MILRev
Metro Islamic Law Review
Scientific Islamic Law Journal Of Sharia Faculty
MILRev : Metro Islamic Law Review
ISSN: 2986-528X
Vol. 5 No. 2 July-December 2026, Pages 1205-1223

A Benefit-Based Reconstruction of Contemporary Copyright Inheritance in Indonesian Islamic Law

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Doi: 10.32332/milrev.v5i2.13719

Dates:
Received 03 January, 2026
Revised 20 Mei, 2026
Accepted 09 July, 2026
Published 27 July, 2026

Abstract: The emergence of intellectual property as an economically productive asset has challenged the traditional conception of inheritance in Islamic law, particularly regarding the transfer of copyright after the author's death. Although the *Kompilasi Hukum Islam* (KHI) serves as the primary legal framework for inheritance adjudication in Indonesia's Religious Courts, its provisions remain predominantly oriented toward tangible property, generating normative uncertainty regarding contemporary intangible assets. This study aims to examine the legal status of copyright inheritance within Indonesian Islamic law through the case of the copyrighted Al-Barqy Qur'anic learning method and to formulate a benefit-based reconstruction of inheritance norms capable of accommodating productive intellectual assets. Employing an empirical socio-legal approach, the research integrates qualitative fieldwork through semi-structured interviews with the heirs responsible for managing the Al-Barqy copyright and doctrinal analysis of Articles 171(e) and 189 of the KHI in conjunction with Indonesian copyright legislation. The collected data were analyzed using the interactive model of Miles and Huberman, while the normative reconstruction was developed through Fazlur Rahman's Double Movement theory and Jeremy Bentham's utilitarianism. The findings demonstrate that the heirs have implemented a hybrid inheritance model combining *farā'iḍ*-based allocation of economic rights with collective copyright governance, thereby preserving both Islamic distributive justice and the long-term economic productivity of the inherited asset. Nevertheless, the absence of explicit legal recognition within the KHI creates uncertainty regarding the inheritance and management of productive intangible property. This study proposes a benefit-based reconstruction of Islamic inheritance law by reformulating Article 171(e) to recognize intangible economic rights as inheritable assets explicitly, and by reconstructing Article 189 to expand the concept of productive inheritance beyond agricultural land to encompass all assets requiring collective and sustainable management. The study contributes to contemporary Islamic inheritance scholarship by demonstrating the adaptive

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capacity of Islamic law to respond to evolving economic realities while maintaining its foundational objectives of justice, legal certainty, and public welfare.

Keywords: Copyright Inheritance; *Kompilasi Hukum Islam* (KHI); Productive Inheritance; Socio-Legal Studies.

INTRODUCTION

The rapid transformation of wealth structures in contemporary society has fundamentally challenged traditional legal frameworks of inheritance.[1] While classical inheritance regimes were predominantly developed around tangible assets such as land, livestock, and movable property, modern economic systems increasingly recognize intangible assets, including copyrights, patents, trademarks, and digital property, as significant sources of wealth and intergenerational transfer.[2] Intellectual property has emerged not merely as a legal entitlement, but as an economically productive asset capable of generating long-term income through royalties, licensing, and commercial exploitation.[3] This transformation raises an important jurisprudential question: can contemporary Islamic inheritance law adequately accommodate intangible productive assets within its existing doctrinal framework?

This question becomes particularly urgent in Muslim-majority jurisdictions where Islamic inheritance law continues to operate as a living legal system. In many of these jurisdictions, inheritance law remains heavily influenced by classical fiqh categories developed in pre-modern economic contexts, where wealth was primarily material and physical. As a result, although Islamic jurisprudence historically demonstrated remarkable adaptability, many contemporary codifications of Islamic inheritance law continue to privilege tangible property, creating normative ambiguity regarding newer forms of wealth. This tension reflects a broader challenge in contemporary Islamic legal thought: how to

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[1] Marina Mijatovic, “Digital Assets and Inheritance Law: Legal Vacuum or New Paradigm,” *SCIENCE International Journal* 4, no. 3 (2025): 7–11, https://doi.org/10.35120/sciencej0403007m.

[2] Akmaljon A. Akramov et al., “The Impact of Digitalization in Inheritance Law,” *Qubahan Academic Journal* 4, no. 3 (2024): 100–134, https://doi.org/10.48161/qaj.v4n3a863.

[3] Lailatul Farochah et al., “Intellectual Property Rights as Fiduciary Collateral in Indonesian Legal Framework,” *Academia Open* 11, no. 1 (2025): 10.21070/acopen.11.2026.13164, https://doi.org/10.21070/acopen.11.2026.13164.

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preserve doctrinal fidelity while ensuring legal relevance in changing socio-economic realities.

In Indonesia, this problem is particularly visible in the Compilation of Islamic Law (Kompilasi Hukum Islam) (KHI), which functions as the principal reference for Islamic family and inheritance matters in the Religious Courts.[4] Although the KHI has played a crucial role in standardizing Islamic legal practice, its inheritance provisions were drafted in a period when legal attention toward intangible assets remained limited. Article 171 defines inheritance primarily in terms of property left by the deceased, but its language remains materially oriented and does not explicitly address rights-based intangible assets such as copyright. Similarly, Article 189 introduces the notion of "productive inheritance," but limits its application to agricultural land, reflecting an agrarian paradigm that no longer captures the complexity of contemporary asset structures.[5]

This normative limitation becomes increasingly problematic when inheritance disputes involve productive intangible assets whose value depends not merely on ownership, but on sustained and coordinated management. Copyright, for example, differs from conventional inherited property because its economic utility lies in continuity, licensing, reputation, and institutional control.[6] Fragmented inheritance distribution may legally divide ownership but simultaneously destroy the asset's productive value. Consequently, treating copyright purely through conventional distributive logic may undermine the very welfare objectives that Islamic inheritance law seeks to protect.

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[4] Hendrayani et al., "Kompilasi Hukum Islam (KHI) Sejarah Penyusunan, Dasar Dan Eksistensinya Dalam Tata Urutan Perundang-Undangan Ditinjau Dari Politik Hukum Indonesia," *Journal Scientific of Mandalika (JSM) e-ISSN 2745-5955 | p-ISSN 2809-0543* 6, no. 3 (2025): 678–684, https://doi.org/10.36312/10.36312/vol6iss3pp678-684; Ahmad Rofiq, *Pembaharuan Hukum Islam Di Indonesia* (Gama Media Offset, 2001), 94–96.

[5] Kompilasi Hukum Islam, Pub. L. No. 1, Instruksi Presiden Republik Indonesia Nomor 1 Tahun 1991 (1991) Article 171 e dan 189.

[6] Hendra Tanu Wijaya, "Konsep Hak Ekonomi Dan Hak Moral Pencipta Menurut Sistem Civil Law Dan Common Law," *Jurnal Hukum IUS QUIA IUSTUM* 10, no. 23 (2016): 153–168, https://doi.org/10.20885/iustum.vol10.iss23.art8; Fitria Mayangsari, "Kemelekatan Hak Ekonomi Ahli Waris Terhadap Karya Dari Pencipta Yang Telah Meninggal Dunia," *Jurnal Globalisasi Hukum.* 2, no. 2 (2025): 188–206, https://doi.org/10.25105/jgh.v2i2.23266; Andre Gerungan, "Pengalihan Hak Ekonomi Atas Hak Cipta Menurut Undang-Undang Nomor 28 Tahun 2014 Tentang Hak Cipta," *LEX PRIVATUM* 4, no. 2 (2016), https://ejournal.unsrat.ac.id/index.php/lexprivatum/article/view/11364.

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This article addresses that problem through the case of the copyrighted Al-Barqy Qur'anic learning method, hereafter referred to as the Al-Barqy Method. Developed as an innovative pedagogical method for Qur'anic literacy, Al-Barqy has evolved beyond a purely educational tool into an economically productive intellectual asset generating ongoing financial returns through publication, licensing, and educational dissemination.[7] Following the death of its creator, inheritance of this copyright raised a legal question absent from conventional inheritance discourse: should such an asset be treated merely as divisible private property, or as a productive estate requiring collective management for the benefit of all heirs?

The selection of the Al-Barqy Method as the principal case study is not incidental but methodologically significant. Unlike ordinary copyrighted works that merely generate passive royalties, the Al-Barqy Method represents a productive intellectual asset whose economic value depends upon continuous institutional management, licensing arrangements, educational dissemination, and collective family governance. Following the death of its creator, the heirs did not simply divide ownership rights but developed a collaborative management model that preserved both the copyright and its productive value while distributing economic benefits according to Islamic inheritance principles. This unique combination of copyright inheritance, collective management, and sustainable economic utility exposes more clearly than conventional copyright disputes the normative inadequacy of Article 189 of the Indonesian Compilation of Islamic Law (KHI), which remains confined to agricultural land as the sole object of productive inheritance. Consequently, the Al-Barqy case provides an ideal empirical foundation for proposing a broader reconceptualization of productive inheritance under contemporary Islamic law.

This study argues that resolving this problem requires more than technical statutory amendment; it demands a reconceptualization of productive inheritance itself. Rather than understanding inheritance solely as the division of property ownership, Islamic inheritance law should also be understood as a mechanism for preserving sustainable economic benefit for heirs. Such an approach aligns closely with the Qur'anic moral objective of preventing

[7] M. Romzul Islam, "Wawancara," Oktober 2025.

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economic vulnerability among future generations, as reflected in Surah al-Nisā' (4:9), which warns against leaving descendants in a condition of weakness. From this perspective, the preservation of benefit, not merely the division of assets, becomes central to the philosophy of inheritance.

To develop this argument, the article adopts an integrative theoretical framework combining two complementary approaches. First, Fazlur Rahman's hermeneutic theory of the Double Movement is employed to identify the moral objective underlying Qur'anic inheritance rules and to reinterpret those principles in light of contemporary economic conditions. Rahman's approach allows the movement from historically specific legal formulations toward universal moral values, and back toward present-day legal reconstruction.[8] Second, the study draws on Jeremy Bentham's utilitarian philosophy, particularly his principle of "the greatest happiness of the greatest number." Although originating outside Islamic jurisprudence, utilitarianism offers an important modern legal rationale for evaluating whether legal arrangements maximize social welfare, economic sustainability, and distributive efficiency.[9] By synthesizing these two frameworks, this article proposes a benefit-based reconstruction of Islamic productive inheritance. This model seeks to reinterpret inheritance law not merely through doctrinal literalism, but through the preservation of sustained utility, economic continuity, and family welfare.

Previous studies on contemporary Islamic inheritance law can be broadly mapped into three major clusters. The first cluster focuses on expanding the scope of inheritance to include intangible property and digital assets. Wahab *et al.* demonstrate that the emergence of crypto-assets in Malaysia necessitates a reformulation of Islamic inheritance law to accommodate modern forms of wealth.[10] Similarly, Ugli *et al.* and Hafidz argue that digital assets may be legally recognized as inheritable property, provided they meet the

[8] Arsal et al., "Female Breadwinners and the Shifting Paradigm of Family Livelihoods in Indonesia: A Double Movement Approach," *JURIS (Jurnal Ilmiah Syariah)* 25, no. 1 (2026): 131–150, https://doi.org/10.31958/juris.v25i1.16558.

[9] Jeremy Bentham, *An Introduction to the Principles of Morals and Legislation* (Kitchener, 2000), 83; Maya Ruhtiani et al., "Legal Protection of Architectural Works as Copyright: An Epistemological and Islamic Law Perspective," *El-Mashlahah* 14, no. 1 (2024): 43–70, https://doi.org/10.23971/el-mashlahah.v14i1.7645.

[10] Norazlina Abd Wahab et al., "A Proposed Framework of Islamic Inheritance and Estate Planning of Digital Assets: The Malaysian Case of Crypto Assets," *ISRA International Journal of Islamic Finance* 16, no. 2 (2024): 45–64, https://doi.org/10.55188/ijif.v16i2.713.

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essential criteria of economic value and transferability under Islamic law.[11] In a more specific context, Mokhamed extends this discourse by examining non-fungible tokens (NFTs) as legal instruments for protecting Islamic cultural heritage through digital ownership structures.[12] While these studies are significant, they remain largely confined to the normative recognition of digital assets as inheritable property, without addressing how such intangible assets may be managed as productive inheritance to preserve their long-term economic utility.

The second cluster emphasizes modernizing inheritance governance and distribution through digital technology. Azmi, through a systematic literature review, demonstrates that the application of Industry 4.0 technologies in inheritance distribution in Malaysia improves administrative efficiency,[13] although his subsequent research also identifies substantial practical limitations in implementation.[14] Complementing this perspective, Sharif proposes a digital governance model integrating data security into Islamic inheritance administration.[15]

The third cluster concerns the normative reform of Islamic inheritance law, particularly through reinterpretations of the Indonesian *Kompilasi Hukum Islam* (KHI) and national inheritance law. Fatahullah illustrates how customary law influences Islamic inheritance reform through the doctrine of *wasiat wajibah*, [while Musafaah and Djawas] emphasize that Islamic inheritance law is inherently dynamic and open to reconstruction in response to

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[11] Akramov et al., "The Impact of Digitalization in Inheritance Law"; Jibran Hafidz, "The Legal Status of Digital Assets as Inheritance Objects from the Perspective of Islamic Inheritance Law," *Sakina: Journal of Family Studies* 10, no. 2 (2026): 119–136, https://doi.org/10.18860/jfs.v10i2.26464.

[12] Takua Mokhamed et al., "Developing Blockchain Framework and System to Preserve the Arabic and Islamic Culture and Heritage Ownership as a Digital Asset Using Non-Fungible Tokens," *2024 6th International Conference on Blockchain Computing and Applications (BCCA)*, November 2024, 698–703, https://doi.org/10.1109/BCCA62388.2024.10844468.

[13] Fatin Afiqah Md Azmi et al., "A Systematic Literature Review of Industry 4.0 Technology Applications in Malaysian Estate Distribution," *Planning Malaysia* 23 (November 2025), https://doi.org/10.21837/pm.v23i38.1884.

[14] Fatin Afiqah Md Azmi et al., "Shortcomings of Industry 4.0 Technology Applications in the Estate Distribution in Malaysia," *2026 International Conference on Artificial Intelligence, Computer, Data Sciences and Applications (ACDSA)*, February 2026, 1–6, https://doi.org/10.1109/ACDSA67686.2026.11468050.

[15] Dziauddin Sharif et al., "Bridging Shariah Governance and Digital Security: Evaluating a Secure Digital Credentials Management Framework for Islamic Estate Administration in Malaysia," *2025 IEEE 23rd Student Conference on Research and Development (SCOReD)*, November 2025, 1–6, https://doi.org/10.1109/SCOReD68498.2025.11398832.

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social change. Taken together, these three clusters reveal a clear research gap: no existing study has integratively examined copyright as intangible inherited property, the concept of productive inheritance within the KHI, and normative reconstruction through the lens of contemporary Islamic legal hermeneutics. Addressing this gap, the present study offers a novel contribution by reconceptualizing productive inheritance of copyright, specifically the copyright of the Al-Barqy Qur'anic learning method, within the KHI through a synthesis of Fazlur Rahman's Double Movement theory and Jeremy Bentham's utilitarianism.

The contribution of this article is threefold. First, it contributes theoretically by expanding the concept of inherited property (*māl*) within contemporary Islamic legal discourse to include productive intangible assets. Second, it contributes methodologically by integrating Fazlur Rahman's Double Movement and Bentham's utilitarianism into a unified framework for contemporary Islamic inheritance reform. Third, it contributes normatively by advancing a legal reconceptualization of Articles 171(e) and 189 of the KHI, proposing explicit recognition of intangible assets within the definition of inheritance and redefining productive inheritance as a broader legal category applicable to all assets whose economic value depends on collective and sustainable management.

Accordingly, this article addresses the following central question: how should Islamic inheritance law be reconstructed so that productive intangible assets such as copyright can be recognized and managed within the framework of contemporary Islamic law while remaining faithful to its normative objectives? By answering this question through the Al-Barqy case, this study seeks to demonstrate that Islamic inheritance law possesses sufficient internal flexibility to respond to the realities of modern economic life without sacrificing its moral and theological foundations.

METHOD

This study employs an empirical legal research design, drawing on a socio-legal approach, to examine the relationship between normative Islamic inheritance law and contemporary inheritance practices involving intangible productive assets. This approach

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is appropriate because the inheritance of copyrighted intellectual property cannot be understood solely through doctrinal analysis but requires examination of legal practice and social reality. The study focuses on the Al-Barqy Method as a qualitative case study, selected purposively because it represents a unique case in which copyright functions simultaneously as intellectual property, family inheritance, and a productive economic asset requiring collective management.

The research utilizes both primary and secondary data. Primary data were collected through semi-structured interviews with six heirs of KH. Muhadjir Sulthon was selected through purposive and snowball sampling based on their direct involvement in the inheritance and management of the Al-Barqy copyright. The interviews were conducted between October and December 2025, during which six semi-structured interviews were carried out with the widow and children of the late KH. Muhadjir Sulthon. Each interview lasted approximately 60–90 minutes and focused on inheritance distribution, copyright management, licensing practices, family agreements, and perceptions concerning the legal status of copyright as inheritable property. Secondary data include primary legal materials, particularly Presidential Instruction No. 1 of 1991 on the Compilation of Islamic Law (KHI) and Law No. 28 of 2014 on Copyright, as well as scholarly literature on Islamic inheritance, copyright, Fazlur Rahman's Double Movement, and Jeremy Bentham's utilitarianism. Data were analyzed qualitatively using the Miles and Huberman interactive model, consisting of data reduction, data display, and conclusion drawing through iterative verification and triangulation.[16] Normative reconstruction was then conducted using Double Movement as the hermeneutical framework for reinterpreting Islamic inheritance norms and utilitarianism as the evaluative framework for assessing whether the proposed legal reform maximizes collective welfare and sustainable benefit for heirs.[17]

[16] Matthew B. Miles and A. M. Huberman, *Qualitative Data Analysis: An Expanded Sourcebook*, 2nd ed (Sage Publications, 1994), http://catdir.loc.gov/catdir/enhancements/fy0655/93041204-t.html.

[17] Fazlur Rahman, *Islam and Modernity: Transformation of an Intellectual Tradition* (The University of Chicago Press, 1982), https://ia903207.us.archive.org/2/items/FazlurRahmanIslamandModernity/FazlurRahmanIslamandModernity.pdf; Bentham, *An Introduction to the Principles of Morals and Legislation*.

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RESULTS AND DISCUSSION

The Al-Barqy Copyright as Productive Intangible Inheritance: Empirical Findings from Family Practice

The empirical findings reveal that the copyright of the *Al-Barqy Method* functions not merely as inheritable intellectual property but as a productive intangible asset whose value depends on continuity, coordinated management, and collective family stewardship. Originally developed by KH. Muhadjir Sulthon as an innovative Qur'anic learning method[18], Al-Barqy gradually evolved beyond a pedagogical instrument into an institutionalized religious intellectual asset with sustained economic value through publication, licensing, and educational dissemination.[19] Its transformation into a professionally managed family enterprise demonstrates that copyright, unlike passive inherited property, derives its value from ongoing institutional control and intergenerational continuity.

This productive character is clearly reflected in the heirs' own perception of the asset. One informant explained: *"waris itu bukan hanya dibagi, tapi dijaga supaya tetap hidup"* ("inheritance is not merely divided, but preserved so that it remains alive").[20] This statement reflects a fundamentally different understanding of inheritance: rather than viewing inheritance solely as divisible ownership, the family treats it as a living economic entity whose continuity must be maintained. In this sense, the Al-Barqy copyright is understood less as a static legal entitlement and more as a dynamic source of collective welfare.

The family's decision to entrust the management of Al-Barqy to an institution further confirms this orientation. Following the founder's death, two heirs assumed responsibility for taking over publication and organizational control. As M. Romzul Islam stated, *"Kami kemudian mengambil alih penerbitan Al-Barqy dari Penerbit Sinar Wijaya agar dapat kami kelola dan kembangkan secara mandiri"* ("We took over the publication of Al-Barqy from Sinar Wijaya so that we could manage and develop it independently").[21] This transition led

[18] Muhadjir Sulthon, *Company Profile Al-Barqy* (Penasuci, 2016), https://anyflip.com/fdeq/dwip/basic.
[19] Ach. Syauqi, "Wawancara," Oktober 2025.
[20] Luthfiyah, "Wawancara," Desember 2025.
[21] M. Romzul Islam, "Wawancara."

to the creation of a family-owned publishing company, which became the central institution for preserving and expanding the copyright's economic and educational value. As another heir noted, "*Melalui CV, seluruh kegiatan keuangan, administrasi, serta pengelolaan usaha dapat tercatat secara akuntabel dan terstruktur*" ("Through the company structure, all financial, administrative, and business activities can be managed in an accountable and organized manner").[22]

Importantly, the family does not regard Al-Barqy solely as an economic commodity. Its inheritance is also framed in moral and spiritual terms. One heir emphasized: "*Kami ingin tetap menjaga Al-Barqy sebagai amanah keluarga, bukan hanya sebagai warisan, tapi sebagai sarana dakwah dan pengabdian*" ("We want to preserve Al-Barqy as a family trust, not merely as inheritance, but as a medium of *da'wah* and service").[23] This indicates that the asset carries layered meanings, economic, religious, and symbolic- which strengthen the family's commitment to preserving it collectively rather than dividing it conventionally.

The empirical findings further show that the family has adopted a hybrid inheritance model. Economic benefits generated by the copyright are distributed among heirs in accordance with classical *farā'iḍ* principles, while the copyright itself remains collectively managed through a centralized institutional mechanism.[24] This arrangement preserves distributive justice while simultaneously protecting the asset's productive capacity. As reflected in the family's own words, "*Al-Barqy ini hidup, dan menghidupi*" ("Al-Barqy is alive, and it sustains life").[25] The statement encapsulates how the heirs understand copyright not as dormant inherited property, but as an active source of long-term welfare.

Interestingly, this benefit-oriented model did not emerge suddenly, but reflects an older family inheritance culture.[26] One interviewee explained: "*Rumah atau tanah tidak langsung dibagi fisik. Yang dibagi itu hasil sewanya. Jadi asetnya tetap utuh, manfaatnya yang dirasakan bersama*" ("In our extended family, houses or land were not immediately divided

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[22] M. Syarifur Rodhi, "Wawancara," Desember 2025.
[23] Nur Tsuroyah, "Wawancara," Desember 2025.
[24] M. Romzul Islam, "Wawancara."
[25] Nur Tsuroyah, "Wawancara."
[26] Asiah Aqilah Abdul Ghani et al., "Navigating Legal Constraints in Asnaf Housing Development on Waqf Land in Malaysia," *Nusantara: Journal of Law Studies* 5, no. 2 (2026): 902–936, https://doi.org/10.66325/nusantaralaw.v5i2.218.

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physically; what was distributed was the rental income, while the asset itself remained intact and its benefits were shared collectively").[27] This demonstrates a longstanding *manfa'ah*-oriented inheritance culture, now adapted from tangible property to modern intellectual assets.

Table 1. Summary of Interviews with the Heirs of the Al-Barqy Method

No.	Key Interview Question	Informant	Position	Summary of Interview Findings
1	How was the management of Al-Barqy transferred from external publishers to the family?	M. Romzul Islam; Ach. Syauqi	Sons / Active Heirs	Explained that the family gradually took over publication rights from external publishers because Al-Barqy was viewed as a family intellectual legacy (*amanah keluarga*). This led to the formal establishment of CV Penasuci in 1995 as a family-managed publishing institution.
2	Why was a formal business entity (CV) established to manage Al-Barqy?	M. Syarifur Rodhi; Nur Tsuroyah	Son; daughter / Active Heirs	Emphasized that the creation of a corporate structure was intended to ensure accountability, administrative order, and professional management of the copyright and related business operations.
3	How are copyright-related assets distributed among heirs?	Ach. Syauqi; M. Romzul Islam	Sons / Active Heirs	Explained that copyright-related income is divided into two categories: (1) royalties and non-routine partnerships distributed according to *farāʾiḍ*, and (2) business profits from the family company distributed according to active participation and family agreement.
4	How do heirs distinguish between copyright royalties and business income?	Collective interview statement	Family representative	Clarified that *royalties* are treated as the creator's personal rights and therefore distributed according to Islamic inheritance law, while *company profits* are treated as business income linked to operational contribution.

[27] Muawanah, "Wawancara," Desember 2025.

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5	Why is Al-Barqy managed collectively rather than divided individually?	Collective interview statement	Collective heirs	Stated that dividing the copyright individually would risk weakening the sustainability and productive value of Al-Barqy; therefore, collective management is considered the best way to preserve long-term benefit.
6	What values guide family decisions regarding Al-Barqy inheritance?	Collective interview statement	Collective heirs	Highlighted that management decisions are guided by *musyawarah* (deliberation), fairness, preservation of family legacy, and commitment to maintaining Al-Barqy as both an economic and *da'wah* asset.

Source: Semi-structured interviews conducted by the author with six heirs of KH. Muhadjir Sulthon (widow and children), focusing on the inheritance and management of the Al-Barqy copyright.

The interviews reveal a consistent pattern: the heirs distinguish between copyright as inherited property and business management as an operational responsibility, resulting in a hybrid inheritance model combining *farāʾiḍ*-based distribution and collective productive management. Taken together, these findings confirm that the Al-Barqy copyright fulfills all substantive elements of productive intangible inheritance: it possesses measurable economic value, generates recurring benefit, requires centralized management, and is most effectively preserved through collective stewardship rather than fragmented ownership. The case therefore provides strong empirical evidence that contemporary Islamic inheritance law must move beyond a purely distributive paradigm toward a broader conception centered on the preservation of sustainable benefit (*manfa'ah*) for future generations.

Normative Limits of the Indonesian Compilation of Islamic Law (KHI) in Accommodating Productive Intangible Inheritance

The empirical findings from the Al-Barqy case reveal a significant normative gap within the Indonesian *Compilation of Islamic Law* (*Kompilasi Hukum Islam*—KHI), particularly concerning its capacity to regulate productive inheritance involving intangible assets such as copyright. Although the KHI remains the principal legal reference for inheritance adjudication in Indonesia's Religious Courts,[28] its substantive provisions were formulated within a predominantly material and agrarian paradigm. Consequently, the existing doctrinal framework does not adequately address the legal complexities generated by contemporary forms of wealth, especially intellectual property that derives its value from sustained exploitation rather than immediate physical possession.

This limitation is most visible in Article 171(e) of the KHI, which defines inherited property (*harta warisan*) as "personal property plus the deceased's share of jointly owned property, after deduction of expenses for the deceased's care during illness until death, funeral arrangements (*tajhiz*), debt settlement, and grants made to relatives".[29] While the provision appears broad, its conceptual orientation remains implicitly tied to tangible assets. The article does not expressly recognize intangible property rights, such as copyright, despite Indonesian positive law, particularly Law No. 28 of 2014 on copyright, explicitly classifying copyright as transferable property capable of inheritance.[30] This omission creates interpretive uncertainty in Islamic inheritance adjudication. Although copyright is legally inheritable under national intellectual property law, its status within Islamic inheritance doctrine remains normatively ambiguous due to the KHI's silence.

Within the context of national lawmaking, the existence of KHI as a legal instrument widely applied by the Religious Courts cannot be separated from the principles of proper legislative drafting as stipulated in Law No. 12 of 2011 on the Formation of Laws and Regulations. Although formally enacted through Presidential Instruction No. 1 of 1991 and not included in the formal hierarchy of legislation under Article 7 of Law No. 12 of 2011, the KHI continues to perform a normative role as a living legal instrument in the practice of Islamic adjudication. Accordingly, the normative substance of the KHI remains relevant to be assessed against the principles of sound legislative drafting, particularly the

[28] Muklisin Muklisin, "Reconstructing the Distribution of Inheritance in Islamic Family Law: Normative and Contextual Analysis in Indonesia," *Rechtsvinding* 3, no. 2 (2025): 33–40, https://doi.org/10.59525/rechtsvinding.v3i2.937; Dewi Fransiska Mamonto et al., "The Evolution of Islamic Civil Law in Indonesia: Developments, Contemporary Challenges, and Future Directions," *Nusantara: Journal of Law Studies* 3, no. 02 (2024): 147–158, https://doi.org/10.5281/zenodo.17385985.

[29] Kompilasi Hukum Islam.

[30] Undang-Undang (UU) Nomor 28 Tahun 2014 Tentang Hak Cipta, 28 (2014), art. 16, https://peraturan.bpk.go.id/Download/28018/UU%20Nomor%2028%20Tahun%202014.pdf.

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principle of clarity of formulation, as provided under Article 5(f) of Law No. 12 of 2011. The principle of clarity of formulation requires that every legal norm be drafted in a clear, systematic, and unambiguous manner in order to ensure legal certainty in its implementation.[31] In this regard, Article 171(e) of the KHI continues to employ a formulation primarily oriented toward tangible property, without explicitly clarifying whether economic rights attached to intangible assets, such as copyright, fall within the legal category of inheritable property. This normative ambiguity creates interpretive uncertainty and weakens the KHI's capacity to respond adequately to contemporary developments in wealth structures, particularly the growing significance of intellectual property as a productive asset within modern inheritance relations.

The doctrinal inadequacy becomes even more evident in Article 189, which introduces the concept of productive inheritance (*waris produktif*). The provision permits collective management of inherited property where the estate includes agricultural land exceeding two hectares,[32] thereby postponing physical division to preserve its productive value. While progressive for its time, this formulation is explicitly limited to agrarian assets and does not extend to other forms of productive wealth. Such a narrow construction reflects an outdated assumption that only land requires collective management for sustained benefit. In reality, contemporary productive assets, including copyrights, patents, trademarks, and other intellectual property, often depend even more heavily on coordinated management, institutional continuity, and collective stewardship to preserve their economic utility.

The Al-Barqy case illustrates this deficiency clearly. The heirs did not divide the copyright as a conventional asset; instead, they retained collective managerial control over the intellectual property while distributing the economic benefits among family members.[33] This practice effectively mirrors the underlying rationale of Article 189, namely, preserving benefit through collective management, yet falls outside its textual scope because copyright

[31] Undang-Undang Republik Indonesia Nomor 12 Tahun 2011 Tentang Pembentukan Peraturan Perundang-Undangan, https://peraturan.bpk.go.id/Details/39188/uu-no-12-tahun-2011.
[32] Kompilasi Hukum Islam, art. 189.
[33] M. Romzul Islam, "Wawancara."

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is not contemplated as a productive asset under the existing provision. As a result, the heirs' practice is legally functional but doctrinally unsupported, exposing a disconnect between lived Islamic legal practice and codified inheritance law.

This normative disconnect demonstrates that the central problem is not merely the absence of copyright within the list of inheritable assets, but a deeper conceptual limitation within the KHI's understanding of inheritance itself. The current framework continues to treat inheritance primarily as a mechanism of ownership transfer and distributive division, rather than as an instrument for preserving long-term benefit (*maṣlaḥah*) for heirs. In cases involving productive intangible assets, such an approach risks undermining the economic value of the inherited property by prioritizing immediate division over sustainable utility. Accordingly, these findings indicate the need to reconceptualize both Articles 171(e) and 189. Article 171(e) requires expansion to explicitly recognize intangible assets, particularly intellectual property rights, as inheritable property within Islamic law. Simultaneously, Article 189 requires substantive reform so that productive inheritance is no longer restricted to agricultural land, but is redefined as a broader legal category encompassing all assets whose economic value depends on collective and sustainable management. Such reconstruction would allow the KHI to respond more effectively to contemporary economic realities while remaining faithful to the normative objectives of Islamic inheritance law.

Reconstructing Productive Inheritance through Fazlur Rahman's Double Movement

The limitations of the Indonesian Compilation of Islamic Law (KHI) in regulating copyright as productive inheritance indicate the need for a deeper legal reconstruction rather than mere statutory amendment.[34] Such reconstruction requires a methodological framework capable of preserving the normative integrity of Islamic inheritance law while allowing adaptation to contemporary socio-economic realities. For this purpose, this study employs Fazlur Rahman's Double Movement theory as a hermeneutical framework for reconstructing the concept of productive inheritance within Islamic law. Rahman's Double Movement operates through a two-stage interpretive process. The first movement proceeds

[34] Nibrosu Rohid et al., "Reconstructing the Legal Enforcement Framework for Digital Activism in an Era of Technological Disruption," *Nusantara: Journal of Law Studies* 5, no. 2 (2026): 881–901, https://doi.org/10.66325/nusantaralaw.v5i2.236.

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from the present legal problem back to the historical context of revelation to identify the underlying moral and social objectives embedded in Qur'anic legal norms. The second movement returns from those universal moral principles to the contemporary context, translating them into new legal formulations responsive to present realities. Through this method, Islamic law is understood not as a static collection of historically fixed rules, but as a dynamic normative system oriented toward enduring ethical objectives.[35]

Applied to Islamic inheritance law, the first movement requires distinguishing between the specific legal forms contained in classical *farā'iḍ* rules and the moral purpose underlying those rules.[36] The Qur'anic law of inheritance was revealed in a socio-economic context in which wealth primarily consisted of tangible assets such as land, livestock, and movable goods.[37] The textual emphasis on distributive precision therefore reflected the material structure of wealth at that time. However, the deeper objective of these rules was not merely division itself, but the benefits they conferred, including protection of family welfare, prevention of economic vulnerability, and preservation of justice among heirs. This ethical orientation is reflected in Qur'an 4:9, which warns believers not to leave their descendants in a condition of weakness.

On the other hand, in the Qur'anic inheritance verse (QS. 4:11), after explaining the prescribed shares of inheritance for children and parents, it is stated: ".....your parents or your children - you know not which of them are nearest to you in benefit. [These shares are] an obligation [imposed] by Allah. Indeed, Allah is ever Knowing and Wise." The use of the term *naf'a* (benefit) in this verse indicates that utility or benefit constitutes an important value that should be taken into consideration in the distribution of inheritance. Accordingly, the *ratio legis* of Islamic inheritance law lies not merely in the mechanical

[35] Rahman, *Islam and Modernity: Transformation of an Intellectual Tradition*; Muhammad Umair and Hasani Ahmad Said, "Fazlur Rahman Dan Teori Double Movement: Definisi Dan Aplikasi," *Al-Fahmu: Jurnal Ilmu Al-Qur'an Dan Tafsir* 2, no. 1 (2023): 71–81, https://doi.org/10.58363/alfahmu.v2i1.26.

[36] Nita Azhari et al., "Penerapan Teori Double Movement Fazlur Rahman Terhadap Pembagian Waris Islam Dalam Konteks Kekinian," *Al-Furqan : Jurnal Agama, Sosial, Dan Budaya* 2, no. 5 (2023): 232–43; Rahman, *Islam and Modernity: Transformation of an Intellectual Tradition*, 6.

[37] Noor Lizza Mohamed Said et al., "Sustainability of Waqf Zurrī: Legal Analysis of Malaysia and Indonesia," *Nusantara: Journal of Law Studies* 5, no. 2 (2026): 798–824, https://doi.org/10.66325/nusantaralaw.v5i2.259.

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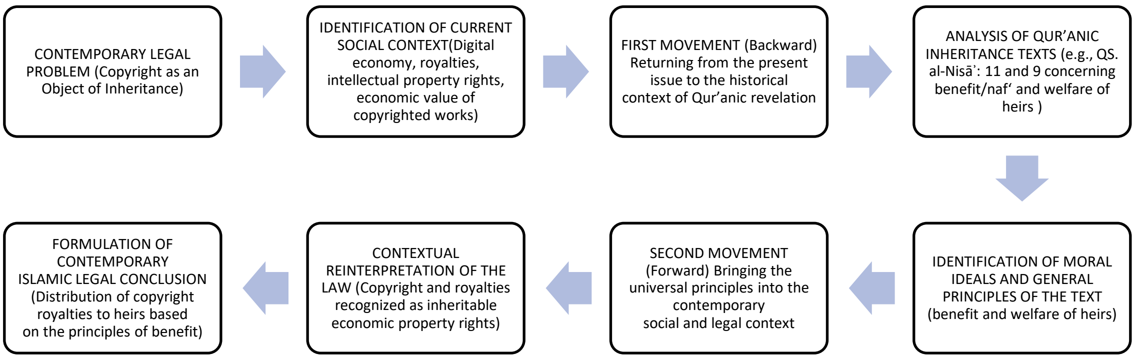
distribution of property, but in the realization of *maṣlaḥah* (benefit) through the preservation of sustainable welfare for heirs.

The second movement requires translating that moral objective into the context of contemporary economic realities,[38] where wealth increasingly includes productive intangible assets such as copyright. Unlike conventional tangible property, the economic value of copyright depends on continuity of management, institutional coordination, and long-term exploitation through licensing and royalties. If such assets are divided solely through atomistic ownership, their productive value may be diminished or even destroyed. From a Double Movement perspective, this outcome contradicts the ethical objective of Islamic inheritance law: preserving welfare and economic continuity for future generations. The application of the Double Movement theory in this study is illustrated in the following flowchart, which outlines the process of interpreting Qur'anic inheritance principles in the contemporary context of copyright and intellectual property rights.

Chart 1. Flowchart of the Application of the Double Movement Theory



Source: Developed by the author based on the Double Movement theory of Fazlur Rahman.

The empirical case of the Al-Barqy Method clearly illustrates this point. Although the heirs formally recognized individual inheritance rights according to *farā'iḍ*, they simultaneously maintained collective control over the copyright through family-based management. This hybrid practice demonstrates an implicit reinterpretation of inheritance

[38] Azhari et al., "Penerapan Teori Double Movement Fazlur Rahman Terhadap Pembagian Waris Islam Dalam Konteks Kekinian"; Rahman, *Islam and Modernity: Transformation of an Intellectual Tradition*, 6–7.

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law, in which the heirs prioritized the preservation of benefits over immediate fragmentation of ownership. Their practice therefore reflects the moral logic that Fazlur Rahman identifies as central to Islamic legal reform, namely, fidelity to ethical purpose rather than literal fixation on inherited legal forms. Accordingly, this study argues that the concept of productive inheritance within the KHI should be reconstructed through a Double Movement approach. Article 171(e) should be reinterpreted to explicitly include intangible economic rights, particularly copyright, within the legal definition of inheritable property. Likewise, Article 189 should be expanded beyond its current agrarian limitation to encompass all productive assets whose value depends upon collective and sustainable management. Such reconstruction does not depart from Islamic inheritance principles; rather, it restores their original moral objective within a transformed economic context.

Evaluating the Reconstruction of Articles 171(e) and 189 KHI through Bentham's Utilitarianism

Jeremy Bentham's utilitarianism provides a complementary normative framework for evaluating whether legal rules achieve their ultimate social objective, namely the maximization of collective welfare. Bentham argues that "nature has placed mankind under the governance of two sovereign masters, pain and pleasure,"[39] implying that the legitimacy of legal norms should be assessed according to their capacity to produce the greatest happiness for the greatest number. Within the context of Islamic inheritance law, this perspective raises a practical question: whether the existing formulation of Articles 171(e) and 189 of the Indonesian Kompilasi Hukum Islam (KHI) continues to yield optimal benefits for heirs amid contemporary economic transformation.

From this perspective, the current provisions reveal significant normative limitations. Article 171(e) defines inherited property (*harta waris*) without explicitly recognizing intangible economic rights, while Article 189 confines the concept of productive inheritance exclusively to agricultural land. Such an agrarian orientation may have been appropriate when the KHI was drafted, but it no longer reflects contemporary

[39] Bentham, *An Introduction to the Principles of Morals and Legislation*, 14; V. Andri Hananto, "Utilitarianisme Dan Keseimbangan Antara Kepentingan Umum Dan Kepentingan Individu," *Jurnal Hukum IUS QUIA IUSTUM* 32, no. 1 (2025): 72–98, https://doi.org/10.20885/iustum.vol32.iss1.art4.

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patterns of wealth, in which copyrights and other intellectual property rights frequently constitute productive assets capable of generating sustainable economic returns.[40] The absence of explicit recognition creates legal uncertainty and may deprive heirs of mechanisms to preserve long-term economic welfare.

Bentham's hedonic calculus further reinforces this reconstruction. Copyright assets generally exhibit high utility because they generate substantial economic value (intensity), remain productive over an extended period of legal protection (duration), and provide relatively predictable income through licensing and royalty systems (certainty). In addition, copyright royalties can be enjoyed without long production cycles (propinquity), create opportunities for reinvestment and intergenerational economic development (fecundity), minimize social costs associated with physical fragmentation and boundary disputes (purity), and enable all heirs to benefit simultaneously through collective management without diminishing the underlying asset (extent).[41] Collectively, these characteristics demonstrate that productive copyright generates greater and more sustainable utility than a restrictive inheritance regime limited to agricultural land. The following table summarizes how copyright, as a form of productive intangible inheritance, fulfills each element of Bentham's utilitarian evaluation and provides a normative justification for broadening the scope of Articles 171(e) and 189 KHI beyond tangible agrarian assets.

Table 2. Evaluation of Copyright as Productive Inheritance through Bentham's Hedonic Calculus

Bentham's Hedonic Calculus	Copyright as Productive Inheritance
Intensity	Generates substantial economic value through recurring royalties and licensing arrangements.
Duration	Economic rights remain protected during the author's lifetime and for seventy years after death, enabling long-term intergenerational benefits.

[40] Martin Croft, "American Copyright-Intensive Industries Contribute 3.37 Trillion to US GDP - Inngot," accessed January 29, 2026, https://inngot.com/news-views/american-copyright-intensive-industries-contribute-3-37-trillion-to-us-gdp; Anastassios Pouris and Roula Inglesi-Lotz, "The Contribution of Copyright-Based Industries to the South African Economy," *South African Journal of Science* 113, no. 11/12 (2017): 7, https://doi.org/10.17159/sajs.2017/20160286.

[41] Bentham, *An Introduction to the Principles of Morals and Legislation*, 83–84.

Certainty	Established licensing and royalty mechanisms provide relatively predictable and legally protected income streams.
Propinquity	Royalties may be received periodically, independent of lengthy production or agricultural cycles.
Fecundity	Income generated from copyright can support education, reinvestment, and the expansion of family economic activities.
Purity	Collective management avoids many conflicts associated with the physical division of inherited land, such as fragmentation and boundary disputes.
Extent	The economic benefits can be distributed among all heirs simultaneously without diminishing the value of the underlying asset.

Source**:** Author's Analysis based on Bentham's Hedonic calculus

Viewed through this utilitarian lens, the limitations of Article 171(e) and Article 189 become normatively problematic. Article 171(e), by failing to recognize intangible economic rights explicitly, creates unnecessary legal uncertainty and may exclude highly valuable assets from inheritance protection. Article 189, by restricting productive inheritance to agricultural land, prevents Islamic inheritance law from maximizing utility in contemporary economic contexts where intellectual property may generate greater and more sustainable welfare than land itself. Accordingly, the proposed reconstruction is not merely doctrinally desirable, but utilitarianly necessary. Article 171(e) should be reformulated to explicitly include intangible assets and transferable economic rights, including copyright, within the definition of inherited property. Article 189 should be expanded beyond agricultural land to cover all productive assets whose value depends upon collective and sustainable management, whether tangible or intangible. Such a reconstruction would better align the KHI with the modern economic realities of Muslim families while remaining faithful to the underlying moral objective of Islamic inheritance law: the preservation of sustainable welfare (*maṣlaḥah*) for future generations.

Proposed Reconceptualization of Articles 171(e) and 189 of the Indonesian Compilation of Islamic Law (KHI)

The preceding analysis demonstrates that Articles 171(e) and 189 of the Indonesian *Kompilasi Hukum Islam* (KHI) are no longer fully adequate to address contemporary forms of wealth, particularly productive intangible assets such as copyright. The Al-Barqy case

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shows that copyright functions not only as inheritable property but also as a productive asset whose value depends on collective and sustainable management. However, the current KHI framework remains materially oriented, creating a normative gap between legal doctrine and contemporary inheritance practice.

From the perspective of Fazlur Rahman's Double Movement, this gap requires a return to the moral objective (*ratio legis*) of Islamic inheritance law: safeguarding sustainable welfare (*maṣlaḥah*) for heirs rather than preserving historically contingent forms of property. This is reinforced by Bentham's utilitarianism, which shows that limiting productive inheritance to agricultural land under Article 189 fails to maximize collective welfare in modern economic conditions, particularly when assets such as copyright provide recurring benefits, preserve asset integrity, and generate broader utility.

Accordingly, this study proposes two normative reforms. First, Article 171(e) should be revised to recognize both tangible and intangible assets as inherited property explicitly:

> *"Inherited property consists of the entire estate left by the deceased, whether tangible or intangible, including rights possessing economic value and capable of lawful transfer to heirs, after deduction of the deceased's outstanding obligations."*

This reformulation serves several normative purposes. First, it aligns the KHI with the classical Islamic concept of *tarikah*, which historically includes transferable rights and obligations rather than merely physical assets.[42] Second, it eliminates interpretive uncertainty in Religious Court practice by explicitly recognizing intangible assets as inheritable property. Third, it harmonizes Islamic inheritance law with Law No. 28 of 2014 on copyright, which already recognizes copyright as transferable and inheritable.[43] Finally, it reflects both the moral objective identified through Double Movement, namely, sustaining benefit (*naf'*) for heirs, and the utilitarian demand to maximize social welfare through broader recognition of economically valuable property.

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[42] Shams al-Dīn Muḥammad b. Abī al-'Abbās Aḥmad b. Ḥamzah Shihāb al-Dīn al-Ramlī, *Nihāyat Al-Muḥtāj Ilā Sharḥ al-Minhāj* (Dar al-Fikr, 1404), 6:4.

[43] Undang-Undang (UU) Nomor 28 Tahun 2014 Tentang Hak Cipta, vol. 28.

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Second, Article 189 should be reformulated to redefine productive inheritance beyond agricultural land:

> *"(1) Inherited property possessing productive characteristics and whose value may decline if physically divided may be preserved as a unified estate and collectively managed by the heirs or an agreed administrator.*
> *(2) The proceeds shall be distributed according to each heir's Islamic inheritance share.*
> *(3) This provision applies to both tangible and intangible assets with sustainable productive value."*

This proposed reconstruction shifts productive inheritance from an object-based to a function-based legal category, ensuring that Islamic inheritance law remains adaptive, welfare-oriented, and responsive to the realities of the modern creative economy. Ultimately, the proposed reconceptualization demonstrates that the Indonesian KHI possesses sufficient doctrinal flexibility to evolve without abandoning its Islamic foundations. By integrating empirical legal reality, Qur'anic moral reasoning, and benefit-based legal philosophy, Articles 171(e) and 189 can be reconstructed into a more adaptive framework capable of governing inheritance in the twenty-first century.

This study is subject to several limitations. First, the empirical analysis relies on a single case study, namely the copyright inheritance of the Al-Barqy Qur'anic learning method. Although this case provides a rich illustration of productive intangible inheritance, its institutional characteristics may differ from other forms of intellectual property. Second, the study adopts a qualitative socio-legal approach, primarily based on interviews with family members and normative legal analysis, without incorporating a quantitative economic assessment of copyright productivity. Consequently, the findings should be understood as analytical rather than statistically generalizable.

Future research should examine whether the proposed reconstruction of Articles 171(e) and 189 KHI can also accommodate other categories of intellectual property rights, including patents, trademarks, industrial designs, software copyrights, and digital assets. Comparative studies involving multiple inheritance cases across different creative

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industries would further enrich the development of contemporary Islamic inheritance law in response to the expanding knowledge economy.

CONCLUSION

This study demonstrates that the existing inheritance provisions of the Kompilasi Hukum Islam (KHI), particularly Articles 171(e) and 189, have not fully accommodated the legal realities of productive intangible assets such as copyright. The case of the Al-Barqy Qur'anic learning method confirms that copyright inheritance extends beyond the transfer of private ownership, functioning instead as a sustainable economic asset whose value depends on collective governance and long-term management. The findings further reveal that the heirs have successfully implemented a hybrid model combining farā'iḍ-based distribution of economic rights with collaborative copyright management, thereby preserving both distributive justice and the continued productivity of the inherited asset. Through the integration of Fazlur Rahman's Double Movement theory and Jeremy Bentham's utilitarianism, this study establishes that the primary objective of Islamic inheritance law is to realize enduring maṣlaḥah, allowing inheritance norms to evolve in response to contemporary forms of wealth while remaining faithful to the principles of justice and public welfare.

Based on these findings, this research proposes a benefit-based reconstruction of the KHI by explicitly recognizing intangible economic rights as inheritable property under Article 171(e) and redefining productive inheritance in Article 189 according to its capacity to generate sustainable collective benefits rather than its tangible characteristics. This reconstruction provides a more adaptive and coherent legal framework for addressing modern intellectual assets within Indonesian Islamic inheritance law while preserving the normative integrity of Islamic legal doctrine. Future research should broaden the empirical scope by examining other forms of intellectual property, including patents, trademarks, industrial designs, digital assets, and software rights, across different institutional and socio-economic contexts. Comparative studies involving the inheritance systems of other Muslim-majority jurisdictions would also be valuable for evaluating the broader applicability of benefit-based inheritance principles and for enriching the ongoing development of

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contemporary Islamic inheritance law in response to the expanding knowledge-based economy.

AUTHOR CONTRIBUTIONS STATEMENT

Syabbul Bachri conceived and designed the study, developed the research framework, supervised the overall research process, and led the manuscript preparation. Zaenul Mahmudi contributed to the conceptual refinement, provided critical revisions to the theoretical and legal analysis, and reviewed the manuscript for important intellectual content. Khoirul Hidayah was responsible for data interpretation, methodological validation, and contributed to the analysis and discussion of the findings. Ma'adul Yaqien Makkarateng contributed to the literature review, data collection and analysis, manuscript editing, and final proofreading. All authors reviewed, approved the final version of the manuscript, and agreed to be accountable for all aspects of the work.

CONFLICT OF INTEREST

The author declares that there is no conflict of interest regarding the publication of this article. The research was conducted independently without any financial, commercial, or institutional influence that could affect the objectivity, interpretation, or presentation of the findings.

AI USAGE STATEMENT

The author acknowledges the use of artificial intelligence-assisted language tools during the preparation of this manuscript, specifically DeepL Translator for translation and Grammarly for grammar checking and clarity improvement. These tools were used solely to enhance linguistic quality, readability, and clarity of expression. All conceptual development, legal analysis, interpretation of findings, and final intellectual content remain the sole responsibility of the author.

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ISSN: 2986-528X
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