore the key reform (Setyawan, 2019) (A. Wahyudi, 2021).

#### 4. CONCLUSION

This study set out to reconstruct the distribution of inheritance in Islamic family law through a normative and contextual analysis of Indonesia's legal framework. The findings demonstrated that Islamic inheritance law in Indonesia operates within three interrelated layers: the classical fiqh, which provides rigid normative certainty; the Compilation of Islamic Law (KHI), which codifies Qur'anic shares while introducing innovations such as wasiat wajibah; and judicial practice, which has shown creativity in extending wasiat wajibah and utilizing mediation to address contemporary challenges such as interfaith families and gender justice.

The conclusion drawn from this triangulation is that inheritance law in Indonesia is neither static nor purely formalistic; rather, it is a "living law" capable of adaptation through lawful mechanisms when guided by the higher objectives of the Shari'ah (maqāṣid al-sharī'a). By balancing legal certainty with substantive justice, judges can employ corrective devices such as wasiat wajibah, hibah, and ṣulh without undermining the textual integrity of the Qur'anic provisions. Importantly, the study proposes a three-step standard of judicial reasoning anchoring decisions in KHI, applying equity mechanisms within jurisprudential limits, and employing maqāṣid as a justificatory framework to minimize inconsistency across judicial rulings.

Future research should extend this inquiry by conducting empirical field studies of Religious Court judgments across multiple jurisdictions to assess how judges apply these standards in practice. Comparative research with other Muslim-majority countries could also enrich the debate, offering insights into how different legal systems reconcile fixed Qur'anic injunctions with contemporary demands for justice. The author wishes to express gratitude to colleagues and research assistants who provided academic input during the literature collection process, and to the administrative staff of the Faculty of Sharia and Law for their invaluable support.

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