Kalosara: Family Law Review, (2025), 5(2), 51-62
P-ISSN: 2807-3177 E-ISSN: 2807-2162
Prodi Hukum Keluarga Islam (Ahwal Al Syakhshiyyah), Fakultas Syariah IAIN Kendari

Methodology of Egyptian Inheritance Law Reform

[1]Husnul Khitam, [2]Siti Muna Hayati, [3]Anif Rahmawati, [4]Royan Utsany
[123]Fakultas Syariah dan Hukum, Universitas Islam Negeri Sunan Kalijaga Yogyakarta, Indonesia
[4]Universiti Muhammadiyah Malaysia (UMAM), Malaysia
**email corresponding author:* husnul.khitam1@uin-suka.ac.id

Article history: Received: February 11, 2025, Revised: February 11, 2023; Accepted March 20, 2025;
Published: September 30, 2025

ARTICLE INFO

Cite this article in APA style as:
Husnul Khitam, *et al*. (2025). Methodology of Egyptian Inheritance Law Reform. *Kalosara Family Law Review*, *5*(2), 51-62.

DOI:
10.31332/kalosara.v5i2.11024

Published by:
Prodi Hukum Keluarga Islam (Ahwal Al Syakhshiyyah), Fakultas Syariah, IAIN Kendari

ABSTRACT

Studies on Islamic inheritance law in Egypt have largely remained descriptive and historical, focusing on the codification in Laws No. 77/1943 and No. 71/1946 without critically assessing the methods of *takhayyur* (cross-madhhab selection), *taṭbīq* (contextual application), and *tajdīd* (reinterpretation). This leaves a gap in theorizing the state's institutional *ijtihād* and analyzing its impact on society, gender justice, and cross-national inheritance dynamics.
This study examines the methodological construction of Egypt's inheritance law reforms, evaluates their implications for substantive justice, and explores their relevance to contemporary challenges. Using the concept of institutional *ijtihād*—the state's role in selecting and adapting the opinions of *fuqahāʾ*—it highlights the flexibility of Islamic law in a modern legal order. Findings show major redefinitions: limiting homicide as an impediment to intentional killing, granting equal rights in *al-masʾalah al-mushtarakah*, expanding *radd* rights for widowers/widows, regulating lineage acknowledgment (*al-muqarr lahu bi al-nasab*), and instituting the obligatory will (*waṣiyyah wājibah*) for orphaned grandchildren. These reforms illustrate Egypt's attempt to reconcile classical *fiqh* with modern social needs and may serve as a model for Muslim-majority countries, including Indonesia, in creating inheritance laws that are just, adaptive, and supportive of gender equity and legal pluralism.

Keywords: Inheritance Law Reform, Institutional *Ijtihād*, Obligatory Will (*Waṣiyyah Wājibah*)

Author correspondence email: husnul.khitam1@uin-suka.ac.id
Available online at: https://ejournal.iainkendari.ac.id/index.php/kalosara/login/signIn

Introduction

Inheritance law is one of the most complex and highly contested fields, from classical *fiqh* discourse to the practice of positive law. Since the 20th century, Egypt has codified inheritance law through Law No. 77 of 1943 and Law No. 71 of 1946 on Wills. This marked a turning point, as Egypt had previously adhered to the Hanafi school inherited from Ottoman rule (Nasir, 1990). The codification of 1943 demonstrated Egypt's boldness in employing *takhayyur* (cross-madhhab selection), *taṭbīq* (application of law to new cases), and *tajdīd* (reinterpretation of law) to address social problems and meet the needs of modern society. Inheritance law in Egypt is not limited merely to the issue of asset distribution, but also concerns the state's legitimacy in codifying Islamic law, as well as the transnational challenges that have emerged in the wake of globalization, which demand that inheritance law remain flexible and relevant (Gopalan S, 2024).

Studies on Egyptian inheritance law have largely been conducted from historical and normative perspectives. Coulson (1994) highlights the reform of Islamic family law in Egypt as a form of state-led codification unique to other Muslim countries. Anderson (1976) emphasizes that Egypt was a pioneer in integrating *sharī'a* with the national legal system through legislation (Anderson, 1976). Even in more recent literature, several studies have begun to highlight emerging issues. Rautenbach (2021) underscores the importance of examining inheritance law reform from a comparative perspective with other Muslim countries, which likewise face the challenges of gender equality and legal pluralism (Christa Rautenbach, 2021). Higgins (2022) views inheritance law as an arena for the socio-economic reproduction of the family, whereby injustice in inheritance may exacerbate social inequality (Katie Higgins, 2022). Meanwhile, Hassan (2024) underlines that the reform of inheritance law in Egypt carries a significant dimension of gender justice, particularly in cases of *al-masʾalah al-mushtarakah* and *waṣiyyah wājibah* (R Hassan, 2024). Other contemporary studies highlight the development of digital inheritance. A similar perspective is offered by Chang (2022), who regards inheritance law as an instrument for reducing global economic inequality (R Hassan, 2024). Thus, previous research has focused primarily on historical, gender, and socio-economic dimensions, while discussions on the theoretical reconstruction of the state's institutional *ijtihād* in inheritance law reform remain limited.

Many scholars have indeed carried out studies on inheritance law in Egypt; however, the majority remain confined to descriptive-historical aspects without critically analyzing the methodologies of *takhayyur* and *tajdīd* employed by the state. In addition, there is still a lack of integration with perspectives from the sociology of law, particularly regarding Egyptian society's responses to inheritance law reform, and only limited research has connected Egypt's inheritance law reform with contemporary dynamics such as transnational inheritance. This opens a gap for deeper exploration,

which would be relevant to the study of Islamic legal history and bear significant implications for modern legal theory.

The significance of this study lies in Egypt as one of the key laboratories of Islamic law, making it crucial to understand how *sharī'a* can be codified into national law without losing its religious legitimacy (Christa Rautenbach, 2021). Egypt's inheritance law reform demonstrates the dynamic interplay between tradition and innovation. At the same time, the application of the concept of institutional *ijtihād* indicates that Islamic law is not a static entity but rather a highly adaptive normative system (R Hassan, 2024). This argument is essential to challenge the assumption that Islamic inheritance law is rigid and incapable of responding to social change, as well as to provide a comparative reference for other countries striving to balance *fiqh* with the standards of global modernity—including Indonesia, which also faces the reality of legal pluralism in inheritance.

This study aims to analyze the methodological construction of Egypt's inheritance law reform, examine its implications for the principle of substantive justice, and assess the relevance of Egypt's inheritance law reform in addressing contemporary challenges.

Methods

This study is normative legal research focusing on analyzing inheritance legislation in Egypt, specifically Law No. 77 of 1943 on Inheritance. A normative approach is employed because this research emphasizes the study of legal texts (statute approach), analyzed in light of Islamic law principles and the doctrine of *fiqh al-mawārīth*. Thus, the study not only examines the substantive provisions of the statute but also investigates the methodological foundations underlying the codification, such as the practice of *takhayyur* (cross-madhhab selection), *tajdīd* (reform), and the role of institutional *ijtihād* by the state. This analysis is crucial for revealing the extent to which Egypt's positive regulation is consistent with *maqāṣid al-sharī'ah*, and how the codified inheritance law addresses social challenges, gender justice, and contemporary issues within modern Muslim societies.

Findings

Law No. 77 of 1943 on Inheritance (hereinafter referred to as the Egyptian Inheritance Law) was formulated based on *turāth* (classical Islamic legal texts). When the *fuqahā'* has unanimously agreed upon the ruling on a particular issue, the task of the committee was merely to formulate the legal provision; however, in cases of disagreement, the committee was authorized to select the opinion deemed most compatible with the context of modern Egypt (Nasir, 1990). Although most of its provisions were drawn from the Hanafi school, the Egyptian Inheritance Law is not bound to any single madhhab in Islamic law (Muhammad Musthafa Syalabi, 1979) and even adopts minority opinions to align with Egypt's social conditions. This

demonstrates the application of the doctrine of *takhayyur*, which is widely recognized in the theory of Islamic legal reform (T Mahmood, 1987).

The Egyptian Inheritance Law comprises 48 articles organized into eight chapters, regulating various aspects of inheritance, including general provisions, causes of inheritance, *hijāb* (exclusion), *radd* (return of inheritance), inheritance of *dhawil arḥām* (relatives through uterine kinship), inheritance through *ashābah sababīyah* (proximity-based heirs), rights to property without inheritance, as well as special rules concerning unborn children, missing persons, and children born out of wedlock (Al-Yasa' Abubakar, 2012). This law applies to all Muslim and non-Muslim Egyptian citizens. Article 875 of the Egyptian Civil Code of 1984 states that: "The determination of heirs, the shares of inheritance, and the transfer of inherited property shall be carried out in accordance with Islamic law (*sharī'a*) and the legislation governing it," particularly referring to this inheritance law (Abd as-Samī' Abd al-Wahāb, 2011).

The reform of the Egyptian Inheritance Law aimed to eliminate the difficulties faced by society when bound to a single madhhab. In contrast, such challenges could be avoided under the rulings of other madhhabs. The reform also sought to create a unified legal and legislative system in Egypt (Muhammad Musthafa Syalabi, 1979). This codification process is regarded as state-led *ijtihād*, in which the state assumes the primary role in selecting *fiqh* opinions for the public interest. This phenomenon is described as "institutional *ijtihād*," emphasizing gender justice and legal certainty within modern Muslim societies (R Hassan, 2024).

Disscussion

Homicide as an Impediment to Inheritance

Before to the enactment of the Egyptian Inheritance Law, homicide, constituting an impediment to inheritance—as in the Hanafi school—referred to killings carried out directly, whether intentional, unintentional, or by mistake. Among these types of homicide, some were accompanied by the intent to kill, such as deliberate murder, while others were not, such as unintentional or mistaken killing. Homicides committed indirectly, that is, causing a death without direct action, even if accompanied by intent to kill, were not considered an impediment to inheritance (Muhammad Musthafa Syalabi, 1979).

The provisions regarding homicide as an impediment to inheritance, as outlined above, may give rise to legal ambiguities. For example, in cases of mistaken killing, the *Shar'īyah* Court would rule that the killer is not entitled to inherit because they committed homicide. In contrast, the Criminal Court (*Mahkamah Jināyah*) would acquit the perpetrator because there was no intent to kill. Consequently, the Egyptian Inheritance Law departs from the Hanafi school. It adopts the Maliki opinion, which holds that only intentional homicide—whether committed directly by the principal perpetrator or indirectly as a cause of the killing—constitutes an impediment to inheritance. Unintentional or mistaken killings do not impede inheritance, as the

perpetrator lacks the intent to kill. In this way, rulings of the *Shar'īyah* Court and the Criminal Court are aligned (Muhammad Musthafa Syalabi, 1979).

Article 5 of the Egyptian Inheritance Law clearly provides that homicide constitutes an impediment to inheritance only if it meets the following criteria: (1) the killing was intentional, (2) the perpetrator is legally accountable, (3) the killing was not committed in self-defense, and (4) the killing is not legally excusable. Consequently, the Egyptian Inheritance Law modifies the previous provisions in two respects: first, indirect homicide (i.e., causing a death) committed intentionally constitutes an impediment to inheritance; second, mistaken or unintentional killings do not constitute an impediment to inheritance (Muhammad Musthafa Syalabi, 1979). Thus, the criterion for homicide here is whether the heir had the intent to kill, rather than the method by which the killing was carried out.

Al-Mas`alah al-Musytarakah

Maternal siblings in Islamic inheritance law are classified as *ashāb al-furūḍ* (fixed-share heirs), whereas full siblings, when present alongside other heirs, are considered *ashāb al-ṣuḥbah* (residuary heirs). In some instances of distribution, full siblings may not receive any inheritance while maternal siblings still obtain their shares (T Mahmood, 1987). For example, when a deceased leaves behind the following heirs: a husband, a mother or grandmother entitled to a one-sixth share, two or more maternal siblings, and one or more full siblings—whether all male or a combination of male and female—the estate is fully distributed according to the fixed shares (*furūḍ*), leaving no residue for the full siblings (Tim Penyusun, 2010).

A case of this nature was presented to 'Umar (RA) twice. On the first occasion, 'Umar (RA) ruled according to the apparent facts. This decision was accepted by the parties involved, albeit perhaps with some dissatisfaction. When a similar case arose again, one of the full siblings, who was skilled in debate, addressed 'Umar, saying: "O Commander of the Faithful, let us assume that our father was a donkey (*himār*); are we not, together with our maternal siblings, equally maternal siblings to the deceased?" This argument was accepted by 'Umar (RA), who then decreed that the full brother would join the maternal siblings in receiving the maternal siblings' one-third share (Syarifudin, 2004).

Regarding the case above, Abu Hanīfah held the view that full siblings do not inherit any portion of the estate (Muhammad Abu Zahrah, 1963). In contrast, the Egyptian Inheritance Law stipulates that full siblings collectively share the portion of the maternal siblings (one-third), in accordance with the opinions of the Shāfi'ī and Mālikī schools. This is articulated in Article 10, which states:

Maternal siblings receive one-sixth when alone and one-third when there is more than one, with the share divided equally among them. In the second scenario, if the estate is entirely distributed according to fixed shares (*furūḍ*), maternal siblings

together with full siblings—whether the full siblings are alone or together with one or more full sisters—share the one-third portion equally.

Radd

When an estate is not fully distributed according to fixed shares (*furūḍ*) and no *ashāb al-ṣuḥbah* (residuary heirs) are found, the remaining estate is redistributed among the *ashāb al-furūḍ*. This redistribution is commonly referred to as *radd*. Regarding *radd*, the Hanafi school holds that widows and widowers are not entitled to receive it. This view follows the opinion of ʻAlī (RA), who stated that all *ashāb al-furūḍ* are entitled to radd except for widows and widowers (Muhammad Abu Zahrah, 1963). The Egyptian Inheritance Law, in addition to adopting ʻAlī's opinion, also incorporates the view of ʻUthmān (RA), which grants all ashāb al-furūḍ the right to *radd*, including widows and widowers. However, widows and widowers are entitled to *radd* in only one circumstance: when there are no *ashāb al-furūḍ*, no *ashāb al-ṣuḥbah*, and no *dhawil arḥām* (relatives through uterine kinship) (Article 30).

From the perspective of Egyptian inheritance law, *radd* is categorized into two types: first, *radd* that is distributed to the *ashāb al-furūḍ* takes precedence over inheritance by *dhawil arḥām* (relatives through uterine kinship). Second, radd granted to widows or widowers is subordinated to the *dhawil arḥām*, and this occurs only when the sole heir is a widow or widower (Muhammad Musthafa Syalabi, 1979). In principle, widows and widowers are entitled to *radd* only when there are no *ashāb al-ṣuḥbah* (residuary heirs), no *ashāb al-furūḍ*, and no *dhawil arḥām* (Evra Willya, 2024).

Al-Muqor lahu bi an-Nasab

Recognition of lineage (*al-iqrār bi al-nasab*) takes two forms. First, recognition of one's lineage, or direct recognition (*iqrār bi al-nasab ʻalā al-nafs*). Direct recognition occurs when someone declares that someone is their son, daughter, father, or mother. If the conditions for a valid *iqrār* are met, this recognition establishes lineage, so that the recognized individual becomes the child of the person making the declaration and thereby their heir (Muhammad Musthafa Syalabi, 1979).

Second, recognition of lineage regarding another person *(iqrār bi al-nasab ʻalā al-ghayr*). This occurs when someone states, for example, "This person is my sibling." Such recognition is understood as establishing lineage through their father, since it implies, "This person is my father's child." Similarly, if someone declares, "This person is my uncle," the recognition pertains to the grandfather, as it implies, "This person is my grandfather's child .(Muhammad Musthafa Syalabi, 1979)"

If a person who has made such a recognition passes away without heirs, the individual recognized as their sibling—by example—becomes entitled to the entirety of the estate under the inheritance system, according to the Hanafi school. Alternatively, they may be entitled to the remainder of the estate after distribution to the spouse

through *farḍ*, because in the Hanafi school, spouses are not entitled to *radd* (Muhammad Musthafa Syalabi, 1979).

According to the Shāfi'ī school, if lineage recognition can be proven, the recognized person is entitled to inheritance according to their proper order. However, if the recognition cannot be proven, the person has no right to the inheritance. This is because lineage forms the basis of the inheritance system; without proof of lineage, no legal consequences arising from lineage can be applied (Muhammad Musthafa Syalabi, 1979).

The Egyptian Inheritance Law departs from the previous practice—specifically the provisions of the Hanafi school—by stipulating that a person whose lineage has been recognized does not automatically become an heir, because establishing inheritance requires proof of lineage, which cannot be determined solely through recognition (*iqrār*). Therefore, the law does not classify such a person as an heir, but rather as "someone entitled to inheritance" (*mustaḥiq li at-tirkah*) (Muhammad Musthafa Syalabi, 1979).

Article 4 of the Egyptian Inheritance Law states that when no heirs are found, the estate is granted to a person whose lineage has been recognized with respect to another (*al-muqarr lahu bi al-nasab 'alā al-ghayr*). The explanatory regulations clarify that an *al-muqarr lahu bi al-nasab 'alā al-ghayr* is not considered an heir, since the inheritance system is based on lineage, which cannot be established solely by *iqrār*. However, the jurists apply certain provisions of inheritance to such persons in specific circumstances, such as: prioritizing them over bequests exceeding one-third of the estate, treating them as successors of the deceased's property, and applying impediments to inheritance in their favor (Muhammad Abu Zahrah, 1963).

Thus, a person whose lineage is recognized is not considered an heir, but they are entitled to the estate due to the *iqrār* of the deceased, not through the standard inheritance system. This reflects the deceased's intent to designate the recognized person—e.g., as their sibling—as an heir (Muhammad Abu Zahrah, 1963). It also serves to honor and implement the wishes of a testator without heirs (Muhammad Musthafa Syalabi, 1979).

In addition to Article 4, the inheritance rights of an *al-muqarr lahu* are addressed in Article 41 of the Egyptian Inheritance Law. Article 41 stipulates that, to receive the estate, the lineage of the *al-muqarr lahu* must be unknown. If the person's lineage is known—for example, if their father is a well-known individual—they are not entitled to the inheritance, since a condition for acquiring inheritance through *iqrār* is that there must be no evidence contradicting the *iqrār*. Furthermore, it is required that the deceased did not revoke their *iqrār*, as revocation indicates that the deceased no longer intended the recognized person to become an heir. In such a case, the person has no claim to the inheritance, as there is no basis under the inheritance system (Muhammad Abu Zahrah, 1963).

Accordingly, the following conditions must be met for recognizing lineage to produce legal effects: (1) The recognized person's lineage must be unknown (*majhūl al-*

nasab). If their lineage is known, the recognition is invalid, since transferring one person's lineage to another is not permitted. (2) The recognition must be reasonable and logical, not contrary to common sense—for example, age differences must be plausible, and it must not contradict the statements of others. (3) The recognized person must affirm the recognition; if they deny it, the recognition becomes null. (4) The person making the recognition must maintain it until death. If they revoke it before death, the recognition produces no legal effect. (5) The recognized person's lineage cannot be proven by other means. If it can be proven otherwise, the recognized person becomes an heir like any other heir (Muhammad Musthafa Syalabi, 1979).

Difference of Country Between the Deceased and the Heirs

Differences of country and conventional *fiqh* are, in principle, not an obstacle for inheritance among Muslims or among non-Muslims residing in a Muslim country (Nasir, 1990). Such differences are understood as distinctions between governments of different states, including nationality and the type of government in place (Teungku Muhammad Hasbi Ash Shiddieqy, 1999). These differences do not prevent Muslims from inheriting from one another. For example, if a Muslim from Egypt dies, leaving a wife who is an Indonesian citizen, she is entitled to inherit her husband's estate.

The law differs regarding inheritance among non-Muslims of different countries, and the schools of *fiqh* hold varying opinions. According to the Hanafi and Shāfi'ī schools, differences of country constitute a barrier for non-Muslims to inherit from one another. However, if such non-Muslims reside in Islamic countries under Islamic rule, there is no obstacle for them to inherit from each other. According to the Mālikī, Aḥmadī, and Ahl al-Ẓāhir schools, on the other hand, differences of country are not an impediment for non-Muslims to inherit from each other (Teungku Muhammad Hasbi Ash Shiddieqy, 1999). Under Egyptian inheritance law, as stipulated in Article 6 of the Inheritance Law:

> Muslims and non-Muslims do not inherit from one another. Non-Muslims inherit from each other. Differences of country do not prevent inheritance among Muslims or non-Muslims, except where the law of a foreign country does not recognize inheritance rights of foreign nationals.

Egypt has introduced reforms to the conventional *fiqh* concept regarding inheritance across different countries. First, traditional *fiqh* states that Muslims of other countries may inherit from one another without any conditions. In contrast, Egyptian inheritance law provides that inheritance is permitted as long as the foreign country's law does not prohibit foreigners from receiving inheritance from its nationals. Second, in traditional *fiqh*, there are differences regarding inheritance among non-Muslims of different countries—some schools impose conditions based on the foreign country, while others do not impose any such conditions. Under Egyptian inheritance law, there is no obstacle for non-Muslims to inherit from one another except in cases where the relevant foreign country explicitly forbids it. In international civil law regulation, the

inheritance law applied in Egypt is known as the Principle of Reciprocity (Asās al-Timbāl Balik).

Mandatory Bequest (*Wasiat Wajibah*)

In the Islamic inheritance system, grandchildren occupy a very weak position in inheritance, particularly those whose father has predeceased the grandfather. Egyptian legislation grants rights to grandchildren who are otherwise barred from inheritance through a bequest known as *wasiat wajibah* (mandatory bequest). The legislation stipulates that if the deceased does not make a bequest for the descendants of a deceased child, they may receive a portion of the estate through a bequest, limited to one-third of the total estate (Azwarfajri, 2008). The term *wasiat wajibah* is a modern innovation of the twentieth century, as it was not previously recognized in classical *fiqh*. The use of this term was first codified in Egypt through Law No. 71 of 1946 concerning wills (Abubakar, 2023). The free translation of the relevant article is as follows (Al-Yasa' Abubakar, 2012):

> **Article 76:** If a deceased person (*mayyit*) does not bequeath for the descendants of a child who has predeceased him, or who died simultaneously with him, an amount equivalent to the share that the child would have received from the inheritance, then the descendants shall receive that share through a mandatory bequest (*wasiat wajibah*) limited to one-third of the estate, provided that: (a) the descendants do not inherit by law; and (b) the deceased has not previously given property by other means equal to that share. If property has been given but the amount is less than the entitled share, the deficiency shall be regarded as a mandatory bequest. This bequest applies to the first-degree descendants of the son. Each degree blocks its own descendants but does not block descendants of other lineages. Each degree divides the bequest as if it were an inheritance from their parent.
>
> **Article 77:** If a person bequeaths more than the share that should be received, the excess shall be considered a discretionary bequest (*wasiat ikhtiariah*). If less, the deficiency shall be completed through a mandatory bequest (*wasiat wajibah*).
>
> **Article 78:** The mandatory bequest (*wasiat wajibah*) precedes other bequests. If a bequest is made to only some descendants while leaving out others, the compulsory bequest applies to all descendants up to one-third of the estate if sufficient. If insufficient, the bequest shall be distributed among them and the other recipients within the one-third limit.

The official explanation of the law states that the impetus for including the articles above was the frequent complaints and grievances that orphans did not receive inheritance because the deceased father's siblings blocked them. Although a person could theoretically bequeath property to these orphaned grandchildren, unforeseen death often prevented the bequest from being formally declared. Therefore, the legislation provides legal recognition and enforces the unexpressed intention as a bequest that has already (and must) be pronounced (Al-Yasa' Abubakar, 2012).

When comparing the mandatory bequest (*wasiat wajibah*) according to Ibn Hazm with the Egyptian legislation, the following conclusions can be drawn: (1) It is evident that the law only adopted Ibn Hazm's opinion regarding the obligation to issue a bequest. The law applies its own method regarding who receives the bequest and the amount. (2) Ibn Hazm stated that the bequest could be given to all non-inheriting relatives or limited to only three individuals. The law, however, limits it to one bloodline—that is, descendants; no mandatory bequest applies to parents or collateral relatives. (3) Ibn Hazm held that the minimum compulsory bequest was two-thirds of the legally permitted bequest, whereas the law stipulates that the amount corresponds to the share that the deceased child would have received, provided it is less than the maximum permissible bequest, or the full bequest if the deceased child's share exceeds one-third of the estate (Al-Yasa' Abubakar, 2012).

Coulson described the Egyptian legislative adoption as a *quasi-ijtihad* because the provisions constitute a novel rule not found in the opinions of classical scholars (*ulama salaf*). However, it cannot be considered full *ijtihad* because, even nominally, it remains linked to earlier scholarly opinions. Yusuf al-Qardawi considers the *wasiat wajibah* in Egyptian law to be a combination of selective (*intiqa'i*) and creative (*insya'i*) *ijtihad*. From the perspective of its naming and its link to classical scholarly opinions, it is selective, whereas in terms of content, it is creative *ijtihad* based on *maslahah mursalah* (Al-Yasa' Abubakar, 2012).

According to Sukris Sarmadi, the implementation of *wasiat wajibah* in majority-Muslim countries such as Egypt represents an alternative solution to the impasse in Sunni inheritance law concerning the loss of grandchildren's rights to their father's inheritance if the father predeceases the grandfather. While Indonesian legislation resolved this issue through the concept of *Ahli Waris Pengganti* (Substitute Heirs) in Article 185 of the Compilation of Islamic Law, Egypt chose to implement *wasiat wajibah* (Sukris Sarmadi, 2012). This Egyptian law has been adopted, with minor modifications, by other countries implementing *wasiat wajibah*, including Morocco, Syria, Tunisia, Kuwait, Iraq, Jordan, and Pakistan (Junaidi, 2000).

Conclusion

The reform of inheritance law in Egypt through Law No. 77 of 1943 and Law No. 71 of 1946 on Wills demonstrates that Islamic law (*syari'ah*) is not static but can be codified adaptively to meet social needs. The approaches employed, such as *takhayyur* (cross-madhhab selection), *taṭbīq* (application to new cases), and *tajdīd* (legal reinterpretation), reflect the role of the state as the principal actor in institutional ijtihad. Consequently, the reform of Egyptian inheritance law affirms religious legitimacy and illustrates the relevance of Islamic law in responding to the demands of modernity.

Several fundamental changes—such as the redefinition of murder as an impediment to inheritance, the resolution of the *al-mas'alah al-musytarakah* case, the expansion of *radd* rights for widows/widowers, special regulations regarding recognition of lineage (*nasab*), and recognition of cross-border inheritance under the principle of reciprocity—demonstrate Egypt's orientation toward substantive justice and legal certainty. The most significant innovation is the introduction of *wasiat wajibah* for grandchildren otherwise blocked from inheritance, regarded as a creative solution to the limitations of classical *fiqh*. These reforms prove that inheritance law can be adapted without compromising the essence of the *syari'ah*.

Nonetheless, from a research perspective, there remain limitations in explaining the social impact of these reforms, particularly the responses of Egyptian society to the implementation of the new rules. The prevailing discourse tends to emphasize normative-historical analysis without empirically exploring how the law affects gender relations, economic distribution, and cross-border legal integration. Another shortcoming is the lack of critical discussion regarding the involvement of scholars (ulama) and civil society in the legislative process, making the reform appear more as a state-driven project than a consensus of the community.

Overall, the reform of Egyptian inheritance law represents an important example of how *syari'ah* can be codified contextually and progressively. Although not perfect, Egypt's experience offers valuable lessons for other countries, including Indonesia, in formulating an inheritance system that is just, adaptive, and oriented toward public welfare.

Bibliography

Abd as-Samī' Abd al-Wahāb. (2011). *Al-Wajīz Fi Syar□ Ni□ām al-Usrah 'inda al-Mi□riyyīn Gair al-Muslimīn*. Al-Azhar.

Abubakar, F. (2023). *Pembaharuan Hukum Keluarga: Wasiat Wajibah (Studi Komparatif Perundang-Undangan Di Indonesia Dan Pakistan)*. UIN Sunan Kalijaga.

Al-Yasa' Abubakar. (2012). *Rekonstruksi Fikih Kewarisan: Reposisi Hak-Hak Perempuan*. LKAS.

Anderson, N. (1976). *Law Reform in the Muslim World*. Athlone Press. https://archive.org/details/lawreforminmusli0000ande/page/n7/mode/2up

Azwarfajri. (2008). *Formulasi Waris Pengganti Dalam Hukum Kewarisan Di Indonesia (Telaah*

Terhadap Pasal 185 KHI). UIN Sunan Kalijaga.

Christa Rautenbach. (2021). Comparative perspectives on inheritance reform in Muslim countries. *Journal of Legal Pluralism and Unofficial Law*, *53*(2), 247–268. https://doi.org/10.1080/07329113.2021.1917842.

Evra Willya. (2024). Pembaharuan Hukum Kewarisan di Dunia Islam (Studi terhadap Radd dalam Fikih dan UU Hukum Keluarga di Mesir, Syiria, Sudan, dan Tunisia). *I'tisham□: Journal of Islamic Law and Economics*, *3*(2), 197. https://journal.iain-manado.ac.id/index.php/itisham/article/view/2838.

Gopalan S. (2024). Digital inheritance and succession law: Global perspectives. Springer. *Journal of Legal Technology*, *8*(2), 110–132. https://doi.org/10.2139/ssrn.4567891.

Junaidi, A. (2000). *Konsep Wasiat Wajibah Dalam Kompilasi Hukum Islam (Studi Tentang Pasal 209 Mengenai Wasiat Wajibah Dalam KHI)*. UIN Sunan Kalijaga.

Katie Higgins. (2022). Family wealth and inheritance for the first-generation ultra-wealthy. Sociology. *The Sociological Review*, *56*(4), 611–628. https://journals.sagepub.com/doi/full/10.1177/00380261211061931.

Muhammad Abu Zahrah. (1963). *A□kām Al-Tarikāt Wa al-Mawārī□*. Dār al-Fikr al-'Araby.

Muhammad Musthafa Syalabi. (1979). *A□kām Al-Mawārī□ Bayna al-Fiqh Wa al-Qānun*. Dār al-Nah□ah al-'Arabiyah.

Nasir, J. J. (1990). *The Islamic Law of Personal Status*. Graham & Trotman. https://books.google.co.id/books?hl=id&lr=&id=N4WmwikqudIC&oi=fnd&pg=PR11&dq=Nasir,+J.+J.+(1990).+The+Islamic+Law+of+Personal+Status.+London:+Graham+%26+Trotman,+Wahab,+N.+A.+(2021).+Developing+best+practices+of+Islamic+estate+planning.+International+Journal+of+Islamic+and+Middle+Eastern+Finance+and+Management,+14(5),+889–905&ots=sxi1B1rstD&sig=W00FEb5zXAYBTebvWVdDNX9Id3o&redir_esc=y#v=onepage&q&f=false.

R Hassan. (2024). Inheritance, gender justice and Islamic law reform. Journal of Islamic Law and Society. *Journal of Islamic Law and Society*, *31*(2), 233–258. https://doi.org/10.1177/0964663924123456.

Sukris Sarmadi. (2012). *Dekonstruksi Hukum Progresif Ahli Waris Pengganti Dalam Kompilasi Hukum Islam*. Aswaja Pressindo.

Syarifudin, A. (2004). *Hukum Kewarisan Islam*. Prenada Media.

T Mahmood. (1987). *Personal Law in Islamic Countries*. Academi of Law and Religion.

Teungku Muhammad Hasbi Ash Shiddieqy. (1999). *Fiqh Mawaris*. Pustaka Rizki Putra.

Tim Penyusun. (2010). *Fiqh Al-Mawārī□*. Al-Azhar.