

***Wājibah* will for non-muslim heirs in Indonesia: a legal political perspective based on justice and welfare**

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This research examines the application of Islamic law, social situations, and the state's orientation in formulating policies regarding '*wasiat wājibah*' or *wājibah* will (mandatory will) for non-muslim heirs. The research was conducted in Palangkaraya and Bali, Indonesia. These locations were chosen because both areas have unique characteristics that combine religious heterogeneity and high tolerance. *Wājibah* will is a mandated will, given when an heir is unable to inherit for certain reasons. This study uses a qualitative descriptive analysis method. The primary data for this research includes interviews and court rulings. The issues discussed in this article are analyzed using a legal-political perspective. The findings indicate that the establishment of the *wājibah* will is not only based on legal-normative reasons but also on social and political factors. The establishment of the *wājibah* will, which guarantees equality before the law in interfaith families, is expected to have a positive impact on social and political order, creating a just, tolerant, and humane society. However, there remain gaps in the legal substance of the *wājibah* will for non-muslim heirs, as it has not been explicitly regulated

in existing legislation. Therefore, there is a need to develop policies in the form of regulations that specifically address *wājibab* wills for non-muslim heirs. The establishment of the *wājibab* will for non-muslims is a form of legal reform in inheritance law in Indonesia. Methodologically, legal reform is conducted through an extensive interpretation approach, which is an activity that broadens the scope of an interpretation based on the analogy of reason between old and new issues. Additionally, the reform also considers living law as a reference to reconcile the demands of justice in society with legal certainty.

Penelitian ini mengkaji penerapan hukum Islam, situasi sosial, dan orientasi negara dalam menetapkan kebijakan wasiat *wājibab* bagi ahli waris non muslim. Penelitian dilakukan di Palangkaraya dan Bali, Indonesia. Alasan pemilihan lokasi karena kedua wilayah tersebut memiliki karakter unik yang memadukan heterogenitas keberagaman dan toleransi yang tinggi. Wasiat *wājibab* merupakan wasiat yang dimandatorikan karena ahli waris tidak bisa menerima waris karena alasan tertentu. Penelitian ini menggunakan metode analisis deskriptif kualitatif. Data utama dalam penelitian ini adalah wawancara dan dokumen putusan pengadilan. Masalah dalam artikel ini dianalisis menggunakan perspektif politik hukum. Hasil penelitian menunjukkan bahwa penetapan wasiat *wājibab* tidak hanya didasarkan pada alasan yuridis normatif tetapi juga alasan sosial dan politik. Penetapan wasiat *wājibab* yang menjamin persamaan di depan hukum dalam keluarga beda agama diharapkan akan berdampak positif terhadap tatanan sosial dan politik, yaitu terlembagakannya tatanan yang adil, toleran, dan humanis. Akan tetapi, masih terdapat celah pada aspek substansi hukum wasiat *wājibab* bagi ahli waris non-muslim karena belum diatur secara eksplisit dalam regulasi. Karena itu perlu dikembangkan ke arah kebijakan yang dituangkan dalam bentuk peraturan perundang-undangan yang secara khusus mengatur tentang wasiat *wājibab* bagi ahli waris non-muslim. Penetapan wasiat *wājibab* bagi non-muslim merupakan bentuk pembaruan hukum waris di Indonesia. Pembaruan hukum secara metodologis dilakukan dengan menggunakan penafsiran ekstensif, yaitu aktifitas yang memperluas ruang lingkup suatu penafsiran dengan mendasarkan pada kesamaan rasio legis antara persoalan lama dan baru. Di samping itu pembaruan juga mengkonsiderasi living law sebagai acuannya, sehingga dapat mempertemukan antara tuntutan keadilan masyarakat dan kepastian hukum.

Keywords: *wājibab will; non-muslim; legal politics, justice; welfare.*

Introduction

Islamic inheritance law in Indonesia seems not to accommodate inheritance between Muslims and non-muslims (Zubair and Latif, 2022). This is because Islamic inheritance law adheres to the hadith of the Prophet: “*lā yarithu al-muslimu al-kāfira wa lā al-kāfiru al-muslimā*” (Al-Zuhaylī, 2010), which is understood to mean that a Muslim cannot inherit from a non-muslim, and likewise, a non-muslim cannot inherit from a Muslim. This provision becomes a legal issue in Indonesia when viewed from the aspects of legal justice and

humanity, as all citizens have the right to receive justice and equal standing before the law (Thomsen, 2018; Sameh, 2010). According to Wahbah Al-Zuhaylī (2010), in the Islamic inheritance system, religious differences are an obstacle to inheritance (Zubair and Latif, 2022). However, in practice, in Muslim-majority countries, there is jurisprudence allowing heirs of different faiths to receive a portion of the deceased's estate through *wājibah* wills, which are mandated wills for non-muslim heirs (Ilhami, 2015).

The development of inheritance law in Indonesia is very dynamic (Hasan, 2023), and several legal policies have been implemented by policymakers, such as judges deciding inheritance disputes by offering the concept of the *wājibah* will (Suwarti et al., 2022). This legal solution, as expressed by Mahfud M.D. in the foreword of Daniel S. Lev's book (2018, p. vii), states that law is influenced by the policies of the institutions that enact it. In addition, several community traditions also practice inheritance distribution through gifts or the "*wājibah*" will for non-muslim heirs (Candrawan, 2024; Lisnawati, 2024; Mustar, 2024; Sadiani, 2024). These practices consider aspects of humanity, justice, and welfare, ensuring inheritance distribution without conflict (Candrawan, 2024; Lisnawati, 2024; Mustar, 2024; Sadiani, 2024). Such practices occur in the communities of Palangkaraya and Bali, where inheritance distribution in interfaith families is carried out through gifts and wills (Candrawan, 2024; Lisnawati, 2024; Mustar, 2024; Sadiani, 2024). This practice exists because these regions have unique characteristics that blend religious heterogeneity and tolerance. Abubakar (2010) states that the religious heterogeneity in Palangkaraya is very high, yet the atmosphere of life amid differences is harmonious. Meanwhile, Hindu-Muslim relations in Bali have been established since the 17th century (Wisarja and Sudarsana, 2023). Hindu and Muslim communities live in peace and harmony, and their religious, cultural, and ethnic differences do not hinder their harmonious relations in Bali (Wisarja and Sudarsana, 2023).

Law is never in a vacuum (Hofler, 2010), but always interacts with many variables (Lundstedt and Sinander, 2020), and establishes interdependent relationships with various surrounding variables (Saragih et al., 2021). The law exists for the benefit of humans and can only be understood concerning humans. According to Saragih et al. (2021), law is influenced by various variables that will color its form, such as social, political, and cultural

factors. Similarly, Islamic law has, throughout its history, been shaped and influenced by local customs, and reconstructed by state bodies and courts to formulate just laws (Khosyi'ah and Rusyana, 2022).

Legal justice is the highest goal in a social system, something that is not debated by scholars of public law and political philosophy (Jalilvand, 2020). The concept of justice has become an intriguing theme in discussions related to public interest (Jalilvand, 2020). Furthermore, Jalilvand (2020) states that one of the most important aspects of the existence of law is justice in the social realm. Given that the most important aspect of governance is the formulation of the best laws to improve the social life of citizens, lawmakers need to examine the relationship between justice and law (Jalilvand, 2020). In other words, the role of justice is crucial in formulating and enforcing the law.

Studies on the division of inheritance for non-muslims using the mechanism of *wājibab* will have been carried out in three study patterns. *First*, the formulation and implementation of *wājibab* will for non-muslim heirs (Hidayati, 2012; Asnii and Sulong, 2016; Herenawati, Sujana and Kusuma, 2020). The implementation of *wājibab* will is carried out for non-muslim heirs based on court rulings. They have the right to inheritance based on justice and humanity (Herenawati, Sujana and Kusuma, 2020; Reskiani et al., 2022). *Second*, a normative study on the views of scholars regarding the provisions of *wājibab* will for non-muslim heirs (Kamarudin, 2015; Iwannudin, 2016; Hasanudin, 2021), where debates still occur regarding the implementation of *wājibab* will for non-muslim heirs. The reason for these debates arises from the view that religious differences become an obstacle for inheritance between Muslim and non-muslim heirs (Kamarudin, 2015). *Third*, a study of *wājibab* will for non-muslim heirs from the perspective of positive law and legal development in Indonesia, as written by Ilham (2015); Andayani and Hariyati, (2020); Elfia, Surwati and Fajri, (2021). Even Andayani sees that differences in *ijtihad* in determining the views on interfaith relations cause differences in inheritance distribution (Andayani and Hariyati, 2020).

These studies seem to have not specifically addressed *wājibab* will for non-muslim heirs from the perspective of political law. Therefore, this paper offers a new perspective by studying *wājibab* will for non-muslim heirs from the viewpoint of political law. This means that the implementation of inheritance law is influenced by policies, both by judicial

authorities and family practices and traditions of inheritance that have developed in society, considering aspects of humanity, justice, and welfare. However, these policies still seem to raise issues regarding legal certainty, as legal policies are not always used as the only solution for inheritance distribution for non-muslims, thus failing to achieve the principle of legal certainty (Arifia et al., 2023).

This paper specifically examines the substantive matter regarding the purpose that the state aims for in the establishment of *wājibah* will for non-muslim heirs. This study is conducted by looking at the policy of establishing *wājibah* will from a political law perspective, including examining the values that underlie the establishment of “*wājibah* will.” Political law is the official policy on the law; thus, to guarantee legal certainty, new legislation on *wājibah* will for non-muslim heirs needs to be formulated.

Method

This study uses a descriptive qualitative analysis method. The study on the establishment of *wājibah* will for non-muslims is conducted on court decisions and field data obtained from interviews with the parties involved in the establishment of *wājibah* will for non-muslim heirs (Irianto, 2012). The primary data sources for this article are interviews and documentation. Interviews were conducted with key informants, namely Dayak customary leaders in Palangkaraya, community leaders in Bali, interfaith families, will implementers, and judges of Religious Courts, both at the first-instance and appellate levels. In addition, data is also supported by first-instance court rulings and cassation decisions from *Mahkamah Agung* (the Supreme Court).

The court decision documents were selected from religious courts in areas where the Muslim population is a minority, such as Badung, Bali. The documents were also obtained from regions where the population shows complex religious dynamics, such as Palangkaraya (Mustar, 2020). Additionally, documents were chosen from decisions made by the Supreme Court. The data was then analyzed based on the legal considerations and decisions (*petitum*). To validate the court decision documents, information was gathered through interviews with judges. The data was then analyzed in three stages: first, mapping the interview data and court decisions; second, describing the data patterns by mapping the results of the interviews and

court rulings; and lastly, interpreting the court decisions and interview results to explain the logical relationships and validity of the data. The collected data was then analyzed using a political-legal perspective to reveal its meaning. The data was then interpreted, categorized (Denzin and Lincoln, 1994), concluded, and presented comprehensively.

Studies from the perspective of political law emphasize the direction or official guidelines used to create and enforce laws in achieving the state's objectives Mahfud M.D., (2012). As stated by T.M. Radhie in Mahfud M.D. (2012), to trace how the state policy addresses a particular issue, one of the methods is to conduct a juridical study of the policy products, such as court decisions and other regulations. A study from a legal and juridical perspective thus becomes an inseparable whole.

***Wājibah* will in interfaith families in Indonesia**

Wājibah will is a bequest that must be conveyed to heirs or relatives who do not receive inheritance for various reasons (Daud and Azahari, 2022). *Wājibah* will consists of two terms: wasiyah (bequest), derived from the Arabic word *awṣā*, meaning message, and *wājibah*, derived from the Arabic word *wājib*, meaning obligatory (Daud and Azahari, 2022). Classical fiqh does not explain who is entitled to receive a *wājibah* will. This is because the Qur'an and Hadith do not specifically mention it. *Wājibah* will essentially exists due to the rational thinking of scholars in issuing a fatwa (Syafitri, 2015). *Wājibah* will is a manifestation of Islamic law's essence, ensuring goodness, justice, prosperity, and well-being for humanity (Daud and Azahari, 2022). Although inheritance regulations vary in each country, *wājibah* will is typically issued for adopted children or parents (Ahadias, 2019). An heir is entitled to a *wājibah* will if they have not committed murder, severe abuse, or defamation of the deceased (Syafitri, 2015). The amount of *wājibah* will is equal to the current inheritance value (Masriani, 2011; Sujana, 2020).

Wājibah will has existed in Indonesia since the 1990s when the Compilation of Islamic Law (KHI) was established as Islamic jurisprudence in Indonesia (Hosen, 2011; Syafitri, 2015). As a result of Indonesia's legal consensus [*Konsensus Hukum Indonesia*, KHI], the KHI also regulates non-muslim beneficiaries; however, there are still some weaknesses in its implementation. According to Tono's (2013) research, non-muslim heirs are entitled to a

wājibah will based on Surah al-Baqarah verse 180 and four other verses that indirectly refer to bequests. This indicates that it is permissible to write a will for non-muslim relatives. Giving a bequest to non-muslims is an expression of love and compassion (Maulana, 2013).

In contrast, Azkiya (2019) argues that giving *wājibah* will to non-muslims should be avoided because they are not heirs. Apart from the fact that it is not mentioned in the Qur'an and Hadith, this rejection is based on the position of scholars who oppose giving inheritance to non-muslims due to religious obstacles. This aligns with the opinion of Ahmatnihar (2019), based on findings in Makassar, where non-muslims were not given bequests because it was believed it could strengthen their economic power, thus weakening the Muslim community.

However, based on data obtained from respondents in Palangkaraya and Bali, there is evidence of community acceptance and court decisions affirming that non-muslim heirs can inherit their family's estate through *wājibah* will. For them, religious differences are not seen as an obstacle preventing non-muslim heirs from receiving a bequest. As stated by Lisnawati (2024) from an interfaith family, religious differences in families in Palangkaraya do not hinder them from maintaining good relations with their relatives. This is reflected when parents divide their assets among their children (Ideham, 2022). Parents of different religions share their inheritance with all their children voluntarily through gifts (Lisnawati, 2024). Mustar (2024), a judge at the Palangkaraya Religious Court, added that inheritance division in the area is carried out through bequests. Meanwhile, according to Candrawan (2024), a community leader, inheritance in Bali is divided through family deliberations and agreements. From this data, it can be concluded that the division of inheritance in these two regions is carried out voluntarily and in a spirit of family togetherness.

Although in general, in both regions, there is a voluntary mechanism for resolving inheritance division in interfaith families, there are some cases of inheritance disputes in interfaith families caused by conflicting interests among family members (Mustar, 2024). When these disputes are resolved through litigation in court, the judge adjudicates the inheritance dispute of interfaith families by referring to the living law of the local community, which accommodates non-muslim heirs in the distribution of inheritance (Mustar, 2024).

Nadhimin (2024), a judge at the Religious Court, added that the flexibility in distributing inheritance to non-muslims is not only based on the view that inheritance law is non-obligatory (*ghayr taklifi*), but also because inheritance law is categorized as a field of *mu'amalah*, which is transactional in nature. This last concept accommodates the willingness (*an-tarāḍin*) of heirs and is a primary consideration for judges when dividing inheritance in interfaith families (Nadhimin, 2024).

According to Mustar (2024), the practice of inheritance distribution through will in interfaith families in Palangkaraya shows the long-standing existence of living law in society. According to Coffey et al. (2012), living law is a law that applies and develops within the community's life. Living law is also known by several terms such as; legal rules, morals, religion, customs, ethics, honor, courtesy, wisdom, etiquette, fashion, and so on (Urinboyev and Svensson, 2013). Living law is an unwritten law that is practiced repeatedly, leading to legal consequences if not practiced (Irianto, 2022; Wibowo, 2023). Living law is a consideration for judges in making decisions so that the ruling meets the sense of justice in society. A judge's ruling that does not take into account the living law in society can fail to meet social justice with the court's legal decision, leading to social conflict (Armawan, 2024).

It can be said that the establishment of *wājibah* will is a form of transformation in resolving inheritance distribution that cannot be done peacefully within interfaith families. The establishment of *wājibah* will requires the intervention of the court to ensure that inheritance division in interfaith families is carried out fairly. The formulation of *wājibah* will is a meeting point between the hope for social justice and the rule of law upheld by the court. A general description of how the court decides the division of joint inheritance in interfaith families can be seen in several court decisions below.

The Supreme Court decision 721/K/Ag/2015 determined the inheritance share for non-muslim heirs. This ruling was the resolution of an inheritance litigation in the Religious Court, which continued to the Supreme Court, where the child filed a lawsuit against the stepmother. The inheritance claim involved property and buildings located in Ilir Timur II District, Palembang. The inheritance belonged to the plaintiff's deceased father. At the time the lawsuit was filed, the house was occupied by his father's second wife. The issue

arose because the two plaintiffs were of different religions from their father. The plaintiffs were Christian, while their father was Muslim. This religious difference created a problem because, according to Islamic law, non-muslim heirs are not allowed to inherit from Muslim heirs. Finally, the Supreme Court determined that both non-muslim plaintiffs were entitled to inherit from their father based on *wājibah* will (Mahkamah Agung, 2015).

The Palangkaraya Religious Court Decision No. 0055/Pdt.P/2017/PA.Plk also determined the distribution of inheritance to non-muslim heirs. The case involved a petition for the division of family inheritance filed by four petitioners. However, because Petitioners I and IV were Christian, they were not entitled under Islamic law to inherit from their Muslim sibling. In the end, the judge ruled that Petitioners I and IV could receive an inheritance share equivalent to that of a female heir through *wājibah* will.

The establishment of *wājibah* will for non-muslim heirs also appears in the Badung Bali Religious Court Decision No. 4/Pdt.P/2013/PA.Bdg. This case began with a petition from Petitioners I and II to divide inheritance in the form of land measuring 250 m² and 350 m² in the name of their parents, located in Kuta, Bali. In addition to Petitioners I and II, there were also other heirs, namely their siblings who had converted to Hinduism. Since the mother passed away before the father of both Petitioners, the judge determined the status of the heirs from the mother, consisting of the father of the Petitioners and both Petitioners. When the mother passed away, she was a Hindu, while her husband was Muslim.

The Religious Court judge determined the inheritance for interfaith heirs based on Quranic verses and Hadith. The Quranic verse considered was Surah An-Nisa, verse 12, which instructs the execution of a will for relatives who do not receive an inheritance. Meanwhile, the Hadith used as a legal basis states: "A Muslim does not inherit from a non-muslim, and a non-muslim does not inherit from a Muslim." These two proofs show how Islam views non-muslim heirs who cannot inherit, but Islam provides a solution for them to receive a will. This solution in jurisprudence is concretized in the form of *wājibah* will. In making the decision for non-muslim heirs, the judge referred to the family relationship between the deceased and the heirs, namely *nasabīyyah* (blood relation) and *sababīyyah* (marriage relation). *Nasabīyyah* refers to blood relations, such as the relationship between

children and parents or siblings (Ritonga, 2022; Maulana et al., 2024). While *sababiyah* refers to marital relationships, such as husband and wife (Ritonga, 2022). These family relationships are legal facts that cannot be denied. Furthermore, the judge considered that the heirs had a good relationship and there was no hostility among them. The explanation above can be concluded that, on one hand, the judge, in resolving inheritance issues in interfaith families, does not violate the doctrine of the prohibition of inheritance for non-muslims. On the other hand, the judge based the decision on the legal fact of family relationships and good human relations in the interfaith family as the basis for determining the share of inheritance for non-muslim heirs through *wājibah* will.

***Wājibah* will for non-muslim heirs in the perspective of political law**

The court decision on *wājibah* will for non-muslim heirs represents a new breakthrough in family law in Indonesia. This legal ruling serves as a solution to a serious issue in society. The judge's rulings in Palangkaraya and Bali were based on the jurisprudence of the Supreme Court of the Republic of Indonesia. The judge established the division of *wājibah* will based on the analogy of Article 209 of the Compilation of Islamic Law (KHI), which states that religious differences should not benefit relatives who are Muslim. This argument implies that the share of *wājibah* will should be determined proportionally with the share of other Muslim heirs (Palangkaraya Religious Court Decision No. 0055/Pdt.P/2017/PA.Plk).

The judge's decision to divide the inheritance through *wājibah* will represents recognition of the legal equality between Muslims and non-muslims. This equality, according to Sameh (2010), refers to the realm of mu'āmalah, which deals with human relations, such as buying and selling, mutual cooperation, wills, and other transactions (Sameh, 2010). Moreover, according to Herenawati, Sujana, and Kusuma (2020), the presence of judicial decisions that accommodate the status of non-muslims in inheritance matters is considered to eliminate family disputes (Herenawati, Sujana, and Kusuma, 2020). This regulation can help improve the strained relations between Muslims and non-muslims.

The determination that non-muslim heirs may receive *wājibah* will presents three important implications. *First*, the will for non-muslim heirs demonstrates state intervention in the private realm, where the state regulates family matters deemed appropriate. *Second*,

the establishment of *wājibah* will for non-muslim heirs shows the state's commitment to religious tolerance, especially in family relationships. *Third*, although *wājibah* will is within the family domain, the family is a crucial component of society. Therefore, the upholding of tolerance within the family becomes an important element in creating order in public life. The state's decision to ensure public interests is a political decision and a right and responsibility of the state to regulate.

The establishment of *wājibah* will for non-muslim heirs illustrates the relationship between law and politics, based on the view that law is not independent (Vinjamuri and Snyder, 2015), as there are many variables influencing the existence of a law. According to Mahfud M.D. (2012), from a political law perspective, the existence of a legal decision is an official policy used as a basis for implementing law to achieve national goals. Meanwhile, Tanya (2011) states that political law expresses law in carrying out a collective mission, which is imperative, to achieve a common goal. Therefore, in the context of political law, law should not be hijacked by the interests of a particular group, but should instead defend the interests of society as a whole. The adage stating that all people have equal standing before the law reinforces this principle.

For Mahfud M.D. (2012), in the context of political law, it is clear that law is a "tool" to achieve national goals. The goals of Indonesia, as outlined in the fourth paragraph of the 1945 Constitution Preamble, include: protecting all the people of Indonesia and the entire Indonesian homeland, advancing the general welfare, educating the nation's life, and participating in the establishment of world order based on independence, eternal peace, and social justice. Mahfud M.D. (2012) also emphasized that these goals must be achieved by the state, thus becoming the foundation for political law to respect and protect human rights in a non-discriminatory manner.

From a political law perspective, the decision regarding the division of inheritance for non-muslim heirs illustrates the state's policy in using law to achieve common goals. This policy is based on a commitment to maintain the spirit of diversity and respect for differences, both in the public domain and in the private realm of the family (Syarif et al., 2021). In the context of *wājibah* will for non-muslim heirs, the law functions as an effective tool of social engineering to guide society in accordance with the state's desired objectives

(Matnuh, 2018). Thus, the political and legal structure of Indonesia requires that all parties be treated equally before the law. The presence of *wājibab* will has had a significant impact on the evolution of Indonesia's legal system. Its relevance stems from the fact that this legal decision has shaped jurisprudence and has become a guideline for other judges deciding similar cases.

The legislative rationale for allowing non-muslim heirs to receive *wājibab* will is the undeniable family relationship, whether in the form of blood relations, such as between parents and children, or marital relationships, such as between husband and wife. The existence of this family relationship is a legal fact that cannot be denied (Mustar, 2024). Family relationships are the closest in human relations, so, logically, their integrity must be preserved. In addition to legal reasons, social and political factors also contribute to shaping the judge's decision in determining non-muslim heirs' eligibility for *wājibab* will. In considering the case at hand, and when making a decision, the judge must always explore the values of justice in society and consider the implications of the decision in public life (Mustar, 2024).

The state has the responsibility to ensure the orderly, safe (Yunita and Dewi, 2021; Karimullah, 2023), prosperous, and harmonious life of society (Manan, 2015). This responsibility is manifested through the existence of law as an instrument for regulating social life (Hidayat and Arifin, 2029). One of the regulations established by law is the determination of *wājibab* will for non-muslim heirs. The regulation of interfaith family matters in the private domain demonstrates the state's commitment to maintaining social harmony through legal instruments. The state's involvement in individual autonomy is driven by broader public interests (Pratama, 2017). The state's engagement in the private domain aims to achieve equitable welfare and justice for all Indonesian citizens, regardless of religion or ethnicity. This view aligns with Wahyurudhanto's (2018) statement that the state's presence should guarantee and defend society, particularly in terms of access to justice.

This study evaluates that the issue of *wājibab* will is one solution to family conflicts regarding inheritance division (Suwarti et al., 2022). In resolving such conflicts, judges do not solely base their decisions on normative legal reasons but also consider sociological

and even political reasons. The social component holds great importance because when adjudicating, judges must take into account the justice values prevailing in society. At the same time, the political dimension must also be considered, as court decisions, as legal representations, will shape society following the goals set by the state. From both perspectives, it is clear that there is a relationship between law and other variables, including politics (Lev, 2018), and the relationship between these variables with the actual legal profile.

The values of justice and public benefit of *wājibah* will for non-muslim heirs

Islamic inheritance law has long been stigmatized negatively. This stigma arises because Islamic inheritance law is considered unjust, not favorable to women, and discriminatory toward non-muslims (Bachri et al., 2024). According to Islamic law, non-muslims are not allowed to be heirs (Al-Zuhaylī, 2010). However, the court's decision to grant *wājibah* will to non-muslims is concrete evidence of Islam's stance in advocating for the legal rights of non-muslims as an implementation of *maqāṣid al-syar'iah* (Husni, 2019). *Wājibah* will for non-muslim heirs also serves as undeniable proof of Islam's concern for human values and justice.

The establishment of *wājibah* will for non-muslim heirs represents three important points. First, granting *wājibah* will to non-muslim heirs is part of the process of upholding Islamic law with a focus on justice and public benefit. Second, there is recognition that court decisions are dynamic legal products, as judges, when enforcing the law, always test the ideals of justice in society. Third, the importance of judges being independent and objective to make fair decisions is crucial. The effectiveness of judges in delivering fair rulings is key to building a just legal system. Thus, these three points underscore the importance of the establishment of *wājibah* will for non-muslim heirs.

The key concept in the principle of equality before the law is justice. Justice is a fundamental issue in life, especially in a heterogeneous society (Thomassen, 2005), as justice ensures that individual and social rights are well fulfilled. In a heterogeneous society with uneven composition, justice becomes an important instrument to guarantee the protection and sense of security for minority groups. Justice is universally acknowledged because it pertains to the most fundamental aspect of human life: a sense of security.

Human beings can live in peace with a sense of security, where there is no fear of their rights being harmed by others. According to Jean-Jacques Rousseau's Social Contract Theory, as explained by Abramchayev (2004), the state derives its authority to regulate public interests from the trust granted by the people. Oscar de la Parra (2010) suggests that the Social Contract Theory highlights the relationship between the state and the people in realizing good governance and public service, while also emphasizing the integrity of the people who have entrusted power. In this contract, the state and the people agree to achieve justice and welfare through the enforcement of the law, respecting freedom of speech, and recognizing equality (Ruslan, 2013). The state is obligated to uphold justice for all citizens impartially to maintain orderly, respectful, and harmonious social relations (Yunita and Dewi, 2021; Manan, 2015).

Justice is the primary goal in the enforcement of law, while also considering the aspects of utility and legal certainty for society (Suhardin, 2009; Lathifah, 2022). To enforce justice, various interrelated instruments are necessary, including law enforcement agencies, public awareness, and regulations. As an instrument to establish order, the law places all citizens in an equal position before it (Thomsen, 2018). This principle expresses the value of justice in ensuring that all members of society are treated equally, regardless of their social, political, or religious background.

The substance of Islamic teachings in the establishment of *wājibab* will for non-muslim heirs is not only built upon the principle of justice but also aims to uphold welfare (public benefit), which promotes the public interest and prevents harm (Iqbal, 2010). The public welfare of human life encompasses all aspects, whether in relation to Allah SWT, oneself, others, or the surrounding environment (Duc, 2023). Islam's advocacy for welfare is reflected in its character as a religion of peace, as noted by Tamer ed., (2020). One of its manifestations is maintaining good relationships with people of other religions (Tamer ed., 2020). The practice of inheritance distribution through *wājibab* will to non-muslim heirs creates several benefits, including benefits for individuals, families, and society.

First, the benefit for each individual or welfare through the preservation of life (*ḥifẓ al-nafs*) and the preservation of wealth (*ḥifẓ al-māl*) (Al-Shāṭibī, 1997). Every family member benefits from the fulfillment of their economic needs through *wājibab* will for non-muslims

and inheritance for Muslims. Psychologically, a person who receives their rightful share will feel at ease and avoid conflicts that disrupt their comfort. Thus, the provision of *wājibah* will for non-muslim heirs can bring positive welfare for each individual (*ḥifẓ al-naḥs*) and also ensures that inheritance is distributed to those entitled to it under the law (*ḥifẓ al-māl*).

Second, the granting of *wājibah* will to non-muslim heirs can maintain the welfare of the heirs and their descendants (*ḥifẓ al-nas*) (Al-Shāṭibī, 1997). In this regard, Sadiani (2024), a Dayak community leader in Palangkaraya, emphasized that providing *wājibah* will can preserve family ties despite religious differences. If inheritance rights are distributed properly among all family members entitled to them (*ḥifẓ al-māl*), then all family members benefit and are protected from poverty. Additionally, the distribution of inheritance to Muslim heirs and *wājibah* will to non-muslim heirs embodies obedience to religious teachings (*ḥifẓ al-dīn*) (Al-Shāṭibī, 1997). Therefore, all family members and their descendants will benefit from their parents' inheritance, while also fulfilling their religious obligations (Mahmudi et al., 2024).

Third, the division of inheritance through *wājibah* will to non-muslim heirs also has implications for creating a more constructive public order. This is because the public order is formed from the order within the family. By regulating relationships within the family justly and humanely, a peaceful, orderly, and just social order will be built. The authority to manage public interests is the state's obligation, which must be carried out fairly and non-discriminatory. The orientation of the state's regulations should refer to the principle of *taṣarruf al-imām 'ala al-rā'iyah manūṭ bi al-maṣlahah* (Hakim et al., 2023), meaning that the leader's policies towards the people must be oriented towards the public benefit. Thus, inheritance rights that are properly distributed, prioritizing human values and social justice, will lead to the formation of a just social order and public benefit (Al-Zuhaylī, 2000), with the state's involvement in realizing this.

Islam sets a good precedent, as the Prophet Muhammad SAW was concerned with human rights and justice in society and the state. The Prophet Muhammad SAW upheld the rights and protection of non-muslims living in Muslim-majority states (El-Seoudi et al., 2012). Non-Muslims in Indonesia are considered *ahl al-dhimmah*, a community with a social contract with Muslims to protect the state in which they live and build it together.

Furthermore, democracy provides equal opportunities for all citizens from various backgrounds, such as ethnicity, nationality, religion, and organizations, to practice their religion according to their beliefs (Tabrani and Walidin, 2017). This guarantee for non-muslims is based on the Quran and Hadith (Basri, 2016). Despite the differences between the two religions, Islam does not teach or condone the persecution of non-muslims based on their religion (Munshar, 2012). Moreover, historical evidence shows that Islam allows Muslims to dine with the People of the Book and marry *muallaf* (converted women) (Asy'ari et al., 2022). Muslim-majority countries also grant non-muslims equal employment rights while imposing taxes on them (Basri, 2016). Even today, many Islamic practices are associated with non-muslims, such as donating zakat to non-muslims, viewed as part of the state's goal to alleviate poverty (Basri and Khalil, 2014).

On the other hand, the rights of minorities often become a sensitive issue in the history of nation-building, particularly concerning religious life (Farkhani et al., 2023). This issue of intolerance cannot be separated from the categorization of religious groups according to Islam, namely Muslims, the People of the Book (Christians and Jews), and those who do not follow any religion (Al Sadi and Basit, 2013). As a result of this categorization, non-muslims are often not allowed to engage in public activities in Muslim-majority countries, hold certain positions, spread their religion, build places of worship more prominent than mosques, or marry a Muslim (Al Sadi and Basit, 2013). According to Finke and Harris (2012), intolerance against non-muslims is exacerbated by state support for their own religion, including legal advantages and the ability to regulate religious and political life. Furthermore, the subjective norms and control variables regarding the behavior of Muslims towards non-muslims could overshadow the fair and objective regulations intended for non-muslims (Pratiwi, 2018).

The establishment of court rulings on *wājibah* will for non-muslim heirs is seen as a way to narrow the relational gap between Muslims and non-muslims. Reconciliation policies begin at the family level and are expected to resonate into the public sphere. Beyond the religious differences between Muslims and non-muslims, horizontal humanitarian relationships must be built in the framework of humanity. The establishment of *wājibah* will for non-muslim heirs shows the state's initiative to uphold democratic life and adhere

to the principle of diversity. In the Indonesian context, this phenomenon is relevant to policies aimed at strengthening indicators of religious moderation, including acceptance of national principles, tolerance, cooperation, anti-violence, and respect for local traditions and cultures (Subchi et al., 2022).

Legal issues of *wājibah* will for non-muslim heirs

Positive law in Indonesia does not regulate the legal basis for granting *wājibah* will (obligatory will) to non-muslim heirs (Abdillah, 2020). The establishment of this *wājibah* will is based on the jurisprudence of the Supreme Court, which has since been followed by lower courts. Upon closer examination, the jurisprudence regarding *wājibah* will for non-muslim heirs is based on an analogy interpretation of Article 209 of the Compilation of Islamic Law [*Kompilasi Hukum Islam, KHI*]. According to this article, adopted parents who do not receive a will, are entitled to *wājibah* will up to 1/3 of the inheritance from their adopted child. Conversely, an adopted child who does not receive a will, they are entitled to *wājibah* will up to 1/3 of the inheritance from their adoptive parents.

The judge's analogy in the jurisprudence is carried out by expanding the scope of the *wājibah* will regulations, which were originally intended only for adopted children, and then applied to non-muslim heirs due to the similarity in legal reasons. This method of broadening the object of interpretation is known as extensive interpretation (Mertokusumo, 2020), which is the activity of extending the scope of an interpretation. Extensive interpretation is based on the similarity of ratio legis (the reasoning behind the law) between the old and new issues. The establishment of *wājibah* will for adopted children and non-muslim heirs has an identical ratio legis, as both are not legal heirs. Another legal reason is that both parties share a good relationship, emotional closeness, and the absence of animosity between them and the testator.

Jurisprudence has an urgent role in law enforcement because legislative regulations do not always fully address legal provisions for every event. Therefore, jurisprudence will fill these gaps (Wardhani et al., 2022). Jurisprudence is also a source of law that can be used in legal settlements. Jurisprudence applies when the panel of judges believes that the previous ruling is still relevant to the current legal issue. In a common law system,

court decisions become the primary source of law, similar to how laws are in the civil law system (Wardhani et al., 2022). Jurisprudence or precedents are previous court decisions that can serve as a basis for resolving similar cases (Wardhani et al., 2022). According to Jimly Asshiddiqie (2014), jurisprudence is one of the recognized sources of law in the Indonesian constitutional system.

However, there is still a gap regarding the existence of jurisprudence. As is known, there is the principle of judicial freedom, where judges are free to decide cases (Maula et al., 2021). Judges are not bound by anything and should not be pressured by anyone. The principle of judicial freedom is intended so that judges can uphold the law as fairly as possible without any intervention (Maula et al., 2021). Jurisprudence will be followed if the judge believes that the jurisprudence contains justice and legal benefits. Additionally, the case to be decided by the judge must have the same ratio legis as the case in the jurisprudence. According to Lewis (2023), judges need to ensure they have the correct legal reasoning to follow relevant jurisprudence. If a judge believes that a previous ruling is no longer relevant, the judge may depart from that ruling. If this happens, it will result in a legal vacuum.

According to Friedman and Hayden (2017), the effectiveness of law enforcement is determined by three important elements that form a legal unity, namely legal substance, legal structure, and legal culture. Legal substance refers to the legal norms contained in legislation; legal structure refers to the institutions that create laws and law enforcement officials; and legal culture refers to the legal behavior of society. In the context of *wājibab* will for non-muslim heirs, judges as part of the legal structure have performed their function appropriately by issuing progressive decisions (Ramadhan and Muslimin, 2022; Sufriadi, 2024; Neta, Budiyo, and Firmansyah, 2021). In the aspect of legal culture, as demonstrated in practices in Palangkaraya and Bali in this article, it also shows a spirit of sharing in the distribution of inheritance. Therefore, to guarantee legal certainty, definitive regulations regarding *wājibab* will for non-muslim heirs need to be established. If these three aspects are met, it will guarantee the effectiveness of law enforcement (Friedman and Hayden, 2017).

Conclusion

This research identifies that the inheritance distribution for non-muslims through *wājibah* will is highly dependent on the policies of the authorities, particularly the judicial sector. In addition, the practices and traditions of the society in the inheritance distribution for non-muslims using a will or *wājibah* will align with the state policy orientation to reconcile inheritance distribution in families of different religions. However, the key value that has enabled the implementation of *wājibah* will for non-muslim heirs is the value system built by policymakers, both in the judicial sector and cultural leaders in society. These values include public benefit, justice, and humanity. They view these values as the foundation for the implementation of inheritance distribution for non-muslim heirs through *wājibah* will.

Although *wājibah* will can be accommodated as a solution to the inheritance distribution issue in interfaith families, there still seem to be significant issues in the implementation of this policy. One such issue is related to the legal substance, which has not yet included *wājibah* will as a method of inheritance distribution for non-muslim heirs. This issue with legal substance is crucial to address by recommending the inclusion of *wājibah* will for non-muslim heirs in formal regulations. This not only aims to strengthen the principle of legality but also to avoid legal disparities due to the principle of judicial freedom.

The phenomenon of establishing *wājibah* will for non-muslim heirs demonstrates that Islamic law is dynamic. The renewal of Islamic law is urgent to respond to societal developments. Such renewal must still be grounded in the public benefit, which is the purpose of establishing Islamic law, by strengthening the values of humanity, justice, and tolerance. In the case of *wājibah* will for non-muslims, the renewal is carried out by the judiciary through court decisions. Methodologically, this renewal uses extensive interpretation of existing provisions. In addition, the renewal also considers living law as a reference, thus reconciling the demands for justice in society with legal certainty.

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