

Mandatory Bequests and Succession in Islamic Inheritance Law

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Abstract

Death creates legal consequences in the form of the transfer of rights and obligations to heirs. In Islamic inheritance law, inheritance issues are not only related to the distribution of inheritance assets but also concern the protection of parties who may lose inheritance rights, such as orphaned grandchildren and relatives who do not receive inheritance shares. To address these issues of justice, Indonesian Islamic law has developed the concepts of compulsory bequest (*wasiat wajibah*) and substitute heirs as regulated in the Compilation of Islamic Law. This study aims to analyze the concepts, legal foundations, implementation, and relevance of compulsory bequests and substitute heirs in realizing justice within Islamic inheritance law in Indonesia. This research employs a normative legal research method with a library research approach. Data were collected from primary legal sources, including the Quran, Hadith, the Compilation of Islamic Law, and relevant court decisions, as well as secondary legal sources such as books, scientific journals, and previous studies. Data analysis was conducted descriptively and analytically through conceptual and statutory approaches. The findings indicate that compulsory bequests serve as a legal instrument to protect individuals who are not entitled to direct inheritance rights, such as adopted children, adoptive parents, and, in certain judicial practices, heirs of different religions. Meanwhile, substitute heirs represent a reform of Islamic inheritance law that allows grandchildren to replace the position of their deceased parents who passed away before the testator. Both concepts share the same objective of promoting justice, public welfare, and protection of family economic rights. Therefore, compulsory bequests and substitute heirs constitute forms of Islamic legal *ijtihad* that remain relevant to contemporary societal needs and are consistent with the principles of *maqashid al-shariah* in preserving wealth and lineage.

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INTRODUCTION

From the perspective of Islamic law, a person's death not only brings an end to personal legal relationships but also gives rise to legal consequences in the form of the transfer of rights and obligations to the surviving parties (Suliyono, 2020). Before the estate is distributed to the heirs, certain obligations must first be fulfilled, such as funeral expenses, the settlement of debts, the payment of zakat, and the execution of

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zakat, and the execution of a valid will. Once all these obligations have been fulfilled, the estate may be distributed to the heirs in accordance with the provisions of Islamic inheritance law. In practice, inheritance issues concern not only who is entitled to receive an inheritance but also those barred from receiving it, as well as the mechanisms for the transfer of inheritance rights that have evolved within contemporary Islamic law. One issue that remains a subject of debate is the status of grandchildren whose parents predeceased the testator.

In classical fiqh, grandchildren whether through the male or female line may be barred (*mahjub*) from inheriting due to the presence of a living child of the decedent, based on the principle of hijab-mahjub; whereas in Indonesian positive law, through Article 185 of the Compilation of Islamic Law (KHI), the concept of a substitute heir is recognized, allowing grandchildren to take the place of their parents in receiving a share of the inheritance. This provision represents a reform of Islamic law aimed at providing protection and justice to the descendants of the decedent who have close social and moral ties to the decedent's family (Fadhilah, 2021).

The concept of substitute heirs, as stipulated in Article 185 of the Indonesian Civil Code, emerged in response to the needs of Indonesian society, which sought an inheritance system more oriented toward substantive justice. Unlike the classical fiqh inheritance system, which strictly emphasizes blood ties and the principle of hijab, Indonesian inheritance law seeks to protect orphaned grandchildren who may lose their economic rights due to the premature death of their parents. The introduction of substitute heirs is viewed as the result of legal *ijtihad* that reconciles Sharia values with the social realities of Indonesian society. However, the existence of this provision continues to spark differing viewpoints among legal scholars and practitioners, particularly regarding its normative basis, scope of application, and compatibility with the principles of classical Islamic inheritance law.

Furthermore, a hadith of the Prophet Muhammad (peace be upon him), narrated by Imam Bukhari and Muslim from Abdullah ibn Umar, emphasizes the importance of a will as an instrument for protecting the rights of family members and relatives who may not receive a direct share of the inheritance. This hadith indicates that a will serves a vital social function in safeguarding the welfare of the family after a person's death. Therefore, the concepts of substitute heirs and obligatory wills are often viewed as instruments of Islamic law aimed at realizing justice and the well-being of the family left behind by the testator. In the Indonesian context, the development of these concepts is part of the dynamic process of Islamic legal reform that continues to evolve in accordance with the needs of modern society (Nurdiansyah & Andaryuni, 2023).

A growing trend in the practice of Islamic inheritance in Indonesia shows that inheritance disputes involving substitute heirs still frequently occur, both within families and in cases heard in Religious Courts. Many cases reveal a discrepancy in understanding between the provisions of Article 185 of the Indonesian Islamic Family Law (KHI) and the concept of inheritance according to classical fiqh, leading to conflicts regarding the rights of grandchildren as substitute heirs for those who have predeceased them. On the one hand, the public demands legal protection for orphaned grandchildren so that they may receive a fair share of the inheritance; on the other hand, some circles still maintain the view that the concept of substitute heirs is not recognized in the classical Islamic inheritance system. These differences have led to various interpretations in religious court practice and in the distribution of inheritances within the community (Yogi et al., 2026).

Another phenomenon is evident in the continued existence of differing court rulings regarding the application of Article 185 of the Islamic Family Law Code (KHI), particularly concerning the limits on the share of substitute heirs and their standing relative to other heirs of equal rank. Recent research indicates that in judicial

practice, there is a tendency for judges to place greater emphasis on recognizing the status of substitute heirs without thoroughly examining the limits on their share as specified in Article 185 (2) of the Compilation of Islamic Law (KHI). This situation suggests that the implementation of the concept of substitute heirs still faces challenges, both normatively and practically (Sitorus et al., 2026).

Research on substitute heirs is important because it concerns the protection of the rights of economically and socially vulnerable families, particularly grandchildren who lost their parents before the testator's death. This study is necessary to provide a comprehensive understanding of the legal basis, purpose, and implementation of Article 185 of the Indonesian Islamic Family Law (KHI) within the Indonesian legal system. Furthermore, this research is also important for addressing the debate between the concepts of classical Islamic inheritance and the reform of Islamic law that is developing in Indonesia. It is hoped that this research will lead to a formulation capable of bridging the values of social justice with the principles of Sharia, so that the application of inheritance law can provide legal certainty and benefit to society (Nurfajri et al., 2024).

Another pressing issue is the public's growing need for fair resolution of inheritance disputes. In many cases, a lack of clear understanding regarding substitute heirs often leads to protracted family conflicts. Therefore, an in-depth academic study of the concept of substitute heirs is necessary to contribute to the development of Islamic family law in Indonesia and to serve as a basis for consideration by judges, academics, and policymakers in reforming Islamic inheritance law (Yogi et al., 2026).

Previous research has extensively discussed the concept of substitute heirs from various perspectives. A study (Yogi et al., 2026) examined the epistemology of substitute heirs in the Compilation of Islamic Law (KHI) and concluded that the concept remains controversial because it is not fully consistent with the principles of classical Islamic inheritance law. Furthermore, a study (Fadhilah, 2021) focused more on the relevance of the Indonesian concept of substitute heirs to the *wasiat wajibah* in Egypt as a form of Islamic legal reform. A study (Nurdiansyah & Andaryuni, 2023) compared the concepts of the Egyptian *wasiat wajibah*, substitute heirs, and the Indonesian *wasiat wajibah* in terms of their application and beneficiaries. Meanwhile, Muhammad Yogi et al. (2024) highlight the need to revise Article 185 of the Indonesian Islamic Family Law (KHI) because it is considered to still create ambiguity in its application (Fitri & Rofiah, 2021).

Although these studies have discussed the concept of substitute heirs from a normative perspective, there are still limitations in examining the relationship between the *hijab-mahjub* principle in classical *fiqh* and the implementation of Article 185 of the Compilation of Islamic Law (KHI) as an instrument of Islamic legal reform in Indonesia. Furthermore, there has been little research specifically analyzing how the concept of substitute heirs can address issues of social justice for orphaned grandchildren from the perspective of *maqāṣid al-syarī'ah* and the dynamics of contemporary Islamic family law. Therefore, this study offers a novel contribution by focusing its analysis on the role of substitute heirs as a form of Islamic legal reform that bridges the provisions of classical *fiqh* with the justice needs of modern Indonesian society.

METHODS

This study employs a normative legal research method using a literature review approach. Data were obtained through an examination of various primary and secondary legal sources related to the concepts of *wasiat wajibah* and substitute heirs in Islamic inheritance law in Indonesia. The primary legal sources used include the Quran, hadith, the Compilation of Islamic Law (KHI), and relevant court decisions. Meanwhile, secondary legal sources were drawn from academic journals, books, and

previous research findings. The approaches employed were the conceptual approach and the statutory approach. The analysis was conducted using a descriptive-analytical method by examining the concepts, legal basis, implementation, and relevance of these two instruments in realizing justice in Islamic inheritance law in Indonesia (Efendi et al., 2026; Engkizar et al., 2025; 2026; Mubarak, 2020; Sabir, 2019; Siddigiyah & Novita, 2023; Nofitasari, 2021).

RESULT AND DISCUSSION

Definition of Mandatory Bequest

Linguistically, a *wasiat wajibah* consists of two words derived from Arabic. The word “*wasiat*” (وَصِيَّةٌ) comes from the root *waṣa-yuṣi* (وَصَّى-وَصِيَّ), which means a message, promise, or entrustment from one person to another to perform a specific act to be carried out after the testator’s death. In legal terms, a will is a gift from one person to another in the form of property, a debt, or a benefit so that the recipient may possess that gift after the testator’s death. The word “*wajibah*” (وَاجِبَةٌ) comes from the word *wājib* (وَاجِب), which means something that must be done; it is obligatory and cannot be neglected. In Islamic legal terminology, *wājib* refers to a provision commanded by Allah that must be carried out; one will receive reward if it is carried out and punishment if it is not.

Thus, etymologically, a *wasiat wajibah* can be defined as a mandatory bequest that is, a directive that must be carried out automatically, regardless of the testator’s wishes. In Islamic encyclopedias, a *wasiat wajibah* is defined as a bequest intended for heirs or relatives who do not receive a share of the deceased’s estate due to a legal impediment under Islamic law. Based on this explanation, it can be concluded that a *wasiat wajibah* refers to a bequest intended for heirs or close relatives who do not receive a share of the deceased’s estate due to an impediment under Islamic law.

According to (Rofiq, 2000), a mandatory will is an action taken by a government official or judge, as a state authority, to enforce or issue a mandatory will for a deceased person, which is granted to a specific person under specific circumstances. This definition emphasizes the role of the state, through the judge, in establishing a mandatory will. In another sense, a mandatory will is an action taken by a government official or judge, acting as a state agent, to enforce or issue a mandatory will for a person who has passed away, which is granted to a specific person under specific circumstances as well. This version states that a *wasiat wajibah* is a will that is deemed to have been made by a person who is about to die, even though they did not actually leave such a will (Siddigiyah & Novita, 2023).

The Concept and Implementation of Mandatory Bequests in the Compilation of Islamic Law (KHI)

Terminologically, a mandatory bequest is a bequest whose execution does not depend on the will or consent of the testator, but is based on a mandatory statutory provision or court order. In classical fiqh, a will is voluntary (*ikhtiyariyyah*). However, some Tabi’in scholars, such as Ibn Hazm, argued that close relatives who do not receive an inheritance share are entitled to a portion through a mandatory bequest based on Surah Al-Baqarah, verse 180. In Indonesia, the Indonesian Compilation of Islamic Law (KHI) explicitly regulates the mandatory bequest in Article 209 to accommodate the rights of adopted children and adoptive parents who do not receive a formal bequest, with a maximum limit of one-third (1/3) of the estate. Subsequently, through Supreme Court jurisprudence, the application of the mandatory bequest has also been expanded to provide legal protection for heirs of different religions (non-Muslims) in order to uphold social justice within the family.

The Existence and Mechanism of Substitution of Heirs under Article 185

The legal institution of substitution of heirs in the Compilation of Islamic Law

(KHI) emerged as a form of positive legal innovation (*ijtihad*) aimed at resolving the impasse in distributive justice for orphaned grandchildren. In classical (conventional) *fiqh*, which adheres to the Shafi'i school of thought, the inheritance rights of a grandchild whose parents have predeceased their grandparents (the decedent) are absolutely barred (*mahjub hirman*) by the presence of the decedent's son or daughter (the grandchild's uncle or aunt). The Compilation of Islamic Law (KHI) breaks through this textual rigidity by formulating Article 185(1), which states that an heir who dies before the decedent may be replaced by their child. This line of thinking was heavily influenced by Professor Hazairin's ideas regarding a bilateral inheritance system, which seeks to restructure the concepts of *dzu'wil arham* and *ashabab* to be more oriented toward the common good and a sense of humanity within Indonesian families.

From a legal-mechanistic perspective, the application of this principle of substitution is subject to strict limitations that distinguish it from both Western law and customary law, in order to maintain the proportionality of Islamic inheritance distribution. The phrase "may be substituted" in the Compilation of Islamic Law (KHI) emphasizes that this status is conditional and not an absolute, automatic requirement; rather, it must take into account the existing structure of heirs (Rashid, 2012). The provisions regarding the share for substitute heirs are based on the principle that their share must not exceed that of the heir who is of the same rank as the parent being replaced. This rule limits the rights of grandchildren so that they do not disadvantage or take a larger share than their own living uncles or aunts, thereby ensuring that commutative justice among legal subjects is maintained within the framework of inheritance distribution.

Furthermore, the dynamics of religious court practice in Indonesia show that the scope of Article 185 of the Indonesian Compilation of Islamic Law (KHI) has been subject to substantive restrictions through judicial precedent and agreements among Supreme Court justices. Based on the results of the 2010 National Working Meeting (*Rakernas*) of the Supreme Court of the Republic of Indonesia in Balikpapan, it was agreed that the right to succeed as a substitute heir is limited to direct descendants, namely grandchildren (children of the decedent's children) and nephews/nieces (children of the decedent's full siblings or siblings of the same father). This restriction is intended to prevent an overly broad interpretation of substitute heirs, which has the potential to undermine the principles of justice for primary heirs (*ashabul furudh*). Thus, the substitution of heirs under the KHI represents a synthesis between the protection of the fundamental rights of orphans and the preservation of the core principles of Islamic inheritance law (*fiqh mawaris*) in Indonesia.

The Distinction Between Heirs and Beneficiaries Under a Will

Although the concept of substitute heirs and mandatory beneficiaries both stem from the substantive justice of the Indonesian Islamic Family Law (KHI) to resolve the tensions inherent in classical inheritance law, these two legal institutions are based on fundamentally opposing principles. The most fundamental distinction lies in the legal standing of the beneficiaries. Substitute heirs (Article 185 of the Compilation of Islamic Law (KHI)) automatically join the ranks of biological heirs due to the blood relationship inherent in the parents they are replacing (Syarifuddin, 2008). Conversely, the recipient of a mandatory bequest (Article 209 of the Compilation of Islamic Law (KHI)) is positioned purely as a "third-party beneficiary" or *mutlaqah* who receives a post-mortem grant of rights from the decedent through a court order, not on the basis of a blood relationship (Rofiq, 2000).

These qualitative differences have direct implications for the structure of beneficiaries, the extent of their rights, and the order of distribution of the estate. The share for substitute heirs is not bound by the one-third (1/3) limit but varies depending on the size of the original share that their parents would have received, which can

sometimes reach one-half (1/2) or even the remainder of the estate (*ashabah*). This stands in stark contrast to the mandatory bequest (*wasiat wajibah*), which is strictly capped by the Indonesian Compilation of Islamic Law (KHI) at a maximum of one-third (1/3) of the net estate. Chronologically, in the execution of the estate, the right to the mandatory bequest must be fulfilled first, concurrently with the settlement of the decedent's debts (the estate liquidation phase); only then is the remaining net estate distributed to the absolute heirs, including the substitute heirs (Fajriyah et al., 2023).

From a philosophical-legal perspective, the distinction between these two concepts reflects the flexibility of Indonesian Islamic law in reconciling formal justice and substantial justice. Article 185 of the Compilation of Islamic Law (KHI) addresses issues of public interest within the internal circle of blood relatives, whereas Article 209 of the Compilation of Islamic Law (KHI) encompasses social relationships outside the circle of blood relatives in order to foster peace and prevent economic inequality (Zein, 2010). Understanding the theoretical demarcation lines between these two regulations is crucial for religious court judges to avoid errors in the application of the law when adjudicating disputes over joint property within the Indonesian Muslim community.

Mandatory Bequest and Substitute Heirs in the Perspective of *Maqashid al-Sharia*

From the perspective of *maqashid al-sharia*, the existence of the mandatory bequest (*wasiat wajibah*) and substitute heirs can be understood as an implementation of the objectives of Islamic law, which are oriented toward the welfare of the community. The theory of *maqashid al-sharia* developed by Imam al-Shatibi emphasizes that all provisions of Islamic law aim to preserve five essential elements of human life: religion (*hifz al-din*), life (*hifz al-nafs*), intellect (*hifz al-aql*), lineage (*hifz al-nasl*), and property (*hifz al-mal*). The concept of the mandatory bequest is closely related to the principle of *hifz al-mal*, as it seeks to safeguard the continuity of wealth benefits for those who share social and familial ties with the deceased. On the other hand, substitute heirs are connected to *hifz al-nasl*, as they provide protection for the descendants of the deceased to ensure that they continue to receive fair economic rights.

Both concepts also reflect the principles of justice (*al-'adl*) and public interest (*al-maslahah*), which constitute the fundamental foundations of Islamic law. By providing protection to those vulnerable to losing their economic rights, Islamic law demonstrates its ability to respond to societal needs without abandoning the values of the sharia (Arto, 2019).

CONCLUSION

Based on the foregoing discussion, it can be concluded that the mandatory bequest (*wasiat wajibah*) and substitute heirs represent a reform in Islamic inheritance law, emerging as a response to the evolving needs of modern society. These two concepts were developed to address various inheritance issues not explicitly regulated in classical fiqh, particularly concerning the protection of individuals who have strong familial or social ties with the deceased but may otherwise be excluded from receiving a share of the estate. The presence of these concepts illustrates that Islamic law possesses the capacity to evolve through *ijtihad* while remaining faithful to the fundamental principles of the sharia as derived from the Quran and Hadith. The mandatory bequest serves as a legal instrument that provides protection to individuals not recognized as heirs under Islamic inheritance law, such as adopted children and adoptive parents. Within the Indonesian legal system, this concept is codified in Article 209 of the Compilation of Islamic Law (KHI), as a means of safeguarding the social and emotional bonds established between the deceased and adopted children or adoptive parents. Through the mandatory bequest, the state seeks to realize justice and public welfare by granting economic rights to those who, although lacking a juridical inheritance relationship, maintain a strong sociological

attachment to the deceased.

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