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International Journal of Research Publication and Reviews

Journal homepage: www.ijrpr.com ISSN 2582-7421

The Legal Reasoning of the Compilation of Islamic Law in Indonesia on Mandatory Bequests (A Study of the Dialectics of Islamic Law and Socio-Cultural Context)

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ABSTRACT

Wasiat wājibah regulated by the Compilation of Islamic Law (KHI) in Indonesia is a unique legal finding in Islamic jurisprudence. Although the motivation for its formulation is based on the principle of goodness, its legal wording is entirely different from conventional Islamic jurisprudence views. In fact, this formulation is akin to the thoughts of scholars considered weak. Such a legal position raises questions about the reasoning employed in Islamic jurisprudence. This study focuses on three main research questions: How is the socio-cultural consideration reflected in the KHI regulations on mandatory bequests in Indonesia? How do ijtihad and taklid intersect in the KHI regulations on mandatory bequests? And what is the legal strength of mandatory bequests in the KHI from the perspective of Islamic jurisprudence? This qualitative research employs a library-based approach using historical and sociological perspectives of Islamic law. Practically, this research examines the regulations on mandatory bequests in the KHI in relation to the formulations of Islamic legal schools. Analysis through the Miles and Huberman model aims to produce a description of the nature and methods of the reform of Islamic law regarding mandatory bequests in Indonesia. The findings indicate that there are five socio-cultural contexts within Indonesian society related to the regulations on mandatory bequests in the KHI. All of these lead to the conclusion that, within the socio-cultural context of Indonesian society, adopted children have a very close relationship with their adoptive families, especially regarding the receipt of inheritance after the death of the adoptive parents. This context is one of the two foundational elements for the regulation of mandatory bequests; the other is the jurisprudence derived from the religious texts. Both the formation of the regulation on mandatory bequests and the jurisprudence are based on a reasoning founded on maslahat (public interest). This indicates the dominance of ijtihad in its formulation process, particularly of the extra-doctrinal type. Such reasoning results in the law of mandatory bequests in the KHI being weak when approached with a qauli analytical pattern, gaining strength when approached with an ilhaqi pattern, and becoming robust when approached with a manhaji pattern. Nonetheless, qauli analysis can still be conducted to generate recommendations for improving the strength of the law.

Keywords**:** Mandatory bequest, Compilation of Islamic Law, socio-cultural context, ijtihad, taklid, Islamic jurisprudence.

INTRODUCTION

In Islamic legal literature, it is explained that the opinions of scholars on an issue fall into two categories: *aqwāl rājiḥah* (strong opinion) and *aqwāl marjūḥah* (weak opinion).[1] *Aqwāl rājiḥah* refers to the opinion that is supported by stronger arguments, both in terms of evidence and consistency in practice. This opinion is usually recognised and accepted by the majority of scholars and is often used as a reference in making legal decisions. In contrast, *aqwāl marjūḥah* is an opinion that is considered less strong or has weaker evidential support. This opinion is often not adopted in daily legal practice and may only be taken by a handful of scholars or in certain contexts.[2]

Wājibah will, which is regulated in the Compilation of Islamic Law (KHI) in Indonesia, is one of the unique and interesting fiqh legal findings to be studied. Although formulated with the principle of beneficence, this law is different from the conventional Islamic fiqh view generally adopted by the Muslim community.[3] The formulation of this law tends to adopt the thoughts of scholars who are considered weak,[4] thus raising questions about the fiqh reasoning underlying its formulation.

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[1] Abd al-Karīm Al-Khuḍayr, *Sharh Bulūgh Al-Marām*, 2, n.d.., 24.

[2] 'Uthmān ibn Muḥammad Shaṭa Al-Dimyāṭī, *I'ānah al-Ṭālibīn*, vol. 1, n.d., 19; Muhammad *ibn* Sulaymān Al-Kurdī, *Al-Fawā'id al-Madaniyyah*, n.d.., 233; Alwī ibn Aḥmad Al-Saqqāf, *Majmū'ah Sab'ah Kutub Mufīdah*, n.d.., 61; Aḥmad Jābir Jubrān, *Al-Nafaḥat al-Makkiyyah*, n.d.., 12.

[3] Sri Hidayati, "The Provisions of Wills in Various Contemporary Muslim Countries," *AHKAM : Journal of Sharia Science* 12, no. 1 (February 1, 2012): 82, accessed March 13, 2025, https://journal.uinjkt.ac.id/index.php/ahkam/article/view/982.

[4] Ade Kurniawan Akbar, "REGULATION OF WIZARDAT *WAJIBAH* AGAINST FAMILY CHILDREN UNDER ISLAMIC LAW," *AL IMARAH : JOURNAL OF ISLAMIC GOVERNANCE AND POLITICS* 4, no. 1 (June 15, 2019): 8.

In the context of Indonesian society, which has socio-cultural diversity, *wājibah* is presented to answer legal needs that are not fully accommodated by the prevailing inheritance law.[5] KHI places adopted children and adoptive parents in an equal position in terms of inheritance, which was previously not recognised in classical fiqh. This shows a paradigm shift in Islamic legal thinking in Indonesia, which seeks to integrate local values with the principles of sharia.[6]

This research aims to examine three main aspects related to the will in KHI: (1) the socio-cultural considerations behind the formulation of this law, (2) the interaction between ijtihad and taklid in the context of the will, and (3) the legal force of the will in the fiqh perspective. By using a qualitative approach and historical and sociological analyses, this research is expected to provide a deeper insight into the dynamics of Islamic law in Indonesia as well as the role of wills and testaments in a broader social context.

Several studies on wājibah wills in the Compilation of Islamic Law in Indonesia have been conducted by various researchers. However, these studies do not explore the fiqh reasoning contained in the legal formulation. Nevertheless, it is important to present relevant previous research as a reference and further research that shows the interest of this discussion, especially those that focus on the will of *wājibah* in the KHI.

The first research was conducted by Yasir Fauzi Mohammad in his dissertation entitled "*Wājibah* for Non-Muslims in the Perspective of Islamic Law and Positive Law and its Contribution to Family Law in Indonesia". In this research, Yasir wants to reconstruct the will of *wājibah* which is something that is not in accordance with the Shari'ah and the perspective of the law, but the Supreme Court's decision allows non-Muslim heirs to receive property through the will of *wājibah*.[7]

Related to the discussion of wills, Sidik Tono also researched in his dissertation entitled "Wasiat *Wājibah* as an Alternative to Accommodate the Share of Non-Muslim Heirs in Indonesia". This research confirms that Islamic law as conceptualised in KHI has stipulated that non-Muslim heirs cannot be called heirs, but can receive property through wills. The existence of the Supreme Court's decision on the will of *wājibah* for non-Muslim heirs is an alternative to giving part of the inheritance to non-Muslims. This then encourages researchers to suggest that the verdict be made into a law to be effective[8]

Research on wills was also conducted by Laras Shesa with the title "Guaranteeing the Position of *Dzaul Arḥām* in Islamic Inheritance through Wasiat Wājibah". This research discusses how to ensure that families classified as *dzaul arḥām* are taken into account as a group that still gets inheritance or inheritance property. Through a literature study, the researcher offers wills as a solution so that dzaul arham can be taken into account as such. A practical way of distributing it is offered as suggested by Hasbi As-Shiddiqi.[9]

Through a better understanding of *wājibah* wills, it is hoped that this research can be a significant contribution to the development of knowledge in the field of Islamic law, as well as provide input for making legal decisions that are more just and in accordance with the needs of society.

METHODS

This research methodology uses a qualitative approach with a literature study to examine and analyse the rules of wājibah wills in the Compilation of Islamic Law (KHI) and its relevance to the socio-cultural context of Indonesian society. Data collection was conducted through a literature review of legal texts, fiqh books, scientific articles, and official documents, as well as interviews with religious leaders and legal experts to gain a broader perspective. Historical and sociological analyses were applied to understand the interaction between local norms and sharia principles, while data were analysed using the Miles and Huberman model to produce in-depth descriptions. The results of the analyses are critically discussed to assess the legal force of wājibah wills in KHI as well as its interaction with ijtihad and taklid, with conclusions drawn based on the findings from the literature review and interviews, so that it is hoped that this research can provide a deeper insight into the dynamics of Islamic law in Indonesia.

RESEARCH AND DISCUSSION

Socio-cultural Considerations of Indonesian Society in the Compilation of Islamic Law on *Wājibah Wills*

The Ministry of Religious Affairs stated that the preparation of the Compilation of Islamic Law was conducted through four stages: preparation, data collection, drafting, and refinement. The data collection stage was divided into four tracks: the book track, the ulama track, the jurisprudence track, and the comparative study track.[10] In the series of stages along with the details of the path, there is a process that considers the socio-cultural context of Indonesian society in formulating KHI.

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[5] Erniwati Erniwati, "WASIAT WAJIBAH IN THE PERSPECTIVE OF ISLAMIC LAW IN INDONESIA AND COMPARATION IN MUSLIM COUNTRIES," *Mizani Scientific Journal: Legal, Economic and Religious Discourse* 5, no. 1 (December) 30, 2018): 70–73.

[6] Destri Budi Nugraheni, Haniah Ilhami, and Yulkarnain Harahab, "Regulation and Implementation of Compulsory Wills in Indonesia," *OLD WEBSITE OF JOURNAL MIMBAR HUKUM* 22, no. 2 (2010): 312.

[7] Yasir Fauzi Mohammad, "wasiat wajibah for non muslims in the perspective of islamic law and positive law and its contribution to family law in indonesia" (PhD, UIN Raden Intan Lampung, 2021), accessed March 13, 2025, https://repository.radenintan.ac.id/13497/.

[8] 02932006 Sidik Ton0, "WASIAT WAJIBAH SEBAGAI ALTERNATIVE ACCOMMODATING THE PART OF NONMUSLIM HEIRS IN INDONESIA" (October 23, 2013), accessed March 13, 2025, https://dspace.uii.ac.id/handle/123456789/9416.

[9] Laras Shesa, "Guaranteeing the Position of Dzaul Arham in Islamic Inheritance through Compulsory Wasiat," *Al-Istinbath: Journal of Islamic Law* 3, no. 2 December (December 29, 2018): 145–166.

[10] "the collection of legislation related to the compilation of islamic law with definitions in their discussion,", 23, accessed March 15, 2025, https://perpustakaan.mahkamahagung.go.id/read/ebook/23.

Since the preparatory stage, efforts to formulate Islamic law in accordance with the socio-culture of the community have influenced the plans implemented in the later stages. In the data collection stage, there are four paths that explain this effort in detail.

First, the book route. The kitab pathway in data collection for the Compilation of Islamic Law involved the collection of fiqh books that guided judges in the Religious Courts. Initially, 13 books were consulted,[11] mainly from the Shafi'i Mazhab, which was later increased to 38 books.[12] The study was conducted by seven State Islamic Institutes in Indonesia. [13]Although the predominance of books came from outside Indonesia, relevance to the context of Indonesian society was also considered through the fatwas of Islamic organisations such as the Indonesian Ulema Council and Nahdlatul Ulama. The formulation process of wasiat *wājibah* in KHI considers socio-culture and local fatwa results, although the books referred to do not always have the same rules as wasiat *wājibah*.[14]

Second, the ulama track. The ulama track in collecting data for the Compilation of Islamic Law involved interviews with 166 religious leaders in 10 Indonesian cities.[15] The selection of respondents was done by considering the representation of Islamic organisations and influential figures outside the organisations.[16] Questions were systematically structured to explore legal practice and the development of community values.[17] The interviews were organised as discussion forums to encourage openness and mutual respect for differences of opinion.[18] This path serves to ensure that the law formulated in KHI is relevant to community practice and the times.[19] In the context of wasiat wājibah, the ulama track strengthens the relevance of the law by using the perspectives of Indonesian scholars, making it more in line with the socio-cultural conditions of the community.

Third, the jurisprudence route. The jurisprudential route to data collection for the Compilation of Islamic Law involved a review of Religious Court judgements conducted by the Directorate of Development of Islamic Religious Courts. Data was collected from 16 decision books, including judgements, fatwas and law reports.[20] This process aimed to review and select jurisprudence relevant to the conditions of Indonesian society. This path recognises the judges' judgement on the problems faced by society, ensuring that only jurisprudence that is appropriate to the socio-cultural context is used as a source in the drafting of the KHI, including in the case of *wājibah* wills.[21]

Fourth, the comparative study route. The comparative study route in collecting data for the Compilation of Islamic Law involved visits to three countries in 1986: Morocco, Turkey and Egypt.[22] These visits were undertaken by H. Masrani Basran and H. Muchtar Zakrasyi to study judicial systems, Islamic legal legislation, and legal sources related to family law.[23] While the previous three tracks focused on the locality of Indonesian society, this track reached out to non-local data as an alternative reference.[24] The findings from these countries provide insights for drafting laws that are more appropriate to the context of Indonesian society, as well as strengthening the legitimacy of sorting out Islamic law to be incorporated into the national legal system.[25] With this comparison, it is hoped that the Islamic law implemented can reflect the diversity and suitability to the needs of local communities.[26]

The four paths described are the second stage of the compilation of the Compilation of Islamic Law, namely the data collection stage. After that, there are two more stages, namely the drafting stage and the refinement stage. In the drafting stage, activities tend to be carried out by the team in the form of data processing and drafting the Compilation of Islamic Law. The draft is then continued to the last stage, which is refinement. Although the term gives the impression that this last stage was held to give the final touches to make the draft perfect, in practice it was done through a fairly rigorous forum. That forum is the National Workshop.

Before describing the details of the workshop as a stage of improvement of the Compilation of Islamic Law, it should be noted that in addition to the official team drafting the Compilation of Islamic Law, Islamic organisations also conducted studies on the materials planned in the Compilation of Islamic Law. There were at least two Islamic organisations that did so. The first is Muhammadiyah through its Tarjih Council and the second is Nahdlatul Ulama through its Shura in East Java (bahtsul masail). For Muhammadiyah, the Seminar on the Compilation of Islamic Law was held in Yogyakarta in April, on the eighth and ninth of 1986. The exact location was the University of Muhammadiyah Yogyakarta. The seminar discussed various laws concerning marriage, pregnant women due to adultery, li'an issues, syiqaq, reconciliation, ta'liq talak, inheritance distribution, gono-gini property, and the sale of

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[11] Hikmatullah Hikmatullah, "An Overview of the History of the Compilation of Islamic Law in Indonesia," *Adjudication: Journal of Legal Science* 1, no. 2 (2017): 210, accessed March 15, 2025, https://e-jurnal.lppmunsera.org/index.php/ajudikasi/article/view/496.
[12] Yahya Harahap, "The Purpose of the Compilation of Islamic Law," in *Islamic Studies on Various Contemporary Issues* (Jakarta: Hikmah Syahid Indah, 1988), 93.
[13] Hikmatullah, "Overview of the History of the Compilation of Islamic Law in Indonesia," 211.
[14] Harahap, "The Purpose of the Compilation of Islamic Law," 94.
[15] "a set of laws and regulations relating to the compilation of islamic law with definitions in its discussion," 24.
[16] Busthanul Arifin, "Fiqh in the Language of Law," in *Pesantren: Periodical of Studies and Development Number 2 Vol II* (Jakarta: Association for the Development of Pesantren and Society, 1985), 29.
[17] Harahap, "The Purpose of the Compilation of Islamic Law," 92.
[18] Hasan Basri, "The Need for Compilation of Islamic Law," in *Mimbar Ulama*, 10 104, 1986, 61.
[19] Harahap, "The Purpose of the Compilation of Islamic Law," 93.
[20] Directorate General of Islamic Judicial Development, *History of the Compilation of Islamic Law in Indonesia* (Jakarta: Ministry of Religious Affairs, 1991), 28-29.
[21] Team of Authors of the Supreme Court of the Republic of Indonesia, *Set of Legislation Relating to the Compilation of Islamic Law with the Understanding in its Discussion* (Jakarta: Supreme Court of the Republic of Indonesia, 2011).
[22] *Set of Laws and Regulations Relating to the Compilation of Islamic Law with the Understanding in its Discussion*, 29.
[23] *Set of Laws and Regulations Relating to the Compilation of Islamic Law with the Understanding in its Discussion*, 30.
[24] *History of the Compilation of Islamic Law in Indonesia*, 152–154.
[25] Amir Syarifuddin, *Renewal of Thought in Islamic Law* (Padang: Angkasa Raya, 1990), 138-139.
[26] *History of the Compilation of Islamic Law in Indonesia*, 155.

waqf property. Many of these rulings were later found in the Compilation of Islamic Law. The NU organised bahtsul masail three times, in Jombang, Lumajang and Sidoarjo respectively.

The contribution of unofficial parties to the drafting of the Compilation of Islamic Law in Indonesia was significant, especially during the National Workshop held in Jakarta from 2-6 February 1988. The event involved 124 participants from various regions, including the Chairman of the Indonesian Ulema Council, the Chairman of the Religious High Court, rectors and deans of State Islamic Institutes, and representatives of Islamic organisations. Participants were divided into three commissions that discussed the laws of marriage, inheritance, and perwakafan, focusing on fiqh issues that are often debated, such as the rights of children in inheritance.

The description of the formulation process of the wājibah rule shows attention to the socio-cultural context of Indonesian society, especially in the legitimisation of giving property from adoptive parents to adopted children. The tradition of child adoption in Indonesia, especially in the patrilineal family system, makes adopted children have an important position and are entitled to the property of the adoptive parents. This can be seen in the Batak, Balinese and Lampung communities, where inheritance is often given to adopted children.

In general, the tradition of child adoption in various regions of Indonesia has legal implications in terms of inheritance, where adopted children can be considered as heirs equal to biological children, especially if the appointment is made clearly and in cash. This is in contrast to adoptions that do not meet these requirements, where adopted children are still recognised as biological children only in the context of care.

Although the Dutch East Indies government regulations recognised the nasab relationship between adopted children and adoptive parents, this had an effect on the socio-culture of the community, so that adopted children had rights to the property of adoptive parents.[27] The drafting process of the wājibah will in the Compilation of Islamic Law reflects the recognition of the rights of adopted children in terms of inheritance, even though they are not officially heirs.[28]

Up to this point, it can be concluded that the socio-cultural considerations in the rules of the Compilation of Islamic Law in Indonesia related to the will of wājibah historically follow the historical side of the formulation process of the Compilation of Islamic Law in general. The specific socio-cultural considerations related to the will and testament rule are: *First*, that people who use patrilineal and matrilineal family systems have a tradition to adopt children when they do not have the desired offspring (male or female). *Secondly*, that the adoption of children in patrilineal and matrilineal family systems has an impact on the ownership of adopted children's rights to parental property, including after death (receiving inheritance). *Thirdly*, that in all family systems, including bilateral, there is a fundamental rule that the appointment of a child has the function of covering the financial needs of the adopted child. *Fourthly*, that customary law recognises the continuation of the financial needs of the adopted child even after the death of the adoptive parents by providing their inheritance. This is on the condition that the adoption of the child is done clearly and in cash. *Fifth*, that positive law during the Dutch East Indies government recognised adopted children as entitled to inherit the property of their adoptive parents. *Sixth*, that in the socio-cultural context of Indonesian society, adopted children have a very close relationship with their adoptive family up to the matter of receiving property after the death of the adoptive parents.

The six points above are a series of conclusions from the description of the socio-cultural conditions of Indonesian society regarding the right of adopted children to receive the inheritance of their adoptive parents. Through the condensation and presentation of data that has been carried out, the researcher concludes that in the socio-cultural context of Indonesian society, adopted children have such a close relationship with their adoptive family that they tend to be recognised as having the right to receive the inheritance of their adoptive parents who died.

The Intersection of Ijtihad and Taklid Studies in the Compilation of Islamic Law on *Wājibah Wills*

The Compilation of Islamic Law and *the* wills and testaments in it are products of Islamic law legislation in Indonesia. In relation to the intersection between ijtihad and taklid, the pattern of legal formulation of the will of *wājibah* in the Compilation of Islamic Law in general seems to show the tendency of ijtihad rather than taklid. This is because the provision of giving inheritance property to adoptive parents and adopted children through an automatic system (not delivered as a will by the owner of the property) is simply not found in any fiqh literature. This also applies to the 38 fiqh books that were the source of data mining at the formulation stage of the Compilation of Islamic Law. However, the effort to explore through various classical Islamic law books rather than directly referring to the Qur'an or the Prophet Muhammad's hadith shows that the tendency of ijtihad was carried out after taklid efforts did not find results that were felt to be in line with the socio-cultural conditions of Indonesia, namely its people.[29]

The tendency towards ijtihad rather than taqlid above also applies to the implementation when there are judges in the courts deciding cases related to *wājibah* wills. Judges in the Religious Courts basically use the provisions of the Compilation of Islamic Law, especially article 209, in deciding *wājibah*

[27] Regynald Pudihang, "legal position of angkat children's rights under the kitab under the *law* of the civil law," *lex privatum* 3, no. 3 (August 10, 2015), accessed March 22, 2025, https://ejournal.unsrat.ac.id/v3/index.php/lexprivatum/article/view/8998; Sintia Stela Karaluhe, "the position of angkat children in getting the estate of warisants reviewed from the law of waris," *lex privatum* 4, no. 1 (January 31, 2016), accessed March 22, 2025, https://ejournal.unsrat.ac.id/v3/index.php/lexprivatum/article/view/11178; Muhammad Al Ghazali, "PROTECTION OF THE RIGHTS OF ANGKAT CHILDREN IN THE DIVISION OF THEIR ESTATE UNDER THE KITAB UNDER THE CIVIL LAW AND ISLAMIC LAW" (masters, IAIN Bengkulu, 2015), accessed March 22, 2025, http://repository.iainbengkulu.ac.id/3233/.

[28] Amelia Niken Pertiwi, Dominikus Rato, and Dyah Octhorina Susanti, "The Legal Power of Testament (Surat Wasiat) Towards the Inheritance Rights of Adopted Children According to the Civil Code," *MIMBAR YUSTITIA : Journal of Law and Human Rights* 7, no. 1 (May 29, 2023): 97.

[29] destri budi nugraheni, haniah ilhami, and yulkarnain harahab, "regulation and implementation of compulsory wills in indonesia," *old website of journal mimbar hukum* 22, no. 2 (2010): 313.

cases. However, the complexity of Indonesian society makes judges often use their function as *rechtsvinding* or judge judgement as an alternative to making legal decisions.[30] The tendency to use the *rechtsvinding* function by judges in wills *and* testaments cases is due to the limited rules of the Compilation of Islamic Law, which only designates wills and testaments for children and adoptive parents. When it is found that inheritance disputes *are* not only related to children or adoptive parents, judges then expand the designation of wills outside of these two subjects based on the *rechtsvinding* function. In the language of fiqh science, *rechtsvinding* is equivalent to the term ijtihad judge.[31]

In the context of taklid related to the law of wills and testaments, Mohannad Fuad Estity explains the basics of wills and testaments that are legislated in Egypt.[32] According to the legislation, wills are the right of grandchildren whose father dies before their grandfather, if the grandchildren are not entitled to inheritance. Estity put forward several bases for the wājibah will.[33] Firstly, there is the opinion of the jurists that all mukallaf are obliged to make a will, as stated by scholars such as Sa'id bin al-Musayyib, al-Hasan al-Basri, and Imam Ahmad.[34] Secondly, there is a provision from Ibn Hazm's jurisprudence that states that relatives who are not heirs must be given property through a will. The testator is also free to determine the beneficiaries of the will from certain relatives, and there is no limit on the amount of the bequeathed property.[35] Third, the fiqh rule states that the leader can order permissible things that contain public benefits, and the order must be obeyed.[36] In this context, the recipient of the will must be a descendant, with the amount of property not exceeding one-third. Fourth, there is a unification of different fiqh opinions to produce the rule of bequests.[37]

These four foundations show that there are scholarly opinions that can be used as the basis for taklid, although they are not entirely the same as the legislated rules.[38] Ibn Hazm is the most dominant scholar to be the reference of taklid on this law, and then modified by using the rules of fiqh and talfiq to become a rule in Egypt.[39] Ibn Hazm's fame in making the will obligatory in the context of fulfilling the rights of relatives who are not heirs is recognised by many as a differentiator from the four schools of fiqh that state that the law of wills is sunnah, not obligatory.[40]

In relation to the Indonesian context of wājibah, which is conceptualised in the KHI, which regulates the receipt of the estate of the deceased for adopted children and adoptive parents, Ibn Hazm's opinion is actually quite relevant to be put forward as a reference for taklid. The reasoning used in the taklid would be quite similar to the four foundations put forward by Estity earlier, namely based on the opinions of scholars who oblige the will, then following Ibn Hazm's fiqh for the freedom of the recipient of the will, then specialising the freedom using fiqh rules related to the authority of the leader, and finally strengthened by the opinions of other scholars through talfiq. However, for the latter, the talfiq reference will be quite different because the legal products between Indonesia and Egypt are different. Egypt determines wājibah wills for grandchildren, while Indonesia for adoptive parents and adopted children.[41]

In relation to ijtihad, the formulation of KHI in the Indonesian context that contains the law of wills and testaments can be reviewed in several components. The first is related to the proposition or legal basis that is positioned as the basis for producing the law of wājibah wills. In relation to this proposition, the description of Rafat Mahmud Abdurrahman Hambouth has relevance to be put forward, although the context is the rule of wills and testaments in Egypt. He writes in one of his works that scholars are divided into two regarding the source of the law of wills and testaments. The first is the view that bequests are masyru' or have a Sharīʿah basis. The second view is the opposite, that bequests are not permissible.[42]

In the end, the effort to condense the data and its presentation on the intersection of ijtihad and taklid studies described in this section resulted in the researcher's conclusion that the legal formulation of the will of *wājibah* in the Compilation of Islamic Law in Indonesia has more or less contained a side of relevance to the arguments of sharia and has similarities (although in some parts only) with the fiqh opinions of several scholars. This is a fiqh reasoning of *wājibah* in the Compilation of Islamic Law in Indonesia. From this, the researcher concludes that the *wājibah* will in the Compilation of Islamic Law in Indonesia is formed from a combination of fiqh and *'urf* or the socio-cultural conditions of Indonesian society, both of which are combined through maslahah-based considerations and fiqh rules. Jurisprudence, which is the input of this combination, is formed from sharia arguments in the form of the Al-Quran and Prophetic traditions, which in the process of formulating the law through reasoning based on istinbat rules and maslahah-based considerations. All of these processes then gave birth to the law that the will of *wājibah* is given to adoptive parents and adopted children with a maximum limit of one-third of the property.

The Legal Power of the Compilation of Islamic Law in Indonesia on *Wājibah Wills*

Starting the discussion on the analysis of the legal force of wills in the Indonesian context found in the Compilation of Islamic Law, the researcher considers it necessary to present the decision of the Central Java PWNU working meeting held on 26 January 2019. This forum discussed three main

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[30] Nugraheni, Ilhami, and Harahab, "Regulation and Implementation of Compulsory Testament in Indonesia," 319.
[31] Nugraheni, Ilhami, and Harahab, "Regulation and Implementation of Compulsory Testament in Indonesia," 320.
[32] Mohannad Fuad Estity, "Al-Washiyyah al-Wājibah Dirasah Muqaranah," *Majallah Jami'ah al-Quds al-Maftuhah lil Abhats wa al-Dirasat* 1, 28 (2012).
[33] Estity, "Al-Washiyyah al-Wājibah Dirasah Muqaranah," 209.
[34] Mohannad Abu Zahrah, *Sharh Qanun Al-Washiyyah Dirasah Muqaranah Li Masailih Wa Bayan Li Mashadirih* (Cairo: Maktabah al-Anjalu al-Mishriyyah., 1950), 221.
[35] Estity, "Al-Washiyyah al-Wājibah Dirasah Muqaranah," 211.
[36] Estity, "Al-Washiyyah al-Wājibah Dirasah Muqaranah," 212.
[37] Estity, "Al-Washiyyah al-Wājibah Dirasah Muqaranah," 212.
[38] Estity, "Al-Washiyyah al-Wājibah Dirasah Muqaranah," 215.
[39] Bal'aqib Aisyah, *Al-Washiyyah al-Wājibah Fi Qanun al-Usrah al-Jazairiy: Dirasah Fiqhiyyah Muqaranah* (Telemcen: Universite Abou Bekr Belkaid, 2015), 44.
[40] Ali ibn Ahmad ibn Hazm, *Al-Mahalli Bi al-Athar* (Beirut: Dar al-Kutub al-Ilmiyah, 2003), 314.
[41] Estity, "Al-Washiyyah al-Wājibah Dirasah Muqaranah," 215.
[42] Rafat Mahmud Abdurrahman Hambouth, *Al-Washiyyah al-Wājibah*, n.d., 1-3, https://naseemalsham.com/uploads/Component/word%20new/Arabic/Research/2011/Wasyeh_Wajebeh.pdf.

issues: the fiqh view on *wills*, the status of court decisions related to wills for adoptive parents and adopted children, and wills for non-Muslims. They considered that *wājibah* wills are more akin to the distribution of inheritance, which is an obligation, not the will of the heirs.[43]

From a fiqh perspective, the *wājibah* will in KHI is not relevant to the legal formulations of the mujtahids or the opinions of the scholars of the madhhab. The absence of support from the scholars makes court decisions that grant wājibah wills to adoptive parents, adopted children, and non-Muslim heirs invalid and null and void. As an alternative, the forum provides a solution so that they can still obtain inheritance without the wājibah will mechanism, under certain conditions.

In conclusion, the Central Java PWNU forum rejects the wājibah will rule in KHI, indicating that its legal strength is weak in fiqh. This weakness is caused by the absence of willingness or agreement of the heirs in giving property to non-heirs, which is the main key in the context of inheritance distribution according to their view.

However, the analysis of fiqh reasoning as stated in the previous sub-chapter, which is related to the intersection of ijtihad and taklid in wājibah wills, shows that wājibah wills as regulated in Indonesia through the Compilation of Islamic Law are not of the taklid type. Such a pattern of fiqh reasoning will certainly give rise to the claim that in the Indonesian context, the regulation of the Compilation of Islamic Law on wills and testaments has no basis in the ijtihad of the salaf scholars. This is what then made the Central Java PWNU bahtsul masail forum conclude that in the Indonesian context, the Islamic Law Compilation's regulation on wills and testaments is not justified by sharia. Therefore, the forum conducted a fiqh study based on the existence or absence of existing laws in the fiqh books. Such a pattern of study is referred to by many experts as the *qaulī* pattern. If the study pattern is changed to *ilḥāqī* or *manhajī*, then it is likely that the final conclusion will be different.

The *qaulī* pattern of legal formulation is based on texts from classical fiqh books that are considered mu'tabarah, namely from Hanafi, Maliki, Shafi'i and Hambali scholars. [44] Meanwhile, the *ilḥāqī* pattern analogises problems that do not have direct legal provisions in mu'tabarah books, by comparing them to similar problems that already have provisions.[45] This pattern is similar to qiyas, but focuses on fiqh products, including the use of fiqh rules. In contrast to these two, the *manhajī* pattern applies the ruling methods of the imams of the madhhab and is equivalent to *iṣtinbāṭ* law.[46] This pattern is considered as ijtihad, where the process of ruling is done by a group of experts (*iṣtinbāṭ jamā'ī*).[47]

If the pattern of the study of wājibah wills in the Compilation of Islamic Law in Indonesia uses the *ilḥāqī* approach, the opinion of scholars such as Ibn Hazm can be used as a basis. However, if *ilḥāqī* is limited to the fiqh of the four madhhabs, then Ibn Hazm's opinion cannot be used.[48] Alternatively, a narration from Imam Ahmad ibn Hambal stating that *wājibah* wills are made can be used as a reference, although this narration is not as complete as Ibn Hazm's fiqh products. However, there is an opportunity to base it on some fiqh rules, such as rules related to leader policies that are based on maslahah and do not contradict the Shari'ah, so that these policies must be obeyed. In this context, the main determinant is how much maslahah is contained in the *wājibah* will in Indonesia.

If the *ilḥāqī* pattern is considered too forceful, the study of wills and testaments in the Compilation of Islamic Law in Indonesia can be done using the *manhajī* pattern. This approach allows for the production of new laws using the istinbat rules of the imams of the madhhab, with a focus on tabulating the evidence, both muttafaq and mukhtalaf, primarily from the Qur'an and hadith.[49] After finding the evidence supporting the obligation of wills, the next step is to explore evidence outside the text, such as '*urf* and *maslahah mursalah*.[50] '*Urf* is obtained by considering the socio-cultural context in Indonesia, where the relationship between adoptive parents and adopted children is very close, so inheritance is considered natural. *Maslahah mursalah* is proposed to show the benefits of recognising property rights between parents and adopted children, such as the establishment of good relations and the continuation of kindness after one dies. The dominance of maslahah considerations in the formulation of the law of *wājibah* wills in KHI was recognised by the Religious Court judges interviewed. Historically, the emergence of *the* law of wills and testaments in the KHI is based on considerations of benefit, which are considered more effective in tracking the quality of the law than simply referring to the text of the book.

It can be concluded that the legal force of *the* Compilation of Islamic Law in Indonesia regarding wills will be weak when approached with the *qauli* study pattern, increase in strength when approached with the *ilhaqi* study pattern, and become strong when approached with the *manhaji* study pattern. In *manhaji*, the basis for producing the law is based on the verses of the Qur'an and the Prophetic traditions where both state the obligation of the will, followed by the consideration of *'urf* and *maslahah mursalah* to give rise to the law that adoptive parents and adopted children have the right to obtain property instead of inheritance rights.

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[43] Lembaga Bahtsul Masa'il, *Decision of the Central Java PWNU Working Conference Bahtsul Masail Maudluiyah 26 January 2019 on Washiyat Wājibah* (Central Java: LBM PWNU Central Java, 2019).

[44] The formulation of the 27th NU Congress actually defines mu'tabarah books as books that are in accordance with the Ahlussunnah wal Jamaah creed. However, if traced regarding the parameters of Ahlussunnah wal Jamaah used by NU, it will be found that in fiqh it must follow one of the four madhhabs. See: LTN NU, *Islamic Legal Solutions Decisions of Nahdlatul Ulama's Muktamar, Munas, and Konbes (1926-2004 AD)* (Surabaya: Khalista, 2006), 446-449.

[45] Agus Mahfudin, "Legal Istinbath Methodology of Nahdlatul Ulama Bahtsul Masail Institute" 6, no. 1 (September 15, 2021): 15.

[46] Samsidar Jamaluddin et al., "Examining the Istinbat Systems of the Indonesian Ulema Council (MUI), Nahdlatul Ulama (NU), and Muhammadiyah," *Journal of Marital: Islamic Family Law Studies* 2, no. 2 (May 27, 2024): 121.

[47] Luthfi Hadi Aminuddin, "Istinbat Jama'i and its Application in Bahsul Masa'il," *Al-Manahij: Journal of Islamic Legal Studies* 9, no. 2 (2015): 242.

[48] Aminuddin, "Istinbat Jama'i And Its Application In Bahsul Masa'il," 241.

[49] Mahfudin, "Legal Istinbath Methodology of Nahdlatul Ulama Bahtsul Masail Institute," 16.

[50] Muhammad Ali Mahmud Yahya, *Ahkam Al-Washiyyah Fi al-Fiqh al-Islami* (Palestine: Jami'ah al-Najah al-Wathaniyyah., 2010), 99.

CONCLUSION

In conclusion, this research has examined in depth the legal reasoning of wills in the Compilation of Islamic Law (KHI) in Indonesia, focusing on three main problem formulations. Firstly, it was found that socio-cultural considerations greatly influenced the formulation of the KHI regulation on wājibah wills. The unique context of Indonesian society, which includes the recognition of adopted children as legitimate beneficiaries, reflects a shift in legal perspective that accommodates local traditions and family structures. Secondly, the interplay between ijtihad and taklid shows that while the formulation of wājibah wills tends to exhibit ijtihadist tendencies, it is also influenced by traditional interpretations. This duality highlights the ongoing dialogue between progressive legal reasoning and established norms in Islamic fiqh, suggesting that KHI seeks to bridge the gap between classical and contemporary understandings of inheritance law. Third, the legal strength of wājibah wills in KHI is perceived to be rather weak when assessed through a conventional legal framework. However, when analysed through socio-cultural lenses and progressive methodologies, such as the ilhaqi and manhaji approaches, the legal basis of the will becomes stronger. This shows that the legal interpretations in KHI, although controversial, are responsive to the dynamic needs of Indonesian society.

For future research, the researcher recommends that scholars conduct a more in-depth comparative study of wājibah wills in various Muslim-majority countries, examining how different socio-cultural factors shape legal interpretations. In addition, exploring the implications of this regulation on real cases in Indonesian courts could provide practical insights into its application and effectiveness. Furthermore, a longitudinal study could assess how evolving societal norms and values influence the interpretation and implementation of wājibah wills in Indonesia. This will not only enrich academic discourse but also contribute to the development of a fairer legal framework that better serves the needs of diverse communities.

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