DISCOURSE OF *WASIAT WAJIBAH* IN REVIEW OF *ISTINBATH* ISLAMIC LAW

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ABSTRACT

This paper will explain the concept of wasiat wajibah in review of istinbath of Islamic law. The presence of the wasiat wajibah which is one of the characteristics of Indonesian Islamic law contained in the Compilation of Islamic Law (KHI) is important. Even though it cannot be denied that the debate over the existence of a wasiat wajibah occurs among Indonesian Islamic scholars. The implementation of the mandatory will in the context of implementation in the community to the decision of the Religious Courts has been running. Tracing in classical fiqh against wasiat wajibah as an effort to strengthen it by finding legal equations. Tracking through the istinbat method of Islamic law with a maslahat approach is the most powerful way to establish the existence of wasiat wajibah.

Keywords: *wasiat wajibah, istinbath, islamic law.*

Introduction

In Islamic law discourse, the phenomena and dynamics of legal development will continue to develop according to place and time. Changes in legal fatwas from time to time cannot be separated from cases occurring at different times and places. Even in the Shafi'i school, it is known as *qawl qadim* and *qawl Jadid* Imam Shafi'i for the same problem but the law is different. In other words, Islamic Islamic law is an elastic and dynamic law according to the needs and developments of the times.

One of the discussions that Interesting discussion in Islamic law is related to *wasiat wajibah*. *Wasiat wajibah* is understood as a will that is determined and given to someone who is in a position of inheritance not as an heir. However, through the legal way of *wasiat wajibah*, it is possible for someone to get a share of someone who dies. Adopted children who live from small to large are ensured by inheritance that they do not get inheritance rights. The evolving dynamics and legal elasticity provide an opportunity to be rediscussed with syar'iyat considerations.

In this context, *wasiat wajibah* as a fiqh product that has been implemented in the community cannot stand alone. *Wasiat wajibah* must be traced in a methodical manner *istinbath* The law is a way of thinking about ushul fiqh. At least, this paper will trace the *wasiat wajibah* in the perspective of classical fiqh, the Compilation of Islamic Law (KHI), and Islamic law istinbath.

Discussion

Wasiat wajibah according to Fiqh

Wasiat wajibah is a compound word consisting of two words, namely will and mandatory. The two words when they stand alone have their own meaning. Likewise, if they are combined, they will have their own meaning as well. *Wasiat wajibah* according to the term, namely, wills whose implementation is not influenced or does not depend on the will or will of the deceased testator. Where its implementation does not require evidence that the will is spoken or written at will, but its implementation is based on legal reasons that justify that the will must be implemented.[1]

According to Ahmad Rafiq, *wasiat wajibah* is a will that is imposed by a judge so that someone who has died who does not make a will voluntarily so that his inheritance can be taken to be given to certain people under certain circumstances.[2]

In this case, the ruler or judge as a state apparatus has the authority to force or give *wasiat wajibah* testament to certain people, for example a will to a non-Muslim mother or father. This is as it is known that religious differences are a barrier to receiving inheritance. So that in such circumstances the father or mother is not possible to get the inheritance of the deceased except by way of *wasiat wajibah* .

In essence, the term obligatory will in fiqh is used in the sense as opposed to the word ikhtiyariyah will. Regarding the nature of the will of ikhtiyariyah, the majority of scholars, including the four schools of thought, state that there is no obligatory will. A will like this is only recommended and is not *wasiat wajibah* , except for the obligation to testify for responsibilities relating to the fulfillment of Allah's rights or the rights of servants who are dependent on the testator which must be fulfilled, such as zakat, unpaid debts. but it is an obligation that is ta'abbudi in nature so that the court or family does not have the right to enforce its implementation if the person who has died does not have a will.[3]

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[1]Suparman Usman, *Fikih Mawaris Hukum Kewarisan Islam* (Jakarta: Gaya Media Pratama, 2002), p. 163.

[2]Ahmad Rafiq, *Hukum Islam Di Indonesia* (Jakarta: Raja Grafindo Persada, 2000), p. 462.

[3]Ali Yasa' Abu Bakar, Wasiat Wajibah Dan Anak Angkat, Dalam *Mimbar Hukum* No. 29 tahun 1996, p. 98.

However, some scholars are of the opinion that a will for both parents or relatives who do not receive an inheritance is obligatory if the deceased does not testify for them. So the heirs are obliged to remove a certain amount of property from the property of the deceased and give it as *wasiat wajibah* to them. Those who think this way include Ibn Hazm and Muhammad Rashid Rida.

According to Ibn Hazm that the command of the will in Q. S al-Baqarah/2: 180 is obligatory and is*qada'i* [4]This means that if a person does not make a will, then the remaining relatives are obliged to issue a certain amount of the inheritance, which they consider appropriate for the relatives who are not entitled to inherit.

Meanwhile, according to Rasyid Rida, wills in inheritance law are specifically given to people who cannot inherit because they are prevented from inheriting. For example, his parents are still unbelievers, so he is required to make a will to his parents in order to soften their hearts, as Allah SWT commands to always do good to parents even though both are still unbelievers.

As for the relatives who are entitled to receive *wasiat wajibah* , they are people who are not entitled to inherit either because of religious differences, slavery or because other heirs wear the hijab. For more details on this matter as Ibn Hazm explains:

وفرض على كل مسلم أن يوصى لقربته لايورثون إما لرق وإما لكافر وإما لان هنالك من يحجبهم عن الميراث ولانهم لايرثون فيوصى لهم بما طابت به نفسه لاحد فى ذلك فان لم يفعل اعطوا ولابد مارواه الورثة أوالوصى فان كان والداه أواحدهما على الكفر أومملوكا ففرض عليه أيضا أن يوصى لهما أولأحدهما إن لم يكن الاخر كذلك فان لم يعطى أعطيا من المال ولابد ثم يوصى فيما شاء بعد ذلك [5]

Meaning: It is obligatory on every Muslim to make a will to his close relatives who do not inherit. Maybe because of their status as a servant, infidel, veiled, or because they are not included as heirs. Let him make a will for them according to what is good for him and there is no limit to it. If it turns out that he does not have a will for these people, then you (the heir or testator if there is one) should give it to them. If both his parents or one of them disbelieves, or is a slave, then it is obligatory for him to make a will for them or one of them if he is alone. if it turns out that he did not have a will to them, then let them spend the property. This is a form of certainty.

From the description above, it is clear that both parents and relatives who cannot inherit are caused by one of the obstacles. Whether it is because of slavery, different religions, or being veiled by other heirs, it is obligatory to give a will if a Muslim does not make a will at the time of his life. However, it is also necessary to explain who is meant by relatives who must be given

[4]Abi Muhammad Ali bin Ahmad bin Sa''id bin Hazm, *Al-Muhalla* (Beirut: Dar al-Fikri, t.th.), Jilid 6, Juz IX, p. 314.

[5]*Ibid*.

wasiat wajibah , in this case Ibn Hazm has given his limitations that what is meant by relatives are all descendants who have a kinship relationship between one and a half, all the way down.[6]

The obligation to make a will, according to Ibn Hazm, is based on the understanding of QS al-Baqarah/2: 180 which contains *wasiat wajibah* law. This opinion is certainly different from the opinion of the majority of scholars who understand that this testamental verse has been dimansukh by the inheritance verse.

Although there has been a difference of opinion between the majority of scholars and Ibn Hazm in determining the law of *wasiat wajibah* , the scholars from the Maliki, Hanbali schools and the majority of the Shafi'i schools are of the opinion that it is permissible to make a will to those who are non-Muslims on the condition that they are given a will. are those who do not fight Islam, otherwise their will is void. Meanwhile the Hanafi school and the majority of the Imamiyah schools said it was not valid.[7]

Wasiat wajibah according to KHI

KHI has determined that between adopted children and adoptive parents a mutually willed relationship is established. This provision as in Article 209 paragraph I and paragraph 2 states:

1) The inheritance of the adopted child is divided based on the articles 176 to 193 mentioned above, while the adoptive parents who do not receive *wasiat wajibah* are given *wasiat wajibah* as much as 1/3 of the inheritance of their adopted child.
2) An adopted child who does not receive a will is given *wasiat wajibah* as much as 1/3 of the inheritance of his adoptive parents.

From the provisions of the article above, it appears that KHI has determined a law that has not been known in the fiqh discourse which gives *wasiat wajibah* to adopted children or adoptive parents, and this is also different from the concept of *wasiat wajibah* which is applied in other Islamic countries. like Egypt.

Wasiat wajibah according to Egyptian law are provisions governing the acquisition of property of a person who has the status of zawil arham and when we compare it with KHI, the concept of *wasiat wajibah* in Egypt is almost the same as the concept of a substitute heir in KHI, for example, a grandson who first the death of his father is declared to have inherited property from his grandfather to replace his father's position, and to take his father's share provided that it is not more than 1/3 of the inheritance, not concerning the acquisition of an adopted child.

Whereas in KHI the position of the grandson is to replace the position of his father who has died by getting a share that must not exceed the share

[6]*Ibid*.
[7]Muhammad Jawad Mughniyah, *Fikih Lima Mazhab* (Jakarta: Lentera, 2004), p. 508.

of the heirs who are still living parallel to the position of the father he replaces. In KHI this concept is called a substitute heir. Thus, the provisions of *wasiat wajibah* regulated in the KHI are different from the concept of *wasiat wajibah* in Egypt and this is a distinct characteristic of inheritance law in Indonesia.

Legal *Istinbath* Method of *Wasiat Wajibah*

In Islamic law, *wasiat wajibah* are identified with wills which are only intended for the relationship between children and parents, where there is a *hijab* between the two of them to inherit, for example because they are infidels. So to get the inheritance is done with *wasiat wajibah* .

However, this is different from the KHI which defines the use of *wasiat wajibah* to allow adopted children and adoptive parents to claim certain parts of the inheritance. Article 209 KHI stipulates that adopted children and adoptive parents are recipients of *wasiat wajibah* with a maximum of 1/3 of the inheritance. Because neither the adopted child nor the adoptive parents have kinship ties with the heir.[8]

So this revolutionary reformation inevitably overrides the established principle of Islamic inheritance, namely that blood relations are a legal condition for the distribution of inheritance from the heir to the heirs. Thus, it can be said that KHI is largely dependent on the institution of adoption in customary law.

The provisions contained in the article above can also be interpreted that in the Compilation of Islamic Law (KHI) adopted children who do not receive a will from their adoptive parents while they are still alive, it means that the adoptive parents have never given a will in an ikhtiyariyah manner, namely a will given at the instigation of the will of the adopted child, then according to the provisions of the KHI that the child has the right to be given *wasiat wajibah* , provided that it does not exceed 1/3 of the inheritance.[9]

From the provisions of this KHI, a legal line can be drawn, that in the absence of an element of ikhtiyariyah from the giver of the will (adoptive parents) then there is an element of obligation to testify even though there is no willingness from the people who died, then the child according to Article 209 paragraph (2) has the right to receive a will in the sense of a will that must be given.[10]

In Indonesian society, at least the legal behavior and actions of adopting children occur a lot. It is important to note that adopted children and biological children are only a matter of status. But in reality, on the devotional side, obedience and compassion are almost indistinguishable.

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[8]Syahrizal, *Hukum Adat Dan Hukum ...,* p. 282.
[9]*Ibid*., p. 283..
[10]*Ibid*.

In essence, from the historical dimension, *wasiat wajibah* have been in effect in Egypt. The *wasiat wajibah* in Egypt is contained in Qanun Number 71 of 1946.[11]This Qanun is the first Qanun officially promulgated in Arab countries. Therefore, the presence of this Qanun at the time of its enactment was understood to be quite controversial, and was widely inspired by Ibn Hazm's opinion even though they were not born in the same form. At least in article 76 of the Qanun it is stated:[12]

إذا لم يوصى الميت لفروع ولده الذي مات فى حياته أو مات معه ولو حكما بمثل ماكان يستحقه هذا الولد ميراثا فى تركه لو كان حيا عند موته وجبت للفرع فى التركة وصية بقدر هذا النصيب فى حدود الثلث بشرط إن يكون غير وارث إو لا يكون الميت قد أعطاه بغير عوض من طريق تصرف أخر قدر مايجيب له, وإن كان مأعطاه أقل منه وجبت له وصية بقدر مايكمله وتكون هذه الوصية لاهل الطبقة الاولى من أولاد البنات ولاولاد الابناء من أولاد الظهور وإن نزلوا على أن يحجب كل أصل على فرعه وأن نزل قسمة الميراث كما لو كان اصله الذين يدلى بهم الى الميت ماتوا بعده وكان موتهم مرتبا كترتيب الطبقات

Meaning: If the deceased (grandfather) does not testify to his grandson whose father (the child of the deceased) first died from him or at the same time they died (the grandfather and the father) even though they died legally, the amount should be the inheritance rights of the father (children). the deceased) from the inheritance, if he is still alive at the time the testator dies, then it is obligatory for the grandson to obtain *wasiat wajibah* from the inheritance as much as that portion, provided that it cannot be from a third of the property, provided that he is not an expert. heirs, or he has received the previous property in any way as a gift of the deceased to him with no compensation at all with the amount of property that is only his right. If he has been given a small amount, then he is still entitled to receive *wasiat wajibah* of the size to perfect what should be his right. And this obligatory will is the right of the offspring of the first-degree children from sons and daughters, namely from those who have been born to the bottom. Each descendant can veil his own descendants, not to other descendants, with approximately each lineage divided according to their respective descendants down to the bottom, then the inheritance is divided between each person according to the lineage of the deceased to them, in the where they died after the heirs sequentially according to the row in the lineage. And this obligatory will is the right of the offspring of the first-degree children from sons and daughters, namely from those who have been born to the bottom. Each descendant can veil his own descendants, not to other descendants, with approximately each lineage divided according to their respective descendants down to the bottom, then the inheritance is divided between each person according to the lineage of the deceased to them, in the where they died after the heirs sequentially according to the row in the

[11]Pagar, *Pembaharuan Hukum Islam Indonesia: Kajian Terhadap Sisi Keadilan Ahli Waris Pengganti Dalam Kompilasi Hukum Islam* (Bandung: Citapustaka Media, 2007), p. 53.

[12]Hisyam Qublan, *Wasiat Wajibah fi al-Islam* (Beirut: Masyurat Bahr al-Mutawassit, Mansyurat 'Uwaidat, 1971), p. 53, in Pagar, *Pembaharuan Hukum Islam Indonesia…,* p. 73.

lineage. And this obligatory will is the right of the offspring of the first-degree children from sons and daughters, namely from those who have been born to the bottom. Each descendant can veil his own descendants, not to other descendants, with approximately each lineage divided according to their respective descendants down to the bottom, then the inheritance is divided between each person according to the lineage of the deceased to them, in the where they died after the heirs sequentially according to the row in the lineage.

It can be seen in the contents of the Qanun above that Egypt recognizes and applies the concept of *wasiat wajibah* . In this case, the will is *wasiat wajibah* for the grandson whose father died from his grandfather to obtain the inheritance from his grandfather when the grandfather died. Thus, this Egyptian law has initiated the provision of concrete solutions for orphans whose parents died from their grandfathers in order to remain protected from arbitrariness in the distribution of assets. However, one thing that is important to note is that the concept of obligatory will which is applied by Egypt still refers to Ibn Hazm's view to its size.

Regarding the amount of property acquired by means of *wasiat wajibah* according to Egyptian law, it turns out that it is still the same as Ibn Hazm's opinion, which is no more than the maximum limit of one third of the property. It's just that there is a difference in placing the status of people who are entitled to receive this property, namely Egyptian law has seen their status from the aspect of replacement of place. So, if it is used, then their acquisition is a right that should have been owned by the father, because his father died first, the right flows to him.

However, grandchildren obtain legal rights when two conditions have been met, namely:

First, the grandson is not an heir. Regarding this matter, there are also similarities between the Egyptian Law and Ibn Hazm's opinion. Second, the grandson has not/has not obtained property in the form of absolute pure gifts, an amount which must be his right according to Egyptian law, while according to Ibn Hazm it is limited by not having obtained a will.[13]

Egyptian law stipulates that the beneficiary of *wasiat wajibah* is only for children and their respective descendants. So, it only concerns kinship downwards. In contrast to Ibn Hazm who explained that the *wasiat wajibah* includes all relatives both downwards such as children, grandchildren, and to the side such as brothers, nephews and so on. However, KHI in the area of granting a will is even broader, namely adopted children who have absolutely no kinship with the testator.

[13]*Ibid*., p. 73.

To see the part given in the *Wasiat wajibah* as stated in article 77 which reads as follows:[14]

إذا أوصى الميت لمن وجبت له الوصية بأكثر من نصيبه كانت الزيادة وصية إختيارية وإن أوصى له بأقل من نصيبه وجب له مايكمله. وإن أوصى لبعض من وجبت لهم الوصية دون البعض الاخر, وجب لمن لم يوص له قدر نصيبه. ويؤخذ نصيب من لم يوص له ويوفى نصيب من أوصى له بأقل مما وجب من باقى الثلث, فإن ضاق عن ذلك فمنه ومما هو مشغول بالوصية الاختيارة.

Meaning: If the deceased will bequeathed to a person who should have received a *wasiat wajibah* in excess of the shares that he should have received, then it remains for him (because the excess is understood as an ikhtiyariyah will), and if he wills is less than the share that should be for him, it must be added again for him to perfect it. If the deceased will only bequeathed to some of the people who should have received *wasiat wajibah* while the others are not, then it is obligatory to give the right of the person who has not passed on to the right of his rightful share, and *wasiat wajibah* shall be enforced for the person who was not given the will.

It can be seen in the Egyptian Qanun above, that the determination of the share of grandchildren in *wasiat wajibah* may receive more than a third, because it will be counted as *wasiat wajibah* in the amount of one third of the property.his advantages as wasait ikhtiyariyah. Unlike the case with Ibn Hazm's opinion which gives the maximum limit for the acquisition of grandchildren only one third. Similarly, in the KHI, the provision of *wasiat wajibah* is a maximum of one third for adopted children who receive the *wasiat wajibah*.

In relation to the legal istinbat method, at least the *wasiat wajibah* in its formulation to use is the benefit of mursalah.[15]This is further explained by Abdullah Shah, that the emotional relationship that exists between children and parents is love. Even though nowadays there is a strange reality that sometimes adopted children are more obedient and affectionate to their adoptive parents and vice versa. Thus, giving a will to a child or adoptive parent is something that must be done.[16]

The benefits according to Syatibi are:

المصلحة هي جلب المصلحة أو دفع المفسدة [١٧]

Meaning: Maslahat is accepting goodness or rejecting damage

Meanwhile, according to Ghazali, the benefits are:

المصلحة هي عبارة فى الاصل عن جلب منفعة, أودفع مضرة ,[١٨]

[14]Hisyam Qublan, *Wasiat Wajibah…,* in Pagar, *Pembaharuan Hukum Islam Indonesia…*p. 76.

[15]Abdullah Syah, interview in Medan tanggal 11 Agustus 2021.

[16]*Ibid*.

[17]Abu Ishaq Syatibi, *Al-Muwafaqat fi Usul al-Syari'ah* (Beirut: Dar al-Fikri, t.th.), Juz II, p. 348.

Meaning: Maslahat is an expression of accepting benefits and rejecting harm.

Meanwhile, according to Khwarizmi, namely:

المحافظة على مقصود الشارع بدفع المفاسد عن الخلق [١٩]

Meaning: Maintaining the Shari'a intent by rejecting the damage of creatures.

From the three definitions above, it can be understood that benefit is a concept that carries out the maintenance of the existence of things that are useful and good and rejects or discards everything that can cause damage and accidents. All of this is in order to maintain the continuity and continuity of human life in their lives.

However, to focus this research, at least the maslahat mursalah method can be approached with the Syatibi method, which holds that the main purpose of shari'ah is to maintain and fight for three categories of law which he calls daruriyyat, hajiyyat, and tahsiniyyat.*[20]*the final goal to be achieved from the three categories is the certainty that the benefit of the Muslims is realized in the best way. Shari'ah was made to give birth to the benefit of the believers. The explanation of the three legal categories that need to be fought for is as follows:

First, things that are included in the category of daruriyat (primary needs) are:[21]

1) keep religion,
2) nourish the soul,
3) keep mind,
4) guard property,
5) Caring for offspring.

*Daruriyat*can be called a legal aspect that is very much needed for the continuity of the implementation of religious and worldly affairs. Daruriyat is manifested in two senses, on the one hand the need must be fought for so that it can be fulfilled, and on the other hand everything that can hinder the fulfillment of these needs must be removed.[22]

Second,*hajiyat*(secondary needs) are legal aspects needed to lighten a very heavy burden, so that the law can be implemented without feeling pressured and constrained. In essence, the fulfillment of hajiyat is related to efforts to find legal relief so that Muslims have laws that can be accepted and applied.

Third,*tahsiniyat*(tertiary needs) refers to legal aspects related to efforts to improve the standard of living and welfare of the people. Tahsiniyat

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[18]Wahbah al-Zuhaili, *Usul Fikih al-Islami* (Beirut: Dar al-Fikri, 1998), Juz II, p. 756.
[19]*Ibid*., p. 757.
[20]Abu Ishaq Syatibi, *Al-Muwafaqat fi Usul al-Syari'ah*, Juz II, p. 8.
[21]*Ibid*., p. 10.
[22]*Ibid*., h. 8.

does not include an urgent need, but is still needed in order to add value to the character of the law in general.[23]

In practice*good luck*To be applied to cases that occur in the community, it must meet the criteria set by the ulama of fiqh proposals. At least three conditions must be met in practicing the benefit of mursalah, Syatibi in Muwafaqat explains, namely:[24]

1. Does not conflict with the texts of the Qur'an and Hadith
2. The benefits are certain and not just estimates and conjectures
3. The benefit is general, not partial and individual

In other words, the application of maslahat mursalah as a method of legal istinbat is not free and without procedures in practicing it. So that the benefit of mursalah does not become relative and interpretable which ends in a lack of validity and strength of the legal results.

In relation to the *wasiat wajibah* , it can be said that the legal istinbat method based on the benefit of mursalah can be seen and studied based on the criteria above. *Wasiat wajibah* in practice can be said to meet the three criteria above. This is proven that the *wasiat wajibah* does not conflict with the texts of the Qur'an and Hadith. Because there are no verses in the Qur'an or Hadith that forbid giving a will to an adopted child.

Furthermore, the benefits contained in the *wasiat wajibah* are general, not partial and individual. *Wasiat wajibah* given to any adopted child certainly has a beneficial impact on those who receive it. An adopted child who is given a *wasiat wajibah* in the form of property or in any form can use it for the continuation of his life in the future. If they are still children, of course, they can be used as funds for education and everything related to it.

And lastly, that the benefits contained in the *wasiat wajibah* are certain and can be measured. This means that the *wasiat wajibah*, the benefits it contains are not just conjectures or presumptions, but have a definite purpose and the benefits can be felt immediately. On the contrary, if a will is not given to the adopted child who is left behind, it can cause difficulties for him.

Thus, it is clear that *wasiat wajibah* has a fairly strong foundation in its legal istinbat. The benefit that is clearly seen from *wasiat wajibah* is to bring the kinship side that exists between the adoptive parents and the adopted child. From the side of togetherness between adoptive parents and adopted children, kinship ties have been established as is the relationship between biological parents and their own biological children.

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[23]Wael B. Hallaq, *A. History of Islamic Legal theories,* terj. E. Kusnadiningrat dan Abdul Haris bin Wahid, *Sejarah Teori Hukum Islam: Pengantar Untuk Fikih Mazhab Sunni* (Jakarta: PT. Raja Grafindo Persada, 2000), h. 248-249.

[24]Abu Ishaq Syatibi, *Al-Muwafaqat fi Usul al-Syari'ah*, Juz II, h. 8. Also see Wahbah al-Zuhaili, *Usul Fikih al-Islami* , Juz II, h. 799-800.

Conclusion

Wasiat wajibah is a product of fiqh that lives and is implemented in the midst of the Indonesian Muslim community. The position of the *wasiat wajibah* in terms of source tracking is undeniable found from studies in general in classical fiqh studies. Even in theory, Islamic law has a strong foundation from the istinbath method of Islamic law.

Bibliography

Abdul Haris bin Wahid, *Sejarah Teori Hukum Islam: Pengantar Untuk Fikih Mazhab Sunni*, Jakarta: PT. Raja Grafindo Persada, 2000.

Abu Bakar, Ali Yasa', Wasiat Wajibah Dan Anak Angkat, Dalam *Mimbar Hukum* No. 29 tahun 1996.

Abdullah Syah, interview in Medan tanggal 11 Agustus 2021.

Abi Muhammad Ali bin Ahmad bin Sa''id bin Hazm, *Al-Muhalla*, Beirut: Dar al-Fikri, t.th., Jilid 6, Juz IX.

Hallaq, Wael B., *A. History of Islamic Legal theories,* terj. E. Kusnadiningrat dan

Mughniyah, Muhammad Jawad, *Fikih Lima Mazhab*, Jakarta: Lentera, 2004.

Usman, Suparman, *Fikih Mawaris Hukum Kewarisan Islam*, Jakarta: Gaya Media Pratama, 2002.

Rafiq, Ahmad, *Hukum Islam Di Indonesia*, Jakarta: Raja Grafindo Persada, 2000.

Pagar, *Pembaharuan Hukum Islam Indonesia: Kajian Terhadap Sisi Keadilan Ahli Waris Pengganti Dalam Kompilasi Hukum Islam*, Bandung: Citapustaka Media, 2007.

Syatibi, Abu Ishaq, *Al-Muwafaqat fi Usul al-Syari'ah*, Beirut: Dar al-Fikri, t.th..

Qublan, Hisyam, *Wasiat Wajibah fi al-Islam*, Beirut: Masyurat Bahr al-Mutawassit, Mansyurat 'Uwaidat, 1971.

al-Zuhaili, Wahbah, *Usul Fikih al-Islami* (Beirut: Dar al-Fikri, 1998.