



THE EXISTANCE OF A MANDATORY WILL FOR ADOPTED CHILDREN IN FIQH AND ISLAMIC COMPILATION LAW

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Article Info

Received : 04/10/2021

Approved: 24/11/2021

DOI: 10.24815/sklj.v5i3.24177

Keywords:

Adopted children;

Mandatory;

Islamic Law.

Abstract

This research was conducted to observe the Islamic scholars' perception on last wills and die. Then for the group of Islamic scholars, who disagree giving legacy to adopted children, stated that the last will and testament in Islamic testaments for adopted children by using normative and empirical juridical methods. The results showed that the 'ulama' (islamic scholars) who stated the giving mandatory will to the adopted children do not contradict Islamic Law. This is justified in order to save them from unattended lives if the heir or parents jurisprudence is not solely for adopted children. In fact, wills and testament in Islamic Law distribute other than inheritance. The providing legacy to an adopted child is carried out because it relies on the principle of 'mashlahah mursalah' (something benefits other) which is to anticipate the ignorance to adopted child after his adoptive parent dies.

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I. INTRODUCTION

Al-Qur'an surah Al-Ahzab verses 37 to 40 tell about the marriage between the prophet's adopted son and a woman named Siti Zainab bint Jahsy who was the daughter of the Prophet's aunt. Rasulullah SAW's adopted son was named Abu Usamah or better known as Zaid Bin Haritsah.

Rasulullah SAW once proposed for Siti Zainab bint Jahsy, a Quraish noble woman to be married to Zaid bin Harithah, a former slave who was freed and taken by Rasulullah SAW as his adopted son. Then the proposal was rejected by Zainab and his brother because they did not come from the same level or equivalent between the two. Since the verse 36 of Surah Al-Ahzab should be delivered they had to accept it.

Zaid Bin Haritsah was married to Siti Zainab bint Jahsy even though the effect of displeasure from wife side. But the wisdom of this marriage is to cancel the customs of the Arabs who have anything to do with ancestry and glory. The custom is that they equate adopted children with biological children in terms of heredity and the law of inheritance distribution and are not allowed to marry the former wife of adopted children as they are prohibited from marrying their son-in-law to their biological child.

The household of Zaid bin Haritsah and Zainab bin Jahsy got problem, there was not ideal couple. So that their marriage could no longer be maintained and then they divorced. After the iddah (the waiting period after divorce) of Zainab bint Jahsy, Rasulullah SAW married Zainab who was the former wife of his adopted son. This is a comment of Allah SWT through the His messenger to eliminate the customs of the Arabs tribes who consider adopted children to be the same as biological children.

Islam recognizes that the status of adopted children cannot be equated with biological children. Adopted children cannot add the name of their adoptive parent after name. This is stated in Surah Al Ahzab verse 40 which means "Muhammad is not the father of a man among you, but he is the Messenger of Allah and the closing of the prophets. And Allah knows everything".

In the legal framework, Indonesia has other legal rules besides law, namely the Compilation of Islamic Laws (KHI). Compilation of Islamic Law is a Presidential Instruction issued in 1991 by President Soeharto. Compilation of Islamic Law regulates the law of marriage, law of inheritance and law of waqf (giving the property to needy in order to get Allah's will).

According to Islamic law, "a will is the donation of a right whose implementation is linked after the person concerned dies". Wasiat is part of one of the definitions of inheritance law. The issue of will is mentioned in CHAPTER V Article 194 to Article 209. Article 209 paragraph 2 mentions "for an adopted child who does not receive a will is given a mandatory will not exceeding 1/3 of the inheritance of his adoptive parents". This contradicts the mu'tabar fiqh where there is a certain part that the adopted child possesses wills and testament from the inheritance of his adoptive parents.

Theoretically, mandatory wills are defined as actions taken by the ruler or judge as state officials to force or give a mandatory will for the deceased person given to a certain person under certain circumstances.

Principally, a will is given to a certain person in a certain situation with justification by by the state. Bismar Siregar revealed that a mandatory will intend for heirs or relatives who do not receive a share of the inheritance, because of certain restriction in Islamic law. Susiana said adoption was a legal act to transfer rights under parent's controll, legal guardian or other person responsible for the care, education and raising of the child into the family environment of the adoptive parents based on court decisions and decisions.

Fiqh decides three causes of inheritance, namely: first, because of marriage. If one of the married couples die, then he leaves an inheritance to the living. This is in accordance with the decree of Allah SWT in Surah An-Nisa verse 12. Second, because of blood relations. They are what are called the true hereditary relationship. It is stated by Allah SWT in Surah Al-Ahzab verse 6 which means, "and people who have blood relations with each other have more rights (inheritance) in the book of Allah". Third, because of or bondage relations. The majority of Islamic scholars argue that

the inheritance problem in terms of liberating slaves has been in the naskh. Because it is considered the Jahiliyah system, however, it is permissible if it is in an emergency state.

Adoptive parents must be responsible for the care and education of their adopted children, with the aim of providing protection for the survival and welfare of their adopted children, adoptive parents must realize that the adopted child is not their heir, so that the adoptive parents can prepare a will or give a grant to their adopted child.

The Article 209 of KHI firmly regulates the position of adopted children and adoptive pare. In general, it can be said that the status of adopted children and adoptive parents regulated in the KHI remains the same as their original status, that is, only having a nasab relationship with their biological parents is the same as the opinion of jurisprudence scholars, therefore he only has an inheritance relationship with them. It can be seen that adoption does not change the status and position as well as the pre-existing lineage relationships.

The current positive law considers adopted children to their adoptive parents, so that they can inherit each other. Although this adoption does not change the status of the child, it does not reduce the value and meaning of adoption, especially this can be seen from KHI article 209 which clearly regulates that adoptive parents require to carry out mandatory wills for the prosperity of their adopted children as parents.

Even though the dalil naqli (argument taken from Al-Qur'an and prophet's saying) states if an adopted child does not possess right in adoptive parent inheritance, the adoptive parents are concretely to be responsible for him/her adopted child since his or her responsibility and emotionally bounded. This actually contradicts Islamic jurisprudence, which in Islam does not require giving a will from part of the property to the adopted child. Because a will is given not solely to the adopted child but to other than the heir.

Thus, the purpose of this study is to explain how the understanding of scholars who accept and reject mandatory wills for adopted children. Then what the scholars' basis on giving their arguments for consideration in accepting and rejecting the mandatory will for the adopted child.

II. RESEARCH METHOD

This study the authors used a normative juridical and empirical juridical research. Normative jurisprudence and empirical jurisprudence research are legal research on the application of (codification, law or contract) and also action on any particular legal event that occurs in society. Normative legal research is an approach that is carried out based primary data which examining theoretical matters concerning legal principles, legal conceptions, views and legal doctrines. Moreover, regulations and legal systems using secondary data involves principles, norms and legal rules officially stated in statutory regulations or other regulations.

III. RESULTS AND DISCUSSION

3.1. Construction of Will Law for Adopted Children According to Jurisprudence And Compilation of Islamic Law

3.1.1. The Islamic law and compilation of Islamic law wills for adopted children

The Islamic law said there is a Construction of Mandatory Legacy for Adopted Children considers that immature children and women are families who do not deserve to be heirs. Some of them even think that the widow of the deceased is a form of inheritance that can be inherited the dead.

Ibn Abi Talha quoted a narration of Ibn Abbas r.a explains:

كَانَا لِرَجُلٍ إِذَا مَاتَ وَتَرَكَ جَارِيَةً أَلْفَى عَلَيْهِ حَمِيمَهُ نُؤْبَهُ فَمَنْعَهَا النَّاسَ. فَإِنْ كَانَتْ جَمِيلَةً نَزَّوَجَهَا وَإِنْ كَانَتْ ذَمِيمَةً حَبَسَهَا حَتَّى تَمُوتَ فَيَرِثُهَا

Meaning: It is said that when a man dies leaving a woman (widow), his relative throws his clothes in front of the woman (for this action) then he forbade her to be married to someone else. If the woman is beautiful he continues to marry and if she is ugly, he will hold her until he dies and then she would be inheritance.

As proof that the tradition of inheriting the widow of the dead really happened during the time of the Jahiliya (a condition before Islamic law). It was the act of a man named Mihsham bin Abu Qais Al-Aslat, when his father died, he wanted to marry his father's widow, who was not taken care of and was not given any inheritance from his assets of his father. At the pressure of a new husband, the widow asked the Prophet for permission to marry Mihsham. At that time Rasulullah SAW could not give a spontaneous answer. Only a few moments later after Allah revealed verse 19 of Surah An-Nisa'

يَا أَيُّهَا الَّذِينَ آمَنُوا لَا يَحِلُّ لَكُمْ أَنْ تَرِثُوا النِّسَاءَ كَرْهًا

Meaning: you who believe, it is not lawful for you to inherit women (widows) by force.

Besides the blood relationship, there were two other conditions in which somebody namely:

a. Children adoption

The Prophet Muhammad SAW before being appointed as an Messenger once took an adopted son named Zaid bin Harithah, after he was freed from being a slave. Because the status of an adopted son at that time was identical to his own descendants, the friends called him not Zaid bin Harithah, but Zaid bin Muhammad.

According to Islamic scholars, it defines that a will is “an act that is done voluntarily in all circumstances. Because there is nothing in the Islamic law, a will that must be carried out by way of a judge's decision”. However, adoption institutions in earlier days of Islam had no longer existed after *surah Al-Ahzab* verses 4, 5 and 40 were revealed, which prohibited the use of the adoptive parents' name to adopted children's name as they addressed their own descendants.

وَمَا جَعَلْذُعِيَاءَ كُمْ أَبْنَاءَكُمْ ذَلِكَ قَوْلُكُمْ بِأَفْوَاهِكُمْ وَاللَّهُ يَقُولُ الْحَقَّ وَهُوَ يُحْدِثُ السَّيِّئَاتِ (٤) أَدْعُوهُمْ لِأَبَائِهِمْ هُوَ أَقْسَطُ عِنْدَ
اللَّهِ فَإِنْ لَمْ تَعْلَمُوا آبَاءَهُمْ فَاخْوَانَكُمْ فِي الدِّينِ وَمَا لِيكُمْ (٥)

Meaning: ... and God does not make your adopted children as your own biological children. These are just words in your mouth. Meanwhile, Allah tells the truth and shows the (correct) way. Call on them using the (real) names of their fathers. Since this is more just in the view of God. If you don't know the father, then (call them) as you address your brothers and sisters of the same religion and maula-maula (people under your responsibility).

مَا كَانَ مُحَمَّدٌ أَبَا أَحَدٍ مِنْ رِجَالِكُمْ وَلَكِنْ رَسُولَ اللَّهِ وَخَاتَمَ النَّبِيِّينَ

Meaning: Muhammad would not ever be the father of a man among you, but he is the Messenger of Allah and the closing of the Prophets.

b. Migration from Mecca to Medina and brotherhood between the Muhajirin and the Ansar

After receiving a revelation from Allah SWT to leave the city of Mecca, Rasulullah SAW together with a number of great friends left the city of Mecca for Medina. In the new city Rasulullah SAW and his fellows were greeted warmly by the people of Medina by being placed in their homes, provided with all their daily necessities, protected their souls from the pursuit of the Quraish Musyrikin and assisted in dealing with the enemies who attacked them.

For strengthen and preserve the brotherhood between the Muhajirin and the Anshar, Rasulullah SAW made this brotherly bond to get mutual inheritance each other. For example, if an immigrant dies in Medina and he has a guardian (heir) who follows the migration, then his inheritance will be inherited by his guardian who joined the migration. Meanwhile, his heirs who were reluctant to move to Medina had no right to inherit their inheritance at all. However, if the Muhajirin does not have a guardian who will emigrate to Medina, his inheritance can be inherited by his brother from the Anshar who becomes guardian because of his brotherhood ties.

3.1.2. Construction of Mandatory Will Law for Adopted Children According to Compilation of Islamic Law

By the middle of the 20th century the compulsory will had become a legal product in Egypt with the establishment of The Compulsory Will Law No. 71 of 1336 H /1946 A.D. This law granted inheritance to grandchildren and granddaughters whose fathers had died earlier than the heirs (datuk). Even the granddaughter of the male is given the right to the lowest descendants to the bottom, while the granddaughter of the woman is only one level. The legal product of granting this inheritance is called a compulsory will.

According to article 171 points (f) Compilation of Islamic Law that: a will is the giving of an object from the heir to another person or institution that applies after the heir dies.

The position of adopted children and adoptive parents in the law of inheritance according to khi is expressly stipulated in Article 209 khi. In general, it can be said that the status of adopted children and adoptive parents regulated in the KHI remains as its original status, namely only having a relationship with its biological parents is the same as the opinion of the scholars of jurisprudents, therefore he has only an inheritance relationship with them. It appears that the adoption of the child does not change the status and position and relationship of nasab that has existed before.

The concept of adoption is different from the concept of adoption as stipulated in today's evolving positive law which places adopted children with adoptive parents, so that they can inherit each other. Although this appointment does not change the status of the child, it does not reduce the value and meaning of the adoption of the child, especially this can be seen from KHI article 209 expressly regulates the adoptive parents obliged to perform mandatory wills for the benefit of the adopted child as the adoptive parents have received the burden of responsibility to take care of all the needs of their adopted child.

3.2. The view of Islamic Scholars who Accept and Reject the Mandatory Will of Adopted Children

The view of Islamic Scholars who Accept and Reject the Mandatory Will of Adopted Children Among the scholars, there are also different interpretations of the law that Allah has sent down regarding the distribution of inheritance. The interview result at Islamic Scholars Council of Pidie Regency where the research was conducted – The Islamic Scholars Council of Pidie Regency. The researcher conducted the research by asking a couple of core principles of the case. Some Islamic scholars who were divided into two groups, in which the groups had different opinions toward the problem.

The first grouped represented by Teungku Muhammad Amin, MA, he is a member of the Islamic Scholars Council of Pidie Regency. Teungku Muhammad Amin, MA argues that the mandatory will for adopted children can be accepted by human common sense because it is feared if the heir or adoptive parents of the child died, the child would be neglected. But practically, of course, it should follow the rules set by Allah SWT.

There are rules regarding property distribution in which heirs and inheritors must attack to the Prophet SAW hadits (saying). Once in a hadith narrated by Al Bukhari Muslim, the writers of “Sunan”, reported that from Sa’ad bin Abi Waqash r.a, he said: The Prophet SAW came to visit me, while I was in Mecca and he was reluctant to die in the place where he had abandoned to migrate from. He said Allah blessed Ibn Ghafra (sa'ad bin abi waqash) I said O Messenger of Allah, could I distribute the whole of my property? He said, no. What if allocate a third? Then he said, it’s alright. But a third is too much.

Islam encourages a Muslim to take care of the children of others who are poor or neglected. But it is not permissible to break the blood/lineage relationship and rights with the biological parents. This maintenance must be based solely on the recommendation of Allah SWT.

Then Teungku Muhammad Amin, MA also explained that what the government had done by publishing the Compilation of Islamic Laws, which contained the problem of mandatory wills for adopted children, was not against Islamic law. Because a will cannot be given to an heir. The basic law of wills is permissibility which is given to other than the heirs and not solely to the adopted child. Because in Islam the position of adopted children is no different from anyone other than the heir.

Furthermore, he also added that if an adoptive parent has left his assets to his adopted child, then the will becomes mandatory. If the will is not carried out then the other heirs will be sinful.

This opinion is in line with the opinion of the scholars who enforce the obligatory will. Some scholars argue that the will to walidain and aqrabain until now is still valid. Therefore, giving wills to those (who do not get the inheritance property) can also be done and implemented.

The scholars who performed the obligatory will include Abi Abdillah bin Umar al-Razi, Sayyid Quthb, Muhammad Abduh, Said bin Jabir, Rabi 'bin Anas, Qatadah, Muqatil bin Hayam, Ibn Abbas and al Hasan.

Some opinions that accept the validity of the will to adopted child strongly embrace sense of justice. Those with this opinion think that it is unfair if the adopted child does not get a part of the inheritance of the adoptive parents while the child has carried out his obligations to take care of the adoptive parents. This is in line with the concept of fairness put forward by A.A. Qadri, namely, the conception of justice has a deeper meaning than what Aristotle has put forward or the conceptions of law made by other figures. It penetrates into the deepest souls of humans, because everyone must act in the name of God as the starting place for everything including motivation and action.

Then the second group consisted of Abu Amin as the deputy chairman of the Islamic Scholars Council of Pidie Regency and Teungku Imran Abubakar as a member of the Islamic Scholars Council of Pidie Regency. They argue that wills do not exist in Islamic law. Abu Amin said that in the fiqh (Islamic law) book, inheritance and wills are not equated in one chapter of discussion. Furthermore, he also adhered to the verse about wills, the law about it has been eliminated and the verse about inheritance applied.

Furthermore, he explained that the wills were not only for adopted children. Because wills are addressed to people who are not heirs, not specifically for adopted children. He added that if a case regarding the wills of the adopted child were going to be judged and decided by the court, it could be accepted if only the case were decided by Islamic law (classical fiqh). However, Abu Amin also agreed on the limitation of the amount of assets to be donated, the part is only a third of the total possession.

The scholars who opposed the mandatory will giving to the adopted child was Ibn Umar bin Baidhawi. Scholars who state that there is no provision of obligatory will, in submitting our non-compliance, can be categorized into four groups, namely:

- a. The group that states that the provisions of the obligatory will in verse 180 of Surat Al-Baqarah can not be enforced because the verses have been confirmed by the verses of the heirs. They argue that when the verse of faraidh is revealed, the verse of the will is nasakh (its law is removed).
- b. The group that states that the provisions of the obligatory will in verse 180 of Surat Al-Baqarah can not be applied and implemented because the verse has been confirmed by the hadith la washiyyata li waritsin, not by the verses of the heirs.
- c. The group that states the obligatory will in verse 180 of Surat Al-Baqarah cannot be enforced because it has been confirmed by the verses of the heirs and hadith of the Prophet SAW. This opinion was put forward by al Baidhawi as follows "this state of law (will) occurred at the beginning of Islam. Then the verse has been confirmed by the verses of inheritance and hadith: innallaha qad a'tha kulla dzi haqqin haqqahu fala washiyyata li waritsin."
- d. The group that states that the provisions of the obligatory will in verse 180 of Surat Al-Baqarah can not be applied and implemented because the verse has been confirmed by ijma'.

Based on the description above, legal certainty is needed regarding the application of wills to adopted children. A definite legal answer is obtained regarding the problem of implementing wills against adopted children, whether the will is legally enforceable or is a sunnah. So that people are not ambiguous in interpreting the problem.

Sudikno Mertokusumo explained that legal certainty is a guarantee that the law must be carried out in a good manner. Legal certainty requires efforts to regulate law in legislation made by an authorized and authoritative party, so that the rules have a juridical aspect that can guarantee certainty that the law functions as a regulation that is obeyed.

The opinion of the scholars regarding the application of the mandatory will was actually had disagreement. For those who think the mandatory will can still be carried out until now, is guided by verse 180 of the Surat Al-Baqarah. Then for the scholars who say that verse 180 of Surat Al-Baqarah chapter has been denied, it is absolutely not permissible to apply the mandatory will to other heirs because the verse has been ruled by mawaris, hadith and ijma 'verses.

3.3. Implementation of Wills for Adopted Children at the Syar'iyah Court and in the Community.

3.3.1. Implementation of Wills for Adopted Children in the Court of Syar'iyah Sigli

The Syar'iyah Court in Sigli had received three cases regarding wills against adopted children, the last four years. Dedi Afrizal SHI, as the Junior Registrar of Laws explained that the three cases had not been decided by the judge. Both parties were successfully mediated by a mediator from the Syar'iyah Sigli Court. Dedi Afrizal also added that cases of wills against adopted children or in other words donating part of assets from adoptive parents to adopted children rarely occur. Because such cases can be resolved by kinship or by mediation at the village level which is carried out by village officials.

This is problem caused by the lack of awareness of the people of Pidie Regency to get a decision on hadhanah (raising children) rights for adoption of a child. In this way, when such the things happened, they will be resolved internally as family or mediated by the gampong (village) apparatus.

Drs. H. Juwaini, SH, MH as the head of the Court Syar'iyah Sigli explained that the implementation of the decision regarding the mandatory will or what is often referred to as a grant (giving inheritance to non-heirs) is in accordance with the recommendations in the Islamic Law Compilation. The Syar'iyah Court is guided by Article 209 Compilation of Islamic Laws paragraph (2), namely that adopted children who do not receive a will are given a mandatory will as much as one third of the inheritance of their adoptive parents. He said that the reasons chosen by the judges of the Syar'iyah Court were certainly clear and had proper considerations. One of the right reasons is so that the child's life would not neglected in the future. Besides, it is considered the bond and emotion between parent and child in adoption has created affection each other. It is natural that the judge decides to give a compulsory will to the adopted child if the adoptive parent dies.

The conclusion that can be drawn from the explanation put forward by Drs. H. Juwaini, SH, MH as the head of the Court Syar'iyah Sigli is the mandatory will case should be in accordance with the opinion of the scholars who allow compulsory wills to adopted children. This is due to the consideration of the condition for future life of the child after the death of his adoptive parents.

3.3.2. Implementation of Wills for Adopted Children in the Community

The problem of adoption is not new issue in Islam or in Indonesian government law. Adoption of children has occurred since the time of the Prophet Muhammad. Irwan as the Head of Islamic Community Guidance at the Office of the Ministry of Religion of Pidie Regency, said that adoption often occurs in Pidie Regency society. The majority of people who carry out the

children adoption was taken one of their own close relatives with the aim that the adopted child is still related by blood.

Then for some cases of adoptions could not avoid from disputes between fellow heirs in completing the distribution of inheritance whenever the adoptive parents of the adopted child died. The heirs cannot accept it if the adopted child gets inheritance. The heirs assume that the adopted child is not an heir who can inherit.

However, some adoptive parents took firm steps by making a will to their adopted child in the form of a grant from part of the assets they owned. This is so that the child is not neglected in the future. Contrary to this fact, some adoptive parents do not leave a little of their assets to give to their adopted children. This is what triggers a fight between the heirs when the adoptive parents die.

In connection with this, Fajri who is the head of the Office of Religious Affairs in Pidie District, Pidie Regency, expressed his opinion about giving an obligatory will to adopted children. He reasoned that many people understand religion, but the knowledge of religion that he gets is used rigidly without affixing the *mashlahah murshalah* (something benefits other) in it. Adoptive parents who do not make a will to their adopted children often caused the misunderstandings between fellow heirs.

Fajri added, if it is viewed from the Islamic principles concerning the *Mashlahah murshalah*, the will becomes mandatory. Because the basis of the principle of the *Mashlahah murshalah* is the benefit for the people. Give a little property to the adopted child will be beneficial for the child to ensure his survival.

According to Imam Al-Syatibi, human benefit will be realized if the five main elements of human life can be realized and maintained i.e. religion or belief, soul, reason, descendants and property. As explained earlier, al-Syatibi divides the order and scale of *maslahat* priorities into three ranking sequences, namely *úarúriyyāh*, *hajiyāt*, and *tahsiniyāt*.

Therefore, giving a little property to adopted children is part of one of the goals of *maqashid Syar'iyah*, namely to protect the soul. By making a will to the adopted child, he can get a little of the inheritance of his adoptive parents, his survival will be maintained.

IV. CONCLUSION

The legacy of the adopted child has occurred since the time of the Prophet Muhammad SAW. In the early days of Islam, the cause of adoption and the cause of the migration from Mecca to Medina and the brotherhood between the Muhajirin and the Ansar. The inheritance caused by the children adoption such as Zaid bin Harithah who was become the Prophet's adopted son. Because the status of an adopted son at that time was identical to his own descendants, the friends did not address him as Zaid bin Harithah, but Zaid bin Muhammad. This also ended after the surah Al Ahzab verses 4, 5 and

40 were revealed, which contained the prohibition of using adopted child's name such as the name of their own descendants. After the verse revealed, the inheritance of the adopted child has been erased by Allah SWT. Similar too the will contained in the Islamic Law Compilation, Article 209 states generally that the status of an adopted child cannot change the blood relationship with the biological parents. Therefore, between adopted children and adoptive parents only creates an inheritance relationship.

There are two groups of scholars who disagree in understanding the problem of wills for adopted children. The first group is the group that accepts or allows compulsory wills to adopted children. This group of scholars adheres to the Word of Allah in the surah Al Baqarah verse 180, that the verse is not fully revealed by the verses regarding inheritance, but only partially proclaimed that it is limited to walidain and aqrabain. It is different from the second group. The group who oppose the mandatory will adopted children, they hold the verses of the Al Quran surah Al Ahzab verses 4,5 and 40 that these verses have retracted the law contained in verse 180 of the surah Al Baqarah regarding wills.

The implementation of wills to the adopted children at the Syar'iyah Court and in society are also different. The judges of the Syar'iyah Court adhere to the points of law contained in the Islamic Law Compilation, namely mandatory. This is reasonable for adopted children to obtain one third of the assets from adoptive parents after they die. This is intended so that the adopted child's life would not be neglected after the death of his adoptive parents. There are two kinds of implementation in society. Some people have the self-awareness to pass some of their assets to their adopted children for the survival of the adopted children. Some of the second group thought that the will was not obligatory and a will was made to donate a small amount of assets to the adopted child. The group also understands that giving a small amount of inheritance is permissible.

BIBLIOGRAPHY

1. Books

- Ahmad, Beni Sabaeni. Dewi, M dan Ai. (2016). Perbandingan Hukum Perdata. Bandung: CV Pustaka Setia.
- Shiddieqy, Ash., Teungku Muhammad Hasbi, T. (2010). Fikih Mawariş. Semarang: Pustaka Rizki Putri.
- Usman, Suparman and Yusuf Somawinata. (2011). Fiqih Mawaris Hukum Kewarisan Islam, Jakarta Selatan: Gaya Media Pratama Jakarta

2. Journals

- Abubakar, M. (2019). Hak Mengajukan Gugatan dalam Sengketa Lingkungan Hidup. Kanun Jurnal Ilmu Hukum, 21(1), 93-108.
- Kurniawan, Ade Akbar. (2018). Wasiat Terhadap Harta Peninggalan Untuk Anak Angkat Dipandang Dari Hukum Islam. Al-Imarah, Vol 3, No 2, 179.
- Setiawan, Eko. (2017). Penerapan Wasiat Wajibah Menurut Kompilasi Hukum Islam (KHI) Dalam Kajian Normatif Yuridis. Muslim Heritage, Vol 1 No.2, 49.
- Susiana. (2011). Hak Anak Angkat Terhadap Harta Peninggalan Orang Tua Angkat Menurut Hukum Islam. Kanun, No 55, 141.
- Syafi'i. (2017). Wasiat Wajibah Dalam Kewarisan Islam di Indonesia. Misykat, Vol 2, No. 2, 119.
- Erniwati. (2018). Wasiat Wajibah dalam Perspektif Hukum Islam. Jurnal Mizani, Vol. 5, No. 1.
- Manan, Abdul, "Beberapa Masalah Hukum tentang Wasiat dan Permasalahannya Dalam Konteks Kewenangan Peradilan Agama", Mimbar Hukum Aktualisasi Hukum Islam, No. 38, (Tahun IX, 1998)