

THE LEGALITY OF WASIYYAH WAJIBAH IN ACHIEVING MAQASID AL-SHARIAH

Md. Habibur Rahman^{1*}, Abu Talib Mohammad Monawer²

¹Faculty of Business and Management, University Sultan Zainal Abidin (UniSZA)
Kuala Terengganu, Malaysia

²Academy of Islamic Studies, University of Malaya (UM)
Kuala Lumpur, Malaysia

*Corresponding author
habiburrahman@unisza.edu.my

Received: November 2020

Accepted: December 2020

Online First: December 2020

ABSTRACT

Wasiyyah wajibah is an obligatory will, prescribed in some jurisdictions for the sake of grandchildren whose father dies during the lifetime of their grandfather. Maqasid shariah refer to the underlying objectives of Islamic rulings, which are summarized as the protection of faith, life, lineage, intellect and wealth. They are further described as the wellbeing (maslahah) of humankind which is portrayed as achieving the benefit and repulsing the harm. This study intends to analyze the lawfulness of wasiyyah wajibah in the context of maqasid shariah. The study is qualitative, and a method of content analysis is used to conduct this study. Though wasiyyah is voluntary, this form of wasiyyah is made obligatory to ensure social solidarity for the deprived grandchildren and social equality in distributing the inheritance of their grandfather among his inheritors. The study concludes that the lawfulness of wasiyyah wajibah goes in line with maqasid shariah as it protects the lives of underprivileged grandchildren and repulses the hardship of poverty and economic discrimination from their life. Thus, it ensures the wellbeing of those deprived grandchildren in particular and achieves social justice and social solidarity in Islamic inheritance at large.

Keywords: Social Solidarity, Maqasid Shariah, Wasiyyah Wajibah

1. Introduction

Wasiyyah is a form of donation and charity work. It means making a will for the specified beneficiaries. It gives a sense of the relation between two things. Making wasiyyah of something for someone means making a relation between the beneficiary and the thing donated. Productive land is called 'ard wasiyyah', i.e. the land that is attached with plants (Razi, 2008; Ibn Manzur, 1990; Fayyumi; 1323H). As a verbal noun wasiyyah refers to the action of the person who makes the will (musi) as the Quran mentions "o ye who believe, when death approaches any of you, take witnesses among yourselves when making bequests" (5:106). Wasiyyah also refers to the item given through it (Musa bihi) as the Quran states "after the payment of legacies and debts" (4:11). Thus, in the literal sense, wasiyyah means to determine, to command, to recommend, to connect and so forth (Firuzabadi, 2005; Ibn Manzur, 1990; Fayyumi, 1323H).

Technically, Hanafi School defines wasiyyah as transferring ownership of an asset or benefit voluntarily, which will be effective after the death of the donor (Zadah, 2003; Ibn Abidin, 1998). The clause of voluntarily eliminating the possibility of a sale, lease etc. as it occurs with consideration. Also, the condition of being effective after death removes the confusion of hibah as it is transferring ownership voluntarily in the lifetime of the donor. Maliki School defines wasiyyah as a contract that establishes the right in one-third of the wealth of the contracting party, which will be effective upon his death (Dasuqi,

2003; Dardir, 2003). Nevertheless, Shafi'i School defines wasiyyah as donating the right related, though implicitly, to the duration after death (Ansari, 2001; Sharbini, 2006; Ramli, 1993), while Hanbali School defines wasiyyah as the dealing or instruction to deal after one's death or donating the wealth for the duration after death (Bahuti, 1997; Ibn Qudamah, 2004). From these definitions, it is found that wasiyyah is making a will for donation and wealth dissemination which is confined to one-third of one's property and which will come to effect after the demise of the donor.

Wasiyyah is verified by the Quran, Sunnah, and scholarly consensus. The Quran states it is prescribed when death approaches any of you if he leaves any goods that he makes a bequest to parents and next of kin, according to reasonable usage; this is due from Allah-fearing (2:180). Before the ruling of inheritance making a will for the parents and next of kin was obligatory. However, after the ruling of inheritance, the obligation of wasiyyah is removed, but it remains lawful and recommended subject to some conditions. Wasiyyah is prescribed before the settlement of the debt as the Quran mentions 'the distribution of inheritance is after the settlement of the will and debt' (4:11, 12).

Besides, it is recommended to take witnesses upon making wasiyyah as the Quran mentions 'o ye who believe, when death approaches any of you, take witnesses among yourselves when making bequests' (5:106). The validity of making wasiyyah is inferred explicitly from the command of taking witnesses to that.

The Prophet (PBUH) says 'it is not right for any Muslim who has anything to bequeath that he may pass even two nights without having his will written' (Bukhari, Muslim). This narration encourages making the will by everyone who has capacity for that. The Prophet (PBUH) also mentions 'he who dies with a will, has died in the way of Allah and the Sunnah, and fear of Allah and martyrdom, and dies while his sins are forgiven' (Ibn Majah). When the companion Sad ibn Abi Waqqas R. intended to make wasiyyah for two thirds or half of his properties, the Prophet (PBUH) stopped him. It made the wasiyyah valid for up to one third (Bukhari, Muslim). Thus, the Sunnah also validates the wasiyyah.

The validity of wasiyyah is also verified by unanimous agreement of the scholars. All Muslim jurists unanimously agree that making a will for anyone except the heirs up to one third is valid and lawful (Ibnul Mundhir, 1997; Kasani, 2005; Zayla'I, 1393H; Ansari, 2001; Ibn Qudamah, 2004).

Concerning the legal status of wasiyyah in Islam, Muslim jurists agree that before the provisions of inheritance everyone needed to make wasiyyah with all properties for the parents and the relatives (Kasani, 2005; Sharbini, 2006; Ansari, 2001; Bahuti, 1997; Zuhayli, 2001). Al Quran says 'it is prescribed when death approaches any of you if he leaves any goods that he makes a bequest to parents and next of kin, according to reasonable usage; this is due from Allah-fearing' (2:180). However, after the provisions of inheritance, scholars differ in opinions regarding its legal status. The majority of the scholars including Hanafi, Maliki, Shafi'i and Hanbali Schools opine that generally wasiyyah is (mustahabb) recommended, yet it is obligatory for settling the debt, returning others' deposits, as well as for paying outstanding zakah (Sarakhsi, 1989; Zayla'I, 1393H; Ibn Nujaym, 1997a; Hattab, 1995; Ibn Qudamah, 2004). However, Daud Zahiri opines that wasiyyah is obligatory for the relatives who do not inherit while Ibn Hazm opines that wasiyyah is obligatory on everyone who leaves property and riches (Ibn Hazm, 1900; Ibn Qudamah, 2004).

Nevertheless, wasiyyah wajibah is a special kind of wasiyyah prescribed in many jurisdictions to protect the life and to ensure the sustainable survival of the grandchildren whose father dies in the lifetime of their grandfather. It is a fraction of the inheritance restricted to one third which is essentially be given to those who lost their father during the life of their grandfather. In this endeavour, the legality of wasiyyah wajibah has been discussed in the light of maqasid shariah (the noble objectives of the Islamic law). The legality of wasiyyah wajibah protects the life of such grandchildren and brings social justice and sustainable survival of their lives.

2. Literature Review

Few studies have been done on wasiyyah wajibah. Regarding the practices of wasiyyah wajibah in Islamic countries, countries like Malaysia and Morocco allow giving wasiyyah wajibah to the grandson only who lost his father. However, a country like Egypt allows granting wasiyyah to the granddaughter as

well. On the other hand country like Pakistan replaces the grandchildren, who lose their father, as their parents to get the inheritance of the grandfather. Thus, there is an inconsistency in the practice of wasiyyah wajibah in Muslim societies (Daud & Azahari, 2019).

2.1 Definition and Essence of Wasiyyah Wajibah

The meaning of wasiyyah has been discussed earlier. Wajibah means compulsory, obligatory, required, and so forth (Razi, 2008). As a technical term, the classical scholars did not define wasiyyah wajibah as it is newly discovered in the present time by the Family Law. However, contemporary scholars have some definitions of it which are relatively close to each other.

Sultan (2006) defines wasiyyah wajibah as a fraction of property that the grandchild of the deceased deserves it when his father dies in the lifetime of his grandfather. After that, he takes the portion of his father the same as he lives, which shall not exceed one third, and the law requires that. Khalifah (2009) defines wasiyyah wajibah as the obligatory wasiyyah in one-third of the legacy for the child of the deceased's son. The latter died in deceased's lifetime or died with him through legally.

So, wasiyyah wajibah is something required by the law for the next of kin who does not inherit like the grandchild from son and daughter within the ambit of one-third of the legacy. To execute this wasiyyah, no initiation is required. If the deceased initiates it by his free will, it would be executed, and if he ignores the legal judgement would execute it.

Making wasiyyah is recommended in Islamic law, though it would be obligatory, recommended, permissible, not recommended and prohibited based on the relevant circumstances and conditions. Making wasiyyah is obligatory by shariah for the rights, assets, and fixed debts as well as for zakah, expiation, and ransom, etc. which are outstanding. In these cases, wasiyyah is made obligatory by shariah because they are more likely ignored after his death and remained in the deceased's liability. Though making wasiyyah is obligatory here by the shariah, the essence of wasiyyah remains optional and discretionary as it shall be made by the free will of the deceased. Thus, no fraction of the deceased's properties shall be taken out as wasiyyah unless the deceased initiates it before his demise.

Wasiyyah wajibah is a new form of wasiyyah made obligatory by law as the law executes it not the religion. The law obligates this wasiyyah in the deceased's properties for those who are stipulated in the legal provision, irrespective of whether the deceased makes wasiyyah for them and the inheritors accept it. This is made obligatory for the group of relatives who do not inherit because of having someone above them who block them from the bequest.

The Egyptian Law of Will is the premier in this connection. Wasiyyah wajibah is enacted by Egyptian law in 1946, followed by the Syrian Family law in 1953, Tunisian Family law in 1956, Moroccan Family law in 1958, Palestinian law in 1962, Kuwaiti law in 1971, Jordanian law in 1976 and so forth (Az'ar 2008).

2.2 Authority of Wasiyyah Wajibah in Islamic Law

Wasiyyah wajibah, as practised nowadays, is verified neither by any explicit text of the Quran nor by the Sunnah of the Prophet. Also, none of the classical scholar and nor any known School of Islamic law advocates this type of wasiyyah. Yet, it is the discretionary judgement (ijtihad) of the contemporary scholars.

However, proponents of wasiyyah wajibah try to relate it with the legal (shar'i) evidence. In terms of being obligatory, they rely on the verse of wasiyyah. Also, they rely on the opinion of Ibn Hajm as well as some views of the companions and their followers who opine that making wasiyyah is obligatory for the next of kin who does not inherit. Moreover, wasiyyah wajibah is underpinned by Islamic legal maxims and noble objectives of the shariah.

The Quran mentions 'it is prescribed when death approaches any of you if he leaves any goods that he makes a bequest to parents and next of kin, according to reasonable usage; this is due from Allah-fearing' (2:180). This verse clearly states that making wasiyyah is obligatory for the parents and next of kin. This

obligation has been rescinded by the verse of inheritance for the parents and next of kin who inherit from the deceased. However, the obligation of making wasiyyah still remains for the parents and next of kin who do not inherit from the deceased (Tabari, 2001; Ibnul Arabi, 1988; Qurtubi, 1372H).

The Prophet (PBUH) says 'it is not right for any Muslim who has anything to bequeath that he may pass even two nights without having his will written' (Bukhari, Muslim). This hadith clearly instructs the obligation of making wasiyyah.

Furthermore, there are maxims in Islamic law that allow the ruler to restrict the permissible actions as long they secure the public interest, and essentially the instruction of the ruler should be followed, and his command initiates the legal ruling in Islamic law (Ibn Nujaym, 1980b; Suyuti, 1979). Likewise, it is permissible for the ruler to specify next of kin as the grandchildren of the deceased and to give them the portion of their father in the legacy as if he lives (Sartawi, 2000; Wih, 1999).

2.3 Scope and Significance of Wasiyyah Wajibah

Basically, wasiyyah wajibah is legalized to solve the problem of the children who die in the lifetime of their fathers and leave their children behind. Pursuant to the wasiyyah wajibah the grandchildren shall be given the portion of their father in the inheritance. This helps them to get out of poverty and tight living while their uncles are in richness and happy living.

So, the lawfulness of wasiyyah wajibah responds to the miserable situation that arises due to deprivation of the grandchildren from the inheritance, whose father dies in the lifetime of their grandfather. Thus, wasiyyah wajibah reduces the suffering of the orphans as much as possible so that this suffering does not come together with the suffering of deprivation from inheritance.

Wasiyyah wajibah also contributes to uphold the existence of the family with a balanced distribution of wealth among the family members, particularly when due to early death of the father the respective children become underprivileged while their cousins stay solvent and well-off. Moreover, wasiyyah wajibah is a legally verified way that establishes social justice and mutual cooperation in the community and removes harm and hatred from society. Finally, it safeguards the grandchildren from decay when their father dies before their grandfather (Az'ar, 2008).

3. Methodology

This is a qualitative and descriptive study. To achieve the objective, the study employs the content analysis method. For data collection, related books, journals, documents have been utilized.

4. Discussion and Analysis

4.1 Conditions for Wasiyyah Wajibah

The law stipulates numerous conditions for the entitlement of wasiyyah wajibah. There are some conditions related to the descendent that deserves wasiyyah wajibah while some other conditions are related to the child who is dead, as follows:

4.1.1 Conditions Related to the Descendent that Deserves Wasiyyah Wajibah:

First: To be entitled to wasiyyah wajibah one should be the descendent of the deceased.

Second: The descendent who deserves wasiyyah wajibah shall not inherit from the grandfather. If he inherits whether being the Quranic heir like the daughter of the son or being the agnates like the son of the son, such descendent shall not be entitled to wasiyyah wajibah. This is irrespective of whether the portion of inheritance is little or much. Wasiyyah wajibah is legalized to compensate what the descendent misses up from inheritance. Since the descendent entitles to bequest and becomes the inheritor, then no point exists for the law to give him anything beyond inheritance (Abu Zuhrah, 1988; Qasim, 1987; Barraaj, 1999).

Third: The deceased grandfather shall not grant anything in his lifetime to the descendent without compensation that equals to the wasiyyah wajibah. For example, he makes a wasiyyah for his grandchild equal to the portion of his father, or donates him from the inheritance that equals to the portion of wasiyyah wajibah, or makes waqf for him, or sells to him with a token price something that equals to the wasiyyah wajibah. In all these cases wasiyyah wajibah will not be applicable for the grandchild whose father died during the lifetime of grandfather. However, if the grandfather grants him less than what supposes to get from the inheritance, the balance can be taken from wasiyyah wajibah. But, if the grandfather donates him more than what assumes to get from wasiyyah wajibah, then the additional portion would be considered voluntary wasiyyah and accordingly the provisions of voluntary wasiyyah would be applicable thereof (Badran, 1997; Qasim, 1987; Barraaj, 1999; Ashqar, 1997).

Fourth: The descendent that deserves wasiyyah wajibah shall be alive upon the demise of the donor (musi).

Fifth: The descendent that deserves wasiyyah wajibah shall not be blocked by his principal, i.e. someone closer than him to the deceased.

Sixth: The descendent that deserves wasiyyah wajibah shall not be banned from the inheritance per se. If he is banned from the inheritance due to be a killer or different in faith, he will not be entitled to wasiyyah wajibah. Wasiyyah wajibah is a compensation for the missing portion of the inheritance, and in the case of being banned from an inheritance, there will be nothing to be compensated (Qasim, 1987).

Seventh: The wasiyyah wajibah for the grandchildren shall be equal to the portion of their father in inheritance if he is alive if it does not exceed one-third of the inheritance (Abu Zuhrah, 1988; Zuhayli, 2001, Az'ar, 2008).

4.1.2 Conditions Related to the Deceased Child:

First: The deceased child (i.e. father of grandchildren) shall die in the lifetime of the (muwarrith) benefactor (i.e. grandfather) really or legally or shall die with him. Since he is dead upon the demise of the grandfather, he shall not be entitled to bequest, and accordingly, his children also will be deprived of the legacy of their grandfather. Hence, they will be entitled to wasiyyah wajibah. But, if the deceased child (father of grandchildren) dies after his father (i.e. grandfather of grandchildren), he will be entitled to the legacy of his father, and accordingly, his children will be entitled to his legacy. Thus, they will not be entitled to wasiyyah wajibah (Qasim, 1987; Abul Basal, 1999; Ashqar, 1997).

Second: Assuming to be alive, the deceased child (i.e. father of grandchildren) shall be entitled to inheritance in the lifetime of his father. Thus, there should not be any hindrance that prevents him from being inherited from his father. If he is prevented from the inheritance of grandfather due to homicide or difference in faith, his children will not be entitled to wasiyyah wajibah. Wasiyyah wajibah is legalized to compensate what the grandchildren miss from the inheritance due to the demise of their father. Since their father does not have any portion from inheritance to be compensated, they will not be entitled to wasiyyah wajibah (Qasim, 1987).

4.2 The Amount of Wasiyyah Wajibah

The law stipulates that the amount of wasiyyah wajibah will be determined according to the portion of the principal (father of grandchildren) in inheritance, assuming that he is alive, provided that such amount shall not exceed one-third of the inheritance. However, some legal system confines wasiyyah wajibah to the grandchildren from the son only, not from the daughter. So, if the benefactor makes wasiyyah wajibah with more than one third, then the additional portion will be considered the voluntary wasiyyah and will be subject to the approval of the heirs. If the heirs allow wasiyyah in more than one third, it will be executed, and if they do not allow it will be invalid in the additional amount. In a case where some heirs allow, and some others disallow then wasiyyah will be executed in the portion of those who permit so. If wasiyyah wajibah is made in less than what they deserve from their benefactor, then they shall be fully paid what they deserve. If no wasiyyah wajibah is made for them then essentially, they will be given that within the limit of one third. So, wasiyyah wajibah will be determined with what is smaller between the inheritance

that the descendent receives should he live and the one third. If the inheritance is smaller than wasiyyah wajibah will be measured with that; otherwise, it will be limited up to one third if it is smaller than the inheritance of the deceased son (Qadri, 2006; Badran, 1997; Abu Zuhrah, 1988; Daud, 1996; Zuhayli, 2001).

4.3 Who are Entitled to Wasiyyah Wajibah

The Egyptian and Kuwaiti laws specify that the beneficiary of wasiyyah wajibah is the descendent of the child who dies in the lifetime of his father or mother, irrespective of whether this child is son or daughter. So, the descendent of the sons will be entitled to wasiyyah wajibah, regardless of whatever level they are. But, the children of daughter get wasiyyah wajibah only if they are of the first level.

On the other hand, the Syrian, Moroccan and Jordanian laws confine wasiyyah wajibah to descendent of the son only. So, the grandchildren from the son, grandchildren from the grandson and so on will be entitled to wasiyyah wajibah, provided that each principal blocks his descendent and does not block the other descendent. Every descendent deserves the portion of his principal only. But, the descendent of the daughter who died before her father or mother will not be entitled to wasiyyah wajibah (Abu Zuhrah 1988, Zuhayli 2001, Az'ar 2008).

4.4 An Overview of Maqasid Shariah

Maqasid shariah is the essence of human life. Failure to achieve the maqasid shariah causes human life to fall and to remain uncertain and in anarchy and. Success in their fulfilment leads human life to be directed objectively (Mohammad & Shahwan, 2013). Hence, there is an utmost need to evaluate the law of wasiyyah wajibah in the light of maqasid al-shariah. Literally, maqasid shariah is a combination of the words: maqasid and shariah. Maqasid is plural derived from the root word qasada, and its singular is maqsad which means purpose and intention (Ibnu Athir, 2002). Shariah is a singular noun derived from the root word shari'a whose plural form is Sharai'. It gives two meanings: the straight path and fountain Ibn-Faris, 1970). As a term, shariah refers to the life system which Allah, the Highest, legislated for mankind (al-Aṣfahani, n.d.). Thus, the meaning of maqasid shariah is objectives of shariah or objectives of Islamic legislation.

Ibn Ashur (1393 H) defined maqasid shariah as “the purpose and wisdom behind the enactment of all or most of the shariah rulings” (Ashur, 2001). The overall objective of Islamic legislation is to protect the social order of the community and ensure its healthy progress by promoting the wellbeing and righteousness (salah) of human beings (El-Mesawi, 2006). Human wellbeing is achieved through the preservation of five major objectives: faith (din), life (nafs), progeny (nasl), wealth (mal), and intellect (aql) (El-Mesawi, 2006). These essentials are the guarantors of preserving justice, equality, welfare, etc., which the issue of wasiyyah wajibah concerns (Manas & Ibrahim, 2016). The essence of maqasid shariah is wellbeing (maṣlaḥah) by attaining every benefit and repelling every harm from human beings (al-Qayyim, 1973). The Holy Quran states that Allah wants ease and comfort for human beings; He does not want hardship (al-Quran, 2:185-4:28; 5:6); and He did not make any difficulties (al-Qur'ān, 22:78; 33:38) in order to attain benefits (jalb al-maslahah) and avoid harms (jalb al-manfa'ah).

Maqasid shariah is primarily classified under three hierarchical levels of wellbeing (maslahah). These are, in order of priority, daruriyyat (unavoidable essentials), hajiyyat (general needs), and tahsiniyyat (embellishments) (al-Ghazali, 1413 H). It also classified into other categories from different perspectives such as general objectives (al-maqasid al-ammah), particular objectives (al-maqasid al-khassah) and partial objectives (al-maqasid al-juz'iyyah) (Kamali, Khan, & Shaikh-Ali, 2008); purposes of the Lawgiver (maqasid al-Shari') and human purposes (maqasid al-mukallaf) (al-Shatibi, 1997); primary objectives (al-maqasid al-asliyyah) and subsidiary objectives (al-maqasid al-tab'iyyah), and so on (al-Raysuni, 1995; al-Shatibi, 1997; Kamali et al., 2008).

4.5 Achieving Maqasid shariah by Wasiyyah Wajibah

As mentioned earlier that the fifth objective of shariah is the preservation of wealth (hifz al-mal), it should be realized through the lawful acquisition, consumption, and distribution of wealth among all human being including the grandchildren characterized in the present study. Preservation of wealth means to protect the wealth of society against waste and to transfer its ownership to other without counter value and to safeguard the wealth of individuals as a means of the preservation of society's wealth (Ibn Ashur, 2001). In order to preserve wealth, shariah intends some specific goals in the economy and legislates several provisions (ahkam) concerning financial transactions in different modes ('Abbās & 'Abbās, n.d.). Regarding the objectives to be achieved in wealth are economic wellbeing, brotherhood, equitable distribution, freedom, welfare, growth and improvement of cultural milieu (Chapra, 1979; Faridi, 1983; Laldin & Furqani, 2013; Lamido, 2016).

Due to the objective of preserving wealth, divine law facilitates all lawful means for its acquisition and secures it by defending the right of ownership through penalizing theft (al-Allaf, 2003). At this very point, inheritance is one of the vital and lawful means of wealth acquisition which is discussed in Islamic inheritance law (faraid). Accordingly, wasiyyah is made lawful by shariah due to some noble purposes which can be summarized as ensuring public wellbeing in this world and in the afterlife. Through the wasiyyah, one can rectify the noble deeds that he could not perform in his lifetime, which bring benefit for individuals as well as for society in large. Wasiyyah is a way to take care of the relatives since it provides donations for them and removes their necessities and needs, particularly those who do not inherit. It also secures wellbeing of the human society in general by making contributions to community welfare activities and charitable projects. Moreover, it is also a way to reward someone who extended his helping hand for the donor in his lifetime.

However, the law has legislated wasiyyah wajibah (binding will) as a new sort of wasiyyah for a specific group of relatives who have already been deprived of the inheritance due to the existence of a person who prevents them from inheritance according to the rules of hajb (priority in succession). The need and significance of wasiyyah wajibah appear when some grandchildren become underprivileged due to early death of their father while some other grandchildren, i.e. their cousins stay solvent and well-off despite all of them are grandchildren of the same grandfather. The grandchildren are deprived of the portion of inheritance which they are supposed to inherit if their father is alive when the grandfather leaves inheritance (mirath). Deprivation of those children from the grandfather's wealth does not show justice to them when their cousins are enjoying the inheritance of the same grandfather. On the contrary, it will not be an injustice to another grandchild (heirs) if the amount of wasiyyah is given to unprivileged children because if they inherit their actual portion as if the deceased uncle (i.e. father of deprived grandchildren is alive).

Thus, the execution of wasiyyah wajibah ensures social justice (adl) for the deprived grandchildren and social equality (musawah) in managing the inheritance of grandfather and its distribution among grandchildren of all sons. In addition, it eliminates the poverty of vulnerable children and establishes their wellbeing and protects family members against economic discrimination. This is the easing the hardship which is intended by shariah. Moreover, the lawfulness of wasiyyah wajibah goes in line with maqasid shariah because it protects the lives of the grandchildren; it established social justice and equality among the children of the same generation as well as removes hardship and establish wellbeing of underprivileged children.

5. Conclusion

Basically, wasiyyah is considered a voluntary action in Islamic law which has been prescribed to give a chance for the Muslims to compensate for the good deeds that they miss in their lifetime. It is the law which obligates the wasiyyah that is more familiar with the term 'wasiyyah wajibah'. Wasiyyah wajibah is basically legalized to address the issue of the underprivileged inheritors who are deprived of inheritance due to having someone closer than them to the deceased that prevents them from legacy. More specifically, wasiyyah wajibah provides a solution of sustenance for that grandchild whose father dies in the lifetime of his grandfather. Thus, he (grandchild) does not have any portion in the legacy (of

grandfather) due to having his uncle(s) who is closer than him to his grandfather and who prevents him from inheritance if the *fara'id* law is concerned. Islamic law does not have any objection to accommodating something that secures public wellbeing without being contrary to its fundamentals. Thus, *wasiyyah wajibah* is valid by the tacit approval of Islamic law as it is abiding by the general principles of Islamic law.

As discussed, *wasiyyah* is made obligatory for the parents and next of kin by the Quranic verse. This obligation has been repealed by the verse of inheritance for the parents and next of kin who inherit from the deceased. However, the obligation of making *wasiyyah* still remains for the parents and next of kin who do not inherit from the deceased. In addition, as the maxim of Islamic law advocates, the ruler can restrict any permissible action as long it secures the public interest. Thus, it will be permissible for the ruler to specify next of kin as the grandchildren of the deceased and to give them the portion of their father in the legacy as if he is not dead.

Though *wasiyyah wajibah* is made obligatory by law, it shall abide by the fundamentals of *wasiyyah* in Islamic law. To determine the volume of *wasiyyah wajibah* the portion of the dead father is considered the yardstick. The grandchildren will get the equal volume of inheritance for their dead father if he lives, if it shall constitute less or equal to one-third of the inheritance. Thus, in any case, the amount of *wasiyyah wajibah* shall not exceed one-third of the inheritance, and if it exceeds, the grandchildren deserve up to one third only. Also, to be entitled to *wasiyyah wajibah*, the grandchildren shall not inherit in any case from their grandfather.

Lastly, the legality of *wasiyyah wajibah* implements *maqasid shariah* as it protects of lives of grandchildren and ensures their continuous survival by providing for them a fraction from the inheritance not exceeding one-third of it. The lawfulness of *wasiyyah wajibah* brings justice, solidarity and brotherhood in the society. *Wasiyyah wajibah* would be a great means to ensure the wellbeing of such who are by virtue not entitled to get any fraction from the inheritance and removes hardship from them and such *wasiyyah wajibah* achieves *maqasid shariah* in human society.

6. References

- Abbas, I.A. & Abbas, U.A. *Atharul fikrit taghribi alal maqasidish shariyyah: Al-Daruriyyatil Khamsi Unmūhadhan*. from *Shabakatul Alukah* www.alukah.com.
- Abu Zuhrah, M. (1988), *Sharh qanun al-wasiyyah*, Dar al-Fikr al-Arabi.
- Abul Basal, A.N.M., (1999), *Ahkam al-tarikat fi al-fiqh wal qanun*, Jordan: Muwassasat Hamadah, Yarmuk University.
- Aishah, B. (2015), *Wasiyyah wajibah fi qanun al-usrah al-jaza'iri*, *Dirasah Fiqhiyyah Muqaranah*, Master's Thesis, Algeria: Abu Bakr Bilqaid University.
- Al-Allaf, M. (2003). *Mirror of realization: God is a percept; the universe is a concept*. [St. Louis, Mo.?]: M. Al-Allaf.
- Al-Asfahani, A.H.I.M. a.-R. (n.d.). *Al-Mufradat*. Beirut: Darul Marifah.
- Al-Ghazali, A.H.M.I.M. (1413 A. H.). *Al-Mustasfa fi Ilmil Usul*. Beirut: Darul Kutubil Ilmiyyah.
- Alma'Amun, S. (2010). *Islamic Estate Planning: Analyzing the Malaysian perceptions on wasiyyah (will) and bequest practices* (Doctoral dissertation, Durham University).
- Al-Raysuni, A. (1995). *Nazariyyatul maqasid indal Imam al-Shatibi* (4th ed.). Herndon, Virginia, USA: International Institute of Islamic Thought.
- Al-Shatibi, A.I.I.M.I.M. a.-L. a.-G. (1997). *al-muwafaqat fi usulil fiqh* (A.U.M.I.H.A. Salman Ed. 1st ed.). KSA: Daru Ibn 'Iffan.
- Ansari, A.Y.Z. (2001), *Asna al-matalib*, Beirut: Dar al-Kutub al-Ilmiyyah.
- Ashqar, U.S. (1997), *al-wadih fi sharh qanun al-ahwal al-shakhsiyah*, Jordan: Dar al-Nafa'is.
- Awang, M.R. (2008). *The Islamic inheritance law (fara'id): The manifestation of comprehensive inheritance management in Islam*. The National Convention of Fara'id and Hibah.
- Az'ar, R.A. (2008), *al-Wasiyyah al-wajibah*, *Dirasah Fiqhiyyah Muqaranah*, Master's Thesis, Faculty of Shariah and Law, Islamic University Gaza.
- Azizi, Muhammad Ramiz Abdul Fattah, (2003), *al-mirath wal wasiyyah*, Dar al-Furqan.

- Badran, Abul Aynayn, (1997), *al-mawarith wal wasiyyah wal hibah fi al-Shariah al-Islamiyyah*, Alexandria: Markaz al-Iskandariyah lil Kitab.
- Bahuti, Mansur ibn Yunus, (1997), *Kashshaf al-Qina'*, Beirut: Dar al-Kutub al-Ilmiyyah.
- Barraj, Jum'ah Muhammad, (1999), *Ahkam al-mawarith fi al-shariah al-Islamiyyah*, Dar Yafa al-Ilmiyyah
- Chapra, M.U. (1979). *Objectives of the Islamic economic order*: Islamic Foundation Leicester, UK.
- Dardir, Ahmad. (2003), *al-sharh al-kabir*, Beirut: Dar al-Kutub al-Ilmiyyah.
- Dasuqi, Ahmad ibn Arafah. (2003), *Hashiyat al-dasuqi*, Beirut: Dar al-Kutub al-Ilmiyyah.
- Daud, Ahmad Muhammad, (1996), *al-Huquq al-muta'alliqah bi al-tarikah byana al-Fiqh wal Qanun*, Oman: Dar al-Thaqafah.
- Daud, Zakiul Fuady Muhammad & Azahari, Raihanah. (2019). The wajibah will, Alternative wealth transition for individuals who are prevented from attaining their inheritance, *International Journal of Ethics and Systems*.
- El-Mesawi, M. E.-T. (2006). *Ibn Ashur Treatise on maqasid al-shariah*. London [etc.]: The International Institute of Islamic Thought (IIIT).
- Faridi, F. R. (1983). *Theory of fiscal policy in an Islamic State*.
- Fayyumi, Ahmad, (1323H), *al-misbah al-munir* Egypt: Maktabat Abd al-Wahid.
- Firuzabadi, Majd al-Din, (2005), *al-qamus al-muhit*, Beirut: Dar al-Ma'rifah.
- Hattab, Muhammad, (1995), *Mawahib al-jalil* Beirut: Dar al-Kutub al-Ilmiyyah.
- Ibn Abidin, Muhammad Amin, (1998), *Radd al-Muhtar*, Beirut: Dar Ihya al-Turath.
- Ibn Hazm, (1900), *al-Muhallah*, Beirut: Dar al-Fikr.
- Ibn Manzur, Muhammad ibn Makram, (1990), *Lisan al-Arab*, Beirut: Dar Sadir.
- Ibn Nujaym, Zayn al-Din, (1980b), *al-Ashbah wa al-Naza'ir*, Beirut: Dar al-Kutub al-Ilmiyyah.
- Ibn Nujaym, Zayn al-Din, (1997a), *al-Bahr al-Ra'iq*, Beirut: Dar al-Kutub al-Ilmiyyah.
- Ibn Qudamah, Muwaffaq al-Din, (2004), *al-Mughni*, Cairo: Dar al-Hadith.
- Ibn-al-Athir, M. A. S. a.-M. M. a.-J. (2002). *An Nihayatu fi Gharibil Hadithi wal Athar* (A. A. R. S. I. M. Uwaydah Ed.). Beirut: Darul Kutubil Ilmiyyah.
- Ibn-al-Qayyim, S. a.-D. M. I. A. B. A. a.-Z. i. a.-J. (1973). *I'lam al-Muwaqqi'in 'An Rabb al-'Alamin* (T. A. a.-R. Sa'ad Ed. 1 ed. Vol. 1). Beirut: Dar al-Jayl.
- Ibn-Ashur, M. a.-T. (2001). *Maqasidush shari'atil Islamiyyah* (M. a.-T. al-Meisawi Ed. 2nd ed.). Jordan: Dar al-Nafa'is.
- Ibn-Faris, A. H. A. (1970). *Maqayisul Lughah*. Al-Qahirah: Matba'at al-Babi al-Halabi.
- Ibnul Arabi, Abu Bakr, (1988), *Ahkam al-Quran*, Beirut: Dar al-Kutub al-Ilmiyyah.
- Ibnul Munzir, Muhammad ibn Ibrahim, (1997), *al-Iqna'*, Beirut: Dar al-Kutub al-Ilmiyyah.
- Kamali, M. H., Khan, S., Al Shaikh-Ali, A., & International Institute of Islamic, T. (2008). *Maqasid shariah made simple*. London: International Institute of Islamic Thought.
- Kamarudin, M. K., & Muhamad, N. H. N. (2018). Islamic estate planning and management: Malaysian Experience. *International Journal of Management Applications*, 1(1), 8-16.
- Kasani, Ala Uddin Abu Bakr. (2005). *Bada'i' al-Sanai'*, Cairo: Dar al-Hadith.
- Khalifah, Muhammad Taha, (2009), *Ahkam al-Mawarith, Dirasah Tatbiqiyah*, Cairo: Dar al-Salam.
- Laldin, M. A., & Furqani, H. (2013). Developing Islamic finance in the framework of Maqasid al-Shariah : Understanding the ends (maqasid) and the means (wasa'il). *International Journal of Islamic and Middle Eastern finance and Management*, 6(4), 278-289. doi:10.1108/IMEFM-05-2013-0057.
- Lamido, A. A. (2016). Maqasid al-Shariah as a framework for economic development theorization. *International Journal of Islamic Economics and Finance Studies*, 2(1).
- Manas, S. A., & Siddeek, M. I. M. (2016). *al-Ta'ayushus silmiyyu wal indimajul ijtimaiyyu fidaw'imaqasidish shariah: Sirilanka Unmudhajan*. [Peaceful Coexistence and Social Integration in the Light of Maqasid shariah with Special Reference to Sri Lanka]. *al-Tajdid*, 20(39A), 333-365.
- Mansur, Shahhat Ibrahim & Hamzah, Muhammad, (n.d.), *al-Shariah al-Islamiyyah, Mawarith wa Wasiyyah wa Waqf*, Egypt: Zaqaziq University.

- Mohammad, M. O., & Shahwan, S. (2013). The objective of Islamic economic and Islamic banking in light of maqasid al-shariah: a critical review. *Middle-East Journal of Scientific Research*(13), 75-84. doi:10.5829/idosi.mejsr.2013.13.1885.
- Puad, N. A. B. M., Rafdi, N. B. J., Sanusi, S. W. S. B. A., & Sarip, M. M. B. (2018). The Journey on Wasiyyah in Malaysia: A Calling for an Expansion.
- Qadri, Muhammad Qadri Basha, (2006), *al-Ahkam al-Shar'iyah fil Ahwal al-Shakhsiyyah*, Cairo: Dar al-Salam.
- Qaradawi, Y. (2008). Maqasid al-Shariah al-Muta'alliqah bi al-Mal. Paper presented at the 18th Session of The European Council for Fatwa and Research Dublin, Ireland. <http://www.e-cfr.org>.
- Qasim, Yusuf, (1987), *al-Wajiz fil Mirath wal Wasiyyah*, Dar al-Nahdah.
- Qurtubi, Abu Abdillah, (1372H), *al-Jami' li Ahkam al-Quran*, Cairo: Dar al-Sha'b.
- Ramli, Shams al-Din, (1993). *Nihayat al-Muhtaj*, Beirut: Dar al-Kutub al-Ilmiyyah.
- Rashid, R. A., Hassan, S. A., & Yaakub, N. I. (2013). A need for legal framework of gift inter vivos (hibah) in Malaysian estate planning. *International Journal of Business, Economics and Law*, 2(3), 2289-1552.
- Razi, Muhammad ibn Abi Bakar, (2008), *Mukhtar al-Sihah*, Beirut: Dar Sadir.
- Sarakhsi, Muhammad Ibn Ahmad, (1989). *Kitab al-Mabsut*, Beirut: Dar al-Ma'rifah.
- Sartawi, Fuwad Abdul Latif, (2000), *al-Wajiz fil Wasaya wal Mawarith*, Dar al-Bayariq.
- Sharbini, Shams al-Din al-Khatib. (2006), *Mughni al-Muhtaj* Cairo: Dar al-Hadith.
- Sultan, S. (1999). *Mirathul Mar'ati wa Qadiyyatul Musawah* (1st ed.). Madinatun Sadis min Unktubar: Nahdatu Misr.
- Sultan, Salah al-Din, (2006), *al-Mirath wal Wasiyyah bayna al-Shariah wal Qanun*, USA: Sultan Publishing.
- Suyuti, Jalal al-Din, (1979), *al-Ashbah wa al-Naza'ir*, Beirut: Dar al-Kutub al-Ilmiyyah.
- Tabari, Abu Ja'far, (2001), *Jami' al-Bayan an Ta'wil Ayi al-Quran*, Syria: Dar al-Fikr.
- Wih, Ashraf Abdur Rajjaq, (1999), *al-Ra'id fi Ilm al-Fara'id*, Dar al-Nahdah al-Arabiyyah.
- Zadah, Shams al-Din, (2003), *Nata'ij al-Afkar fi Kashf al-Rumuj wal Asrar*, Beirut: Dar al-Kutub al-Ilmiyyah.
- Zayla'i, Jamal al-Din, (1393H), *Nasb al-Rayah*, Beirut: al-Maktab al-Islami.
- Zuhayli, Muhammad, (2001), *al-Fara'id wal Mawarith wal Wasaya*, Dar al-Kalim al-Tayyib.