

When Inheritance Meets Citizenship: Land Rights of Foreign Heirs in Muslim Mixed Marriages in Indonesia and Malaysia

Jio Fikra*

Institut Agama Islam Negeri Pontianak, Pontianak, Indonesia

jiof321@gmail.com

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* Corresponding Author

Abstract

Mixed marriages in Indonesia or Malaysia involving foreign nationals raise legal issues when land is the subject of inheritance. Islamic inheritance law, as adopted by Indonesia and Malaysia, recognizes inheritance rights based on blood ties and marriage. Although both countries have adopted the same school of Islamic jurisprudence (the Shafi'i school), the distribution of inheritance is limited by land laws that require specific citizenship status. This article aims to compare the status and exercise of Muslim heirs' rights to land resulting from mixed marriages in Indonesia and Malaysia. The article employs a normative legal method with a statutory and comparative approach to the inheritance and land regulations of both countries. The research findings indicate that citizenship does not automatically deprive an individual of their status as a Muslim heir. However, there are differences in the exercise of land rights. Indonesia, through the KHI, recognizes inheritance rights; however, the UUPA restricts ownership rights to land to Indonesian citizens, meaning foreign nationals cannot retain them and must relinquish their land rights within a specified period. Malaysia recognizes the inheritance rights of foreign nationals, while land ownership is permitted on a limited basis through approval by the State Authority under the NLC 1965. These findings indicate a discrepancy between inheritance rights and the capacity to retain land rights, which necessitates harmonization between Islamic inheritance law and land law.

[Perkawinan campuran di Indonesia atau Malaysia dengan warga negara asing menimbulkan persoalan hukum ketika tanah menjadi objek warisan. Hukum waris Islam yang diadopsi oleh Indonesia dan Malaysia mengakui hak mewaris berdasarkan hubungan darah dan perkawinan. Meskipun mengadopsi fikih yang sama (mazhab syafi'i) pelaksanaan pembagian warisan dibatasi oleh hukum pertanahan yang mensyaratkan status kewarganegaraan tertentu. Artikel ini bertujuan membandingkan kedudukan dan pelaksanaan hak ahli waris Muslim atas tanah dari perkawinan campuran di Indonesia dan Malaysia. Artikel menggunakan metode hukum normatif dengan pendekatan perundang-undangan dan komparatif terhadap regulasi kewarisan dan pertanahan kedua negara. Hasil

penelitian menunjukkan bahwa kewarganegaraan tidak secara otomatis menghilangkan kedudukan seseorang sebagai ahli waris Muslim. Namun, terdapat perbedaan dalam pelaksanaan hak atas tanah. Indonesia melalui KHI mengakui hak kewarisan, tetapi UUPA membatasi Hak Milik atas tanah kepada WNI sehingga WNA tidak dapat mempertahankannya dan harus melepas hak atas tanahnya dalam waktu tertentu. Malaysia mengakui hak waris WNA, sementara kepemilikan tanah dapat dimungkinkan secara terbatas melalui persetujuan Pihak Berkuasa Negeri berdasarkan NLC 1965. Temuan ini menunjukkan adanya perbedaan antara hak mewaris dan kapasitas mempertahankan hak atas tanah, yang memerlukan harmonisasi antara hukum kewarisan Islam dan hukum pertanahan.]

Keywords: Muslim Heirs' Rights; Mixed Marriages; Land Rights; Indonesia; Malaysia.

Introduction

Land ownership and management in Southeast Asia are complex issues, particularly when it comes to inheritance rights involving Muslims who are foreign nationals.¹ The strong influence of Islam in some Southeast Asian countries² means that national laws governing inheritance sometimes conflict with other laws, such as those regarding land ownership.³ Under Islamic inheritance law, Muslim heirs retain the right to receive an inheritance even if they hold citizenship in or reside in a country different from that of the decedent. This is based on the principle that Islam views the Muslim community as a single entity that does not hinder inheritance relationships.⁴ Qur'an 49:10, which states that believers are indeed brothers, can serve as the basis for granting inheritance rights to Muslims with foreign citizenship.

Indonesia and Malaysia are Southeast Asian countries with sizable Muslim populations.⁵ Although the two countries have different regulations

¹ Elan Miranda, Phia Irawan Maharani Purba, and Fahri Sabriansyah, "Hak Kepemilikan Tanah Oleh Ahli Waris Warga Negara Asing Di Indonesia: Tinjauan Atas Putusan Mahkamah Agung Nomor 782 PK/Pdt/2016," *Ar-Rasyid: Jurnal Publikasi Penelitian Ilmiah* 1, no. 5 (2025): 963–84.

² Muhammad Ali Fakhri, *Islam Di Asia Tenggara: Sejarah Peradaban Dan Kebudayaan Islam Di 11 Negara* (IRCISOD, 2024).

³ Rayi Kharisma Rajib, Althaf Dhamar Rahabistara, and Kharina Hanifah Handani, "Integrasi Hukum Waris Dan Hukum Pertanahan Dalam Pembagian Waris Atas Tanah Dengan Sertifikat Yang Musnah Guna Mewujudkan Kepastian Hukum," *Jurnal Media Akademik (JMA)* 4, no. 5 (2026).

⁴ Wahbah Az-Zuhaili, *Al-Fiqh Al-Islami Wa Adillatuhu* (Damaskus: Dar al-Fikr, 2009).

⁵ Ahmad Khoirul Anam, "Penerapan Hukum Keluarga Muslim Di Asia Tenggara: Sebuah Perbandingan," *Jurnal Bimas Islam* 10, no. 1 (2017): 129–54.

regarding land ownership by foreign nationals, they both adopt the same principles of Islamic jurisprudence (fiqh) in governing the inheritance rights of Muslims.⁶ The Compilation of Islamic Law (hereinafter referred to as KHI) in Indonesia and Section 25 of Malaysia's Civil Act of 1956 stipulate that the administration of inherited assets must be based on the laws of faraid.⁷ Islamic inheritance jurisprudence serves as the primary basis for regulating Muslim inheritance rights in both countries, including for heirs from mixed-nationality marriages. The legal basis for Islamic inheritance applied by both countries derives from the Qur'an and hadith, which outline the rights of each heir. Although the fiqh is the same, there are significant differences in the application of inheritance rights regarding land for heirs with foreign citizenship. This is due to differences in national legal systems: Indonesia applies a pluralistic legal system that combines Islamic, customary, and national law,⁸ which restricts land ownership rights through the Land Law (UUPA);⁹ while Malaysia has a dualistic system with Sharia¹⁰ and civil law that is more open to land ownership by foreign nationals.¹¹ Factors such as state sovereignty over land and sociocultural conditions also underlie these differences.

In Indonesia, legal provisions regarding land ownership in mixed marriages—particularly for foreign nationals—are set forth in Article 21(1) and Article 42 of the Basic Agrarian Law, which stipulate that only Indonesian citizens may hold title to land, while foreign nationals are entitled only to a

⁶ Mahmood Zuhdi Haji Abd Majid, "Mazhab Syafi'i Di Malaysia: Sejarah, Realiti Dan Prospek Masa Depan," *Jurnal Fiqh* 4 (2007): 1–38; Rizkia Dina Azkiya and Fahriana Nurrisa, "Perkembangan Mazhab Syafi'i Sebagai Landasan Pemikiran Masyarakat Indonesia," *Religion: Jurnal Agama, Sosial, Dan Budaya* 2, no. 3 (2023): 209–24.

⁷ M K Kamarudin and A Abdullah, "Amalan Pembahagian Faraid Di Malaysia," *Journal of Global Business and Social Entrepreneurship* 2, no. 3 (2016): 11–19.

⁸ Afif Muhni et al., *Pengantar Hukum Indonesia: Sejarah, Sistem, Sumber Hukum Dan HAM Di Indonesia* (Star Digital Publishing, 2025).

⁹ Putu Kanya Prajna Maharani and Anak Agung Angga Primantari, "Penguasaan Hak Milik Atas Tanah Oleh Warga Negara Asing Melalui Nominee Berdasarkan KUHPerdota Dan UUPA," *Jurnal Media Akademik (JMA)* 3, no. 10 (2025).

¹⁰ Sendi Sanjaya, "Dualisme Sistem Hukum Waris: Tantangan Implementasi Hukum Waris Islam Dalam Konteks Perdata Nasional Di Indonesia Dan Malaysia," *CBJIS: Cross-Border Journal of Islamic Studies* 6, no. 2 (2024): 395–408.

¹¹ Bianca Prithresia, "Kajian Perbandingan Asas Nasionalitas Hukum Agraria Dalam Konteks Internasional," *UNES Law Review* 6, no. 2 (2023): 7305–13.

right of use.¹² Article 26(2) of the Basic Agrarian Law also prohibits legal acts that transfer ownership rights to foreign nationals, whether directly or indirectly. Such acts are null and void by law, and the land reverts to the state, while any payments received cannot be reclaimed.¹³ To circumvent this prohibition, given the restrictions on asset ownership, one method foreign nationals use to gain control of land in Indonesia is by entering into mixed marriages with local residents.¹⁴ Mixed marriages between foreign nationals and Indonesian citizens serve as a means for foreign nationals to utilize nominee agreements to legalize land rights.¹⁵ Under this arrangement, the land title is registered in the name of an Indonesian citizen, but in reality, management remains under the control of the foreign national.

In contrast to Indonesia, which prohibits foreign nationals from owning land, Malaysia has adopted a more liberal and investment-friendly policy. Malaysia's National Land Code of 1965 allows foreign nationals to own property under both freehold (full ownership) and leasehold (long-term lease) arrangements.¹⁶ Although there are restrictions—such as a ban on purchasing protected land and certain minimum value thresholds—Malaysia generally provides greater legal certainty and flexibility for foreign nationals.¹⁷

Previous research indicates that studies on mixed marriages, land rights, and inheritance are still developing as separate areas of focus.

¹² D A Nurcahya, "Sengketa Hukum Perjanjian Nominee Antara WNA Dan WNI Dalam Pengelolaan Tanah (Studi Putusan No. 259/Pdt.G/2020/PN Gin)," *Jurnal Ilmiah Wahana Pendidikan* 10, no. 10 (2024): 179–92, <https://doi.org/10.5281/ZENODO.11395457>.

¹³ D Haspada, "Perjanjian Nominee Antara Warga Negara Asing Dengan Warga Negara Indonesia Dalam Praktik Jual Beli Tanah Hak Milik Yang Dihubungkan Dengan Pasal 1313 Kitab Undang-Undang Hukum Perdata," *Wacana Paramarta: Jurnal Ilmu Hukum* 17, no. 2 (2018): 115–24, <https://doi.org/10.32816/paramarta.v17i2.77>.

¹⁴ U Atsani et al., "Perjanjian Nominee Dalam Pemanfaatan Kawasan Pesisir Pantai Di Kabupaten Kepulauan Mentawai," *Jurnal Masyarakat Indonesia* 49, no. 1 (2023): 25–34, <https://doi.org/10.14203/jmi.v49i1.1217>.

¹⁵ Rosyani Ada and Akhmad Safik, "Analisis Yuridis Kepemilikan Hak Atas Tanah Melalui Perjanjian Nominee Oleh Warga Negara Asing Di Indonesia (Studi Putusan Perkara Nomor: 2959 K/Pdt/2022)," *Unes Law Review* 6, no. 2 (2023): 7624–36.

¹⁶ Salfarina Samsudin et al., "Land for Indigenous People: Ownership Conflicts and Government Interventions in Kampung Bawong, Perak, Malaysia," in *IOP Conference Series: Earth and Environmental Science*, vol. 683 (IOP Publishing, 2021), 12124.

¹⁷ Lgina Tesalonika, Handar Subhandi Bakhtiar, and Atik Winanti, "Perbandingan Hukum Indonesia Dan Malaysia Dalam Kepemilikan Properti Oleh Warga Negara Asing," *Aliansi: Jurnal Hukum, Pendidikan Dan Sosial Humaniora* 2, no. 3 (2025): 323–35, <https://doi.org/10.62383/aliansi.v2i3.999>.

Mujiburohman et al. (2023),¹⁸ Rachman et al. (2020),¹⁹ and Rohman et al. (2023)²⁰ all identify land ownership status in mixed marriages as a key issue, emphasizing restrictions on land ownership by foreign nationals and the importance of prenuptial agreements as instruments for protecting the rights of Indonesian citizens. Meanwhile, Adiananda et al. (2019)²¹ expand the discussion to the realm of cross-border inheritance, specifically regarding the status of heirs in mixed marriages and the determination of applicable law; however, the subject of their study consists of business assets and does not specifically examine the issue of land ownership as an object of inheritance. Thus, previous research has revealed two trends: first, agrarian studies focusing on land ownership during mixed marriages;²² and second, inheritance studies focusing on the status of heirs and legal conflicts in cross-border marriages.²³ No study has yet been found that specifically brings these two issues together by analyzing the rights of Muslim heirs from mixed marriages to inherited land—particularly when the heirs are foreign nationals—through a comparison of Indonesian and Malaysian regulations. This article focuses on the academic discourse between Islamic inheritance law and national land law, examining to what extent the recognition of inheritance rights under Islamic law can be implemented when the subject of inheritance is land subject to ownership restrictions based on citizenship.

This study aims to analyze and compare the status and enforcement of the rights of Muslim heirs from mixed marriages regarding inherited land in Indonesia and Malaysia, specifically by examining the relationship between

¹⁸ D A Mujiburohman et al., “The Issues of Land Tenure in Mixed Marriage,” *Jurnal Ilmiah Peuradeun* 11, no. 1 (2023): 19–38, <https://doi.org/10.26811/peuradeun.v11i1.818>.

¹⁹ R Rachman, E Ardiansyah, and S Sahrul, “A Juridical Review Towards the Land Rights Ownership in Mixed Marriage,” *Jambura Law Review* 3, no. 1 (2020): 1–18, <https://doi.org/10.33756/jlr.v3i1.6857>.

²⁰ B N Rohman, V D Mukhoyyaroh, and A A Arifin, “Ownership Status of Implementation of Assets in Mixed Marriages,” *Contemporary Issues on Interfaith Law and Society* 2, no. 2 (2023): 113–30, <https://doi.org/10.15294/ciils.v2i2.68854>.

²¹ I D A M Adiananda et al., “Model Child’s Inheritance Law Towards Business Assets in Intermarriage of an Australian and Indonesian Citizen,” in *Industrial Engineering and Operations Management Society International*, 2019, 1318–22, <https://doi.org/10.46254/NA04.20190468>.

²² Maulana Malik, Abdul Qahar, and Yuli Adha Hamzah, “Hilangnya Hak Milik Tanah Akibat Perubahan Kewarganegaraan Dalam Perkawinan Campuran,” *LEGAL DIALOGICA* 1, no. 2 (2026).

²³ Norayanti Simaremare Norayanti, Pristika Handayani, and Dwi Afni Maileni, “Tantangan Perkawinan Beda Negara: Suatu Kajian Komparatif Hukum Indonesia Dan Hukum Perdata Internasional,” *Jurnal USM Law Review* 8, no. 3 (2025): 1485–1505.

Islamic inheritance provisions—which determine the status and shares of heirs—and land law provisions—which determine a person’s capacity to acquire, own, retain, or transfer rights to land based on their citizenship status. The novelty of this study lies in its integration of the perspectives of Islamic inheritance law and land law in the context of mixed marriages, thereby not only examining whether foreign nationals can be heirs, but also analyzes the gap between inheritance entitlement and the capacity to maintain land ownership as an object of inheritance, and compares how this gap is resolved in the legal systems of Indonesia and Malaysia.

Literature Review

In the context of differences in citizenship, a state is understood as an entity possessing its own defense system and system of government.²⁴ Differences in citizenship in the context of inheritance refer to situations where the decedent and the heirs are from two different countries, each with its own system of authority and legal protection. Thus, there is a separation between the two in terms of legal protection. For example, one party is from Indonesia, while the other is from a European country.

In classical fiqh scholarship, this issue is often linked to the division of territories between dar al-Islam (the Islamic realm) and dar al-harb (non-Islamic territories with which there is no peaceful relationship), or between territories that are both classified as dar al-harb.²⁵ As for Islamic countries, they are viewed as a single entity for Muslims. Therefore, Muslims residing in any country can, in principle, still inherit from one another. This is based on the principle that Islam views countries with Muslim majorities as part of a single Muslim community, even if they are geographically distant, have different systems of government, or lack political ties.²⁶ Thus, if a Muslim dies in dar al-harb, his or her heirs residing in dar al-Islam may still inherit his or her estate. In this case, differences in nationality do not constitute a barrier to inheritance among fellow Muslims, as this barrier is more relevant in the

²⁴ Dedi Mulyadi et al., “Perbandingan Bentuk Antara Negara Federal, Negara Konfederasi, Dan Negara Kesatuan Dalam Prespektif Ilmu Negara,” *Journal of Law Perspectives Review* 1, no. 2 (2025): 107–16.

²⁵ Imam Supriyadi, Agnes Nur Inawati, and Andika Agung Ferdiansyah, “Perbedaan Negara; Penghalang Kewarisan?,” *The Indonesian Journal of Islamic Law and Civil Law* 1, no. 2 (2020): 125–38.

²⁶ Jufri Suyuthi Pulungan, “Relasi Islam Dan Negara: Studi Pemikiran Politik Islam Dalam Perspektif Al-Qur’an,” *Intizar* 24, no. 1 (2018): 185–202.

context of non-Muslims. According to the Hanafi school of thought, differences in nationality can constitute a barrier to inheritance in relationships between non-Muslims. The basis for this is the severance of the protective relationship (jurisdiction) resulting from differences in authority and citizenship. In this school, differences in nationality are divided into three categories: both actual and legal differences, legal differences alone, and actual differences alone.²⁷

There are two types of differences in the Hanafi school's study of inheritance law (*fiqh al-mawaris*) used to determine heirs: substantive and legal differences. Substantive and legal differences occur when there is both a difference in place of residence and a difference in citizenship or legal protective relationship. For example, an heir with the status of a *kafir harbi* (hostile non-Muslim) residing in *darul harb*, while the decedent has the status of a *kafir dzimmi* (protected non-Muslim) residing in *darul Islam*. Under these circumstances, neither party can inherit from the other even if they share the same religion. This is due to a severance of the legal protective relationship between them. Since inheritance rights relate to ownership, control, and the management of assets, the severance of this legal protective relationship also prevents inheritance.

A legal discrepancy arises when the only difference lies in nationality or legal status, even if their places of residence are the same or adjacent. Examples include a German heir and a British decedent, or the situation involving a *dhimmi* and a *musta'man* (non-Muslims granted protection) who are both residing within the territory of *Dar al-Islam*. In such circumstances, inheritance rights do not apply due to differences in legal status or citizenship. According to the Hanafi school of thought, such a difference in legal status is sufficient to constitute a barrier to inheritance even if there is no actual difference in place of residence.

A genuine difference occurs when there is only a difference in place of residence, while citizenship or the legal protective relationship remains the same. An example is two people who are German citizens, but one resides in France and the other in the United States. Although their places of residence differ, both can still inherit from one another because they share the same citizenship. Under these circumstances, a difference in place of residence alone does not constitute a barrier to inheritance as long as the legal relationship and citizenship of both parties remain the same. Based on this

²⁷ Az-Zuhaili, *Al-Fiqh Al-Islami Wa Adillatuhu*.

classification, the Hanafi school of thought holds that the first and second types of differences can prevent inheritance due to differences in legal relationship or citizenship. As for the third type, it does not prevent inheritance because there is no difference in the legal relationship.

Meanwhile, according to the Shafi'i school, a difference in nationality is not, in principle, a barrier to inheritance. However, they hold that there is no reciprocal right of inheritance between kafir harbi and kafir mu'ahad (non-Muslims bound by a treaty), including between kafir dzimmi and kafir musta'man, due to the severance of the legal protective relationship between them. Thus, under certain conditions, the Shafi'i school's view aligns with that of the Hanafi school. As for the Maliki and Hanbali schools, they hold that differences in nationality do not constitute an absolute barrier to inheritance. According to these two schools, residents of Dar al-Harb may still inherit from one another even if they come from different countries. Similar provisions are also found in Egyptian legislation. Article 6 states that differences in nationality do not prevent inheritance among fellow Muslims. Differences in nationality also do not prevent inheritance among non-Muslims, unless the law of the foreign country prohibits inheritance by foreigners.

The opinions of the scholars of these schools of thought indicate that, in principle, differences in national law do not constitute a barrier to inheritance, as long as the relevant national law does not explicitly prohibit it. In contrast, Article 264 of Syrian law states that foreigners are not entitled to receive an inheritance unless the laws of their own country also grant similar rights to Syrian citizens. This provision is based on the principle of reciprocity. However, applying the principle of reciprocity to fellow Muslims is considered contrary to the principle of brotherhood in Islam. This is because all Muslims are fundamentally viewed as a single community, as stated by Allah SWT (Al-Hujurat: 10). If the term "foreigner" is interpreted to mean non-Muslims residing in Muslim countries, then this provision does not contradict the principles of Sharia. This is because Muslims in Muslim countries are not considered foreigners from the perspective of Islamic law.²⁸

Based on the views of these scholars, it can be understood that differences in nationality do not, in principle, constitute a barrier to inheritance rights among fellow Muslims, including in mixed-nationality marriages. From a fiqh perspective, Muslim nations are viewed as a single

²⁸ Az-Zuhaili.

ummah,²⁹ so there are no differences in inheritance rights between Muslims in Indonesia, Malaysia, or other Muslim countries. However, in the context of contemporary nation-states, the exercise of inheritance rights to land does not depend solely on the provisions of fiqh regarding inheritance but is also significantly influenced by the applicable inheritance laws, land ownership (agrarian) laws, and national regulations in each respective country. Therefore, an analysis of Muslim heirs' rights to land arising from mixed marriages must take into account the interplay between the principles of Islamic inheritance law and the positive law in force in Indonesia and Malaysia.

In Indonesia, following the enactment of Law No. 7 of 1989 on Religious Courts, the authority of the Religious Courts to examine, adjudicate, and resolve inheritance cases was reaffirmed.³⁰ This situation spurred the need for inheritance laws that are clearer, more detailed, provide legal certainty, and are in harmony with the bilateral kinship system that has developed within Indonesian Muslim society.³¹ Based on this need, the government subsequently enacted the KHI through Presidential Instruction No. 1 of 1991, issued on June 10, 1991.³²

Substantively, the inheritance law adopted by the KHI, as set forth in Article 171(a), is defined as the law governing the transfer of ownership rights to the deceased's estate (*tirkah*), determining who is entitled to be an heir and the respective shares of each heir. Thus, Islamic inheritance law not only regulates the mechanism for the transfer of assets but also normatively establishes who is entitled to receive an inheritance along with the shares determined by sharia. This means that the testator's freedom to designate beneficiaries is limited, as there are mandatory shares (*fara'id*) that cannot be reduced, based on the provisions of the Qur'an.

Unlike Islamic inheritance law, which has been incorporated into national law, customary inheritance law in Indonesia is more pluralistic and

²⁹ Lukman Arake, "Agama Dan Negara Perspektif Fiqh Siyasah," *Al-Adalah: Jurnal Hukum Dan Politik Islam* 3, no. 2 (2018): 79–116.

³⁰ Eka Susylawati, *Kewenangan Pengadilan Agama Dalam Mengadili Perkara Kewarisan Islam Berdasarkan Undang-Undang Peradilan Agama*, vol. 142 (Duta Media Publishing, 2018).

³¹ Anna Muwaffika, "KHI: Upaya Transformasi Hukum Keluarga Islam Kedalam Sistem Hukum Nasional," *ALWAQFU: Jurnal Hukum Ekonomi Dan Wakaf* 3, no. 1 (2025).

³² Ahmad Rajafi, "Sejarah Pembentukan Dan Pembaruan Hukum Keluarga Islam Di Nusantara," *Aqlam: Journal of Islam and Plurality* 2, no. 1 (2018).

diverse.³³ This diversity reflects the provisions of customary law among the various tribes or ethnic groups found throughout Indonesia. The legal basis for the application of customary inheritance law can be found in Article 131(2)(b) of the Indische Staatsregeling (I.S.), as stipulated in Staatsblad No. 415 of 1925, in conjunction with No. 577. These provisions stipulate that for the indigenous Indonesian population (bumiputra), the Eastern Foreigners, and subgroups within these categories, the law derives from the religion and customs practiced by each respective group. In practice, customary inheritance law is inseparable from the kinship systems that have developed within each community. There are three fundamental principles of kinship or descent: paternal descent (patrilineal), maternal descent (matrilineal), and descent through both parents (bilateral/parental).³⁴

Furthermore, Western inheritance law, as regulated in the Civil Code, applies an individual inheritance system—that is, a system governing the distribution of the decedent's estate to the heirs after the decedent's death. This provision applies to Indonesian citizens (hereinafter referred to as "WNI") of foreign descent, such as those of European, Chinese, or even Arab descent who no longer strictly adhere to the teachings of their religion. Under the civil inheritance law system, there are two basic ways for an heir to inherit the decedent's estate: through statutory provisions (*ab intestato*) and through a will (testament).³⁵

Unlike in Indonesia, the distribution of Islamic inheritance in Malaysia falls under the authority of the state government. This constitutional basis is explicitly set forth in List II, Schedule Nine of the Federal Constitution, which mandates that the legislature of each state establish its own regulations.³⁶ Consequently, the enforcement of substantive Islamic inheritance law in Malaysia is carried out through local legal instruments such as the Islamic Religious Administration Enactment and the Islamic Family Law Enactment via the Sharia Courts in each state.³⁷ These courts have the authority to issue

³³ Nathasya Irish Rachelninta and Sulastris, "Implementasi Hak Waris Perempuan Dalam Masyarakat Adat Patrilineal," *Jurnal USM Law Review* 8, no. 1 (2025): 86–104; Putri Wijayanti, *Pluralisme Hukum Waris Dan Implikasinya* (Guepedia, n.d.).

³⁴ A Nasution, "Pluralisme Hukum Waris Di Indonesia," *Al-Qadha* 5, no. 1 (2019): 20–30, <https://doi.org/10.32505/qadha.v5i1.957>.

³⁵ Nasution.

³⁶ Hj Resali bin Muda, "Harta Pusaka Islam Di Malaysia: Antara Perundangan Dan Pentadbiran," *Malaysian Journal of Syariah & Law* 4 (2016): 1, <https://doi.org/10.33102/mjssl.vol4no1.13>.

³⁷ Kamarudin and Abdullah, "Amalan Pembahagian Faraaid Di Malaysia."

faraid certificates that validate the heirs and their respective shares.³⁸ In calculating the distribution of faraid, the collector or judge refers to the faraid texts and relies on informal learning, as there are still no specific rules to refer to regarding the calculation of faraid.³⁹ The distribution of an estate for non-Muslims in Malaysia is governed by the Distribution Act 1958 as amended by the (Amendment) Act 1997. Section 2 of that Act specifically states: “Nothing in this Act shall apply to the estate of any person professing the Muslim religion or shall affect any rules of Islamic law...”. This provision confirms that the Act does not apply to Muslims in Malaysia and does not affect the applicable rules of Islamic law. Throughout the ten sections of the Distribution Act 1958 as amended by the (Amendment) Act 1997, there are no provisions that establish religious differences as a barrier to inheritance for non-Muslims, given that the primary focus of the restriction in Section 2 is solely an exception for legal subjects who are not Muslim.⁴⁰

Methodology

This article is a literature review that examines various sources of literature and written documents, such as manuscripts, books, journals, magazines, newspapers, and other relevant documentary sources related to the research topic.⁴¹ This article employs a normative and comparative legal approach that focuses on the content of legal documents from the countries under study.⁴² Data sources were obtained from documents or books in libraries—where this research was conducted—with access to regulations obtained through the official websites of each country.

Primary legal sources include: laws enacted by parliament, court decisions, and executive/administrative regulations. The primary legal materials in this study include: Law No. 5 of 1960 on the Basic Provisions of Agrarian Law (hereinafter referred to as UUPA); Law No. 12 of 2006 on

³⁸ Suhaimi Ab Rahman, Rasyidah Khalid, and Abu Bakar Jaafar, “Kajian Keberkesanan Undang-Undang Faraid Di Malaysia,” *Akademika* 89 (2019): 77.

³⁹ Ahmad Termizi Bin Abdullah, “Perlaksanaan Pembahagian Harta Pusaka Berdasarkan Faraid: Kedudukan Dan Perlaksanaannya Mengikut Undang-Undang Dan Amalan Guaman Di Malaysia,” 2017.

⁴⁰ M D Ariphia, F Wisnaeni, and A P Prabandari, “Perbandingan Pengaturan Pemberian Waris Pada Ahli Waris Non-Muslim Di Indonesia Dan Malaysia,” *Notarius* 12, no. 2 (2019): 883–99, <https://doi.org/10.14710/nts.v12i2.29133>.

⁴¹ R Rahmadi, *Pengantar Metodologi Penelitian* (Antasari Press, 2011).

⁴² I Atikah, *Metode Penelitian Hukum* (CV Haura Utama, 2022).

Citizenship of the Republic of Indonesia; the Compilation of Islamic Law (KHI); the Constitution of the Federation of Malaysia; the National Land Code 1965 (hereinafter referred to as NLC 1965); the Civil Code Act 1956; the Distribution Act 1958 as amended by the Amendment Act 1997; the Islamic Law Administration Act (Federal Territories) of 1993; Circular No. 6 of 2024 from the Director-General of Land and Minerals regarding Restrictions on Land Acquisition by Non-Citizens or Foreign Companies (PKPTG No. 6 of 2024). These materials include academic papers, draft legislation, legal textbooks, scholarly journals, articles, research findings, and other writings related to the research topic.

The data validity verification technique employed source triangulation, which involves comparing and verifying legal materials obtained from various sources to ensure the validity and consistency of the information used in the research,⁴³ such as laws, regulations, court decisions, books, and related scholarly articles from both Indonesia and Malaysia. In this way, the validity of the data obtained is examined through cross-source comparison to avoid bias and ensure consistency.

The legal materials obtained through the literature review were then qualitatively analyzed using the Miles, Huberman, and Saldana analytical model. This analysis was conducted in three main stages: reduction of legal materials, presentation of analysis results, and drawing conclusions or verification. Data reduction is an analytical stage involving the selection, focusing, simplification, abstraction, and grouping of legal materials obtained from the literature review so that only information relevant to the research problem is used in the analysis process.⁴⁴ Legislation, court rulings, legal doctrine, and literature related to the rights of Muslim heirs and land regulations in Indonesia and Malaysia. This stage sharpens the research focus by eliminating less relevant information and highlighting data that is important for the comparative study.

The second stage of the analysis involves the presentation of legal materials. At this stage, the refined legal materials are organized systematically and structurally to clarify the relationships between pieces of information, thereby facilitating the analysis process and the drawing of

⁴³ N Solikin, *Pengantar Metodologi Penelitian Hukum* (CV Penerbit Qiara Media, 2021).

⁴⁴ M B Miles, A M Huberman, and J Saldaña, *Qualitative Data Analysis: A Methods Sourcebook*, 3rd ed. (Sage, 2014).

conclusions.⁴⁵ The presentation of data allows the researcher to clearly and systematically outline the differences and similarities in inheritance and land laws between the two countries, thereby facilitating comparative analysis. This final stage involves interpreting the results of the data presentation to draw preliminary and final conclusions regarding the land rights of Muslim heirs from mixed marriages under the laws of Indonesia and Malaysia. Verification is conducted by checking the consistency of the data and strengthening the arguments based on credible sources to ensure that the analysis results are valid and reliable.

Results

This article presents several findings that will be categorized into five sections, namely: a comparison of the inheritance rights of foreign nationals in Indonesia and Malaysia, regulations regarding land ownership for foreign nationals in Indonesia and Malaysia; the relationship between inheritance laws and land ownership regulations for foreign nationals in Indonesia and Malaysia; a comparison of the inheritance rights of foreign nationals in Indonesia and Malaysia; and a simulation of the distribution of an estate among heirs who are foreign nationals in Indonesia and Malaysia.

Table 1: Overview of the Legal Basis for Inheritance in Indonesia and Malaysia

Country	Legal Basis	Substance of Regulations	Notes
Indonesia	Book II of the KHI	Regulations on Islamic inheritance	The KHI serves as the primary basis for determining the status of Muslim heirs with respect to land derived from mixed marriages
	Customary Law	Customary inheritance regulations	Customary inheritance law is relevant because the distribution of inherited land in some regions is still influenced by local customs
	Civil Code	Civil inheritance regulations	The Civil Code is relevant for assessing the potential application of civil inheritance law in mixed-faith families,

⁴⁵ Miles, Huberman, and Saldaña.

			particularly when a non-Muslim party is involved
Malaysia	<i>Malaysian Federal Constitution, Schedule II, Table 9</i>	Islamic inheritance regulations	This provision stipulates that inheritance matters in Malaysia are subject to state jurisdiction through the Sharia Courts
	<i>Civil Act 1956, Section 25</i>	Exclusion of Muslim inheritance from general civil law	This provision affirms that the distribution of the estate of a Muslim in Malaysia is not subject to general civil law, but rather to Islamic law/faraid
	<i>Small Estates (Distribution) Act 1955, Section 12(7)</i>	Determination of Inheritance Law and Heirs by the Land Administrator	This provision specifies that for Muslim decedents, the determination of heirs and the proportion of inheritance shares is based on Faraid law
	<i>Distribution Act 1958, Section 2, in conjunction with the Amendment Act 1997</i>	Regulations Governing Non-Muslim Inheritance	This regulation governs the distribution of inherited assets among non-Muslims in Malaysia under civil law and serves as a point of comparison with the Islamic inheritance system.

Source: Researcher’s analysis (2026)

Land law in Indonesia is based on Law No. 5 of 1960 concerning Basic Agrarian Principles (hereinafter referred to as the UUPA) as the primary basis for regulating land rights. Meanwhile, the land law system in Malaysia is governed by the National Land Code 1965 (hereinafter referred to as the NLC 1965), which applies in Peninsular Malaysia. In Sabah and Sarawak, however, land regulations are subject to different laws and regulations as a consequence of the autonomous status enjoyed by these two regions.⁴⁶

⁴⁶ Tesalonika, Bakhtiar, and Winanti, “Perbandingan Hukum Indonesia Dan Malaysia Dalam Kepemilikan Properti Oleh Warga Negara Asing.”

Table 2: Overview of Land Laws in Indonesia and Malaysia

Country	Legal Basis	Substance of Regulation	Notes
Indonesia	UUPA	Regulation of land ownership rights	The UUPA serves as the primary basis for analyzing the control and ownership of land rights by Muslim heirs, particularly in the context of mixed marriages involving differences in citizenship status
Malaysia	NLC 1965	Regulation of the acquisition, registration, and transfer of land rights	The NLC 1965 serves as the primary basis for regulating the acquisition, registration, and transfer of land rights to Muslim heirs in the context of mixed marriages, particularly regarding restrictions on ownership by foreign nationals

Source: Research findings (2026)

The rights of Muslim heirs from mixed marriages to inherited land are still recognized as inheritance rights under Islamic inheritance law as stipulated in the KHI; however, the exercise of property rights over land with freehold status is highly dependent on the heir’s citizenship status. If the heir is an Indonesian citizen (WNI), they are entitled to acquire, own, and retain freehold rights to the land. Conversely, heirs who are foreign nationals (hereinafter referred to as “foreign nationals”) are not entitled to own land with full ownership status under Article 21(1) of the Land Law (UUPA); therefore, they are required to relinquish or transfer such rights within one year from the date the rights were acquired or from the date their Indonesian citizenship was lost, as stipulated in Article 21(3) of the Land Law (UUPA).

Table 3: Regulatory Framework for Muslim Heirs’ Land Rights in Indonesia

Country	Legal basis	Substance of Regulation	Notes
KHI	Section 171(c)	Definition of Heirs	Serves as the basis for determining the status of Muslim heirs who are related to the decedent by blood or marriage

	Section 172	Determination of the Religion of Heirs	Serves as the basis for confirming the Islamic status of heirs as a prerequisite for the application of Islamic inheritance law
	Section 174	Categories of Heirs	This article specifies the categories of persons who qualify as heirs under Islamic law. In the context of mixed marriages, a difference in citizenship does not negate a person's status as an heir as long as they meet the inheritance requirements under the KHI.
UUPA	Section 21(1)	Ownership Rights	Affirms that only Indonesian citizens may hold title to land
	Section 21(3)	Restrictions on Ownership by Foreign Nationals	This article serves as a legal resolution mechanism. Foreign heir(s) may still acquire inheritance rights under civil law, but are required to relinquish or transfer such title within one year of acquiring the rights

Source: Researcher's analysis (2026)

The rights of Muslim heirs to land from mixed marriages in Malaysia are still recognized as inheritance rights under Faraid law. However, the exercise of property rights over such land depends on the heir's citizenship status and applicable land laws. Heirs with WNM status are, in principle, entitled to acquire and retain rights to inherited land in accordance with Malaysian land laws. Meanwhile, heirs with WNA status may still acquire rights to land, but their ownership is subject to certain restrictions and the approval of state authorities as stipulated in the National Land Code 1965 (NLC 1965), including restrictions on the minimum property value, prohibitions on low-cost and lower-middle-cost housing units, land classified as Malay Reservation Land, and property specifically allocated for Bumiputera by the PBN.

Table 4: Regulatory Framework Governing the Land Rights of Muslim Heirs in Malaysia

National Law	Act	Substance of the Regulations	Explanation
Civil Act of 1956	Section 25	The distribution and administration of the estates of Muslims are exempt from the	This regulation stipulates that the settlement of estates for Muslims in Malaysia is governed by Islamic inheritance law, or faraid.

		application of general civil law	
Small Estates (Distribution) Act of 1955 [Act 98]	Section 12(7)	The Land Administrator determines the applicable law governing the inheritance of estate assets and designates the heirs and their respective shares	This regulation stipulates that the settlement of estates for Muslims in Malaysia is governed by Islamic inheritance law/faraid.
Federal Constitution	List II, Ninth Schedule	Matters of Islamic law, including inheritance and the administration of estate assets, fall under the jurisdiction of the state	This rule indicates that the authority to administer Islamic inheritance cases falls within the jurisdiction of the state
NLC 1965 Malaysia	Section 433B	The acquisition of land interests by foreign nationals requires the approval of the competent state authority	This provision explains that foreign nationals may acquire land rights in Malaysia under certain conditions and with the approval of state authorities

Source: Researcher's analysis (2026)

The provisions governing the inheritance rights of Muslim heirs to land in mixed-marriage cases in Indonesia and Malaysia reveal both similarities and differences in their regulations. The similarity lies in the fact that both countries recognize the inheritance rights of Muslim heirs under Islamic law; thus, foreign citizenship does not, in principle, negate these inheritance rights. The differences lie in the exercise of land rights, where Indonesia imposes stricter restrictions on land ownership by foreign nationals, while Malaysia still allows for limited ownership with the approval of land authorities. Thus, the exercise of land rights in both countries is determined not only by Islamic inheritance law but also by the provisions of their respective national land laws.

Table 5: Comparison of Provisions Regarding Muslim Heirs’ Rights to Land from Mixed Marriages in Indonesia and Malaysia

Comparative Aspects	Similarities	Differences
Legal Basis for Inheritance	Both use Islamic inheritance law as the basis for determining inheritance rights. Therefore, heirs from mixed marriages involving a foreign national are still recognized as heirs as long as they meet the inheritance requirements under Islamic law.	Indonesia uses the KHI as the basis for regulating Islamic inheritance at the national level, while Malaysia uses the faraid system based on Sharia law, the regulation of which falls under the authority of each state.
Land Ownership Rights	Both regulate restrictions on land ownership or control by foreign nationals through land law provisions.	Indonesia imposes stricter restrictions on land ownership by foreign nationals, as stipulated in Article 21(1) of the Land Law (UUPA), whereas Malaysia still allows for limited land ownership by foreign nationals provided they meet certain requirements and obtain approval from the National Land Board (PBN) pursuant to Section 433B of the National Land Code (NLC) 1965.

Source: Researcher’s analysis (2026)

Conceptually, foreign national status does not eliminate inheritance rights, but it does affect the ability to retain rights to land as an object of inheritance. In Indonesia, the restrictions are more stringent, whereas in Malaysia, foreign national ownership is permitted through a mechanism requiring approval from the State Authority. Assuming the wife is a native citizen, the heir is her foreign national husband, and they have one son, the husband’s share is one-fourth, and the son receives the asabah share. The calculation of 1/4 for the husband and 3/4 for the child applies under the

assumption that the decedent leaves behind only the husband and one child, with no other heirs, and that the land is the decedent's personal property. If the land is joint property, the share of the joint property must first be separated before the distribution of the faraid is carried out.

Table 6: Simulation of Land Inheritance Distribution for a Foreign National Husband and a Child from a Mixed Marriage

Aspects	Indonesia	Malaysia
Decedent	Indonesian Muslim woman	Malaysian Muslim Woman
Heirs	Foreign national husband + 1 Muslim child from a mixed marriage	Married to a foreign national husband + 1 Muslim child from a mixed marriage
Subject of the inheritance	Land held under Freehold Title: 1,000 m ²	Land valued at RM1,000,000
Husband's share	$1/4 = 250 \text{ m}^2$	$1/4 = \text{RM}250,000$
Child's share	$3/4 = 750 \text{ m}^2$	$3/4 = \text{RM}750,000$
If the child is an Indonesian citizen or a foreign national	May retain her share of the land under Freehold Title, provided he meets the requirements	In principle, registration is possible in accordance with land regulations
If the child is a foreign national	Retains the right to inherit $3/4$ of the estate, but cannot retain Freehold Title to the land	he retains a $3/4$ inheritance right; land registration requires approval from the State Authority
A foreign national husband's rights to land	Receives an inheritance share, but cannot retain Freehold Title	he may be possible to acquire or register the land with the approval of the State Authority
Consequences for foreign nationals	Land rights must be relinquished or transferred in accordance with Article 21 of the Land Law (UUPA)	Subject to Section 433B of the NLC 1965 and state land regulations
Key differences	Inheritance rights are recognized, but Freehold Title is restricted based on citizenship	Inheritance rights are recognized, and land ownership by foreign nationals is permitted on a limited basis through state approval

Analysis and Discussion

The primary basis for the regulation of land rights in Indonesia is the UUPA.⁴⁷ The UUPA serves as the foundation for the unification of agrarian law in Indonesia by eliminating the dualism between customary law and colonial law, and by establishing a single national land law system that applies equally to all Indonesian citizens without distinction based on race, social class, or religion. Through this law, the state defines various types of land rights, such as Freehold Rights (Hak Milik), Right to Use for Business Purposes (HGU), Right to Use for Building Purposes (HGB), and Right of Use (Hak Pakai). Additionally, this law regulates the mechanisms for the transfer of rights, as well as land registration procedures to ensure legal certainty.

Unlike Indonesia, land law regulations in Malaysia are generally based on the NLC 1965, which applies to Peninsular Malaysia. However, Sabah and Sarawak implement different land regulations in accordance with their autonomous powers. One characteristic of the land ownership system in Malaysia is the implementation of a clearly structured and organized land registration system. This system employs the Torrens system, which provides legal certainty regarding land ownership rights. Under this system, ownership rights to a parcel of land are legally recognized once they are registered in the land register,⁴⁸ making such registration conclusive evidence and the primary source for determining the legal validity of land ownership.

Some forms of land rights in Malaysia include freehold (freehold title), which is granted to Malaysian citizens on a permanent (indefinite) basis,⁴⁹ and leasehold (leasehold title), which is a land right limited to a specific term, typically 30, 60, or 99 years.⁵⁰ These forms of land rights are generally used for residential purposes, commercial activities, and the industrial sector. The term of validity may be extended in accordance with local government

⁴⁷ Tesalonika, Bakhtiar, and Winanti; Elfia, Surwati, and Bakhtiar, "The Struggle of Custom and Sharia: Classic Dilemma of Inheritance Settlement in Javanese and Minangkabau Ethnic Communities in Indonesia," *Al-Istinbath: Jurnal Hukum Islam* 8, no. 1 (2023): 75–94.

⁴⁸ Richard Wu and M Y B Z Kepli, "Implementation of Land Title Registration System in Malaysia: Lessons for Hong Kong," *Malayan Law Journal Articles* 1 (2010): 1–8.

⁴⁹ Rico Pratama Purnomo, Admiral, and Rosyidi Hamzah, "Legal Consequences in Buy and Sell of the Land Which Is Not Transfer of Title Yet in Simpang Perak Jaya Village (Case Study of Freehold Title Number 733)," 2023.

⁵⁰ Frengki Hardian Hermayulis et al., "An Analysis of the Leasehold Concept in the Land Management System of Indonesia and Malaysia," *The Social Sciences* 7, no. 3 (2012): 391–404.

policies and provided that the rights holder meets the specified requirements.

In Malaysia, pursuant to PKPTG No. 6/2024—Restrictions on Land Acquisition by Non-Citizens or Foreign Companies (hereinafter referred to as PKPTG No. 6/2024)—foreigners are permitted to own land or property, but subject to various restrictions or prohibitions, including a high minimum purchase price (threshold), which requires that foreign nationals may only purchase properties priced at more than RM 1 million Malaysian ringgit per unit; residential units in the low-cost and lower-middle-cost categories, as determined by the State Authority (hereinafter referred to as PBN); properties located on Malay Reservation Land (Malay Reservation Land), and properties that have been allocated for the benefit of Bumiputera in a property development project designated by the State Authority.⁵¹

In addition, there are also technical provisions regarding the distribution of inherited property that are governed by various other laws, such as the NLC 1965, which recognizes the concept of joint ownership of land. However, in certain contexts, the implementation of faraid also faces normative limitations, such as on land under the FELDA (Federal Land Development Authority) scheme, which is regulated by the Land Deed (Group Settlement Areas) Act of 1960—limiting the number of owners—as well as on customary land and Malay Rizab land, which restrict the categories of heirs entitled to receive such property.⁵²

Provisions regarding the rights of Muslim heirs to land arising from mixed marriages in Indonesia lie at the center of a normative dispute between the principle of personal status under Islamic law and the principle of nationality. Based on a systematic interpretation of Islamic inheritance law as stipulated in Article 171(c), Article 172, and Article 174 of the KHI, Islamic law explicitly guarantees the full share of the faraid to Muslim heirs from mixed marriages. Inheritance rights under Islamic law are inherent as long as the conditions for inheritance are met and there are no obstacles to inheritance.⁵³ Citizenship status does not affect the validity of a person's status as an heir under Islamic law because citizenship is not included in the

⁵¹ Alain Bertaud and Stephen Malpezzi, "Measuring the Costs and Benefits of Urban Land Use Regulation: A Simple Model with an Application to Malaysia," *Journal of Housing Economics* 10, no. 3 (2001): 393–418.

⁵² Kamarudin and Abdullah, "Amalan Pembahagian Faraid Di Malaysia."

⁵³ Dewi Noviarni, "Kewarisan Dalam Hukum Islam Di Indonesia," *'Aainul Haq: Jurnal Hukum Keluarga Islam* 1, no. 1 (2021): 62–75.

category of obstacles to inheritance (mawani' al-irth),⁵⁴ but it is decisive in determining the legality of ownership of inherited property in the form of land under national agrarian law. Therefore, from a theological and legal perspective, the inheritance rights of Muslim heirs from mixed marriages remain legally recognized and cannot be nullified by their formal citizenship status.⁵⁵

Although Islamic law fully recognizes the inheritance rights of Muslim heirs, the exercise of those rights with respect to land held as freehold property remains subject to the restrictions of national agrarian law. Pursuant to Article 21(1) of the Agrarian Law (UUPA), Indonesia explicitly stipulates that freehold title to land is reserved exclusively for Indonesian citizens. This regulation has direct implications for the ownership status of inherited land left by a decedent. Such land may only be fully owned and retained if the heir from a mixed marriage chooses Indonesian citizenship as their status.⁵⁶

The determination of the citizenship status of heirs from mixed marriages must be based on the Citizenship Law. Under these provisions, heirs from mixed marriages hold limited dual citizenship from birth until they turn eighteen or get married.⁵⁷ If, after reaching that age, the heir chooses to become an Indonesian citizen, they have the legal capacity to acquire and retain ownership rights to the inherited land. This analysis is supported by Rampay's research, which explains that children born of mixed marriages acquire limited dual citizenship and are required to choose their citizenship after turning eighteen or upon marriage. This choice must be declared no later than three years thereafter, that is, before the age of twenty-one.⁵⁸

⁵⁴ Najwa Rohmah, "Studi Komparatif Konsep Mawāni 'al-Irth Dalam Fikih Klasik Dan Fikih Kontemporer," *Maliki Interdisciplinary Journal* 3, no. 11 (2025): 1223–30.

⁵⁵ Darwis L Rampay, "Hak Waris Anak Dalam Perkawinan Campuran Berdasarkan Undang-Undang Nomor 12 Tahun 2006 Tentang Kewarganegaraan," *MORALITY: Jurnal Ilmu Hukum* 2, no. 2 (2017): 107–21.

⁵⁶ Muhammad Hafidz Zain Arridho and Rahmida Erliyan, "Pelepasan Hak Atas Tanah Pada Harta Bersama Melalui Jual Beli Oleh Warga Negara Asing Dalam Perkawinan Campuran," *Iuris Studia: Jurnal Kajian Hukum* 7, no. 2 (2026): 410–23.

⁵⁷ Leonora Bakarbesy and Sri Handajani, "Kewarganegaraan Ganda Anak Dalam Perkawinan Campuran Dan Implikasinya Dalam Hukum Perdata Internasional," *Perspektif: Kajian Masalah Hukum Dan Pembangunan* 17, no. 1 (2012): 1–9.

⁵⁸ Rampay, "Hak Waris Anak Dalam Perkawinan Campuran Berdasarkan Undang-Undang Nomor 12 Tahun 2006 Tentang Kewarganegaraan."

The conflict between Islamic law and national positive law reaches its peak when, upon reaching adulthood, an heir from such a mixed marriage chooses to become a foreign national. Pursuant to Article 21(3) of the Land Law (UUPA), the presence of a foreign element in land ownership cannot be permanently maintained in Indonesia. Heirs who hold foreign nationality are required to relinquish their rights to the land within one year of acquiring such rights or of losing their Indonesian citizenship.⁵⁹ If the rights are not relinquished within that period, ownership of the land is automatically extinguished by law and the land reverts to the state, provided that the rights of other parties encumbering the land remain in effect. This provision affirms that although Islamic law (KHI) recognizes the validity of inheritance rights, national agrarian law prohibits foreign nationals from owning land under freehold title, even though certain forms of land rights may still be permitted in accordance with applicable laws and regulations.⁶⁰

Similar findings were reported by Rizki et al. regarding the transfer of land ownership rights through inheritance in mixed-nationality marriages. The study indicates that heirs who are foreign nationals are required to relinquish or transfer their rights to the land within a maximum period of one year.⁶¹ Thus, the normative conflict in inheritance within mixed marriages does not lie in the recognition of Muslim heirs' status as subjects of inheritance law, but rather in the restrictions on the exercise of property rights over inherited land subject to the national agrarian legal regime.

Constitutionally, inheritance law regulations for Muslims in Malaysia are based on the faraid system as the primary reference for the distribution of inherited assets.⁶² Pursuant to Schedule 9, List II (State List), of the Federal Constitution of Malaysia, authority over matters of Islamic law—including inheritance and the administration of inherited assets—falls under state

⁵⁹ Muhammad Setya Ady Syarifuddin, "Kedudukan Hukum Dan Keabsahan Kepemilikan Hak Atas Tanah Warga Negara Asing Yang Berasal Dari Pewarisan," *Notaire* 4, no. 3 (2021): 373–98.

⁶⁰ Clarinta Trovani, "Hak Ahli Waris Berkewarganegaraan Asing Terhadap Harta Warisan Berupa Tanah Hak Milik Dari Pewaris Berkewarganegaraan Indonesia," *Indonesian Notary* 3, no. 1 (2021): 14.

⁶¹ C Rizki, E S F Pakpahan, and W Wijaya, "Tinjauan Yuridis Hak Milik Atas Tanah Karena Pewarisan Dalam Perkawinan Campuran," *Jurnal Ilmu Hukum, Humaniora Dan Politik* 4, no. 6 (2024): 2480–89, <https://doi.org/10.38035/jihhp.v4i6.2788>.

⁶² Hani Kamariah Mat Abdullah et al., "Perkembangan Pengurusan Dan Pentadbiran Harta Pusaka Islam Malaysia," *BITARA International Journal of Civilizational Studies and Human Sciences* 3, no. 1 (2020): 42–53.

jurisdiction. Procedurally, the implementation of inheritance is reflected in Section 25 of the Civil Law Act 1956, which stipulates that the distribution of assets among Muslims is not subject to the general civil law regime but rather to Islamic law, as well as Section 12 (7) of the Small Estates (Distribution) Act 1955 [Act 98], which stipulates that the Land Administrator is obligated to determine the applicable law governing the inheritance of estate assets and to designate the heirs along with their respective shares based on that law. In the context of Muslim heirs in Malaysia, the law governing the determination of heirs and the distribution of an estate refers to the law of faraid.

In determining the distribution of an estate for Muslims, the Shariah Court, in principle, refers to Shariah law, giving priority to the *qaul muktamad* (authoritative opinion) of the Shafi'i school of thought. This is consistent with the mandate of Section 39 of the Administration of Islamic Law (Federal Territories) Act 1993 [Act 505] as well as similar provisions in state ordinances, which require the courts to refer to Islamic law in the absence of written legislation.

Based on these provisions, it can be understood that foreign citizenship resulting from a mixed marriage does not, in principle, preclude a person's right to inherit as long as they meet the requirements for inheritance under Islamic law, since citizenship is not, in principle, a barrier to inheritance under Islamic inheritance law. However, when the subject of the inheritance consists of immovable property such as land, Islamic inheritance law cannot be applied in isolation because its implementation must take into account the provisions of Malaysia's national land law, namely the NLC 1965, which also considers citizenship status in the acquisition of land rights.⁶³

If the heir holds foreign national status, the acquisition of rights to inherited land can generally be carried out in accordance with applicable legal procedures. Conversely, if the heir is a foreign national, the acquisition of rights to the land requires written approval from the State Authority pursuant to Section 433B of the NLC 1965, and is subject to restrictions on certain types of ownership. These restrictions on land ownership encompass various limitations on land acquisition by foreign nationals, including minimum property value thresholds, prohibitions on certain types of

⁶³ Agus Setyadi Hadisusilo, "Perbandingan Hukum Perolehan Hak Atas Tanah Untuk Orang Asing Di Indonesia Khususnya Di Pulau Batam Dengan Orang Asing Di Negara Malaysia" (Program Pasca Sarjana Universitas Diponegoro, 2009).

property, and restrictions on land with special status as stipulated in PKPTG No. 6/2024.

Provisions regarding Muslim heirs' rights to land in Malaysia face a dualism between Sharia law and civil regulations. Studies by Abdullah et al.⁶⁴ and Muda⁶⁵ indicate that although inheritance rights are recognized under faraid, their implementation is hindered by bureaucratic complexities and overlapping jurisdictions among state institutions. Specifically regarding land assets, Kamarudin and Abdullah emphasize that recognition under Islamic inheritance law must still be subject to national land laws; restrictive regulations on the status of certain lands—such as Tanah Rizab Melayu—can hinder the transfer of rights to heirs, even if their Islamic status is valid.⁶⁶

Thus, there is a duality in regulation between the normative recognition of inheritance rights under Islamic law and the exercise of those rights within the realm of Malaysian national law. A mixed marriage does not, in principle, negate the inheritance rights of heirs as long as they qualify as heirs under Sharia law. However, specifically regarding inherited property in the form of land, the exercise of these rights remains subject to restrictions under Malaysia's land law regime, particularly those related to citizenship status and certain categories of land.

As for the similarities in the provisions governing the inheritance rights of Muslim heirs to land from mixed marriages in Indonesia and Malaysia, these can be observed from several aspects. The first similarity lies in the legal basis for inheritance, as both use Islamic inheritance law as the primary foundation for determining heirs and the distribution of Muslim inheritance. In Indonesia, these provisions are codified in the KHI, while in Malaysia they are implemented through the faraid system based on Sharia law, as regulated in the laws of each state. Although the forms of regulation differ, both countries rely on Islamic law as the primary source for determining inheritance rights for Muslims. Thus, the recognition of inheritance rights for heirs with foreign citizenship, in principle, does not make citizenship status a barrier to inheritance. Therefore, heirs who are foreign nationals retain the right to inherit the estate as long as they meet the inheritance requirements under Islamic law. This indicates that in both legal systems, the recognition

⁶⁴ H K M Abdullah, S Ab Rahman, and M D Awang, "Review on Issues of Administration and Distribution of Islamic Inheritance in Malaysia," *Jurnal Al-Sirat* 22, no. 1 (2022): 118–31, <https://doi.org/10.64398/alsirat.v22i1.264>.

⁶⁵ Muda, "Harta Pusaka Islam Di Malaysia: Antara Perundangan Dan Pentadbiran."

⁶⁶ Kamarudin and Abdullah, "Amalan Pembahagian Faraid Di Malaysia."

of inheritance rights places greater emphasis on the fulfillment of inheritance requirements under Islamic law than on citizenship status.

The second similarity lies in the regulation of land rights, where both Indonesia and Malaysia restrict foreign nationals' ownership of land based on their respective national land laws. In other words, although inheritance rights are recognized under Islamic law, the exercise of land rights remains subject to the provisions of national land law. This indicates a close interconnection between Islamic inheritance law and land law in the exercise of property rights over land. Thus, both Indonesia and Malaysia distinguish between regulations concerning inheritance rights and those concerning land ownership; consequently, recognition as an heir does not automatically entitle a person to land ownership without regard to applicable land law provisions.

This finding is consistent with the research by Rajib et al., which affirms that foreign citizenship does not negate a person's status as an heir, as the right to inherit is still recognized based on blood ties and applicable inheritance laws. However, when the inherited property consists of land, the exercise of these rights is restricted by national agrarian regulations, particularly those regarding limitations on land ownership rights for foreign nationals.⁶⁷

Meanwhile, in Malaysia, research by Kamarudin and Abdullah shows that the faraid system remains the primary basis for the distribution of inherited assets among Muslims. However, the practical implementation of inheritance distribution is also influenced by applicable administrative procedures and regulations, including those governing immovable property such as land.⁶⁸ Thus, this study reinforces the finding that both Indonesia and Malaysia recognize inheritance rights based on Islamic law, but the practical implementation of land rights remains influenced by each country's land regulations and administrative mechanisms.

Meanwhile, the differences between Indonesia and Malaysia are primarily evident in the form of their inheritance legal frameworks. Indonesia has a more codified system through the KHI as the national reference for resolving inheritance cases for Muslims. In contrast, Malaysia applies the

⁶⁷ R K Rajib, K Y Manalu, and A H Hanifah, "Kepastian Hukum Pewarisan Hak Atas Tanah Bagi Anak Hasil Perkawinan Campuran Di Indonesia," *Integrative Perspectives of Social and Science Journal* 3, no. 5 (2026): 2591–2605, <https://ipssj.com/index.php/ojs/article/view/1368>.

⁶⁸ Kamarudin and Abdullah, "Amalan Pembahagian Faraid Di Malaysia."

faraid system based on Sharia law, the regulation of which falls under the jurisdiction of each state. Consequently, the Islamic inheritance system in Malaysia exhibits a stronger decentralized character compared to Indonesia's.

The second difference lies in the mechanism governing foreign nationals' ownership of land. Indonesia imposes stricter restrictions through the UUPA, specifically by prohibiting foreign nationals from holding freehold title to land. If freehold title to land is inherited by a foreign national, that title must be transferred or relinquished within the timeframe specified by law. This system reflects strict limitations on land ownership rights by foreign nationals. In Malaysia, however, while foreign nationals still face restrictions on land ownership, they may obtain rights to certain lands through approval by the National Land Commission (PBN) and by complying with the provisions of Section 433B of the National Land Code (NLC) 1965. This difference indicates that Indonesia's land policy is more oriented toward protecting the principle of nationality in land ownership, whereas Malaysia accommodates the interests of foreign nationals to a limited extent through a licensing mechanism under the authority of the PBN.

Based on the results of this comparison, it can be concluded that the similarities between Indonesia and Malaysia lie in the recognition of inheritance rights under Islamic law, while the differences between the two countries lie in the legal framework governing inheritance and the mechanisms for foreign nationals to acquire land rights as heirs. Indonesia imposes stricter restrictions under Article 21 of the Land Law (UUPA), whereas Malaysia still allows for limited land ownership by foreign nationals under Section 433B of the National Land Code (NLC) of 1965, subject to approval by the National Land Board (PBN). This difference indicates that Indonesia treats citizenship status as the primary requirement for land ownership, thereby severely limiting ownership opportunities for foreign nationals. In contrast, Malaysia adopts a more flexible approach by continuing to allow foreign nationals to hold land rights through a licensing mechanism and oversight by the PBN in accordance with the provisions of Section 433B of the NLC 1965. Thus, this comparison shows that the difference between the two countries does not lie in the recognition of inheritance rights under Islamic law, but rather in the land law policies governing the exercise of land rights by heirs who are foreign nationals.

Conclusion

This study demonstrates that the central legal issue arising from mixed marriages is not whether a Muslim foreign national may inherit, but how the right to inherit can be legally realized when the inheritance consists of land. The distinction between inheritance entitlement and land ownership capacity is therefore essential, as citizenship does not necessarily determine the existence of inheritance rights but may determine the extent to which those rights can be exercised over land. Accordingly, the protection of foreign heirs requires mechanisms that preserve the economic substance of their inheritance while respecting national restrictions on land ownership. This study is limited by its normative and comparative approach, which does not examine the practical implementation of inheritance administration, land registration, or judicial practice. In addition, the Malaysian analysis primarily concerns the framework under the National Land Code 1965 and does not comprehensively address the distinct land regimes of Sabah and Sarawak. The study also does not empirically examine cases involving foreign spouses or children of mixed marriages, particularly those with dual or changing citizenship. Future research should therefore examine court decisions, administrative and land-registration practices, and the implementation of mechanisms for transferring or preserving the economic value of inherited land by foreign heirs. Further studies should also investigate differences among Malaysian states and focus on children of mixed marriages whose citizenship status changes, thereby providing a more comprehensive understanding of the interaction between Islamic inheritance law, nationality law, and land law in cross-border family relationships.

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Generative AI Usage Statement

The author states that the use of AI in the preparation of this article was limited to assisting with the process of refining words and sentences

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