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Institutional *Ijtihād* and Socio-Legal Adaptation: The Formulation of *Waṣiyah Wājibah* in Indonesia's Compilation of Islamic Law

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Abstract

Studies of Islamic law in Indonesia have generally framed *waṣiyah wājibah* (mandatory will) merely as a normative innovation, without providing a comprehensive account of the epistemic processes and socio-cultural dialectics underpinning its formulation. This article examines the rationale behind *waṣiyah wājibah* in the drafting process as a form of institutional *ijtihād* (legal reasoning) responsive to the plural realities of Indonesian Muslim society. Employing a library-based method within a socio-legal framework, the study analyzes the Compilation of Islamic Law (KHI) alongside its official preparatory documents, legal periodicals, judicial decisions, and relevant regulations from other Muslim-majority jurisdictions. The findings reveal that the construction of *waṣiyah wājibah* under Article 209 of the KHI—which grants rights to adopted children and adoptive parents—emerged from an interplay among textual sources of the *Sharīʿah* (Islamic law), local *ʿurf* (customary) practices, and the *maqāṣid al-sharīʿah* (objectives of Islamic law) framework. This construction synthesizes *naṣṣ* (Qurʾān and Hadith), customary adoption traditions, the views of Ibn Ḥazm, and legal precedents from Egypt and Morocco, as reflected in each stage of the KHI's formulation. The study argues that *waṣiyah wājibah* functions as a legal instrument that is adaptive, progressive, and responsive to the demands of substantive justice in Indonesia's plural Muslim society. It further recommends developing *waṣiyah wājibah* models to accommodate marginalized groups excluded from inheritance distribution while preserving the integrity of the foundational principles of the *Sharīʿah*.

Keywords

Compilation of Islamic Law; Institutional *Ijtihād*; Socio-Legal Adaption; *Waṣiyah Wājibah;* Local Custom

Introduction

The regulation of wills in the Muslim world reflects the complex legal dynamics arising from the interaction between classical *fiqh* (Islamic jurisprudence), local customs, and modern legal systems.[1] Divergent views among the schools of Islamic jurists (*madhhab*) regarding the permissible scope of testamentary bequests—particularly the prohibition against bequests to legal heirs—have produced normative inconsistencies. These are further compounded by varying degrees of codification and the influence of European legal traditions.[2] In many Muslim jurisdictions, state intervention has become essential both to safeguard the civil rights of those

1 Ahmad Bunyan Wahib, "Reformasi Hukum Waris di Negara-Negara Muslim," *Asy-Syir'ah: Jurnal Ilmu Syari'ah dan Hukum* 48, no. 1 (2014): 29–54.

2 Nadjma Yassari, "Testamentary Formalities in Islamic Law and Their Reception in the Modern Laws of Islamic Countries," in *Comparative Succession Law: Volume I: Testamentary Formalities*, ed. Kenneth G C Reid et al. (Oxford University Press, 2011), 282–304.

excluded under *fiqh* rules—such as orphaned grandchildren, adopted children, or non-Muslim relatives—and to reconcile tensions between religious law and human rights principles.[3] Moreover, inheritance practices shaped by customary law often produce local variations that alter the substantive norms of the *Sharīʿah* (Islamic law).[4] Administrative challenges, including overlapping jurisdiction, low legal literacy, and weak estate management systems, further complicate the realization of justice in inheritance matters.[5] Nonetheless, a progressive trend is emerging in several Muslim-majority countries, characterized by the codification of Islamic inheritance law, the establishment of centralized management models, the use of digital technology for will registration, and the strengthening of deliberation-based dispute resolution mechanisms.[6] These developments indicate a shift toward an Islamic inheritance system that is more adaptive, efficient, and contextually aligned with the socio-cultural realities of contemporary Muslim societies.

A similar transformation can be observed in Indonesia's Islamic inheritance system through the codification of the 1991 Compilation of Islamic Law (*Kompilasi Hukum Islam*, KHI), particularly regarding the provision on *waṣiyah wājibah* (mandatory will). This legal concept is understood as a compulsory bequest mandated by the Islamic court to allocate a portion of the estate to individuals who, under the law, are not entitled to inherit from the deceased. Article 209 of the KHI explicitly stipulates that *waṣiyah wājibah* is granted to adopted children and adoptive parents as a substitute for inheritance rights. This provision is distinctive compared to similar regulations codified earlier in other Muslim jurisdictions, such as Syria, Jordan, Morocco, Tunisia, Iraq, Iran, Kuwait, and Pakistan.[7] Although classical *fiqh* does not explicitly provide for *waṣiyah wājibah*, its adoption into Indonesia's positive legal system offers a compelling case for analysis from the perspective of Islamic reasoning and its socio-legal construction.

Previous studies have shown that the *waṣiyah wājibah* in Indonesia has evolved into a legal instrument adaptive to the country's social complexity and religious diversity. Research by Hakim, Nasution, and Halim reveals that the Supreme Court has adopted a progressive approach in accommodating the inheritance rights of non-Muslim heirs through the *waṣiyah wājibah* scheme, albeit still within the limits of classical *fiqh*.[8] Riyanta and Rahman emphasize the urgency of state intervention to ensure substantive justice and protect human rights, in line with the values of

3 Abdul Rahman et al., "Compulsory Testament: State Intervention in the Protection and Fulfillment of Human Rights of Non-Muslim Heirs," *LAW REFORM* 20, no. 2 (2024): 301–28.

4 Sulong Jasni Bin, "The Development in Codification of the Islamic Law of Inheritance in Malaysia," *Hamdard Islamicus* 35, no. 1 (2012): 49–69.

5 See: Mushaddad Hasbullah et al., "Model Pusat Sehenti Pengurusan Harta Pusaka Islam (Faraid)," *Malaysian Journal of Syariah and Law* 9, no. 1 (2021): 114–24; Fazira Shafie et al., "A Framework Study of Islamic Real Estate Management for Property Inheritance in Malaysia," *Journal of Engineering and Applied Sciences* 12, no. 7 (2017): 1710–14; Siti Asishah Hassan et al., "Understanding the Roles and Responsibilities of Administrators in Managing Muslims' Estates in Malaysia," *Social Sciences (Pakistan)* 11, no. 22 (2016): 5526–33.

6 See: Lilian Ifeoma Nwabueze and Peter Ikechukwu Gasiokwu, "Reevaluating the Formal Requirements of Wills: Advocating for the Integration of Electronic Wills," *Khazanah Hukum* 6, no. 2 (2024): 202–22; Akhmad Kamil Rizani, "Musyawarah Sebagai Alternatif Penyelesaian Sengketa Waris Beda Agama: Avidence Based Solution From Indonesia," *El-Mashlahah* 10, no. 2 (2020): 52–64.

7 Erniwati Erniwati, "Wasiat Wajibah dalam Perspektif Hukum Islam di Indonesia dan Komparasinya di Negara-Negara Muslim," *Jurnal Ilmiah Mizani: Wacana Hukum, Ekonomi, dan Keagamaan* 5, no. 1 (2018): 70–1.

8 See: Muhammad Lutfi Hakim and Khoiruddin Nasution, "Accommodating Non-Muslim Rights: Legal Arguments and Legal Principles in the Islamic Jurisprudence of the Indonesian Supreme Court in the Post-New Order Era," *Oxford Journal of Law and Religion* 11, nos. 2–3 (2023): 288–313; Abdul Halim, "Disparities of the Supreme Court Judge's Decisions on the Non-Muslim Inheritance: Indonesian Case," *Journal of Legal, Ethical and Regulatory Issues* 24, no. 6 (2021): 1–8.

maqāṣid al-sharī'ah (objectives of Islamic law).[9] Meanwhile, Fuady and Azahari, Lubis et al., and Fatahullah et al. demonstrate that the scope of *waṣiyah wājibah* recipients has expanded to include non-*farā'iḍ* (Islamic inheritance law) categories such as children born out of wedlock and unregistered wives, through jurisprudential approaches grounded in social realities.[10] A comparative perspective is offered by Suhaili et al. through cross-national analysis.[11] At the same time, Hakim proposes *hibah wājibah* (mandatory gift) as a more flexible instrument for inheritance redistribution in pluralistic contexts.[12] Although these studies have made significant normative and practical contributions, they have yet to fully explore the epistemic construction of *waṣiyah wājibah* in the KHI as a product of institutional *ijtihād* (independent reasoning) integrating *fiqh* norms with Indonesia's distinctive socio-cultural configuration. This study seeks to fill that gap by tracing the legal genealogy of *waṣiyah wājibah* in the KHI as a form of Islamic legislation that is contextual, responsive, and oriented toward substantive justice.

Literature Review

The codification of the KHI in Indonesia marks a pivotal moment in the development of the nation's Islamic family law. It signifies a shift from the pluralistic application of Islamic law—rooted in multiple *madhhab*s—toward a more uniform and integrated system embedded within the national legal framework, particularly for resolving disputes within Muslim communities.[13] This codification initiative emerged during the New Order era as a form of institutional *ijtihād* initiated by the state to address the judiciary's need for clear legal guidelines in the Islamic courts and to harmonize the diverse jurisprudential practices prevalent in society.[14] The enactment of the KHI in 1991 was inseparable from the political climate of the time, when President Soeharto sought to ease tensions with Islamic groups by offering symbolic concessions in the form of formal recognition of religious law.[15] Consequently, the KHI reflects the active role of the state in defining the authoritative contours of Islamic law through an approach that was not only textual but also sociological and political in nature.

The drafting of the KHI began in the early 1980s under the auspices of the Ministry of Religious

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9 See: Riyanta et al., "Toward Interfaith Equality in Islamic Inheritance Law: Discourse and Renewal of Judicial Practice in Indonesia," *Al-Manahij: Jurnal Kajian Hukum Islam* 19, no. 1 (2025): 1–16; Rahman et al., "Compulsory Testament," 301–28.

10 See: Zakiul Fuady Muhammad Daud and Raihanah Azahari, "The Wajibah Will: Alternative Wealth Transition for Individuals Who Are Prevented from Attaining Their Inheritance," *International Journal of Ethics and Systems* 38, no. 1 (2019): 1–19; Rusdi Rizki Lubis et al., "Reconstruction of Obligatory Bequest in the Perspective of the Objectives of Islamic Law: Contextualizing Islamic Law in a Case Study of the Secret Wife in Polygamous Marriage," *Jurnal Ilmiah Mizani: Wacana Hukum, Ekonomi dan Keagamaan* 12, no. 1 (2025): 64–85; Fatahullah et al., "Reform of Islamic Inheritance Law: The Influence of Customary Law on the Institution of Wasiat Wajibah in Islamic Law," *Jurnal IUS Kajian Hukum dan Keadilan* 13, no. 1 (2025): 259–74.

11 Suhaili Alma'amun et al., "Legislative Provisions for *Waṣiyyah Wājibah* in Malaysia and Indonesia: To What Extent Do They Differ in Practice?," *ISRA International Journal of Islamic Finance* 14, no. 2 (2022): 157–74.

12 Muhammad Lutfi Hakim, "Between Hibah and Waṣiat Wājibah for Non-Muslims: Expansive Legal Interpretations by Indonesian Religious Judges in Inheritance Cases," *Al-Ahwal: Jurnal Hukum Keluarga Islam* 17, no. 2 (2024): 147–66.

13 Fajar Sugianto and Slamet Suhartono, "The Existence of President Instruction of the Republic of Indonesia Number 1 the Year 1991 on the Wide Spread of Compilation of Islamic Law in Indonesian Legal System," *AL-IHKAM: Jurnal Hukum & Pranata Sosial* 13, no. 2 (2018): 291–309.

14 Muhammad Lutfi Hakim, "Hak Non-Muslim dalam Putusan Pengadilan Agama di Indonesia: Pengetahuan Hukum, Motivasi dan Interpretasi Hukum Hakim" (Doctoral, UIN Sunan Kalijaga, 2024), 67.

15 Ahmad Imam Mawardi and A. Kemal Riza, "Why Did Kompilasi Hukum Islam Succeed While Its Counter Legal Draft Failed? A Political Context and Legal Arguments of the Codification of Islamic Law for Religious Courts in Indonesia," *Journal of Indonesian Islam* 13, no. 2 (2019): 421–53.

Affairs, through the establishment of a committee to formulate Islamic court law, composed of *ʿulamāʾ* (Islamic scholars), academics, and legal practitioners. This committee was tasked with developing an Islamic legal system that was both applicable and socially responsive, capable of operating effectively within the institutional framework of the Islamic courts.[16] Broadly, the codification process unfolded in four main phases: (1) institutional preparation, (2) substantive data collection, (3) drafting based on the processed data, and (4) refinement through a National Workshop (*Lokakarya Nasional*).[17] In the final stage, participants were divided into three commissions: Commission I drafted the marriage law (Book I), Commission II addressed the inheritance law (Book II), and Commission III dealt with the waqf law (Book III).[18] Each commission tackled *fiqh* issues that had long generated divergent rulings in judicial practice.[19]

The collection of substantive data proved to be the most critical phase, as it involved a socio-cultural approach to contextualize Islamic legal norms within the lived realities of Indonesian society. Four primary sources served as references.[20] First, the committee examined thirty-eight *fiqh* texts from various *madhhab*s, thirteen of which were authoritative Shāfiʿī works already used by Islamic court judges to standardize rulings in similar cases.[21] These included *al-Qawānīn al-Sharʿiyyah li Ahl al-Majālis al-Ḥukmiyyāt wa al-Iftāʾiyyāt* by Sayyid Uṡmān bin Yahyā (1822–1914), a Nusantara scholar who wrote in Jāwī script.[22] The remaining twenty-five works reflected a cross-*madhhab* approach, incorporating reformist and contemporary scholars such as Ibn Taymiyyah.[23] This research was distributed proportionally across seven State Islamic Institutes (*Institut Agama Islam Negeri*, IAIN), demonstrating a commitment to drafting an inclusive Islamic legal framework rather than one narrowly aligned with Shāfiʿī orthodoxy.[24]

Second, the views of the *ʿulamāʾ* were gathered through interviews conducted in ten major cities: Banda Aceh, Medan, Palembang, Padang, West Java, Central Java, East Java, Banjarmasin, Ujung Pandang, and Mataram.[25] A total of 166 *ʿulamāʾ*, including *kiai*s (traditional Islamic scholars) and religious leaders from diverse Islamic organizations, were interviewed by the drafting team

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16 Athoillah Islamy, "Eksistensi Hukum Keluarga Islam di Indonesia dalam Kontestasi Politik Hukum dan Liberalisme Pemikiran Islam," *Al-Istinbath: Jurnal Hukum Islam* 4, no. 2 (2019): 166.

17 Tim Penulis Mahkamah Agung Republik Indonesia, *Himpunan Peraturan Perundang-Undangan yang Berkaitan dengan Kompilasi Hukum Islam Dengan Pengertian dan Pembahasannya* (Jakarta: Mahkamah Agung, 2011), 30.

18 Amir Syarifuddin stated that this national workshop marked the culmination of the development of *fiqh* thought in Indonesia. See: Amir Syarifuddin, *Pembaharuan Pemikiran dalam Hukum Islam* (Angkasa Raya, 1993), 138–39.

19 See: Dirjen Pembinaan Badan Peradilan Agama Islam, *Sejarah Penyusunan Kompilasi Hukum Islam di Indonesia* (Jakarta: Departemen Agama RI, 1991), 158–9; Tim Penulis Mahkamah Agung Republik Indonesia, *Himpunan Peraturan Perundang-Undangan yang Berkaitan dengan Kompilasi Hukum Islam dengan Pengertian dan Pembahasannya*, 31–32.

20 Tim Penulis Mahkamah Agung Republik Indonesia, *Himpunan Peraturan Perundang-Undangan yang Berkaitan dengan Kompilasi Hukum Islam dengan Pengertian dan Pembahasannya*, 23.

21 The reference to the thirteen *fiqh* texts is documented in Circular Letter of the Bureau of Religious Courts No. B/I/735 dated February 18, 1958, which served as a follow-up to the implementation of Government Regulation No. 45 of 1957 on the Establishment of Islamic Courts/Mahkamah Syar'iyah outside Java and Madura. See: Hikmatullah Hikmatullah, "Selayang Pandang Sejarah Penyusunan Kompilasi Hukum Islam di Indonesia," *Ajudikasi: Jurnal Ilmu Hukum* 1, no. 2 (2017): 210.

22 Muhammad Lutfi Hakim, "Hak Non-Muslim dalam Putusan Pengadilan Agama di Indonesia: Pengetahuan Hukum, Motivasi dan Interpretasi Hukum Hakim" (Doctoral, UIN Sunan Kalijaga, 2024), 64–7.

23 Euis Nurlaelawati, *Modernization, Tradition and Identity: The Kompilasi Hukum Islam and Legal Practice in the Indonesian Religious Courts* (Amsterdam University Press, 2010), 80–9.

24 Yahya M Harahap, "Tujuan Kompilasi Hukum Islam, dalam IAIN Syarif Hidayatullah, Kajian Islam tentang Berbagai Masalah Kontemporer," *Jakarta: Hikmah Syahid Indah*, 1988, 93.

25 Tim Penulis Mahkamah Agung Republik Indonesia, *Himpunan Peraturan Perundang-Undangan yang Berkaitan dengan Kompilasi Hukum Islam dengan Pengertian dan Pembahasannya*, 24.

with assistance from the local chair of the high Islamic court. Informants were selected based on their organizational representation and socio-religious influence, particularly within the *pesantren*s (Islamic boarding schools) milieu.[26] Interviews were conducted both in open discussion forums and through individual approaches, guided by systematically structured and indexed questions. The aim was to elicit authoritative legal opinions along with their evidentiary bases while fostering an inter-*madhhab* dialogue that valued the diversity of *fiqh* methodologies.[27] This process also functioned as a form of social verification (*taṣḥīḥ al-wāqiʿ*), ensuring that the codified norms would carry sociological legitimacy.[28]

Third, judicial precedents (jurisprudence) constituted a key foundation for the KHI, reflecting the body of Islamic legal practice consistently applied in the Islamic courts prior to formal codification. Data were drawn from sixteen volumes of compiled decisions produced by the Directorate for the Development of Islamic Courts, encompassing judgments from both Islamic courts and the high Islamic courts between 1976 and 1984, as well as fatwas and law reports that document judicial reasoning in family law cases.[29] Case selection prioritized precedents that addressed recurring disputes and provided solutions for issues not explicitly regulated in classical *fiqh*, such as inheritance rights for adopted children and adoptive parents. The inclusion of these sources demonstrates that the KHI was not merely a normative-theoretical construct but a synthesis of textual doctrine, judicial practice, and pressing social needs.

Fourth, comparative studies of Islamic legal systems in other countries played a significant role in shaping the KHI. In 1986, the drafting team conducted study visits to Morocco, Egypt, and Turkey to examine how Islamic family law was codified and integrated into each country's national legal system.[30] Led by Supreme Court Justice H. Masrani Basran and the Director of the Development of Islamic Courts, H. Muchtar Zakrasyi, the delegation analyzed legislative frameworks, the structure of Islamic courts, and the legal sources employed in adjudication. Although these references were external, they provided critical comparative insights for formulating provisions suited to Indonesia's context, especially when classical *fiqh* sources were considered inadequate or overly rigid for contemporary application.[31]

Beyond these four principal sources, civil society participation—particularly from major Islamic organizations—made a significant contribution to the formulation of the KHI. Muhammadiyah organized a national seminar in Yogyakarta in April 1986 to address contemporary Islamic legal issues,[32] while Nahdlatul Ulama (NU) convened *baḥth al-masāʾil* (religious deliberations) forums

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26 Bustanul Arifin, "Kompilasi: Fiqh dalam Bahasa Undang-Undang," *Journal of Pesantren: Berkala Kajian dan Pengembangan* 2, no. 2 (1985): 29.

27 Arifin, "Kompilasi," 92–3.

28 This statement was delivered by the then-Chairman of the Indonesian Ulema Council (MUI) during the drafting of the KHI, KH. Hasan Basri. In his view, the process of gathering data through consultation with *ʿulamāʾ* represented an aspirational endeavor aimed at compiling and systematizing *fiqh* that was actively practiced within society. See: Hasan Basri, "Perlunya Kompilasi Hukum Islam," *Mimbar Ulama* 10, no. 104 (1986): 61.

29 See: Dirjen Pembinaan Badan Peradilan Agama Islam, *Sejarah Penyusunan Kompilasi Hukum Islam di Indonesia,* 158–9; Tim Penulis Mahkamah Agung Republik Indonesia, *Himpunan Peraturan Perundang-Undangan yang Berkaitan dengan Kompilasi Hukum Islam dengan Pengertian dan Pembahasannya*, 28–29.

30 Dirjen Pembinaan Badan Peradilan Agama Islam, *Sejarah Penyusunan Kompilasi Hukum Islam di Indonesia,* 158–9; Tim Penulis Mahkamah Agung Republik Indonesia, *Himpunan Peraturan Perundang-Undangan yang Berkaitan dengan Kompilasi Hukum Islam dengan Pengertian dan Pembahasannya*, 29.

31 Dirjen Pembinaan Badan Peradilan Agama Islam, *Sejarah Penyusunan Kompilasi Hukum Islam di Indonesia*, 152–54.

32 Redaktur, "Panji Masyarakat," *Panji Masyarakat* 27, no. 502 (1986).

in Jombang, Lumajang, and Sidoarjo.[33] The outcomes of these forums were incorporated into the KHI draft. This broad-based engagement culminated in the National Workshop of the KHI Drafting Team, held from February 2 to 6, 1988, in Jakarta, attended by 124 participants, including provincial MUI chairs, high Islamic court judges, rectors and deans of IAIN, representatives of Muslim women's organizations, and scholars from across the archipelago.[34] Such cross-sector involvement underscores that the KHI was not merely a technocratic product, but the result of a deliberative process that engaged both state actors and civil society, thereby ensuring its social acceptability and juridical sustainability to the present day.

Method

This research is a library-based study employing a socio-legal approach to examine the interaction between Islamic legal texts and the social context in which they were formulated. The primary focus is on analyzing the normative construction of *waṣiyah wājibah* in the KHI and its supporting legislative documents, as a product of institutional *ijtihād* emerging from the dialectic among *fiqh* texts, state interests, and the social dynamics of Indonesian society. Data sources include primary legal materials, such as statutory regulations—particularly the KHI—and official preparatory documents, as well as legal journals, decisions from the Supreme Court and Islamic Courts. Secondary legal materials comprise classical *fiqh* literature, academic journal articles, and relevant prior research. Data analysis is conducted qualitatively through hermeneutic reading and critical interpretation of legal texts, combined with contextual analysis of the social, political, and cultural factors influencing the formulation of *waṣiyah wājibah*. The study adopts Jasser Auda's theory of the cognitive nature of the Islamic legal system as its analytical framework,[35] highlighting that *waṣiyah wājibah* is not merely a formal legal product but also an ethical and substantive response to the demands of justice in a pluralistic and dynamic Muslim society.[36]

Results

The Provision of Waṣiyah Wājibah *and Its Juridical Legitimacy*

The KHI comprises 229 articles divided into three main sections: Book I on Marriage Law, Book II on Inheritance Law, and Book III on Endowment Law. The provision regarding *waṣiyah wājibah* is explicitly regulated under Article 209, which states: (1) The estate of an adopted child shall be distributed under Articles 176 to 193 above. Adoptive parents who do not receive a testamentary bequest shall be granted a *waṣiyah wājibah* of no more than one-third of the adopted child's estate. (2) An adopted child who does not receive a testamentary bequest shall be granted a *waṣiyah wājibah* amounting to no more than one-third of the adoptive parents' estate.[37] This article examines a form of state-led juridical *ijtihād* aimed at addressing a normative gap in classical Islamic inheritance law, particularly regarding the legal relationship between adoptive parents and adopted children, which is not accommodated under the *farāʾiḍ* system. Although *waṣiyah wājibah* is not discussed in a separate chapter, the concept holds a significant position as a legal

[33] Dirjen Pembinaan Badan Peradilan Agama Islam, *Sejarah Penyusunan Kompilasi Hukum Islam di Indonesia*, 155.
[34] Redaktur, "Sinar Darussalam," *Sinar Darussalam*, no. 166/167 (1988): 11.
[35] Jasser Auda, *Maqasid al-Shariah as Philosophy of Islamic Law: A Systems Approach* (The International Inst. of Islamic Thought, 2008), 26–45.
[36] Muhammad Abror Rosyidin et al., "Multicultural Values in the Concept of Islamic Brotherhood: A Study from the Hadith Perspective," *Nabawi: Journal of Hadith Studies* 6, no. 1 (2025): 35–91.
[37] "Presidential Instruction No. 1 of 1991 on Compilation of Islamic Law," Article 209.

innovation—binding in nature, enforceable without the testator's explicit consent, and subject to judicial determination.[38]

Conceptually, this provision is absent from classical *fiqh*, which generally treats a *waṣiyyah* (will) as a voluntary gift that cannot be made in favor of existing heirs unless approved by the other heirs.[39] However, the drafters of the KHI reinterpreted the principles of *maqāṣid al-sharīʿah*, particularly those related to justice and public welfare (*maṣlaḥah*), to justify the validity of *waṣiyah wājibah* as a form of contextualized institutional *ijtihād*.[40] Within this framework, *waṣiyah wājibah* is understood as a form of distributive justice designed to address changes in modern social structures, such as the practice of child adoption (*tabannī*), which, under classical Islamic law, does not confer inheritance rights.[41]

The legitimacy of *waṣiyah wājibah* within the KHI was further reinforced through a comparative study conducted by the KHI Drafting Team in Morocco, Egypt, and Turkey in 1986. In Egypt, *waṣiyah wājibah* had been codified in the Qānūn al-Aḥwāl al-Shakhṣiyyah since 1943, primarily to grant inheritance rights to orphaned grandchildren whose fathers predeceased the testator.[42] In Morocco, the recipients were similarly limited to orphaned grandchildren from the male line, with a maximum share of one-third of the estate.[43] These legislative models served as important references in the formulation of Article 209 of the KHI.

According to Hambouth, Egyptian scholarly opinions on the Islamic legality of *waṣiyah wājibah* are divided into two main camps.[44] The first affirms that a will is a religious obligation, citing Sūrat al-Baqarah verse 180, which commands believers to make bequests to parents and close relatives in an honorable manner. This verse is interpreted as a normative basis for the obligation to bequeath to relatives who are excluded from the *farāʾiḍ* system. Critics, however—such as ʿĀʾishah, as recorded in *Tafsīr al-Ṭabarī*—argue that the injunction was abrogated (*naskh*) by the verses on inheritance distribution in Sūrat al-Nisāʾ.[45] Thus, the obligation to bequeath is confined to specific circumstances, such as when relatives are burdened by debt or lack financial support. Some contemporary scholars nonetheless uphold the absolute obligation to make a bequest, even if the estate is modest.[46] This exegetical debate opens significant room for *ijtihād*, particularly in the context of modern Islamic law codification, where *waṣiyah wājibah* is adopted as a binding legal norm in Indonesia.

Beyond Qurʾānic injunctions, the normative basis for bequests is further supported by several

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38 Hakim, "Between Hibah and Waṣiat Wājibah for Non-Muslims," 159–60.

39 Wahbah al-Zuḥailī, *Al-Fiqh al-Islāmī wa Adillatuh* (Dār al-Fikr, 1984), 8:286.

40 Muhammad Daud and Azahari, "The Wajibah Will," 1–19.

41 See: Fatahullah et al., "Reform of Islamic Inheritance Law," 259–74; Faisal Kutty, "Islamic Perspectives on Adoption," in *The Oxford Handbook of Religious Perspectives on Reproductive Ethics*, ed. Dena S. Davis (Oxford University Press, 2024), 239–60.

42 J. N. D. Anderson, "Recent Reforms in the Islamic Law of Inheritance," *International & Comparative Law Quarterly* 14, no. 2 (1965): 358.

43 Hakim and Nasution, "Accommodating Non-Muslim Rights," 312.

44 Rafat Mahmud Abdurrahman Hambouth, "Al-Waṣiyah al-Wājibah," Naseemalsham, 1–3, https://naseemalsham.com/uploads/Component/word new/Arabic/Research/2011/Wasyeh_Wajebeh.pdf.

45 Bal'aqib Aisyah, *Al-Waṣiyah al-Wājibah fi Qānūn al-Usrah al-Jazāirī: Dirāsah Fiqhiyyah Muqāranah* (Universite Abou Bekr Belkaid, 2015), 44; Muhammad Ibn Jarir Al-Thabari, *Jami' al-Bayan 'an Ta'wil ay al-Qur'an - Tafsir al-Thabari* (Dar Hajar, n.d.), 128.

46 Aisyah, *Al-Waṣiyah al-Wājibah fi Qānūn al-Usrah al-Jazāirī*, 45.

hadith emphasizing the moral and social obligation of Muslims to make a will.[47] One well-known narration, recorded by Imam al-Bukhārī through ʿAbd Allāh ibn Yūsuf, states that it is unbecoming for a Muslim who has something to bequeath to sleep two nights without having written it down. It is corroborated by additional narrations cited by Rafat Mahmud ʿAbd al-Raḥmān Hambouth from Ṭāriq ibn ʿUmar, as well as by Balʿaqib ʿĀʾishah from ʿĀʾishah and Abū Hurayrah.[48] Collectively, these narrations underscore that—even without an explicit directive from the testator—the distribution of wealth to deserving recipients should be pursued, including through charity on behalf of the deceased. Hambouth further highlights the relevance of *maṣlaḥah mursalah* (public interest) and *dalīl ʿaqlī* (rational evidence), especially in cases where orphaned grandchildren are excluded from inheritance due to the predecease of their parent.[49] In such cases, Egypt's official fatwa body (*Dār al-Iftāʾ*) has affirmed that the state's legalization of *waṣiyah wājibah* is not contrary to the *Sharīʿah* but rather supported by various *tābiʿīn* (the second generation of Muslims) and mujtahid authorities, as it aligns with substantive justice, the preservation of kinship ties, and the protection of marginalized family members' rights.[50]

Furthermore, Estity elaborates on four principal foundations underpinning the legality of *waṣiyah wājibah* in Egypt's family law system.[51] First, the view of prominent *tābiʿīn* such as Saʿīd ibn al-Musayyib and al-Ḥasan al-Baṣrī, who held that every legally competent Muslim is obligated to make a will without exception.[52] Second, Ibn Ḥazm's position obligates bequests to non-heir relatives and grants the testator full discretion in determining recipients and amounts. Third, the Islamic legal maxim "*taṣarruf al-ḥākim manūṭ bi al-maṣlaḥah*", which authorizes the ruler to enact policies in permissible matters for public welfare, including mandating bequests to orphaned grandchildren from the male line. Fourth, an integrative approach combining Islamic jurists' opinions across *madhhab*s to develop new legal norms suited to contemporary social contexts.[53] These foundations affirm that *waṣiyah wājibah* is a product of responsive legal *ijtihād* attuned to Egypt's socio-cultural realities.

In Indonesia, none of the 38 *fiqh* texts referenced in drafting the KHI explicitly regulate *waṣiyah wājibah*, yet Ibn Ḥazm's opinion has become a widely cited basis in Islamic court jurisprudence.[54] In *al-Muḥallā*, Ibn Ḥazm states: "*Every Muslim is obligated to make a bequest to relatives who do not inherit, whether due to slavery, unbelief, the presence of inheritance impediments, or because they are simply not heirs. Such a bequest must be made according to the testator's discretion.*"[55] This position is significant because it departs from the consensus of the four major Sunnī

47 See: Zarūq al-Fāsī, *Syarḥ Ṣaḥīḥ al-Bukhārī* (Matba'ah Hasan, 1973), 270; Muhamad Khoirul Huda, "Dissemination of Sanad Ṣaḥīḥ al-Bukhārī in West Java: A Biographical Study of KH. Muhammad Qudsi Garut," *Nabawi: Journal of Hadith Studies* 6, no. 1 (2025): 1–33.

48 Hambouth, "Al-Waṣiyah al-Wājibah," 2.

49 Hambouth, "Al-Waṣiyah al-Wājibah," 2–3.

50 Shawqī Ibrāhīm 'Allām, "Ḥukm al-Shar' fī al-Waṣiyyah al-Wājibah," October 14, 2014, https://www.dar-alifta.org/ar/fatwa/details/16352/.

51 Mohannad Fuad Estity, "Al-Waṣiyah al-Wājibah Dirāsah Muqāranah," *Majallah Jamī'ah al-Quds al-Maftūḥah li al-Abḥāth wa al-Dirāsāt* 1, no. 28 (2012): 209.

52 Muhammad Abu Zahrah, *Syarh Qanun al-Washiyyah Dirasah Muqaranah li Masailih wa Bayan li Mashadirih* (Maktabah al-Anjalu al-Mishriyyah, 1950), 221.

53 Estity, "Al-Washiyyah al-Wajibah Dirasah Muqaranah," 211.

54 Muhamad Isna Wahyudi, "Penegakan Keadilan dalam Kewarisan Beda Agama: Kajian Lima Penetapan dan Dua Putusan Pengadilan Agama dalam Perkara Waris Beda Agama [Upholding Justice in the Case of Interfaith Inheritance: An Analysis of Five Court Determinations and Two Court Decisions on the Case of Interfaith Inheritance]," *Jurnal Yudisial* 8, no. 3 (2015): 3.

55 Ali ibn Ahmad ibn Hazm, *Al-Maḥalli* (Dar al-Kutub al-'Ilmiyyah, 2003), 314.

*madhhab*s, which hold that a will is merely recommended (*sunnah*).[56] In Indonesia, Ibn Ḥazm's view has been contextually adopted as a juridical justification in Islamic court rulings, particularly in cases involving adopted children, children born out of wedlock, or non-Muslim heirs—groups excluded from inheritance under classical *fiqh*.[57] Accordingly, the KHI's provision on *waṣiyah wājibah* represents a form of *ijtihād maṣlaḥī* (reasoning based on public interest) rooted in international comparative studies, adaptations from other national legal systems, and reinterpretations of textual evidence in light of Indonesia's socio-cultural realities. It embodies a synthesis between the rationality of *fiqh* and the plural socio-cultural needs of the Muslim community.[58]

Socio-Cultural Basis of the Waṣiyah Wājibah *Provision*

The formulation of the *waṣiyah wājibah* provision in the KHI cannot be separated from the socio-cultural context of Indonesia's pluralistic and dynamic society, characterized by distinctive kinship systems. During the substantive data collection phase, the KHI Drafting Team conducted interviews with 166 *'ulamā'* and religious leaders from ten major cities, aiming to elicit legal opinions that were contextually relevant to social realities.[59] One of the most prominent considerations was the social status of adopted children, who, in many Indonesian communities, are treated as members of the nuclear family despite lacking legal standing as heirs under classical *fiqh*.[60] In Indonesia's traditional family structures—marked by *gotong royong* (cooperation) and shaped by both patrilineal and matrilineal kinship systems—adopted children are often accorded legal and social treatment equivalent to that of biological children, including in matters of inheritance.[61]

The tradition of child adoption across various regions of Indonesia exhibits significant diversity in both form and legal implications. Under Javanese and Sumatran customary law, adoption typically occurs within the extended family—often involving nieces or nephews—without financial transactions, and adopted children may inherit from their adoptive parents.[62] In Javanese society, there is even a cultural philosophy that "more children bring more blessings."[63] In Bali and Nias, adoption involves customary ceremonies and symbolic gifts, whereas in Pontianak and Bengkulu, the rituals may include blood oaths and the payment of *ulun* (traditional fine) as a formal relinquishment of parental rights by the biological parents.[64] Among Acehnese communities,

56 Aisyah, *Al-Waṣiyah al-Wājibah fī Qānūn al-Usrah al-Jazāirī*, 44.
57 Hakim and Nasution, "Accommodating Non-Muslim Rights," 305–7.
58 See: Riyanta et al., "Toward Interfaith Equality in Islamic Inheritance Law," 1–16; Muhammad Adib Alfarisi et al., "Negotiating Customary Law and Fiqh Norms: The Transformation of the Mepahukh Tradition in the Indigenous Marriage Practices of the Alas People in Southeast Aceh," *Indonesian Journal of Sharia and Socio-Legal Studies* 1, no. 1 (2025): 72–93.
59 Arifin, "Kompilasi," 92–3.
60 Hotnidah Nasution, "Determination of Grandson as Adopted Child and its Implications for Inheritance," *Ahkam: Jurnal Ilmu Syariah* 14, no. 1 (2014): 73–84.
61 Mohammad Ghozali et al., "Kajian Perbandingan Hak Warisan Anak Angkat di Indonesia dan Malaysia: A Comparative Study of the Inheritance Rights of Adopted Children in Indonesia and Malaysia," *Malaysian Journal of Syariah and Law* 12, no. 3 (2024): 726–38.
62 Ulfa Ramadhani Nasution, "The Convergence of Customary Law and Islamic Law: Adoption and Inheritance Rights of Adopted Children in Batak Angkola," *Al-Hukama': The Indonesian Journal of Islamic Family Law* 14, no. 2 (2024): 261–89.
63 Enung Hasanah, "Java Community Philosophy: More Children, Many Fortunes," *Genealogy* 7, no. 1 (2023): 3.
64 Nanda Peni Butar-Butar and Setiyowati, "The Position of Male Adopted Child in the Distribution of Heritage in the Simalungun Batak Tribe in Pontianak City, West Kalimantan," *South East Asia Journal of Contemporary Business, Economics and Law* 19, no. 5 (2019): 239–45.

adopted children are often taken from less affluent relatives as an act of economic solidarity.[65] In many cases, adopted children are entitled to inherit from their adoptive parents when the adoption is conducted openly and bindingly, witnessed by customary authorities, and accompanied by symbolic transfers under local traditions.[66] These practices demonstrate that customary law recognizes the civil relationship between adoptive parents and adopted children not only during the parents' lifetime but also posthumously.[67]

In Indonesia's customary inheritance laws, adoption carries significant legal consequences. In some traditions, an adopted child is recognized as an heir equal to a biological child if the adoption meets specific requirements: openness, immediate effect, acknowledgment by the adat chief, and the performance of a public ceremony involving customary symbolic transfers, such as ritual objects or monetary gifts. Such adoption formally incorporates the child into the kinship group of the adoptive parents. Conversely, adoption without a formal and immediate transfer does not confer inheritance rights; in these cases, the adopted child remains affiliated with the biological family, with the adoptive parents serving only as guardians and providers during their lifetime.[68] This pattern underscores that, in certain adat systems, adoption primarily functions as a social welfare mechanism rather than an automatic means of inheritance—unless formalized through recognized customary procedures. The influence of Staatsblad 1917 No. 129, issued by the Dutch colonial administration, further reinforced the legal recognition of adopted children's inheritance rights from their adoptive parents,[69] albeit with limitations on the portion of the estate not covered by a will.

Accordingly, the *waṣiyah wājibah* in the KHI represents a synthesis between the demands of formal legal frameworks and the living values embedded in the socio-cultural realities of Indonesia's Muslim communities. This codification process reflects not only sensitivity to the social context but also the adaptive capacity of Islamic law to respond to evolving societal conditions.[70] Six primary socio-cultural considerations underpin the normative formulation of *waṣiyah wājibah*: (1) the tradition of adoption as a solution to childlessness; (2) the recognition, within customary law, of the economic rights of adopted children after the death of their adoptive parents; (3) the practice of adoptive parents providing financial and emotional care to adopted children equivalent to that given to biological offspring; (4) the legal recognition of adopted children's rights in adat law; (5) the influence of Staatsblad 1917, which established a legal precedent for the inheritance rights of adopted children; and (6) the strong emotional and social bonds between adopted children and adoptive families, widely acknowledged across Indonesian society. Together, these factors form a crucial foundation for the *waṣiyah wājibah* as a context-

65 Nahara Tawar Nate and Suhartini Suhartini, "Adopted Children's Rights to Inheritance According to Gayo Customary Law and Islamic Inheritance," *RESAM Jurnal Hukum* 10, no. 2 (2024): 71–81.

66 Munadi Usman, "Anak Angkat dalam Peraturan di Indonesia," *ADHKI: Journal of Islamic Family Law* 1, no. 1 (2019): 146.

67 See: Euis Nurlaelawati and Stijn Cornelis van Huis, "The Status of Children Born out of Wedlock and Adopted Children in Indonesia: Interactions between Islamic, Adat, and Human Rights Norms," *Journal of Law and Religion* 34, no. 3 (2019): 356–82; V. Batyrov and E. Komandzhaev, "Adoption and Guardianship in the Kalmyk Society in the 19th Century," *Oriental Studies* 7, no. 4 (2014): 84–88; Fatahullah et al., "Reform of Islamic Inheritance Law," 259–74.

68 Usman, "Anak Angkat Dalam Peraturan di Indonesia," 130–31.

69 Ni Wayan Manik Prayustini and I Ketut Rai Setiabudhi, "Hak Mewaris Anak Angkat terhadap Harta Orang Tua Angkat Menurut Hukum Perdata," *Universitas Udayana*, 2014, 5.

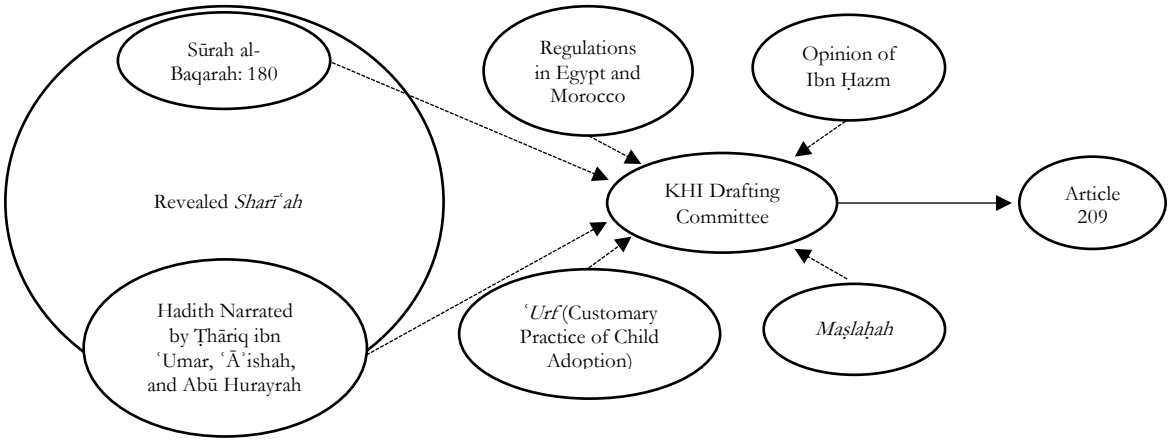
70 Zaimuariffudin Shukri Nordin et al., "Integrating Islamic Law and Customary Law: Codification and Religious Identity in the Malay Buyan Community of Kapuas Hulu," *Journal of Islamic Law* 6, no. 1 (2025): 89–111.

sensitive, responsive, and substantively just product of Islamic legal development in Indonesia.[71]

Discussion

The formulation of the *waṣiyah wājibah* provision in Article 209 of the KHI represents a contemporary form of *ijtihād maṣlaḥī* that is neither partial nor fragmented. Instead, it emerges from a multi-source synthesis encompassing textual evidence, sociological contextualization, and legal innovation grounded in the *maqāṣid al-sharīʿah*.[72] This approach positions law not merely as a normative reproduction of classical *madhhab* opinions but as a dynamic arena for reconstructing Islamic legal doctrine in a manner responsive to social change and local conceptions of justice.[73] Within this framework, the KHI serves as a model for the codification of Islamic law through a holistic epistemic method—linking the dimensions of revealed *Sharīʿah*, local *ʿurf* (custom), the construction of public interest (*maṣlaḥah*),[74] and comparative legal practices from other Muslim jurisdictions.

Figure 1. The Islamic reasoning of *waṣiyah wājibah*



Source: Authors' analysis

The normative foundation of *waṣiyah wājibah* in the KHI is rooted in Surah al-Baqarah 2:180, which obligates Muslims to make a bequest to parents and relatives in an equitable manner prior to death.[75] While some exegetes argue that this verse was abrogated by the subsequent *farāʾiḍ* verses,[76] many contemporary scholars continue to regard it as a moral and legal basis for extending

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71 See: Zainal Arifin and Zaenul Mahmudi, "Mandatory Wills for Adultery Children, Analysis of the Compilation of Islamic Law from the Perspective of Maqasid Syariah Al-Syatibi," *International Journal of Law and Society (IJLS)* 1, no. 1 (2022): 36–47; Muhammad Daud and Azahari, "The Wajibah Will," 1–19.

72 See: Fatahullah et al., "Reform of Islamic Inheritance Law," 259–74; Hakim and Nasution, "Accommodating Non-Muslim Rights," 288–313; Arifin and Mahmudi, "Mandatory Wills for Adultery Children, Analysis of the Compilation of Islamic Law from the Perspective of Maqasid Syariah Al-Syatibi," 36–47.

73 See: Nordin et al., "Integrating Islamic Law and Customary Law," 89–111; M. Djawas et al., "Harmonization of State, Custom, and Islamic Law in Aceh: Perspective of Legal Pluralism," *Hasanuddin Law Review* 10, no. 1 (2024): 64–82, Scopus, https://doi.org/10.20956/halrev.v10i1.4824.

74 Khairul Fikri and Khamim, "The Concept of Good Governance in the Story of Prophet Solomon: A Maqāṣidī Interpretation Analysis of Q.S. An-Naml [27]: 17-44," *Basmala Journal of Qur'an and Hadith* 1, no. 1 (2025): 1–27.

75 Hambouth, "Al-Waṣiyah al-Wājibah," 1–3.

76 See: Bal'aqib Aisyah, *Al-Waṣiyah al-Wājibah fī Qanun al-Usrah al-Jazāirī*, 44; Muhammad Ibn Jarir Al-Thabari, *Jamiʿ al-Bayān ʿan Taʾwil ay al-Qurʾān - Tafsīr al-Ṭabari* (Dar Hajar, n.d.), 128.

the beneficiaries of bequests beyond biological heirs.[77] This interpretation is further supported by several hadiths narrated by Ṭhāriq ibn ʿUmar, ʿĀʾishah, and Abū Hurayrah, which emphasize the urgency and importance of making a will promptly.[78] These scriptural sources thus provide interpretive space for viewing bequest obligations as both a social and spiritual responsibility, not strictly determined by kinship ties.[79]

In parallel, local *ʿurf*—particularly the strong tradition of adoption in various Indonesian communities—plays a pivotal role in shaping this legal reasoning. In kinship systems such as those of the Minangkabau, Batak, and Balinese, adopted children are often raised and treated as biological offspring, even in matters of inheritance. The absence of formal recognition for adopted children within the classical *farāʾiḍ* framework results in an inequitable distribution of rights within families, especially in a modern societal context where the socio-legal status of adopted children is already acknowledged. This consideration of *ʿurf* emerged from extensive consultations by the KHI Drafting Team with 166 *ʿulamāʾ*, *kiai*s, and religious leaders across ten major Indonesian cities—a process that served as a form of social verification, ensuring that the resulting legal provisions are not only formally valid but also culturally grounded.[80] The *waṣiyah wājibah* thus functions as a normative bridge, accommodating social relations institutionalized in customary law while filling doctrinal gaps within classical Islamic inheritance law.[81]

Methodologically, this provision also draws on comparative studies of family law in Muslim-majority countries such as Egypt and Morocco, both of which had previously adopted forms of *waṣiyah wājibah* to protect the rights of orphaned grandchildren or relatives excluded from inheritance under the *farāʾiḍ* system.[82] In Indonesia, the KHI Drafting Team utilized these practices as conceptual references in designing a legal form of *waṣiyah wājibah* tailored to domestic needs.[83] This approach reflects an epistemic awareness that Islamic law must remain adaptive, transcending temporal and *madhhab* boundaries, provided it does not contravene the fundamental values of the *Sharīʿah*. Furthermore, the wording of Article 209 of the KHI reflects a deliberate openness to incorporating non-mainstream *fiqh* opinions, particularly that of Ibn Ḥazm in *al-Muḥallā*, who argued that a Muslim is obliged to make a bequest to relatives excluded from inheritance, based on rational reasoning, public interest, and justice.[84] Although rejected by the four major Sunnī schools, Ibn Ḥazm's position provides both moral and juridical legitimacy for extending bequests through *maqāṣid*-based reasoning and *maṣlaḥah mursalah*.[85] Within the KHI, this opinion is not merely transplanted from classical texts but undergoes an institutional *ijtihād* process that accounts for Indonesia's plural and complex socio-cultural realities.

Ultimately, the *waṣiyah wājibah* provision under Article 209 of the KHI is not merely a normative instrument but an articulation of an Islamic legal system refined through layered

77 Aisyah, *Al-Waṣiyah al-Wājibah fī Qānūn al-Usrah al-Jazāirī*, 45.
78 See: Hambouth, "Al-Waṣiyah al-Wājibah," 2–3; Ananda Prayogi, "The Discourse of Scientific Approach in the Study of Fiqh al-Hadith: Applications of Hegel's Dialectics," *Nabawi: Journal of Hadith Studies* 3, no. 1 (2022): 98–121.
79 Zarūq al-Fāsī, *Sharḥ Ṣaḥīḥ al-Bukhārī* (Matba'ah Hasan, 1973), 270.
80 Arifin, "Kompilasi," 92–3.
81 See: Fatahullah et al., "Reform of Islamic Inheritance Law," 259–74; Riyanta et al., "Toward Interfaith Equality in Islamic Inheritance Law," 1–16.
82 Anderson, "Recent Reforms in the Islamic Law of Inheritance," 358.
83 Hakim and Nasution, "Accommodating Non-Muslim Rights," 288–313.
84 Hazm, *Al-Maḥalli,* 314.
85 Moh. Fathi Nasrulloh, "Interview with Judge of the Sumbawa Besar Islamic Court," March 24, 2024.

epistemic scrutiny. This provision grants an obligatory bequest to adopted children and adoptive parents, up to one-third of the estate, regardless of the testator's explicit will, and is implemented under an Islamic court decision. Beyond adopted children and adoptive parents, this legal reasoning also leaves open the possibility of *waṣiyah wājibah* for non-Muslims and children born out of wedlock,[86] as suggested by scholars who do not restrict bequest recipients based on religion.[87] In this sense, the *waṣiyah wājibah* in the KHI stands as concrete evidence of how *fiqh* can be reformulated through national legal instruments without sacrificing the authenticity or integrity of the *Sharīʿah*.

Conclusion

The formulation of *waṣiyah wājibah* (mandatory will) in Article 209 of the Compilation of Islamic Law (KHI) represents an epistemic synthesis of the normative foundations of *Sharīʿah*, the socio-cultural realities of Indonesian society, and the principles of *maqāṣid al-sharīʿah* (objectives of Islamic law). Through an institutional process of *ijtihād* (independent reasoning), this provision effectively bridges the gap between classical Islamic inheritance law—which does not recognize adopted children as heirs—and customary practices that have long institutionalized such civil relationships. This holistic approach, integrating scriptural references (*naṣṣ*), local *ʿurf* (custom), and comparative studies of family law in other Muslim countries, demonstrates the adaptability, cross-*madhhab* (school of Islamic law) applicability, and responsiveness of Islamic law to the dynamics of modern society. Consequently, the *waṣiyah wājibah* in the KHI not only embodies substantive justice aligned with the Indonesian context but also provides a conceptual model for reformulating Islamic law within national legal frameworks.

Theoretically, this study suggests that integrating *naṣṣ*, *ʿurf*, and *maṣlaḥah* (public interest) can serve as an effective methodology for codifying Islamic law in pluralistic and multicultural contexts. Practically, the *waṣiyah wājibah* model can be adapted to include groups traditionally excluded from inheritance distribution, such as adopted children, adoptive parents, non-Muslims, and children born out of wedlock, provided that such inclusions do not conflict with the core principles of *Sharīʿah*. However, this research is limited to a normative-doctrinal analysis focusing on the legal construction within the KHI and does not empirically examine the implementation or effectiveness of *waṣiyah wājibah* rulings in Islamic courts. Therefore, further studies employing a socio-legal approach are necessary to evaluate the practical application of this provision in the field and to assess the extent to which it achieves the objectives of substantive justice.

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86 See: Halim, "Disparities of the Supreme Court Judge's Decisions on the Non-Muslim Inheritance," 1–8; Hakim and Nasution, "Accommodating Non-Muslim Rights," 288–313; Hakim, "Between Hibah and Waṣiat Wājibah for Non-Muslims," 147–66.

87 See: Muhammad Ali Mahmud Yahya, *Aḥkām al-Waṣiyah fī al-Fiqh al-Islāmī* (Jami'ah al-Najah al-Wathaniyyah, 2010), 99; Lajnah Al-Ifta', "Tajūz al-Waṣiyah li Ghair al-Muslim (Fatwa No. 962, 28 November)," Aliftaa.Jo, 2010, https://aliftaa.jo/Question.aspx?QuestionId=962.

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