



Application of John Stuart Mill's Formal Equality Theory to Distribution of Inheritance for Adopted Children: A Comparative Study of *Burgerlijk Wetboek* and Compilation of Islamic Law

Imam Sujono 

STAI Taruna Surabaya, Indonesia

Corresponding Email: imamsujono@staitaruna.ac.id

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Abstract

This article examines the application of John Stuart Mill's formal equality theory to inheritance rights of adopted children within Indonesian legal frameworks, specifically the *Burgerlijk Wetboek* (BW) and Compilation of Islamic Law (KHI). Using a normative juridical approach with secondary data sources including statutory provisions, judicial decisions, and philosophical texts, this research addresses whether differential treatment of adopted versus biological children comports with Mill's formal equality principle. Findings reveal significant normative tensions: both legal regimes restrict adopted children's inheritance rights based primarily on biological lineage, which Mill's theory would deem insufficient justification for unequal treatment. Under the BW, adopted children possess limited rights unless formally adopted through prescribed mechanisms, while the KHI denies adopted children rights under the *faraidh* system, permitting only *wasiat wajibah* up to one-third of estates. Judicial interpretation shows modest accommodation through mandatory bequest provisions, yet falls short of full equality. This research concludes that current Indonesian inheritance frameworks contain structural inequalities conflicting with Mill's formal equality principles, necessitating legal reform to eliminate discriminatory provisions based solely on biological status. The article contributes to discourse on harmonizing civil law, Islamic law, and liberal egalitarian principles within pluralistic legal systems.

Keywords: Formal equality theory; John Stuart Mill; adopted children; inheritance law; *Burgerlijk Wetboek*; Islamic law; legal discrimination; *wasiat wajibah*; comparative law

Introduction

In February 2024, the Indonesian Supreme Court issued a significant decision concerning inheritance rights of an adopted child in West Java, reigniting public debate about the legal status of non-biological children in succession matters. The case involved a woman

who had raised her niece for twenty-three years, providing comprehensive education, healthcare, and emotional support comparable in every respect to that accorded to biological offspring. Upon the adoptive mother's death, biological relatives contested the adopted daughter's inheritance claim, arguing that under both civil and Islamic law operative in Indonesia, adoption does not create legal ties sufficient for automatic succession rights. The Supreme Court ultimately sided with biological heirs, affirming the adopted child's exclusion from the estate absent explicit testamentary provision. This decision, while legally orthodox under existing Indonesian jurisprudence, prompted vigorous public discourse about whether such outcomes align with contemporary notions of justice, equality, and children's fundamental rights (Hadiansyah & Nuryasinta, 2025; Maya, 2025).

Indonesia's legal landscape regarding adoption and inheritance reflects the nation's pluralistic character, maintaining parallel legal regimes governing different populations based on religious and ethnic affiliation. Citizens may choose to resolve inheritance matters under the Civil Code (*Burgerlijk Wetboek*, hereinafter BW), inherited from the Dutch colonial period and still applicable to many Indonesian citizens, or under Islamic law as codified in the Compilation of Islamic Law (*Kompilasi Hukum Islam*, hereinafter KHI) for those identifying as Muslim. Both systems, however, treat adopted children differently than biological children concerning succession rights, creating what some scholars characterize as institutionalized discrimination based on biological status. This differential treatment raises fundamental questions about the compatibility of Indonesian inheritance law with basic principles of equality and non-discrimination (Hadiansyah & Nuryasinta, 2025; Maya, 2025; Putri et al., 2025; Saputra & Hussin, 2025; Sarah & Farsia, 2025).

The question of whether such differential treatment constitutes unjust discrimination becomes particularly salient when examined through the lens of John Stuart Mill's formal equality theory. Mill's principle, most comprehensively developed in his seminal works 'On Liberty' and 'The Subjection of Women', establishes that individuals merit equal treatment under law unless differential treatment serves legitimate purposes resting on rational grounds. Applied to inheritance law, Mill's framework suggests adopted children should receive treatment equivalent to biological children absent compelling justification for distinction. This theoretical framework provides analytical tools for evaluating whether existing Indonesian legal provisions can be reconciled with fundamental equality principles or whether they constitute arbitrary discrimination requiring reform (Azharuddin, 2025; Laadiy et al., 2025).

Current provisions in both the BW and KHI create substantial barriers to adopted children's inheritance rights. Article 833 of the BW establishes succession rights primarily through blood relationships, effectively excluding adopted children unless formal legal adoption procedures have been completed through court proceedings. Articles 171 and 209 of the KHI explicitly exclude adopted children from the Islamic inheritance system (*faraidh*), permitting only discretionary testamentary bequests (*wasiat wajibah*) limited to one-third of estates. These restrictions, ostensibly justified by traditional conceptions of family structure rooted in biological lineage and, in the case of Islamic law, by religious doctrinal requirements, warrant rigorous examination from the perspective of formal equality principles (Dedi et al., 2025; Permatasari & M.Kn. S.H., MBA., 2025).

Application of John Stuart Mill's Formal Equality Theory to Distribution of Inheritance for Adopted Children: A Comparative Study of Burgerlijk Wetboek and Compilation of Islamic Law

This research addresses three interconnected questions: First, whether the differential treatment accorded to adopted versus biological children in inheritance matters aligns with Mill's formal equality principle, which requires that legal distinctions rest on relevant differences rather than arbitrary classifications. Second, how Indonesian courts interpret and apply equality principles when adjudicating inheritance disputes involving adopted children, and whether judicial practice has evolved toward greater recognition of adopted children's rights. Third, whether normative conflicts exist among the BW, KHI, and liberal egalitarian principles embodied in Mill's theory, and if so, how such conflicts might be reconciled through legal reform or reinterpretation. These inquiries hold significant practical import, as inheritance disputes involving adopted children have increased substantially in recent years, reflecting both rising adoption rates and growing public awareness of children's rights and non-discrimination principles. The article proceeds through comprehensive literature review, methodological explication, detailed findings and analysis, and concluding recommendations for legal reform.

Literature Review

John Stuart Mill's Formal Equality Theory

John Stuart Mill's contributions to political philosophy centered fundamentally on principles of individual liberty and equality. His formal equality theory emerges most explicitly in 'On Liberty' (1859) and receives further elaboration in 'The Subjection of Women' (1869), where Mill systematically challenges status-based hierarchies and argues for equal treatment of all individuals under law. Mill argued that the state possesses legitimate authority to restrict individual freedom only to prevent harm to others—the celebrated harm principle—and that legal distinctions among persons require rational justification rooted in relevant differences rather than arbitrary or traditional classifications. Formal equality, in Mill's conception, demands that law treat similar cases similarly, departing from equal treatment only when meaningful distinctions warrant differential approaches based on legitimate governmental purposes (Maniaci, 2025; Suputra et al., 2025).

Recent philosophical scholarship has explored Mill's equality principles across various legal and social contexts, demonstrating the theory's enduring relevance to contemporary debates about discrimination and justice. Anderson (2021) demonstrates how Mill's framework fundamentally challenges status-based hierarchies embedded in legal systems, arguing that formal equality requires eliminating legal distinctions predicated solely on immutable characteristics unrelated to legitimate governmental purposes. This interpretation proves particularly relevant to adoption and inheritance contexts, where biological status—an immutable characteristic present at birth—often determines legal rights and entitlements. The author contends that Mill's principle would require showing how biological connection serves purposes beyond mere tradition or administrative convenience before permitting differential treatment based on that characteristic (Muthmainnah et al., 2023; Toatubun, 2020).

Thompson and Williams (2022) extend Mill's analysis specifically to family law contexts, contending that Mill's principles necessitate equal treatment of all children within family units regardless of biological parentage, provided functional parent-child relationships exist. The authors argue that Mill's emphasis on actual relationships and demonstrated capacity over inherited status or biological connection supports recognizing adoptive relationships as creating equivalent legal obligations and entitlements as biological relationships. Mill's formal equality theory distinguishes itself from substantive equality approaches by focusing on procedural fairness and consistent application of neutral principles rather than requiring identical outcomes for all individuals. As Robertson (2023) observes in his comprehensive analysis of Mill's political philosophy, the theory does not demand outcome equality but rather consistent application of legal rules without arbitrary exclusions or preferences based on irrelevant characteristics. Applied to inheritance, formal equality would permit legal rules favoring biological children only if biological connection constitutes a relevant distinction for succession purposes—a proposition Mill's writings suggest he would reject, given his consistent emphasis on nurture over nature in shaping human relationships and capacities (Suputra et al., 2025).

Inheritance Law Under the Burgerlijk Wetboek

The Burgerlijk Wetboek, introduced during Dutch colonial administration in 1848 and retained post-independence for certain populations, establishes inheritance rules derived from continental civil law traditions reflecting nineteenth-century European conceptions of family and property. Articles 830 through 1130 comprehensively govern succession matters, with Articles 833-841 specifically addressing legitimate heirs and their respective shares. The BW recognizes four classes of heirs arranged in descending priority: children and their descendants; parents and siblings; grandparents; and other blood relatives extending to the sixth degree of consanguinity. Significantly, the BW predicates inheritance rights fundamentally on consanguinity—biological blood relationships—rather than on social or functional family ties that may exist independently of genetic connection (Safitri & Saiful, 2025).

Kusuma (2021) provides comprehensive analysis of adoption's legal status under the BW framework, noting that traditional adoption as practiced in indigenous Indonesian communities does not create legal parent-child relationships recognized by the Code for inheritance purposes. Only formal adoption through court proceedings pursuant to Supreme Court Regulation No. 2 of 1979 (later amended to reflect procedural modifications) generates legal ties sufficient to trigger inheritance rights between adoptive parents and adopted children. Even then, adopted children's rights remain significantly circumscribed compared to biological children; they inherit from adoptive parents but not from the adoptive family's broader kinship network, while biological children inherit from parents, grandparents, uncles, aunts, and more distant relatives within the prescribed degrees. Conversely, adopted children retain full inheritance rights vis-à-vis biological parents and their kinship networks, creating potential dual succession rights that complicate estate administration (Jauhari et al., 2023; Marpi, 2020).

Muljohadi (2019) and Subairi (2021) examine judicial interpretation of these provisions through empirical analysis of district court decisions, documenting that Indonesian courts have generally construed adoption requirements strictly, consistently declining to recognize

Application of John Stuart Mill's Formal Equality Theory to Distribution of Inheritance for Adopted Children: A Comparative Study of Burgerlijk Wetboek and Compilation of Islamic Law

informal adoption arrangements even when social and emotional bonds closely mirror those characteristic of biological families (Muljohadi, 2019; Subairi, 2021). The authors identify this judicial conservatism as reflecting deeply embedded cultural assumptions about blood relationships' primacy in determining family membership and inheritance entitlements. Their comprehensive empirical analysis of district court decisions from 2015-2020 across multiple jurisdictions found that fewer than fifteen percent of cases involving informally adopted children resulted in any inheritance awards, with courts consistently citing the absence of formal legal adoption as dispositive regardless of the duration or quality of adoptive relationships. Pratama (2023) builds on this analysis, arguing that the BW's colonial-era assumptions about family structure inadequately address contemporary Indonesian realities, including rising adoption rates driven by social and economic factors, increasing prevalence of blended families resulting from remarriage and divorce, and evolving social conceptions of parenthood that emphasize caregiving functions over biological connection (Sujono, 2022). The author advocates comprehensive legislative reform aligning succession law with functional rather than exclusively biological definitions of family, suggesting that such reform would better serve contemporary Indonesian society's needs while maintaining appropriate safeguards against fraudulent claims.

Islamic Inheritance Law and the Compilation of Islamic Law

Islamic inheritance law (*faraidh*) derives from Quranic provisions, hadith traditions, and centuries of sophisticated jurisprudential development across various schools of Islamic legal thought addressing complex succession scenarios. The KHI, promulgated through Presidential Instruction No. 1 of 1991, represents Indonesia's systematic effort to codify and harmonize Islamic law applicable to Muslim citizens in matters of marriage, divorce, and inheritance. The compilation draws primarily from the Shafi'i school of jurisprudence predominant throughout the Indonesian archipelago while incorporating selective elements from other Sunni schools and accommodating certain local customary practices where compatible with Islamic legal principles (Febriyanti et al., 2025; Permatasari & M.Kn. S.H., MBA., 2025).

Article 171 of the KHI provides foundational definitions, specifying that heirs are individuals possessing blood or marital relationships with the deceased, thereby explicitly excluding adopted children from the *faraidh* inheritance system. Article 209 addresses this exclusion more directly, providing that adopted children may receive property from adoptive parents through *inter vivos* gifts during the adoptive parents' lifetimes or through testamentary bequests (*wasiat*) limited to one-third of the estate. Importantly, Article 209 also establishes the innovative concept of 'mandatory bequest' (*wasiat wajibah*), enabling religious courts to order testamentary provisions for adopted children even in the absence of explicit testamentary documents, provided such bequests do not exceed the statutory one-third limitation. This mandatory bequest provision represents a significant Indonesian innovation reflecting efforts to balance classical Islamic legal doctrine with contemporary concerns about adopted children's welfare.

Rahman and Hidayat (2021) trace the theological foundations of adoption's treatment under Islamic law through careful analysis of Quranic texts and classical jurisprudential sources, noting that while Islam strongly encourages caring for orphans and vulnerable children as an expression of religious devotion and social responsibility, classical jurisprudence distinguished adoption in the sense of creating fictive kinship (*tabanni*) from fostering arrangements (*kafalah*) that maintain clarity about biological lineage. The authors explain that adoption's prohibition in its kinship-creating form stems primarily from Quranic verses, particularly Surah Al-Ahzab 33:4-5, which emphasize genealogical accuracy and express concerns about lineage confusion that might affect both inheritance rights and marriage prohibitions. Contemporary Muslim scholars engage in vigorous debate about whether these classical prohibitions necessarily entail complete inheritance exclusion or whether modern contexts characterized by different social structures and family patterns warrant interpretive flexibility enabling broader recognition of adopted children's rights while maintaining core theological principles (Sujono, 2023).

Hasanah (2022) documents judicial application of *wasiat wajibah* provisions through systematic analysis of religious court decisions, finding significant variation across Indonesian religious courts in determining appropriate bequest amounts and identifying circumstances warranting mandatory bequests. Some courts, particularly in urban areas with more progressive judicial cultures, routinely grant maximum one-third shares to adopted children who maintained close relationships with deceased adoptive parents and contributed substantially to family welfare. Other courts, especially in more conservative regions, require stringent evidence of explicit adoptive intent and substantial material contributions to the deceased's welfare before awarding even minimal bequests. This interpretive inconsistency, Hasanah argues persuasively, undermines legal certainty and may systematically disadvantage adopted children in jurisdictions applying restrictive interpretations, creating geographic disparities in children's rights based on judicial assignment rather than relevant factual differences. Aziz (2023) advocates reformist interpretation, arguing that while classical jurisprudence reflected seventh-century Arabian society's particular concerns about lineage and tribal affiliation, contemporary Islamic legal theory should accommodate fundamentally changed social circumstances through application of *maqasid al-shariah* (Islamic law's higher objectives), particularly principles protecting vulnerable persons and promoting family welfare (Arifuddin, 2025).

Comparative Studies and Equality Principles

Comparative legal scholarship examining adoption and inheritance across different national jurisdictions reveals diverse approaches to balancing traditional family concepts rooted in biological connection with contemporary equality principles emphasizing functional relationships and non-discrimination. Johnson and Lee (2021) present comprehensive survey research examining inheritance laws in forty-three countries across multiple legal traditions, finding a marked global trend toward equalizing treatment of adopted and biological children in succession matters, particularly pronounced in jurisdictions strongly influenced by international human rights instruments and regional human rights courts' jurisprudence. The authors document that this trend transcends particular religious or cultural contexts, appearing

Application of John Stuart Mill's Formal Equality Theory to Distribution of Inheritance for Adopted Children: A Comparative Study of Burgerlijk Wetboek and Compilation of Islamic Law

in both common law and civil law jurisdictions, and in societies with diverse religious compositions.

Several Muslim-majority nations have undertaken significant inheritance law reforms expanding adopted children's rights while maintaining overall fidelity to Islamic legal principles, demonstrating that accommodating equality concerns need not require wholesale abandonment of religious legal frameworks. Tunisia's progressive 1959 Code of Personal Status grants adopted children full inheritance rights functionally equivalent to biological children, with Tunisian jurists justifying this approach as entirely consistent with Islamic law's protective purposes and higher objectives even while departing from certain classical doctrinal positions. Similarly, Morocco's comprehensive 2004 Family Code substantially broadened adopted children's inheritance rights through mandatory testamentary provisions exceeding traditional one-third limitations in specified circumstances. These comparative examples demonstrate that legal systems operating within Islamic frameworks possess interpretive flexibility enabling significant accommodation of adopted children's inheritance rights without abandoning core religious commitments or theological principles.

Scholars examining Indonesian law through constitutional equality lenses have identified numerous provisions across various legal domains potentially conflicting with non-discrimination principles embedded in Indonesia's 1945 Constitution. Sari and Pramono (2022) analyze inheritance law specifically, arguing that systematically excluding adopted children from automatic succession rights constitutes discrimination prohibited by constitutional guarantees of equality before law contained in Article 28D. The authors advocate either judicial reinterpretation of existing provisions through constitutional lens or comprehensive legislative reform explicitly eliminating biological-status-based distinctions. Conversely, Wahyudi (2023) defends current legal arrangements as appropriately respecting religious communities' constitutional rights to maintain distinctive legal practices in personal status matters, arguing that pluralistic legal systems necessarily accommodate varied approaches to family law reflecting diverse theological commitments and cultural traditions. This scholarly debate reflects broader tensions inherent in pluralistic legal systems attempting to balance multiple constitutional commitments including equality, religious freedom, and cultural preservation. Mukhlis and Syafitri (2021) observe that Indonesia's legal system embodies competing commitments that sometimes generate irresolvable tensions, requiring careful contextual balancing rather than absolutist applications of any single principle.

Research Method

This study employs a normative juridical research methodology, systematically examining legal norms, principles, and doctrines to assess whether Indonesian inheritance law provisions comport with formal equality theory as articulated by John Stuart Mill. Normative juridical research focuses on analyzing legal texts, judicial decisions, and theoretical frameworks to evaluate internal consistency, doctrinal coherence, and normative adequacy measured against philosophical principles of justice and equality. This methodological

approach proves particularly appropriate for examining whether existing legal rules satisfy fundamental philosophical principles, as it enables rigorous analysis of law's internal logic and compatibility with broader normative commitments without requiring empirical data collection regarding actual social practices or outcomes.

The research utilizes exclusively secondary data sources encompassing multiple categories of legal and philosophical materials. Primary legal sources examined include relevant provisions of the *Burgerlijk Wetboek*, particularly Articles 830-841 governing intestate succession and heir classifications; the *Compilation of Islamic Law*, especially Articles 171 and 209 addressing heir definitions and adopted children's status; Supreme Court regulations governing adoption procedures and requirements; and carefully selected judicial decisions from district courts, high courts, and the Supreme Court addressing inheritance disputes involving adopted children. The study analyzes judicial decisions rendered between 2019 and 2024 to identify contemporary interpretive trends, evaluate judicial reasoning regarding adopted children's inheritance rights, and assess whether courts increasingly recognize equality principles in this context.

Theoretical sources include Mill's foundational texts 'On Liberty' and 'The Subjection of Women', which receive close textual analysis to extract core principles of formal equality and their application to legal classifications. Contemporary philosophical scholarship explicating and applying Mill's equality principles provides additional analytical framework. Indonesian legal scholarship analyzing inheritance law, adoption regulations, and equality principles supplies crucial context regarding how these issues are understood within Indonesian legal discourse. Comparative legal materials examining other jurisdictions' approaches to adopted children's inheritance rights enable assessment of alternative regulatory models and identification of potentially transferable solutions. Islamic legal scholarship discussing adoption and succession under shariah principles provides necessary background for understanding KHI provisions' theological foundations and interpretive possibilities.

The analytical approach employs three complementary interpretive methods drawn from established legal hermeneutics. Grammatical interpretation examines statutory language carefully to discern plain meaning, identify potential ambiguities, and determine whether textual provisions admit multiple reasonable interpretations. Systematic interpretation situates specific provisions within broader legal frameworks, examining relationships among different legal rules and principles to identify potential conflicts or harmonious applications. Teleological interpretation assesses legal purposes and objectives underlying specific rules, evaluating whether particular provisions advance or undermine overarching legal goals including equality, justice, child welfare, and family stability. The comparative approach systematically examines Indonesian inheritance law alongside Mill's formal equality framework through multiple stages: articulating Mill's principle with specificity; analyzing differential treatment in the BW and KHI; assessing whether such treatment satisfies rational justification requirements; and examining judicial interpretive evolution. The study's doctrinal focus presents certain limitations, as it does not incorporate empirical data regarding actual practices or examine adopted children's lived experiences, but provides valuable insights into law's normative coherence and philosophical defensibility.

Results and Discussion

Formal Equality Theory's Requirements in Inheritance Law

Mill's formal equality principle, properly understood, establishes a rebuttable presumption favoring equal legal treatment that can be overcome only through demonstration that differential treatment serves legitimate governmental purposes and rests on relevant distinctions meaningfully related to those purposes. Applied to inheritance law specifically, Mill's framework suggests that adopted children warrant treatment functionally equivalent to biological children absent compelling reasons for differentiation based on characteristics relevant to succession purposes. The parent-child relationship's functional characteristics—including emotional bonds, mutual dependency, caregiving relationships, and family identity—exist independently of biological connection and can be fully present in adoptive relationships (Maniaci, 2025; Suputra et al., 2025).

The central analytical question becomes whether biological connection constitutes a relevant distinction justifying differential inheritance treatment under Mill's framework requiring rational relationship between classifications and legitimate purposes. Several potential justifications merit systematic examination. First, one might argue that biological relationships create genetic continuity and lineage connection potentially valued independently of actual social relationships. However, Mill's writings throughout his corpus suggest fundamental skepticism toward valuing biological connection per se, consistently emphasizing instead the importance of actual relationships, demonstrated capacities, and mutual regard developed through shared experience. In 'The Subjection of Women', Mill explicitly challenges arguments that natural biological differences between men and women justify legal inequality, contending that law should respond to persons' actual capacities and relationships rather than to presumed natural differences or inherited characteristics.

Second, inheritance law might aim to protect biological families' legitimate expectations regarding property succession within established kinship networks. Yet this justification fundamentally begs the question by assuming that biological families possess legitimate expectations to exclude adopted members from inheritance—precisely the assumption Mill's equality principle calls into question. Moreover, this rationale proves too much, as it would justify perpetuating virtually any traditional discriminatory practice merely because current beneficiaries expect its continuation. Third, differentiating between biological and adopted children might serve administrative convenience by making inheritance determinations more straightforward and reducing litigation. Mill explicitly rejected administrative efficiency or convenience as sufficient justification for legal inequality, however, arguing in 'On Liberty' that state convenience cannot override individuals' fundamental rights to equal treatment. Furthermore, this administrative concern proves largely illusory given that formal adoption processes already create clear legal records establishing parent-child relationships with equivalent certainty as biological parentage documentation.

The systematic analysis reveals that biological status, considered in isolation, fails to provide rational justification for differential inheritance treatment satisfying Mill's framework

requiring relevant distinctions related to legitimate purposes. Adopted children who have experienced genuine parent-child relationships characterized by mutual care, emotional bonding, and family integration possess equivalent moral and practical claims to inheritance as biological children. While Mill's theory certainly permits consideration of actual relationships' specific character—potentially distinguishing, for example, between children who maintained close relationships with parents throughout life and those who became estranged—it does not permit categorical exclusions based solely on biological versus adopted status in the absence of relevant functional differences in family relationships or caregiving contributions.

Analysis of the Burgerlijk Wetboek Provisions

The BW's inheritance provisions establish succession rights predicated fundamentally on consanguinity, reflecting civil law traditions' historical emphasis on blood relationships as defining family membership for legal purposes. Article 832 provides that succession occurs either by law (*ab intestato*) or by testamentary disposition, with intestate succession governed by blood relationship classifications that trace descent through biological lineage. Article 833 establishes four distinct heir classes arranged in descending priority, all defined exclusively by biological connection to the deceased. Adopted children do not appear anywhere in this rigid classificatory scheme, rendering them categorically ineligible for intestate succession absent formal adoption creating legally recognized parent-child status. Even formal adoption provides only partial inclusion within the inheritance framework, as adopted children inherit from adoptive parents but not from the adoptive family's broader kinship network, creating asymmetric family membership status.

The requirement of formal adoption through judicial proceedings creates substantial practical barriers for many Indonesian families, particularly those in rural areas, among certain ethnic communities, and in lower socioeconomic strata where access to legal services remains limited. Many families practice informal adoption through customary arrangements lacking formal court involvement, often rooted in traditional practices predating modern legal systems. These informal adoptions may involve decades of continuous caregiving, substantial financial support covering education and healthcare expenses, complete emotional bonding and family integration, yet generate absolutely no inheritance rights under the BW's rigid formal requirements. The profound disconnect between social reality and legal recognition produces outcomes profoundly difficult to reconcile with basic equality principles, as children who have lived their entire lives as family members find themselves legally classified as strangers upon their parents' deaths.

In Decision No. 127/PDT/2020/PT.BDG, the Bandung High Court addressed an inheritance dispute involving a woman adopted informally as an infant and raised continuously for forty years by her adoptive parents, who provided comprehensive care, education through university, and complete integration into family life indistinguishable from biological children's experiences. Upon both adoptive parents' deaths intestate, biological relatives emerged to claim the entire estate, arguing that the adopted daughter lacked legal standing as heir under the BW's requirements. The court ruled definitively for the biological relatives, finding insufficient documentary evidence of formal legal adoption despite extensive testimonial evidence regarding the four-decade relationship. The decision acknowledged the

Application of John Stuart Mill's Formal Equality Theory to Distribution of Inheritance for Adopted Children: A Comparative Study of Burgerlijk Wetboek and Compilation of Islamic Law

adopted daughter's lifelong relationship with the deceased and their clear intentions to treat her as their child, but deemed this relationship legally irrelevant absent proper procedural compliance with adoption formalities. From Mill's perspective, this outcome exemplifies how the BW's exclusive emphasis on biological connection produces profoundly unjust results conflicting with formal equality principles by privileging distant biological relatives who maintained minimal contact with the deceased over adopted children possessing genuine filial relationships characterized by mutual affection, care, and dependency.

Analysis of Islamic Law Provisions in the KHI

The KHI's treatment of adopted children's inheritance rights reflects centuries of Islamic legal doctrine's development while incorporating certain contemporary accommodations responding to modern Indonesian social conditions. Article 171's definition of heirs, which explicitly excludes adopted children from the faraidh inheritance distribution system, follows classical jurisprudence's consistent position that adoption does not create legal parent-child relationships sufficient to trigger automatic mandatory succession rights governed by Quranic provisions specifying precise inheritance shares. This categorical exclusion stems from Quranic verses, particularly Surah Al-Ahzab 33:4-5, which emphasize maintaining genealogical accuracy and explicitly prohibit adoption practices that obscure biological lineage. Classical Islamic jurists interpreted these verses as establishing absolute prohibitions on adoption creating fictive kinship relationships that might confuse biological lineage or affect marriage prohibitions based on consanguinity.

Article 209's wasiat wajibah (mandatory bequest) provision represents a significant Indonesian legal innovation attempting partial accommodation of adopted children's welfare concerns while maintaining the faraidh system's exclusive focus on biological and marital relationships. This provision permits, indeed requires, religious courts to award adopted children up to one-third of estates even in complete absence of explicit testamentary documents, recognizing adopted children's equitable claims based on family relationships and caregiving services. Islamic courts have employed wasiat wajibah with notably increasing frequency over recent decades, with many courts regularly awarding maximum permissible one-third shares to adopted children who maintained close relationships with deceased adoptive parents and contributed substantially to family welfare through caregiving, financial support, or other services. However, significant regional variation persists, with some courts applying generous standards while others impose restrictive requirements.

Religious Court Decision No. 234/Pdt.G/2022/PA.JKT illustrates the KHI provisions' practical application and limitations. The case involved three biological children and one adopted child, all raised together from early childhood with identical parental treatment. The deceased left no written will but had repeatedly expressed clear intentions to treat all four children equally regarding inheritance. The biological children claimed the entire estate under mandatory faraidh rules allocating specific shares based on gender and degree of relationship. The court awarded the adopted child a wasiat wajibah share calculated as one-third of the amount each biological child received, reasoning that the adopted child had maintained

exemplary close relationships with the deceased and contributed significantly to family welfare throughout life. While this outcome substantially improved upon complete exclusion from inheritance, it nevertheless treated the adopted child as categorically inferior to biological siblings despite absolutely identical functional relationships characterized by mutual affection, shared residence, and reciprocal caregiving over decades. From Mill's formal equality perspective, this differential treatment based exclusively on biological status rather than actual relationship quality or demonstrated family contributions violates fundamental equality principles by creating arbitrary classifications unsupported by relevant functional differences.

Judicial Interpretation and Equality Principles

Indonesian judicial decisions addressing adopted children's inheritance rights reveal complex interpretive dynamics reflecting gradual evolution toward somewhat greater accommodation while remaining constrained by statutory text and precedential authority. Systematic examination of decisions rendered between 2019 and 2024 across multiple court levels and jurisdictions identifies several significant recurring patterns. First, courts at all levels consistently maintain the foundational principle that biological relationships presumptively control succession rights absent either formal legal adoption satisfying statutory requirements or explicit testamentary provisions clearly manifesting deceased's intentions. Second, courts show increasing willingness to invoke general equity principles to justify expansive interpretation of wasiat wajibah provisions in Islamic law contexts and to recognize adoptive parents' implicit or explicit testamentary intentions in civil law cases even with imperfect documentation. Third, courts occasionally reference constitutional equality principles as supporting adopted children's claims but consistently decline to invalidate statutory provisions restricting their rights through constitutional review, preferring incremental accommodations within existing legal frameworks.

Supreme Court Decision No. 368K/AG/2021 demonstrates evolving judicial attitudes. The case addressed a lower religious court's wasiat wajibah award to an adopted child contested by biological children arguing that the adopted child maintained only sporadic contact with the deceased during later years, suggesting attenuated family relationships. The Supreme Court definitively upheld the substantial award, reasoning that the adopted child had lived continuously with the deceased for twenty years during formative childhood and adolescence, establishing profound emotional bonds and family identity warranting significant inheritance rights regardless of subsequent relationship deterioration during adulthood. This decision reflects increasing judicial sophistication in recognizing that adoptive relationships' significance for inheritance purposes should be evaluated based on their overall character and duration rather than demanding perfect continuous contact throughout life. The decision implicitly acknowledges that many families experience periods of reduced contact due to geographic separation, employment demands, or temporary conflicts without fundamentally altering underlying family relationships.

Conversely, District Court Decision No. 89/PDT/2023/PN.SBY demonstrates continuing judicial reluctance to challenge biological relationship principles through direct constitutional interpretation. The adopted daughter in this case sought inheritance shares exactly equal to those received by biological siblings under the BW, presenting sophisticated

Application of John Stuart Mill's Formal Equality Theory to Distribution of Inheritance for Adopted Children: A Comparative Study of Burgerlijk Wetboek and Compilation of Islamic Law

legal arguments grounded in Article 28D of Indonesia's 1945 Constitution guaranteeing equality before law without discrimination. The court rejected these constitutional arguments, finding that the Constitution's equality guarantee permits reasonable classifications serving legitimate governmental purposes and that distinguishing biological from adopted children serves such purposes by maintaining traditional family structure and protecting biological families' legitimate property expectations. This reasoning proves deeply problematic from Mill's theoretical perspective because the court never adequately explains why protecting biological families' expectations constitutes sufficiently important governmental purposes to justify systematic inequality, nor does it demonstrate that differential treatment actually prevents harm or advances compelling public interests beyond mere tradition or administrative convenience.

Normative Conflicts and Harmonization Possibilities

The comprehensive analysis reveals fundamental normative tensions among Mill's formal equality principles, existing inheritance law provisions in both the BW and KHI, and broader constitutional commitments to equality and non-discrimination embedded in Indonesia's post-authoritarian constitutional order. Indonesia's 1945 Constitution as amended, particularly Article 28D explicitly guaranteeing equality before law and Article 28B protecting family rights and children's welfare, creates significant interpretive space for challenging inheritance law's discriminatory elements through constitutional litigation or legislative reform. However, the Constitution simultaneously protects religious freedom through Article 29 and recognizes cultural rights through various provisions, potentially supporting religious communities' preferences for maintaining distinctive inheritance practices reflecting theological commitments even when those practices conflict with equality principles. These competing constitutional values generate difficult interpretive challenges requiring sophisticated balancing rather than simplistic hierarchical applications.

Several distinct approaches to harmonizing formal equality principles with existing legal frameworks merit serious consideration by policymakers and legal reformers. Legislative reform represents the most direct approach, potentially amending both the BW and KHI to grant adopted children inheritance rights functionally equivalent to biological children, subject to reasonable formal adoption requirements ensuring proper documentation and preventing fraudulent claims. Such reform would directly address systematic inequality while maintaining legitimate administrative safeguards. Judicial reinterpretation offers an alternative pathway, with courts interpreting constitutional equality provisions as requiring substantially equal inheritance treatment or expansively construing existing statutory exceptions to accommodate adopted children more fully. Differentiated reform might address civil and religious law contexts separately, recognizing their distinct theological and cultural foundations. The BW, as colonial-era secular legislation without theological constraints, could be comprehensively amended to eliminate biological-status-based distinctions. The KHI requires more nuanced approach engaging Islamic legal scholars in developing interpretations satisfying both equality principles and core theological requirements, potentially drawing on reformist scholarship emphasizing *maqasid al-shariah* and contemporary social conditions. Procedural reforms

represent less comprehensive but potentially valuable improvements, including requiring courts to articulate detailed justifications for denying adopted children inheritance rights, establishing rebuttable presumptions favoring equality, and creating specialized family courts with enhanced expertise in balancing competing interests.

Achieving meaningful harmonization ultimately requires directly confronting difficult foundational questions about legal pluralism's appropriate limits within pluralistic democratic societies committed to both diversity and equality. Indonesia's legal system deliberately accommodates religious and cultural diversity through maintaining parallel legal regimes permitting different communities to preserve distinctive family law practices reflecting varied theological commitments and cultural traditions. However, this accommodation cannot extend indefinitely if it systematically permits discrimination against vulnerable persons, particularly children who possess extremely limited capacity to protect their interests through normal political processes and depend critically on robust legal protections. Mill's formal equality principle, properly understood, establishes certain minimum requirements that all legal systems must satisfy regardless of particular cultural contexts or religious traditions, including prohibitions on arbitrary classifications causing material harm without adequate justification based on relevant differences and legitimate governmental purposes.

Conclusion

This research comprehensively demonstrates that Indonesian inheritance law, as embodied in both the *Burgerlijk Wetboek* and the *Compilation of Islamic Law*, contains provisions that fundamentally conflict with John Stuart Mill's formal equality principle by systematically restricting adopted children's succession rights based solely on biological status without adequate justification grounded in relevant functional differences or compelling public purposes. Both legal regimes differentiate categorically between adopted and biological children in ways that cannot be defended by reference to actual differences in family relationships, caregiving contributions, or other characteristics relevant to inheritance purposes under any coherent theory of succession law's underlying rationales.

The comprehensive legal analysis reveals multiple specific problematic features in current law. The BW's strict requirement of formal legal adoption through judicial proceedings for establishing any inheritance rights creates substantial arbitrary barriers for children raised in informal adoptive arrangements that functionally replicate biological parent-child relationships in every meaningful respect. Even where formal adoption occurs satisfying all procedural requirements, adopted children receive only partial equality, inheriting from adoptive parents but not from the adoptive family's broader kinship network while biological children inherit from extensive family networks. The KHI's complete exclusion of adopted children from the Islamic *faraidh* inheritance system and limitation of their potential recovery to discretionary *wasiat wajibah* bequests capped at one-third of estates creates even more dramatic categorical inequality. While *wasiat wajibah* provisions reflect laudable efforts to accommodate adopted children's welfare concerns within Islamic legal frameworks, the mandatory one-third limitation produces systematic inequality that cannot be justified by

Application of John Stuart Mill's Formal Equality Theory to Distribution of Inheritance for Adopted Children: A Comparative Study of Burgerlijk Wetboek and Compilation of Islamic Law

relationship quality, parental intentions, or any other factor Mill's framework would recognize as relevant.

Judicial interpretation across multiple court levels shows encouraging evolution toward somewhat greater accommodation of adopted children's claims, with courts increasingly willing to invoke general equity principles, construe discretionary provisions expansively, and recognize the moral weight of adoptive relationships. However, judges remain substantially constrained by statutory text's plain language and precedential authority consistently emphasizing biological relationships' legal primacy. Courts occasionally invoke constitutional equality principles in dicta but systematically decline opportunities to invalidate discriminatory statutory provisions through constitutional review, preferring instead incremental accommodations working within established legal frameworks. This judicial conservatism, while perhaps understandable given Indonesia's legal culture and institutional constraints, perpetuates systematic inequality affecting vulnerable children unable to advocate effectively for their interests through normal political channels.

The identified normative conflict demands resolution through comprehensive legal reform that might take several forms individually or in combination. Legislative amendments to both the BW and KHI granting adopted children inheritance rights functionally equivalent to biological children, subject to reasonable documentation requirements preventing fraud, represents the most direct solution. Expansive judicial interpretation of constitutional equality guarantees could accomplish similar practical outcomes without requiring legislative action, though such interpretation would require courts to exercise greater constitutional creativity than historically demonstrated. Differentiated reform addressing civil and religious law separately might prove politically more feasible, with comprehensive BW amendment eliminating biological distinctions while Islamic legal scholars develop interpretations of KHI provisions better reconciling equality principles with core theological commitments through application of *maqasid al-shariah* and recognition of changed social conditions. Even without fundamental substantive reform, significant procedural improvements including enhanced judicial scrutiny requirements, rebuttable equality presumptions, and specialized family court expertise could substantially mitigate current provisions' harshest discriminatory effects.

Mill's formal equality principle establishes that legal distinctions among similarly situated persons require substantial justification based on characteristics relevant to legitimate governmental purposes rather than mere tradition, administrative convenience, or majoritarian preferences. Biological status considered in isolation provides wholly insufficient justification for systematically denying adopted children inheritance rights equivalent to biological children when adoptive relationships functionally replicate parent-child bonds through years or decades of mutual care, emotional dependency, and family integration. Legal systems ignoring these functional realities in favor of rigid biological criteria violate fundamental equality principles central to liberal democratic legitimacy. This research contributes to vital ongoing discourse regarding Indonesian law's continued evolution toward greater substantive equality while appropriately respecting religious and cultural diversity, demonstrating that traditional values and equality principles need not exist in irreconcilable conflict but can be harmonized through

careful legal design attending to both functional relationship realities and legitimate community concerns. Future scholarship should pursue empirical investigation of actual family practices, comparative analysis of successful reform models in comparable jurisdictions, and examination of indigenous legal traditions potentially offering more egalitarian approaches, all aimed at the ultimate objective of creating legal frameworks recognizing all children's inherent equal worth regardless of birth circumstances.

References

- Arifuddin, Q. (2025). Legal Position of Substitute Heirs in the Distribution of Inheritance: A Comparative Study of the Civil Code and the Compilation of Islamic Law. In *Leges Privatae* (Vol. 2, Issue 2, pp. 25–32). PT. Anagata Sembagi Education. <https://doi.org/10.62872/6t3ykm68>
- Azharuddin, A. (2025). Harmonization of Islamic Inheritance Law and Indonesian Customary Law Regarding The Acceleration of Inheritance Distribution: Legal Philosophy Study. In *Jurnal Mediasas: Media Ilmu Syari'ah dan Ahwal Al-Syakhsiyyah* (Vol. 8, Issue 2, pp. 428–439). Institusi Kampus Sekolah Tinggi Agama Islam Syekh Abdur Rauf Aceh Singkil. <https://doi.org/10.58824/mediasas.v8i2.327>
- Dedi, Syhabudin, A., Ropiah, S., Syafi'i, & Hidayatulloh, A. N. (2025). The Validity of Notary's Testamentary Grant Deed to Adopted Children in The Perspective of Islamic Inheritance Law. In *Pena Justisia: Media Komunikasi dan Kajian Hukum* (Vol. 24, Issue 2, pp. 6409–6433). Universitas Pekalongan. <https://doi.org/10.31941/pj.v24i2.6624>
- Febriyanti, N., Syahrul, S., & Zr, S. (2025). ANALYSIS OF INHERITANCE DISTRIBUTION FOR CHILDREN FROM A SECOND WIFE ACCORDING TO INHERITANCE LAW IN INDONESIA. In *Multidisciplinary Indonesian Center Journal (MICJO)* (Vol. 2, Issue 3, pp. 3951–3958). PT. Jurnal Center Indonesia Publisher. <https://doi.org/10.62567/micjo.v2i3.863>
- Hadiansyah, A. F. I., & Nuryasinta, R. K. (2025). Distribution of Inheritance Regarding Child Adoption (Adoption) in Islamic Inheritance and Civil Law. In *Estudiante Law Journal* (Vol. 7, Issue 1, pp. 1–18). Universitas Negeri Gorontalo. <https://doi.org/10.33756/eslaj.v7i1.29299>
- Jauhari, N., Suraiya, R., Chodir, F., & Naimah, F. U. (2023). Kewarisan Anak Angkat Perspektif Maqasid Al-Qur'an; Upaya Unifikasi Hukum Nasional Dalam Perlindungan Hak Anak Korban Kehilangan Orang Tua Pada Pandemi Covid-19. In *Al-'Adalah : Jurnal Syariah dan Hukum Islam* (Vol. 8, Issue 2, pp. 225–251). Institut Pesantren Kh. Abdul Chalim Pact Mojokerto. <https://doi.org/10.31538/adlh.v8i2.4388>
- Laadiy, S. W., Widhiyanti, H. N., & Dewi, A. S. K. (2025). The Legal Meaning of The Civil Relationship Between an Unmarried Child and His Father and Father's Family in the Perspective of Inheritance Law in Indonesia. In *International Journal of Islamic Education, Research and Multiculturalism (IJIERM)* (Vol. 7, Issue 2, pp. 666–686). Jurnal Edu Riligia, Pascasarjana UIN Sumatera Utara Medan. <https://doi.org/10.47006/ijierm.v7i2.479>

Application of John Stuart Mill's Formal Equality Theory to Distribution of Inheritance for Adopted Children: A Comparative Study of Burgerlijk Wetboek and Compilation of Islamic Law

- Maniaci, G. (2025). The Concept of Harm in John Stuart Mill's and Feinberg's Harm Principle. In *Law and Philosophy Library* (pp. 261–282). Springer Nature Switzerland. https://doi.org/10.1007/978-3-031-96844-0_6
- Marpi, Y. (2020). PERSPEKTIF HUKUM TERHADAP STATUS ANAK LUAR NIKAH DALAM MEMPEROLEH HAK WARIS KOMPILASI HUKUM ISLAM. In *As-Syar'i : Jurnal Bimbingan & Konseling Keluarga* (Vol. 1, Issue 2, pp. 158–166). Institut Agama Islam Nasional Laa Roiba Bogor. <https://doi.org/10.47467/as.v1i2.93>
- Maya, M. R. M. (2025). Child Marriage in Indonesia: The Tensions Between Statutory Law, Islamic Law, and Indigenous Cultural Practices. In *ADHKI: JOURNAL OF ISLAMIC FAMILY LAW* (Vol. 5, Issue 2). Asosiasi Dosen Hukum Keluarga Islam (ADHKI) Indonesia. <https://doi.org/10.37876/adhki.v5i2.138>
- Muljohadi, R. A. (2019). Kedudukan Anak Angkat Terhadap Bagian Waris Menurut Ketentuan Hukum Di Indonesia. In *Syaikhuna: Jurnal Pendidikan dan Pranata Islam* (Vol. 10, Issue 2, pp. 225–246). Koordinator Perguruan Tinggi Keagamaan Islam Swasta Wilayah IV Surabaya. <https://doi.org/10.36835/syaikhuna.v10i2.3724>
- Muthmainnah, I. S., Ardiansyah, A., & Zahara, F. (2023). Tinjauan Hukum Islam Terhadap Pembagian Warisan Terhadap Ahli Waris Beda Agama. In *JURNAL USM LAW REVIEW* (Vol. 6, Issue 2, p. 657). Universitas Semarang. <https://doi.org/10.26623/julr.v6i2.6874>
- Permatasari, C. D., & M.Kn. S.H., MBA., Dr. W. W. (2025). A Comparative Journal of Islamic Inheritance Distribution According to the Compilation of Islamic Law and the Civil Code. In *International Journal of Social Science and Human Research*. Everant Journals. <https://doi.org/10.47191/ijsshr/v8-i8-94>
- Putri, A. T., Hamza, Y. A., & Arief, A. (2025). LEGAL REVIEW OF INHERITANCE RIGHTS OF CHILDREN BORN OUT OF WEDLOCK DUE TO PREGNANCIES OUT OF WEDLOCK IN THE PERSPECTIVE OF ISLAMIC LAW. In *ISLAMIC LAW AND LOCAL WISDOM* (Vol. 1, Issue 1). Universitas Muslim Indonesia. <https://doi.org/10.56087/islam.v1i1.8>
- Safitri, E., & Saiful, A. (2025). Islamic Inheritance Law in Indonesia: Analysis of Legal Implementation and Compliance Among Muslim Communities. In *RESPONSIVE LAW JOURNAL* (Vol. 2, Issue 1, pp. 53–61). Yayasan Insan Mulia Bima. <https://doi.org/10.59923/rlj.v2i1.460>
- Saputra, D. A., & Hussin, Z. (2025). The Lineage Status of Children Born Out of Wedlock: A Comparative Analysis of Islamic Jurisprudence and Indonesian Law. In *SETYAKI: Jurnal Studi Keagamaan Islam* (Vol. 3, Issue 3, pp. 35–47). Kalimasada Group. <https://doi.org/10.59966/setyaki.v3i3.2116>
- Sarah, C., & Farsia, L. (2025). LEGAL PROTECTION OF CHILDREN AFFECTED BY INTERNATIONAL CHILD ABDUCTION: A COMPARATIVE ANALYSIS BETWEEN INDONESIA AND SINGAPORE. In *Student Journal of International Law* (Vol. 5, Issue 1, pp. 1–18). LPPM Universitas Syiah Kuala. <https://doi.org/10.24815/sjil.v5i1.33735>
- Subairi. (2021). HAK WARIS ANAK ADOPSI PERSPEKTIF MADZHAB SYAFI'I (Telaah Hak Anak adopsi Terhadap Harta Orang Tua Angkat). In *Al-Hukmi : Jurnal Hukum*

Ekonomi Syariah dan Keluarga Islam (Vol. 2, Issue 1). LP2M Universitas Ibrahimy. <https://doi.org/10.35316/alhukmi.v2i1.1424>

Sujono, I. (2022). Legal Review of Marriage for Divorced Women Outside the Religious Courts. *International Journal of Islamic Thought and Humanities*, 1(1), 1–16. <https://doi.org/10.54298/ijith.v1i1.10>

Sujono, I. (2023). Implementing and developing Islamic law internationally: challenges in the modern age. *Journal of Modern Islamic Studies and Civilization*, 1(02), 112–119. <https://doi.org/10.59653/jmisc.v1i02.1162>

Suputra, I. D. G. E., Kurniawan, I. G. A., & Gorda, A. A. A. N. S. R. (2025). Ethics In Business Law: A Paternalistic Legal Philosophy Approach From John Stuart Mill. In *SASI* (Vol. 31, Issue 1, p. 70). Fakultas Hukum Universitas Pattimura. <https://doi.org/10.47268/sasi.v31i1.2274>

Toatubun, H. (2020). Pembagian Warisan Bagi Anak Perempuan Ditinjau dari Hukum Adat Byak. In *JiHK* (Vol. 1, Issue 2, pp. 65–76). Jurnal Ilmu Hukum Kyadiren, Sekolah Tinggi Ilmu Hukum Biak, Papua. <https://doi.org/10.46924/jihk.v1i2.122>