

A Preliminary Study on the Role of Will and Obligatory Will in Property and Estate Management Based on Islamic Law

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ABSTRACT

Will is a form of donation and charity that allows individuals to allocate their assets to beneficiaries while adhering to Islamic standards. On the other hand, obligatory will refers to situation where a grandfather or grandmother passes away without leaving a will for their grandchildren from a predeceased son or daughter, or if both the grandparent and parent pass away simultaneously. In such cases, the grandchildren become entitled to the obligatory will. This study examines the role of will and obligatory will in the property and estate management under Islamic law. The study employs a qualitative and descriptive cross-sectional analysis by utilizing existing legal frameworks. This research found that in Islamic estate planning, a will enables individuals to distribute their assets according to their wishes while remaining compliant with Islamic standards. Furthermore, an obligatory will provides an avenue for inclusive wealth distribution, particularly when certain heirs are not entitled to a share under *faraid* (mandatory inheritance laws).

Keywords: Will, Obligatory Will, Property, Estates Management, Islamic Law

INTRODUCTION

Will is a form of donation and charity that involves making a will for the beneficiaries. In other words, a will is a mechanism for donation and wealth dissemination that is confined to one-third of one's property and takes effect after the demise of the donor (Rahman & Monawer, 2020). On the other hand, an obligatory will is a special type of will prescribed in many jurisdictions to protect life and 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 given to those who lost their father during the life of their grandfather (Rahman & Monawer, 2020).

The difference between a will and an obligatory will is that an obligatory will involves the power of authority or a judge in implementing the will of certain people, whether it is made in writing or orally. As long as an application made and the applicant has complied with certain requirements, the court has the power to grant the obligatory will. On the other hand, the ordinary *wasiyyah* is made during the lifetime of the donor and it

must be made in writing with a special instrument or document. The scope of the ordinary bequest is more comprehensive than the obligatory bequest as it allows for the transfer of assets to any individual other than those who are entitled to inherit through *faraid*. Conversely, an obligatory bequest is limited to particular beneficiaries and is imposed as a legal obligation, irrespective of the will of the testator (Shesa, 2018). More specifically, an obligatory bequest has been instituted to benefit orphaned grandchildren who have lost their parents. In the absence of an obligatory bequest, the legal position was that the surviving sons of a deceased parent would disinherit the grandchildren of that parent whose parents had predeceased the grandparents. The imposition of an obligatory bequest is contingent upon the needs of the beneficiaries and the directive of the court (Hadi, 2017). In fact, in the sequence of estate management, the heirs are obliged to fulfil the obligatory bequest before executing the deceased's other bequests (Muda & Jusoh, 2005). On the contrary, an ordinary bequest can only be implemented if the testator explicitly makes a testamentary disposition, whether orally or in writing. Therefore, a thorough investigation and understanding of classical and current literature are necessary to analyse the principles of wills and obligatory wills concerning property and estate management under Islamic law.

METHODOLOGY

This study employs a qualitative research approach, focusing on the analysis of secondary data. The research aims to explore the potential roles of wills and obligatory wills in property and estate management.

Data and the findings were collected through a review of academic literature. The data was analyzed thematically, focusing on identifying the role, function, and advantages for exercising the wills and obligatory wills towards property and estates management from Islamic law.

Will From Islamic Law

A will, the plural form of *al-wasiyah*, refers to the testator's activities and bequests that extend beyond a promise. Thus, it represents the bequest source or act of making a bequest.

Muslim jurists dispute on the will's conditions, enumeration, and other legal concerns, hence their terminological definitions differ. Hanafi jurists define will as post-mortem ownership through alms or property contributions. According to Maliki jurists, a will is an agreement that grants one third of the estate or names an heir. This means that testators may designate posthumous heirs.

Allah said in Surah al-Baqarah:

“It is prescribed that when death approaches any of you—if they leave something of value—a will should be made in favour of parents and immediate family with fairness.¹ This is an obligation on those who are mindful of Allah.” (Al-Baqarah: 180).

Additionally, al-Harith narrated that Ali said:

“You recite this father, ‘After payment of legacies he (or she) may have bequeathed or debts, without causing harm’. Indeed the Prophet PBUH judged the debt before the will and that the children from the same mother and father inherit, not the sons from various mothers. The man inherits from his brother from his father, and his mother, not his brother from his father.” (Narrated by al-Tirmidzi).

Another prophetic tradition was narrated by Abu Hurairah that the Prophet PBUH said:

“Allah has been charitable with you over the disposal of one third of your wealth at the time of your death, so that you may be able to add to the record of your good deeds.” (Narrated by Ibn Majah).

It was also narrated by Ibn Umar that the Prophet PBUH said:

“The Muslim man has no right to spend two nights if he has something for which will should be made, without having a written will with him.” (Narrated by Ibn Majah).

Al-Baqarah encourages the practice of wills, as Allah decreed inheritance laws to precede them. Allah also mandates the presence of witnesses during the formation of a will, further proving its permissibility. The verse supports the validity of wills; however, subsequent Quranic verses concerning the inheritance rights of heirs restricted its application to non-heirs while maintaining its validity for others.

For instance, the verse of Surah al-Nisa verse 11:

“Allah (thus) directs you as regards your Children's (Inheritance): to the male, a portion equal to that of two females: if only daughters, two or more, their share is two-thirds of the inheritance; if only one, her share is a half. For parents, a sixth share of the inheritance to each, if the deceased left children; if no children, and the parents are the (only) heirs, the mother has a third; if the deceased Left brothers (or sisters) the mother has a sixth. (The distribution in all cases ('s) after the payment of legacies and debts. Ye know not whether your parents or your children are nearest to you in benefit. These are settled portions ordained by Allah; and Allah is All-knowing, Al-wise.” (Al-Nisa: 11).

Moreover, the prophetic tradition signifies the permissibility of a bequest. Sa’ad recounts that the Prophet PBUH visited him in Mecca while he was ailing. He said to the Prophet PBUH:

“I have property. May I bequeath all my property in Allah’s cause?” The Prophet said, “No.” Saad said, “Half of it?” The Prophet said, “No.” Saad said, “One-third of it?” The Prophet said, “One-third is alright, yet it is still too much, for you had better leave your inheritors wealthy than leave them poor, begging for others. Whatever you spend will be considered a charity for you, even the mouthful of food you put in the mouth of your wife. Anyhow Allah may let you recover, so that some people may benefit by you and others be harmed by you.” (Narrated by al-Bukhari).

Majority of Muslim jurists believe a will has four main components: the party making the will (*musi*), the receiver (*musa lah*), the bequeathed assets or property (*musa bih*), and the declaration.

Instead, Hanafi jurists consider that a will has one pillar: declaration (*sighah*), offer (*ijab*), and acceptance. *Ijab*, such “I bequeath this to so-and-so” or “I bestow upon so-and-so a third of my estate posthumously”, is frequent in will. *Qabul* is essential for will ownership transfers. Unlike a gift, *qabul* is not required for inheritance, although the specified beneficiary cannot claim possession until it is done. Posthumous acceptance of a will is mandatory.. If the intended recipient learns of the will while the testator is alive, the will becomes null and void, and the recipient's entitlement only comes after the testator dies. Offering the will only takes effect posthumously. Similarly, adopting or rejecting a will during the testator’s lifetime is irrelevant. Offering the will prior to death is not applicable.

Obligatory Will

Islam recognises the concept of obligatory wills. This type of will is a relatively new development that does not violate the principle of *al-asl fi al-ashya' alibahah*, which states that things are permissible by default. According to this principle, actions, objects, and practices are lawful unless explicitly prohibited by foundational Islamic scriptures. Surah al-Baqarah of the Quran states that everything produced on Earth is for human use unless otherwise stated.

Allah said:

“He is the One Who created everything in the earth for you. Then He turned towards the heaven, forming it into seven heavens. And He has perfect knowledge of all things.” (Baqarah: 29).

Allah said:

“Forbidden to you are carrion, blood, and swine; what is slaughtered in the name of any other than Allah; what is killed by strangling, beating, a fall, or by being gored to death; what is partly eaten by a predator unless you slaughter it; and what is sacrificed on altars. You are also forbidden to draw lots for decisions.1 This is all evil. Today the disbelievers have given up all hope of ‘undermining’ your faith. So do not fear

them; fear Me! Today I have perfected your faith for you, completed My favour upon you, and chosen Islam as your way. But whoever is compelled by extreme hunger—not intending to sin—then surely Allah is All-Forgiving, Most Merciful.” (Al-Maidah, 3).

It was narrated that Salman Al-Farisi said:

“The Messenger of Allah PBUH was asked about ghee, cheese and wild donkeys. He said: ‘What is lawful is that which Allah has permitted, in His Book and what is unlawful is that which Allah has forbidden in His Book. What He remained silent about is what is pardoned.’” (Sunan Ibn Majah, Hadith 117).

Jurists who follow the Prophet's companions (tabi'in) and some schools of thought define obligatory wills as an obligatory given to kin and relatives who are not legal heirs. This concept is particularly significant when Shariah law excludes certain people from inheritance, this idea is very important. For instance, if their uncle intervenes according to Shariah, grandchildren may lose their inheritance from their grandfather.

The foundation of obligatory wills aligns with verse 180 of Surah al-Baqarah. However, Muslim jurists disagree on how to implement the obligatory wills due to different verse interpretations. As previously explained, Ibn Kathir (n.d) explained that the text requires parents and relatives in the will before inheritance regulations. After the revelation of inheritance laws, this verse was abrogated, establishing fixed inheritance shares for deserving beneficiaries. Thus, legal heirs receive their fixed inheritance without needing to be included in the will or reminded of the deceased's generosity. The broad sense of the verse about the will suggests that the surviving relatives without a definite part of the inheritance should get up to a third. Even Ibn Mundhir cites the consensus of Muslim jurists (Ibnu Kathir, n.d: Al-Qinnawji, 1992). Thus, according to al-Hajawi (n.d) and most Muslim jurists, creating a will for non-legal heirs is considered commendable (*mustahabb*) for those who intend to distribute their estate, especially if it is large by societal standards.

According to al-Zuhayli (n.d), the justification of a will by traditional Muslim jurists is closely tied to the enforcement of obligatory wills in Egypt and Syria, which have benefited Muslims. A similar opinion is stated by Sayyid Sabiq (1977) and al-Qardhawi (2010), as al-Qardhawi said:

“We choose the opinion that understands the apparent meaning of the verse (Surah al-Baqarah: 180) instead of saying that the verse is abrogated, as the verse can be understood in another way. Accordingly, the grandfather needed to make a will for these children, because they are his son's children, close relatives, poor, and orphans. Orphans, poverty, and deprivation have collectively shared among them, and the grandfather had to remedy this by bequeathing something to them, within the limits of one-third as a will in Shariah does not exceed one-third” (Al-Qardhawi, 2010).

Some modern Muslim thinkers say that legislating the obligatory wills system preserves family relationships, establishes justice, and addresses injustice caused by misery, hardship, and poverty. In many circumstances, the son dies before his father, and the father's other son prevents the deceased's child from inheriting, depriving them of their fortune. This leads to poverty, the breakdown of mercy, rekindling of hatred, and the painful experience of injustice and deprivation. Obligatory wills, derived from the accurate ideas of a number of righteous forefathers, jurists, and hadith scholars, filled this vacuum and addressed a source of criticism that has become louder and more frequent in contemporary culture due to opinion flexibility. Muhammad Abu Zaharah discussed the distribution of inheritance through obligatory wills. In this framework, a deceased child of the original owner receives their share as if they were alive (Bustami, 2009). The grandchild receives the assigned part or the bequeathable third, whichever is smaller, from the estate. The rest of the estate is split among the legitimate heirs. This method simplifies the other systems and guarantees that grandchildren receive a share equal to their parents' up to the bequeathable third without compromising the rightful heirs' rights post-bequest deduction. By adding bequests to inheritance, Muhammad Abu Zaharah's method improves on previous systems. It also protects legitimate heirs post-bequest deduction and ensures that grandchildren receive the identical share of what their parents would have received, or the bequeathable third.

For that reason, many Muslim states have imposed obligatory wills, including Egypt under the Law of Testamentary Dispositions (1946), Tunisia under the Law of Personal Status (1956) with its 1959 supplement,

Syria under the Law of Personal Status (1953), Morocco under the Code of Personal Status (1958), and Indonesia under the Kompilasi Hukum Islam (1979–2009).

The Wisdom of Will and Obligatory Will towards the Property and Estate Management

Islamic wills, based on Shariah law, have other validity requirements. Will distributes wealth fairly after death, reflecting Islamic beliefs. Capacity, bequest clarity, adherence to Islamic, and witnesses are essential. First, testator capacity matters. The will maker must be mentally sound and mature, usually puberty-aged. The idea is that a person must have mental capacity to make informed estate decisions. Hanafi, Maliki, Shafi'i, and Hanbali jurists agree that a will made by a minor or incompetent person is invalid. The testator must not be coerced into writing the will since this would undermine their actual intentions. Second, bequests must be unambiguous. Will must list assets and beneficiaries. Ambiguity might cause heir conflicts and invalidate the will. According to Islamic equitable distribution, scholars emphasise stating each beneficiary's share. This clarity is both legal and ethical, as Islamic jurisprudence prioritises heir conflict prevention. A valid will also adherence to Islamic principles. Shariah law prohibits bequests that contravene with Quranic inheritance portions. In order to distribute wealth fairly among family members and ensure that no one is unjustly deprived of their rightful share, Quranic injunctions prohibit testators from leaving more than one-third to non-heirs. Islam requires at least two competent non-beneficiaries to witness a will. This stops fraud and disputes. The witnesses must be of sound mind and mature age like the testator and attest that the will was voluntary and uncoerced. These factors ensure post-death wealth distribution fairness, equity, and transparency. Muslims can have their estates administered according to Islamic law.

Muslims must leave a portion of their income to their heirs in an equitable manner, according to Islamic law. This is important to prevent wealth from being hoarded or monopolised by a few and given properly to family and others. Al-Zuhayli (n.d) says academics concur on Islamic will. A will allows people to ponder and be kind, correcting hastiness and doing good. Charity and will yield good results. Will was ordained by Allah to reward good conduct, improve relationships, disguise flaws, and support the destitute. Islamic justice limits will to one third of the inheritance. Will prevent enmity and sustain relationships with cooperation, not overruling legitimate heirs. A will emphasises positive and useful (maslahah) deeds for the common welfare. Wills should reflect personal wishes and benefit family and community. A will must support Shariah's goals of well-being to be valid. A number of scholars agree with this principle.

According to most Muslim jurists, a will should only apply to non-legal heirs, such as relatives who cannot inherit assets from the deceased. The scripture above and the Prophet PBUH's prophetic tradition emphasise that no bequest should be made to an heir because Allah has predetermined each person's inheritance. Although a will may be given to a stranger without familial links, Al-Nawawi (1392) advises giving it to one's kin who cannot inherit property. This advice preserves familial relationships and ensures that those without direct inheritance rights are remembered and included in asset distribution. A will could be given to a distant relative who has shaped one's life but is not a legal successor. By including them in the will, one can honour them and leave a legacy. In the time of the Prophet PBUH, Abu Talhah showed his kindness by helping his family. Since bequeathing assets through a will is considered charitable giving, providing for one's family is regarded one of the most important acts of charity. Thus, there is consensus that individuals should provide in their will for non-legal heirs who cannot inherit property, prioritising family.

Although most Muslim jurists recommend drafting a will, Ibn Jauzi supported bequeathing to relatives who do not have a fixed inheritance (Ibn Kathir, n.d). Malik, al-Shafi'i, Abu Hanifah and his colleagues, al-Awza'i, and Ahmad bin Hanbal also believed that bequeathing to non-relatives while neglecting needy relatives was reprehensible (Ibn Kathir, n.d). Al-Dahhak said giving a will to someone outside the family would be a wicked death (Al-Qurtubi, 1964). Equity in will means making bequests to relatives without violating lawful heirs or being excessive or frugal. Muslim scholars have concluded that a will is not required unless a person has a debt, deposit, or trust.

In Islamic estate planning, a will allows people to distribute their assets according to their wishes while following Islamic standards. A will helps Muslims announce their estate desires after death. A will allows individuals to make specific bequests to supplement Islamic inheritance law's mandated portions, as specified

in the Quran. This flexibility allows the testator to address beneficiary requirements or circumstances, improving inheritance fairness. A will promotes social fairness and equity among heirs while allowing personal expression. A will can balance heir rights and responsibilities to ensure fair wealth distribution. This is especially significant when conventional inheritance procedures favor some family members, which can lead to family strife. A will protects heirs, especially those who are disadvantaged or excluded under normal inheritance laws. By plainly articulating the testator's wishes, a will can strengthen Islamic inheritance law's right to share. This is important when the heirs may not be entitled to a share under *faraid* (required inheritance), allowing for a more inclusive wealth distribution. *Al-wala'*—the legal tie between the liberator and the liberated—can also strengthen a will. This relationship can affect inheritance rights and asset distribution, protecting vulnerable heirs. Testators can ensure their bequests reflect their personal values and Islamic teachings by adding such concepts into the will.

A will helps people organize their estates by helping them make informed decisions regarding their assets. A will's estate planning framework helps people examine their financial commitments and beneficiaries' requirements. This pre-emptive planning can reduce heir conflicts and ease asset transfers. A will can also help family members who cannot inherit under *faraid*, improving estate planning techniques.

Contemporary Muslim jurists believe the obligatory will system in Islamic inheritance law preserves family bonds, establishes justice, and prevents inequities caused by poverty and deprivation. They focus on cases when a grandchild loses inheritance due to their parent's death before them. This practice, based on early Islamic scholars' teachings, ensures the grandchild receives their appropriate part to promote family harmony and reduce resentment and injustice.

CONCLUSION

To conclude, the difference between ordinary will and obligatory will is that obligatory will involves the power of authority or judge in implementing the will of certain people, which is made either in writing or not. Due to the emergence of the concept of obligatory will, a certain division of the grandfather's estate can be given to the grandchild. Therefore, the obligatory will, can be considered an alternative to a judicial decision so that an inheritance can be granted to an heir or family member who is not otherwise entitled and automatically entitled to the inheritance provided that there is an application by the beneficiaries not more than one third. Hence, Islamic principles governing the disposition of a will and an obligatory will emphasise the balance between individual autonomy and collective responsibility to uphold justice and fairness in wealth distribution.

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