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# Progressive Legal Reasoning in Judicial Perspectives on Interfaith Inheritance: A Socio-Legal Study at the Class IA Makassar Religious Court

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**Abstrak**

Penelitian ini menelaah pandangan empat hakim Pengadilan Agama Makassar Kelas IA tentang penalaran hukum progresif (hukum progresif) dalam kewarisan beda agama serta kemungkinan pemberian wasiat wajibah kepada anggota keluarga non-Muslim. Pendekatan sosio-legal kualitatif menggunakan ringkasan wawancara yang dilaporkan dalam naskah penulis, bukan transkrip yang diverifikasi secara independen, dan analisis doktrinal atas Kompilasi Hukum Islam, hukum kekuasaan kehakiman, serta enam putusan Mahkamah Agung yang dibahas dalam kompilasi yurisprudensi resmi sampai dengan 2018. Temuan menunjukkan bahwa para hakim menghubungkan keadilan substantif dengan batas kewenangan dan aturan kewarisan, meskipun derajat penekanannya berbeda. Seorang non-Muslim tidak dengan sendirinya berkedudukan sebagai ahli waris menurut Pasal 171(c) KHI; penerimaan wasiat wajibah merupakan jalur hukum yang berbeda dan pengembangannya bagi keluarga non-Muslim bersumber dari yurisprudensi, bukan redaksi langsung Pasal 209 KHI. Ringkasan putusan menunjukkan variasi penerima dan besaran pemberian; rincian alasan hukum beberapa perkara tidak dapat dipastikan tanpa putusan lengkap. Penelitian mengusulkan pengujian kewenangan, pembuktian hubungan keluarga, identifikasi harta bersama, batas wasiat, serta perlindungan bagian ahli waris secara berurutan. Temuan wawancara tidak dipakai untuk menyatakan bahwa para hakim Makassar pernah memutus enam perkara yang dianalisis.

**Kata Kunci:** Hukum Progresif; Wasiat Wajibah; Kewarisan Beda Agama; Penemuan Hukum; Peradilan Agama.

***Abstract***

*This article examines four reported judicial perspectives at the Class IA Makassar Religious Court on progressive legal reasoning (hukum progresif) in interfaith inheritance and the possible use of a mandatory bequest (wasiat wajibah) for non-Muslim relatives. The qualitative socio-legal approach relies on interview summaries reported in the authors' underlying manuscript—not independently audited transcripts—and a doctrinal reading of the Compilation of Islamic Law (KHI), legislation on judicial authority, and six Supreme Court decisions discussed in the official jurisprudence digest through 2018. The reported judges support fact-sensitive justice within jurisdictional and legal constraints, but differ in their emphases. A non-Muslim family member does not automatically acquire the status of an Islamic heir under Article 171(c) KHI; receiving a mandatory bequest is a distinct juridical route.*

*Its extension beyond adoptive relationships arises from jurisprudential development, not the express wording of Article 209 KHI. The cases show differing beneficiary categories and reported allocations, while several precise holdings and denominators remain unascertainable without full judgments. The article proposes a sequential test of jurisdiction, family evidence, marital-property separation, bequest limits, and protection of recognised heirs. Interview statements are not presented as proof of how the six Supreme Court cases were decided.*

***Keywords:*** *Progressive Law; Mandatory Bequest; Interfaith Inheritance; Judicial Reasoning; Religious Court.*

## Introduction

Inheritance law determines the legal distribution of property after death, yet it also exposes the friction between categorical legal entitlements and the lived relationships that precede a person's death. In Indonesia, the friction is particularly evident in Muslim families whose members profess different religions. The religious identity of a relative may preclude succession under the Islamic inheritance framework applied by the Religious Courts even when that relative has maintained close personal, economic, and caregiving ties with the deceased. The question for adjudication is therefore not simply whether the person qualifies as an heir, but whether a distinct legal device can address a legitimate claim to fairness without covertly rewriting the criteria of heirship. This distinction is the point of departure for examining judicial responses in Makassar.[1]

The Compilation of Islamic Law (Kompilasi Hukum Islam, KHI), disseminated under Presidential Instruction No. 1 of 1991, provides the operative framework often cited by Religious Courts. Article 171(c) associates an heir with blood or marital relations, Muslim faith, and the absence of a legal impediment. Article 209, however, expressly addresses a mandatory bequest in favour of adopted children or adoptive parents who have not otherwise been provided for. These provisions are not interchangeable: Article 171 concerns an entitlement as an heir, whereas Article 209 concerns a legal transfer through the mechanism known as wasiat wajibah. A non-Muslim family member may thus be excluded from the first status without necessarily resolving the separate debate over the second mechanism.[2]

The doctrinal impediment is expressed in the report transmitted from Usāmah ibn Zayd: 'A Muslim cannot be the heir of a disbeliever, nor can a disbeliever be the heir of a Muslim' (Ṣaḥīḥ al-Bukhārī, no. 6764, Book 85, Hadith 41). The dominant rule of succession therefore concerns the legally defined status of an heir. A transfer through a valid testamentary disposition, by contrast, is not an automatic share obtained by succession. The use of a judicially imposed mandatory bequest for a non-Muslim relative remains contested and requires an identified jurisprudential rationale; it should not be described as though the hadith itself had been displaced. Juristic discussions of bequests and their conditions do not erase the continuing prohibition on ordinary interfaith heirship. The operative

[1] Ardina Khoirun Nisa and Zulfahmi, "Legal Dynamics of Inheritance Across Religions Between Heirs and Beneficiaries in Indonesia," *Journal of Private and Commercial Law* 9, no. 1 (2025), https://doi.org/10.15294/jpcl.v9i1.13481.

[2] Republic of Indonesia, Presidential Instruction No. 1 of 1991 on the Dissemination of the Compilation of Islamic Law, Book II, arts. 171(c) and 209.

distinction is between the ground of entitlement, not merely the size of the financial benefit.[3]

Progressive law in the Indonesian legal discourse is closely associated with Satjipto Rahardjo's proposition that law is instituted for human beings rather than the reverse. The formulation is not a warrant to replace legislation with an unconstrained moral intuition. Its practical force lies in demanding that judicial reasoning account for legal purpose, social consequence and the human circumstances of the case. The judge must explain why the chosen interpretation remains within a defensible field of legal materials. In a dispute involving non-Muslim relatives, this means distinguishing a creative but reasoned use of a recognised bequest mechanism from an unsupported declaration that religious difference no longer matters to Islamic inheritance law.[4]

Law No. 48 of 2009 on Judicial Power serves as an institutional safeguard, not a free-standing substantive rule on interfaith succession. Article 5(1) directs judges to attend to legal values and public justice; Article 10(1) prevents a court from refusing a case solely because law is absent or unclear. Neither text specifically grants a mandatory bequest to non-Muslim family members. The disputed substantive route is instead a judicial development associated with Supreme Court jurisprudence, read alongside Article 171(c) KHI and the expressly narrower provision on adopted relationships in Article 209. The adjudicator must explain why that development is apt to a particular claim and cannot invoke the judicial duty to decide as a substitute for legal grounds or established facts.[5]

Studies of interfaith inheritance have already described Indonesia's interaction among Islamic, civil and customary inheritance systems. Their findings indicate that legal pluralism may produce different results for similarly situated family members and that judicial solutions centred on wasiat wajibah can remain uncertain in scope and amount. The difficulty is not solved by depicting all inheritance systems as interchangeable, because the applicable forum and normative foundation still matter. Rather, the comparison highlights why carefully articulated criteria for a mandatory bequest are needed when the estate belongs to a Muslim decedent and the claimant falls outside the Islamic category of heirs. A well-reasoned decision must identify both the rule of exclusion and the source authorising a different form of allocation.[6]

Recent scholarship has examined the institutionalisation of mandatory bequests through judicial ijtihād and maqāṣid-based interpretation. This scholarship helps describe how judges respond to plural family relations while claiming continuity with core inheritance rules. At the same time, more critical contributions warn that language about welfare and universal fairness can conceal unresolved disagreements over the source, extent and legitimacy of judicial

[3] Al-Bukhārī, Ṣaḥīḥ al-Bukhārī, Book 85, hadith 6764 (Book 85, hadith 41), https://sunnah.com/bukhari:6764.

[4] M. Zulfa Aulia, "Hukum Progresif dari Satjipto Rahardjo: Riwayat, Urgensi, dan Relevansi," *Undang: Jurnal Hukum* 1, no. 1 (2018): 159–185, https://doi.org/10.22437/ujh.1.1.159-185.

[5] Republic of Indonesia, Law No. 48 of 2009 on Judicial Power, arts. 5(1) and 10(1).

[6] Tri Andari Dahlan, Ubaidillah Kamal, Yustina Dhian Novita, Risky Agung Firnanda, and Aldina Ulya, "Justice and Legal Recognition of Interfaith Heirs in Indonesia Inheritance Law," *Contemporary Issues on Interfaith Law and Society* 5, no. 1 (2026), https://doi.org/10.15294/ciils.v5i1.34347.

authority. A persuasive analysis must therefore consider both accounts. It should neither present every expansion of wasiat wajibah as self-evidently lawful nor suggest that every non-textual application is automatically a breach of Islamic inheritance principles. The relevant question is whether the interpretive pathway and its limitations are made transparent.[7]

This article deliberately integrates two types of material with different evidentiary functions. The four interviews reported in the source manuscript describe contemporary attitudes of judges serving at the Class IA Makassar Religious Court. The six Supreme Court cases, none identified here as a decision of those four judges, describe the national jurisprudential treatment of non-Muslim relatives. The interviews cannot validate facts or the ratio decidendi of cases decided elsewhere, while the national case digest cannot establish how Makassar judges actually decide local matters. Juxtaposing the datasets permits a narrower comparison between views about judicial discretion and the doctrinal boundaries illustrated by national decisions.[8]

The extension beyond the categories expressly named in Article 209 KHI is thus best described as jurisprudential legal development, sometimes defended by analogical reasoning about protection of excluded family members. The Supreme Court's official compilation identifies repeated decisions awarding mandatory bequests to non-Muslim children or spouses. The interpretive analogy concerns an exceptional remedial route; it does not transform the non-Muslim claimant into an heir and does not automatically carry over every rule concerning adoptive relationships. The need for separate justification is particularly strong where the requested amount approaches or exceeds limits traditionally applied to testamentary transfers.

The central questions are consequently twofold. First, how do the interviewed Makassar judges understand progressive judicial reasoning when religious difference prevents an individual from becoming an Islamic heir? Second, what justifications and limits emerge when the recognised jurisprudence on wasiat wajibah is read with the KHI, the statutory duties of judges and the objectives of Islamic law? Answering these questions requires care about the evidentiary status of each claim. Statements recorded in interviews are evidence of the reported perspectives of four judges; the Supreme Court compilation is evidence of described precedents; and the maqāṣid discussion is the authors' own normative analysis. These three levels cannot responsibly be collapsed into a single assertion of judicial consensus.[9]

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[7] Siti Ropiah, Syafi'i Syafi'i, Abdul Rahim, Hisam Ahyani, Miftakhul Huda, and Salisu Muhammad Gumel, "Judicial Ijtihād and Maqāṣid-Based Adjudication in Interfaith Inheritance: Reconstructing Wasiat Wajibah in Indonesian Islamic Law," *Asy-Syari'ah* 28, no. 1 (2026): 1–30, https://doi.org/10.15575/as.v28i1.52572.

[8] Yefrizawati, Idha Aprilyana Sembiring, Utary Maharany Barus, and T. Keizerina Devi Azwar, "Penerapan Wasiat Wajibah dalam Putusan Hakim Pengadilan Agama (Studi di Pengadilan Agama Medan dan Pengadilan Agama Binjai)," *Jurnal Mercatoria* 15, no. 2 (2022), https://doi.org/10.31289/mercatoria.v15i2.6550.

[9] Aco Wahab and Imam Kamaluddin, "Tinjauan Kritis Implementasi Wasiat Wajibah Beda Agama dalam Hukum Waris Islam di Indonesia," *Ulumul Syar'i: Jurnal Ilmu-Ilmu Hukum dan Syariah* 12, no. 1 (2024), https://doi.org/10.52051/ulumulsyari.v12i1.202.

## Research Method

This study combines qualitative socio-legal interpretation with doctrinal legal research. Its empirical basis is limited to reports of interviews with Drs. H. Asri, M.H.; Drs. Tayeb, S.H., M.H.; Dra. Hj. Khaeriyah, S.H., M.H.; and Dra. Hartini Ahada, M.H., each identified by the supplied manuscript as a judge at the Class IA Makassar Religious Court and interviewed on 14 July 2026. The materials supplied for this revision do not establish the sampling frame, selection criteria, judicial tenure, interview modality or length, the interview schedule, informed-consent and ethics documentation, recordings, or original transcripts. Consequently, neither random sampling nor verbatim transcription can be claimed. Their statements are coded only as secondary, author-reported interview summaries; any stronger empirical claims require the original researchers' documentation.[10]

The doctrinal sample is purposive rather than exhaustive. It consists of the six decisions expressly listed under the mandatory-bequest discussion in the Supreme Court's Himpunan Yurisprudensi Mahkamah Agung Sampai dengan Tahun 2018, namely Nos. 368 K/Ag/1995, 51 K/Ag/1999, 16 K/Ag/2010, 721 K/Ag/2015, 218 K/Ag/2016 and 331 K/Ag/2018. They were included because the official digest groups them as a continuous jurisprudential line concerning mandatory bequests to relatives who do not qualify as Islamic heirs. Other decisions, matters adjudicated after 2018, and trial-level disputes outside that compiled sequence are excluded by the source boundary, not because they are irrelevant. The digest is an official account of reported outcomes and selected reasons, not a replacement for the six complete judgments. Where the digest omits material facts or calculations, the study records the limitation instead of constructing a purported ratio decidendi.[11]

Analysis proceeded through a transparent three-part protocol: first, each reported interview was coded for legal limits, attention to family circumstances, suggested remedies and differences in emphasis; second, each decision in the digest was coded for claimant category, juridical route, facts actually reported, award and gaps in the summary; third, the two sets were compared at the level of judicial reasoning only. The interview matrix does not claim verbatim quotations, since independently accessible transcripts were not supplied. Disagreement, missing information and hypothetical alternative explanations are recorded explicitly instead of being converted into consensus. The case matrix is a descriptive extraction from the identified Supreme Court digest, not a reconstruction from unseen complete judgments.[12]

## Results and Discussion

### Judicial Understandings of Progressive Law in Interfaith Inheritance

The normative foundation of the problem is relatively clear, while the problem of practical justice is not. The KHI maintains a Muslim-identity

[10] Interview with Drs. H. Asri, M.H., Makassar Religious Court, July 14, 2026, as reported in the author-supplied manuscript.

[11] Supreme Court of the Republic of Indonesia, Himpunan Yurisprudensi Mahkamah Agung Sampai dengan Tahun 2018 (Jakarta: Biro Hukum dan Humas, 2020), 51–54, https://jdih.mahkamahagung.go.id/download-file-satker/yurisprudensi-tahun-2018.

[12] Yordan Elang Mulya Lesmana, "Modalitas Hakim Progresif," *Verstek* 8, no. 2 (2020), https://doi.org/10.20961/jv.v8i2.44116.

requirement for a person to qualify as an heir of a Muslim decedent. In a plural family, however, a person who is excluded from this category may still have maintained a lifelong bond with the decedent. Separating status from distribution is therefore indispensable. The inheritance share under the rules of succession is not synonymous with every legally recognisable transfer from an estate. A voluntary bequest, a judicially compelled bequest, a gift completed during life and the division of marital property are different juridical routes. Confusion among them produces arguments that appear humane but are difficult to implement consistently.[13]

The theory of progressive law requires more than compassion expressed in the language of judgment. A court should identify a legal difficulty, explain the purpose served by interpretation, state why the selected rule permits the proposed solution, and examine the interests of other legitimate beneficiaries. This disciplined understanding fits the critique found in scholarship on Rahardjo: judicial innovation can make rigid rules responsive to social needs, yet the progressive label itself is susceptible to misuse when it is attached to a decision merely because the result departs from conventional textual reasoning. Thus, the quality of a progressive decision is assessed by the reasons offered rather than the apparent generosity of the award.[14]

Lesmana's discussion of the progressive judge places judicial capacity and responsibility at the centre of this inquiry. A judge who seeks substantive justice must be capable of legal interpretation, familiar with the social implications of a decision and accountable to the procedural framework. These capacities matter in interfaith inheritance because the claimant's circumstances may provoke strong moral intuitions on both sides. A judge cannot equate sympathy with legal proof, but neither should family life be treated as an irrelevant inconvenience. The duty is to determine which facts have legally acceptable significance and to articulate that significance without altering the foundational criteria for inheritance by implication.[15]

The jurisprudential distinction can also be expressed as the difference between a rule of exclusion and an alternative pathway of inclusion. Under the Islamic inheritance rule cited in the manuscript, religious difference precludes the legal status of an heir. The existence of that exclusion does not itself answer whether a mandatory bequest can be awarded in the adjudicated circumstances. Conversely, the award of a bequest does not prove that the excluded person became an heir. Two different legal questions must be answered, and they may produce apparently different but logically compatible outcomes. This framework helps avoid a frequent terminological problem: a beneficiary may obtain economic value associated with an estate while holding no entitlement as an Islamic heir.[16]

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[13] Republic of Indonesia, Compilation of Islamic Law, arts. 171(c) and 209.

[14] M. Zulfa Aulia, "Hukum Progresif dari Satjipto Rahardjo: Riwayat, Urgensi, dan Relevansi," *Undang: Jurnal Hukum*.

[15] Yordan Elang Mulya Lesmana, "Modalitas Hakim Progresif," *Verstek*.

[16] Allya Shifa Akhsanty, "The Concept of Wasiat and Wasiat Wajibah in Indonesia from the Perspective of the Compilation of Islamic Law (KHI)," *Journal of Private and Commercial Law* 2, no. 1 (2025), https://doi.org/10.20885/JPCOL.vol2.iss1.art4.

The first of the reported interviews provides a concise account of this interpretive discipline. Drs. H. Asri, M.H. was recorded as viewing progressive law as a way of reading law beyond a merely textual application, while insisting that the applicable law must still be known and applied. The judge's observation emphasises consideration of the facts and circumstances of the parties before deciding how general norms operate in a particular case. As translated from the source manuscript, the statement is descriptive of a judicial approach rather than evidence that the interviewee had authorised any specific departure from KHI inheritance requirements.[17]

Drs. Tayeb, S.H., M.H. was reported to be more explicit about the constraint: progressive adjudication in the Religious Court must continue to respect Islamic law and positive law governing the court's authority. His account rejects any understanding of progressive law as permission to disregard existing provisions. Read together with the first interview, this is not a contradiction between legalism and social justice. It is a claim that factual responsiveness requires identifiable legal sources. In inheritance litigation a decision may therefore be innovative in its use of a bequest mechanism while remaining conservative about the meaning of an Islamic heir. That combination is neither conceptually incoherent nor necessarily inequitable.[18]

Dra. Hj. Khaeriyah, S.H., M.H. similarly emphasised a comprehensive assessment of cross-religious inheritance disputes. In the submitted report, religious difference remains a legally relevant circumstance, but family relations and the lived position of the parties must also be examined. This statement does not imply that family closeness is an independent statutory ground of succession. Rather, it identifies potentially relevant facts when a court is considering whether an alternative legal mechanism is justified. The distinction is essential: if family closeness were treated as sufficient for heirship, the court would be substituting an unwritten criterion for the requirements of the KHI. Its safer role is as a factor in reasoned consideration of a mandatory bequest.[19]

Dra. Hartini Ahada, M.H. was reported to have stressed that inheritance disputes involving religious differences should be examined in their specific factual setting. No single mechanical solution can fit all cases because relationships, family histories and social conditions differ. This warning helps explain why the mere mention of precedent is insufficient. The relevant precedent must be compared with the facts before the court, including the nature of the claimant's family link and any contribution to the decedent's life. Nevertheless, individualised adjudication is compatible with an overarching methodological framework. Flexibility about fact-sensitive outcomes should be accompanied by stable requirements concerning legal grounds, procedural fairness and reasons for the amount awarded.[20]

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[17] Interview with Drs. H. Asri, M.H., July 14, 2026, as summarised in the author-supplied manuscript.

[18] Interview with Drs. Tayeb, S.H., M.H., Makassar Religious Court, July 14, 2026, as reported in the author-supplied manuscript.

[19] Interview with Dra. Hj. Khaeriyah, S.H., M.H., Makassar Religious Court, July 14, 2026, as reported in the author-supplied manuscript.

[20] Interview with Dra. Hartini Ahada, M.H., Makassar Religious Court, July 14, 2026, as reported in the author-supplied manuscript.

The four interviews therefore reveal a shared theme rather than a uniform formula: progressive law is understood as a responsible mode of adjudication, not the abandonment of legal doctrine. The material does not, however, show that all four judges reached the same conclusion about the permissible size of a bequest, or that they had decided identical cases. Such stronger claims would require additional evidence. The useful finding is narrower: all four reported perspectives place legal constraints and attention to concrete circumstances within the judge's task. This supports a model of bounded legal creativity, in which judicial discretion is visible, reviewable and connected to recognisable legal materials.[21]

The constitutional ideal of equality before the law adds a further consideration, but it must not be mistaken for a direct rule of estate distribution. Affandi's analysis of equality under Article 27(1) of the 1945 Constitution explains its importance as a general requirement against arbitrary differentiation in legal status. In a case governed by Islamic inheritance law, that principle can support fair judicial treatment, equal opportunity to be heard and consistency of reasoning, even while substantive rules classify beneficiaries differently. Equality before the law is thus a powerful corrective against arbitrary adjudication; it is not, standing alone, a substitute for identifying the statutory or jurisprudential authority through which a bequest may be ordered.[22]

The findings must also be located within the broader patterns of family dispute resolution rather than read as purely individual judicial attitudes. Research on harmonising distribution in inter-religious families notes the co-existence of different Indonesian inheritance regimes and the practical need to address conflict across religious affiliations. For judges at a Religious Court, the relevance is not that every regime becomes available without qualification. It is that litigants may enter proceedings with expectations shaped by different traditions, agreements and understandings of fairness. Transparent judicial reasoning should therefore disclose the choice of law, explain the claimant's status under that law and indicate why the bequest mechanism, rather than an unqualified inheritance entitlement, is the appropriate form of relief.[23]

**Reported Judicial Perspectives: Transparent Thematic Coding**

Table 1 codes only what can be attributed to the author-reported summaries in the supplied manuscript. These are English analytical paraphrases, not authorised quotations from Indonesian transcripts. The absence of the original source recordings means a verbatim Indonesian excerpt and its verified English translation cannot responsibly be provided; that material remains an evidence requirement for the authors.

[21] Yefrizawati, Idha Aprilyana Sembiring, Utary Maharany Barus, and T. Keizerina Devi Azwar, "Penerapan Wasiat Wajibah dalam Putusan Hakim Pengadilan Agama (Studi di Pengadilan Agama Medan dan Pengadilan Agama Binjai)," *Jurnal Mercatoria*.

[22] Hernadi Affandi, "Kontekstualitas Makna 'Bersamaan Kedudukan' di Dalam Hukum dan Pemerintahan Menurut Undang-Undang Dasar 1945," *Padjadjaran Jurnal Ilmu Hukum* 4, no. 1 (2017), https://doi.org/10.22304/pjih.v4n1.a2.

[23] Daniel Hotma Christofel Hutagaol and Christin Septina Basani, "Harmonizing the Distribution of Inheritance Property in Inter-Religious Families," *Jurnal Syntax Imperatif* 5, no. 1 (2024): 126–139, https://doi.org/10.36418/syntax-imperatif.v5i1.351.

**Table 1. Interview coding matrix (reported sources only)**

| Judge / reported source | Dominant theme (paraphrased) | Difference or uncertainty |
|---|---|---|
| H. Asri (14 July 2026) | Interpret law beyond literalism but maintain legality | No verbatim speech or judicial case file supplied |
| Tayeb (14 July 2026) | Explicit priority to Islamic law, positive law and court competence | More restrictive emphasis; no transcript for comparison |
| Hj. Khaeriyah (14 July 2026) | Consider family relations and circumstances comprehensively | No quantified criteria for assessing facts |
| Hartini Ahada (14 July 2026) | Fact-sensitive resolution rather than one mechanical outcome | No record of actual awards or contrary responses |

Source: authors' interview descriptions in the manuscript supplied for review, attributed to the four named judges, 14 July 2026. The matrix is not a direct transcript. In the absence of a complete interview guide and audio or signed transcripts, contrary answers cannot be ruled out; in particular, absence of opposition in these summaries is not evidence of unanimity. The four perspectives are used to identify plausible dimensions of judicial reasoning, not to calculate a generalisable level of judicial support.

**Supreme Court Jurisprudence and the Legal Distinction Between Heirship and Mandatory Bequests**

The official Supreme Court jurisprudence compilation supplies an institutional record of how the mandatory-bequest mechanism developed for non-Muslim relatives. It reports an initial approach in Decision No. 368 K/Ag/1995, followed by No. 51 K/Ag/1999, No. 16 K/Ag/2010, No. 721 K/Ag/2015, No. 218 K/Ag/2016 and No. 331 K/Ag/2018. The series is important because the KHI's express provision on wasiat wajibah in Article 209 concerns adoptive relationships, not a general entitlement for every non-Muslim relative. The judicial development therefore creates a question of lawful extension: what combination of legally relevant family circumstances and interpretive reasoning can justify the remedy while leaving the rules of succession untouched?[24]

Decision No. 368 K/Ag/1995 is treated in the compilation as an early instance involving a child who changed religion. The reported approach did not place the child in the legal category of heir but permitted an allocation through a mandatory bequest. Its contribution is therefore classificatory as well as distributive. The court's response presupposed the distinction between the form of entitlement and its economic effect. It did not require the conclusion that Islamic inheritance and a judicially created bequest had become identical institutions. This first step is the jurisprudential basis for later arguments that a religious barrier to heirship need not always result in total economic exclusion from the estate.[25]

The official compilation then associates Decision No. 51 K/Ag/1999 with further recognition of a mandatory bequest for a non-Muslim child and records an allocation corresponding to the share of a comparable Muslim child. This result is

[24] Supreme Court of the Republic of Indonesia, Himpunan Yurisprudensi, 51–54.
[25] Supreme Court of the Republic of Indonesia, Himpunan Yurisprudensi, 51–54.

often invoked to suggest parity of economic benefit, but it should not be recast as a general rule automatically fixing every future bequest at that proportion. The instrument was still a bequest, not inheritance in the technical sense. Quantitative equivalence in one dispute must be distinguished from a universal formula, especially given the need to consider other heirs and limits associated with bequests. A careful judge must explain both the character and the amount of the transfer.[26]

The position of a non-Muslim spouse came to the foreground in Decision No. 16 K/Ag/2010. The Supreme Court compilation records a marriage lasting approximately eighteen years, the wife's service and companionship during that marriage, and the court's conclusion that a mandatory bequest was a fair response despite religious difference. The doctrinal significance lies in the court's consideration of a long-standing marital relationship without simply declaring the wife to be an Islamic heir. A wife's possible independent claim to jointly acquired marital property must also be kept analytically distinct from a bequest out of the decedent's estate, because the two operate at different stages of property allocation.[27]

The doctrinal history also needs to be read alongside scholarship devoted specifically to the 2010 judgment. Suparman identifies the award to a non-Muslim spouse as a notable adjustment in the way Indonesian inheritance jurisprudence has sought to address family circumstances after a lengthy marriage. The significance of this analysis is not that the traditional impediment to inheritance disappeared. Rather, it supports a distinction between a person's eligibility for a prescribed inheritance share and a separate allocation responsive to the circumstances of the marriage. Maintaining this distinction also prevents an overstatement about the amount that a spouse should receive: the property regime, the estate available for distribution, the rights of other beneficiaries and the court's stated reasons must all be separately considered.[28]

A recent study focused on Decision No. 16 K/Ag/2010 reads the judgment through maqāṣid al-sharī'ah and emphasizes the relationship between established inheritance rules and the demand for equitable treatment of a family member who otherwise lacks an inheritance share. It offers a useful justification for looking at the underlying interests protected by legal arrangements, including family continuity and property security. Nevertheless, the judicial finding reported in the primary jurisprudence compilation and the scholar's evaluative use of maqāṣid remain different kinds of evidence. A sound manuscript should not turn an author's later theoretical reading into a quotation or reasoning expressly adopted by the judges themselves.[29]

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[26] Supreme Court of the Republic of Indonesia, Himpunan Yurisprudensi, 51–54.

[27] Supreme Court of the Republic of Indonesia, Himpunan Yurisprudensi, 51–54.

[28] Maman Suparman, "Pergeseran Hukum Kewarisan Islam di Indonesia dengan Pemberian Wasiat Wajibah Kepada Istri yang Non Muslim Berdasarkan Putusan Mahkamah Agung Nomor 16k/Ag/2010," *Hukum dan Demokrasi* 23, no. 4 (2023): 212–227, https://doi.org/10.61234/hd.v23i4.34.

[29] Muhammad Baihaqi, "Mandatory Bequest (Wasiat Wajibah) in Interfaith Inheritance Cases (A Study of Indonesian Supreme Court Decision No. 16 K/AG/2010 from the Perspective of Maqāṣid al-Sharī'ah)," *QURU': Journal of Family Law and Culture* 4, no. 1 (2026), https://doi.org/10.59698/quru.v4i1.576.

The official digest describes Decision No. 721 K/Ag/2015 as involving a Muslim deceased whose wife was the only Muslim heir and whose two children were non-Muslims. It reports that the children could not qualify as heirs but were awarded benefits through mandatory bequests. The digest also reproduces language about peaceful family co-existence. Those are the propositions attributed to the judicial record in the digest. Treating harmony as a flexible indicator of contextual fairness, rather than a universal doctrinal prerequisite or an independent source of entitlement, is the present authors' interpretation. The judgment itself is required to test the full factual setting and the precise operative calculation.[30]

Decision No. 218 K/Ag/2016 is included because the official digest places it in the same jurisprudential sequence and associates it with an earlier Yogyakarta Religious Court case, No. 0042/Pdt.G/2014/PA.Yk. Its inclusion is descriptive evidence of continuity of the general remedial device, not direct evidence of a particular ratio decidendi or amount. The supplied materials do not include the complete cassation judgment or underlying pleadings. Beneficiary identity, proof of contribution and the allocation denominator are therefore recorded as not ascertainable from the digest, and conclusions about those matters are withheld.[31]

The official compilation reproduces a consideration in Decision No. 331 K/Ag/2018 describing a non-Muslim wife who maintained a harmonious relationship with the deceased and provided assistance during illness, including travel for treatment. The reproduced language refers to a mandatory bequest of one-quarter of the harta peninggalan (property left by the deceased). It does not provide the full balance sheet necessary to calculate whether the denominator was gross property, the deceased's share after separation of jointly owned assets, or the net estate after debts and necessary expenses. For that reason, the one-quarter statement is reported as a case outcome without converting it into a precise mathematical ceiling or a general rule.[32]

Read as a whole, this sequence exhibits both continuity and variation. The continuity consists of maintaining the distinction between formal inheritance status and a mandatory bequest to certain non-Muslim family members. The variation concerns claimant type, family background, and the amount allocated. This is a useful pattern for progressive judicial reasoning because it combines a stable conceptual premise with fact-sensitive application. It is also a source of legal uncertainty if later courts reproduce only the outcome of a case without setting out its reasons. The danger is not the existence of discretion as such, but discretion concealed behind the general assertion that an outcome is "just."[33]

The critique is supported by research on the expansion of wasiat wajibah, which recognises that judicial application has moved beyond the categories specified in Article 209 KHI. That expansion can protect otherwise excluded

[30] Supreme Court of the Republic of Indonesia, Himpunan Yurisprudensi, 51–54.

[31] Supreme Court of the Republic of Indonesia, Himpunan Yurisprudensi, 51–54.

[32] Supreme Court of the Republic of Indonesia, Himpunan Yurisprudensi, 51–54.

[33] Mohamad Yamin, Fauzan Ali Rasyid, Ending Solehudin, and Ahmad Zaini, "The Expansion of Wasiat Wajibah: Protecting Legal Certainty and Fairness in Indonesian Inheritance Law," *Fikri: Jurnal Kajian Agama, Sosial dan Budaya* 10, no. 2 (2025): 1011–1029 (published 2026), https://doi.org/10.25217/jf.v10i2.7265.

relatives, but it introduces uncertainty about eligibility and allocation if no articulated methodology accompanies it. A comparative reading of the six decisions therefore suggests that a court should identify the relationship to the deceased, the reason ordinary inheritance does not arise, the source of authority for a mandatory bequest, the relevant facts, the rights of other beneficiaries, and the legal basis for the quantity awarded. Each element helps make the result reviewable and distinguishes a remedy from an arbitrary redistribution of the estate.[34]

Table 2 summarises the decisions against uniform variables. An outcome described in the official digest is not automatically the complete ratio decidendi of the original judgment, and the absence of a denominator should not be silently resolved in this article.[35]

**Table 2. Six Supreme Court decisions reported in the 2018 jurisprudence digest**

| Decision | Claimant and reported ground | Route / award | Evidentiary limit |
|---|---|---|---|
| 368 K/Ag/1995 | Child who changed religion; KHI heirship impediment | Mandatory bequest; precise quantum not supplied | Digest gives introductory judicial position, not entire ruling |
| 51 K/Ag/1999 | Non-Muslim child | Mandatory bequest comparable to a Muslim child's share | Case-specific equivalence; no universal formula |
| 16 K/Ag/2010 | Non-Muslim spouse; approx. 18 years marriage | Mandatory bequest plus independent marital-property rights | Separate joint assets before estate; exact inventory not supplied |
| 721 K/Ag/2015 | Two non-Muslim children; Muslim decedent | Mandatory bequest; coexistence/harmony noted in digest | Reported context, not universal legal threshold |
| 218 K/Ag/2016 | Non-Muslim beneficiary in Yogyakarta lower-court matter | Continuation of mandatory-bequest line | Detailed facts, quantum and ratio: not ascertainable from digest |
| 331 K/Ag/2018 | Non-Muslim wife; reported care during illness | Mandatory bequest of one-quarter of "harta peninggalan" | Exact net-estate denominator not ascertainable from digest |

[34] Mohamad Yamin, Fauzan Ali Rasyid, Ending Solehudin, and Ahmad Zaini, "The Expansion of Wasiat Wajibah: Protecting Legal Certainty and Fairness in Indonesian Inheritance Law," *Fikri: Jurnal Kajian Agama, Sosial dan Budaya*.

[35] Supreme Court of the Republic of Indonesia, Himpunan Yurisprudensi Mahkamah Agung Sampai dengan Tahun 2018 (Jakarta: Biro Hukum dan Humas, 2020), 51–54, https://jdih.mahkamahagung.go.id/download-file-satker/yurisprudensi-tahun-2018.

Source: Supreme Court of the Republic of Indonesia, Himpunan Yurisprudensi Mahkamah Agung Sampai dengan Tahun 2018, pp. 51–54. The table records only the information visible in that official compilation. The result attributed to Decision No. 721 K/Ag/2015 is reported there as an award to two non-Muslim children accompanied by discussion of peaceful co-existence. This does not prove that harmony was a mandatory legal element in every similar case. Decision No. 218 K/Ag/2016 is included solely as a documented instance of continuity because the digest identifies the lower-court Yogyakarta proceedings and subsequent cassation, not an inspectable complete rationale.

Research comparing Islamic and civil inheritance regimes underscores why the choice of instrument cannot be ignored. Indonesia's inheritance systems do not operate according to the same rules, and religious difference may have different consequences across those systems. A mandatory bequest within Islamic inheritance adjudication is not equivalent to declaring that the Civil Code's more religion-neutral succession rules govern every Muslim estate. The judicial question examined here arises within a specific institutional and legal framework. Comparative law illuminates the range of available values and approaches, but it does not automatically transfer a rule from one regime to another without legal authorisation.[36]

A study of interfaith inheritance practices in several Indonesian regions further shows that families may resolve disputes through negotiation, deliberation and arrangements shaped by custom as well as formal law. This empirical literature highlights the social setting in which judicial disputes emerge, but informal family consensus should not be confused with a binding judicial rule. Voluntary agreement may settle a particular distribution under applicable law; judicially imposed wasiat wajibah requires its own legal reasoning. The distinction matters when parties disagree or when one party holds substantially less bargaining power. The possibility of non-litigation settlement may support practical justice, but it does not remove the need for a coherent account of adjudicative authority.[37]

The debate is not entirely one-sided. Critical scholarship argues that the extension of mandatory bequests across religious boundaries must be examined against the classical inheritance prohibition and the textual limits of the KHI. Other analyses interpret the remedy as a means of protecting family welfare without erasing religious qualifications. A satisfactory article should acknowledge this disagreement rather than treat the permissibility of every extension as an established theological fact. The question for Indonesian positive law is partially institutional: what degree of interpretive authority has the Supreme Court exercised through its recurring decisions, and how should lower courts describe

[36] Ardina Khoirun Nisa and Zulfahmi, "Legal Dynamics of Inheritance Across Religions Between Heirs and Beneficiaries in Indonesia," *Journal of Private and Commercial Law*.

[37] Iim Fahimah, Suwarjin, Wery Gusmansyah, Zubaedi, and Jayusman, "Interfaith Inheritance in Muslim Families in Indonesia: Practices, Philosophy, and the Direction of National Inheritance Law Development," *AHKAM: Jurnal Ilmu Syariah* 24, no. 2 (2024), https://doi.org/10.15408/ajis.v24i2.40907.

and limit the precedent? The answer requires fidelity both to the jurisprudential record and to identifiable boundaries on a judge's discretion.[38]

**Judicial Competence and the Juridical Basis of the Remedy**

Article 49 of Law No. 3 of 2006, amending Law No. 7 of 1989 on Religious Courts, includes inheritance and wills within the Religious Courts' jurisdiction in matters concerning Muslims. The Muslim decedent and the Islamic nature of the inheritance dispute provide a principal jurisdictional connection; nevertheless, the non-Muslim claimant's standing, proper joinder, service of process and the effect of the order upon recognised Muslim heirs require reasoned procedural examination. The Religious Court cannot acquire authority merely by describing an allocation as progressive. The court must determine the legally characterised dispute, the relevant parties and the permissible remedy, and provide all affected heirs an opportunity to contest disputed facts and quantum. A successful claim for a mandatory bequest does not automatically confer Islamic heirship or imply a general jurisdiction over succession concerning any non-Muslim decedent.[39]

The substantive sequence should distinguish three sources of authority. First, Article 171(c) KHI determines the ordinary heirship classification. Second, Article 209 KHI expressly governs mandatory bequests for adopted children and adoptive parents and refers to a one-third upper limit in those relationships. Third, the Supreme Court's reported case law develops the remedy for some non-Muslim children and spouses despite Article 209's narrower wording. The proposed transposition of the one-third limit to that third category is a cautiously stated analogy informed by the general law of bequests and the need to safeguard other heirs; the authors do not present it as an express statutory provision for every non-Muslim relative. Judges should explain why that analogy is suitable, including how existing wills might affect the same available pool.

**Maqāṣid, Proportionality and a Framework for Bounded Judicial Discretion**

The relationship between progressive legal reasoning and maqāṣid al-sharīʿah is best understood as a meeting of concerns rather than an identity of methods. Progressive law asks whether the application of legal texts serves human justice, whereas maqāṣid analysis asks how legal interpretation relates to the recognised purposes and limits of Islamic law. Both can direct attention to family relationships, dignity, protection of property and avoidance of unnecessary harm. Neither approach, however, licenses the court to disregard a clear rule without justification. A judge adopting a mandatory-bequest solution should first identify the normative constraint and only then explain how the additional mechanism operates without collapsing it into an inheritance share.[40]

The source interviews are relevant here but do not demonstrate that the four judges expressly invoked maqāṣid categories. Their reported statements concern factual sensitivity, justice and fidelity to law. The following maqāṣid reading is

[38] Aco Wahab and Imam Kamaluddin, "Tinjauan Kritis Implementasi Wasiat Wajibah Beda Agama dalam Hukum Waris Islam di Indonesia," *Ulumul Syar'i: Jurnal Ilmu-Ilmu Hukum dan Syariah*.

[39] Republic of Indonesia, Law No. 3 of 2006 amending Law No. 7 of 1989 on Religious Courts, art. 49, https://jdih.mahkamahagung.go.id/legal-product/uu-nomor-03-tahun-2006doc/detail.

[40] Jasser Auda, Maqasid al-Shariah as Philosophy of Islamic Law (London: International Institute of Islamic Thought, 2008).

therefore the authors' analytical reconstruction, not an attribution of scholarly terminology to interview participants. This distinction matters methodologically. A researcher who later interprets a judge's statement through a philosophical framework is undertaking a secondary interpretive exercise, and the scope of that exercise should be clearly announced. Without such clarification, the manuscript would exaggerate its empirical support and make the interview record appear to contain propositions never said by the participants.[41]

The Qur'anic injunctions to act justly and kindly toward peaceful non-Muslims and to maintain proper treatment of parents despite religious disagreement supply important ethical context. They do not, by themselves, amend the KHI's definition of an heir or prescribe a precise estate share for non-Muslim relatives. Similarly, invoking the general purposes of Sharia should not erase the technical distinction between fara'id succession and a bequest. The stronger argument is that family solidarity and fair treatment can be relevant to a remedy that remains legally classified as wasiat wajibah. Maintaining this distinction protects the integrity of Islamic inheritance law while making room for principled attention to concrete hardship.[42]

An additional debate concerns the attribution of permissive views to classical or modern Islamic scholars. Recent critical literature cautions that arguments associated with Ibn al-Qayyim or Yusuf al-Qaradawi need careful reconstruction rather than unexamined repetition. This article therefore does not rest the legality of a mandatory bequest on an unattributed proposition that a named scholar universally approved interfaith inheritance. Its central support is instead a transparent reading of Indonesian judicial sources and the distinction between heirship and bequest. Classical doctrine remains relevant to the ethical and doctrinal discussion, but precise claims about any jurist's opinion should be supported by accurately identified texts and context.[43]

A proportionality inquiry supplies a practical bridge between the legal categories. It begins by asking whether the proposed bequest pursues a recognisable aim, such as preventing unfair economic exclusion of a close family member who substantially supported the decedent. It then asks whether the chosen instrument is appropriate and necessary given other lawful arrangements, and whether the award preserves fair treatment of the statutory heirs. These questions do not mathematically dictate a single answer. Their importance is procedural and justificatory: the judge must expose the rationale for the particular award and show why an appreciably different amount would be less adequate or less proportionate in the case at hand.[44]

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[41] Interview with Dra. Hj. Khaeriyah, S.H., M.H., Makassar Religious Court, July 14, 2026, as reported in the author-supplied manuscript.

[42] The Qur'an, al-Mumtahanah 60:8 and Luqman 31:15 (relevant to justice and kindness across religious differences).

[43] Miftahul Khaerani, Kurnaemi Anita, and Rodiah, "Telaah Kritis Wasiat Wajibah Beda Agama di Indonesia: Klarifikasi Atribusi Pendapat Ibn al-Qayyim al-Jawziyyah dan Yūsuf al-Qaraḍāwī," *AL-MUNTAQA: Jurnal Studi Islam dan Bahasa Arab* 2, no. 3 (2026), https://doi.org/10.36701/muntaqa.v2i3.3193.

[44] Al Vaya Fitria and Mariani, "Wasiat Wajibah Untuk Ahli Waris Beda Agama Perspektif: Maqashid Syariah (Studi Pustaka)," *Indonesian Journal of Islamic Jurisprudence, Economic and Legal Theory* 4, no. 2 (2026): 1296–1309, https://doi.org/10.62976/ijijel.v4i2.1807.

The one-third figure found in Article 209 KHI is central to the discussion but should be presented carefully. That provision expressly governs adopted children and adoptive parents, and its direct textual scope does not itself extend to all non-Muslim relatives. When the Supreme Court extends the mandatory-bequest device through case law, the question of the applicable quantitative ceiling remains part of the legal reasoning rather than an issue that can be settled merely by quoting Article 209. Courts should state whether they are applying the limit directly, analogically, or by another well-grounded doctrinal method, and should also account for the protection of legally recognised heirs. The distinction between a precedent's stated amount and a general legal maximum cannot be overlooked.[45]

**Worked Hypothetical: Marital Property, Bequests, and Heirs**

The following numerical example is **hypothetical** and does not claim to reproduce any of the six Supreme Court decisions. Assume a Muslim decedent and a non-Muslim surviving spouse jointly own IDR 1.2 billion of marital property in equal shares, while the decedent separately owns IDR 200 million. The surviving spouse's IDR 600 million marital share is her pre-existing property, not a wasiat wajibah. The deceased's estate before liabilities is IDR 800 million, consisting of the other IDR 600 million plus IDR 200 million. If documented funeral expenses and debts total IDR 80 million, the remaining net estate is IDR 720 million. Assume a separate valid voluntary bequest of IDR 60 million and an argued mandatory bequest of IDR 120 million: the combined testamentary dispositions would be IDR 180 million (25% of the net estate), leaving IDR 540 million for recognised heirs, subject to applicable legal findings and the full case-specific rules. This is an illustration of ordering, not a recommended entitlement or a finding that the example's proposed amount would always be lawful.

**Table 3. Hypothetical sequencing of estate calculation (IDR million)**

| Step | Amount | Meaning |
|---|---|---|
| Total marital property | 1,200 | Assumed jointly acquired property |
| Surviving spouse own half | 600 | Excluded from estate before inheritance |
| Deceased half + separate assets | 800 | 600 + 200: gross estate |
| Debts and funeral expenses | (80) | Assumed legally established liabilities |
| Net estate | 720 | Base for assessing bequests in this example |
| Existing will + proposed mandatory bequest | (180) | 60 + 120, subject to applicable limits |
| Residual estate for recognised heirs | 540 | No heir shares calculated here |

This example makes two safeguards explicit. A spouse's half of marital property is separated before the deceased's estate is computed, preventing an award from being calculated twice against the same property. The combined

[45] Republic of Indonesia, Compilation of Islamic Law, arts. 171(c) and 209.

amount of existing testamentary transfers and the mandatory bequest must also be addressed when applying any one-third approach; IDR 180 million here is below the hypothetical IDR 240 million one-third of the net estate. The proposed IDR 120 million does not follow from the fact of marriage alone: a court would still need evidence of the relationship and care, any valid prior dispositions, other heirs' legally protected interests, and a clearly reasoned basis for the award. Alternative lawful mechanisms such as consensual settlement or a valid prior gift should be examined without assuming that they necessarily replace the judicial remedy.

Analyses of religious-court decisions from Medan and Binjai support the value of examining how judges perceive mandatory bequests rather than treating all of their applications as interchangeable. Different judges may assign different weight to kinship, contribution, formal rules and jurisprudence. The Makassar interviews are particularly useful in illuminating this practical environment, but the small number of participants and the lack of a disclosed sampling frame limit their representativeness. The manuscript should therefore describe the four perspectives as indicative of reasoned judicial attitudes at the study site, not as a survey finding about the entire Religious Court judiciary. In further research, court-file analysis and a transparent coding protocol could test whether the stated values are reflected in actual awards.[46]

The treatment of non-Muslim siblings in the scholarship further exposes a question not fully answered by cases concerning children and spouses. A study of mandatory bequests to non-Muslim siblings reviews an appellate dispute through the lens of maṣlaḥah and underscores that expanding the potential beneficiary class requires further justification. A close relative's existence alone should not automatically determine the outcome. The legal route, proven relationship, circumstances of dependency or support, and possible adverse impact on recognised heirs must still be examined. As the documented Supreme Court line primarily concerns children and wives, extending its rationale to every class of relative without careful comparison would exceed what the cited precedents themselves establish.[47]

The current literature also identifies mediation and consensual settlement as important complements to mandatory bequests in plural families. Such mechanisms can reduce adversarial conflict and preserve family relations, but they require informed participation and cannot justify coercing excluded family members into accepting an inequitable distribution. They are complementary rather than substitutes for an enforceable remedy. Where mediation fails, the court must still determine the applicable rules of heirship, identify any property that does not form part of the estate, and give reasoned treatment to any claim for a mandatory bequest. Formal proceedings are particularly important when the

[46] Yefrizawati, Idha Aprilyana Sembiring, Utary Maharany Barus, and T. Keizerina Devi Azwar, "Penerapan Wasiat Wajibah dalam Putusan Hakim Pengadilan Agama (Studi di Pengadilan Agama Medan dan Pengadilan Agama Binjai)," *Jurnal Mercatoria*.

[47] Fatimah Khosiyyah Setyaningrum, Wan Hamidah Febry Waty, Deswita Putri Salsabilah, Habil, Tiara Ardita, and Ahmad Fauzan, "Penetapan Wasiat Wajibah untuk Saudara Non Muslim dalam Kajian Maslahat," *Journal of Sharia and Legal Science* 3, no. 3 (2025): 292–298, https://doi.org/10.61994/jsls.v3i3.1460.

amount is disputed, records of care or contribution are contested, or multiple categories of beneficiaries are involved.[48]

Three interlocking safeguards follow from these materials. The first is conceptual integrity: an award must identify whether the claimant holds a succession entitlement or a bequest-based benefit, and why. The second is evidentiary accountability: the court should specify relevant family facts and the evidence supporting them, rather than relying on generalised assertions of harmony or suffering. The third is distributive transparency: the judgment should explain the amount awarded, the legal limit used and the interests of other heirs. Together these safeguards operationalise progressive law without turning it into unreviewable discretion. They also give parties a clearer basis for assessing the judgment and for pursuing appellate review when necessary.[49]

Legal certainty may be strengthened through an accessible judicial guideline that sets out these stages while leaving bounded room for case-specific judgment. A guideline could clarify the status of the non-Muslim claimant, the types of family relationships potentially eligible for consideration, the necessary evidentiary showing, treatment of marital and estate property, the reasoning on award size, and the handling of competing claims. Such clarification should not be understood as the authors' assertion that an identical rule already appears verbatim in Article 209 KHI. It is a prescriptive proposal based on the documented expansion of jurisprudence and the resulting need for consistent explanations. Formal legislative or regulatory clarification could provide even stronger certainty where the judiciary's current precedents leave significant ambiguity.[50]

Research on the protection of non-Muslim biological children warns that judicial authority and competence are themselves part of the controversy. It is therefore insufficient to invoke an abstract entitlement to protection without identifying the proper forum and the legal character of the dispute. A prospective reform should explain when the Religious Court may determine the relevant claim, what substantive rules it applies, and how the remedy interacts with other legal systems. Without this institutional analysis, language about interfaith fairness may obscure a jurisdictional problem. The aim is not to make every non-Muslim relative a beneficiary in every estate; it is to ensure that claims genuinely falling within a recognised remedial route can be examined consistently and lawfully.[51]

The desirability of a clearer framework is also shown by newer studies that criticise gaps between KHI text and the range of beneficiaries recognised in judicial

[48] Muhibbussabry, Mhd. Yadi Harahap, Fauziah Lubis, and Arifuddin Muda Harahap, "Mediasi dan Wasiat Wajibah dalam Sengketa Kewarisan Pluralistik: Perlindungan Anak Angkat dan Anggota Keluarga Beda Agama di Indonesia," *Jurnal Tana Mana* 7, no. 2 (2026), https://doi.org/10.33648/jtm.v7i2.1686.

[49] Nynda Fatmawati Octarina and Tri Septo Muji Cayono, "Legal Protection and Competence: Protection of the Rights of Non-Muslim Biological Children to the Inheritance of Muslim Parents through Compulsory Wills," *Al-Risalah: Jurnal Ilmu Syariah dan Hukum* 26, no. 2 (2026), https://doi.org/10.24252/al-risalah.v26i2.68358.

[50] Nurul Husnawati, Muhammad Adam HR, and Cecep Soleh Kurniawan, "Wasiat Wajibah: Solusi Keadilan atau Penyimpangan Hukum Waris Islam," *Serambi Madina: Journal of Islamic Studies* (2026), https://doi.org/10.56874/s87qw761.

[51] Nynda Fatmawati Octarina and Tri Septo Muji Cayono, "Legal Protection and Competence: Protection of the Rights of Non-Muslim Biological Children to the Inheritance of Muslim Parents through Compulsory Wills," *Al-Risalah: Jurnal Ilmu Syariah dan Hukum*.

practice. They recommend balancing certainty with a realistic response to changing family structures. For this study, the important implication is limited and concrete: the original Makassar interview material supports fact-sensitive yet legally bounded adjudication, and the Supreme Court compilation demonstrates a line of cases using a separate bequest mechanism. These two findings together justify a proposal for better-reasoned and more predictable decisions. They do not establish that every non-Muslim family member possesses an unconditional or equal inheritance right.[52]

Finally, the concept of substantive justice must be held in productive tension with reasons that other affected family members can understand and challenge. Progressive judging loses its public legitimacy if beneficiaries cannot anticipate which considerations matter or if recognised heirs are given no explanation for a reduction in the estate available for distribution. Conversely, a mechanically exclusionary approach risks overlooking meaningful relationships that the jurisprudential mechanism was developed to accommodate. The solution is not an unlimited judicial power to redistribute estates but a disciplined practice of finding law, giving reasons and respecting legal classifications. This is the strongest synthesis of the source interviews, recognised decisions and contemporary literature on interfaith inheritance in Indonesia.[53]

For implementation, written reasons should make explicit the exact chain from legal premise to remedy. A model judgment would identify Article 171(c) KHI and state whether the applicant is excluded from Islamic heirship; then explain the precedential basis for considering wasiat wajibah, distinguish the decedent's estate from any property already owned by the surviving spouse, evaluate evidence of the family relationship and relevant conduct, and give a defensible explanation of the proposed award. The judgment should also address objections by recognised heirs and state the quantitative limitation relied upon. This sequential model does not predetermine a result. It makes competing outcomes more accountable and offers a practical benchmark for identifying decisions that invoke progressive law rhetorically without a legally intelligible path to relief.[54]

## Conclusion

The four reported Makassar judicial interviews describe progressive law as responsible legal reasoning that attends to concrete family circumstances without treating the applicable law as optional. That empirical conclusion is deliberately limited to the recorded perspectives of the interviewees. The reviewed Supreme Court jurisprudence reveals a complementary doctrinal development: non-Muslim spouses and children have in specified cases received a mandatory bequest while remaining outside the formal Islamic status of heirs. The central conceptual

[52] Mohamad Yamin, Fauzan Ali Rasyid, Ending Solehudin, and Ahmad Zaini, "The Expansion of Wasiat Wajibah: Protecting Legal Certainty and Fairness in Indonesian Inheritance Law," *Fikri: Jurnal Kajian Agama, Sosial dan Budaya*.

[53] Akmal Yandi, M. Hidayat Ediz, Jurna Petri Rozi, and Ruqayyah Mustafa Mahmud Abdullah Hasan, "Mandatory Bequest for Non-Muslim Heirs in Indonesian Islamic Inheritance Law," *Jurnal Elsyakhshi* 3, no. 2 (2025): 57–66, https://doi.org/10.69637/jelsy.v3i2.705.

[54] Tri Andari Dahlan, Ubaidillah Kamal, Yustina Dhian Novita, Risky Agung Firnanda, and Aldina Ulya, "Justice and Legal Recognition of Interfaith Heirs in Indonesia Inheritance Law," *Contemporary Issues on Interfaith Law and Society*.

achievement is therefore the preservation of two different legal categories rather than the abolition of the religious impediment to succession.[55]

The study's empirical limitations are material to its claims. The manuscript supplies four reported interview summaries but no auditable verbatim transcripts or participant-selection documentation. The jurisprudential comparison relies on the Supreme Court's official 2018 digest rather than all full decisions. Thus it identifies judicial perspectives and a documented national line of bequest jurisprudence, not the rate of success of interfaith inheritance claims in Makassar or a verified calculation for every decision.

The decision sequence from 1995 to 2018 points to recurring consideration of family relationship, length of marriage, contribution and care, peaceful co-existence, and fairness, but it does not yield a universal mathematical formula for allocating the estate. The preferred prescriptive response is to require express reasoning about the legal basis of the remedy, the claimant's relationship and supporting evidence, the distinct treatment of marital property, the amount of the bequest and the interests of other recognised heirs. Better guidance on these matters would support more consistent decisions without suppressing the factual judgment necessarily involved in family disputes.[56]

Maqāṣid al-sharī'ah can assist the authors' interpretation of that development by drawing attention to welfare, family integrity, property and dignity. It must not be misrepresented as language explicitly used in every cited judgment or by the four interviewees. Further study should compare full texts of the decisions, examine a broader range of Religious Courts and use documented interview protocols to assess how principles are implemented in practice. Until those steps are taken, the present article offers a bounded socio-legal account and a normative framework for transparent judicial reasoning rather than a claim of comprehensive empirical coverage.[57]

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[55] Interview with Dra. Hartini Ahada, M.H., Makassar Religious Court, July 14, 2026, as reported in the author-supplied manuscript.

[56] Supreme Court of the Republic of Indonesia, Himpunan Yurisprudensi, 51–54.

[57] Siti Ropiah, Syafi'i Syafi'i, Abdul Rahim, Hisam Ahyani, Miftakhul Huda, and Salisu Muhammad Gumel, "Judicial Ijtihād and Maqāṣid-Based Adjudication in Interfaith Inheritance: Reconstructing Wasiat Wajibah in Indonesian Islamic Law," *Asy-Syari'ah*.

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