


# A comparative socio-legal and maqasid analysis of *waṣiyyah wājibah* in Islamic inheritance law in Indonesia and Malaysia

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## ABSTRACT

### Introduction

Islamic inheritance law is widely recognized for its doctrinal clarity, yet contemporary social transformations have exposed gaps between classical rules and modern family realities. The concept of *waṣiyyah wājibah* (compulsory bequest) has emerged as a legal mechanism to address the exclusion of socially dependent individuals such as adopted children, orphaned grandchildren, and interfaith relatives. Despite its growing importance, comparative and integrative studies examining its application across different legal systems remain limited.

### Objectives

This study aims to analyze the concept and implementation of *waṣiyyah wājibah* in Indonesia and Malaysia through a comparative framework. It seeks to identify the legal, institutional, and socio-cultural factors shaping its application, and to evaluate its legitimacy and function using sociological and *maqāṣid al-sharīah* perspectives.

### Method

The research adopts a qualitative, doctrinal-comparative approach based on the analysis of legal texts, statutory regulations, judicial decisions, and scholarly literature. It integrates normative legal analysis with socio-legal interpretation and purposive reasoning to examine how *waṣiyyah wājibah* operates within different institutional contexts.

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## Results

The findings reveal that *waṣiyyah wājibah* functions as a flexible instrument of legal adaptation in both countries, though with distinct characteristics. Indonesia demonstrates a more expansive and jurisprudence-driven model, where courts extend the scope of compulsory bequests to address diverse social realities. Malaysia, by contrast, exhibits a more structured and decentralized approach, shaped by state enactments and procedural frameworks. In both systems, *waṣiyyah wājibah* remains bounded by doctrinal constraints and justified through principles of justice, welfare, and the objectives of Islamic law.

## Implications

The study highlights the role of *waṣiyyah wājibah* in enhancing family welfare, reducing inheritance disputes, and promoting socially responsive legal outcomes. It also underscores the importance of institutional design and judicial reasoning in shaping the effectiveness of Islamic legal reform.

## Originality/Novelty

This study offers an integrated comparative analysis that combines doctrinal, socio-legal, and *maqāṣid*-based perspectives. It contributes to the literature by demonstrating how Islamic inheritance law can adapt to contemporary challenges while maintaining its normative foundations.

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## INTRODUCTION

Islamic inheritance law (*farā'id/mawārīth*) has long been recognized as one of the most structured and textually grounded domains within Islamic jurisprudence (Muntazar & Syafruddin, 2025; Rozikin, 2026). Its detailed allocation of shares is often regarded as a hallmark of doctrinal certainty, yet contemporary scholarship increasingly situates this system within rapidly transforming social realities. Over the past decade, researchers have emphasized that modern family structures—marked by adoption, nuclearization, migration, and legal pluralism—generate new forms of dependency that are not fully accommodated within classical inheritance categories. As a result, Islamic inheritance law is no longer examined solely as a fixed doctrinal system but as a dynamic field shaped by interactions between *fiqh*, state law, and social practice (Rafay et al., 2017; Rasyid et al., 2024; Wimra et al., 2023; A. A. Yusuf, 2017). These developments underscore the urgency of re-examining inheritance mechanisms in light of contemporary expectations of justice and welfare.

Recent literature further highlights that the tension between doctrinal rigidity and social change is particularly visible in relation to non-heir beneficiaries, such as adopted children and socially dependent relatives. Classical jurisprudence links inheritance rights primarily to lineage (*nasab*), thereby excluding individuals who lack recognized genealogical ties, even when they occupy central roles in family life (Makka et al., 2021; Retnowulandari, 2023; Septiana et al., 2023; Tremayne, 2022). Scholars argue that this exclusion creates normative and practical dilemmas, especially in societies where adoption and caregiving relationships are socially institutionalized (Adjie, 2021; Alpat, 2023; Anwar et al., 2024; Hidayati & Hidayatullah, 2021). At the same time, the diversity within Islamic legal tradition has enabled various forms of adaptation through mechanisms such as wills, gifts, and judicial interpretation. Consequently, contemporary debates increasingly focus on how Islamic law can remain faithful to its textual foundations while responding to evolving social needs through context-sensitive legal instruments (A. H. Abdul Rahman & Hassan, 2020; N. A. Abdul Rahman, 2019; Ahmad, 2016; Alfida & Azhari, 2024; Azwar et al., 2024; Olowu, 2010).

Against this background, the central research problem lies in the mismatch between classical inheritance rules and modern family realities. When applied rigidly, traditional doctrines may fail to recognize legitimate claims arising from dependency, caregiving, or social belonging (Fatah & Yunatskyi, 2024; Regev-Messalem, 2020; Timmermans & Prickett, 2022). This gap has generated legal and ethical challenges related to distributive justice, particularly in cases involving adopted children, interfaith families, and children born outside formal marital frameworks. Scholars consistently frame these challenges as tensions between formal entitlement and substantive fairness, where adherence to doctrinal categories may lead to outcomes perceived as unjust or socially disruptive (Mohamad et al., 2025; Wimra et al., 2023). The issue is further complicated by the institutional context of modern legal systems, where courts must navigate between codified law and classical jurisprudence.

In response to these challenges, contemporary scholarship identifies *wasiat wajibah* (compulsory bequest) as a general solution designed to address gaps in inheritance justice. This mechanism allows for the allocation of a portion of the estate to individuals who are not formal heirs but have legitimate claims based on social or moral considerations. Importantly, *wasiat wajibah* is conceptualized not as a replacement for inheritance rules but as a complementary instrument that operates within established constraints, particularly the one-third limitation and the principle of non-harm to heirs (‘Abdel-Hay, 2018; Hidayati & Hidayatullah, 2021).. As such, it represents a form of legal adaptation that seeks to balance doctrinal integrity with social responsiveness, reflecting broader trends in Islamic legal reform.

More specifically, prior studies have elaborated different models of *wasiat wajibah* across Muslim-majority jurisdictions. In Indonesia, the mechanism is explicitly codified in the *Compilation of Islamic Law* (KHI), particularly in relation to adopted children and adoptive parents, reflecting the strong influence of local customs and social expectations (Dupret et al., 2023; Hakim & Nasution, 2022; Kutaraya et al., 2024; Marpaung & Adly, 2022; A. A. Yusuf, 2017). Indonesian courts have also played a



significant role in expanding the application of *wasiat wajibah* beyond its original scope, extending it to other excluded groups such as non-Muslim relatives and children born outside marriage. This expansion is often justified through considerations of *maṣlahah* (public interest) and social justice, although it remains subject to doctrinal debate (Reskiani et al., 2022; Timur et al., 2024).

In contrast, Malaysia adopts a more formalized and institutionally structured approach. *Wasiat wajibah* is regulated through state-level enactments, reflecting the country's federal legal system and dual court structure. While the general principle of compulsory bequest is recognized, its implementation varies across jurisdictions in terms of beneficiary categories and procedural requirements (Anwar et al., 2024; Sujono, 2025). Additionally, the division of authority between Syariah courts and civil courts introduces further complexity in estate administration, influencing how *wasiat wajibah* is applied in practice. Comparative studies suggest that these differences are not merely technical but reflect broader variations in legal culture, institutional design, and approaches to Islamic legal reform (Halim et al., 2020; Kamis & Abd. Wahab, 2022; Khamis et al., 2024; Shith et al., 2022; A. A. Yusuf, 2017).

Despite the growing body of literature, significant gaps remain in the comparative analysis of *wasiat wajibah*, particularly between Indonesia and Malaysia. Existing studies tend to focus on doctrinal or statutory aspects, with limited attention to the sociological dimensions of legal practice and the role of *maqāṣid al-sharī'ah* in shaping reform. While Indonesian scholarship increasingly integrates socio-legal perspectives and emphasizes the role of custom (*'urf*) and judicial reasoning, comparable analyses in the Malaysian context remain underdeveloped (Abbas et al., 2025; Azwar et al., 2024; Ghozali et al., 2024; Mubarak et al., 2026; N. Yusuf et al., 2025). Moreover, there is insufficient exploration of how *maqāṣid*-based arguments are operationalized and contested within different legal systems, especially in relation to questions of legitimacy and authority ('Abdel-Hay, 2018; Anwar et al., 2024; Atallah, 2026; Rokhim et al., 2025). This gap points to the need for a more integrated and comparative framework that combines doctrinal, sociological, and purposive approaches.

This study aims to address these gaps by providing a comparative analysis of *wasiat wajibah* in Indonesia and Malaysia through the combined lenses of sociology of law and *maqāṣid al-sharī'ah*. It seeks to examine how each system conceptualizes and implements compulsory bequests, identify the underlying legal and social factors shaping these approaches, and evaluate their alignment with the broader objectives of Islamic law. The novelty of this study lies in its integrative methodology, which moves beyond purely doctrinal analysis to incorporate socio-legal dynamics and purposive reasoning. By doing so, it offers a more comprehensive understanding of *wasiat wajibah* as a contemporary instrument of Islamic legal reform and contributes to ongoing debates on the adaptability and relevance of Islamic inheritance law in modern contexts.

## LITERATURE REVIEW

### Conceptual Foundations of Waṣiyyah and Its Transformation into Waṣiyyah Wājibah

Classical Islamic jurisprudence conceptualizes *waṣiyyah* (testamentary bequest) as a voluntary legal act through which an individual may allocate up to one-third of their estate to non-heirs. This framework is rooted in Qur'anic and prophetic sources and was historically understood as complementary to the fixed system of inheritance (*farā'id*). Within this structure, the autonomy of the testator is balanced by limitations designed to protect the rights of heirs, particularly through the prohibition of harm (*lā ḍarar wa lā dirār*) and the quantitative ceiling of one-third (Hidayati & Hidayatullah, 2021; A. A. Yusuf, 2017). Classical jurists largely maintained that inheritance and bequest occupy distinct legal domains, with inheritance governed by divine allocation and bequest functioning as a discretionary supplement (Jany, 2020).

The emergence of *waṣiyyah wājibah* represents a significant transformation of this classical doctrine. Contemporary scholarship widely agrees that the concept does not appear in its modern form in classical fiqh manuals, but rather constitutes a product of modern legal reform and *ijtihād* (Alma'amun et al., 2022; Ismail et al., 2022). It is theorized as a compulsory or state-imposed bequest designed to address situations where strict application of inheritance rules results in exclusion or hardship for certain individuals. Importantly, scholars emphasize that *waṣiyyah wājibah* does not convert non-heirs into heirs but instead creates a parallel mechanism of wealth transfer that preserves the structural integrity of Islamic inheritance law (Bastani & Waldenström, 2021; Crouch & Bodmer, 2020; Daud & Azahari, 2022; Kasdi & Anwar, 2019).

This transformation is often explained through reinterpretation of scriptural sources, particularly Qur'an 2:180, which some scholars argue provides a basis for obligatory bequests to relatives who do not inherit (Fatima, 2024; Pedersen & Bøyum, 2020; Rosadi & Ropiah, 2020). Contemporary jurists thus draw on minority classical opinions and broader interpretive tools to justify the institutionalization of *waṣiyyah wājibah*. As a result, the concept occupies a hybrid position between doctrinal continuity and legal innovation, reflecting the broader dynamics of adaptation within Islamic law under modern conditions (Alma'amun et al., 2022; Ismail et al., 2022).

### Jurisprudential Debates on Legitimacy and Doctrinal Compatibility

The legitimacy of *waṣiyyah wājibah* remains one of the most contested issues in contemporary Islamic legal scholarship. A central point of debate concerns whether a compulsory bequest contradicts the classical understanding of *waṣiyyah* as a voluntary act. Many jurists argue that transforming a voluntary institution into a mandatory one challenges established doctrinal principles, particularly given the dominant view that inheritance rules superseded earlier injunctions regarding bequests (Hidayati & Hidayatullah, 2021; Ismail et al., 2022). This position raises concerns about whether *waṣiyyah wājibah* represents a permissible extension of Islamic law or an unwarranted innovation.



At the same time, reform-oriented scholars defend the concept by invoking broader interpretive principles within Islamic jurisprudence. They argue that the prohibition of harm to heirs can coexist with the obligation to protect vulnerable individuals, provided that the bequest remains within the one-third limit and does not undermine the overall inheritance structure (Hakim, 2023; Wimra et al., 2023). In this view, *waṣiyyah wājibah* is not a violation of inheritance rules but a necessary adjustment that operates within their boundaries. The debate thus reflects a tension between formalist and purposive approaches to Islamic law.

Another dimension of the debate concerns the scope of beneficiaries. While some scholars support limiting *waṣiyyah wājibah* to specific categories such as orphaned grandchildren, others advocate broader application to include adopted children, interfaith relatives, and other excluded dependents (Abdel-Hay, 2018; A. A. Yusuf, 2017). Critics argue that such expansions risk blurring the distinction between inheritance and bequest, potentially undermining doctrinal clarity. Proponents, however, contend that these developments reflect legitimate responses to changing social realities and are grounded in recognized principles of Islamic legal reasoning.

### **Maqāṣid al-Sharī'ah and Justice-Oriented Reform**

The framework of *maqāṣid al-sharī'ah* has become a central analytical tool in contemporary discussions of inheritance reform. Scholars increasingly employ this framework to justify legal adaptations aimed at achieving broader objectives such as justice, welfare, and social stability. In the context of *waṣiyyah wājibah*, *maqāṣid* reasoning is used to argue that strict adherence to formal inheritance rules may, in certain circumstances, undermine the very purposes those rules are intended to serve (Dwairi, 2022; Farah & Hattab, 2020). This perspective allows for limited departures from classical interpretations in order to address concrete instances of hardship.

A prominent strand of scholarship influenced by Jasser Auda's systems approach emphasizes the need to integrate empirical realities into legal reasoning. This approach treats Islamic law as a dynamic system oriented toward achieving human welfare, thereby legitimizing the use of compulsory bequests as instruments of distributive justice (Dupret et al., 2023; Farah & Hattab, 2020). Within this framework, *waṣiyyah wājibah* is understood as a means (*wasīlah*) to realize higher objectives such as the protection of wealth (*ḥifz al-māl*) and family cohesion, rather than an end in itself.

However, the application of *maqāṣid* is not without controversy. Some scholars caution against what they perceive as excessive reliance on public interest arguments that may override specific textual rulings (Abdel-Hay, 2018). They argue that *maqāṣid* should be derived from, rather than imposed upon, scriptural sources. This methodological debate highlights the broader challenge of balancing flexibility and fidelity within Islamic legal reform. Despite these disagreements, there is a growing consensus that *maqāṣid* provides a valuable framework for addressing contemporary issues in inheritance law.

### Socio-Legal Perspectives and Legal Pluralism

Socio-legal approaches have significantly enriched the study of Islamic inheritance law by emphasizing the interaction between legal norms and social practices. In many Muslim societies, inheritance disputes are resolved within plural legal environments where Islamic law coexists with customary norms and state legislation. Scholars argue that this pluralism plays a crucial role in shaping both the interpretation and application of legal rules, including *waṣiyyah wājibah* (Hidayati & Hidayatullah, 2021; Rafay et al., 2017). As a result, legal outcomes often reflect negotiated compromises rather than strict doctrinal application.

In the Indonesian context, the role of *urf* (custom) is particularly prominent. Studies show that customary practices, such as the social recognition of adopted children, have influenced the development of legal provisions within the Compilation of Islamic Law (KHI) (Hakim, 2023; A. A. Yusuf, 2017). This process of indigenization demonstrates how Islamic law can adapt to local contexts while maintaining its normative foundations. The concept of “living fiqh” further underscores the importance of examining how legal norms are interpreted and applied in everyday life (Abdullah, 2020).

At the institutional level, courts play a key role in mediating between doctrinal principles and social realities. Judicial decisions often involve interpretive strategies that draw on both classical sources and contemporary considerations, thereby contributing to the evolution of Islamic law (Mohamad et al., 2025). This dynamic highlights the importance of examining not only legal texts but also legal practices in understanding the development of *waṣiyyah wājibah*.

### Comparative Implementations of Waṣiyyah Wājibah

Comparative studies reveal significant variation in the implementation of *waṣiyyah wājibah* across Muslim-majority countries. Egypt is often cited as the first jurisdiction to codify the concept, primarily to address the exclusion of orphaned grandchildren from inheritance (Dupret et al., 2023). This model has influenced subsequent reforms in other countries, although its application has been adapted to different social and legal contexts. The Egyptian approach is generally characterized by a relatively narrow beneficiary scope and a strong emphasis on statutory regulation.

Indonesia represents a distinct model in which *waṣiyyah wājibah* is explicitly incorporated into national law through the KHI, particularly in relation to adopted children and adoptive parents (A. A. Yusuf, 2017). Indonesian courts have further expanded the application of the concept to other categories of excluded individuals, reflecting the influence of legal pluralism and social considerations (Reskiani et al., 2022). This expansion, while addressing practical needs, has also generated debates on doctrinal legitimacy and legal certainty.

Malaysia, by contrast, exhibits a more decentralized and institutionally complex approach. The implementation of *waṣiyyah wājibah* varies across states due to the federal structure of Islamic law, and its application is shaped by the interaction between Syariah and civil courts (Anwar et al., 2024). These differences illustrate how legal, social,

and institutional factors combine to produce diverse models of inheritance reform, highlighting the importance of comparative analysis in understanding contemporary Islamic law.

### Research Gap and the Significance of the Study

Despite the extensive literature on *waṣiyyah wājibah*, several gaps remain in existing scholarship. First, most studies focus on doctrinal or statutory analysis, with limited integration of socio-legal perspectives and maqāṣid-based reasoning. While Indonesian scholarship has made progress in this regard, comparable analyses in the Malaysian context are less developed. Second, existing comparative studies often rely on limited data, such as selected statutes or a small number of cases, and therefore do not fully capture the complexity of legal practice and institutional variation (Alma'amun et al., 2022). These limitations suggest the need for a more comprehensive and interdisciplinary approach.

This study addresses these gaps by combining doctrinal, sociological, and maqāṣid-based analyses in a comparative framework. By examining both Indonesia and Malaysia, it seeks to provide a deeper understanding of how *waṣiyyah wājibah* functions as a mechanism of legal adaptation in different contexts. The significance of this study lies in its contribution to ongoing debates on the flexibility and relevance of Islamic inheritance law, offering insights into how traditional legal systems can respond to contemporary challenges while maintaining their normative integrity.

## METHOD

### Research Design and Approach

This study employs a qualitative, doctrinal-comparative research design aimed at examining the concept and implementation of *waṣiyyah wājibah* in Indonesia and Malaysia. The research is grounded in normative legal analysis while incorporating sociological and *maqāṣid al-sharī'ah* perspectives to provide a multidimensional understanding of Islamic inheritance reform. The qualitative approach is appropriate because the object of study—legal doctrines, statutory provisions, and judicial interpretations—requires interpretive analysis rather than statistical measurement. At the same time, the comparative dimension enables the identification of similarities and differences between two legal systems that share Islamic foundations but operate within distinct institutional and socio-cultural contexts.

The study adopts an inductive analytical strategy. It begins with the examination of specific legal texts, judicial decisions, and scholarly interpretations, and subsequently develops broader conceptual conclusions regarding the nature and function of *waṣiyyah wājibah*. This approach allows the research to move from empirical legal materials to theoretical insights, particularly in relation to justice, legal adaptation, and the objectives of Islamic law. By integrating doctrinal and contextual analysis, the study seeks to bridge the gap between formal legal norms and their practical application in contemporary Muslim societies.

### Sources of Data and Legal Materials

The research relies primarily on library-based data, consisting of both primary and secondary legal sources. Primary sources include statutory regulations, legal codifications, and authoritative judicial decisions related to Islamic inheritance law. In the Indonesian context, the principal legal reference is the *Compilation of Islamic Law (Kompilasi Hukum Islam, KHI)*, particularly provisions concerning *waṣiyyah wājibah* such as Article 209. In the Malaysian context, the study examines relevant state enactments on Islamic wills and inheritance, as well as judicial decisions issued by Syariah courts. These primary materials are essential for understanding how *waṣiyyah wājibah* is formally regulated and applied within each jurisdiction.

Secondary sources consist of scholarly books, journal articles, dissertations, and legal commentaries that discuss Islamic inheritance law, *waṣiyyah*, and contemporary legal reform. These materials provide theoretical frameworks and interpretive perspectives that inform the analysis of primary sources. In addition, classical fiqh literature is consulted to establish the doctrinal foundations of inheritance and bequest, enabling a critical assessment of how modern developments relate to traditional jurisprudence. The combination of primary and secondary sources ensures both doctrinal depth and analytical breadth.

### Comparative Legal Analysis

A central methodological component of this study is comparative legal analysis. The research compares the regulation and implementation of *waṣiyyah wājibah* in Indonesia and Malaysia by examining differences in legal structure, beneficiary categories, procedural mechanisms, and judicial interpretation. The comparative method is used not merely to describe differences but to explain them in relation to broader legal, social, and institutional factors. In particular, the study considers how variations in legal systems—such as Indonesia’s relatively centralized codification through the KHI and Malaysia’s state-based enactment system—shape the application of *waṣiyyah wājibah*.

This comparative approach also highlights the role of legal pluralism and institutional diversity. Indonesia’s legal system reflects a synthesis of Islamic law, customary law (*adat*), and national legislation, while Malaysia operates within a dual legal system in which Syariah and civil courts have distinct jurisdictions. By situating *waṣiyyah wājibah* within these broader frameworks, the study is able to identify the contextual factors that influence legal interpretation and reform. The comparative analysis thus serves as a tool for uncovering both convergences and divergences in contemporary Islamic inheritance practices.

### Sociological and Contextual Analysis

In addition to doctrinal examination, the study incorporates a sociological approach to understand how legal norms interact with social realities. This perspective is particularly relevant in analyzing *waṣiyyah wājibah*, which often emerges as a response to social practices such as adoption, interfaith family relations, and caregiving arrangements.



The sociological analysis draws on the concept of legal pluralism, recognizing that individuals and communities may navigate multiple normative systems simultaneously, including Islamic law, customary norms, and state regulations. This approach allows the study to account for the gap between formal legal provisions and lived legal experiences.

The research also considers the role of judicial practice as a site of legal development. Courts are viewed not merely as interpreters of law but as active agents in shaping legal outcomes through reasoning, discretion, and the application of broader principles such as justice and public interest (*maṣlahah*). By examining judicial decisions and their underlying reasoning, the study captures the dynamic process through which *waṣiyyah wājibah* evolves in response to concrete cases. This sociological dimension enriches the analysis by situating legal doctrines within their practical and institutional contexts.

### **Maqāṣid al-Sharī'ah as Analytical Framework**

The study employs *maqāṣid al-sharī'ah* as a key analytical framework for evaluating the legitimacy and function of *waṣiyyah wājibah*. This framework focuses on the higher objectives of Islamic law, such as the protection of wealth (*ḥifẓ al-māl*), preservation of lineage (*ḥifẓ al-nasab*), and promotion of justice and welfare. By applying *maqāṣid*-based analysis, the research assesses whether the use of compulsory bequests aligns with the broader purposes of Islamic law, particularly in addressing situations where strict application of inheritance rules may lead to hardship or exclusion.

The *maqāṣid* approach also provides a normative basis for comparing different legal systems. It allows the study to move beyond formal differences in legal provisions and to evaluate the extent to which each system achieves substantive justice. In this sense, *maqāṣid al-sharī'ah* functions both as an interpretive tool and as a معيار (criterion) for assessing legal reform. The integration of this framework reflects a broader trend in contemporary Islamic legal scholarship that emphasizes purposive reasoning as a means of reconciling tradition with modernity.

### **Data Analysis and Interpretation**

The analysis of data in this study is conducted through qualitative content analysis and legal interpretation. Legal texts, judicial decisions, and scholarly writings are systematically examined to identify key themes, concepts, and patterns related to *waṣiyyah wājibah*. The process involves several stages, including classification of sources, extraction of relevant provisions, and interpretation of legal reasoning. Particular attention is given to how different sources conceptualize the relationship between inheritance and bequest, as well as how they justify the use of compulsory mechanisms.

Interpretation is carried out using both doctrinal and contextual methods. Doctrinal analysis focuses on the internal logic of legal rules and their consistency with Islamic jurisprudence, while contextual analysis considers the social and institutional factors influencing their application. The findings are then synthesized to develop a coherent

understanding of *waṣiyyah wājibah* as a contemporary legal instrument. Through this process, the study aims to produce conclusions that are both analytically rigorous and relevant to ongoing debates in Islamic legal studies.

## RESULTS

### Normative Construction of *Waṣiyyah Wājibah* in Indonesia

The findings demonstrate that the Indonesian model of *waṣiyyah wājibah* is primarily rooted in the *Compilation of Islamic Law* (Kompilasi Hukum Islam, KHI), which provides a formal legal basis for compulsory bequests, particularly in relation to adopted children and adoptive parents. Article 209 of the KHI establishes that individuals who are not legally recognized as heirs may nevertheless receive a portion of the estate through a mandatory testamentary mechanism. This provision reflects a deliberate legislative effort to reconcile the doctrinal principle that inheritance is based on lineage (*nasab*) with the social reality that adoption creates enduring familial and economic relationships. The institutionalization of *waṣiyyah wājibah* in Indonesia thus represents a codified response to a persistent normative gap.

Beyond statutory provisions, the Indonesian legal system exhibits a dynamic pattern of judicial interpretation that has significantly expanded the scope of *waṣiyyah wājibah*. Religious Courts and, in several instances, the Supreme Court have applied this mechanism to categories not explicitly mentioned in the KHI, including non-Muslim relatives and children born outside marriage. These developments indicate that *waṣiyyah wājibah* functions not merely as a fixed legal rule but as a flexible instrument shaped by judicial reasoning. The courts frequently justify such extensions by invoking considerations of justice, social harmony, and public interest, thereby transforming *waṣiyyah wājibah* into a broader equity-based mechanism within the inheritance system.

At the same time, the Indonesian model maintains structural constraints designed to preserve the integrity of Islamic inheritance law. The most significant of these is the limitation that the compulsory bequest should not exceed one-third of the estate, a principle derived from classical jurisprudence. This limitation ensures that the rights of formal heirs remain protected while allowing space for corrective redistribution. The coexistence of doctrinal constraints and judicial flexibility illustrates the hybrid nature of *waṣiyyah wājibah* in Indonesia, combining elements of codification, interpretation, and socio-legal adaptation.

### Institutional and Legal Framework in Malaysia

In contrast to Indonesia, the Malaysian model of *waṣiyyah wājibah* is characterized by a more decentralized and institutionally complex framework. Islamic inheritance and testamentary matters fall under the jurisdiction of individual states, each of which enacts its own legislation governing wills and estate distribution. As a result, there is no single, unified legal framework comparable to Indonesia's KHI. Instead, the regulation of *waṣiyyah wājibah* varies across jurisdictions, reflecting differences in legislative priorities, interpretive traditions, and administrative practices. This decentralized



structure introduces a significant degree of variability in how compulsory bequests are defined and applied.

Another defining feature of the Malaysian system is the dual institutional arrangement involving Syariah courts and civil courts. While Syariah courts have authority over substantive issues of Islamic law, civil courts often play a role in estate administration, including probate and enforcement. This division of jurisdiction can create procedural complexities, particularly in cases involving wills and compulsory bequests. In practice, the effectiveness of *waṣiyyah wājibah* depends not only on its doctrinal recognition but also on the coordination between these institutional actors. The findings suggest that such coordination is not always seamless, which may affect the consistency and predictability of legal outcomes.

Despite these complexities, the Malaysian system shares certain foundational features with the Indonesian model, particularly the emphasis on maintaining the distinction between heirs and non-heirs. Like Indonesia, Malaysia generally treats *waṣiyyah wājibah* as a mechanism for providing limited financial support to individuals who are excluded from inheritance under classical rules. However, the narrower scope of application and the absence of extensive judicial expansion indicate a more restrained approach. This difference highlights the influence of institutional design and legal culture on the development of Islamic inheritance law.

### **Comparative Patterns of Beneficiaries and Legal Scope**

A key finding of this study lies in the comparative analysis of beneficiary categories and the legal scope of *waṣiyyah wājibah*. In Indonesia, the primary beneficiaries are adopted children and adoptive parents, reflecting the social significance of adoption within Indonesian society. However, judicial practice has extended the mechanism to other groups, including non-Muslim relatives and children lacking formal lineage recognition. This expansion suggests that Indonesian courts interpret *waṣiyyah wājibah* as a general tool for addressing exclusion and dependency, rather than as a narrowly defined legal provision. The flexibility of beneficiary categories is thus a defining characteristic of the Indonesian model.

In Malaysia, by contrast, beneficiary categories tend to be more clearly defined and limited by statutory provisions. The application of *waṣiyyah wājibah* is generally confined to specific situations recognized by state enactments, with less evidence of judicial extension beyond these parameters. This results in a more predictable but less adaptive system, where legal certainty is prioritized over contextual responsiveness. The narrower scope may also reflect a more cautious approach to legal reform, particularly in maintaining alignment with classical doctrinal principles.

The comparison reveals that differences in beneficiary scope are closely linked to broader legal and institutional contexts. Indonesia's plural legal environment, characterized by the interaction of Islamic law, customary norms, and national legislation, encourages a more expansive interpretation of *waṣiyyah wājibah*. In contrast, Malaysia's structured legal system, with its emphasis on formal enactments and procedural clarity, tends to limit the scope of application. These findings

underscore the importance of contextual factors in shaping the evolution of Islamic legal instruments.

### **Judicial Reasoning and the Role of Legal Interpretation**

The study finds that judicial reasoning plays a central role in shaping the practical application of *waṣiyyah wājibah*, particularly in Indonesia. Judges often engage in interpretive reasoning that draws on a combination of statutory provisions, classical jurisprudence, and broader principles such as justice (*‘adl*) and public interest (*maṣlahah*). This interpretive approach allows courts to address cases that fall outside the explicit scope of legislation, thereby expanding the reach of *waṣiyyah wājibah*. In doing so, judges effectively act as agents of legal development, adapting the law to meet contemporary needs.

In Malaysia, judicial reasoning is also important but operates within a more constrained framework. The reliance on state enactments and the division of jurisdiction between courts limit the extent to which judges can engage in expansive interpretation. As a result, judicial decisions tend to adhere more closely to statutory provisions, with less emphasis on creative or purposive reasoning. This difference highlights the varying degrees of judicial discretion in the two systems and its impact on legal outcomes.

The findings suggest that the role of courts is not merely interpretive but also constructive. In contexts where legislation is incomplete or ambiguous, judicial reasoning becomes a primary mechanism for resolving legal uncertainty. This is particularly evident in cases involving non-traditional family structures, where existing legal categories may not provide adequate solutions. The ability of courts to navigate these challenges is therefore a key factor in the effectiveness of *waṣiyyah wājibah* as a tool of legal adaptation.

### **Maqāṣid al-Sharī‘ah and the Justification of Legal Outcomes**

Another significant finding concerns the role of *maqāṣid al-sharī‘ah* in justifying the use of *waṣiyyah wājibah*. In both Indonesia and Malaysia, although more prominently in Indonesia, legal actors invoke the objectives of Islamic law to support decisions that prioritize fairness and social welfare. The principle of protecting wealth (*ḥifẓ al-māl*) is particularly relevant, as *waṣiyyah wājibah* ensures that vulnerable individuals are not left without financial support. In addition, considerations of family cohesion and social harmony are frequently cited as reasons for adopting a more flexible approach to inheritance.

The application of *maqāṣid* reasoning allows for a shift from formalistic to purposive interpretation. Instead of focusing solely on the literal application of inheritance rules, legal actors consider the broader implications of their decisions. This approach is especially important in cases involving adopted children or interfaith families, where strict adherence to classical doctrine may produce outcomes perceived as unjust. By invoking *maqāṣid*, courts and scholars provide a normative framework that legitimizes legal adaptation while maintaining continuity with Islamic principles.

However, the findings also indicate that the use of *maqāṣid* is not uniform and may be subject to debate. While some actors view it as a legitimate basis for reform, others caution against its potential to override established legal norms. This tension reflects broader debates within Islamic legal theory بشأن the balance between textual fidelity and contextual interpretation. Nevertheless, the increasing prominence of *maqāṣid* in legal reasoning suggests that it will continue to play a central role in the evolution of Islamic inheritance law.

### Synthesis of Comparative Findings

The overall results of this study reveal that *waṣiyyah wājibah* functions as a context-dependent legal instrument shaped by the interaction of doctrine, social reality, and institutional structure. In Indonesia, the concept has evolved into a flexible and expansive mechanism, supported by both codification and judicial innovation. In Malaysia, it remains more constrained, reflecting a legal system that prioritizes formal structure and procedural clarity. Despite these differences, both systems share a common objective: to address gaps in inheritance justice without fundamentally altering the core principles of Islamic law.

The comparative analysis highlights that variation in implementation is not merely a matter of legal interpretation but is deeply influenced by broader socio-legal factors. These include the role of custom, the structure of legal institutions, and the degree of judicial discretion. By examining these factors, the study provides a more nuanced understanding of how Islamic law adapts to contemporary challenges. Ultimately, the findings demonstrate that *waṣiyyah wājibah* represents a significant example of legal innovation within the Islamic tradition, illustrating the capacity of the law to respond to changing social conditions while maintaining its normative foundations.

## DISCUSSION

### *Waṣiyyah Wājibah* as a Mechanism of Legal Adaptation

The findings of this study demonstrate that *waṣiyyah wājibah* functions as a flexible legal mechanism that bridges the gap between classical Islamic inheritance doctrine and contemporary social realities. In Indonesia, this adaptability is particularly visible in judicial practice, where courts extend the scope of compulsory bequests beyond codified provisions to accommodate socially dependent individuals such as non-Muslim relatives and children outside formal lineage structures. In Malaysia, although more formally regulated, *waṣiyyah wājibah* similarly operates as a corrective tool within institutional constraints. These findings confirm that *waṣiyyah wājibah* is not merely a doctrinal addendum but a dynamic instrument responding to structural tensions within modern family systems.

This interpretation is strongly supported by recent socio-legal scholarship, which frames *waṣiyyah wājibah* as part of a broader pattern of legal adaptation under conditions of legal pluralism. Studies show that courts and legislators deploy such mechanisms when classical rules produce socially contested outcomes, particularly in plural societies like Indonesia (Rafay et al., 2017; Roziqi et al., 2025; A. A. Yusuf, 2017). The

literature also emphasizes that *maqāṣid al-sharī'ah* provides the justificatory framework for such adaptation, enabling legal actors to prioritize welfare and justice while maintaining doctrinal continuity. However, some scholars caution that this adaptive approach risks undermining the stability of inheritance law if not carefully bounded (‘Abdel-Hay, 2018; Ahmed, 2025).

The implications of these findings are significant at multiple levels. Theoretically, they reinforce the view that Islamic law possesses an inherent capacity for contextual adaptation through purposive reasoning. Practically, they highlight the importance of judicial discretion in resolving complex inheritance disputes, particularly in plural societies. From a policy perspective, the findings suggest the need for clearer legal frameworks that balance flexibility with predictability, ensuring that *waṣiyyah wājibah* remains both effective and legitimate as an instrument of contemporary Islamic legal reform (Harefa, 2025; Hassan et al., 2026).

### Comparative Judicial Practices and Institutional Divergence

This study finds notable divergence in how *waṣiyyah wājibah* is interpreted and applied in Indonesia and Malaysia, particularly in terms of judicial practice and institutional structure. Indonesian courts play a proactive role in expanding the application of compulsory bequests, often relying on jurisprudential reasoning to address cases not explicitly covered by statutory law. In contrast, Malaysia exhibits a more structured and decentralized approach, where implementation is largely determined by state enactments and procedural frameworks. These differences indicate that the evolution of *waṣiyyah wājibah* is shaped not only by doctrinal considerations but also by institutional configurations and legal culture (Hakim & Nasution, 2022; Nugroho et al., 2025; Subagyono et al., 2025).

Comparative scholarship supports these findings by highlighting similar patterns of divergence. Studies note that Indonesia’s centralized judicial system enables the development of consistent jurisprudence, while Malaysia’s federal structure produces variation across states (Abdullah, 2020; A. A. Yusuf, 2017). Research also shows that Indonesian courts have extended *waṣiyyah wājibah* to non-traditional beneficiaries, whereas Malaysian practice remains more closely aligned with statutory provisions. At the same time, both systems share a commitment to preserving the core principles of inheritance law, particularly through limitations on the size and scope of compulsory bequests.

These differences have important implications. Theoretically, they demonstrate that Islamic legal reform is not monolithic but varies according to institutional context. Practically, they suggest that judicial capacity and institutional design play a critical role in determining the effectiveness of legal adaptation. From a policy standpoint, the findings point to the need for harmonization and clearer guidelines, particularly in decentralized systems, to ensure consistency and fairness in the application of *waṣiyyah wājibah*.

### **Maqāṣid al-Sharī'ah and the Legitimacy of Reform**

The study finds that *maqāṣid al-sharī'ah* serves as a central framework for legitimizing the use of *waṣiyyah wājibah* in both Indonesia and Malaysia. Legal actors invoke principles such as the protection of wealth and the preservation of family welfare to justify the allocation of estate portions to individuals excluded from inheritance. This purposive reasoning allows for a shift from rigid textual interpretation toward a more flexible approach that prioritizes substantive justice. However, the findings also reveal variation in the extent to which *maqāṣid* is explicitly applied, with Indonesian courts demonstrating greater reliance on such reasoning.

This finding aligns with contemporary scholarship that views *maqāṣid* as a key tool for Islamic legal reform. Studies argue that *waṣiyyah wājibah* can be justified as a means of achieving broader objectives such as social justice and family cohesion (Dwairi, 2022; Farah & Hattab, 2020). At the same time, critical perspectives highlight potential limitations, including the risk of subjective interpretation and the possibility of undermining established legal norms if *maqāṣid* is applied without sufficient methodological rigor ('Abdel-Hay, 2018; Abdullah, 2020; Güney, 2024). These debates underscore the complexity of balancing flexibility and doctrinal integrity.

The implications of these findings are multifaceted. Theoretically, they support the integration of purposive reasoning into contemporary Islamic legal analysis. Practically, they emphasize the need for clear methodological guidelines to ensure consistent application of *maqāṣid*. From a policy perspective, they suggest that legal reform should incorporate both textual and purposive elements, creating a balanced framework that preserves legitimacy while addressing contemporary needs.

### **Socio-Legal Impact on Family Welfare and Dispute Resolution**

The findings indicate that *waṣiyyah wājibah* plays a significant role in enhancing family welfare and facilitating dispute resolution. By providing financial support to excluded beneficiaries, it mitigates the economic vulnerability of dependents such as adopted children and orphaned grandchildren. In addition, the availability of compulsory bequests reduces the likelihood of inheritance disputes by offering a compromise solution that balances competing claims. This dual function underscores the practical importance of *waṣiyyah wājibah* as both a welfare mechanism and a conflict-resolution tool within Islamic legal systems.

Empirical and socio-legal studies support these conclusions by demonstrating that *waṣiyyah wājibah* contributes to social stability and family cohesion. Research shows that courts often use this mechanism to resolve disputes involving interfaith families, providing partial inclusion without altering formal inheritance status (Hidayati & Hidayatullah, 2021; Luntajo & Hasan, 2025; Mohamad et al., 2025). Other studies highlight the role of *waṣiyyah* in reducing conflict and ensuring equitable distribution, particularly in contexts where formal inheritance rules may produce socially undesirable outcomes (Abari et al., 2021; Anwar et al., 2024; Dwairi, 2022; Rohman et al., 2026; Zaini et al., 2025).

These findings have important implications. Theoretically, they reinforce the view that Islamic law can function as a tool of social engineering, promoting welfare and

harmony. Practically, they highlight the importance of accessible legal mechanisms for dispute resolution. From a policy perspective, they suggest that strengthening the implementation of *waṣiyyah wājibah* could contribute to more efficient and equitable inheritance systems, particularly in plural societies.

### Policy and Reform Implications for Contemporary Islamic Law

The study reveals that the future development of *waṣiyyah wājibah* depends on effective legal and institutional reform. Key challenges include the need for clearer statutory provisions, better coordination between legal institutions, and greater public awareness of estate planning mechanisms. In Indonesia, the expansion of *waṣiyyah wājibah* through judicial practice highlights the importance of codifying emerging norms to ensure consistency. In Malaysia, the variation across state enactments underscores the need for greater harmonization and standardization. These findings point to the central role of policy in shaping the evolution of Islamic inheritance law.

The literature provides strong support for these conclusions. Scholars recommend strengthening legal frameworks, clarifying beneficiary categories, and integrating *waṣiyyah wājibah* into broader estate planning systems (Dwairi, 2022; A. A. Yusuf, 2017). Other studies emphasize the importance of public education and institutional capacity building to improve the effectiveness of inheritance law (Farah & Hattab, 2020; Hakim, 2023). At the same time, some authors caution against excessive reform that may compromise doctrinal integrity, highlighting the need for balanced and context-sensitive approaches (Abdel-Hay, 2018).

The implications are clear. Theoretically, they highlight the dynamic relationship between law and policy in Islamic legal reform. Practically, they underscore the importance of institutional design and public engagement in ensuring effective implementation. From a policy perspective, they suggest that future reforms should aim to create coherent, transparent, and accessible legal systems that can respond to contemporary challenges while maintaining fidelity to Islamic legal principles.

### CONCLUSION

This study has demonstrated that *waṣiyyah wājibah* operates as a dynamic legal instrument that mediates between the doctrinal structure of Islamic inheritance law and the evolving realities of contemporary family life. The findings reveal that both Indonesia and Malaysia employ *waṣiyyah wājibah* to address exclusion within the classical system, yet they do so through distinct legal pathways. Indonesia's model is characterized by judicial expansion and socio-legal flexibility, while Malaysia's approach reflects a more formalized and institutionally structured framework. Despite these differences, both systems maintain the foundational principle that compulsory bequests must remain supplementary and bounded within established legal limits.

The discussion highlights that the legitimacy of *waṣiyyah wājibah* is closely tied to its alignment with *maqāṣid al-sharī'ah*, particularly the protection of wealth and family welfare. At the same time, the study underscores ongoing debates regarding the scope and methodological boundaries of such reform. While purposive reasoning enables



legal adaptation, it also raises concerns about consistency, legal certainty, and doctrinal integrity. The comparative findings further show that institutional design, judicial authority, and legal culture significantly influence how Islamic legal reform is articulated and implemented in practice.

This study contributes to the existing body of knowledge by offering an integrated comparative framework that combines doctrinal, socio-legal, and *maqāṣid*-based analysis. It advances the understanding of *waṣiyyah wājibah* as not merely a technical legal provision but as a broader mechanism of legal adaptation and social justice. By situating the concept within different institutional contexts, the study provides new insights into the diversity of contemporary Islamic legal systems. It also opens avenues for further inquiry into how Islamic inheritance law can continue to evolve in response to changing social conditions while maintaining its normative foundations.

### **Limitation of the Study**

This study is subject to several limitations that should be acknowledged in interpreting its findings. First, the research relies primarily on qualitative and doctrinal analysis of legal texts, judicial decisions, and scholarly literature. While this approach allows for in-depth conceptual and comparative insights, it does not provide empirical measurement of the real-world impact of *waṣiyyah wājibah* on family welfare or dispute resolution outcomes. As a result, conclusions regarding its effectiveness remain interpretive rather than statistically validated. Additionally, the availability of judicial data differs significantly between Indonesia and Malaysia, with Indonesian jurisprudence being more extensively documented. This imbalance may affect the depth of comparative analysis, particularly in assessing patterns of judicial application in Malaysia.

Second, the study is limited by its focus on two jurisdictions, which, although representative of important models, do not capture the full diversity of *waṣiyyah wājibah* practices across the Muslim world. Variations in legal systems, cultural contexts, and institutional arrangements in other countries may produce different interpretations and applications of compulsory bequests. Furthermore, the study emphasizes legal and institutional perspectives, with less attention to the lived experiences of individuals affected by inheritance disputes. This may limit the ability to fully understand how legal reforms are perceived and negotiated at the community level. These limitations highlight the need for broader and more empirically grounded research in this field.

### **Recommendations for Future Research**

Future research should expand the empirical dimension of *waṣiyyah wājibah* studies by incorporating quantitative and field-based methodologies. Longitudinal studies examining the socio-economic outcomes of compulsory bequests would provide valuable evidence on their impact on family welfare, financial security, and dispute resolution. In addition, ethnographic and socio-legal research focusing on litigants, legal practitioners, and community actors could offer deeper insights into how

*waṣiyyah wājibah* is understood, negotiated, and applied in everyday contexts. Such approaches would complement doctrinal analysis and contribute to a more holistic understanding of Islamic inheritance reform.

Further comparative research is also needed to explore how *waṣiyyah wājibah* is implemented in a wider range of jurisdictions, including countries with different legal traditions and institutional arrangements. This would help identify broader patterns and inform policy development across contexts. Moreover, future studies should examine the methodological use of *maqāṣid al-sharī'ah* in greater detail, particularly in relation to establishing clear criteria for legal adaptation and ensuring consistency in judicial reasoning. By addressing these areas, future research can deepen scholarly understanding and support the development of more effective and equitable inheritance systems within contemporary Islamic law.

**Author Contributions**

Conceptualization	N.D.S., A., K., & R.A.M.R.	Resources	N.D.S., A., K., & R.A.M.R.
Data curation	N.D.S., A., K., & R.A.M.R.	Software	N.D.S., A., K., & R.A.M.R.
Formal analysis	N.D.S., A., K., & R.A.M.R.	Supervision	N.D.S., A., K., & R.A.M.R.
Funding acquisition	N.D.S., A., K., & R.A.M.R.	Validation	N.D.S., A., K., & R.A.M.R.
Investigation	N.D.S., A., K., & R.A.M.R.	Visualization	N.D.S., A., K., & R.A.M.R.
Methodology	N.D.S., A., K., & R.A.M.R.	Writing – original draft	N.D.S., A., K., & R.A.M.R.
Project administration	N.D.S., A., K., & R.A.M.R.	Writing – review & editing	N.D.S., A., K., & R.A.M.R.

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**Informed Consent Statement**

Informed consent was not required for this study.

**Data Availability Statement**

The data presented in this study are available on request from the corresponding author.

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**Conflicts of Interest**

The authors declare no conflicts of interest.

**Declaration of Generative AI and AI-Assisted Technologies in the Writing Process**

During the preparation of this work the authors used ChatGPT, DeepL, Grammarly, and PaperPal in order to translate from Bahasa Indonesia into American English, and to improve clarity of the language



and readability of the article. After using these tools, the authors reviewed and edited the content as needed and take full responsibility for the content of the published article.

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