

Reconstruction of the Principle of Justice in the Islamic Inheritance Law System in Indonesia

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ABSTRACT

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This study aims to analyze the application of the principle of justice in the distribution of inheritance according to Islamic law in Indonesia, as regulated in the Compilation of Islamic Law (Kompilasi Hukum Islam/KHI). The primary issue examined is how the principle of proportional justice manifests in the distribution of inheritance, as well as its practical implementation in the Religious Court (Peradilan Agama) in responding to the social dynamics of modern society. The research method employed is normative juridical with a conceptual approach. The findings reveal that justice in Islamic inheritance law does not always mean numerical equality (equal distribution), but is rather grounded in a balance between rights and obligations (the obligation of financial support/nafkah). However, in practice in Indonesia, there exists room for the application of substitute heirs (Ahli Waris Pengganti) and testamentary grants (Hibah Wasiat) as instruments to realize distributive justice for heirs who do not receive a portion under the faraid system. This article concludes that the principle of justice in Islamic law in Indonesia is dynamic, wherein legal certainty is maintained through the Quranic text, while substantive justice is achieved through judicial *ijtihad* and family agreement (*takharuj*).



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Introduction

The issue of inheritance has always occupied a central position in human civilization because it concerns not only the transfer of wealth after death but also the continuity of family responsibility, social order, and justice among surviving family members. In legal discourse, inheritance law functions as a mechanism to regulate the transfer of rights and obligations from the deceased (*muwarrits*) to the heirs (*warits*), thereby ensuring legal certainty and preventing disputes within the family structure. Without a clear inheritance system, the death of an individual may create uncertainty regarding ownership rights and potentially generate prolonged social and economic conflict among surviving relatives. Therefore, inheritance law is not merely a technical legal arrangement concerning the distribution of property, but also an instrument for maintaining social harmony and protecting the dignity of the family institution (Waluyo, 1991).

From a philosophical perspective, inheritance reflects the continuity of human responsibility that transcends death. Wealth accumulated during one's lifetime is not solely personal property but also carries social and familial dimensions that must be managed responsibly after the owner's death. Inheritance law ensures that economic resources continue to provide benefits for subsequent generations and do not become a source of injustice or oppression within the family structure (Usman, 2009). In this sense, inheritance law possesses not only legal significance but also moral and sociological dimensions because it directly affects the welfare and stability of family members left behind.

In the economic context, inheritance law also functions as a mechanism for wealth redistribution. Through inheritance distribution, assets concentrated in the hands of one individual are divided among several heirs, thereby preventing excessive concentration of wealth within a single lineage or family member.

Such redistribution contributes to economic balance within the family and may reduce inequality among heirs (Soleman et al., 2022). Islamic inheritance law, in particular, establishes detailed rules intended to create proportional distribution and avoid arbitrary domination by stronger family members over weaker ones. Consequently, inheritance law serves as a means of social protection, especially for vulnerable parties such as women, children, and economically dependent family members (Agustin et al., 2022).

For Muslim societies, inheritance law occupies a highly strategic position because it forms an inseparable part of Islamic teachings. Islamic inheritance law, commonly referred to as *faraid*, derives directly from the Qur'an and Hadith, making it one of the most explicitly regulated aspects of Islamic family law. The Qur'anic verses concerning inheritance, particularly in Surah An-Nisa verses 11, 12, and 176, establish specific shares for heirs and emphasize the importance of justice in wealth distribution. Historically, these provisions represented a revolutionary transformation because they granted inheritance rights to women and children who, in pre-Islamic Arabian society, were often excluded entirely from inheritance distribution. Thus, Islamic inheritance law emerged as an instrument of social reform aimed at protecting human dignity and ensuring distributive justice within the family system (Huda, 2022).

The implementation of Islamic inheritance law in Indonesia cannot be separated from the country's pluralistic legal system. Indonesia recognizes the coexistence of several legal traditions, namely civil law inherited from the Dutch colonial period, customary law (*adat law*), and Islamic law. This pluralistic structure creates a complex legal landscape in which inheritance disputes may involve interactions among various normative systems. In Muslim communities, Islamic inheritance law is formally recognized through the Religious Courts and codified in the Compilation of Islamic Law (Kompilasi Hukum Islam/KHI), which serves as the primary reference for resolving Islamic family law disputes, including inheritance matters (Abdurrahman, 2010).

The legal foundation for the application of Islamic inheritance law in Indonesia is strengthened by Article 29 of the 1945 Constitution, which guarantees freedom of religion and allows Muslims to practice Islamic legal principles in matters related to personal and family law. Furthermore, Law Number 7 of 1989 concerning Religious Courts, as amended by subsequent legislation, grants Religious Courts absolute authority to adjudicate inheritance disputes among Muslims. The enactment of Presidential Instruction Number 1 of 1991 concerning the Compilation of Islamic Law further institutionalized Islamic inheritance law within Indonesia's national legal framework. Through Book II of the KHI, inheritance law was codified to provide greater legal certainty and uniformity in judicial practice (Ali, 2005).

Despite the existence of a codified legal framework, the implementation of Islamic inheritance law in Indonesia continues to face substantial challenges, particularly regarding the interpretation and realization of justice. One of the most debated issues concerns the proportional distribution ratio between male and female heirs, where males generally receive twice the share of females. Contemporary society, influenced by modern ideas of gender equality and human rights, frequently questions the relevance of this distribution model, especially in situations where women contribute equally or even predominantly to the family economy (Ahyani et al., 2023). Critics often interpret the 2:1 ratio as a form of gender discrimination incompatible with constitutional guarantees of equality.

However, within the framework of Islamic legal philosophy, justice is not necessarily synonymous with numerical equality. Islamic inheritance law is constructed upon the principle of proportional justice, which links rights to responsibilities. The larger inheritance share granted to male heirs is traditionally associated with their financial obligations toward the family, including the duty to provide maintenance (*nafkah*) for wives, children, and other dependents. Therefore, the difference in inheritance shares reflects not superiority or inferiority, but the distribution of socio-economic responsibilities within the Islamic family system (Ilhami, 2023). In this context, justice is understood as equity rather than absolute equality.

The tension between textual legal certainty and substantive justice becomes increasingly visible in contemporary Indonesian society. Social transformations such as urbanization, the emergence of dual-income households, increased participation of women in the workforce, and the diversification of family structures have altered the traditional socio-economic roles underlying classical inheritance rules. Additionally, modern forms of wealth such as intellectual property, digital assets, and financial instruments create new legal challenges that were not explicitly addressed in classical Islamic jurisprudence. Consequently, judges, scholars, and legal practitioners are required to reinterpret and contextualize Islamic inheritance principles in order to maintain both legal certainty and social relevance (Wahyu et al., 2024).

Indonesia's experience demonstrates that Islamic inheritance law is not a static legal system but a dynamic and adaptive one. The KHI itself represents a product of collective *ijtihad* by Indonesian Muslim scholars aimed at harmonizing classical Islamic jurisprudence with Indonesian socio-cultural realities. Various legal instruments introduced within the KHI, such as substitute heirs (*ahli waris pengganti*), mandatory wills (*wasiat wajibah*), marital property (*gono-gini*), grants (*hibah*), and peaceful settlement mechanisms (*takharuj*), indicate the effort to achieve substantive justice while preserving the normative framework of *faraid* (Nuruddin & Tarigan, 2004).

Among these instruments, the concept of substitute heirs in Article 185 of the KHI represents a significant innovation. Under classical Islamic jurisprudence, grandchildren whose parents die before the decedent may lose inheritance rights due to the doctrine of *hijab* (exclusion by closer heirs). The KHI modifies this principle by allowing grandchildren to replace their deceased parents and inherit accordingly. This provision reflects an effort to protect vulnerable family members, particularly orphans, from economic hardship and social injustice (Haula Fiqri et al., 2024).

Similarly, the doctrine of mandatory wills has evolved significantly within Indonesian judicial practice. Originally intended for adopted children and foster parents, the concept has been expanded through Supreme Court jurisprudence to include heirs of different religions who are formally barred from inheritance under classical *faraid* principles. This judicial expansion demonstrates the growing orientation of Indonesian Islamic law toward substantive justice and humanitarian considerations (Ichsan & Dewi, 2023). Through such mechanisms, Islamic inheritance law in Indonesia seeks to bridge the gap between rigid textual interpretation and the practical realities of modern family life.

The role of Religious Court judges is therefore crucial in realizing justice within inheritance disputes. Judges are not merely passive interpreters of statutory provisions but active legal discoverers (*rechtsvinding*) who must balance legal certainty, social benefit (*masalah*), and the lived realities of Indonesian Muslim communities. Through mediation, judicial interpretation, and the application of *maqashid syariah* principles, judges frequently attempt to achieve solutions that preserve family harmony while remaining consistent with Islamic legal values (Hamami, 2013). This judicial flexibility demonstrates that Islamic inheritance law in Indonesia functions as a living law responsive to societal change.

The concept of *maqashid syariah* plays an important role in understanding the philosophical foundation of justice in Islamic inheritance law. *Maqashid syariah* emphasizes that Islamic law aims to protect essential human interests, including religion, life, intellect, lineage, and property. Inheritance law, particularly through the principle of *hifz al-mal* (protection of property), seeks to ensure the fair circulation and preservation of wealth across generations. Therefore, inheritance rules should not be understood solely in textual or mathematical terms but also in light of their broader objectives in promoting social welfare and family stability (Jauhari, 2017).

Although many studies have examined Islamic inheritance law in Indonesia, much of the existing literature remains focused either on doctrinal analysis or on procedural aspects of inheritance disputes. Limited attention has been given to the reconstruction of the principle of justice within the contemporary Indonesian context, particularly regarding how substantive justice is operationalized through legal instruments and judicial practice. Furthermore, the relationship between classical *faraid* principles, the KHI, and the evolving jurisprudence of Religious Courts remains insufficiently explored in an integrated manner.

Based on this background, this study aims to analyze the reconstruction of the principle of justice in the Islamic inheritance law system in Indonesia. Specifically, this research seeks to answer two main questions: first, how is the principle of justice conceptualized within the Islamic inheritance law system as codified in the Compilation of Islamic Law; and second, how do legal instruments such as mandatory wills, substitute heirs, grants, and peaceful settlements function as mechanisms for achieving substantive justice in inheritance dispute resolution. Through a normative juridical approach, this study intends to contribute to the broader discourse on the modernization and contextualization of Islamic family law in Indonesia.

Ultimately, this research argues that justice in Islamic inheritance law should not be reduced to rigid mathematical equality. Rather, justice must be understood as a dynamic balance between rights, obligations, social realities, and humanitarian values. The Indonesian experience demonstrates that Islamic inheritance law possesses inherent flexibility capable of accommodating social transformation while maintaining fidelity to its theological foundations. Therefore, the reconstruction of the principle of justice in Islamic inheritance law does not signify a rejection of *faraid*, but rather a contextual reinterpretation aimed at ensuring that Islamic law continues to function as a living system of justice within contemporary Indonesian society.

Method

This research employs a normative juridical method, which focuses on the examination and in-depth study of legal norms contained in legislation, particularly those regulating Islamic family and inheritance law in Indonesia (Fyzee, 2008). This research specifically examines the implementation of the principle of justice as contained in Articles 171 to 193 of the Compilation of Islamic Law (KHI), in order to address challenges regarding the distribution of estates in accordance with the principle of proportionality of sharia.

This research uses two approaches: a conceptual approach (conceptual approach) and a case approach (case approach). The conceptual approach refers to doctrines and legal principles that have developed in Islamic legal science, such as proportional justice principles, *maqashid syariah*, and contemporary legal re-interpretation theory (Marzuki, 2005). The case approach is applied by examining inheritance disputes that arise in society, particularly those related to the issue of distributing shares between males and females and providing portions to those blocked under *faraid* (Cholid Abdurrohman, 2022). This research uses both primary legal materials (the Quran and Hadith as the main sources of law, Presidential Instruction No. 1 of 1991 on KHI, and the Religious Courts Act) and secondary legal materials (legal textbooks, Islamic law journals, and scholars' opinions on justice philosophy, *faraid* law, and Islamic family law).

The data analysis technique used in this research is qualitative prescriptive analysis, in which the researcher conducts a systematic examination of legal norms, legal principles, and doctrinal texts to formulate normative prescriptions regarding the ideal application of the principle of justice in Islamic inheritance law. This approach is in line with the nature of normative juridical research, which aims not merely to describe the law as it is (*lex lata*) but also to prescribe how the law ought to be (*lex ferenda*) in order to better serve the ideals of justice and public interest (Rahardjo, 2014).

To ensure the comprehensiveness of this study, a comparative analysis is also conducted between the classical *fiqh* positions on inheritance and the contemporary adaptations embodied in the KHI. This comparative dimension is essential for identifying the points of tension and convergence between traditional Islamic jurisprudence and the demands of modern Indonesian legal practice. Particular attention is paid to landmark Supreme Court decisions (*yurisprudensi Mahkamah Agung*) that have expanded or reinterpreted KHI provisions, as these judicial pronouncements constitute a form of living law that shapes the practical application of Islamic inheritance norms in Indonesia (Cholid Abdurrohman, 2022).

The scope of this research is limited to the normative analysis of Islamic inheritance law as applied in Indonesia, with particular focus on the provisions of Book II of the KHI (Articles 171 to 193) and relevant Supreme Court jurisprudence. The research does not extend to empirical sociological surveys of public attitudes toward inheritance, nor does it cover the inheritance systems of non-Muslim communities in Indonesia. This delimitation ensures a focused and methodologically coherent examination of the legal framework governing Islamic inheritance, while acknowledging the broader socio-legal context in which this framework operates (Rosyida & Nugraheni, 2024).

Results and Discussion

This section presents and discusses the findings of this normative juridical study on the principle of justice within the Islamic inheritance law system in Indonesia. The analysis is structured around two central research questions: first, the essence of the principle of justice as codified in the Compilation of Islamic Law (KHI); and second, the role of legal instruments in achieving substantive justice in inheritance dispute resolution. The discussion draws on primary legal materials namely the Qur'an, Hadith, and the KHI as well as secondary sources consisting of Islamic legal doctrine, jurisprudence from the Supreme Court of Indonesia, and scholarly opinion. The findings reveal a dynamic interplay between the textual certainty of *faraid* and the demands of substantive, context-sensitive justice, demonstrating that the KHI functions not merely as a codification of classical Islamic jurisprudence but as a living legal instrument responsive to the socio-cultural realities of Indonesian Muslim society. The discussion is organized into three main themes: (1) the transformation of the meaning of the principle of justice from mathematical toward proportional-functional justice; (2) the essence of the principle of justice as embedded in the KHI; and (3) the utilization of complementary legal instruments including mandatory testaments (*wasiat wajibah*), substitute heirs, grants (*hibah*), and peaceful settlement (*takharuj*) as mechanisms to bridge the gap between legal formalism and substantive justice in inheritance dispute resolution in Indonesia.

It is also important to note that the principle of justice in Islamic inheritance law must be examined in light of its foundational theological underpinnings. The Qur'anic verses on inheritance (An-Nisa: 11 to 12 and 176) were revealed as a revolutionary correction to the pre-Islamic Arabian custom of excluding women and children from

inheritance entirely. In this historical context, the 2:1 ratio represented a profound advancement in the recognition of women's property rights, granting them a guaranteed legal share for the first time. Understanding this historical-contextual dimension is critical to properly situating the justice discourse within Islamic inheritance law, particularly when evaluating contemporary critiques (Huda, 2022).

The KHI, as the primary normative instrument of Islamic inheritance law in Indonesia, reflects the outcome of an extensive *ijtihad* process conducted by Indonesian Muslim scholars (*ulama*) in the late 1980s. Its drafting process involved hundreds of *ulama* from various regions and schools of Islamic jurisprudence, making it a product of collective deliberation (*ijma'*) rooted in Indonesian socio-cultural realities. This origin gives the KHI a unique character: it is simultaneously a text of religious law and a product of national legal policy, embodying the balance between fidelity to classical *fiqh* and responsiveness to Indonesian social conditions.

Transformation of the Meaning of the Principle of Justice: From Mathematical Justice to Proportional-Functional Justice

The transformation of the meaning of the principle of justice in Islamic inheritance distribution in Indonesia has undergone a paradigm shift from textual-mathematical understanding toward proportional-functional justice. In this view, the distribution of estates is no longer merely seen as a rigid numerical calculation based on a 2:1 ratio between males and females but is understood as a legal instrument closely intertwined with the distribution of the obligation to provide financial support (*nafkah*) and the family's financial burdens. This proportional-functional justice asserts that the size of the right received by an heir must be in line with the legal functions and obligations they bear in the Islamic family system (Ilhami, 2023).

This understanding of proportional-functional justice draws heavily from the philosophical framework of distributive justice as articulated by classical Islamic scholars such as Al-Shatibi and Abu Zahrah, who emphasized that the purpose of divine law (*maqashid al-shari'ah*) is fundamentally oriented toward the realization of human welfare (*maslahah*). Al-Shatibi posited that all divine commands, including the *faraid* system, are designed to protect five essential human interests: religion (*hifz al-din*), life (*hifz al-nafs*), intellect (*hifz al-aql*), lineage (*hifz al-nasl*), and property (*hifz al-mal*). It is within this normative framework that the 2:1 ratio acquires its deepest justification: it is not a marker of gender inequality, but a mechanism for aligning inheritance rights with financial responsibilities within the Islamic family system (Haula Fiqri et al., 2024).

Contemporary Indonesian Islamic legal scholars have further developed the concept of proportional-functional justice to address the growing phenomenon of dual-income families and women as primary financial providers. Scholars such as Muhibbin and Wahid argue that while the formal *faraid* structure should be preserved to maintain legal certainty and textual integrity of divine command, the spirit of justice can be fulfilled through complementary instruments such as *hibah*, *wasiat*, and *takharuj* that operate outside the strict mathematical formula. This progressive interpretive approach demonstrates the inherent flexibility of Islamic inheritance law and its capacity to accommodate social change without abandoning its foundational theological principles (Wahyu et al., 2024).

The Essence of the Principle of Justice in the Inheritance Distribution System According to Islamic Law as Codified in the Compilation of Islamic Law (KHI)

Justice in the Compilation of Islamic Law (KHI) is fundamentally based on the principle of integral balance between the property rights received and the burden of obligations that each heir must bear. In the discourse of Islamic inheritance law in Indonesia, the manifestation of this justice is not understood as mere numerical equality (equality). Rather, KHI positions the value of justice as a form of proportional justice or equity, where the distribution of estates is carried out based on logical and objective considerations that go beyond uniform mathematical calculations for every individual.

The principle of the 2:1 ratio in inheritance between male and female heirs in KHI is a concrete manifestation of distributive justice based on socio-economic function. In this legal framework, the distribution of estates is not viewed merely as a transfer of material ownership, but as a supporting instrument in carrying out specific roles within the family ecosystem. KHI views this difference as rooted in the recognition of different responsibilities, so that the law provides a share that is proportionally aligned with the functional role of each individual (Anshary, 2011).

The principle of *ijbari* is one of the main pillars in Islamic inheritance law adopted by KHI. This principle means that the transfer of property from the decedent to the heirs occurs automatically by law (automatic transfer) from the moment of the decedent's death. The essence of justice from the *ijbari* principle lies in protecting the

rights of heirs from the intervention or arbitrariness of other parties (Muhibbin & Wahid, 2011). Furthermore, KHI adopts a bilateral or parental inheritance system, which is the result of collective *ijtihad* by Indonesian scholars. This system legally provides a fair and equal position for heirs from both the paternal and maternal lines, ensuring that inheritance rights are not dominated solely by the male lineage (Wahyu et al., 2024). KHI also adopts the principle of individuality, where the estate must be distributed to each heir individually to be owned absolutely. This principle aims to provide economic independence for each individual. Additionally, KHI introduces protective instruments such as mandatory wills (*wasiat wajibah*) for adopted children or foster parents, and regulations on marital property (*gono-gini*), which protect the rights of wives and weak parties from domination of the strong (Nuruddin & Tarigan, 2004).

The concept of *Maqashid Syariah*, particularly *hifz al-mal* (protecting property), provides the theological basis for justice in Islamic inheritance law. Protecting property (*hifz al-mal*) means preventing the accumulation of wealth in only certain parties, which can trigger conflict or economic inequality in the family. Through *faraid* regulations, Islam automatically redistributes wealth to a broad circle of heirs (Fyzee, 2008).

The implementation of these KHI principles in practice is not without tension. One of the most contested areas is the application of the individuality principle in the context of undivided family assets (*harta warisan tidak terbagi*). In many Indonesian families, particularly those with modest economic resources, the estate may consist of a single indivisible asset such as a family home or agricultural land. In such situations, the strict application of *faraid* shares often creates legal deadlock, as fractional shares cannot be physically realized. Religious Court judges frequently resort to *musyawarah* (deliberation) and creative legal remedies such as joint ownership (*kongsi*) or buyout arrangements to overcome these practical constraints while remaining faithful to the spirit of the KHI (Harahap, 2007).

Another significant dimension of the KHI's justice framework is its treatment of the decedent's obligations prior to estate distribution. Article 175 of the KHI establishes a clear priority hierarchy: the estate must first cover funeral expenses, then settle any debts of the decedent, then execute valid wills (up to one-third of the net estate), and only then distribute the remainder according to *faraid* shares. This sequential obligation ensures that the inheritance process serves not only the rights of heirs but also the responsibilities that the decedent carried during their lifetime. It reflects a holistic understanding of justice that considers both the rights of living heirs and the dignity of the deceased (Anshary, 2011).

The Use of Legal Instruments as a Means to Achieve Substantive Justice in Resolving Inheritance Disputes in Indonesia

a. Mandatory Testament (*Wasiat Wajibah*)

The mandatory testament (*wasiat wajibah*) is a crucial legal instrument in the dynamics of Islamic inheritance law in Indonesia, especially as a mechanism to accommodate the sense of justice for those who are biologically related but formally blocked by *faraid* provisions. Theoretically, a will is essentially the voluntary will of the decedent before death. However, in the context of the 'mandatory' will, the state through the judge's authority makes a legal intervention to establish a share of the estate for certain parties who are deemed worthy of receiving it for the sake of public interest (Bisri, 2003).

In its development in Indonesia, the mandatory testament has expanded in meaning and application beyond just adopted children or foster parents as textually regulated in Article 209 of KHI (Nuruddin & Tarigan, 2004). The Supreme Court's jurisprudence has significantly expanded the reach of this instrument, particularly by providing it to non-Muslim heirs who are barred from inheriting under *faraid* due to differences in faith (*ikhtilaf al-din*). This legal step was taken to fill the gap in distributive justice. The essence of justice in the mandatory testament fundamentally lies in its function as a social safety net within the family structure (Suma, 2004). Through this instrument, the social reality of adopted children who have served their adoptive parents for decades receives adequate legal protection (Bisri, 2003). The amount provided through mandatory testament is normatively limited to a maximum of one-third of the total estate, reflecting the precise balance between fulfilling justice for the deserving outside party and respecting the absolute rights of blood heirs.

The application of mandatory testament in the Religious Court also raises important questions about the limits of judicial discretion (*ijtihad qadha'i*). While the KHI expressly provides for mandatory testament for adopted children (Article 209), judges have gone beyond this textual provision to extend it to heirs barred by religious difference. This judicial expansion, while controversial among conservative legal scholars, reflects an orientation toward substantive justice that prioritizes the humanitarian bond between the deceased and the recipient over formal textual restrictions. The Supreme Court of Indonesia has consistently upheld these expansive

interpretations, lending legitimacy to this progressive judicial approach (Ichsan & Dewi, 2023; Puspantoro et al., 2025).

From the perspective of Maqashid Syariah, the mandatory testament fulfills the objective of protecting property (*hifz al-mal*) by ensuring that economically dependent individuals who have a *de facto* relationship with the deceased are not left entirely without recourse. This functional reading of the Maqashid framework allows judges to transcend the literalism of *faraid* while remaining within the overarching teleological logic of Islamic law. The mandatory testament thus serves as a crucial bridge between legal certainty and substantive justice in the Indonesian inheritance system (Jauhari, 2017).

b. Substitute Heir (*Abli Waris Pengganti*)

The substitute heir provision explicitly regulated in Article 185 of the KHI is a progressive juridical response to the problem of orphans' suffering in Indonesia's inheritance system. Sociologically, this instrument is present to overcome the injustice frequently experienced by grandchildren who lose their inheritance rights over the estate of their grandparents because their parents passed away earlier. Without this provision, orphan groups are often in an economically vulnerable position (Haula Fiqri et al., 2024).

In classical *fiqh*, grandchildren experiencing the condition of being blocked (*mahjub*) often received nothing if there were uncles or aunts as closer heirs. KHI makes a bold re-interpretation by allowing grandchildren to occupy the position of their parents as substitute heirs, receiving the share their parents would have received if still alive, with the limitation of not exceeding the share of heirs of the same degree (Haula Fiqri et al., 2024). The essence of justice in the substitute heir is the protection of children's futures that the death of a parent should not become a double burden by also losing economic rights from their grandparents (Agustin et al., 2022; Haula Fiqri et al., 2024).

c. Grant (*Hibah*) and Marital Property (*Gono-Gini*)

A grant (*hibah*) is a legal instrument carried out by the decedent during their lifetime to arrange the distribution of property to prospective heirs or other parties. In the context of substantive justice, a grant is often used by parents to balance the economic portion between sons and daughters. If a parent sees that a daughter has more urgent economic needs or a greater contribution, a grant becomes a means to provide additional shares outside the subsequent *faraid* distribution (Rosyida & Nugraheni, 2024). Justice in the grant instrument is fundamentally preventive and strategic, minimizing potential conflicts by distributing property transparently based on love and willingness while the grantor is alive (Rosyida & Nugraheni, 2024).

The existence of marital property (*gono-gini*) in Indonesian Islamic law is the most tangible form of recognition of a wife's contribution in building household economics. Before the distribution of inheritance according to *faraid* is carried out, KHI requires marital property to be separated first. This provision protects the wife from sudden poverty after her husband's death, especially for wives who are not formally employed but play a large role in managing household affairs (Ilhami, 2023). KHI pays attention to the fulfillment of the decedent's obligations before the estate is divided, such as funeral costs, debt repayment, and the execution of wills, ensuring that the property received by heirs is truly clean (*halalan thayyiban*).

d. Peace and Mediation (*Takharuj*)

Peace or *takharuj* is the pinnacle of implementing substantive justice in Islamic law, where heirs agree to set aside the mathematical figures of *faraid* for the sake of pursuing justice based on willingness (*antaradin*). Islam greatly prioritizes *ishlah* (peace) over rigid legal victory. Mediation in inheritance cases in the Religious Court is not merely a formal procedure but a means to explore what all parties truly feel is fair. The substantive justice in mediation allows heirs to forgive each other and share burdens, and resolutions born from peaceful agreements have stronger emotional executorial value than imposed judicial verdicts (Rahmadi, 2010). Through the *takharuj* mechanism, an economically well-off heir can give or sell their portion to a needier sibling at a symbolic or no price a highly noble form of wealth redistribution driven by *sharia*. This principle also prevents the destruction of indivisible family assets, such as a single family home or family business (Manan, 2005).

The utilization of grants (*hibah*) and the recognition of marital property (*gono-gini*) together form a preventive justice architecture within the KHI framework. By enabling the distribution of assets during the owner's lifetime, *hibah* allows for a degree of wealth redistribution that is sensitive to the actual needs and contributions of individual family members. This is particularly significant in families where daughters have provided substantial caregiving or financial contributions that are not formally recognized under the *faraid* formula. A grant, when

properly executed with the consent of all parties and documented before a notary or witnessed appropriately, can lawfully supplement the inheritance shares of daughters or other heirs who would otherwise receive a smaller portion (Rosyida & Nugraheni, 2024).

The mechanism of takharuj represents perhaps the most elegant expression of substantive justice in Islamic inheritance law, as it transforms the resolution of inheritance disputes from a potentially adversarial legal process into a collaborative family deliberation. By empowering heirs to negotiate and redistribute shares based on mutual consent, takharuj acknowledges that justice is ultimately a social and relational concept, not merely a mathematical one. Indonesian Religious Court practice has increasingly embraced mediation as a prerequisite to formal adjudication in inheritance cases, reflecting the legislative mandate of Supreme Court Regulation Number 1 of 2016 on Mediation Procedures in Courts. This integration of mediation into the formal judicial process represents a significant institutional affirmation of the takharuj principle (Rahmadi, 2010).

Implementation of Mandatory Testament and Substitute Heir as Instruments of Substantive Justice

The implementation of mandatory testament and substitute heir in Indonesia's Islamic inheritance law system is a highly progressive juridical breakthrough to realize substantive justice for those who are classically-textually blocked from receiving inheritance. Through Article 185 KHI, grandchildren whose parents died before the decedent are given the position of substitute heir, thereby preventing the 'cutting of economic rights' which is often considered unjust in Indonesian family practice. The expansion of the mandatory testament through Supreme Court jurisprudence (providing property shares to heirs of different religions and adopted children) shows that Islamic law in Indonesia is not rigid but is able to adopt humanitarian values and public interest (maslahah) as the spirit of justice (Ichsan & Dewi, 2023).

The Role of Religious Court Judges in Realizing Ex Aequo Et Bono in Inheritance Cases

A judge in the Religious Court environment in inheritance cases is not merely limited to the rigid application of statutory text, but functions as a local-level mujtahid tasked with exploring the values of justice living in society. Through the authority of *ex aequo et bono* (deciding based on justice and benefit), judges often conduct legal discovery (*rechtsvinding*) to overcome deadlocks in the distribution of property that cannot be physically distributed according to *faraid* shares. In many cases, judges encourage mediation efforts to achieve peaceful agreements (*tashaluh*), where heirs agree to distribute property based on willingness (*antaradin*) to maintain family harmony. This flexibility shows that judicial institutions in Indonesia place substantive justice above legalistic-mathematical certainty, ensuring that every inheritance verdict not only has permanent legal force, but also provides real benefit (*maslahah*) for all heirs involved (Hamami, 2013).

Conclusion

Based on the analysis and discussion presented in this study, it can be concluded that the principle of justice in Islamic inheritance law in Indonesia, as codified in the Compilation of Islamic Law (Kompilasi Hukum Islam/KHI), should not be interpreted merely as mathematical equality, but rather as proportional-functional justice grounded in the balance between rights and obligations. The *faraid* system fundamentally reflects the concept of distributive justice in Islamic law, where the distribution of inheritance is closely related to the socio-economic responsibilities borne by each heir within the family structure. Therefore, the distinction in inheritance portions between male and female heirs is not intended to establish inequality, but rather to preserve social balance and ensure the continuity of family welfare in accordance with the principle of *Maqashid Syariah*, particularly the protection of property (*hifz al-mal*) and family lineage (*hifz al-nasl*).

This study further demonstrates that the KHI represents a dynamic form of Islamic legal reform in Indonesia. Through its codification, Islamic inheritance law has been transformed into positive law capable of providing legal certainty while remaining responsive to the social realities of Indonesian Muslim society. The KHI not only adopts classical principles of *faraid* but also introduces progressive legal instruments such as substitute heirs (*ahli waris pengganti*), mandatory wills (*wasiat wajibah*), grants (*hibah*), marital property arrangements (*gono-gini*), and peaceful settlement mechanisms (*takharuj*). These instruments function as mechanisms for achieving substantive justice, especially for vulnerable groups who may be excluded under rigid textual interpretations of classical inheritance law, including adopted children, orphaned grandchildren, and heirs of different religions.

The findings of this research also reveal that the implementation of justice in Islamic inheritance law cannot rely solely on rigid textual interpretation. Instead, it requires contextual legal reasoning and judicial flexibility. In this regard, Religious Court judges play a highly significant role as legal discoverers (*rechtsvinding*) and local-level

mujtahids who are responsible for harmonizing legal certainty with social justice. Through mediation, judicial interpretation, and the application of *maqashid syariah* principles, judges contribute substantially to resolving inheritance disputes in a manner that preserves family harmony and reflects the living sense of justice within society. The integration of mediation mechanisms into inheritance dispute resolution, particularly through the principle of *takharuj*, further demonstrates that Islamic law prioritizes reconciliation (*ishlah*) and collective welfare over adversarial legal formalism.

Moreover, this study confirms that legal certainty and substantive justice are not contradictory values within the Indonesian Islamic inheritance law system. Instead, both can coexist through an interpretive approach that combines fidelity to Qur'anic norms with sensitivity to changing social realities. The flexibility of Islamic inheritance law in Indonesia illustrates the capacity of Islamic legal tradition to adapt to modern societal developments without abandoning its theological foundations. This adaptability is particularly important in responding to contemporary challenges such as changing gender roles, economic transformation, and increasingly complex family structures.

Finally, this study emphasizes the importance of strengthening public legal awareness regarding Islamic inheritance law. Many inheritance disputes arise due to limited understanding of legal rights and available mechanisms within the KHI framework. Therefore, legal education, judicial reform, and the continued development of progressive jurisprudence are necessary to ensure that Islamic inheritance law continues to function as a living system of justice that promotes harmony, legal certainty, and social welfare within Indonesia's pluralistic society.

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Author Contributions Statement

SA: Conceptualization, methodology, formal analysis, writing – original draft preparation.

FP: Theoretical framework development, validation, legal interpretation, writing – review and editing.

MR: Data curation, literature review, comparative analysis, writing – review and editing.

FH: Supervision, critical review, refinement of arguments, writing – review and editing.

All authors have read and approved the final version of the manuscript and agree to be accountable for all aspects of the work, ensuring the integrity and accuracy of the research.

AI Usage Statement

The authors declare that the use of Artificial Intelligence (AI) tools in this study was strictly limited to language editing, grammar checking, and improving the clarity and readability of the manuscript. AI tools were not used to generate research ideas, conduct substantive analysis, interpret legal materials, or draw conclusions.

All intellectual content, legal reasoning, and academic arguments presented in this article are the original work of the authors. The authors take full responsibility for the accuracy, originality, and integrity of the manuscript in accordance with academic and publication ethics.

Conflict of Interest

The authors declare that there are no conflicts of interest regarding the publication of this article. The research was conducted in the absence of any commercial or financial relationships that could be construed as a potential conflict of interest.

References

- Abdurrahman. (2010). *Kompilasi Hukum Islam di Indonesia*. Akademika Pressindo.
- Agustin, F., Hasuri, H., & Najmudin, N. (2022). Kedudukan Hukum Islam dalam Pelaksanaan Waris di Indonesia. *Mizan: Journal of Islamic Studies*, 10(1), 1–14.
- Ahyani, H., Putra, H. M., & Muharir, M. (2023). Prinsip-Prinsip Keadilan Berbasis Ramah Gender dalam Pembagian Warisan di Indonesia. *Al-Mawarid Jurnal Syariah Dan Hukum (JSYH)*, 5(1), 73–100. <https://doi.org/10.20885/mawarid.vol5.iss1.art6>
- Ali, M. D. (2005). *Hukum Islam: Pengantar Ilmu Hukum dan Tata Hukum Islam di Indonesia*. RajaGrafindo Persada.

- Al-Shatibi, A. I. (1997). *Al-Muwafaqat fi Ushul al-Syari'ah* (Vol. 2). Dar al-Ma'rifah.
- Anshary, M. (2011). *Hukum Kewarisan Islam dalam Teori dan Praktek*. Pustaka Pelajar.
- Anwar, S. (2007). *Hukum Perjanjian Islam: Studi tentang Teori Akad dalam Fikih Muamalat*. RajaGrafindo Persada.
- Bisri, C. H. (2003). *Peradilan Agama di Indonesia*. RajaGrafindo Persada.
- Cholid Abdurrohman, M. (2022). Perencanaan Kurikulum Pendidikan Islam. *Rayah Al-Islam*, 6(01), 11–28. <https://doi.org/10.37274/rais.v6i01.524>
- Darmodiharjo, D., & Shidarta. (2004). *Pokok-Pokok Filsafat Hukum: Apa dan Bagaimana Filsafat Hukum Indonesia*. Gramedia Pustaka Utama.
- Daud, H. (2012). *Asas-Asas Hukum Kewarisan Islam*. Bumi Aksara.
- Fyzee, A. A. A. (2008). *Outlines of Muhammadan Law*. Oxford University Press.
- Hamami, T. (2013). *Peradilan Agama dalam Reformasi Kekuasaan Kehakiman di Indonesia*. Tatanusa.
- Harahap, Y. (2007). *Kedudukan Kewenangan dan Acara Peradilan Agama*. Sinar Grafika.
- Haula Fiqri, M., Arham, M., & Yusuf, M. (2024). Ahli Waris Pengganti dalam KHI Pasal 185: Inovasi Hukum yang Bertentangan dengan Prinsip Hijab. *USRAH: Jurnal Hukum Keluarga Islam*. <https://jurnal.staim-probolinggo.ac.id>
- Huda, N. (2022). Ijtihad Kontemporer dalam Hukum Keluarga Islam. *Ahkam: Jurnal Ilmu Syariah*, 22(1), 33–54.
- Ichsan, M., & Dewi, E. (2023). Reformulasi Hukum Wasiat Wajibah di Indonesia terhadap Kewarisan Anak Angkat Perspektif Hukum Islam. *Maqasid: Jurnal Hukum Islam*, 12(1). <https://doi.org/10.30651/mqs.v12i1.15885>
- Ilhami, H. (2023). Kedudukan Asas Keadilan Berimbang dalam Hukum Kewarisan Islam. *Mimbar Hukum*, 32(2), 243–259.
- Jauhari. (2017). *Maqashid Syariah sebagai Paradigma Ijtihad Kontemporer*. Pustaka Pelajar.
- Khallaf, A. W. (2003). *Ilmu Ushul al-Fiqh*. Rineka Cipta.
- Manan, B. (2005). *Sistem Peradilan di Indonesia*. Pusat Studi Hukum FH-UII.
- Mardani. (2014). *Hukum Waris Islam di Indonesia*. RajaGrafindo Persada.
- Marzuki, P. M. (2005). *Penelitian Hukum* (1st ed.). Penerbit Kencana.
- Muhibbin, Moh., & Wahid, A. (2011). *Hukum Kewarisan: Islam sebagai Pembaruan Hukum Positif di Indonesia*. Sinar Grafika.
- Mutahhari, M. (1992). *Keadilan Ilahi* (A. Effendi, Ed.). Mizan.
- Nafisyah, S. N., & Guspita, D. R. (2024). Hukum Waris Islam: Keadilan dalam Pembagian Harta dan Penerapannya. *Jurnal Dinamika Lembaga Syariah*, 1(2), 137–152. <https://doi.org/10.58824/jdls.v1i2.233>
- Nuruddin, A., & Tarigan, A. A. (2004). *Hukum Perdata Islam di Indonesia: Studi Kritis Perkembangan Hukum Islam dari Fikih, UU No. 1/1974 sampai KHI*. Kencana.
- Petita. (2024). Examining the Basis of Maqashid Syariah in Renewal of Islamic Law in Indonesia. *PETITA: Jurnal Kajian Ilmu Hukum Dan Syariah*, 9(1). <https://doi.org/10.22373/petita.v9i1.258>
- Prodjodikoro, W. (2013). *Hukum Waris di Indonesia*. Varsa.
- Puspantoro, R., Anshori, A. G., & Sulistyawati, A. (2025). Pertimbangan Hakim dalam Perluasan Wasiat Wajibah di Luar Ketentuan KHI. *Journal of Law, Society, and Islamic Civilization*. <https://jurnal.uns.ac.id/JoLSIC/article/view/109134>
- Qutb, S. (1994). *Keadilan Sosial dalam Islam* (A. Mohammad, Ed.). Pustaka.
- Rahardjo, S. (2014). *Ilmu Hukum*. Citra Aditya Bakti.
- Rahmadi, T. (2010). *Mediasi: Penyelesaian Sengketa Melalui Pendekatan Mufakat*. RajaGrafindo Persada.
- Ramulyo, I. (1996). *Hukum Perkawinan Islam: Suatu Analisis dari Undang-Undang No. 1 Tahun 1974 dan Kompilasi Hukum Islam*. Bumi Aksara.
- Rofiq, A. (2013). *Hukum Islam di Indonesia*. RajaGrafindo Persada.
- Rosyida, S., & Nugraheni, D. (2024). Wasiat Melebihi Sepertiga Harta Warisan Akibat Adanya Ahli Waris Dzawil Arham Perspektif Hukum Kewarisan Islam. *Al-Mawarid Jurnal Syariah Dan Hukum (JSYH)*, 6(1), 131–146.
- Sjadzali, M. (1997). *Ijtihad Kemanusiaan*. Paramadina.
- Soleman, W., Ambo, S., & Thalita, M. D. (2022). Fiqih Mawaris dan Hukum Adat Waris Indonesia. *Al-Mujtahid: Journal of Islamic Family Law*, 2(2), 92. <https://doi.org/10.30984/ajifl.v2i2.1958>

- Suhaili, A. (2025). Integrasi Maqāṣid al-Syarīʿah dalam Praktik Peradilan Agama di Indonesia: Studi Alternatif Penyelesaian Sengketa Keluarga. *Mabahits: Jurnal Hukum Keluarga*, 6(1).
- Suma, M. A. (2004). *Hukum Keluarga Islam di Dunia Islam*. RajaGrafindo Persada.
- Syarifuddin, A. (2009). *Ushul Fiqh: Jilid 2*. Kencana.
- Usman, R. (2009). *Hukum Kewarisan Islam dalam Dimensi Hukum Positif*. Mandar Maju.
- Wahyu, W., Syaʿbani, M. A., & Permana, S. (2024). Hak Waris dan Keadilan: Menggagas Reformasi Hukum Keluarga dengan Prinsip Maqasid Syariah. *Jurnal Studi Inovasi*, 4(2), 11–21. <https://doi.org/10.52000/jsi.v4i2.156>
- Waluyo, B. (1991). *Penelitian Hukum dalam Praktek*. Sinar Grafika.
- Yaswirman. (2011). *Hukum Keluarga: Karakteristik dan Prospek Doktrin Islam dalam Statuta Modern*. Rajawali Pers.