

Revocation of islamic inheritance rights to the recipient of the obligatory will perspective masalahah

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Abstract

This study examines the issue of the cancellation of Islamic inheritance rights to the recipient of the obligatory will which is analyzed through the perspective of masalahah. The background of this study is the limitation of the regulation of mandatory wills in the compilation of Islamic law (KHI), especially Article 209, which does not explicitly regulate the mechanism for their cancellation, causing legal uncertainty in judicial practice. This research uses normative juridical method with conceptual approach and legislation. The results showed: first, the cancellation of the rights of the obligatory will can only be justified if it is based on causes recognized by the Shari'a, such as harming the heir or obstructive religious differences; second, the perspective of masalahah considers the cancellation to be legally valid if it aims to preserve greater benefits, but prohibited if it is carried out discriminatively; third, the absence of detailed arrangements on the mechanism for canceling the obligatory will in the KHI implies the weak protection of the recipient's civil rights. This study recommends a comprehensive renewal of the KHI in order to realize legal certainty and substantive justice in the Islamic inheritance system in Indonesia.

Keywords: Islamic Law, Inheritance, Masalahah

1. INTRODUCTION

Islamic inheritance law is one of the fundamental aspects in the Islamic legal system that regulates the distribution of one's inheritance after death. In the context of Indonesian positive law, Islamic inheritance provisions are regulated through the compilation of Islamic law (KHI) which is a guideline for Religious Court judges in deciding inheritance cases.¹ One of the instruments known in this system is the mandatory will, that is, the will that is established by a judge by force to a certain heir or relative who does not obtain a share of the inheritance because it is hindered by legal provisions, such as religious differences. The phenomenon of mandatory Wills has become a discourse that continues to develop along with the dynamics of increasingly progressive court decisions, especially in the case of Muslim heirs who leave non-Muslim heirs or adopted children. However, the issue that arises later is how Islamic law views the cancellation of inheritance rights to the recipient of the obligatory will when studied

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¹ Oming Ratna Wijaya, "Putusan Hakim Pengadilan Agama Surabaya Tentang Wasiat Wajibah Bagi Suami Non Muslim Perspektif Hukum Islam" 03 (2023): 674–89.

through the *maslahah* framework, an Islamic legal approach that emphasizes the benefit of the people as the main goal of establishing law.²

The study of mandatory wills in contemporary Islamic legal literature shows that this issue does not stand alone, but intersects with various issues such as distributive justice, protection of human rights, and the flexibility of Islamic law in responding to social change.³ Several previous studies have highlighted the application of compulsory Wills from the perspective of comparative schools, as well as juridical analysis of Supreme Court rulings that expand the scope of beneficiaries.⁴ However, studies that specifically discuss the possibility of canceling the rights to the obligatory will through the *maslahah mursalah* approach are still very limited. Previous studies have tended to focus on the aspect of mandatory bequests, rather than on the dimension of their cancellation. This research gap is the academic foundation as well as the novelty of this research, which fills the void in the study of the mechanism and legal basis for the cancellation of obligatory wills which are comprehensively analyzed through the *maslahah* theory as developed by classical and contemporary *usul Fiqh* scholars.⁵

Theoretically, the concept of *maslahah* formulated by Al-Ghazali and further developed by Al-Syatibi through the theory of *maqashid al-Shari'ah* becomes a relevant analytical framework in assessing the legal validity of a policy or decision related to civil rights in Islam. *Maslahah* does not merely mean benefits in a pragmatic sense, but includes the maintenance of the five basic elements of human life (*al-kulliyat al-khams*), namely religion, soul, intellect, offspring, and wealth. In the context of the cancellation of obligatory Wills, the *maslahah* approach becomes a measure of whether the cancellation is in line with the objectives of the *Shari'a* or is contrary to it. Comparative studies of regulations in some Muslim countries such as Egypt, Tunisia, and Malaysia also show variations in approaches to regulating mandatory wills that need to be scientifically criticized.⁶

Based on the foregoing, this study formulated three main questions: first, How is the construction of Islamic law against the cancellation of inheritance rights for recipients of obligatory Wills?; second, what is the perspective of *maslahah* in assessing the legality of the cancellation of

² Analisis Yuridis, Ketentuan Pembuatan, and Surat Wasiat, "Analisis Yuridis Ketentuan Pembuatan Surat Wasiat Berkaitan Dengan Pembagian Warisan Apabila Tidak Ada Keluarga Sedarah Pada Garis Lurus Ke Atas Dan Ke Bawah Sesuai Dengan Ketentuan KUH Perdata Dan KHI" 2 (2024): 1–11.

³ Iwan Permadi, "Problematika Hak Waris Atas Tanah Warisan Bagi Ahli Waris Beda Agama" 6, no. 193 (2023): 242–57, <https://doi.org/10.33474/yur.v6i2.19482>.

⁴ Satriani and Marilang, "Analisis Gugatan Pembatalan Adopsi Kepada Orang Tua Angkat Perspektif Hukum Islam" 2, no. 2 (2024): 107–18.

⁵ Kheesya Arzeeta S Sahid, "Penyelesaian Sengketa Hibah Wasiat Kepada Anak Angkat Tanpa Persetujuan Ahli Waris Di Indonesia" 2, no. 2 (2025): 718–29.

⁶ Fedhli Faisal, "Hak Harta Bersama Dan Waris Janda Dari Perkawinan Poligami Yang Tercatat Tanpa Izin Dari Pengadilan Agama" 7, no. 3 (2025): 1261–74.

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obligatory wills in the Islamic inheritance law system?; and Third, What are the legal implications of the cancellation of mandatory Wills on the protection of civil rights of recipients in the context of Indonesian positive law? In line with the formulation of the problem, this study aims to: first, to analyze the construction of Islamic law on the cancellation of obligatory testamentary rights; second, to examine the perspective of masalah in assessing the validity of the cancellation; and third, to describe its legal implications for the civil rights protection system in Indonesia. The benefits of this research include two dimensions. Theoretically, this study is expected to enrich the scientific treasure of Islamic law, especially in the development of masalah theory as an instrument of contemporary *ijtihad* in the issue of inheritance. In practical terms, the results of this study can be a reference for Religious Court judges, Islamic law academics, and policy makers in formulating regulations that are more equitable and responsive to the needs of Indonesia's growing Muslim community.

2. RESEARCH METHOD

This study uses a normative juridical approach, namely legal research methods that place the law as a system of norms that are studied in depth through the analysis of primary, secondary, and tertiary legal materials. This approach was chosen because the issue of revocation of Islamic inheritance rights to the recipients of obligatory Wills is a doctrinal issue and requires in-depth study of normative texts, both from the Qur'an, Hadith, classical jurisprudence, and legislation in force in Indonesia, especially the compilation of Islamic law (KHI). This method is relevant to use in legal research aimed at finding coherent truths between one legal norm and another in a whole legal system.⁷ Sources of legal materials in this study are divided into three categories. First, primary legal materials covering the nash of the Qur'an and Hadith related to inheritance, compilation of Islamic law (Inpres No. 1 Of 1991), Law No. 3 of 2006 on religious courts, as well as decisions of the Supreme Court of the Republic of Indonesia relating to mandatory Wills.⁸ Second, secondary legal materials include books of classical jurisprudence, contemporary Islamic legal literature, scientific journals, dissertations, and the results of previous research that discusses the obligatory Testaments and masalah theory.⁹

Third, tertiary legal materials in the form of legal dictionaries, Islamic encyclopedias, and other supporting sources that serve to clarify the

⁷ Abd Ghafur, Dwi Aprilia Widyastutik, and Ifitah Firdausiyah, "Hukum Waris Islam : Kajian Komparatif Mazhab Fikih Dan Relevansinya Dengan KHI Di Indonesia" 4, no. 4 (2025): 6234–43.

⁸ "Undang-Undang Republik Indonesia Nomor 3 Tahun 2006 Tentang Perubahan Atas Undang-Undang Nomor 7 Tahun 1989 Tentang Peradilan Agama," 2006

⁹ "Instruksi Presiden Republik Indonesia Nomor 1 Tahun 1991 Tentang Penyebarluasan Kompilasi Hukum Islam," 1991, 1–2.

technical concepts used in research. Legal material collection techniques are carried out through library research studies systematically and comprehensively, by browsing various sources both in print and digital through academic databases such as Google Scholar, SINTA, and accredited National Journal portals. Furthermore, the legal materials that have been collected are analyzed using the qualitative-prescriptive content analysis method, which describes, interprets, and evaluates the relevant legal norms to be constructed logically and systematically. Conceptual approach (conceptual approach) and statutory approach (statute approach) is applied integratively to answer all the problems that have been set. The validity of the analysis is maintained through triangulation of sources and consistency of legal arguments that refer to the principles of *maslahah* as the main knife of analysis.

3. RESULT AND ANALYSIS

A. Construction of Islamic law against the cancellation of the right of compulsory will in the inheritance system

Islamic law builds an inheritance system on a solid foundation through a normative and measured distribution mechanism of property. In this construction, the obligatory will is present as a legal instrument imperatively established by the judicial authorities to those parties who are formally veiled from the part of the inheritance, but substantially have a close moral and social relationship with the testator. The compilation of Islamic law (KHI) through Article 209 confirms that the obligatory will is given to adopted children and adoptive parents with a maximum limit of one third of the total inherited property. But in its development, the jurisprudence of the Supreme Court of the Republic of Indonesia has progressively expanded the scope of mandatory will recipients to include non-Muslim heirs and stepchildren, in response to a legal vacuum that existing normative provisions are unable to answer.¹⁰

The issue of canceling the rights of a compulsory will arises when there are certain conditions or reasons that legally invalidate the eligibility of a person to receive such a share. In classical jurisprudence, there are at least three main reasons that can be the basis for the cancellation of the right to inherit and the right to receive a will, namely: *al-qatl* (murder of the heir), *al-riddah* (apostasy of the recipient), and *al-ikhtilaf al-din* (religious differences). These three factors in Indonesian positive law are selectively adapted, where Article 173 of the KHI explicitly states that a person who is proven to have committed an act that threatens the life of the testator or prevents the testator from making a Will can be declared disqualified. If

¹⁰ Muchamad Ikbal, Oyo Sunaryo Mukhlas, and Beni Ahmad Saebeni, "Keabsahan Pelimpahan Porsi Haji Melalui Wasiat Wajibah Dan Transformasi Hukumnya Terhadap Hukum Islam," No. September (2025).

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these causes are proven juridically, then the cancellation of obligatory testamentary rights is not only permissible, but also becomes a necessity in order to maintain the integrity of the Islamic inheritance law system itself.¹¹

Furthermore, a study of the Supreme Court Decision No. 1983 K/Pdt / 2017 shows that the freedom of wills included in the context of mandatory Wills is not absolute. The Supreme Court affirmed that a Will can be declared legally defective and null and void if it contradicts the normative provisions in force as *lex specialis*, such as the rules on joint property in marriage.¹² This principle provides an important precedent that the cancellation mechanism in the context of Islamic inheritance law in Indonesia must always be based on a hierarchy of applicable norms, where legal certainty and protection of the rights of others are the main considerations that cannot be ruled out.

B. Masalah perspective in assessing the legality of the cancellation of compulsory Wills

Maslahah theory as developed in the tradition of *usul Fiqh* is one of the most relevant instruments of *ijtihad* in assessing the validity of a legal policy that is not explicitly stipulated in *nash*. *Maslahah mursalah* specifically refers to benefits that are not mentioned directly in the Qur'an or Hadith, but are in line with the general purpose of the Shari'a to preserve the five basic elements of human life (*al-kulliyat al-khams*): religion, soul, intellect, heredity, and wealth. In the context of revocation of obligatory Wills, the *maslahah* approach provides a comprehensive evaluative framework for determining whether the act of revocation is in line with or contrary to the objectives of Shari'a.¹³

If the cancellation of the obligatory will is carried out on the basis of causes that are Shari'a recognized as proven by the actions of the recipient that harm or threaten the heir, the cancellation action actually embodies *maslahah* in its most fundamental dimension, namely the maintenance of property (*hifzh al-mal*) and the maintenance of life (*hifzh al-nafs*). On the other hand, if the cancellation is done solely on the basis of discriminatory considerations or without a strong legal basis, then the action is contrary to the principle of *maslahah* because it causes real injustice to those who should be protected by law. A comparative study of the practice of law in Egypt and Indonesia shows that the flexibility of Islamic law in responding to social dynamics is always based on the principle of measurable benefit and can be accounted for scientifically.

¹¹ Gus Nurdiansyah, "Perbandingan Antara Wasiat Wajibah Mesir Dengan Ahli Waris Pengganti Dan Wasiat Wajibah Indonesia" 12, No. 2 (2023): 107–16.

¹² Abdul Gafur, "Analisis Konsep Wasiat Wajibah Dalam Khi Dan Putusan Ma," 2022, 1–27.

¹³ Arvita Hastarini, "Analisis Yuridis Pembatalan Akta Wasiat Yang Melibatkan Harta Bersama: Studi Putusan Mahkamah Agung Nomor 1983 K/Pdt/2017" 7 (2026): 1–18, <https://doi.org/10.22437/zaaken.v7i1.53452>.

In Indonesian judicial practice, the Banten high religious court through Decision number 0092 / Pdt.G/2017/PTA.Btn shows how judges use an integrative *maslahah* approach with *qiyas* to establish and at the same time limit the rights of obligatory wills for non-Muslim brothers. Judges do not merely apply formal norms, but also consider family harmony, substantive justice, and social stability as part of a broader benefit.¹⁴ This proves that *maslahah* is not just an abstract theory, but a living and dynamic legal analysis tool in contemporary Islamic judicial practice. Furthermore, the expansion of the subject of mandatory testament recipients by the Supreme Court is always based on the consideration of the recipient's real contribution to the testator, social proximity, and protection of vulnerable parties all of these elements are concrete manifestations of the principle of *maslahah* in the dimension of substantive justice.

C. Legal implications of compulsory will cancellation on Civil Rights Protection

The cancellation of a mandatory will carries broad and layered legal implications, not only for the disenfranchised recipient, but also for the civil rights protection system as a whole. In the context of Indonesian positive law, a person's civil rights are protected by various normative instruments, ranging from KHI to law No. 3 year 2006 on religious courts that give full authority to the religious courts to decide cases of Islamic inheritance. If the cancellation of a compulsory will is carried out without sufficient legal basis and without going through the correct judicial procedure, then the action has the potential to violate the recipient's civil rights guaranteed by the applicable legal system.

One critical aspect that needs serious attention is the limitation of the arrangement of mandatory wills in the KHI which is still general and multi-interpretation. The absence of provisions that specifically regulate the mechanism and conditions for the cancellation of compulsory Wills creates a space for legal uncertainty that can harm the parties involved. This condition encourages judges to perform judicial *ijtihad* based on the sources of Islamic law and the principles of *maqashid al-Shari'ah*, but without clear normative guidelines, disparity of decisions between courts becomes a necessity.¹⁵ Therefore, a more comprehensive codification effort is needed in the KHI, in particular, which regulates in detail the conditions that can lead to the deprivation of the rights of compulsory wills and their legal procedures, so that legal certainty and substantive justice can be realized simultaneously.

¹⁴ Allya Shifa Akhsanty, "The Concept of Wasiat and Wasiat Wajibah in Indonesia From The Perspective of The Compilation of Islamic Law (KHI)" 2, no. August (2025): 72–94.

¹⁵ Mohamad Yamin, "The Expansion of Wasiat Wajibah : Protecting Legal Certainty and Fairness in Indonesian Inheritance Law," 2026.

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In a broader perspective, the cancellation of a mandatory will should always be interpreted as a last resort (*ultimum remedium*) that can only be taken through the judicial route with strict proof. This is in line with the spirit of renewal of Islamic law in Indonesia, which continues to strive to harmonize between the universal values of Sharia and the real needs of a growing society. The development of the concept of mandatory Wills based on *maqashid al-Shari'ah* as pioneered by the Supreme Court through its various rulings must ultimately be balanced with a comprehensive regulation of the boundaries and mechanisms for their cancellation, so that this legal instrument is not abused and still functions as its original purpose: realizing justice for those who are formally unprotected by conventional inheritance schemes.¹⁶

4. CONCLUSION

Based on the studies that have been carried out, it can be concluded that the cancellation of obligatory testamentary rights in Islamic law can only be justified normatively if it is based on causes recognized by Shari'a and positive law, such as acts of murder, apostasy, or acts that actually harm the testator. The perspective of *maslahah* affirms that the cancellation is legally valid if it aims to preserve the greater benefit, but becomes prohibited if it is done arbitrarily without a strong basis. The implications of this study indicate that the arrangement of mandatory wills in the KHI still requires a more comprehensive update. Therefore, it is recommended to policy makers to immediately revise the KHI by including more detailed provisions on the terms, mechanisms, and legal consequences of canceling mandatory wills, so that legal certainty and substantive justice can be realized simultaneously in Islamic judicial practice in Indonesia.

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¹⁶ Legal Science, "Penetapan Wasiat Wajibah Untuk Saudara Non Muslim Dalam Kajian Maslahat" 3, no. 3 (2025): 292–98.

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