

THE CONCEPT OF MANDATORY BEQUEST IN THE ISLAMIC FAMILY LAW SYSTEM OF INDONESIA AND EGYPT

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ABSTRACT

This study aims to compare the concept of wasiat wajibah in the family law systems of Indonesia and Egypt, focusing on aspects such as regulation, recipients, portion size, implementation mechanisms, and its relevance to maqasid syariah. The research uses a normative-comparative legal method with a juridical-comparative approach and content analysis of primary legal materials (KHI Article 209 in Indonesia and Law No. 71 of 1946 in Egypt), secondary materials (Supreme Court of Indonesia case law, Egyptian court rulings, literature on legal reform), and tertiary materials. The results of the study show that Egypt implements wasiat wajibah in a legislative and normative manner that is clear and consistent in order to protect orphaned grandchildren (mahjub) with a share equivalent to that of parents (up to 1/3 of the estate). Meanwhile, Indonesia has adopted a more flexible judicial-pragmatic approach through Article 209 of the KHI and case law of the Supreme Court, focusing primarily on foster children/foster parents and expanding to stepchildren and relatives of different religions. The two models represent different yet complementary contemporary ijtihad in achieving justice and welfare. This study concludes that cross-learning between the two countries can strengthen the adaptability of Islamic inheritance law in the modern era.

Keywords: Mandatory bequest, Islamic inheritance law, Indonesia-Egypt comparison, substitute heirs

ABSTRAK

Penelitian ini bertujuan untuk membandingkan konsep wasiat wajibah dalam sistem hukum keluarga Islam di Indonesia dan Mesir, dengan fokus pada aspek regulasi, penerima, besaran bagian, mekanisme penerapan, serta relevansinya terhadap maqasid al-syariah. Penelitian ini menggunakan metode hukum normatif-komparatif dengan pendekatan yuridis-komparatif serta analisis konten terhadap bahan hukum primer (Pasal 209 KHI di Indonesia dan Undang-Undang No. 71 Tahun 1946 di Mesir), bahan sekunder berupa yurisprudensi Mahkamah Agung Indonesia, putusan pengadilan Mesir, dan literatur reformasi hukum, serta bahan tersier. Hasil penelitian menunjukkan bahwa Mesir menerapkan wasiat wajibah secara legislatif-normatif dengan aturan yang jelas dan konsisten untuk melindungi cucu yatim (mahjub) dengan bagian setara dengan orang tua, maksimal sepertiga dari harta warisan. Sementara itu, Indonesia mengadopsi pendekatan yudisial-pragmatis yang lebih fleksibel melalui Pasal 209 KHI dan yurisprudensi Mahkamah Agung, dengan fokus utama pada anak angkat dan orang tua angkat, serta diperluas kepada anak tiri dan kerabat berbeda agama. Kedua model

ini merepresentasikan bentuk ijtihad kontemporer yang berbeda namun saling melengkapi dalam mewujudkan keadilan dan kemaslahatan. Penelitian ini menyimpulkan bahwa pembelajaran silang antara kedua negara dapat memperkuat daya adaptasi hukum waris Islam di era modern.

Kata Kunci: Wasiat wajibah, hukum waris Islam, perbandingan Indonesia–Mesir, ahli waris pengganti

INTRODUCTION

The modernization of law has become an inevitability in the contemporary Islamic world, particularly in the field of family law. This process encompasses various essential aspects such as marriage, divorce, and inheritance. Beginning in the early 20th century, legal modernization has generally been carried out through changes and adjustments to fiqh regulations that have existed for centuries. In essence, the social realities of society also shape and drive legal transformation, since law is fundamentally established to respond to the needs and interests of the community itself (Rusdi Rizki Lubis, Asmuni, Tamyiz Mukarrom, Candra Boy Seroza, 2025, p. 65).

In the development of modern Islamic law, Islamic inheritance law has become one of the most influential legal systems in Muslim-majority countries as well as in states with significant Muslim populations. One of the most remarkable provisions in the field of inheritance is the recognition of grandchildren as substitute heirs. In classical provisions, grandchildren could not replace their deceased father in receiving inheritance from their grandfather, as their rights were blocked by the presence of their paternal uncle. This concept was later perceived as unjust for grandchildren who had lost their parents. Consequently, the idea of wasiat wajibah (mandatory bequest) emerged, first pioneered in Egypt. This concept was subsequently adopted by many Islamic countries, including Indonesia, as an effort to balance classical fiqh provisions with the demands of contemporary social justice (Fadhilah, 2021, p. 37).

Although wasiat wajibah has been the subject of considerable study in contemporary Islamic legal literature, previous research has shown diverse areas of focus. Nugroho (2020) examined the development of legislation on wasiat wajibah in Egypt (Ishak Tri Nugroho, 2020), while Fadhilah (2021) discussed its relevance to the concept of substitute heirs in Indonesia (Fadhilah, 2021). Nuruddien (2022) compared wasiat wajibah in Egypt and the Compilation of Islamic Law (KHI) from the perspective of justice and family welfare (Nuruddien, 2022). Furthermore, Nurdiansyah and Andaryuni (2023) compared Egypt's wasiat wajibah with substitute heirs and Indonesia's wasiat wajibah (Agus Nurdiansyah, 2023). Meanwhile, Bustomi and Setyawan (2025) analyzed the comparison of compulsory bequests within the Indonesian and Egyptian legal systems (Ilham Bustomi, 2025). These developments indicate that wasiat wajibah constitutes an important part of the dynamics of reform in Islamic inheritance law, both in the context of legislation, legal practice, and efforts to realize justice and family welfare.

A thorough comparative study between Egypt's legislative-normative model (which has focused the wasiat wajibah on grandchildren who are barred (mahjub) since Law No. 71 of 1946) and Indonesia's judicial-pragmatic approach (which emphasizes contextual adaptation through court decisions) remains very limited. Yet such a comparison is crucial to reveal not only the technical similarities and differences in regulation, but also the philosophical foundations and adaptability of both systems to the social dynamics of their respective societies. In particular, comprehensive analyses from the perspective of maqasid al-shariah—such as the preservation of lineage (hifz al-nasl), justice ('adl), and public welfare (maslahah 'ammah)—as well as social

adaptability are still rarely undertaken. This limitation has resulted in the absence of integrative, evidence-based recommendations for legal reform in Indonesia, despite its position as the country with the largest Muslim population in the world.

This study seeks to fill that gap. The research problems are formulated as follows: (1) How are the regulations and applications of wasiat wajibah implemented in Indonesia and Egypt? (2) How can a comparative analysis be conducted regarding the regulation, application, similarities, and differences of wasiat wajibah in both countries? The objective of this research is to compare the regulation and application of wasiat wajibah in Indonesia and Egypt, as well as to analyze the similarities, differences, strengths, and weaknesses of the two systems. It is expected that this study will provide an academic contribution in the form of an in-depth comparative analysis, as well as a practical contribution to the reform of Islamic inheritance law in Indonesia, making it more adaptive to the social dynamics of society.

METHODS

This research is a normative-comparative legal study of a conceptual nature, employing a juridical-comparative approach. This approach was chosen because the study aims to compare the concept of wasiat wajibah within two different Islamic family law systems—Indonesia and Egypt—examining their regulations, historical development, implementation, and maqasid al-shariah implications. The method applied is qualitative-analytical, relying on secondary data consisting of primary, secondary, and tertiary legal materials. Primary legal materials include Egypt's Law No. 71 of 1946 on Wills, Indonesia's Compilation of Islamic Law (KHI), and relevant decisions of the Supreme Court of the Republic of Indonesia. Secondary legal materials comprise scholarly journals, Islamic law textbooks, dissertations, and literature on family law reform in both countries as listed in the bibliography. Tertiary legal materials consist of legal dictionaries, encyclopedias, and media articles that provide supporting social context.

Data analysis is conducted through content analysis and comparative analysis. The first stage involves inventorying, classifying, and systematizing the provisions of wasiat wajibah in both countries. The second stage compares similarities and differences in terms of subjects, objects, distribution shares, and philosophical foundations. Subsequently, a normative analysis is carried out from the perspective of maqasid al-shariah to assess the degree of justice and adaptability of both systems to contemporary social dynamics. This approach is expected to yield comprehensive conclusions and relevant policy recommendations.

RESULTS AND DISCUSSION

The Concept of Mandatory Bequest in Indonesia

In the practice of family law in Indonesia, the Shafi'i school of thought serves as the primary foundation, resulting in the application of faraid principles that tend to be traditional and relatively strict. According to classical Islamic law, only individuals within a direct line of descent are entitled to inherit from one another, meaning that adopted children are not recognized as direct heirs. However, in response to the demands of social justice and the needs of modern society, Indonesia, through the Compilation of Islamic Law (KHI), adopted the concept of wasiat wajibah as a normative solution to protect the rights of parties not covered by the traditional faraid system (Mulyani, 2025, p. 52).

In Indonesia, wasiat wajibah does not apply to grandchildren who are barred (mahjub) by the presence of male children (Rohana, 2021, p. 146). For grandchildren

whose parents have passed away earlier, Indonesia recognizes the concept of substitute heirs (*ahli waris pengganti*) as stipulated in Article 185 of the Compilation of Islamic Law (KHI). Wasiat wajibah is instead focused on issues concerning adoptive parents and adopted children, which frequently arise in various cases of Islamic family law (Rohana, 2021, p. 146). The regulation of wasiat wajibah is specifically provided in Article 209 of the Compilation of Islamic Law (KHI) (Agus Nurdiansyah, 2023, p. 113).

Article 209 stipulates that between adopted children and adoptive parents there exists a reciprocal relationship of bequest. The estate of an adopted child is first distributed according to the ordinary rules of inheritance to his or her heirs, while adoptive parents who do not receive a bequest are entitled to a wasiat wajibah of up to one-third of the adopted child's estate (Kompilasi Hukum Islam, 1991, pasal 209 ayat (1)). Conversely, adopted children who do not receive a bequest are entitled to a wasiat wajibah of up to one-third of their adoptive parents' estate (Kompilasi Hukum Islam, 1991, pasal 209 ayat (2)).

The provision of Article 209 of the Compilation of Islamic Law (KHI) represents one of the significant breakthroughs in Islamic law in Indonesia. It emerged as a response to the widespread practice of child adoption among Muslim communities (Setiawan, 2017, p. 50). Unlike the classical *tabanni* concept in *fiqh*, which transfers lineage, child adoption in Indonesia is intended solely to meet the needs of livelihood, education, and affection, without severing kinship ties with the biological parents. Although adoption does not create an inheritance relationship between adopted children and adoptive parents, the strong social and emotional bonds between them gave rise to Indonesia's distinctive solution in the form of wasiat wajibah (Ismail, 2021, p. 128). This concept serves as a legal protection for adopted children who do not possess full inheritance rights due to the absence of blood relations (Rohana, 2021, p. 146), while at the same time ensuring justice within the adoptive family (Ilham Bustomi, 2025, p. 110).

In addition to the provisions already contained in the Compilation of Islamic Law (KHI), the rules regarding wasiat wajibah are further elaborated through a number of circular letters issued by the Supreme Court of the Republic of Indonesia, particularly those originating from the Religious Courts. Some of these circular letters include:

- a. Circular Letter of the Supreme Court of the Republic of Indonesia No. 7 of 2012 (Plenary Session of the Religious Chamber, May 3–5, 2012) affirms that stepchildren who have been raised since childhood, although not recognized as heirs under Islamic inheritance law, are nevertheless entitled to receive a portion of the estate through the mechanism of wasiat wajibah (Surat Edaran Nomor 07 Tahun 2012 Tentang Rumusan Hukum Hasil Rapat Pleno Kamar Mahkamah Agung Sebagai Pedoman Pelaksanaan Tugas Bagi Pengadilan, 2012, p. 9).
- b. Circular Letter of the Supreme Court of the Republic of Indonesia No. 3 of 2015 (Plenary Session of the Religious Chamber, December 9–11, 2015) refers to the outcomes of the National Working Meeting held in 2010 in Balikpapan. In that meeting, it was agreed that substitute heirs (*ahli waris pengganti*) are recognized only up to the level of grandchildren. Furthermore, if a decedent passes away without leaving direct descendants but still has siblings as heirs, then the daughters of those siblings are entitled to receive a portion of the estate through the mechanism of wasiat wajibah (Surat Edaran Nomor 03 Tahun 2015 Tentang Pemberlakuan Rumusan Hasil Rapat Pleno Kamar Mahkamah Agung Tahun 2015 Sebagai Pedoman Pelaksanaan Tugas Bagi Pengadilan, 2015, p. 5).

- c. Circular Letter of the Supreme Court of the Republic of Indonesia No. 3 of 2023 (Plenary Session of the Religious Chamber, November 19–21, 2023, inheritance division) emphasizes the importance of protecting the best interests of the child. This circular states that children born from marriages valid under Islamic law, even if the marriage has not yet been officially registered or recorded by the state, are still entitled to receive a portion of the estate through the mechanism of wasiat wajibah (Mahkamah Agung Republik Indonesia, 2024, p. 148).

These circular letters function as guidelines for interpreting and implementing the provisions already stipulated in the relevant legislation. Thus, they not only reflect the dynamics of an ever-evolving social reality, but also contribute to fostering more equitable resolutions in the application of Islamic inheritance law.

The concept of wasiat wajibah in Indonesia has undergone an expansion of meaning following cases that required judges to exercise *ijtihad* in developing the law through methods such as *rechtsvinding* (legal discovery), *maslahah mursalah* (public interest), and a sense of justice. This development occurred because Article 209 of the Compilation of Islamic Law (KHI) regulates wasiat wajibah only in a limited scope for adopted children and adoptive parents (up to one-third of the estate). Meanwhile, the pluralistic social reality of Indonesian society has created a legal vacuum (*rechtsvacuum*) concerning non-Muslim heirs, stepchildren, apostate spouses, and similar cases (Aco Wahab, 2024, p. 52).

One of the landmark decisions is Supreme Court Decision No. 368 K/AG/1995. In this case, Sri Widyastuti binti H. Sanusi (a Christian) filed a claim for inheritance rights from her parents who were Muslims. The Religious Court and the High Religious Court initially rejected or restricted her rights due to the difference in religion. However, the Supreme Court ruled that Sri Widyastuti was entitled to receive a portion of her father's and mother's estate through the mechanism of wasiat wajibah. The portion granted was equivalent to that of a female heir (such as her sisters). This decision established a juridical basis for granting wasiat wajibah to non-Muslim relatives who are biologically related, even though they are barred by the principle of Islamic personal law in inheritance matters (Gafur, 2022, pp. 13–14).

Supreme Court Decision No. 51 K/AG/1999 reinforced this principle. The late H. Martadi Hendro Lesono passed away leaving fifteen relatives, five of whom were non-Muslims. One of the heirs filed a claim with the Yogyakarta Religious Court requesting that the estate be divided according to Islamic law, on the grounds that the five non-Muslim relatives (Defendants III, VII, X, XII, and XV) were not entitled to inherit. The Yogyakarta Religious Court, through Decision No. 83/Pdt.G/1997/PA.YK., determined that Ny. Jazilah Martadi binti Cokro Lesono, as the widow, was entitled to one-fourth of the estate, while the remaining three-fourths were allocated to the Muslim heirs. This ruling was upheld by the Yogyakarta High Religious Court. Upon cassation filed by the defendants, however, the Supreme Court in Decision No. 51 K/AG/1999 amended the ruling by affirming Ny. Jazilah's entitlement to one-fourth as the widow, while the remaining three-fourths were distributed among the other heirs, including the five non-Muslim relatives, who received their shares through the mechanism of wasiat wajibah (Gafur, 2022, pp. 15–16).

The Supreme Court also extended the application of wasiat wajibah to interfaith spouses. In Decision No. 16 K/AG/2010, the non-Muslim wife of a Muslim decedent was granted the right to wasiat wajibah equivalent to the share of a wife under Islamic inheritance law. The Supreme Court's consideration was that the wife had devoted herself for eighteen years within the marriage, and thus the granting of wasiat wajibah

constituted a form of justice and recognition of her contribution as well as the emotional closeness established during the marriage (Gafur, 2022, p. 16).

Supreme Court Decision No. 721 K/AG/2015 granted wasiat wajibah to a biological non-Muslim child amounting to one-third of the estate. Meanwhile, Supreme Court Decision No. 59 K/AG/2001 awarded one-third of the estate to the biological non-Muslim father of the decedent. Both decisions are consistent with the approach that wasiat wajibah may be granted in an amount equivalent to the share of an heir of equal rank, or at most one-third of the estate (Gafur, 2022, pp. 16–17).

An interesting expansion is the application of wasiat wajibah to stepchildren through Supreme Court Decision No. 489 K/AG/2011. The Court employed the method of legal discovery (*rechtsvinding*) by analogizing the legal rationale (*'illat hukum*) of Article 209 of the Compilation of Islamic Law (KHI). Although stepchildren do not possess a genealogical relationship (*nasab*), the emotional closeness and shared life within one family became the basis for granting wasiat wajibah, similar to adopted children. This decision demonstrates the Supreme Court's flexibility in broadening the concept of wasiat wajibah on the basis of shared legal rationale (*ratio legis*) (Gafur, 2022, p. 17).

The application of wasiat wajibah through these Supreme Court decisions reflects a progressive judicial approach that integrates the provisions of the Compilation of Islamic Law (KHI) with principles of justice, public interest (*maslahah*), and the social values of Indonesian society. Unlike the KHI, which limits wasiat wajibah to adopted children and adoptive parents (up to one-third of the estate), the Supreme Court expanded the eligible recipients to include non-Muslim relatives and stepchildren, with portions equivalent to those of heirs of equal rank or at most one-third of the estate. This was carried out through the mechanism of legal discovery (*rechtsvinding*), as mandated by Article 5 paragraph (1) of Law No. 48 of 2009 on Judicial Authority. Such an approach not only fills the legal vacuum but also bridges the tension between normative Islamic law and the social reality of diversity in Indonesia.

Nevertheless, this legal framework still faces various challenges, particularly with regard to consistency and binding force. First, since the Compilation of Islamic Law (KHI) is not a statutory regulation with binding authority, its provisions do not possess full legal force. As a result, the application of the KHI largely depends on the discretion and interpretation of judges in court. Second, although wasiat wajibah is mandatory in principle, its implementation in practice often requires the consent of other heirs, especially when the portion requested exceeds one-third of the total estate. This situation frequently creates uncertainty and has the potential to trigger family conflicts, particularly when heirs are unwilling to compromise. Third, the inheritance law system in Indonesia still recognizes several alternative avenues of settlement, such as civil law (*Burgerlijk Wetboek*) and customary law. Both non-Muslim citizens and some Muslims may choose to resolve inheritance disputes outside the Religious Courts. This condition further reduces uniformity in the application of Islamic inheritance rules (Ilham Bustomi, 2025, pp. 111–112).

Despite these limitations, the implementation of the concept of wasiat wajibah in the Compilation of Islamic Law (KHI) represents an important step forward. This effort reflects Indonesia's attempt to harmonize the principles of Islamic inheritance law with the evolving social dynamics of society. At the same time, the approach demonstrates the moderate and pragmatic character of Islamic law in Indonesia, in which considerations of justice and family harmony serve as the primary basis for legal development.

The Concept of Mandatory Bequest in Egypt

In the practice of family law in Egypt, the Hanafi school of jurisprudence serves as the primary foundation. Although Egypt was the birthplace of the Shafi'i school, the dominant influence today stems from the historical legacy of the Ottoman Empire. Following the conquest of Egypt in 1517 CE, Egypt, as part of the Ottoman Empire, adopted the Hanafi school as the official state madhhab. This policy was implemented to standardize the legal system for the administrative interests of the empire. The influence of the Hanafi school has persisted to the present day, shaping the characteristics of family law in Egypt (Hamdi, 2024, p. 1192), including the regulation of wasiat wajibah through modern legislation. Although the concept of wasiat wajibah does not originate from classical Hanafi doctrine, it was adopted as a response to the social needs of contemporary society (Mulyani, 2025, p. 53).

Egypt was the first Islamic country to officially establish rules regarding the making of mandatory bequests. This regulation was later followed by other Islamic countries such as Kuwait, Tunisia, Pakistan, Jordan, Iraq, and several others (Handayani, 2023, p. 148). Under Law No. 71 of 1946 on the Issuance of the Law of Wills (Egypt), the legislature introduced the institution of wasiat wajibah as an important breakthrough in modern Islamic inheritance law (Mohamad Salman Podungge, Panji Nugraha Ruhiat, 2022, p. 24). The provisions concerning wasiat wajibah are elaborated in detail in Articles 76 through 79.

Article 76 stipulates that when a testator dies without leaving a will for grandchildren or descendants whose parents have predeceased them or died simultaneously with the testator, the testator is deemed obliged to make a mandatory bequest to those descendants. The amount of this wasiat wajibah is equivalent to the inheritance share that would have been received by their parent, with a maximum limit not exceeding one-third of the total estate. This bequest is granted only if the recipient is not already an heir, and if the testator has made lifetime gifts, the wasiat wajibah is limited to the remaining balance. The provision applies to the children of daughters as well as the children of sons and their further descendants, applying the principle of representation according to the hierarchy of inheritance classes, whereby each ascendant excludes his or her own descendants (Undang-Undang Nomor 71 Tahun 1946 Tentang Penerbitan Hukum Wasiat, 1946, sec. 76).

The rationale for applying this mandatory bequest concept can be viewed from two important aspects. First, from the perspective of humanity and social justice, the state seeks to prevent inequality and economic injustice experienced by orphans who lose their rights under the rules of classical law. Second, from the perspective of the development of modern Islamic law, this approach reflects the flexibility and adaptability of Islamic law to changing times, without disregarding the fundamental principles of the Sharia (Muhammad Kandriana, I Wayan Sukardiawan, Muhammad Rifaid, Zainal Arifin, Muhammad Wildan, 2025, p. 518).

Article 77 regulates the corrective mechanism for deviations committed by the testator. If the testator makes a bequest greater than the mandatory portion, the excess is treated as a voluntary bequest (*wasiyyah ikhtiyariyyah*). Conversely, if the bequest is less than the rightful share, the deficiency must be supplemented. If the testator bequeaths only to some of the recipients of the wasiat wajibah, those not mentioned remain entitled to their share from the remainder of one-third of the estate, with priority taken from voluntary bequests if necessary (Undang-Undang Nomor 71 Tahun 1946 Tentang Penerbitan Hukum Wasiat, 1946, sec. 77).

Article 78 affirms the principle of priority of the wasiat wajibah. This institution takes precedence over all forms of voluntary bequests. Therefore, even if the testator does not mention the wasiat wajibah at all, the entitled recipients may still claim their share from one-third of the estate. If this one-third portion is insufficient, their rights are taken from the property already bequeathed to other parties (Undang-Undang Nomor 71 Tahun 1946 Tentang Penerbitan Hukum Wasiat, 1946, sec. 78). Finally, Article 79 stipulates that after the fulfillment of the wasiat wajibah, the remaining estate bequeathed voluntarily shall be distributed among the voluntary beneficiaries proportionally (muhāsah) according to the size of each bequest, provided that it does not conflict with the general provisions of wills (Undang-Undang Nomor 71 Tahun 1946 Tentang Penerbitan Hukum Wasiat, 1946, sec. 79).

Overall, Articles 76–79 of Law No. 71 of 1946 provide flexibility for a person to make a bequest to those who are in fact entitled to inherit, without requiring the consent of other heirs. This regulation was introduced because many children who lost their parents were deprived of inheritance due to being excluded by their uncles or aunts (the siblings of the father). Even when a testator intended to allocate part of the estate to his orphaned grandchildren, such intentions often could not be realized, particularly in cases of sudden death. Therefore, the wasiat wajibah is considered crucial as a legal instrument to ensure that the rights of orphaned grandchildren are fulfilled, even though their parents had predeceased the testator (All-Mu'izz Abas, Noor Lizza Mohamed Said, 2023, pp. 1853–1854).

The implementation of wasiat wajibah in Egypt is enforced firmly and consistently by the courts. Instead of relying on moral considerations or family negotiations, judges directly apply the statutory provisions as codified. This judicial approach ensures a high degree of legal certainty, predictability, and uniformity, thereby making the Egyptian model a frequent point of reference in the modernization of Islamic inheritance law across various jurisdictions (Ilham Bustomi, 2025, p. 114).

One concrete example of the application of wasiat wajibah in Egyptian judicial practice can be seen in the decision of the Supreme Constitutional Court of Egypt (Al-Mahkamah al-Dusturiyya al-'Ulya) No. 216 of Case Year 30 (Qada'iyya Dusturiyya), dated 8 May 2021. This case originated from an inheritance dispute before the First Instance Court of Alexandria, Case No. 5570 of 1997. The decedent, Anwar Hafiz Ali, passed away on 9 April 1997, leaving behind property in Alexandria, including assets located on Umar Lutfi Street – Camp Shezar and in the Bulkeley district. He had a daughter, Suheir Anwar Hafiz, who had predeceased him, and she left two children, namely Adel Ahmad Mukhtar al-Hatibi and Najla Ahmad Mukhtar al-Hatibi (Putusan Mahkamah Konstitusi Tertinggi Mesir Nomor 216 Tahun 30 Perkara Konstitusi, 2021).

Although the two grandchildren were excluded by their uncles and thus not entitled to inherit under faraidh, the Alexandria Family Court nevertheless applied Article 76 of Law No. 71 of 1946 by granting them the right to a wasiat wajibah. After calculations by court experts (khubra'), it was determined that the two grandchildren were entitled to an additional mandatory bequest amounting to approximately 67,258 Egyptian pounds (after deducting 5,916 Egyptian pounds previously given by the testator during his lifetime as takharuj). One of the heirs filed a constitutional objection against the validity of Articles 76–79. The Supreme Constitutional Court subsequently rejected the objection and affirmed that wasiat wajibah constitutes a form of contemporary ijtiḥad consistent with the principles of maslahah, social justice, and the spirit of both the Sharia and the Egyptian Constitution (Putusan Mahkamah Konstitusi Tertinggi Mesir Nomor 216 Tahun 30 Perkara Konstitusi, 2021).

Nevertheless, this system has attracted criticism from traditionalist circles who regard wasiat wajibah as an unnecessary innovation that risks undermining the integrity of classical Islamic law. Other critiques argue that the rigidity of these provisions restricts judicial discretion in special cases, such as those involving adopted children or parties outside the scope of the statute. Overall, however, the Egyptian model continues to be praised for its clarity, legal certainty, and commitment to justice, standing as one of the most successful examples of Islamic legal reform undertaken by a state (Ilham Bustomi, 2025, p. 114).

Comparative Analysis of Mandatory Bequest in Indonesia and Egypt

The wasiat wajibah represents one of the forms of reform (ijtihad) in modern Islamic inheritance law, aimed at protecting vulnerable groups who, under classical jurisprudence, are not entitled to an inheritance share. Although both Indonesia and Egypt limit the wasiat wajibah to a maximum of one-third of the estate, the two countries demonstrate significant differences in philosophy, scope, and mechanisms of implementation. To facilitate understanding, the following is a concise comparative table:

Table 1. Comparison of Wasiat Wajibah in Indonesia and Egypt

Aspect	Indonesia	Egypt
Background	Protecting adopted children and foster parents, as well as addressing legal gaps for vulnerable groups	Protecting orphaned grandchildren who are excluded from inheritance due to the prior death of their parents
Dominant School	Shafi'i	Hanafi
Eligible Recipients	Adopted children/foster parents, with judicial expansion to include non-Muslims and stepchildren	Orphaned grandchildren who are excluded (mahjub)
Legal Basis	Article 209 of the Compilation of Islamic Law (KHI) + Supreme Court jurisprudence	Law No. 71 of 1946 (Articles 76–79)
Approach	Judicial-pragmatic	Legislative-normative
Share Allocation	Maximum one-third of the estate	Maximum one-third of the estate (equivalent to the parent's share)
Implementation	Flexible, dependent on judicial discretion	Strict and uniform application by courts
Strengths	Responsive to pluralism	High degree of legal certainty
Weaknesses	Vulnerable to inconsistency across rulings	Limited flexibility in special cases

The concept of wasiat wajibah implemented in Egypt is indeed similar to that applied in other Muslim countries such as Turkey, Tunisia, and Morocco, which mandate wasiat wajibah for orphaned grandchildren (Ishak Tri Nugroho, 2020, p. 13). This stands in clear contrast to the Indonesian system, which grants the opportunity for wasiat wajibah to adopted children or foster parents, even across religious differences (Halim, 2018, p. 158). Meanwhile, the rights of grandchildren who are excluded are accommodated through the concept of substitute heirs (ahli waris pengganti) as stipulated in Article 185 of the Compilation of Islamic Law (KHI). This divergence in

approach arises because Egypt continues to adhere to the relatively strict framework of the Hanafi school, whereas Indonesia applies a more contemporary *ijtihad* that is responsive to societal welfare. Although both countries aim to achieve universal justice and protection for vulnerable groups, the paths of reform they pursue remain distinct, shaped by their respective social, political, and legal traditions (Fuad Riyadi, Ahmad Remanda, Abdurrohman Kasdi, 2025, p. 367).

In Egypt, the *wasiat wajibah* emerged as an effort to protect orphaned grandchildren who were deprived of their inheritance rights because their parents had predeceased them. Within the Hanafi jurisprudence that dominates in Egypt, such grandchildren are often excluded (*mahjub*) by uncles or aunts as *ashabah* heirs. Therefore, Articles 76–79 of Law No. 71 of 1946 explicitly require grandparents to bequeath a portion of their estate to these orphaned grandchildren. The Egyptian approach is legislative–normative, meaning that the rules are strict, uniform, and provide a high degree of legal certainty across all courts. The amount of the *wasiat wajibah* in Egypt is calculated to be equivalent to the share that the grandchild’s parent would have received if alive, but it must not exceed one-third of the estate (All-Mu’izz Abas, Noor Lizza Mohamed Said, 2023, pp. 1851–1854).

Conversely, in Indonesia the *wasiat wajibah* is primarily focused on protecting adopted children and foster parents. Article 209 of the Compilation of Islamic Law (KHI) serves as its main foundation, supported by Supreme Court jurisprudence that has continually expanded its scope. Since Indonesia adheres to the dominant Shafi’i school, the relationship of adopted children in classical jurisprudence does not generate inheritance rights (*lā yarith wa lā yurāth*). The *wasiat wajibah* thus emerges to fill this legal gap while responding to the plural social realities of Indonesian society. Through Supreme Court rulings, its application has even been extended to stepchildren and, in certain cases, to recipients of different religions, guided by the spirit of substantive justice and *de facto* family compassion. Indonesia’s approach is judicial–pragmatic, making it highly flexible and responsive to societal dynamics, but also vulnerable to inconsistency across judicial decisions (Erna Mastiningrum, Mai Renza Faradilla, 2025, pp. 65–66).

In terms of eligible recipients, Egypt is highly specific, limiting the *wasiat wajibah* solely to orphaned grandchildren who are excluded. The legislative approach produces uniform implementation and minimizes disputes, but it lacks flexibility in addressing new cases arising in contemporary society (Muhammad Kandriana, I Wayan Sukardiawan, Muhammad Rifaid, Zainal Arifin, Muhammad Wildan, 2025, p. 517). By contrast, Indonesia adopts a broader and more dynamic scope, encompassing adopted children, foster parents, and extending to other vulnerable groups. Judicial flexibility in Indonesia makes the law more adaptive to pluralism, yet it often results in divergent interpretations among religious courts (Suhaili Alma’amun, Mohd Khairy Kamarudin, Wan Nadiyah Wan Mohd Nasir, Nasrul Hisyam Nor Muhammad, 2026, pp. 167–168).

The principal strength of the Egyptian model lies in its high degree of legal certainty and uniform application across the country. This greatly helps to reduce family conflicts and provides clear protection for orphaned grandchildren (Arthos & Iqbal, 2021, pp. 210–211). On the other hand, the Indonesian model excels in its responsiveness to highly diverse social realities, thereby extending protection to vulnerable groups that are not envisaged in classical jurisprudence, such as stepchildren and non-nasab family relationships (Amalia, 2025, p. 58). Nevertheless,

the weaknesses of each model are also evident. In Egypt, the rigidity of the rules makes the wasiat wajibah less capable of responding to rapid social developments (Muhammad Kandriana, I Wayan Sukardiawan, Muhammad Rifaid, Zainal Arifin, Muhammad Wildan, 2025, p. 517). In Indonesia, reliance on jurisprudence creates the potential for inconsistency and uncertainty for communities that require clear legal guidance (Muhammad Akbar Filayati, 2026, pp. 1033–1034).

From the perspective of maqāṣid al-sharī'ah, both countries strive to realize the protection of lineage (ḥifẓ al-nasl), justice (‘adl), and public welfare (maṣlaḥah). Egypt places greater emphasis on intergenerational justice, while Indonesia highlights the protection of de facto family relationships and adaptation to a plural society. These two approaches demonstrate that Islamic inheritance jurisprudence is dynamic and capable of adapting to local contexts without abandoning the fundamental principles of the Sharia (Zainal Arifin, Tutik Hamidah, Zaenul Mahmudi, 2025, p. 24).

Overall, the wasiat wajibah in Egypt and Indonesia represents two distinct yet equally valuable models of Islamic legal reform. The Egyptian model offers certainty and uniformity, while the Indonesian model provides flexibility and inclusiveness. For Indonesia, lessons can be drawn from Egypt through efforts to codify the expansion of jurisprudence in order to achieve greater consistency. Conversely, Egypt may benefit from Indonesia's flexibility in addressing increasingly complex social dynamics. Both countries demonstrate that Islamic law remains relevant and capable of providing protection for the vulnerable in the modern era.

CONCLUSIONS

This study shows that Indonesia and Egypt have taken different paths in regulating and implementing the wasiat wajibah. In Indonesia, Article 209 of the Compilation of Islamic Law and Supreme Court jurisprudence have established the wasiat wajibah as an instrument of protection for adopted children and foster parents, later expanded to include stepchildren and even non-Muslim relatives. This judicial-pragmatic approach allows judges to adapt the law to the plural realities of society. In contrast, Egypt regulates the wasiat wajibah strictly under Law No. 71 of 1946, focusing on orphaned grandchildren who are excluded from inheritance. This legislative-normative model ensures a high degree of legal certainty and uniform application across the courts.

From a comparative perspective, both countries limit the wasiat wajibah to a maximum of one-third of the estate and aim to protect vulnerable groups in line with the principles of maqāṣid al-sharī'ah. Yet, the differences are striking in terms of recipients and mechanisms. Egypt applies a narrower and more rigid scope, restricted to orphaned grandchildren, while Indonesia adopts a broader and more dynamic approach that includes adopted children, foster parents, stepchildren, and relatives of different faiths. Egypt's strength lies in its certainty and reduced potential for disputes, though it lacks flexibility in addressing new social realities. Indonesia's strength lies in its responsiveness to pluralism, though it risks inconsistency across judicial rulings.

Ultimately, both models demonstrate that Islamic inheritance law is dynamic and capable of adapting to local contexts. Indonesia may benefit from Egypt's codification to achieve greater uniformity, while Egypt may learn from Indonesia's flexibility in addressing complex social dynamics. Together, they affirm that the wasiat wajibah remains relevant as a contemporary ijtihād in providing protection for vulnerable groups in the modern era.

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