

MAQASHID AL-SHARIAH ANALYSIS OF CHILD-REARING WILLS (*WASIAT TARBIYAH*) UNDER ARTICLE 156 (A) OF THE COMPILATION OF ISLAMIC LAW

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Abstrak

Penelitian ini bertujuan untuk menganalisis praktik wasiat pengasuhan anak (*wasiat tarbiyah*) dalam perspektif *maqashid syariah* serta kesesuaiannya dengan Pasal 156 huruf a Kompilasi Hukum Islam. Anak merupakan subjek perlindungan hukum yang keberlanjutannya perlu direncanakan oleh orang tua, termasuk melalui mekanisme wasiat. Namun, praktik wasiat *tarbiyah* sering menimbulkan ketegangan dengan urutan *hadhanah* dalam Kompilasi Hukum Islam. Penelitian ini menggunakan metode normatif dengan pendekatan perundang-undangan dan konseptual. Sumber data primer meliputi Al-Qur'an, hadis, Kompilasi Hukum Islam, dan kitab fikih klasik, sedangkan data sekunder berasal dari jurnal ilmiah dan buku terkait. Teknik pengumpulan data dilakukan melalui studi kepustakaan dengan analisis deskriptif-analitik berbasis *maqashid syariah*. Hasil penelitian menunjukkan bahwa wasiat *tarbiyah* memiliki landasan hukum yang kuat dalam fikih Islam meskipun terdapat perbedaan urutan dengan ketentuan formal Kompilasi Hukum Islam. Prinsip kemaslahatan anak menjadi pertimbangan utama sehingga penunjukan pengasuh di luar urutan dapat dibenarkan apabila lebih sesuai dengan kepentingan terbaik anak. Dari perspektif *maqashid syariah*, praktik ini selaras dengan *hifz al-nafs*, *hifz al-aql*, dan *hifz al-nasl*. Penelitian ini menyimpulkan bahwa wasiat *tarbiyah* merupakan instrumen perlindungan anak yang perlu diatur secara tertulis untuk mencegah konflik dan menjamin kemaslahatan.

Kata Kunci: Pengasuhan Anak, *Maqashid al-Shariah*, Hukum Keluarga Islam

Abstract

This study aims to analyze the practice of child-rearing wills (*wasiat tarbiyah*) from the perspective of *maqashid al-shariah* and its conformity with Article 156(a) of the Compilation of Islamic Law. Children are subjects of legal protection whose continuity of care must be planned by parents, including through testamentary arrangements. However, the practice of *wasiat tarbiyah* often creates tension with the custodial order (*hadhanah*) regulated in the Compilation of Islamic Law. This study employs a normative legal method with statutory and conceptual approaches. Primary legal sources include the Qur'an, Hadith, the Compilation of Islamic Law, and classical Islamic jurisprudence texts, while secondary sources consist of scholarly journals and relevant academic books. Data collection is conducted through library research using descriptive-analytical analysis based on *maqashid al-shariah*. The findings indicate that *wasiat tarbiyah* has a strong legal foundation in Islamic jurisprudence, although differences exist compared to the formal custodial order in the Compilation of Islamic Law. The principle of the child's best interest (*maslahah*) becomes the main consideration, allowing deviations from the prescribed order when it better serves the child's welfare. From the perspective of *maqashid al-shariah*, this practice aligns with *hifz al-nafs*, *hifz al-aql*, and *hifz al-nasl*. The study concludes that *wasiat tarbiyah* is a child protection instrument that should be formally documented in writing to prevent conflicts and ensure the realization of the child's welfare.

Keywords: Child-Rearing Will, *Maqashid al-Shariah*, Islamic Family Law

INTRODUCTION

Children are subjects of protection in Islamic law whose rights to care, education, and proper development must be continuously safeguarded. In the Islamic perspective, parental responsibility extends beyond fulfilling a child's physical needs and encompasses the obligation to nurture moral character, strengthen faith, and provide appropriate education to ensure the child's holistic development. This obligation is emphasized in the Qur'an:

يَا أَيُّهَا الَّذِينَ ءَامَنُوا قُوا أَنفُسَكُمْ وَأَهْلِيكُمْ نَارًا وَقُودُهَا النَّاسُ وَالْحِجَارَةُ عَلَيْهَا مَلَائِكَةٌ غِلَاظٌ شِدَادٌ لَا يَعْصُونَ اللَّهَ مَا أَمَرَهُمْ وَيَفْعَلُونَ مَا يُؤْمَرُونَ

O you who have believed, protect yourselves and your families from a Fire whose fuel is people and stones, over which are [appointed] angels, harsh and severe; they do not disobey Allah in what He commands them but do what they are commanded. (Qur'an, At-Tahrim: 6).

This verse demonstrates that the care and education of children constitute a religious obligation that must be sustained continuously. Such responsibility does not cease upon the death of the parents; rather, its continuation must be ensured through mechanisms capable of safeguarding the rights and welfare of children after their parents pass away. In this context, the issue of caring for orphaned children represents an essential component of child protection in Islam because it involves the continuity of education, moral guidance, psychological well-being, and the fulfillment of the child's basic needs in the future.

In Islamic legal practice, a will (*wasiyyah*) is generally understood as a declaration of a person's intention regarding the transfer of property or certain rights that take effect after the testator's death (Bahasa, 2026). Such an understanding has led discussions on wills to focus primarily on material and financial matters. However, substantively, the concept of a will is not limited to property distribution; it may also encompass non-material responsibilities that carry significant social and religious benefits. One such responsibility is the appointment of a specific person to continue the care and upbringing of a child after the parents' death. This practice is known as child-rearing will (*wasiat tarbiyah*), which refers to a parental declaration appointing an individual to assume responsibility for the child's care, education, protection, and moral development when the parents are no longer able to fulfill these duties due to death.

The urgency of *wasiat tarbiyah* becomes more apparent when viewed through the lens of *maqashid al-shariah*. Within this framework, child protection is not only related to the preservation of life (*hifz al-nafs*) but also to the preservation of lineage (*hifz al-nasl*), religion (*hifz al-din*), and intellect (*hifz al-'aql*). Children who lose their parents are vulnerable to numerous challenges, including uncertainty regarding guardianship, family conflicts, limited access to education, and psychological difficulties. Therefore, the existence of a mechanism that guarantees the continuity of childcare following the death of parents constitutes an important means of realizing public welfare (*maslahah*), which is the fundamental objective of Islamic law.

From a sociological perspective, the need for legal certainty concerning childcare after parental death has become increasingly evident. Data from the Supreme Court indicate that

6,636 child guardianship petitions were decided by the Religious Courts in 2021, reflecting an increase compared to previous years (Maulani et al., 2022). This increase demonstrates that issues surrounding the care of children who have lost their parents are real social phenomena requiring greater legal attention. The growing number of guardianship petitions suggests a strong societal demand for certainty regarding who possesses the authority and responsibility to ensure the welfare and future development of children after their parents' death.

This phenomenon can be observed in the case of Gala Sky, who lost both parents, Vanessa Angel and Febri Ardiansyah, in November 2021. The absence of a clear declaration or arrangement concerning who would assume responsibility for the child's upbringing led to disputes among family members and attracted significant public attention (Hartati et al., 2022). This case illustrates that childcare after parental death involves not only formal legal issues but also the protection of the child's best interests. In such circumstances, *wasiat tarbiyah* may function as a preventive legal instrument capable of minimizing family disputes while providing certainty regarding the continuity of childcare and education.

Despite its significance, scholarly studies examining child-rearing wills from the perspectives of Islamic law and *maqashid al-shariah* remain limited. The study conducted by (Rozalia & Djajaputra, 2024) examined the legal consequences of child custody when both parents die, focusing on determining the party entitled to assume custody under the Indonesian legal system. Research by (E. C. Dewi, 2020) explored the legal foundations of guardianship and legal protection for orphaned minors. Meanwhile, (HS, 2020) discussed childcare from the perspective of Islamic law but did not specifically address the concept of wills as an instrument for appointing a child's caregiver.

Research employing the *maqashid al-shariah* approach also reveals certain limitations. The study by (Abror et al., 2025) examined *maqashid al-shariah* in childcare based on the Prophetic traditions without linking it to the concept of wills. The study by (Farandy et al., 2024) focused on guardianship rights when both parents die simultaneously, while (Rahmawati, 2023) analyzed child guardianship from a *maqashid al-shariah* perspective following the loss of parental authority. Collectively, these studies demonstrate that issues of childcare and guardianship have received considerable scholarly attention; however, none has specifically integrated the concepts of *wasiat tarbiyah*, Article 156(a) of the Compilation of Islamic Law, and *maqashid al-shariah* analysis within a comprehensive analytical framework.

Based on this review of previous studies, an important research gap remains. First, limited attention has been given to conceptualizing child-rearing wills as a form of non-material will within Islamic law. Second, there is a lack of studies examining the relevance of *wasiat tarbiyah* to Article 156(a) of the Compilation of Islamic Law. Third, no comprehensive research has positioned *wasiat tarbiyah* as a child protection mechanism based on the principles of *maqashid al-shariah*. Accordingly, the novelty of this study lies in its integration of Islamic legal principles, Indonesian positive law, and the *maqashid al-shariah* approach in analyzing the practice of child-rearing wills.

Based on the foregoing discussion, this study focuses on three main questions: how the legal construction of child-rearing wills (*wasiat tarbiyah*) is understood within Islamic law and social practice; how such practices correspond to Article 156(a) of the Compilation of Islamic Law; and how these practices can be analyzed from the perspective of *maqashid al-shariah*. The study aims to examine the legal construction of *wasiat tarbiyah*, assess its compatibility with Islamic law and the Compilation of Islamic Law, and evaluate its contribution to the realization of *maslahah* based on the objectives of Islamic law. Theoretically, this study is expected to enrich the body of knowledge in Islamic family law, particularly concerning the development of non-material wills as instruments of child protection. Practically, it is expected to serve as a reference for society, academics, and policymakers in formulating child protection mechanisms that prioritize the best interests of children in accordance with the principles of *maqashid al-shariah*.

METHOD

This study employs a qualitative research design using a normative legal research method with a juridical-normative approach. Normative legal research focuses on examining legal issues from an internal legal perspective by analyzing legal norms, principles, doctrines, and statutory regulations as the primary objects of investigation. According to Ika Atikah, normative juridical research is a legal inquiry that examines legal issues through the study of legislation, legal principles, and legal norms (Atikah, 2022). This approach was selected because the present study seeks to analyze the legal construction of child-rearing wills (*wasiat tarbiyah*) within Islamic law and to evaluate their conformity with the objectives of *maqashid al-shariah* and Article 156(a) of the Compilation of Islamic Law.

The research applies both a statute approach and a conceptual approach. The statute approach is utilized to examine relevant legal provisions governing child custody, guardianship, and wills within Islamic family law, particularly the Compilation of Islamic Law. Meanwhile, the conceptual approach is employed to explore and analyze the interrelationship between the concepts of *wasiyyah* (will), *hadhanah* (child custody), guardianship, and *maqashid al-shariah* as an integrated framework for child protection in Islamic law.

The sources of legal materials in this study consist of primary, secondary, and tertiary legal materials. Primary legal materials include the Qur'an, Hadith, and the Compilation of Islamic Law. Secondary legal materials comprise classical and contemporary Islamic legal literature, including Al-Fiqh wa Adillatuhu and other authoritative works on Islamic family law, as well as scholarly journal articles, theses, dissertations, and relevant academic publications. All journal articles utilized in this study are open-access scientific publications that can be independently accessed and verified by readers. Tertiary legal materials include dictionaries, encyclopedias, and other reference sources that assist in clarifying legal concepts and terminology.

Data collection was conducted through library research. This technique was chosen because the study does not aim to test hypotheses statistically but rather to understand, interpret, and critically analyze the concept of child-rearing wills (*wasiat tarbiyah*) from the perspective of *maqashid al-shariah* and its relevance to Islamic family law. The collected legal materials were systematically identified, classified, and organized according to the themes and legal issues under investigation.

The analysis of legal materials was conducted using a descriptive-analytical method. The researcher first described and interpreted relevant legal norms, doctrines, and scholarly opinions concerning child-rearing wills and child protection. Subsequently, these materials were analyzed through the framework of *maqashid al-shariah*, particularly the principles of *hifz al-din* (protection of religion), *hifz al-nafs* (protection of life), *hifz al-'aql* (protection of intellect), and *hifz al-nasl* (protection of lineage). Through this analytical framework, the study evaluates whether the practice of *wasiat tarbiyah* contributes to the realization of *maslahah* (public welfare) and aligns with the broader objectives of Islamic law in safeguarding the best interests of children.

RESULTS AND DISCUSSIONS

The Legal Construction of Child-Rearing Wills (*Wasiat Tarbiyah*) in the Perspective of Islamic Law and Social Practice

Etymologically, the term *wasiyyah* (will) originates from the Arabic language and denotes a message, mandate, or instruction. In Islamic jurisprudence, a will is generally defined as the voluntary transfer of ownership, property, or benefits to another person that becomes effective after the testator's death (Az Zuhaily, 2015). Contemporary Muslim scholars have expanded this definition to include non-material forms of wills, including child-rearing wills (*wasiat tarbiyah*). A will is commonly declared while a person is in good health or approaching death and is usually implemented within the family sphere. Consequently, the requirement of witnesses in the execution of a will falls within the realm of *ijtihadi* matters, as it is closely related to the realization of public welfare and the preservation of legal certainty while preventing future disputes (Mahmud, 2021). This principle is reflected in the Qur'anic recommendation concerning witnesses in wills, as stated in Surah Al-Ma'idah verse 106:

يَا أَيُّهَا الَّذِينَ ءَامَنُوا شَهَدَةُ بَيْنِكُمْ إِذَا حَضَرَ أَحَدَكُمُ الْمَوْتُ حِينَ الْوَصِيَّةِ اثْنَانِ ذَوَا عَدْلٍ مِّنكُمْ

....

O you who have believed, testimony [should be taken] among you when death approaches one of you at the time of bequest - [that of] two just men from among you .. (Qur'an, Al-Ma'idah: 106).

The transfer of childcare responsibility through *wasiat tarbiyah* represents a form of parental planning intended to ensure the continuity of a child's upbringing after the death of the parents. One practice found among Muslim communities in Indonesia is the appointment of the maternal aunt as a guardian responsible for the child's care and education. Such an appointment

is generally made through a will. Although a will may be delivered orally or in writing, many parents communicate their *wasiat tarbiyah* orally to family members. Nevertheless, from a legal perspective, a written will provides stronger evidentiary value and greater legal certainty. This position is supported by the following Prophetic tradition:

مَا حَقُّ امْرِئٍ مُسْلِمٍ لَهٗ شَيْءٌ، يُوصِي فِيهِ نَيْتٌ لَيْلَتَيْنِ، إِلَّا وَوَصِيَّتُهُ مَكْتُوبَةٌ عِنْدَهُ

“It is not proper for a Muslim who has something to bequeath to stay for two nights without having his will written and kept with him.” (Sahih Al-Bukhari, Hadith No. 2738).

In Indonesian positive law, wills are regulated under Article 195 of the Compilation of Islamic Law, which stipulates that a will may be made orally before two witnesses, in writing before two witnesses, or before a notary public (Compilation of Islamic Law, 2003). The documentation of a will serves as legal evidence for the implementation of childcare arrangements and helps prevent disputes among family members regarding the child's future care.

According to Wahbah al-Zuhaili in *Al-Fiqh wa Adillatuhu*, each Islamic legal school (*madhbab*) establishes a distinct order of priority regarding child custody (*hadhanah*). The Hanafi school prioritizes the biological mother, followed by the maternal grandmother, paternal grandmother, sisters of the child, maternal aunts, daughters of the child's sisters, daughters of the child's brothers, paternal aunts, and finally the *'asabah* relatives according to inheritance order. The Maliki school similarly prioritizes the biological mother, followed by the maternal grandmother, maternal aunt, paternal grandmother, sisters of the child, paternal aunts, and nieces. The Shafi'i school places the biological mother first, followed by the maternal grandmother, paternal grandmother, paternal grandfather, sisters of the child, maternal aunts, daughters of the child's brothers, daughters of the child's sisters, paternal aunts, and subsequently other eligible *mahram* relatives and *'asabah* heirs. Meanwhile, the Hanbali school prioritizes the biological mother, maternal grandmother, paternal grandmother, paternal grandfather and his mother, full sisters, maternal sisters, paternal sisters, aunts from both parental sides, maternal aunts, paternal aunts, great-aunts, nieces, cousins, and other close relatives according to the degree of kinship (Az Zuhaily, 2015).

The Compilation of Islamic Law, particularly Article 156(a), stipulates that a child who has not yet reached the age of discernment (*mumayyiz*) is entitled to custody by the mother. If the mother has passed away, the right of custody is transferred sequentially to: (1) female ascendants in the maternal line; (2) the father; (3) female ascendants in the paternal line; (4) the child's sisters; and (5) other female blood relatives of the child (Compilation of Islamic Law, 2003). Although this provision establishes a hierarchical order of custody, its implementation remains subject to the principle of the child's best interests. If an individual within the prescribed order lacks the necessary qualifications or capability to provide proper care, custody may be transferred to another person who is more suitable for safeguarding the child's welfare.

In practice, many testators choose a maternal aunt as the designated caregiver for several reasons. These include concerns regarding the advanced age of the maternal grandmother and her limited capacity to provide active care and education, as well as the desire to ensure that the child remains within the maternal family environment, which is often perceived as providing greater emotional security and religious guidance. This practice is also supported by Prophetic traditions emphasizing the elevated status of maternal relatives in child care. Although, according to several schools of Islamic law, the maternal aunt occupies a lower position than the maternal grandmother in the hierarchy of custody, Muslim jurists generally allow flexibility when the appointment better serves the child's welfare. The principle of *maslahah* (the best interests of the child), which is recognized across all major schools of Islamic jurisprudence, provides a legitimate basis for the implementation of *wasiat tarbiyah*, even when the designated caregiver does not strictly follow the traditional order of *hadhanah* entitlement. As argued by (Maulana, 2023) in his analysis of Article 105 of the Compilation of Islamic Law, *hadhanah* is a right inherently attached to the child and must always be determined based on the child's best interests rather than merely on formal hierarchical considerations.

The Relevance and Compatibility of Child-Rearing Wills (Wasiat Tarbiyah) with Article 156(a) of the Compilation of Islamic Law

In practice, *wasiat tarbiyah* is commonly used by parents to appoint a specific individual to assume responsibility for the care and upbringing of their children in the event of their death. One of the most frequently chosen caregivers is the maternal aunt (*bibi dari jalur ibu*), due to perceived emotional closeness and familial attachment to the child. From an emotional and sociological perspective, this choice is understandable. However, when examined from a juridical perspective, particularly under Article 156(a) of the Compilation of Islamic Law (KHI), the order of guardianship is structured hierarchically, beginning with the mother, followed by specific maternal and paternal relatives, before reaching the maternal aunt as one of the later options (A. P. Dewi et al., 2024).

This hierarchical structure raises questions regarding the compatibility between parental wills and the statutory order of custody. In some cases, the appointment of a maternal aunt through *wasiat tarbiyah* may appear inconsistent with the prescribed legal order in the KHI, particularly when closer relatives such as the maternal grandmother still exist. However, this apparent inconsistency does not necessarily indicate a legal contradiction. Instead, the relationship between *wasiat tarbiyah* and Article 156(a) of the KHI is better understood as contextual and conditional rather than absolute.

In practice, *wasiat tarbiyah* may align with the legal order stipulated in the KHI when parents appoint individuals who are already prioritized within the statutory hierarchy, such as the maternal grandmother. In such cases, the will functions as a reinforcement of legal norms rather than a deviation from them. Conversely, in certain circumstances, parents may designate individuals whose position in the legal hierarchy is lower, such as the maternal aunt, based on considerations of competence, emotional stability, caregiving capacity, and religious

environment. This indicates that the will functions as an expression of parental responsibility to ensure the best possible care for the child before death.

The flexibility of Islamic legal practice allows for such contextual considerations. Although the KHI provides a structured order of guardianship, its implementation is not rigid and must be interpreted in light of the child's best interests (*maslahah al-tijl*). The incapacity of higher-priority relatives, such as advanced age, poor health, or limited caregiving ability, may justify the appointment of a more capable relative. For instance, if the maternal grandmother is elderly and unable to provide optimal care, appointing the maternal aunt may be considered a more appropriate solution for ensuring the child's welfare (Yulianto, 2025). In determining *hadhanah*, one of the most important considerations is the continuity of education and the overall development of the child (Mallongi et al., 2023).

Therefore, the relationship between *wasiat tarbiyah* and Article 156(a) of the KHI reflects a shared normative objective, namely the protection and welfare of the child. Islamic law fundamentally directs custody arrangements toward the realization of the child's best interests and the safeguarding of their rights (Asyuro & Sayehu, 2025). In this sense, *wasiat tarbiyah* and the KHI are not mutually exclusive but rather complementary. The KHI provides a formal hierarchical structure of custody, while *wasiat tarbiyah* serves as a mechanism through which parents may proactively determine the most suitable caregiver based on contextual needs and welfare considerations.

In conclusion, both *wasiat tarbiyah* and Article 156(a) of the Compilation of Islamic Law share a common foundation in the principle of *maslahah* and the protection of children. Any apparent deviation from the legal order in *wasiat tarbiyah* can be legally justified within Islamic jurisprudence when it is based on a demonstrable benefit for the child's welfare. Thus, rather than being contradictory, both frameworks operate in a mutually reinforcing relationship aimed at ensuring the best interests, protection, and future well-being of the child.

Analysis of Child-Rearing Wills (Wasiat Tarbiyah) from the Perspective of Maqashid al-Shariah

In Islamic legal theory, *maqashid al-shariah* is generally classified into three hierarchical levels: *daruriyyat* (essentials), *hajiyyat* (complementary needs), and *tahsiniiyyat* (embellishments). At the core of this framework lies the preservation of five fundamental objectives of Islamic law, known as *al-daruriyyat al-khams*, namely the protection of religion (*hifz al-din*), life (*hifz al-nafs*), intellect (*hifz al-aql*), lineage (*hifz al-nasl*), and property (*hifz al-mal*) (Az Zuhaily, 1986). These five principles function as a normative standard to assess whether a legal practice produces benefit (*maslahah*) or harm (*mafsadah*), including in the context of child-rearing wills (*wasiat tarbiyah*). Within this conceptual framework, *wasiat tarbiyah* is particularly relevant to three primary objectives of *maqashid al-shariah*, namely the preservation of life (*hifz al-nafs*), intellect (*hifz al-aql*), and lineage (*hifz al-nasl*).

First, from the perspective of *hifz al-nafs* (protection of life), *wasiat tarbiyah* functions as a preventive legal instrument aimed at ensuring that a child is not neglected or exposed to physical and psychological harm after the death of parents. Islamic law guarantees that every child has the right to live in a safe environment free from violence, including physical abuse, sexual exploitation, and criminal neglect. The appointment of a competent caregiver through *wasiat tarbiyah* is therefore essential in maintaining both physical security and emotional stability for the child (M. Hasbi Umar & Ma'ani, 2017). The effectiveness of this protection depends largely on the quality and capability of the appointed caregiver. If a maternal aunt, for instance, is able to provide affection, stability, and a secure environment, then such an appointment aligns with the objectives of *maqashid al-shariah*. However, if the appointment instead creates intra-family conflict or places the child in an unstable environment, it may contradict the very purpose of *hifz al-nafs*. Moreover, this principle also extends to the psychological dimension, as children who lose both parents are among the most vulnerable groups in terms of emotional trauma, anxiety, and insecurity, all of which must be carefully addressed in caregiving arrangements.

Second, the principle of *hifz al-aql* (protection of intellect) emphasizes the importance of ensuring the continuity of education, cognitive development, and intellectual growth of the child. Education is not only a fundamental human right but also a core responsibility that must be safeguarded through proper guardianship, especially when parental roles are no longer available due to death (Masadah, 2020). In the context of *wasiat tarbiyah*, the appointed caregiver becomes the primary figure responsible for continuing the child's intellectual and moral development. *Hifz al-aql* is not limited to formal education but also includes character formation, moral guidance, and protection from destructive influences such as drug abuse, delinquency, and unethical social environments. Therefore, the success of *wasiat tarbiyah* in achieving this objective depends on whether the appointed caregiver is capable of providing consistent educational support and moral supervision.

Third, from the perspective of *hifz al-nasl* (protection of lineage), *wasiat tarbiyah* contributes not only to the preservation of biological lineage but also to the maintenance of generational quality through proper upbringing, ethical education, and balanced psychological development (Sari, 2023). The appointment of a maternal aunt as a caregiver may be interpreted as part of parental responsibility to ensure continuity of care within the family structure. However, such an appointment must be guided by the principle of *maslahah*, ensuring that the child's future development is not compromised. The preservation of lineage in this sense goes beyond genealogical continuity and extends to safeguarding the child's dignity, identity, and long-term well-being within a stable family environment.

The combined analysis of *hifz al-nafs*, *hifz al-aql*, and *hifz al-nasl* demonstrates that *wasiat tarbiyah* possesses strong potential to realize significant *maslahah* for children. However, its effectiveness is highly dependent on the suitability and competence of the appointed caregiver. The designation of a maternal aunt or other relative is considered valid within the framework of *maqashid al-shariah* as long as the caregiver is capable of ensuring physical protection, intellectual development, and lineage continuity. Conversely, if such an appointment is made solely based on

emotional considerations without evaluating caregiving capacity, it may contradict the objectives of Islamic law and potentially lead to harm rather than benefit.

Therefore, *maqashid al-shariah* emphasizes that the criteria for selecting a child caregiver are not limited to kinship relations but must prioritize the realization of the child's best interests in all dimensions of life. The primary objective is to ensure that the child receives optimal protection, education, emotional stability, and long-term welfare. Although *wasiat tarbiyah* is grounded in strong legal and moral foundations within Islamic law, its implementation in contemporary society faces several structural challenges that require serious attention.

The first challenge is the limited understanding of *wasiat tarbiyah* among Muslim communities in Indonesia. Many people still perceive wills exclusively as instruments for distributing inheritance, particularly property, and are not familiar with the concept of wills that regulate childcare arrangements. As a result, *wasiat tarbiyah* remains a relatively uncommon practice in social life. The second challenge is the lack of proper documentation. As previously discussed, oral wills without written documentation are highly vulnerable to misinterpretation and family disputes. The case of Gala Sky illustrates the significant legal and social consequences that may arise from the absence of clear and documented childcare arrangements after the death of parents.

To address these challenges, legal education and public awareness programs are essential. Muslim communities need to be informed about the broader scope of Islamic wills, including their role in safeguarding children's welfare. Furthermore, formal documentation of *wasiat tarbiyah* should be encouraged, ideally through written instruments or notarial deeds, as part of responsible life planning. Strengthening legal awareness and institutional support will contribute to minimizing disputes and ensuring that childcare arrangements are carried out in accordance with both Islamic legal principles and the objectives of *maqashid al-shariah*.

CONCLUSION

This study concludes that child-rearing wills (*wasiat tarbiyah*) have a strong legal foundation within both Islamic law and the Compilation of Islamic Law (KHI). Although there may be differences between the caregiver appointed through a will and the hierarchical order of custody stipulated in Article 156(a) of the KHI, the principle of *maslahah* (public benefit and the best interests of the child) remains the primary legal consideration that justifies such flexibility. In this regard, *wasiat tarbiyah* is substantively aligned with Article 156(a) of the KHI, as both aim to ensure the welfare, protection, and proper development of the child after the death of parents. Even when there appears to be a deviation from the formal custodial hierarchy, such as appointing a relative who is not in the first order of priority, this practice can still be legally justified as long as it demonstrably serves the child's best interests. From the perspective of *maqashid al-shariah*, *wasiat tarbiyah* is highly relevant to three essential objectives of Islamic law, namely the preservation of life (*hifz al-nafs*), intellect (*hifz al-aql*), and lineage (*hifz al-nasl*). These three dimensions collectively ensure that the child receives adequate protection, emotional

stability, education, and sustainable development after parental death. The practice of *wasiat tarbiyah* thus represents an important mechanism for continuing parental responsibility beyond death, ensuring that children's physical, psychological, and educational needs are properly fulfilled. However, the effectiveness of this mechanism is highly dependent on the competence, capability, and suitability of the appointed caregiver. Without careful selection based on welfare considerations, the intended legal and moral objectives may not be fully achieved. Therefore, *wasiat tarbiyah* functions as a complementary instrument within Islamic family law that strengthens the protection of children in accordance with the overarching objectives of *maqashid al-shariah*.

REFERENCES

- Al-Bukhari, M. I. (n.d.). *Sabih al-Bukhari, Hadis No. 2738, Kitab al-Wasaya (Wills and Testaments)*. Sunnah.com. <https://sunnah.com/bukhari:2738>
- Abror, M., Akbarizan, & Akmal Abdul Munir. (2025). Maqashid Syariah dalam Pengasuhan Anak di Indonesia: Telaah Hadis Nabi dan Implikasinya dalam Hukum Keluarga Islam. *Jurnal El-Thawalib*, 6(2), 227–240.
- Asyuro, F. A., & Sayehu, A. (2025). Analisis Komparatif Hak Asuh Anak dalam Kompilasi Hukum Islam dan Undang-Undang di Indonesia. *Arus Jurnal Sosial dan Humaniora (AJSH)*, 5(2). <https://doi.org/> (DOI tidak tersedia pada publikasi sumber)
- Az Zuhaily, W. (1986). *Ushul Fiqh Islamy*. Dar Al Fikr.
- Az Zuhaily, W. (2015). *Fiqh Islam wa Adillatuhu 3*. Darul Fikr.
- Bahasa, B. P. dan P. (2026). *Kamus Besar Bahasa Indonesia VI daring*. <https://kbbi.kemendikdasmen.go.id/Cari/Index>
- Dewi, A. P., Sawaya, N., Nasution, N. A., & Universitas Islam Negeri Sumatera Utara. (2024). Hak Asuh dalam Perceraian Menurut Perspektif Hukum Islam dan Hukum Positif. *Jurnal Pendidikan Tambusai*, 8(1), 4468–4475. <https://doi.org/> (DOI tidak tersedia pada publikasi sumber)
- Dewi, E. C. (2020). Tinjauan Yuridis Mengenai Perwalian Anak Yatim Piatu yang Masih di bawah Umur. *Perspektif Hukum*, 20(2), 162–279. <https://perspektif-hukum.hangtuah.ac.id/index.php/jurnal/article/view/83>
- Farandy, F., Febrian, M., Nazhifa, R., Shakira, T. A., & Ardhika, W. (2024). Analisis Hak Perwalian Anak Setelah Kedua Orang Tua Meninggal Secara Bersamaan. *Kultura: Jurnal Ilmu Sosial*, 5624(7), 153–160. <http://jurnal.kolibi.org/index.php/kultura>
- Hartati, R., Syafrida, S., & Suryani, R. (2022). Perwalian Anak Akibat Meninggalnya Kedua Orang Tuanya (Studi Kasus Gala Sky). *Pamulang Law Review*, 4(2), 205–216. <https://doi.org/10.32493/palrev.v4i2.17755>
- HS, I. N. D. (2020). Pelaksanaan Pasal 156 Huruf a dan b Kompilasi Hukum Islam tentang Hadhanah terhadap Anak yang Belum Mumayyiz. Fakultas Hukum Universitas Medan. (Tidak tersedia DOI/link publikasi)
- Ika Atikah. (2022). *Metode Penelitian Hukum*. Badamai Law Journal.

- Kompilasi Hukum Islam. (2003). Hukum Perkawinan, Kewarisan, dan Perwakafan. Perpustakaan Mahkamah Agung RI.
- Kementerian Agama Republik Indonesia. (2019). Al-Qur'an dan terjemahannya: Surah At-Tahrim (66): 6. <https://quran.kemenag.go.id/quran/per-ayat/surah/66?from=6&to=6>
- Kementerian Agama Republik Indonesia. (2019). Al-Qur'an dan terjemahannya: Surah Al-Ma'idah (5): 106. <https://quran.kemenag.go.id/quran/per-ayat/surah/5?from=106&to=106>
- M. Hasbi Umar, & Ma'ani, B. (2017). Urgensi Hak dan Perlindungan Anak dalam Perspektif Maqashid al-Syariah. *Ar Risalah*, 17(2), 201–212.
- Mahmud, Z. (2021). Tinjauan Maqasid al-Syari'ah terhadap Pasal 195 KHI tentang Saksi dalam Wasiat. *El-Ushrah*, 4(2), 357–369. <https://doi.org/10.22373/ujhk.v4i2.11146>
- Mallongi, A. A., Ilyas, M., & Anis, M. (2023). Tinjauan Hukum Islam terhadap Penetapan Hadhanah dalam Menjamin Keberlangsungan Pendidikan Anak. *Qadauna: Jurnal Ilmiah Mahasiswa Hukum Keluarga Islam*, 4, 571–585. <https://doi.org/10.24252/qadauna.v4i2.27794>
- Masadah. (2020). Hadhanah dalam Perspektif Imam Mazhab dan Kompilasi Hukum Islam serta Pengaruhnya terhadap Pendidikan Anak. *Dinamika*, 5(2), 69–94.
- Maulana, D. (2023). Telaah Pasal 105 Kompilasi Hukum Islam tentang Hadhanah. *Posita: Jurnal Hukum Keluarga Islam*, 1(1), 1–9. <https://doi.org/10.52029/pjhki.v1i01.133>
- Maulani, L. P., Nugroho, B. D., & Saleh, K. A. (2022). Perlindungan Hukum bagi Anak di Bawah Umur yang Berada di Bawah Perwalian. *Qiyas: Jurnal Hukum Islam dan Peradilan*, 7(2). <https://doi.org/10.29300/qys.v7i2.8209>
- Rahmawati, I. (2023). Analisis Perspektif Maqashid Syari'ah pada Penetapan Perwalian Anak. *Jurnal Restorasi Hukum*, 6(1), 66–88. <https://doi.org/10.14421/jrh.v6i1.3000>
- Rozalia, R., & Djajaputra, G. (2024). Akibat Hukum Hak Asuh Anak Ketika Kedua Orang Tuanya Meninggal Dunia. *Unes Law Review*, 6(4), 9960–9975. <https://doi.org/10.31933/unesrev.v6i4>
- Sari, M. (2023). Hadhanah dalam Tinjauan Teori Hifz al-Nasl. *Journal Waqfeya*, 1(1), 1–11.
- Yulianto, S. F. (2025). Rekonstruksi Konsep Hadhanah dalam Fiqh Klasik dan Relevansinya terhadap Kompilasi Hukum Islam. *Minhaj: Jurnal Ilmu Syariah*, 6, 230–249.