



## Mandatory Wills as a Legal Instrument in Resolving Interfaith Inheritance in Indonesia

Ahmad Nizar Mohammad Syamwil<sup>1</sup>, Muhibbussabry<sup>2</sup>, Akmaluddin Syaputra<sup>3</sup>, Ramadhan Syahmedi Siregar<sup>4</sup>

<sup>1</sup>University of Malaya Malaysia

<sup>234</sup>State Islamic University of North Sumatra

E-mail: [22103602@siswa.um.edu.my](mailto:22103602@siswa.um.edu.my) [muhibbussabry@uinsu.ac.id](mailto:muhibbussabry@uinsu.ac.id)

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| <b>Article History</b><br>Received: 2026-01-17<br>Revised: 2026-01-24<br>Published: 2026-01-30<br><br><b>Keywords:</b><br><i>Mandatory Will; Interfaith Inheritance; Islamic Inheritance Law; Legal Instruments; Supreme Court Jurisprudence</i> | The issue of interfaith inheritance is a classic issue in Islamic law that continues to generate debate, especially in multicultural societies like Indonesia. In classical fiqh, religious differences are positioned as a barrier to inheritance (māni' al-irth), so that Muslims and non-Muslims cannot inherit from each other. However, social reality shows the existence of strong family ties despite differences in faith, which demands the presence of a just and welfare-oriented legal solution. This article aims to analyze the determination of the distribution of inheritance to heirs who wear the hijab due to religious differences through the mechanism of mandatory wills from the perspective of Islamic law and Indonesian national law. This study uses a normative legal research method with a conceptual, legislative, and jurisprudential approach. The results of the study indicate that although Islamic inheritance law normatively rejects interfaith inheritance, the concept of mandatory wills can function as a legal instrument that bridges the gap between sharia provisions and demands for social justice. The application of mandatory wills for heirs of different religions, as developed in the Supreme Court decision, reflects contextual ijtihad which is based on the principles of maqāṣid al-syarī'ah, especially justice (al-'adl) and benefit (al-maṣlaḥah). Thus, obligatory wills become a legal and relevant juridical alternative in addressing the problem of inheritance between different religions in Indonesia. |

### I. INTRODUCTION

Inheritance law occupies a central position in the Islamic family law system because it is directly related to the regulation of property transfer, the continuation of family relationships, and distributive justice after death. The Qur'an explicitly regulates inheritance law in several detailed and imperative verses, particularly in Surah al-Nisa' verses 11, 12, and 176, which emphasize the distribution of inheritance rights based on blood relations and marriage.(RI, 2015)With a strong normative character, Islamic inheritance law is not only understood as a technical mechanism for the distribution of property, but also as an instrument for maintaining social and moral stability in Muslim families. (Syarifuddin, 2019)Therefore, every problem that arises in the realm of inheritance always has direct implications for the normative legitimacy of Islamic law itself.

In classical Islamic jurisprudence, religious similarity between the testator and the heirs is a fundamental requirement for inheritance.

Religious differences (ikhtilāf al-dīn) are positioned as one of the obstacles to inheritance that can result in the loss of a person's right to inherit from each other. (Sabiq, 1990)This provision is based on authentic hadiths which emphasize that a Muslim cannot inherit from an infidel, and vice versa. (al-Bukhari, 2002)The majority of ulama from the Hanafiyyah, Mālikiyyah, Syāfi'iyyah and Hanābilah schools of thought agree that religious differences are an absolute barrier to inheritance, so that lineages are no longer relevant if they are not accompanied by unity of faith. (Abdul Hamid, 1943)

However, the application of these classical fiqh norms faces serious challenges when confronted with the social realities of modern society, particularly in Indonesia. As a multicultural and pluralistic nation, Indonesia is home to numerous interfaith families resulting from intermarriage, religious conversion, and differences in belief within the same lineage. (Manan, 2017)In this context, blood ties and

family responsibilities remain strongly intertwined despite religious differences, so that the rigid implementation of inheritance prohibitions often gives rise to a sense of social injustice in society. (Basri, 1999)

This condition gives rise to tension between textual normative fiqh norms and the demands for social justice that develop in society. On the one hand, Islamic law has a strong commitment to legal certainty and obedience to sharia propositions. On the other hand, Islamic law is also built on the principle of *maqāṣid al-syarī'ah*, which places justice (*al-'adl*) and benefit (*al-maṣlaḥah*) as the main goals of the *shari'a*. (Al-Zuhayli, 1997) This tension is what has driven the birth of various forms of contextual *ijtihad* in order to maintain the relevance of Islamic law without ignoring its basic principles.

One form of *ijtihad* is the development of the concept of a mandatory will as an alternative legal solution to the issue of interfaith inheritance. Conceptually, a mandatory will is a gift of property determined by legal authority—not based on the will of the testator—to a specific party who, according to Islamic law, is not entitled to inherit. (Rahman, 1981) From an Islamic legal perspective, this concept has normative roots in Surah al-Baqarah verse 180 as well as the views of scholars such as Ibn Ḥazm al-Andalusī who require a will for relatives who are prevented from receiving an inheritance. (al-Andalusi, 2016) Thus, mandatory wills function as a bridge between sharia norms and the demands of social justice.

In the context of Indonesian national law, the concept of a mandatory will is formally accommodated through the Compilation of Islamic Law (KHI), specifically Article 209, which grants the right of mandatory will to adopted children and adoptive parents. (Islam, 2018) Despite its limited provisions, the existence of this norm demonstrates the state's recognition of non-inheritance mechanisms as an instrument of justice in Islamic inheritance law. Over time, these limitations have been overcome through more progressive religious court practices in responding to contemporary inheritance issues.

The most significant development is seen in the jurisprudence of the Supreme Court of the Republic of Indonesia, which expanded the application of *wajibah* wills to heirs of different faiths. Supreme Court Decision No. 368 K/AG/1995 was a milestone because it established that non-Muslim biological children

could receive a share of the inheritance of Muslim parents through the *wajibah* will mechanism.) Subsequent decisions further emphasized that religious differences do not preclude the possibility of legal protection for family economic rights, as long as it is not pursued through direct inheritance. (Decision No. 51 K/AG/1999, 1999)

This jurisprudence demonstrates that Islamic law in Indonesia is not static, but rather develops through a dialogue between normative texts, social realities, and judicial institutional authority. A mandatory will is positioned not as a form of defiance of *faraidh* law, but as a legitimate instrument of *ijtihad* to maintain substantive justice. (Manan, 2006) Within this framework, the Supreme Court plays a strategic role as an agent of national Islamic legal reform that is oriented towards the welfare of the people.

Based on the above description, this study focuses on three main issues: first, how is the concept of interfaith inheritance in Islamic law; second, what is the position and character of mandatory wills in Islamic law and Indonesian national law; and third, how is the implementation of mandatory wills as a legal instrument in resolving interfaith inheritance in Indonesia. The objectives of this study are to explain the normative basis for the prohibition of interfaith inheritance, analyze mandatory wills as an instrument of legal *ijtihad*, and emphasize its contribution in realizing justice and social welfare in a pluralistic society.

## II. RESEARCH METHODS

This research is a normative legal research that focuses on the study of norms, principles, and legal doctrines related to interfaith inheritance from the perspective of Islamic law and Indonesian national law. The approaches used include a conceptual approach, a statute approach, and a jurisprudential approach (case approach). The conceptual approach is used to analyze the concepts of interfaith inheritance, *māni' al-irṭh*, and *wajibah* wills in classical and contemporary fiqh literature. The statutory approach is directed at the study of the Compilation of Islamic Law and regulations related to Islamic inheritance in Indonesia, while the jurisprudential approach focuses on relevant Supreme Court decisions, particularly decisions that develop the application of *wajibah* wills for interfaith heirs. (Marzuki, 2017)

The legal materials used in this study consist of primary and secondary legal materials. Primary legal materials include the Qur'an, hadiths concerning inheritance, the Compilation of Islamic Law, and decisions of the Supreme Court of the Republic of Indonesia relating to wajibah wills. Secondary legal materials include fiqh books, Islamic law textbooks, and relevant scientific journal articles. All legal materials are analyzed descriptively and analytically using normative juridical reasoning and the maqāṣid al-syarī'ah approach as an evaluative framework, in order to assess the extent to which wajibah wills can function as a just and beneficial legal instrument in resolving interfaith inheritance issues in Indonesia. (Ibrahim, 2006)

### III. RESULTS AND DISCUSSION

#### A. Inheritance of Different Religions from an Islamic Legal Perspective

Inheritance in Islamic law is a legal institution built on the principle of faith, in addition to blood and marriage ties. Therefore, religious similarity between the testator and the heirs holds a fundamental position in the Islamic inheritance system. In Islamic jurisprudence (fiqh) literature, religious differences (ikhtilāf al-dīn) are consistently classified as one of the obstacles to inheritance that invalidate a person's right to receive or give an inheritance. (Syarifuddin, 2019) This concept shows that inheritance in Islam is not merely biological, but also theological, so that its validity is greatly influenced by the religious status of the parties involved.

The term ikhtilāf ad-din refers to a situation where the heir and the prospective heirs adhere to different religions, whether Muslim or non-Muslim, or vice versa. In classical fiqh, religious differences are seen as a legal severance of inheritance, even though the biological relationship remains recognized. (Sabiq, 1990) This confirms that Islamic inheritance law has a unique normative character, placing faith as the primary foundation for the distribution of inherited assets. Thus, religious differences not only impact aspects of worship but also have direct implications for civil rights.

The primary normative basis for the prohibition on interfaith inheritance stems from the hadiths of the Prophet Muhammad (peace be upon him), which explicitly affirm

this provision. One of the most frequently cited hadiths is the saying of the Prophet Muhammad (peace be upon him): "A Muslim does not inherit from an infidel, and an infidel does not inherit from a Muslim." (al-Bukhari, 2002) This hadith was narrated by al-Bukhārī and Muslim with a valid sanad, so it has high evidence power in determining the law. (al-Hajjaj, 2006) The clarity of the wording of the hadith is the main basis for scholars in determining religious differences as an obstacle to inheritance.

In addition to this hadith, several other narrations also reinforce the same principle, both through explicit and implicit wording. Hadiths on loyalty to faith (al-walā') and the severance of legal relationships due to religious differences are also used as supporting arguments in fiqh literature. (al-Zuhayli, 1997) From the perspective of *usul fiqh*, these hadiths are understood as *qat'i al-dalālah* evidence because they clearly prohibit and do not open up wide interpretations in the context of inheritance. Therefore, the prohibition on interfaith inheritance is positioned as a binding normative provision.

Based on these arguments, the majority of scholars from the four schools of jurisprudence, namely Hanafiyyah, Mālikiyyah, Sāfi'iyyah, and Hanābilah, agree that religious differences are an absolute barrier to inheritance. (Abdul Hamid, 1943) This consensus demonstrates the strong position of the prohibition on interfaith inheritance within classical Islamic legal tradition. In fact, scholars assert that there is no distinction between a *harbi kafir* and a *dhimmi kafir* in the context of the prohibition on mutual inheritance with Muslims. (al-Jaziri, 2003) Thus, unity of faith is a non-negotiable condition in the *faraidh* system.

However, within the jurisprudence, there are also minority views that offer a different approach. Some scholars, such as Mu'adh ibn Jabal and Mu'āwiyah ibn Abī Sufyān, are reported to have permitted a Muslim to inherit from a non-Muslim relative, although the reverse is not true. (Rahman, 1981) This view is based on considerations of the benefit and position of Islam as a higher religion (*al-islām ya'lū wa lā yu'lā 'alayh*). However, this opinion did not spread widely and did not become the dominant school of thought in Sunni fiqh.

Ibn Ḥazm al-Andalusī also put forward a view that differed relatively from the majority of scholars. Although he still rejected interfaith inheritance, Ibn Ḥazm made it mandatory to make a will to non-Muslim relatives who were prevented from receiving an inheritance. (al-Andalusi, 2016) This approach demonstrates an effort to accommodate the dimensions of family justice without violating normative provisions regarding inheritance prohibitions. Ibn Ḥazm's thinking later became one of the theoretical foundations for the development of the concept of mandatory wills in contemporary Islamic law.

The normative implications of the prohibition on interfaith inheritance are significant, particularly in the context of a pluralistic society. Legally, heirs of a different religion from the testator have no right to inherit property through inheritance mechanisms, even if they are legally related by blood. (Basri, 1999) Consequently, the entire inheritance is transferred to heirs of the same faith, or under certain circumstances, is handed over to the Baitul Mal (treasury). This situation is often seen as inconsistent with social justice, especially when non-Muslim heirs have made significant contributions to the testator's life.

Thus, it can be affirmed that the concept of interfaith inheritance in Islamic law is built on a strong and relatively well-established normative foundation in the classical fiqh tradition. The prohibition of interfaith inheritance is a logical consequence of the theological character of Islamic inheritance law. However, the steadfastness of this norm also creates room for *ijtihad* in the form of non-inheritance mechanisms, such as *wajibah* wills, to bridge the tension between the certainty of sharia law and the demands of social justice. This is where the discourse on interfaith inheritance finds relevance in the context of Islamic law in Indonesia.

## **B. Mandatory Wills as a Concept of Islamic Law and Indonesian National Law**

A mandatory will is a legal concept that occupies a unique position in the Islamic legal system because it straddles the boundaries between individual worship and the intervention of legal authorities. Terminologically, a mandatory will is

understood as the legally obligatory transfer of property to a specific party who, according to Islamic jurisprudence, does not have inheritance rights, regardless of the will of the testator. (Rahman, 1981) The primary characteristic of a mandatory will lies in its imperative nature, unlike a regular will, which is voluntary. This characteristic allows a mandatory will to function as a corrective mechanism against the rigidity of inheritance law, particularly in complex social conditions.

In Islamic law, the theological basis of obligatory wills is rooted in Surah al-Baqarah verse 180 which orders the granting of wills to parents and relatives.)Although the majority of scholars consider this verse to have been abrogated by the inheritance verses, some scholars understand the command to remain relevant for relatives who do not receive a share of the inheritance. Ibn Ḥazm al-Andalusī explicitly stated the obligation of a will for relatives who are prevented from inheriting, including due to religious differences, as a form of fulfilling moral responsibility and family justice. This view later became an important theoretical foundation for the development of the modern concept of a mandatory will.

From a fiqh perspective, the debate over the obligation of a will reflects the differing methodologies of legal *istinbat* among scholars. The majority of scholars believe that a will is voluntary and not obligatory, except under certain circumstances, such as the presence of a debt or trust. (al-Zuhayli, 1997)In contrast, Ibn Ḥazm and a small number of *Zāhiriyyah* scholars made it obligatory to make a will for relatives who did not inherit, arguing that the Qur'anic command was general and not completely abrogated.(Syarifuddin, 2019)This difference shows that the mandatory will is not an ahistorical concept, but rather the result of a dialectic between text and context.

Within the framework of *maqāsid al-syarī'ah*, obligatory wills have strong relevance to the aim of protecting assets (*ḥifẓ al-māl*) and protecting offspring (*ḥifẓ al-nasl*). A mandatory will allows the distribution of assets to be carried out more fairly without directly violating the provisions of *faraidh*. (Auda, 2008) Thus, this mechanism is not intended to replace the inheritance system, but rather to complement it in situations

where the application of pure inheritance norms has the potential to create substantive injustice. The maqāṣid approach makes the wajibah will a valid instrument of contextual ijtihad.

In the context of Indonesian national law, mandatory wills are explicitly regulated in the Compilation of Islamic Law (KHI), specifically Article 209, which grants mandatory will rights to adopted children and adoptive parents. (Islam, 2018) This regulation demonstrates the state's recognition of the concept of a mandatory will as part of positive Islamic law. While limited in scope, this provision opens the door for further development through judicial practice, particularly in addressing inheritance issues not explicitly addressed by the Compilation of Islamic Law (KHI).

The meaning and subject matter of wajibah wills were further expanded through the jurisprudence of the Supreme Court of the Republic of Indonesia. Supreme Court Decision No. 368 K/AG/1995 set an important precedent, establishing the granting of wajibah wills to non-Muslim biological children of Muslim testators. (Decision No. 368 K/AG/1995, 1998) This ruling affirmed that religious differences do not preclude granting a family's economic rights as long as they are pursued through non-inheritance mechanisms. This jurisprudence has subsequently been followed and developed by religious courts in various regions.

Contemporary religious court practice demonstrates consistency in the application of wajibah wills for heirs of different faiths. Khapni, Salikin, and Sugianto's research on the 2022 Ciamis District Court Decision confirms that the application of wajibah wills is seen as consistent with human rights principles, particularly the rights to family protection and non-discrimination. (Khapni et al., 2023) Meanwhile, Nida'ul HR Subagja and Nuril Habibi's study of the Surabaya PA Decision shows that judges actively use wajibah wills as an instrument of substantive justice for heirs of different religions. (Rasyid & Habibi, 2024)

Further analysis of the Surabaya PA decision Number 2331/Pdt.P/2024/PA.Sby shows that the court still limits the amount of mandatory wills to a maximum of one-third of the inheritance, as stipulated in the KHI, in

order to maintain a balance between the interests of Muslim and non-Muslim heirs. (Ali, 2025) This approach demonstrates the judge's careful integration of positive norms, jurisprudence, and principles of justice. From a legal political perspective, granting a mandatory will to a non-Muslim is also seen as a strategy to harmonize Islamic law with the realities of a pluralistic society. (Budiman et al., 2024)

Thus, wajibah wills can be positioned as a progressive legal instrument within Indonesia's national Islamic legal system. This mechanism allows Islamic law to maintain its normative integrity while being responsive to social dynamics. Several recent studies confirm that wajibah wills play a crucial role in promoting reform of Islamic inheritance law toward interfaith justice without negating sharia principles. (Riyanta et al., 2025) Therefore, the position of mandatory wills is not only complementary, but also strategic in the development of just and beneficial Indonesian Islamic law.

### **C. Analysis of Mandatory Wills as an Instrument for Resolving Inheritance of Different Religions**

The application of mandatory wills to resolve interfaith inheritance in Indonesia cannot be separated from the dialectical relationship between normative fiqh norms and the need for social justice. Classical fiqh norms explicitly preclude interfaith inheritance, yet the social reality of Indonesian society demonstrates that interfaith kinship remains closely intertwined. (Manan, 2006) This tension demands the existence of a legal mechanism capable of maintaining the certainty of Sharia law while addressing the sense of substantive justice. The obligatory will (wasiat wajibah) exists as an instrument that allows for the proportional distribution of assets without violating faraidh provisions.

In religious court practice, a mandatory will is used to fill the legal gap when heirs are normatively prevented from inheriting due to religious differences. This approach reflects a shift in Islamic law's orientation from merely formal justice to substantive justice. By granting economic rights to non-Muslim heirs through non-inheritance channels, the court maintains the integrity of fiqh norms while

avoiding social exclusion within the family. This pattern demonstrates the internal flexibility of Islamic law that can be realized through contextual *ijtihad*.

In this context, a mandatory will functions as a form of *ijtihad* that originates from concrete social reality. This *ijtihad* is not conducted individually by classical *mujtahids*, but rather institutionally by the judiciary through a judge's decision. (Auda, 2008) The Supreme Court and religious courts are the primary actors in this process, using the *maqāṣid al-syarī'ah* as the normative framework for interpreting and applying the law. This demonstrates the transformation of the *ijtihad* method from a personal approach to an institutional one.

Supreme Court Decision No. 368 K/AG/1995 is a concrete example of the application of contextual *ijtihad*. In this decision, the Supreme Court ruled that granting a will to a non-Muslim child of a Muslim testator is mandatory, based on considerations of justice and humanity. (Decision No. 368 K/AG/1995, 1998.) This ruling affirmed that religious differences should not eliminate all family economic rights, as long as the mechanisms used do not directly conflict with Islamic inheritance law. Since then, *wajibah* wills have become a key reference in resolving interfaith inheritance disputes.

Religious court practices following the Supreme Court ruling demonstrate consistency in the application of mandatory wills. Research by Dzikri Mubarak and Nurbaedah confirms that subsequent Supreme Court decisions have made mandatory wills a valid and binding legal instrument for lower-level judges. (Mubarak & Nurbaedah, 2025) Thus, mandatory wills are no longer positioned as an exception, but rather as a relatively established settlement pattern in Indonesian religious court practice.

From a human rights perspective, the implementation of *wajibah* wills also has strong normative justification. Khapni, Salikin, and Sugianto's study of the 2022 Ciamis District Court Decision shows that granting *wajibah* wills to non-Muslim heirs is seen as consistent with the principles of non-discrimination and the protection of family rights. (Khapni et al., 2023) This human rights approach strengthens the legitimacy of

mandatory wills as legal instruments that are not only legally valid, but also ethically and socially relevant in a modern state of law.

Judges' considerations in granting mandatory wills also demonstrate a more mature argumentation pattern. Nida'ul HR Subagja and Nuril Habibi's study of the Surabaya District Court's ruling revealed that judges explicitly linked mandatory wills to the principles of justice, expediency, and legal certainty. (Rasyid & Habibi, 2024) Judges not only refer to Supreme Court jurisprudence but also consider the sociological circumstances of the parties. This demonstrates that the application of mandatory wills has become part of a comprehensive legal reasoning method.

From a technical standpoint, religious courts still impose a maximum limit on the amount of a mandatory will, which is one-third of the inheritance. Surabaya District Court Decision No. 2331/Pdt.P/2024/PA.Sby emphasizes that this limitation is essential to maintain a balance of rights between Muslim and non-Muslim heirs. (Ali, 2025) This approach demonstrates the judge's caution in harmonizing the principles of justice with legal certainty, so that mandatory wills do not develop without clear boundaries.

Harmonization between Islamic law and national law is one of the important implications of implementing mandatory wills. From a legal political perspective, mandatory wills are seen as a state strategy to maintain the relevance of Islamic law in a pluralistic society. (Budiman et al., 2024) The state does not directly change *fiqh* norms, but rather provides room for interpretation through judicial institutions. Thus, Islamic law remains a living source of law within the national legal system.

The relevance of mandatory wills is increasingly strong in the context of Indonesia's pluralistic and multicultural society. A study by Riyanta et al. shows that the use of mandatory wills contributes to the discourse of interfaith equality in Indonesian Islamic inheritance law. (Riyanta et al., 2025) This approach is not intended to equalize all inheritance rights across religions, but to ensure that no party is completely economically disadvantaged due to differences in belief.

Furthermore, the phenomenon of interfaith marriages also reinforces the urgency of implementing mandatory wills. Research by Putri Handayani et al. shows that the KHI's limitations in addressing the impact of interfaith marriages on inheritance make mandatory wills the most realistic legal alternative. (Handayani et al., 2025) With this mechanism, family conflict can be minimized without having to violate the religious norms adhered to by the majority of society.

Thus, the implementation of mandatory wills as a legal instrument for resolving interfaith inheritance in Indonesia reflects an effort to harmonize Islamic jurisprudence (fiqh) norms, national law, and social realities. Mandatory wills serve as a bridge between legal certainty and substantive justice, while demonstrating Islamic law's capacity for contextual adaptation. Within this framework, mandatory wills are not only relevant but also strategic for the development of just and beneficial Indonesian Islamic law.

#### IV. CONCLUSION AND SUGGESTIONS

##### A. Conclusion

This study confirms that in classical Islamic law, religious differences (ikhtilāf al-dīn) are normatively positioned as māni' al-irṭh which closes the possibility of interfaith inheritance, with a strong basis in the hadiths of ahkām inheritance and the consensus of the majority of scholars, thus reflecting the theological and normative character of the faraidh system which makes unity of faith a fundamental prerequisite for inheritance. However, in the context of plural and multicultural Indonesian society, tension arises between the certainty of fiqh law and the demands of substantive justice in interfaith family relations, which is then bridged through the implementation of wajibah wills as a non-inheritance legal instrument to protect the economic rights of heirs of different religions without negating the basic principles of Islamic inheritance law. Through the strengthening of the jurisprudence of the Supreme Court and religious courts, especially the Supreme Court Decision Number 368 K/AG/1995 along with subsequent decisions, the wajibah will has developed as a form of contextual ijtihad that is legitimate, operational, and relatively consistent, so that the novelty of this article lies in the affirmation of the wajibah will as an

instrument of harmonization between the norms of inheritance fiqh, national law, and the social reality of a plural society that maintains the integrity of sharia while ensuring the responsiveness of Islamic law in the context of contemporary Indonesia.

##### B. Suggestion

The development of Islamic inheritance law in Indonesia needs to be directed at strengthening the normative basis of wajibah wills in positive regulations, particularly through the improvement of the Compilation of Islamic Law so that the scope of its subjects, including heirs of different religions, is formulated explicitly and provides legal certainty. In religious court practice, the application of wajibah wills should be consistently based on maqāṣid al-syarī'ah and the principle of prudence, especially in determining the proportion of assets, in order to maintain a balance of rights between Muslim and non-Muslim heirs. Academically, further research is recommended to lead to empirical and comparative studies on the impact of the implementation of wajibah wills, so that the development of Islamic inheritance law does not stop at the normative level, but makes a real contribution to realizing social justice in a pluralistic society.

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