



Implementation of a Mandatory Will for Children Who Do Not Have Legality from a Religious Court

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Abstract

The inheritance distribution for adopted children without official legal recognition from the Religious Court often leads to disputes, particularly among legitimate heirs. This study aims to analyze and understand the implementation of inheritance processes for adopted children who have not obtained formal legal status. Referring to the Compilation of Islamic Law, this research employs a normative qualitative method with a case study approach to explore the application of the testamentary obligatory mechanism. The findings reveal that the testament obligatory mechanism can be used to allocate inheritance to adopted children who lack nasabiyah (bloodline) or sababiyah (marital ties) relationships. This obligatory bequest serves as a fair legal solution to accommodate the interests of adopted children while adhering to Islamic legal principles and minimizing potential disputes among legitimate heirs.

Keywords: Wasiat Wajibah, Adopted Children, Compilation of Islamic Law

A. Introduction

Adoption has become commonplace today with various underlying objectives, including not having children, wanting to help abandoned children, and so on. Children play an important role in the family because they are a source of happiness, motivation, and the next generation. Children can also strengthen emotional bonds in the family, provide a sense of togetherness and continuity of social and cultural values. The presence of children encourages parents to try to provide the best, both in terms of education, economy, and morals. The process of raising children, children become a medium for families to pass on traditions, norms, and hopes, which will be passed on to future generations. The status of a child in positive law in Indonesia is based on how the relationship with their parents is divided into three categories: the status of legitimate children (born from official marriage), the status of children outside of marriage, and the status of children who do not have blood ties with their parents, which are commonly called adopted children.

The adoption process has important legal implications. The status of the child will affect the rights held by the child. Children born from a legal marriage according to Indonesian law are considered legitimate children and receive legal guarantees regarding inheritance issues from their parents. Based on Article 832 of the Civil Code and Article 174 (1) legitimate heirs are those who have blood ties with the testator. For adopted children and their adoptive parents, there is no inheritance relationship because the two are not blood ties, so adopted children cannot have the right to inherit their adoptive parents' property.

Adopted children require legal requirements from the court to obtain legal recognition and protection. This is reinforced by Indonesian law such as the Child Protection Act (UUPA), Government Regulation (PP) on Procedures for Implementing Child Adoption and Compilation of Islamic Law (KHI), while the Civil Code does not clearly explain this.

Three important points to remember when adopting a child. First, the adopted child's *lineage* (descent) remains attributed to his/her legal parents, so that *the lineage status* does not transfer to the adopter. Second, mahram and guardianship, adopted children do not automatically become mahram for the adoptive parents' family, so that the limits of interaction and intimate parts must be considered, and guardianship in marriage still follows the biological guardian according to sharia provisions. Third, regarding the right to receive inheritance, because adopted children do not have blood ties with their adoptive parents, they do not have the right to inherit property from their adoptive parents. Because they are not a group entitled to receive inheritance, the Compilation of Islamic Law discusses the possibility of giving part of the property through a certain mechanism from the heir to a group that is not an heir, in this case the adopted child. This mechanism transfers the property through what is called a *wajibah* will (Article 209 (2) Compilation of Islamic Law (KHI)).

This Mandatory Will is found only in Islamic Law which provides a way for the granting of certain inheritance assets to parties who basically do not have the right to receive inheritance directly according to the rules of *inheritance* or because of marriage. This will is usually given to adopted

children or certain relatives outside the list of main heirs. The purpose of the mandatory will is to ensure social justice and welfare for individuals who have played a role or had an emotional relationship with the testator. Islamic law regulates the maximum amount of the grant of one-third to parties or groups who are not included as heirs, either in the form of a gift or mandatory will (Compilation of Islamic Law (KHI) Article 209 (2) and Article 210 (1)).

In a case presented to the author by Mr. Kesit Umar Pranoto, SH, MH from Koep & Co Law Office. The resource person mentioned that there was a dispute between the heirs' families. A married couple who were not blessed with children adopted a child whose legality determination process was not carried out, although according to custom, the process was witnessed by both parents of the couple and several witnesses. Until the time the husband died, the family, namely the deceased's older and younger siblings, demanded the inheritance rights left by the husband, namely two plots of land to be sold and the proceeds distributed to the legal heirs by lineage and ignoring the child adopted by the couple. The conflict occurred when the wife did not agree that her adopted child did not receive a share of the inheritance demanded by the deceased's family because for her the child had been adopted and cared for by the couple for a long time and already had a strong emotional bond. To resolve the lawsuit, mediation was carried out with the related parties.

This study will raise issues related to how to implement the transfer of assets based on positive law in Indonesia and the validity of a Mandatory Will for adopted children who do not yet have the legality of a determination by the Religious Court.

By using a qualitative normative legal method that refers to the legal regulations applicable in Indonesia and is relevant for analysis, and also using a *case approach*, namely a case study, and a *statue approach*, namely an approach to the law.

The case study approach is used by analyzing the problems found (Nazah, 2024). Interviews are conducted with religious court judges or related parties appointed as sources to obtain information and opinions on existing problems. This legal approach is carried out by interpreting regulations related to child protection, procedures for adoption, inheritance laws applied in Indonesia, such as the Compilation of Islamic Law (KHI), Law Number: 16 of 2019 which is a revision of Law Number: 1 of 1974 concerning Marriage. The goal is to understand how to apply laws and regulations appropriately based on existing provisions.

B. Discussion

The Position of Children in Positive Law and *Living Law* in Indonesia

The status of children in Indonesian positive law includes children with legitimate status (Article 250 of the Civil Code, and Article 42 of Law Number 1 of 1974, and Article 99 of the Compilation of Islamic Law), children with extramarital status (Article 43 of Law Number 1 of 1974, and Article 100 of the Compilation of Islamic Law) and adopted children (Article 171 (h) of the Compilation of Islamic Law, and Article 1 (9) of Law Number 35 of 2014 concerning amendments to Law Number 23 of 2002 concerning Child

Protection). There is another opinion from Adilah Hia from a western legal perspective, namely adulterous children and illegitimate children (Hia, 2016). According to Adira Hia, children born from a relationship where one or both parents are still married to another person are referred to as children of adultery. Meanwhile, children born from a relationship between a man and a woman who, according to western law, should be prohibited from marrying are referred to as illegitimate children.

A marriage carried out legally and religiously between a man and a woman produces a child who has the status of a legitimate child (Article 250 of the Civil Code, Article 42 of Law Number 1 of 1974 and Article 99 of the Compilation of Islamic Law). From a legal perspective, children from a legitimate marriage have a stronger position, especially regarding the rights granted, such as the right to inheritance and the right to use the name of their biological father officially. Including legitimate children according to Article 99 (2) of the Compilation of Islamic Law, children who come from the fertilization between a legitimate husband and wife, even though the fertilization process is carried out outside the wife's womb (such as through IVF), as long as the child is still born by the wife.

The legal perspective views the position of a child from the marital status of his/her parents. A legally recognized marriage will produce a child who is considered legitimate, with full civil rights to both parents. The Marriage Law and the Compilation of Islamic Law explain that a child born outside of an official marriage only has a legal relationship with his/her biological mother and the mother's family (Article 43 of Law

Number 1 of 1974 and Article 100 of the KHI). Relationships between men and women that are not legally or religiously recognized, such as living together without marriage (*kumpul kebo*) or non-marital relationships that are common in Western countries, can produce children out of wedlock. Parents in such a situation still have the right to recognize the child as part of their family (Syamsuddin & Azizah, 2021).

What is meant by adopted child based on the Compilation of Islamic Law, Article 171 (h) and Article 1 (9) of Law Number 35 of 2014 concerning amendments to Law Number 23 of 2002 concerning Child Protection is “a child whose daily care, care, education and other needs are transferred from his/her original legal parents to his/her adoptive parents based on a court decision.”

Every child, regardless of their birth status—whether born in marriage, out of wedlock, or adopted—has the right to legal protection. This right is part of the basic rights of children protected by law as referred to in Article. 52 (2) of Law Number: 39 of 1999 concerning Human Rights (HAM Law) states that “every child receives a guarantee from the state to guarantee every child legal protection from all forms of physical and mental violence, neglect, ill-treatment, and sexual harassment while being cared for by their parents or guardians, or other parties who have the responsibility to care for the child.” (Lestari, 2017 in Nazah, 2024).

Islamic Law Perspective in Child Adoption

From the perspective of Islamic and state law, adopted and foster children are generally subject to restrictions that are

not equal to those of legitimate children, even though they have been cared for by their adoptive parents from an early age .

The process of adopting a child in Islam does not mean giving the child the same status or position as a biological child. Islamic teachings do not allow such an equal status, as stated in Surah Al-Ahzab (33): 4-5 in the Quran, it is clearly stated that Allah SWT does not consider an adopted child as a biological child. An adopted child will remain connected to the lineage of his biological father, not his adoptive father.

Islamic law stipulates three important things that must be considered in regulating the issue of adopted children, namely (Faradz, 2009):

1. Adopted children remain connected in origin with their biological parents and their lineage (nasab) is not interrupted. Additionally, they are not allowed to use their adoptive father's name . This is based on Surah Al-Ahzab verse. 4 and 5, with the following translation: “ *Allah does not make your adopted children your (own) biological children... and call them (adopted children) using the names of their fathers....* ” This shows that Islam prohibits adopted children from using the surname or name of their adoptive father. This prohibition is based on the teachings of Islamic law which emphasizes the importance of maintaining one's original identity and lineage. It is feared that changing the biological father's name to the adoptive father's name could damage civil rights and the true nature of family relationships, as well as trigger potential conflicts regarding inheritance issues in the future.

2. Adopted children need to maintain mahram boundaries with their parents and siblings, because they are not blood relatives. In the view of sharia law, adopted children are still considered outsiders to members of the adopted family who have different genders. For example, an adopted son is not allowed to see the private parts of his mother or adopted sister who are not mahram. Likewise, an adopted daughter must wear the hijab in front of her father or adopted brother if she has reached puberty. This rule aims to maintain honor and prevent slander or relationships that are not permitted in Islam.
3. There is no inheritance between them. In Islamic law, the basic principle of inheritance requires that only families with a legitimate lineage or marriage relationship have automatic inheritance rights. Islam stipulates that children and adoptive parents are not considered family in law, so they do not have the right to inherit each other's property. This shows that even though a child is adopted, the relationship between the child and his biological parents is maintained, and inheritance rights continue to follow the biological lineage.

Adopted children also have rights based on Islamic law according to the writing of Enty Nasution, including (Nasution, 2017):

- a. Parenting/ *Hadhanah*

Caring for or looking after a child, *hadhanah* in terminology means looking after a child who is still

unable to take care of and manage himself.

The opinion of Sa'di Abu Habib quoted by Abiyazid and quoted by Enty Lafina Nasution "al hadhanah is interpreted as guardianship of a child to educate and manage all his affairs".

b. Guardianship

Article 1 paragraph 1 of the Compilation of Islamic Law explains that guardianship is a right given to a person to represent a child who does not yet have the legal capacity to carry out legal actions.

National Legal Perspective on Child Adoption

Adoption is the process of transferring responsibility from a parent or legal guardian for a child to another person who will care for and raise the child. This process is considered a legal act. Based on Government Regulation Number 54 of 2007 concerning the Child Adoption Process, adoption is a legal act that must be carried out in accordance with the procedures established by law in Indonesia, namely through a Court decision .

In current Indonesian law, the rules on adoption apply to all child adoption processes without distinguishing between groups or social classes. Indonesian law has specific provisions regarding the child adoption process, which are regulated in Government Regulation Number 54 of 2007 concerning the Implementation of Child Adoption. The issuance of this PP is an implementation of Law Number. 23 of 2002 concerning Child Protection.

Referring to government regulations, the act of adopting a child aims to ensure that the child's best needs and interests are met. (Article 2. PP on Adoption). From the PP, there are several main points that are relevant to this study, namely in terms of:

- a. It is a legal act. (Article 1 (2)).
- b. Through Court Ruling or Decision. (Article 1 (1))

The rights of adopted children refer to Article. 13 Law Number. 23 of 2002 concerning Child Protection, apart from getting their rights to grow and develop, they also get proper education, welfare and love:

1. Free from discrimination.
2. Protection from exploitation, both sexual and economic.
3. Protection from abandonment;
4. Protection from crime.
5. Protection from being treated unfairly; And,
6. Protection from other deviant acts.

Transfer of Property Rights to Adopted Children: Indonesian Positive Law Perspective

Death causes a person's property to change hands. In the Civil Code (KUHPer)/ Burgerlijk Wetboek (BW) and the Compilation of Islamic Law, state that inheritance can only occur after someone dies. Compilation of Islamic Law Article. 171 (b), explains that a person who has died or is declared dead based on a decision of the Religious Court, who leaves

heirs and inheritance are referred to as heirs and inheritance.

According to positive Indonesian law, the transfer of assets from the testator to the heirs or other parties including this adopted child is not done automatically through the inheritance mechanism. Unlike biological children who are a legitimate heir group based on the Civil Code (KUH Perdata) and the Compilation of Islamic Law (KHI) will directly receive their inheritance rights. Regarding the group who are not heirs, the law in Indonesia provides alternative solutions in 3 (three) ways , namely through:

- a. Inheritance
- b. Testamentary Grant
- c. Will

Inheritance due to death is regulated in the Civil Code in Articles 830 to 1130. Inheritance in this context is a mechanism for transferring rights and obligations from a person to an heir, which occurs because the testator dies. Based on Article 832 of the Civil Code, those who are entitled to be heirs are family members with blood relations, both children who are legally recognized and those born out of wedlock. In addition, husbands or wives who have lived together for a long time also have the right to inherit. Article 983 of the Civil Code states that objects that are granted by will must be handed over to the heirs in the same state of existence on the day the testator died.

It is determined in Islamic law that the legal heirs are divided into 2 (two) groups (Art. 174),

- a. According to blood relationship (Nasab)
- b. According to the marriage relationship

In Islamic inheritance law, it is also stated that inheritance is obtained by someone because of blood relations (*nasabiyah*), or marriage relations (*sababiyah*), and also because of guardianship. What is meant by guardianship here concerns the issue of freeing or emancipating a slave. Examined from the KHI and Fiqh, it is clear that any party who does not fulfill the elements of lineage or marriage has no right as a party receiving inheritance from the testator.

Article 957 of the Civil Code explains about testamentary grants, which are special provisions from someone who bequeaths property to another person. In this case, the testator gives or transfers goods or part of his property. This provision is determined when the prospective heir is still alive and will be carried out after the death of the testator. This concept allows someone to specifically determine a certain part of his assets that he wants to give to the recipient (legatee) outside the normal inheritance process. The meaning of a testamentary grant is not the same as a regular grant because a regular grant is given and applies while the testator is still alive. In a testamentary grant, the new grant can only be carried out after the testator dies, similar to a will, but focuses on specific goods or parts of the property, not all of it. The recipient of a testamentary grant is also not limited to legal heirs, allowing the testator to give property to other parties, such as adopted children, social institutions, or certain individuals. In the Compilation of Islamic Law Article. 171 (g) it is stated that “a grant is the voluntary giving of an

object without compensation from one person to another person who is still alive to be owned “.

In Indonesian positive law, adopted children do not receive inheritance rights like biological/legitimate children, because their status does not change their lineage or blood relationship with the biological family. However, the heir has a way to transfer part of his assets in accordance with Indonesian law to the adopted child by using a will . A *will* is a written statement from the heir about his wishes to give part of his assets to another party or institution, which will be carried out when the heir has died. This will *can* be given to anyone, including parties outside the family or legal heirs. Wills can be made privately or made in a notarial deed or a will approved by the court. In Islamic law, giving through a will is still limited to one-third of the assets so that the rights of the heirs are not disturbed. If the heir wants to give more than that limit, the heirs must agree for the will to be valid. This aims to maintain justice in the family and protect the rights of the heirs. Heirs have the right to reject a will if its value exceeds one-third of the total inheritance. If that happens, the will can be considered legally invalid.

Validity of Mandatory Wills for Adopted Children Who Do Not Yet Have Legal Status from the Religious Court

Will Etymologically, a will is a message or desire from a person about what he/she wants/desires after he/she dies. Article 875 of the Civil Code states that “a will *is* a deed containing a person’s statement about what he/she wants or desires to happen after he/she dies”. Compilation of Islamic

Law Article 171 (f) states that “a will is a gift of an object from the testator or testator to a person or institution that will be valid after the testator or testator has died”. The difference with a gift is that a *will* will only occur or be implemented when the testator *has* died, while a gift is given when the donor is still alive.

According to Islamic law, a will or will means giving ownership rights from one person to another. Thus, after the testator dies, the person who receives the will has the right to receive the inheritance left behind. Islamic legal experts refer to Surah Al-Baqarah in verse 180 as the basis for their views on wills which are interpreted as follows: “*It is obligatory for every pious believer to write a will for his parents and relatives.*”

In giving a will or gift, there are legal provisions that need to be considered, and in Islam, these provisions have been regulated with certainty. According to KHI and Fiqh, the assets transferred /given through a will *or* gift are a maximum of 1/3 of the assets owned (KHI Article 195 and Article 210). According to the views of scholars from the Syafi'i School, a person can give a will of a maximum of one third of the total assets he owns. If you want to give more than that, then there must be permission from the heirs.

A will cannot be given to heirs, unless the other heirs agree. This means that both gifts and wills are permitted and do not require the permission of the heirs as long as they do not violate the rights of the legal heirs. Fahmi Al Amruzi wrote that the concept of inheritance of assets in Islam is that distant relatives and non-heirs are the purpose of this will , this is based on the hadith of the Prophet Muhammad SAW from the book of Imam Bukhari as follows: “*Qutaibah and Abu*

Awanah have heard from Qatadah from Syahri ibn Hawsah from Abdirrahman Ibn Gonmin from Amru Ibn Khorijiyah, I heard the Prophet SAW say that in fact there is no will for heirs... “ HR. Bukhari (Al Amruzi, 2014).

The Civil Code does not specifically regulate the limitations for gifts and wills. However, it is important to note that neither gifts nor wills may reduce the absolute portion (*Legitime Portie*) which is the right of the legitimate heirs according to law (Civil Code Article 913 of the Civil Code).

Based on the description for people outside the legal heirs, including adopted children who do not have the right to inherit, but because there has been a strong bond of affection between the adopted child who has been cared for since childhood like his own child and vice versa when the adoptive parents have entered old age and the adopted child takes turns caring for both of them with affection until they die, from the perspective of justice in the Indonesian legal system, the transfer of inheritance from adoptive parents to adopted children as recipients of the inheritance can be done through a grant, inheritance, or will mechanism. In the Compilation of Islamic Law (KHI), this mechanism is known as a mandatory will. With the existence of these rules in the Indonesian legal system, it has also provided legal certainty regarding the mechanism for transferring inheritance from the heir to a group that is not an heir.

Although the rules regarding mandatory wills already exist, in practice there is still often the potential for disputes related to their implementation. The main problem is that many people still assume that adopted children are not entitled to receive inheritance because they are not related by

blood to the testator. They also understand that in Islamic law, adopted children cannot be used as a basis or reason to obtain inheritance rights. In addition, the adoption process does not legally change the status of adopted children to biological or legitimate children. This perception in society can trigger conflicts between official heirs and other parties who are not included in the heir group, such as adopted children.

The second problem of mandatory wills for adopted children will arise when there are still other heirs because this is related to the distribution of inheritance assets with the existence of this mandatory will potentially reduce the portion of inheritance receipts for other heirs, it could be because the child who is adopted with this mandatory will gets a third share while the legitimate heirs, such as parents, siblings of the testator will actually receive a smaller share of inheritance than the adopted child.

Legality of Mandatory Wills in Indonesian Law.

The provisions regarding mandatory wills are explained in Article 209 paragraph (2) of the Compilation of Islamic Law, which states that “adopted children who do not receive a will are given a mandatory will of a maximum of 1/3 of the inheritance of their adoptive parents”. The difference between a mandatory will and an ordinary will lies in its nature: a mandatory will must be given compulsorily to the party entitled to receive it, in contrast to an ordinary will which is freer in nature according to the wishes of the testator, which could be a party or group that does not meet the criteria of blood relations (*nasabiyah*), marriage relations (*sababiyah*).

The role and position of the Compilation of Islamic Law (KHI) in the Indonesian national legal system, although there are parties who state that its position is not equal to other legal products due to the process of its formation, however, according to Ismail Suni as quoted by Fahmi Al Amruzi, the Compilation of Islamic Law which is based on Presidential Instruction Number 1 of 1991, its legal basis is Article 4 (1) of the 1945 Constitution which states “the power of the President who holds the power of State Government”. So, both Presidential Decrees and Presidential Instructions have equal legal standing (Al Amruzi, 2014).

The application of mandatory wills in inheritance cases for non-heirs has also received legal force from court decisions from judges who consistently decide civil inheritance cases. The Supreme Court, through Jurisprudence Number 1/Yur/Ag/2018, stated “The granting of mandatory wills to persons other than adopted children and adoptive parents has been consistently applied by the Supreme Court since 1998 until at least 2016, namely to children and wives who are not Muslim”. Due to the consistent attitude of the Supreme Court, this has now become a jurisprudence in the institution.

The Compilation of Islamic Law does not explicitly stipulate whether a mandatory will must be made by the testator in written form or an authentic deed. However, in the Civil Code, one of the formal requirements for a will is a deed (Article 875) and if the letter is made informally, it should be submitted to a notary to provide legal force equivalent to an official deed (Article 932). The Supreme Court in 1998 through its decision Number: 368 K/Ag/1999 decided the

case of a non-Muslim wife of a deceased testator who did not leave a will still has the right to receive her mandatory will.

Thus, from the legal position of a mandatory will in the Compilation of Islamic Law and Supreme Court Jurisprudence, the use of a mandatory will to transfer the inheritance of the testator's inheritance to a party who is not an heir in this context is an adopted child has strong legal certainty, even though the testator did not make or leave a deed or letter of inheritance. However, to prevent disputes in the future and to provide justice to prospective recipients of his inheritance, it is highly recommended for prospective heirs during their lifetime to leave a will in the form of an authentic deed, which is intended for groups who have inheritance rights and for groups who are not heirs with a fair distribution and does not violate the provisions that have been regulated in Indonesian law. The inheritance deed can be authentic evidence for the Court if a dispute occurs in the future based on Article 1870 of the Civil Code, "An authentic deed is perfect evidence of what is contained therein ..." and according to Article 1866 of the Civil Code, written documents are the main type of evidence used in the evidentiary process in court.

Procedures for Adopting an Adopted Child Based on Indonesian Law.

Adoption is a legal process in which the responsibility and obligation for a child is transferred from the parent or legal guardian to another party. As a legal act, this means that the adoption must follow the rules of law in the process in order to be valid or legal.

The following are the steps for adopting a child for prospective adopted children and prospective adoptive parents who are Indonesian citizens, in accordance with Article 20 of Government Regulation Number: 54 concerning the Implementation of Child Adoption, namely:

- a. Submission to the Court to obtain a Court Order is requested after all requirements have been completed.
- b. The relevant agency will be sent a copy of the Child Adoption Decree.

After being adopted, the child's birth certificate needs to be processed in accordance with the provisions contained in Article 47 of Law Number: 23 of 2006 concerning the Requirements and Procedures for Population Registration and Civil Registry, which states:

1. After a court decision is made, the adoption of the child is recorded.
2. Reporting to the Implementing Agency must be reported no later than 30 (thirty) days after receipt of the court decision.
3. The Civil Registry Office will write a marginal note on the birth certificate register and birth certificate extract based on the report in point 2.

The court's decision in the adoption of a child is a legal procedure that must be carried out based on the positive legal system in Indonesia so that the adoption of the child is carried out legally and has legal certainty for the adopted child,

this is further strengthened by the Circular of the Supreme Court (SEMA) Number: 6 of 1983, which is an improvement of Circular Letter Number 2 of 1979. This circular letter emphasizes that to ensure legal certainty for adopted children, a decision from the Court is required.

In positive laws regarding the need for a court decision for child adoption, this is contained in:

- a. Circular Letter of the Supreme Court (SEMA) Number: 6 of 1983 Concerning Improvement of Circular Letter Number: 2 of 1979.
- b. Law Number: 35 of 2014 concerning amendments to Law Number 23 of 2002 concerning Child Protection, Article 1 (9) states that "An adopted child is a child whose daily care, maintenance, education and other needs are transferred from the original parents to the adoptive parents based on a court decision."
- c. Law Number: 23 of 2006 concerning Population Administration, Article 47 (1-3) which states that "Recording of child adoption is carried out based on the local court's decision which must be reported to the local Civil Registry Agency no later than 30 days after receiving a copy of the court order and the Agency will issue a marginal note on the register or Birth Certificate Extract".
- d. Government Regulation Number: 54 of 2007 Concerning the Implementation of Child Adoption, Article (1) which states "Child adoption requires a Court Decision or Ruling".

- e. Government Regulation Number: 54 of 2007 concerning the Implementation of Child Adoption, Article 9 (2) which states “Adoption of a child based on customary law may be subject to a request for a Court Decision or Ruling”.
- f. Government Regulation Number: 96 of 2018 Concerning the Requirements and Procedures for Population Registration and Civil Registration, Article 47 (1) which states “Recording of child adoption in the territory of Indonesia must fulfill the requirements of a copy of the court decision”.
- g. Compilation of Islamic Law, Article 171 (h) which states “Adopted children are children whose daily care, maintenance, education and other needs are transferred from their original parents to their adoptive parents based on a court decision.”

The court decision provides legal certainty for adopted children, ensuring that the adoption process is valid and can be used as evidence if a dispute arises regarding the adoption. This is in accordance with Article 1868 of the Civil Code, which states that an authentic deed is a document made in accordance with legal regulations or before an authorized public official. In addition, with this court decision, the child will receive rights, one of which is in terms of residency status. Obtaining residency status means that the child's right to receive services and protection from the state will not be hindered or obstructed.

Wills, both ordinary wills and mandatory wills according to the Civil Code and Islamic Law, can be given to anyone outside the heirs, including adopted children. This means that according to national law, the granting of a will, in this case a mandatory will to an adopted child, does not see whether the child has a court order or not, meaning that the mandatory will is still valid. Article 209 of the Compilation of Islamic Law stipulates that mandatory wills must be given to adopted children, as an effort to ensure their welfare (Setiawan, 2017).

Legal Issues of Children Without Court Decision.

Adopting a child is a legal process that must follow the procedures established by existing regulations. The aim is for all parties involved in the child adoption process to receive legal protection. Non-compliance with applicable laws has the potential to cause problems in the future.

The first problem is that adopted children do not receive proper legal protection. Legal protection in accordance with applicable legal regulations provides preventive (prevention) and repressive (coercive) protection (Mertokusumo quoted by Saraswati, 2022). Court decisions are a form of preventive legal protection if legal problems arise in the future, for example in terms of wills or gifts (Saraswati, 2022). Efforts for legal protection by making an authentic will by adoptive parents, such as in the case of a notary who cannot make a will to an adopted child who has not received a court decision, because the notary has an obligation to comply with existing positive law in accordance with the oath of office, code of ethics and the Notary Law.

problem, the process of adopting a child without complying with the applicable procedures can be considered an illegal or criminal act (Article 79 of Law Number: 23 of 2002 concerning Child Protection). This criminal act can be sentenced to 5 years in prison and/or a fine of a maximum of Rp. 100,000,000.

An example of a case like this can be seen in the Medan High Court Decision with Decision Number 246 / PID / 2014 / PT-MDN, with the verdict of the Simalungun District Court stating that the Defendant, who is an adoptive parent, is guilty and sentenced to six months in prison. This is because the convict adopted a child that is not in accordance with customary procedures or regulations in force in Indonesia, and this is a criminal act.

The third problem, children often cannot access their rights from the state related to population registration and administration, such as birth certificates and family cards. (Government Regulation Number: 96 of 2018 Requirements & Procedures for Population Registration & Civil Registration).

The absence of a will as an authentic document and an administrative document as evidence causes the child not to receive the legal certainty that is his/her right. From the first and third problems, the absence of a notary deed for a mandatory will and population documents and civil records which are authentic deeds and can be perfect evidence in court, causes the adopted child not to receive a guarantee of legal certainty for the child himself/herself if a dispute occurs in court (either district or religious court). According to Bachsan Mustafa as quoted by Ika Putri Pratiwi, positive state law can provide a guarantee of legal certainty for every resident according to the

theory of legal certainty (Pratiwi, 2016).

The absence of a notary's mandatory will can also hinder the fulfillment of a sense of justice for all parties, both from the heirs and from the group that is not included in the heirs, such as in the case example that is the background of this research, namely a husband and wife have 2 (two) children, 1 (one) is a legitimate child and 1 (one) adopted child. The adopted child does not get the legitimacy of his right to receive the inheritance left by his adoptive parents, even though between the two of them there has been a strong bond as legitimate parents and legitimate children.

Another example of a problem that arises related to inheritance for adopted children was expressed by Mr. Kesit Umar Pranoto, SH, MH from Koep & Co Law Office. The resource person mentioned that there was a case of dispute between the heirs' families. A married couple who were not blessed with children adopted a child whose legality determination process was not carried out, even though according to custom, the process was witnessed by both parents of the couple and several witnesses. Until when the husband died, the family, namely the deceased's older and younger siblings, demanded the inheritance rights left by the husband, namely two plots of land to be sold and the proceeds distributed to the legal heirs by lineage and ignoring the child adopted by the couple. The conflict occurred when the wife did not agree that her adopted child did not receive a share of the inheritance demanded by the deceased's family because for her the child had been adopted and cared for by the couple for a long time and already had a strong emotional bond. To resolve the lawsuit, mediation was carried out with the related parties.

The mediation process is carried out by providing reviews of the legal aspects of inheritance, one of which is regarding mandatory wills, namely there is a mechanism for someone who is not an heir to receive inheritance property where in fact this inheritance rule already exists, but the perception that has developed in society generally assumes that adopted children or foster children are not entitled to the inheritance of their adoptive parents.

The resource person mentioned that from a legal perspective, the status of the adopted child is quite strong because there are witnesses and other evidence that support it even though the child does not yet have legal legality. In addition, even though the child is not a legitimate heir and does not have inheritance rights, he can still receive inheritance property, namely through a mandatory will. With these legal reviews, the problem of inheritance can be resolved properly even though the resource person continues to emphasize the importance of the legal ratification process for adopted children in accordance with applicable legal corridors. This is of course so that the parties involved in the adoption of the child can protect their legal rights.

Based on the analysis above regarding the existing case, in order to mitigate the risk of legal uncertainty in the future, including the risk of lawsuits for violating the law, we suggest the following. First, parents will first take care of the court's decision, although the decision cannot be applied retroactively but can be used in the future. Second, after receiving a copy of the court decision, the data in the civil registry is processed and updated with reference to existing laws. Third, after all formal requirements have been fulfilled, a will is made which

in substance includes determining fair amounts for heirs and adopted children.

C. CONCLUSION

The transfer of assets from the heir to the non-heir group in this case from parents to their adopted children can be done through the mechanism of gifts and wills (in the KHI known as *wajibah* wills). Both methods are supported by a solid legal basis, especially with the decision of the Supreme Court stated in Jurisprudence Number: 1/Yur/Ag/2018. In this decision, the Supreme Court showed its consistency by issuing a similar decision. This is expected to be able to realize justice and legal certainty for both the heir and non-heir groups.

The granting of a mandatory will can be given to anyone for the non-inheritor group. In formal law, the granting of a will in this case a mandatory will to an adopted child does not see whether the child has a court order or not, meaning that the mandatory will is still valid, including whether the testator left a will or not. However, in Civil Procedure Law, an authentic deed is considered one of the strongest types of evidence, as regulated in Article 1870 of the Civil Code. The absence of a court order on the adoption of a child hinders obtaining residency rights, making an authentic deed and criminal violations due to violations of the procedures for adoption of a child based on the Law. To obtain legal certainty and mitigate the risk of legal problems in the future, the adoption process must be carried out by following the rules that have been regulated in the Indonesian legal system.

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