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A Comparative Study of Wasiat Wajibah in Indonesia, Egypt, and Pakistan from the Perspective of Maqashid al-Sharia

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Abstract

The wasiat wajibah is a form of reform in Islamic inheritance law that has evolved to provide protection to family members who do not receive their rights under the classical inheritance system. This study aims to analyze the regulations governing wasiat wajibah in Indonesia, Egypt, and Pakistan and to assess their relevance as an instrument of family protection from the perspective of the maqashid al-sharia. This study employs a normative legal method using legislative, conceptual, and comparative legal approaches. Legal materials were obtained from legislation, legal literature, and scholarly articles, which were analyzed qualitatively. The results indicate that all three countries share the same objective to provide economic protection to family members who may lose their rights due to the application of the classical inheritance system but employ different mechanisms. Indonesia regulates the mandatory bequest for adopted children and adoptive parents through Article 209 of the Compilation of Islamic Law; Egypt grants a mandatory bequest to grandchildren who are barred from receiving an inheritance through Qanun al-Wasiyyah No. 71 of 1946; while Pakistan implements a system of heir representation through Article 4 of the Muslim Family Laws Ordinance of 1961. From the perspective of maqashid al-sharia, these three models are oriented toward the protection of descendants (*hifz al-nasl*) and the protection of property (*hifz al-mal*), thereby demonstrating that Islamic inheritance law possesses the flexibility to achieve justice and the public interest in accordance with the needs of society.

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Introduction

Islamic inheritance law is one of the branches of law that possesses the highest level of normative certainty compared to other fields of Islamic law. Provisions regarding the distribution of inheritance are directly stipulated in the Qur'an, specifically in Surah al-Nisa' verses 11, 12, and 176, which were subsequently systematically developed by the fuqaha in their studies of faraidh. This system is designed to distribute the deceased's estate based on kinship and marital relationships in predetermined proportions. Nevertheless, inheritance practices do not always align with the evolving social needs of society. In some cases, there are family members who have emotional ties, social responsibilities, or even economic dependence on the decedent, yet do not receive an inheritance share because they are barred by the provisions of faraidh. This situation is evident in the case of a grandchild who loses their inheritance rights because their parent died before the decedent, or in the case of an adopted child who, legally, has no blood relationship with their adoptive parent. These limitations have spurred the emergence of various forms of inheritance law reform, one of which is the concept of the mandatory bequest (*wasiat wajibah*) as a protective mechanism for parties not accommodated within the classical inheritance system (Nugraheni dkk., 2010).

The intellectual roots of the concept of the mandatory bequest can be traced to the views of Ibn Hazm, who interpreted Surah al-Baqarah, verse 80, as the basis for the obligation to make a bequest to relatives who do not receive an inheritance share. This view differs from that of the majority of scholars, who consider this provision to have been superseded by the verses on inheritance. Although it was not the dominant view in classical fiqh, Ibn Hazm's idea gained new relevance when modern Muslim countries faced demands for social protection that the faraidh system could not fully address. This line of thought subsequently became one of the conceptual foundations for the emergence of various regulations regarding the obligatory bequest in a number of Muslim countries (Yasir, 2023). As noted by Bustomi and Setyawan, Egypt became the first country to formally adopt this concept through the Qanun al-Wasiyya No. 71 of 1946. A similar model subsequently developed in several other countries, such as Syria, Tunisia, Morocco, Pakistan, and Indonesia, which regulates it in the Compilation of Islamic Law (KHI) (Bustomi & Setyawan, 2025).

In the Indonesian context, the provisions regarding the mandatory bequest are found in Article 209 of the KHI, which grants adopted children and adoptive parents the right to receive a share of the estate amounting to no more than one-third of the total inheritance (Nasution dkk., 2025). This provision reflects recognition of the social bonds formed through adoption, even though they are not based on blood ties. This development does not stop at the normative provisions of the KHI. Through a number of rulings, the Supreme Court has expanded the application of the mandatory bequest to heirs of a different religion than the decedent. Ruling No. 368 K/AG/1995 and Ruling No. 16 K/AG/2010 are often viewed as important milestones in this expansion (Rizkal, 2016). This step demonstrates the judiciary's effort to bridge the tension between classical fiqh doctrine which rejects interfaith inheritance and the demands for justice emerging in modern society (Suparidho & Muhammad, 2025).

Egypt has developed a different model. Regulations regarding the "*wasiat wajibah*" in Qanun al-Wasiyya No. 71 of 1946 designate grandchildren who have lost their

inheritance rights because their parents predeceased them as the primary beneficiaries requiring protection. Articles 76 through 79 stipulate that grandchildren are entitled to a specific share that, in principle, represents the share their parents would have received had they been alive (Bustomi & Setyawan, 2025). Meanwhile, Pakistan does not directly employ the concept of wasiat wajibah. Through Section 4 of the Muslim Family Laws Ordinance of 1961, Pakistan applies the principle of representation, which allows grandchildren to take the place of their parents in receiving an inheritance. This provision has sparked a lengthy debate because it is considered to deviate from classical inheritance doctrine. The Federal Shariat Court, in the case of Allah Rakha v. Federation of Pakistan, even ruled that the provision was inconsistent with the principles of Islamic law, although to this day the regulation remains in effect in practice (Munir, 2018).

Differences in regulations in Indonesia, Egypt, and Pakistan demonstrate that protection for family members who do not receive inheritance rights can be achieved through various legal constructs. These variations are influenced by many factors, ranging from the dominant school of thought, the direction of family law reform policies, to evolving social needs in each country. Erniwati explains that the practice of the wasiat wajibah in Muslim countries has never been uniform because it arises from a process of *ijtihad* influenced by varying social and political contexts (Erniwati, 2018). This situation means that the wasiat wajibah is not merely a technical instrument in inheritance law, but also a reflection of how each country interprets the relationship between sharia, justice, and family protection.

This diversity requires an analytical framework capable of assessing not only the formal legal aspects but also the objectives sought through the formulation of the law. In this regard, the *maqashid al-sharia* offer a relevant perspective. The thought of al-Shathibi, which was later further developed by Ibn 'Ashur and Jasser Auda, places the public interest (*maslahah*) as the primary orientation of every provision of Islamic law (Ahmad, 2018). This perspective allows the law to be understood not merely as a collection of normative rules, but as a means to safeguard and realize human interests. In the context of inheritance, the protection of descendants (*hifz al-nasl*) and the protection of property (*hifz al-mal*) are two objectives closely linked to the existence of the wasiat wajibah (Fitria & Mariani, 2026). A number of studies indicate that this instrument has a strong connection to the objectives of *maqashid al-sharia*. Studies conducted by Emi Yasir, as well as research by Habibiur Rahman and Monawer, confirm that the wasiat wajibah is essentially a form of legal protection aligned with the principle of public interest, although the effectiveness of its implementation remains an open topic of discussion (Yasir, 2023).

Studies on wasiat wajibah have expanded across various research areas, ranging from those focusing on legal regulations in Indonesia to those examining its application in several Muslim countries. Most of these studies position the wasiat wajibah as an instrument for resolving inheritance issues for groups that do not receive inheritance rights under the provisions of *faraidh*. However, discussions comparing Indonesia, Egypt, and Pakistan within a single analytical framework remain relatively limited, particularly those that use the *maqashid al-sharia* as an evaluative foundation for assessing the family protection models developed by each country. In fact, these three countries demonstrate different approaches in addressing the issue of family members who do not receive direct inheritance rights. Based on these circumstances, this article examines the legal

framework of the *wasiat wajibah* in Indonesia, Egypt, and Pakistan and analyzes its relevance as an instrument of family protection from the perspective of the *maqashid syariah*.

Method

This study employs normative legal research using statutory, conceptual, and comparative law approaches. The statutory approach is used to examine the legal provisions governing *wasiat wajibah* in three Muslim-majority jurisdictions: Indonesia, Egypt, and Pakistan. The primary legal sources include Article 209 of Indonesia's Compilation of Islamic Law (KHI), Articles 76–79 of Egypt's *Qanun al-Wasiyyah* No. 71 of 1946, and Article 4 of Pakistan's Muslim Family Laws Ordinance of 1961.

The conceptual approach is employed to analyze the doctrinal foundations of *wasiat wajibah*, including its classical jurisprudential basis, its development in modern Islamic legal reform, and its relation to the objectives of Islamic law (*maqashid al-sharia*). This approach enables the study to evaluate how legal reforms are justified both normatively and socially.

The comparative law approach is used to systematically compare the legal frameworks of the three countries. The comparison framework consists of six indicators: (1) legal basis, (2) beneficiaries of *wasiat wajibah*, (3) relationship with the deceased, (4) legal protection mechanism, (5) amount of entitlement, and (6) legal requirements for beneficiaries. These indicators are used to identify similarities, differences, and patterns of legal reform across jurisdictions.

To assess the relevance of these regulations from the perspective of *maqashid al-sharia*, this study employs two primary analytical indicators: protection of lineage (*hifz al-nasl*) and protection of property (*hifz al-mal*). These indicators are selected because *wasiat wajibah* fundamentally aims to protect vulnerable family members from economic exclusion under the classical inheritance system.

The analytical process was conducted in three stages. First, legal materials were collected from legislation, court decisions, legal literature, and scholarly publications. Second, the legal frameworks of Indonesia, Egypt, and Pakistan were compared using the established comparative indicators. Third, the findings were evaluated using the *maqashid al-sharia* framework to determine the extent to which each legal model contributes to family protection, distributive justice, and public welfare (*maslahah*). This analytical structure allows the study to provide a comprehensive understanding of the legal and philosophical dimensions of *wasiat wajibah* in contemporary Islamic inheritance law.

Results

The Concept of Wasiat Wajibah

Etymologically, the term “*wasiat*” originates from the Arabic *waṣṣā-yūṣṣī-al-waṣiyyah*, which generally means a message, command, or advice conveyed by one person to another to be carried out. This linguistic meaning indicates the testator's intention that a specific trust or message be carried out, both during their lifetime and after their death (Munawwir, 1997). In Islamic legal terminology, a *wasiat* is defined as the granting of a right to property, a debt, or a specific benefit by one person to another, with the stipulation that this right only takes effect and can be held by the beneficiary after

the testator's death. Thus, the transfer of rights in a will does not occur at the time the will is made, but rather after the testator's death. The form of such a grant may consist of tangible property, property rights, or benefits of economic value (Sabiq, 2008).

Unlike a general will, which arises based on the testator's intent, a mandatory bequest is a form of bequest whose execution is determined by law and does not depend on the existence of a will from the testator. Its validity does not require proof that the testator ever uttered, wrote, or intended such a gift during their lifetime (Rahman, 1979). The execution of a mandatory bequest is based on specific legal considerations that designate the beneficiary as a party deserving of protection; thus, the bequest must still be carried out even if it was never explicitly stated by the testator. It is this characteristic that distinguishes a mandatory bequest from the concept of an ordinary bequest in Islamic law (Somawinata, 2002).

Ahmad Rofiq defines a mandatory bequest as a bequest mandated by the authorities or a judge, acting on behalf of the state, to specific parties under certain circumstances. The validity of such a bequest does not depend on an expression of intent by the testator but is established based on legal provisions that require its execution after the testator's death (Rofiq, 2000). Classical and contemporary Islamic scholars place different emphases on the interpretation of *wasiat wajibah*. In the development of modern Islamic law, the *wasiat wajibah* is no longer viewed as a moral issue dependent on individual will but rather as a binding legal provision. Its existence reflects the transformation of the will into a legal instrument aimed at providing protection to parties who do not receive their rights within the inheritance system (Filayati & Mariani, 2026).

The normative basis frequently cited in discussions of the *wasiat wajibah* is Surah Al-Baqarah, verse 180, which commands a person to make a bequest to their parents and close relatives when facing death. This verse is understood as an expression of Islam's concern for granting rights and protection to family members related to the testator. However, following the revelation of the inheritance verses in Surah An-Nisa' verses 11, 12, and 176 which detail the shares of each heir the majority of scholars hold that the provision in Surah Al-Baqarah verse 180 no longer applies to heirs who have already received their inheritance shares. This view is supported by a hadith of the Prophet (peace be upon him), which states that Allah has already determined the rights of each heir, so there is no need for a will regarding those whose shares have been specified under Islamic inheritance law. Based on this view, the obligation to make a will as mentioned in Surah Al-Baqarah, verse 180, is understood to have undergone a legal change following the introduction of more specific *faraidh* provisions (Muhajir, 2021).

The term "mandatory bequest" (*wasiat wajibah*) is not found in classical *fiqh* literature and has only recently emerged in contemporary *fiqh* studies, particularly after the concept was codified into legislation in several Muslim countries. Egypt was one of the first countries to formally regulate mandatory bequests, followed by several others, including Indonesia through the Compilation of Islamic Law enacted pursuant to Presidential Instruction No. 1 of 1991. The emergence of this concept reflects the evolution of Islamic legal thought in addressing inheritance issues that cannot be fully addressed by the classical *faraidh* system. Therefore, the term "*wasiat wajibah*" cannot be understood literally as a will that is obligatory to make based on the meaning of the word "*kutiba*" in Surah Al-Baqarah, verse 180. Although this verse is often used as a normative basis for

the concept of wasiat wajibah, its existence is more a result of ijtihad and modern legislation aimed at providing legal protection to certain parties within the inheritance system (Nasution dkk., 2025).

The Concept of Wasiat Wajibah in Indonesian Law

In the Islamic inheritance law system in Indonesia, the mandatory bequest was developed as an instrument to provide protection to parties who have familial and custodial relationships with the decedent, even though they lack a blood relationship that would confer inheritance rights. Its provisions are specifically accommodated in Article 209 of the Compilation of Islamic Law (KHI), which was enacted through Presidential Instruction No. 1 of 1991. Article 209(1) of the KHI stipulates that the estate of an adopted child is distributed in accordance with Articles 176 through 193, while paragraph (2) specifies that an adopted child who does not receive a bequest is granted a mandatory bequest of up to one-third of the estate of their adoptive parents, and the same applies conversely to the adoptive parents (Wahono, 2023). This provision reflects a legal effort to accommodate the social reality of Indonesian society, where the practice of adoption is widespread, without disregarding the fundamental principles of Islamic inheritance law, which establish blood ties as the basis for inheritance (Nofitasari, 2021).

The existence of Article 209 of the KHI stems from the need to address a gap in legal protection that the classical Islamic inheritance system could not cover. In Islamic jurisprudence (*fiqh*), adoption does not create a blood relationship; therefore, neither the adopted child nor the adoptive parents are included in the category of heirs. However, long-term foster relationships often give rise to strong emotional bonds, social responsibilities, and economic dependence. On this basis, the mandatory bequest was established as a legal mechanism allowing for the allocation of a specific share to an adopted child or adoptive parent without changing their status to that of a legal heir. The limitation on the amount of the mandatory bequest to a maximum of one-third of the estate also reflects an effort to maintain a balance between the interests of the bequest recipient and the rights of legitimate heirs (Fauzi & Masruri, 2016).

Conceptually, the construction of the wasiat wajibah in the KHI is the result of ijtihad adapted to the needs of Indonesian society. A number of studies explain that its formulation combines various perspectives from schools of Islamic jurisprudence to produce a legal formulation relevant to national social conditions. Therefore, the regulation of the wajibah will in Indonesia cannot be understood as a direct adoption of practices from other Muslim countries, but rather as a form of Islamic legal reform that seeks to address evolving family law issues in society. This characteristic demonstrates that Islamic law in Indonesia not only serves to uphold normative provisions but also adapts to emerging social protection needs in the practice of family life (Khomaini, 2023).

The development of the wasiat wajibah in Indonesia does not stop at the provisions explicitly set forth in Article 209 of the KHI. Through a number of Supreme Court decisions, the scope of beneficiaries of the wasiat wajibah has been expanded beyond adopted children and adoptive parents. Supreme Court Decisions No. 368 K/AG/1995, No. 51 K/AG/1999, and No. 16 K/AG/2010 granted mandatory bequests to heirs of a different religion than the decedent. In a subsequent development, Decision No. 489 K/AG/2011 also opened the possibility of applying the mandatory bequest to stepchildren (Erwandi, 2016).

These developments demonstrate the active role of the judiciary in engaging in legal discovery (*rechtsvinding*) to address inheritance issues that have not yet been explicitly regulated in the KHI (Maryam dkk., 2022)

The expansion of beneficiaries of the obligatory bequest through case law highlights a distinctive feature of Islamic inheritance law in Indonesia. The Supreme Court not only functions as an interpreter of legal norms but also contributes to the formation of law through rulings that take into account the values of justice and the needs of society. This practice is in line with Article 5(1) of Law No. 48 of 2009 on Judicial Power, which requires judges to explore, follow, and understand the legal values and sense of justice that exist within society. Consequently, the development of the mandatory bequest in Indonesia has been shaped not only by legislation but also by the evolving dynamics of jurisprudence within judicial practice (Endang Ali Masum, 2005).

These characteristics distinguish the Indonesian model from those of other Muslim countries. While some countries direct the *wasiat wajibah* to grandchildren who have lost their inheritance rights due to being preempted by closer heirs, Indonesia instead focuses protection on parties who have a custodial relationship and social responsibility toward the decedent (Filayati & Mariani, 2026). This difference indicates that the construction of the *wasiat wajibah* in Indonesia places greater emphasis on the aspect of family protection in a broader sense, thereby making it a distinctive form of reform in Islamic inheritance law that is relevant to the social context of Indonesian society.

The Concept of Wasiat Wajibah in Egyptian Law

Egypt was the first Muslim country to codify the concept of the *wasiat wajibah* into modern legislation. The provisions are set forth in Law No. 71 of 1946 on Wills (*Qanun al-Wasiyyah*), which was enacted after Egypt had previously established Law No. 77 of 1943 on inheritance. The introduction of this regulation was part of Egypt's family law reforms in the mid-20th century, aimed at addressing various inheritance issues that had not been adequately resolved under classical Islamic jurisprudence. One of the most prominent issues was the lack of protection for grandchildren whose parents had died before the testator, causing them to lose the opportunity to receive a share of the inheritance because they were preempted by heirs with closer kinship ties (Hamdi, 2024).

The enactment of Law No. 71 of 1946 was the result of a collective *ijtihad* involving scholars from various schools of Islamic jurisprudence. This formulation demonstrates that the concept of the *wasiat wajibah* in Egypt is not merely a codification of established jurisprudential opinions but rather a form of legal reform designed to fill regulatory gaps in the classical inheritance system. Consequently, many scholars view the Egyptian *wasiat wajibah* as a significant example of Islamic legal reform through state legislation aimed at providing social protection for vulnerable family members (Nuruddin, 2022).

Unlike Indonesia, which designates adopted children and adoptive parents as recipients of the *wasiat wajibah*, Egyptian law focuses protection on grandchildren who have lost their inheritance rights due to the death of their parents before the testator (Nugroho, 2020). These provisions are set forth in Articles 76 and 77 of Law No. 71 of 1946, which grant grandchildren the right to receive a mandatory bequest equal to the share their parents would have received had they been alive. The amount of this share is limited to a maximum of one-third of the testator's estate. Through this mechanism,

grandchildren who, under the classical faraidh system, would be barred from receiving an inheritance still receive economic protection via the mandatory bequest (Hamdi, 2024).

The granting of a mandatory bequest in Egypt also requires that the recipient not be a direct heir entitled to an inheritance and not have already received an equivalent share through a gift or other form of transfer (Abubakar, 2011). If the recipient has received a gift of lesser value than the mandatory bequest they are entitled to, the shortfall must be made up to reach the amount specified by law. This provision indicates that the mandatory bequest serves as a supplementary instrument to ensure protection for the testator's descendants who are in a disadvantaged position (Faizal, 2022).

Another prominent characteristic of the Egyptian model is the continued upholding of the principle of bloodline (*nasab*) as the primary basis for legal protection. The mandatory bequest is granted to the testator's biological descendants who have lost their inheritance rights due to the hijab mechanism, rather than to parties with social or foster relationships, as is the case in the Indonesian system. Therefore, the orientation of family protection in Egyptian law is directed more toward the continued well-being of lineal descendants than toward family relationships arising from foster care or social ties (Nuruddin, 2022).

Over time, the practice of the *wasiat wajibah* in Egypt has gained strong legitimacy from both legal and religious perspectives. Dar al-Ifta' al-Mishriyyah, through a fatwa issued by Sheikh Hasanin Muhammad Makhluf, affirmed that the *wasiat wajibah* does not alter the provisions of faraidh derived from the Qur'an and Sunnah. The *wasiat wajibah* merely requires setting aside a portion of the estate for relatives who do not receive an inheritance, and its implementation takes place before the estate is distributed to the heirs. Thus, the *wasiat wajibah* is viewed as a complementary instrument that remains within the framework of Islamic inheritance law (Arifin dkk., 2025).

When compared to Indonesia, the Egyptian model has a relatively similar objective, namely to provide protection to family members who do not receive a share under the ordinary inheritance system. The difference lies in the protected parties and the legal mechanisms. Indonesia directs the *wasiat wajibah* toward adopted children and adoptive parents through the Compilation of Islamic Law, whereas Egypt uses it as a means of protection for grandchildren who are prevented from receiving an inheritance due to the death of their parents before the testator. These differences demonstrate that the concept of the *wasiat wajibah* evolves in accordance with the social needs and evolving legal frameworks of each country.

The Concept of Wasiat Wajibah in Pakistani Law

Pakistan is one of the Muslim countries that undertook a fairly progressive reform of family law in the mid-20th century. This reform began with the establishment of a family law commission in 1955, tasked with examining various issues in Islamic family law and formulating recommendations for reforms aligned with the needs of modern society. The commission's work subsequently led to the enactment of *the Muslim Family Laws Ordinance* (MFLO) of 1961, which regulates various aspects of family law, including inheritance matters (Syahroni dkk., 2025). The enactment of the MFLO cannot be separated from the state's efforts to provide more effective legal protection for vulnerable

family members particularly women and children by adapting certain provisions of Islamic law to the evolving social realities in Pakistan (Hidayati, 2012).

In the area of inheritance, the most significant reform is found in Section 4 of the MFLO of 1961, which introduces the concept of “representational succession” or the substitution of an heir’s position. This provision stipulates that if a son or daughter dies before the decedent, the children of that deceased heir are entitled to receive the share that their parent would have received had they been alive at the time of the decedent’s death. Through this mechanism, grandchildren acquire inheritance rights by taking the place of their father or mother who died first. Unlike Egypt, which uses the *wasiat wajibah* instrument to provide a share to grandchildren who are otherwise barred from receiving an inheritance, Pakistan chooses to grant this right directly through the system of representation in the distribution of inheritance (Munir, 2018).

The enactment of Article 4 of the MFLO was motivated by the desire to protect *orphaned grandchildren*, who, under the classical Islamic inheritance system, often lose their economic rights because they are preempted by heirs with closer kinship ties. Supporters of this provision argue that the protection of orphans has a strong foundation in Islamic teachings, thereby enabling the state to engage in legal *ijtihad* to ensure their well-being. From this perspective, inheritance representation is viewed as an instrument that allows for the continuity of the family’s economic protection without altering the fundamental objectives of Islamic inheritance law (Ashraf & Shahnawaz, 2024).

Nevertheless, Article 4 of the 1961 MFLO is not without controversy. A number of Islamic scholars and legal experts argue that the concept of representation contradicts the classical *faraidh* system established in the Qur’an, Sunnah, and *ijma’* (Hidayati, 2012). According to this view, granting an inheritance share to grandchildren through a mechanism of substitution can alter the inheritance structure that has been explicitly defined in Islamic law. The debate has been ongoing for quite some time and has even led to differing viewpoints between reformists and those who uphold classical *fiqh*. Furthermore, some segments of Pakistani society tend to follow the opinions of traditional schools of thought and religious authorities rather than state legal provisions, so the implementation of Section 4 of the MFLO often faces resistance in practice (Ashraf & Shahnawaz, 2024).

The controversy reached its peak when the Federal Shariat Court, in the case of *Allah Rakha V. Federation of Pakistan*, ruled that Article 4 of the MFLO contradicted the principles of Islamic inheritance law because it was deemed to interfere with the inheritance scheme established by the Qur’an. However, the court did not disregard the social issues faced by orphaned grandchildren. Instead, the court proposed an alternative in the form of a mandatory *bequest* or *wasiat wajibah* for orphaned grandchildren, capped at one-third of the decedent’s estate. According to the court, this mechanism is more consistent with Sharia principles while still providing economic protection to grandchildren who have lost their parents (Munir, 2018).

The characteristics of Pakistani law reveal fundamental differences from those of Indonesia and Egypt. Indonesia uses the *wasiat wajibah* as a protective instrument for adopted children and adoptive parents, while Egypt employs it to protect grandchildren who are otherwise barred from receiving an inheritance. Pakistan has chosen a different path through the system of heir representation under Section 4 of the MFLO 1961.

Although the instruments used differ, the three countries share a relatively similar objective: to provide protection to family members who might lose their economic rights due to the strict application of the classical inheritance system. Thus, Pakistan's legal reform can be understood as a form of modern legal *ijtihad* that seeks to balance the normative provisions of Islamic inheritance law with the need for family protection in contemporary society.

Discussion

Legal Comparison Table of Wasiat Wajibah in Indonesian, Egypt, and Pakistan

Table 1. Comparative Framework of Wasiat Wajibah in Indonesia, Egypt, and Pakistan

Aspect	Indonesia	Egypt	Pakistan
Legal Basis	Article 209 KHI	Articles 76–79, Qanun al-Wasiyyah No. 71/1946	Article 4, MFLO 1961
Beneficiaries	Adopted children and adoptive parents; extended through case law to non-Muslim heirs and stepchildren	Grandchildren whose parents predeceased the testator	Grandchildren through representational succession
Relationship with Deceased	Caregiving and social relationship	Blood relationship	Blood relationship
Legal Protection Mechanism	Mandatory bequest	Mandatory bequest	Representational succession
Amount of Share	Maximum 1/3 of estate	Equivalent to parent's share, max 1/3	Equivalent to parent's inheritance share
Requirements	No prior bequest received	Not direct heir and no equivalent gift received	Descendant of predeceased heir

Based on this comparison, it is evident that Indonesia, Egypt, and Pakistan have all reformed their Islamic inheritance laws to provide protection to family members who might otherwise lose their economic rights under the classical inheritance system. Although their objectives are relatively similar, the three countries have developed distinct approaches in accordance with their respective social needs and legal frameworks. Indonesia directs the *wasiat wajibah* to adopted children and adoptive parents as a form of protection for family relationships arising from foster care, whereas Egypt focuses protection on grandchildren who are prevented from receiving an inheritance because their parents died before the testator. Meanwhile, Pakistan has opted for a mechanism of *representational* succession to guarantee the economic rights of orphaned grandchildren. These differences demonstrate that the concept of *wasiat wajibah* and similar instruments are evolving dynamically within modern Islamic family law, giving rise to diverse models of family protection tailored to the social context, societal needs, and the direction of legal reform in each country.

Analysis Based on Maqashid al-Sharia

An analysis of the regulations governing *wasiat wajibah* in Indonesia, Egypt, and Pakistan can be conducted through the *maqashid syariah* approach as a framework for assessing the extent to which a legal provision is able to realize the public interest. In the theory of *Maqashid al-Sharia*, the objectives of Islamic law are directed toward the

protection of five fundamental elements (*al-kulliyat al-khamsah*), namely religion (*hifz al-din*), life (*hifz al-nafs*), reason (*hifz al-'aql*), lineage (*hifz al-nasl*), and property (*hifz al-mal*) (Auda, 2011). In the context of the mandatory bequest, the most relevant dimensions are the protection of lineage and the protection of property, as this instrument is fundamentally intended to ensure the continued well-being of family members who do not receive a share under the ordinary inheritance system. A number of studies also identify distributive justice as an objective that is inseparable from the application of the obligatory bequest, as its existence serves to prevent economic disparities within the family (Yasir, 2023).

From a methodological perspective, the development of the concept of the *wasiat wajibah* demonstrates the application of *maqashid* reasoning that is oriented not only toward the text but also toward the objectives of the law. This approach can be explained through two modes of reasoning: the *ta'lili* approach, which seeks to identify the legal rationale (*illat*) from the textual sources (*nash*), and the *istislahi* approach, which places the public interest (*maslahah*) as the foundation for legal development. Through this approach, the *wasiat wajibah* is understood as the result of *ijtihad* aimed at addressing social issues not explicitly regulated in the classical inheritance system, while simultaneously ensuring the relevance of Islamic law to the changing needs of society (Faizal, 2022).

In the Indonesian context, the application of the *wasiat wajibah* demonstrates a strong orientation toward the protection of the family in the broadest sense. The provisions in Article 209 of the KHI provide protection to adopted children and adoptive parents who have no legal blood relationship with the decedent. Subsequent developments in Supreme Court jurisprudence have expanded the scope of beneficiaries to include non-Muslim heirs and stepchildren. From the perspective of the *maqashid al-sharia*, these developments reflect efforts to realize *hifz al-mal* and *hifz al-nafs* by providing economic security to parties who have emotional ties and social dependence on the decedent. A number of studies have concluded that this expansion serves the public interest and promotes substantive justice, particularly in Indonesia's pluralistic and complex society. Nevertheless, expansion through jurisprudential channels also raises issues of legal certainty, as it has not yet been fully and explicitly accommodated in the Compilation of Islamic Law (Maryam dkk., t.t.).

Unlike Indonesia, the Egyptian model was built from the outset on a framework of protecting biological descendants. The mandatory bequest under Law No. 71 of 1946 is intended toward grandchildren who lose their inheritance rights due to the death of their parents before the testator. This policy reflects a strong orientation toward *hifz al-nasl*, as the state seeks to ensure the continued well-being of future generations within the lineage. At the same time, the allocation of a specific share to grandchildren who are otherwise barred from receiving an inheritance also reflects the application of *hifz al-mal* through a more equitable distribution of assets. Unlike Indonesia, which developed the concept of *wasiat wajibah* through a combination of legislation and jurisprudence, Egypt has used the *maqashid al-sharia* as the foundation for regulatory development from the outset, ensuring that the objective of family protection has been systematically integrated into its legal framework (Hamdi, 2024; Nuruddien, 2022).

Meanwhile, Pakistan exhibits a more complex dynamic. Section 4 of the Muslim Family Laws Ordinance of 1961 provides protection for orphaned grandchildren through the mechanism of "representational succession," or the substitution of the heir's status. In

terms of purpose, this provision shares the same orientation as the Egyptian model, namely ensuring the economic sustainability of descendants who have lost their inheritance rights due to the prior death of their parents (Munir, 2018). Therefore, the substance of this regulation can be viewed as consistent with the principles of *hifz al-nasl* and *hifz al-mal*. Issues arise regarding methodological legitimacy, as these provisions have faced criticism from some scholars and were even declared contrary to Islamic inheritance law by the Federal Shariat Court. This situation demonstrates that the alignment of a rule with the objectives of the public interest does not necessarily entail the same level of acceptance of the *ijtihad* method used in its formulation (Ashraf & Shahnawaz, 2024).

Based on this comparison, it can be concluded that the three countries share a relatively similar *maqashid* orientation, namely providing economic protection to vulnerable family members who risk losing their rights due to the application of the classical inheritance system. The main differences lie in the subjects being protected and the legal mechanisms employed. Indonesia focuses its protection on adopted children, adoptive parents, and other parties who have gained legitimacy through jurisprudence. Egypt directs its protection toward grandchildren who are prevented from receiving an inheritance through the instrument of the *wasiat wajibah*. Pakistan uses the mechanism of heir representation to achieve a similar objective. From the perspective of *maqashid al-sharia*, these three models essentially strive to realize *hifz al-nasl* and *hifz al-mal*, although they are constructed through different legislative and *ijtihad* approaches in accordance with the social needs and legal developments in each country.

Conclusion

The mandatory bequest is a form of reform in Islamic inheritance law developed to provide protection to family members who are not entitled to inheritance under the classical system. Research findings indicate that Indonesia, Egypt, and Pakistan share the same objective namely, to protect parties who may lose their economic rights due to the formal application of Islamic inheritance law but each country has developed distinct mechanisms. Indonesia regulates the *wasiat wajibah* for adopted children and adoptive parents through Article 209 of the Compilation of Islamic Law and has expanded its application through case law. Egypt regulates mandatory bequests for grandchildren who are barred from receiving an inheritance through Qanun al-Wasiyyah No. 71 of 1946, while Pakistan uses the mechanism of representational succession in Section 4 of the Muslim Family Laws Ordinance of 1961 to provide protection to orphaned grandchildren through a system of substitute heirs.

Viewed from the perspective of the *maqashid al-sharia*, these three models are fundamentally oriented toward the protection of lineage (*hifz al-nasl*) and the protection of property (*hifz al-mal*). Indonesia emphasizes the protection of family relationships arising from care and social responsibility; Egypt focuses on protecting the biological lineage that has lost its inheritance rights; while Pakistan prioritizes the economic protection of orphaned grandchildren through a system of representation. These differences demonstrate that the implementation of the *maqashid al-sharia* is not always realized through the same legal instruments but can be adapted to social needs, societal conditions, and evolving legal policies in each country.

Based on these findings, it can be concluded that the wasiat wajibah and similar instruments constitute a form of legal ijihad that serves to bridge the provisions of Islamic inheritance law with the need for family protection in modern society. The existence of these instruments demonstrates that Islamic inheritance law possesses the flexibility to adapt to social changes without neglecting the fundamental principles of Sharia. Therefore, the development of inheritance law through the maqashid al-Sharia approach is essential to ensure that the primary objectives of Sharia namely, the realization of justice, public interest, and the protection of vulnerable family members can be optimally achieved

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