



Islamic Inheritance Law Reform in Indonesia from the Perspective of Islamic Legal Politics: Strategies and Implications

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Abstract

This research aims to analyze the reform of Islamic inheritance law in Indonesia, with a particular focus on government policies supporting this reform. The study examines legal doctrines in the Compilation of Islamic Law, jurisprudence, Supreme Court guidance letters for religious courts, and fatwas from the Indonesian Ulema Council. Employing a historical and Islamic legal political (*fiqh siyasah*) approach, it explores the background and dynamics of these reforms. The reform process involves updating legal concepts, norms, and techniques, driven primarily by the executive and judiciary, while legislative bodies are constrained by their inability to pass laws. Non-governmental institutions, particularly the Indonesian Ulema Council, also play a pivotal role. Scientifically grounded methods, such as *ijtihad intiqah'i tarjihi* and *ibda'i insha'i*, serve as the foundation for these reforms. The government's strategies within the Islamic legal-political framework (*fiqh siyasah*) are (1) developing Islamic inheritance law in line with societal practices, (2) codifying it into legislative products, (3) compiling it into unified legal texts, (4) enacting legal products such as presidential instructions, fatwas, and jurisprudence, (5) involving scholars, officials, and judges in shaping reforms, (6) creating regulations for non-litigious inheritance distribution based on Islamic law, and (7) engaging the community in inheritance practices. This research's novelty lies in its comprehensive analysis of both governmental and non-governmental roles in reforming Islamic inheritance law through integrative legal-political strategies. Additionally, it highlights the innovative application of *ijtihad intiqah'i tarjihi* and *ibda'i insha'i*, contributing to the modernization and contextualization of Islamic inheritance law in Indonesia. The contribution of this research is its exploration of the interplay between legal reform and societal practices, providing a new understanding of the mechanisms that shape Islamic law in contemporary Indonesia. Furthermore, it offers valuable insights into the role of both religious scholars and government authorities in the legal reform process, offering a model for integrating Islamic law with modern legal systems.

Keywords: Islamic inheritance, Islamic legal political, Codification of law

Abstrak

Penelitian ini bertujuan untuk menganalisis reformasi hukum waris Islam di Indonesia, dengan fokus khusus pada kebijakan pemerintah yang mendukung reformasi tersebut.



Penelitian ini mengkaji doktrin hukum dalam Kompilasi Hukum Islam, yurisprudensi, surat petunjuk Mahkamah Agung untuk pengadilan agama, dan fatwa dari Majelis Ulama Indonesia. Dengan menggunakan pendekatan historis dan politik-hukum Islam (*fiqh siyasah*), penelitian ini menggali latar belakang dan dinamika reformasi tersebut. Proses reformasi mencakup pembaruan konsep, norma, dan teknik hukum, yang terutama dilakukan oleh lembaga eksekutif dan yudikatif, sementara lembaga legislatif terbatas oleh ketidakmampuannya untuk mengeluarkan undang-undang. Institusi non-pemerintah, khususnya Majelis Ulama Indonesia, juga memainkan peran penting. Metode ilmiah yang digunakan, seperti ijtihad *intiq'a'i tarjihi* dan *ibda'i insha'i*, menjadi dasar bagi reformasi ini. Strategi pemerintah dalam kerangka politik hukum Islam (*fiqh siyasah*) meliputi: (1) mengembangkan hukum waris Islam yang sesuai dengan praktik masyarakat, (2) mengkodifikasi hukum waris Islam menjadi produk legislasi, (3) menyusun hukum waris Islam dalam bentuk teks hukum yang terpadu, (4) mengeluarkan produk hukum seperti Instruksi Presiden, fatwa, dan yurisprudensi, (5) melibatkan ulama, pejabat pemerintah, dan hakim dalam merumuskan reformasi, (6) menciptakan regulasi untuk mekanisme distribusi warisan non-litigasi berdasarkan hukum Islam, dan (7) melibatkan masyarakat dalam praktik distribusi warisan. Kebaruan dari penelitian ini terletak pada analisis komprehensif terhadap peran baik lembaga pemerintah maupun non-pemerintah dalam mereformasi hukum waris Islam melalui strategi politik-hukum yang integratif. Selain itu, penelitian ini menyoroti penerapan inovatif dari *ijtihad intiq'a'i tarjihi* dan *ibda'i insha'i* yang berkontribusi pada modernisasi dan kontekstualisasi hukum waris Islam di Indonesia. Kontribusi penelitian ini adalah eksplorasi interaksi antara reformasi hukum dan praktik masyarakat, memberikan pemahaman baru tentang mekanisme yang membentuk hukum Islam dalam konteks Indonesia kontemporer. Selain itu, penelitian ini memberikan wawasan berharga mengenai peran ulama dan otoritas pemerintah dalam proses reformasi hukum, serta menawarkan model integrasi hukum Islam dengan sistem hukum modern.

Kata Kunci: Hukum Waris, Politik Hukum Islam, kodifikasi Hukum

Introduction

Muslims are obliged to carry out the Islamic inheritance law because it is believed to be a command from Allah SWT.¹ Islamic inheritance law in Indonesia is not in the form of laws such as marriage law, sharia banking law, hajj law, zakat law, waqf and so on. Why is that? In fact, if the Islamic inheritance law is in the form of law, it will have solid legal force. Islamic law should be codified and compiled in the form of a law so that it has certainty and binding legal force for citizens.² Islamic law has gone through seven phases to date, namely the first phase of the Prophet's phase. The second phase is Islamic law during the time of the news of as-shahabah where senior companions gave explanations of the law to replace the Prophet. The third phase of the period of the companions of the junior Apostle where they have the authority to explain the law. This period lasted until the Umawwiyah Dynasty until one century of hijriyyah. The fourth phase is the phase of fiqh becoming a separate discipline. In this phase, mujtahid imams appear in the field of fiqh. The fifth phase appears ikhtilaf in the field of fiqh. The period occurred until the beginning of the fourth century of

¹ Syamsuddin al-Qurtubi, *Al-Jami' Li Ahkam al-Quran*, Vol. V (Riyadh: Dar Alim al-Kutub, 2003). 81

² Ulfiani Rahman et al., "Men and Women in The Distribution of Inheritance in Mandar, West Sulawesi, Indonesia," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 6, no. 1 (June 27, 2022): 156-75, <https://doi.org/10.22373/sjhk.v6i1.9094>.

the Hijri to the end of the Abbasid Empire. The sixth phase is the emergence of taqlid in Islamic law so that it lacks *ijtihad*. This is the seventh phase, where *ijtihad* is revived, Islamic law is codified and compiled so that it is easy to find and there is legal certainty. Currently, Islamic inheritance law should be coordinated and compiled based on *ijtihad*. The renewal of Islamic law through *ijtihad* should be carried out so that it brings legal certainty, justice and utility. The Ka'bah does not explain how the government's politics in implementing Islamic inheritance law in Indonesia so that it can be applied properly through politics.³

Islamic inheritance law is not easy to apply in Indonesia, because of the diversification of citizens from many points of view. Differences in adherents of *madhhab*, differences in customs and culture, and also national historical backgrounds affect the application of Islamic inheritance law in Indonesia.⁴ This is one of the factors in the late formation of the national inheritance law. In addition, Rosman also explained that the government does not provide strong support for the emergence of laws based on *sharia* because of the emergence of divisions in society.⁵ Political considerations are the reason for the codification, compilation and unification of Islamic inheritance law in Indonesia.⁶

There have been many studies on Islamic inheritance law in Indonesia. Syaifullah Basri in his research explained that the tug-of-war between Islamic inheritance law and customary inheritance law is still ongoing in Indonesia.⁷ Consequently, the contextualization of the formulation of Islamic inheritance law is urgently needed. The government needs a strategy on how to implement Islamic inheritance law properly without ignoring the values that live in society. The legal politics applied do not have to be coordinated, or there may be other ways so that the Islamic inheritance law applied is an Islamic inheritance law that lives in accordance with the situation and conditions of the Muslim community in Indonesia.

Assyafira explained that the contextualization of Islamic inheritance law in Indonesia is urgently needed and is the main choice so that Islamic inheritance law can be applied in society. The Muslim community in Indonesia needs a normative Islamic inheritance law that can be a reference.⁸ Assyafira only explained the problem of Islamic inheritance law in Indonesia and provided a solution in the form of the need to formulate an Islamic inheritance law that is in accordance with the Indonesian context. This study does not

³ Umdatul Baroroh, "Understanding Methodology of Fiqh Sosial," *Santri: Journal of Pesantren and Fiqh Sosial* 1, no. 1 (June 29, 2020): 27–42, <https://doi.org/10.35878/santri.v1i1.202>.

⁴ Ilyas Ilyas et al., "The Accommodation of Customary Law to Islamic Law: Distribution of Inheritance in Aceh from a Pluralism Perspectives," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 7, no. 2 (May 28, 2023): 897–919, <https://doi.org/10.22373/sjhk.v7i2.15650>.

⁵ Edi Rosman, "Legislasi Hukum Islam Di Indonesia (Sejarah Dan Relevansi Praktis Pembaharuan Hukum Nasional)," *Al-Hurriyah: Jurnal Hukum Islam* 1, no. 1 (June 7, 2016): 27–44, <https://doi.org/10.30983/alhurriyah.v1i1.478>.

⁶ Muhazir Muhazir, "Islamic Law Politics in The Contemporary Era (Revealing The Struggle for The Positivization of Islamic Law in Indonesia)," *Al-Hurriyah: Jurnal Hukum Islam* 6, no. 1 (August 25, 2021): 12–24, <https://doi.org/10.30983/alhurriyah.v6i1.3956>.

⁷ Saifullah Basri, "Hukum Waris Islam (Fara'id) dan Penerapannya Dalam Masyarakat Islam," *Jurnal Kepastian Hukum dan Keadilan* 1, no. 2 (July 12, 2020): 37, <https://doi.org/10.32502/khdk.v1i2.2591>.

⁸ Rahmat Haniru, "Hukum Waris Di Indonesia Perspektif Hukum Islam Dan Hukum Adat," *Al-Hukama': The Indonesian Journal of Islamic Family Law* 4, no. 2 (2014): 456–74, <https://doi.org/10.15642/al-hukama.2014.4.2.456-474>.

explain how the government's politics to formulate, implement and update Islamic inheritance law in Indonesia so that it is in accordance with this context.⁹

Syarief Huesin had previously explained that Islamic inheritance law in Indonesia had been compiled in the form of a Compilation of Islamic Law in Indonesia, and this had been enforced since 1991. This compilation is a fiqh law combined with elements of customary law and the interests needed by the Indonesian people at that time.¹⁰ In this study, he only explained the dynamics of inheritance law from the book of fiqh to Islamic inheritance law as outlined in the Compilation of Islamic Law in Indonesia. He did not explain how the politics of reforming the Islamic inheritance law in Indonesia was pursued by the government so that it became a form of compilation, not in the form of a law. He did not explain how the government's steps to prepare an Islamic inheritance law in Indonesia so that the KHI could be accepted by the Muslim community.

One of the existing studies that touches on the reform of Islamic law in Indonesia is Anugrah Reskiani. He explained that the renewal of Islamic inheritance law in Indonesia is carried out through jurisprudence. This jurisprudence violates many of the provisions of the law, for the sake of realizing Islamic inheritance law that is fair in certain cases. He explained that Islamic law reform through jurisprudence can be carried out through three things, namely first, through understanding the philosophical values in the qath'i text. The second is carried out through the formulation of laws that are built by considering sociological values and the benefits of the community, the third is through the formulation of Islamic law through fiqh based on the philosophy of Islamic law and customs as well as the reality that lives in society. His theory was taken from Werner Menski's, namely "Triangular Concept of Legal Pluralism".¹¹ He explained that the renewal of Islamic inheritance law is mostly carried out through jurisprudence.¹² The question is whether the renewal of Islamic inheritance law in Indonesia is only carried out through jurisprudence? This study does not explain how the politics of Islamic inheritance law reform in Indonesia are? In fact, the renewal of Islamic inheritance law in Indonesia is also carried out through the fatwa of the Indonesian Ulema Council. This study does not explain how the method of reforming Islamic inheritance law in Indonesia, who is involved in the reform of Islamic inheritance law in Indonesia, and what are the materials for the reform of the law? This study does not discuss in detail the politics of Islamic inheritance law reform in Indonesia.

What is very interesting is the result of research from Khosyi'ah, where according to him the community and experts admit that the Islamic inheritance law in Indonesia that is currently in force is accepted by the community even though it is not yet in the form of a law. The law is in accordance with the Quran, fiqh and also the situation and conditions that live

⁹ Gisca Nur Assyafira, "Waris Berdasarkan Hukum Islam di Indonesia," *Al-Mashlahah Jurnal Hukum Islam dan Pranata Sosial* 8, no. 01 (May 26, 2020): 68–81, <https://doi.org/10.30868/am.v8i1.771>.

¹⁰ Syarief Husein, "Hukum Waris Islam Di Indonesia," *Jurnal Akta V* (2018): 85–86.

¹¹ Akhmad Jalaludin, "From Patrilineal to Bilateral: A New Balance of Islamic Inheritance Law in Indonesia's Religious Court," *Al-Hukama': The Indonesian Journal of Islamic Family Law* 14, no. 2 (December 26, 2024): 201–31, <https://doi.org/10.15642/alhukama.2024.14.2.201-231>.

¹² Muhazir Muhazir, "Islam, Fatwa Dan Negara: Meretas Pluralisme Hukum Perceraian Di Aceh," *Al-Manahij: Jurnal Kajian Hukum Islam* 15, no. 2 (2021): 233–248.

in the community.¹³ In the legal research conducted by Khosyi'ah, he explained that the Islamic inheritance law that exists and applies in Indonesia today has been accepted and practiced by the community. The Muslim community in Indonesia considers that Islamic inheritance law in Indonesia is an inheritance law based on the Quran, fiqh and ijtihad as outlined in the Compilation of Islamic Law in Indonesia.¹⁴ The question is why does the Muslim community accept it? Of course, the answer is because the inheritance law is a law that lives in the community. How does the government and society implement and update Islamic inheritance law in Indonesia?

None of the previous studies above discussed the politics of Islamic inheritance law reform in Indonesia specifically. There is no research that explains what the reform of Islamic inheritance law is, how and who is involved in the renewal of Islamic inheritance law in Indonesia. There has been no special research that examines the politics of Islamic law as the problem in this study. Abdul Manan as a former Chief Justice of the Supreme Court of the Republic of Indonesia explained that the politics of law discussed two things, namely the first formation, application and enforcement of the law and the second legal reform.¹⁵ This shows that the problem in this study is a problem in the politics of Islamic inheritance law reform in Indonesia.

This study uses a normative law research method, which focuses on the study of legal norms and policies that underlie the renewal of Islamic inheritance law in Indonesia.¹⁶ This research is descriptive-analytical, namely describing the phenomenon of Islamic inheritance law reform as well as analyzing the politics of Islamic law behind it. Several approaches are used in this study. The statute approach is used to examine the legal rules that are the basis for the renewal of Islamic inheritance law, such as the Compilation of Islamic Law (KHI), the Supreme Court Circular, and jurisprudence.¹⁷ The historical approach is applied to trace the development of Islamic inheritance law, including social, cultural, and political changes that affect its implementation and renewal.¹⁸ The legal political approach is used to analyze government and community policies in formulating a strategy for reforming Islamic

¹³ Maizuddin Maizuddin et al., "The Typology of Hadith as the Bayān of the Qur'an and Its Implications for the Reform of Islamic Inheritance Law," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 7, no. 2 (May 9, 2023): 760-780, <https://doi.org/10.22373/sjhk.v7i2.17467>.

¹⁴ S. Khosyi'Ah, S., S., & (2018). et al., "Analysis of Rules for Islamic Inheritance Law in Indonesia Using Hybrid Rule Based Learning," *IOP Conference Series: Materials Science and Engineering* 288, no. 1 (n.d.), <https://doi.org/10.1088/1757-899X/288/1/012133>.

¹⁵ Mohammad Nur Yasin, *Politik Hukum Ekonomi Syariah Di Indonesia* (Malang: UIN Maliki Press, 2018).30

¹⁶ Muhammad Rudi Syahputra, "Metodologi Penelitian Hukum Dalam Menyelesaikan Problematika Hukum Kontemporer," *Jurisprudensi: Jurnal Ilmu Hukum* 1, no. 2 (December 31, 2024): 89-106, <https://doi.org/10.70193/jurisprudensi.v1i02.08>.

¹⁷ Ahamad Rosidi, M. Zainuddin, and Ismi Arifiana, "Metode Dalam Penelitian Hukum Normatif Dan Sosiologis (Field Research)," *Journal Law and Government* 2, no. 1 (February 27, 2024): 46-58, <https://doi.org/10.31764/jlag.v2i1.21606>.

¹⁸ Muammar Muammar and Iqbal Taufik, "Quo Vadis Penelitian Hukum: Sebuah Jalan Meluruskan Miskonsepsi Kecenderungan Arah Penelitian Hukum," *JURNAL USM LAW REVIEW* 7, no. 2 (June 8, 2024): 634-657, <https://doi.org/10.26623/julr.v7i2.7917>.

inheritance law. The conceptual approach is used to understand concepts such as *ijtihad*, *intiqā'i tarjihi* and *ibda'i insha'i* that are applied in legal reform.¹⁹

This research uses primary, secondary, and tertiary legal materials. Primary legal materials include laws and regulations,²⁰ such as KHI, jurisprudence, fatwas of the Indonesian Ulema Council, and Supreme Court Circulars. Secondary legal materials consist of scientific literature, journals, and relevant books, such as the work of Rifyal Ka'bah and previous studies by Basri, Assyafira, and Khosyi'ah. Meanwhile, tertiary legal materials include legal dictionaries, encyclopedias, and other supporting documents. Data collection is carried out through literature studies by examining relevant legal materials, both primary and secondary. The collected data is then analyzed qualitatively with the stages of data reduction, data presentation, and conclusion drawn. The analysis was carried out by highlighting three main aspects, namely the substance of the reform of Islamic inheritance law, the renewal process, and the legal political strategy taken.

The approach in this study aims to provide an in-depth analysis of legal politics in the reform of Islamic inheritance law in Indonesia. This analysis is expected to make an important contribution to the development of legal science, especially in understanding the relationship between Islamic law and public policy in Indonesia, as well as offering policy recommendations based on justice, benefit, and relevance to the context of the Indonesian Muslim community.

The Direction of Islamic Inheritance Law Reform in Indonesia

The renewal of the substance of Islamic inheritance law in Indonesia includes three main aspects, namely the update of concepts, the update of legal norms, and the update of legal techniques. Concept renewal refers to the adjustment of several concepts in *fiqh* books with new interpretations applied in Islamic inheritance law in Indonesia.²¹ Examples include the concept of compulsory wills, successor heirs, and *tirkah*. This update was carried out to answer the needs of a dynamic society and in accordance with the context of Indonesian law. The renewal of the substance of legal norms includes changes in certain rules in Islamic inheritance law that differ from the rules contained in the book of jurisprudence. For example, there are differences in the arrangement of the daughter's share, the inheritance rights of children out of wedlock, and the recognition of grants from heirs to heirs who are considered part of the inheritance. These changes aim to provide justice and legal benefits that are more relevant to the condition of Indonesian society. In addition, technical updates in Islamic inheritance law are also carried out, including mechanisms for the implementation of inheritance distribution, the implementation of wills, and the settlement of inheritance

¹⁹ Rifyal Ka'bah, *Penegakan Syariat Islam Di Indonesia* (Jakarta: Khairul Bayan, 2004).²⁰ Dapat juga dilihat pada A. Reskiani Furqani & D. Tenrilawa, and R. Subha, "Reform Methods of Islamic Inheritance Law in Indonesia in Jurisprudence.," 2022.

²⁰ Ayyub Kadriah and Dadang Sumarna, "Analisis Epistemologi Kritis Terhadap Metode Penelitian Hukum Perdata," *Jurnal Supermacy Of Law (Ilmu Hukum)* 1, no. 1 (October 14, 2024): 1–25.

²¹ Elfia Elfia, Surwati Surwati, and Bakhtiar Bakhtiar, "The Struggle of Custom and Sharia: Classic Dilemma of Inheritance Settlement in Javanese and Minangkabau Ethnic Communities in Indonesia," *Al-Istinbath: Jurnal Hukum Islam* 8, no. 1 May (May 16, 2023): 75–94, <https://doi.org/10.29240/jhi.v8i1.5480>.

disputes. This technical update aims to ensure that the process of implementing inheritance law can run effectively and efficiently in accordance with the needs of the community.

In terms of concept, the update includes adjustments to the concept of *tirkah*, surrogate heirs, mandatory wills, and arrangements related to children out of wedlock. The comparison of these concept changes can be seen more clearly in the table provided, which shows the transformation from the concept in the fiqh book to the form of Islamic inheritance law that applies in Indonesia.²² The update of Islamic inheritance law in the conceptual aspect includes the concept of *tirkah*, surrogate heirs, obligatory wills and the concept of children out of wedlock, the comparison of this concept update will be clearly seen in the following table:

Table 1 : Updating Islamic Law on Conceptual Aspects

No	Aspects of Reform	Fiqh	Islamic Inheritance Law in Indonesia	Legal Products
1	Tirkah	<i>Tirkah</i> or heritage property is property left behind by the heirs in the form of property and rights. Fiqh does not explain the existence of common property	Distinguish <i>between tirkah</i> and inheritance. Inheritance is inherited property plus part of common property after being used for <i>tajhiz</i> , debts and gifts to relatives	KHI Article 171 points (d) and (e)
2	Successor Heirs	Fiqh does not have the concept of <i>Successor Heir</i>	A Successor Heir is an heir who replaces the position of father or mother as heir	KHI Article 185 and Jurisprudence of the Supreme Court of the Republic of Indonesia
3	<i>Wasiat Wajibah</i> (Mandatory Wills)	<i>Wasiat wajibah</i> are for Heirs who are not entitled to inheritance due to different religious and other reasons	<i>Wasiat wajibah</i> are inheritances obtained through mandatory wills, such as for adopted children, heirs of different religions, and children from out-of-wedlock marriages	KHI Article 209, Jurisprudence of the Supreme Court and Fatwa of the Indonesian Ulema Council
4	Illegitimate Children or Children out	Fiqh does not explain children out of marriage, it	There are two children outside of marriage, <i>the first</i> is a child who is not recorded in	Jurisprudence of the Supreme

²² Irfan Abdurahman, Asep Lukman Daris Salam, and Parhan Taqwa Ali Hasan, "Implementation of Islamic Inheritance Law: Study of History, Law and Its Principles," *Al-Arfa: Journal of Sharia, Islamic Economics and Law* 2, no. 1 (October 5, 2024): 81–91, <https://doi.org/10.61166/arfa.v2i1.53>.

of marriage	explains about adultery children, which are those born from marriages that are not based on a valid marriage according to the Shari'a	the KUA but can be proven by the <i>isbat of the marriage</i> of both parents. This is to obtain inheritance according to sharia. <i>The two</i> children of adultery as in the book of fiqh. He does not get the inheritance but he gets the inheritance through a compulsory will	Court of the Republic of Indonesia, <i>Fatwa</i> MUI
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The renewal of legal substance in the aspect of legal norms includes the law on inheritance of adulterous children, heir grants to heirs, daughters' shares, and heirs of different religions.

Tabel 2 Islamic Law Reform on the Aspects of Legal Norms

No	Aspects of Reform	Fiqh	Islamic Inheritance Law in Indonesia	Legal Products
1	Child of Adultery	Not getting his biological father's inheritance	Getting his biological father's inheritance based on a compulsory will	Supreme Court Decision (MK) No. 46/PUU/VIII/ 2010. <i>Fatwa</i> MUI No. 11, In 2012
2	<i>Hibah</i> to Heirs	<i>Hibah</i> in times of serious illness become part of the heirs if approved by all other heirs	<i>Hibah</i> become part of the inheritance	KHI Articles 211 to 213, and the Supreme Court Regulation on the Compilation of Sharia Economic Law (KHES)
3	Part of the girls' inheritance	Each girl gets one share and the boys get two parts	Girls get the same share if boys don't carry out their responsibilities	Supreme Court Jurisprudence
			A daughter spends all her wealth if there are no male heirs and her male descendants	Supreme Court Jurisprudence
			Daughter block (<i>hijab</i>) of the father's sibling (uncle of the daughter)	Yurisprudensi Mahkamah Agung
4	Heirs of Different Religions	Not Getting Inheritance	Obtaining inheritance by way of a <i>wasiat wajibah</i>	Jurisprudence of the Supreme Court of the Republic of Indonesia and the MUI <i>Fatwa</i>

The update of Islamic inheritance law in Indonesia on technical aspects includes the causes of obstacles to receiving inheritance, the technical implementation of wills, the implementation of the distribution of inheritance by deliberation and consensus, and the application of *aul* and *rad*.

Tabel 3. Islamic Law Reform on the Technical Aspects of Law

No	Reform Aspect	Fiqh	Islamic Inheritance Law in Indonesia	Legal Products
1	Reasons that hinder inheritance	The barriers to inheritance are slavery, murder, religious differences and differences in citizens.	Barriers to inheritance are murder, attempted murder, severe persecution and slander	KHI article 173
2	Implementation of wills	Age of testator: <i>Aqil Baligh</i>	The testator must be at least 21 years old	KHI Article 194 points (1)
		Pelaksanaan wasiat lisan dan tulisan	Execution of will, oral, written and can be in front of a notary	KHI article 195
		No explanation of a closed will	Can be a closed will	KHI article 203
3	Implementation of Distribution of Inheritance by deliberation and familial	allow <i>Takharuj min Tirkah</i>	It is permissible to carry out the distribution of inheritance based on a peace agreement after each heir knows his or her rights	KHI article 183
4	Implementation of Asset Distribution by <i>Aul</i> and <i>Radd</i>	Fiqh is different madhab, Jumhur argues that it is permissible through <i>aul</i> and <i>rad</i> , while Ibn Abbas and the Shia group by prioritizing the nearest	The implementation of the distribution of inheritance in a way <i>that is aul</i> and <i>somewhat</i> in situations of need	article 192 and 193 of KHI

The renewal of Islamic inheritance law in Indonesia is carried out using methods that can be scientifically accounted for, namely *ijtihad intiq'a'i tarjih* and *ibda'i insya'i*. This method can be clearly seen in the examples of the substance of the renewal of Islamic inheritance law in Indonesia above. The renewal of Islamic inheritance law by means of *ijtihad intiq'ai tarjih* can be seen in the issue of *aul* and *rad*. Islamic inheritance law in Indonesia chooses the opinions of Umar, Abbas bin Abdul Muttalib, Zaid bin Sabit and others,²³ and leaves the pendapa of Ibn Abbas and the opinion of Shia.²⁴ In addition, another

²³ Sayyid Sabik, *Fikh Sunnah*, Vol. III (Beirut: Dar al-Fikr, 1983). 444.

example is carrying out the distribution of inheritance by means of *takharuj min at-tirkah*, namely peace. This is one of the *ijtihad intiqai tarjihi* by choosing an opinion that allows the division of inheritance.²⁵

The application of *ijtihad intiqai tarjihi* is very clearly seen during the process of preparing the KHI which goes through five stages. *The first* is the study of fiqh books. The book references for the compilation of KHI consist of cross-sectarian fiqh books. The committee does not only use the fiqh book of one school, but consists of the Hanafi, Maliki, Shafii and Hanbali schools, even though the majority are from the Shafi'i school. The committee formed by the government consisting of the Supreme Court and the Ministry of Religious Affairs refers to 38 books.²⁶ *The second* interview with the scholars. The scholars interviewed were scholars from all over Indonesia represented by 10 locations, such as Aceh, Medan, Palembang, Padang, Java, Ujung Pandang, Mataram and Banjar Masin. Hasan Basri as Chairman of MUI explained that this interview was conducted in order to find out the laws that live in the community and to find out the aspirations of the Muslim community in Indonesia.

Ulama as respondents and informants are representatives of Muslim groups in Indonesia, such as Nahdlatul Ulama, Muhammadiyah and other Muslim groups. *Third, the* jurisprudence of religious courts, *the fourth* is a comparative study of law with other countries, *and the fifth* is workshops and seminars on legal materials for religious courts. As a comparison to formulate Islamic law in Indonesia, the committee also made a comparison to three Muslim countries, namely; Turkey, Morocco and Egypt.²⁷ The steps taken by the government in order to prepare the KHI in which there is an Islamic inheritance law shows that the government is making a selective and aspirational update of the Islamic inheritance law. Islamic inheritance law in Indonesia is built and formed based on studies and it is a law that lives dynamically in society, not a static law.

The renewal of Islamic inheritance law in Indonesia is also carried out by means of *ijtihad ibad'i insya'i*, where many Islamic inheritance law materials are compiled and compiled based on the new *ijtihad*. For example, the article on heir grants to children can be counted as inheritance, mandatory wills for adopted children, heirs of different religions, and children out of wedlock. The position of grandchildren as successor heirs, mandatory wills for non-Muslim heirs, the concept of *hijab-mahjub* in Book II by the Supreme Court and so on. It has been found that Islamic inheritance law in Indonesia, be it in the KHI, Supreme Court Regulations, Court Decisions and other laws and regulations in the form of *ijtihad insya'i*, namely *ijtihad* in cases that have not existed before or already existed but have not been written by scholars in the books of fiqh. Scholars, *umaras*, and judges carry out *ijtihad* in new cases that require *ijtihad* in order to realize justice, order and legal certainty in the

²⁴ Muhammad bin Ahmad bin Abi Sahl Syamsul Aimmah as-Sarkhasi, *Al-Mabsut*, vol. XXXII (Beirut: Dar al-Fikr, 1998). 312.

²⁵ Muhammad Ali as-Shabuni, *Al-Mawaris Fi as-Syari'ah al-Islamiyyah Fi Dhau' al-Kitab Wa as-Sunnah* (Beirut: Dar al-Kitab al-'Ilmiyyah, n.d.). 171.

²⁶ Mahkamah Agung, *Himpunan Peraturan Perundang-Undangan Yang Berkaitan Dengan Kompilasi Hukum Islam Serta Pengertian Dalam Pembahasannya* (Jakarta: Mahkamah Agung, 2011). 25.

²⁷ Mahkamah Agung. 28.

community. Although Islamic inheritance law in the form of a law does not yet exist in Indonesia, Islamic inheritance law is still enforced and grows in accordance with the development of values and norms that grow and live in the midst of Muslim society in Indonesia without contradicting the values and messages in the Qur'an and Hadith.²⁸

The standards used in performing *ijtihad* by the government and rulers refer to the five standards written by al-Qaradhawi, namely *first*, choosing the most appropriate opinion for the current period, *second*, choosing an opinion that is more humane, *third*, choosing an opinion that is closer to the convenience of sharia, *fourth*, choosing an opinion that is more important in realizing *sharia maqasid* and the welfare of beings and *the fifth* rejects the welfare of beings.²⁹ The five updated standards are clearly seen in Islamic inheritance law in Indonesia. For example, in the issue of the most viable inheritance law, Islamic inheritance law in Indonesia affirms that the male part is two parts female. This provision is written in the KHI, but in certain situations and conditions, the judge can decide otherwise, namely that men and women get the same share if the man does not carry out his responsibilities.³⁰ This can be seen in the decisions of judges who dare to go out of the text of *zahir* verses and hadiths but in accordance with the spirit of justice.

KHI does not leave clear verses and hadiths, but the judge's decision can issue a special decision on a specific specific and become jurisprudence in the same situation and condition.³¹ This ruling is the most appropriate law because it sees a case based on facts and applies a fair inheritance law. Another example is in the case of a surrogate heir. A small child was abandoned by his father, and he was raised by his own biological mother and helped by his grandparents during his lifetime. When his grandparents died, he did not get any inheritance from his grandparents because his uncle spent all the inheritance (*ashabah*).³² The orphan has lost his father and grandparents, but he does not get the inheritance because he is *killed* by his own uncle, even though he needs the property more than his uncle. The birth of the successor article is a very humane article for today's era. Likewise, the article of the compulsory will which gives a share of the inheritance to the father and adopted son who have contributed to him during his life and also to the adulterous child. The birth of technical articles on the implementation of inheritance and wills is proof of legal reform that brings convenience and can be accounted for. For example, the emergence of articles involving notaries in wills is a guarantor so that the will does not deviate from the law.

²⁸ Muarafa Nur Afif and Moh Wahyu, "Basic Concept and History of Inheritance Law in Indonesia," *SAKINAH: Jurnal Hukum Keluarga Islam* 2, no. 2 (September 30, 2024): 97–110.

²⁹ Yusuf Al-Qaradāwī, *Al-Ijtihādū Fī as-Syari'ah al-Islāmiyyah Ma'a Nazarātin Taḥlīliyyatin Fī al-Ijtihād al-Mu'āsir* (Kuwait: Dār al-Qalm, 1415). 115.

³⁰ Basuki Kurniawan, "Studi Putusan Nomor 92/Pdt.G/2009/PA Medan Tentang Pembagian Waris Islam Terhadap Perempuan Sebagai Kepala Keluarga; Perspektif Muhammad Syahrur," *Panitera Journal of Law and Islamic Law* 1, no. 2 (2023): 177.

³¹ Maimanah Maimanah et al., "Delay in the Division of Inheritance: A Theoretical Review within Legal System Framework in Indonesia," *Syariah: Jurnal Hukum Dan Pemikiran* 24, no. 1 (June 1, 2024): 241–357, <https://doi.org/10.18592/sjhp.v24i1.12916>.

³² Utama Wardi et al., "Comparative Analysis of Islamic Family Law and Customary Law in the Settlement of Inheritance Disputes in Indonesia," *Hakamain: Journal of Sharia and Law Studies* 3, no. 1 (July 8, 2024): 13–25, <https://doi.org/10.57255/hakamain.v3i1.330>.

Likewise, there is an article that it is permissible to carry out the distribution of inheritance in a family manner or through a mediator after each heir knows his or her rights is evidence of making it easier for the ummah to carry out the distribution of inheritance, without having to go through the court which requires more costs and a longer time. The process of implementing the distribution of inheritance in a family manner is in accordance with *maqashid syariah* and also rejects affirmation because this kind of implementation will bring harmony and reject the disharmony of the heirs while still implementing Islamic inheritance law.

The reform of inheritance law in Indonesia aims to make Islamic law more contextual, adaptive, and relevant to the dynamics of a pluralistic modern society. This reform is carried out with a balanced approach between the maintenance of normative sharia values and adjustment to the social and cultural needs of the Indonesian people. One of the main focuses is the integration of Islamic legal principles into the national legal system through the process of codification and compilation of laws, as seen in the formation of the Compilation of Islamic Law (KHI). This process not only includes the textual absorption of fiqh law, but also pays attention to local values and pragmatic needs of the community, so that Islamic law can be accepted by various circles without causing conflict with customary law or national law. The direction of the reform also includes an emphasis on ijtihad methods, both ijtihad intiqai'i (selective) and ibda'i (innovative), to present more flexible legal solutions in answering contemporary problems, such as the inheritance rights of children out of wedlock, the distribution of inheritance, and the implementation of compulsory wills. In addition, the role of scholars, academics, and the government is the key in formulating Islamic legal policies that are not only in accordance with the demands of sharia, but also support national development. Through a strategic legal and political approach, Islamic law reform is directed to strengthen the harmony between legal certainty, justice, and benefit, so that it can become an integral part of Indonesia's national legal system. This effort not only represents the modernization of Islamic law, but also shows how Islamic law can contribute to creating an inclusive and just legal system in Indonesia.³³

Government Agencies

Based on the data above, it can be seen that the renewal of Islamic inheritance law in Indonesia is carried out by government agencies and non-government institutions. Government institutions that reform Islamic inheritance law in Indonesia are executive and judicial institutions, while legislative institutions do not participate in reforming Islamic inheritance law, because they have not been able to issue Islamic inheritance law laws in Indonesia. The executive institution led by the President of the Republic of Indonesia, Suharto, has been able to issue Presidential Instruction of the Republic of Indonesia Number 1 of 1991 concerning the Compilation of Islamic Law instructing the Minister of Religion to disseminate the Compilation of Islamic Law which consists of three books, namely Book I, on marriage law, Book II on Inheritance law and Book III on Waqf. This was followed by the issuance of the Decree of the Minister of Religion No. 154 of 1991 to implement Presidential Instruction No. 1 of 1991.

³³ Zuhrah Zuhrah, "Legislative Legal Politics of Inheritance Law in Indonesia," *Journal of Ecohumanism* 3, no. 6 (2024): 910-916.

The reform of Islamic inheritance law carried out by the judiciary is the Supreme Court. The Supreme Court has issued the Chief Justice Regulation of the Supreme Court Number KMA/032/SK/IV/2006 concerning the Enforcement of Book II of the Guidelines for the Implementation of Duties and Administration of Religious Courts. In this book, there are guidelines and instructions for religious judges to receive, examine, decide and settle inheritance cases based on Islamic law. In this book there are many updates to Islamic law, especially related to the principles of inheritance law, the concept of *hijab-mahjub* and others. The Supreme Court has also issued Supreme Court Regulation Number 2 of 2008 concerning the Compilation of Sharia Economic Law (KHES) which in part regulates grant law related to inheritance law. Furthermore, the renewal of Islamic inheritance law in Indonesia is also carried out by the Supreme Court through the decisions of the Judges of the Religious Court and the Supreme Court which are the jurisprudence for Islamic law in Indonesia.

Lembaga Non Pemerintah

The renewal of Islamic inheritance law in Indonesia is not only carried out by government institutions, but non-governmental institutions also participate in the renewal of Islamic inheritance law in Indonesia, namely the Indonesian Ulema Council. The Indonesian Ulema Council has conducted a workshop in Jakarta from February 2 to 5, 1988 which in its decision accepted the formulation of the Compilation of Islamic Law in Indonesia.³⁴ The results of this workshop agreed and supported the government to enforce the Compilation of Islamic Law in Indonesia. In addition, the Indonesian Ulema Council also issued fatwa Number 5/MUNAS VII/MUI/9/2005 concerning Interreligious Inheritance, namely: *first*, the inheritance law does not provide the right of mutual inheritance between people of different religions between Muslims and non-Muslims. *Second*, the giving of inheritance between people of different religions can only be done in the form of grants, wills and gifts.³⁵ This is the way the Indonesian Ulema Council renews the Islamic inheritance law which does not allow mutual inheritance between heirs and heirs of different religions. MUI does not violate sharia but it also responds to the social reality that exists in Indonesian society, where many nuclear families consist of various adherents of different religions. In order not to be interrupted and also to show affection between heirs, this fatwa was issued.

One of the fatwas that is very helpful to the community is related to the rights of a child born outside of a valid marriage. There are two children born out of wedlock, the *first* is a child born out of wedlock recorded in the KUA, and *the second* child is born out of marriage due to adultery. The Constitutional Court's decision conducted a material test on Article 43 of Law No. 1/1974 which reads that children out of wedlock only have a civil relationship with their mother and her mother's family. Based on the Constitutional Court Decision Number 46/PUU-VIII/2010 affirming that the article is that a child born out of wedlock has a civil relationship with his mother and his mother's family as well as a man as his father

³⁴ Pagar, *Pembaharuan Hukum Islam Indonesiam Kajian Terhadap Sisi Keadilan Ahli Waris Pengganti Dalam Kompilasi Hukum Islam* (Bandung: Cita Pustaka Media, 2007). 169.

³⁵ Imamatus Shalehah, "Waris Beda Agama ; Analisis Putusan Perkara Beda Agama Dalam Putusan MA 16/Kag/2018," *Al-Manhaj; Journal of Indonesian Islamic Family Law* 2, no. 1 (2020). 43.

which can be proven based on science and technology and/or other evidence according to the law to have a blood relationship, including a civil relationship with his father's family (Ahmad Farahi, 2016) This Constitutional Court decision has made the Muslim community in Indonesia uneasy who are of the view that the decision legalizes adultery³⁶ and make the adulterer's son the heir, even though that is not what he means.

Responding to the unrest of the community, the Fatwa of the Indonesian Ulema Council Number 11 of 2012 at point e was born, emphasizing that the government has the power to impose takzir punishment on adulterous men who cause the birth of a child by requiring him *to firstly* meet the needs of the child's life, secondly to inherit his property through a mandatory will (*wasiat wajibah*) after he dies.³⁷ This fatwa emphasizes that children born out of legitimate marriage (adultery) get inheritance from their biological father based on a compulsory will, not inheritance law. This fatwa is an update of Islamic law because it has made a new law for adulterous children. Previously, in the book of fiqh, he did not get anything from his biological father, even though he was born because of the fault of his parents. Based on the Constitutional Court Decision and the MUI Fatwa mentioned above, he has legal certainty to obtain inheritance from his biological father by way of a mandatory will and not based on inheritance law. A child born out of a valid marriage because it is not recorded in the KUA, he gets an inheritance from his father as long as it can be proven that he is a legitimate child according to Islamic law. Therefore, the first step that can be taken is the *isbat* of the marriage of both parents to prove that the marriage of both parents is valid even though it is not recorded. If it is proven and there is a *marriage isbat*, then he is a legitimate child according to Islam and he will get inheritance from his parents, not based on a compulsory will. Meanwhile, if it cannot be proven as a legitimate child, then it remains an adulterous child and does not inherit from its biological father. These people only have a civil relationship and they get inheritance on the basis of a compulsory will not based on the inheritance law. This can be seen in the Decision of the South Jakarta Religious Court No. 0156/Pdt.P/2013/PA.JS which in the decision states that the child (initials AK) is the result of an extramarital relationship between Applicant I and Applicant II. Furthermore, in his ruling, it was stated that the AK brand child had a civil relationship with his mother and father, and he obtained a mandatory will from his father a maximum of 1/3 of the inheritance. This shows that the judge still refers to the MUI Fatwa No.11 of 2012. This legal rule aims to protect children born outside of a valid marriage and also does not violate Islamic sharia law. MUI Fatwa Number 11 of 2012 is very helpful for legal certainty and has become a reference to religious court decisions in determining heirs and successors.

The government, both ulama and umara, also allows the distribution of inheritance in a familial manner with deliberation and consensus on the basis of justice and benefit without violating Islamic law. The situation and condition of the heir's family are not always the same at the time of the heir's life and the distribution of inheritance. The community is more likely to carry it out through deliberation and consensus but does not violate the rights of

³⁶ Nginggar Ajeng Radindi, "Pemberian Wasiat Wajibah Bagi Anak Luar Kawin Dalam Hukum Islam," *Jurnal Hukum Ius Publicum* 4, no. 2 (n.d.): 84.

³⁷ Ahmad Habib al-Farabi, "Hak Waris Anak Zina," *Meraja Journal Volume 6 Nomor 3 Tahun 2023*, 127. 6, no. 3 (2023): 127.

each heir. Before the advent of Islamic inheritance law in Indonesia, there were already customary law and western civil law. This affects the implementation of the distribution of inheritance. In order to prevent violations of the Shari'a, before the implementation of the distribution of inheritance, the rights of the heirs are explained based on the Shari'a, and after that they deliberate and agree to maintain the harmony of the heirs left behind. The emergence of Article 183 of the KHI is one of the ways for the government to accept customary law in the implementation of Islamic law. One of the heirs will give up part of his rights to the inheritance to complement the needs of his other siblings so that his other siblings are helped and family harmony can be guaranteed (*takharuj minattrirkah*). This article is the government's politics to ensure the realization of Islamic inheritance law and also accept the reality that exists in society. If an agreement is not reached, the settlement can be mediated. The government has also issued Law No. 48 of 2009 and Supreme Court Regulation No. 1 of 2016. The government always strives to settle inheritance laws carried out in an Islamic and familial manner that does not violate Islamic sharia

This condition shows that the reform of Islamic inheritance law in Indonesia is carried out by a group of people, namely those consisting of; ulama, umara and judges. The renewal of Islamic inheritance law in Indonesia is not carried out by one person. This is in accordance with the theory written by Yusuf al-Qaradhawi stating that it is permissible to reform Islamic law by one person or a group of people.³⁸ Collective *ijtihad* (*ijtihad jama'i*) carried out by scholars, umara and judges or bodies has been practiced by the previous khulafaurrasid and mujtahid. This is again very important to be done as an alternative to solving increasingly complex problems that require a broader and more in-depth analysis.³⁹ (Muammad Salam Mazkur, 1974). This is in accordance with what Imam Nawawi stated that the reform of Islamic law will always be carried out by a group of people (*thaifatun*).⁴⁰

Politics and Reform of Islamic Inheritance Law in Indonesia

The implementation and application of Islamic inheritance law in Indonesia has at least three problems, namely *the first* is the problem of the substance of Islamic inheritance law itself. The Islamic inheritance law in the book of fiqh needs to be updated so that it can adapt to the situation and conditions of Indonesian society. *The second* is the cultural problem of the Muslim community which still consists of various schools and is also still subject to customary and western law, and *the third* problem is the politics of Islamic inheritance law in Indonesia. Substantially, there are several laws that urgently need to be updated to realize justice and adjustment to the situation of the condition of Indonesian Muslim society, such as the problem of children out of wedlock, children or adoptive fathers, surrogate heirs, and so on as in the example above.

The problem of Islamic inheritance law in Indonesia is also related to the socio-cultural of its multicultural society so that it has different customs from each other. This will

³⁸ Yusuf Al-Qaradāwī, *Al-Ijtihādū Fī as-Syari'ah al-Islāmiyyah Ma'a Nazarātin Taḥlīliyyatin Fī al-Ijtihād al-Mu'āsir*, 188-189.

³⁹ Muammad Salam Mazkur, *Manahij Al-Ijtihad Fi al-Islam* (Kuwait: Jami'ah Kuwait, 1974). 259.

⁴⁰ Abu Zakariya an-Nawawi, *Al-Minhaj Syarh Shahih Muslim Bin Hujjaj*, vol. II (Berut: Dar Ihya at-Turas al-Arabi, 1392). 178.

affect the submission and compliance of the community with the law. Indonesian society is viewed from the madhhab, there are those who adhere to the Hanafi, Maliki, Syafii and Hanbali madhhabs even though the majority are Shafii madhhab, while the level of awareness has also diversified, namely there are abangan Muslims, santri Muslims and priyai Muslims.⁴¹ Abangan Muslims are more inclined to profess to be Muslims, but they do not practice certain teachings. He performs prayers, fasting, and other worship, but in the inheritance law he does not carry it out.

Muslim students are a group of Muslims who carry out Islamic teachings consistently. Muslim priyai are a group of noble Muslims who understand Islam not only from the point of view of Islamic teachings but they have previously received other teachings or philosophies, such as Hindu-Buddhist teachings and other modern philosophies. These three cultural groups will affect their understanding of Islamic inheritance law in Indonesia. One of the reasons why Islamic inheritance law is still difficult to apply in Indonesia is because in some Muslim communities in Indonesia, especially for Java, they consider customary law to be fairer than Islamic inheritance law because it prioritizes men over women.⁴² Likewise with the Muslim community in the Minangkabau customary area in West Sumatra. They divide inheritance into high inheritance and low inheritance. High inheritance is subject to customary law, while Islamic law is applied to high inheritance.⁴³ This shows that the customs and culture of the Muslim community in Indonesia still affect the implementation of inheritance law in Indonesia.

The application of inheritance law nationally is related to national legal politics. The national inheritance law is at three intersections, namely the customary inheritance law that existed before the presence of the Islamic kingdom, the Islamic inheritance that existed since the presence of the Islamic kingdom in the archipelago and the inheritance law left by the Dutch government in the Civil Code. These three laws compete in the formation of Islamic inheritance law and also national inheritance law. That is why Islamic inheritance law has not been codified in the form of law until now.⁴⁴ These three reasons require a way to implement and update Islamic inheritance law in Indonesia so that justice is realized as in *the sharia maqashid*. This requires a strategy pursued by the Muslim community, religious judges and also the government in the political way of Islamic inheritance law in Indonesia. The following are some of the political steps of inheritance law carried out by the Indonesian government.

Building Islamic Inheritance Law in Indonesia Based on Living Law in Society

⁴¹ Clifford Geertz, *The Religion of Java* (Glencoe: Free Press, 1964), h. 6. Dapat juga dilihat Ahmad Najib Burhani, "Geerts Trichotomy of Abangan, Santri and Priyai Controversy and Contuinity," *Journal of Indonesian Islam* 11, no. 02 (Desember 2017): 331.

⁴² Ahmad Najib Burhani, "Geerts Trichotomy of Abangan, Santri and Priyai Controversy and Contuinity."

⁴³ Adeb Davega Prasna, "Pewarisan Harta Di Minangkabau Dalam Perspektif Kompilasi Hukum Islam Di Dalam," *Jurnal Koordinat* XVII, no. 1 (April 2018): 41

⁴⁴ A. Qodri Azizy, *Hukum Nasional; Eklektisisme Hukum Islam Dan Hukum Umum* (Jakarta: Teraju, 2004). 12

Legal politics is an activity to determine a choice regarding the goals and methods to be used to achieve legal goals in society.⁴⁵ The Indonesian government has applied the theory of Bentham, Savigny and Eurlich Theory in order to realize Islamic inheritance law in Indonesia. On the one hand, he issued laws and regulations to achieve the legal goals as conveyed by Bentham, namely in the form of a Compilation of Islamic Law in Indonesia, but on the other hand, the laws and regulations were also born based on laws that grew and lived in society as Savigny's theory. The Islamic inheritance law in the KHI is a law that grows and develops in the community so that it is obeyed and obeyed by the Muslim community in Indonesia. Eurlich has combined both Bentham and Savigny's theories which state that the government only plays a role in directing the law and that living law is the law that grows in society, especially the law based on religion.⁴⁶

The Islamic inheritance law in the KHI is a law that grows in the community and is obeyed because it is indeed born from the community. The government has compiled a KHI, one of which is Book II regulating inheritance law, which was compiled after conducting interviews with Islamic religious figures in Indonesia who come from social organization figures and Islamic boarding schools that have a real mass base in the community. This shows that Islamic inheritance law in Indonesia is a law taken from the law that grows and lives in society.

The government does not impose Islamic inheritance law based on government studies and interests alone, but it takes and compiles it based on Islamic inheritance law that grows and lives in the midst of Muslim society in Indonesia. The preparation of KHI as an Islamic inheritance law in Indonesia was prepared based on the results of interviews with scholars at the same time in order to bring *umara* closer to *ulama*, *umara* and *madhhab* so that an attitude of mutual respect emerged,⁴⁷ So it is very reasonable that until now the community does not demand changes to the Islamic inheritance law in the KHI because it is prepared based on the aspirations of scholars and the community, not based on coercion. KHI is also discussed with scholars from all over Indonesia,⁴⁸ so that some conclude that KHI is the *ijma* of Indonesian scholars in the fields of marriage, inheritance and *waqf*. One of the legal policies carried out by the Indonesian government so that the inheritance law can be accepted by the community is by exploring and understanding the inheritance law that lives in the Muslim community in Indonesia. KHI is the peak of *fiqh thought* in Indonesia.⁴⁹

Performing taqwin on Islamic inheritance law in Indonesia as a product of legislation

Currently, the constitutionalization of Islamic law has received legitimacy from the state. *First*, this can be seen in the MPRS TAP Number II/MPRS/1960 which states the improvement of marriage law and inheritance law. *The second* is the GBHN which states that Islamic law is one of the components and raw materials of Indonesian national law, and *the*

⁴⁵ Satjipto Rahardjo, *Ilmu Hukum* (Bandung: Citra Aditya Bakti, 2000). 35

⁴⁶ Sudjono Dirdjosisworo, *Sosiologi Hukum* (Jakarta: Rajawali, 1983). 2

⁴⁷ Mahkamah Agung, *Himpunan Peraturan Perundang-Undangan Yang Berkaitan Dengan Kompilasi Hukum Islam Serta Pengertian Dalam Pembahasannya*, 31

⁴⁸ Mahkamah Agung, 38

⁴⁹ Mahkamah Agung, 38

third is the Long-Term Development Plan 2005-2025, one of which states that the direction of national legal policy is sourced from customary law, Islamic religious law, and Western law. On this basis, Islamic inheritance law in Indonesia must experience legitimacy from the state politically. The better the relationship between the Muslim community in Indonesia and politics, the greater the opportunity for Islamic law to be actualized, and vice versa, if the Muslim community is further away from politics, Islamic law is feared to exist only in fiqh books, academic journals and seminar recommendations and finally cannot be applied and actualized.⁵⁰ Broadly speaking, the purpose of Islamic law legislation in Indonesia as explained by Muchammad Ali Safaat has three objectives, namely: *first*, the formulation of Islamic law is aimed at unifying Islamic law, *second*, maximizing the economic potential possessed by Muslims, and *third*, to protect and facilitate the religious life of Muslims.⁵¹ These are some theories that can be used in the study of Islamic legal politics, especially in relation to the direction of the purpose of Islamic law legislation in Indonesia. The Islamic inheritance law must obtain the pose of *taqnin*, in order to achieve freedom by Muslim umar to carry out his religious teachings.

Abdul Halim about the political theory of Islamic law in Indonesia after the reform. According to him, the political theory of Islamic law after reform is the constitution theory and the accommodation theory. The meaning of this theory is that the State has a constitutional obligation to accommodate and make Islamic law a reference for national law. Therefore, all legal products in Indonesia must be in line with the universal values of Islam and the values of Islamic law and at least the laws and regulations do not contradict Islamic law that is believed by the majority of the Indonesian people and nation.⁵²

This new theory is built on a strong footing according to Abdul Halim. There are seven arguments that support this theory. *The first* is that the 1945 Constitution provides guarantees for the enforcement of religious law. *Second*, the Muslim community is the largest society in Indonesia and even in the world. *Third*, Islamic law is a law that lives and grows in the middle of Indonesian society (*the living law*) and as one of the *subsystems* of national law. *Fourth*, the political climate and democracy in Indonesia have provided space for the transformation of Islamic law into national law, because most political institutions are dominated by Muslims. *Fifth*, the blurring of the dividing line between secular nationalists and Islamic nationalists. Secular nationalists have transformed into religious nationalists. This will enlarge the accommodative factor and reduce the dimension of conflict towards Islamic law which becomes National Law. *Sixth*, the transformation of religious thinking from formalistic-legal to substantive-legal. *Seventh*, the development of democracy has opened the door wide for the accommodation and adoption of Islamic law in laws and regulations.⁵³

⁵⁰ Ulya Kencana, "Wakaf Uang Dalam Perspektif Hukum Dan Politik," *Jurnal Nurani* 16, no. 2 (2016). 161.

⁵¹ Muchammad Ali Safaat, *Dinamika Negara Dan Islam: Dalam Perkembangan Hukum Dan Politik Di Indonesia* (Jakarta: Konstitusi Press, 2018). 330-331.

⁵² Abdul Halim, "Membangun Teori Politik Hukum Islam Di Indonesia," *Jurnal Ahkam* XIII, no. 2 (2013): 268.

⁵³ Abdul Halim.

Realizing Islamic Inheritance Law in Indonesia in a Compiled Legal Product

The use of the word *compilation* in Islamic inheritance law is a political step in Islamic law in Indonesia. The government does not use the words *qanun*, *ahkam* and also codification. This is one of the government's strategies so that inheritance law products are accepted by the Muslim community in Indonesia and are also not rejected by non-Muslim citizens. The use of this word is a politically correct choice compared to the word *qanun* or *ahkam*, because this word has the implication of Islamization of national law and will also cause discrimination so that it will cause a reaction in non-Muslim communities. The right choice of words is very important in politics. Politics that is identified with power must seek power by violence and also by persuading others willingly. This persuasion can be done by *implication*, which is a message that can be conveyed using language that raises other assumptions behind the text explicitly.⁵⁴ The word *compilation* as a source of Islamic inheritance law in Indonesia will be acceptable to other non-Muslim citizens.

The establishment of Islamic inheritance law in the form of a compilation is a political choice of Islamic law in Indonesia. The choice of the word compilation has been pondered by the *umara* and *scholars* at the time of its compilation. If the word *codification* is used, it is feared that it will cause a reaction from the public because there is an assumption that there will be a change in Islamic inheritance law from the book of fiqh to the new law. This will certainly be challenged by the internal Muslim community of the archipelago, while if it is stated as a compilation, this means that it is a collection of opinions in the book of fiqh and is made into the inheritance law of Islam in Indonesia.⁵⁵ This is one of the government's ways not to cause a negative reaction from the public even though in fact in the KHI there are many updates of what is in the books of fiqh as mentioned above.

Making Islamic Inheritance Law in the Form of Legal Products Presidential Instructions, Fatwa of the Indonesian Ulema Council and Jurisprudence

The selection of Islamic inheritance law in the form of a Presidential Instruction (Inpres) is a very appropriate political choice. If the KHI is compiled in the form of a law, it will quickly get a response from the non-Muslim community who think that an Islamic state will emerge or a great influence of Islam on the country so that it will disrupt unity and unity. In addition, it will take a long time to be able to convince non-Muslim communities that there is no Islamization and no Islamic state. The experience of the *ulama* and *umara* in the government has been very mature, such as the promulgation of Law No. 1/1974 on Marriage and Law No. 7/1989 on Religious Courts requires a long time, a lot of effort and money. This experience should not be repeated, so the most appropriate way at that time is in a short way, *cutting the compass*, namely the Presidential Instruction. Finally, before leaving for the hajj, on June 10, 1991, the President signed Presidential Instruction No. 1 of 1991 which was followed up with the Decree of the Minister of Religion No. 154/1991 on

⁵⁴ Johar Amin, "Representasi Kekuasaan Dalam Tuturan Elit Politik Pascareformasi," *Linguistik Indonesia* 31, no. 1 (2013): 46.

⁵⁵ Mahkamah Agung, *Himpunan Peraturan Perundang-Undangan Yang Berkaitan Dengan Kompilasi Hukum Islam Serta Pengertian Dalam Pembahasannya*, 438.

July 22, 1991 and disseminated through the Circular Letter of the Directorate of Development of the Islamic Religious Judiciary Agency Number 3694/EV//HK.003/AZ/91 dated July 25, 1991.⁵⁶ With the birth of this Presidential Instruction, this will be implemented by the Religious Affairs Office (KUA) of Districts throughout Indonesia and the judges of the Religious Court who at that time were still in the Ministry of Religion and also for the Muslim community nationally.

The Presidential Instruction does not damage the framework of unity and unity, because if it is damaged, it will cause *mafsadat*, the Government needs a strategy on how to make this Islamic inheritance law can be applied by the Muslim community without hurting its non-Muslim brothers. The legal product of KHI in the form of a Presidential Instruction is to apply the method in *fiqh siyasah* which explains that the government chooses the best policy among the two good, as well as rejects and eliminates *the existing* mudharat.⁵⁷ This is the political *ijtihad* of Islamic law (*fiqh siyasah*) in Indonesia.

The question that arises is why the legislature has not drafted a law on Islamic inheritance law, such as marriage law, zakat, waqf and so on so that it has stronger *imperative* power? This question is very basic to answer, but politically Islamic law in Indonesia is not very needed. Legal politics only wants that Islamic inheritance law can be applied and can realize justice, certainty, and legal order. Islamic inheritance law, if formulated in the form of law, will experience many obstacles in the process, both in the executive and legislative environment.

The experience of the Indonesian people has shown that it is very difficult to draft a law related to family law and is very sensitive to religion, such as the marriage law and religious courts which have received many rejections from Muslims internally and externally. It is different from rules related to the economy, such as the law on zakat, waqf, and Islamic banking. In these three laws, there is the interest of the state to improve the community's economy, while inheritance law is very closely related to religion, customs, and families which are very sensitive and have a great chance of causing conflicts between heirs. This shows that Eurlich's theory is very correct that laws related to the state must be realized, while laws related to religion must really be laws that grow in the middle of society.⁵⁸

Furthermore, in order to bring about caustic justice and facilitate the renewal of Islamic inheritance law, Islamic inheritance law was formed in the form of jurisprudence and fatwa of the Indonesian ulema assembly. The product of institutionalizing Islamic inheritance law in the form of fatwas and jurisprudence will easily undergo dynamics and updates, in contrast to laws and regulations that require complicated political and bureaucratic decisions.

Involving Ulama, Umara and Hukama in the Formation of Islamic Inheritance Law Reform in Indonesia

⁵⁶ Mahkamah Agung.

⁵⁷ Fauzi Usman Shalih, *Al-Qawaid Wa Ad-Dhawabith al-Fiqhiyyah Wa Tathbiqatuha Fi as-Siyasah as-Syar'iyah* (Riyadh: Dar al-'Ashimah, 2011). 127-128.

⁵⁸ Sudjono Dirdjosisworo, *Sosiologi Hukum*, 2.

Savigny's theory has explained that the law must grow, live and develop from society, it is the legal consciousness of society which he calls the soul of the people or the nation (*spirit of the people/volkgeist*).⁵⁹ A law that does not grow from society, but it is a law imposed by the government, then the law will not be obeyed by the community.⁶⁰ One of the political strategies taken by the Indonesian government so that this Islamic inheritance law really comes from the people, not coercion from the government is by involving ulama, umara, academics and also judges in Indonesia, involving all of this not only at the stage of results, but starting from the stage of planning, implementation and up to the stage of acceptance and implementation decisions. The initiative to form and standardize Islamic law in Indonesia in the form of KHI – including Islamic inheritance law in Indonesia – came from the government represented by the Ministry of Religion and the Supreme Court. The government involves scholars, Muslim figures, Muslim academics and judges by means of interviews and workshops on the results of the formulation of Islamic law in the KHI. The workshop was attended by 124 participants consisting of the Chairman of the Provincial Ulema Council, the Chairman of the High Court of Religion throughout Indonesia, several rectors of the State Islamic Institute (IAIN), Muslim community organizations, Muslim scholars from the central and regional levels and even from women's organizations. Busthanul Arifin stated that this politics emerged to avoid what happened to the Sudanese state under Numaeri, where the law was imposed by the government, which brought a response and challenges from some of its people.⁶¹

The government gives the right to the Supreme Court to build and update Islamic inheritance law in Indonesia. Religious judges in the Supreme Court have reformed Islamic inheritance law through jurisprudence. There are two Supreme Court decisions that establish and update Islamic inheritance law in Indonesia, namely *first*, girls wear their uncle's hijab, and *second*, girls get the same share as boys if it can be proven that boys are unable to carry out their responsibilities. The Supreme Court's decision that gives all inheritance to the daughter to the heir who does not have a son and he hijabs the heir's brother (the daughter's uncle). Such a decision is in the Supreme Court Decision No. 122 K/AG/1995 dated April 30, 1996 and also the Decision of the Supreme Court of the Republic of Indonesia No. 218 K/AG/1993 dated July 26, 1996,⁶² while an example of a decision of the Religious Court that gives equal parts to boys and girls because they do not carry out their responsibilities is the Decision of the Religious Court of Medan City Number 92/Pdt.G/2009/PA-Mdn,⁶³ Actually, in the report of Supreme Court Justice Muhtar Zamzami, there have been three Religious

⁵⁹ M.Zulfa Aulia, "Friedrich Carl von Savigny Tentang Hukum: Hukum Sebagai Manifestasi Jiwa Bangsa," *Undang Jurnal Hukum* 3, no. 1 (2010): 212.

⁶⁰ Sudjono Dirdjosisworo, *Sosiologi Hukum*, 2.

⁶¹ Mahkamah Agung, *Himpunan Peraturan Perundang-Undangan Yang Berkaitan Dengan Kompilasi ukum Islam Serta Pengertian Dalam Pembahasannya*,. 41.

⁶² Edi Riyadi, "Paradigma Baru Hukum Waris Islam Di Indonesia," *Jurnal Varia Peradilan Majalah Hukum Tahun XXV Nomor 287 Tahun 2009*, h. 52. XXV, no. 287 (2009): 52.

⁶³ Kaswadi, "Putusan Hakim Anak Perempuan Mahjub Saudara Pewaris Dalam Pewarisan Di Pengadilan Agama Lombok Barat Beserta Implikasinya," *Jurnal Morality Jurnal Hukum* 07, no. 02 (2021): 135-136.

Court Decisions that provide a one-for-one section for boys and girls, namely the Makassar Religious Court Decision Number 338/Pdt.G/1998/PA. UPG, Decision of the Makassar Religious Court No. 230/Pdt.G/2000/PA. Mks and the Decision of the Medan Religious Court No. 92/Pdt.G/2009/PA. Mdn. There are so many Supreme Court decisions that have become jurisprudence for the development and renewal of Islamic inheritance law in Indonesia.

Realizing a Non-Litigation Institution in the Implementation of the Distribution of Inheritance Based on Islamic Law

One way to prevent inheritance law disputes from being too numerous and so that the dispute does not cause disharmony, the steps taken by the government is to suggest the resolution of sharia disputes through non-litigation channels, namely through mediation. The settlement of inheritance disputes by means of mediation is very beneficial to the parties, the integrity and harmonization of the family will continue to be guaranteed because it is carried out not on the basis of losing and winning, but based on law and family,⁶⁴ In order for this mediation to be carried out properly, Supreme Court Regulation Number 1 of 2016 was formed. The birth of Perma is a political step in the politics of reforming Islamic inheritance law in Indonesia, because rules like this do not yet have provisions in fiqh books.

Involving the Community in the Implementation of the Distribution of Inheritance Based on Islamic Law

Islamic inheritance law in Indonesia is a law that is built on the basis of sharia in the framework of Indonesian society. The law must bring benefits, legal certainty and legal order. Dispute resolution through the judicial process and mediation is the last resort if the community cannot resolve it independently. One of the articles that firmly and clearly provides an opportunity for its citizens to complete the Islamic inheritance is Article 183 of the Compilation of Islamic Law. This article is the government's response to the culture that exists in the Indonesian people to solve all problems by deliberation and consensus. This provision does not contradict what is regulated in the book of fiqh, namely *tkharuj an tirkah*. This is one of the politics of Islamic law reform in Indonesia. The participation of the community in the implementation of the distribution of inheritance will help the government in realizing a law that is fair and beneficial.

These measures constitute a thorough and strategically devised initiative to modify Islamic inheritance law, aligning it with the changing social dynamics and legal requirements in Indonesia. This reform seeks to modify Islamic inheritance law to accommodate the increasingly intricate social dynamics, taking into account both traditional ideals and evolving practical requirements within society. Furthermore, these measures aim to further the integration of religious law with the national legal framework, fostering a cohesive synergy between the two. This seeks to guarantee that Islamic inheritance law aligns with Sharia principles and is recognized and implemented within the national legal structure. This initiative considers the obstacles encountered by Indonesia's multicultural

⁶⁴ Khozanah Ilma Terok, et.al., "Pengaruh Mediasi Dalam Penyelesaian Sengketa Waris," *Juncto Jurnal Ilmiah Hukum* 3, no. 1 (2021): 18.

and diverse population and seeks to establish a more inclusive, equitable, and efficient legal framework for addressing inheritance issues. This reform aims to ensure that Islamic inheritance law is not merely a theoretical construct but is actively implemented in everyday life, fostering a sense of justice and legal certainty within society. An effective integration of religious law and national law will establish a more robust legal framework capable of addressing contemporary legal difficulties while upholding the ideals and principles of Islamic law that underpin the system.

Conclusion

The reform of Islamic inheritance law in Indonesia encompasses three critical elements: the legal substance, the stakeholders, and the process of renewal. The update encompasses modifications to fundamental concepts, legal principles, and methodologies for the implementation of Islamic inheritance law. This reform is implemented collaboratively by governmental bodies, including the administration and judiciary, with non-governmental organizations, particularly the Indonesian Ulema Council. The Indonesian government implements this update by presidential directives, ulama fatwas, and jurisprudence, rather than through legislation. The reform of Islamic inheritance law in Indonesia is influenced not only by fatwas and fiqh experts but also by the interpretation of *ijtihad*, which generates legal remedies pertinent to societal context. This study enhances current theories, including Anugrah Reskiani's perspectives on the application of jurisprudence in the reform of Islamic inheritance law in Indonesia. The findings indicate that the reform of Islamic inheritance law in Indonesia emphasizes a flexible and contextual approach, facilitating community acceptance and implementation of the law.

The reform of Islamic inheritance law in Indonesia occurs in two primary phases: renewal and institutionalization. The update is conducted by the *ijtihad* approach, encompassing both *intiq'a'i tarjihi* and *ibda'i insya'i*. Conversely, the institutionalization of Islamic inheritance law via presidential directives, MUI fatwas, and Supreme Court jurisprudence represents the most prudent political decision regarding Islamic law at present, given the challenges in legislative formulation within parliament and the divergent views among scholars. The Indonesian government employs seven tactics in the realm of Islamic law (*fiqh Siyasah*), which encompass the establishment of Islamic inheritance law grounded in societal norms, the formulation of codified legal products, and the engagement of clerics and the community in the implementation process. This technique demonstrates that Indonesia's Islamic inheritance law system embraces the Anglo-Saxon paradigm, emphasizing legal flexibility in alignment with societal dynamics. The implications of these findings are the establishment of a more inclusive and responsive inheritance law system tailored to the requirements of the Indonesian Muslim population. Moreover, these findings underscore the significance of collaboration among the government, ulama, and the community in legal reform to attain enhanced justice and legal clarity in the implementation of Islamic inheritance in Indonesia.

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