

## **The Values of Obligatory Testament Justice for Adopted Children in the Islamic Inheritance Law System**

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### **ABSTRACT**

The research objective is to analyze the nature of obligatory will in the inheritance system of Islamic law. The type of research conducted is normative legal research with qualitative descriptive analysis originating from primary, secondary and tertiary legal materials. The results of the research show that the essence of the obligatory will on adopted children in the Islamic legal inheritance system is to realize the benefit of daruriyat, hajiyat and tahsiniyat; distribution of justice for groups that are textually prevented from receiving inheritances that have contributed a lot to the heirs; provide economic protection to adopted children so that the child grows well; The legal construction of obligatory wills for adopted children in the Islamic inheritance law system is that the Koran and hadith do not specifically regulate obligatory wills for adopted children. The arrangement is through Article 209 paragraph (2) of the Compilation of Islamic Law. This article was born because it was based on efforts to grant property rights to adopted children who so far have not obtained inheritance rights from their adoptive parents, while adopted children in Indonesia have been institutionalized in a society like their own children. Adopted children have no place in Islamic law to acquire inheritance rights; The values of obligatory testament justice for adopted children in the Islamic inheritance law system are to realize equality for adopted children who cannot inherit because they are not in the class of heirs; balance or proportionality between rights and obligations as well as a balance between what is obtained with the needs and uses. The position of adopted children and adoptive parents is not always maximum to get 1/3 (one-third) of the inheritor's inheritance.

**Keywords:** Compulsory Will, Adopted Child; Islamic inheritance

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### **I. Introduction**

A will is a will of its own accord, but under certain circumstances or casuistically, the ruler or judge is a state official; has the authority to force or make obligatory wills, which are known as obligatory wills, to certain people under certain circumstances due to the loss of the element of endeavour for the giver of the will and the emergence of an element of obligation through legislation or decrees without depending on the willingness of the person making the will and the approval of the beneficiary. , and there are similarities with the provisions for the distribution of inheritance in the case of accepting men 2 (two) times the share of women

. fard) heirs do not get it because they are veiled by heirs with a higher degree. They are grandsons or both male and female offspring. In contrast to the intent of article 209 KHI, the obligatory will is addressed to adopted children. Even in the opinion of muta'kirin scholars, the impression of a mandatory will is still aimed at close relatives or those who have a bloodline relationship but do not get inheritance rights, not adopted children.<sup>[1]</sup>

Since ancient times, adoption has been carried out in different ways and with different motivations, in line with the legal system and legal feelings that live and develop in the community concerned. The Indonesian state, which does not yet have complete laws and regulations, has adopted children since ancient times. The definition of adoption is different from parenting. Adoption means an attempt to unite a child who he knows is someone else's child into his family. He is treated as a child in terms of love, provision of living, education and service in all his needs, not treated as his natural child or his biological child.

According to the provisions of the Shari'ah teachings, the existence of adopted children cannot be denied, but only to provide welfare and education children. Things that are not permitted are severing the blood relationship between the biological child and the biological parents so that all consequences of inheritance rights fall due to the absence of lineage. However, the adopted child should be given a will, but if there is no will then

the adopted child will receive a will of as much as 1/3 (one-third) of the inheritance of his adoptive parents. Thus, the adopted child is still a child and does not cause any affinity, which is one of the rights to inherit.

In Indonesia, the Compilation of Islamic Law is used as the basis for carrying out a mandatory will. To give part of the heir's inheritance to adopted children who are not given a will by the heir (adoptive parent), or adoptive parents who are not given a will by the heir (adopted child). Article 209 of the Compilation of Islamic Law stipulates that the inheritance of adopted children is divided based on Articles 176 to 193 mentioned above, while adoptive parents who do not receive a will are given a mandatory will of up to 1/3 of the adopted child's inheritance. Furthermore, adopted children who do not receive obligatory wills are at most 1/3 of the inheritance of their adoptive parents.

The existence of a mandatory will in the Compilation of Islamic Law is a bridge that covers the inequality that has occurred so far between adopted children and adoptive parents who do not inherit from each other, because indeed there is no provision for mutual inheritance between the two. Meanwhile, adopted children who have contributed greatly to caring for and caring for adoptive parents do not receive an inheritance when their adoptive parents pass away, or vice versa, unless the adoptive parents or adopted child have previously made a will. If there are no adopted children or adoptive parents, they will not receive any property. This has been felt unfair in society. Adopted children who have served for so long for the benefit of their adoptive parents or vice versa do not get a share of the property.<sup>[2]</sup>

The latest phenomenon in the granting of obligatory wills for adopted children or adoptive parents cannot be separated from the practice of the process of adopting children in Indonesian society which varies from one region to another. In Minangkabau, adoption is permitted, but this does not create an inheritance relationship between adopted parents and their adopted children. Meanwhile, in areas that adhere to a bilateral kinship system, such as in Java, Sulawesi, and parts of Kalimantan, adoption creates an inheritance relationship. Meanwhile, in the Javanese customary community, parents who do not have biological children, and adopted children who behave well towards adoptive parents will receive an inheritance from their parents. If the parents besides having biological children also have adopted children, then in inheritance the biological children will receive more from the adopted children, because the adopted children can still inherit from their biological parents. Javanese custom recognizes the principle of *, ngangsu Sums Wong Loro*, which means that an adopted child inherits from two sources, namely his biological parents and adoptive parents.

The granting of obligatory wills to adopted children often creates conflicts that lead to inheritance disputes which then continue to become cases in the Religious Courts. These disputes arise not infrequently due to the presence of adopted children in the heir's family, and the rejection by other heirs' families in determining the obligatory will.

One case was written by Nur Mujib that, which an heir had no children and both parents had died but had an adopted child and left several heirs consisting of the heir's siblings. The heir's siblings sued the heir's adopted child in the Religious Court against the heir's inheritance, because the heir's inheritance was controlled by the adopted child without wanting to share it with the heir's siblings. According to the heirs, because the heir has no parents and no biological children, they, as the heir's siblings become the heirs of the heir, while adopted children do not receive an inheritance but only receive a mandatory will.<sup>[3]</sup>

In the case above there were several mistakes in adopting the child. Firstly, the adoption of the child was not carried out before the trial court so in this case there is no written evidence regarding the adoption. The second heir, in making a birth certificate for his adopted child, deliberately removed the lineage of the adopted child from his biological parents by replacing the biological parents with the heir himself. The birth certificate of the adopted child should still include the names of his real biological parents, not the inheritor as his biological parents. The act of adopting a child like that of the heir is mostly done by the community. Adopt a child by eliminating the legal relationship between the adopted child and his biological parents by having the adopted child have a birth certificate made at Disdukcapil by listing the adoptive parents as their biological parents.

## **II. Research Methods**

This research is normative legal research that seeks to examine in concrete law (legal facts), by making the Supreme Court's decision a case. Therefore, the focus of this research is library research, namely research that uses literature as its main data source that aims to discover, develop, and test a science. This literature study is used to identify and map concepts and provisions regarding obligatory wills in Islamic law, customary law, and Civil Law (BW), about child adoption. This study also used a philosophical, conceptual and statutory approach, namely exploring philosophically, conceptual and legal norms governing the value of testamentary justice in adopted children.

### III. Discussion

#### A Construction of Obligatory Wills for Adopted Children in the Islamic Inheritance Law System

##### 1. Construction of Obligatory Wills in the Qur'an and Hadith

The scope of religion and Islamic teachings is supported and visible in its basic framework. What is important to understand is that Islam originates from revelation (Al'Quran) and sunnah (Al-Hadith). Islamic teachings originate from human ra'yu (mind) through ijthad. Islamic teachings are explanations of the religion of Islam. By following the systematic Imam, Islam, and Ikhsan originating from the Hadith of the Prophet Muhammad, the basic framework of the Islamic religion, as mentioned above, consists of (1) aqidah, (2) sharia, and (3) morals.<sup>[4]</sup>

The implication of a will that is understood by Islamic jurists is that the obligation of a will is only fulfilled if someone has made a will, if they do not have a will, then there is no need to make up a will so that the will is carried out because of the provisions mentioned in QS. Al-Baqarah (2): 180 it has been texted by QS. An-Nisa' (4): 11-12. Therefore, both parents and close relatives, both those who receive an inheritance and those who do not receive an inheritance after the revelation of the letter An-Nisa' (4): 11-12, have had their right to receive a will be closed.

According to Wahbah Zuhaili in the book of Tafsir Munir, QS Al Baqarah verse 180 as written above is a very strong legal basis regarding obligatory wills. Some scholars interpret the verse above, that a will to parents and relatives of origin is obligatory, until now this obligation remains and is enforced. So that the granting of a mandatory will to *walidayn* (both parents) and *aqrabin* (relatives) who get a share (receipt) of the inheritance, can be implemented and implemented.<sup>[5]</sup>

In interpreting this verse, some scholars think that wills to parents and relatives (*walidain* and *aqrabain*) who receive inheritance can be implemented and carried out. While some think that the provisions of the obligatory will cannot be applied and carried out because the provisions regarding the obligatory will in the verse have been written down.<sup>[6]</sup> According to Ibn Hazm, a will is obligatory for someone who leaves the property. The will command in Surah al-Baqarah verse 180 is obligatory and qat'i in nature. Sense that if a person does not leave a will, it is obligatory to issue part of his inheritance as a will that is considered appropriate for his relatives who do not receive an inheritance. Ibn Hazm did not explain the amount of property that must be bequeathed. This is left to the sincerity and consideration of each, as long as it is within the limit of one-third of the assets by the maximum limit of the will. Therefore, the determination of the amount of the obligatory will is left to the heirs or the person appointed to carry out the will within reasonable limits.<sup>[7]</sup>

Scholars who say there is no obligatory will in stating its invalidity can be categorized into several groups<sup>[8]</sup>:

- a. The group stated that the provisions of the obligatory will in paragraph 180 of sura al-Baqarah cannot be enforced because the verse has been scripted by inheritance verses. In his commentary, Ibnu Katsir said that when faraid verses were revealed, the testamentary verse was sanctioned. Al-Razi stated that opinions like this were mostly expressed by acknowledged mufasssir and fiqh experts. Likewise, this opinion was reinforced by scholars such as al-Hasan, Qatadah, Tawus, and Jabir bin Zayd.
- b. The group that says this verse is scripted by the hadith *lā waiyyata li waris*, is not inherited verses. According to the hadith of the Prophet SAW, this testament verse was erased by giving inheritance rights to each heir by Allah SWT.
- c. The group stated that this verse cannot be enforced because it has been sanctioned by the inheritance verses and hadiths of the Prophet Muhammad. This opinion, among others, was put forward by al-Baidlawi who stated that this verse was deleted by the inheritance verses and hadiths narrated by Tirmidhi
- d. The group which states that the provisions of the obligatory will have been sanctioned by ijma'. So the will obligations for parents and relatives have also been sanctioned by ijma'.

Obligatory wills are between wills and heirs. It is said so because the heir has never explicitly bequeathed to whom the inheritance will be given, but there are certain parties other than the heir who get some of his property. The problem of obligatory wills is never found in classical books. the problem of a new obligatory will exists in contemporary books after the appearance of the obligatory will regulations in the Egyptian Civil Code (*Qanun al-Madani*). In the Civil Code of Egypt, provisions for obligatory will have been established which are intended for grandchildren of children who have died before the heir, so they are not entitled to inheritance through the process of Islamic inheritance law because they are veiled by uncles [9]

Based on the verse above, it can be concluded that when a person dies and leaves wealth and money, he will inherit it. Among his heirs is an innocent child, he has not deserved to spend his wealth. Then the other siblings want to control the property, especially those who feel close to him by showing an abundance of affection and tenderness, even though they want to take possession of the property unjustly. Therefore wisdom is prescribed from a will, that is, a child who is still innocent has had an implementation of a will that loves him and can be trusted.<sup>[10]</sup>

While the second source of Law is the Hadith of the Prophet Muhammad, told by Sa'ad bin Abi Waqās that, when Sa'ad was sick the Apostle visited him who at that time was in the city of Mecca. Then, at that time Sa'ad expressed his desire to bequeath all his property. Hearing Sa'ad's statement, the Apostle forbade "don't", if I willed half of it the Apostle said "don't", then a third, the Apostle said "yes a third, and a third is already a lot. Indeed, when you leave those who are under your care in a state of wealth, it is more important than you leave them in a state of poverty, so begging people with stretched-out hands. Whatever you give in the form of a living, is counted as charity even if it's just a bribe that you give to your family. At the time Sa'ad expressed his wish to inherit, he only had one daughter as an heir.

If understood, this hadith has several meanings: the maximum for a will is 1/3 of the property, not more. The last sentence of this hadith "and you leave your children in sufficiency is better than leaving them in trouble" does not become an 'illat or legal reason to change the 1/3 provision to more than 1/3. Second, a maximum of 1/3 of the property is a clear stipulation, but it is permissible to give more than 1/3 with the sentence "and you leave your children in sufficiency is better than leaving them in trouble". This sentence can be understood as 'illat or the legal reason that a will may exceed 1/3 of the inheritance, if a person's inheritance is very large and by giving more than 1/3, the family is guaranteed, therefore giving a will of more than 1/3 is permissible [11]<sup>1</sup>

The legal basis for determining the obligatory will is a compromise of the opinions of the salaf and khalaf scholars, as explained by Fatchur Rahman<sup>[12]</sup>:

- 1) Regarding the obligation to bequeath relatives who do not receive the inheritance, it is taken from the opinions of the Fuqaha and hadith experts, including Said Ibn al Musayyah, Hasan al Basry, Tawus, Ahmad, Ishaq Ibn Rahawaih and Ibn Hazm.
- 2) The giving of part of the deceased's inheritance to his relatives who do not receive the inheritance which functions as a mandatory testament, if the deceased does not have a will is taken from the opinion of Ibn Hazm which is quoted from the Tabi'in Fuqaha and the opinion of Imam Ahmad.
- 3) The specialization of relatives who cannot receive the inheritance for their grandchildren and the limitation of receiving one-third of the inheritance is based on the opinion of Ibn Hazm and the principles of Shari'ah which say that the holder of authority has the authority to order permissible matters because he believes that it will bring public good. , if the ruler stipulates so then it must be obeyed.

## **2. Construction of Obligatory Will in Islamic Law Compilation**

In Islamic jurisprudence is generally based more on reason (ijtihad). On the one hand, it is intended to give a sense of justice to people close to the heir, who according to syar'i do not receive a share from the faraid route. But on the other hand, the four priests of the madhhab do not allow it if it will cause *harm* to the heirs, except on condition that if the heir leaves a large amount of property, the commentators have interpreted the word "*in taraka khairan* " in Surah Al-Baqarah (2): 180. This is also in line with a fragment of Surah An-Nisa' (4): 11 which means: "... (About) your parents and your children, you do not know which of them is closer (much) in benefit for you..."

This piece of the verse gives a general indication of among the heirs who do not get a share of the inheritance and also become pregnant the purpose of the possibility of the birth of ijthadi opportunities regarding the settlement of cases of inheritance related to parents and close relatives.

The existence of Article 209 of the KHI regarding obligatory wills is a notion of wills with Indonesian characteristics, where in the discourse of Islamic legal thought in Indonesia, thoughts have been raised about the need to foster Jurisprudence with Indonesian characteristics. From the existence of Article 209 of the KHI, it turns out that the KHI has created a new law that has so far been unknown in fiqh discourse.

The granting of a mandatory will is a middle way taken by the scholars composing the KHI which is harmonized through a compromise between very strict fiqh thinking and the reality of a society that not a few people in married life are not blessed with offspring which in the end they adopt children.

The proposition of Al-Qur'an letter Al-Baqarah verse 180 can be understood that the obligation to testify is by religious decree that must be carried out and not by a judge's decision, however, the Religious Courts are one of the executors of judicial power for justice-seeking people who are Muslim regarding cases certain civil cases regulated in Law Number 3 of 2006 concerning Religious Courts (Article 2), and in Article 11 it is stated that Judges are officials who carry out the duties of judicial power in certain fields of cases based on the principle of Islamic personality.

Rulers and judges cannot force someone to give a will. As for the obligation of a will for someone due to their negligence in fulfilling the rights of Allah SWT, such as not performing the pilgrimage, not paying zakat, violating the prohibitions on fasting and other things that have been required by the Shari'a itself, not by the authorities or by the Judge. In contrast to judges as state officials who have the power within one government, in this case, judges have the right and authority to force someone to give a will or to give a mandatory testament to a well-known a Wajwat Wajbah to certain people and under certain circumstances as well.

The obligation of a will for someone is to fulfil obligations related to assets that have not been carried out by the person who made the will while he was alive, such as zakat on assets that have not been paid, still have fasting debts that are obligatory upon him and so on. So the will is obligatory with religious provisions, not with a decision or decision of a judge.

Fatchur Rahman stated that this obligatory will arose because<sup>[13]</sup>:

- 1) the loss of the element of endeavour for the person making the will and the emergence of obligations through legislation or decrees without depending on the willingness of the person making the will and the approval of the person receiving the will, 2
- ) there is a resemblance to the provision for the distribution of inheritance in that men receive twice the share of women,
- 3) The people who are entitled to receive the obligatory will are the grandsons of both men and women, both male and female, whose parents died before or together with their grandparents.

The rules regarding wills are regulated in the Compilation of Islamic Law starting from Article 194 to Article 209. Articles 194 to 208, regulate wills in general that are common as those in classical fiqh as a legacy of Islamic jurists.

Article 209 contains obligatory wills for adoptive parents and adopted children. Article 209 paragraph (2) of the Compilation of Islamic Law, provides an explanation that adopted children can receive a mandatory will of up to 1/3 of the inheritance of their adoptive parents.

The existence of a mandatory will in the Compilation of Islamic Law is a bridge that covers the inequality that has occurred so far between adopted children and adoptive parents who do not inherit from each other because indeed there is no provision for mutual inheritance between the two. Meanwhile, adopted children who have contributed greatly to caring for and caring for adoptive parents do not receive an inheritance when their adoptive parents pass away, or vice versa, unless the adoptive parents or adopted child have previously made a will. If there are no adopted children or adoptive parents, they will not receive any property. This has been felt unfair in society. Adopted children who have served for so long for the benefit of adoptive parents or vice versa do not get a share of the property<sup>[14]</sup>

Article 209 KHI according to Habiburrahman, by the theory of *maslahah al-ummah* for adopted children who can get a share as a mandatory will from the inheritance with the reconstruction of thoughts as follows<sup>[15]</sup>:

1. Adopted children are allowed only to the extent of maintenance, protection, and education. It is forbidden to give status like biological children.
2. Adoptive children can get assets from adoptive parents based on the provisions of a will, the amount of which does not exceed one-third of the assets of their adoptive parents who have died. If the adoptive parents do not leave a will, they are entitled to a mandatory will.
3. The giver of the obligatory will may not prejudice the rights of the heirs.
4. If there is a dispute regarding the status of an adopted child, it must be proven by a court decision.
5. If there is a dispute regarding a will or obligatory will for an adopted child, then there must be a court decision stating that the adopted child has the right to an obligatory will, but there is no specific petition for declaring the right to an obligatory will because the provisions in KHI are imperative, it should refer to Al-The Koran requires heirs to leave a lot of wealth.

The construction of the legal basis for the obligatory will should not only provide justice and benefit to *the mushalahu* but must still adhere to the principle of the origin of the will, namely not to harm the heirs or forget justice and benefit for him, this is by the legal objectives contained in the hadith of the Prophet narrated by Sa'ad bin Abu Waqqash ra which limits the level of acquisition of wills to other than heirs not more than a third of the assets so that the heirs left behind are weak in terms of the economy or neglected to the point where they have to beg from other human beings.

Regarding the position of adopted children in inheritance law, the priests of the madzhab and the adherents of their opinion have not discussed much, their discussion revolves around the issue of the independence of the legal status of children who are picked up from the street, their assets and matters related to them.

Jumhur Ulama think that adopted children do not have a share of their parent's inheritance, this is because there is no single argument that shows it. Whereas regarding his wealth, Umar bin Khatab thought that the assets of the adopted child belonged to the Baitul Mal, so was the opinion of Imam Syafi'i in Al-Umm that: He (the adopted child) has an independent status and has no wala' rights over him, his property is inherited by the Muslims because they have the right to control every property that has no owner.<sup>[16]</sup>

The mastery of the property he intended was to be handed over to the Baitul Mal which was utilized for the benefit of the Muslims including the adopted child. Regarding the independence of laqith, the majority of Ulama agree on this as stated by Imam Ibn Hazm Adz-Dzahiri that an adopted child is independent in status and there is no wala' upon him, because all humans are all descendants of Adam and Eve, both of them are independent as well as their offspring. There is no difference of opinion regarding the independence of adopted

children unless there is a text that turns this around. ... this is the opinion of Abu Hanifah, Malik, Syafi'i and Daud...<sup>[17]</sup>

If the property of an adopted child is taken by the Baitul Mal, then what are the rights of the adopted child? in the Islamic government system, people who are abandoned or whose families are unknown will be provided for by the Baitul Mal including adopted children. So that the maintenance rights are in the hands of the Islamic government. Even if there is no government, Muslim individuals are allowed to use the adopted children's assets for their welfare. This has become an agreement among Fuqaha'.<sup>[18]</sup>

While based on the Jurisprudence of the Supreme Court Decision of the Republic of Indonesia Number 312 K/AG/2008 it also emphasized that in inheritance disputes the Supreme Court in its dictum determined a person as an adopted child and was given a share of 1/3 (one third) of the heir's inheritance using a mandatory will.

In the decision of the Malang Regency Religious Court on Case Number 0973/Pdt.P/2016/PA.Kab.Mlg. Regarding the application for the establishment of a mandatory will for adopted children, the judge has granted the request based on considerations that are by the provisions in the Compilation of Islamic Law (KHI) and because the parties have also fulfilled the requirements to obtain a mandatory will.

Basically, a will can change the law to obligatory, mubah, and makruh and even unlawful depending on the intent and purpose<sup>[19]</sup>.

1. It is obligatory if during his life he has not paid off his obligations to Allah SWT, for example paying kifarati, zakat or hajj or obligations towards humans, for example, debts and others.
2. Sunnah is bequeathing to relatives who do not receive an inheritance.
3. It is unlawful to make a will for matters prohibited by religion.
4. Makruh apabila gives wills regarding things that are hated by religion.
5. Mubah when making a will for relatives or sufficient other people. About obligatory wills or obligatory wills, it is a will that is considered to exist even though it does not exist for the sake of benefit.

This obligatory will is *Ijtihadiyyah*, because there is no authentic text, so what concerns the legal principles and conditions and the invalidation of obligatory wills is a field of legal study. The legal basis of obligatory wills is the word of Allah SWT in Surat Al-Baqarah verse 180, so scholars based on that verse think it is obligatory to make a will to relatives who are not entitled to inherit because they are veiled by other heirs.

#### **IV. Conclusion**

The legal construction of obligatory wills for adopted children in the Islamic inheritance law system is that the Qur'an and hadiths do not specifically regulate obligatory wills for adopted children, but only regulate wills in general. Its operational arrangement is through Pasal 209 paragraph (2) Compilation of Islamic Law which is Indonesian jurisprudence. This article was born because it is based on efforts to grant property rights to adopted children who have not obtained inheritance rights from their adoptive parents, while adopted children in Indonesia have been institutionalized in society as if they were their children. Adopted children have no place in Islamic law to acquire inheritance rights.

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