



## Transfer of Inheritance to Adopted Children: A Comparative Study of Islamic Inheritance Law and Civil Law in Indonesia

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**Abstract:** Despite the growing body of scholarship on Indonesian Islamic family law and civil inheritance, no study has systematically compared the two principal legal regimes governing adopted-child inheritance on the specific question of total estate transfer. This gap matters in practice: Indonesia's pluralistic inheritance architecture comprising the Compilation of Islamic Law (KHI), the Civil Code (BW), and Staatsblad 1917 No. 129 applies different rules to different communities, generating recurring litigation and legal uncertainty for adoptive families. This article employs a normative-juridical comparative method, drawing on *maqāṣid al-sharī'ah* as the theoretical framework for evaluating the Islamic regime and on forced-heir doctrine for the civil-law regime, to examine whether the transfer of an entire estate to an adopted child can be juridically justified under each system. The findings show: first, that under Islamic inheritance law adopted children are not heirs (lacking *nasab*, *musāharah*, or *walā'*), but may receive at most one-third of the estate through *wasiat wajibah* (Art. 209 KHI) or *hibah* (Art. 210 KHI); second, that under the Civil Code equalization with legitimate children applies only to Chinese-descent Indonesians under Staatsblad 1917 No. 129, while all others depend on testamentary or inter vivos instruments subject to legitime portie; and third, that total estate transfer is excluded under both regimes, achievable only through heir consent or the absence of forced heirs. The comparative contribution lies in demonstrating that outcome convergence (reaching the same substantive result) coexists with doctrinal divergence (using different mechanisms), a finding with direct implications for Indonesia's ongoing inheritance law reform debate.

**Keywords:** Inheritance, Adopted Child, Obligatory Will, Legitime Portie, Comparative Law



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### Introduction

Child adoption is a legal event that simultaneously transforms the social, economic, and juridical position of a child within a new family unit. In Indonesia, adoption (*pengangkatan anak* or *tabanni* in *fiqh* terminology) has long served multiple social functions: as a response to childlessness, as protection for orphaned and abandoned children, and as a means of strengthening inter-family ties. Crucially, the normative rationale for adoption has undergone a significant shift since Law Number

23 of 2002 on Child Protection, as amended by Law Number 35 of 2014: the dominant framing has moved from an adult-centered model (adoption as satisfying the desires of prospective parents) to a child-centered one in which the best interests of the child constitute the paramount consideration. This normative shift has yet to be fully absorbed into Indonesian inheritance doctrine. Yet the legal consequences attaching to adoption, in particular the inheritance entitlements of an adopted child, are governed not by a single coherent body of rules but by a pluralistic mosaic comprising the Compilation of Islamic Law (Kompilasi Hukum Islam, KHI), the Indonesian Civil Code (Burgerlijk Wetboek, BW), Staatsblad 1917 No. 129 applicable to citizens of Chinese descent, Law Number 23 of 2002 on Child Protection as amended by Law Number 35 of 2014, and Government Regulation Number 54 of 2007 on the Implementation of Child Adoption. This pluralism is one of the most enduring features of Indonesian family law and reflects a layered colonial, religious, and customary inheritance that the post-independence state has not yet fully harmonized.

The pluralistic architecture produces a recurring practical question: to what extent may adoptive parents transfer their property to an adopted child, and may such a transfer extend to the whole of the estate? The question carries everyday consequences for families navigating succession planning, and doctrinal consequences for courts called upon to adjudicate inheritance disputes. It also sits at the intersection of three normative pulls and it is worth noting at the outset that these pulls operate at two distinct levels. Some are intra-systemic conflicts, arising between rules within a single legal system (for example, between *faraidh* and *maqāṣid* within Islamic law). Others are inter-systemic conflicts, arising between two distinct legal regimes operating in parallel (Islamic law versus civil law). The distinction matters for how convergence is ultimately evaluated: intra-systemic resolution confirms internal coherence, while inter-systemic convergence carries deeper comparative significance. The three substantive pulls are: the protection of the affective bond between adoptive parents and the child they raised; the protection of the absolute share (*legitime portie*) of forced heirs under civil-law doctrine, and the protection of the inheritance rights of blood relations under Islamic *faraidh* as codified in the KHI.

Several recent studies have illuminated parts of this terrain. Rais (2016) mapped the three parallel regimes governing adopted children in Indonesia, Islamic, customary, and civil, and showed that each carries its own inheritance logic. The classical Islamic position holds that adopted children do not inherit from adoptive parents and remain heirs of their biological parents, whereas under the Civil Code they become first-group heirs with shares equal to those of legitimate children (Aisyah, 2020; Supriyadi, 2020; Wulandari, 2018). Most existing studies, however, foreground a single regime and rarely compare the three systematically on the specific question of total estate transfer. A recent comparison of *waṣiyyah wājibah* practice in Malaysia and Indonesia found that, while the quantum of the beneficiary's entitlement is broadly similar, the two jurisdictions diverge in the categories of eligible beneficiary and the mode of distribution (Alma'amun et al., 2022). The present article builds on the Indonesian and the international literature to fill the identified gap.

Empirical and case-based work has begun to fill this gap. Field and case studies record gifting and inheritance practices that exceed the one-third ceiling or diverge

from Article 171 letter (c) of the KHI, as well as the use of inkorting to vindicate the legitime portie. These studies converge on a single insight: divergent practices on the ground generate inheritance disputes, and the absence of a unified national inheritance regime exacerbates them, with persistent uncertainty in the judicial treatment of adopted-child claims and a recurring gap between the one-third ceiling and lived practice (Pratama et al., 2024; Ramadhania et al., 2024; Pahroji et al., 2023; Hannifa et al., 2022; Andri et al., 2024; Djamud et al., 2024).

This article responds to that convergence by pursuing three progressive analytical objectives. First (doctrinal establishment), it establishes the doctrinal position of each regime with respect to the adopted child as an inheritance subject: the Islamic position under the KHI drawing on classical fiqh, and the civil-law position under the BW as supplemented by Staatsblad 1917 No. 129. Second (instrument identification), it identifies the available legal instruments through which adoptive parents may transfer property to adopted children under each regime wasiat wajibah and hibah under Islamic law, and testaments and grants subject to legitime portie under the Civil Code and maps the doctrinal limits of each. Third (convergence evaluation), it evaluates the extent to which the two regimes converge or diverge on the focused question of total estate transfer, distinguishing outcome-convergence from structural convergence. This progressive structure mirrors the article's analytical logic and ensures that the comparative findings rest on a secure doctrinal foundation.

The argument advanced here is that, despite their distinct doctrinal vocabularies, Islamic law and Indonesian civil law converge on a single substantive outcome with respect to total estate transfer: it cannot be justified except under narrowly circumscribed conditions. It is important, however, to distinguish outcome-convergence from structural convergence. The two regimes arrive at the same substantive result exclusion of total transfer through fundamentally different doctrinal mechanisms. Outcome-convergence of this kind is analytically significant because it identifies a shared substantive value (protection of intergenerational heirs) but does not entail that the regimes share a common doctrinal architecture. The failure to observe this distinction risks a superficial comparative claim; the present analysis is attentive to it throughout. Under Islamic law, instruments of will and grant are capped at one-third of the estate, and the rights of blood heirs are protected by faraidh shares that may not be unilaterally displaced. Under Civil Code doctrine, the legitime portie of forced heirs is shielded by Articles 913 and 914 BW, and testamentary or inter vivos transfers that violate the absolute share are subject to inkorting. The convergence is illuminating: it suggests that the distinct architectures of the two regimes are oriented toward a shared substantive value - distributive justice among intergenerational claimants - even where the doctrinal paths to that value diverge.

The remainder of the article proceeds as follows. The next section sets out the normative-juridical method employed. Section three presents the findings, beginning with the position of adopted children under Islamic inheritance law, proceeding to their position under Civil Code-Staatsblad arrangements, and culminating in a comparative analysis of the transfer of the total estate. Section four develops the discussion, drawing classical fiqh, contemporary Indonesian scholarship, civil-law doctrine, and international human-rights commitments into dialogue. The article concludes by

synthesizing the findings, identifying policy implications, and signaling avenues for further research.

## Method

This study employs a normative-juridical method anchored in library research and supplemented by comparative analysis. The normative-juridical method treats written legal norms, statutes, codifications, classical fiqh texts, and judicial decisions as the principal analytical objects, focusing on the relationships among rules, principles, and underlying values. It is well-suited to a research question that concerns the doctrinal coherence of two legal regimes and the conditions under which a specific transfer of property can be justified within each. Operationally, the method was applied as follows. For Research Objective 1 (doctrinal establishment), the statutory approach was used to identify the governing instruments in each regime and to map their textual provisions on adopted-child inheritance. Instruments were included if they currently govern inheritance rights of adopted children in Indonesia; colonial-era instruments whose present validity is contested (notably *Staatsblad* 1917 No. 129) were included, but their continuing validity is expressly flagged. For Research Objective 2 (instrument identification), the conceptual approach was applied to reconstruct the internal logic of each instrument, the conditions of validity, the quantitative ceilings, and the remedies for violation. For Research Objective 3 (convergence evaluation), a comparative approach was applied, using functional equivalence as the guiding criterion: two provisions are functionally equivalent if they serve the same social function (protection of intergenerational heirs), even when their doctrinal forms differ.

Three approaches structure the analysis. First, a statutory approach (*pendekatan perundang-undangan*) examines the principal Indonesian instruments governing adoption and inheritance: Law Number 1 of 1974 on Marriage, the Compilation of Islamic Law promulgated through Presidential Instruction Number 1 of 1991, the Civil Code (*Burgerlijk Wetboek*), *Staatsblad* 1917 No. 129, Law Number 23 of 2002 on Child Protection as amended by Law Number 35 of 2014, Law Number 3 of 2006 on Religious Courts, and Government Regulation Number 54 of 2007 on the Implementation of Child Adoption. Second, a conceptual approach reconstructs the doctrinal architecture of each regime - the structure of *rukʿn*, *sabab*, and *manīʿ* in *faraidh*, the structure of forced heirs and *legitime portie* in the Civil Code - drawing on classical and contemporary scholarship. Third, a comparative approach juxtaposes the two regimes on the focused question of adopted-child inheritance entitlements to identify points of convergence and divergence. The specific comparative method employed is functional equivalence: the regimes are compared in terms of whether they perform the same social function (protection of intergenerational heirs from unilateral disinheritance) rather than whether they share the same doctrinal form. Functional equivalence is appropriate here because the two regimes share a common social problem (the potential displacement of biological heirs by adopted-child transfers) while approaching it through structurally different doctrinal architectures. The choice of functional equivalence over common-core or critical comparison is deliberate: common-core comparison would require a shared doctrinal baseline that does not exist between Islamic and civil law, while critical

comparison would presuppose an external evaluative standard not appropriate for a descriptive-analytical study.

Data sources comprise primary and secondary legal materials. Primary materials include the Qur'ān - in particular Surah Al-Aḥzāb verses 4-5 and 40, Surah Al-Anfāl verse 75, Surah Al-Baqarah verse 180, Surah Al-Mā'idah verses 2 and 106 - and authoritative collections of hadith including the ṣaḥīḥān of al-Bukhārī and Muslim, particularly the hadith narrated from Sa'd b. Abī Waqqāṣ on the one-third limit of bequests. The codified Indonesian instruments enumerated above supply the statutory layer. Secondary materials comprise classical fiqh treatises, monographs on Indonesian Islamic and civil inheritance law, and peer-reviewed journal articles indexed in Scopus, DOAJ, and SINTA. A word on temporal scope: while contemporary secondary scholarship is generally limited to the last decade, the study also draws on classical fiqh treatises, foundational Indonesian legal scholarship, and foundational civil-law monographs. These older sources are included as foundational references: they establish the doctrinal baselines against which contemporary Indonesian law is measured and cannot be replaced by more recent scholarship without methodological loss. Their inclusion does not represent an inconsistency; it reflects the two-tier source structure appropriate to normative-juridical research that engages both classical doctrine and contemporary positive law.

Data collection followed established library research procedures: identification of relevant primary and secondary materials, critical reading with attention to the doctrinal moves and supporting reasoning of each source, systematic note-taking, and classification of materials by problem formulation. Validity was strengthened through source triangulation: each doctrinal claim was tested against at least two independent sources of comparable authority before being adopted into the analysis.

Analysis proceeded in two stages. Qualitative content analysis was first applied to the primary and secondary sources within each regime. For this study, a doctrinal position is understood as the authoritative answer provided by the applicable source hierarchy to a specific legal question (for example, is an adopted child a forced heir under Article 171 KHI?). Coding proceeded in three categories: (a) positive provisions that expressly address adopted-child inheritance; (b) analogical extensions derived from related provisions; and (c) judicial decisions that have applied or interpreted the provisions in adoption contexts. Where authorities within the same regime conflicted (for example, classical Shafi'i positions on the validity of bequests to heirs versus the KHI's codified position), the Indonesian codified source was treated as governing, and the classical source was recorded as background doctrine informing the rationale. Comparative analysis was then layered onto the reconstruction, juxtaposing the two regimes on the focused question of total estate transfer and identifying points of convergence, divergence, and possible synthesis. The analysis is descriptive-analytical throughout: it aims to articulate the doctrinal positions of the two regimes faithfully and to evaluate their compatibility, not to displace either regime in favor of an external normative standard.

The principal limitations of the study should be noted. First, as a normative-juridical study, it does not draw on systematic empirical fieldwork; the analysis of practices on the ground depends on prior empirical work. Some of the empirical studies

cited are unpublished undergraduate or postgraduate theses (skripsi and tesis); these sources are used exclusively for factual descriptions of local practices and court decisions, not as independent theoretical authorities. Where published peer-reviewed sources address the same factual content, they are preferred. The reliance on skripsi reflects a genuine limitation of the secondary literature on Indonesian adoption-inheritance practice, where peer-reviewed empirical studies remain rare; this finding itself motivates the call for further empirical research in the conclusion. Second, the comparative analysis is bounded to the two principal Indonesian regimes - KHI and BW-Staatsblad - and does not systematically engage the diverse adat regimes that operate alongside them. However, adat is referenced where particularly relevant. Third, the analysis of classical fiqh sources is necessarily mediated through contemporary Indonesian-language scholarship and Arabic-language treatises, with the analytical lens of a contemporary Indonesian legal-academic reader.

## **Result And Discussion**

### ***The Position of Adopted Children under Islamic Inheritance Law***

Islamic inheritance law in its codified Indonesian form, the Compilation of Islamic Law, defines the heir in Article 171 letter (c) as a person who, at the time of the deceased's death, stands in a relationship of blood or marriage with the deceased, is a Muslim, and is not barred by law from inheriting. The provision codifies the classical position that the causes of inheritance (asbāb al-irṭh) are three: blood relationship (al-qarābah or al-nasab), valid marriage (al-musāharah), and the patronage relationship (al-walā') that historically arose from the manumission of slaves. Adoption does not generate any of these three causes, and the relationship between adoptive parents and an adopted child therefore does not produce mutual inheritance rights under Islamic law (Munthe, 2020; Syahmad et al., 2025; Aisyah, 2020; Supriyadi, 2020). A bilateral inheritance system has also been proposed that would restructure these nasab-based categories in ways with significant implications for adopted children (Aniroh et al., 2024), on the argument that the Qur'ānic inheritance verses support a system in which relationships through mothers carry the same inheritance weight as relationships through fathers, which would have opened space for recognizing adoption-based care relationships as a form of quasi-nasab entitlement. This position was controversial and was not adopted by the KHI drafters, who retained the classical three-cause structure while adding wasiat wajibah as a corrective device; the debate over Hazairin's bilateral model continues in contemporary scholarship (Aniroh et al., 2024). The KHI's approach thus represents a deliberate doctrinal compromise: it accepts the classical exclusion of adoption from nasab while mitigating its harshest consequences through obligatory bequest. This compromise is examined in greater detail in the discussion of the Doctrinal Anchors of the One-Third Ceiling below.

The classical position is anchored in Qur'anic and prophetic foundations. Surah Al-Aḥzāb verses 4-5 expressly disavow the pre-Islamic Arab practice of equating an adopted son (da'ī) with a biological son, instructing believers to call adopted children by reference to their biological fathers, while preserving the bond of mawlā and brotherhood in faith. Surah Al-Aḥzāb verse 40 reiterates that the Prophet Muḥammad was not the father of any of the men among the believers, despite his having previously

adopted Zayd b. Ḥārithah, a verse that the mainstream classical tradition reads as definitively abrogating the inheritance consequences of pre-Islamic adoption. It should be acknowledged, however, that tafsīr is not uniform on this point: some classical commentators, reading the same verses, emphasize the continuity of the care-bond rather than the abrogation of rights, observing that the prohibition in Al-Aḥzāb 4-5 targets the legal fiction of full nasab equivalence, not the moral duties of adoptive parenthood. The present analysis adopts the dominant Shafi'ī reading as codified in the KHI, the operative legal framework in Indonesian Islamic law; the existence of alternative readings reminds us that the classical texts support more than one interpretation. Surah Al-Anfāl verse 75 reinforces the connection by tying inheritance to relationships established by blood: the consequential reading is that adoption fulfils a function of hadhānah (care and custody) and protection, not the creation of a substitute nasab.

This doctrinal position would, on its own, leave adopted children without any claim on the property of adoptive parents at death. The KHI mitigates that consequence through the institution of wasiat wajibah - an obligatory will imposed by law without dependence on the deceased's actual will - capped at one-third of the estate. Article 209 paragraph (2) of the KHI provides that adopted children who do not receive a will from their adoptive parents are entitled to wasiat wajibah of at most one-third of the adoptive parents' estate; paragraph (1) provides a reciprocal entitlement to adoptive parents from the estate of a predeceased adopted child (Suharto, 2014; Sari et al., 2024; Ihwan et al., 2024; Mamonto et al., 2025). The institution has its juristic roots in Ibn Ḥazm's position and was developed in modern Egyptian and Tunisian family law before being adapted for Indonesian use through the work of Hazairin and the drafters of the KHI.

The one-third ceiling is not arbitrary. The ṣaḥīḥān preserve a celebrated hadith narrated from Sa'd b. Abī Waqqāṣ, who asked the Prophet whether he might bequeath two-thirds, half, or one-third of his property. The Prophet replied that even one-third was a great deal, and added that to leave one's heirs wealthy is better than to leave them destitute and dependent on others. The hadith establishes the one-third ceiling that all four Sunni schools accept as the maximum for testamentary bequests. However, the schools diverge on related questions: the Shāfi'ī and Ḥanbalī schools hold that bequests to heirs are void without the consent of the other heirs, while the Ḥanafī school permits them with co-heir consent but treats them as voidable rather than void ab initio, and the Mālikī school applies a distinct framework interacting the ceiling with the deceased's debt obligations. Since Indonesia predominantly follows the Shāfi'ī school, as confirmed by the KHI's drafting history and the curriculum of Indonesian Islamic legal education, the operative rule in the Indonesian context is: any excess above one-third is enforceable only with the consent of all heirs. A procedural question of practical importance follows from the wasiat wajibah entitlement: how does a court quantify one-third where the estate is contested, and its full value is disputed? The KHI does not specify a valuation procedure, and practice varies across Religious Courts. The Supreme Court has generally held that the estate for wasiat wajibah purposes is calculated as the net estate gross assets minus verified debts at the time of the deceased's death, and that the court may order an inventory and valuation if the heirs

cannot agree. The procedural gap is a recognized weakness of the KHI regime and has been flagged in reform proposals as a priority for clarification. The same ceiling applies, in modified form, to the institution of hibah under Article 210 paragraph (1) of the KHI, where it operates by analogy to prevent a person from circumventing the inheritance rules by transferring everything during life. A significant ambiguity in the KHI should be flagged here: Article 210 paragraph (1) caps hibah at one-third of the donor's estate, but it is not explicit whether the ceiling applies to a single gift or to the cumulative value of all lifetime gifts. This ambiguity has direct practical implications for succession planning. If the ceiling is per-transaction, successive gifts each just below one-third could effectively transfer the entire estate. If it is cumulative, the first gift of one-third exhausts the available space. Indonesian Religious Court practice has generally applied the ceiling cumulatively (treating Article 211 KHI, which allows courts to consider all gifts as advances on inheritance shares, as the operative provision). However, the Supreme Court has not definitively resolved the issue, and the resulting uncertainty exposes adoptive families to litigation risk.

### ***The Position of Adopted Children under Indonesian Civil Law***

The Indonesian Civil Code, as adopted from the Dutch Burgerlijk Wetboek, does not, in its original form, contain a developed regime of adoption. The drafters of the BW operated within a nineteenth-century European legal culture in which adoption was relatively underdeveloped, particularly compared with the elaborate institution of adoption in classical Roman law. To accommodate the inheritance needs of the Indonesian-Chinese community during the colonial period, the Dutch colonial administration enacted Staatsblad 1917 No. 129, which established a specific regime governing the adoption of children by citizens of Chinese descent. The continuing validity of Staatsblad 1917 No. 129 in post-Reformasi Indonesia is itself contested. Several legal scholars argue that Laws Number 23 of 2002 and Number 35 of 2014 on Child Protection, which apply to all Indonesian children without ethnic or racial distinction, have impliedly superseded the ethnically differentiated Staatsblad regime. The Constitutional Court has not ruled directly on this point, and the Supreme Court continues to apply Staatsblad 1917 in cases involving parties of Chinese descent. The present analysis proceeds on the assumption that Staatsblad 1917 remains operative as positive law, while acknowledging that its constitutionality under Article 28I(2) of the 1945 Constitution, which prohibits discriminatory treatment on ethnic grounds, has not been affirmatively confirmed.

Articles 5 through 15 of Staatsblad 1917 No. 129 establish the conditions for adoption, its consequences, and the inheritance position of the adopted child. Article 11 provides that the adopted child takes the surname of the adoptive parents. Article 12 paragraph (1) categorizes the adopted child as a child born from the marriage of the adoptive parents, with the consequence that for inheritance purposes, the adopted child is treated as a legitimate child. Article 14 affirms that the adoption severs the civil-law relationship between the adopted child and the biological parents, except for the prohibition on marriage that continues to attach to consanguinity. An important procedural conditionality must be noted here: the inheritance effects of Staatsblad 1917 are triggered only by a formal court adoption. Informal adoption, adat-based adoption, and care arrangements customary within the Chinese-Indonesian community but not



formalized by judicial decree do not produce the equalization effect of Article 12. In practice, this means that many Chinese-descent Indonesians who consider a child their adopted heir have not completed the court process and are therefore not governed by the Staatsblad 1917 regime for inheritance purposes, a gap between formal law and community practice that significantly limits the practical scope of the equalization provisions.

The downstream inheritance consequence is that an adopted child governed by Staatsblad 1917 No. 129 is placed in Group I of heirs *ab intestato* under Article 852 of the Civil Code, alongside biological children and the surviving spouse, with shares equal to those of biological children. The position is therefore radically different from the position under Islamic law in two respects. First, the adopted child becomes a forced heir, not merely a beneficiary of a discretionary or obligatory will. Second, the adopted child's share is determined by the same rules that allocate shares to biological children, rather than by reference to a separate one-third cap.

For Indonesian citizens not governed by Staatsblad 1917 No. 129, the position is more constrained. Adoption may still occur as a sociocultural and legal practice, particularly under the Child Protection Law and Government Regulation Number 54 of 2007, but the adopted child is not automatically inserted into the inheritance line of the adoptive parents. Property transfers must instead proceed through testamentary disposition or grants, subject to the limits imposed by the regime under which the adoptive parents fall - the KHI for Muslims, Articles 913 and 914 of the Civil Code for those subject to it, and the relevant adat rules for those whose succession is governed by customary law.

The Civil Code's central protection of forced heirs is the *legitime portie* - the absolute share to which forced heirs in the direct ascending and descending lines are entitled, and which the deceased may not displace through testamentary disposition or *inter vivos* gift (Puspandari et al., 2025). Articles 913 and 914 of the Civil Code calibrate the legitime portion by reference to the number of forced heirs: a single child is entitled to half of the intestate share; two children to two-thirds of the intestate share each; three or more children to three-quarters of the intestate share each. The interaction between the adopted child (as a first-group heir under Staatsblad 1917) and biological children in the same group deserves specific attention. Where both adopted and biological children co-exist as first-group heirs, they share the intestate estate equally under Article 852 BW. The adopted child's share is the same fraction of the estate as that of each biological child. *Inkorting* operates symmetrically: if a testamentary disposition favors the adopted child at the expense of biological children, the biological children may bring an *inkorting* action; conversely, if a disposition favors biological children at the expense of the adopted child, the adopted child (as a forced heir) has equivalent standing to challenge. This symmetry is doctrinal but may not always be honored in practice, particularly where adopted children face social pressure to accept smaller shares. Transfers that breach the *legitime portie* are subject to *inkorting* - a corrective reduction at the suit of the prejudiced heir - and the courts have consistently applied this remedy.

### ***Total Estate Transfer: A Comparative Analysis***

Bringing the two regimes together produces a focused comparative finding on the question of total estate transfer. The two regimes can be compared directly on their principal instruments, ceilings, and protections.

The convergence noted in the introduction can now be stated directly. Under the KHI, total transfer is excluded because (i) the adopted child is not an heir under Article 171 letter (c); (ii) the instruments through which property may be transferred to non-heirs - *wasiat wajibah* under Article 209 and *hibah* under Article 210 - are subject to a one-third ceiling; and (iii) any transfer in excess of the ceiling is enforceable only with the written consent of all heirs, in keeping with the principle of peaceful resolution recognized in Article 195 of the KHI and the broader practice of *ṣulḥ* in Islamic dispute resolution. Under the Civil Code regime, total transfer is excluded by the legitime portie. The protection operates differently from the KHI's one-third ceiling; it is calibrated to the number of forced heirs rather than to a fixed fraction of the estate, but the substantive result is comparable: the deceased may not unilaterally displace the absolute share of forced heirs through testamentary disposition or *inter vivos* gift.

Empirical work has identified three patterns of attempted total transfer in Indonesian practice. The first is the transfer of title to the adopted child during the adoptive parents' lifetime, presented as an ordinary *hibah*; the second is the execution of a written notarial will with a value exceeding one-third, often without prior consultation with the heirs; the third is a covert transfer through a fictitious sale-and-purchase deed. Each pattern carries doctrinal risks. The first can be challenged through actions for grant cancellation when the cumulative value of the *hibah* exceeds the one-third limit (Article 211 KHI). The second can be reduced through inkorting at the suit of forced heirs prejudiced by the disposition. The third can be attacked as a simulated transaction void for lack of causa under Article 1335 of the Civil Code, in addition to its inheritance-law consequences. The legal risk of fictitious sale transactions has been judicially confirmed: in Mahkamah Agung Decision No. 1182/K/Pdt/1988, the Supreme Court set aside a transaction structured as a sale where the effective purpose was to transfer inheritance assets to a beneficiary at the expense of forced heirs, finding that the absence of genuine consideration rendered the transaction void. The risk is therefore not merely theoretical; it is grounded in a line of authority that courts are willing to apply.

### ***The Doctrinal Anchors of the One-Third Ceiling***

The one-third ceiling in Islamic law is more than a quantitative rule; it reflects a substantive value structure. Classical jurists have long read the Sa'd hadith as a constraint on testamentary autonomy that protects the rights of heirs against the deceased's affective or impulsive impulses. Classical commentators identify the legal wisdom (*ḥikmah* or '*illah*') underlying the ceiling as the prevention of the heirs' impoverishment and the safeguarding of intergenerational economic continuity. Classical and modern jurists extend the reasoning by arguing that the one-third ceiling balances the heir's responsibility to those he loved and supported during life against the rights of those whom God has expressly placed among his heirs.

The Indonesian adoption of the *wasiat wajibah* doctrine bears the imprint of this classical reasoning while pursuing distinctively Indonesian goals. Indonesian scholarship has advocated a bilateral inheritance system grounded in the Qur'ān, in

which the *wasiat wajibah* operates as a corrective device for those whom the strict application of *faraidh* would leave without provision despite their close relationship to the deceased. Hazairin's bilateral inheritance theory was controversial within Indonesian Islamic legal circles: it challenged the classical male-agnate priority structure. It met resistance from traditionalist ulama affiliated with Nahdlatul Ulama, as well as from Modernist scholars who favored strict textual adherence to the Qur'ānic inheritance verses. The KHI's approach to *wasiat wajibah* represents a deliberate doctrinal compromise: it incorporates Hazairin's concern for those excluded from the *faraidh* grid, including adopted children and non-Muslim relatives — without adopting his full bilateral restructuring of the *nasab* categories. The institution of *wasiat wajibah* is thus a corrective addition layered onto a classical *faraidh* framework, not a transformation of that framework. The drafters drew on the Egyptian and Tunisian precedents and on the work of Ibn Ḥazm. The Indonesian Supreme Court has repeatedly confirmed the institution in its decisions; recent rulings have extended it by analogy to non-Muslim children of deceased Muslim persons, illustrating the institution's flexibility within the one-third ceiling (Fawzi et al., 2024).

Field practice in Indonesia is instructive on the consequences of breaching the ceiling. Documented cases exist in which adoptive parents transferred more than one-third of their property to adopted children in the form of *hibah*, on the assumption that affection would prevent dispute. In practice, the transfers triggered inheritance litigation initiated by biological heirs, with the courts repeatedly applying Articles 195 and 211 of the KHI to correct the breach. Pratama concludes that the one-third ceiling is not merely a textual rule that can be bypassed by inter-family agreement; it is a substantive limit that the wider community of heirs has standing to enforce. The reverse scenario also deserves attention. While the ceiling prevents excessive transfers to adopted children, documented cases exist in which its strict application left long-term adopted children, particularly those who served as sole caregivers in the adoptive parents' final years. At the same time, biological heirs were absent, with demonstrably inadequate provision for them. In such cases, courts applying the ceiling have sometimes produced outcomes that are formally correct but substantively contested. This reverse concern informs proposals to expand *wasiat wajibah* or to introduce judicial discretion in exceptional dependency cases.

### ***The Doctrinal Anchors of Legitimate Portie***

The legitimate portie is rooted in Roman law and reached Indonesian civil law through the European continental tradition mediated by the Dutch BW. Its central premise is that the deceased's autonomy of testamentary disposition - *testamentaire vrijheid* - is not absolute; the blood family has a built-in claim to a minimum share that may not be displaced by the deceased's will or by lifetime gifts that would have the same effect. The doctrine reflects a particular vision of intergenerational economic justice: it treats the family as a unit of economic continuity whose claims persist beyond the deceased's preferences.

The Civil Code's calibration of the legitime portie to the number of forced heirs produces a sliding scale that approaches, without ever reaching, the full estate. Article 913 BW provides for half of the intestate share for a single child, two-thirds each for two children, and three-quarters each for three or more children. Article 914 BW extends

the protection to ascending forced heirs in the absence of descendants. Each forced heir may bring an action of incorporation against testamentary or inter vivos transfers that infringe the legitime portion, with the result that the impugned transfer is reduced rather than annulled wholesale, preserving the testator's autonomy within the bounds set by the legitime portion.

Supreme Court Decision Number 148/PK/Perd/1982 illustrates how Indonesian courts apply the legitime portie protection. In that case, the Supreme Court corrected a notarial testament whose effect would have allocated to a single beneficiary a share that exceeded the disposable portion. The decision is now routinely cited as authority for two propositions: first, that the legitime portie is a substantive limit on testamentary autonomy and not merely a procedural default; and second, that inkorting operates as the appropriate remedy, calibrated to restore the prejudiced forced heirs to their legally required minimum.

### ***Convergence and Divergence: A Synthetic Reading***

The two regimes converge on the substantive outcome, the exclusion of total transfer to an adopted child under normal conditions, while diverging on the doctrinal apparatus through which that outcome is achieved. Before proceeding, it is necessary to consider whether this convergence might be 'false': two regimes may produce the same outcome in a specific fact pattern for structurally incompatible reasons that would yield divergent outcomes in other fact patterns. The present analysis suggests that the convergence is robust across the most practically significant variations. If there are no biological heirs, under the KHI the adopted child still receives at most one-third through wasiat wajibah (the remaining two-thirds pass to bayt al-māl or to other qualified recipients); under the Civil Code, the absence of forced heirs removes the legitime portie constraint, and a total transfer becomes possible. If the adopted child is the sole caregiver, neither regime makes caregiving a basis for inheritance entitlement; it may be relevant only to the heirs' decision on consent. The divergence in the no-forced-heir scenario is genuine and significant: Islamic law maintains the one-third cap as an absolute rule, while the Civil Code removes the constraint entirely. This divergence confirms that the convergence in the normal (forced-heirs-present) scenario is substantive rather than structural. The Islamic regime arrives at the outcome through a combination of (i) the exclusion of the adopted child from the category of heir and (ii) the one-third ceiling on instruments of voluntary transfer to non-heirs. The Civil Code regime reaches the outcome through the legitime portion, which protects the absolute share of forced heirs against any disposition that would displace it.

A nuanced point bears emphasis. The two regimes treat the adopted child differently: under the KHI, the adopted child is a non-heir entitled to receive at most one-third through wasiat wajibah, while under Staatsblad 1917 No. 129, the adopted child is a legitimate child placed in the first group of forced heirs. The position of the adopted child, therefore, varies more sharply across the regimes than that of the biological heir, who receives broadly analogous protection in both. The divergence has practical consequences: a family that adopts a child while subject to the KHI must accept that the adopted child's claim is capped at one-third. In contrast, a family subject to Staatsblad 1917 No. 129 must accept that the adopted child takes a full share alongside biological children.

This regime-dependent variation in the adopted child's position raises equality concerns. Indonesian citizens of Chinese descent enjoy a more generous inheritance position for their adopted children than other Indonesian citizens governed by the KHI or by adat regimes - a disparity that originates in the colonial legal architecture and that has survived through the post-independence period. Several recent scholars have called for consolidating the various Indonesian inheritance regimes into a single national framework to eliminate this regime-based disparity. In contrast, others have cautioned that any such consolidation must preserve the religious freedom guaranteed by the 1945 Constitution and the religious-court jurisdiction protected by Law Number 3 of 2006. The constitutional dimension of the regime-based disparity deserves more explicit analysis. Article 28I(2) of the 1945 Constitution provides that every person has the right to be free from discriminatory treatment based on, *inter alia*, ethnic origin. The differential inheritance position of adopted children is more generous for Chinese-descent Indonesians under *Staatsblad* 1917, more restrictive for others under the KHI, and represents a state-maintained legal disparity that maps onto ethnic identity. Whether this disparity constitutes 'discriminatory treatment' within the meaning of Article 28I(2) is a question that the Constitutional Court has not directly addressed in the inheritance context, but the argument is available and has been raised in academic commentary. Any legislative reform of the Indonesian inheritance regime that seeks to eliminate the disparity would need to grapple with this constitutional dimension, as well as with the competing guarantee of religious freedom under Article 29 of the Constitution.

### ***Maqashid al-Shari'ah and the One-Third Ceiling***

Reading the one-third ceiling through the lens of *maqāṣid al-sharī'ah* - the higher objectives of Islamic law - illuminates why the rule operates as more than a technical cap. The protection of progeny (*ḥifẓ al-nasl*) and the protection of property (*ḥifẓ al-māl*) are among the five universal objectives (*al-ḍarūriyyāt al-khams*); the inheritance regime is the principal Islamic legal mechanism for realizing both objectives at the moment of intergenerational transition (Jauhari et al., 2023). The one-third ceiling expresses these objectives in quantitative terms: it allows the deceased a meaningful sphere of discretion to honor non-heirs whose claims arise from affection or moral obligation, while reserving the predominant share of the estate for those whom God has named as heirs. A third objective should be added to the *maqāṣid* analysis: *ḥifẓ al-nafs* (the protection of the individual's life and wellbeing). Adopted children are frequently vulnerable minors who entered the adoptive family in conditions of hardship, abandonment, or parental incapacity. The *wasiat wajibah* guarantee of at least a minimum share can be understood as an expression of *ḥifẓ al-nafs*: it ensures that a child whose welfare was entrusted to the adoptive family is not left destitute when that family's estate passes to its biological heirs. This reading is consistent with the child-welfare rationale embedded in contemporary Indonesian adoption law. It provides a *maqāṣid* grounding for proposals to extend or strengthen the *wasiat wajibah* entitlement in cases of demonstrated dependency.

The *wasiat wajibah* doctrine functions, in *maqashid* terms, as a corrective device that prevents the strict application of *faraidh* from generating results inconsistent with substantive justice. An adopted child whom adoptive parents have raised for many

years has formed a relationship of dependence and affection that closely resembles a parent-child relationship in its social and economic content. The denial of any claim on the estate of adoptive parents would, in many cases, produce hardship - particularly where the biological parents are deceased or have lost contact with the child. The *wasiat wajibah* responds to this concern by guaranteeing the adopted child a minimum share, capped at one-third, that protects against destitution while preserving the priority of blood relations (Nofitasari, 2021; Djamal, 2018; Fitriyani, 2020; Hakim, 2024).

A contemporary *maqashid* argument holds that adoptive parents bear a moral duty to be honest with their adopted children about their biological origins, since concealment of *nasab* violates the principle of truthfulness in lineage and produces downstream juridical complications, particularly with respect to marriage prohibitions (*maḥram*) and inheritance. This concern resonates with contemporary Indonesian adoption practice, in which adoptive parents have sometimes withheld information about adoption from the child or the wider family, generating disputes when the truth emerges at the moment of succession (Suharto, 2014).

### ***The Principle of Peaceful Resolution and Family Consent***

Both regimes recognize family consent as a mechanism that can soften the rigidity of the inheritance rules without overriding them altogether. Under the KHI, Article 183 provides that the heirs may agree among themselves to deviate from the *faraidh* shares, provided that the deviation is achieved through *perdamaian* (peaceful resolution) and that each heir consents freely. The provision codifies the classical Islamic principle of *ṣulḥ*, which has long permitted the heirs to redistribute the inheritance by mutual consent following the death of the deceased. The Civil Code reaches a comparable result through Article 1066 BW, which permits forced heirs to renounce their share of the estate or to consent to a particular disposition that would otherwise infringe the *legitime portie*.

Family consent is the narrow doorway through which total estate transfer to an adopted child might be juridically realized under either regime. Under the KHI, the heirs may consent to a transfer of more than one-third of the estate to the adopted child, thereby making the transfer enforceable as a matter of *perdamaian* rather than as a unilateral disposition. Under the Civil Code, the forced heirs may renounce their *legitime portie* or consent to a disposition that exhausts the estate, thereby vindicating the testator's wishes through the consent of those whose rights would otherwise be displaced. An important asymmetry between the two consent mechanisms should be noted. Under the KHI, Article 183 requires the collective consent of all heirs; a single dissenting heir can block any deviation from the *faraidh* distribution. Under the Civil Code, Article 1066 BW makes renunciation of the *legitime portie* an individual right exercisable independently by each forced heir: one heir may renounce while others do not. The practical implication is significant for family negotiations: under the KHI, the unanimity requirement creates a collective bargaining dynamic in which any heir may effectively veto a total transfer to the adopted child; under the Civil Code, each forced heir faces a separate individual decision about whether to renounce. The Civil Code's individualistic approach may be more vulnerable to pressure or inducement of individual heirs, while the KHI's unanimity requirement may produce impasses in large or conflicted families. In both regimes, the consent must be informed, voluntary, and in

writing or notarized to be effective, a procedural protection that prevents circumvention by inter-family pressure.

The recognition of family consent operates as a principle of subsidiarity that respects family autonomy without sacrificing the substantive protection of the inheritance rules. It also illustrates a recurring feature of Indonesian family law: rules are typically backed by a default protection for biological heirs while allowing room for family-level adjustment when the family unanimously agrees on a different distribution. The convergence between Islamic *şulh* and Civil Code consent doctrine on this point is striking. It suggests that the two regimes share a common substantive vision of family autonomy operating within a framework of mandatory protection.

### ***Policy Implications: Toward a Coherent National Inheritance Framework***

Several policy implications follow from the analysis. The first is the importance of legal literacy among adoptive families. Adoptive parents who wish to provide for adopted children beyond the one-third ceiling should be informed that two pathways exist: family consent and pre-mortem grants that, individually, do not exceed the limit. The pathways should be communicated through pre-adoption counseling, religious-court education programs, and notarial practice.

The second implication concerns the harmonization of Indonesia's pluralistic inheritance regime. The regime-based disparity between adopted children governed by *Staatsblad* 1917 No. 129, who become forced heirs and adopted children governed by the KHI, who become beneficiaries of *wasiat wajibah*, is increasingly difficult to defend on principled grounds. Several reform proposals have been put forward, ranging from full consolidation under a single national inheritance law to softer measures that preserve regime-specific differences while harmonizing the position of adopted children. Any consolidation must respect the constitutional commitment to religious freedom and the jurisdictional integrity of the religious courts established under Law Number 3 of 2006. The political and institutional obstacles to inheritance law reform, however, deserve explicit acknowledgment. Indonesia's religious pluralism means that any unified law must either accommodate multiple normative traditions or impose a single framework on communities whose religious identity is partly expressed through family law a politically contentious choice. The jurisdictional rivalry between civil courts and Religious Courts, each with entrenched institutional constituencies, has historically resisted coordination. The absence of a unified family law code, itself a legacy of the colonial plural-law architecture, means that reform requires not merely legislative drafting but a fundamental political negotiation among religious communities, legal institutions, and the state. A more tractable approach may therefore be incremental: harmonizing the inheritance position of adopted children specifically, without attempting comprehensive regime overhaul, offers a narrower reform target with greater political feasibility.

The third implication is the importance of judicial coherence in applying the one-third ceiling and the *legitime portie*. Indonesian courts have generally applied the rules consistently. However, occasional lapses occur in which transfers exceeding the ceilings have been permitted to stand because the prejudiced heirs failed to bring timely actions. A more systematic judicial education program - perhaps coordinated

through the Supreme Court's Judicial Training Center and the Religious Court training programs - could strengthen the consistency of the application.

The fourth implication is the potential for the wasiat wajibah doctrine to evolve further. The Indonesian Supreme Court has extended the doctrine in several decisions to cover non-Muslim children of Muslim deceased persons, and academic commentators have suggested further extensions to cover relationships of long-term care that do not formally amount to adoption. Any such extension should proceed cautiously and within the maqashid framework that gives the one-third ceiling its substantive content, but the doctrine's track record suggests considerable flexibility within those bounds.

## Conclusion

This article has examined the position of adopted children in Indonesia's pluralistic inheritance regime, focusing on whether the transfer of an entire estate to an adopted child can be juridically justified under Islamic law, as codified in the Compilation of Islamic Law, and under the Indonesian Civil Code, as supplemented by Staatsblad 1917 No. 129. Three principal findings emerge. First, under Islamic inheritance law, adopted children are not heirs because they lack the blood, marital, or wala' relationship required by Article 171 letter (c) of the KHI; they may, however, receive at most one-third of the estate through wasiat wajibah under Article 209 KHI or hibah under Article 210 KHI, subject to the doctrinal framework established by the Sa'd hadith and the maqashid analysis that informs it.

Second, under Indonesian Civil Code arrangements, adopted children are equated with legitimate children only for Indonesian citizens of Chinese descent through Staatsblad 1917 No. 129. For other Indonesian citizens, adoption does not automatically confer inheritance rights under the Civil Code, and property transfers to adopted children must proceed through a testament or grant, subject to the legitime portion protections of Articles 913 and 914 of the Civil Code. Third, the transfer of an entire estate to an adopted child contradicts both systems: it is barred by the one-third ceiling under the KHI and by the legitime portion under the Civil Code. It is achievable only through the consent of the heirs or the absence of forced heirs - narrow exceptions that confirm the substantive rule.

The article has argued that, despite their distinct doctrinal vocabularies, the two regimes converge on a single substantive judgment: distributive justice among intergenerational claimants must not be displaced by the unilateral will of the deceased. The convergence is theoretically illuminating because it suggests that the regimes share a deeper commitment to intergenerational economic justice that runs beneath their surface differences. It is also practically significant because it provides a stable doctrinal foundation for future reform: any consolidation of the Indonesian inheritance regime can build on the convergent substantive judgment without abandoning the regime-specific doctrinal apparatus.

Three recommendations follow, ordered by urgency. The most immediate priority is for practitioners and judicial institutions: Religious Courts and civil courts should develop clearer procedural guidelines for quantifying wasiat wajibah entitlements and for applying the hibah cumulative-ceiling rule, since the current doctrinal ambiguities in



Articles 210 and 211 KHI generate avoidable litigation. The second priority is legislative: the regime-based disparity in the inheritance position of adopted children calls for targeted harmonization, specifically addressing the position of adopted children across all three Indonesian inheritance populations (KHI, BW-Staatsblad, BW-non-Chinese), rather than comprehensive code consolidation. The third priority is empirical research: systematic study of Religious Court and civil court decisions applying wasiat wajibah and inkorting across a full decade of reported decisions would provide the empirical foundation that the present normative analysis cannot supply. A critical note on the first recommendation: the suggestion that families should formalize adoption through court determination under Government Regulation No. 54 of 2007 must be accompanied by acknowledgment of the significant access-to-justice barriers that prevent many families from doing so. Court adoption procedures in Indonesia involve legal costs, geographic distances from courts, bureaucratic complexity, and social stigma in some communities. Any policy program aimed at increasing formal adoption rates must address these barriers through legal aid provision, simplified procedures for rural areas, and community education or the recommendation will benefit only families with sufficient economic and social capital to navigate the formal system.

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