IJISH (International Journal of Islamic Studies and Humanities)
Vol 8, No. 1, pp. 47-61
http://journal2.uad.ac.id/index.php/ijish/index
E-ISSN 2615-7403

A Comparative Analysis of the Practice and Legal Reference of Wasiat Wajibah Indonesia and Malaysia

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ABSTRACT

This study aims to analyze the comparison of the implementation and regulations regarding mandatory wills in Indonesia and Malaysia and relate it to maslahah according to Izzudin bin Abdissalam. This research uses a qualitative approach. The data collection technique used in this research is a literature study through documentation. The object of this research is the rules and implementation of mandatory wills in Indonesia and Malaysia when connected with the maslahah of Izzudin bin Abdissalam. The results of this study indicate that first, Indonesia provides mandatory wills to adopted children or adoptive parents with a share of 1/3, by referring to Hazairin. The rule is listed in KHI article 209 because it is not binding. The designation has been expanded. At the same time, Malaysia gives to the grandchildren. The rule is listed in the Enakmen, which has a binding legal nature; however, not all states in Malaysia regulate mandatory wills, and not all mandatory will rules are the same. Secondly, if the issue of compulsory legacy is related to the maslahah of Izzudin bin Abdissalam, then it is included in the haqiqi maslahah because it provides happiness (farh) for the recipient of the compulsory bequest, and the maslahah can be known directly by the intellect and is classified as a worldly maslahah.

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OPEN ACCESS

Article history
Received June 28, 2024
Revised October 13, 2025
Accepted October 20, 2025

Keywords
Wasiat wajibah, Practice and Legal, Maslahah.

Introduction

Compulsory probate is a will made by the law to solve problems in dividing property based on the principle of justice. This will become mandatory with a share of one-third of the inheritance (Adliyah, 2021a). The concept of compulsory bequest is actually not found in the fiqh books of previous scholars because it is a new issue, and it uses ijtihad from some contemporary Islamic jurists (Erniwati, 2018). The rule of compulsory bequest first appeared in Egypt and was later followed by some other Muslim countries (Amran suadi, 2015).

Indonesia established the mandatory will from the confluence of two legal systems, namely Islamic law, which does not recognize adopted children at all and customary law, which treats adopted children as biological children (Ariphia et al., 2019). The meaning of obligatory will is that

a person is considered by law to have received a will even though there is no actual will. Compulsory probate in Indonesia is regulated in the Compilation of Islamic Law Article 209, which was established by Presidential Instruction in 1999 and has a non-binding legal nature. The existence of this mandatory will provision makes justice in accordance with the legal awareness of the community, as well as providing a "positive position to the adopted child" (Fathoni, 2014).

The application of the rules of probate regulated by KHI is carried out for 2 (two) reasons, namely, the first reason is to fill the legal vacuum. The second reason related to the application of the rule of testament law in the mandatory will is to realize a sense of justice for the community. Regarding the issue of compulsory probate, there are allied countries in the Southeast Asian region that are side by side and have cultural and religious perspectives that are not much different. Malaysia is a federated state with a constitutional monarchy form of government, while Indonesia is a unitary state with a republican form of government.

Malaysia, in regulating wasiat wajibah, stipulated in an Act in the state called Enakmen, precisely in Enakmen Wasiat Orang Islam in section 27, which states that people who get the right to receive wasiat wajibah are grandchildren. The implementation of this will is an effective ijtihad to resolve the case of the death of the father, where the grandchildren can be prevented (mahjub) from receiving the grandfather's inheritance because of the presence of uncles. The law provides for the distribution of inheritance to grandchildren at certain rates and conditions, as a will (not based on inheritance).

Malaysia has 3 states, 9 kingdoms and 13 states. Enakmen is a legal provision that the State Legislative Council has approved to create law in the State. The domicile residents must follow and comply with it. The Enakmen Wasiat Orang Islam applies to all Muslims living in the State as well as to all Muslims who are residents of the State but live outside the State.

This research differs from previous studies in that it uses two states in Malaysia, namely Selangor and Kelantan, because there are slightly different rules, even though they are still in the same family. In the State of Selangor, the first time the rules regarding mandatory wills were enacted, namely in section 27, part VIII, by giving the property to grandsons and granddaughters of male lineage, and an expansion in 2016, namely to sons and daughters of male and female lineage (Hikmatullah, 2018).

However, on this issue, the State of Kelantan 2019 gave it to both male and female grandchildren from the line of sons and daughters downward, where the father or mother died first or simultaneously as the grandfather or grandmother. Thus, the grandchild can receive a mandatory will of 1/3 (Ariphia et al., 2019).

As mentioned above, Indonesia and Malaysia have different rules regarding mandatory wills. The mandatory will contained in the Enakmen Wasiat Orang Islam Negeri Kelantan 2009 and

Enakmen Wasiat Orang Islam Negeri Selangor 1999, pendant 2016, is to ensure the rights of grandchildren who cannot receive inheritance rights because their connectors have died first. The method comes from the view of Ibn Hazm, which aims to avoid injustice for grandchildren who do not get an inheritance because the deceased did not leave a will. Whereas the establishment of compulsory bequests in the State of Indonesia is a form of compassion and gratitude to adopted children and adoptive parents who have lived together, the designation of compulsory bequests in Indonesia is more in line with Hazairin's opinion (Hidayati, 2012).

Izzudin discusses the issue of maṣlaḥah and mafsadah differently from other scholars because Izzudin argues not in terms of function but in general terms. According to Izzudin, maṣlaḥah follows the ultimate goal that can be seen by the impression contained therein. In addition, maslahah and mafsadah are also divided into haqiqi (pleasure and happiness) or (misery) and majazi (an intermediary to get haqiqi), in addition to being divided into worldly (which can be known by reason) and ukhrawi (known from the argument of sayara') (Haetami, 2015).

Izzudin's maslahah is categorized as a worldly maṣlaḥah because it is something that can be directly obtained and felt rather than assumed. In addition, the maslahah can provide benefits and give property rights to the person who is given a will after the testator's death. Therefore, Izzudin's maslahah falls under the haqiqi maṣlaḥah because it can provide happiness for the recipient of the mandatory will (Johari, 2013).

This research includes normative legal research with a qualitative research type. This research includes normative legal research using library research methods. This research also uses a conceptual approach, giving the concept of maslahah Izzudin bin Abdissalam and a comparative approach to compare the laws applicable in Indonesia and Malaysia (Adliyah, 2021b). By using legal materials, the literature study is divided into secondary and primary. The legal materials obtained are processed through the editing, systematization, and description steps. Therefore, this research aims to see the regulation of mandatory wills in the context of countries that are allied with the population that uses the majority of the same madzhab, but the designation is different. Since there is no shar'i evidence on whether compulsory bequest is valid or invalid, this research is important to describe and analyze the comparison of compulsory bequest in Indonesia and Malaysia (especially in Selangor and Kelantan) using maṣlaḥah according to Izzudin bin Abdissalam.

Discussion

Comparison of the Implementation and Regulation of Wasiat Wajibah in Indonesia and Malaysia (Kelantan and Selangor)

The Compilation of Islamic Law has a level that is below the Law. Indonesia has a judicial

system that the Law binds. Thus, KHI has no authority in material Law. It is legally non-binding because of its status as a Presidential Instruction that functions as an administrative guideline, not as a law produced through the legislative process. This provides flexibility in application and allows judges to interpret the Law according to the context and needs of the case at hand.

However, because the Compilation of Islamic Law regulates marriage, inheritance, wills, and others, KHI is used as the main support for the Law in religious court decisions. The implementation of mandatory wills in Indonesia is contained in the Compilation of Islamic Law, Article 209. Judges make decisions regarding mandatory wills to fulfil the principle of justice. However, in addition to looking at the principle of justice in the allocation of children and adoptive parents, with 1/3 of the inheritance. In addition, the Indonesian state also looks at the benefits contained therein and the customs of its people. Because Indonesian people are also accustomed to giving wills and grants to their adopted children (M., 2014).

It is intended for both children and parents because it is a form of gratitude for accompanying, caring for, and going through various problems together. In addition, it can also illustrate local values and cultures that have mutual respect, even though they are not related by blood. The rules of compulsory bequests given to adopted children and adoptive parents are to provide clarity regarding their inheritance rights, which are legally recognized as in religious orders, but do not ignore the adjustments that occur in the distribution of inheritance. Therefore, the obligatory will can be an alternative to take into account financial needs as well as social support provided for adopted children and their adoptive parents.

In addition, adopted children in Indonesia have many cases of child neglect with various background factors, so the child is adopted by another family that can help fulfil the needs and rights of the child. However, the relationship between the adopted child and his adoptive parents cannot make the same lineage; thus, the mandatory will becomes an alternative way of giving inheritance property other than to the testator. Because Wasiat wajibah in the State of Indonesia prioritizes the interests and habits of its population. So, the State of Indonesia prefers to follow Hazairin's opinion on the issue of mandatory wills. Hazairin also argues that in dividing the inheritance, property must be evenly distributed, and there is no room for discrimination (Maya C. P., 2021).

As for male and female grandchildren who have been left by one or both parents before their grandmother or grandfather dies or at the same time between parents and grandmother/grandfather, then in the State of Indonesia, the grandchildren are regulated as replacement heirs because they have a position as *dzawil arham*. This is stated in Book II, Chapter III, Article 185. Successor heirs. In the Qur'an and al-hadith, there are many mentions of the importance of doing good, especially to the family, with the aim of not only maintaining the

relationship but also maintaining blood ties. Therefore, dzawil arham is part of the teachings of Islam, which teaches the importance of family relationships and the responsibility of maintaining them.

Due to the non-binding nature of the Compilation of Islamic Law, there are different interpretations, different social contexts, and different emphases in religious practice. Therefore, in some cases, MUI fatwas, jurisprudence, and SEMA decisions from Islamic courts clarify certain provisions of Islamic law, including the issue of the designation of mandatory wills. Among them is for non-Muslim heirs, which is mentioned in decision No. 51 K/Ag/1999 dated September 29, 1999, by giving it to children of different religions. In addition to children in 2010, namely in decision No. 16 K/Ag/2010 dated April 16, 2010, the Supreme Court has also ruled that wives of different religions (non-Muslims) who have been married and accompanied the testator for 18 years of marriage are also entitled to inheritance through the institution of mandatory wills, intending to create peace and justice. In Islamic law, it has been stated that non-Muslim heirs do not get part of the inheritance (Amran Suadi, 2015).

In addition to being given to adopted children or adoptive parents, non-Muslim heirs but biological parents are also obliged to provide their share and inheritance for their children born out of wedlock through mandatory wills, as *ta'zir* (Constitutional Court Decision Number 46/PUU-VIII/2010 dated February 17, 2012 MUI Fatwa Number 11 of 2012 dated March 10, 2012 and Decision of the Supreme Court Rakernas Commission II for Religious Courts dated October 31, 2012). Then, the latest decision regarding Sema number 3 of 2023 states that biological children born from marriages that are not registered with the state are entitled to mandatory wills.

Unlike Malaysia, which is a federal state, there is no national family law. As a result, the applicable family laws vary from one state to another. Malaysia has 13 states, including Johor, Kedah, Kelantan, Melaka, Negeri Sembilan, Pahang, Perak, Perlis, Pulau Pinang, Sabah, Sarawak, Selangor, and Terengganu. At the same time, having 3 fellowship areas, namely Kuala Lumpur, Labuan, and Putrajaya. Then there are 9 states which are constitutional monarchies and are led by a king or sultan; these states are Johor, Kedah, Kelantan, Pahang, Perak, Perlis, Selangor, Terengganu, and Negeri Sembilan.

The other four states (Melaka, Pulau Pinang, Sabah and Sarawak) do not have kings or sultans and are led by Yang di Pertua Negeri, whom the Yang di Pertuan Agong appoints. Meanwhile, some states regulate mandatory wills. States in Malaysia that regulate the Enakmen wills of Muslims, including the State of Selangor (Enakmen Year 1999), Melaka (Enakmen Year 2005), as well as Sembilan (Enakmen Year 2004), and Kelantan (Enakmen Year 2009), as well as the State of Sabah (Enakmen Year 2018). Meanwhile, the word Enakmen is official legislation that is determined

(made) by the State Invitation Council and has full legal force after obtaining approval from the Sultan and Governor. Once passed, enakmen will have a binding legal force and must be implemented by relevant institutions. Violation of the enakmen can be subject to legal sanctions determined by the contents of the enakmen (Mohamed et al., 2019).

Although the rules of compulsory bequests are established in the states, not all states apply the rules regarding compulsory bequests. If Indonesia has an expansion of the distribution of mandatory wills, but Malaysia only stops according to the rules in the state, the rule of Wasiat wajibah in Malaysia applies to grandchildren who are veiled (obstructed) in obtaining inheritance from their grandparents because their father has died first or at the same time as their grandparents. The issue of mandatory wills in Malaysia is more following the opinion of Ibn Hazm, which provides a way to be able to ensure financial security and create prosperity in the family, besides that it can also be a contribution to a family to support each other. It is not uncommon for grandchildren to help take care of their grandmother or grandfather; thus, it can be used as an award because the grandchildren have taken care of their grandmother or grandfather, and the grandchildren have lost their parents" (Jasni Sulong, 2008).

The designation of mandatory wills for grandchildren in Malaysia is motivated by the many incidents of grandchildren whose father or mother has died and who did not get an inheritance from their grandmother or grandfather because of the existence of uncles (Susanti, 2023). Whereas in these conditions, those who actually need more property are grandchildren whose father or mother has left because they have lost one or both parents. The position of the uncle in these conditions is not too influential. Thus, the mandatory will become an alternative way to create justice and peace.

The Enakmen (Law) explains in detail the groups entitled to compulsory bequests, the level of compulsory bequests and the conditions. However, the Enactment is not as comprehensive as some other Muslim countries. The Enactment only applies to the states in Malaysia and only applies to Muslims. Each Enakmen in Malaysia has a State Council that is responsible for determining the laws of the state, and the State Council can also amend Enakmen within a certain time. The states in Malaysia that regulate the Enakmen wasiat orang Islam include the States of Selangor, Melaka, Sembilan, Kelantan, and the State of Sabah. But in this case, Malaysia has a national will law for Muslims. The law is known as the Faraid Islamic Heritage Division Act and is implemented based on the Islamic legislative system (Hidayati, 2012).

In this research, the author took two laws to see whether one state in Malaysia has the same or even different regulations and practices. Thus, the author took the State of Kelantan and Selangor in this research. The following is a summary of the rules regarding Enakmen wasiat orang Islam Seksyen 27, which is regulated in Negeri Selangor and Kelantan:

Table 1. Enakmen Waisat Orang Islam Seksyen 27 Selangor & Kelantan

Selangor	***Kelantan (2009)***
(1) If a person dies dies without making a will for his grandchildren from his sons, who dies before him or dies at the same time as him, then his grandchildren shall be entitled to one-third of the will and if his grandchildren are given less than to one-third of the will, and if the grandson is given less than one-third, his right shall be enhanced by the proportion of the compulsory bequest. One-third of his entitlement shall be enhanced by the proportion of the compulsory bequest specified in this section. (2) The amount of compulsory inheritance for a child, as referred to in paragraph (1), shall be limited to the amount to which the father is entitled from the estate of his grandfather, assuming that the father dies after the death of his grandfather: Provided that the inheritance shall not exceed one-third of the estate of the deceased. (3) A child shall not be entitled to a will if he or she inherits from his or her grandparents, as the case may be, or his or her grandparents during his or her lifetime, and for no consideration whatsoever, bequeathed or gave them property equivalent to what they would have received Provided that, if the will made by the grandparents is less than the share to which he or she would have been entitled, his or her entitlement shall increase. The excess shall be their share if it is greater than the share to which they would have been entitled. If the share is greater than the share he is entitled to, then the excess share is a voluntary bequest with the heirs' consent. It was amended in 2016 to read: 27. (1) Subject to subsection (2), if a grandparent dies without making a will to a grandchild of a son or daughter, the grandchild's father or mother was a Muslim at the time of the grandchild's death; (c) The grandchild was not involved in the murder of the deceased grandparent and (d) The grandchild has not received any property from the deceased grandparents either by way of a grant, bequest, or other gift by the share of the	(1) If a child whose father or mother died before his grandfather or grandmother, or whose father or mother died at the same time as his grandfather or grandmother, his grandchild is entitled to receive a compulsory legacy by taking his father's or mother's share of the estate at a rate not exceeding 1/3 of the estate of the grandfather or grandmother. If the mother's or father's share is 1/3 or less 1/3, then the distribution must be made according to that rate. If the portion exceeds 1/3, it must be reduced by a rate not exceeding 1/3. (2) The execution of a compulsory will shall be subject to the following conditions: (a) Sons and daughters of sons and daughters (grandchildren) and below are entitled to receive compulsory testament. (b) Both parents or the father must have died before the grandparent, or the parents must have died at the same time as the grandparent under the same or different circumstances. (c) Grandchildren and granddaughters are not heirs to the grandfather's estate. If they are heirs to the estate by way of *fardhu* or *ta'sib*, they are not entitled to receive compulsory bequests even if their share is small compared to compulsory bequests. (d) If the son or daughter is of a different religion from his or her mother or father or was involved in the murder of his or her mother or father, he or she is not entitled to a compulsory bequest from his or her grandfather's estate. (e) If the grandfather or grandmother has given property to his grandchildren through grants, waqf, wills and so on to the value that his son or daughter would have received had they been alive, then the grandchildren are no longer entitled to the inheritance of the compulsory will. If the gift is less than what the grandchild would have received from the son's or daughter's share, then that share must be settled. (f) The child shall take the share of the *faraid* father or mother who died before the grandfather or grandmother, and the amount shall not exceed 1/3 of the estate's value. If the share is 1/3 or less

compulsory testament that the grandchild should have received. (3) The distribution of the compulsory will, as referred to in paragraph (1), may be made after prioritizing matters relating to the management of the body, voluntary wills, and debts. (4) Without prejudice to the provisions of paragraph (1), if a grandparent dies having made a will, grant, or another gift to his or her grandchild, the grandchild shall still be entitled to the compulsory testament if he or she fulfils the requirements of paragraph (1). to the mandatory will if he fulfils the conditions referred to in paragraphs (2)(a), (b) and (c)". 27A. (1) The amount of the will to which the grandchild is entitled shall be by the faraid share of the obligor's father or mother to which the father or mother would have been entitled had they been alive and shall not exceed one-third of the estate of the deceased grandparents. (2) The rates of compulsory endowments are as follows: (a) If the value of the father's or mother's faraid share to the grandchildren is less than one-third of the estate of the deceased grandparents, the amount shall be based on the value of the faraid share. (b) if the father's or mother's fair share of the grandchild exceeds one-third of the estate of the deceased grandparent, the amount shall be limited to one-third of the estate unless the consent of the heirs of the deceased grandparent is obtained. (c) if the deceased grandparent has bequeathed to the grandchild by paragraph 27(4) an amount that exceeds the father's or mother's faraid share of the deceased grandparent's estate but does not exceed one-third of the excess, it shall be counted as an elective bequest that the grandchild is entitled to receive without the consent of the heirs of the deceased grandparent; or (d) if the deceased grandparent has bequeathed, gifted, or devised property by any gift to the grandchild by subsection 27(4) at a rate lower than the father's or mother's faraid share of the deceased grandparent's estate. 27(4), if the rate is less than the father's or mother's fair share of the deceased grandparent's estate, the rate shall be the statutory probate rate.	than 1/3, the distribution must be made according to that rate. If the remainder exceeds 1/3, it must be reduced according to the rate except after the consent of the other heirs. (g) The distribution of compulsory bequests may be made after prioritizing matters relating to corpses, discretionary bequests, and accounts receivable. (h) The distribution of wills to eligible grandchildren is based on the principle of faraid, i.e. a man gets two women's shares.

27B. The division of assets whose rates are determined under Article 27A shall be made according to the following rules: (a) in the case of a grandchild, he shall be entitled to the entire compulsory bequest, (b) if there is more than one grandchild and all of them are male or female, the distribution of the compulsory bequest shall be made equally or (c) If there is a combination of male and female grandchildren, the distribution of the mandatory will shall be according to the ratio determined by Faraid law between sons and daughters."	

From the chart above, it can be analyzed regarding the state of Kelantan in Seksyen 27 of 2009 states that those who are entitled to get mandatory wills are grandchildren of sons and daughters and are entitled to receive them if the mother or father of the child dies before the grandmother or grandfather or dies simultaneously in the same or different events, with a share not exceeding 1/3 of the estate of his grandfather or grandmother. However, if it is less than 1/3, the share follows at that level, and if it exceeds 1/3, then it is reduced and adjusted unless permission has been obtained from other heirs. And those entitled to compulsory bequests are not the heirs of the grandfather (Nurul Syafini Abd Rahman et al., 2017).

The following provision of the recipient of the mandatory will listed in the Enakmen in Malaysia is that the grandchildren who get the mandatory will cannot be of different religions. There is no history of murder, and if one happens, then the compulsory will is cancelled; if the grandfather or grandmother has given a will or grant or waqf or something else during his lifetime, he has no right to the mandatory will. If the level is less, then it is increased to 1/3. The distribution of compulsory bequests can be carried out after the funeral arrangements are completed, both regarding the will and the debts, and the distribution still follows the principle of *faraidh*, which is two to one for men and women (Nugraheni et al., 2012).

It can be concluded from the designation of sections 11 (2) and 26 (2) that the will to the heirs does not require permission from the other heirs as long as it is less than one-third. Malaysia, especially the State of Kelantan, in the allocation of mandatory wills, is for the grandchildren of sons and daughters who are hindered (hijab). Their parents die first or simultaneously with their grandparents, with the level of parts harmonized with the part received by their father if he were alive, as long as it is not more than 1/3 of the inheritance. (M., 2014) Negeri Kelantan provides mandatory wills to grandchildren of sons and daughters so that they can be divided evenly and not cause division. The grandson is Ashabul Furud, while the granddaughter is included in Dzaw al-arham. In Sunni inheritance, *dzaw al-arham* does not get an inheritance if there is *ashabul*

furudh or *asabah*. However, in the issue of mandatory wills, granddaughters also get inheritance property with efforts to be divided equally, and there is no gap.

The entire Enakmen regarding Wasiat Orang Islam, part VIII, section 27, discusses wasiat wajibah, although the designation of wasiat wajibah in Malaysia is agreed upon for the grandchildren who have been left by their parents first or together with their grandparents. But even though it is agreed upon for the grandchildren, there are differences regarding the grandchildren of sons only, with the grandchildren of both sons and daughters.

The state of Selangor was the first state in Malaysia to enact the Wasiat wajibah Law in the regulation of Enakmen Wasiat Orang Islam (Selangor) 1999, which is listed in Bahagian VIII, Seksyen 27 (1), (2) and (3). Several other states then followed it. Negeri Selangor and Kelantan, in regulating the issue of wills wajibah, have differences, including the case controlled by Negeri Selangor in Seksyen 27 (1) 1999 and have a renewal or expansion of the law in 2016. The provisions and implementation of wasiat wajibah in Selangor in 1999 are in Enakmen wasiat wajibah State of Selangor provides wasiat wajibah for the grandchildren of sons only who have died first from their grandfather. If it is less than 1/3, it is perfected following the existing rules (Susanti, 2023).

The grandchild is not entitled to a compulsory bequest if he has received an inheritance from his grandmother or grandfather, or has been given a will during his lifetime or property that has a level of 1/3 (Sholikhah, 2023). If the property is less than 1/3, then it is completed, and if it exceeds, then it becomes a voluntary will with the consent of the other heirs. Thus, the above Enactment clearly states that the mandatory will is only limited to grandchildren (both male and female) but only from sons and does not apply more broadly to lower descendants. However, in 2016, there was an update to the Muslim testamentary Enactment regarding the expansion of the compulsory testamentary system to include grandsons and granddaughters of sons and daughters and so on.

Regarding the renewal in the section is that even though the grandmother or grandfather during his lifetime has given a will, or grant, or other to the grandchildren, but the grandchildren can still get a mandatory will if they meet several conditions including if the grandchildren are not heirs of the grandmother's or grandfather's estate, the father or mother was Muslim when he died, was not involved in the murder of the grandmother or grandfather. The next reform is about determining the distribution of property in more detail; if there is only one grandchild, then he gets the entire mandatory will, and if more than one but all men or even all women, then divided pretty and evenly, but if there are men and women, then divided according to the provisions of faraidh.

The State of Selangor in 1999 only made the will mandatory for grandchildren of sons because

it followed the awlaad azh-zhuhur. Awlaad azh-zuhur can be said to be the descendants (grandchildren or granddaughters and so on) of sons who have died before the testator. The implementation of Awlaad azh-Zuhur aims to establish that inheritance can be divided relatively among the heirs and create justice for the Muslim community. This arrangement may reflect the traditional view of favouring the male line when it comes to inheriting property, or it may also take into account more general social customs related to the division of property.

However, in 2016, the designation of mandatory wills in the State of Selangor was expanded to create justice and equality for male and female descendants. In addition, it can also be said that the mandatory will in Malaysia is shown to protect and protect orphaned grandchildren after losing their parents. The child of adultery in Malaysia will get the inheritance with several conditions, including that the inheritance belongs to the mother, the mother who died did not leave a will, and the mother does not have other legitimate descendants, such as children/grandchildren and others. While regarding non-Muslim heirs in the State of Malaysia is regulated in the Distribution Act 1958 jo. Amendment Act 1997, which states in the Distribution Act 1958 jo. (Amendment) Act 1997 It is not controlled that religious differences affect inheritance because, from Articles 1 to 10, there is no requirement that the inheritor must be of the same religion, only mentioned in Article 2 that this provision is not for Muslims.

Although the two countries are mainly following the Syafi'I madzhab in fiqh issues, on the issue of mandatory wills in Indonesia follows the views of Hazairin and Malaysia, referring to the views of Ibn Hazm, because Imam Syafi'I is one of the fiqh scholars who do not enforce the provisions of mandatory wills, as Imam Syafi'I only states that carrying out wills is only a suggestion, not mandatory to be implemented.

The data analysis results show similarities and differences regarding the implementation and rules of mandatory wills in Indonesia and Malaysia. The main focus of this study, when compared to other previous studies, is that in addition to comparing the regulations in Indonesia and Malaysia, this study also compares the rules between states in Malaysia, namely Kelantan and Selangor. Because even the same source turns out to have different regulations, it can be seen in the following table:

Table 2. Comparison of the Implementation and Rules of Compulsory Wills in Indonesia and Malaysia

Indicator	***Indonesia***	***Malaysia***
Level of Compulsory Bequest	1/3	1/3
Peruntukan Wasiat Wajibah	Mandatory Testamentary Appropriation	Male and female grandchildren of male lineage

Expansion of the Designation of Compulsory Testament	Non-Muslim heirs, children of adultery, children of marriages not valid according to the state.	Male and female grandchildren of male and female lineal descendants
Sources/References of Thought	Hazairin (1906-1975 AD) Fiqh madzhab of Indonesia.	Ibn Hazm (994-1064 CE) Zhahiri school of thought, fiqh book Al-Muhalla bi'l-Athar.
Juridical Source Law	National	Local (State Selangor and Kelantan)
Hierarchy of Legal Sources	KHI Article 209	Enakmen Seksyen 27
Nature of law	Not Binding	Binding
Legal power	Presidential Instruction No.1 Year 1991	State Invitation Council
Additional sources of law	Jurisprudence, Fatwa MUI, SEMA.	-
Purpose of Designation	Forms of affection and gratitude to adopted children and adoptive parents who have lived life together.	Guaranteeing the rights of grandchildren who cannot receive inheritance rights because their relatives have died first.

Comparison of the Implementation and Rules of Compulsory Wills in Indonesia and Malaysia (Kelantan and Selangor) Perspective of Maslahah Izzudin bin Abdissalam

The implementation of compulsory bequests based on the concept of maṣlaḥah Izzuddin bin Abdissalam shows the existence of ḥaqiqi benefits based on the parameter that an action is categorized as maslahah haqiqi if it realizes a benefit with happiness and enjoyment. Based on Izzuddin's maslahah, the allocation of compulsory bequests in Indonesia given to adopted children and adoptive parents at a rate of 1/3 of the inheritance is a benefit because even though adopted children or adoptive parents are not included in the class of heirs, because they have lived together, helping each other, through joy and sorrow, Indonesia provides a share of the inheritance through compulsory bequests (Syarif & Ahmad, 2016).

Based on Izzudin's maṣlaḥah in Indonesia, the mandatory will, which is classified as a haqiqi maslahah, aims to fulfil a sense of justice with the aim of not causing conflict gaps in the family. Thus, through the obligatory testament, the property rights of the adopted child will be more secure and will help the adopted child in his future life, and by giving a share, the child or adoptive parent will feel happy (farh) because they feel considered by their adoptive family.

According to Izzuddin, a benefit must not contradict the text (Qur'an and hadith) and reason. Izzuddin also categorizes *maṣlaḥah* into worldly and heavenly. In this case, the compulsory legacy that is given to the child or adoptive parent is included in the worldly maṣlaḥah because it has properties that are directly obtained and felt and not in the form of conjecture. In this case, the

recipient of the will immediately feels happiness in himself because by getting a share of the inheritance, the recipient feels that even though he is adopted, he is not differentiated from other biological families.

Based on this typology of maslahah, the designation of compulsory bequests in Malaysia, which is given to grandchildren whose fathers or mothers predeceased their grandparents or simultaneously, can be classified as maṣlaḥah ḥaqiqi because Malaysia is very concerned about the welfare of the family. Thus, the maṣlaḥah obtained from grandchildren is farh (happiness) for the recipient of the will because the grandchildren still get a share of the inheritance from their grandparents in a different way, even though there are still uncles. Thus, before the property is distributed to others, ensure that other family members are not deprived.

According to Izzuddin, a benefit must not contradict the text (Qur'an and hadith) and reason (Haetami, 2015). In addition, Izzudin also classifies maslahah into worldly and heavenly. In this case, the designation of compulsory bequests for grandchildren left by their father or mother before their grandfather or grandmother or simultaneously, is included in the worldly maslahah because it has properties that are directly obtained and felt and not in the form of conjecture. In this case, the beneficiary of the will feels the immediate happiness of receiving a share of the inheritance. The aim is to ensure that other family members are not in distress.

Conclusion

Implementing mandatory wills in Indonesia and Malaysia has similarities regarding the level of 1/3 of the inheritance. Regarding the designation of experiencing differences in Indonesia given to adopted children and adoptive parents (KHI Article 209) because it refers to Hazairin's view that looks at the surrounding customs and traditions, while in the Enakmen wills of Muslims Seksyen 27 in the state of Selangor (1999) which gives it to the grandson or granddaughter of the lineage of the son who was left dead by his grandmother or grandfather or together with him, more following the views of Ibn Hazm who prioritize lineage. Then, in 2016, the State of Selangor expanded the allocation (following the State of Kelantan 2009) given to daughters to obtain justice and equality for men and women. Furthermore, regarding the expansion of allocation in Indonesia, it extends to non-Muslim heirs, children of adultery, and biological children who are not registered with the state, and in Malaysia, it extends to male and female grandchildren of sons or daughters who are left dead by their grandmother or grandfather or together with them.

According to the maslahah of Izzudin bin Abdissalam in the implementation of compulsory bequests in Indonesia and Malaysia, if this problem is related to Izzuddin's maslahah theory, then this problem is classified as *maslahah haqiqi* because the maslahah can cause happiness (*farh*) for the recipient of the will who a family member has left behind and the recipient of the mandatory

will also feels that there is still someone who cares for him by other family members, besides that, even though he is an adopted brother, the recipient will think that he is not distinguished from other biological families by still giving him a share of the inheritance even though he uses a different way (mandatory will). And because this maṣlaḥah can be recognized directly by the intellect, it is classified as a worldly maslahah.

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