al-ahwal
Jurnal Hukum Keluarga Islam

Al-Aḥwāl: Jurnal Hukum Keluarga Islam
ISSN: 2085-627X (p); 2528-6617(e)
Vol. 17, No. 2 (2024), pp. 147-66, DOI: 10.14421/ahwal.2024.17201

# Between *Hibah* and *Waṣiat Wājibah* for Non-Muslims: Expansive Legal Interpretations by Indonesian Religious Judges in Inheritance Cases

Muhammad Lutfi Hakim
IAIN Pontianak, Indonesia
Email: muhammadlutfihakim@iainptk.ac.id

**ABSTRACT**

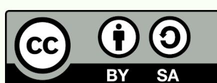
Apart from gender, differences in religious affiliation have often been perceived as negatively impacting the rights of non-Muslims in the practice of family law within Muslim jurisdictions. This article challenges that assumption by presenting recent evidence from the practice of religious courts in Indonesia, specifically in inheritance cases involving testators without heirs. It aims to analyze the legal arguments employed by religious judges in granting the testator's estate to non-Muslim cognates through *hibah* (gift). By examining three court verdicts, from the first instance to the cassation level, the author finds that religious judges utilize both juridical and philosophical reasoning to accommodate the rights of non-Muslims via the institution of *hibah wājibah* (mandatory gift). While the juridical arguments at the first-instance level align with classical *fiqh* (Islamic jurisprudence), which prescribes allocating the testator's estate to the *bait al-māl* (public treasury), higher-level judges deviate from this approach. They adopt an expansive interpretation of *hibah* provisions, prioritizing societal justice over rigid adherence to classical *fiqh* rules. Unlike *waṣiat wājibah* (mandatory will), *hibah wājibah* offers greater flexibility, as a maximum limit does not constrain it. The author argues that the state's efforts to encourage religious judges to shift away from rigid classical *fiqh* references have been gradually successful. This finding carries significant implications for promoting justice and equality among citizens, regardless of their religious affiliation.

[Perbedaan afiliasi agama, selain gender, berdampak negatif pada hak yang diterima oleh non-muslim dalam praktik hukum keluarga di yurisdiksi muslim. Artikel ini membantah asumsi ini dengan menyajikan bukti terbaru melalui praktik peradilan agama Indonesia pada kasus pewaris tidak memiliki ahli waris. Untuk itu, artikel ini bertujuan untuk menganalisis argumentasi hukum yang digunakan oleh para hakim agama dalam menyelesaikan kasus tersebut yang melibatkan kerabat non-muslim. Melalui analisis isi terhadap tiga putusan pengadilan agama dari tingkat pertama sampai kasasi, penulis menemukan bahwa para hakim menggunakan argumentasi yuridis dan filosofis untuk mengakomodasi hak-hak non-muslim melalui institusi hibah wajibah. Meskipun argumentasi yuridis para hakim agama pada tingkat pertama kompatibel dengan ketentuan fikih klasik yang memberikan harta peninggalan tersebut ke *bait al-māl*, namun argumentasi hukum para hakim pada dua tingkat terakhir cenderung mengabaikannya. Mereka menginterpretasikan secara ekspansif ketentuan tentang hibah dengan mempertimbangkan rasa keadilan yang hidup di masyarakat. Pemenuhan hak-hak non-muslim melalui hibah wajibah ini lebih fleksibel, karena tidak memiliki batas maksimal bagian sebagaimana dalam wasiat wajibah. Penulis berargumentasi bahwa upaya negara menjauhkan para hakim agama dari merujuk pada ketentuan fikih klasik berhasil secara bertahap. Temuan ini berimplikasi terhadap keadilan dan persamaan hak antar warga negara, tanpa memandang afiliasi agama.]

**KEYWORDS**
*Hibah*, Islamic Inheritance, legal interpretation, non-Muslim rights, *waṣiat wājibah*.

**ARTICLE HISTORY**
Received: 6 November 2023
Approved for Publication: 30 December 2024

**TO CITE THIS ARTICLE**
Muhammad Lutfi Hakim, "Between *Hibah* and *Waṣiat Wājibah* for Non-Muslims: Expansive Legal Interpretations by Indonesian Religious Judges in Inheritance Cases" *Al-Ahwal: Jurnal Hukum Keluarga Islam* 17, no. 2 (2024): 147-66, https://doi.org/10.14421/ahwal.2024.17201.



Copyright © 2024 by Author(s)
This work is licensed under a Creative Commons Attribution-ShareAlike 4.0 International License.

## Introduction

Not only gender but also religious affiliation significantly influence the hierarchy of rights in Muslim personal status legislation.[1] The conversion of one non-Muslim partner to Islam has far-reaching consequences under Islamic family law in Malaysia.[2] Such conversions necessitate the dissolution of their marriage, with Sharia Courts prioritizing custody rights (*ḥaḍānah*) for Muslim parents while overlooking the inheritance rights of non-Muslims.[3] Similarly, in Indonesia, religious judges often revoke the custody rights of non-Muslim parents who convert to a religion other than Islam (apostasy or *murtad*). Furthermore, accusations of apostasy against mothers can negatively impact their custody rights, even when these rights should otherwise be guaranteed.[4] In countries like Bahrain, the United Arab Emirates, and Qatar, custody rights are explicitly restricted for

[1] Mariz Tadros, "The Non-Muslim 'Other': Gender and Contestations of Hierarchy of Rights," *Hawwa* 7, no. 2 (January 1, 2009): 111–43.

[2] Zuliza Mohd. Kusrin, "Conversion to Islam in Relation to Divorce in Malaysian Family Law," *Islam and Christian–Muslim Relations* 17, no. 3 (July 2006): 307–15.

[3] See: Najibah Mohd Zin et al., "Jurisdictional Conflict in Interfaith Child Custody Disputes: A Legal Discourse in Malaysian Courts," *Al-Shajarah: Journal of the International Institute of Islamic Thought and Civilization (ISTAC)* 24, no. 1 (July 1, 2019): 1–24; Zuliza Mohd Kusrin et al., "Comment Conversion and the Conflict of Laws in Respect of Spouse Rights to Inheritance in Malaysia," *Religion & Human Rights* 7, no. 1 (January 1, 2012): 1–9.

[4] Muhrisun Afandi, "Apostasy as Grounds in Divorce Cases and Child Custody Disputes in Indonesia," in *Indonesian and German Views on the Islamic Legal Discourse on Gender and Civil Rights*, ed. Noorhaidi Hasan and Fritz Schulze, Studies on Islamic Cultural and Intellectual History (Wiesbaden: Harrassowitz Verlag, 2015), 89–106.

non-Muslim mothers.[5] These examples demonstrate how differences in religious affiliation negatively affect the rights accorded to non-Muslims in family law within Muslim jurisdictions.[6]

In recent developments, Indonesian religious courts have tried to accommodate non-Muslims' rights in interfaith inheritance cases.[7] An examination of several Supreme Court jurisprudence cases in Indonesia reveals that religious judges have recognized the rights of non-Muslims through *hibah* (gifts). For instance, Supreme Court Verdict No. 218 K/AG/2016 not only granted non-Muslims rights to the estate through *waṣiat wājibah* (mandatory will) but also *hibah* in the case of a Muslim testator without heirs. However, Presidential Instruction No. 1 of 1991 on the Compilation of Islamic Law (*Kompilasi Hukum Islam*, KHI) explicitly mandates that such estates be allocated to the *bait al-māl* (public treasury).[8] It raises critical questions about the legal arguments and interpretations employed by religious judges to accommodate the rights of non-Muslims in cases involving testators without heirs but with non-Muslim cognates.

Previous studies analyzing non-Muslim rights in Islamic family law have predominantly focused on custody rights, common property (*harta bersama*), and inheritance. In custody cases, the rights of non-Muslim parents are generally limited due to personal status laws rooted in pre-modern Islamic *fiqh* (jurisprudence), which often view non-Muslims as "others" (*ẓimmī*).[9] Although state laws in some Muslim countries attempt to deviate from classical *fiqh* in addressing apostasy to safeguard human rights, religious judges often adhere to the doctrine that Muslims must protect their religion from potential harm by non-Muslim groups.[10] By contrast, in matters of common property and inheritance, religious judges tend to adopt a more lenient stance, accommodating the rights of non-Muslims.[11] Their legal arguments often incorporate societal norms[12] and find

5 Lynn Welchman, "Bahrain, Qatar, UAE: First Time Family Law Codifications in Three Gulf States," in *The International Survey of Family Law 2010*, ed. Bill Atkin (Jordan Publishing Limited, 2010), 163–78.

6 Imen Gallala-Arndt, "The Impact of Religion in Interreligious Custody Disputes: Middle Eastern and Southeast Asian Approaches," *American Journal of Comparative Law* 63, no. 4 (December 14, 2015): 829–58.

7 Muhammad Lutfi Hakim and Khoiruddin Nasution, "Accommodating Non-Muslim Rights: Legal Arguments and Legal Principles in the Islamic Jurisprudence of the Indonesian Supreme Court in the Post-New Order Era," *Oxford Journal of Law and Religion* 11, no. 2–3 (July 25, 2023): 288–313.

8 "Presidential Instruction No. 1 of 1991 on Compilation of Islamic Law," Article 191.

9 See: Maurits Berger, "Public Policy and Islamic Law: The Modern Dhimmī in Contemporary Egyptian Family Law," *Islamic Law and Society* 8, no. 1 (January 1, 2001): 88–136; Tadros, "The Non-Muslim 'Other,'" 111–43.

10 Euis Nurlaelawati, "For the Sake of Protecting Religion: Apostasy and Its Judicial Impact on Muslim's Marital Life in Indonesia," *Journal of Indonesia Islam* 10, no. 1 (June 7, 2016): 89–112.

11 Nora Abdul Hak, "Rights of a Wife in the Case of Conversion to Islam under Family Law in Malaysia," *Arab Law Quarterly* 26, no. 2 (January 1, 2012): 227–39.

12 Mark E. Cammack, "Marital Property in California and Indonesia: Community Property and Harta Bersama," *Washington and Lee Law Review* 64, no. 4 (2007): 1417–60.

grounding in alternative *fiqh* precedents,[13] enabling verdicts that align with modern contexts and are acceptable to Muslim communities.[14] These interpretations have gradually paved the way for new, inclusive applications of Islamic law that balance secular and religious considerations.[15]

Unlike previous studies focusing on the three cases above, this article examines cases involving testators without heirs but with non-Muslim cognates. By analyzing religious judges' decisions to grant *hibah* to non-Muslim cognates instead of allocating the estate to the *bait al-māl*, the author argues that Indonesia's efforts to distance religious judges from classical *fiqh* rulings on apostasy have gradually advanced justice and equality among citizens. To support this argument, the author first presents an overview of relevant cases and the corresponding legal decisions made by religious judges. The analysis then delves into the contrasting legal arguments used to exclude or accommodate non-Muslims' rights. Finally, the article explores how judges interpret the provisions of *hibah* as an alternative legal mechanism to grant rights to non-Muslims, particularly in cases involving a testator without heirs, through the institution of *hibah wājibah* (mandatory gift).

This study employs a qualitative methodology with a socio-legal approach. The primary data consists of three verdicts issued by religious judges at various levels, obtained from the Supreme Court Verdict Directory:[16] Yogyakarta Religious Court Verdict No. 0042/Pdt.G/2014/PA.Yk, Yogyakarta High Religious Court Verdict No. 16/Pdt.G/2015/PTA.Yk, and Supreme Court Verdict No. 218 K/AG/2016. These verdicts were selected because, out of five Supreme Court decisions serving as jurisprudence for granting *waṣiat wājibah* to non-Muslim heirs, only Verdict No. 218 K/AG/2016 pertains to a testator without heirs, a situation referred to in *fiqh* as *al-munāsakhāt*.[17] Secondary data sources complement the analysis, including peer-reviewed articles, books, research findings, and other relevant materials. To protect the privacy of the individuals involved in these cases, pseudonyms are used. The data is analyzed using the

[13] Ratno Lukito, *Legal Pluralism in Indonesia: Bridging the Unbridgeable*, Routledge Contemporary Southeast Asia Series, v. 48 (New York: Routledge, 2013), 181.

[14] Hakim and Nasution, "Accommodating Non-Muslim Rights," 288–313.

[15] Maurits Berger, "Secularizing Interreligious Law in Egypt," *Islamic Law and Society* 12, no. 3 (January 1, 2005): 394–418.

[16] See: Directory of Supreme Court Verdicts, "Jurisprudence on Wasiat Wajibah," accessed October 1, 2023, https://putusan3.mahkamahagung.go.id/yurisprudensi/detail/11eadf086b586f509ef932323 0333034.html.

[17] In *fiqh* books, the case of *al-munāsakhāt* refers to a situation where the first testator passes away, leaving several heirs. If the inheritance has not yet been distributed, one or more of these heirs may subsequently pass away. Consequently, the net estate of the second or subsequent testator is transferred to the remaining heirs. See: Muḥammad Alī al-Shōbūnī, *Al-Mawārīth fī al-Sharī'ah al-Islāmiyyah* (Beirut: Dār al-Kitāb al-Ilmiah, 1995), 159.

interactive qualitative analysis model developed by Matthew B. Miles, A. M. Huberman, and Johnny Saldaña.[18]

## Inheritance Rules for Testators Without Heirs: *Fiqh* and State Law Perspectives

Islamic inheritance law provides for the transfer of the estate (*al-tirkah*) from the testator (*al-muwarriṡ*) to their heirs (*al-wāriṡ*), specifying both the rightful heirs and their designated shares (*al-furūḍ al-muqaddarah*).[19] In *fiqh*, these rules are known as *'ilm al-mīrāṡ* or *'ilm al-farā'iḍ*.[20] Before distribution, the estate is subject to deductions for burial costs (*taḥjiz*), debts, and any *waṣiat* (will) made by the testator.[21] The remaining portion, referred to as the net estate (*al-mīrāṡ*), is distributed among the heirs. To qualify as heirs, individuals must have a valid marital relationship (*al-nikāḥ al-ṣaḥīḥ*) or blood ties (*al-qarābah*) with the testator. Additionally, four factors disqualify a person from inheriting: murder (*al-qatl*), differences in religion (*ikhtilāf al-dīn*), apostasy (*murtad*), and slavery.[22] The intricate nature of these inheritance rules is a hallmark of Islamic family law.[23]

A notable question arises when a testator leaves no heirs. In such cases, the four major Sunnī schools of law (*madhhab*) agree that the estate should be allocated to the *bait al-māl*. However, they differ in the mechanism of transfer.[24] The Mālikī and Shāfi'ī *madhhab*s assert that the *bait al-māl* inherits the estate as if it were an heir, positioning it as the rightful successor. Conversely, the Ḥanafī and Ḥanbalī *madhhab*s argue that the estate is transferred to the *bait al-māl* not through inheritance but to serve the broader welfare of the Muslim community. This provision applies to non-Muslims (*ẓimmī*) without heirs as well. A similar principle governs cases involving illegitimate children.[25] Since they can only inherit from their mothers, the father's estate is transferred to the *bait al-māl*.[26]

A related question concerns testators who leave *żawiī al-arḥām* (cognates).[27] Islamic jurists (*fuqahā'*) differ in their interpretations to resolving this issue.[28] Abū

[18] Matthew B. Miles, A. M. Huberman, and Johnny Saldaña, *Qualitative Data Analysis: A Methods Sourcebook*, 3rd ed. (Califorinia: SAGE Publications, Inc, 2014), 31–33.

[19] "Presidential Instruction No. 1 of 1991 on Compilation of Islamic Law," Article 171.

[20] Wahbah al-Zuḥailī, *Al-Fiqh al-Islamī wa Adillatuhu*, vol. 8, 5 (Damsyik: Dār al-Fikr, 1985), 243.

[21] Al-Shōbūnī, *Al-Mawārīth fī al-Sharī'ah al-Islāmiyyah*, 34–36. The maximum limit for the *waṣiat* by the testator is one-third (1/3) of the estate. See: David S. Powers, "The Islamic Inheritance System: A Socio-Historical Approach," *Arab Law Quarterly* 8, no. 1 (1993): 18.

[22] Al-Zuḥailī, *Al-Fiqh al-Islamī wa Adillatuhu*, 8:249–69.

[23] Joseph Schacht, *An Introduction to Islamic Law* (New York: Clarendon Press, 1982), 170–71.

[24] Al-Zuḥailī, *Al-Fiqh al-Islamī wa Adillatuhu*, 8:407–8.

[25] Zainal Azwar et al., "Child Filiation and Its Implications on Maintenance and Inheritance Rights: A Comparative Study of Regulations and Judicial Practices in Indonesia, Malaysia, and Turkey," *Journal of Islamic Law* 5, no. 1 (February 29, 2024): 62–85.

[26] Zahari Mahad Musa, "The Fatwa of a Companion as Sources of Islamic Law in the Specific Cases on Farā'id," *Jurnal Syariah* 20, no. 2 (May 1, 2012): 182.

[27] The *żawiī al-arḥām* roughly corresponds to cognates. See: Schacht, *An Introduction to Islamic Law*, 170.

[28] Al-Zuḥailī, *Al-Fiqh al-Islamī wa Adillatuhu*, 8:387–89.

Ḥanīfah, Aḥmad ibn Ḥanbal, ʿUmar ibn al-Khaṭṭāb, ʿAlī ibn Abī Ṭālib, Ibn Masʿūd, and Ibn ʿAbbās contend that the estate should be granted to *żawiī al-arḥām* through a *waṣiat*, citing *Sūrah al-Aḥzāb* (33:6) and four *ḥadīth* that emphasize the importance of allocating estates to *żawiī al-arḥām*. By contrast, Imām Syāfiʿī, Imām Mālik, Zaid ibn Thābit, Saʿīd ibn al-Musayyab, and Saʿīd ibn Jubair argue that if a testator dies without direct heirs (*aṣḥāb al-furūḍ* and *aṣḥābah*), the estate should be transferred to the *bait al-māl* for the welfare of the Muslim community.[29] This view draws on *Sūrah Maryam* (19:6) and two *ḥadīth*, one of which recounts that the Angel Gabriel informed the Prophet Muhammad that uncles and aunts (*żawiī al-arḥām*) do not inherit. In cases where no *bait al-māl* exists, the estate is distributed proportionally to other heirs or, in their absence, allocated to *żawiī al-arḥām*.[30]

In the Indonesian context, the KHI governs the distribution of estates for testators without heirs. Article 191 of the KHI stipulates that a testator's estate who leaves no heirs or whose heirs are unknown should be transferred to the *balai harta keagamaan* (a local equivalent of the *bait al-māl*).[31] However, since the enactment of the KHI in 1991, this institution has not been formally established in Indonesia. While the *balai harta keagamaan* and *bait al-māl* serve similar functions, the latter historically functioned as a formal institution in Islamic states. As Indonesia, despite its Muslim-majority population, is not an Islamic state, legal practitioners such as Marjohan Syam—a former judge of the Pekanbaru Religious High Court—have recommended establishing a similar institution to uphold religious justice.[32] The transfer of estates to the *bait al-māl* aims to benefit Islam and the broader community. Unlike classical *fiqh*, the KHI permits this transfer through the institution of *hibah* rather than inheritance. Under the KHI, *hibah* is defined as a voluntary and unconditional gift made by a living person to another.[33] Since the testator in these cases is deceased, the act of *hibah* is carried out by religious judges through court verdicts, effectively acting on behalf of the testator to transfer the estate to the *bait al-māl*. This practice ensures that the estate serves communal welfare while adhering to Islamic principles.

Overall, the provisions for distributing a testator's estate without heirs under the KHI and *fiqh* are not inherently contradictory. Both frameworks ultimately direct the estate to the *bait al-māl*. Their alignment reflects the influence of

[29] When there are no heirs, transferring the testator's estate to the *bait al-māl* is considered more beneficial for public welfare than allocating it to *żawiī al-arḥām*. This is because the estate serves the Muslim community as a whole, rather than providing personal benefits to *żawiī al-arḥām*. See: Beni Ahmad Saebani, *Fiqh Mawaris*, 1st ed. (Bandung: Pustaka Setia, 2009), 183.

[30] Al-Zuḥailī, *Al-Fiqh al-Islamī wa Adillatuhu*, 8:283.

[31] "Presidential Instruction No. 1 of 1991 on Compilation of Islamic Law," Article 171.

[32] Marjohan Syam, "Kebutuhan Akan Baitul Mal bagi Badan Peradilan Agama dengan Padanannya Balai Harta Peninggalan (BHP) di Indonesia," October 20, 2022, 1, https://badilag.mahkamahagung.go.id/artikel/publikasi/artikel/kebutuhan-akan-baitul-mal-bagi-badan-peradilan-agama-dengan-padanannya-balai-harta-peninggalan-bhp-di-indonesia-oleh-dr-h-marjohan-syam-sh-mh-20-10.

[33] "Presidential Instruction No. 1 of 1991 on Compilation of Islamic Law," Article 171.

classical *fiqh*—particularly that of the Shāfi'ī *madhhab*—on the codification of the KHI.[34] However, the transfer mechanisms differ: the KHI employs the concept of *hibah*, while classical *fiqh* relies on the principle of inheritance. This alignment also resonates with the views of Ismail Mundu, a prominent Nusantara scholar and former Royal Mufti and Judge of the Court of Kubu, who applied these principles before and after Indonesia's independence (1907–1957).[35]

## Inheritance Among Different Religions and Testators Without Heirs: Case Description

The case analyzed in this article is exceptionally complex, involving three contentious issues frequently debated by Islamic jurists in the field of inheritance law: the *al-munāsakhāt* case, a testator without heirs, and heirs of different religions. It is classified as an *al-munāsakhāt* case because it involves the estates of four testators, originating from the common property of two initial testators—a husband and wife.[36] The complexity is further heightened by the inclusion of another testator who left no heirs and the presence of heirs from different religions. This multifaceted scenario has led to disparate judgments by religious judges, from the first instance court to the appellate level, and significant variations in the legal reasoning applied to resolve the dispute.

The case originated in the Yogyakarta Religious Court and centers on Ahmad and Siti, a married couple. Ahmad (Testator 1) passed away on September 12, 1987, leaving seven heirs: a widow, his mother, a full-blooded brother, two half-brothers, and two half-sisters. On January 2, 1997, Siti (Testator 3) died without heirs. Prior to Siti's death, Ahmad's mother (Testator 2) had also passed away, leaving behind one biological son—Ahmad's full-blooded brother, Saiful (Testator 4). Ahmad and Siti's common property included a parcel of land and a building in Yogyakarta, covering an area of 132 $m^2$. Before the inheritance could be distributed, Saiful passed away on December 26, 2001, leaving seven heirs: a non-Muslim widow (Martha), a non-Muslim biological son (Nikolas), a non-Muslim biological daughter (Gabriela), two half-brothers (Yusuf and Yunus), and two half-sisters (Aminah and Aisyah).[37]

[34] See: Euis Nurlaelawati, *Modernization, Tradition, and Identity: The Kompilasi Hukum Islam and Legal Practice in the Indonesian Religious Courts*, ICAS Publications Series 4 (Amsterdam: Amsterdam University Press, 2010), 44–45; Martin Bruinessen, "Kitab Kuning; Books in Arabic Script Used in the Pesantren Milieu; Comments on a New Collection in the KITLV Library," *Bijdragen Tot de Taal-, Land- En Volkenkunde / Journal of the Humanities and Social Sciences of Southeast Asia* 146, no. 2–3 (January 1, 1990): 249.

[35] Muhammad Lutfi Hakim, "Ismail Mundu on Islamic Law of Inheritance: A Content Analysis of Majmū' al-Mīrāth fī Ḥukm al-Farā'iḍ," *Al-Jami'ah: Journal of Islamic Studies* 61, no. 1 (June 30, 2023): 59–79.

[36] For a detailed explanation of *al-munāsakhāt* and its resolution, see: Al-Zuḥailī, *Al-Fiqh al-Islamī wa Adillatuhu*, 8:433–39.

[37] Gabriela Vs. Yusuf and 6 Others, No. 218 K/AG/2016 (Indonesian Supreme Court Verdict May 26, 2016).

Before her death, Siti gathered all of Ahmad's heirs and orally made a *waṣiat* concerning the common property, leaving it to Yusuf and Aminah. Since Siti had no heirs, she transferred ownership of the 132 m² land and building to Yusuf and Aminah by issuing a land certificate. At the time, none of the other heirs objected to the contents of the *waṣiat*. When the inheritance dispute was eventually registered with the Yogyakarta Religious Court, Yusuf and Aminah still possessed the property, with Aminah retaining the land certificate.[38]

The dispute over the estate arose following Siti's death. Saiful and Martha contacted Aminah via telephone to request permission for Gabriela and her family to temporarily reside in the Yogyakarta house, part of the common property. After consulting with her family, Aminah, acting in good faith, granted Gabriela and her family temporary permission to reside in the house under two conditions: first, the permission was strictly temporary; second, Gabriela's family was to occupy only the rear rooms. The latter condition was intended to ensure that Ahmad's heirs, who lived outside Yogyakarta, could use the front rooms when visiting the city.[39]

Despite Aminah's conditions, Saiful, Martha, and Gabriela moved into the entire house, disregarding the agreement. Furthermore, they fraudulently obtained new land certificates for the property, listing Nikolas and Gabriela as the owners based on false information. These criminal actions came to light after Saiful's death on December 26, 2001. During a visit to offer condolences to Saiful's family, Yusuf and Aminah discovered that the land certificate had been altered to bear the names of Nikolas and Gabriela. Shocked by this discovery, Yusuf, Aminah, and their families sought to resolve the matter amicably through family discussions. However, Martha and Gabriela ignored these efforts and refused to engage in dialogue. As a result, Yusuf, Aminah, and their families filed an inheritance dispute with the Yogyakarta Religious Court to address the fraudulent ownership transfer and restore their property rights.[40]

## Legal Argumentation of Religious Judges: *Waṣiat Wājibah* and *Hibah* for Non-Muslims

Disparities in the verdicts of religious judges arise when addressing the inheritance of estates left by a testator without heirs. In the first instance, religious judges allocated the estate to the *bait al-māl* based on juridical arguments. However, judges at the religious high court and supreme court levels diverged from this approach, instead awarding the estate to the testator's cognates, including both Muslim and non-Muslim heirs. In addition to juridical reasoning, these judges incorporated philosophical arguments to justify their decisions. These discrepancies in verdicts and legal reasoning, from the first instance to cassation,

[38] Yusuf and 3 Others Vs. Gabriela and 3 Others, No. 16/Pdt.G/2015/PTA.Yk (Yogyakarta High Religious Court Verdict May 5, 2015).

[39] Yusuf and 3 Others Vs. Gabriela and 3 Others, No. 0042/Pdt.G/2014/PA.Yk (Yogyakarta Religious Court Verdict December 22, 2014).

[40] Yusuf and 3 Others Vs. Gabriela and 3 Others.

reflect differing interpretations of the existence and practical role of the *bait al-māl* institution as mandated by the KHI.

To resolve the case, religious judges first determined the heirs, the estate, and the respective shares for the heirs of Testators 1, 2, 3, and 4. For Testator 1, they identified seven heirs and designated half of the common property (shared with Testator 3) as the estate. For Testator 2, they identified one heir, Testator 4. The net estates of Testators 1 and 2 were combined into the estate of Testator 4 and distributed among four heirs. One-third of this was allocated to Testator 4's non-Muslim wife and two non-Muslim children via *waṣiat wājibah*. Since Testator 3 left no heirs, half of the common property and one-quarter of her share from Testator 1's estate were allocated to the *bait al-māl* of Yogyakarta City.[41] A detailed breakdown of the inheritance division is presented in table 1.

**Table 1.** Inheritance division by the Yogyakarta Religious Court judges

| No. | Heirs | Testator 1 (%) | Testator 2 (%) | Testator 3 (%) | Testator 4 (%) | Total (%) | Description |
|---|---|---|---|---|---|---|---|
| **1.** | Siti | 62.5 | - | *Bait al-Māl* | - | 62.5 | Testator 3 |
| **2.** | Ahmad's Mother | 8.3333 | - | | - | - | Testator 2 |
| **3.** | Yusuf | 7.2917 | - | | 3.4722 | 10.7639 | Muslim |
| **4.** | Yunus | 7.2917 | - | | 3.4722 | 10.7639 | |
| **5.** | Aminah | 3.6458 | - | | 1.7361 | 5.3819 | |
| **6.** | Aisyah | 3.6458 | - | | 1.7361 | 5.3819 | |
| **7.** | Saiful | 7.2917 | 8.3333 | | - | - | Testator 4 |
| **8.** | Martha | - | - | | 5.2083 | 5.2083 | Non-Muslim |
| **9.** | Nikolas | - | - | | | | |
| **10.** | Gabriela | - | - | | | | |

Source: Data analysis by the author

In the first instance, religious judges relied on Article 191 of the KHI, which mandates that if a testator leaves no heirs or their heirs are unknown, the estate should be entrusted to the *bait al-māl*. Following this provision, the judges allocated half of the contested common property and one-quarter of Ahmad's net estate to the Badan Amil Zakat (Zakat Management Agency) of Yogyakarta City to benefit Islam and public welfare.[42] This allocation underscores the judges' adherence to classical *fiqh* rules,[43] prioritizing the *bait al-māl* in cases involving apostasy or the absence of heirs,[44] even when the state's legal system seeks to distance itself from such rules.[45] Similar rulings have been observed in Malaysia, where courts have allocated estates to the *bait al-māl* over non-Muslim cognates.[46]

41 Yusuf and 3 Others Vs. Gabriela and 3 Others.
42 Yusuf and 3 Others Vs. Gabriela and 3 Others.
43 Nurlaelawati, *Modernization, Tradition and Identity*, 44–45.
44 Al-Zuḥailī, *Al-Fiqh al-Islamī wa Adillatuhu*, 8:407–8.
45 Nurlaelawati, "For the Sake of Protecting Religion," 89–112.
46 Kusrin et al., "Comment Conversion and the Conflict of Laws in Respect of Spouse Rights to Inheritance in Malaysia," 5–7.

In contrast, judges at the religious high court nullified and revised the first-instance decision. While their determinations of heirs, estates, and respective portions for Testators 1, 2, and 4 aligned with the earlier ruling, the high court deviated in its treatment of Testator 3's net estate. Instead of allocating it to the *bait al-māl*, the court distributed it evenly among the seven heirs of Testator 1. Furthermore, the *hibah* received by Testator 4 from Testator 3 was not shared among all heirs of Testator 4 but was allocated exclusively to his Christian wife and two Christian children via *waṣiat wājibah*. This revision significantly increased the shares of the non-Muslim cognates from 5.2083% to 17.7083.[47] The Supreme Court later affirmed this decision, deeming it just, though it did not elaborate on the rationale for granting *hibah* to non-Muslim cognates.[48] For a detailed breakdown of the heirs' portions, see table 2.

**Table 2.** Inheritance division by the judges of the Yogyakarta High Religious Court and the Supreme Court

| No. | Heirs | Testator 1 (%) | Testator 2 (%) | Testator 3 (%) | Testator 4 (%) | Total (%) | Description |
|---|---|---|---|---|---|---|---|
| **1.** | Siti | 62.5 | - | - | - | - | Testator 3 |
| **2.** | Ahmad's Mother | 8.3333 | - | - | - | - | Testator 2 |
| **3.** | Yusuf | 7.2917 | - | 12.5 | 3.4722 | 23.2639 | Muslim |
| **4.** | Yunus | 7.2917 | - | 12.5 | 3.4722 | 23.2639 | |
| **5.** | Aminah | 3.6458 | - | 12.5 | 1.7361 | 17.8819 | |
| **6.** | Aisyah | 3.6458 | - | 12.5 | 1.7361 | 17.8819 | |
| **7.** | Saiful | 7.2917 | 8.3333 | **12.5** | - | - | Testator 4 |
| **8.** | Martha | - | - | - | 5.2083+**12.5** | 17.7083 | Non-Muslim |
| **9.** | Nikolas | - | - | - | | | |
| **10.** | Gabriela | - | - | - | | | |

Source: Data analysis by the author

The religious high court judges did not allocate a testator's estate without heirs to the *bait al-māl*. Instead, they distributed it equally among Ahmad's heirs. The judges relied on two types of legal arguments: juridical and philosophical. Their juridical argument was based on Articles 191 and 229 of the KHI. Although they acknowledged that Article 191 mandated allocating the estate to the *bait al-māl*, they argued that no officially established Islamic philanthropic institution existed at the time. Consequently, they invoked Article 229, which allows for consideration of societal justice, to justify their decision. Based on this philosophical argument, the judges granted *hibah* to the heirs, including the three Christian heirs of Saiful.[49] The fact that the heirs of Testator 4 had already received a similar *hibah* from Testator 3 reinforced this decision, thereby increasing the

[47] Yusuf and 3 Others Vs. Gabriela and 3 Others, Yogyakarta High Religious Court Verdict May 5, 2015.

[48] Gabriela Vs. Yusuf and 6 Others.

[49] Yusuf and 3 Others Vs. Gabriela and 3 Others, Yogyakarta High Religious Court Verdict May 5, 2015.

share of the three non-Muslim cognates from their initial 5.2083% to 17.7083%. The Supreme Court upheld the high court's ruling, affirming its fairness. However, it did not elaborate on the reasons for granting *hibah* to non-Muslim cognates.[50]

The decisions by the religious high court and supreme court to grant the estate of a testator without heirs to non-Muslim cognates reflect a notable deviation from classical *fiqh* rules. Islamic jurists differ in their opinions on whether the estate of a testator without heirs should be allocated to *żawiī al-arḥām* or the *bait al-māl* for the benefit of the Muslim community.[51] However, the four major Sunnī *madhhab*s unanimously agree that differences in religion or apostasy constitute barriers to inheritance.[52] By analogy, if non-Muslim status disqualifies an individual from inheriting directly, it would logically exclude *żawiī al-arḥām* as well. Despite these traditional provisions, the religious judges chose to disregard them and instead granted the estate of a testator without heirs to non-Muslim cognates. This finding suggests that the state's efforts to steer religious judges away from rigid adherence to classical *fiqh* rules have gradually fostered a prevailing sense of justice within society.[53]

These findings challenge Nurlaelawati's argument that, despite the state's efforts to avoid the application of classical *fiqh* rules in apostasy cases to protect human rights, religious judges continue to struggle with rejecting doctrines that prioritize the protection of Islam from perceived external threats.[54] Instead, this study demonstrates that religious judges are increasingly willing to deviate from classical *fiqh* in inheritance disputes involving non-Muslim cognates to accommodate their rights through the institution of *hibah*. This finding complements earlier studies showing that religious judges often prioritize social, cultural, communal, and justice-based arguments over theological rationales.[55]

[50] Gabriela Vs. Yusuf and 6 Others.

[51] Al-Zuḥailī, *Al-Fiqh al-Islamī wa Adillatuhu*, 8:387–89.

[52] Muḥammad ibn Alī al-Syaukānī, *Nail al-Authār min Asrār Muntaqā al-Akhbār*, vol. 11 (Saudi Arabia: Dār Ibn Jauzī, 1427), 380.

[53] Nafisatul Muawwanah, "The Evolution of 'Kafir' in the Qur'an: A Diachronic Study on the Socio-Political Influences Shaping Its Meaning," *Jurnal Studi Ilmu-Ilmu Al-Qur'an dan Hadis* 25, no. 1 (June 14, 2024): 187–220.

[54] Nurlaelawati, "For the Sake of Protecting Religion," 89–112.

[55] See: Hakim and Nasution, "Accommodating Non-Muslim Rights," 288–313; Muhammad Hasan, "Construction of Modern Islamic Inheritance Law Based on Ijtihad of the Judges at the Religious Court of Pontianak, West Kalimantan," *Samarah: Jurnal Hukum Keluarga dan Hukum Islam* 7, no. 2 (May 9, 2023): 650–68; John Bowen, "'You May Not Give It Away': How Social Norms Shape Islamic Law in Contemporary Indonesian Jurisprudence," *Islamic Law and Society* 5, no. 3 (January 1, 1998): 382–408; Mark E. Cammack and R. Michael Feener, "Joint Marital Property in Indonesian Customary, Islamic, and National Law," in *The Law Applied: Contextualizing the Islamic Shariʿa; A Volume in Honour of Frank E. Vogel*, ed. Peri Bearman et al. (London: Tauris, 2008), 92–115.

## Expansive Interpretation of Provisions on *Hibah*: Towards Flexibility in the Inheritance Share for Non-Muslims

Judges of the religious high court and supreme court have granted *hibah* from a testator's estate without heirs to non-Muslim cognates. This decision deviates from classical *fiqh* rules and Article 191 of the KHI, which mandate the allocation of such estates to the *bait al-māl*. The judges justified their departure by arguing that the designated institutions (*bait al-māl*) were not formally established in Indonesia.[56] Consequently, the estate was redirected to non-Muslim cognates through *hibah*, a decision deemed consistent with society's prevailing sense of justice.[57]

The granting of *hibah* to non-Muslim cognates from the estate of a Muslim testator without heirs reflects an expansive interpretation of the *hibah* provision under Article 171, letter (g) of the KHI.[58] According to the KHI, *hibah* refers to the voluntary, unremunerated property transfer from one living person to another. This definition aligns with provisions in classical *fiqh* books, which stipulate that the giver of the *hibah* must be of sound mind, at least 21 years old, act voluntarily without coercion, and ensure that the property transferred does not exceed one-third of the total estate, with the transfer witnessed by two individuals.[59] In this context, the testator acts as the giver of the *hibah*, a role posthumously represented by religious judges as state agents (*ulū al-amrī*) through a court decision.[60] Thus, the allocation of the estate to relatives who are not *fiqh* heirs is referred to as *hibah wājibah*.[61]

The legal interpretation employed by the religious judges in the analyzed verdicts remains somewhat ambiguous. However, the expansive application of the *hibah* provision in the KHI appears to stem from broader judicial opinions. For example, Muayyad, the Chief Judge of the Yogyakarta Religious High Court, cited *Sūrah al-Nisāʾ* (4:8) as a basis for granting *hibah* to non-Muslim cognates. This verse instructs property owners to allocate shares to relatives, orphans, and the poor, irrespective of religious affiliation.[62] According to Muayyad, the absence of any mention of religious qualifications implies that relatives who lack inheritance rights under *fiqh*, including non-Muslim cognates, may receive a share of the estate. Furthermore, this *hibah* should consider sociological factors such as economic

[56] Yusuf and 3 Others Vs. Gabriela and 3 Others, Yogyakarta High Religious Court Verdict May 5, 2015.

[57] "Presidential Instruction No. 1 of 1991 on Compilation of Islamic Law," Article 229.

[58] A similar legal interpretation was adopted by Supardin, a judge at the Religious Court of Sungguminasa, who granted common property to legitimate children through the concept of *hibah wājibah*. See: Masyitha Putri Awaliah, "Harta Bersama yang Diserahkan kepada Anak Setelah Perceraian (Studi Kasus No. 346/Pdt.G/2010/PA.Sgm)" (Undergraduate Thesis, Makassar, Universitas Hasanuddin, 2012), 50.

[59] "Presidential Instruction No. 1 of 1991 on Compilation of Islamic Law," Article 210.

[60] Hamid Sarong and Muhammad Siddiq Armia, *Paradigma Penemuan Hukum dalam Bingkai Yurisprudensi Indonesia* (Aceh: Ar-Raniry Press, 2021), 94.

[61] Yasardin et al., "Dinamika Hukum Kewarisan Islam terkait Pembagian Harta Warisan bagi Ahli Waris Beda Agama (Studi Analisis Putusan Peradilan Agama di Indonesia)," Research Results Report (Jakarta: Mahkamah Agung RI, 2016), 150.

[62] Al-Fakhr al-Rāzī, *Mafātīḥ al-Ghayb*, vol. 9 (Dār al-Fikr, 1981), 203–4.

need, the relationship with the testator, and the principle of justice.[63] A similar approach was adopted by Abd. Rasyid As'ad, a judge of the Mojokerto Religious Court, who relied on *Sūrah al-Isrā'* (17:26), *Sūrah al-Rūm* (30:38), and two hadiths reported by al-Tabarānī and al-Baihaqī from Ibn ʿAbbās to justify granting *hibah wājibah* to children born out of wedlock from their biological father's estate.[64] This reasoning legitimizes the granting of *hibah wājibah* to non-Muslims as a product of *ijtihād* (independent legal reasoning) by Indonesian religious judges.[65] The practice is analogous to the *waṣiat wājibah* designated for parents or adopted children, with the same upper limit of one-third of the estate.[66]

The expansive interpretation of Article 171, letter (g) of the KHI has drawn varied responses from judicial figures. Amran Su'adi, Chair of the Religious Chamber (Kamar Agama) of the Supreme Court, has supported the application of *hibah wājibah*.[67] However, religious judges within the court system remain divided. Harijah, Vice Chair of the Makassar Religious Court, and Muayyad have argued that *hibah wājibah* is more appropriate than *waṣiat wājibah* for accommodating non-Muslim rights. They contend that Islamic inheritance laws are definitive (*qaṭʿī*), whereas *hibah wājibah* offers greater flexibility since the one-third limitation of waṣiat wājibah does not bind it. The allocation of the estate, whether through a *waṣiat wājibah* or *hibah wājibah*, cannot be separated from the *ijtihād* of the religious judges based on clear legal foundations.[68] Conversely, M. Anwar Umar, a judge of the Sungguminasa Religious Court, disagreed with the term *hibah wājibah*. He argued that it is more appropriate to use *waṣiat wājibah* because *hibah* traditionally applies to inter vivos transactions. Nonetheless, he supported granting inheritance rights to non-Muslims, emphasizing that changes in laws, times, places, and circumstances necessitate adaptation. According to him, the

[63] There are three criteria for granting the testator's estate to non-Muslims through *hibah wājibah*. First, the testator's cognates who are economically less fortunate under Islamic inheritance are eligible. Second, any cognates of the testator, regardless of their religious affiliation, can receive the estate through *hibah wājibah*, without consideration of the closeness of their family ties, as the purpose of inheritance is to maintain family relationships. Third, the *hibah wājibah* grant should not exceed the share received by the heirs in the Islamic inheritance. See: Yasardin et al., "Dinamika Hukum Kewarisan Islam terkait Pembagian Harta Warisan bagi Ahli Waris Beda Agama," 123–4 and 150.

[64] Abd. Rasyid As'ad, "Hibah 'Wajibah' Ayah Biologis terhadap Anak di luar Nikah" (Paper, Law and Judiciary Panel Discussion with the theme: "Towards Supreme Justice Through Judicial Professionalism and Legal Unity," Hotel Yusro Jombang, April 12, 2013), https://badilag.mahkamahagung.go.id/artikel/publikasi/artikel/hibah-wajibah-ayah-biologis-terhadap-anak-di-luar-nikah-oleh-drs-h-abd-rasyid-asad-mh-3110.

[65] Yasardin et al., "Dinamika Hukum Kewarisan Islam terkait Pembagian Harta Warisan bagi Ahli Waris Beda Agama," 146–50.

[66] "Presidential Instruction No. 1 of 1991 on Compilation of Islamic Law," Article 209.

[67] Yasardin et al., "Dinamika Hukum Kewarisan Islam terkait Pembagian Harta Warisan bagi Ahli Waris Beda Agama," 113.

[68] Yasardin et al., "Dinamika Hukum Kewarisan Islam terkait Pembagian Harta Warisan bagi Ahli Waris Beda Agama," 123–51.

appropriate terminology is *waṣiat wājibah* rather than *hibah wājibah*, as the latter pertains to the testator's pre-death *hibah*.[69]

Although there are differing opinions regarding which terminology is appropriate—*waṣiat wājibah* or *hibah wājibah*—judges unanimously agree on the necessity of accommodating non-Muslim rights. These terminological differences also have implications for the share that non-Muslims should rightfully receive. If *waṣiat wājibah* is used, religious judges can allocate only up to one-third of the estate of a Muslim testator.[70] In some cases, the rights received by non-Muslim heirs may not be proportionate to those of their Muslim counterparts of equal standing.[71] However, if *hibah wājibah* is employed, religious judges are more flexible in granting a portion of the Muslim testator's estate to non-Muslims, as there are no provisions specifying a maximum limit for *hibah*.[72] This expansive interpretation of the *hibah* provision aligns with the Indonesian Ulema Council (*Majelis Ulama Indonesia*, MUI) Fatwa No. 5/MUNAS VII/MUI/9/2005 on Interfaith Inheritance.[73] Despite these differences of opinion, the provision of *hibah wājibah* needs to be standardized and regulated for implementation. The most feasible and straightforward approach would involve a plenary decision by the chamber, reinforced by issuing a Circular Letter from the Supreme Court or incorporating it into Book II, a guideline for judges and judicial personnel.[74]

The granting of *hibah wājibah* to non-Muslim cognates through court verdicts applies not only to cases involving testators with no heirs but also to cases involving common property and children born out of wedlock. In the first case, religious judges granted a portion of the post-divorce common property between a husband and wife to their legitimate children. This *hibah* was based on the parties' agreement, with consent maintained as long as neither the widow nor the widower contested the matter in an appellate court.[75] In the latter case, religious judges allocated a portion of the biological father's property to an illegitimate child.[76]

[69] Yasardin et al., "Dinamika Hukum Kewarisan Islam terkait Pembagian Harta Warisan bagi Ahli Waris Beda Agama," 128–9.

[70] "Presidential Instruction No. 1 of 1991 on Compilation of Islamic Law," Article 209.

[71] Hakim and Nasution, "Accommodating Non-Muslim Rights," 288–313.

[72] Yasardin et al., "Dinamika Hukum Kewarisan Islam terkait Pembagian Harta Warisan bagi Ahli Waris Beda Agama," 123–51.

[73] See: "Fatwa Majelis Ulama Indonesia No. 5/MUNAS VII/MUI/9/2005 tentang Kewarisan Beda Agama," July 28, 2005.

[74] Yasardin et al., "Dinamika Hukum Kewarisan Islam terkait Pembagian Harta Warisan bagi Ahli Waris Beda Agama," 144–55.

[75] See: Andi Dadi Mashuri Makmur and Muharawati, "Harta Bersama yang Diserahkan kepada Anak Setelah Perceraian di Pengadilan Agama Sengkang Kabupaten Wajo," *Legal Journal of Law* 1, no. 1 (April 30, 2022): 55–72; Awaliah, "Harta Bersama yang Diserahkan kepada Anak Setelah Perceraian (Studi Kasus No. 346/Pdt.G/2010/PA.Sgm)," 50–51.

[76] The *hibah wājibah* is a state policy that mandates biological fathers to allocate a portion of their assets to children born out of wedlock, with the implementation occurring while the biological father is still alive. See: Abd. Rasyid As'ad, "Hibah 'Wajibah' Ayah Biologis terhadap Anak di luar Nikah" (Paper, Law and Judiciary Panel Discussion with the theme: "Towards Supreme Justice Through Judicial Professionalism and Legal Unity," Hotel Yusro Jombang,

Providing a *hibah wājibah* to illegitimate children represents a form of accountability (*taʿzīr*) by the biological father to fulfill the basic needs and secure the future of the child. *Hibah wājibah* is a legal innovation by religious judges, grounded in their *ijtihād* to safeguard the rights of children and non-Muslim cognates.[77] Thus, alongside *waṣiat*, *takharruj* (selling a share in inheritance),[78] and other traditional methods, *hibah* is an alternative legal precedent for transferring the estate in cases where classical *fiqh* provisions conflict with contemporary realities.[79]

## Conclusion

Differences in religious affiliation do not inherently diminish the rights of non-Muslims within the jurisdictional practices of Muslim territories. It is particularly evident in cases involving a testator without heirs, including non-Muslim relatives. Religious judges at both the religious high court and supreme court levels employ juridical and philosophical arguments to accommodate the rights of non-Muslims through *hibah* (gift). These rulings deviate from classical *fiqh* (Islamic jurisprudence) rules and Article 191 of the Compilation of Islamic Law (*Kompilasi Hukum Islam*, KHI), which mandate that the estate of a testator without heirs be allocated to the *bait al-māl* (public treasury), rather than to *żawiī al-arḥām* (cognates) or non-Muslims. The accommodation of non-Muslim rights arises from an expansive interpretation of *hibah* provisions, referred to by religious judges as *hibah wājibah* (mandatory gift). Unlike *waṣiat wājibah* (mandatory will), which is limited to one-third of the estate, *hibah wājibah* offers greater flexibility due to the absence of a maximum limit. This innovative approach reflects the exercise of *ijtihād* (independent legal reasoning) by religious judges in adapting to evolving legal frameworks and societal norms. It aligns with the principles of justice and equality, ensuring the equitable treatment of all citizens, regardless of their religious affiliation.

## References

Afandi, Muhrisun. "Apostasy as Grounds in Divorce Cases and Child Custody Disputes in Indonesia." In *Indonesian and German Views on the Islamic Legal Discourse on Gender and Civil Rights*, edited by Noorhaidi Hasan and Fritz

April 12, 2013), https://badilag.mahkamahagung.go.id/artikel/publikasi/artikel/hibah-wajibah-ayah-biologis-terhadap-anak-di-luar-nikah-oleh-drs-h-abd-rasyid-asad-mh-3110.

[77] Sarong and Armia, *Paradigma Penemuan Hukum dalam Bingkai Yurisprudensi Indonesia*, 95.

[78] Mohammad Takdir et al., "The Takharrūj Method as an Islamic Legal Solution for Customary Inheritance Practices among Muslim Communities in Pakamban Laok, Sumenep, Indonesia," *Journal of Islamic Law* 4, no. 1 (February 28, 2023): 104–22.

[79] Amylia Fuziana Azmi, Nik Salida Suhaila Nik Saleh, and Mohamad Zaharuddin Zakaria, "Hibah as Alternative to Resolve Inheritance Issue among New Muslim Converts (Muallaf) in Malaysia: An Analysis," *Islāmiyyāt* 44, no. 1 (May 31, 2022): 81–87.

Schulze, 89–106. Studies on Islamic Cultural and Intellectual History. Wiesbaden: Harrassowitz Verlag, 2015.

Al-Rāzī, Al-Fakhr. *Mafātīḥ Al-Ghayb*. Vol. 9. 32 vols. Dār al-Fikr, 1981. https://archive.org/details/FPtrazitrazi.

Al-Shōbūnī, Muḥammad Alī. *Al-Mawārīth fī al-Sharī'ah al-Islāmiyyah*. Beirut: Dār al-Kitāb al-Ilmiah, 1995.

Al-Syaukānī, Muḥammad ibn Alī. *Nail al-Authār min Asrār Muntaqā al-Akhbār*. Vol. 11. Saudi Arabia: Dār Ibn Jauzī, 1427. https://waqfeya.net/book.php?bid=5157.

Al-Zuḥailī, Wahbah. *Al-Fiqh al-Islamī wa Adillatuhu*. Vol. 8. 5. Damsyik: Dār Al-Fikr, 1985.

As'ad, Abd. Rasyid. "Hibah 'Wajibah' Ayah Biologis terhadap Anak di luar Nikah." Paper presented at the Law and Judiciary Panel Discussion with the theme: "Towards Supreme Justice Through Judicial Professionalism and Legal Unity," Hotel Yusro Jombang, April 12, 2013. https://badilag.mahkamahagung.go.id/artikel/publikasi/artikel/hibah-wajibah-ayah-biologis-terhadap-anak-di-luar-nikah-oleh-drs-h-abd-rasyid-asad-mh-3110.

Awaliah, Masyitha Putri. "Harta Bersama yang Diserahkan kepada Anak Setelah Perceraian (Studi Kasus No. 346/Pdt.G/2010/PA.Sgm)." Undergraduate Thesis, Universitas Hasanuddin, 2012.

Azmi, Amylia Fuziana, Nik Salida Suhaila Nik Saleh, and Mohamad Zaharuddin Zakaria. "Hibah as Alternative to Resolve Inheritance Issue among New Muslim Converts (Muallaf) in Malaysia: An Analysis." *Islāmiyyāt* 44, no. 1 (May 31, 2022): 81–87.

Azwar, Zainal, Mhd Ilham Armi, Zulfan Zulfan, Ahmad Bakhtiar bin Jelani, and Ahmad Luthfy Nasri. "Child Filiation and Its Implications on Maintenance and Inheritance Rights: A Comparative Study of Regulations and Judicial Practices in Indonesia, Malaysia, and Turkey." *Journal of Islamic Law* 5, no. 1 (February 29, 2024): 62–85. https://doi.org/10.24260/jil.v5i1.2326.

Berger, Maurits. "Public Policy and Islamic Law: The Modern Dhimmī in Contemporary Egyptian Family Law." *Islamic Law and Society* 8, no. 1 (January 1, 2001): 88–136. https://doi.org/10.1163/156851901753129683.

———. "Secularizing Interreligious Law in Egypt." *Islamic Law and Society* 12, no. 3 (January 1, 2005): 394–418. https://doi.org/10.1163/156851905774608242.

Bowen, John. "'You May Not Give It Away': How Social Norms Shape Islamic Law in Contemporary Indonesian Jurisprudence." *Islamic Law and Society* 5, no. 3 (January 1, 1998): 382–408. https://doi.org/10.1163/1568519981570230.

Bruinessen, Martin. "Kitab Kuning; Books in Arabic Script Used in the Pesantren Milieu; Comments on a New Collection in the KITLV Library." *Bijdragen Tot de Taal-, Land- En Volkenkunde / Journal of the Humanities and Social Sciences of Southeast Asia* 146, no. 2–3 (January 1, 1990): 226–69. https://doi.org/10.1163/22134379-90003218.

Cammack, Mark E. "Marital Property in California and Indonesia: Community Property and Harta Bersama." *Washington and Lee Law Review* 64, no. 4 (2007): 1417–60.

Cammack, Mark E., and R. Michael Feener. "Joint Marital Property in Indonesian Customary, Islamic, and National Law." In *The Law Applied: Contextualizing the Islamic Shariʿa; A Volume in Honour of Frank E. Vogel*, edited by Peri Bearman, Frank E. Vogel, Wolfhart Heinrichs, and Bernard G. Weiss, 92–115. London: Tauris, 2008.

Directory of Supreme Court Verdicts. "Jurisprudence on Wasiat Wajibah." Accessed October 1, 2023. https://putusan3.mahkamahagung.go.id/yurisprudensi/detail/11eadf086b586f509ef9323230333034.html.

"Fatwa Majelis Ulama Indonesia No. 5/MUNAS VII/MUI/9/2005 Tentang Kewarisan Beda Agama," July 28, 2005. http://mui.or.id/wp-content/uploads/files/fatwa/39.-Kewarisan-Beda-Agama.pdf.

Gabriela Vs. Yusuf and 6 Others, No. 218 K/AG/2016 (Indonesian Supreme Court Verdict May 26, 2016).

Gallala-Arndt, Imen. "The Impact of Religion in Interreligious Custody Disputes: Middle Eastern and Southeast Asian Approaches." *American Journal of Comparative Law* 63, no. 4 (December 14, 2015): 829–58. https://doi.org/10.5131/AJCL.2015.0025.

Hak, Nora Abdul. "Rights of a Wife in the Case of Conversion to Islam under Family Law in Malaysia." *Arab Law Quarterly* 26, no. 2 (January 1, 2012): 227–39. https://doi.org/10.1163/157302512X629214.

Hakim, Muhammad Lutfi. "Ismail Mundu on Islamic Law of Inheritance: A Content Analysis of Majmū' al-Mīrāth fī Ḥukm al-Farā'iḍ." *Al-Jami'ah: Journal of Islamic Studies* 61, no. 1 (June 30, 2023): 59–79. https://doi.org/10.14421/ajis.2023.611.59-79.

Hakim, Muhammad Lutfi, and Khoiruddin Nasution. "Accommodating Non-Muslim Rights: Legal Arguments and Legal Principles in the Islamic Jurisprudence of the Indonesian Supreme Court in the Post-New Order Era." *Oxford Journal of Law and Religion* 11, no. 2–3 (July 25, 2023): 288–313. https://doi.org/10.1093/ojlr/rwad004.

Hasan, Muhammad. "Construction of Modern Islamic Inheritance Law Based on Ijtihad of the Judges at the Religious Court of Pontianak, West Kalimantan." *Samarah: Jurnal Hukum Keluarga dan Hukum Islam* 7, no. 2 (May 9, 2023): 650–68. https://doi.org/10.22373/sjhk.v7i2.8852.

Kusrin, Zuliza Mohd. "Conversion to Islam in Relation to Divorce in Malaysian Family Law." *Islam and Christian–Muslim Relations* 17, no. 3 (July 2006): 307–15. https://doi.org/10.1080/09596410600794988.

Kusrin, Zuliza Mohd, Mohd Zamro Muda, Hayatullah Laluddin, and Abdul Basir Mohammad. "Comment Conversion and the Conflict of Laws in Respect of Spouse Rights to Inheritance in Malaysia." *Religion & Human Rights* 7, no. 1 (January 1, 2012): 1–9. https://doi.org/10.1163/187103212X625660.

Lukito, Ratno. *Legal Pluralism in Indonesia: Bridging the Unbridgeable*. Routledge Contemporary Southeast Asia Series, v. 48. New York: Routledge, 2013.

https://books.google.co.id/books/about/Legal_Pluralism_in_Indonesia.html?id=Nt8b24vZi-MC&redir_esc=y.

Makmur, Andi Dadi Mashuri, and Muharawati. "Harta Bersama yang Diserahkan kepada Anak Setelah Perceraian di Pengadilan Agama Sengkang Kabupaten Wajo." *Legal Journal of Law* 1, no. 1 (April 30, 2022): 55–72.

Miles, Matthew B., A. M. Huberman, and Johnny Saldaña. *Qualitative Data Analysis: A Methods Sourcebook*. 3rd ed. California: SAGE Publications, Inc, 2014.

Muawwanah, Nafisatul. "The Evolution of 'Kafir' in the Qur'an: A Diachronic Study on the Socio-Political Influences Shaping Its Meaning." *Jurnal Studi Ilmu-Ilmu Al-Qur'an dan Hadis* 25, no. 1 (June 14, 2024): 187–220. https://doi.org/10.14421/qh.v25i1.5564.

Musa, Zahari Mahad. "The Fatwa of a Companion as Sources of Islamic Law in the Specific Cases on Farā'id." *Jurnal Syariah* 20, no. 2 (May 1, 2012): 219–54.

Nurlaelawati, Euis. "For the Sake of Protecting Religion: Apostasy and Its Judicial Impact on Muslim's Marital Life in Indonesia." *Journal of Indonesia Islam* 10, no. 1 (June 7, 2016): 89–112. https://doi.org/10.15642/JIIS.2016.10.1.89-112.

———. *Modernization, Tradition, and Identity: The Kompilasi Hukum Islam and Legal Practice in the Indonesian Religious Courts*. ICAS Publications Series 4. Amsterdam: Amsterdam University Press, 2010.

Powers, David S. "The Islamic Inheritance System: A Socio-Historical Approach." *Arab Law Quarterly* 8, no. 1 (1993): 13–29. https://doi.org/10.1163/157302593X00285.

"Presidential Instruction No. 1 of 1991 on Compilation of Islamic Law."

Saebani, Beni Ahmad. *Fiqh Mawaris*. 1st ed. Bandung: Pustaka Setia, 2009.

Sarong, Hamid, and Muhammad Siddiq Armia. *Paradigma Penemuan Hukum dalam Bingkai Yurisprudensi Indonesia*. Aceh: Ar-Raniry Press, 2021.

Schacht, Joseph. *An Introduction to Islamic Law*. New York: Clarendon Press, 1982.

Syam, Marjohan. "Kebutuhan Akan Baitul Mal bagi Badan Peradilan Agama dengan Padanannya Balai Harta Peninggalan (BHP) di Indonesia," October 20, 2022. https://badilag.mahkamahagung.go.id/artikel/publikasi/artikel/kebutuhan-akan-baitul-mal-bagi-badan-peradilan-agama-dengan-padanannya-balai-harta-peninggalan-bhp-di-indonesia-oleh-dr-h-marjohan-syam-sh-mh-20-10.

Tadros, Mariz. "The Non-Muslim 'Other': Gender and Contestations of Hierarchy of Rights." *Hawwa* 7, no. 2 (January 1, 2009): 111–43. https://doi.org/10.1163/156920709X12511890014540.

Takdir, Mohammad, Fajrul Munir, Ali Ludhfi, Muliyanzah Muliyanzah, and Zainol Muttaqin. "The Takharrūj Method as an Islamic Legal Solution for Customary Inheritance Practices among Muslim Communities in Pakamban Laok, Sumenep, Indonesia." *Journal of Islamic Law (*4, no. 1 (February 28, 2023): 104–22. https://doi.org/10.24260/jil.v4i1.1044.

Welchman, Lynn. "Bahrain, Qatar, UAE: First Time Family Law Codifications in Three Gulf States." In *The International Survey of Family Law 2010*, edited by Bill Atkin, 163–78. Jordan Publishing Limited, 2010. https://www.semanticscholar.org/paper/Bahrain%2C-Qatar%2C-UAE%3A-First-time-Family-Law-in-Three-Welchman/acfd23273ef08e210bd52564723bfe7a45ce6caf.

Yasardin, M Sutomo, Zulfia Hanum, Tri Mulyani, and Bismo Anggoro. "Dinamika Hukum Kewarisan Islam terkait Pembagian Harta Warisan bagi Ahli Waris Beda Agama (Studi Analisis Putusan Peradilan Agama di Indonesia)." Research Results Report. Jakarta: Mahkamah Agung RI, 2016. https://bldk.mahkamahagung.go.id/id/unduh-materi/summary/72-2017/1006-buku-laplit-2016-dinamika-hukum-kewarisan-islam-terkait-pembagian-harta-warisan-bagi-ahli-waris-beda-agama.html.

Yusuf and 3 Others Vs. Gabriela and 3 Others, No. 0042/Pdt.G/2014/PA.Yk (Yogyakarta Religious Court Verdict December 22, 2014).

Yusuf and 3 Others Vs. Gabriela and 3 Others, No. 16/Pdt.G/2015/PTA.Yk (Yogyakarta High Religious Court Verdict May 5, 2015).

Zin, Najibah Mohd, Hidayati Mohamed Jani, Abdul Ghafur Hamid, and Nora Abdul Hak. "Jurisdictional Conflict in Interfaith Child Custody Disputes: A Legal Discourse in Malaysian Courts." *Al-Shajarah: Journal of the International Institute of Islamic Thought and Civilization (ISTAC)* 24, no. 1 (July 1, 2019): 1–24.