

## The Concept of Wasiat and Wasiat Wajibah in Indonesia From The Perspective of The Compilation of Islamic Law (KHI)

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**Abstract.** Wasiat and wasiat wajibah hold a significant position in Islamic law, particularly in the distribution of assets after the death of a decedent. Both share the same objective of granting rights to certain parties and take effect after the testator's death, yet they differ in nature and implementation. Wasiat is voluntary and based on the will of the testator, whereas wasiat wajibah is a legal obligation granted to individuals who are not entitled to inheritance under Islamic law, such as adopted children or non-Muslim heirs. This study employs a normative legal research method with a statutory and jurisprudential approach. The primary legal source is Book II of the Compilation of Islamic Law (KHI), particularly Article 209 which regulates wasiat wajibah, while secondary sources include relevant literature and judicial decisions. The analysis is conducted qualitatively and descriptively by examining the consistency between legal norms and practice, and by connecting it with the principles of maqashid al-shariah. The findings indicate that the regulation of wasiat wajibah in KHI remains general and often results in multiple interpretations, making its implementation highly dependent on the role of judges. Several court decisions show that judges play a crucial role in determining the proportion of wasiat wajibah while maintaining fairness among heirs. In conclusion, more detailed provisions within KHI are necessary to ensure legal certainty, strengthen judicial discretion, and achieve justice as well as public benefit in the application of wasiat and wasiat wajibah in Indonesia.

**Keywords:** Wasiat, Wasiat Wajibah, Islamic Inheritance Law, Compilation of Islamic Law

**Abstrak.** Wasiat dan wasiat wajibah memiliki kedudukan penting dalam hukum Islam, khususnya terkait pembagian harta setelah pewaris meninggal dunia. Keduanya sama-sama bertujuan memberikan hak kepada pihak tertentu dan berlaku setelah pewaris wafat, namun berbeda dari segi sifat dan pelaksanaannya. Wasiat bersifat sukarela berdasarkan kehendak pewaris, sedangkan wasiat wajibah merupakan kewajiban hukum yang diberikan kepada pihak yang tidak memperoleh hak waris menurut ketentuan syariat, seperti anak angkat atau ahli waris non-Muslim. Penelitian ini menggunakan metode hukum normatif dengan pendekatan perundang-undangan dan yurisprudensi. Sumber hukum primer adalah Buku II Kompilasi Hukum Islam (KHI), khususnya Pasal 209 yang mengatur wasiat wajibah, sedangkan bahan hukum sekunder meliputi literatur serta putusan-putusan pengadilan yang relevan. Analisis dilakukan secara deskriptif kualitatif dengan mengkaji kesesuaian norma dan praktik, serta mengaitkannya dengan prinsip maqashid al-shariah. Hasil penelitian menunjukkan bahwa pengaturan wasiat wajibah dalam KHI masih bersifat umum dan menimbulkan beragam interpretasi, sehingga implementasinya sangat bergantung pada peran hakim. Melalui sejumlah putusan, hakim berfungsi menetapkan besaran wasiat wajibah yang proporsional dengan tetap menjaga keadilan bagi ahli waris lain. Kesimpulannya, diperlukan pengaturan yang lebih rinci dalam KHI untuk memberikan kepastian hukum, memperkuat peran hakim, dan mewujudkan kemaslahatan dalam penerapan wasiat dan wasiat wajibah di Indonesia.

**Kata kunci:** Wasiat, Wasiat Wajibah, Hukum Warisan Islam, Kompilasi Hukum Islam

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## INTRODUCTION

Every human being will inevitably experience death. In Islam, this event gives rise to matters that cannot be separated from the passing of a Muslim, namely heirs and the estate left behind. According to Muljono,<sup>1</sup> before the estate can be distributed, several matters must first be settled, such as funeral expenses, repayment of debts, and the fulfillment of bequests. One of the significant aspects of concern in Islam is the issue of inheritance.<sup>2</sup> Islamic inheritance law regulates everything related to the transfer of rights and obligations over a person's property after their death to their heirs. This body of law provides detailed provisions on the procedures of distribution and transfer of inheritance, as well as the impediments that may prevent an heir from receiving their share of the estate.

Within the context of Islamic inheritance law in Indonesia, there exists a provision on the concept of *wasiat wajibah* (mandatory bequest), which represents a development in the implementation of Islamic inheritance law in the country. Based on Islamic inheritance principles, both *wasiat* (testamentary bequest) and *wasiat wajibah* play important roles in the regulation of estate distribution. A *wasiat* is understood as a gift from a person to another, which may take the form of goods, debts, or benefits, and which only takes effect upon the death of the testator.<sup>3</sup>

On the other hand, *wasiat wajibah* is a form of bequest directed to heirs or relatives who do not receive inheritance because of certain impediments under Islamic law.<sup>4</sup> A *wasiat wajibah* is imposed by the state or determined by a judge as an obligation on the estate of a deceased person, given to specific individuals under particular circumstances.<sup>5</sup>

Generally, bequests in the Islamic inheritance system are crucial to prevent disputes and division within families. This is particularly important given the potential for family members to become emotionally sensitive regarding the distribution of

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<sup>1</sup> Wahyu Muljono, *Hukum Waris Islam Dan Pemecabannya* (Yogyakarta: Magister Ilmu Hukum FHUJB, 2010), 12.

<sup>2</sup> Amir Syarifuddin, *Hukum Kewarisan Islam*, Cet.2 (Jakarta: Prenada Media Grup, 2015), 7.

<sup>3</sup> Nada Putri Rohana, "Wasiat Wajibah Dalam Perspektif Hukum Di Indonesia," *Yurisprudencia: Jurnal Hukum Ekonomi* 7, no. 1 (2021): 140.

<sup>4</sup> Abdul Aziz Dahlan, *Ensiklopedi Hukum Islam* (Jakarta: PT Ikhtiar Baru Van Hoeve, 2000), 30.

<sup>5</sup> Sri Lum'atus Sa'adah, *Pembaharuan Hukum Kewarisan Islam Indonesia* (Jember: STAIN Jember Press, 2013), 188.

inheritance, especially if some of the property is given to parties outside the family.<sup>6</sup> The provisions on *wasiat* and *wasiat wajibah* are regulated in Presidential Instruction No. 1 of 1991 on the Dissemination of the Compilation of Islamic Law (KHI). The definition of *wasiat* is provided in Article 171 (f) of the KHI, while further rules on bequests are found in Chapter V (Articles 194–209). The provision on *wasiat wajibah* is specifically contained in Article 209 of the KHI.

Although both *wasiat* and *wasiat wajibah* are regulated, their implementation in Indonesia still faces challenges, particularly regarding the scope of regulation. For instance, the KHI only sets the maximum portion of *wasiat wajibah* at one-third of the estate. This can be seen in several Religious Court decisions, such as the decision of the High Religious Court (PTA) of Manado No. 0009/Pdt.G/2015/PTA.Mdo and the Religious Court (PA) of Sekayu No. 701/Pdt.G/2013/PA.Sky.<sup>7</sup> Both decisions concerned *wasiat wajibah* for non-Muslim heirs. The key distinction lies in the judges' consideration of the amount to be granted, which must not exceed one-third of the estate as stipulated in Article 209 of the KHI. The limitation arises because no other criteria are provided for judges to determine *wasiat wajibah*.

The limited regulation of *wasiat wajibah* in the KHI inevitably creates potential problems. Furthermore, there is still a tendency to equate *wasiat* with *wasiat wajibah*, although they differ not only in definition but also in implementation. This is illustrated in the Supreme Court Cassation Decision No. 558 K/Ag/2017 concerning a bequest made to an heir. Pursuant to Article 195(3) of the KHI, a bequest to an heir is valid only if approved by all other heirs. In that case, the bequest was annulled because it lacked such approval. This shows that, in principle, bequests in Islam cannot be made in favor of heirs unless all heirs consent, whereas *wasiat wajibah* can be imposed upon certain heirs who are otherwise barred from inheritance, such as those of a different religion from the deceased.

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<sup>6</sup> Resa Wira Nata, Sufirman Rahman, and Ilham Abbas, “Kedudukan Wasiat Dalam Sistem Pembagian Harta Warisan Menurut Hukum Islam Di Indonesia,” *Journal of Lex Generalis (JLS)* 3, no. 4 (2022): 936.

<sup>7</sup> Muhamad Isna Wahyudi, “Melacak Illat Hukum Larangan Waris Beda Agama,” *Jurnal Hukum Dan Peradilan* 10, no. 1 (2021): 155, <https://doi.org/10.25216/jhp.10.1.2021.155-172>.

Another distinction lies in the timing of delivery to the recipient. In Islamic teaching, the execution of a *wasiat* takes precedence before the distribution of inheritance. As explained by Ibn Kathir, inheritance is only distributed after the debts of the deceased are repaid and their bequest fulfilled. This principle is also an *ijma'* (consensus) of the scholars.<sup>8</sup> However, in practice, since there is no specific provision on the timing of *wasiat wajibah*, it is often implemented similarly to a regular *wasiat*, which risks creating injustice among other heirs. The recipients of *wasiat wajibah* under the KHI include adoptive parents, adopted children, and non-Muslim heirs. In Islamic law, these parties are not entitled to inherit either because of the absence of lineage (*nasabiyah*), marital bond (*sababiyah*), or because of the prohibition on inheritance between Muslims and non-Muslims. The mandatory and judge-determined nature of *wasiat wajibah* means that if not carefully understood, it could conflict with the foundational principles of Islamic inheritance law, and even create disorder in its implementation.

Therefore, it is essential to understand both the similarities and differences between *wasiat* and *wasiat wajibah* in Islamic inheritance law, particularly as regulated by the KHI in Indonesia. While both relate to the distribution of a deceased person's estate, they differ fundamentally in terms of provisions, implementation, and purpose. Based on this background, the central issue to be examined in this study is the similarities and differences between *wasiat* and *wasiat wajibah* as regulated in the KHI. The intended goal is to provide knowledge and understanding of these concepts in line with the KHI as a key reference for Islamic legal practice in Indonesia.

## METHODOLOGY

The research was conducted using a normative legal method, namely a research approach that refers to laws and prevailing regulations. This method can also be

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<sup>8</sup> Fahadil Amin Al Hasan, "Kewajiban Wasiat Sebelum Pembagian Waris," 2024, accessed June 10, 2025, <https://pa-rangkasbitung.go.id/publikasi-artikel/arsip-artikel/626-kewajiban-wasiat-sebelum-pembagian-waris>.

understood as a type of legal research methodology that bases its analysis on statutory provisions relevant to the legal issues under examination.<sup>9</sup>

Legal research requires various legal materials, consisting of primary and secondary legal sources. Primary legal sources refer to authoritative legal documents.<sup>10</sup> In this study, the primary legal source is Book II of the Compilation of Islamic Law (KHI), which regulates inheritance, including wasiat. Secondary legal sources encompass all publications that may serve as guidelines or supplementary explanations for primary sources.<sup>11</sup> The secondary materials in this research include books and scholarly journals that discuss wasiat and wasiat wajibah in terms of their definition, legal basis, implementation, and other relevant aspects.

This research employs a qualitative descriptive analysis technique. Data are analyzed through processes of classification, identification of similarities and differences, evaluation, and integration of findings. The analysis is conducted using the principles of Islamic inheritance law. To draw conclusions, a deductive method is applied.

## RESULT AND DISCUSSION

### Wasiat

#### 1. Definition of Wasiat (Testamentary Bequest)

The term wasiat derives from the Arabic root words *وَصَّى - يَوْصِي - الوصية*, which refer to a message, command, or advice given to another person.<sup>12</sup> In the Qur'an, the meaning of wasiat varies: in some contexts, it pertains to property, while in others, it refers to matters unrelated to material wealth.<sup>13</sup> The legal basis for the implementation of wasiat can be found in Qur'an Surah Al-Baqarah verse 180:

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<sup>9</sup> Kornelius Benuef and Muhammad Azhar, "Metodologi Penelitian Hukum Sebagai Instrumen Mengurai Permasalahan Hukum Kontemporer," *Jurnal Gema Keadilan* Vol.7, no. No.1 (2020): 24.

<sup>10</sup> Zainuddin Ali, *Metode Penelitian Hukum* (Jakarta: Sinar Grafika, 2019), 47.

<sup>11</sup> Ibid.

<sup>12</sup> Ahmad Warson Munawwir, *Al-Munawwir Kamus ArabIndonesia* (Surabaya: Pustaka Progressif, 1997).

<sup>13</sup> Erniwati, "Wasiat Wajibah Dalam Perspektif Hukum Islam Di Indonesia Dan Komparasinya Di Negara-Negara Muslim," *Jurnal Ilmiah Mizani: Wacana Hukum, Ekonomi Dan Keagamaan* 5, no. 1 (2018): 64, <https://doi.org/10.29300/mzn.v5i1.1437>.

*“It is prescribed for you, when death approaches any of you and he leaves wealth, that he should make a bequest to his parents and near relatives in a fair manner – this is an obligation for the righteous.”*

This verse contains three key points regarding wasiat. First, a person approaching death and leaving wealth is obliged to make a bequest to his mother in a proper manner. Second, he is also obliged to make a bequest to his father in a fitting manner. Third, he is obliged to make a bequest to his closest relatives in an appropriate way.<sup>14</sup> In its development, many jurists agree that this verse was abrogated (nasakh) by the following hadith:<sup>15</sup>

*“Indeed Allah has given each entitled person their rightful share; therefore, there is no bequest for an heir.”* (Narrated by Abu Dawud, At-Tirmidhi, An-Nasa’i, and Ibn Majah)

As the second source of Islamic law after the Qur’an, hadith provides legal rulings that serve as general guidance for wasiat.<sup>16</sup> Based on this hadith, the bequest to legal heirs is prohibited. However, the Compilation of Islamic Law (KHI) in Indonesia adopts a middle-ground approach by stipulating that a wasiat exceeding one-third of the testator’s estate requires the consent of all heirs. This means that under the KHI, a bequest to heirs is permissible if agreed upon by all of them.

While the Qur’an establishes the foundational principles of wasiat, various scholars have provided definitions that deepen and contextualize its meaning. Al-Ibyani describes wasiat as a system of ownership arising from a voluntary transfer made after the death of the testator, which may involve property or benefits.<sup>17</sup> Similarly, Sayyid Sabiq views it as the transfer of property, debt, or benefit from one person to another, contingent upon the recipient’s ability to take possession after the testator’s death.<sup>18</sup>

<sup>14</sup> Hazairin, *Hukum Kewarisan Islam Bilateral Menurut Qur’an Dan Hadith* (Jakarta: PT Tintamas Indonesia, 1982), 57.

<sup>15</sup> Hidayatullah.com, “Tafsir Surat Al-Baqarah Ayat 180-182: Hukum Wasiat,” accessed June 10, 2025, <https://hidayatullah.com/kajian/oase-iman/2022/07/31/234405/tafsir-surat-al-baqarah-ayat-180-182-hukum-wasiat.html>.

<sup>16</sup> A Fuadi, “Reduksitas Hukum Wasiat (Studi Pemikiran Muhammad Syahrur),” *Ijtihad* 36, no. 1 (2020): 51, <https://journals.fasya.uinib.org/index.php/ijtihad/article/view/100>.

<sup>17</sup> M. Yasir Fauzi, “Pembagian Harta Dengan Wasiat Wajibah Dan Hibah Dalam Hukum Islam,” *ASAS: Jurnal Hukum Ekonomi Syariah* 9, no. 1 (2017), <https://doi.org/http://dx.doi.org/10.24042/asas.v9i1.1218>.

<sup>18</sup> Tono Sidik, *Kedudukan Wasiat Dalam Sistem Pembagian Harta Peninggalan* (Jakarta: Kementerian Agama RI, 2012), 43.

Ibn Rushd characterizes wasiat as the granting of property by one person to another, either concerning specific assets or certain individuals, which only becomes effective after death.<sup>19</sup> Muhammad Sarbini al-Khatib emphasizes its voluntary nature, defining it as the giving of something after one's death without compulsion.

The Compilation of Islamic Law (KHI), which serves as the authoritative guideline for Islamic inheritance law in Indonesia, adopts a more formal legal formulation. Article 171 letter f of the KHI defines wasiat as the granting of an object from a testator to another person or institution, which takes effect after the testator's death. From these perspectives, wasiat may be understood as a voluntary legal act of transferring property or benefits from an individual to another party – whether a person or an institution – which only produces legal consequences after the death of the testator. Such a transfer must be free of coercion, and the recipient must fulfill the legal requirements to validly receive the bequest.

## 2. Regulation of Wasiat under Islamic Law in Indonesia

Islam places the execution of a wasiat as a priority before the distribution of inheritance. This is emphasized in QS. An-Nisa verse 11, which states that the division of inheritance is carried out after the fulfillment of wasiat and the settlement of debts.<sup>20</sup> In line with this, the Compilation of Islamic Law (KHI) has become the basis for the implementation of wasiat for Muslims in Indonesia, as stipulated in Book II of KHI on Inheritance Law, Chapter V concerning Wasiat. These provisions are regulated starting from Article 171 letter f, which defines wasiat, and more specifically in Articles 194 through 209 of KHI. The definition of wasiat provided by KHI includes three essential elements: the existence of the *Mushi*, the *Mustashy*, and the *Musa Bihi*, namely the object of the wasiat.

In Islamic law, there are four main elements that must be fulfilled for a wasiat to be considered valid and enforceable. The first is the *Mushi*, namely the person who makes the wasiat. The *Mushi* must meet certain requirements, such as being of sound

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<sup>19</sup> Sidik, *Kedudukan Wasiat Dalam Sistem Pembagian Harta Peninggalan*.

<sup>20</sup> Maimun Nawawi, *Pengantar Hukum Kewarisan Islam* (Surabaya: Pustaka Radja, 2016), 101.

mind, of legal age, acting voluntarily, understanding the applicable law, and making the wasiat with good intentions.<sup>21</sup> To be able to make a wasiat regarding a portion of their property, a person must fulfill two cumulative requirements: being at least 21 years old and of sound mind. Moreover, the wasiat must be made without coercion from others.<sup>22</sup> This provision is stipulated in Article 194 paragraph (1) of the Compilation of Islamic Law (KHI).

KHI sets the minimum age of 21 years as the benchmark for legal capacity because at that age, a person is considered capable of being legally responsible for their actions.<sup>23</sup> In addition to age, soundness of mind is an absolute requirement for making a wasiat.<sup>24</sup> This ensures that the decision to bequeath property genuinely comes from the will of the Mushi, without doubt about their sincerity or ability to understand the legal consequences of the wasiat.

The second is the *Mustashy*, namely the recipient of the wasiat. The Mustashy must be alive at the time the wasiat is made, must not have any legal impediment to receiving inheritance, and must have the legal capacity to manage the property bequeathed.<sup>25</sup> In principle, anyone other than the Mushi themselves can be the recipient of the wasiat. Article 196 KHI emphasizes that in a wasiat, whether made in writing or orally, it must clearly state to whom or to which institution the property is bequeathed. However, there are several exceptions as stipulated in Article 195 paragraph (3), Article 207, and Article 208 of KHI, which list categories of persons who cannot receive a wasiat. It is important to note that Article 195 paragraph (3) specifically states that a wasiat to an heir can only be executed if all heirs agree to the bequest.

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<sup>21</sup> Sumarwoto, Andrie Irawan, and Eva Nur Khaya Putri, "Perbandingan Wasiat Dalam Hukum Waris Perdata Dan Hukum Waris Islam," *Indonesian Journal of Islamic Jurisprudence, Economic and Legal Theory* 2, no. 3 (2024): 1307–20, <https://doi.org/10.62976/ijjel.v2i3.648>.

<sup>22</sup> Amir Hamzah and A. Rachmad Budiono, *Hukum Kewarisan Dalam Kompilasi Hukum Islam* (Malang: IKIP, 1994).

<sup>23</sup> Sanawiah and Muhammad Zainul, "Batasan Kedewasaan Dan Kecakapan Hukum Pewasiat Menurut Kompilasi Hukum Islam Dan KUHP," *Jurnal Hadratul Madaniyah* 5, no. 1 (2018): 1–12, <https://doi.org/https://doi.org/10.33084/jhm.v5i1.157>.

<sup>24</sup> Moh. Syamsul Mu'arif, "Perbandingan Wasiat Dalam Perspektif Kompilasi Hukum Islam (KHI) Dan Burgerlijk Wetboek (BW)," *Tafâqqub: Jurnal Penelitian Dan Kajian Keislaman* 3, no. 2 (2015): 97, <https://doi.org/10.52431/tafaquh.v3i2.49>.

<sup>25</sup> Sumarwoto, Irawan, and Putri, "Perbandingan Wasiat Dalam Hukum Waris Perdata Dan Hukum Waris Islam."



The third is the *Musa Bihi*, namely the property subject to the wasiat. This property must be something lawful and permissible under Islamic law, fully owned by the Mushi at the time the wasiat is made, transferable and usable by the Mustashy, and not exceed one-third of the Mushi's total wealth.<sup>26</sup> In Islamic law, the property that can be bequeathed is that which exists at the time of the Mushi's death and can be transferred from the Mushi to the Mustashy. KHI classifies property that can be bequeathed into two types: movable property and immovable property.<sup>27</sup> Furthermore, a wasiat may also involve the usufruct or benefits of a particular property. According to Article 198 of KHI, if a wasiat involves usufruct, the duration of its use must be specified. This limitation is intended to facilitate management and ensure administrative order of the bequeathed property.

As a principle, a wasiat is only allowed up to one-third of the total estate, unless all heirs give their consent. This provision is based on the hadith of the Prophet Muhammad (peace be upon him) narrated by Sa'ad ibn Abi Waqqash.<sup>28</sup> This limitation aims to protect the interests of other heirs so that they still receive their rightful inheritance shares. However, if the Mushi wishes to bequeath more than one-third of the estate, it is still valid as long as all heirs agree. This is regulated in Article 195 paragraph (2) of KHI, which stipulates that a wasiat is only permissible up to one-third unless with the consent of all heirs. Conversely, if the wasiat exceeds one-third of the estate without the approval of the other heirs, then the wasiat can only be executed up to one-third of the estate, as provided in Article 201 of KHI.

The fourth is the *Shighat Wasiat*, namely the declaration or expression by the Mushi concerning their wasiat. This declaration must be conveyed orally or in writing, clearly understandable, demonstrate the sincerity and willingness of the Mushi, and must not contain conditions contrary to Islamic law.<sup>29</sup> This is regulated in Article 195 paragraph (1) of KHI. The Shighat Wasiat consists of *ijab* and *qabul*. *Ijab* is the declaration made

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<sup>26</sup> Ibid.

<sup>27</sup> Ahmad Jayadi, "Prospek Legislasi Hukum Kewarisan, Hibah Dan Wasiat," *Constitutional Law Review* 2, no. 1 (2023): 41, <https://doi.org/10.30863/clr.v2i1.5176>.

<sup>28</sup> Bahdar, "Hadis Sa'ad Ibn Abi Waqqash Tentang Wasiat Sepertiga Harta Kekayaan," *HUNAFa: Jurnal Studia Islamika* 2, no. 1 (2005), <https://doi.org/https://doi.org/10.24239/jsi.Vol2.Iss1.289>.

<sup>29</sup> Sumarwoto, Irawan, and Putri, "Perbandingan Wasiat Dalam Hukum Waris Perdata Dan Hukum Waris Islam."

by the Mushi, for example: "I bequeath this property to you so that it becomes yours after my death." Meanwhile, qabul is the statement from the Mustashy as a sign of acceptance, such as: "I accept this property." The statement of acceptance should preferably be made in writing, and its drafting must be witnessed by witnesses.<sup>30</sup>

## **Wasiat Wajibah**

### **1. Definition of Wasiat Wajibah (Mandatory Bequest)**

In the Indonesian Islamic legal system, there is no definition of wasiat wajibah. The term wasiat wajibah was first introduced in Egypt through Inheritance Law No. 71 of 1946. This provision was intended for grandchildren who do not receive inheritance rights because of a barrier, namely the presence of their father's siblings. Subsequently, the concept of wasiat wajibah was adopted by several other Muslim countries, such as Tunisia, Morocco, Syria, and Pakistan.<sup>31</sup>

In practice, the understanding of what is meant by wasiat wajibah is derived from various definitions provided by scholars. Wasiat, in essence, is a voluntary act (ikhtiyariyah) carried out based on a person's own will.<sup>32</sup> Under any circumstances, neither the government nor judges have the authority to compel someone to make a wasiat.

According to Fatchurrahman,<sup>33</sup> a wasiat is referred to as wasiat wajibah for two reasons: First, the voluntary element of the testator is eliminated, replaced by an obligation established through regulations or official rulings. This does not depend on the willingness of the testator or the consent of the beneficiary. Second, there is a similarity with the rules of inheritance distribution, in which the share received by a male is double that of a female.

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<sup>30</sup> Arpin, "Kedudukan Wasiat Berdasarkan Kompilasi Hukum Islam Dan KUHPerdara (Study Komparatif)," *AkMen: Jurnal Ilmiah* 12, no. 3 (2015): 460–75.

<sup>31</sup> Rizkal, "Pemberian Hak Waris Dalam Hukum Islam Kepada Non-Muslim (Rizkal)," *Jurnal Yudisial* 9, no. 2 (2016): 10.

<sup>32</sup> Fatchur Rahman, *Ilmu Waris* (Bandung: Almaarif, 1994), 62.

<sup>33</sup> Ibid., 371.

Ahmad Rofiq explains that wasiat wajibah is a decision made by the ruler or judge as the representative of the state to obligate the granting of a wasiat to certain parties in particular situations, even though the deceased has already passed away.<sup>34</sup>

Suparman Usman and Yusuf Somawinata<sup>35</sup> argue that wasiat wajibah does not depend on the will or desire of the deceased. Meanwhile, Islamic jurists define wasiat wajibah as a wasiat given to heirs or relatives who do not receive inheritance shares due to barriers established by sharia law.

Eman Suparman<sup>36</sup> states that wasiat wajibah is a type of wasiat whose implementation does not depend on the will or desire of the deceased. In other words, it is applied automatically without the need for the deceased to declare it before death. Another view from Abdul Manan formulates that wasiat wajibah serves as a means to provide inheritance rights to those who do not directly receive a share under inheritance law. He also emphasizes that wasiat wajibah aims to achieve justice, especially for groups who, based on the text of the law, are not entitled to inheritance, such as adoptive parents or adopted children who may have made significant contributions to the life of the deceased.<sup>37</sup>

Wasiat wajibah is implied in the provisions of Article 209 of the Compilation of Islamic Law (KHI). There are several elements of wasiat wajibah, including: its subject involves the relationship between adopted children and adoptive parents or vice versa; the granting of the wasiat does not come directly from the deceased, but is established by the state; and the portion received may not exceed one-third of the total estate of the deceased. This provision emerged to address issues related to inheritance rights between adopted children and adoptive parents.<sup>38</sup>

Based on the various definitions of wasiat wajibah provided, it can be understood that wasiat wajibah represents a decision made by the ruler or judge as the representative

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<sup>34</sup> Ahmad Rofiq, *Hukum Islam Di Indonesia* (Jakarta: Kencana, 2000), 170.

<sup>35</sup> Suparman Usman and Yusuf Somawinata, *Fiqh Mawaris Hukum Kewarisan Islam* (Jakarta: Gaya Media Pratama, 2008), 163.

<sup>36</sup> Eman Suparman, *Inti Sari Hukum Waris Indonesia* (Bandung: Mandar Maju, 1991), 37.

<sup>37</sup> Abdul Manan, *Aneka Masalah Hukum Perdata Islam Di Indonesia* (Jakarta: Kencana, 2006), 168–69.

<sup>38</sup> Syafi'i, "Wasiat Wajibah Dalam Kewarisan Islam Di Indonesia," *Misykat: Jurnal Ilmu-Ilmu Al-Quran Hadist Syari Ah Dan Tarbiyah* 2, no. 2 (2017): 124, <https://doi.org/10.33511/misykat.v2n2.119-130>.

of the state to regulate the granting of inheritance to certain parties who, under inheritance law, would not directly receive a share. This wasiat does not depend on the will of the deceased but is determined by sharia law to ensure justice, particularly for parties such as adopted children or adoptive parents who may have made significant contributions but have no direct inheritance rights.

## 2. Regulation of Wasiat Wajibah in Indonesia

In the Indonesian legal system, matters related to the institution of wasiat, including wasiat wajibah, fall under the absolute jurisdiction of the Religious Courts as stipulated in Law Number 7 of 1989 concerning the Religious Courts, which was later amended by Law Number 3 of 2006 and Law Number 50 of 2009. However, in practice, there has not yet been any material legal regulation stipulated by statute. The only regulation governing wasiat is the Compilation of Islamic Law (Kompilasi Hukum Islam / KHI), issued through Presidential Instruction Number 1 of 1991.<sup>39</sup>

Judges rely on the general principles of wasiat law as regulated in the KHI as the basis for determining the granting of wasiat wajibah. The application of these principles is grounded on two main reasons: to fill the legal vacuum and to realize a sense of justice.<sup>40</sup> Wasiat wajibah represents a system of state-regulated wasiat that derives its legal basis from the KHI. However, the KHI does not provide detailed provisions on wasiat wajibah itself. Therefore, judges apply the general principles of wasiat as the foundation in adjudicating cases related to wasiat wajibah.<sup>41</sup> The implementation of these legal principles aims to ensure fairness within society.

The applicable legal principle in wasiat wajibah refers to the sequence that must be followed prior to the distribution of wasiat, as stipulated in Article 175 paragraph (1) of the KHI. This provision states that the estate of the deceased must first be used to cover funeral expenses, medical costs, and the repayment of debts. Only thereafter can

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<sup>39</sup> Oemara Amiroel Syarief, "Kewenangan Hakim Pengadilan Agama Dalam Menetapkan Wasiat Wajibah Bagi Pewaris Yang Tidak Menetapkan Wasiat," *Tabkīm* 17, no. 2 (2021): 210.

<sup>40</sup> Destri Budi Nugraheni, Haniah Ilhami, and Yulkarnain Harahab, "Pengaturan Dan Implementasi Wasiat Wajibah Di Indonesia," *Mimbar Hukum - Fakultas Hukum Universitas Gadjah Mada* 22, no. 2 (2012): 316, <https://doi.org/10.22146/jmh.16229>.

<sup>41</sup> Nugraheni, Ilhami, and Harahab, "Pengaturan Dan Implementasi Wasiat Wajibah Di Indonesia."

the testator's wasiat, whether in the form of an ordinary wasiat or a wasiat wajibah, be executed.<sup>42</sup>

Wasiat wajibah must adhere to certain limitations. The maximum portion is one-third (1/3) of the estate and may not be granted for the exclusive benefit of one heir to avoid injustice among them. Scholars agree that the maximum limit of wasiat is one-third, based on the Prophet's hadith which states that one-third is already considered a significant portion for a wasiat.<sup>43</sup> According to Article 209 of the KHI, the maximum that may be given through a wasiat is one-third of the estate. However, exceptions exist that allow more than one-third to be granted to recipients of wasiat wajibah, such as adopted children or adoptive parents. These exceptions are permitted to fulfill a sense of justice, assessed according to the legal facts and circumstances of the case before the court.<sup>44</sup> Moreover, deviations from the one-third limit may also be carried out with the consent of the other heirs. In the execution of wasiat wajibah, certain boundaries must be observed. If the wasiat fulfills all its requirements and pillars, then it must be implemented after the death of the testator. At that point, the recipient of the wasiat officially acquires the bequeathed property.<sup>45</sup>

### **Implementation Wasiat and Wajibah**

The position of wasiat and wasiat wajibah holds significant importance because both are closely related to the inevitable event of human death. Nonetheless, there are similarities and differences between them that must be understood. The urgency of such understanding lies in the special conditions that distinguish wasiat from wasiat wajibah. Through proper comprehension, confusion in practice that could potentially disadvantage certain parties in its implementation may be minimized.

In the Indonesian legal system, the Religious Courts are recognized and have equal standing with other judicial bodies, as stipulated in Law Number 7 of 1989 concerning

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<sup>42</sup> Khomaini, "Pemberian Harta Warisan Terhadap Anak Angkat Melalui Wasiat Wajibah Dalam Perspektif Hukum Islam," *Jurnal Ilmiah Metadata* 5, no. 2 (2023): 148, <https://doi.org/https://doi.org/10.47652/metadata.v5i2>.

<sup>43</sup> Abdul Gafur, "Analisis Konsep Wasiat Wajibah Dalam KHI Dan Putusan MA," *Al-Mazaahib: Jurnal Perbandingan Hukum* 10, no. 1 (2022): 9, <https://doi.org/10.14421/al-mazaahib.v10i1.2483>.

<sup>44</sup> Nugraheni, Ilhami, and Harahab, "Pengaturan Dan Implementasi Wasiat Wajibah Di Indonesia," 317.

<sup>45</sup> Andre Gema Ramadhani, Ngadino, and Irawati, "Pelaksanaan Wasiat Wajibah Menurut Kompilasi Hukum Islam Dalam Praktek Pengadilan Agama Sambas," *Notarius* 13, no. 1 (2019): 39, <https://doi.org/10.14710/nts.v13i1.29160>.

the Religious Courts, later amended by Law Number 3 of 2006 and Law Number 50 of 2009. The Religious Courts serve as special courts with authority to examine, decide, and resolve disputes involving individuals or legal entities subject to Islamic law. Based on statutory provisions, the jurisdiction of the Religious Courts covers matters such as marriage, inheritance, wasiat, gifts (hibah), endowments (waqf), zakat, infaq, sadaqah, and sharia economics. To resolve such cases, a substantive legal source is required. One effort to fill this need was the formulation of the Compilation of Islamic Law (Kompilasi Hukum Islam / KHI), which serves to address the gap in substantive law within the Religious Courts. The KHI is used as the main reference in legal decision-making for cases submitted to the Religious Courts. With respect to the implementation of wasiat and wasiat wajibah, the guidelines referred to by society are contained in the KHI. Provisions regarding wasiat and wasiat wajibah are regulated in Articles 194–209 of the KHI.

Generally, based on scholarly definitions and the provisions in the KHI, several similarities can be identified between wasiat and wasiat wajibah: first, both aim to grant rights to certain parties after the death of the testator, albeit through different mechanisms and conditions. Second, both only take effect after the testator's death. Third, both are subject to the same quantitative limitation, namely a maximum of one-third of the estate, except when a greater portion is allowed with the consent of the other heirs.

However, referring to Article 209 of the KHI as the basis for wasiat wajibah, it is apparent that the provision lacks clarity and sufficient explanation, creating confusion and uncertainty in its application.<sup>46</sup> Fatchurrahman's view, as previously discussed, may provide guidance in determining when a wasiat becomes a wasiat wajibah: namely, when a voluntary wasiat transforms into an obligation by virtue of law or an official decision of an authorized institution, in this case the Religious Courts. The execution of a wasiat wajibah is thus not contingent on the willingness of the testator

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<sup>46</sup> Fatahullah, Supardan Mansyur, and Haeraton, "Kompleksitas Pelaksanaan Wasiat Wajibah Di Pengadilan Agama Mataram," *Jurnal Risalah Kenotariatan* 4, no. 1 (2023): 647, <https://doi.org/https://doi.org/10.29303/risalahkenotariatan.v4i2.138>.

or the consent of the beneficiary.<sup>47</sup> It can therefore be concluded that the fundamental distinction lies in their nature: wasiat is voluntary, depending on the testator's will, whereas wasiat wajibah arises from a binding legal obligation determined by an authoritative body.

Another difference lies in the beneficiaries. Under a wasiat, anyone other than the testator may be a beneficiary, with certain exceptions provided in Articles 195(3), 207, and 208 of the KHI. In contrast, Article 209 of the KHI specifically provides that wasiat wajibah is designated for adopted children upon the death of adoptive parents, or vice versa. Although this is the normative provision, in practice wasiat wajibah has been extended to other parties beyond adopted children and adoptive parents. Based on several Supreme Court rulings, wasiat wajibah has even been granted to non-Muslim heirs.<sup>48</sup>

Another point of difference is in their implementation. A wasiat is executed according to the testator's will and generally does not require legal intervention if no dispute arises. Conversely, the execution of wasiat wajibah often requires the intervention of state authorities or court decisions. This is because, under Islamic inheritance law, the rightful heirs are those linked by blood or marriage. In cases of wasiat wajibah, however, the beneficiaries do not fulfill these criteria, thus requiring the involvement of an authoritative institution.

To better clarify the differences between wasiat and wasiat wajibah under the KHI, the following table summarizes their distinctions:

Table 1.

Differences Between Wasiat (Testament Bequest) and Wasiat Wajibah (Mandatory Bequest) under the KHI

Aspect	Wasiat	Wasiat Wajibah
<b>Definition</b>	The transfer of property from the testator to a person or	A bequest mandated by law, granted to adopted children or

<sup>47</sup> Rahman, *Ilmu Waris*, 62.

<sup>48</sup> Nugraheni, Ilhami, and Harahab, "Pengaturan Dan Implementasi Wasiat Wajibah Di Indonesia."

	institution, effective after the testator's death, based on the testator's will. (Article 171 letter f of the KHI)	adoptive parents. (Article 209 of the KHI)
<b>Legal Basis</b>	Regulated under Article 171 and Articles 194–208 of the KHI, which generally govern bequests.	Regulated under Article 209 of the KHI, which specifically provides for wasiat wajibah for adopted children and adoptive parents.
<b>Beneficiaries</b>	May be given to anyone designated by the testator.  Generally not heirs unless consent is obtained from all heirs	Specifically designated for adopted children, adoptive parents, and, in certain cases, granted to non-Muslim heirs.
<b>Nature</b>	Voluntary and dependent on the testator's will.	Mandatory and not dependent on the testator's will. Its implementation is prescribed by law.
<b>Implementation</b>	Execute before inheritance distribution but after funeral expenses and debt settlement  May be carried out in accordance with the testator's wishes without legal intervention unless a dispute arises.	Execution timing is not explicitly regulated often equated with wasiat  Implementation may require a court decision if disputes arise concerning the rights of the beneficiaries.

*Source: Literature Review Analysis*

From this explanation and the table above, it is evident that the differences are fundamental. However, many aspects of wasiat wajibah are still implemented based on the general rules of wasiat due to the legal vacuum. In practice, cases of wasiat wajibah are resolved through judicial interpretation in the Religious Courts, as illustrated by the Religious High Court (PTA) Manado Decision No.



0009/Pdt.G/2015/PTA.Mdo and the Religious Court (PA) Sekayu Decision No. 701/Pdt.G/2013/PA.Sky.<sup>49</sup>

The first case, PTA Manado Decision No. 0009/Pdt.G/2015/PTA.Mdo, annulled the Kotamobagu Religious Court's ruling that disregarded Christian heirs. The panel referred to al-Jurjani's view in *Hikmah at-Tasyri' wa Falsafatuh*, which emphasized that inheritance law aims to foster compassion, mutual assistance, and benefit among relatives. The judges also cited Wahbah az-Zuhaili's opinion in *al-Fiqh al-Islami wa Adillatuh*, which allows wasiat wajibah for heirs of different faiths, as well as Supreme Court jurisprudence No. 368 K/AG/1995. On this basis, the non-Muslim heir was awarded a share equal to that of a daughter.

The second case, PA Sekayu Decision No. 701/Pdt.G/2013/PA.Sky<sup>50</sup> (16 October 2014), awarded the testator's Christian mother a one-eighth share, equal to that of a widow with children. The ruling was based on egalitarian principles of Islamic inheritance, which permit non-Muslim relatives to receive a share through wasiat wajibah up to one-third of the estate, but not exceeding the share of equivalent heirs. This reasoning was supported by Supreme Court jurisprudence No. 51 K/AG/1999 and No. 368 K/AG/1995.

Both rulings on wasiat wajibah for non-Muslim heirs demonstrate that outcomes depend largely on judicial interpretation, since Article 209 of the KHI only stipulates the maximum portion (one-third) for wasiat wajibah beneficiaries, leaving the rest to the discretion of judges.

These cases also reveal a new challenge: the allocation of wasiat wajibah alongside inheritance distribution. In Islamic inheritance law, heirs are classified hierarchically: *ashabul furud* (those with fixed shares in the Qur'an) are prioritized, followed by *ashabah* (residuary heirs). Since beneficiaries of wasiat wajibah do not belong to either group, combining them with heirs could disrupt the established order of inheritance shares.

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<sup>49</sup> Wahyudi, "Melacak Illat Hukum Larangan Waris Beda Agama."

<sup>50</sup> Mahkamah Agung RI, "Direktori Putusan Mahkamah Agung," accessed June 10, 2025, <https://putusan3.mahkamahagung.go.id/direktori/putusan/911b06c5e207bfd29ee1ae700e3dbbb8.html>.

Thus, clarity on the timing and mechanism of wasiat wajibah is essential, as it cannot simply be equated with general wasiat. The KHI provides detailed regulation for ordinary wasiat, including beneficiaries, conditions, and execution. For example, Article 195(3) states that a wasiat in favor of an heir is only valid with the consent of all heirs. This provision serves as a safeguard to balance individual freedom with the protection of other heirs' rights. This was reaffirmed in Supreme Court Cassation Decision No. 558 K/Ag/2017, which concerned a wasiat in the form of a gift (*hibah*) exceeding one-third of the estate without the consent of other heirs. The Court ruled that such a wasiat to an heir is invalid unless approved by all heirs, and distribution must revert to the rules of Islamic inheritance and the KHI.

This case illustrates that the implementation of wasiat under the KHI incorporates an internal checks-and-balances mechanism: no more than one-third may be bequeathed, and any wasiat to heirs requires consent from the others. This ensures that the testator's will does not undermine the rights of other heirs, maintaining a balance between individual freedom and collective justice.

The regulation of wasiat and wasiat wajibah in the Compilation of Islamic Law (KHI), as previously explained, is intended to ensure legal certainty and justice in their implementation. Legal certainty is inherent in the existence of authoritative sources that can serve as a basis for resolving cases related to both wasiat and wasiat wajibah. In this regard, KHI guarantees that there is no legal vacuum concerning these matters. Nevertheless, debates remain regarding the regulation of wasiat wajibah within KHI. According to Raihan A. Rasyid, as cited by Cik Hasan Bisri, Article 209 of KHI is considered controversial by Islamic legal scholars, legal practitioners, and justice seekers. This is due to the lack of clarity and explanation in the article, making its intent difficult to comprehend. As a result, the provision has not yet functioned as an effective guideline for application.<sup>51</sup>

This appears to be the main reason for frequent ambiguities in the community's interpretation of wasiat and wasiat wajibah. The absence of a clear and explicit

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<sup>51</sup> Fatahullah, Mansyur, and Haeratus, "Kompleksitas Pelaksanaan Wasiat Wajibah Di Pengadilan Agama Mataram."

distinction between the two within KHI—except with respect to the subject of the recipient—has further contributed to this uncertainty. Ultimately, wasiat wajibah and substitute heirs reflect aspects of legal reform in Indonesian Islamic inheritance law. Unlike the clear provisions on substitute heirs under Article 185 of the KHI, the regulation of wasiat wajibah remains underdeveloped, lacking clear definitions and differentiation in entitlements between wasiat and wasiat wajibah recipients.

Islamic law is intended to realize human welfare (*maslahah*), in line with the *maqasid al-shariah* (*maqasid al-khamsah*): protection of religion, life, intellect, lineage, and property.<sup>52</sup> If its application fails to align with these objectives, true welfare has not been achieved. In practice, fairness in the execution of wasiat wajibah depends heavily on judicial discretion. The amount granted varies according to case-specific circumstances. Ideally, however, judicial reasoning should be guided by the principle of Islamic inheritance law: no heir should be disadvantaged. Judges must ensure that the shares granted through wasiat wajibah do not diminish the fixed entitlements of rightful heirs as stipulated in Article 175(1) of the KHI.

To prevent potential harm to rightful heirs, more detailed regulation of wasiat wajibah is necessary. Such reform would ensure both justice and welfare for the community while preventing public confusion over the distinction between wasiat and wasiat wajibah.

## CONCLUSION

Based on the findings, this study concludes that wasiat and wasiat wajibah play a pivotal role in Islamic inheritance law, particularly in the distribution of assets after the death of the testator. Both serve the same purpose of granting rights to certain parties and are executed after the testator's death, yet they differ in nature and implementation. Wasiat is voluntary and based on the testator's will, while wasiat

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<sup>52</sup> Muhammad Daud Ali, *Hukum Islam Pengantar Ilmu Hukum Dan Tata Hukum Islam Di Indonesia* (Jakarta: Rajawali Pers, 1996), 53–57.

wajibah is a legal obligation imposed to provide rights for individuals who do not qualify as heirs under Islamic law, such as adopted children or non-Muslim heirs.

The regulation of wasiat wajibah under Article 209 of the Compilation of Islamic Law (KHI) remains general and does not provide sufficient legal certainty, leading to varied interpretations in practice. In judicial practice, judges play a central role in determining the proportion of wasiat wajibah by referring to egalitarian principles, the pursuit of justice, social benefit, and maqashid al-shariah. Several judicial decisions, including Supreme Court precedents, demonstrate the application of wasiat wajibah for non-Muslim heirs and adopted children, while ensuring that their entitlement does not exceed or undermine the rights of legitimate heirs.

Therefore, wasiat wajibah serves as a legal instrument that bridges the gap between normative Islamic provisions and the practical needs of contemporary society. However, for its implementation to be more consistent and just, KHI requires more detailed regulation, including clearer limitations, standardized mechanisms, and strengthened judicial guidance. Such reformulation is expected to enhance legal certainty, safeguard fairness for all parties, and promote public benefit within the Islamic inheritance system in Indonesia.

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