FUNDAMENTUM
JOURNAL OF LEGAL AND JUDICIAL REFORM

E-ISSN: xxxx - xxxx
Volume 01, Number 01, Year 2025
Page: 51-63

RESEARCH ARTICLE

The Supreme Court and The Reform of Islamic Family Law in Indonesia

Jajang Husni Hidayat*
Religious Court of Tanjung, South Kalimantan
**Correspondence*: *e-mail*: jajangkop@gmail.com

Abstract

Family law is unique in the discourse of Islamic law, especially because of its strategic position in forming Islamic society from its smallest unit. The development of social reality triggered by advances in science and information technology demands legal reform in general, including reform in the field of Islamic family law. In Indonesia, after successfully unifying marriage law through Law No. 1 of 1974 concerning Marriage, the renewal of Islamic family law continued with the emergence of Presidential Decree No. 1 of 1991 concerning the dissemination of the Compilation of Islamic Law. Not only through the executive and legislative institutions, but the renewal of Islamic family law is also carried out by the judiciary, namely the Supreme Court, both through jurisprudence and a Supreme Court Circular Letter. This paper focuses on the method of reforming Islamic family law carried out by the Supreme Court, which is examined normatively through qualitative data obtained from a literature review of related sources. As a result, the Supreme Court reformed Islamic family law using the intra-doctrinal reform method, through superstition and talfiq. This is evident in the SEMA regarding the husband's obligation to his wife as a result of divorce, by choosing (takhayyur) the opinion of the Hanafi School. As for the talfiq method adopted by Jurisprudence in terms of giving the inheritance to non-Muslim families through a mandatory testament.

Keyword: *Jurisprudence, SEMA, Legal Reform, Islamic family law.*

How to cite this article:
Hidayat.J.H. (2025). The Supreme Court and The Reform of Islamic Family Law in Indonesia. *Fundamentum: Journal of Legal and Judicial Reform.* 1 (1). 51-63. DOI: https://doi.org/10.70992/m0n8yf41

Received, 10 Mei 2025; Accepted, 17 Juni 2025; Published, Juni 2025

INTRODUCTION

After conducting various studies on Islamic law, some (Western) researchers finally came to the opinion that Islamic law is one of the most important elements in Islamic teachings. Islamic law has entered and influenced other areas of Islamic studies. Joseph Schacht has his own language, stating, Islamic law has become a symbol of Islamic thought and has become the embodiment of the most distinctive and tangible lifestyle of Muslims. Gibs said that Islamic law describes the most

epic knowledge and the most effective agent in shaping the social order of the life of the Muslim community. (Wahib & Ahmad, n.d.)

In the discourse of Islamic law, family law has a unique role, especially because of its strategic position in the formation of Islamic society from its smallest unit. In addition, it cannot be denied that Islamic family law has its own adaptability, so that Islamic countries or Muslim-majority countries apply it. (Mahfudhi, n.d.)

The reality of society then develops in such a way triggered by advances in science and information technology. The forms and patterns of interaction are entirely new, and the established structure of society has been corrected. This reality demands accommodation in the form of legal reform in general, including various reforms in the field of Islamic family law. (Muin, n.d.)

Islamic family law reform means a serious effort to find family law provisions that are able to answer problems and are in line with the times with the aim of bringing benefit and rejecting kemafsadatan as the purpose of Islamic law. (Muin, n.d.) . This renewal cannot be separated from the dynamics of Islamic law in general which, according to many experts, every effort to renew it is motivated by at least four things; *first,* to fill the legal vacuum due to the emergence of a problem that is not in the books of fiqh. *Second, the* influence of globalization and the advancement of science and technology that demands the rule of law. *Third, the* influence of reform in various fields opens up opportunities for Islamic law to become a frame in shaping national law. *Fourth,* the influence of Islamic law reform from mujtahids, both international and national levels. (Sulaiman, n.d.)

Regarding the reform of Islamic law in Indonesia, especially in the family sector, Muji Mulia notes that the Compilation of Islamic Law (KHI) is the result of the dynamics of renewal of Islamic legal thought, which includes three handbooks, namely: marriage law, trusts and inheritance. According to Ahmad Rofiq KHI has ideas that must not be completely new, with all its shortcomings it can be considered as a reflection of the awareness of ijtihad in Indonesian society. Marzuki Wahid and Rumadi consider that KHI symbolizes the State's fiqh mazhab. It is called the State's school of thought because the elements that construct Islamic law in KHI starting from the initiative, the research process, to the final conclusion of its legal choices are all carried out by a team formed by the state and consists almost entirely of State people. The background of the formation, the legal logic used to the editorial pattern applied is also as commonly used by positive law recognized by the state. Moreover, the legal legitimacy of the implementation also depends on the decision of the State through (at the moment) a Presidential Instruction (Inpres). As a result, everything is State-colored, paralleling the highly authoritarian New Order political style, the political frame in which KHI was born. (Mulia, n.d.)

Nurul Ma'rifah examines the development of Islamic law reform during the New Order and Reformation Era. During the New Order period, Islamic family law reform in Indonesia experienced a rather significant development. The New Order, with the political dynamics that existed at that time, had succeeded in giving birth to the legal unification of Law No. 1 of 1974 concerning Marriage. Furthermore, the reform of Islamic family law continued with the emergence of Presidential Instruction No. 1 of 1991 concerning the dissemination of the Compilation of Islamic Law, a product of Islamic family law reform with fiqh requirements, and this benefited the Muslim community. However, the Compilation of Islamic Law at that time was still limited to Soeharto's strategy in maintaining national political stability, attracting sympathy from Muslims. (Ma'rifah, n.d.)

During the Reformation period, the politics of Islamic family law reform tended to stagnate due to the open space for freedom of speech of all Islamic groups in voicing their aspirations. The government has almost no role in the reform. (Ma'rifah, n.d.) . Islamic family law reforms in Indonesia are currently issued through the judiciary, either by Supreme Court decisions (jurisprudence) or circular letters on the implementation of the results of plenary meetings of religious chambers.

If in the Compilation of Islamic Law the mandatory will is only limited to adopted children and adopted parents, in its development, the mandatory will has been applied further. There are at least 4 (four) decisions of the Supreme Court of the Republic of Indonesia during the period 1995-2010 that provide a share of property from Muslim heirs to non-Muslim heirs through a mandatory will. The four decisions are (1) Supreme Court Decision Number: 368 K/AG/1995, (2) Supreme Court Decision Number: 51 K/AG/1999, (3) Supreme Court Decision Number: 59 K/AG/2001, and (4) Supreme Court Decision Number: 16 K/AG/2010. Wills were also granted to stepchildren as found in Supreme Court Decisions Number 489 K/AG/2011 and number 554/K/ AG/2011. (Setyawan, n.d.)

Such is the case in the issue of iddah maintenance due to divorce filed by the wife. If KHI only regulates the provisions of iddah and mut'ah maintenance as a result of the husband's divorce to the wife, Circular Letter no. 3/2018 on the Implementation of the Formulation of the Results of the Plenary Meeting of the Religious Chamber determines that in a divorce initiated by the wife (cerai gugat), iddah and mut'ah maintenance can be given as long as the wife is not proven to be nusyuz.

This paper focuses on the discussion of the method of renewal of Islamic family law in Indonesia and the method of renewal of Islamic family law by the Supreme Court, in this case through Jurisprudence and Circular Letters enforcing the results of the plenary meeting of the

chamber (read; religious chamber). This study is normative in nature. The answers will be sought through qualitative data obtained from a literature study of related sources. The systematic writing of this article is by presenting the reform of Islamic law in general before entering into Islamic family law in Indonesia in particular, describing the beginning of the Islamic madhhab adopted, the methodology of reform used and how the Supreme Court reformed Islamic family law through judges' decisions and Circular Letters of the Supreme Court.

METHODS

This research is descriptive and analytical with a juridical-normative method. The data collection techniques in this study through the study of literature materials include, literature books, magazines, newspapers, the internet, and journals related to the focus of this research. Initially, the author will collect all the sources of the library, then sort them by prioritizing the ones that are most relevant to the theme of this article.

FINDINGS AND DISCUSSION

1. Functions of the Supreme Court

The Supreme Court is the highest judicial institution in a country, its presence is a necessity regardless of whether a country adheres to a *civil* law legal system such as in Indonesia, or *Common law* such as England and America. In the Trias Politica initiated by *Montesquieu, the* Supreme Court is a manifestation of the judicial power of the state, which resolves disputes between citizens or between citizens and the government by applying laws that bind all citizens and governments that have been made by the legislature. (Riyadi, n.d.)

The authority of the Supreme Court is regulated in Article 24 A of the 1945 Constitution, namely to hear cases at the cassation level, to hear laws and regulations under the law against the law, and to have other powers granted by law. Other authorities of the Supreme Court are regulated in the Supreme Court Law

The area of legal reform by the Supreme Court is open because of the two functions it has, namely *first*; the judicial function. This means that the Supreme Court aims to foster uniformity in the application of law through cassation and judicial review decisions and to ensure that all laws and statutes throughout the territory of the Republic of Indonesia are applied fairly, precisely and correctly. *Second, the* Regulatory function, which is the authority of the Supreme Court to further regulate matters necessary for the smooth administration of justice if there are matters that have not been sufficiently regulated in the Law.

In relation to legal reform, the judicial function is manifested in the existence of Supreme Court Jurisprudence, namely the decision of the Supreme Court Panel of Judges in the

Indonesian Supreme Court which has permanent legal force containing legal rules applied in examining and deciding cases within the scope of Criminal, Civil, State Administration, Religious and Commercial Courts which are qualified. This jurisprudence is a source of law that has relative binding force. This jurisprudence is published by the Supreme Court after being selected by a Special Team and if deemed appropriate to become Jurisprudence. The function of regulating in relation to legal reform is manifested in the Supreme Court Circular Letter (SEMA). Through SEMA for example, namely SEMA Number 3 of 1963, the Supreme Court canceled several Articles in the *Burgelijk Wetboek* (BW) because the canceled Articles were considered to have not fulfilled the sense of justice of the Indonesian people. (Cahyadi, n.d.)

2. Islamic Family Law Reform by the Supreme Court

2.1. Through Jurisprudence

The role of the Supreme Court in legal reform is carried out one of them through the process of *rechtspraakende functie*, which is a judicial process on a case, especially at the cassation level (and also review). *Cassation* is derived from the French cassation, which is a derivation of the verb *casser*, meaning to cancel or break. Thus, examination in cassation means overturning the decision of the court below. In overturning the decisions of the courts below, the Supreme Court can create new laws that are different from the laws applied by the courts below, or even deviate from the legal rules in the laws and regulations *(contra legem)* if the rules are considered contrary to the sense of justice and the laws that live in society. (Bahri, n.d.)

An example in this case is the courage of the Supreme Court in distributing the assets of the deceased to non-Muslim families through mandatory wills. This compulsory testament is carried out by the judge on the basis of benefit because the non-Muslim heirs really need it, while the testator when he was alive was never harmed by the non-Muslim heirs. The portion of inheritance for non-Muslim heirs through the mandatory will is the same level as other Muslim heirs with a limit of no more than 1/3 of the inheritance. (Fauzi & Mohammad, n.d.)

The definition of obligatory will is basically no different from the definition of ordinary will or testament in general. An ordinary will is a gift of inheritance by the testator pronounced before he dies, and its implementation is carried out after the testator dies. The obligatory will according to Ibn Hazm is a judge's decision as a representative of the state government to take part of the testator's property and give it to relatives who do not get a share of the inheritance as a mandatory will due to certain reasons. (Daud & Zakiul, n.d.) . Thus, Wasiat Wajibah means that the act of will is ordered by law, this is different from the

will of ikhtiyariyah which is a voluntary act of the owner of the property. In the Encyclopedia of Islamic Law, Compulsory Testament is a will intended for the heirs or relatives who do not get a share of the inheritance of the person who died, because of a Shara obstacle. (Tono, n.d.)

The original ruling on wills in classical jurisprudence is that the making of a will is an ikhtiyariyah or voluntary act. No one can force another person to make a will. Since a will is an act that is done voluntarily in all circumstances, there is no provision in Islamic Shari'ah that makes it obligatory to make a will, even if it is determined by a judge's decision. However, in its development, namely in the 20th century, the legal discovery of compulsory probate was born. Compulsory testament authorizes the ruler or judge as an apparatus of the state to force or decide the distribution of property through compulsory testament to certain people in certain circumstances, based on the view of the benefit. Mandatory testament is said to be caused by 2 (two) things. *First*, the voluntary element of the testator disappears and the obligatory element arises through legislation or a judge's decision without depending on the will of the testator and the consent of the testator. *Secondly*, there is a similarity with the provisions for the distribution of inheritance property in that the male share is twice the female share. (Tono, n.d.)

When a will is coupled with the word wajibah, then the fulfillment does not look at the wishes of the person who left the property but rather looks at who deserves and is entitled to receive the property left behind (even though there is no will submitted beforehand). Compulsory wills do not require proof that the will has been spoken, written or willed by someone who leaves property. This is because the obligatory will is based on legal reasons that justify that the will should be implemented. From here, the mandatory will can be interpreted as a delegation of property that must be given to biological families who are prevented from inheriting or other families who are not blood, such as adopted children or adoptive parents. (Ahmad & Azmi, n.d.)

Based on the description above, a mandatory will is a legal act that must be fulfilled. In the process of implementation, a mandatory will is imposed by a judge or an authorized institution so that the property of a person who has died is given to certain people (other than heirs) and in certain circumstances (not based on the principle of will/inheritance).

There are two important elements that distinguish between a will and a compulsory testament, namely: first, a compulsory testament is established based on legal and statutory provisions made by the competent authority or judge. Its implementation is based on statutory provisions or legal rules, and does not depend on whether or not the testator wishes

to make a will. This is certainly different from ordinary wills whose implementation depends on the will of the testator. Secondly, compulsory testament is intended for families who are legally prevented from inheriting property. This is also different from ordinary wills, where the will may be intended for other people.

The law of compulsory bequest, like bequests in general, is based on Surah Al-Baqarah Verse 108. Based on this understanding of the verse, Hasby ash-Shiddieqy states that the Compulsory Testament is obligatory for relatives who are prevented from receiving inheritance. He quotes al-Jashash in Ahkamul Qur'an, who explains that Surah Al-Baqarah (2): 180 clearly points to the obligation of bequests for relatives who do not receive inheritance. The word "kutiba" in the verse means "furida" (required). As for the phrase bi al-ma'ruf haqqan 'ala al-muttaqin, it is a very strong phrase pointing to the obligation of the will, so according to him ma'ruf as a right (obligation) on all people who have piety. Allah SWT makes the implementation of this will as one of the conditions of taqwa increasingly pointing to the obligation of the will. (Tono, n.d.)

In the Compilation of Islamic Law, the compulsory testament that is regulated was originally adopted from the understanding used in Egypt. However, what is regulated by KHI is different from what is contained in the Egyptian inheritance law. The mandatory will in Egypt is intended for grandchildren who do not receive inheritance due to obstruction by sons, especially grandchildren from the female line. The mandatory will in Indonesia is intended for adopted children and adoptive parents. The provisions of mandatory wills for adopted children and adoptive parents have been regulated in Article 209 in two paragraphs of KHI, as follows:

a. The estate of the adopted child is divided based on Article 176 through Article 193. As for adoptive parents who do not receive a will, given a will as much as 1/3 of the inheritance of the adopted child;
b. Adopted children who do not receive a will are given a mandatory will of up to 1/3 of the inheritance of their adoptive parents)

The position as a child or adoptive parent-who is entitled to receive inheritance through a mandatory will, as well as a substitute heir, does not apply to those mentioned in Article 173 of the Compilation of Islamic Law, namely: A person is prevented from becoming an heir if by a judge's decision that has permanent legal force, is convicted of: (a) is guilty of having killed or attempted to kill or severely maltreated the testator; (b) is guilty of slanderously filing a complaint that the testator has committed a crime punishable by 5 years imprisonment or a heavier penalty.

Based on the Compilation of Islamic Law Article 209 and the conditions of validity in Article 173 KHI above, it can be understood that as long as an adopted child or adoptive parent does not do something as mentioned in Article 173, the adopted child or adoptive parent is entitled to get the inheritance of the parent or adoptive child through the mandatory will. This provision is limited to not exceeding one-third of the inheritance.

If in the Compilation of Islamic Law the mandatory will is only limited to adopted children and adopted parents, in its development, the mandatory will has been applied further. There are at least 4 (four) decisions of the Supreme Court of the Republic of Indonesia during the period 1995-2010 that provide a share of property from Muslim heirs to non-Muslim heirs through a mandatory will. The four decisions are (1) Supreme Court Decision Number: 368 K/AG/1995, (2) Supreme Court Decision Number: 51 K/AG/1999, (3) Supreme Court Decision Number: 59 K/AG/2001, and (4) Supreme Court Decision Number: 16 K/AG/2010. (Setyawan, n.d.)

In these decisions, the Supreme Court gave tirkah to non-Muslim relatives through mandatory wills on the basis of benefit because the non-Muslim heirs really needed it, while the testator during his lifetime was never harmed by the non-Muslim heirs. This consideration does not seem to have a clear legal construction.

These Supreme Court decisions seem controversial because they give inheritance to non-Muslims, even though it is prohibited because non-Muslims are prohibited from inheriting. Whereas Muslims may receive wills from non-Muslims, what is prohibited is receiving inheritance from non-Muslims or bequeathing to non-Muslims. "Usamah bin Zaid r.a. reported that the Prophet said*: 'A Muslim cannot inherit from a disbeliever, and a Muslim cannot inherit from a disbeliever.'"* (HR Muslim).

The hadith indicates that the law of inheritance and the law of wills are different, although wills are contained in the law of inheritance itself. For example, the mother is a Muslim but the child is non-Muslim, then as a sign of a mother's love for her child, the mother may make a will by giving her property to her non-Muslim child on the condition that it is not more than one-third of the total property. (Fauzi & Mohammad, n.d.)

This compulsory testament must meet two conditions; 1) The person who is obliged to receive the will, not the inheritance. If he was entitled to receive an inheritance, even a small one, it would not be obligatory for him to make a will. 2) The deceased person, whether grandfather or grandmother, has not given to the child who is obliged to make a will, the amount that was willed in another way, such as a grant, for example. This means

that although wills are basically allowed, there are limits that must not be violated, namely these two provisions. (Fauzi & Mohammad, n.d.)

The majority of scholars are of the opinion that bequests are not obligatory, but rather Sunnah and that they are not allowed to be made to heirs. However, scholars from among the Shafi'iyah, Hanafiyah and Hanabilah allow bequests to those who are not Muslims (non-Muslims) provided that the person does not fight against Muslims. The reason for the permissibility of the will is because of qiyas (analogy), which is equal to the permissibility of grants and charity to them. The opinion of the scholars from the Syafi'iyah, Hanafiyah and Hanabilah can be the basis of the legal construction of the permissibility of mandatory wills for non-Muslims, as long as they are not kafir harbi (i.e. non-Muslims who are hostile) and the amount is not more than 1/3 of the estate. (Fauzi & Mohammad, n.d.)

The opinion of a minority of scholars, including Ibn Hazm al-Zhahiri, al-Thabari and Abu Bakr bin Abdul Aziz of the Hambali school, and Rashid Ridha, is that parents and relatives who do not inherit, one of which is due to not being Muslim (non-Muslim), must be given a will. If a Muslim does not make a will during his lifetime, then the heirs or guardians who administer the will must carry out the will. Thus, the obligation to make a will is not only *diyani* (religious) in nature, but also *qadha'i* in nature, meaning that it is not only a person's responsibility to carry out a religious command (making a will), but it can also be enforced by the state (authority) if he fails to do so because it concerns the interests of the community. (Fauzi & Mohammad, n.d.)

By looking at the explanation above, the granting of inheritance to non-Muslims through mandatory wills by the Supreme Court is an *intra doctrinal reform*, where the Supreme Court combines the opinions of scholars from among the Shafiiah, Hanafiah, Hanabalilah with Ibn Hazm, and others. The Compulsory Testament stipulated by the Supreme Court is based on the benefit, because the non-Muslim family members/heirs are in dire need, while the testator during his lifetime was never harmed by the non-Muslim heirs.

2.2. Through the Supreme Court Circular Letter

Supreme Court Circular Letter (SEMA) does not have a formal form similar to general laws and regulations that have forming parts such as Naming, Preamble, Body, and Closing. These parts are not fully found in SEMA. Judging from its name, "circular letter", by Prof. Jimmly Asshidiqie in his book Perihal Undang-Undang, is classified as a policy rule or *quasi legislation.* When viewed from the subject of the rule, SEMA is included in the policy rule because SEMA is generally addressed to judges, clerks and other positions in the court.

The authority to make SEMA is in the hands of the chairman and deputy chairman of the Supreme Court. However, in its formation, the Chief Justice of the Supreme Court may request a legal opinion from the Junior Chief Justice regarding the substance of the SEMA that will be formed in accordance with their respective fields. At the beginning of its birth, the Supreme Court Circular Letter was issued based on the provisions of Article 12 paragraph 3 of Law No. 1 of 1950 concerning the Structure, Powers and Courts of the Supreme Court of Indonesia. the contents explain that the Supreme Court is a judicial institution authorized to supervise the judicial institutions below it. For the benefit of the ministry, the Supreme Court has the right to give warnings, reprimands and instructions deemed necessary and useful to the courts and judges, either by separate letter or by circular letter. However, in its development SEMA is no longer only a supervisory tool but has expanded functions including regulation, administration, etc. (Cahyadi, n.d.)

Some of them even go as far as updating the material law, such as SEMA No. 3/2018 on the Application of the Formulation of the Results of the Plenary Meeting of Chambers - in this case the Religious chamber, in terms of the husband's obligations as a result of divorce to a wife who is not nusyuz. The Compilation of Islamic Law determines that the obligation of iddah and mut'ah maintenance is imposed on the husband as a result of divorce (divorce at the husband's initiative) as long as the wife does not nusyuz, not as a result of cerai gugat (divorce at the wife's initiative). Article 149 letter (b) of the Compilation of Islamic Law even states, *"provide nafkah, maskan and kiswah to the former wife during iddah, unless the former wife has been sentenced to divorce ba'in or nusyuz and is not pregnant."* There is confirmation from KHI through this article that divorce bain is the same as nuzyuz in terms of being a barrier for the wife to receive iddah and mut'ah maintenance from her husband as a result of divorce. Unless the divorced wife is pregnant, she is entitled to iddah maintenance and mut'ah from her husband. However, SEMA No. 3 of 2018 stipulates, *"accommodating Perma No. 3 of 2017 concerning Guidelines for Adjudicating Cases of Women Against the Law, the wife in a case of gugat divorce can be given mut'ah and iddah maintenance as long as there is no evidence of nusyuz."* This SEMA opens the door that has been closed by the Compilation of Islamic Law, that iddah maintenance and mut'ah can be given to wives who are divorced ba'in.

Regarding the rights of the wife during the iddah period due to divorce bain, there is a difference of opinion among the scholars. According to the Hanbali Mazhab, wives who are divorced bain are not entitled to maintenance and housing. This is based on the hadith of the Prophet Muhammad SAW he said: *"Indeed, maintenance and housing for the wife, if her*

husband still has the right of reconciliation to her" (HR. Ahmad and An-Nasa'i). or the hadith from Fatimah bint Qais which reads, from the Prophet SAW, he said about a woman who was divorced three, *"she is not entitled to housing and maintenance."*

The Maliki Mazhab and the Shafii Mazhab are similar in this regard. Both of them argue that a wife who is divorced bain is entitled to housing in all circumstances, but only when she is pregnant can she get maintenance. This means that the husband's obligation to the wife who is divorced bain is only housing, as Allah says in Surah At-Talaq verse 6:

أَسْكِنُوهُنَّ مِنْ حَيْثُ سَكَنتُم مِّن وُجْدِكُمْ وَلَا تُضَآرُّوهُنَّ لِتُضَيِّقُواْ عَلَيْهِنَّۚ وَإِن كُنَّ أُوْلَٰتِ حَمْلٍ فَأَنفِقُواْ عَلَيْهِنَّ حَتَّىٰ يَضَعْنَ حَمْلَهُنَّۚ فَإِنْ أَرْضَعْنَ لَكُمْ فَـَٔاتُوهُنَّ أُجُورَهُنَّ وَأْتَمِرُواْ بَيْنَكُم بِمَعْرُوفٍۖ وَإِن تَعَاسَرْتُمْ فَسَتُرْضِعُ لَهُۥٓ أُخْرَىٰ

"Settle them (the wives) where you can, and do not trouble them to constrain them. And if they (the divorced wives) are pregnant, then give them their maintenance until they give birth, then if they suckle your (children) for you then give them their wages, and negotiate among yourselves (everything) well; and if you encounter difficulties then another woman may suckle (the child) for her."

The Maliki and Shafi'i schools of thought see Allah's command in the phrase *"Settle them (the wives) where you live according to your ability"*, so they are of the opinion that what is obligatory for the husband over the wife who is divorced bain in every situation (when pregnant or not) is housing, not maintenance. The Shafii and Maliki schools of thought also rely on the hadeeth of Fatimah bin Qais above.

The Hanafi Mazhab is of the opinion that a wife who is divorced bain is entitled to housing and iddah maintenance on the grounds that the wife who is divorced bain is obliged to live in the husband's house, as Allah says in Surah at-Talaq verse 6 above. Imam Abu Hanifah interpreted the above verse, a wife divorced by raj'i divorce or bain divorce, whether pregnant or not, is still entitled to maintenance and housing from her former husband during the iddah period. This is due to the retention of the divorced ex-wife during the iddah period for the sake of the husband's rights. (Komalasari et al., n.d.)

From the description above, it can be seen that SEMA No. 3/2018 in terms of the husband's obligations to his wife due to divorce bain is following the opinion of the Hanafi school. The SEMA in this case uses the *takhayyur* method, or selecting various scholarly opinions and then choosing one of them, including scholars outside the madhhab. The SEMA *reform* in this case is therefore an *intra doctrinal reform*, which still refers to the

concept of confessional fiqh by means of *takhayyur* (choosing the view of one of the fiqh scholars, including scholars outside the madhhab).

CONCLUSION

Based on the description above, it can be concluded that the reform of Islamic family law in Indonesia by the Supreme Court, in this case through two institutions; Jurisprudence and SEMA, is carried out using the *intra doctrinal reform* method. In the SEMA regarding the husband's obligation to his wife due to divorce bain, the Supreme Court took the path of *takhayyur* by taking the opinion of the Hanafi Mazhab. The *talfiq* path is taken in the Jurisprudence of giving inheritance to non-Muslim family members through mandatory wills.

REFERENCES

Ahmad, Z., & Azmi. (n.d.). Wasiat Wajibah Dalam Perspektif Hukum Positif Dan Hukum Islam: Analisis Maqāṣid Asy-Syarī'ah Jasser Auda'. *Asy-Syir'ah*, *52*(1).

Bahri, S. (n.d.). *Pelembagaan Hukum Islam Di Indonesia (Studi Peran Yurisprudensi Mahkamah Agung Dalam Positivisasi Hukum Islam)'*. Tesis Magister, Universitas Muhammadiyah Surakarta.

Cahyadi, I. A. (n.d.). *Kedudukan Surat Edaran Mahkamah Agung (Sema) Dalam Hukum Positif Di Indonesia'*. Jurnal Mahasiswa Fakultas Hukum Universitas Brawijaya.

Daud, F. M., & Zakiul. (n.d.). Menyoal Pemberian Wasiat Wajibah Kepada Anak Tiri (Studi Putusan Hakim Terhadap Kasus Warisan Anak Tiri)'. *As-Salam*, *6*(1).

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

Komalasari, E., Arif, S., & Irfani, F. (n.d.). Hak Istri Dalam Masa Iddah Talak Bain Menurut Empat Mazhab Dan Kompilasi Hukum Islam'. *Jurnal Pendidikan Tambusai*, *6*(2), 16144–51. https://doi.org/10.31004/jptam.v6i2.4970.

Ma'rifah, N. (n.d.). Positivisasi Hukum Keluarga Islam Sebagai Langkah Pembaharuan Hukum Islam Di Indonesia: Kajian Sejarah Politik Hukum Islam'. *Al-Manahij: Jurnal Kajian Hukum Islam*, *13*(2), 243–57. https://doi.org/10.24090/mnh.v13i2.2692.

Mahfudhi, H. M. (n.d.). Pengaruh Sosio-Kultur Terhadap Reformasi Hukum Keluarga Islam Di Maroko'. *MIYAH : Jurnal Studi Islam*, *18*(1), 59–74. https://doi.org/10.33754/miyah.v18i1.413.

Muin, F. M. F. (n.d.). Pembaruan Hukum Keluarga Islam Di Indonesia Dalam Peningkatan Status Perempuan'. *Legal Studies Journal*, *2*(1). https://ejournal.unuja.ac.id/index.php/lsj/article/view/3390.

Mulia, M. (n.d.). Pembaharuan Hukum Islam Di Indonesia (Analisis Historis Tentang Kompilasi Hukum Islam)'. *Jurnal Ilmiah Islam Futura*, *7*(1), 64–85. https://doi.org/10.22373/jiif.v7i1.3056.

Riyadi, E. (n.d.). *Dinamika Putusan Mahkamah Agung Republik Indonesia Dalam Bidang Perdata Islam*. Gramata Publishing.

Setyawan, R. (n.d.). *Penerapan Wasiat Wajibah Kepada Ahli Waris Non Muslim Perspektif*

Maslahah Mursalah (Studi Putusan Mahkamah Agung Republik Indonesia Tahun 1995-2010)'. Tesis Magister, Universitas Islam Negeri Sunan Kalijaga Yogyakarta.

Sulaiman, M. S. (n.d.). Pembaruan Hukum Islam (Esensi, Urgensi dan Kendala)'. *Islamika : Jurnal Ilmu-Ilmu Keislaman*, *13*(1). https://doi.org/10.32939/islamika.v13i1.18.

Tono, S. (n.d.). *Wasiat Wajibah Sebagai Alternatif Mengakomodasi Bagian Ahli Waris Non-Muslim Di Indonesia'*. Doktoral, Universitas Islam Indonesia Yogyakarta.

Wahib, B., & Ahmad. (n.d.). Reformasi Hukum Keluarga Di Dunia Muslim'. *Ijtihad, Jurnal Wacana Hukum Islam Dan Kemanusiaan*, *14*(1).