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Mandatory Bequests for Non-Muslim Adopted Children and Stepchildren Perspective of Indonesian Islamic Law

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Abstract: The Compilation of Islamic Law (KHI) in Indonesia regulates wasiat wajibah in Article 209, specifically for adopted children and adoptive parents. This provision differs from other Muslim countries, such as Egypt and Jordan, which recognize mandatory bequests for orphaned grandchildren who are excluded from inheritance by their uncles. In Indonesia, issues related to orphaned grandchildren are instead resolved through the substitute heirs mechanism under Article 185 KHI. The development of wasiat wajibah in Indonesia has significantly progressed through judicial ijtihad, with courts extending its application beyond adopted children and adoptive parents to include non-Muslim heirs and families, as established in Cassation Court decisions. Recently, debates have emerged over whether wasiat wajibah should also be granted to stepchildren, an issue that remains controversial among scholars and judges. This study is a normative research that employs statutory, conceptual, and comparative approaches. The statutory approach examines Article 209 of the Compilation of Islamic Law and its legal framework; the conceptual approach explores the underlying principles of wasiat wajibah in classical and contemporary Islamic law; and the comparative approach analyzes differences between Indonesia and other Muslim countries in regulating mandatory bequests. The object of analysis is Article 209 KHI and relevant jurisprudence related to non-Muslim heirs and stepchildren. The findings show that the Indonesian formulation of wasiat wajibah is a result of legal reform and ijtihad, demonstrating the adaptability of Islamic law to social realities in a pluralistic society. It functions not only as a legal innovation but also as a mechanism of distributive justice for parties traditionally excluded from inheritance.

Keywords: Mandatory Bequest; Legal Formulation; Compilation of Islamic Law

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I. INTRODUCTION

Mandatory wills fall between wills and inheritance. This is because the heir never explicitly bequeaths to whom the inheritance will be given, but there are certain parties other than the heirs who receive part of the inheritance. The issue of compulsory bequests is not found in classical texts. The issue of compulsory bequests only appeared in contemporary texts after the emergence of compulsory bequest regulations in the Egyptian Civil Code (Qānūn al-Madanī). In the Egyptian Civil Code, a provision has been established for mandatory bequests intended for the grandchildren of children who have died before the heir, so that they are not entitled to inheritance through the Islamic inheritance process because they are blocked by their uncles[1] . This provision was then adopted by other Muslim countries.[2]

The Compilation of Islamic Law in Indonesia provides for mandatory bequests not to the orphaned grandchildren of children who have died, as is the case in Egypt, Jordan, Morocco, and other Muslim countries. The issue of inheritance to orphaned grandchildren who have been left by their parents before their grandfather is regulated in Article 185 of the Compilation of Islamic Law on substitute heirs. In Indonesia, the provisions on mandatory bequests are regulated in Article 209 of the Compilation of Islamic Law.[3] This article explains that mandatory bequests are intended for adopted children and adoptive parents. According to Islamic law, adopted children have a different status from biological children, who are automatically entitled to inheritance. Based on the context of early Islamic law, there is a clear prohibition on adopting children by attributing their names to them. Budiarto, in his book, "Adoption from a Legal Perspective," states that adoption has no legal consequences, either in terms of blood relations, guardianship rights, or inheritance.[4] This gives rise to the assumption that the provisions of wajibah will, in Article 209 of the Compilation of Islamic Law, contradict the principle of ijbari in Islamic law, as well as contradict the prohibition of attributing an adopted child as a biological child in Islamic law.[5]

Wasiat wajibah is one of the instruments of Islamic inheritance law regulated in the Compilation of Islamic Law in Indonesia, specifically Article 209. This concept was born as a form of legal ijtihad to provide protection to parties who are not included as heirs under the provisions of faraid, but who have close social and emotional ties to the deceased, such as adopted children and stepchildren.[6] Historically, the practice of wasiat wajibah is not explicitly found in the Qur'an or

[1] Fahmi Al Amruzi, Reconstruction of Mandatory Wills in the Compilation of Islamic Law, (Yogyakarta: Aswaja Pressindo, 2014), p. vii.

[2] Achmad Jarchosi, "Pelaksanaan Wasiat Wajibah," *ADHKI: Journal of Islamic Family Law* 2, no. 1 (2020): 101–115,

[3] Syahrul Mubarak Subeitan, "Wasiat Wajibah dan Implementasinya Terhadap Hukum Keluarga di Indonesia," *Comparativa* 1, no. 2 (2020): 25–36.

[4] Syahrul Mubarak Subeitan.

[5] Habiburrahman, Reconstruction of Islamic Inheritance Law in Indonesia, (Jakarta: Kencana, 2011), p. 7.

[6] Amir Syarifuddin, Islamic Inheritance Law in Indonesia (Jakarta: Kencana, 2004), 215.

hadith, but is the result of legal construction developed by scholars and lawmakers in Indonesia.[7] The main objective is to accommodate the needs of people who often face cases where adopted or stepchildren do not receive an inheritance, even though they have a close relationship and play a significant role in the life of the deceased.[8] The Compilation of Islamic Law through Article 209 stipulates that adopted children and adoptive parents can be given a mandatory bequest of up to one-third of the deceased's estate. However, in its development, there has been debate regarding the application of wasiat wajibah, especially for non-Muslim adopted children and stepchildren, because neither is legally included in the category of heirs.[9] This raises fundamental questions regarding distributive justice in Islamic inheritance law, as well as the relevance of applying wasiat wajibah in the context of Indonesia's pluralistic society.[10] Thus, the study of wasiat wajibah is important not only from a normative perspective, but also from a sociological and juridical perspective. This approach is expected to provide a more comprehensive understanding of the position of non-Muslim adopted children and stepchildren within the framework of inheritance law in Indonesia, as well as to address the challenges of the development of Islamic law in the context of modern society.[11]

II. METHODS

This study on *Mandatory Bequests for Non-Muslim Adopted Children and Stepchildren in the Perspective of Indonesian Islamic Law* employs a normative legal research method. The normative approach was chosen because the main focus of the study is the analysis of written legal norms contained in Islamic law and Indonesian positive law. Field data are not emphasized; instead, the research relies on a systematic literature review and analysis of relevant legal sources.

The approaches applied in this research are threefold. First, the statutory approach, which examines legal regulations such as the Compilation of Islamic Law (KHI), the Marriage Law, and other related statutory provisions. Second, the conceptual approach, which is used to analyze the underlying principles and doctrines of *wasiat wajibah* both in classical Islamic jurisprudence and in its contemporary development within Indonesian law. Third, the comparative approach, which highlights the similarities and differences in regulating *wasiat wajibah* between Indonesia and other Muslim countries, particularly in addressing issues of inheritance for adopted children, stepchildren, and non-Muslim heirs.

The legal materials analyzed consist of primary sources (the Qur'an, Hadith, the Compilation of Islamic Law, the Marriage Law, and court decisions), secondary sources (books, journal articles, theses, and dissertations relevant to the topic), and tertiary sources (legal dictionaries and encyclopedias). These materials were

[7] Hazairin, Bilateral Inheritance Law According to the Qur'an and Hadith (Jakarta: Tintamas, 1982), 97.

[8] M. Yahya Harahap, Islamic Inheritance Law (Jakarta: Sinar Grafika, 2010), 142.

[9] Compilation of Islamic Law, Presidential Instruction No. 1 of 1991, Article 209.

[10] Andi Syamsu Alam and M. Fauzan, The Law of Adoption: An Islamic Perspective (Jakarta: Kencana, 2008), 174.

[11] Jaih Mubarok, The Development of Islamic Law in Indonesia (Bandung: Remaja Rosdakarya, 2012), 201.

collected through literature study and analyzed using descriptive and analytical methods. By interpreting and constructing the existing legal rules, this research seeks to provide a clear understanding of the position of *wasiat wajibah* for non-Muslim adopted children and stepchildren in Indonesian Islamic law, while also assessing the extent to which principles of justice and benefit can be realized through its regulation.

III. ANALYSIS AND DISCUSSION

Mandatory Wills According to Islamic Law and Indonesian Positive Law

Essentially, making a will is a discretionary act, which is an action carried out on one's own initiative in any circumstance. However, the authorities or judges, as state officials, have the authority to compel or issue a mandatory will, known as a wasiat wajibah, to certain individuals and under specific circumstances.[12] Therefore, the general definition of a mandatory will is an action taken by authorities or judges as state officials to compel or issue a mandatory will for a deceased person, which is given to certain individuals under specific circumstances.[13] There are at least two reasons for the existence of wasiat wajibah. First, the loss of the testator's discretion and the emergence of the obligation of state officials (judges) through a law or compulsory will decision, without the testator's consent and the recipient's willingness. Second, there is a similarity in the provisions for the distribution of inheritance to sons and daughters, specifically 2:1[14]. The position of wills in Islamic inheritance law is placed above the rights of heirs, and after the care of the deceased's body, with their remaining assets and the settlement of the deceased's debts.[15]

Basically, a wasiat wajibah replaces the heir who died before the testator. However, there is a difference in the amount of inheritance received. A wasiat wajibah only replaces the deceased person, but does not replace the amount of inheritance received; therefore, the portion received is not necessarily the same as the portion that should have been received by the person being replaced. According to Fahmi Al-Amruzi, in his book "Reconstruction of Mandatory Wills in the Compilation of Islamic Law," he states that some Islamic law experts, including Fathurrahman, argue that mandatory wills are only given to male and female grandchildren whose parents have passed away. Furthermore, Muhammad Zamro Muda states that a mandatory bequest is part of the inheritance that is designated by law for children who have lost their mother or father before their grandfather or grandmother because they are blocked by their uncle. Unlike Egypt or Jordan, which apply mandatory bequests to orphaned grandchildren, Indonesia resolves this issue

[12] Mardani, Islamic Inheritance Law in Indonesia, 1st ed. (Jakarta: Raja Grafindo Persada, 2014), p. 120.

[13] Mardani

[14] Fathur Rahman, *Inheritance Science, (*Bandung: Al-Ma'arif, 1981), p. 63.

[15] Wahbah Zuhaili, Fiqh Imam Syafi'i: Discussing Fiqh Issues Based on the Qur'an and Hadith, (Jakarta: Al-mahira, 2010), p. 366.

through substitute heirs (Article 185 KHI).[16] Thus, the Indonesian system reflects a unique adaptation of Islamic law within the national legal framework.

In classical Islamic law, the concept of a will essentially involves the transfer of a person's property to another party, which takes effect upon the testator's death.[17] The will is sunnah and limited to one-third of the heir's property, and only applies to non-heirs.[18] This is based on the hadith of the Prophet Muhammad SAW which states: *"Verily, Allah has given rights to those who are entitled to them, so there is no will for heirs."*[19] Thus, a will in the classical sense is voluntary and not a legal obligation. However, in its development, the concept of mandatory bequests emerged, namely, bequests that are automatically determined by law to certain parties who are not heirs but have strong social or emotional ties to the testator.[20] These mandatory bequests arose as a result of contemporary scholars' ijtihad (independent reasoning) to address the needs of modern society, especially regarding the protection of adopted children and certain relatives.[21]

In Indonesia, the concept of wasiat wajibah was then adopted into the Compilation of Islamic Law through Article 209. This article gives adopted children and adoptive parents the right to receive wasiat wajibah amounting to a maximum of one-third of the testator's estate. This application differs from the concept of classical wills, as it is imperative and no longer merely a moral recommendation. A number of scholars argue that the application of wasiat wajibah is a form of maslahah mursalah, namely an effort to reform Islamic law to achieve benefit and justice.[22] In the context of Indonesia's pluralistic society, wasiat wajibah serves as a bridge between classical fiqh norms and the dynamic social needs of the time. However, debates remain, especially regarding the status of non-Muslim adopted children and stepchildren. In terms of inheritance, neither is recognized as an heir, but through a wajibah will, they have the potential to obtain rights to the deceased's estate.[23] This debate reflects the tension between text and context, between the normative provisions of sharia and the socio-legal needs of modern society.

Thus, it can be concluded that the wasiat wajibah in Islamic law in Indonesia is the result of ijtihad and legal reform aimed at realizing distributive justice. This concept illustrates the adaptability of Islamic law in responding to social realities,

[16] Allya Shifa Akhsanty, "The Concept of Wasiat and Wasiat Wajibah in Indonesia From the Perspective of the Compilation of Islamic Law (KHI)," *Jurnal Perbandingan dan Kolaborasi Hukum* 2, no. 1 (2025): 45–56.

[17] Dewi Nawang Wulan and Indira Retno Aryatie, "Prinsip Kaffah pada Rahn Tasjily di Pegadaian Syariah," *Notaire* 6, no. 3 (2023): 345-362.

[18] Amir Syarifuddin.

[19] HR. Abu Dawud, Book of Wills, no. 2870.

[20] Hazairin, Bilateral Inheritance Law According to the Qur'an and Hadith (Jakarta: Tintamas, 1982), 103.

[21] Cucuk Kristiono, "Position of Adopted Children in the Distribution of Heritage Property in Indonesia," *Law Reconstruction Journal* 2, no. 2 (2018): 145–159.

[22] Jaih Mubarok, The Development of Islamic Law in Indonesia (Bandung: Remaja Rosdakarya, 2012), 188.

[23] M. Yahya Harahap, Islamic Inheritance Law (Jakarta: Sinar Grafika, 2010), 157.

without compromising its foundational roots in the Qur'an and hadith.[24] Wills in Indonesian positive law have a strong legal basis, both from the perspective of Islamic law and Western civil law. This aligns with the legal pluralism prevalent in Indonesia, where Islamic law, customary law, and Western law coexist and complement each other.

1) Wills in the Compilation of Islamic Law (KHI)
   The Compilation of Islamic Law (KHI), a legal reference for Muslims in Indonesia, regulates wills in detail in Articles 194-209. Some important provisions in the KHI include:
   - A will can only be executed for a maximum of one-third of the inheritance, unless approved by the heirs.
   - A will can only be given to a person or institution whose existence is clear.
   - A will to an heir is invalid unless approved by all other heirs.

   Thus, the KHI emphasizes that wills are part of Islamic inheritance law that has been adopted into national law.
2) Wills in the Civil Code (KUH Perdata)
   For non-Muslim Indonesian citizens, the provisions regarding wills refer to the Civil Code Book II Chapter XIII (Articles 875–940). The Civil Code defines a will as a deed containing a person's statement about what they want to happen after their death, which can be revoked by the person who made it during their lifetime. The Civil Code also regulates the forms of wills, namely:
   - General will (algemene testament)
   - Holographic will (olografisch testament)
   - Secret will (geheim testament)[25]

   This indicates that in Western civil law, a will is regarded as a unilateral legal act that can be revoked at any time.
3) The Position of Wills in the National Legal System
   With the provisions in the KHI and the Civil Code, it can be understood that the position of wills in Indonesian positive law is valid and recognized, but their implementation is adjusted to the legal system applicable to each group of society:
   - For Muslims: subject to the provisions of the KHI and the principles of Islamic law.
   - For non-Muslims: subject to the Civil Code.

[24] Andi Syamsu Alam and M. Fauzan, Adoption Law: An Islamic Perspective (Jakarta: Kencana, 2008), 180.

[25] Sudikno Mertokusumo, Indonesian Civil Law (Yogyakarta: Liberty, 2008), 133.

- For indigenous communities**,** its implementation is often regulated through customary law that is still in force, although it is formally governed by the Civil Code.

Thus, the position of wills in Indonesian positive law reflects the principle of legal pluralism, whereby legal regulations are adapted to a person's religious background and legal status.[26]

Comparative Analysis of Wajibah Wills in Classical Fiqh and the Compilation of Islamic Law

The concept of a will in classical fiqh is based on the principle that a will is a voluntary legal act performed by an heir to distribute part of their property to another party after their death.[27] The limit of a will, according to classical Islamic law, is a maximum of one-third of the testator's assets, and it cannot be given to heirs who have already been allocated a share through the faraid system.[28] A will is considered a sunnah muakkadah (strongly recommended), not an obligation, except in certain circumstances, such as when the testator has outstanding debts or unfulfilled promises.[29] Conversely, in the Compilation of Islamic Law in Indonesia, the concept of wasiat wajibah (mandatory bequest) was introduced. Article 209 of the Compilation of Islamic Law stipulates that adopted children are given a mandatory bequest of up to one-third of the estate of their adoptive parents, and conversely, adoptive parents receive a share of the estate of their adopted children. This provision differs from classical Islamic law, which does not recognize the position of adopted children or adoptive parents in inheritance at all.[30]

This difference illustrates the contextual ijtihad (independent reasoning) employed by lawmakers in Indonesia. Wasiat wajibah in the Compilation of Islamic Law is not merely a moral recommendation, but a right attached to adopted children or adoptive parents, so that religious courts can determine it even if the heir never made a will.[31] From a methodological perspective, contemporary scholars consider the obligatory will in the Compilation of Islamic Law to be the result of a maslahah mursalah approach—that is, an effort to bring about social benefits through Islamic law—as well as a solution to problems that often arise in Indonesian society, where child adoption is common.[32] In addition, the application of the wasiat wajibah also demonstrates the flexibility of Islamic law in responding to social changes without

[26] Maria Farida Indrati, Legislation Science (Yogyakarta: Kanisius, 2007), 85.

[27] Wahbah al-Zuhayli, *al-Fiqh al-Islami wa Adillatuhu*, Juz VIII (Damascus: Dar al-Fikr, 1985), 23.

[28] HR. Abu Dawud, Kitab al-Wasaya, no. 2870.

[29] Amir, *Loc.Cit*

[30] Aco Wahab and Imam Kamaluddin, "Tinjauan Kritis Implementasi Wasiat Wajibah Beda Agama dalam Hukum Waris Islam di Indonesia," *ULS: Ulsula Law Studies* 3, no. 1 (2023): 77–92.

[31] M. Yahya Harahap, Islamic Inheritance Law (Jakarta: Sinar Grafika, 2010), 158.

[32] Jaih Mubarok, The Development of Islamic Law in Indonesia (Bandung: Remaja Rosdakarya, 2012), 190.

neglecting the principles of justice and public interest. Thus, a comparison between classical fiqh and the Compilation of Islamic Law reveals a transformation in the concept of wasiat: from what was originally voluntary to what is now obligatory. This transformation is not a deviation from Sharia, but rather a form of Islamic legal reform aimed at remaining relevant to the needs of modern society.[33]

Mandatory Wills according to the Compilation of Islamic Law and Their Development

Essentially, there is no formal definition of mandatory wills in the Islamic legal system of Indonesia; however, Bismar Siregar states that a mandatory will is a will intended for heirs or relatives who do not receive a share of the inheritance due to a legal impediment. Eman Suparman comments in his book that a mandatory will is a will whose execution is not influenced or dependent on the testator's will and desire. Despite the absence of a definition of a mandatory will, the provisions of a mandatory will are contained in the Compilation of Islamic Law (KHI). Mandatory bequests are one of the sections listed in Chapter II, which regulates inheritance in the Compilation of Islamic Law (KHI). The KHI does not provide for mandatory bequests to orphaned grandchildren who are hijab-wearing, as is the case in other countries. The granting of inheritance rights to orphaned grandchildren who are covered by their uncle is covered in the provisions on substitute heirs in Article 185 of the Compilation of Islamic Law (KHI).
Article 185 of the Compilation of Islamic Law:

1. If an heir dies before the testator, his position may be replaced by his child, except as provided for in Article 173.
2. The share of the substitute heir shall not exceed the share of the heir of equal rank who is being replaced.

The provisions in this article ensure that grandchildren whose parents have passed away will not be deprived of their inheritance by anyone and will receive a clear share, equal to the share of the parent they are replacing. The rules regarding substitute heirs are also stipulated in the Civil Code, namely in articles 841 to 848. Substitute heirs in the Civil Code occupy the position of their parents absolutely, meaning that all of their parents' rights and obligations relating to inheritance are transferred to them. Substitute heirs do not only apply to children and grandchildren, but also to collateral heirs (siblings and their children) and cross heirs (uncles, aunts, and their children). This rule of substitute heirs makes the concept of wasiat wajibah (mandatory will) which is enforced in Muslim countries, namely for orphaned grandchildren who are mahjub by their uncles, no longer necessary in Indonesia. In matters of compulsory inheritance, the Compilation of Islamic Law regulates this in Article 209, with the following provisions:

[33] Hazairin, Bilateral Inheritance Law According to the Qur'an and Hadith (Jakarta: Tintamas, 1982), 104.

1. The estate of an adopted child shall be divided in accordance with Articles 176 to 193 above, while adoptive parents who do not receive a will shall be given a mandatory bequest of up to 1/3 of the estate of their adopted child.
2. Adopted children who do not receive a will are given a mandatory inheritance of up to 1/3 of the inheritance of their adoptive parents.

Article 209 of the Compilation of Islamic Law does not provide detailed requirements and conditions for a mandatory will. However, based on the provisions in that article, it can be concluded that a mandatory will can only be made by adoptive parents for their adopted children and vice versa, by adopted children for their adoptive parents. The requirement for a mandatory will for the child and adoptive parents is that they did not receive a discretionary will from the adoptive parents or adopted children before their death. In reality, the application of mandatory wills in practice is not limited to adopted children, as stated in Article 209 of the Compilation of Islamic Law. However, the right to a mandatory will is also given to non-Muslim biological children and non-Muslim families.

VI. CONCLUSION

This study shows that *wasiat wajibah* for non-Muslim adopted children and stepchildren is the result of legal *ijtihad* arising from social needs. While absent in classical fiqh, it was later developed in contemporary law and codified in Article 209 of the Compilation of Islamic Law (KHI). In classical doctrine, wills are voluntary, limited to one-third of the estate, and not for heirs, whereas the KHI makes them compulsory for adopted children and adoptive parents, shifting the concept from *sunnah* to legal obligation in pursuit of *maslahah*. Unlike Egypt and Jordan, which apply mandatory bequests to orphaned grandchildren, Indonesia resolves such cases through substitute heirs (Article 185 KHI). Instead, the KHI emphasizes protection for adopted children and adoptive parents. Although its application to non-Muslims and stepchildren remains debated, *wasiat wajibah* illustrates the adaptability of Islamic law as a legal reform that ensures justice, benefit, and protection within Indonesia's plural society.

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