

ASPECTS OF MAQASID SYARIAH IN SUBSTITUTE HEIR AND WASIAT WAJIBAH (STUDY OF IMPLEMENTATION IN INDONESIA AND EGYPT)

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ABSTRACT

There are many new problems in society is the reason why it is important to reform Islamic law, one of which is in the field of family law, especially related to inheritance. The problem that occurs in the field of inheritance is related to the status of grandchildren as substitute heirs. In the past, grandchildren could not replace their father's position to receive inheritance from their grandfather because they were obstructed by their uncles. However, this concept was considered unfair to grandchildren, so the concept of Wasiat wajibah emerged which was first introduced by Egypt and then adopted by Indonesia and called substitute heirs. The concept of substitute heirs and Wasiat wajibah have the same purpose, namely to protect certain parties who do not receive inheritance directly according to classical Islamic law. This study is included in the category of literature research with a comparative approach that explores and analyzes Maqāsid Syariah in the concept of substitute heirs and Wasiat wajibah. Data were collected through literature searches, which include primary and secondary legal materials. The results of the study show that substitute heirs and Wasiat wajibah can be recognized in Islamic law, because these two concepts reflect the flexibility of Islamic inheritance law in adapting to social developments, as well as ensuring that entitled parties do not lose their rights in the distribution of inheritance.

Keywords: *Shariah Maqosid, Heir, Wasiat wajibah, Islamic family law.*

INTRODUCTION

The presence of the Islamic Family Law or *Hukum Keluarga Islam (HKI)* discipline is one of the efforts made by Muslim scholars so that the values of Islamic law in this world continue to exist and are able to answer the dynamics of the challenges of the development of human life that always moves without stopping at all times. One form of this legal value is the existence of sharia which aims to realize the welfare of humans in the world and the hereafter. Or in other words, these laws are prescribed for the welfare of humans which is known as maqosid al-syari'ah. *Maqāsid syariah* itself is the purpose of a series of rules outlined by Allah SWT to obtain benefits and prevent harm for humans. Another definition with a slightly different expression where Maqāsid Syariah is interpreted as the intention of Allah as the maker of sharia is to provide benefits for mankind, namely by fulfilling the needs of daruriyyat (basic needs), hajiyat (secondary needs), and tahsiniyyat (complementary needs), so that humans can live well and become good servants of Allah. This can also be understood as the purpose of Allah in establishing His laws, namely what Allah wants to achieve or aim for through the establishment of these laws (Syarifuddin, 2019).

One of the legal provisions of Allah that regulates human life is related to



inheritance. Related to the issue of inheritance or inheritance has been explained in great detail and certainly in the Qur'an and also the hadith both in terms of how to divide, who are the parties who are entitled to receive the inheritance, to how much the amount will be received from the inheritance itself by each recipient of the inheritance. The event of inheritance occurs in the provisions of Islamic law between the testator and the heirs due to the existence of a relationship of lineage/family or marriage relationship (Supardin, 2020).

The heirs whose parts have been clearly explained in the Qur'an include children, parents (father and mother), siblings, and widows and widowers. The first three heirs mentioned are heirs due to blood relations (lineage), while the last two heirs mentioned are heirs related to marriage. Regarding this, because the Qur'an and hadith do not explicitly determine the portion for grandchildren, nephews, grandfathers, or heirs with a further degree, this problem is resolved through *ijtihad*. One of the *ijtihad* to determine the share of grandchildren is the *ijtihad* carried out by Zaid bin Thabit as follows:

وَقَالَ زَيْدٌ : وَلَدُ الْأَبْنَاءِ بِمَنْزِلَةِ الْوَالِدِ إِذْ لَمْ يَكُنْ دُونَهُمْ وَلَدٌ ذَكَرَ ذَكَرَهُمْ
كَذَكَرَهُمْ، وَأَنْثَاهُمْ كَأَنْثَاهُمْ يَرِثُونَ كَمَا يَرِثُونَ، وَيَحْجُبُونَ كَمَا
يَحْجُبُونَ وَلَا يَرِثُ وَلَدُ الْإِبْنِ مَعَ الْإِبْنِ

"Grandchildren and granddaughters, from sons (through sons) are equal to children if there are no surviving sons. Grandchildren are like sons, granddaughters are like daughters, they inherit and veil like children, and do not inherit grandchildren together with sons (Abu Abdillah al-Bukhari, 2019)"

At that time, Zaid bin Tsabit's *ijtihad* was accepted because it was in line with the way of thinking of Arab society at that time. However, the emphasis on the position of men and descent through the male line shows that the *ijtihad* more reflects the thought patterns of patrilineal society, which does not consider the position of granddaughters through the maternal line at all. In the view of patrilineal society, grandchildren from the mother's side are only considered as *zul arham* (distant relatives). Therefore, in the context of Islamic inheritance law, Maqāsid Syariah plays an important role in ensuring the distribution of inheritance fairly and equally. For this reason, one of the results of the renewal of Islamic family law in the field of inheritance in Egypt is the implementation of *Wasiat wajibah* to grandchildren of the testator who are left by their parents who are the heirs of the testator.

The concept of *Wasiat wajibah* in Egypt was then adopted in several countries, one of which is Indonesia. The concept was then adapted by Hazairin as one of the Figures of Family Law Reform in Indonesia with the customs of the Indonesian people, namely by acculturating the concept of *Wasiat wajibah* in Egypt into the inheritance law system in Indonesia to become a substitute heir (Hazairin, 2020). Substitute heirs or the replacement of heirs' positions, known in legal science as *plaatsvervulling*, is an old



issue that has caused pros and cons in various circles such as judges, academics and practitioners. In the context of inheritance law, Maqāṣid Syariah aims to create justice, balance, and protection of rights for all parties involved. By conducting this study, we can assess the extent to which the application of inheritance law in Indonesia and Egypt reflects the objectives of Maqāṣid Syariah, especially in terms of inheritance distribution, replacement of heirs, and provision of *Wasiat wajibah*.

Substitute heirs are basically heirs due to replacement, which can be interpreted as people who become heirs because their parents who are entitled to receive the inheritance died before the testator, so that their position is replaced by them (Saeban, 2012). Within the framework of Maqāṣid Syariah, substitute heirs provide a solution so that the inheritance continues to flow to the party entitled to receive it, even though the actual heir has died. This ensures the continuity of family rights and protection for the younger generation. In addition to the term substitute heir above, there is also the term *Wasiat wajibah* which is a legal provision that requires a person to give part of the inheritance to certain heirs, even though there is no specific will from the testator.

This concept is in line with the objectives of Maqāṣid Syariah in ensuring justice and protection for less fortunate family members, such as adopted children or grandchildren who have lost their inheritance rights. However, in its development, the concept of dividing a will or inheritance has differences that are not only carried out by scholars, but also between other Muslim countries, such as Indonesia and Egypt for example. The discussion of substitute heirs and *Wasiat wajibah* in the context of Islamic inheritance law in Indonesia and Egypt reveals significant differences in the application of the two concepts. Although both countries are guided by sharia principles, in practice the implementation of inheritance law, especially regarding substitute heirs and *Wasiat wajibah*, each faces different challenges. By understanding the concept of substitute heirs and *Wasiat wajibah* within the framework of Maqāṣid Syariah, we can better appreciate the importance of justice, welfare and protection of family rights in the distribution of inheritance according to Islamic law. This research will provide insight into how the existing inheritance systems, both in Indonesia and Egypt, can resolve this problem based on the principles of Maqāṣid Syariah, so as to reduce the potential for conflict and provide a fairer solution.

METHOD

This research category is literature research with a comparative study that explores and analyzes Maqāṣid Syariah in the concept of substitute heirs and *Wasiat wajibah*. Data were collected through literature searches, which include primary and secondary legal materials (Suharsimi Arikunto, 2019). Comparative study was conducted to analyze the differences and similarities in the application of these concepts in both countries. The type of research used is normative legal research with a comparative analysis approach (comparative legal research). This study will analyze the legal norms applicable in Indonesia and Egypt regarding inheritance, substitute heirs,



and *Wasiat wajibah*, as well as how *Maqāṣid Syariah* is applied in both legal systems.

The data sources in this study consist of two types of data: namely Primary Data such as *UU NO. 1 Tahun 1974 tentang Perkawinan* and the *Kompilasi Hukum Islam*, as well as the provisions of inheritance law in Islamic law applicable in Indonesia. In addition, there are also Legal Regulations in Egypt, such as the provisions contained in the Egyptian Civil Code and fatwas related to Islamic inheritance law received in Egypt. Secondary data include books, scientific articles, journals, and previous research on inheritance in the perspective of *Maqāṣid Syariah*. Data analysis will be conducted using descriptive-analytical analysis methods. Researchers will analyze the collected data and compare the application of the *Maqāṣid Syariah* principle in the concept of substitute heirs and *Wasiat wajibah* in Indonesia and Egypt.

This study will use the *Maqāṣid Syariah* theory as the main framework for analyzing the phenomenon of inheritance law in both countries. This study will assess the extent to which the legal regulations in Indonesia and Egypt can reflect the main objectives of *Maqāṣid Syariah*, especially in terms of protecting inheritance rights, respecting *Wasiat wajibah*, and maintaining justice in the distribution of inheritance.

RESULTS AND DISCUSSION

Aspects of Maqāṣid Syariah Regarding Substitute Heirs and Obligatory Wills in Islamic Law

Before describing further regarding the *Maqāṣid Syariah* in inheritance matters, it is necessary to first describe the legal basis for inheritance itself. Some verses of the Qur'an that are the basis for inheritance law are;

1. Al-Quran, Surah An-Nisa' verse 33 which states that there are rights for heirs of every inherited property (Kementrian Agama RI, 2023).

وَلِكُلِّ جَعَلْنَا مَوْلِيًّ مِمَّا تَرَكَ الْوَالِدَانِ وَالْأَقْرَبُونَ ۚ وَالَّذِينَ عَقَدَتْ أَيْمَانُكُمْ فَآتُوهُمْ نَصِيبَهُمْ إِنَّ اللَّهَ كَانَ عَلَىٰ كُلِّ شَيْءٍ شَهِيدًا

"And for each (male and female) We have appointed the heirs for what was left by both his parents and his close relatives. And those with whom you have sworn allegiance, then give them their share. Indeed, Allah is the All-Witness of everything"

This verse emphasizes that the distribution of inheritance does not only depend on the closeness of blood relations, but also on the provisions of Allah which guarantee that each heir receives his rights. In this context, the distribution of inheritance has been carefully regulated so that each individual, especially those who are closest in blood relations, gets a share according to His provisions. In other words, both siblings, children, or other close family have the right to



receive a fair share of the inheritance, whether small or large, according to the Islamic inheritance laws that have been outlined.

2. The Qur'an, Surah An-Nisa, verse 7, states that male and female heirs each have the right to receive inheritance according to the portion determined (D. A. RI, 2022).

لِّلرِّجَالِ نَصِيبٌ مِّمَّا تَرَكَ الْوَالِدَانِ وَالْأَقْرَبُونَ وَلِلنِّسَاءِ نَصِيبٌ مِّمَّا تَرَكَ الْوَالِدَانِ وَالْأَقْرَبُونَ
وَلِلنِّسَاءِ نَصِيبٌ مِّمَّا تَرَكَ الْوَالِدَانِ وَالْأَقْرَبُونَ مِمَّا قَدَرْتُمْ حَافِظِينَ لِحُكْمِ اللَّهِ وَاللَّهُ عَزِيزٌ ذُنُوبًا

"For men there is a right to a share of the inheritance of both parents and their relatives, and for women there is a right to a share (also) of the inheritance of both parents and their relatives, whether it is a little or a lot according to the portion that has been determined."

This verse emphasizes that both men and women have inheritance rights, although in some circumstances the share of men is greater than that of women. However, this provision is still fair because it is based on the principle of different responsibilities between men and women in society at that time. Men have the obligation to support the family, while women are not burdened with the same obligation. Therefore, in some circumstances, men get a larger share as a responsibility to provide for the family. These two verses show the principle of justice in the distribution of inheritance according to Islam. The distribution of inheritance is not only based on closeness of blood relations, but also includes the principle of social and economic responsibility. Allah SWT through these verses emphasizes that everyone has the right to receive a portion of the inheritance in accordance with their rights and obligations, which ultimately creates a fair and orderly distribution system.

One of the stages in realizing *Maqāsid Syariah* is to draw out the goal, where the goal of *Maqāsid Syariah* is in the form of public interest. The definition of *Maqāsid Syariah* as explained by Abdul Wahhab Khalaf is to act as a tool to understand the wording of the Qur'an and Sunnah, resolve conflicting arguments, and to determine the law on cases that are not accommodated in the Qur'an and Sunnah in terms of linguistic studies (Nasih, 2022). So, to understand the purpose of the law for the sake of public interest (*Maqāsid Syariah*) it can be realized by fulfilling five main elements:

- a. Preservation of religion (*Hifz al-Din*)

This means that humans as creatures of God must believe in God who created them, then maintain and regulate their lives. Religion or religiosity is a vital thing for human life, therefore it must be maintained and preserved. Maintaining religion at the *daruriyat* level, namely maintaining and carrying out



religious obligations that are included in the primary level, such as performing the five daily prayers (Syarifuddin, 2022).

b. Preservation of the soul (*Hifz al-Nafs*)

One of the levels of importance in the daruriyat ranking related to preserving the soul is fulfilling basic needs in the form of food to sustain life. If these basic needs are ignored, it will result in the existence of the human soul being threatened (Aibak, 2019).

c. Preservation of reason (*Hifz al-Aql*)

Preservation of reason at the level of daruriyat, such as the prohibition of drinking alcoholic beverages. If this is not heeded, it will result in the destruction of reason (Aibak, 2019).

d. Preservation of descendants (*Hifz al-Nasl*)

Preservation of descendants at the level of daruriyat, such as the prescription of marriage and the prohibition of adultery. If this is ignored, the existence of descendants will be threatened (Sapiudin Shidiq, 2021).

e. Preservation of property (*Hifz al-Māl*)

Preserving property at the level of daruriyat, such as the prescribed procedures for property ownership and the prohibition of taking other people's property in an unlawful manner. If this rule is ignored, it will threaten the order and integrity of property (Aibak, 2019).

According to the *Maqāsid Syariah* above, it is clear that the concept of substitute heirs and *Wasiat wajibah* can be justified if they bring benefits and justice. This is certainly in line with the objectives of Islamic law, namely to realize the benefits of human life by bringing benefits and avoiding harm. This benefit is to ensure that certain parties do not lose their rights in the distribution of inheritance. Substitute heirs protect the direct descendants of the testator, while *Wasiat wajibah* give rights to parties who are considered important (Syarifuddin, 2004), even though they do not directly meet the requirements as heirs of the deceased testator. Therefore, based on the application of the concept of *Maqāsid Syariah*, it can be said that the existence of regulations on the provisions of substitute heirs and *Wasiat wajibah* for the grandchildren of the testator is a fairly ideal legal model. Because this method does not conflict with the basic law of Islamic inheritance but instead becomes an alternative to the distribution of Islamic inheritance which so far has certain parts that are considered not beneficial and tend to discredit the grandchildren or other descendants. In short, the perspective approach of *Maqāsid Syariah* in reviewing the provisions on substitute heirs and *Wasiat wajibah* is sufficient and even very relevant, because although the problem, especially the position of substitute heirs, is not explicitly explained in the Qur'an and al-Sunnah, it is still in accordance with the purpose of the dispensation of Islamic law, namely the realization of benefits. If there are no clear legal provisions regarding the position of the substitute heirs, then harm could arise. Such as the occurrence of



conflicts between descendants of the testator, injustice in the practice of dividing inheritance, and the position of grandchildren apart from being orphans who need affection from their families and relatives also need property for their survival (Syarifuddin, 2004).

In relation to the provisions of the *Wasiat wajibah* in Indonesia which are stated in the KHI regarding adopted children as recipients of the *Wasiat wajibah* is to protect the descendants who are legally determined by the court regarding the adoption of children and are responsible for a decent life for the adopted child (Miswanto, 2019), then the benefit that arises with the provisions of this *Wasiat wajibah* is that the adopted child will be protected from miserable conditions after the death of the adoptive parent, and with the *Wasiat wajibah*, the property can be maintained so that it can be used according to its place and responsibility so that the adoptive parent does not bear the sin of neglecting the adopted child whom he has promised to care for. Adopted children who have been officially adopted by the Judge's decision have the right to be protected from weakness and misery after the death of the adoptive father, because they are like their own children in happiness and sorrow (Anshoruddin, 2015). So with this *Wasiat wajibah*, the adopted child will later live decently after the death of their adoptive father or mother. Thus, justice to protect the family will be achieved properly and the implementation of *Wasiat wajibah* and substitute heirs provides very significant benefits in the distribution of inheritance carried out fairly, evenly, and according to the needs of the family members concerned. This not only creates justice in the distribution of assets, but also strengthens relationships between families and ensures their welfare.

Implementation of the Concept of Substitute Heirs and Wasiat wajibah in Indonesia and Egypt

1. Substitute Heirs in Indonesia

The concept of substitute heirs and *Wasiat wajibah* in Indonesia and Egypt are two different legal approaches but have the same goal, namely to protect certain parties who do not receive direct inheritance according to traditional Islamic law. In both countries, Indonesia and Egypt, its application is based on social conditions and developing legal needs, although there are fundamental differences in its implementation. When viewed from its history, the *Wasiat wajibah* originally came from Egypt which was then adopted in Indonesia, so that in its development in Indonesia the terms substitute heirs and *Wasiat wajibah* are known. However, in Egypt itself there is no term substitute heir. In Indonesia, substitute heirs are regulated in the *Kompilasi Hukum Islam (KHI)* Article 185. This provision allows the grandchildren of the testator to replace their parents who have died first, and this applies to both male and female descendants. With the provisions in the KHI above, of course it will have legal implications, including:



- a. Ensuring the continuity of grandchildren's rights: Substitute heirs aim to protect the rights of grandchildren of an heir whose parents have died before him. In Islamic inheritance, without the provision of substitute heirs, grandchildren will not receive a share if their parents die first.
- b. Protection of justice: This concept ensures that the children of an heir who dies first still receive a share, thus preventing injustice in the distribution of inheritance.
- c. Clear distribution procedures: Substitute heirs receive the same share as their parents should have received. This creates a clear standard in the inheritance distribution system, maintains social stability, and prevents inheritance disputes that may arise if the rights of grandchildren are ignored.
- d. Formal recognition in court: This provision provides a strong legal basis for grandchildren to file claims for inheritance in religious courts, thus strengthening their position in the Indonesian legal system.

The provisions regarding substitute heirs in the *Kompilasi Hukum Islam* (KHI) provide an important contribution in maintaining justice and the continuity of inheritance rights in the Islamic inheritance system in Indonesia. The existence of this regulation reflects the principles of justice and welfare for the family left behind by the testator.

Still on the concept of substitute heirs, among scholars there are also differences of opinion. In the case of inheritance where the existence of grandchildren together with sons, there is no provision for their share firmly regulated in the text of the Qur'an or the Sunnah of the Prophet. If examined from the existing references, then there is a difference of interpretation to determine the share of grandchildren, namely the interpretation of the Qur'an, Surah an-Nisa Verse 33. Differences in interpretation of this verse also occur among scholars, where these differences in interpretation give rise to differences in views and thoughts about the inheritance of grandchildren.

وَلِكُلِّ جَعَلْنَا مَوْلِيًا مِمَّا تَرَكَ الْوَالِدَانِ وَالْأَقْرَبُونَ وَالَّذِينَ عَقَدَتْ أَيْمَانُكُمْ فَآتَوْهُمْ نَصِيبَهُمْ إِنَّا
اللَّهُ كَانَ عَلَىٰ كُلِّ شَيْءٍ شَهِيدًا

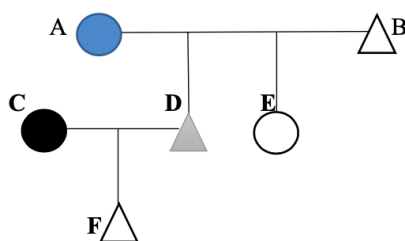
The difference lies in the interpretation of the words "*wa likullin*" and "*mawaliya*". Experts such as Dr. Sayid Qutub, Sheikh Ahmad Mustafa al-Maraghi, Prof. Dr. Quraisy Syihab, that the word "*wa likullin*" is interpreted as "for each inheritance", while the word "*mawaliya*" is interpreted as "heir or person who inherits" (Syihab, 2007). Meanwhile, according to Ibn Abbas (companion of the Prophet Muhammad), the word "*wa likullin*" is interpreted as "for each heir" (which is mentioned in the previous verse) (Abbas, n.d.). While the word "*mawaaliya*" is interpreted as "a person who replaces the heir/replacement heir"

Ulama Sunni

Ibnu Abbas



According to Hazairin, the concept of substitute heirs does have references from the Qur'an and hadith. The concept of substitute heirs in Hazairin's view is not merely inconsistency with socio-historical foundations but rather due to misinterpretation (Hazairin, 2019). In its application, a substitute heir is a descendant of an heir who has died before the testator (the person who left the inheritance) died. Here is a description of the substitute heir and the possible rights that he can receive through the following case examples:



A = Heir

B = Husband, gets $\frac{1}{4}$

C = Son-in-law

D = Deceased daughter

E = Son (*'aṣabah bi al-naḥs*, becomes *'aṣabah bi al-gair* with D which is replaced by F)

F = Granddaughter of a female lineage (*dzawī al-arḥam*)

An example of its application is if a child of the testator dies before the testator, then the child of the deceased person (the testator's grandchild) can become a substitute heir. They receive the portion of the inheritance that their parents should have received. The substitute heir receives the inheritance according to the portion that should have been received by the substitute heir. In this case, there is no limit to the amount that is different from other living heirs. The concept of substitute heirs is very important to ensure that inheritance rights are maintained and preserved even if there is a change in the lineage. Providing inheritance to substitute heirs serves to maintain justice, legal certainty, and prevent conflict within the family, while ensuring the welfare of those left behind (Syarifuddin, 2018). Therefore, the regulation of substitute heirs, both in Islamic law and other legal systems, is a crucial step to create a fair and harmonious distribution of inheritance (Fahmi Al Amruzi, 2014).

Wasiat wajibah in Indonesia

Wasiat wajibah in Indonesia are regulated in Article 209 of *Kompilasi Hukum Islam (KHI)*. This legal provision is adjusted to the social context in Indonesia which includes the protection of the rights of adopted children and adoptive parents (Anshoruddin, 2015). This article emphasizes the provision of a portion of the inheritance to adopted children or adoptive parents through the *Wasiat wajibah* mechanism, although according to traditional Islamic law they are not included in the

heirs. With the existence of this article, of course, it brings legal implications in terms of:

- a. Legal settlement for adopted children and adoptive parents: *Wasiat wajibah* provide a legal solution for adopted children and adoptive parents who are not included in the legal heirs according to sharia. With this provision, they can obtain a share of the inheritance, although limited to a maximum of one third of the total inheritance.
- b. Reducing inheritance disputes: With the regulation of *Wasiat wajibah*, the possibility of inheritance disputes involving adopted children or adoptive parents can be reduced, because there is already a clear legal path to ensure they get a certain share.
- c. Judge's decision: If there is a dispute regarding the implementation of *Wasiat wajibah*, the religious court has the authority to decide the case based on the KHI. This clarifies the rules and provides a strong legal basis for religious courts to decide inheritance cases involving adopted children and adoptive parents. In fact, the nomenclature of *Wasiat wajibah* is not found in classical fiqh books. *Wasiat wajibah* are a form of tajdid (renewal) of law around the science of faraidh.

Therefore, *Wasiat wajibah* are often referred to as one of the contemporary fiqh discussions, considering that their emergence was only recently discovered in contemporary fiqh. Meanwhile, according to the term, *Wasiat wajibah* are interpreted as legal actions or decisions from judges, governments or authorized officials regarding the assets of a deceased person to be given to a certain person, with a certain amount with considerations based on Islamic sharia values (Yefrizawati, 2020) . In the application of Islamic law in Indonesia, as stated in the KHI, a *Wasiat wajibah* is interpreted as follows (M. A. RI, n.d.) :

- a. The property left by an adopted child is divided based on Article 176 to Article 193 mentioned above, while adoptive parents who do not accept a will are given a *Wasiat wajibah* of up to 1/3 of the property left by their adopted child.
- b. Adopted children who do not accept a will are given a *Wasiat wajibah* of up to 1/3 of the property left by their adoptive parents.

If we look at the historical sequence, the concept of a *Wasiat wajibah* is part of the acculturation first popularized by the Parliament of the Arab Republic of Egypt which established the *Qanun Washiyyah* (Egyptian Law of Bequest) or the Egyptian Will Law of 1946, Article Number 71 (Naily Fadhilah, 2021). In the qanun it is explained that a will can occur by court order without the wishes of the heir. In the law, the obligatory will is formulated with the aim of bringing a sense of justice to grandchildren who have lost their parents before the death of the heir and are veiled by the presence of other children from the heir (Basyir, 2006). Because grandchildren are not allowed to receive inheritance, they are given an obligatory will from the heir's property through a court decision based on the qanun of wills . In its application, the



obligatory will in Indonesia is given to adopted children and adoptive parents, who in traditional Islamic law are not considered heirs.

This is a legal effort to guarantee that they get a share of the heir's property, considering that in Islamic inheritance law, adopted children and adoptive parents are not included in the legitimate heirs. If the heir does not make a will for an adopted child or adoptive parent, then the law provides for an obligatory will so that they get a share. The maximum share received through an obligatory will by an adopted child or adoptive parent is one third of the inheritance, in accordance with the limitations in Islamic law. However, if all the heirs agree, the amount of this portion can be increased (Junaidi, 2013). In the context of the property transfer method, obligatory wills in Egypt and Indonesia have similarities in the transfer of inherited property, namely through a will issued by force by a ruler or judge as a state apparatus, while the transfer of property to successor heirs is flexible, depending on the judge's decision to decide whether there are heirs or not in an heir case.

From the point of view of the recipient of the property, the three have different objects, the recipient of obligatory wills in Egypt is only reserved for grandchildren, and the recipients of obligatory wills in Indonesia are adopted children, adoptive fathers, and non-Muslim relatives, while in successor heirs, the recipients of inherited property are descendants of children (grandchildren), descendants of relatives (nephews), descendants of mothers (brothers of the mother) and descendants of fathers (brothers on the father's side). While from the aspect of the factor causing the transfer of property in the case of obligatory wills in Egypt and successor heirs in Indonesia, the factor is the existence of a family relationship or lineage/blood relationship (As-Shabuni, 2004), then those who do not have a blood relationship with the heir, cannot become a successor heir and those who do not have a blood relationship with the testator, then cannot obtain a will (Simanjuntak, 2008).

Meanwhile, compulsory wills in Indonesia can be given to adopted children and adoptive fathers, and can even be given to non-Muslim relatives, this is in accordance with the decision of the *Mahkamah Agung Republik Indonesia* Number 368.K/AG/1995, Number 51.K/AG/1999 and Number 16.K/AG/2010. As for the size of the bequest, it depends on the judge's authority and a maximum of one third of the estate. Thus, the size of the portion of property that is transferred in the successor heir is different from the obligatory will in Egypt and in Indonesia, this happens because of the difference in the method of transferring property. The size of the compulsory will in Egypt is a maximum of one third as is the case with compulsory wills in Indonesia, while the size of the replacement heir's receipt is equal to the share of the replaced parent but cannot exceed the relative's share of the parent.

Wasiat wajibah in Egypt

In Egypt, the concept of successor heirs does not directly exist, but its form can be found in the application of obligatory wills that apply to grandchildren whose parents have died before the heir. Inheritance law in Egypt is based on Law No. 71 of 1946 which regulates the division of inheritance, which adopts the views of several



scholars and sects in Islamic inheritance law. The law applies specifically to grandchildren whose parents have died before the heirs. *Wasiat wajibah* in Egypt is a reform in Islamic family law in the field of inheritance, which is confirmed and regulated in Law No. 71 of 1946 concerning wills in article 76 "When an heir does not make a will to his descendants who have died first or died at the same time as the heir, to leave the inheritance to his children (grandchildren) as much as the share he should have received, then it is obligatory for The heir must make a will for the grandson who was left behind by his parents to receive a share of no more than one-third of the inheritance amount, provided that there are no other heirs and he has never given away property in other ways equal to his share. . If it has been given but less than the share he should have received, then the deficiency is considered a compulsory bequest equal to the share he should have been entitled to receive. This bequest becomes the right of the first degree of descent of the sons and daughters and the subsequent descendants according to the line of descent of the first child not from others. Each degree veils its own descendants but cannot veil the descendants of others. Each degree divides the will as if the obligatory will was an inheritance from their parents (Nugroho, 2021) .

This article contains several provisions, including (Sholeh, 2022) : First, the obligatory will is automatically given to the descendants of the heir's children who died before the heir or died together, if the heir did not leave a will before dying. Second, the share received by orphan grandchildren through the obligatory will is equal to their parents' share but does not exceed one-third of the inheritance (Al-Amruzi, 2014). Third, the condition for orphan grandchildren to receive the obligatory will is that they are not included as heirs and do not receive property through means such as grants. Fourth, if orphan grandchildren receive property through other means but less than the obligatory will share, then the deficiency must be added. Fifth, the people who are entitled to receive the obligatory will are descendants from sons onwards and descendants from first-degree daughters. Sixth, in the obligatory will, there is the concept of hijab as in inheritance but only applies to one's own descendants.

Based on the description above, in Egypt, the grandchildren of the testator whose parents have died (children of the testator) do not receive direct inheritance based on traditional Islamic inheritance law. Therefore, as an alternative, a *Wasiat wajibah* is used to grant them rights. So, a *Wasiat wajibah* in Egypt only applies to provide a portion of the property to the grandchildren of the testator whose parents have died before the testator (for example, grandparents). This concept is similar to a substitute heir, but is limited by the provisions of a *Wasiat wajibah*. In the event that the testator does not make a clear will for his grandchildren, the law will automatically grant inheritance rights to the grandchildren through a *Wasiat wajibah* (Ezzat, 2020).

The purpose itself is very clear, namely that the *Wasiat wajibah* in Egypt aims to provide legal protection to grandchildren who lose their inheritance rights because their parents (children of the testator) have died first. This *Wasiat wajibah* gives the grandchildren the right to receive an inheritance in a certain amount regulated by law,



even though they are not direct heirs (Aubakar, 2011). The maximum limit received by grandchildren as a *Wasiat wajibah* is one third of the inheritance. If the testator's will explicitly provides more than one-third, then it will be followed, but if not, the grandchildren are only entitled to one-third of the testator's estate. Based on the description above, it can be described how the general comparison is related to substitute heirs and *Wasiat wajibah* in Indonesia and Egypt as in the following table;

<i>Aspect</i>	<i>Indonesia</i>	<i>Egypt</i>
Substitute Heir	Applied to grandchildren of the testator whose parents (the testator's children) died first	Not applied directly (replaced by the concept of <i>Wasiat wajibah</i>)
Obligatory Will	For adopted children and adoptive parents	For grandchildren whose parents have died first
Limitations of Wills	Maximum one-third of the testator's assets	Maximum one third of the testator's assets
Legal Principles	<i>Kompilasi Hukum Islam (KHI)</i>	Law No. 71 of 1946

The differences between the substitute heirs in Indonesia and the *Wasiat wajibah* in Egypt show that although both aim to protect inheritance rights and prevent conflict, they differ in legal approach, flexibility, and practical application. The concept of substitute heirs in Indonesia focuses more on direct lineage (Karim, 2012), while the *Wasiat wajibah* in Egypt gives the testator greater freedom to pass on inheritance to others outside the direct lineage. Both systems, although different, reflect efforts to ensure fairness in the distribution of inheritance and protect the welfare of the bereaved family (Arifin, 2022). Aspects of substitute heirs in Indonesia based on *Kompilasi Hukum Islam* and *Wasiat wajibah* in Egypt show some similarities and differences in their objectives and implementation. The following is a conclusion from the comparison of these two concepts:

1. Common Purpose, both the substitute heirs in Indonesia and the *Wasiat wajibah* in Egypt aim to ensure fairness in the distribution of inheritance, especially when there is a change in the composition of the heirs due to the death of a rightful heir. Both protect the rights of the party entitled to the inheritance even though the position of the deceased heir has been replaced by a descendant or beneficiary of the will (Saed, 2021). In addition, both also play a role in preventing family conflicts and disputes that can arise if there are no clear rules regarding who has the right to replace the deceased heir. Indonesia with *Kompilasi Hukum Islam* and Egypt with its applicable Law No.7 of 1946.
2. Differences in Legal Principles, substituted heirs in Indonesia, based on the Compilation of Islamic Law (KHI), apply when an heir who is entitled to receive a portion of the inheritance dies before the testator (Fahmi Al



Amruzi, 2014), and the position of the heir is replaced by his/her descendants (such as grandchildren replacing their deceased parents). In this case, the distribution of the inheritance still follows the family line. Unlike the concept of substituted heirs, a *Wasiat wajibah* in Egypt is an obligation given by the testator to give a portion of his/her property to heirs who are not included in the distribution of inheritance according to Islamic law (for example, grandchildren, or people who have been assisted by the testator but are not entitled to a share of the inheritance in the traditional distribution) (Mamun, 2017). This *Wasiat wajibah* is often used to protect those who are morally considered worthy of a share of the testator's property, even though they are not legally legitimate heirs.

3. Practical Applications, the substitute heir system in Indonesia focuses more on the inheritance process according to direct lineage, which helps ensure the continuity of inheritance rights within the family (Tahir, 2015). It is simpler and more structured based on direct blood relations. This is different from the *Wasiat wajibah* in Egypt which allows the testator to make personal adjustments in the distribution of inheritance, which is useful when there are other people who are not directly entitled but have an important position in the testator's life. This provides more freedom and can be applied for certain social purposes.

The provisions regarding heirs that apply in Indonesia and Egypt are already in accordance with the concept of *Maqāṣid Syariah* due to the following reasons:

1. Preservation of property (Ḥifẓ al-Māl), the relation to this context is to ensure that the property is distributed fairly and not misused (Wahbah al-Zuhaili, 1986). In the case of substitute heirs or *Wasiat wajibah*, the inheritance law applicable in Indonesia and Egypt aims to maintain justice in the distribution of inheritance. These substitute heirs often appear to replace the position of someone who loses their inheritance rights for certain reasons.
2. Preservation of descendants (Ḥifẓ al-Nasl) In the context of successor heirs, descent becomes very important, especially if there is a conflict regarding inheritance or who has the right to receive the inheritance (Wahbah al-Zuhaili, 1986). This *Maqāṣid* aims to ensure the continuity of legitimate descendants and provide inheritance rights to entitled individuals. If an heir is removed or loses their rights, a replacement heir ensures that the family's rights remain protected

CONCLUSION

Based on the theory and objectives of *Maqāṣid Syariah*, substitute heirs and *Wasiat wajibah* can be recognized in Islamic law. Because overall, these two concepts show the flexibility of Islamic inheritance law in adapting to social



developments and ensuring that certain parties do not lose their rights in the distribution of inheritance. Substitute heirs protect the direct descendants of the testator, while *Wasiat wajibah* give rights to parties who are considered important, even though they do not directly meet the requirements as heirs. The distribution of certain inheritances in Indonesia and Egypt has different terms where Indonesia is known as the term substitute heirs, namely if the heir dies before the testator, his position can be replaced by his child (the testator's grandchild). The term *Wasiat wajibah* in Indonesia is intended for adopted children and adoptive parents and even includes non-Muslim relatives, while the *Wasiat wajibah* that applies in Egypt is for grandchildren whose parents have died before the testator (grandfather, grandmother) and the maximum limit of the will given to the grandchild is one third of the inheritance. If the testator gives a will that benefits the grandchild by more than one third, this is permissible.

To further develop the understanding of *Maqāsid* sharia in the practice of inheritance distribution, both in Indonesia and Egypt. This can be done through deeper religious education to the community, so that they better understand the importance of inheritance distribution in accordance with the objectives of sharia, namely to protect the rights of each individual. In Indonesia, this can be done by introducing and socializing substitute heirs to the community so that they understand better ways to resolve inheritance problems. While in Egypt, empowerment regarding *Wasiat wajibah* can provide an understanding of the benefits of this obligation for family welfare.

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