

## **ASPECTS OF MAQOSID SYARIAH IN SUCCESSOR HEIRS AND OBLIGATORY WILLS** (Implementation Study in Indonesia and Egypt)

**Muktamar Ibrahim**

State Islamic University of Mataram, Indonesian  
220401060.mhs@uinmataram.ac.id

### **Abstract**

*Maqasid syariah, the creator of sharia law, whose fundamental basis is Allah in establishing laws with the aim of providing benefits to humans, namely by fulfilling the needs of daruriyyat, hajiyat, and tahsiniyyat so that humans can live in goodness and become good servants of Allah. The perspective of maqasid syariah on substitute heirs and mandatory wills in the Compilation of Islamic Law, based on the theory of the purpose of law for benefit (maqasid syariah), states that substitute heirs and mandatory wills can be recognized in Islamic law. This is because, overall, these two concepts demonstrate 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 deceased, while mandatory bequests give rights to parties who are considered important, even though they do not directly qualify as heirs. Certain inheritance cases in Indonesia and Egypt have different terms, where in Indonesia it is known as a substitute heir, meaning that if the heir dies before the testator, his position can be replaced by his child (the testator's grandchild). Mandatory wills in Indonesia are intended for adopted children and adoptive parents, and even include non-Muslim relatives, while in Egypt, mandatory wills are for grandchildren whose parents have died before the testator (grandparents), and the maximum limit of the will given to the grandchild is one-third of the estate. If the heir gives a will that benefits the grandchild more than one-third, this is permissible.*

---

**Keywords:** *Maqasid Syariah, Heirs, Wasiah Wajibah, Indonesia and Egypt*



<https://creativecommons.org/licenses/by-nc/4.0/>  
©2024



### **A. INTRODUCTION**

The presence of the Islamic Family Law (HKI) discipline is one of the efforts made by Muslim scholars so that Islamic legal values in this world continue to exist and are able to answer the dynamics of the challenges of human life development which are always moving without stopping at all times. One form of these legal values is the existence of sharia which aims to realize the benefits for humans in this

world and the hereafter. Or in other words, the laws are prescribed for the benefit of humans which is known as the term maqasid al-shari'ah. Maqasid shari'ah itself is the purpose of a series of rules outlined by Allah SWT to obtain benefits and prevent harm to humans.

Another definition with a slightly different expression where maqasid syariah is interpreted as the intention of God as the creator of syariah to provide benefits to humans, namely by fulfilling the needs of daruriyyat, hajiyat and tahsiniyyat so that humans can live in goodness and be good servants of God.<sup>1</sup> It can also be interpreted as what God means in establishing the law, what God aims at in establishing the law, or what God wants to achieve in establishing a law.

One of the legal provisions from God that regulates human life is related to heirs inheriting. Related to the problem of inheritance or heirs inheriting has been explained in great detail and certainty in the Qur'an and also hadiths both in terms of the method of division, who is the party entitled to receive the heirs, up to the amount that will be received from the inherited property itself by each recipient of the heir.

Basically, the event of an heir inheriting occurs in the provisions of Islamic law between the heir and the heir due to the existence of a lineage/family relationship or marriage relationship. But if it is observed that the heirs whose share of the inheritance has been detailed clearly enough in the Qur'an are the inheritance of children, parents (father and mother), siblings, widows and widowers. The three heirs mentioned first are heirs due to blood relationship (nasab), while the two heirs mentioned later are heirs due to marriage.<sup>2</sup>

In relation to that, bearing in mind that neither the Qur'an nor the hadith affirms the share of grandchildren, nephews, grandfathers, and heirs whose degrees are further away, so this problem is sought to be resolved through ijтиhad. One of the ijтиhads to determine the share of grandchildren is the ijтиhad carried out by Zaid bin Thabit as follows:

وَقَالَ زَيْدٌ : وَلَدُ الْأَبْنَاءِ بِمَنْزِلَةِ الْوَلَدِ إِذْلَمْ يَكُنْ دُوَّنَهُمْ وَلَدُ ذَكَرٍ ذَكَرُهُمْ  
كَذَكَرُهُمْ، وَأُنْثَاهُمْ كَأُنْثَاهُمْ يَرْثُونَ كَمَا يَرْثُونَ، وَيَخْجُلُونَ كَمَا  
يَخْجُلُونَ وَلَا يَرْثُ وَلَدُ الْأَبْنَاءِ مَعَ الْأَبْنَاءِ

"Male and female grandchildren, from sons (through sons) are equal to children if there are no surviving sons. Grandsons are like sons, granddaughters are

---

<sup>1</sup>Amir Syarifuddin, Ushul Fiqih Volume 2 Revised Edition, (Jakarta: Kencana-Prenadamedia Group, 2018), Cet. 4, 231.

<sup>2</sup> Rendra Khaldun, Hermeneutika Khaled Abou El Fadl: Sebuah Upaya Untuk Menemukan Makna Petunjuk Kehendak Tuhan Dalam Teks Agama, Jurnal Edu-Islamika, Vol. 3 No.1 Tahun 2012 hal. 115-124

like daughters, they inherit and wear hijab like children, and do not inherit grandchildren together with sons."<sup>3</sup>

At that time, Zaid bin Thabit's ijtihad was justified, because the way of thinking was in accordance with the Arab community's mindset at the time the ijtihad was performed. However, the prominence of the position of men and descent through the male line reflects the ijtihad rather towards the thought pattern of the patrilineal society which does not allude to the position of granddaughters through the female line. In the realm of patrilineal thinking, grandchildren through the female lineage are only seen as *zul arham*.

So in the context of Islamic inheritance law, the Shariah objectives play an important role in ensuring the fair and balanced distribution of inherited property. For this reason, one of the results of the reform of Islamic family law in the field of inheritance in Egypt is the implementation of obligatory wills to the grandchildren of the heir who are left behind by their parents who are the heirs of the heir.

The idea of compulsory will in Egypt was later 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 habits of the Indonesian people, namely by acculturing the concept of compulsory will in Egypt into the inheritance law system in Indonesia to become a successor heir.<sup>4</sup> Substitute heirs or the change of position of heirs known in legal science as the term *plaatsvervulling* is one of the old issues that cause pros and cons in various circles such as judges, academics and practitioners.

Substitute heirs are basically heirs due to succession, which can be interpreted as those who become heirs because their parents who are entitled to inherit died before the heir, so that their position is replaced by them. In the framework of *maqosid shari'ah*, successor heirs provide a solution so that the inherited property continues to flow to the party entitled to receive it, even though the actual heir has passed away. This ensures the continuation of family rights and protection for the younger generation.

In addition to the term substitute heirs above, the term compulsory will is also known, which is a legal provision that obliges a person to give part of the inheritance to a specific heir, even if there is no specific will from the heir. This concept is in line with the purpose of *maqosid sharia* in ensuring justice and protection for less fortunate family members, such as adopted children or grandchildren who have lost their inheritance rights.

However, in the development of the concept of the distribution of wills or heirs, there are differences not only among scholars, but also between other Muslim countries, such as Indonesia and Egypt for example. The discussion about successor heirs and obligatory wills in the context of Islamic inheritance law in Indonesia and Egypt reveals significant differences in the application of the two concepts. Although

---

<sup>3</sup>Abu Abdillah al-Bukhari, *Sahih al-Bukhari*, (Beirut: Dar al-Fikr, 2006), 1886

<sup>4</sup>Hazairin, *Bilateral Inheritance According to the Qur'an and Hadith*, (Jakarta: Tintamas, 1976), 1-2.

both countries are guided by the principles of shari'ah, but in the practice of the implementation of inheritance law, especially in relation to successor heirs and obligatory wills, each faces different challenges.

By understanding the concept of successor heirs and obligatory wills within the framework of sharia maqosid, we can better appreciate the importance of justice, benefit and protection of family rights in the distribution of inherited property according to Islamic law. This study is expected to provide a comprehensive guide for legal practitioners, academics and the wider community in applying sharia principles in the affairs of heirs inheriting. For that reason, the writer is interested in discussing the theme of inheritance with the title "Aspects of Shari'ah Maqosid in Surrogate Heirs and Obligatory Wills (Enforcement Study in Indonesia and Egypt)"

## B. METHODS

The type of research in this paper is library research (library research)<sup>5</sup> with a comparative approach, which is to compare the concept of successor heirs and obligatory wills in Indonesia with obligatory wills in Egypt. Then the legal material in the form of data, either primary or secondary legal material related to the research topic will be analyzed using the qualitative descriptive analysis method, which is to analyze the legal material that has been collected using descriptions with words of the findings in the research.

## C. RESULT AND DISCUSSION

### 1. Aspects of Maqosid Syariah Regarding Substitute Heirs and Obligatory Wills in Islamic Law

Before describing further in relation to the maqosid shari'ah in the problem of heirs, it is necessary to first describe in relation to the legal basis of the heirs themselves. Some verses of the Qur'an that form the basis of inheritance law are;

- a. The Quran, Surah An-Nisa', verse 33, states that there are rights for heirs of every inherited property.

وَلِكُلٍّ جَعَلْنَا مَوَالِيَ مِمَّا تَرَكَ الْوَالِدُونَ وَالْأَقْرَبُونَ ۚ وَالَّذِينَ عَدَدْتَ أَيْمَانُكُمْ فَأَنْتُمْ هُمْ نَصِيبُهُمْ ۚ إِنَّ اللَّهَ كَانَ عَلَىٰ كُلِّ شَيْءٍ شَهِيدًا

"And for each (male and female) We have appointed the heirs for what was left by 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".

---

<sup>5</sup>Suharsimi Arikunto, Research Procedures A Practical Approach, (Jakarta: PT Rineka Cipta, 2019)

b. Al-Qur'an surah An-Nisa verse 7, states that male and female heirs are each entitled to receive heirs according to the determined share.

لِلرِّجَالِ نَصِيبٌ مِّمَّا تَرَكَ الْوَالِدُونَ وَالْأَقْرَبُونَ ۖ وَلِلنِّسَاءِ نَصِيبٌ مِّمَّا تَرَكَ الْوَالِدُونَ  
وَالْأَقْرَبُونَ مِمَّا قَلَّ مِنْهُ أَوْ كُثُرٌ ۖ نَصِيبًا مَّوْرُوضًا

"For men there is a right to a share of the property left by both parents and their relatives, and for women there is a right to a share (also) of the property left by both parents and their relatives, either a little or a lot according to the share that has been determined"

In addition to the verses of the Qur'an above, there are several hadiths that talk about the problem of inheritance. As it is known that the hadith is a complement to the Qur'an and at the same time as the second source of law after the Qur'an in the Islamic legal order. The majority of scholars believe that the hadith is one of the sources of Islamic law that ranks second after the Qur'an. One of the Hadith referred to is;

حَدَّثَنَا مُوسَى بْنُ إِسْمَاعِيلَ حَدَّثَنَا وُهَيْبٌ حَدَّثَنَا ابْنُ طَاؤِسٍ عَنْ أَبِيهِ عَنْ ابْنِ عَبَّاسٍ  
رَضِيَ اللَّهُ عَنْهُمَا عَنِ النَّبِيِّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ قَالَ أَجِحْفُوا الْفَرَائِضَ بِأَهْلِهَا فَمَا بَقَى  
فَهُوَ لِأَوْلَى رَجُلٍ ذَكْرٍ

"It has been reported to us from Musa bin Ismail from Wuhaib from Ibn Thaus from his father from Ibn Abbas ra. From the Prophet SAW. He said: "Give certain portions to those who deserve them. And the rest is for men who are more important (close relatives)." (HR. Bukhari and Muslim).<sup>6</sup>

One of the stages in realizing maqasid shari'ah is attracting the goal,<sup>7</sup> where the purpose of the shari'ah maqosid is in the form of benefits. The understanding of maqosid shari'ah as explained by Abdul Wahhab Khalaf is a tool to understand the redaction of al-Qur'an and al-Sunnah, resolve conflicting arguments, and to establish the law for cases that are not accommodated in al-Qur'an and al-Sunnah in terms of linguistic studies.<sup>8</sup>

So to know the purpose of the law for the sake of benefit (maqosid shari'ah) can be realized by the fulfillment of five basic elements namely:

a. The preservation of religion (Hifz al-Din)

<sup>6</sup>Abu Abdullah al-Bukhari, Sahih al-Bukhari, Vol. 4th, (Beirut: Dar al-Fikr, 1990), 189

<sup>7</sup>Ahmad Munjin Nasih, "The Shift of the Maqashid al-Shari'ah Pattern from Traditional to Modern: Reading the Thoughts of Jasser Auda", Ijtihad Journal, vol. 11, no. 1, 2011, 14

<sup>8</sup>Satria Effendi M. Zein, Ushul Fiqh, (Jakarta: Prenada Media, 2018), cet. 4, 237.

It means that humans as creatures of God must believe in God who created them, then take care and organize their lives. Religion or religiosity is a vital thing for human life, therefore it must be guarded and preserved. Maintaining religion in the poverty level, that is maintaining and implementing religious obligations that are included in the primary level, such as performing the five daily prayers.<sup>9</sup>

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

One of the levels of importance in the disaster stage related to the preservation of the soul is to meet the basic needs in the form of food to sustain life. If these basic needs are neglected, then the existence of the human soul will be threatened.<sup>10</sup>

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

Preserving common sense in times of need, such as prohibiting drinking alcohol. If this is not heeded, then it will result in the destruction of the mind.<sup>11</sup>

d. Preservation of lineage (Hifz al-Nasl)

Protecting descendants in the poverty level, as prescribed by marriage and the prohibition of adultery. If this is ignored, then the existence of the offspring will be threatened.<sup>12</sup>

e. Preservation of wealth (Hifz al-Mal).

Maintaining property at a level of necessity, such as the Shariah stipulating the procedures for property ownership and the prohibition of taking other people's property in an illegal manner. If these rules are ignored, it will threaten the order and integrity of property.<sup>13</sup>

If you look carefully at the five aspects of the shari'ah maqosid above, then it is clear that the concept of successor heirs and obligatory wills can be justified if they bring benefit and justice. This is certainly in line with the purpose of Islamic law, which is to realize the welfare of human life by bringing benefits and avoiding harm. The benefit is to ensure that certain parties do not lose their rights in the division of inheritance. Substitute heirs protect the direct descendants of the heirs, whereas a will is obligatory to give rights to parties that are considered important, even if they do not directly meet the requirements as heirs of the deceased heir.

Therefore, based on the application of the concept of maqosid syar'iah, it can be said that the existence of arrangements regarding the provision of successor heirs and obligatory wills for the heirs' grandchildren 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 division of Islamic inheritance, which has always had a certain part that is considered unprofitable and tends to discredit the grandchildren

---

<sup>9</sup>Syarifuddin, Ushul Fiqh... 233.

<sup>10</sup>Kutbuddin Aibak, Islamic Law Reform Methodology, (Yogyakarta: Pustaka Pelajar, 2016), Cet. 1, 61-62.

<sup>11</sup>Sapiudin Shidiq, Ushul Fiqih First Edition, (Jakarta: Kencana, 2011), Cet. 3, 228-229.

<sup>12</sup> Aibak, "Renewal Methodology,"63

<sup>13</sup>Sapiudin Shidiq, "Ushul Fiqh", 230

or other descendants. In short, the approach of the maqosid shari'ah perspective in reviewing the provisions on successor heirs and obligatory wills is quite relevant, even very relevant, because although the problem, especially the position of successor heirs, is not explicitly explained in the Qur'an and al-Sunnah, it is still in accordance with the purpose of Islamic law, namely the realization of benefits. If there is no clear legal provision regarding the position of the successor heirs, then it is possible that corruption will arise. Such as conflicts between heirs, the injustice in the practice of dividing inheritance, and the position of grandchildren in addition to being orphans who need love from their families and relatives also need property for their survival.

In relation to the provisions of obligatory wills in Indonesia which are listed in KHI about adopted children as recipients of obligatory wills is to take care of the descendants legally determined by the court regarding the adoption of children and be responsible for a life worthy of adopted children, then the benefits that arise with the provisions of obligatory wills where the adopted child will be spared from miserable conditions after the death of the adoptive parents, and with the existence of obligatory wills can preserve property so that it can be used according to its place and responsibility so that the parents do not bear the sin of abandoning the adopted child which he had promised to take care of.

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 good times and bad. So with a compulsory will, these adopted children will later live as worthy as their adopted father or mother'. In this way, the justice to protect the family will be well achieved.

## **2. Implementation of the Concept of Surrogate Heirs and Mandatory Wills in Indonesia and Egypt**

### **a. Surrogate Heirs in Indonesia**

The concept of successor heirs and obligatory wills in Indonesia and Egypt are two different legal approaches but have the same purpose, which is to protect certain parties who do not directly inherit according to traditional Islamic law. In both countries, Indonesia and Egypt, its application is based on social conditions and growing legal needs, although there are fundamental differences in its implementation.

When viewed from its history, obligatory wills originally came from Egypt which were later adopted in Indonesia, so that in its development in Indonesia the terms successor heirs and obligatory wills were known. However, in Egypt itself there is no term successor Heir.

In Indonesia, successor heirs are regulated in the Compilation of Islamic Law (KHI) Article 185. This provision allows grandchildren of heirs to replace their parents who have died before, and this applies to both male and female descendants.

With the provisions in the KHI above, it will certainly provide legal implications such as:

- 1) Ensuring the continuity of grandchildren's rights: Successive heirs aim to protect the rights of grandchildren of heirs whose parents died first. In Islamic inheritance, without the provision of successor heirs, grandchildren will not get a share if their parents die first.
- 2) Protection of justice: This concept guarantees that the children of the heir who died first still get a share, thus preventing injustice in the distribution of inheritance.
- 3) A clear division procedure: Surrogate heirs receive the same share as their parents should have received. This creates a clear standard in the inheritance system, maintains social stability, and prevents inheritance disputes that may arise if the rights of grandchildren are neglected.
- 4) Formal confession in court: This provision provides a strong legal basis for grandchildren to submit claims for inherited property in religious courts, thereby strengthening their position in the Indonesian legal system.

Still about the concept of successor heirs, there are also differences of opinion among scholars. In the case of inheritance where the existence of a grandson is together with a son, there is no stipulation of his share strictly regulated in the Qur'an and the Prophet's Sunnah. If examined from the available references, then there is a difference in an interpretation to determine the grandson's share, which is the interpretation of the Qur'an Surat an-Nisa Verse 33.

Differences in interpretation of the verse also occur among scholars, where the difference in interpretation causes differences in views and thoughts about grandchildren's inheritance.

Quoted from verse 33 of An-Nisa which reads;

وَلِكُلِّ جَعْلٍ مَوَالِيٍّ مِمَّا تَرَكَ الْوَالِدُونَ وَالْأَقْرَبُونَ وَالَّذِينَ عَدَدُتْ أَيْمَانُكُمْ فَأَنُؤْهُمْ  
نَصِيبُهُمْ لَمَّا كَانَ عَلَى كُلِّ شَيْءٍ شَهِيدًا

The difference lies in the interpretation of the word "wa likullin" and the word "mawaliya". Experts like Dr. Sayid Qutub, Sheikh Ahmad Mustafa al-Maraghi, Prof. Dr. Quraish Syihab, that the word "wa likullin" means "for every inheritance", while the word "mawaliya" means "heir or person who inherits".<sup>14</sup>

Meanwhile, according to Ibnu Abbas (a friend of the Prophet, peace be upon him), the word "wa likullin" means "for every heir" (which is mentioned in

---

<sup>14</sup>Quraish Syihab, 2007, Tafsir Al-Misbah, Publisher: Lentera Hati, Jakarta, 421

the previous verse). While the word "mawaaliya" means "the person who replaces the heir/substitute heir"<sup>15</sup>, The difference can be seen in the table below;

Table1. Differences in Perception of Sunni Scholars and Ibn Abbas

	<b>Sunni Scholars</b>	<b>Ibn Abbas</b>
<i>Wa likullin</i>	Inherited property	The heirs
<i>Mawaaliya</i>	The heirs	Substitute heir

So, according to the books of interpretation, the above verse is interpreted;

*"For every property left by parents and close relatives, We (Allah) make its heirs..."*

According to the translation of Ibnu Abbas, the meaning of the verse;

*"For every heir (as mentioned in the previous verses) We have appointed a successor/replacement..."*.

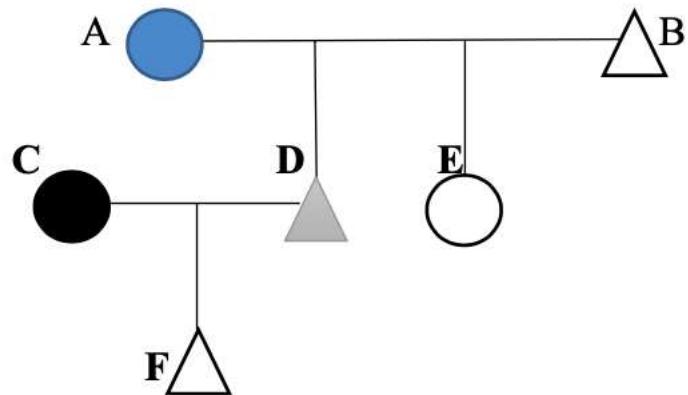
According to Hazairin's opinion, the concept of successor heirs does have references from the Qur'an and hadith. By using a grammatical approach that is different from the early jurists and commentators, he states that the meaning of "mawali" has the meaning of a successor heir. The concept of successor heirs in Hazairin's view, is not just a mismatch with the socio-historical basis but because of a misinterpretation.<sup>16</sup>

In its application, a successor heir is a descendant of an heir who died before the heir (the person who left the inheritance) died. An example of its application is when a child of the heir dies before the heir, then the child of the deceased person (grandchild of the heir) can become a successor heir. They get a share of the inheritance that should have been received by their parents.

Further, the following is a description of the successor heir and the possible rights he can receive through the case example as follows;

<sup>15</sup>Ibn Abbas, *Tafsir Tanwirul Miqbas*", Publisher: Daar al-Fikr, Beirut. 1112

<sup>16</sup>Hazairin, *Bilateral Inheritance According to the Qur'an and Hadith*, (Jakarta: Tintamas, 1976), 87



Description:

- A = Heir
- B = Husband, gets  $\frac{1}{4}$
- C = Son-in-law
- D = Deceased daughter
- E = Son ('asabah bi al-nafs, becomes 'asabah bi al-gair with D replaced by F)
- F = Male Granddaughter (dzawi al-arham)

This means that the successor heir receives the inheritance in accordance with the share that should be received by the replaced heir. In this case, there is no different amount limit with other surviving heirs.

#### b. Mandatory Wills in Indonesia

A will is obligatory in Indonesia itself is regulated in Article 209 Compilation of Islamic Law (KHI). This legal provision adapts to the social context in Indonesia which includes the protection of the rights of adopted children and adoptive parents. From this article, emphasis is placed on giving part of the inheritance to adopted children or adoptive parents through the obligatory will mechanism, even though according to traditional Islamic law they are not included in the heirs.

With the existence of the article, it certainly brings legal implications in terms of;

- 1) Legal solutions for adopted children and adoptive parents: Wills must provide legal solutions 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 it is limited to a maximum of one third of the total inheritance property.
- 2) Reducing inheritance disputes: With the arrangement of obligatory wills, the possibility of inheritance disputes involving adopted children or adoptive parents can be reduced, because there is a clear legal path to ensure that they get a certain share.
- 3) Judge's decision: If there is a dispute regarding the implementation of a mandatory will, the religious court has the authority to decide the

matter 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 obligatory wills is not found in the classic book of fiqh. Obligatory wills are a form of tajdid (renewal) of the law surrounding faraidh knowledge. Therefore, obligatory wills are often mentioned as one of the topics of contemporary jurisprudence, considering that its appearance was recently discovered in contemporary jurisprudence.

While according to the term, obligatory will is interpreted as an action or legal decision from a judge, government or official in authority regarding the property of a person who has died to be given to a certain person, with a certain amount with considerations based on the values of Islamic Shari'a.<sup>17</sup>

In the application of Islamic law in Indonesia, as stated in KHI, obligatory wills are interpreted as follows<sup>18</sup>:

- 1) The inheritance of an adopted child is divided based on Article 176 to Article 193 mentioned above, while adoptive parents who do not receive a will are given a compulsory will as much as 1/3 of the property of their adopted child's will.
- 2) For adopted children who do not receive a will, a mandatory will is given of a maximum of 1/3 of the property inherited by their adoptive parents.

When viewed from the history, the concept of obligatory wills is part of acculturation first popularized by the Parliament of the Arab Republic of Egypt which established the Qanun Washiyyah (Egyptian Law Of Bequest) or Egyptian Wills Law Year 1946 Article Number 71<sup>19</sup>. In the qanun it is explained that a will can be made by a court decision without the will of the heir.

In this law, the obligatory will is formulated with the aim of bringing a sense of justice to the grandson who has lost his parents before the death of the heir and he is veiled by the presence of another child of the heir. Because the grandson is not allowed to receive the inheritance, he is given an obligatory will from the heir's property through a court decision based on the qanun of wills.

In its application, obligatory wills in Indonesia are given to adopted children and adoptive parents, who in traditional Islamic law are not considered heirs. This is a legal effort to ensure 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 legal heirs.

---

<sup>17</sup>Idha Aprilyana Sembiring Yefrizawati, —Implementation of Mandatory Wills in Religious Court Judges' Decisions (Studies in Medan Religious Court and Binjai Religious Court) Implementation,|| Journal Mercatoria 1, no. 1 (2017): 79–98, <http://ojs.uma.ac.id/index.php/mercatoria/article/view/731/643>

<sup>18</sup>Supreme Court of RI, Collection of Laws and Regulations Related to the Compilation of Islamic Law and Understanding in its Discussion. 36

<sup>19</sup>Naily Fadhilah, —Islamic Inheritance Law Reform: Egypt's Obligatory Wills And Its Relevance With Indonesia's Concept Of Surrogate Heirs,|| Al-Mawarid 3, no. 1 (2021): 51–62.

If the heir does not make a will for the adopted child or adoptive parents, then the law provides a mandatory will for them to get a share. The portion received through a compulsory will by an adopted child or adoptive parent is a maximum of one-third of the inherited property, in accordance with the limitations in Islamic law. However, if all the heirs agree, the amount of this portion can be increased.

In the context of the property transfer method, compulsory 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 or not there are heirs in an inheritance case.

From the point of view of the recipient of 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, 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. 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 Supreme Court of Indonesia Number 368.K/AG/1995, Number 51.K/AG/1999 and Number 16.K/AG/2010. As for the size of the obligatory will, 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 obligatory will in Egypt is a maximum of one third as is the case with obligatory wills in Indonesia, while the size of the replacement heir's acceptance is equal to the share of the replaced parent but cannot exceed the relative's share of the parent.

### **c. Mandatory Wills 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.

Compulsory wills in Egypt are a reform in Islamic family law in the field of inheritance, which is legalized 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 pass on the inheritance to his child (grandchild) as much as the share he should have received, then it is obligatory for the heir to make a mandatory will for the grandson who was left by his parents to receive a share of no more than one-third of the total inheritance on the condition that there are indeed no other heirs, and has never given property in other ways as much as his share. If it has been given but less than the share he should have received, then the deficiency is considered a mandatory will as much as the share he should have been entitled to receive. This will becomes the right of the descendants of the first degree of sons and daughters and subsequent descendants according to the line of origin of the first child not from others. Each degree veils its own descendants but cannot veil descendants from others. Each degree divides the will as if the mandatory will was an inheritance from their parents"<sup>20</sup>. This article contains several provisions, among others:<sup>21</sup>

First, a mandatory will is automatically given to the descendants of the deceased 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 the orphaned grandchild through a compulsory will equals the share of his parents but does not exceed one third of the inheritance.

ThirdThe condition for an orphan's grandchild to obtain a mandatory will is that they are not included as heirs and do not obtain property through means such as a hibah.

Fourth, if an orphaned grandchild obtains property through other means but is less than the compulsory will, then the deficiency must be added.

Fifth, the people who are entitled to receive a mandatory will are descendants from sons onwards and descendants from daughters of the first degree.

Sixth, in the obligatory will, there is the concept of hijab as in inheritance but it only applies to one's own descendants.

Based on the description above, then in Egypt, grandchildren of heirs whose parents have died (child heirs) do not receive direct inheritance based on traditional Islamic inheritance law. Therefore, as an alternative, obligatory wills are used to give them rights. So, obligatory wills in Egypt only apply to give a share of property to the grandchildren of the heirs whose parents have died

---

<sup>20</sup>Nugroho, IT The Development of Muslim Family Law in Egypt (Study of Mandatory Wills in Egypt). *Familia: Family Law Journal*, 1(1) 2020, p.3

<sup>21</sup>Sholeh, MGI Obligatory Wills and Substitute Heirs in Muslim Countries: Alilm, 4(2) 2022, p.57

before the heirs (eg grandparents). This concept is similar to successor heirs, but is limited by the provisions of compulsory wills.

In the event that the heir does not make a clear will for his grandchildren, the law will automatically grant inheritance rights to the grandchildren through a compulsory will. The purpose itself is very clear, namely the obligatory will in Egypt aims to provide legal protection to grandchildren who lose their inheritance rights because their parents (children of heirs) have died first.

This obligatory will gives the grandchildren the right to receive an inheritance with a certain amount regulated by law, even if they are not direct heirs. The maximum limit accepted by the grandson as a compulsory will is one third of the inherited property. If the heir's will explicitly gives more than a third, then this will be followed, but if not, the grandson is only entitled to a third of the heir's property.

Based on the description above, it can be illustrated how the general comparison is related to successor heirs and obligatory wills in Indonesia and Egypt as shown in the following table;

Table 2. Differences in the Concept of Heirs in Indonesia and Egypt

Aspect	Indonesia	Egypt
Substitute Heir	Applied for grandchildren of heirs whose parents (heirs) died first	Not applied directly (replaced with the concept of compulsory will)
Obligatory Will	For adoptive children and adoptive parents	For grandchildren whose parents have died before
Will Limitations	A maximum of one third of the heir's property	A maximum of one third of the heir's property
Legal Policy	Compilation of Islamic Law (KHI)	Law No. 71 of 1946

## D. CONCLUSION

The perspective of maqosid shari'ah about successor heirs and obligatory wills in the Compilation of Islamic Law, based on the theory of the purpose of law for benefit (maqosid sharia'ah), it can be said that successor heirs and obligatory wills can be recognized in Islamic law. This is because as a whole, 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 division of inheritance.

Substitute heirs protect the direct descendants of the heirs, while a will must give rights to parties that are considered important, even if they do not directly meet the requirements as heirs.

The case of the division of certain heirs in Indonesia and Egypt has a different term where in Indonesia it is known as the successor heir, meaning that if an heir dies before the heir, his position can be replaced by his son (grandchild of the heir). Obligatory wills in Indonesia are reserved for adopted children and adoptive parents, even including non-Muslim relatives, while in Egypt obligatory wills are for grandchildren whose parents have died before the heirs (grandparents) and the maximum limit of the will given to the grandchild is one third of the inheritance. If the heir gives a will that benefits the grandchildren more than one third, this is allowed.

In dealing with and overcoming the problems of inheritance in general, especially related to the problem of inheritance of successor heirs and obligatory wills in particular, the Islamic Law Compilation should be used as a guide to solving problems that stand as positive law in Indonesia. This is where the active role of the students of UIN Mataram's Postgraduate HKI Doctoral Program in the class of 2024 is expected to socialize KHI and make KHI the community. Hopefully!

## REFERENCES

Aibak, Kutbuddin. "Metodologi Pembaruan Hukum Islam, 63. Yogyakarta: Pustaka Pelajar, 2016

Al- Bukhari, Abu Abdillah. "Sahih al-Bukhari, 189. Beirut: Dar al-Fikr, 1990.

Arikunto, Suharsimi. "Prosedur Penelitian Suatu Pendekatan Praktek, 158. Jakarta: PT Rineka Cipta, 2016.

Hazairin, "Kewarisan Bilateral Menurut Alquran dan Hadits, 2. Jakarta: Tintamas, 1976.

Ibnu Abbas, *Tafsir Tanwirul Miqbas*", Penerbit: Daar al-Fikr, Beirut. 1112

Idha Aprilyana Sembiring Yefrizawati, —Penerapan Wasiat Wajibah Dalam Putusan Hakim Pengadilan Agama (Studi Di Pengadilan Agama Medan Dan Pengadilan Agama Binjai) Implementation,|| Jurnal Mercatoria 1, no. 1 (2017): 79–98, <http://ojs.uma.ac.id/index.php/mercatoria/article/view/731/643>

Mahkamah Agung RI, Himpunan Peraturan Perundang-Undangan Yang Berkaitan Dengan Kompilasi Hukum Islam Serta Pengertian Dalam Pembahasannya.

Muhammad bin Isma'il al-Bukhari, Shahih al-Bukhari, (Beirut: Dar al-Fikr, 2006), 1886

Naily Fadhilah, —Pembaruan Hukum Waris Islam : Wasiat Wajibah Mesir Dan Relevansinya Dengan Konsep Waris Waris Pengganti Indonesia,|| Al-Mawarid 3, no. 1 (2021)

Nasih, Ahmad Munjin. "Pergeseran Pola Maqashid al-Shari'ah dari Tradisional Menuju Modern: Membaca Pemikiran Jasser Auda", *Jurnal Ijtihad*, vol. 11, (Juni: 2011)

Nugroho, I. T. Perkembangan Perundang-Undangan Hukum Keluarga Muslim Di Mesir ( Studi Wasiat Wajibah Di Mesir). *Familia: Jurnal Hukum Keluarga*, 1(1) 2020,

Rendra Khaldun, Hermeneutika Khaled Abou El Fadl: Sebuah Upaya Untuk Menemukan Makna Petunjuk Kehendak Tuhan Dalam Teks Agama, *Jurnal Edu-Islamika*, Vol. 3 No.1 Tahun 2012.

Satria Effendi M. Zein, *Ushul Fiqih*, (Jakarta:Prenada Media, 2018), cet. 1.

Shidiq, Sapiudin Shidiq.”*Ushul Fiqih*, 229. Jakarta: Kencana, 2011.

Sholeh, M. G. I. Wasiat Wajibah Dan Ahli Waris Pengganti Di Negara-Negara Muslim: *Alilm*, 4(2) 2022,

Syariffudin, Amir.”*Ushul Fiqih* Jilid, 231.Jakarta: Kencana-Prenadamedia Group, 2008.

Syatibi, Al.”*Al-Muwafaqat Fi Ushul al-Syari’ah*,2.Berut: Dar al-Fikr, 1922.

Syihab, Qurais. “*Tafsir Al-Misbah*, 421. Jakarta: Lentera Hati, .