



LEGAL REVIEW OF THE POSITION OF ADOPTED CHILDREN IN INHERITING INHERITANCE BASED ON THE COMPILATION OF ISLAMIC LAW (KHI) IN INDONESIA

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Article Info	Abstract
Article History Received : 2024-12-03 Revised: 2024-12-10 Published: 2025-01-15 Keywords: <i>Adopted Child, Mandatory Will, Compilation of Islamic Law, Islamic Inheritance</i>	<p>Inheritance of property for adopted children in the Indonesian legal system is still a matter of debate due to the existence of legal pluralism that includes Islamic inheritance law, customary inheritance law, and civil inheritance law. In Islamic law, adopted children do not have inheritance rights because they do not have a blood relationship with their adoptive parents. However, in the Compilation of Islamic Law (KHI), adopted children can obtain a portion of the inheritance of their adoptive parents through the mandatory will mechanism, as regulated in Article 209 of the KHI, with a maximum limit of 1/3 of the total inheritance.</p> <p>This study aims to analyze the legal status of adopted children in the Islamic inheritance system in Indonesia and the implementation of the concept of wajibah will in court decisions. The case study used is the Decision of the Palembang Religious Court Number 2142/Pdt.G/2017/PA.Plg and the Decision of the Palembang High Religious Court Number 35/Pdt.G/2018/PTA.Plg. The results of the study indicate that at the first level, the Palembang Religious Court determined the adopted child as the heir, which is contrary to Islamic law. However, at the appeal level, the Palembang High Religious Court revised the decision by determining the adopted child as the recipient of the wajibah will of 1/6 of the inheritance of his adoptive parents.</p> <p>The application of mandatory wills in this case reflects the flexibility of Islamic law in Indonesia in accommodating developing social practices. Mandatory wills are a legal solution that bridges the need for protection of adopted children while still respecting the rights of biological heirs. Therefore, the existence of mandatory wills in the Islamic inheritance law system in Indonesia is a form of legal reform that aims to create justice and balance in the distribution of inheritance.</p>

I. INTRODUCTION

Inheritance of property for adopted children in the Indonesian legal system is still a matter of debate and does not yet have a national legal unification. The pluralism of inheritance laws that apply includes inheritance law in the Civil Code (KUHPdata), customary inheritance law, and Islamic inheritance law. The diversity of these legal systems causes differences in the position of adopted children in inheriting the property left by their adoptive parents. In practice, there are various conditions faced by adopted children, ranging from controlling all the property left by their adoptive parents, not receiving any portion at all, to receiving a portion of the inheritance in the form of a mandatory will as regulated in the Compilation of Islamic Law (KHI). (Ramadan 2023)

The unclear status of adopted children in inheritance law often causes legal problems in society. Some adopted children who do not have official documents of adoption from the court

often lose their rights to the inheritance of their adoptive parents. On the other hand, there are also adopted children who receive a certain portion of the inheritance based on a family agreement or a judge's decision. In the context of Islamic law, adopted children do not have the same position as biological children who are automatically entitled to inheritance. However, in the development of Islamic law in Indonesia, adopted children can obtain rights through the mandatory will mechanism regulated in Article 209 of the KHI. (Tanjung and Tanjung 2022)

In the Indonesian legal system, judges have the authority to make legal discoveries (rechtvinding) in resolving inheritance disputes, as regulated in Article 5 of Law Number 48 of 2009 concerning Judicial Power. In the context of Islamic law, judges can conduct ijtihad in inheritance cases that do not have an explicit explanation in the Qur'an and Hadith. The concept of a mandatory will is one form of renewal of Islamic law in the field of inheritance which aims

to accommodate social practices that are developing in society.

The concept of a mandatory will in the KHI gives adopted children the right to receive a portion of the inheritance of their adoptive parents of up to 1/3. However, the application of this concept is still controversial, especially regarding the distribution of inheritance to other heirs. In some cases, granting a mandatory will to adopted children has caused conflict with biological heirs, who feel that their rights have been violated. Therefore, there needs to be an in-depth study of the application of mandatory wills so that it remains in accordance with the principles of justice and does not give rise to new disputes.

The phenomenon of child adoption in society is often carried out with various motives, whether for humanitarian reasons, economic factors, or as part of a particular culture. In many cases, adopted children become an inseparable part of their adoptive family and have a strong emotional bond. However, in terms of inheritance, adopted children often face legal obstacles because they are not blood relatives of their adoptive parents.(Suprayogi 2023)

In Indonesian positive law, adoption is regulated in various regulations, such as Law Number 23 of 2002 concerning Child Protection and Government Regulation Number 54 of 2007 concerning Adoption. These regulations emphasize that adoption must be carried out based on the best interests of the child and does not sever the blood relationship between the adopted child and his biological parents. Legal adoption must be determined by the court. Although in many regions adopted children are treated the same as biological children in terms of inheritance rights, legally they do not have automatic rights to the inheritance of their adoptive parents except through a mandatory grant or will mechanism.

The provisions in the KHI that stipulate that adopted children are entitled to a mandatory will of 1/3 of the inheritance of their adoptive parents are intended to provide legal protection to adopted children. However, in practice, the provision of this mandatory will often faces various challenges, especially in terms of implementation in religious courts. Many cases show that adopted children often do not receive a share of the inheritance due to rejection by other heirs.

From an Islamic legal perspective, adoption is permitted as long as it does not change the

lineage relationship and does not cause legal consequences that conflict with the principles of justice. Islam emphasizes the importance of child care (hadhonah) as a form of affection and social responsibility. However, in terms of inheritance, adopted children are not considered as heirs who are entitled to the inheritance of their adoptive parents. Therefore, granting a wajibah will to an adopted child is a progressive legal effort to ensure the welfare of the adopted child without having to interfere with the rights of other heirs.

In the progressive legal theory developed by Satjipto Rahardjo, the law must be dynamic and able to adapt to the needs of society. In the context of the inheritance of adopted children, the law must provide a fair solution for all parties. Therefore, the regulation of mandatory wills in the KHI is a form of renewal of Islamic law that aims to create social justice for adopted children who have become part of their adopted family.(Limbong, Siregar, and Yasid 2022)

On the other hand, the theory of distributive justice proposed by Aristotle is also relevant in this study. According to this theory, justice in the distribution of inheritance does not always have to be equal, but must consider the services and contributions of individuals in the family. In many cases, adopted children play an active role in caring for their adoptive parents until they die. Therefore, granting inheritance rights to adopted children through the mandatory will mechanism can be seen as a form of distributive justice.(Wulandari 2023)

In addition, the theory of legal protection is also an important basis in this study. In the context of child protection, the state has an obligation to provide legal certainty for adopted children so that they do not lose their rights to welfare. The concept of legal protection put forward by Philipus M. Hadjon emphasizes that the law must provide preventive and repressive protection for vulnerable individuals. In the case of adopted children, preventive protection can be carried out by ensuring that every adoption is officially recorded and obtains a valid legal determination. Meanwhile, repressive protection can be provided through a legal mechanism that allows adopted children to receive a share of the inheritance of their adoptive parents.

In the Indonesian legal system, adopted children can obtain rights to their adoptive parents' inheritance through a grant, will, or mandatory will mechanism. In civil law, a will grant is one way that can be used by adoptive parents to provide a portion of their assets to their

adopted children. Article 957 of the Civil Code stipulates that a will grant is a determination made by the testator to provide part of his assets to a certain party after he dies.

Although the KHI has regulated the mechanism of mandatory wills for adopted children, there are still many obstacles in its implementation. One of the main challenges is the lack of legal awareness among the public regarding the rights of adopted children in inheritance. Many cases show that adopted children do not receive a share of the inheritance due to a lack of understanding of mandatory wills. Therefore, wider socialization and legal education are needed for the public so that the mandatory will mechanism can be implemented effectively.

In addition, the role of judges in resolving inheritance disputes is also very important. In some cases, religious court judges still have different interpretations regarding the application of *wajibah* wills. Some judges tend to follow the principles of classical Islamic law that do not recognize inheritance rights for adopted children, while others are more progressive in applying the provisions of the KHI. Therefore, clearer guidelines are needed for judges in deciding inheritance cases involving adopted children.

Based on the various problems that have been described, this study aims to analyze the position of adopted children in Islamic inheritance law in Indonesia based on KHI. This study will evaluate the extent to which the implementation of *wajibah* wills can provide a fair solution for adopted children and identify the obstacles faced in its implementation. It is hoped that the results of this study can contribute to the development of Islamic inheritance law in Indonesia and offer solutions that are acceptable to the community.(Habiansyah et al. 2022)

II. RESEARCH METHODS

This study uses a normative legal method with a qualitative approach that focuses on the analysis of legal norms in legislation, legal doctrine, and court decisions related to the position of adopted children in inheriting inheritance based on the Compilation of Islamic Law (KHI).(Prasetyo 2015)The data used include primary and secondary data, obtained through literature studies, observations, and analysis of primary legal materials such as the 1945 Constitution, the Civil Code, the Child Protection Law, and various government regulations and MUI fatwas related

to adoption. In addition, this study also uses secondary and tertiary legal materials from journals, books, and legal dictionaries. Data collection techniques are carried out by examining various legal sources to understand the legal regulations regarding the status and inheritance rights of adopted children. Data analysis is carried out descriptively-analytically to organize and interpret the relationship between legal regulations and their application in judicial practice.(Yam 2022)

III. RESULTS AND DISCUSSION

A. Adoption in Positive Law in Indonesia

Adoption in positive law in Indonesia has a strong legal basis in various regulations. In the General Dictionary of the Indonesian Language, an adopted child is defined as someone else's child who is taken and legally legalized as one's own child.(Kids 2020). A similar definition is also found in Article 1 point 2 of Government Regulation Number 54 of 2007 concerning the Implementation of Child Adoption, which states that child adoption is a legal act that transfers a child from the sphere of authority of parents or guardians to the environment of the adoptive parents' family based on a court decision or ruling. Law Number 23 of 2002 concerning Child Protection also regulates the rights of adopted children who are transferred to their adoptive parents in the best interests of the child.

Historically, the practice of adoption in Indonesia has been going on for a long time with various purposes, such as continuing the lineage, compassion for abandoned children, and maintaining family harmony. During the colonial period, the Dutch East Indies Government issued *Staatsblad* 1917 Number 129 which regulated adoption for the Chinese community. In this regulation, only male children could be adopted, while the adoption of female children was declared null and void by law. After independence, regulations regarding adoption developed, starting with Law Number 62 of 1958 concerning Citizenship, which regulates the citizenship status of adopted children. Further regulations emerged through Law Number 4 of 1979 concerning Child Welfare, as well as Law Number 23 of 2002 which was updated by Law Number 35 of 2014 concerning Child Protection.(Ahmatnihar 2022)

The law of adoption in Indonesia is subject to several different legal systems, namely civil law, Islamic law, and customary law. In the Civil

Code (KUHPdata), adoption is not explicitly regulated, but in Staatsblad 1917 Number 129, adoption in the Chinese community is recognized. Changes occurred when the Decision of the Jakarta District Court Number 588/1963 G permitted the adoption of female children in civil law. In addition, Islamic law also regulates adoption based on the concept of tabbani, as stated in Surah Al-Ahzab verse 4, which emphasizes that adopted children should not be considered biological children in relation to lineage and inheritance. In the Compilation of Islamic Law (KHI), adoption may not sever the lineage relationship with their biological parents, but can be given rights through a mandatory will of a maximum of one third of the adoptive parents' inheritance.(Sartika et al., nd)

Customary law also has a concept of adoption that varies, depending on the traditions of each region. Adoption in customary law aims to continue the lineage, maintain family balance, and maintain family heritage. The principle in customary law prioritizes openness and agreement between the parties involved so that adoption can be accepted by the community. With the development of regulations, Government Regulation Number 54 of 2007 was issued to further regulate the procedures for adoption, including requirements for prospective adoptive parents who must have economic ability, be physically and mentally healthy, and have the same religion as the prospective adopted child.

The adoption procedure has also undergone significant changes. Staatsblad 1917 Number 129 requires adoption to be carried out through a notarial deed, while Supreme Court Circular Letter Number 6 of 1983 stipulates that adoption must go through a court with a single petition in the form of ratification of the adoption. Based on Government Regulation Number 54 of 2007, the adoption process involves an application to a social agency, a study of the suitability of prospective adoptive parents, a hearing to consider the adoption permit (PIPA), and a court ruling. After the court grants the application, the decision letter is submitted to the relevant parties, and the adoption is officially recognized.(Risawati et al. 2022)

In practice, there are several additional procedures that must be fulfilled by prospective adoptive parents, such as obtaining approval from the family, meeting age criteria, and ensuring that the adoption is carried out solely in the best interests of the child. Islamic law emphasizes that adoption must not remove the biological

relationship with the biological parents and cannot change the lineage of the adopted child. In addition, in the Compilation of Islamic Law Article 209, it is stated that adoptive parents can provide inheritance to the adopted child through the mandatory will mechanism.

The Constitutional Court has also tested the constitutionality of the requirement of religious similarity in child adoption. In Constitutional Court Decision No. 83/PUU-XX/2022, the Court rejected the request to remove the requirement of religious similarity between prospective adoptive parents and adopted children. This shows that the religious aspect is still an important consideration in child adoption law in Indonesia. Adoption in national law aims to provide legal protection for children, as stated in Article 39 of the Child Protection Law, which states that adoption must be based on the best interests of the child and must not sever blood ties with their biological parents.(Nawafitrid et al. 2024)

Overall, adoption in the Indonesian legal system has developed from the colonial period to the reform era. Although there are differences in approaches in civil, Islamic, and customary law, the main principle that applies is that adoption must be carried out for the welfare of the child and must not be used for other interests such as exploitation or child trafficking. Government Regulation Number 54 of 2007 provides clearer guidelines on the procedures for adoption, including requirements for prospective adoptive parents and procedures for submitting applications to the court. With increasingly developing regulations, it is hoped that adoption can be carried out more transparently and fairly, so that children's rights remain protected in the national legal system.

B. Implementation of Inheritance Rights of Adopted Children in the Perspective of the Compilation of Islamic Law in Indonesia (Case Study of Decision Number 2142/Pdt.G/2017/PA.Plg)

Heni Sriwahyuni Binti R. Sudianto and other parties as Plaintiffs filed a lawsuit against M. Ali Alias Ali Bin Subni and other parties as Defendants to the Palembang Religious Court with case register Number 2142/Pdt.G/2017/PA.Plg. The main point of this case is related to the inheritance rights of the deceased Mahdi Abdullah bin Abdullah (MA) and the deceased Halimah alias Halimatus Sa'diah binti Subni (HS), where a dispute occurred between the heirs of each heir.(Nawafitrid et al. 2024)

In the trial, it was revealed that HS and MA had adopted a daughter named Kiki Wahyuni (KW) since she was a baby without a court order or notarial deed. Nevertheless, the Panel of Judges determined KW as an adopted child who was entitled to receive a portion of the inheritance based on the concept of a mandatory will as regulated in Article 209 of the Compilation of Islamic Law (KHI), with a portion of 1/6 of HS's inheritance and 1/3 of MA's inheritance.

Against the decision of the Palembang PA, an appeal was made to the Palembang High Religious Court (PTA) with Decision Number 35/Pdt.G/2018/PTA.Plg. The Palembang PTA revised the decision of the Palembang PA by stipulating that KW received the inheritance not as an heir, but based on a mandatory will with a portion of 1/6 of HS's inheritance and 1/6 of MA's inheritance, in accordance with the provisions of Article 209 paragraph (2) of the KHI.

1. Adopted Children Are Not Heirs of Adoptive Parents

In the ruling number 4 and 7 of the Palembang PA Decision, KW was determined as the heir of HS and MA. However, based on Article 209 paragraph (1) of the KHI, adopted children are not included in the group of heirs, but can obtain a share through the mandatory will mechanism.

Article 209 paragraph (1) KHI: "For adopted children who do not receive a will, they are given a mandatory will of up to 1/3 of the inheritance of their adoptive parents."

In Islamic law, inheritance is based on blood relations or lineage. Therefore, adopted children do not automatically have inheritance rights. This is in line with Article 39 paragraph (2) of Law Number 23 of 2002 concerning Child Protection, which states that adoption does not sever the blood relationship between the adopted child and his biological parents. Thus, the determination of KW as an heir in the first instance decision is contrary to the principles of Islamic inheritance law.(Aisyah and Panjaitan 2024)

The Palembang PTA Panel of Judges at the appeal level revised this decision and determined that KW did not have the right to be an heir, but received rights through a mandatory will with a portion in accordance with Article 209 paragraph (2) of the KHI.(Nawafitrid et al. 2024)

Article 209 paragraph (2) KHI: "The provision of a mandatory will must not exceed 1/3 of the inheritance of the adoptive parents and must not harm the rights of the heirs."

Thus, the decision of the Palembang PTA is more in line with Islamic law and KHI, where KW still receives a share of the inheritance but in the form of a mandatory will.

2. Wajibah Will as a Legal Effort to Protect the Rights of Adopted Children

Mandatory will is a legal mechanism used to grant rights to adopted children to continue to receive a portion of the inheritance of their adoptive parents. This concept is based on Islamic legal thought that accommodates the customs of Indonesian society, which adopts many children in their social practices.

Article 171 letter h of the KHI: "An adopted child is a child whose responsibility for daily living, education costs and so on, is transferred from the original parents to the adoptive parents based on a court decision."

The Palembang PTA decision determined KW as the recipient of a mandatory will amounting to 1/6 of HS's assets and 1/6 of MA's assets.(Fitriani 2024) This decision is in line with several Supreme Court decisions which confirm that adopted children cannot be heirs, but can receive a portion of the inheritance through a mandatory will.(Sitompul 2015)

Supreme Court Decision of the Republic of Indonesia Number 368 K/AG/2011: "A person is not only considered an adopted child based on a court decision, but a child who is cared for, lives in the environment of the testator, and serves the testator can be considered an adopted child."

With this decision, the Panel of Judges of the Palembang PTA applies the principle of legal protection for adopted children while still respecting the principles of inheritance in Islam. A mandatory will also ensures that the rights of the heirs are not harmed, because the distribution of assets is carried out fairly and does not exceed the maximum limit of 1/3 of the inheritance.(Sitompul 2015)

Based on the analysis of the Palembang PA Decision Number 2142/Pdt.G/2017/PA.Plg and the Palembang PTA Decision Number 35/Pdt.G/2018/PTA.Plg, it can be concluded that:

1. Adopted children do not have the status of heirs in Islamic law, as stated in Article 209 of the KHI. Therefore, the decision of the Palembang PA which determined KW as an heir is not in line with the principles of Islamic law.
2. The concept of a mandatory will in the KHI provides legal protection for adopted

children, so that adopted children still receive a share of the inheritance of their adoptive parents without harming the rights of other heirs.

3. The Palembang PTA decision is more in accordance with Islamic law and the KHI, because it corrects the first level decision and determines KW as the recipient of the mandatory will, not as the heir.
4. Mandatory wills are a legal solution that accommodates the practice of adoption in Indonesia, while maintaining the principle of justice in the distribution of inheritance.

Thus, the decision of the Palembang PTA shows the progressive application of Islamic law while still paying attention to legal protection for adopted children and balancing the rights of other heirs.

IV. CONCLUSIONS AND RECOMMENDATIONS

Based on the analysis of the implementation of the inheritance rights of adopted children from the perspective of the Compilation of Islamic Law (KHI), it can be concluded that in Islamic law, adopted children do not have the status of heirs because they do not have a blood relationship with their adoptive parents. This is emphasized in Article 209 of the KHI which stipulates that adopted children can only obtain a portion of the inheritance of their adoptive parents through the mandatory will mechanism, with a maximum limit of 1/3 of the total inheritance. The decision of the Palembang Religious Court which initially determined adopted children as heirs was contrary to the principles of Islamic law, so that on appeal, the Palembang High Religious Court revised the decision by determining that the rights of adopted children were granted through the mandatory will mechanism.

The application of *wajibah* will in this case shows that Islamic law in Indonesia has flexibility in adapting to social developments, especially in the practice of adoption. This decision also reflects the application of progressive law that not only considers normative aspects in Islamic law, but also accommodates aspects of justice and legal protection for adopted children. Thus, the *wajibah* will mechanism is a legal solution that can maintain a balance between the rights of biological heirs and the rights of adopted children, so that it can create more comprehensive justice in the Islamic inheritance law system in Indonesia.

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