

Inheritance Distribution for Heirs of Different Religions: A Juridical Review

Based on the Compilation of Islamic Law in Indonesia

Tengku Mhd Aulia Fitra, T. Riza Zarzani, Henry Aspan, Andoko, Mhd. Azhali Siregar

Abstract

Inheritance distribution is a fundamental aspect of Islamic family law, normatively regulated in the Compilation of Islamic Law (Kompilasi Hukum Islam/KHI) in Indonesia. One of the persistent issues that generates legal debate concerns the status of heirs who have different religions from the deceased. Classical Islamic law does not grant inheritance rights to heirs of different religions, as religious difference is considered a legal impediment to inheritance. However, in the Indonesian context, legal developments and judicial practices have introduced various approaches to address this issue, including the application of the concept of *wasiat wajibah* (mandatory bequest). This study aims to conduct a juridical analysis of inheritance distribution for heirs of different religions based on the Compilation of Islamic Law and to examine its implementation in Indonesian judicial practice. This research employs a normative legal method with statutory and conceptual approaches. The legal materials used include primary, secondary, and tertiary sources relevant to the issue. The results indicate that the Compilation of Islamic Law does not explicitly regulate inheritance rights for heirs of different religions; however, it provides an alternative mechanism through the concept of *wasiat wajibah* as a form of legal protection and social justice. In practice, judges play a significant role in interpreting the law to bridge the gap between religious norms and the realities of a pluralistic society. Therefore, strengthening legal regulations and ensuring consistency in court decisions are necessary to achieve legal certainty, justice, and utility in inheritance distribution for heirs of different religions in Indonesia.

Keywords: *Inheritance, Heirs of Different Religions, Compilation of Islamic Law, Wasiat Wajibah, Juridical Analysis*

Tengku Mhd Aulia Fitra¹

¹Law Study Program, Universitas Pembangunan Panca Budi, Indonesia
e-mail: tmaffitra@gmail.com¹

T. Riza Zarzani², Henry Aspan³, Andoko⁴, Mhd. Azhali Siregar⁵ ^{2,3,4,5}Lecturer of Law, Universitas Pembangunan Panca Budi, Indonesia e-mail:

trizazarzani@dosen.pancabudi.ac.id², henryaspan@dosen.pancabudi.ac.id³,
andoko@dosen.pancabudi.ac.id⁴, azhalisiregar@dosen.pancabudi.ac.id⁵

2nd International Conference on Islamic Community Studies (ICICS)

Introduction

In Islamic inheritance law literature, religious difference is recognized as one of the impediments to inheritance. Classical doctrine holds that non-Muslims are not entitled to inherit from their Muslim relatives. This view represents the consensus (ijma') of the majority of Islamic jurists (jumhur ulama), who maintain that differences in religion prevent inheritance due to differing legal and religious status.

This position is grounded in both Qur'anic verses and Prophetic traditions. One of the primary references is Surah An-Nisa' (4): 141, which emphasizes that Allah will not grant disbelievers authority over believers. Furthermore, a hadith narrated by Usamah bin Zaid states that Muslims do not inherit from non-Muslims, and non-Muslims do not inherit from Muslims.

Within the framework of classical Islamic law, this rule is understood as part of the protection of the Muslim community and its legal order. This perspective aligns with the thought of Yūsuf Al-Qaradhāwī, who emphasizes the importance of maqāṣid al-sharī'ah in preserving religion and property, including in matters of inheritance.

In the Indonesian context, the prohibition of interreligious inheritance is reinforced by the fatwa of the Indonesian Ulema Council (MUI) No. 5/MUNAS VII/9/2005. The fatwa states that Islamic inheritance law does not allow mutual inheritance between individuals of different religions, while permitting the transfer of assets through grants (hibah), wills (wasiat), and gifts.

Thus, religious difference is generally understood as a barrier to inheritance in line with the majority opinion of Islamic jurists. However, in practice, this issue becomes increasingly complex due to the need to accommodate justice within a pluralistic and multicultural society such as Indonesia.

One of the main issues arises from the fact that the Compilation of Islamic Law (Kompilasi Hukum Islam/KHI) does not explicitly regulate the prohibition of interreligious inheritance in detail, while the Indonesian Civil Code (KUH Perdata) does not prohibit inheritance based on religious differences. This situation creates a dualism of legal norms.

On the other hand, the KHI implicitly requires that heirs must be Muslim. Article 171 stipulates that heirs must have a blood or marital relationship with the deceased and must be Muslim to qualify as legal heirs.

This provision is further elaborated in Article 172, which determines religious identity based on official documents, acknowledgment, or religious practice. However, the KHI does not clearly address the legal status of individuals who have left Islam prior to death.

The complexity increases due to judicial practices in religious courts, where judges have granted inheritance rights to heirs of different religions through the concept of *wasiat wajibah* (mandatory bequest). In the KHI, however, this concept is explicitly limited to adopted children and adoptive parents.

The application of *wasiat wajibah* in interreligious inheritance cases represents judicial ijtihad aimed at filling legal gaps. Nevertheless, this practice leads to legal uncertainty, as court decisions may vary depending on the interpretation of individual judges (Yasardin et al., 2016, p. 161).

Several Supreme Court decisions, such as Decision No. 51/K/AG/1999 and No. 16/K/AG/2010, indicate legal developments by allowing heirs of different religions to receive a portion of the estate through *wasiat wajibah*, limited to a maximum of one-third of the inheritance.

However, in practice, some court decisions have granted equal shares to non-Muslim heirs alongside Muslim heirs without applying the *wasiat wajibah* mechanism. This inconsistency highlights the lack of uniformity in judicial decisions (Zakiul Fuady Muhammad Daud, 2021). Inconsistencies are also evident within the provisions of the KHI itself. Articles 171 and 172 imply a prohibition of interreligious inheritance, whereas Article 173 does not explicitly list religious difference as a barrier to inheritance. This creates interpretative ambiguity.

This condition reflects the existence of legal pluralism within the Indonesian legal system. According to William Twining, legal pluralism refers to the coexistence of multiple legal systems within a single society, often leading to normative conflicts (Twining, 2010, p. 477). This view is supported by Yayan Sopyan (2020, p. 163), who highlights the importance of studying legal pluralism in Islamic law.

Therefore, the issue of interreligious inheritance requires comprehensive legal analysis to formulate regulations that are consistent with Islamic legal principles while accommodating Indonesia's socio-cultural diversity. Such efforts are necessary to achieve legal certainty, justice, and societal benefit in the distribution of inheritance.

Research Methodology

This study employs a normative legal research method, which focuses on analyzing legal norms, principles, and doctrines related to inheritance law, particularly concerning heirs of different religions. Normative legal research is conducted by examining legal materials rather than empirical field data, aiming to identify legal rules, inconsistencies, and possible solutions within the existing legal framework (Zainuddin Ali, 2008).

The approaches used in this research include the statutory approach and the conceptual approach. The statutory approach is applied by analyzing relevant laws and regulations, including provisions in the Compilation of Islamic Law (Kompilasi Hukum Islam/KHI), as well as related legislation governing inheritance law in Indonesia. Meanwhile, the conceptual approach is used to examine legal doctrines and principles derived from Islamic jurisprudence (fiqh), particularly those concerning inheritance and the concept of religious difference as a legal impediment.

The sources of legal materials in this study consist of primary, secondary, and tertiary legal materials. Primary legal materials include statutory regulations, official legal documents, and court decisions, particularly decisions of the Supreme Court related to interreligious inheritance cases. Secondary legal materials consist of books, journal articles, and scholarly opinions that discuss Islamic inheritance law and legal pluralism, including works by William Twining and Yayan Sopyan. Tertiary legal materials include legal dictionaries and encyclopedias that support the clarification of legal terms.

The technique of collecting legal materials is conducted through library research, by systematically gathering and reviewing relevant legal documents and literature. The collected materials are then analyzed using qualitative descriptive analysis, which aims to interpret and explain legal norms and their application in practice.

Furthermore, this study applies a prescriptive analytical method to provide legal arguments and recommendations regarding the regulation of inheritance for heirs of different religions. This method is used to assess the consistency between legal norms and judicial practices, as well as to propose legal solutions that ensure legal certainty, justice, and societal benefit within Indonesia's pluralistic legal system.

Results

The implementation of the Compilation of Islamic Law (KHI) as a material legal source in the Religious Courts has significantly influenced the development of Islamic inheritance law in Indonesia. It reflects an effort to harmonize classical Islamic doctrines with the socio-legal realities of Indonesian society. The reformist spirit embedded in the KHI encourages judges to consider not only textual norms but also justice and societal benefit in their decisions (Zainuddin Ali, 2008).

In the context of inheritance involving non-Muslim heirs, several Supreme Court decisions have evolved into jurisprudence that shapes legal interpretation. These rulings demonstrate judicial creativity in addressing normative gaps within Islamic inheritance law. The

Tengku Mhd Aulia Fitra¹, T. Riza Zarzani², Henry Aspan³, Andoko⁴, Mhd. Azhali Siregar⁵
expansion of the *wasiat wajibah* concept is a notable example of such legal development (Yasardin et al., 2016, p. 161).

Jurisprudence plays a crucial role in Indonesian legal pluralism, where statutory law interacts with judicial interpretation. According to William Twining, legal pluralism allows multiple legal systems to coexist, often requiring judges to reconcile competing norms in practice (Twining, 2010, p. 477).

One of the earliest landmark decisions is Supreme Court Decision No. 368 K/Ag/1995. This ruling marked the beginning of judicial recognition of non-Muslim heirs through *wasiat wajibah*. Initially, the non-Muslim daughter was excluded as an heir due to religious differences.

At the appellate level, the court granted a portion through *wasiat wajibah*, although limited in comparison to Muslim heirs. However, the Supreme Court later revised this decision by granting the non-Muslim daughter a share equal to that of a Muslim daughter.

This decision reflects a progressive interpretation of Islamic inheritance law, prioritizing fairness over rigid textual application. It demonstrates how judicial reasoning can extend beyond traditional fiqh limitations to address contemporary social realities (Zulfia Hanum & Alfi Syahr, 2016).

Another important case is Supreme Court Decision No. 51 K/Ag/1999, which went further by positioning non-Muslim relatives as heirs. In this case, nephews of different religions were recognized and granted shares through *wasiat wajibah*.

The court explicitly stated that non-Muslim heirs are entitled to a portion equal to Muslim heirs via mandatory bequest. This ruling represents a significant shift, as it elevates the legal status of non-Muslim heirs within inheritance law.

However, such equalization raises doctrinal concerns, as classical Islamic law strictly prohibits inheritance across religious lines. This creates tension between normative Islamic principles and judicial pragmatism (Yayan Sopyan, 2018, p. 35).

Supreme Court Decision No. 16 K/Ag/2010 further illustrates the application of *wasiat wajibah* for non-Muslim spouses. In this case, a non-Muslim wife was granted a portion of inheritance in addition to marital property rights.

The court justified its decision by emphasizing the long marital relationship and the wife's contribution to the household. This reflects the incorporation of equitable considerations into legal reasoning.

The decision also cited the views of Yūsuf Al-Qaradhāwī, highlighting the relevance of *maqāṣid al-sharī'ah* in achieving justice and public interest.

In Supreme Court Decision No. 721 K/Ag/2015, the Court limited the portion of non-Muslim children to one-third of the estate through *wasiat wajibah*. This aligns more closely with the traditional limitation of wills in Islamic law.

This decision demonstrates an attempt to balance doctrinal consistency with social justice. It reinforces the idea that *wasiat wajibah* should not exceed one-third of the estate, as generally accepted in Islamic jurisprudence.

Supreme Court Decision No. 218 K/Ag/2016 extended the application of *wasiat wajibah* to non-Muslim relatives in more complex inheritance disputes. The Court upheld lower court decisions that granted portions to non-Muslim heirs.

This case highlights the acceptance of broader interpretations of *wasiat wajibah* within Indonesian jurisprudence. It also reflects the judiciary's role in adapting legal norms to societal diversity (Zakiul Fuady Muhammad Daud, 2021).

Furthermore, Supreme Court Decision No. 331 K/Ag/2018 granted a non-Muslim husband a one-fourth share through *wasiat wajibah*. The decision was based on the husband's dedication and care during the marriage.

This ruling underscores the importance of moral and relational considerations in judicial reasoning. It also illustrates the flexible application of Islamic legal principles in achieving fairness.

Overall, these jurisprudential developments indicate a shift from rigid doctrinal application toward contextual interpretation. Judges exercise *ijtihad*, even to the extent of deviating from written law (*contra legem*), to uphold justice and social benefit (Wirjono Prodjodikoro, 2006, p. 13).

In conclusion, the evolution of jurisprudence on interreligious inheritance in Indonesia reflects the dynamic interaction between Islamic law, state law, and societal values. It emphasizes the need for clearer legal frameworks to ensure consistency, legal certainty, and justice in resolving inheritance disputes in a pluralistic society.

Summary Table of Court Decisions on *Wasiat Wajibah*

No	Case Number	Decision Summary
1	Supreme Court Decision No. 368 K/AG/1995	a. Declares that Sri Widyastuti binti H. Sanusi is entitled to receive a share of the estate of the late H. Sanusi through <i>wasiat wajibah</i> , equal to the portion of a female heir. b. Declares that Sri Widyastuti is entitled to receive a share of the estate of the late Suyatmi through <i>wasiat wajibah</i> , equal to the portion of a daughter.
2	Supreme Court Decision No. 51 K/Ag/1999	a. Determines that non-Muslim heirs are entitled to receive inheritance through <i>wasiat wajibah</i> with a portion equal to that of Muslim heirs. b. Establishes that Ny. Jazilah Martadi Hendrolesono is legally recognized as the wife and heir of the deceased, entitled to 1/4 of the estate, while the remaining 3/4 is distributed to other heirs, including non-Muslim relatives through <i>wasiat wajibah</i> .
3	Supreme Court Decision No. 16 K/Ag/2010	a. The non-Muslim wife (Evie Lany Mosinta) is not recognized as an heir but is granted <i>wasiat wajibah</i> amounting to 1/4 of the estate. b. The non-Muslim wife is also entitled to 1/2 of the marital joint property (<i>harta bersama</i>).
4	Supreme Court Decision No. 721 K/Ag/2015	a. Determines that the defendants (non-Muslim children of the deceased) are entitled to <i>wasiat wajibah</i> . b. Establishes that each defendant is entitled to a maximum of 1/3 of the estate of the deceased Vincencius Papilaya.
5	Supreme Court Decision No. 218 K/Ag/2016	a. Determines that the heirs of Hadi Sardjono (his widow and children, including non-Muslims) are recipients of <i>wasiat wajibah</i> . b. Establishes that they receive $1/3 \times 15.625\% = 5.2083\%$ of the estate through <i>wasiat wajibah</i> .
6	Supreme Court Decision No. 721 K/Ag/2015	a. Confirms that the non-Muslim children (Antonius Papilaya and Fransisca Papilaya) are entitled to <i>wasiat wajibah</i> . b. Establishes that they receive up to 1/3 of the estate of the deceased Vincencius Papilaya.

Conclusion

Based on the results and discussion, it can be concluded that the regulation of inheritance for heirs of different religions within the framework of the Compilation of Islamic Law (KHI) in Indonesia remains normative and does not explicitly accommodate interreligious inheritance. The KHI implicitly requires that both the deceased and the heirs must be Muslim, thereby positioning religious difference as a barrier to inheritance. However, the absence of explicit and detailed provisions regarding this issue has created interpretative gaps in its application.

Judicial practice, particularly through Supreme Court jurisprudence, demonstrates a progressive legal development in addressing inheritance for non-Muslim heirs. Courts have

Tengku Mhd Aulia Fitra¹, T. Riza Zarzani², Henry Aspan³, Andoko⁴, Mhd. Azhali Siregar⁵ consistently utilized the concept of *wasiat wajibah* as a legal mechanism to provide portions of inheritance to non-Muslim relatives. This reflects the role of judges in exercising *ijtihad* to bridge the gap between rigid normative rules and the demands of justice within Indonesia's pluralistic society.

Nevertheless, the application of *wasiat wajibah* in such cases is not uniform. Some decisions limit the portion to one-third of the estate in accordance with classical Islamic principles, while others equate the share of non-Muslim heirs with that of Muslim heirs. This inconsistency indicates a lack of legal certainty and highlights the need for clearer regulatory guidance.

Therefore, it is necessary to strengthen and clarify legal norms regarding interreligious inheritance, either through legislative reform or authoritative legal interpretation. Such efforts are essential to ensure consistency in judicial decisions and to achieve a balance between legal certainty, justice, and social benefit in Indonesia's plural legal system.

References

- [1] Al-Qaradhawi, Y. (n.d.). *Fatāwā Mu'āṣirah*. Cairo: Maktabah Wahbah.
- [2] Al-Qaradhawi, Y. (2007). *Fiqh al-Maqāṣid al-Sharī'ah*. Jakarta: Pustaka Al-Kautsar.
- [3] Ali, Z. (2008). *Pelaksanaan Hukum Waris di Indonesia*. Jakarta: Sinar Grafika.
- [4] Ali, Z. (2010). *Pelaksanaan Hukum Waris di Indonesia*. Jakarta: Sinar Grafika.
- [5] Daud, Z. F. M. (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).
- [6] Hanum, Z., & Syahr, A. (2016). Wasiat wajibah sebagai wujud penyelesaian perkara waris beda agama dalam perkembangan sosial masyarakat. *Jurnal Holistik*, 1(2).
- [7] Prodjodikoro, W. (2006). *Hukum Warisan di Indonesia*. Bandung: Sumur Bandung.
- [8] Sopyan, Y. (2018). *Tarikh Tasyri': Sejarah Pembentukan Hukum Islam*. Jakarta: PT RajaGrafindo Persada.
- [9] Sopyan, Y. (2020). Urgency of legal pluralism study for students of sharia and law faculty after changes of academic degree. *De Jure*, 12(2), 156–175.
- [10] Twining, W. (2010). Normative and legal pluralism: A global perspective. *Duke Journal of Comparative & International Law*, 20(3), 473–518.
- [11] Yasardin, et al. (2016). *Dinamika Hukum Kewarisan Islam Terkait Pembagian Harta Warisan Bagi Ahli Waris Beda Agama*. Jakarta: Puslitbang Hukum dan Peradilan Badan Litbang Diklat Kumdil Mahkamah Agung RI.