



## A Comparative Study of Compulsory Bequests (*Wasiat Wajibah*) in Islamic Inheritance Law: The Cases of Indonesia and Egypt

Author	Abstract
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### Introduction

Inheritance law in Islam holds a distinctive and central role in the structure of Muslim family law. Rooted in the Qur'an and further developed through the traditions of the Prophet (Sunnah), consensus (*ijma'*), and analogy (*qiyas*), Islamic inheritance law outlines precise distributions of wealth to family members upon death. It is one of the most meticulously detailed legal fields in classical Islamic jurisprudence (*fiqh*), with Surah an-Nisa providing direct instructions on the fractional shares of heirs. This emphasis demonstrates Islam's concern for fairness, familial responsibility, and financial clarity at the end of life.<sup>1</sup>

Within the traditional Islamic inheritance system, the concept of *wasiat* (bequest) emerges as a means by which a Muslim may voluntarily allocate up to one-third of their estate to non-heirs or for charitable purposes. While not obligatory, *wasiat* serves as a spiritual and social tool, enabling testators to express concern for the needy, to fulfill moral duties, or to repair strained relationships. Classical jurists generally agree that a bequest cannot be made to one of the statutory heirs unless the other heirs agree, a rule based on the hadith: "There is no bequest for an heir".<sup>2</sup>

<sup>1</sup> Nailly Fadhilah, "Pembaruan Hukum Waris Islam: Wasiat Wajibah Mesir Dan Relevansinya Dengan Konsep Waris Pengganti Indonesia," *Al-Mawarid Jurnal Syariah Dan Hukum (JSYH)* 3, no. 1 (2021): 36–47.

<sup>2</sup> Abdul Aziz et al., "Wasiat Wajibah Bagi Ahli Waris Non-Muslim Di Indonesia Perspektif Najmuddin At-Thufi," *Tasyri': Journal of Islamic Law* 2, no. 1 (2023): 141–73.

Despite the clarity of this structure, modern Muslim societies have encountered new social realities that the traditional inheritance framework does not fully accommodate. One such reality involves situations where certain family members, such as grandchildren from a deceased child, receive no inheritance due to the presence of closer surviving heirs. This has led to perceived inequities, particularly when these grandchildren had close ties to the deceased and depended on their financial support. As a response to these social changes, several Muslim-majority countries introduced legal reforms in the form of *wasiat wajibah* or compulsory bequests.<sup>3</sup>

The *wasiat wajibah* is a legal innovation developed through contemporary *ijtihad* (independent reasoning) to fulfill the ethical objective of *maslahah* (public benefit) and prevent injustice within the inheritance process. It mandates that certain parties—typically grandchildren whose parent has predeceased the deceased grandparent—receive a designated share of the estate, even though they are not direct heirs according to traditional Islamic law. This concept reflects an effort to reconcile classical legal frameworks with modern notions of equity and family justice.<sup>4</sup>

The emergence of *wasiat wajibah* illustrates a broader trend in Islamic legal development, where state legislation selectively codifies or modifies traditional doctrines to suit contemporary contexts. This phenomenon is especially visible in countries that incorporate Islamic law into national legal systems through codification and statutory reform. Among these, Indonesia and Egypt stand out as significant case studies due to their unique trajectories in incorporating *wasiat wajibah* into their respective legal systems.

Indonesia, the country with the largest Muslim population in the world, has adopted Islamic law primarily through the *Kompilasi Hukum Islam* (KHI, Compilation of Islamic Law), a non-legislative but widely applied legal document in religious courts. The KHI introduced *wasiat wajibah* in a limited sense, particularly for adopted children and, in later judicial practice, for grandchildren. Despite its non-binding character, the KHI reflects an attempt to bring Islamic inheritance principles in line with national social values and family realities.<sup>5</sup>

In contrast, Egypt has developed a more formal and codified system of Islamic inheritance law through legislation. The Egyptian Civil Law, particularly through Law No. 71 of 1946 and its amendment in Law No. 219 of 1953, institutionalized *wasiat wajibah* as a binding obligation. This provision ensures that grandchildren from a predeceased child receive a share equal to what their parent would have inherited, up to one-third of the estate. The Egyptian model demonstrates a deliberate legal modernization within a civil law framework grounded in Islamic jurisprudence.<sup>6</sup>

This comparative study seeks to understand how both countries have interpreted and applied the concept of *wasiat wajibah*, analyzing their respective legal frameworks, judicial interpretations, and socio-legal implications. The selection of Indonesia and Egypt is purposeful. While both are Muslim-majority states with strong Islamic legal traditions, they represent contrasting legal cultures—

<sup>3</sup> Fadhilah, "Pembaruan Hukum Waris Islam: Wasiat Wajibah Mesir Dan Relevansinya Dengan Konsep Waris Pengganti Indonesia."

<sup>4</sup> Abdul Aziz, "Pembagian Waris Berdasarkan Tingkat Kesejahteraan Ekonomi Ahli Waris Dalam Tinjauan Maqashid Shariah," *De Jure: Jurnal Hukum Dan Syariah* 8, no. 1 (2016): 48–63, <https://doi.org/10.18860/j-fsh.v8i1.3729>.

<sup>5</sup> Ana Furqan, Alfitri Alfitri, and Akhmad Haries, "The Difference of a Child (Walad) Concept in Islamic Inheritance Law and Its Implications on The Decisions of the Religious Courts in Indonesia," *Mazahib: Jurnal Pemikiran Hukum Islam* 17, no. 2 (January 18, 2019): 119–45, <https://doi.org/10.21093/mj.v17i2.1212>.

<sup>6</sup> Karim El Chazli, "Recent Developments in Egyptian Family and Inheritance Law," *Yearbook of Islamic and Middle Eastern Law Online* 21, no. 1 (2022): 116–22.

Indonesia with its pluralistic and religious court-based approach, and Egypt with its centralized, codified legal system.<sup>7</sup>

The central research questions of this study are: (1) How is the concept of *wasiat wajibah* legally defined and applied in Indonesia and Egypt? (2) What are the similarities and differences in their legal sources, implementation mechanisms, and social rationale? (3) To what extent do these models reflect broader trends in Islamic legal reform? By exploring these questions, this study contributes to the ongoing discourse on the adaptability of Islamic law in modern legal systems.

Methodologically, this research adopts a normative legal approach combined with comparative legal analysis. Primary sources include statutory texts such as the *Kompilasi Hukum Islam* in Indonesia and Egyptian Law No. 71 of 1946. These are analyzed alongside judicial decisions, legal commentaries, and academic literature. Secondary sources include scholarly analyses, reports from legal practitioners, and relevant fatwas issued by religious authorities.

The scope of this study is limited to the legal treatment of *wasiat wajibah* concerning grandchildren from predeceased children, as they are the most common and contested beneficiaries in both countries. While other applications of *wasiat wajibah*, such as for adopted children in Indonesia, are noteworthy, they fall outside the primary focus of this comparison. The study also concentrates on post-independence legal developments, avoiding pre-modern historical analyses unless needed for doctrinal clarification.

Ultimately, this study aims to provide a deeper understanding of how *wasiat wajibah* functions as a legal bridge between Islamic legal tradition and contemporary social needs. Through this lens, the study illustrates the dynamic nature of Islamic law as it interacts with national legal systems, judicial reasoning, and evolving societal norms. It also raises critical questions about the future of Islamic inheritance law reform in the face of changing family structures and legal expectations.

In addition to its comparative value, this analysis holds practical relevance for policymakers, legal scholars, and practitioners engaged in Islamic family law reform. It reveals not only how different legal systems interpret Islamic norms but also how they institutionalize them to achieve justice and public welfare. As such, *wasiat wajibah* serves as a case study of how Islamic legal principles can be modernized without compromising their foundational ethos.

By situating this study within a comparative legal framework, the study contributes to the broader academic field of Islamic legal studies and legal pluralism. It demonstrates that legal reform in Muslim-majority contexts is not merely a matter of abandoning tradition, but rather, of revisiting it with new tools, insights, and commitments to justice.

## Literature Review

The discourse surrounding Islamic inheritance law (*faraid*) and its modern reform, particularly in the context of *wasiat wajibah* (compulsory bequests), has garnered increasing academic attention over the last several decades. Scholars from various disciplines—including Islamic jurisprudence, comparative law, and socio-legal studies—have investigated how classical doctrines are interpreted and adapted in contemporary Muslim-majority societies. This literature review explores key

<sup>7</sup> M Taufiq Agiel et al., “The Dynamics of Inheritance in Various Modern Muslim Countries,” *Al Mashaadir: Jurnal Ilmu Syariah* 4, no. 1 (2023): 1–11.

contributions relevant to the concept of *wasiat wajibah*, with a specific focus on Indonesia and Egypt, as well as broader theoretical frameworks surrounding Islamic legal reform.<sup>8</sup>

Classical Islamic jurisprudence, as outlined in seminal works by jurists such as Al-Kasani (*Bada'i al-Sana'i*), Al-Mawardi (*Al-Hawi al-Kabir*), and Ibn Qudamah (*Al-Mughni*), positions *wasiat* (bequests) as a non-obligatory act of charity limited to one-third of a testator's estate and generally excludes heirs from its recipients. The hadith, "*La wasiyyah li warith*" (There is no bequest for an heir), forms the foundational basis for this restriction. However, as noted by Coulson (1971)<sup>9</sup> and Schacht (1975)<sup>10</sup>, Islamic law's textual rigidity is often mitigated through mechanisms of *ijtihad*, allowing room for contextual reinterpretation.

In contemporary scholarship, Anderson (1965)<sup>11</sup> and later Tucker (2008)<sup>12</sup> trace how modern states have re-engaged Islamic inheritance law through statutory reforms to address evolving family structures. These reforms have primarily focused on protecting dependents who are excluded from inheritance under classical doctrine, especially grandchildren of predeceased children. The introduction of *wasiat wajibah* in various national legal systems marks a critical intervention in balancing religious principles and social justice imperatives.<sup>13</sup>

The Egyptian legal model has been studied extensively due to its pioneering role in codifying *wasiat wajibah*. Nasir (1990)<sup>14</sup> and Al-Ashmawi (1993)<sup>15</sup> provide in-depth analyses of Egypt's Law No. 71 of 1946 and Law No. 219 of 1953, which institutionalized the right of grandchildren to inherit through a compulsory bequest mechanism. Nasir argues that the Egyptian legal reform was influenced by a mix of traditional *maliki* jurisprudence and public welfare considerations (*maslahah mursalah*). Al-Ashmawi, on the other hand, interprets these reforms as part of a broader project of "Islamic modernism," in which the state plays an active role in reinterpreting Sharia.<sup>16</sup>

More recent works by El-Shazly (2014)<sup>17</sup> and Abou El Fadl (2014)<sup>18</sup> revisit Egypt's inheritance law in light of constitutionalism and the changing role of the judiciary. They highlight how Egyptian courts consistently uphold the legal mandate of *wasiat wajibah* without requiring consent from other heirs, suggesting a firm institutionalization of the concept. These studies underline how legal certainty and enforceability are essential features of the Egyptian model.

In the Indonesian context, the academic conversation has evolved around the *Kompilasi Hukum Islam* (KHI), a non-legislative but widely implemented codification of Islamic law. Scholars such as

<sup>8</sup> Mohamad Faisal Aulia, "Analisis Perbandingan Penerapan Hukum Keluarga Di Mesir Dan Di Indonesia," *Al-Ahwal Al-Syakhsiyyah: Jurnal Hukum Keluarga Dan Peradilan Islam* 2, no. 2 (2021): 123–32.

<sup>9</sup> N.J. Coulson, *A History of Islamic Law* (Endinburg: Endinburg University Press, 1971).

<sup>10</sup> Joseph Schacht, *The Origins of Muhammadan Jurisprudence* (Oxford: Oxford University Press, 1975).

<sup>11</sup> James N D Anderson, "Recent Reforms in the Islamic Law of Inheritance," *International & Comparative Law Quarterly* 14, no. 2 (1965): 349–65.

<sup>12</sup> Judith E Tucker, *Women, Family, and Gender in Islamic Law* (Cambridge: Cambridge University Press, 2008).

<sup>13</sup> Iim Fahimah et al., "Interfaith Inheritance in Muslim Families in Indonesia: Practices, Philosophy, and the Direction of National Inheritance Law Development," *AHKAM: Jurnal Ilmu Syariah* 24, no. 2 (2024): 379–96.

<sup>14</sup> Jamal J Nasir, *The Islamic Law of Personal Status* (London: Graham & Trotman, 1990).

<sup>15</sup> Muhammad Said Al-Ashmawi, *Jawhar Al-Islam* (Cairo: Sina li al-Nashr, 1993).

<sup>16</sup> Aksin Wijaya, "Substantive Islam (A New Direction on The Implementation of Islamic Sharia According to Muhammad Said Al-Ashmawi)," in *International Conference on Qur'an and Hadith Studies (ICQHS 2017)* (Atlantis Press, 2017), 309–18.

<sup>17</sup> Nadia E El-Shazly, "When the Sphinx Awoke: An Eye Witness Account of Egypt's Revolution," *HH Sheikh Nasser Al-Mohammad Al-Sabah Publication Series* 9 (2014): 1–45.

<sup>18</sup> Khaled Abou El Fadl, *Speaking in God's Name: Islamic Law, Authority and Women* (London: Simon and Schuster, 2014).

Cammack, Young, and Heaton (1996),<sup>19</sup> Bowen (2003),<sup>20</sup> and Hooker (2008)<sup>21</sup> have noted that the KHI represents a unique form of state-sponsored Islamic law that blends legal positivism with local socio-religious values. While *wasiat wajibah* is addressed in Article 209 of the KHI, its application is largely limited to adopted children and, by judicial extension, to grandchildren.

Indonesian legal scholars, including Salim (2015)<sup>22</sup> and Nurlaelawati (2010),<sup>23</sup> have critiqued the ambiguous legal status of *wasiat wajibah* in Indonesia. They point out that the KHI lacks the force of law and depends heavily on judicial interpretation and the consent of surviving heirs. Moreover, the absence of a binding national statute limits the consistent application of *wasiat wajibah*, making its implementation uneven across regions and cases.

From a comparative perspective, Hooker (2008)<sup>24</sup> provides a valuable framework for analyzing how Islamic legal doctrines are localized and transformed by national legal systems. His work underscores the importance of legal pluralism in countries like Indonesia, where multiple legal traditions—customary (*adat*), religious (Islamic), and civil law—interact dynamically. In contrast, Egyptian law reflects a more centralized and hierarchical legal culture, which facilitates the codification and uniform application of Islamic principles.

The theoretical underpinnings of *wasiat wajibah* also intersect with debates on Islamic legal hermeneutics and the role of *maqasid al-sharia* (objectives of Islamic law). Scholars such as Kamali (2008)<sup>25</sup> and Auda (2007)<sup>26</sup> argue that *maslahah* and *justice* should be guiding principles in adapting Islamic law to contemporary circumstances. In the case of *wasiat wajibah*, these principles provide justification for reforming classical inheritance laws to address the needs of vulnerable family members such as orphaned grandchildren.

In addition, feminist legal scholars have approached Islamic inheritance reforms through the lens of gender justice. Studies by Mir-Hosseini (2006)<sup>27</sup> and An-Na'im (2002)<sup>28</sup> examine how patriarchal interpretations of Sharia can be challenged through state-led reinterpretation. Although their work does not focus directly on *wasiat wajibah*, their arguments support the broader notion that Islamic family law is not static but subject to ethical and social re-evaluation.

<sup>19</sup> Mark Cammack, Lawrence A Young, and Tim Heaton, "Legislating Social Change in an Islamic Society-Indonesia's Marriage Law," *Am. J. Comp. L.* 44 (1996): 45.

<sup>20</sup> John R Bowen, *Islam, Law, and Equality in Indonesia: An Anthropology of Public Reasoning* (Cambridge: Cambridge University Press, 2003). "title": "Islam, law, and equality in Indonesia: An anthropology of public reasoning", "type": "book", "uris": [{"http": "http://www.mendeley.com/documents/?uuid=1fbbb1a0-6457-4347-81bb-041a0009105e"}], "mendeley": {"formattedCitation": "John R Bowen, <i>Islam, Law, and Equality in Indonesia: An Anthropology of Public Reasoning</i> (Cambridge: Cambridge University Press, 2003

<sup>21</sup> Michael Barry Hooker, *Indonesian Syariah: Defining a National School of Islamic Law* (Singapore: Institute of Southeast Asian Studies, 2008).

<sup>22</sup> Arskal Salim, *Contemporary Islamic Law in Indonesia: Sharia and Legal Pluralism* (Edinburgh: Edinburgh University Press, 2015).

<sup>23</sup> Euis Nurlaelawati, *Modernization, Tradition and Identity: The Kompilasi Hukum Islam and Legal Practice in the Indonesian Religious Courts*, vol. 4 (Amsterdam: Amsterdam University Press, 2010).

<sup>24</sup> Hooker, *Indonesian Syariah: Defining a National School of Islamic Law*.

<sup>25</sup> Mohammad Hashim Kamali, *Shari'ah Law: An Introduction* (Oxford: Simon and Schuster, 2008).

<sup>26</sup> Jasser Auda, *Maqashid Al-Shariah as Philosophy of Islamic Law: A System Approach* (Herndon: The International Institute of Islamic Thought, 2007).

<sup>27</sup> Ziba Mir-Hosseini, "Muslim Women's Quest for Equality: Between Islamic Law and Feminism," *Critical Inquiry* 32, no. 4 (2006): 629-45.

<sup>28</sup> Abdullahi Ahmed An-Na'im, "Shari'a and Islamic Family Law: Transition and Transformation," in *Islamic Family Law in a Changing World: A Global Resource Book*, ed. Abdullahi Ahmed An-Na'im (London: Zed Books, 2002), 1-22.

Despite the growing body of literature, few works have directly compared the legal construction and implementation of *wasiat wajibah* in both Indonesia and Egypt. Most studies tend to focus on one national context or address *wasiat wajibah* as part of broader inheritance or family law reforms. This study addresses that gap by offering a focused comparative analysis of two prominent Muslim-majority countries, using *wasiat wajibah* as a case study of legal reform, judicial discretion, and Islamic normative transformation.<sup>29</sup>

The literature reviewed suggests that *wasiat wajibah* is a key site of legal innovation in Islamic inheritance law. It reflects both doctrinal reinterpretation and legislative pragmatism. However, the mode of implementation—statutory in Egypt and judicial/discretionary in Indonesia—has significant implications for legal certainty, access to justice, and the evolving role of the state in defining Islamic legal norms. Building on this foundation, the present study seeks to systematically compare these two models and assess their implications for the future development of Islamic inheritance law.

### The Concept of *Wasiat Wajibah* in Islamic Legal Thought

In classical Islamic jurisprudence (*fiqh*), the concept of *wasiat* (bequest) refers to the voluntary allocation of a portion of a deceased person's estate to a non-heir or charitable cause, to be executed after the individual's death. This right is grounded in the Qur'anic command: “It is prescribed for you, when death approaches [any] one of you, if he leaves wealth, [that he make] a bequest for the parents and near relatives, according to what is acceptable — a duty upon the righteous” (Qur'an 2:180). However, subsequent verses detailing fixed shares of inheritance (Qur'an 4:11–12) limited the applicability of bequests to non-heirs only, thereby excluding legal heirs from benefiting through a will, unless all other heirs consent.<sup>30</sup>

Traditionally, *wasiat* is voluntary in nature (*tatawwu'*), and may not exceed one-third of the total estate, in accordance with the famous *hadith* of the Prophet Muhammad: “A third, and a third is much.” The classical scholars of all Sunni madhabs agree that a testator may not bequeath more than one-third of their estate without the approval of the heirs, and that a bequest cannot be made in favor of an existing legal heir (*warith*), again unless the other heirs agree. This limitation reflects the sanctity of the divinely prescribed shares in the Qur'an, which are considered immutable and not subject to personal preferences.<sup>31</sup>

The introduction of *wasiat wajibah* (compulsory bequest) represents a significant departure from this classical consensus. Unlike voluntary *wasiat*, which is exercised at the discretion of the testator, *wasiat wajibah* is a state-imposed legal obligation, created to provide for certain individuals—such as grandchildren of a predeceased child or adopted children—who are excluded from inheritance under traditional Islamic rules. This innovation challenges the classical juristic principle that prohibits bequests to legal heirs, raising important questions about the scope of *ijtihad* (independent reasoning) and the adaptability of Islamic law to changing social realities.<sup>32</sup>

<sup>29</sup> Fadhilah, “Pembaruan Hukum Waris Islam: Wasiat Wajibah Mesir Dan Relevansinya Dengan Konsep Waris Pengganti Indonesia.”

<sup>30</sup> Fadhilah.

<sup>31</sup> Muhammad Husni Abdulah Pakarti and Diana Farid, “Implementasi Hukum Waris Dalam Islam: Studi Komparatif Tentang Praktek Waris Di Negara-Negara Muslim,” *El-Ahli: Jurnal Hukum Keluarga Islam* 4, no. 2 (2023): 37–62.

<sup>32</sup> 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 (April 24, 2025): 1–16, <https://doi.org/10.24090/mnh.v19i1.10762>.

Among the Sunni legal schools (*madhhabs*), there has historically been some variation in attitudes toward bequests to legal heirs. The Hanafi, Shafi'i, and Hanbali schools generally prohibit such bequests without the consent of other heirs. The Maliki school, however, allows for greater judicial discretion and permits bequests to heirs under certain conditions, particularly when guided by considerations of need or fairness. It is from such more flexible positions that modern legal reforms have drawn inspiration, selectively incorporating these minority views into national legislation to address gaps in familial justice.

Central to the justification of *wasiat wajibah* in modern legal systems is the principle of *maslahah mursalah*—a doctrine of public interest that allows legal authorities to introduce rulings not explicitly found in classical texts, provided they serve the common good and do not contradict the fundamental objectives of Sharia (*maqasid al-sharia*). The concept of *maslahah* enables Islamic law to evolve in response to social transformations, such as the rise of nuclear families, declining extended kin support, and the increasing need to protect dependents like grandchildren or adopted children. In this framework, *wasiat wajibah* is viewed not as a deviation from Sharia but as a functional extension of its ethical and moral goals, such as preserving family ties, ensuring social justice, and preventing harm (*darar*).<sup>33</sup>

Thus, the transformation of *wasiat* from a voluntary to a compulsory legal mechanism represents a broader trend in Islamic legal thought—one that reconciles fidelity to classical jurisprudence with the demands of contemporary society. It illustrates how Islamic law, through tools like *maslahah*, *ijtihad*, and selective adoption of minority views, can maintain its doctrinal integrity while offering responsive solutions to new legal challenges. The emergence of *wasiat wajibah* in modern legal systems like those of Egypt and Indonesia exemplifies this dynamic interplay between tradition and reform within Islamic legal philosophy.

### Legal Framework of Compulsory Bequest in Indonesia

Indonesia's legal system is characterized by legal pluralism, where multiple legal traditions coexist and intersect within a single national framework. The most prominent among these are civil law, inherited from the Dutch colonial administration, and Islamic law (*hukum Islam*), which applies primarily to the personal status of the Muslim population. This dual legal structure is further complicated by the presence of customary law (*hukum adat*), which continues to inform community-based norms, particularly in rural areas.<sup>34</sup>

The foundation of Indonesia's civil law system was laid during the Dutch colonial period through the codification of European-style laws, including the *Burgerlijk Wetboek* (Civil Code) and *Wetboek van Strafrecht* (Penal Code). These codes remain influential and continue to form the backbone of Indonesia's statutory law, particularly in matters related to contracts, torts, property, and general civil procedures. Civil law in Indonesia is generally administered through the public court system (*Peradilan Umum*), which operates under the supervision of the Supreme Court (*Mahkamah Agung*).

<sup>33</sup> Bani Syarif Maula, "Kajian Al-Ahwal Al-Syakhsiyyah Dengan Pendekatan Maqasid Al-Syari'ah," *Al-Manahij: Jurnal Kajian Hukum Islam* 8, no. 2 (2014): 233–46.

<sup>34</sup> Nurlaelawati, *Modernization, Tradition and Identity: The Kompilasi Hukum Islam and Legal Practice in the Indonesian Religious Courts*.

In parallel, Islamic law is implemented selectively within the domain of family law, encompassing issues such as marriage, divorce, inheritance, and endowments (*wakaf*). The administration of Islamic law falls under the jurisdiction of the Religious Courts (*Peradilan Agama*), which were integrated into the national judicial system following the passage of Law No. 7 of 1989 (amended by Law No. 3 of 2006 and Law No. 50 of 2009). These courts have exclusive authority over Muslims in matters of personal status and apply Islamic legal norms as codified in the *Kompilasi Hukum Islam* (KHI).

The *Kompilasi Hukum Islam*, issued through Presidential Instruction No. 1 of 1991, represents a significant attempt by the Indonesian state to harmonize diverse interpretations of Islamic law into a unified national reference for religious courts. Although it lacks the status of formal legislation, the KHI functions as a quasi-codification of Islamic family law and is widely applied by judges. It incorporates classical fiqh doctrines, particularly from the Shafi'i school, but adapts them with contemporary considerations—such as the recognition of *wasiat wajibah* for adopted children and grandchildren—thereby reflecting Indonesia's moderate and pragmatic approach to legal Islamization.<sup>35</sup>

The dual legal system inevitably leads to jurisdictional overlap and normative tension, particularly in cases where civil and religious principles diverge. For instance, while the Civil Code does not recognize *wasiat wajibah*, the KHI mandates it within the Religious Court system. Similarly, while civil courts may allow adopted children to inherit as legal heirs through adoption law, religious courts restrict their access to inheritance to *wasiat wajibah* mechanisms. This can create legal uncertainty, especially in interfaith or mixed-legal cases where jurisdictional boundaries are blurred.

Despite these complexities, the dual legal system offers flexibility in addressing Indonesia's pluralistic society, allowing different communities to resolve legal matters according to their religious or customary values. It also demonstrates the Indonesian government's attempt to balance secular legal rationality with Islamic normative demands, while still maintaining national legal unity. This balance is not static, however, and continues to evolve through legislation, judicial interpretation, and academic discourse.

Indonesia, as the world's largest Muslim-majority country, operates under a plural legal system composed of civil law, customary (*adat*) law, and Islamic law. The application of Islamic inheritance law in Indonesia is primarily limited to Muslims and is executed through religious courts (*Pengadilan Agama*). A key legal instrument for the administration of Islamic family law, including inheritance, is the *Kompilasi Hukum Islam* (KHI), a presidential instruction-based document issued in 1991 (Inpres No. 1 Tahun 1991). While not a statute, the KHI has become the *de facto* legal guide for religious courts in resolving inheritance disputes.<sup>36</sup>

The concept of *wasiat wajibah* in Indonesia is explicitly recognized in Article 209 of the KHI, which states: "A person may make a will for the benefit of an adopted child, and that will shall be regarded as a compulsory bequest (*wasiat wajibah*) so long as it does not exceed one-third of the estate, unless other heirs consent."

This provision was groundbreaking in that it allowed for adopted children—who are not considered legal heirs under classical Islamic inheritance law—to receive a portion of the estate

<sup>35</sup> Andi Herawati, "Kompilasi Hukum Islam (KHI) Sebagai Hasil Ijtihad Ulama Indonesia," *Hunafa: Jurnal Studia Islamika* 8, no. 2 (2011): 321–40.

<sup>36</sup> Naskur Naskur, "Ahli Waris Dalam Kompilasi Hukum Islam," *Jurnal Ilmiah Al-Syir'ah* 6, no. 2 (2008): 1–16, <http://journal.iain-manado.ac.id/index.php/JIS/article/view/251>.

through a binding mechanism. The use of the term *wajibah* signals an obligation, though the legal enforceability of the provision is not absolute due to its reliance on consent and judicial interpretation.

In practice, Indonesian religious courts have extended the application of *wasiat wajibah* to other non-heirs as well, particularly grandchildren from predeceased children (commonly referred to as *cucu dari anak yang telah meninggal dunia*). Although not explicitly mentioned in the KHI, this extension has been grounded in judicial discretion, drawing from principles of *maslahah* (public benefit) and *urf* (custom). Several court decisions, particularly those cited in the Compilation of Religious Court Jurisprudence (*Kompilasi Yurisprudensi Peradilan Agama*), have ruled in favor of granting compulsory bequests to grandchildren who would otherwise be excluded due to the presence of closer heirs.<sup>37</sup>

Beyond the provisions stipulated in the *Kompilasi Hukum Islam* (KHI), the legal norms governing *wasiat wajibah* are further elaborated in several Circular Letters issued by the Supreme Court of Indonesia, specifically from the Religious Chamber. These include:

1. Supreme Court Circular Letter (Religious Chamber) No. 7 of 2012 clarifies that while a stepchild who has been raised from a young age is not recognized as a legal heir under Islamic inheritance law, such an individual may nonetheless be entitled to a portion of the estate through the mechanism of *wasiat wajibah*.
2. Supreme Court Circular Letter (Religious Chamber) No. 3 of 2015 references the resolutions of the 2010 National Working Meeting in Balikpapan, which established that substitute heirs are acknowledged only up to the level of grandchildren. Specifically, in cases where the deceased has no direct descendants but is survived by siblings as heirs, the daughters of those siblings may be granted a share of the inheritance via *wasiat wajibah*.
3. Supreme Court Circular Letter (Religious Chamber) No. 3 of 2023 emphasizes the protection of the best interests of the child by stipulating that a biological child born from a marriage conducted according to Islamic law but lacking official registration may nonetheless be designated as a beneficiary under *wasiat wajibah*.

These circular letters serve to interpret and operationalize the statutory provisions in ways that reflect evolving social realities and promote equitable outcomes within the framework of Islamic inheritance law.

Moreover, the Judicial Commission of the Republic of Indonesia has issued Jurisprudence No. 1 Yur Ag 2018 (368K-Ag-1999), which significantly expands the scope of *wasiat wajibah*. This ruling affirms that compulsory bequests may be granted not only to adopted children, as explicitly provided under Article 209 of the *Kompilasi Hukum Islam* (KHI), but also, under certain conditions, to heirs who are non-Muslim. This jurisprudence thus represents a progressive legal development, introducing a normative principle that accommodates the allocation of *wasiat wajibah* to non-Muslim heirs in specific circumstances, reflecting a more inclusive interpretation of inheritance rights within Indonesia's pluralistic legal framework.

However, there are challenges to the consistency and enforceability of this framework. First, the non-legislative status of the KHI means that it lacks the full force of law, often leaving its application to the discretion of judges. Second, while *wasiat wajibah* is presented as compulsory, its execution often depends on the consent of other heirs, especially if the share exceeds one-third of the estate.

<sup>37</sup> Jaenal Aripin, *Peradilan Agama Dalam Bingkai Reformasi Hukum Di Indonesia* (Jakarta: Kencana, 2008).

This creates uncertainty and can lead to intra-family conflicts, especially in cases where heirs are unwilling to compromise.

Moreover, the Indonesian inheritance system still recognizes alternative inheritance paths through civil law (*Burgerlijk Wetboek*) and customary law (*hukum adat*). Non-Muslim citizens, and sometimes Muslims themselves, may choose to settle inheritance matters outside of the religious courts, further fragmenting the consistency of *wasiat wajibah* implementation.<sup>38</sup>

Despite these limitations, the introduction of *wasiat wajibah* in the KHI reflects a significant development in aligning Islamic inheritance principles with Indonesia's evolving social realities, particularly in the recognition of emotional and financial bonds outside the strict classical definition of *asabah* (legal heirs). It is also a product of Indonesia's moderate and pragmatic approach to Islamic law, where equity and familial harmony often guide legal innovation.

### Legal Framework of Compulsory Bequest in Egypt

Egypt presents a prominent example of a modern Muslim-majority country that has undertaken a systematic integration of Sharia principles into its civil law system, particularly in matters of personal status such as marriage, divorce, and inheritance. While the country follows a civil law tradition—largely influenced by French legal codes and introduced during the 19th century under the leadership of Muhammad Ali and his successors—Egypt has maintained a distinct domain of Islamic personal status law that applies to Muslims and is considered a cornerstone of national identity and social order.<sup>39</sup>

The legal basis for the integration of Sharia into Egyptian civil law is explicitly recognized in Article 2 of the Egyptian Constitution, which states that “Islam is the religion of the state and the principles of Islamic Sharia are the main source of legislation.” This constitutional provision, first introduced in 1971 and strengthened by an amendment in 1980, affirms the primacy of Sharia in the legislative process, particularly in fields that directly affect social relations and moral values, such as family law. However, it also coexists with a codified legal system, meaning that Sharia is not applied directly from classical jurisprudence (*fiqh*) but is translated into statutory form by legislative bodies.<sup>40</sup>

The most notable example of this integration is the codification of inheritance laws in Law No. 77 of 1943, which draws heavily from Sunni Islamic jurisprudence—especially the Hanafi school, traditionally dominant in Egyptian legal interpretation. However, in the post-independence period, particularly under the leadership of reform-minded jurists and legislators, Egypt began to selectively incorporate views from other Sunni schools of law, especially the Maliki and Shafi'i traditions, to address perceived social and legal gaps within the inheritance system.<sup>41</sup>

This reformist spirit culminated in the promulgation of Law No. 71 of 1946 on Wills, and later Law No. 219 of 1953, which introduced the concept of *wasiat wajibah*—a compulsory bequest granted to grandchildren whose parents (i.e., the child of the deceased) had predeceased the testator. This legal innovation was rooted in the principle of *maslahah mursalah* (public interest) and reflects a modern interpretation of Sharia that seeks to protect vulnerable family members while preserving

<sup>38</sup> Hazairin, *Hukum Kekeluargaan Nasional*, 3rd ed. (Jakarta: Tintamas, 1968).

<sup>39</sup> El Chazli, “Recent Developments in Egyptian Family and Inheritance Law.”

<sup>40</sup> El Chazli.

<sup>41</sup> Azza M. Karam, *Women, Islamisms and the State: Contemporary Feminisms in Egypt* (London: Macmillan Press Ltd, 1998).

the core values of Islamic inheritance law. The law made the bequest legally enforceable without the need for a written will or consent of other heirs, marking a clear departure from classical doctrine, which generally forbids bequests to legal heirs beyond their Quranic shares.

In addition to inheritance, Egyptian personal status laws, including those on marriage, divorce, and child custody, are also shaped by Islamic principles, but are enacted through civil statutes and implemented by civil family courts. Judges in these courts are trained in both civil and Islamic law, and they apply statutory provisions that have been derived from, or inspired by, various schools of Islamic jurisprudence. Thus, Egypt's legal system embodies a state-managed form of Sharia, where Islamic principles are filtered through legislative processes and judicial discretion, rather than being applied directly from classical texts.<sup>42</sup>

While this integration has enhanced the consistency and enforceability of Islamic legal norms, it has also sparked ongoing debates among jurists, scholars, and civil society actors regarding the balance between religious authenticity and legal reform. Some conservative scholars criticize the state's selective adoption of juristic opinions as undermining the integrity of Islamic law, while reformists argue that such adaptability is necessary to meet the needs of a modern society. Nonetheless, Egypt's model has been influential in other jurisdictions and is often cited as an example of how Sharia can be harmonized with civil law frameworks to produce a coherent and socially responsive legal system.

Egypt offers a contrasting example of a more formalized and centralized approach to Islamic legal reform. As one of the earliest Muslim-majority countries to codify Islamic personal status law, Egypt enacted Law No. 71 of 1946 (on Inheritance) and Law No. 219 of 1953, which introduced *wasiat wajibah* as a mandatory legal mechanism to ensure social justice within inheritance distribution.

Article 76 of Law No. 71/1946, as amended by Law No. 219/1953, stipulates that: "A compulsory bequest shall be made to the descendants of a predeceased child, regardless of whether such descendants are male or female, at a value not exceeding one-third of the estate, and this shall be executed without the need for consent of other heirs."

This provision is legally binding, fully integrated into Egypt's national civil code, and automatically executed by courts in cases involving eligible beneficiaries. The law ensures that grandchildren from a deceased son or daughter inherit through *wasiat wajibah* up to a maximum of one-third of the estate. The bequest does not depend on whether the deceased left a will and does not require the consent of surviving heirs, making it substantively and procedurally more robust than the Indonesian model.<sup>43</sup>

The legislative rationale behind this provision was to address perceived injustices in classical inheritance law, particularly in cases where a grandchild's parent (who would have inherited) dies before the grandparent. Without reform, such grandchildren are typically excluded from inheritance due to the presence of the deceased's other children (uncles and aunts of the grandchildren), who receive priority. The Egyptian legislature thus invoked principles of equity and social responsibility, grounded in *maslahah* and *maqasid al-sharia*, to justify this departure from traditional jurisprudence.

Notably, the Egyptian law applies equally to male and female grandchildren, reinforcing the

<sup>42</sup> Mohamad Salman Podungge, Panji Nugraha Ruhiat, and Si'ah Khosyiah, "Hukum Perkawinan Dan Kewarisan Dalam Tata Hukum Mesir Dan Sudan," *Al-Ahwal Al-Syakhsyiyah: Jurnal Hukum Keluarga Dan Peradilan Islam* 3, no. 1 (2022): 19–32.

<sup>43</sup> Ishak Tri Nugroho, "Perkembangan Perundang-Undangan Hukum Keluarga Muslim Di Mesir (Studi Wasiat Wajibah Di Mesir)," *Familia: Jurnal Hukum Keluarga* 1, no. 1 (2020): 1–20.

notion of gender equity. The law also reflects Maliki jurisprudence, which historically permitted bequests to heirs in limited circumstances and allowed more discretionary leeway in wills. While Egypt generally follows the Hanafi school in inheritance law, the state has selectively adopted views from other madhhabs to meet contemporary needs—a practice supported by Egyptian legal theorists such as Muhammad Abu Zahrah and ‘Abd al-Wahhab Khallaf.<sup>44</sup>

Judicial enforcement of *wasiat wajibah* in Egypt is rigorous. Courts do not rely on moral persuasion or familial negotiation but instead apply the law as a statutory obligation. This has resulted in greater predictability, enforceability, and uniformity, making the Egyptian model a benchmark in legal modernization of Islamic inheritance law.

Nevertheless, the Egyptian system is not without critique. Some traditional jurists view the law as an unwarranted innovation (*bid’ah*) that compromises the integrity of divine inheritance rules. Others argue that legislative rigidity may limit the scope for compassionate discretion in cases involving adopted children or other dependents not covered by the law. Despite this, the Egyptian model has generally been lauded for its clarity, equity, and legal certainty, offering a clear example of state-led Islamic legal reform.

### Comparative Analysis: *Wasiat Wajibah* in Indonesia and Egypt

Both Indonesia and Egypt have undertaken significant legal innovations in their respective Islamic family law systems, especially through the adoption of *wasiat wajibah* (compulsory bequest). Despite differences in historical and legal contexts, both countries share a common concern: the need to provide legal protection for heirs excluded under classical Islamic inheritance law, such as grandchildren of predeceased children and adopted children. In both jurisdictions, *wasiat wajibah* is a statutory instrument intended to balance fidelity to Sharia with the demands of social justice and familial solidarity.

One key similarity is that in both Egypt and Indonesia, *wasiat wajibah* is a state-driven reform that departs from classical Sunni jurisprudence, which traditionally prohibits bequests to legal heirs without the consent of other heirs. Both legal systems justify this departure using the principle of *maslahah mursalah* (public interest) and *ijtihad* (independent reasoning), demonstrating a willingness to reinterpret Islamic norms in light of changing social conditions. Furthermore, both systems codify this innovation in legislation—Law No. 71 of 1946 in Egypt and the *Kompilasi Hukum Islam* (KHI) in Indonesia—thereby giving it binding legal force within their respective religious court systems.

However, significant differences exist in the doctrinal and institutional frameworks underpinning these reforms. Egypt’s approach is rooted in a centralized, state-centric model of legal authority, where religious interpretation is monopolized by state institutions such as Dar al-Ifta and al-Azhar University, and Islamic family law is fully codified and enforced within the civil court system. In contrast, Indonesia maintains a pluralist legal structure that allows for the coexistence of Islamic, civil, and customary laws. Islamic inheritance law, including *wasiat wajibah*, is applied primarily within the Religious Courts (*Peradilan Agama*), and its doctrinal foundation is drawn from the Shafi’i school but modified through the codification process in the KHI.

Another key distinction lies in the beneficiaries of *wasiat wajibah*. In Egypt, the doctrine applies

<sup>44</sup> Pakarti and Farid, “Implementasi Hukum Waris Dalam Islam: Studi Komparatif Tentang Praktek Waris Di Negara-Negara Muslim.”

specifically to grandchildren whose parent (the deceased's child) predeceased the testator, thereby filling a well-documented lacuna in the classical inheritance scheme. Indonesia, however, extends the scope further to include adopted children, who are not considered legal heirs under traditional Islamic law. This reflects Indonesia's broader pluralist and inclusive approach, shaped by its multicultural society and the influence of customary norms (*adat*). Thus, Indonesia's formulation of *wasiat wajibah* reflects a synthesis of Islamic legal thought and local socio-cultural values.<sup>45</sup>

The role of the state is pivotal in both countries, serving not only as the legislator but also as the interpreter of Islamic norms. In Egypt, the state assumes direct responsibility for religious interpretation, often limiting the space for non-state actors to engage in legal reasoning. In Indonesia, although the state promotes a national version of Islamic law through the KHI and the judiciary, religious interpretation remains more decentralized, allowing space for local religious authorities, scholars, and courts to interpret and adapt Islamic principles. Nevertheless, in both contexts, the state legitimizes reforms by grounding them in Islamic legal principles and presenting them as part of a broader project of legal modernization within the framework of Sharia.<sup>46</sup>

Ultimately, the experiences of Indonesia and Egypt reveal that *wasiat wajibah* is not merely a legal anomaly but a jurisprudential response to evolving social needs, made possible by the flexibility and interpretive depth of Islamic legal tradition. These reforms highlight how contemporary Muslim-majority states can engage in meaningful reinterpretation of Islamic norms while maintaining continuity with their religious heritage. They also demonstrate the capacity of Islamic law to serve as a dynamic and socially responsive system when mediated through state institutions, legislative tools, and normative values such as *maslahah*.

### Case Law Examples

In Indonesia, Religious Court decisions have played a critical role in developing the doctrine of *wasiat wajibah* beyond the statutory text. A landmark case is Putusan Pengadilan Agama Jakarta Selatan No. 0165/Pdt.G/2009/PA.JS, where the court granted an adopted child a share of the inheritance under the doctrine of *wasiat wajibah*, even though he was not a legal heir under classical Islamic law. The court referred to Article 209(2) of the Kompilasi Hukum Islam (KHI), which permits an adopted child to receive up to one-third of the estate through *wasiat wajibah*. This decision was upheld in appeal, reinforcing the legitimacy of using the *maslahah* principle to protect dependents otherwise excluded from inheritance.

In Egypt, the application of Law No. 71 of 1946 was demonstrated in the case Appeal No. 33/56 (1958), decided by the Court of Cassation, where the court confirmed the right of grandchildren to receive a compulsory bequest (up to one-third of the estate) if their parent predeceased the grandparent. The court rejected objections from other heirs that this violated fixed Qur'anic shares, arguing instead that *wasiat wajibah* operates outside the inheritance system and is thus not in conflict with it. This case solidified the judicial interpretation of *wasiat wajibah* as a parallel mechanism rather than a contradiction to inheritance law.

### Public Debates

<sup>45</sup> Fadhilah, "Pembaruan Hukum Waris Islam: Wasiat Wajibah Mesir Dan Relevansinya Dengan Konsep Waris Pengganti Indonesia."

<sup>46</sup> Aulia, "Analisis Perbandingan Penerapan Hukum Keluarga Di Mesir Dan Di Indonesia."

The implementation of *wasiat wajibah* has not been free from controversy in either country. In Indonesia, conservative scholars and institutions such as the Majelis Ulama Indonesia (MUI) have expressed caution over extending inheritance rights to adopted children, warning that such interpretations might inadvertently undermine the fixed shares (*faraid*) mandated in the Qur'an. However, proponents argue that the inclusion of adopted children via *wasiat wajibah* reflects Indonesia's pluralistic culture and the pressing need to protect family cohesion.<sup>47</sup>

In Egypt, debates have centered around the extent to which the state should exercise authority over Sharia-based norms. Institutions like Al-Azhar have supported *wasiat wajibah* as a legitimate use of *maslahah*, but there has been tension with independent Islamic scholars who believe that state control over religious interpretation risks politicizing Islamic law. Moreover, critics argue that *wasiat wajibah* should be applied more broadly to include adopted children and other dependents, which the current legal structure in Egypt does not accommodate.<sup>48</sup>

### Impact on Beneficiaries

The practical effect of *wasiat wajibah* in both countries has been significant for vulnerable family members. In Indonesia, it has enabled adopted children—who may have lived their entire lives with the deceased and been economically dependent—to receive a legal share of the estate, even in the absence of a written will. This mitigates the psychological and financial exclusion that often follows the application of strict inheritance rules.

In Egypt, grandchildren of deceased sons (and sometimes daughters, depending on the interpretation) are no longer left out of inheritance. This reflects a social recognition of their familial bond, despite their classical exclusion. However, the limitation to one-third of the estate often means their needs are only partially met, leading some to call for expanding the rule or supplementing it with social welfare mechanisms.

Aspect	Indonesia	Egypt
<b>Legal Basis</b>	<i>Kompilasi Hukum Islam</i> (KHI), esp. Article 209	Law No. 71 of 1946 (Wills Law)
<b>Scope of Beneficiaries</b>	Grandchildren of predeceased child; Adopted children	Grandchildren of predeceased child (biological only)
<b>Legal System Type</b>	Plural legal system (Civil, Islamic, Customary law)	Civil law system with integrated Sharia in personal status law
<b>Madhhab Influence</b>	Shafi'i school with reformist elements	Primarily Hanafi, with selective Maliki influences
<b>Maximum Share of <i>Wasiat Wajibah</i></b>	Up to 1/3 of estate	Up to 1/3 of estate
<b>Execution Without a Will?</b>	Yes	Yes

<sup>47</sup> Suud Sarim Karimullah, "Pursuing Legal Harmony: Indonesianization of Islamic Law Concept and Its Impact on National Law," *Mazahib: Jurnal Pemikiran Hukum Islam* 21, no. 2 (December 27, 2022): 213–44, <https://doi.org/10.21093/mj.v21i2.4800>.

<sup>48</sup> Nugroho, "Perkembangan Perundang-Undangan Hukum Keluarga Muslim Di Mesir (Studi *Wasiat Wajibah* Di Mesir)."

<b>Judicial Interpretation</b>	Religious Courts ( <i>Peradilan Agama</i> )	Civil Family Courts
<b>Inclusion of Adopted Children</b>	Yes (via <i>maslahah</i> and KHI)	No
<b>Public Debate</b>	On inclusion of adopted children; role of local customs	On limits of state control and exclusion of other dependents
<b>Role of State</b>	Facilitator of pluralist interpretation and legal reform	Centralized interpreter and legislator of Islamic law

The comparative table above highlights the key differences and similarities in the implementation of *wasiat wajibah* between Indonesia and Egypt. Both countries legally recognize *wasiat wajibah* as a statutory obligation, primarily aimed at addressing inheritance gaps for family members excluded under classical Islamic inheritance law, such as grandchildren of predeceased children. However, Indonesia adopts a broader and more inclusive approach by also extending this mechanism to adopted children, reflecting its plural legal system that accommodates customary norms (*adat*) alongside Sharia and civil law. In contrast, Egypt adheres to a more centralized legal interpretation rooted in the Hanafi school, with limited scope confined to biological grandchildren. Both systems cap the bequest at one-third of the estate and permit its execution even without a formal will, showcasing a shared reliance on the principle of *maslahah* to justify this reform. While Indonesia delegates interpretation and application to its Religious Courts, Egypt employs a more centralized model through its civil judiciary and state religious authorities like Al-Azhar. Public debates in each country reflect local tensions: Indonesia’s focus is on the legitimacy of including adopted children, whereas Egypt’s discourse centers on the extent of state control over Islamic legal norms. Together, these features underscore how socio-political contexts shape the ways Islamic legal principles are adapted and institutionalized in modern Muslim-majority states.

The doctrine of *wasiat wajibah* represents a profound example of how Islamic legal principles can be adapted to meet modern social needs through state-led legal interpretation. Both Egypt and Indonesia demonstrate a commitment to reconciling traditional jurisprudence with evolving familial structures. However, the extent and method of this adaptation differ due to the countries’ distinct legal cultures, religious authorities, and political frameworks. As such, the comparative study of *wasiat wajibah* offers rich insight into the intersection of Sharia, legal reform, and the modern state.<sup>49</sup>

### Implications and Challenges

One of the foremost implications of implementing *wasiat wajibah* in both Indonesia and Egypt is the enhancement of legal certainty and improved access to justice for vulnerable heirs. For instance, in Indonesia, the case of Jakarta Selatan Religious Court Decision No. 0165/Pdt.G/2009/PAJS illustrates how an adopted child successfully claimed inheritance rights through *wasiat wajibah* under Article 209(2) of the *Kompilasi Hukum Islam* (KHI). This landmark decision established a precedent for recognizing adopted children who traditionally had no inheritance rights under Islamic law. However, challenges persist: many rural heirs remain unaware of their entitlements

<sup>49</sup> Riyanta et al., “Toward Interfaith Equality in Islamic Inheritance Law: Discourse and Renewal of Judicial Practice in Indonesia.”

or face obstacles accessing Religious Courts, such as complex procedures and costs. Similarly, in Egypt, the Court of Cassation ruling in Appeal No. 33/56 (1958) provided grandchildren of deceased children legal protection through compulsory bequests, which helped reduce familial disputes over inheritance. Nonetheless, beneficiaries outside urban centers often face hurdles in enforcing these rights, pointing to the need for greater judicial accessibility and public legal education.

The implementation of *wasiat wajibah* also reveals the challenge of harmonizing classical Islamic legal principles with the frameworks of modern legal systems. Indonesia's pluralistic legal environment negotiates between Islamic law, customary law (*adat*), and civil law, often resulting in diverse judicial interpretations. For example, Religious Courts in different regions may issue varying rulings on the extent of inheritance rights for adopted children, highlighting inconsistency despite the KHI's provisions. In contrast, Egypt's centralized system integrates Islamic law fully within its civil law structure, with Al-Azhar and Dar al-Ifta serving as authoritative interpreters. However, the state's exclusive control over religious interpretation has sparked debate, such as criticisms voiced during the 2011 Egyptian constitutional reform discussions, where independent scholars warned that excessive state influence could politicize Islamic law. These dynamics underscore the delicate balance needed between legal innovation, religious legitimacy, and pluralism.<sup>50</sup>

In Indonesia, there is significant potential for further reform to strengthen the doctrine of *wasiat wajibah* and its implementation. For example, although adopted children have gained recognition in some Religious Courts, ambiguity persists about the precise legal mechanisms and limits. Efforts to reform could draw inspiration from the West Java Religious High Court's 2018 directive, which called for standardized application of *wasiat wajibah* provisions across its jurisdiction to protect vulnerable heirs consistently. Moreover, expanding the legal recognition of other dependents—such as stepchildren or disabled family members—through amendments to the KHI could promote social justice. Public legal education campaigns, similar to those led by Indonesia's *Badan Pembinaan Hukum Nasional* (BPHN, National Legal Development Agency), could improve awareness and reduce litigation delays, thus improving beneficiaries' access to justice.<sup>51</sup>

Broader still, the experiences of Indonesia and Egypt offer important lessons for Islamic legal modernization in other Muslim-majority countries facing similar inheritance challenges. For instance, countries like Malaysia and Morocco have begun exploring reforms inspired by *wasiat wajibah* to address gaps for adopted children and grandchildren excluded under classical inheritance laws. Egypt's model of embedding Islamic reforms within a civil law framework, combined with authoritative scholarly input from institutions like Al-Azhar, provides one pathway for state-led modernization. Conversely, Indonesia's pluralistic and decentralized approach shows how local customs and diverse Islamic interpretations can be harmonized with statutory law to protect vulnerable heirs effectively. These models also highlight the importance of balancing legal certainty, social justice, and religious legitimacy—a complex task that other Muslim-majority societies will increasingly face as they seek to reconcile tradition with contemporary social realities.

## Conclusion

This comparative study of *wasiat wajibah* in Indonesia and Egypt reveals both convergences and

<sup>50</sup> Aziz et al., "Wasiat Wajibah Bagi Ahli Waris Non-Muslim Di Indonesia Perspektif Najmuddin At-Thufi."

<sup>51</sup> Nurlaelawati, *Modernization, Tradition and Identity: The Kompilasi Hukum Islam and Legal Practice in the Indonesian Religious Courts*.

divergences in how Islamic inheritance law adapts to contemporary social needs. Both countries have institutionalized the doctrine of compulsory bequests to protect vulnerable heirs—particularly grandchildren of predeceased children—who are otherwise excluded from classical inheritance shares. Indonesia’s plural legal system embraces a broader application, extending protections to adopted children through the *Kompilasi Hukum Islam*, while Egypt’s centralized civil law framework restricts such rights to biological descendants. Judicial decisions in both countries demonstrate a willingness to invoke *maslahah* (public interest) as a foundational principle justifying these legal innovations, balancing respect for Qur’anic injunctions with social justice imperatives. However, challenges remain in ensuring consistent judicial application, expanding beneficiary categories, and improving access to justice for marginalized heirs. These findings underscore the dynamic nature of Islamic law and its capacity for reform within diverse legal and socio-political contexts.

The analysis further highlights the critical importance of context-sensitive *ijtihad*—the process of independent legal reasoning—in shaping Islamic legal reforms that respond effectively to local realities. Neither a rigid adherence to classical doctrine nor wholesale adoption of external legal models is sufficient; rather, successful legal modernization requires nuanced interpretations that honor religious principles while addressing contemporary familial and societal challenges. Indonesia’s pluralistic approach, accommodating customary practices alongside Islamic jurisprudence, and Egypt’s state-guided reinterpretation both illustrate different but valid pathways of *ijtihad* grounded in their unique historical, cultural, and institutional contexts. This contextual awareness fosters legitimacy and community acceptance, which are essential for the sustainable evolution of Islamic law. As Muslim-majority societies continue to navigate the tensions between tradition and modernity, the practice of informed, contextually aware *ijtihad* remains indispensable for realizing equitable and just legal outcomes.

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