

The Pillars of the Will in Islamic Jurisprudence

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ABSTRACT

Bequest (wasiyat) refers to a person's instructions regarding the distribution of their property after their death. It is a legitimate act that is emphasized by the Quran, Sunnah, consensus, and analogy. The ruling on bequest varies depending on the relationship between the testator and the beneficiary. It can be obligatory, recommended, disliked, or prohibited. It is not appropriate to appoint minors, insane persons, sinners, traitors, very old or infirm persons, or those who lack the necessary experience and maturity as executors. Entrusting guardianship to untrustworthy individuals is also not permissible, and if they betray the trust, they must be removed and compensated for any damage caused to the wards under their care. Familiar with the rights of detainees, including insane and mentally disabled individuals. The methodology employed in this research involves qualitative analysis focused on content from secondary data sources related to Islamic jurisprudence, particularly in the context of bequest and the appointment of executors. The data analysis process involves the categorization and classification of information derived from both primary and secondary sources. Ethical considerations form a critical component of this research. Adherence to Islamic ethical principles is maintained throughout the research process to ensure respect for religious sensitivities and the sanctity of Islamic teachings. This involves treating the data with the reverence it deserves within the context of Islamic jurisprudence. Sometimes the executor of a will is determined by the appointer, in which case they are called a "Mukhtar executor". A Mukhtar executor is someone who is appointed by the father or paternal grandfather of a child, an insane person, or mentally disabled individual to manage their financial affairs after their death. Sometimes, a judge appoints an executor known as a "Qadi executor" to manage the financial affairs of children. If appointed by the first executor, they are simply referred to as an executor. Will-making is a legitimate act that Islam emphasizes for the realization of the rights of minors. The ruling on making a will varies depending on the relationship between the testator and the beneficiary.

Keywords- Mukhtar executor, Qadi executor, Musi (testator), executor of a minor beneficiary.

I. INTRODUCTION

Since humans go through various stages of life from birth to death in terms of age and physical state, and in each stage of life, even before birth, they have been entitled to legal rights from the formation of the zygote. To claim the rights, they are entitled to and to enjoy them, they require special conditions, and sometimes due to physical and mental disorders, and sometimes due to young age, they need the support of special authorities such as guardians, executors, and trustees to overcome

their physical and mental challenges and age-related conditions, and to enjoy their individual and social rights.

II. MAIN RESEARCH QUESTION.

What is a will? What is its ruling in Islam? And what are its constituent elements?

Subsidiary questions:

1. How many pillars does a will have?
2. Which conditions are necessary in a will?
3. How many types of Will have in Islamic religion?

III. LITERATURE REVIEW

Numerous books have been written about historical artifacts, but many of them are either excessively lengthy or delve into other topics to such an extent that readers find it difficult to easily find concise information about the subject. Therefore, in this article, I will provide a brief and comprehensive overview of the topic of historical artifacts, written in a straightforward and accessible language that everyone can benefit from.

The linguistic meaning of a will: Ibn Manzur 15/394¹ in *Lisan al-Arab* says: "موصى", "وصى", and "موصى به" all have the plural form "أوصياء" (trustees). The Arabic verb "وصى" has the following meanings: To make a will during illness or when facing death, and entrust one's affairs to another person before passing away. Ibn Manzur 15/394).

The legal meaning of a will: Various definitions of a will have been mentioned by the Sunni jurists. The Hanafi school of thought defines a will as follows: "Requesting something from someone else to do after one's death or disappearance, such as paying off one's debts or marrying off one's daughters" (Ibn Najim, 1405: 212).

"The establishment of a person's position in taking possession after death" (Sharbini, 1415: 73).

Reasons for the legitimacy of a will:

The legitimacy of a will is indicated by the Qur'an, Sunnah, and consensus.

1. Qur'an: "It is prescribed for you, when death approaches any of you, if he leaves any wealth, that he makes a bequest to parents and next of kin, according to reasonable manners. (This is) a duty upon Al-Muttaqun (the pious)" (Al-Baqarah: 180).

In another verse, Allah Almighty says: "After a bequest is given or a debt (has been paid)" (An-Nisa: 11).

2. Sunnah: It is narrated from Abdullah bin Umar (may Allah be pleased with him) that the Messenger of Allah (peace be upon him) said: "It is not permissible for a Muslim who has something to bequeath to stay for two nights without having his will written and kept with him." (Bukhari, Hadith No. 2738)

This hadith from the Sunnah of the Prophet (peace be upon him) emphasizes the importance of writing down one's will or bequest as soon as possible and keeping it with oneself. It also highlights the urgency of not delaying this important task for more than two nights.

Abdullah bin Umar (may Allah be pleased with him) also narrates that since he heard this statement from the Prophet (peace be upon him), not even a single night passed without him having his will written and kept with him. (Muslim, Hadith No. 1627)

Based on this hadith, it is not appropriate for someone who intends to make a will to delay it for a prolonged period of time. Instead, they should write it down as soon as possible and express their wishes clearly. It is unacceptable to tolerate delaying the will for more than one or two nights. This is why Abdullah bin Umar

(may Allah be pleased with him) would check his will every night after hearing this advice from the Prophet (peace be upon him), so that he could act in accordance with the teachings of Islam and express his rights.

3. Consensus: All scholars, whose opinions are trusted, have reached a consensus from the time of the Companions of the Prophet (peace be upon him) until the present day, that making a will is permissible. There is no report of any scholar prohibiting the act of making a will. (Kasani, 1406: 330)

The ruling on making a will:

In the early days of Islam, it was obligatory to make a will and distribute all one's wealth among parents and relatives. Later, with the revelation of the laws of inheritance in the Quran and the abrogation of some hadiths, the obligation to make a will was lifted. However, differences between the testator and the heirs can lead to conflicting rulings, and for this reason, scholars have different opinions regarding the ruling on making a will. Some of these opinions are:

1. Obligatory: Making a will is obligatory on anyone who has some remaining wealth, regardless of whether it is small or large. This view is attributed to Zahiri, Ata, and Imam Shafi'i. Ishaq and Dawud Zahiri also accepted this view, and Ibn Jarir favored it.

Their evidence for the obligation of making a will is a hadith narrated by Ibn Umar from the Prophet (peace be upon him), in which he said: "It is not permissible for a Muslim who has something to bequeath to stay for two nights without having his will written and kept with him." (Bukhari: 2587). They also use the apparent meaning of the verse: "It is prescribed for you, when death approaches any of you, if he leaves any goods, that he makes a bequest to parents and next of kin, according to reasonable usage; this is due from the righteous." (Quran 2:180) as evidence for the obligation of making a will.

Imam Shafi'i said: The meaning of the hadith is that a Muslim should write down their will as a precautionary measure so that it is with them. Unexpected death may come upon a person who has not written their will, so a Muslim should not be heedless of death, but should be prepared for it. (Qurtubi, 1367: 259).

Ibn Hazm Zahiri says: According to the above hadith, making a will is obligatory on anyone who has some remaining wealth. Also, making a will is obligatory for any Muslim whose heirs are deprived of inheritance due to their disbelief. (Ibn Hazm, B: 312).

As mentioned earlier, making a will is not obligatory according to the majority of scholars. However, its obligation can arise in certain specific situations where it becomes necessary to fulfill a right that is owed to someone else. For example, if a person owes a debt, or if there is a bequest due to them, or if there is some other obligation that cannot be fulfilled except through making a will, then it becomes obligatory. Shirin in his book "Mughni al-Muhtaj" writes: "Making a will is obligatory on anyone who has a right owed to someone

above him, such as Zakat, Hajj, or a human right, such as a deposit that has been taken by force." (Shirbini, 1415: 39).

2. Recommended: Making a will is recommended but not obligatory. This is the majority view of scholars. Their evidence for this is that making a will was obligatory in the early days of Islam, but later it was abrogated by the laws of inheritance in the Quran and the hadith of Amr ibn Kharijah that says: "Verily, Allah has given to everyone who has a right what is due to him, and there is no bequest for an heir." (Tirmidhi). The hadith has been abrogated.

3. Prohibited: One type of will that is prohibited is making a bequest that involves a sin, such as making a bequest that a certain amount of money be used to buy and drink wine, or giving money to a person to commit an unjust murder (Dura al-Hukkam, 1372: 467).

4. Disliked: If the bequest is undesirable, such as making a bequest to a person who is known to indulge in sinful activities, it is disliked. However, if the person is believed to use it in a way that prevents them from committing sins, then it is permissible, depending on the circumstances and the difference in opinion among scholars regarding the recommendation for the testator (Kasani, 1982: 334).

The ruling regarding accepting a bequest:

In this regard, jurists have two opinions: Ibn Qudamah and some Hanbalis believe that accepting a bequest from a relative is recommended, as long as the person who accepts it can fulfill its obligations (Ibn Qudamah, 1405: 567). They argue based on the Quran, Sunnah, consensus, and reason.

Allah says, "And cooperate in righteousness and piety" (Quran 5:2). There is no doubt that resolving the problems of orphans after the death of their father is a righteous deed. In another verse, Allah commands justice, kindness, and giving to relatives. Taking care of orphans and managing their affairs is one of the acts of kindness towards them. Accepting responsibility for a bequest and guardianship from those who are capable and qualified to do so is also rewarded with blessings and rewards in the Hereafter, as Allah has said, "In this world and the Hereafter. And they ask you about orphans. Say, 'Improvement for them is best. And if you mix your affairs with theirs - they are your brothers. And Allah knows the corrupt from the amender. And if Allah had willed, He could have put you in difficulty. Indeed, Allah is exalted in Might and Wise" (Quran 2:220).

In many hadiths, emphasis has been placed on the rights of orphans. The noble companions also made some of them their heirs, and there is no denial or opposition to any of them recorded. However, Imam Abu Yusuf and Ibn Abidin of the Hanafi School of thought, as well as Imam Shafi'i, hold the opinion of rejecting the acceptance of bequests, as Ibn Abidin says, "Know that it is not appropriate for the testator to accept it, as it is risky." Abu Yusuf said, "Entering into it the first time is a mistake, the second time is treachery, and the third time is theft." Al-Hasan said, "The testator cannot be just, even if

he were Umar ibn al-Khattab" (Ibn Abidin, 1966: 700). The heir should not accept the bequest, as there is a risk of committing a sin. Abu Yusuf says that entering into it for the first time is a mistake, the second time is treachery, and the third time is theft. The heir must be capable of justice, even if he were Umar ibn al-Khattab.

4. Disliked: If a bequest is undesirable, such as making a bequest to a person who is known to engage in sinful activities, it is permissible if the person uses it in a way that prevents them from committing sins. The permissibility of accepting such a bequest may depend on the circumstances and the discretion of the executor of the will (Kasani, 1982: 334).

Imam Shafi'i said: "No one should be allowed to make a will except a fool or a thief." (Shirbini, 1415: 73). However, it is generally permitted to accept a bequest, because it is a recommended act of devotion for a person who is able to fulfill it and can earn great rewards by being responsible for the care of an orphan. This falls under the principle of cooperation in meeting the necessities of life. If accepting such a disliked bequest was not permissible, the noble companions would not have accepted them. The hadith of Abu Dhar is about a person who is unable to fulfill their obligations.

However, it is permissible for the executor of the will to accept a bequest if they have the ability to carry out the duties entrusted to them and have confidence in fulfilling them (Lajnah, 1404: 168).

IV. TYPES OF BEQUESTS

A bequest can be obtained by the executor of the will in various ways regarding the properties of their children. Sometimes, the bequest is made by appointing a guardian, who is then referred to as the chosen executor. At other times, the appointment is made by a judge, who then becomes the designated executor, or the executor is appointed by the first executor, in which case they are referred to as the executor of the executor.

First division: Bequest by appointment of a guardian (chosen executor).

A chosen executor is someone who is appointed by the father or paternal grandfather of a child who is a minor, insane, or foolish, to manage their financial affairs after their death.

1- Bequest by the father:

Islamic jurists agree that the father has the right to appoint an executor of a will from among those who are qualified, as he has guardianship over his minor children and those who are under his authority during his lifetime. Therefore, the father's choice of an executor of a will after his death is also his right (Shirbini, 1415: 151).

2- Bequest by the grandfather:

The appointment of an executor of a will by the grandfather is a subject of dispute among Islamic jurists. The Hanafi and Shafi'i schools of thought hold that the grandfather has the same guardianship rights as the father, and thus has the right to appoint an executor of a will

(Sarakhshi, 1406: 22). However, the Maliki and Hanbali schools of thought argue that the grandfather does not have the right to appoint an executor of a will for his grandchildren, as he does not have guardianship over them, similar to a brother or uncle (Ibn Qudamah, 1405: 142). The dominant view is the opinion of the Hanafi and Shafi'i schools of thought, as the grandfather's compassion towards his grandchildren is equivalent to that of a father.

3- Bequest by the mother:

There are two opinions regarding the mother's right to appoint an executor of a will:

Firstly, the Maliki school of thought holds that it is permissible for a mother to appoint an executor of a will for her children. However, they have three conditions for this right:

- 1- The property inherited by the children must be from the mother. If it is inherited from someone else, the mother does not have the right to appoint an executor of a will.
- 2- If the property inherited from the mother is abundant, she does not have the right to appoint an executor of a will.
- 3- If the children have a living father, a father's executor, or a judge to appoint an executor of a will, the mother does not have the right to appoint an executor of a will (Hattab, 1398: 390).

Secondly, the Hanafi, Shafi'i, and Hanbali schools of thought hold that the mother does not have the right to appoint an executor of a will for her children. This is because the mother does not have guardianship over her children during her lifetime, and therefore, she does not have the right to appoint a successor during her death (Ibn Najim, 1405: 177). The Maliki school of thought has reduced the possibility of appointing an executor of a will by the mother by setting the aforementioned conditions.

The first opinion is the dominant view, which holds that the mother is bound to the mentioned conditions when appointing an executor of a will for her children. The reason for this preference is that the execution of a will in financial matters requires obedience and care, and men are more capable of choosing individuals who can handle this task. Mothers' knowledge in this matter is often less, which can sometimes lead to the selection of an inappropriate person who is not fully capable of safeguarding and protecting the property of minors.

4- Bequest by the judge:

Islamic jurists agree that if the father and grandfather have not appointed an executor of a will or if their appointed executor has not designated another executor, the judge must appoint an executor of a will on their behalf. This is because the judge is the guardian of those who have no guardian. As the Prophet Muhammad (peace be upon him) said, "The ruler is the guardian of one who has no guardian" (Tirmidhi, Hadith no. 1102)

Moreover, neglecting to appoint an executor of a will can lead to the loss of property belonging to minors (Balkhi, 1980: 145). The judge's appointed executor has

the same powers as a chosen executor. They can manage the affairs of the minor, protect their property, and defend it in any matter that benefits the minor.

5- Appointment of an executor from the perspective of the appointed executor:

Islamic jurists unanimously agree that when the testator explicitly prohibits the appointed executor from appointing a replacement executor, the appointed executor no longer has the right to appoint another executor. However, there is a difference of opinion when the testator has appointed a person as an executor but has not explicitly allowed or prohibited the appointment of a replacement executor. In this case, the Hanafi, Maliki, and Shafi'i schools of thought state that the appointed executor has the right to appoint a replacement executor after themselves, and they can appoint whoever they wish (Ibn Abidin, 1966: 706).

Division Two - Validity of the subject matter of a will:

A will can either be general, which is not limited to a specific subject matter or type of action, or it can be specific, which is limited and restricted to a certain type of action. Based on this, wills are divided into two categories:

- 1- General will: A will that is not limited to a specific subject matter or type of action. For example, a testator may say in their will, "I appoint my executor to take care of my children." In a general will, whatever is permissible for the testator is also permissible for the executor, as the executor is acting as their representative.
- 2- Specific will: A will that is limited and restricted to a certain type of action. For example, a testator may say in their will, "I appoint my executor to handle my business affairs." In a specific will, the executor's authority is limited to the specified action or subject matter (Al-Binaa, 1982: 30).

Division Three - Validity of Multiple Executors in a Will:

A will can also be divided into two categories based on the number of executors appointed:

- 1- Will with a single executor: The principle in a will is singularity, not multiplicity, in appointing an executor over the assets and affairs of the testator. Therefore, the testator appoints a single executor, unless the interest of the minor requires the appointment of multiple executors (Kordi, 1406: 103).
- 2- Will with more than one executor: Islamic jurists agree that a testator can appoint two or more executors based on the interest of the minor (Ibn Abidin, 1966: 723).

Order of Executors:

Who has the right of appointment in a will? And who is the first person to be granted this right? To explain this issue, the order of executors is mentioned below:

There is no disagreement among Islamic jurists that the father has the first and most rightful authority to appoint an executor for a minor. However, there is a difference of opinion on who has the right to appoint an executor in the absence of the father. In this regard, the viewpoints of Islamic jurists are as follows:

The first opinion - The order of executors after the father is as follows: the appointed executor by the father, then the appointed executor by the executor appointed by the father, then the paternal grandfather, then the appointed executor by the paternal grandfather, then the appointed executor by the executor appointed by the paternal grandfather, and finally the judge and the appointed executor by the judge. This is the Hanafi opinion. (Sarakhshi, 1406: 20).

The second opinion - The order of executors after the father is as follows: paternal grandfather, appointed executor by the father, appointed executor by the paternal grandfather, then the judge and the appointed executor by the judge. This is the Shafi'i opinion. (Shirbini, 1415: 151).

The third opinion - The order of executors after the father is as follows: appointed executor by the father, the judge and the person appointed by the judge, there is no right of appointment for the paternal uncle, brother, or cousin unless the deceased has appointed them in the will. This is the Maliki and Hanbali opinion. (Hattab, 1398: 389).

From these opinions, it is clear that the father has a priority in appointing an executor for a minor, because the appointment of an executor for minors is based on the principle of their best interest until they are capable of managing their own affairs. It is necessary for others to take responsibility for their affairs when they are unable to do so.

The person who has more compassion and care for the minor is more worthy of appointment and consideration. Therefore, the father has a priority over others because he is the closest relative to the child and his compassion for the child is greater than anyone else's.

Among the aforementioned opinions, the Hanafi opinion is the most preferred because the fulfillment of the best interest of the minor is the main goal of the appointment of an executor, and this interest is achieved in the manner that the Hanafi opinion has mentioned.

Pillars of a will

According to Imam Abu Hanifa, there is one essential element (rukun) in a will, which is the formulation of the bequest (ijab and qabul), just like in other contracts according to the Hanafi school of thought. (Ibn Abidin, 1966: 650). However, according to the majority of Islamic jurists, there are five essential elements (arakan) in a will, which are as follows: formulation of the bequest (sigha), the testator (mosi), the executor (wasi), the beneficiary (mosi alaih), and the person to be excluded from the bequest (mosi bih).

The first essential element (rukun) of a will is the formulation of the bequest (sigha). Islamic jurists agree that a will is not valid without a complete formulation of the bequest (ijab and qabul). They also agree that any form of delegation of the will to the executor is valid, such as saying "I order you to do this" or "I entrust my property and children to you after my death" or "I transfer them to you after my death and put you in my place" or anything

that indicates delegation of the matter to the executor. However, there is a difference of opinion among scholars regarding the use of the formulations of agency (wakalah) and guardianship (wilayah) in the formulation of a will.

Acceptance (qabul) can be explicit, such as saying "I accept" or "I agree" or "I am satisfied," or it can be implicit, such as buying necessary items for minors, paying off the debts of the testator, or accepting the bequest after the death of the testator. (Ibn Najim, 1405: 522).

The conditions for the formulation of the bequest (sigha) in a will are as follows:

1. The formulation of the bequest must include both the order (ijab) and acceptance (qabul) clauses, as the bequest is a type of contract and resembles agency (wakalah). Immediate acceptance of the conditions is not necessary, but conditional acceptance is permissible.
2. The order of the testator and the acceptance of the executor must be in agreement.
3. The bequest must clearly state what the testator intends to convey. If the testator says "I appointed you as my executor," but does not clarify what they mean by that, the statement will be considered null and void.
4. The executor must not have rejected the bequest.

The majority of Islamic scholars from the Hanafi, Maliki, Shafi'i, and Hanbali schools of thought believe that the use of the terms "agency" (wakalah) and "guardianship" (wilayah) in the formulation of a will is valid. For example, if the testator tells someone "You are my executor after my death," this would be considered a valid formulation of the bequest. (Shirbini, 1415: 77).

According to the majority of Islamic scholars from the Hanafi, Maliki, Shafi'i, and Hanbali schools of thought, acceptance and rejection of a bequest during the lifetime of the testator is valid. (Kasani, 1982: 333).

A conditional bequest is also permissible, as a bequest carries the possibility of ignorance and error. Moreover, a bequest is similar to an appointment of authority, as narrated from Abdullah bin Umar (may Allah be pleased with him) who reported that the Messenger of Allah (peace be upon him) appointed Zaid bin Haritha as a leader during the Battle of Mu'tah and said: "If Zaid is killed, then Ja'far will take over leadership. If Ja'far is killed, then the authority will be with Abdullah bin Rawaha." (Bukhari, Hadith No. 4261).

The second pillar of a bequest (sigha) is the testator (mawsi), who is a person that entrusts the affairs of their heirs to someone else who will act as their representative after their death. Alternatively, the testator may give instructions for another person to manage their affairs after their death (Shirbini, 1415: 73).

The conditions for the testator are as follows:

1. Obligation (aqil and baligh): With regards to mental capacity, the majority of scholars agree that the testator must be sane, as the statements of a mad person before they become insane and after they come out of insanity are not valid. Moreover, their statements are not considered credible, nor are they legally binding. In terms

of age, scholars agree that a bequest made by a non-discerning child is not valid, as they are not legally responsible and also because they themselves are in need of a guardian. (Kasani, 1982: 334).

Regarding a discerning child, there is a difference of opinion among scholars, but the preferred view is that natural maturity or a decree from the testator is a condition for the validity of the bequest. Therefore, a bequest made by a discerning child, even if they are mature, is not valid, as they are still under the guardianship of their parents until they reach adulthood.

The third pillar is maturity (*rushd*): The Hanafi and Shafi'i schools of thought believe that a certain level of maturity is not a condition for a bequest. Therefore, even an unintelligent person can appoint their children as heirs, as foolishness does not negate legal capacity or other legal rulings, except in matters of property. The Maliki and Hanbali schools, on the other hand, consider the testator's soundness of mind a condition for the validity of the bequest. Therefore, an unintelligent father cannot appoint his children as heirs, and instead, a judge must supervise the matter. (Bahuti, 1402: 336).

The fourth pillar is justice (*'adl*): Scholars have differed on whether justice is a necessary condition for the testator. The Hanafi and Hanbali schools of thought believe that justice is not necessary for a bequest, so a bequest made by a corrupt person is valid. Imam Shafi'i, on the other hand, considers justice a condition for the validity of a bequest. Therefore, a corrupt person cannot be appointed as an heir. (Shirbini, 1415: 75).

The fifth pillar is guardianship (*wilayah*): It is a condition that the testator does not have anyone who has a greater right to guardianship than the appointed heir. Imam Shafi'i also adds the condition that the appointed heir must not be ineligible for guardianship, such as if they are not a rightful heir. Therefore, if a father appoints someone as an heir and there is a stronger claimant to guardianship, such as a grandparent, the bequest is null and void. Other scholars do not consider this a condition. (Shirbini, 1415: 76).

The sixth pillar is Islam: Scholars agree that being a Muslim is not a condition for a bequest. Therefore, a bequest made by a non-Muslim, such as a Harbi or a protected non-Muslim (*Dhimmi*), is valid as long as the testator is legally responsible, sane, and not prevented from disposing of their belongings. (Kasani, 1982: 235).

The seventh pillar is free will (*ikhtiyar*): The Hanafi, Maliki, Hanbali, and Shafi'i schools of thought agree that a bequest made under coercion (*mukrah*) is not valid, as there are many reasons why forcing someone to do something can negate the intended effects. (Kasani, 1982: 33).

The third pillar is bequest (*wasiyah*): A bequest is when a person entrusts their affairs to someone else to carry out their wishes after their death, such as settling debts (Ibn Qudamah, 1968: 574). Scholars have outlined conditions for a valid bequest, some of which are agreed

upon, while others are subject to differences of opinion. Some of these conditions include:

The first condition is unity of religion: Unity of religion between the testator and the appointed heir is a condition for a valid bequest, as the appointed heir has the same rights over the testator's property as an inheritor, and unity of religion is a condition for inheritance. Therefore, a Muslim's bequest to a Harbi or a protected non-Muslim is valid, but a bequest to a non-Muslim who is not from the People of the Book, or who is not just, is not valid. (Sarakhshi, 1406: 25). Additionally, a non-Muslim is not considered a reliable witness or just, according to Ibn Qudamah. (Ibn Qudamah, 1405: 143).

The fundamental principle is that a non-Muslim is not a legal guardian of a Muslim, therefore a bequest by a non-Muslim to Muslim children is not valid. However, a bequest by a protected non-Muslim to other protected non-Muslim children is valid, and a bequest by a protected non-Muslim to Harbi children is not valid. (Lajnah, 1980: 138).

The second pillar is sanity: This is a condition agreed upon by all scholars, because a person who is insane cannot make sound decisions. Even if someone like Majnun has made a decision, he is not capable of making a sound judgment within himself and is prevented from making decisions in other matters. (Shirbini, 1415: 117).

The third pillar is justice: The Hanafi, Maliki, and Hanbali schools of thought do not consider justice a condition for a valid bequest, as long as the appointed heir has good conduct and there is no fear of betrayal. (Sarakhshi, 1406: 25). The Shafi'i and Ahmad schools of thought, in one narration, consider justice a condition for a valid bequest, therefore a bequest by an immoral person is not valid. (Bahuti, 1402: 394).

The fourth pillar is gender: Scholars have two opinions regarding the validity of a bequest by a woman: 1- The majority of Hanafi, Maliki, Shafi'i, and Hanbali scholars believe that a bequest by a woman is valid. This is narrated by Sharh, Thawri, Awza'i, Hasan bin Salih, and Abu Thawr. The evidence for the majority opinion is the bequest of Caliph Umar (may Allah be pleased with him) to Hafsa (may Allah be pleased with her). Additionally, women are considered reliable witnesses, so a bequest made by a woman has the same validity as one made by a man. Even Ibn Mundhir reports the consensus on the absence of a condition of gender in a bequest. (Sarakhshi, 1406: 171).

2- A bequest by a woman is not valid because she cannot act as a judge, and therefore cannot make a bequest. (Shirbini, 1415: 75).

The fifth pillar is absence of enmity: Scholars consider the absence of enmity between the testator and the appointed heir a condition for a valid bequest, because an enemy is not trustworthy with regard to the testator and their property. Ibn Rushd states that if there is enmity between the testator and the appointed heir, the bequest is invalidated. In this regard, a bequest by a protected non-

Muslim, Jew, or Zoroastrian to a Muslim due to their enmity and hostility is permissible. Other conditions that are not agreed upon by all scholars include:

Firstly, maturity: Regarding the bequest made by a minor, if they are discerning or non-discerning, there is no difference in the permissibility of the bequest, as they do not have authority over themselves or others in the first place. However, if the minor is discerning, scholars differ on their authority:

1- According to the Hanafi, Maliki, and Shafi'i schools of thought, bequest to a child is not valid, as they are not worthy of guardianship and trust. Additionally, how can a child be a guardian, like a non-discerning child or a lunatic? (Ibn Abidin, 1966: 448).

2- According to a Hanbali jurist, a bequest to a discerning child is valid if they are over ten years old. This is based on analogy to appointing a guardian for a minor.

Thirdly, blindness: Most scholars consider the bequest by a blind person valid, as they are capable of bearing witness and have guardianship over their minor children in marriage. Therefore, their guardianship over their property is similar to that of a sighted person (Sharbini, 1415: 74). However, some scholars of the Shafi'i school of thought argue that bequest by a blind person is invalid because their buying and selling is based on speculation (Balkhi, 1980: 138). The majority view is that bequest by a blind person is permissible because the purpose of the bequest is achieved, and they appoint a representative when they are unable to carry out the task themselves.

Thirdly, sufficiency: The Maliki and Shafi'i schools of thought state that sufficiency is a condition for a valid bequest. If the appointed heir is incapable, their bequest is not valid because it contradicts the intended purpose of the bequest (Anvari, n.d.: 67).

The Hanafi and Hanbali schools of thought believe that a bequest by an incapable person is valid because they are trustworthy and have guardianship. The judge appoints another person to assist them in managing their affairs (Buhuti, 1402: 394). However, the majority view is that a bequest by an incapable person is not valid because the intended purpose of the bequest is not achieved, and if we appoint someone else to assist them, what is their duty?

In summary, it is not permissible to appoint minors, lunatics, sinners, traitors, sick, very old, or inexperienced individuals as heirs. Entrusting guardianship to untrustworthy individuals is not valid, and if their betrayal is discovered, they must be removed and compensate for any harm caused to those under their guardianship. Also, entrusting the bequest and guardianship of Muslim children to non-Muslims is not permissible because there is no guarantee of their loyalty, and their guardianship over Muslims is not valid.

The fourth pillar - Mawsibah: Mawsibah is a possessory bequest that has been entrusted to the appointed heir, and the heir must carry it out. The mawsibah must be something that can be represented, and

it is a condition for the mawsibah to be clearly identified so that the appointed heir can carry it out, just as a lawyer's powers are limited. Examples of mawsibah include fulfilling debts, distributing the bequest, taking care of minors, lunatics, and returning deposits to their owners, etc. (Daryabari, vol. b: 422).

The fifth pillar - Mawsibah against: Mawsibah against is a bequest made against a person who is incapable, whether they are young or old, insane, mentally deficient, or mentally ill. Maliki, Shafi'i, Abu Yusuf, and Muhammad of the Hanafi school of thought believe that a bequest can be made against a person who is incapable, whether they are young or old, insane, mentally deficient, or mentally ill, because they are unable to manage their own affairs and need someone to take care of their life affairs properly (Ansari, vol. b: 206).

Imam Abu Hanifa says that an adult and sane person, even if wasteful and corrupt, who reaches the age of 25, can engage in transactions, and is not considered incapable, unless they use their wealth in a way that is not in their best interest (Marghinani. b: 281).

V. METHODOLOGY

Qualitative research, when applied to content analysis with secondary data, involves the systematic examination and interpretation of non-numerical data, often textual, to understand underlying meanings, themes, and patterns. This type of research focuses on exploring the depth and complexity of phenomena, often in context-specific and nuanced ways.

Data Collection:

Primary Sources:

The Quran: The primary religious text of Islam, containing guidance and laws relevant to bequest and the appointment of executors.

Hadith (Prophet's Traditions): Authenticated sayings, actions, and approvals of Prophet Muhammad (peace be upon him) providing additional insights into the topic.

Secondary Sources:

Tafsir (Exegesis) Literature: Commentaries on the Quran to provide contextual understanding.

Fiqh (Jurisprudential) Works: Works of Islamic jurisprudence discussing the legal principles and rulings related to bequest and executorship.

Fatwas (Legal Opinions): Contemporary legal opinions issued by recognized Islamic scholars.

Data Analysis:

Categorization and Classification:

Analyzing the primary and secondary sources to categorize information on bequest, executors, and relevant rulings.

Comparative Analysis:

Comparing the interpretations and opinions of different scholars to identify commonalities and differences.

Ethical Considerations:

Adhering to Islamic ethical principles throughout the research process, ensuring respect for religious sensitivity and the sanctity of Islamic teachings.

VI. THE RESULTS OF THIS RESEARCH INCLUDE THE FOLLOWING

1- Bequest is the act of taking responsibility for managing the financial affairs of minors, lunatics, and mentally deficient individuals through delegation and appointment by a guardian or judge.

2- If someone intends to make a bequest but fails to do so, they should write it down and express it as soon as possible. Delaying this decision for more than one or two nights is not acceptable.

3- Bequests for paying off debts, redressing grievances, and taking care of young children and those who are vulnerable are recommended by the scholars of Islamic jurisprudence.

Requirements to ensure proper protection of the assets of minors.

VII. DISCUSSION

There is a debate among Islamic scholars regarding the obligation of making a bequest. Some scholars, including Zahri, Ata, and Imam Shafi'i, argue that making a bequest is obligatory regardless of the amount of wealth left behind. This view is also supported by Ishaq and Dawud Zahiri, and Ibn Jareer preferred this opinion.

However, Ibn Hazm argues that making a bequest is only obligatory for a person whose heirs are deprived of their inheritance due to disbelief or sin. He also believes that making a bequest is obligatory based on another reason, such as having a debt to be paid off or having a beneficiary who cannot receive their right through inheritance.

The majority of scholars argue that making a bequest is recommended but not obligatory. Their reasoning is that although making a bequest was initially obligatory in early Islam, it was later abrogated by verses on inheritance and the hadith of Amr bin Kharijah. However, it may become obligatory in certain circumstances, such as having a debt or having a beneficiary who cannot receive their right through inheritance.

VIII. CONCLUSION

The research conducted in this area yielded the following results:

1- Islam is a religion of humanity and compassion, and its top priority is the defense of the rights of the oppressed.

2- Incapacitated individuals, including children, lunatics, and mentally deficient people, are vulnerable and their assets must be protected at all times. Guardianship of minors is based on the principle of expediency and compassion.

3- Islamic governments and Muslims have a duty to be aware of the condition of incapacitated individuals and take responsibility for their affairs.

4- The first responsibility for protecting the assets of minors through bequest lies with the father. The appointed heir must meet the necessary

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