

OBLIGATORY BEQUEST IN THE CONTEXT OF POLYGAMOUS WIVES: PRESERVING EQUALITY AND JUST WITHIN THE FRAMEWORK OF MAQASHID SHARIA

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Abstract

This paper discusses the role of obligatory bequests in the context of the relationship between a secret wife in the context of polygamous marriage outside the judicial procedure, with an emphasis on maintaining equality and justice, within the framework of understanding Maqasid Sharia. A secret wife is a complex issue in the implementation of Islamic family law in Indonesia, and this research outlines the concept of obligatory bequests and their role in maintaining a balance of inheritance between a legitimate wife and a secret wife. By using the principles of equality and justice in Islam as a guide, this research illustrates how the path of obligatory bequests can lead to a more equitable distribution of inheritance among heirs. Additionally, this paper integrates the concept of Maqasid Sharia as a philosophical foundation for understanding the importance of maintaining equality and justice in Islamic inheritance law. The results of this writing are expected to provide deeper insights into how the concept of obligatory bequests can contribute meaningfully to achieving the highest goals of Maqashid Sharia, including ensuring equality and justice in the distribution of inheritance for secret wives in polygamous marriages outside the judicial procedure.

Keywords: *Obligatory bequest, Polygamous wives, Maqashid Sharia, Asy-Syatibi*

Abstrak

Tulisan ini membahas peran wasiat wajibah dalam konteks hubungan istri siri dalam pernikahan poligami di luar prosedur hukum, dengan penekanan pada pemeliharaan kesetaraan dan keadilan, dalam kerangka pemahaman Maqasid Syariah. Istri siri merupakan isu kompleks dalam pelaksanaan hukum keluarga Islam di Indonesia, dan penelitian ini menjelaskan konsep wasiat wajibah serta perannya dalam menjaga keseimbangan warisan antara istri sah dan istri siri. Dengan menggunakan prinsip kesetaraan dan keadilan dalam Islam sebagai panduan, penelitian ini menggambarkan bagaimana jalur wasiat wajibah dapat mengarah pada distribusi warisan yang lebih adil di antara para ahli waris. Selain itu, makalah ini mengintegrasikan konsep Maqasid Syariah sebagai landasan filosofis untuk memahami pentingnya pemeliharaan kesetaraan dan keadilan dalam hukum warisan Islam. Hasil dari penulisan ini diharapkan dapat memberikan wawasan yang lebih

mendalam tentang bagaimana konsep wasiat wajibah dapat berkontribusi secara signifikan dalam mencapai tujuan tertinggi Maqasid Syariah, termasuk memastikan kesetaraan dan keadilan dalam distribusi warisan bagi istri siri dalam pernikahan poligami di luar prosedur hukum.

Kata kunci:

INTRODUCTION

The development of Islamic law in Indonesia continues to experience dynamics in line with the evolution of legal systems worldwide, marked by the emergence of new cases and varying perspectives in evaluating these cases. The impact is the constant need for the renewal of Islamic law. To date, these efforts have resulted in the codification of the *ijtihad* of previous *mujtahids* and will continue to undergo gradual development.

The existence of advancements in knowledge, changes in social conditions, and the rapid progress of technology will not render the development of Islamic law stagnant. Islamic law will always be able to exist at any time and anywhere. Its continued existence in Indonesia is even more robust due to the adoption of a comprehensive theory of existence, meaning that Islamic law has its own strength manifested through legislation, jurisprudence (judiciary), and the legal awareness of society (Muchsin, 2010).

Islamic law is also one of the three legal sources in Indonesia, alongside customary law and Western law. As a legal system that has long existed in society, efforts are made to transform the existence of Islamic law into positive law, even though it faces obstacles along the way. Efforts to enforce substantive

Islamic law are seen as a way out of these obstacles. Alongside the efforts of the Muslim community in Indonesia to positivize Islamic law, efforts to enforce substantive Islamic law are also being carried out, resulting in the realization of legal guidance for Muslims in Indonesia through the Compilation of Islamic Law (Kompilasi Hukum Islam) under Presidential Instruction Number 1 of 1991.

The Compilation of Islamic Law (hereinafter referred to as KHI) is compiled based on the *ijtihad* of scholars using 13 books, including Al-Bajuri, Fathul Mu'in, and others, and it does not adhere to a single school of thought. The merging into one book aims to create legal uniformity in society and within the judiciary, contributing to the establishment of legal certainty, one of the goals of law itself (Yusdani & Arfaizar, 2021). Although unified, the possibility of differences of opinion on *furu'iyah* issues remains open, one of which is a matter related to obligatory bequests, which is not clearly known in classical *fiqh* books.

KHI provides flexibility in *furu'iyah* matters for the legal provisions of obligatory bequests that differ from other countries, such as in Egypt, Jordan, Morocco, and other Muslim countries that regulate the giving of obligatory bequests to grandchildren. In KHI, the

issue of giving inheritance to orphaned grandchildren whose parents have passed away before their grandfather is already regulated in Article 185 of KHI on substitute heirs. In Indonesia, the provision regarding obligatory bequests is stipulated in Article 209 of KHI. In this article, it is explained that obligatory bequests are intended for adopted children and adopted parents (Amruzi, 2014).

According to Islamic law, adopted children have a different status than biological children who are entitled by *ijbari* to inherit property. Based on the context of early Islamic law, the prohibition of adopting a child by attributing one's name to the adopted child is very clear. Budiarto in his book, "Adoption from a Legal Perspective," states that adopting a child does not have legal consequences, neither in terms of blood relations, custody rights, nor inheritance rights. This raises the assumption that the provisions of obligatory bequests in Article 209 of the Compilation of Islamic Law contradict the *ijbari*.

Principle in Islamic law and are inconsistent with the prohibition of attributing an adopted child as if they were a biological child in Islamic law (Habiburrahman, 2012).

In essence, making a will is a voluntary act, an action taken based on one's own will in any situation. However, authorities or judges as state officials have the authority to force or make a mandatory decision regarding

wills, known as obligatory bequests, to specific individuals and under specific circumstances. Therefore, the general understanding of obligatory bequests is an action taken by authorities or judges as state officials to enforce or make a mandatory decision for a deceased person, given to specific individuals and under specific circumstances (Mardani, 2014).

With the above understanding, obligatory bequests can be one way, as a state action, to transfer ownership of property from one person to another in a legal manner. It also serves as an alternative to provide a share to parties who do not receive an inheritance, with the implementation taking place after the death of the property owner. This serves the function of law as a means of effective social control, dispute settlement, and social engineering in resolving disputes and providing solutions to issues within society (Tono, 2014).

The research problem in this paper is as follows: How can the concept of compulsory bequests (*wasiat wajibah*) in Islam promote equality and justice within second wife relationships, within the framework of *Maqasid Sharia* principles?

The objectives of this research/paper are as follows: (1). To study the concept of compulsory bequests in Islam and inheritance law, (2). To analyze the role of *Maqasid Sharia* in maintaining equality and justice within second wife relationships, (3). To identify challenges

and obstacles that arise in the implementation of compulsory bequests in the context of second wives, (4). To provide recommendations for promoting equality and justice within second wife relationships in accordance with Maqasid Sharia.

The conceptual framework of this paper/research is based on two main pillars: the concept of compulsory bequests in Islam and the principles of Maqasid Sharia. Compulsory bequests serve as the legal foundation that regulates inheritance distribution, while Maqasid Sharia acts as the philosophical framework that helps interpret the principles of equality and justice in Islamic law. This research will examine how these concepts interact to maintain equality and justice in the context of second wives in Islamic law.

RESEARCH METHODS

This paper utilizes the method of literature review (library research). The literature review research method involves a series of activities related to the collection of bibliographic data, reading and note-taking, as well as managing research materials (Jayasuriya, 2020).

The type of research conducted is qualitative and descriptive library research. Data collection is carried out by exploring a number of relevant references for the research, including books, articles, and other scientific research results such as theses and dissertations. Subsequently, content

analysis is performed, which involves unpacking all the data, describing the central issues, and providing solutions and answers (Ritonga, 2021).

THEORITICAL FRAMEWORK

Definition of Will and Compulsory Bequests

The issue of wills has been addressed in various legal systems (Krisnajadi, 1989), ranging from customary law, civil law/Burgerlijk Wetboek (BW), to Islamic law.

Wasiat, in general, is considered one of the contracts of *al-tabarru'at* (charitable donations). Therefore, giving a bequest is fundamentally an act of volition, a voluntary action based on one's own desires and willingness. In any case, no one has the authority to compel another person to make a bequest. The obligation to make a bequest arises in individuals due to their negligence or failure to fulfill their duties to God, such as the duty to pay zakat, breaking fasting prohibitions, and so on.

Compulsory bequests, known as "*wasiat wajibah*," are bequests designated for heirs or relatives who do not inherit from the deceased due to a legal impediment. Compulsory bequests can also be understood as a mandatory gift to heirs or family members, especially grandchildren, who are barred from receiving a share of the inheritance because their mother or father passed away before their grandparents or simultaneously. This is

because, according to inheritance law, they are prevented from receiving a portion of the estate left by their grandparents due to the existence of paternal or maternal cousins who are entitled to that share (Ramadhani et al., 2019).

Compulsory bequests are the execution of a will or a message that must be carried out and directed towards the living, which involves giving one's inheritance to an adopted child. According to the Compilation of Islamic Law, the distribution of inheritance to adopted children can be done through a gift or by means of a compulsory bequest, with the condition that it does not exceed 1/3 (one-third) of the adoptive parent's estate. This limitation is in place to protect other heirs (Ramadhani et al., 2019).

The definition of Compulsory Bequests in the Encyclopedia of Islamic Law is a bequest intended for heirs or relatives who do not receive a share of the deceased person's inheritance due to a legal obstacle (Dahlan, 1996). Hasby Ash Shiddieqy (Shiddiqy, 1999) explains that Compulsory Bequests are obligatory for relatives who are prevented from receiving the inheritance.

Compulsory bequests first emerged in Egypt as part of the Inheritance Law of 1946 to address the issue of grandchildren being excluded by male offspring (Amruzi, 2014). Under Egyptian law, compulsory bequests are specifically provided to grandchildren of the deceased whose parents have

predeceased them, and they have been excluded from inheriting due to their status as *zawil arham* or being veiled by other heirs (Zuhroh, 2022).

The term compulsory bequests has been incorporated into the legal framework in some Muslim countries. Consequently, the scope of compulsory bequests varies from one place to another. In the practical implementation of compulsory bequests, the jurisprudence of scholars considers a broader public interest perspective. Family members and close relatives who do not receive an inheritance become the targets of compulsory bequests (Ritonga, 2021).

The transfer of one's wealth can occur through compulsory bequests, particularly in the case of inheritance from grandparents to grandchildren. This transfer is not referred to as an inheritance since the rights of the grandchildren are hindered by other, more entitled heirs. In the practice of compulsory bequests, grandchildren or great-grandchildren only receive their rightful share, with a maximum of 1/3.

The discussion regarding compulsory bequests has undoubtedly attracted numerous researchers to approach it from various perspectives. Including in this paper, the author aims to examine how compulsory bequests are implemented in the context of unofficial marriage relationships.

The Concept of Compulsory Bequests in the Compilation of Islamic Law

Compulsory bequests are an essential aspect of Islamic law that regulates property ownership and inheritance. The term "compulsory bequests" refers to bequests mandated by Sharia (Islamic law) and are obligatory for an individual to make before their passing. This concept originates from Islamic teachings and is governed by various sources of Islamic law, including the Quran and Hadith (the teachings of the Prophet Muhammad, peace be upon him). There are several key principles that must be followed concerning compulsory bequests (Bilalu et al., 2022):

- 1 Family welfare: Compulsory bequests are generally intended to provide support to family members in need, such as children or surviving spouses. This is one way to ensure the well-being of the family and prevent conflicts in the distribution of inheritance.
- 2 Limitation of the amount: In Islamic law, there is a specific percentage limit of one's assets that can be left as a compulsory bequest. This amount typically does not exceed one-third of the total estate. Therefore, not the entire wealth of an individual can be designated as a compulsory bequest.
- 3 Compliance with Sharia: Compulsory bequests must align with Sharia principles and should not contradict Islamic teachings. This means they cannot be used to exclude specific family members or

pursue objectives that are inconsistent with Islamic law.

- 4 Written form: Compulsory bequests are usually required to be documented in writing and overseen by competent Islamic legal authorities to ensure compliance with Islamic law and principles.

It's important to note that the principles of compulsory bequests may vary among different Islamic schools of thought (madhabs). Each madhab has slightly different interpretations of compulsory bequests. Furthermore, the rules surrounding compulsory bequests can also vary by country and Islamic legal jurisdiction. It is advisable to consult with a knowledgeable scholar or competent Islamic legal authority if you have specific questions about compulsory bequests or Islamic law related to property ownership and inheritance.

Jurisprudence of Wasiat Wajibah (Supreme Court Decision of the Republic of Indonesia for the years 2006-2012 regarding Wasiat Wajibah)

The legal considerations of the Supreme Court Decision on Wasiat Wajibah from 2006 to 2012 generally refer to the Compilation of Islamic Law (KHI) based on Presidential Instruction of the Republic of Indonesia Number 1 of 1991. There are several legal considerations, including those that refer to customary law and Law Number 4 of 1979. In connection with Wasiat Wajibah, the Supreme Court specifically

issued a circular on April 7, 1979, Number 2 of 1979, regarding the Adoption of Children, the legal consequence of which is the existence of Wasiat Wajibah in the distribution of the inheritance (Tono, 2014).

The legal considerations underlying the Supreme Court decisions from 2006 to 2012, especially regarding Wasiat Wajibah, primarily focus on adopted children. The position of adopted children refers to the Compilation of Islamic Law (KHI), especially Article 171 letter h, which states that adopted children are those whose daily care, education expenses, and the like are transferred from their biological parents to their adoptive parents based on a court decision (Tono, 2014).

In these Supreme Court decisions, no Supreme Court Justice was found to refer to other regulations besides KHI, and there was no indication that any Justice made decisions beyond what was written in KHI. Other articles in KHI related to Wasiat concern the amount of the bequest. The amount in Article 195 paragraph (2) allows a bequest of up to one-third of the inheritance unless all heirs agree. This amount is the same as the portion for adopted children regulated in Article 209 paragraph (2), which stipulates that adopted children who do not receive a bequest are entitled to a mandatory bequest of up to 1/3 of the inheritance from their adoptive parents (Napitupulu, 2022).

The Supreme Court decisions consistently referring to KHI can be

understood because Wasiat Wajibah is an event within Islamic legal matters, particularly in the field of wills, and this matter is documented in KHI. The term Wasiat Wajibah is unique to Indonesian law and is not found in other countries (HAK et al., 2023). Wasiat Wajibah is formally written in KHI, as explained above. The purpose of incorporating Wasiat Wajibah into KHI is to compromise with customary law, not only by taking values from customary law to be adopted and incorporated into Islamic law but also by integrating the development of existing Islamic legal values with the values of customary law. The goal is to make Islamic legal provisions closer to the awareness of the community, effectively Islamizing customary law while also bringing customary law into Islamic law (HAK et al., 2023).

There is a case that questions the position of adopted children who did not go through the court decision process according to Article 171 letter h, KHI, and also did not refer to the circular of the Supreme Court dated April 7, 1979, No. 2 of 1979, concerning Adoption of Children. This issue is present in Supreme Court Decision Number 312 K/AG/2010. In this decision, the position of adopted children not based on a court decision was not questioned, but the judge used customary law as stipulated in Law Number 4 of 1976, as mentioned in the previous court's *judex facti*. In Law Number 4 of 1979 concerning Child

Welfare, Article 1 paragraph (2) states that "a child is someone who has not reached the age of 21 and has never been married" (HAK et al., 2023).

In relation to this decision, according to the Supreme Court decision, the *judex facti* did not make a mistake in applying the law. Moreover, this concerns the outcome of proof that appreciates a fact, which cannot be considered in cassation proceedings because cassation proceedings only deal with non-execution or errors in the application or violation of applicable law (Tono, 2014).

Regarding children born from informal marriages, this remains a lengthy debate. According to Article 4 of the Compilation of Islamic Law ("KHI"), marriage is valid if conducted according to Islamic law, as stated in Article 2 paragraph (1) of Law Number 1 of 1974 concerning Marriage ("UUP"), which states, "Marriage is valid if conducted according to the law of each religion and belief." However, this marriage must be reported and recorded at the Office of Religious Affairs or Civil Registry for those not of the Islamic faith. This is in accordance with Article 2 paragraph (2) of the UUP, which states, "Every marriage is recorded according to the prevailing laws and regulations." Similarly, Article 5 of the KHI states: (1) To ensure the order of marriage for the Muslim community, every marriage must be recorded. (2) The recording of marriage in paragraph 1 is carried out by the Marriage Registrar as regulated in Law Number 22 of 1946, as amended by

Law Number 32 of 1954 (Jumarim et al., 2024).

Without such recording, a child born out of an informal marriage only has a legal relationship with the mother or her family. Article 42 of the UUP states, "A legitimate child is a child born in or as a result of a valid marriage," and Article 43 paragraph (1) of the UUP states, "A child born out of wedlock only has civil relations with its mother and her family." This is also reinforced by the provision of the KHI regarding inheritance, namely Article 186, which states, "A child born out of wedlock only has mutual inheritance relations with its mother and the family on the mother's side." Therefore, the child inherits only from its mother (Jumarim et al., 2024).

If we refer to Article 863 to Article 873 of the Civil Code, then an illegitimate child entitled to inherit from its father is an illegitimate child recognized by its father (the deceased) or an illegitimate child legitimized at the time of the marriage between its parents. For an illegitimate child who was not recognized or never recognized by the deceased (in this case, the father), based on Constitutional Court Decision No. 46/PUU-VIII/2010, which examined Article 43 paragraph (1) of the UUP, this article must be read: "A child born out of wedlock has civil relations with its mother and her family, as well as with the man as its father, which can be proven based on science and technology and/or other evidence according to the

law, including civil relations with the family of its father” (Tono, 2014).

So, an illegitimate child can prove itself as the biological child of the deceased. However, if we refer to Article 285 of the Civil Code, which states that if there is recognition by the father, creating a legal relationship between the deceased and the illegitimate child, the recognition of the illegitimate child must not harm the rights of the wife and legitimate children of the deceased. In other words, the illegitimate child is considered non-existent. Therefore, proving the legal relationship of a child born out of an informal marriage does not allow them to inherit from their biological father (although it can be proven through technology). This opinion is also strengthened by the Fatwa of the Indonesian Ulema Council dated March 10, 2012, which states that an illegitimate child is only entitled to *Wasiat Wajibah* (Tono, 2014).

So far, in Indonesia, there has not been a clear provision regarding the regulation of *Wasiat Wajibah* concerning the rights of children from informal marriages. Additionally, there hasn't been a definitive court decision that has become jurisprudence (Nasrullah et al., 2024). From a normative perspective, judges are not merely the "bouche de la loi" but rather interpreters or givers of meaning through legal discovery (*rechtsvinding*), even creating new laws (*rechtschepping*) through their decisions (judge-made law). In this writing, the

author aims to encourage such a development.

RESULT AND DISCUSSION

Wasiat Wajibah of a Second Wife in the Context of Sharia Maqasid Asy-Syatibi

According to Imam Syatibi, Allah revealed Sharia (legal rules) for no other reason than to bring about benefits and avoid harm (*jalbul mashalih wa dar'ul mafasid*). In simpler terms, the legal rules that Allah has determined are solely for the benefit of humanity itself (Lasmi et al., 2023).

One of the important and fundamental concepts discussed in the philosophy of Islamic law is the concept of *maqasid at-tasyri'* or *maqasid al-shari'ah*, which emphasizes that Islamic law is legislated to realize and preserve the interests of the human community. This concept requires the emergence of proportional thinking about justice in human life, meaning how to shape and implement the law as an effort to realize the well-being of humanity in a broad sense (Tono, 2014).

This concept has been recognized by scholars, and therefore they formulated a quite popular maxim, "where there is benefit, there is the law of Allah." The theory of benefit here, according to Masdar F. Mas'udi, is equivalent to the theory of social justice in the terminology of philosophy of law (Tono, 2014).

The limitations that have been outlined by scholars such as Ramadan

al-Buthi or Syatibi, according to the author, are related to benefits in a very broad sense. However, as expressed by Syaltut, benefits are like *ijtihad* that always changes to suit the conditions of time and era that require legal solutions. This means that limitations for benefits also need to be made more specific according to the needs in which the benefits will be applied. In the context of Indonesia, the limitations of benefits based on Indonesian culture must be realized (Surono, 2022).

So, it is clear that the fundament of the Islamic legal thought structure is benefit, universal human benefit, or "social justice." *Ijtihadi* offers, whether supported by explicit text or not, which can guarantee the realization of human benefits, in the Islamic perspective, are valid, and Muslims are bound to adopt and realize them. Conversely, any theoretical proposal that convincingly does not support the assurance of benefits, especially those that open the possibility of harm, in the Islamic perspective, is *fasid* (corrupt), and Muslims individually or collectively are bound to prevent it (Surono, 2022).

Compulsory bequests in the context of *Maqasid Sharia* refer to the use of inheritance or assets left by an individual in accordance with the primary objectives (*maqasid*) emphasized in Islamic law. *Maqasid Sharia* is a framework for understanding Islamic law that underscores the importance of achieving the highest goals in Islam, such as the protection of

religion, life, intellect, lineage, and property. In the context of compulsory bequests, the principles of *Maqasid Sharia* can help guide the use of inherited wealth in line with these principles. Some aspects of compulsory bequests in the context of *Maqasid Sharia* include (Hasibuan et al., 2024):

- 1 Protection of Religion (*Hifz al-Din*): Compulsory bequests should ensure that the recipients of the inheritance use it to support religion and Islamic values. This may involve supporting mosques, Islamic educational institutions, and religious activities.
- 2 Protection of Life (*Hifz al-Nafs*): The use of inheritance should take into account the basic needs of the recipients, including food, clothing, medical care, and shelter. Ensuring that recipients have adequate access to these necessities is part of the *Maqasid Sharia* objectives.
- 3 Protection of Intellect (*Hifz al-Aql*): The use of inheritance should also avoid wastefulness, excessive speculation, or practices that may harm the recipients. Ensuring that the inheritance is used wisely and with clear thinking is an important component of protecting intellect.
- 4 Protection of Lineage (*Hifz al-Nasl*): In some situations, compulsory bequests can be used to provide financial protection to children or specific descendants, especially if they require financial support for education, care, or a better life.

5 Protection of Property (Hifz al-Mal): Compulsory bequests should ensure that the inherited property is not squandered or wasted, and that its use supports other Maqasid Sharia objectives. Prudent use of inherited property is part of the principle of protecting property.

In all of these aspects, the principles of Maqasid Sharia guide both the owners of the inheritance and the recipients in achieving a balance between rights and responsibilities, and in maintaining equality and justice in the context of inheritance use. This also helps achieve broader goals in Islam, such as social welfare and morality within society.

Equality and Justice in Islam

Equality is one of the fundamental principles in Islam that is emphasized in various aspects of life. This includes equality among individuals, both in their rights and responsibilities, as well as equality in treatment. The principles of equality in Islam include: (1) Equality Before Allah. In Islam, all individuals are considered equal before Allah. There are no distinctions among them based on race, skin color, ethnicity, or social status. Every Muslim has a personal relationship with Allah, and one's goodness is determined by their faith, deeds, and intentions. (2) Gender Equality. Islam recognizes gender equality and the rights of women. While there may be differences in social roles, both men and women have balanced

rights and responsibilities in religion and daily life (Arfaizar et al., 2023). (3) Equality in Law. Islamic legal principles require equal treatment under the law. This means that the law must be applied fairly to all individuals, regardless of their social or economic status.

Islam is a religion that holds strong views on equality and justice in various aspects of human life. These principles are rooted in the teachings of the Quran, the Hadith of the Prophet Muhammad, peace be upon him, and the works of contemporary scholars and scholars over the centuries. The concept of equality in Islam relates to equality before Allah, while justice encompasses various aspects, including social, economic, and legal (Kompasiana.com, 2023).

How the Principles of Justice Work in Islam. Justice is a highly regarded value in Islam and is a crucial legal principle. Justice includes: (1) Justice in the Courts. This principle emphasizes the importance of fair and balanced courts, without regard to social or economic status. Justice in the courts is the core of Islamic law and is emphasized in the verses of the Quran. (2) Justice in Trade: Islam emphasizes the need for fair behavior in trade and business. Justice in trade includes aspects such as accurate measurement, contract enforcement, and avoiding deception in business transactions. (3) Social Justice. This principle highlights the importance of caring for the less fortunate in society. Providing for those in need, reducing economic disparities, and creating a just

social system are principles of social justice in Islam (Mudakir et al., 2022).

How Maqasid Sharia Supports These Principles? Maqasid Sharia, or the main objectives of Islamic law, is a framework of understanding that guides the understanding and implementation of the principles of equality and justice in Islam. Maqasid Sharia includes the protection of religion, life, intellect, lineage, and property (Yusdani et al., 2021). These principles support the principles of equality and justice in the following ways: (1) Protection of Religion: Ensuring equality in the right to practice religion, regardless of an individual's background or social status, is a form of protecting religion and promotes justice among Muslims. (2) Protection of Life: The principle of protecting life in Maqasid Sharia emphasizes the importance of justice in preventing harm and crimes that can endanger an individual's life. (3) Protection of Intellect: Maqasid Sharia demands the protection of intellect, including preventing misuse, fraud, or practices that can harm individuals intellectually. (4) Protection of Lineage: This principle includes the protection of the rights of descendants in terms of inheritance and family rights, which must be applied fairly and evenly. (5) Protection of Property: Maqasid Sharia emphasizes the importance of property and fair distribution. This includes principles of equality in economic and business rights and responsibilities.

Through the Maqasid Sharia framework, Islam provides a strong philosophical and ethical foundation for applying the principles of equality and justice in various aspects of life, creating a more just and balanced society in accordance with Islamic values.

The Issue of Mandatory Bequests in the Context of Polygamous Wives

The issue of mandatory bequests (wasiat wajibah) in the context of polygamous marriages is a complex and controversial matter in Islamic law. Some common issues that arise in this context include:

- 1 Equality and Justice: One central issue is how to maintain equality and justice between a polygamous wife and other wives concerning inheritance. In practice, the distribution of inheritance often does not align with the equality principles desired by Islamic law.
- 2 Obligation of Wasiat Wajibah: In Islam, there is an obligation to provide mandatory bequests in certain situations. However, problems arise when the inheritance is not divided fairly, or when one of the polygamous wives or other heirs does not comply with this obligation.
- 3 Injustice of Customary Law: In some societies, customary law often overrides Islamic law provisions regarding the inheritance of polygamous wives. This can lead to

- inequality and injustice in the distribution of inheritance.
- 4 Lack of Awareness of Maqasid Shariah: Maqasid Shariah is a framework for understanding Islamic law that emphasizes the importance of maintaining equality, justice, and social welfare. Some individuals and communities may have limited understanding or integration of Maqasid Shariah principles in the case of polygamous wife inheritance.
 - 5 Role of Government and Legal Institutions: Governments and legal institutions in a given country often play a role in overseeing and enforcing inheritance laws. Problems arise when regulations and law enforcement are insufficient in preserving equality and justice.
 - 6 Social and Economic Changes: Changes in society and the economy can impact the dynamics of inheritance and relationships between polygamous wives and other wives, creating uncertainty and conflicts in the context of inheritance.
 - 7 Approaches to Legal Interpretation: Different groups and schools within Islam may have varying approaches to interpreting inheritance laws and mandatory bequests, resulting in diverse and sometimes conflicting interpretations.
 - 8 Social and Educational Approaches: Issues related to mandatory bequests in the context of

polygamous marriages are also related to community education and awareness. Improved education on Islamic law, Maqasid Shariah, and the rights of polygamous wives can help address these issues.

Addressing the problems of mandatory bequests in the context of polygamous marriages requires a comprehensive approach involving law, society, and education to achieve the goals of equality and justice in Islam.

Case Studies of Mandatory Bequests in the Context of Polygamous Wives

Polygamous wives, in the context of Islamic law, have a different legal status from legally recognized wives, and this often presents challenges in terms of rights and inheritance. The following case studies provide insights into the application of mandatory bequests in polygamous wife relationships and how principles of equality and justice are reflected in these cases.

Case Study 1: Estate Distribution in a Family with Polygamous Wives

Case Description: A man who had both a legally recognized wife and a polygamous wife passed away. In his will, he allocated his inheritance fairly among the legally recognized wife and the polygamous wife. He ensured that an equal share was given to each wife and provided a reasonable portion for the children from both marriages.

Principles of Equality and Justice: In this case, the principle of equality is reflected in the inheritance arrangement.

Each wife receives an equal right, which mirrors equality in treatment and rights between both wives. The principle of justice is also evident because the distribution of the estate is based on a fair proportion, taking into consideration the rights of all parties involved.

Case Study 2: Applying Mandatory Bequests to Support Children's Education

Case Description: A man had a legally recognized wife and a polygamous wife. He tragically passed away in an accident. In his will, he stipulated that a significant portion of his inheritance should be used to support the education of his children from both marriages, including the children from the polygamous wife. He ensured that they all had equal opportunities for quality education.

Principles of Equality and Justice: This case reflects the principle of equality by ensuring that the children from all wives have an equal right to education. The application of mandatory bequests illustrates equality in providing equal opportunities to all offspring. Furthermore, the principle of justice is evident in fulfilling the children's rights to receive adequate and equitable education, regardless of their status or origin.

Case Study 3: Protecting the Rights of a Polygamous Wife through Mandatory Bequests

Case Description: A man married a woman as a polygamous wife after he had a legally recognized wife. When he fell seriously ill and approached the end of his life, he made a will that allocated a significant portion of his inheritance to the polygamous wife. He wanted to ensure that the polygamous wife was granted economic protection after his passing.

Principles of Equality and Justice: This case reflects the principle of equality by paying special attention to protecting the rights of the polygamous wife in terms of inheritance. The principle of justice is evident in the action of granting the economically vulnerable polygamous wife proper and adequate protection.

Through these case studies, we observe that the application of mandatory bequests in the context of polygamous wives can reflect the principles of equality and justice in Islam. This demonstrates that, with the appropriate approach, Islamic law provides a foundation for maintaining equality and justice in polygamous wife relationships, as well as in the fair and thoughtful distribution of inheritance.

Challenges and Obstacles

Maqasid Sharia can serve as a highly useful philosophical framework for addressing issues related to mandatory bequests in polygamous wife relationships. The principles of Maqasid Sharia help maintain equality and justice in this context and ensure that the

distribution of inheritance aligns with the primary objectives of Islamic law (Wiryanto, 2023). Here are ways in which Maqasid Sharia can help overcome challenges related to mandatory bequests in polygamous wife relationships:

- 1 Protection of Religion (Hifz al-Din): Maqasid Sharia emphasizes the importance of protecting religion. In the context of mandatory bequests, this can mean ensuring that inheritors do not use their inheritance for purposes that contradict Islamic teachings. Thus, the distribution of the inheritance should be directed towards supporting Islamic values and the religion.
- 2 Protection of Life (Hifz al-Nafs): This principle requires the protection of lives and physical well-being of inheritors. In polygamous wife relationships, the distribution of inheritance should ensure that all parties, including polygamous wives, have adequate access to basic necessities such as food, medical care, and shelter. This can be achieved by allocating a fair portion of the inheritance for meeting these needs.
- 3 Protection of Reason (Hifz al-Aql): This principle demands safeguarding intellect, including preventing abuse or practices that may harm individuals intellectually. In terms of inheritance, Maqasid Sharia suggests the wise and ethical

use of inheritance and encourages avoiding extravagance or excessive speculation that may harm inheritors.

- 4 Protection of Lineage (Hifz al-Nasl): Maqasid Sharia prioritizes the protection of the rights of descendants. In the context of polygamous wives, this means that the distribution of inheritance should ensure that children of polygamous wives are not disadvantaged and have equal rights to children of legally recognized wives.
- 5 Protection of Wealth (Hifz al-Mal): This principle encompasses the safeguarding of wealth and ensuring fair distribution. In polygamous wife relationships, the distribution of inheritance should consider the rights of all stakeholders, including polygamous wives, so that the inheritance is not wasted or misused.

By guiding the implementation of mandatory bequests with the principles of Maqasid Sharia, we can achieve a fair and balanced distribution of inheritance in polygamous wife relationships. This also helps avoid conflicts and inequalities that may arise in cases of inheritance distribution. Maqasid Sharia provides a strong foundation for achieving the primary objectives of Islamic law, including maintaining equality and justice in the context of mandatory bequests.

Contribution This Article to Study Islamic Family Law

The writing contributes to filling the legal void in the development of inheritance law cases in Indonesia and provides legal certainty in the resolution of Islamic civil law cases. Apart from that, the contributions of this paper include:

1. **Addressing Legal Gaps:** The article identifies and addresses specific legal gaps concerning inheritance rights for polygamous wives. By focusing on the concept of obligatory bequest, it offers practical solutions to ensure equitable distribution of inheritance among multiple wives, filling a significant void in existing Islamic inheritance law.
2. **Promoting Equality and Justice:** Through its analysis, the article emphasizes the principles of equality and justice, core tenets of Maqashid Sharia. It explores how obligatory bequests can be used to uphold these principles, ensuring that the rights of all wives are respected and protected in a polygamous marriage, thereby promoting fairness.
3. **Theoretical Framework Application:** The research applies the framework of Maqashid Sharia, which aims to achieve the objectives of Islamic law. By situating the discussion within this framework, the article provides a robust theoretical basis for its arguments, contributing to the

academic discourse on how Islamic principles can be practically implemented in contemporary legal contexts.

4. **Policy Recommendations:** The findings and arguments presented in the article can inform policy-making, particularly in Muslim-majority countries. By offering clear recommendations on obligatory bequests, the article has the potential to influence legal reforms that align with both religious principles and contemporary needs for justice and equality.
5. **Interdisciplinary Insights:** Combining insights from Islamic jurisprudence, legal studies, and social justice, the article provides a comprehensive understanding of the complexities involved in inheritance law for polygamous families. This interdisciplinary approach enriches the academic discussion and offers valuable perspectives for scholars and practitioners alike.
6. **Enhancing Legal Certainty:** By providing a detailed examination of obligatory bequests within the context of polygamous marriages, the article contributes to greater legal certainty. It clarifies how such bequests can be implemented in accordance with Islamic law, offering clear guidelines for legal practitioners and judges.
7. **Empirical Relevance:** The article's findings are grounded in real-world

issues faced by polygamous families. By addressing these practical concerns, the research offers relevant and applicable solutions, making a significant contribution to both academic literature and practical legal practice.

CONCLUSION

In this writing, we have explored the role of Wasiat Wajibah in the context of second wives in polygamous marriages outside the court procedure in Indonesia, focusing on equality and justice within the framework of Maqasid Sharia. The status of a second wife is complex and often linked to marriage registration and polygamy requirements, causing tension and conflict in inheritance distribution.

Maqasid Sharia emphasizes principles of equality and justice, which Wasiat Wajibah can help achieve through judicial decisions. Case studies show that Wasiat Wajibah, when implemented with the benefit perspective, has been applied to adopted children and non-Muslim heirs, and can also be a breakthrough for second wives outside court procedures.

Judges, through *rechtvinding* (legal discovery), must consider various aspects such as the first wife's awareness of the second marriage and the fulfillment of the second wife's duties. Recommendations include refining the thought process for practitioners, improving legal regulations to protect

the rights of second wives, and increasing societal awareness of equality and justice in Islam.

Maintaining equality and justice in the relationship of a second wife is a collective responsibility of individuals, society, and legal institutions. A holistic approach integrating Islamic law, legislation, Maqasid Sharia principles, and lived law can achieve the main goal of Islamic law: maintaining equality and justice.

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