

*Research Article***Compulsory Testament: State Intervention in the Protection and Fulfillment of Human Rights of Non-Muslim Heirs****Abdul Rahman<sup>1\*</sup>, Georges Olemanu Lohalo<sup>2</sup>, Mirela Imširović<sup>3</sup>, Zulhilmi Bin Paidi<sup>4</sup>**<sup>1</sup>Faculty of Sharia and Islamic Business Economics, Sekolah Tinggi Agama Islam Negeri Majene, Indonesia<sup>2</sup>Faculty of Social Sciences and Politics, Université de Kinshasa, Republic Democratic of Congo<sup>3</sup>Faculty of Political Sciences, University of Sarajevo, Bosnia and Herzegovina<sup>4</sup>School of Languages, Civilisation and Philosophy, Universiti Utara Malaysia, Malaysia

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**ABSTRACT**

This article discusses the importance of state intervention in protecting and fulfilling the human rights of non-Muslim heirs through the institution of compulsory testament. In the diverse social landscape of Indonesian society, it is possible for one heir to adhere to a non-Muslim religion while the other two heirs are Muslim. This situation raises a legal problem in the field of inheritance, as the non-Muslim heir may risk losing their inheritance rights. Both religious rights and inheritance rights are human rights that must be protected, and their fulfillment must be guaranteed by the state through the establishment of policies regarding compulsory testament. This study employs a normative legal research method to examine existing regulations, the challenges faced by non-Muslim heirs, and the role of the state in promoting justice and protecting human rights. The results of the study conclude that mandatory wills intended for non-Muslim heirs are based on customary law with the principles of justice, social justice, and humanity. Mandatory wills for non-Muslim families also accommodate the democratic atmosphere in society and the state, answering the need for a sense of justice that is the right of every individual and preventing inequality in the pluralistic Indonesian society. It is necessary to strengthen regulations related to compulsory testament, to guarantee the rights of non-Muslim heirs, in order to create a more just and civilized society.

**Keywords: Compulsory Testament, Heirs; Human Rights; Non-Muslims.**

**A. INTRODUCTION**

Indonesia is a multiethnic and multireligious nation, with a population characterized by its diversity. The coexistence of various religious beliefs among Indonesians has persisted for a long time. Religious differences, even within the same family, are not uncommon in Indonesia. It is said that Indonesian society has established a social contract to live in harmony, peace, and mutual respect, refraining from demeaning others

based on ethnic, cultural, or religious differences (Nugraheni, Ilhami, & Harahab, 2010).

Indonesia, an archipelagic nation in Southeast Asia, is renowned for its remarkable diversity, being home to over 300 ethnic groups and a wide range of religious beliefs. This rich mosaic of cultures and faiths has shaped Indonesia into a vibrant, multiethnic, and multireligious society. The largest ethnic group, the Javanese, coexists with other significant groups such as the Sundanese, Batak, and

Balinese, each contributing distinct traditions, languages, and cultural practices. Religiously, Indonesia is predominantly Muslim, housing the world's largest Muslim population, yet it also embraces a variety of other faiths (Dahlan, 2018). Significant Christian, Hindu, Buddhist, and Confucian communities thrive, particularly in regions like Bali, North Sumatra, and parts of Sulawesi and Kalimantan. This religious diversity is safeguarded by the state ideology of Pancasila, which upholds belief in one God while promoting tolerance and unity.

The harmonious interplay of diverse ethnicities and religions is integral to Indonesia's national identity, fostering a society where multiculturalism is celebrated. Despite occasional tensions, the nation's commitment to inclusivity and mutual respect continues to underpin its unity. This intricate tapestry of cultures and beliefs makes Indonesia a unique example of pluralism in a globalized world.

A state governed by the rule of law must ensure the protection and fulfillment of human rights. Paragraph 3 of Article 1 of the 1945 Constitution specifies that "Indonesia is a law-based state," demonstrating that Indonesia acknowledges and safeguards human rights, including the freedom to practice one's religion (Ishak, 2022; Rahayu et al., 2024). The 1945 Constitution, or *Undang-Undang Dasar 1945* (UUD 1945), is the cornerstone of Indonesia's legal and political framework. After Indonesia

declared independence from Dutch colonial rule, the Planning Committee for Independence (PPKI) ratified the constitution on August 18, 1945, one day after the declaration of independence. UUD 1945 establishes Indonesia as a unitary republic and outlines the fundamental principles of the state, including the sovereignty of the people, democracy, and social justice. It adopts *Pancasila* as its guiding principle, emphasizing belief in one God, care for humanity, national unity, democracy based on the wisdom of representative consultation, and social justice for all citizens of Indonesia (Lismanto & Utama, 2020; Titahelu, 2022).

According to the Constitution, the government's structure includes the executive, legislative, and judicial branches, each with distinct functions. As the head of state and government, the president wields significant authority and is accountable to the *Majelis Permusyawaratan Rakyat* (MPR). The MPR, composed of the *Dewan Perwakilan Daerah* (DPD) and the *Dewan Perwakilan Rakyat* (DPR), holds supreme power to amend the Constitution and oversee the president. A key feature of UUD 1945 is its adaptability. Since its inception, the Constitution has undergone several amendments to address the evolving political and social landscape. The most significant amendments occurred during the post-Suharto *Reformasi* era, aimed at enhancing democratic governance, strengthening the rule of law, and ensuring

greater protection of human rights. These reforms introduced checks and balances within the government, reinforced judicial independence, and expanded civil society's role in governance (Yansyah & Rahayu, 2018).

Additionally, regional autonomy was significantly enhanced, granting provinces and municipalities more control over their affairs and promoting a more decentralized form of governance. Overall, the 1945 Constitution remains a living document, central to Indonesia's democratic evolution and its commitment to unity in diversity. It reflects the aspirations and resilience of the Indonesian people in building a just, democratic, and prosperous nation.

Humans have the right to choose a religion because we all hold equal standing before God Almighty. Every person is born with the same dignity and rights, regardless of ethnicity, race, or the religion they follow (Silviana & Fuadi, 2023). Every citizen is equal under the law, and human rights play a crucial role in ensuring the rights of individuals, particularly concerning ethnicity, race, and religion (Ulfa, Dewi, & Furnamasari, 2020).

International human rights treaties, such as the UDHR and the ICCPR, recognize the right of individuals to choose their religion, which includes the freedom of religion. Article 18 of both documents specifically protects the right of individuals to hold their own beliefs, thoughts, and emotions; to freely change their beliefs or convictions; and to express their religion or

convictions through teaching, practice, worship, and observance, either alone or with others, in public or in private. This right is essential for maintaining individual autonomy and dignity, allowing people to live according to their deepest convictions. It also promotes tolerance, pluralism, and respect for diversity in society, fostering peaceful coexistence among different religious communities (Situngkir, 2018).

Freedom of religion is a fundamental aspect of human rights. This is because religious rights primarily concern how individuals treat one another in exercising their religious and other rights. The law regulates the moral imperative in this regard. Both normative and theological perspectives acknowledge legal provisions concerning the recognition, guarantee, and protection of human rights (Evirianti, 2017).

Religious diversity can pose challenges for heirs seeking to obtain their inheritance rights. Nevertheless, Islam provides a legal alternative that allows non-Muslim heirs to receive a portion of the deceased's wealth. The compulsory testament method is the most appropriate approach for resolving disputes involving non-Muslim heirs (Shalehah, 2020).

The compulsory testament method is a legal mechanism designed to ensure that certain heirs receive a portion of a deceased person's estate, regardless of the stipulations outlined in the will. This approach is common in civil law jurisdictions and is based on the principle of

"forced heirship," which aims to protect the inheritance rights of immediate family members—typically spouses, children, and sometimes parents. Under the compulsory testament method, a specified share of the estate, known as the "reserved portion" or "legitim," is legally required to be allocated to these heirs. This reserved portion cannot be reduced or modified according to the testator's wishes (Andayani & Hariyati, 2020). The remaining portion of the estate, referred to as the "disposable portion," can be freely distributed according to the testator's preferences.

The primary goal of the compulsory testament method is to prevent disinheritance and ensure that vulnerable family members are financially protected. It balances the testator's freedom to distribute their assets with the need to safeguard the financial interests of close relatives. This method is commonly used in countries with legal systems influenced by Roman law, such as France, Germany, and many Latin American nations. It reflects a commitment to family welfare and social justice, ensuring that familial responsibilities are upheld even after death (Farikha & Zuhri, 2020).

The judge determines a compulsory testament as a means of transferring inheritance to non-Muslim heirs, aiming to uphold principles of justice and humanity (Sulistyono, Wahid & Primudyastutie, 2017). In cases where the testator does not leave a will or testamentary

instructions for non-Muslim descendants, the judge, as the sole state official with the authority to determine compulsory testamentary provisions, ensures that a portion of the inheritance is allocated to them (Hidayat, 2013). In many jurisdictions, the judge holds exclusive authority to apply the compulsory testament, particularly for non-Muslim heirs. This legal mechanism, also known as forced heirship, mandates that a specific portion of a deceased person's estate be allocated to certain close family members, regardless of the provisions in the deceased's will. This ensures that immediate family members, such as spouses and children, receive a guaranteed share of the inheritance. The judge plays a critical role in interpreting and enforcing these inheritance laws, ensuring that the legal provisions concerning compulsory testamentary portions are followed, thereby protecting the rights of designated heirs.

In cases involving non-Muslim heirs, the judge's decisions are guided by civil law principles (Arif, 2017), often rooted in Roman law traditions. These principles are designed to prevent disinheritance and to protect the financial interests of close family members. The judge must carefully balance the testator's freedom to distribute their estate with the legal requirements of forced heirship. This process requires meticulous legal scrutiny to ensure that the distribution of the estate complies with statutory obligations (Raharjo & Putri, 2019).

Additionally, the judge's role extends to resolving disputes that may arise among heirs regarding the interpretation and execution of the will. In cases where the will's provisions are contested or unclear, the judge's authority is paramount in delivering a fair and just resolution, based on legal precedents and statutory requirements. By safeguarding the rights of compulsory heirs, the judge ensures that the principles of equity and justice are upheld in the distribution of the estate (Khouw, Angga, & Fataruba, 2022). This not only protects vulnerable family members but also reinforces societal values of familial support and responsibility. The judge's impartial adjudication is crucial in maintaining the integrity of the inheritance process and ensuring that compulsory testament laws are faithfully executed (Aziz et al., 2023).

This study differs from previous research, both nationally and internationally, which has explored mandatory inheritance and the protection of inheritance rights for non-Muslim heirs. Previous studies include research on the Constitutional Court's decision regarding mandatory inheritance (Maryam, Sagala & Rahman, 2022), as well as studies on the interpretation of interfaith inheritance law in Indonesia (Billah & Rahma, 2021). Another study focused on the distribution of inheritance to non-Muslim heirs based on a will (Rizkal, 2016). Additionally, international research has examined the issue of inheritance rights for non-Muslim

heirs (Tangkau et al., 2020). The next study aims to determine the legal certainty of a certificate of inheritance for Indonesian citizens of Chinese descent (Wijayanti, Muryanto, & Darori, 2021). Further international research has analyzed the reform of inheritance law in Indonesia, particularly the opposition to transferring assets through a will to non-Muslim heirs (Zubair, Latif, & Hariyanto, 2022).

Based on comparisons with previous studies, it is evident that this study presents distinct differences. The author raises two research questions: how can the state use the compulsory testament to safeguard and fulfill the human rights of non-Muslim heirs, and how can the implementation of the compulsory testament protect and fulfill these rights?

## **B. RESEARCH METHODS**

This study employs a normative legal research method, which examines all laws and regulations relevant to the legal issue under investigation. In its purest form, normative legal research focuses exclusively on substantive legal doctrines found in primary written sources (Sonata, 2014). It involves analyzing secondary data related to theories, concepts, legal principles, and applicable laws and regulations (Benuf & Azhar, 2019). Data collection techniques are a critical step in research, and in this study, they are carried out through library research and thematic analysis (Tan, 2021). Library research

involves gathering data and information from various materials available in libraries, including relevant literature, books, and scientific works related to the issue being studied. In this case, the focus is on Mandatory Wills: State Intervention in the Protection and Fulfillment of Human Rights for Non-Muslim Heirs.

## C. RESULTS AND DISCUSSION

### 1. Compulsory Testament as a form of State Intervention in Fulfilling the Human Rights of Non-Muslim Heirs

Courts, as representatives of the state, play a crucial role in Indonesia's judicial system. Judges, serving as instruments of judicial authority, are responsible for the initial examination, determination, and resolution of both criminal and civil cases. They must carry out their judicial duties in accordance with relevant laws, uphold legal and ethical principles, and base their decisions on considerations of expediency, legal certainty, and justice. Courts are judicial institutions empowered to interpret and apply the law, resolve disputes, and administer justice. They function at various levels, from local to national, and handle a wide range of cases, including civil, criminal, and administrative matters (Taufiqurrohman, Jayus & Efendi, 2021).

Courts ensure the rule of law is upheld by providing a formal mechanism through which legal grievances can be addressed and resolved. Judges preside over court proceedings and make

decisions based on legal principles, evidence, and precedents. Courts play a critical role in safeguarding rights, maintaining social order, and upholding democratic principles within society (Warsono et al., 2023).

Judges play a critical and significant role in the enforcement of the law. When faced with issues that are not explicitly regulated by law or where existing regulations are deemed irrelevant to current circumstances, judges are obligated not only to apply the written law but also to incorporate legal updates into their rulings (Baihaki, 2021). Judges bear the responsibility of interpreting and applying the law impartially, ensuring that justice is served in every case. They preside over court proceedings, evaluate evidence, and make rulings based on legal principles and precedents. Judges must uphold the rule of law, protect individual rights, and ensure fair and unbiased trials. Their duties also include sentencing in criminal cases and resolving civil disputes. By maintaining high ethical standards and judicial integrity, judges play a vital role in sustaining public confidence in the legal system and ensuring justice is administered fairly and equitably.

Judges serving in Indonesia's Religious Courts effectively embody and implement the virtuous principles outlined in the Pancasila and the 1945 Constitution of the Republic of Indonesia. They do so by accepting, investigating, ruling on, and resolving matters related to their

jurisdiction, including issues of marriage, inheritance, wills, grants, waqf, zakat, infaq, shadaqah, and sharia economics (Rahman, Sofyan & Aksi, 2022). These judges play a pivotal role in reflecting the values of Pancasila, which emphasizes belief in one God, humanitarianism, national unity, democracy guided by wisdom, and social justice (Bo'a, 2018). These principles are deeply ingrained in the judicial functions of the Religious Courts, which handle family law, inheritance, and other religious matters among Muslims. By adhering to Pancasila's principles, judges in the Religious Courts ensure that their decisions reflect the nation's core values of fairness, respect for human dignity, and the promotion of social justice. They interpret and apply Islamic law within the framework of national unity and democratic governance, striving to harmonize religious principles with the broader legal and ethical standards of the Indonesian state (Purwanti & Samekto, 2021).

The 1945 Constitution enshrines the protection of human rights and the rule of law, both of which are central to the judiciary's mandate. Judges in the Religious Courts are responsible for upholding these constitutional values, ensuring that their rulings are not only legally sound but also aligned with the moral and ethical principles of Indonesian society. Through their careful application of the law, these judges help maintain social harmony and reinforce the

constitutional commitment to justice and equity for all citizens.

The discovery of legal principles by judges concerning compulsory testaments in cases involving the distribution of inheritance across different religions is a recent development. This indicates that judges have the discretion to make decisions that protect and uphold the rights of adopted children and non-Muslim heirs (Andayani & Hariyati, 2020; Hangabei et al., 2021).

A government agency known as probate is responsible for enforcing a will for deceased individuals and may also take action against individuals under specific circumstances. Even if the deceased has not left a will, surviving relatives may still establish heirs who trust in their legacy (Hanum & Syahr, 2016).

Essentially, a will outlines the testator's preferences regarding what and who should be included. However, when a will includes the term "wajibah," it focuses more on determining the beneficiaries entitled to the inherited property, even in the absence of a previously submitted will. Evidence of a spoken, written, or bequeathed will is not required for a compulsory testament, provided that legal justification supports its implementation through a judge's decision in the Religious Court (Ahmad, 2018).

The application of a compulsory testament influences the transfer of inheritance rights to subsequent successors. Islamic law has never established the term "compulsory testament."

According to Islamic law, adopted children are ineligible to inherit a portion of the estate. The concept of the compulsory testament emerged from the *ijtihad* of Indonesian scholars and is essentially consistent with the views of Middle Eastern scholars who support the idea of compulsory testament (Baihaki, 2017).

The application of a compulsory testament, or forced heirship, significantly impacts the transfer of inheritance rights to subsequent successors by ensuring that specific heirs receive a mandated portion of the deceased's estate. This legal mechanism aims to protect the financial interests of close family members, such as spouses, children, and sometimes parents, preventing their disinheritance and promoting familial support. When a compulsory testament is enforced, the designated heirs are guaranteed their reserved portion, regardless of the testator's wishes expressed in the will. This portion, often defined by law, cannot be diminished or bypassed, ensuring that the immediate family receives their rightful share. Consequently, this reduces the discretionary portion of the estate that the testator can allocate freely, thereby influencing the overall distribution of assets (Arif, 2017).

The reserved portion thus secures the financial stability of close relatives and ensures the equitable transfer of wealth across generations. It maintains the integrity of familial bonds by upholding obligations to support

dependents. This legal safeguard not only provides immediate financial relief to the heirs but also establishes a precedent for subsequent successors, reinforcing the value of protecting family interests within the inheritance process. By guaranteeing these inheritance rights, the compulsory testament upholds principles of justice and familial duty, ensuring a balanced transfer of assets within the family lineage. In Indonesia, it is designated for non-Muslim descendants and adopted children, whereas in the Islamic world, granddaughters are the intended recipients (Farikha & Zuhri, 2020).

The compulsory testament, designated for non-Muslim descendants and adopted children, ensures that these heirs receive a guaranteed portion of a deceased person's estate, regardless of the stipulations in the will. This legal provision aims to protect the inheritance rights of immediate family members and adopted children, preventing disinheritance and securing their financial future. By mandating a reserved portion of the estate for these heirs, the compulsory testament upholds principles of fairness and familial responsibility. This mechanism is crucial for ensuring equitable wealth distribution and maintaining social justice within diverse family structures, reinforcing the protection of vulnerable family members (Rohmawati, 2018).

The consensus among Indonesian Islamic jurists is reflected in the codification of Islamic law, which also involves compulsory confirmation.

The law of wills in Indonesia owes its development to the concept of generally binding covenants. Under Presidential Instruction No. 1 of 1991, only adopted children and adoptive parents can be granted compulsory wills. One-third of the assets of an adopted child are allocated to parents who did not receive it, while the same amount applies to adopted children who did receive it (Fauzi, 2010). The Supreme Court of the Republic of Indonesia Decision No. 368/K/Ag/1995 became the basis for advancing the recognition of non-Muslim heirs within the Islamic inheritance system to facilitate the distribution of inheritance through compulsory testament.

Following this legal precedent, Supreme Court of the Republic of Indonesia Decision No. 51 K/Ag/1999 regulated the implementation of compulsory testament for non-Muslim descendants. The judicial system and judges in Indonesia have consistently upheld this principle when examining the legal values and sense of justice prevailing in society (Raharjo & Putri, 2019). The judge's ruling cites Ibn Hazm's opinion regarding the transfer of inheritance rights from a Muslim heir to a non-Muslim heir (child). Ibn Hazm asserts that those entitled to inherit are relatives who are not recipients of inheritances due to their religious affiliations or enslavement (Jarchosin, 2020). Ibn Hazm, a prominent Muslim scholar, held the view that inheritance rights cannot be transferred from a Muslim heir to a

non-Muslim heir. This perspective is rooted in Islamic jurisprudence, which stipulates that inheritance laws are specific to Muslim heirs and do not extend to non-Muslims. Ibn Hazm's view underscores the importance of adhering to religious principles in matters of inheritance, ensuring that Islamic law governs the distribution of assets among Muslim heirs according to prescribed shares and rules. His stance reflects the traditional interpretation of Islamic inheritance laws and emphasizes adherence to religious teachings in familial and legal affairs.

State officials (judges) administer a compulsory testament, a legal procedure that allows them to compel or issue a ruling regarding a compulsory testament for deceased individuals under specific circumstances and with designated beneficiaries (Jarchosin, 2020). A compulsory testament is a state action that legally transfers property ownership from one person to another. It also serves as an alternative for distributing a portion of the estate to non-Muslim heirs, such as children or relatives who do not inherit property, including parents or grandparents. The implementation of the compulsory testament occurs after the death of the property owner and represents a form of state intervention (Tono, 2013).

The term "compulsory testament" refers to an imposition by a judicial body or institution authorized to administer the estate of a deceased individual who failed to create a will voluntarily.

Consequently, the judicial body or institution presumes to bequeath the rights or assets of the deceased under specific circumstances. A judge, as a state official, has the authority (Sutiyoso, 2010) to impose or render a compulsory testamentary verdict for a specific individual. Thus, a compulsory testament is a decree issued by the highest state apparatus, represented by a judge, to impose and render a mandatory ruling for a deceased person, which is then distributed to a particular individual under specific conditions.

The judge's authority in the compulsory testament indicates that the judge has the power to determine the compulsory testament in the absence of a will from the deceased testator. In cases where the testator does not leave a will, the judge steps in as a substitute and must exercise his *ijtihad* (legal authority) to resolve the case in a manner consistent with legal norms. Furthermore, by making decisions regarding compulsory testament, judges have the capacity to benefit the entire community (Rumadan, 2014).

The rights acquired by the heirs do not affect the mandated portion of the testament. However, religious differences can hinder an individual's opportunity to become an heir. Therefore, non-Muslim relatives have the right to a share of the estate that corresponds to their relationship with the testator and does not harm the interests of other heirs (Suratman & Amini, 2022).

Although the proportion of the compulsory testament may vary among individual judges, a fundamental principle known as the principle of balance serves as the foundation for determining the appropriate amount of the compulsory testament. The judge provides a compulsory testament without disturbing the positions of other beneficiaries. The mandatory testament receives an equitable distribution of the estate. Daughters of non-Muslim faiths receive an equivalent portion to their female counterparts, and a non-Muslim wife receives a share corresponding to her status as a spouse.

The judge rendered a verdict regarding the compulsory testament for apostate or non-Muslim descendants, citing the viewpoint put forth by Ibn Hazm. Ibn Hazm posits that it is incumbent upon the testator to leave a testament for heirs who are not granted inheritance, regardless of the circumstances surrounding their situation (e.g., being obstructed by heirs who are more deserving of the inheritance or being hindered from receiving it due to homicide or religious discord) (Adiasa, 2023).

Creating a will can be considered an instance of **ikhtariyah** (choices). Regardless of the situation, it is a voluntary action. If a testator fails to fulfill their obligations toward Allah SWT, such as performing Hajj, paying zakat, or observing fasting prohibitions, the obligations are established by Sharia, not by the sovereign or judge. In certain circumstances, however, the

ruler or magistrate, acting as a state apparatus, has the authority to compel or grant a testamentary ruling known as a compulsory testament to specific individuals (Khouw, Angga, & Fataruba, 2022).

**Ikhtariyah** refers to the concept of individual choice or discretion within Islamic legal and ethical contexts. It emphasizes the freedom of individuals to make informed decisions based on their personal judgment and understanding of religious teachings and principles. This concept recognizes the importance of personal responsibility and autonomy in matters such as personal conduct, ethical choices, and religious practices, while also encouraging adherence to Islamic ethical standards and values. In essence, **ikhtariyah** underscores the belief that individuals have the capacity and responsibility to exercise their own judgment in navigating moral and ethical decisions within the framework of Islamic teachings.

It can be concluded that state intervention through compulsory testament plays a crucial role in protecting and fulfilling the human rights of non-Muslim heirs within the framework of inheritance law. In many jurisdictions, including Indonesia, where Islamic law (Sharia) governs personal and family matters for Muslims, compulsory testamentary provisions ensure that non-Muslim heirs, such as spouses and adopted children, receive a guaranteed portion of the deceased's estate.

The implementation of compulsory testament serves to safeguard the inheritance rights of non-Muslim heirs, addressing potential disparities and ensuring equitable treatment under the law. This intervention is essential in preventing situations where non-Muslim heirs might otherwise be disinherited, providing them with financial security and stability following the death of a family member. By mandating a reserved portion of the estate for non-Muslim heirs, the state upholds principles of fairness and equality, regardless of religious affiliation. This intervention aligns with international human rights standards that emphasize the protection of individual rights, including property rights and equality before the law. It underscores the state's commitment to ensuring that all citizens, irrespective of their religious background, are treated justly and receive adequate legal protection in matters of inheritance.

Moreover, compulsory testamentary provisions contribute to social cohesion by promoting harmony and mutual respect among different religious communities. They mitigate potential conflicts over inheritance and foster a climate of inclusivity and tolerance within society. In practice, state intervention through compulsory testament requires a robust legal framework and effective enforcement mechanisms to ensure compliance and address any disputes that may arise. Courts and judicial authorities play a pivotal role in interpreting and applying these provisions,

ensuring that the rights of non-Muslim heirs are upheld and enforced according to the law. Overall, state intervention through compulsory testament serves as a critical tool in the protection and fulfillment of human rights for non-Muslim heirs. It reflects a commitment to upholding principles of justice, equality, and human dignity within the context of inheritance law, thereby contributing to a more just and inclusive society.

## **2. Compulsory Testament as a Means of Protection and Fulfillment of Human Rights of Non-Muslim Heirs**

The compulsory testament separates testaments from inheritances. While the testator may not provide an explicit designation for the beneficiaries of their estate upon their demise, specific individuals or entities besides their progeny may inherit a portion of their holdings (Nofitasari, 2021). The compulsory testament, often referred to as forced heirship, establishes a distinct separation between testaments (wills) and inheritances within the legal framework of inheritance law. This legal mechanism mandates that a specified portion of a deceased person's estate must be allocated to certain designated heirs, irrespective of the provisions outlined in the deceased's will. By imposing this separation, the compulsory testament ensures that immediate family members, such as spouses, children, and sometimes parents, receive a guaranteed share of the inheritance. This reserved portion, known as the legitimate or reserved heirship, cannot be

overridden by the testator's testamentary freedom. It is intended to prevent the complete disinheritance of vulnerable family members and to secure their financial welfare following the death of the estate owner.

Conversely, the remaining portion of the estate, known as the disposable portion, allows the testator to distribute assets according to their wishes as specified in their will. The remaining portion of the inheritance is allocated to the **ashabah** heirs, the amount of which has been determined by Islamic inheritance law. This allows the heir to distribute the inheritance assets according to their wishes, as done through a will. This discretionary part of the estate provides flexibility for the testator to allocate resources to other beneficiaries or charitable causes beyond the compulsory heirs. In essence, the compulsory testament creates a clear distinction between the obligatory inheritance rights of designated heirs and the optional distribution choices expressed by the testator in their will. This separation aims to balance familial obligations with individual testamentary freedom, ensuring that both legal certainty and personal autonomy are upheld within the inheritance process.

The Al-Quran (dzawil furudh) stipulates that individuals who are heirs by blood or matrimonial connection but do not immediately receive their status or cannot do so due to their testator's religious affiliation are considered heirs of different faiths. In Islamic law, religious

differences pose an obstacle to inheriting property because the distribution of inheritance is mandated for Muslim heirs. However, non-Muslim heirs can still secure their rights as heirs through a mandatory will. The verse of the Quran that regulates the distribution of inheritance is QS an-Nisa, verse 11. This verse explains the distribution of inheritance among 12 heirs, including men and women, with different proportions.

Conversely, it is possible that the level of devotion and intimacy exhibited by heirs of diverse religious affiliations toward the testator surpasses that of adopted children and parents (Khalisha & Zubaedah, 2021). This foundational text outlines the principles of inheritance, detailing the shares and entitlements of heirs based on their relationship to the deceased. These provisions ensure that family members, including spouses, children, parents, and other relatives, receive their designated portions of the estate. The Al-Quran's guidance on inheritance reflects Islamic teachings on fairness, familial responsibility, and the equitable distribution of wealth among heirs, reinforcing principles of social justice within Muslim communities.

The Compulsory Testament's provision for heirs who are prevented from inheriting due to religious differences is believed to cause less harm than maintaining religious differences as barriers to inheritance. If this rationale continues to be rigidly implemented, it may engender

animosity within the community, particularly among families of heirs belonging to various religious denominations who are entitled to inherit but are not granted the same privileges (Nugraheni, Ilhami, & Harahab, 2010). By mandating a guaranteed share for non-Muslim heirs, such as spouses or adopted children, this legal provision mitigates potential discrimination and ensures their financial security. It promotes social harmony by bridging religious divides and upholding principles of equality and fairness in inheritance. This approach fosters inclusivity within diverse familial structures and aligns with broader human rights principles that emphasize protection from discrimination based on religious affiliation. Ultimately, the Compulsory Testament serves to reconcile legal requirements with societal values, facilitating a more cohesive and equitable inheritance process that respects the rights and dignity of all heirs, regardless of their religious beliefs.

Supreme Court Decision Number 16 K/Ag/2010 states that a wife of a different religion (non-Muslim) who has been married to the testator for 18 years has the right to receive inheritance through a mandatory will. The judge's decision can be interpreted as a form of **hifz al-mal** (protection of property), which functions to prevent the unjust distribution of inheritance to certain individuals. The judge concludes that the issuance of compulsory testaments to non-Muslim descendants serves only the interests of the

affected extended family and ensures that these heirs are treated fairly (Zainuddin, Khalid, & Ramadani, 2023). This principle aims to safeguard the estate's assets from being unjustly distributed to individuals who are not entitled to inherit under Islamic law.

By enforcing the compulsory testament, the judge ensures that designated non-Muslim heirs, such as spouses or adopted children, receive their rightful share of the inheritance. This legal provision aligns with the ethical duty to protect the deceased's property and assets from being unfairly dispersed among heirs who do not have a legal claim under Islamic inheritance rules. Moreover, **hifz al-mal** underscores the broader societal responsibility to uphold justice and maintain the integrity of inheritance laws. It prevents potential disputes and ensures that the deceased's wishes regarding the distribution of their estate are respected within the bounds of legal and religious norms. By applying this principle, judges fulfill their role in preserving the estate's integrity and ensuring equitable treatment of all heirs, thereby promoting harmony and adherence to Islamic principles of property rights and inheritance.

Consequently, the judicial ruling demonstrates the preservation of justice and safeguards human rights by adhering to the fundamental tenets of property protection and religious preservation. One action that exemplifies commendable tolerance and is obligatory is the

provision of compulsory testaments to non-Muslim heirs. In the context of religious protection, a judge's decision can reflect an effort to safeguard individual rights in accordance with religious teachings. For example, in Islam, there are clear provisions regarding inheritance rights for children and wives that need to be considered. If a will ignores these rights, the court can decide to uphold the rights of the heirs that should be recognized (Nurafifah, Muslihuiddin, & Nurhuda, 2023).

This legal mechanism ensures that non-Muslim heirs, including spouses and adopted children, receive a guaranteed share of the deceased's estate, regardless of their religious affiliation. By mandating this provision, governments uphold principles of equality, justice, and religious tolerance within their legal frameworks. The provision of compulsory testaments to non-Muslim heirs demonstrates a commitment to respecting diversity and protecting minority rights. It acknowledges the importance of familial support and financial security for all citizens, irrespective of their religious beliefs. This action promotes social cohesion by fostering inclusive practices and mitigating potential discrimination based on religious differences in matters of inheritance. Moreover, implementing compulsory testaments reflects a broader commitment to human rights principles, including the right to property and equality before the law. It exemplifies a balanced approach to upholding

religious norms while ensuring that legal protections are extended equally to all members of society. By facilitating the equitable distribution of assets among heirs, governments promote a fair and harmonious societal environment where individual rights are respected and protected.

The implementation of compulsory testaments for non-Muslim successors, as mandated by the Supreme Court of the Republic of Indonesia in Circular Number 3 of 2015, represents an effort to safeguard and preserve religious beliefs. The granting of the right to a compulsory testament serves to uphold and respect religious freedom in the Republic of Indonesia. In contemporary **Maqāsīd al-Shariah** (the higher purposes and intents of Islamic law), failing to grant non-Muslim descendants the right to a compulsory testament constitutes a violation of the principle of religious freedom as outlined in the Qur'an (Setyawan, 2019). This judicial mandate ensures that non-Muslim heirs, such as spouses and adopted children, receive a guaranteed share of the deceased's estate, regardless of their religious affiliation. By upholding this provision, the Supreme Court aims to protect the inheritance rights of non-Muslim heirs and prevent their potential disenfranchisement based on religious differences.

This legal framework promotes religious tolerance and respect for diversity by accommodating the inheritance rights of

individuals from different religious backgrounds. It acknowledges the importance of familial support and financial security for all citizens, irrespective of their religious beliefs, thereby fostering social cohesion and harmony within Indonesian society. Moreover, the implementation of compulsory testaments reflects a commitment to upholding constitutional principles of equality and non-discrimination. It ensures that all individuals have access to legal protections and entitlements under the law, reinforcing the rule of law and promoting stability within families and communities. By mandating compulsory testaments for non-Muslim successors, the Supreme Court of Indonesia demonstrates a balanced approach to harmonizing religious norms with legal principles. This initiative not only safeguards individual rights and property but also contributes to building a more inclusive and equitable society where religious freedoms are respected and protected.

Furthermore, the implementation of a compulsory testament provides an additional advantage by offering life insurance. Safeguarding the psyche is essential for attaining these benefits. Within the contemporary context, the concept of safeguarding the soul has expanded to encompass the maintenance of human dignity, the protection of human life, and the defense of human rights. Providing non-Muslim successors with a compulsory testament is crucial in protecting their human rights

(Setyawan, 2019). This legal provision ensures that non-Muslim heirs, including spouses and adopted children, receive a guaranteed portion of the deceased's estate, irrespective of their religious beliefs. By mandating this provision, governments uphold principles of equality, justice, and non-discrimination in inheritance matters.

Firstly, compulsory testaments protect the property rights of non-Muslim successors by preventing their potential disinheritance based on religious differences. This promotes fairness and ensures that all heirs are treated equitably under the law, regardless of their religious affiliation. Secondly, providing compulsory testaments enhances social cohesion and promotes tolerance within diverse societies. It acknowledges and respects religious diversity by accommodating the inheritance rights of individuals from different religious backgrounds. This fosters a more inclusive and harmonious societal environment where all citizens have equal access to legal protections and entitlements. Moreover, compulsory testaments contribute to legal certainty and reduce potential disputes over inheritance. By clearly defining the rights and entitlements of non-Muslim heirs, this legal framework helps mitigate conflicts among family members and ensures a smooth transfer of assets following the death of a testator.

The provision of a compulsory testament to non-Muslim heirs can be justified and is in line with the principles of human rights in Islam,

including the principles of equality, freedom of religion, brotherhood, and justice, as well as the principle of utility, which can foster harmonious relations among adherents of different religions. Philosophically, the concept of a compulsory testament aims to achieve justice and provide protection to all individuals who need their rights safeguarded. Therefore, the regulation of compulsory testaments seeks to promote social justice (Ilhami, 2016).

Following Supreme Court Decision No. 368 K/AG/1995, successors of various religions are required to provide a testament. Establishing sociological connections and ensuring that parents and adopted children receive compulsory testaments, along with heirs of different religions, is an endeavor to ensure justice for those heirs who share extremely close kinship. Justifications for compulsory testaments for heirs of differing faiths can be found on both philosophical and legal grounds (Mutmainah & Sabir, 2019). The Supreme Court Decision No. 368 K/AG/1995 in Indonesia mandates that successors of various religions, including non-Muslims, provide a testament (*wasiat*) to secure their inheritance rights. This landmark ruling ensures that all heirs, irrespective of their religious backgrounds, have legal recourse to protect their interests and entitlements in inheritance matters.

By requiring the formulation of a testament, the Supreme Court aims to uphold principles of fairness, justice, and equality under the law. The

decision recognizes the importance of safeguarding the rights of non-Muslim successors, such as spouses and adopted children, by providing them with a legal mechanism to assert their inheritance claims. It promotes legal certainty and reduces potential disputes among family members by establishing clear guidelines for the distribution of assets following the death of a testator.

Moreover, Supreme Court Decision No. 368 K/AG/1995 reflects Indonesia's commitment to respecting religious diversity and promoting societal harmony. It acknowledges the significance of familial support and financial security for all citizens, regardless of their religious beliefs, thereby fostering a more inclusive and cohesive society. By requiring successors of various religions to provide a testament, the Supreme Court underscores the importance of upholding constitutional principles of equality and non-discrimination. This decision contributes to strengthening the rule of law and ensures that all individuals have access to legal protections and entitlements within the framework of inheritance law. In essence, Supreme Court Decision No. 368 K/AG/1995 represents a progressive step toward ensuring equitable treatment and the protection of inheritance rights for successors of diverse religious backgrounds in Indonesia. It demonstrates a balanced approach to harmonizing religious norms with legal principles, thereby promoting social justice and

upholding fundamental human rights within the legal system.

Hazairin, citing the opinion of Ibn Hazm, asserts that the Supreme Court's ruling permits the transfer of inheritance to a non-Muslim individual via a compulsory testament. Ibn Hazm emphasizes the religious nature of Islam, which is committed to the principles of bilateralism, certainty (absoluteness), the individual, and balanced justice. Consequently, non-Muslim successors view the compulsory testament as a means to reconcile with their progeny (Aziz et al., 2023).

Religious distinctions serve as a fundamental basis under Islamic law that determines an individual's eligibility to inherit. According to Islamic jurisprudence, inheritance rights are governed by strict rules outlined in the Quran and Hadith (Prophetic traditions), which define the shares and entitlements of heirs based on their familial relationships and religious affiliations. Under Islamic law, only Muslim heirs are entitled to inherit from Muslim decedents. Non-Muslims, including those of different faiths or atheists, are generally excluded from inheriting from Muslim estates. This principle is rooted in the belief that Islamic inheritance laws are specific to Muslims and are based on religious obligations and duties. The Quranic injunctions and Prophetic traditions provide detailed guidance on inheritance, specifying the shares allotted to various relatives, such as spouses, children,

parents, and siblings, based on their relationship to the deceased and their status as Muslims. This framework ensures the orderly distribution of assets and promotes social and economic stability within Muslim communities.

While religious distinctions are central to determining inheritance rights under Islamic law, it is important to note that this legal framework also emphasizes fairness, justice, and the equitable treatment of heirs within the Muslim faith. The rules aim to prevent disputes and ensure that the deceased's assets are distributed according to prescribed shares, thereby maintaining familial harmony and fulfilling religious obligations. Overall, religious distinctions in inheritance under Islamic law highlight the significance of religious identity and adherence to religious principles in matters of property and succession. These distinctions reflect broader societal norms and values concerning familial responsibilities and obligations, reinforcing the importance of religious beliefs in shaping legal and social practices within Muslim-majority communities.

In Islamic law, the compulsory testament is a significant legal solution that contributes to the formulation of justice. Justice, which is the essence and intent of the law, justifies the bequest of a portion of the inheritance to non-Muslim heirs through a compulsory testament. This method, whether established through the legislative process or the jurisprudence of court judges, is more effective in ensuring legal

certainty. As a result, the Indonesian populace is likely to perceive the legal system, known as "rahmatan lil'alam" (a blessing for the universe), more favorably.

"Rahmatan lil'alam" is an Islamic concept that translates to "mercy to all worlds." It reflects the belief that the message of Islam is meant to be a source of compassion, peace, and blessings for all of humanity and beyond. This principle emphasizes the inclusive and universal nature of Islam, promoting kindness, tolerance, and understanding among people of different backgrounds and beliefs. It underscores the importance of fostering harmonious coexistence and contributing positively to society, reflecting Islam's broader goal of spreading goodwill and benefiting all creation.

Islamic law validates the legal status of the compulsory testament as an effort to ensure fairness and address potential injustices in inheritance. This measure is a key component of the Islamic inheritance law system, highlighting its flexibility, compassion, friendliness, and the comprehensive nature of Islamic law, known as **rahmatan lil'alam** (Zubair, Latif, & Hariyanto, 2022). By mandating a reserved portion for certain heirs, such as spouses and children, Islamic jurisprudence aims to protect their rights and prevent their disinheritance. This legal mechanism serves as a remedy to uphold familial obligations and maintain social justice within Muslim communities, ensuring that assets are

distributed equitably according to religious principles.

Thus, the compulsory testament aligns with Islamic values of fairness, compassion, and the preservation of family welfare in matters of succession. From the perspective of **maqashid al-syari'ah**, providing a compulsory testament to a non-Muslim is a humanitarian act, perhaps due to several factors. For instance, an individual may receive a will because they care for and support the property owner during their life and illness, or it could be due to fraternal bonds. It may also apply to adopted children who, under traditional inheritance laws, do not qualify for a share. In such cases, a compulsory testament is given to ensure they receive a share, not exceeding one-third of the property left behind and not surpassing the smallest portion allotted to other heirs.

**Maqasid al-Shariah** refers to the objectives or goals of Islamic law. It emphasizes the overarching principles that underpin Shariah, aiming to promote and protect essential human interests such as faith, life, intellect, progeny, and property. This perspective seeks to ensure justice, equity, and societal welfare, guiding legal rulings and practices in accordance with Islamic ethics and values. **Maqasid al-Shariah** encourages a holistic approach to jurisprudence, focusing not only on literal interpretations but also on the broader objectives of promoting well-being

and upholding ethical standards within Muslim communities and society at large.

Requiring non-Muslim experts to provide a compulsory testament undoubtedly undermines the principle that the law exists to prevent harm and maximize benefits, known as **li jalbi al-mashalih wa li dafi al-mafasid**. This principle in Islamic jurisprudence translates to "bringing benefits and preventing harms." It emphasizes the ethical imperative to pursue actions that promote societal well-being while preventing actions that may lead to harm or corruption. This principle guides legal rulings and decisions, encouraging judges and lawmakers to prioritize the greater good and the preservation of public interests. It underscores the proactive role of Islamic law in fostering social justice, ensuring fairness, and safeguarding individual rights while addressing potential risks and negative consequences. By applying this principle, Islamic legal scholars aim to create a just and harmonious society where the welfare of individuals and communities is protected, and where actions that may cause harm or injustice are minimized or prevented.

In the context of Shari'a, al-Syatibi defines **al-maslahat** as the utilization and rejection of **mafsadat** (li jalbi al-mashalih wa li dafi al-mafasid). This definition is not solely grounded in rationality but also pertains to the preservation of individuals' rights (Ja'far & Hermanto, 2021). This principle encompasses the protection of property, lineage, religion, soul, and intellect, as well as

safeguarding human rights. An examination of the law concerning the compulsory testament for non-Muslims reveals that religion delineates the limits between Muslims and non-Muslims in terms of beliefs (**aqidah**). However, Islam does not restrict this distinction to **muamalah**; therefore, it pertains to **muamalah** and not **aqidah** in the context of a compulsory testament (Ja'far & Hermanto, 2021).

**Muamalah** refers to the branch of Islamic jurisprudence that governs transactions and interactions among individuals and communities. It covers various aspects of social and economic life, including contracts, commerce, property rights, and personal conduct. **Muamalah** is grounded in Islamic ethical principles and legal norms, aiming to promote fairness, justice, and mutual respect in all dealings. Islamic scholars emphasize the importance of honesty, transparency, and fulfilling contractual obligations in **muamalah**, ensuring that transactions are conducted ethically and in accordance with Shariah guidelines. This branch of jurisprudence also addresses issues such as charity, loans, partnerships, and inheritance, providing comprehensive guidance on how Muslims should conduct themselves in their daily interactions and business dealings. By adhering to the principles of **muamalah**, individuals and communities uphold the values of integrity, accountability, and social responsibility, contributing to a just and harmonious society based on Islamic teachings.

One of the advantages of a compulsory testament for non-Muslim heirs is the establishment of a sense of justice, the safeguarding and realization of human rights, and the preservation of Islamic values as part of the **rahmatan lil 'ālamīn** religion. Additionally, it accommodates the social reality of Indonesia's pluralistic society, which comprises individuals of diverse ethnic backgrounds and religious affiliations while preserving family integrity (Mutmainah & Sabir, 2019).

Indonesia serves as a vibrant example of a pluralistic society, characterized by a rich tapestry of ethnicities, cultures, and bloodline relationships. This diversity is a cornerstone of Indonesian identity, shaping its social fabric and national ethos. With over 700 ethnic groups and a range of religious beliefs—including Islam, Christianity, Hinduism, Buddhism, and indigenous faiths—Indonesia embraces a pluralistic framework that emphasizes tolerance, mutual respect, and coexistence. Despite this diversity, the family unit holds significant cultural and social importance in Indonesia. Families often serve as the primary source of identity, support, and solidarity, transcending ethnic and religious differences. The integrity of the family is preserved through shared values of respect for elders, communal responsibility, and maintaining harmony within households.

Within this pluralistic context, legal frameworks such as the provision of compulsory

testaments for non-Muslim heirs underscore Indonesia's commitment to protecting familial integrity and ensuring equitable treatment across religious boundaries. These legal provisions safeguard the inheritance rights of spouses, adopted children, and other non-Muslim heirs, contributing to social cohesion and upholding principles of fairness and justice within families. Overall, Indonesia's pluralistic society reflects a dynamic interplay of diversity and unity, where individuals of different ethnic backgrounds and religious beliefs coexist harmoniously while preserving the fundamental values and integrity of the family unit. This societal model not only celebrates cultural diversity but also emphasizes the importance of inclusivity, mutual understanding, and the shared pursuit of social harmony in Indonesia's national narrative.

In conclusion, the provision of compulsory testaments serves as a critical effort to protect and fulfill the human rights of non-Muslim heirs within legal systems influenced by Islamic law. In jurisdictions where Sharia governs personal and family matters, including inheritance, compulsory testamentary provisions ensure that non-Muslim heirs, such as spouses and adopted children, receive a guaranteed share of the deceased's estate. This legal mechanism aims to prevent their potential disinheritance and secure their financial stability following the death of a family member.

Firstly, the compulsory testament upholds principles of equality and non-discrimination by mandating a reserved portion of the estate for non-Muslim heirs. This ensures that they are treated fairly and equitably under the law, irrespective of their religious affiliation. It aligns with international human rights standards that emphasize the protection of individual rights, including property rights and equality before the law. Secondly, this provision promotes social cohesion by fostering inclusivity and tolerance within diverse familial structures. By acknowledging and accommodating the inheritance rights of non-Muslim heirs, governments demonstrate a commitment to respecting religious diversity and minority rights. This contributes to a more harmonious and cohesive society where individuals are valued and their rights are protected.

Moreover, the compulsory testament enhances legal certainty and reduces potential disputes over inheritance. By clearly defining the rights and entitlements of non-Muslim heirs, it mitigates conflicts that may arise among family members and ensures a smoother transition of assets following the death of a testator. This legal framework reinforces the rule of law and promotes stability within families and communities. Furthermore, implementing compulsory testamentary provisions reflects a balanced approach to reconciling religious norms with broader legal principles and societal values.

It demonstrates a commitment to upholding religious freedoms while ensuring that all citizens, regardless of their religious beliefs, have access to legal protections and entitlements.

Ultimately, the provision of compulsory testaments represents a proactive effort by governments to protect and fulfill the human rights of non-Muslim heirs. By guaranteeing their inheritance rights, governments promote fairness, justice, and social harmony within their legal frameworks. This action not only safeguards individual rights and property but also contributes to building inclusive and cohesive societies where diversity is respected and celebrated.

#### D. CONCLUSION

Based on the discussion of the research, it can be concluded that the provision of mandatory wills for non-Muslim heirs represents a form of state intervention aimed at protecting and fulfilling the human rights of these individuals. Mandatory wills for non-Muslim heirs are grounded in customary law and reflect principles of justice, social justice, and humanity. Furthermore, these mandatory wills accommodate the democratic atmosphere in society and the state, addressing the need for a sense of justice that is the right of every individual and preventing inequality in Indonesia's pluralistic society. This practice helps mitigate social inequality by ensuring fair treatment for all individuals, regardless of their religious beliefs. By recognizing the rights of non-

Muslim heirs, this approach promotes social harmony and integration, reflecting the state's commitment to justice and human rights. This step bridges potential gaps in the legal system, accommodates the values of a pluralistic society, and reinforces the principles of equality and justice that underpin Indonesia's democratic ethos.

#### REFERENCES

##### JOURNALS

- Adiasa, Muhammad R. (2023). Wasiat Wajibah Terhadap Non Muslim Dan Murtaf (Analisis Terhadap Yurisprudensi Putusan Mahkamah Agung). *Jurnal Al-Ahkam*, Vol.14,(No.1),pp.70–98.  
<https://doi.org/https://doi.org/10.15548/alahkam.v14i1.6492>.
- Ahmad, Azmi Z. (2018). Wasiat Wajibah Dalam Perspektif Hukum Positif Dan Hukum Islam: Analisis Maqasid Asy-Syarī'ah Jasser Auda. *Asy-Syir'ah*, Vol.52, (No.1), pp.55–73.  
<https://doi.org/http://dx.doi.org/10.14421/ajish.2018.52.1.55-73>.
- Andayani, Dwi., & Hariyati, Tetty. (2020). Problematika Wasiat Wajibah Terhadap Ahli Waris Beda Agama Di Indonesia.. *Cepalo*, Vol.4,(No.2),pp.157–70.  
<https://doi.org/10.25041/cepalo.v4no2.1893>
- Arif, Muhammad R. (2017). Pemberian Wasiat Wajibah Terhadap Ahli Waris Beda Agama

- (Kajian Perbandingan Hukum Antara Hukum Islam Dan Putusan Mahkamah Agung Nomor 368.K/AG/1995). *DE LEGA LATA: Jurnal Ilmu Hukum*, Vol.2, (No.2), pp.351–72.  
<https://doi.org/10.30596/dll.v2i2.1161>
- Aziz, Abdul., Maksum, Ghufron., Nadzif, Ali Asyari, & Huda, Nurul. (2023). Wasiat Wajibah Bagi Ahli Waris Non-Muslim Di Indonesia Perspektif Najmuddin At-Thufi. *Tasyri': Journal of Islamic Law*, Vol.2, (No.1),pp.141–73.  
<https://doi.org/10.53038/tsyr.v2i1.72>
- Baihaki, A. (2021). Penerapan Wasiat Wajibah Dalam Putusan Penyelesaian Sengketa Waris Beda Agama Ditinjau Dari Perspektif Hukum Islam. *Krtha Bhayangkara*, Vol.15, (No.1),pp.117–142.  
<https://doi.org/10.31599/krtha.v15i1.588>
- Benuf, Kornelius., & Azhar, Muhammad. (2019). Metodologi Penelitian Hukum Sebagai Instrumen Mengurai Permasalahan Hukum Kontemporer. *Gema Keadilan*, Vol.3, (No.2),pp.20–33.  
<https://doi.org/10.24246/jrh.2019.v3.i2.p145-160>
- Billah, Mu'tashim & Rahma, Vivi. (2022). Penafsiran Hukum Waris Beda Agama di Indonesia, *IN RIGHT Jurnal Agama dan Hak Azazi Manusia*, Vol.10, (No.2), pp.213-230.  
<https://doi.org/10.14421/inright.v10i2.2924>
- Bo'a, Fais Y. (2018). Pancasila Sebagai Sumber Hukum Dalam Sistem Hukum Nasional. *Jurnal Konstitusi*, Vol.15, (No.1),pp.27–49.  
<https://doi.org/https://doi.org/10.31078/jk1512>
- Dahlan, M. (2018). Rekognisi Hak Masyarakat Hukum Adat Dalam Konstitusi, Undang: *Jurnal Hukum*, Vol.1,(No.2),pp.187–217.  
<https://doi.org/10.22437/ujh.1.2.187-217>
- Evirianti, L. (2017). Religious Freedom in Indonesia: An Islamic Human Right Perspective. *ESENSIA: Jurnal Ilmu-Ilmu Ushuluddin*, Vol.18,(No.1),pp.71–80.  
<https://doi.org/https://doi.org/10.14421/esensia.v18i1.1471>
- Farikha, Nur., & Zuhri, M. Ali Syaifudin. (2020). Konsep Waris Anak Angkat Dalam Wasiat Wajibah Perspektif KHI Dan Prof. Wahbah Zuhaili. *Rechtenstudent Journal*, Vol.1, (No.3),pp.232–39.  
<https://doi.org/https://doi.org/10.35719/rch.v1i3.32>
- Hangabei, Sinung Mufti., Dimiyati, Khudzaifah., Absori., & Akhmad. (2021). The Ideology of Law: Embodying The Religiosity Of Pancasila In Indonesia Legal Concepts," *Law Reform*, Vol.17, (No.1), pp.77-94.  
<https://doi.org/10.14710/lr.v17i1.37554>
- Hanum, Zulfia., & Syahr, Alfi. (2016). Wasiat Wajibah Sebagai Wujud Penyelesaian Perkara Waris Beda Agama Dalam Perkembangan Sosial Masyarakat. *Holistik:*

- Journal For Islamic Social Sciences*, Vol.1, (No.2), pp.123–33.  
<https://doi.org/http://dx.doi.org/10.24235/holistik.v1i2>.
- Hidayat, A. (2013). Penemuan Hukum melalui Penafsiran Hakim dalam Putusan Pengadilan. *Pandecta*, Vol.8, (No.2), pp.153-169. <https://doi.org/10.15294/pandecta.v8i2.2682>
- Ilhami, H. (2016). Development of the Regulation Related To Obligatory Bequest (Wasiat Wajibah) in Indonesian Islamic Inheritance Law System. *Mimbar Hukum*, Vol.27, (No.3), pp.553–65.  
<https://doi.org/10.22146/jmh.15884>.
- Ishak, N. (2022). Religious Tolerance in the Constitution and Guarantees for the Protection of Human Rights. *Jurnal Scientia Indonesia*, Vol.8, (No.1), pp.53–70. <https://doi.org/https://doi.org/10.15294/jsi.v8i1.35953>.
- Ja'far, A. Kumedi., & Hermanto, Agus. (2021). Reinterpretation of The Rights And Duties of Contemporary Husbands And Wives. *Samarah*, Vol.5, (No.2), pp.648–667.  
<https://doi.org/10.22373/sjhc.v5i2.9124>
- Jarchosi, A. (2020). Pelaksanaan Wasiat Wajibah. *ADHKI: Journal of Islamic Family Law*, Vol.2, (No.1), pp.77–90.  
<https://doi.org/10.37876/adhki.v2i1.34>.
- Khalisha, Nabila., & Zubaedah, Rahmi. (2021). Ketentuan Penyerahan Wasiat Wajibah Kepada Ahli Waris Yang Berbeda Agama Di Pengadilan Dan Pertimbangan Hakim Dalam Putusan Pengadilan Agama Bekasi Nomor 0024 / Pdt . P / 2016 / PA . Bks. *El-Faqih: Jurnal Pemikiran Dan Hukum Islam* Vol.7, (No.2), pp.1–24.  
<https://doi.org/https://doi.org/10.29062/faqih.v7i2.238>.
- Khouw, Safira Rahmi., Angga, La Ode., & Fataruba, Sabri. (2022). Kajian Hukum Islam Tentang Wasiat Wajibah Kepada Ahli Waris Beda Agama. *Tatohi: Jurnal Ilmu Hukum*, Vol.1, (No.11), pp.1120–1129.  
<https://doi.org/10.47268/tatohi.v1i11.869>.
- Lismanto., & Utama, Yos Johan. (2020). Membumikan Instrumen Hukum Administrasi Negara Sebagai Alat Mewujudkan Kesejahteraan Sosial dalam Perspektif Negara Demokrasi. *Jurnal Pembangunan Hukum Indonesia*. Vol.2, (No.3), pp.416-433.  
 DOI:10.14710/jphi.v2i3.416-433
- Maryam, Siti., Sagala, Irmawati., & Rahman, Fuad. (2022). Analisis Terhadap Putusan Mahkamah Agung No. 368 K/Ag/1995 Tentang Hak Menerima Wasiat Wajibah Dalam Perspektif Hukum Islam, *Comprehensive Perspective on Islamic Studies*, Vol.1, (No.2), pp.221-242.  
<https://doi.org/10.56436/jocis.v1i2.93>.
- Mutmainah, lin., & Sabir, Muhammad. (2019). Wasiat Wajibah Bagi Ahli Waris Beda

- Agama (Analisis Terhadap Putusan Mahkamah Agung Nomor: 368K/AG/1995). *DIKTUM: Jurnal Syariah Dan Hukum*, Vol.17,(No.2),pp.188–210.  
<https://doi.org/10.35905/diktum.v17i2.818>.
- Nofitasari, Khotifatul D. (2021). Wasiat Wajibah Kepada Anak Angkat, Non Muslim Dan Anak Tiri (Formulasi Hukum Wasiat Wajibah Dalam Pasal 209 Kompilasi Hukum Islam Di Indonesia Dan Perkembangannya). *Al-Syakhsyiyah: Journal of Law & Family Studies*, Vol.3, (No.2),pp.25–47.  
<https://doi.org/10.21154/syakhsyiyah.v3i2.3370>.
- Nugraheni, Destri Budi., Ilhami, Haniah., & Yulkarnain Harahab. (2010). Pengaturan Dan Implementasi Wasiat Wajibah Di Indonesia, *Mimbar Hukum*, Vol.22, (No.2), pp.311–329.  
<https://doi.org/https://doi.org/https://doi.org/10.22146/jmh.16229>.
- Nurafifah, Isti., Muslihuiddin., & Nurhuda, Abid. (2023). Analisis Penetapan Pengadilan Agama Surabaya No. 0378/Pdt.P/2020/PA.Sby Ditinjau Dari Kewarisan Islam Dan Hak Asasi Manusia. *JIS: Journal Islamic Studies*, Vol.1, (No.3), pp.342–63.  
<https://qjurnal.my.id/index.php/jis/article/view/480>
- Purwanti, Ani., & Samekto, FX. Adji. (2021). Tantangan Indonesia Dalam Taman Sari Dunia : Mewujudkan Kedaulatan Pangan. *Pancasila : Jurnal Keindonesiaan*, Vol.1, (No.1),pp.1–16.  
<https://doi.org/https://doi.org/10.52738/pjk.v1i1.2>.
- Raharjo, Alip Pamungkas., & Putri, Elok Fauzia Dwi. (2019). Analisis Pemberian Wasiat Wajibah Terhadap Ahli Waris Beda Agama Pasca Putusan Mahkamah Agung Nomor 331 K/Ag/2018. *Jurnal Suara Hukum*, Vol.1,(No.2),pp.172–85.  
<https://doi.org/10.26740/jsh.v1n2.p172-185>.
- Rahayu., Roisah, Kholis., Wardana, Khansadhia Afifah., & Erlangga, Vania Lutfi Safira. (2024). Human Rights Defenders in Indonesia's Digital Age: Navigating Limited Spaces in the Quest for Digital Democracy. *Sriwijaya Law Review*, Vol.8, Issue, 2, pp.358-375,  
<http://dx.doi.org/10.28946/slrev.Vol8.Iss2.3860.pp358-375>
- Rahman, Arif., Sofyan., & Aksi, Mulham Jati. (2022). Hakim Peradilan Agama: Refleksi Sistem Pengangkatan Dan Pelaksana Kekuasaan Kehakiman Di Indonesia Mulham Jati Aksi. *DIKTUM: Jurnal Syariah Dan Hukum*, Vol. 20, (No.1),pp.79–98.  
<https://doi.org/https://doi.org/10.35905/diktum.v20i1.2780>.

- Rizkal. (2016). Pemberian Hak Waris Dalam Hukum Islam Kepada Non-Muslim Berdasarkan Wasiat Wajibah (Kajian Putusan Nomor 16 K/AG/2010), *Jurnal Yudisial*, Vol.9, (No.2), pp.173-193.  
DOI : 10.29123/jy.v9i2.23
- Rohmawati. (2018). Progresivitas Hukum Kewarisan Beda Agama Di Indonesia Berbasis Keadilan Dan Masalah. *International Journal Ihya' 'Ulum Al-Din*, Vol.20,(No.2),pp.217–240.  
<https://doi.org/10.21580/ihya.20.2.4047>.
- Rumadan, I. (2014). Problematika Pelaksanaan Kekuasaan Kehakiman (Dalam Konteks Pelaksanaan Fungsi Check and Balances System). *Jurnal Hukum Dan Peradilan*, Vol.3,(No.3),pp.243–52.  
<https://doi.org/http://dx.doi.org/10.25216/jhp.3.3.2014.243-252>.
- Setyawan, R. (2019). Wasiat Wajibah, Nonmuslim Dan Kemaslahatan Hukum : Studi Putusan MA Tahun 1995-2010. *Asy-Syir'ah: Jurnal Ilmu Syari'ah Dan Hukum*, Vol.53, (No.1), pp.31–57.  
<https://doi.org/https://doi.org/10.14421/ajish.v53i1.644>.
- Shalehah, I. (2020). Waris Beda Agama (Analisis Putusan Perkara Kewarisan Beda Agama Dalam Putusan Ma 16/Kag/2018). *Al-Manhaj: Journal of Indonesian Islamic Family Law*, Vol.2, (No.1), pp.31–46.  
<https://doi.org/10.19105/al-manhaj.v2i1.3076>
- Silviana, Ana., & Fuadi, Ariza. (2023). Legal Policy on the Use of Heir Certificates (SKAW) for Registration of Land Rights Transfers in Indonesia. *Law Reform*, Vol.19,(No.2),pp.294-320.  
<https://doi.org/10.14710/lr.v19i2.52626>
- Situngkir, Danel A. (2018). Terikatnya Negara Dalam Perjanjian Internasional. *Refleksi Hukum Jurnal Ilmu Hukum*, Vol.2, (No.2),pp.167–80.  
<https://doi.org/10.24246/jrh.2018.v2.i2.p167-180>
- Sonata, Depri L. (2014). Metode Penelitian Hukum Normatif Dan Empiris Karakteristik Khas Dari Metode Meneliti Hukum. *Fiat Justisia Jurnal Ilmu Hukum* Vol.8, (No.1), pp.15–35.  
<https://doi.org/https://doi.org/10.51749/jphi.v2i1.14>
- Sulistiyono, Anang., Wahid, Abdul., & Primudyastutie, Mirin. (2017). Interpretasi Hukum oleh Hakim Konstitusi dalam Mendekonstruksi Anatomi Korupsi Migas. *Jurnal Konstitusi*, Vol.14,(No.2),pp.418-439.  
<https://doi.org/10.31078/jk1429>
- Suratman., & Amini, Sulasyah. (2022). Wasiat Wajibah Bagi Kerabat Yang Terhalang Mendapatkan Warisan (Sebuah Rechtsvinding). *Yurispruden : Jurnal Fakultas Hukum Universitas Islam*

- Malang*, Vol.5,(No.2),p.163.  
<https://doi.org/10.33474/yur.v5i2.13731>.
- Sutiyo, B. (2010). Pembentukan Mahkamah Konstitusi Sebagai Pelaku Kekuasaan Kehakiman Di Indonesia. *Jurnal Konstitusi*, Vol.10,(No.6),pp.25–50.  
<https://doi.org/https://doi.org/10.31078/jk762>.
- Tan, D. (2021). Metode Penelitian Hukum: Mengupas Dan Mengulas Metodologi Dalam Menyelenggarakan Penelitian Hukum. *Nusantara: Jurnal Ilmu Pengetahuan Sosial*, Vol.8, (No.8), pp. 2463–2478.  
<https://doi.org/10.31604/jips.v8i8.2021.2463-2478>.
- Tangkau, Tonic., Tangkau, Daniel Julian., Thalib, Prawitra., Nugraha, Xavier, & Agustin, Windy. (2020). Analysis on Non-Muslim Heir Position Towards the Inheritance of Muslim Testator in Indonesia. *Yuridika*, Vol.35,(No.2).pp.389-406.  
<https://doi.org/10.20473/ydk.v39i3.48338>
- Taufiqurrohmah, Moch. Marsa., Jayus., Efendi, A'an. (2021). Integrasi Sistem Peradilan Pemilihan Umum melalui Pembentukan Mahkamah Pemilihan Umum. *Jurnal Konstitusi*, Vol.18(No.3),pp.562-84.  
<https://doi.org/10.31078/jk1834>.
- Titahelu, Juanrico Alfaromona S. (2022). Legal Liability for Crimes against Humanity as A Form of Human Rights Violation (Criminal Law Perspective). *Law Reform*, Vol.18, (No.1),pp.28-42.  
<https://doi.org/10.14710/lr.v18i1.44154>
- Ulfa, Ina., Dewi, Dinie Anggraeni., & Furnamasari, Yayang Furi. (2020). Suku, Ras Dan Agama Mempengaruhi Kedudukan Hak Asasi Manusia Di Indonesia. *Action Research Literate*, Vol.4,(No.2),pp.38-42.  
<https://doi.org/10.46799/ar.v4i2.9>.
- Warsono, Hardi., Amaliyah, Anita., Putranti, Ika Riswanti., & Iannone, Aniello. (2023). Indonesia Government Sets Back: The Rule Of Law, Collaborative Governance And Human Right Challenges During Covid-19. *Law Reform*, Vol.19, (No.2), pp.169-198.  
<https://doi.org/10.14710/lr.v19i2.53734>
- Wijayanti, Tania., Muryanto, Yudho Taruno., & Darori, M Irnawan. (2021). Comparison of The Transfer of Land Rights to The Description Deed of Inheritance Rights. *Law Reform*, Vol.17, (No.1), pp.121-134.  
<https://doi.org/10.14710/lr.v17i1.37558>
- Yansyah, Roby., & Rahayu. (2018). Globalisasi Lesbian, Gay, Biseksual, Dan Transgender (LGBT): Perspektif Ham Dan Agama Dalam Lingkup Hukum Di Indonesia. *Law Reform*, Vol.14,(No.1),pp.132-146.  
<https://doi.org/10.14710/lr.v14i1.20242>
- Zainuddin., Khalid, Hasbuddin., & Ramadani, Rizki. (2023). Compulsory Testament: Efforts to Protect and Fulfil the Welfare

Rights of Adopted Children in Indonesia's Islamic Inheritance System. *Manchester Journal of Transnational Islamic Law & Practice*, Vol.19,(No.2),pp.162–75.

<https://www.electronicpublications.org/stuff/971>

Zubair, Asni., Latif, Hamzah., & Hariyanto, Al Furqon Dono. (2022). The Construction of Inheritance Law Reform in Indonesia: Questioning the Transfer of Properties through Wasiat Wājibah to Non-Muslim Heirs. *Samarah*, Vol.6,(No.1),pp.176-197. <http://dx.doi.org/10.22373/sjhk.v6i1.12628>

## THESIS

Fauzi, Mohammad Y. (2020). *Wasiat Wajibah Bagi Non Muslim Dalam Perspektif Hukum Islam Dan Hukum Positif Serta Kontribusinya Terhadap Hukum Keluarga Di Indonesia*. Universitas Islam Negeri Raden Intan Lampung.

Tono, S. (2013). *Wasiat Wajibah Sebagai Alternatif Mengakomodasi Bagian Ahli Waris Non Muslim Di Indonesia*. Univesitas Islam Indonesia.