

## Analysis of the Distribution of Heirth Rights to Adopted Children with *Wajibah* Testament

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### Abstract

Adoption of a child is a legal act, because it must have legal consequences. Some of the legal consequences of adopting a child are regarding the position or status of the adopted child as heirs to the adoptive child's parents. Adopted children can not become heirs of adoptive parents, but adopted children have the right to become heirs if the adoptive parents submit a will to the child, this called testament *wajibah*. The researcher used library research and interview methods. By using this method, the researcher obtained the result that the adopted child could inherit with the determination that it was not more than 1/3 of the inheritance of the adoptive parents. Based on the provisions of Islamic law, adopted children cannot be appointed as heirs, because in the provisions of Islamic law, those who can be appointed as heirs are those who are related by blood to the heir. A will (testament) is different from a gift or what is called a "grant". The difference between a testament and a grant is that a will, even though it has been made when the testator is still alive, is only enforced after the testator has died, while the grant itself is valid when the grantor is still alive.

**Keywords:** adopted children; testament; *wajibah* testament.

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### Introduction

In the context of adoption, it can be an option for parents who do not have the next generation, namely children. Adoption of children is common in this country. Recognition of a child or who can be known using the word adoption of this child means not canceling the blood relationship with the child's biological parents. Because based on the Compilation of Islamic Law or *KHI* (*Kompilasi Hukum Islam* in Indonesian), it is certain that a child must come from the court and the method is not to hinder the ties of kinship between biological parents. Conflicts that often occur in terms of adopting a child are incidents in the process of litigation regarding whether or not to legally adopt the child, as well as the role of the adopted child to become the heir of the adoptive parent. (Ahmad K, 2008) In accordance with Article 1 of Law No.1 of 1974 concerning marriage, the definition of marriage is an inner and outer relationship between a man and a woman as husband and wife who get directions to make a family happy and always rely on the One Godhead.

*KHI* states that adopted children cannot be appointed as heirs of the adoptive parents because in the provisions of Islamic law the right to become heirs is someone who has blood ties to the heir. Eventhough the relationship between the two is only a social relationship and

mutual help. As a solution to this statement, based on the *KHI*, namely by giving a *wajibah* testament. A testament can be interpreted as a kind of order / mandate that is shown to other people. The definition of a testament itself is a basic thing, because basically wealth is something that is liked by every human being therefore there are many conflicts between heirs regarding the distribution of inheritance.

So with this matter, it is very necessary for the role of many parties to help and manage to decipher the conflicts that occur related to the distribution of inheritance. So with that we need a notarial institution. Having a notary deed can be a way out of conflicts related to inheritance distribution. (Setya, 2018)

An adopted child has the right to be appointed to be elected as heir, if the parents of the adopted child give a *wajibah* testament. If the child is distributed obligatory testament, therefore the adopted child gets a share. Based on Article 209 paragraph (2) *KHI* emphasizes that if an adopted child does not receive a testament, he will be given a *wajibah* testament of not more than one third of the inheritance of the adoptive parents. In Indonesia, there are three legal systems related to child adoption, namely civil law, customary law, and Islamic law.

Allah says that human beings are created in pairs, in Islam to live with our spouses it is prescribed in a legal marriage according to religion, with a legal marriage, what is common for people in pairs is to have a relationship to get a child. (Solikin, 2021) Based on the Civil Code there are no regulations regarding child adoption. The adoption of a child has its own regulation, namely *Staatsblad* 1917 Number 129. The *Staatsblad* explains that the adopted child has legal relation and is similar in position as a child born to the adoptive parents. (Rachmad, 1999)

Islamic inheritance law is intended for people who are Muslim. The division of inheritance in Islamic inheritance law on the basis of the Compilation of Islamic Law. (Gunawan, 2020)

- a. Customary inheritance law is intended for indigenous peoples who obey customary law. The division of inheritance for customary law is based on the kinship system. For example, such as patrilineal (*Batak*), matrilineal (*Minangkabau*), and parental (*Javanese*).
- b. The law of inheritance of *Burgerlijk Wetboek* that applies is based on civil law which is aimed at people who obey civil law. For example, such as non-Muslim communities.

Based on the *KHI* Article 171 letter c, the definition of an heir is a person who at the time of the person's death has a blood relationship or has a marriage relationship by the heir, adheres to the Islamic religion and is not restrained by law to become an heir. The thing that causes an heir not to get inherited wealth is something that prevents him based on the provisions of Islamic law, namely killing and slandering. Regarding the different religions between the heir and heirs based on the hadith of the Prophet Muhammad SAW from Usama bin Zaid. (Achmad, 2020)

Legal heirs based on law, religion and custom are: (Abdulkadir, 2014)

- a. Original heir (real)  
These heirs include biological children and the husband/wife of the heir. This heir is said to be original because it comes from the marriage of husband and wife and the next generation of children includes children outside of marriage, testament heirs, substitute heirs.
- b. Close heir

This heir expert means someone who is closely related by kinship with the heir whose composition is from biological parents, grandfather or grandmother, brother or sister and uncle or aunt (sourced in a straight line up and sideways).

c. Other heirs

The other heir is if the order between point a and point b does not exist, it is the state.

Based on the background described above, the author will describe some of the problems related to the background above as follows:

- a. How is the arrangement for the distribution of inheritance rights to adopted children through *wajibah* testaments based on KHI?
- b. What is the legal status and position of adopted children and biological children based on KHI?

## **Materials and Methods**

The research method uses a normative juridical approach (legal research). This approach is usually only a document study, which comes from sources from legal materials consisting of legislation or from court decisions, contracts or agreements, legal theories, and several conclusions from several experts. This normative research is often also called doctrinal legal research, or library research or document research. (Bambang, 1996) This normative juridical method is a research method on written laws and regulations or from various legal materials. Library research is another name for normative research because in this there are more secondary data in the library.

This study also uses an empirical approach, which is a type of approach that analyzes and studies law in society. This approach is a research that is used to tell the situation seen in the field as it is. (Suharsini, 2006) This approach is expected to provide a framework of evidence and the results will establish a reality.

## **Results and Discussion**

The results of the discussion in this study aim to respond to the formulation of the problem and several research questions, which show from the results of the study, how the research results can solve problems. In this discussion answer the various problems and objectives of this research. This discussion also includes how to regulate the distribution of inheritance rights to adopted children who have been given a *wajibah* testament and how the legal status and position of adopted children and biological children are based on *KHI*.

The definition of inheritance based on Islamic law is the law that manages the transfer of inheritance left by people who have died and causes conflict to the heirs. (Perangin, 2008) There are arrangements regarding the transfer of property rights, this property right is in the form of property from a person who has died to be handed over to the heirs. In other words, inheritance is called *fara'id* which means that certain parts are divided based on Islam for all those who are authorized to receive and what has been determined their share. (Saebani, 2012)

Adopting a child is one of the legal actions and thus actually has legal consequences. An example of the legal consequences of a child adoption conflict is regarding the status of an adopted child if he becomes the heir of his adoptive parents, this conflict often increases problems in a family (Mahmurodhi, 2021).

Based on the *KHI* regarding *wajibah* testaments, it will be done when someone has a relationship that arises from adoptive parents and adopted children. The provisions regarding the *wajibah* testament itself are contained in the *KHI* which explains that between adopted children and adoptive parents there is a bond of successive testament. This stipulation is contained in Article 209 paragraphs (1) and (2) namely: Paragraph (1) The inheritance of an

adopted child can be divided according to Articles 176 to 193, although for adoptive parents who do not obtain a *wajibah* testament, the adoptive parent will want to submit a *wajibah* testament not exceeds 1/3 of the inheritance of his adopted child. Paragraph (2) for an adopted child who has not received a testament, will receive a *wajibah* testament not exceeding one third of the inheritance of his adoptive parents.

*KHI* emphasizes the explanation that a testament is the offering of an asset derived from the wealth of the heir to another person or institution that takes place after the heir dies. (Religion department, 1998) If in the Civil Code an explanation of a will based on Article 875 namely a deed that stores a person's notification, will realize a person's wishes after someone dies and can be withdrawn by him.

Law number 23 of 2002 concerning Child Protection confirms the definition of an adopted child is a child whose eligibility has been changed to the family's ability from parents, legal guardians, and many parties who are obligated to care, learn, and raise adopted children into an area adoptive parents families based on court decisions. In the matter of realizing regulations regarding child adoption as well as laws related to child adoption, the Government determines the implementation of Child Adoption based on Law No. 54 of 2007 concerning the Implementation of Child Adoption.

With the passage of the Law regarding the Implementation of the Adoption of Children, it is hoped that the adoption process will be realized in harmony with the Law. It is hoped that in the end it can prevent the formation of conflicts in the society regarding the implementation of child adoption for example in the adoption process wrong steps are applied, inaccurate data, and others.

The stipulation regarding the *wajibah* testament is carried out using the legal instructions of a general testament namely the determination of the appropriate level to be exceeded before the distribution of inheritance is carried out as explained under Article 175 (1) *KHI* is that for inheritance from the heir. It is necessary to first cut the medical expenses and debts of the heir and then carry out the testament of the heir if the heir inherits a will or a *wajibah* testament. (Siska, 2015)

Regarding the status of the adopted child's position with the biological child based on inheritance, of course the adopted child's status will not change or will not break blood relation with the child's biological family. Because an adopted child only transfers the rights regarding care, education, and religion to the adoptive parents. As a result, the bond that exists between the adopted child and his biological parents regarding lineage remains the same and does not disappear. Then, regarding the status of the adopted child and biological child, it is legal according to the law because it is based on an application that has been submitted to the head of the competent religious court. So that the child has been determined as a legitimate child for the adoptive parents based on a court decision. The statement is contained in the decision No. 42/Pdt.P/2020/PA.BTL.

1. Arrangements for the distribution of inheritance rights to adopted children through *wajibah* testaments based on *KHI*.

Firstly the *wajibah* testament stipulated for adopted children and adoptive parents, similarly to Article 209 of the *KHI* which contains:

- (1) The distribution of the inheritance of adopted children is divided according to Articles 176 to 193 meanwhile regarding adoptive parents who have not after obtaining a testament, a *wajibah* testament will be distributed not less than one third regarding the inheritance of the adopted child.
- (2) For an adopted child who has not received a testament, it is not less than one third of the inheritance of his adoptive parents. But if there is a family who has agreed that if the adopted child gets all the inheritance, then it is allowed for the child to get all the

inheritance of both adoptive parents. The provisions regarding the *wajibah* testament itself are contained in the KHI which explains that between adopted children and both adoptive parents there is a bond of successive wills.

A *wajibah* testament can be defined as a gift that must be carried out for heirs or the most important family members of grandchildren who are prevented from getting an inheritance because the mother/father of the child died before his grandparents died and or had died together. According to the provisions of the inheritance law, he will be detained to get a share of the inheritance of his grandparents because of the heirs of the uncle/aunt of the grandson (Ahmad, 2006).

In the context of Islamic law, there is an obstacle regarding the adoption of a child by attributing his name to an adopted child, so with that there is no inheritance group bond and does not even change whether the law of *mahram* or not *muhrim* applies (Wahhab, 2016). Based on the provisions of *KHI*, it has submitted a *wajibah* testament for adopted children because in fact the relationship cannot be avoided by law, therefore Article 209 has changed the balance of rights and status between adopted children and adoptive parents in the inheritance bond. This change is evident in that the adopted child has the right to obtain one third of the assets that have been released by his adoptive parents according to the provisions of the *wajibah* testament. Likewise, adoptive parents are authorized to obtain one third of the assets that have been released by their adopted children according to the provisions of the *wajibah* testament. Based on considerations regarding the future of the adopted child but commensurate with the rules, namely not exceeding one third of the wealth of his adoptive parents (Misno, 2019). By so proving that it is impossible for an adopted child to obtain inheritance assets through inheritance, finally a *wajibah* testament is realized (Muhyar).

*KHI* has certainty regarding *wajibah* testaments, namely by providing a limit for someone who has the right to obtain a *wajibah* testament no more for adopted children and adoptive parents. The provisions based on Article 209 of the *KHI* have emphasized that assets regarding the inheritance of adopted children have their respective shares, sourced from Articles 176 to 193, namely for adoptive parents who do not receive a will, a *wajibah* testament shall be distributed not more than one third of the assets inherited by their adopted child. If the adopted child has not received a will, a *wajibah* testament will be distributed not more than a third of the inheritance of the two adoptive parents. By so proving that it is impossible for an adopted child to obtain inheritance assets through inheritance, finally a *wajibah* testament is realized.

## 2. Status and legal position of adopted children and biological children based on *KHI*

Regarding Islamic law, it has produced juridical consequences because there is no blood relationship, therefore between the two adoptive parents and the adopted child it is necessary to maintain a *mahram* even though there is no blood relation between the two, it is permissible to hold a marriage. (Aulia, 2015)

According to Islamic law, another name for child adoption is *tabbani*, which means taking a child. Some *fiqh* scholars agree and have explained that Islamic law does not recognize the existence of an institution regarding child adoption which has legal consequences similar to what has been done by the ignorant people, which has the meaning of releasing a person from the legal ties of his biological parents group and interfering with the person in the legal environment of his adoptive parents. (Mashur, 2018)

Regarding status and position based on inheritance, of course the status of adopted children does not change ties or blood relations with the biological family. Because an adopted child only transfers rights regarding custody, education, and religion to the parents who have adopted the child. So the relationship between the two related to kinship or blood does not change or remains the same. If it is related to the legal position of an adopted child and a biological child, it is legal according to the law, because it is based on an application

that has been submitted to the competent court. So that the court has determined the child as a legitimate child for his adoptive parents. This matter is also contained in the decision no. 42/Pdt.P/2020/PA.BTL.

### **Conclusion**

Based on the results of the research and discussion that has been described above, the author will outline some conclusions that can be drawn from the results of the research above, namely:

1. A *wajibah* testament can be defined as a gift that must be carried out for the heirs or the most important family members of grandchildren who are prevented from getting an inheritance because the mother/father of the child died before his grandparents died and had died together. *KHI* has certainty regarding *wajibah* testaments, namely by providing a limit for someone who has the right to obtain a *wajibah* testament, no more for adopted children and adoptive parents. The provisions based on Article 209 of the *KHI* have emphasized that assets regarding the inheritance of adopted children have their respective shares, sourced from Articles 176 to 193 namely for adoptive parents who do not receive a testaments, a *wajibah* testament shall be distributed not more than one third of the assets inherited by their adopted child. If the adopted child has not received a will, a *wajibah* testament will be distributed not more than a third of the inheritance of the two adoptive parents. The provisions regarding the *wajibah* testament itself are contained in the *KHI* which interprets between an adopted child and both adoptive parents a bond of succession is established.
2. Some *fiqh* scholars agree and have explained that Islamic law does not acknowledge the existence of an institution regarding child adoption which has legal consequences similar to what has been done by the ignorant people, which has the meaning of detaching a person from the legal ties of his biological parents group and interfering the person is in the legal environment of his adoptive parents. Regarding status and position based on inheritance of course the status of adopted children does not change ties or blood relations with the biological family. Because an adopted child only transfers rights regarding custody, education, and religion to the parents who have adopted the child. So the relationship between the two related to kinship or blood does not change or remains the same. If it is related to the legal position of an adopted child and a biological child, it is legal according to the law, because it is based on an application that has been submitted to the competent court. So that the court has determined the child as a legitimate child for his adoptive parents. This matter is also contained in the decision no. 42/Pdt.P/2020/PA.BTL.
3. Based on the conclusions obtained from the research above and from various sources, the researchers provide suggestions that can be submitted as input, namely: (1) If the parents want to adopt a child or adopt a child, it should be done legally through a court process, (2) It is necessary to pay attention to the community, namely during the process of adopting adopted children with biological children in Islam, they are not of the same position or status. Either it is in the form of giving lineage or descent and or in the form of distribution of inheritance.

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