



Comparison of Inheritance Rights for Muslim Heirs in Indonesia and Malaysia: Islamic Law Perspective and Its Implementation

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Abstract: This study discusses the comparison of the granting of inheritance rights for Muslim heirs in Indonesia and Malaysia based on the perspective of Islamic law and its implementation in the national legal systems of each country. Islamic inheritance law in Indonesia is regulated in the Compilation of Islamic Law (KHI), the implementation of which is influenced by cultural diversity and the legal options given to the community. Meanwhile, in Malaysia, Islamic inheritance law is implemented through the Sharia Court which has exclusive jurisdiction to resolve inheritance cases for Muslims. This study uses a qualitative method with a descriptive-comparative approach to analyze the similarities and differences in the regulation and implementation of Islamic inheritance law in both countries. The results of the study show that although both countries base their inheritance law systems on sharia principles, differences in institutional structures and socio-political contexts result in variations in the implementation of the law. This study also identifies the challenges faced, such as differences in legal interpretation and conflicts between heirs, and provides recommendations to improve harmonization and efficiency in the implementation of Islamic inheritance law in Indonesia and Malaysia.

Keywords : Comparison of Inheritance Rights; Indonesia; Malaysia; Islamic Law; Civil Law.

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How to cite (Chicago Style) :

Debri Firmansyah A. "Comparison of Inheritance Rights for Muslim Heirs in Indonesia and Malaysia: Islamic Law Perspective and Its Implementation". *Estudiante Law Journal* 6 (3), (October 2024): 681-692. <https://doi.org/10.33756/eslaj.v6i3.29303>.

1. Introduction

Inheritance law is one of the important aspects of Islamic family law that regulates the distribution of a person's inheritance to his/her heirs after death. The rules regarding Islamic inheritance law are rooted in the Qur'an, Hadith, and the consensus of scholars, which provide detailed guidelines on who is entitled to inherit, how much should be received, and the principles of justice in its distribution. However, the implementation of inheritance law in various countries is not entirely uniform, because it is influenced by the social, political, and legal contexts that apply in each region. The comparison between Indonesia and Malaysia in the implementation of Islamic inheritance law is interesting to study, considering that both countries have a majority Muslim population and share the same Islamic historical heritage, but have different approaches in regulating and implementing inheritance law.¹

In Indonesia, Islamic inheritance law is regulated in the Compilation of Islamic Law (KHI) which serves as a legal guideline for Muslims, especially in resolving disputes in the Religious Courts. KHI is applied based on the principle of choice, which means that Muslims have the freedom to choose the law to be used, whether Islamic inheritance law, customary law, or civil law. This approach reflects the legal pluralism that is characteristic of the Indonesian legal system. However, this pluralism is also often a source of conflict, especially when heirs have different legal preferences. In addition, the application of KHI in the distribution of inheritance is often colored by cultural, social, and economic factors, which can affect the implementation of sharia principles. For example, in some cases, customary practices are still very dominant and tend to override Islamic legal rules, especially in areas with strong local wisdom.

Unlike Indonesia, Malaysia has a more integrated legal structure in the application of Islamic inheritance law. Inheritance law in Malaysia is administered by the Syariah Court, which has exclusive jurisdiction to resolve all inheritance cases for Muslims. This administration provides clarity and consistency in the application of Islamic inheritance law. In addition, the legal system in Malaysia is supported by institutions such as Land Officers and Will Administrators who help ensure the implementation of inheritance distribution in accordance with the decisions of the Syariah Court. However, challenges remain, especially related to differences in legal interpretation between states, complex bureaucracy, and the lack of public understanding of the legal procedures that must be followed.²

¹ Mohammad Ghozali et al., "Kajian Perbandingan Hak Warisan Anak Angkat Di Indonesia Dan Malaysia: A Comparative Study of the Inheritance Rights of Adopted Children in Indonesia and Malaysia," *Malaysian Journal of Syariah and Law* 12, no. 3 (December 31, 2024): 726–48, <https://doi.org/10.33102/mjssl.vol12no3.1164>.

² Neneng Desi Susanti and Akbarizan Akbarizan, "Studi Komparasi Penyelesaian Wasiat Wajibah Di Indonesia Dan Malaysia," *JAWI: Journal of Ahkam Wa Iqtishad* 1, no. 4 (December 31, 2023): 239–48, <https://doi.org/10.5281/zenodo.10478816>.

The fundamental differences in the implementation of inheritance law in the two countries are influenced by the history of the formation of their respective legal systems. In Indonesia, legal diversity is the result of the Dutch colonial influence that introduced the western civil law system, while customary law and Islamic law continue to exist as part of the local heritage. This legal pluralism was then institutionalized in the national legal system, thus providing space for various legal systems to run in parallel. On the other hand, Malaysia, as a former British colony, adopted a more integrated approach, where Islamic law is officially recognized and given a special place in the national legal system. This allows for a more consistent application of Islamic inheritance law throughout Malaysia.³

Social and cultural contexts also play a major role in determining how Islamic inheritance laws are applied in both countries. In Indonesia, ethnic and cultural diversity results in significant variation in inheritance practices. For example, in some regions, custom gives priority to male children or certain heirs, even though this is contrary to sharia principles. On the other hand, Malaysia has a more homogeneous culture in this regard, so the application of Islamic inheritance laws tends to be more uniform. However, this homogeneity does not completely eliminate challenges, especially in cases involving cross-border assets or when there are differences of opinion among heirs.⁴

Another challenge facing both countries is how Islamic inheritance law is implemented in an increasingly complex modern context. With the increasing number of immovable assets, such as property and investments, and the emergence of digital technology, inheritance distribution has become increasingly complex. In Indonesia, many heirs face obstacles in the administrative process, such as difficult document requirements or complicated bureaucracy. Similarly, in Malaysia, despite a more structured system, legal procedures often take a long time, especially in cases involving disputes between heirs.

In addition, the issue of gender justice is also a concern in the application of Islamic inheritance law. In Islamic law, male children receive twice the share of female children, in accordance with the principle of responsibility for maintenance imposed on men. However, in practice, this rule is often seen as unfair, especially in modern societies where women also play a role as breadwinners. In Indonesia, this is often a source of tension in families, especially if female heirs feel disadvantaged. In Malaysia, although

³ Nurul Izzati, Aldy Darmawan, and Abdul Hafizh, "Pengadilan Kasasi Dalam Menjamin Keadilan: Studi Perbandingan Di Mesir Dan Indonesia," *Sakena : Jurnal Hukum Keluarga* 9, no. 2 (November 28, 2024): 21-30.

⁴ Beni Arya Dwinanto, "Pembagian Harta Bersama Setelah Perceraian (Studi Banding Hukum Di Indonesia Dengan Malaysia, Jepang, Australia Dan Maroko)," *Journal of Innovation Research and Knowledge* 4, no. 1 (June 16, 2024): 377-90.

the same rule is applied, a more structured legal approach helps reduce the potential for conflict by providing space for mediation and discussion between heirs.⁵

In response to these challenges, both Indonesia and Malaysia have made efforts to improve public understanding of Islamic inheritance law. In Indonesia, legal education programs by the Ministry of Religious Affairs and the Religious Courts are conducted to educate the public about their rights and obligations as heirs. However, the effectiveness of these programs is often limited by the lack of access to remote areas. In Malaysia, a similar approach is taken through the Syariah Court and related institutions, which provide information and guidance on legal procedures. In addition, technological advances have enabled both countries to utilize digital platforms to provide legal services, such as online registration of wills and access to legal information through government portals.⁶

Despite the many differences in legal systems, both countries share the same goal, which is to ensure that inheritance is distributed fairly and in accordance with sharia principles. To achieve this goal, a collaborative and adaptive approach is needed, both at the national and regional levels. Harmonization of Islamic inheritance laws in the Southeast Asian region can be one strategic step to overcome differences in legal interpretation and procedures, and to create legal clarity for Muslims in the region.⁷

By understanding the comparison between Indonesia and Malaysia in the application of Islamic inheritance law, this study not only provides theoretical insights, but also offers practical guidance to improve the effectiveness of the inheritance law system. This study also highlights the importance of integrating sharia principles with the needs of modern society, so that Islamic inheritance law can continue to be relevant and provide justice for all parties involved.

2. Method

This study uses a qualitative method with a descriptive-comparative approach to analyze the comparison of inheritance rights for Muslim heirs in Indonesia and Malaysia.⁸ This method was chosen because it is appropriate for understanding legal phenomena in depth, especially in identifying similarities, differences, and factors that influence the implementation of Islamic inheritance law in both countries. The descriptive approach is used to describe the regulation of inheritance law in the national legal system of each

⁵ Muhammad Faiz Zakwan and Tajul Arifin, "Perbandingan Wasiat Wajibah Dalam Waris Beda Agama Menurut Pasal 832 Kuhperdata Dan Hadis Riwayat Bukhari," *Causa: Jurnal Hukum Dan Kewarganegaraan* 4, no. 10 (June 15, 2024): 51–60, <https://doi.org/10.3783/causa.v4i10.3849>.

⁶ Ishak Tri Nugroho, "Perkembangan Perundang-Undangan Hukum Keluargamuslim Di Mesir(Studi Wasiat Wajibah Di Mesir)," *Familia: Jurnal Hukum Keluarga* 1, no. 1 (July 27, 2020): 1–20, <https://doi.org/10.24239/familia/a1w4pw69>.

⁷ Dian Ekawati, "Model of the Indonesian Legal System," *Jurnal Kewarganegaraan* 7, no. 2 (December 31, 2023): 2033–43, <https://doi.org/10.31316/jk.v7i2.5585>.

⁸ Ika Atikah, "Metode Penelitian Hukum," 2022, <http://repository.uinbanten.ac.id/9155/1/P%20Metode%20Penelitian%20Hukum.pdf>.

country, while the comparative approach is used to analyze the differences and similarities in its regulation and implementation.

3. Differences and similarities in Islamic inheritance law regulations in Indonesia and Malaysia

Islamic inheritance law in Indonesia and Malaysia has the same basis, namely based on the Qur'an, Hadith, and the principles of Islamic jurisprudence, but there are significant differences in its regulation and implementation. These differences reflect how each country integrates Islamic law into their national legal system, which is influenced by different histories, cultures, and political contexts. In Indonesia, Islamic inheritance law is regulated in the Compilation of Islamic Law (KHI) , which serves as a guideline for Muslims in resolving inheritance disputes through the Religious Courts. Meanwhile, in Malaysia, Islamic inheritance law is implemented through the Syariah Court , which has exclusive jurisdiction over Muslim inheritance cases. These differences serve as a starting point for understanding the unique characteristics of each legal system.⁹

In Indonesia, the application of Islamic inheritance law is pluralistic because the state recognizes the existence of three legal systems, namely Islamic law, customary law, and western civil law. This system gives the Muslim community the freedom to choose the law to be used in the distribution of inheritance. For example, in some areas, people prefer to use customary law based on local traditions, which often differ from the principles of Islamic law. This can be seen in certain tribes that give priority to inheritance rights to sons or certain heirs according to custom. On the other hand, Islamic inheritance law in the KHI provides more detailed rules regarding the distribution of property based on lineage, where sons receive twice the share of daughters, in accordance with Surah An-Nisa verse 11. However, the application of this rule often faces challenges when dealing with customary practices or individual desires that are more flexible regarding the distribution of inheritance.

In contrast, Malaysia has a more integrated approach to the application of Islamic inheritance law. The Syariah Court has full authority to resolve all inheritance matters for Muslims, and this legal system is uniform across all states, although there are minor variations in its technical implementation. The inheritance distribution process in Malaysia also involves supporting institutions, such as the Land Officer and Amanah Raya Berhad , which help ensure that the implementation of the Syariah Court's decisions is in accordance with Islamic law. One of the advantages of this system is the consistency in the application of the law, which minimizes the potential for conflict between heirs. However, on the other hand, the complex bureaucratic structure and lengthy legal

⁹ Fakry Fahrial and Ade Fartini, "Perkawinan Antar Negara Di Indonesia Berdasarkan Pada Hukum Perdata Internasional," *Causa: Jurnal Hukum Dan Kewarganegaraan* 1, no. 8 (December 8, 2023): 81-90, <https://doi.org/10.3783/causa.v1i8.1142>.

procedures often become obstacles for families who want to quickly resolve the distribution of inheritance.¹⁰

The fundamental similarity between the two countries is that both base their Islamic inheritance law systems on sharia principles that specifically regulate the heirs' shares. For example, in Islamic law, the main heirs such as sons, daughters, parents, and spouses have explicitly determined shares. In both Indonesia and Malaysia, this principle is the basis for resolving inheritance cases. However, striking differences are seen in the institutional structure and legal approaches applied. In Indonesia, the existence of legal pluralism provides flexibility for society, but also opens up space for conflict and legal uncertainty. In contrast, the centralized approach in Malaysia creates legal clarity, but is sometimes less responsive to local social and cultural variations.

In historical context, these differences also reflect the influence of colonialism on the legal systems of both countries. Indonesia, as a former Dutch colony, adopted a Western civil law system that continues to this day, although Islamic law and customary law are still recognized. This legal pluralism gives people the freedom to choose the legal system that best suits their needs, but also creates challenges in maintaining consistency and fairness in the application of inheritance law. Meanwhile, Malaysia, as a former British colony, adopted a dual legal system, where Islamic law is officially recognized and given special jurisdiction through the Sharia Court. This approach allows Islamic law to be applied more systematically and integrated with the national legal system.¹¹

In addition, the social and cultural context also influences the differences in inheritance law arrangements in the two countries. In Indonesia, the diversity of cultures and customs often influences how Islamic inheritance law is applied. For example, in some regions, customary practices are still dominant and tend to ignore sharia principles, especially if local traditions have different inheritance rules. This creates challenges for the Religious Courts in balancing between respect for customs and the application of Islamic law. In contrast, in Malaysia, a more homogeneous culture allows for a more uniform application of Islamic inheritance law. However, in some cases, differences in interpretation between states can lead to inconsistencies in the implementation of the law, although not as complex as in Indonesia.

Another difference lies in the procedures and institutions involved in the distribution of inheritance. In Indonesia, the inheritance distribution process often involves various parties, including the Religious Court, notaries, and customary institutions, depending

¹⁰ Ray Rafi Kahramandika M et al., "Perkawinan Campuran Antara Pasangan Berbeda Kewarganegaraan Di Indonesia Berdasarkan Hukum Perdata Internasional," *Kultura: Jurnal Ilmu Hukum, Sosial, Dan Humaniora* 2, no. 1 (January 16, 2024): 254–74, <https://doi.org/10.572349/kultura.v2i1.893>.

¹¹ Fadri Sanafiah, "Perkembangan Hukum Keluarga Islam Termutakhir Di Beberapa Negara Asia Tenggara," *JISIP (Jurnal Ilmu Sosial Dan Pendidikan)* 7, no. 2 (June 7, 2023): 1346–57, <https://doi.org/10.58258/jisip.v7i2.4893>.

on the law chosen by the heirs. This often results in complicated bureaucracy and long resolution times, especially if there are disputes between heirs. Meanwhile, in Malaysia, the Syariah Court is the sole authority that handles inheritance cases for Muslims, so the process is more structured. In addition, the existence of institutions such as Amanah Raya Berhad helps speed up the inheritance distribution process, although complex bureaucracy remains an obstacle in some cases.¹²

By understanding these differences and similarities, it can be concluded that the inheritance law systems in Indonesia and Malaysia reflect each country's efforts to accommodate sharia principles in different social and legal contexts. The pluralistic approach in Indonesia provides greater flexibility, but also opens up room for legal uncertainty and conflict. In contrast, the centralized approach in Malaysia creates consistency and clarity of law, but is less responsive to local social and cultural variations. To improve the effectiveness of the inheritance law systems in both countries, efforts are needed to harmonize the law that not only takes into account sharia principles, but also the needs of modern society and unique local contexts. This harmonization can be done through dialogue between countries, exchange of experiences, and development of more inclusive policies, so that Islamic inheritance law can continue to be relevant and provide justice for all parties involved.

4. Challenges and Solutions in the Implementation of Islamic Inheritance Law in Both Countries

The implementation of Islamic inheritance law in Indonesia and Malaysia is faced with various complex challenges, both from legal, social, cultural, and administrative aspects. Although both countries share the same sharia foundation, namely the Qur'an, Hadith, and Islamic jurisprudence, differences in national legal systems and social contexts create unique challenges for each country. To understand these challenges in depth, it is necessary to explore the various factors that influence the implementation of Islamic inheritance law, as well as solutions that can be applied to improve the effectiveness and fairness of its implementation.¹³

In Indonesia, one of the main challenges is the existence of legal pluralism that allows Muslim communities to choose between Islamic inheritance law, customary law, or Western civil law. Although this pluralism provides flexibility, it is also often a source of conflict between heirs who have different legal preferences. For example, in some cases, older family members tend to support customary law, while the younger generation prefers an approach that is in accordance with Islamic law or civil law. This conflict not

¹² Izzah Afkarina, "Legal Power of Testament Act as Authentic Deed in The Indonesian and Malaysian Law System," *Indonesian Journal of Law and Islamic Law (IJLIL)* 4, no. 2 (December 19, 2022): 332-67.

¹³ M. Nasikhul Umam Al-Mabruri, "Development and Polemic Renewal of Inheritance Law and Compulsory Wills in Indonesia," *Al Hakam: The Indonesian Journal of Islamic Family Law and Gender Issues* 4, no. 1 (May 31, 2024): 41-62, <https://doi.org/10.35896/alhakam.v4i1.581>.

only slows down the inheritance settlement process but can also damage family relationships. In addition, legal pluralism also causes uncertainty in the application of the law, because there is no single standard that applies throughout Indonesia.

Another challenge in Indonesia is the dominance of customary practices that often conflict with sharia principles. For example, in some areas, customs give priority to male children or certain heirs without considering more proportional sharia provisions. In addition, some local traditions even exclude women from inheritance rights, which is clearly contrary to Islamic law. This dominance of customs creates a dilemma for the Religious Courts, which must balance between respecting local traditions and implementing Islamic law.¹⁴

Complex bureaucracy and lack of access to legal institutions are also significant challenges in Indonesia. Many heirs face difficulties in processing legal and administrative documents, especially in remote areas. For example, document requirements such as birth certificates, death certificates, or proof of asset ownership are often difficult to fulfill, especially for families with limited access to government services. In addition, the lack of public understanding of legal procedures means that many inheritance cases are not officially resolved, leading to conflict later on.

In Malaysia, although the Islamic inheritance law system is more integrated through the Syariah Court, challenges remain, especially related to bureaucracy and lengthy legal procedures. Although the Syariah Court has exclusive jurisdiction over Muslim inheritance cases, the settlement process often takes a long time, especially in cases involving disputes between heirs. In addition, differences in legal interpretation between states in Malaysia can lead to inconsistencies in the implementation of inheritance law, although not as complex as in Indonesia.¹⁵

Another challenge in Malaysia is the lack of public understanding of Islamic inheritance law and the legal procedures that must be followed. Many families do not understand the importance of making legal documents, such as wills or gifts, to facilitate the distribution of inheritance. As a result, many assets are not distributed properly, even becoming "frozen assets" that cannot be utilized by heirs. In addition, the involvement of several institutions such as the Land Officer and Amanah Raya Berhad, although intended to assist the asset distribution process, often adds to the complexity of administrative procedures.

¹⁴ Abdul Hakim Hidayat, Rinaldho Rinaldho, and Wismento Wismento, "Perbandingan Syari'at Islam Dan Hukum Di Indonesia Dalam Perspektif Pendidikan," *MARAS: Jurnal Penelitian Multidisiplin* 2, no. 1 (January 23, 2024): 187–202.

¹⁵ Daniel et al., "Studi Komparatif Perbandingan Mengenai Pengaturan Perceraian Dalam Hukum Keluarga Antara Negara Indonesia Dengan Mesir," *Causa: Jurnal Hukum Dan Kewarganegaraan* 1, no. 4 (November 24, 2023): 81–90, <https://doi.org/10.3783/causa.v1i4.816>.

From a social perspective, the challenges in both countries also involve issues of gender equity in inheritance distribution. Under Islamic law, sons receive twice the share of daughters, in keeping with the responsibility of providing for the family that is placed on men. However, in modern societies where women also play a role as breadwinners, this rule is often seen as unfair. In Indonesia, this issue is often a source of tension within families, especially if female heirs feel disadvantaged. In Malaysia, although the same rules apply, a more structured legal approach helps to reduce the potential for conflict, but does not completely eliminate perceptions of unfairness.¹⁶

To address these challenges, several solutions can be implemented in both countries. In Indonesia, increasing public education about Islamic inheritance law is an important step. Legal education programs by the Ministry of Religious Affairs and Religious Courts need to be expanded, especially in remote areas. This education not only helps people understand their rights and obligations as heirs but also provides practical guidance on the legal procedures that must be followed. In addition, the government can develop a digital system to simplify the processing of documents and administration related to inheritance, thereby reducing the time and costs required.

In Malaysia, one solution that can be implemented is the simplification of legal procedures through better collaboration between the Syariah Court, Land Officers, and Amanah Raya Berhad. This simplification can be done by speeding up the process of document validation and asset distribution, so that heirs can immediately receive their share without having to wait for a long time. In addition, awareness campaigns on the importance of documents such as wills and gifts can help people better prepare for inheritance distribution, thereby minimizing conflicts later on.¹⁷

Both countries can also increase the use of digital technology to support the implementation of Islamic inheritance law. For example, an online will registration system can make it easier for people to create valid legal documents without having to go through complicated procedures. In addition, digital platforms can be used to provide information and guidance on Islamic inheritance law, so that people have easier access to legal resources.

In addressing gender equity issues, both Indonesia and Malaysia can promote a more inclusive and flexible approach. For example, family mediation can be used to reach fairer agreements between heirs, especially in cases where women are breadwinners. In addition, providing education on sharia principles that emphasize men's responsibility

¹⁶ Siti Yuli Yanna, "Perlindungan Hukum Perolehan Hak Milik Atas Tanah Bagi Warga Negara Indonesia Yang Terikat Perkawinan Campuran," *Jurnal Multidisiplin Indonesia* 2, no. 8 (August 31, 2023): 2302–20, <https://doi.org/10.58344/jmi.v2i8.451>.

¹⁷ Abdul Jamil, "Batas Usia Perkawinan Dan Perwalian: Pendekatan Komparatif Antara Indonesia Dan Negara Asia Tenggara Lainnya," *Indonesian Journal of Islamic Jurisprudence, Economic and Legal Theory* 2, no. 4 (December 1, 2024): 2081–95, <https://doi.org/10.62976/ijjel.v2i4.762>.

to provide for others can help reduce perceptions of unfairness in inheritance distribution.¹⁸

Finally, both countries can consider harmonizing Islamic inheritance laws at the regional level, especially through dialogue and cooperation between scholars and legal practitioners in Southeast Asia. This harmonization will not only help reduce differences in legal interpretation, but also create clarity and consistency in the application of Islamic inheritance laws in the region. With these steps, it is hoped that the implementation of Islamic inheritance laws in Indonesia and Malaysia can be more effective, fair, and in accordance with the needs of modern society.

5. Conclusion

The implementation of Islamic inheritance law in Indonesia and Malaysia faces various complex challenges, both from legal, social, cultural, and administrative aspects. In Indonesia, legal pluralism that provides the freedom to choose between Islamic, customary, or civil inheritance law is often a source of conflict and legal uncertainty. The dominance of customary practices and complicated bureaucracy also add to the obstacles in resolving inheritance cases. Meanwhile, in Malaysia, although the Islamic inheritance law system is more integrated through the Sharia Court, challenges still arise in the form of lengthy legal procedures, lack of public understanding of inheritance law, and administrative complexity. Although both countries share the same sharia foundation, differences in legal systems and social contexts create unique characteristics in the application of Islamic inheritance law. However, these challenges can be overcome with various solutions, such as increasing public education, simplifying legal procedures, utilizing digital technology, and family mediation to resolve conflicts. An inclusive and flexible approach that takes into account gender justice is also needed to increase public acceptance of Islamic inheritance law. In addition, harmonization of Islamic inheritance law at the regional level can be a strategic step to reduce differences in interpretation and increase consistency in the application of the law. By implementing this solution, Indonesia and Malaysia can increase the effectiveness and fairness in the implementation of Islamic inheritance law, so that this law remains relevant and able to meet the needs of modern society.

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¹⁸ Andhika Septian Anharil Huda, "Comparison of Divorce between Muslims in Australia and Muslims in Indonesia Based on the Laws of Each Country," *Al-Afkar, Journal For Islamic Studies* 7, no. 4 (October 7, 2024): 173–86, <https://doi.org/10.31943/afkarjournal.v7i4.1632>.

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