

# REVIEW LEGAL MANDATORY WILL FOR ADOPTED CHILDREN ACCORDING TO ISLAMIC INHERITANCE LAW

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This study aims to determine and analyze the legal position of the mandatory will of adopted children in terms of Islamic law and the legal consequences of the mandatory will of adopted children according to Islamic law. This research method is a normative juridical method. Primary data were obtained from the Al - Quran and Hadith, Law of the Republic of Indonesia No. 23 of 2002 concerning Child Protection, Law of the Republic of Indonesia No. 54 of 2007 concerning the Implementation of Child Adoption, Law of the Republic of Indonesia No. 3 of 2006 concerning Religious Courts and Presidential Instruction No. 1 of 1991 concerning the Compilation of Islamic Law. The technique of collecting legal materials in writing is through literature study, namely the technique of collecting data by reading, studying and reviewing research results, journals and laws and regulations that are closely related to the main problems in this study. The results of this study are in the Compilation of Islamic Law (KHI) adopted children do not become heirs of their adoptive parents, only get a will but adopted children receive a mandatory will, namely a will whose implementation is not influenced or does not depend on the heir and the legal consequence is that there are still disparities in mandatory will for adopted children. Recommendations for research on child adoption so that the community does it in a recorded manner with the Court's decision in order to avoid disputes in the future and the government must immediately realize a Child Adoption Law that is complete and in line with the interests of the Indonesian people in relation to inheritance for adopted children.

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## REVIEW LEGAL MANDATORY WILL FOR ADOPTED CHILDREN ACCORDING TO ISLAMIC INHERITANCE LAW

### INTRODUCTION

unitary state of the Republic of Indonesia has diverse ethnicity , religion, culture and language . Diversity the potential cause difference in the society . In order to overcome problem the required existence regulation law that is capable arrange all over life society to realize a sense of justice . Function law No just as tool controller social but more from that . [1]One of the form the laws applied in Indonesia for arrange connection law between public is Islamic Law. Islamic Law is law that originates from from the Al-Quran and Hadith which regulate all action law for communities that adhere to Islam, including is about Marriage and inheritance . Marriage Law is one of part from Family Law . One of the wisdoms of marriage is to form a peaceful , loving and compassionate family . [ 2]In general partner husband wife really craves existence descendants that is child who is results from marriage which will be later will become successor family . However the reality No all partner husband wife gifted a child , if a family No have a child so For complete element family That or For continue descendants can done a action law that is with lift child or adopt child . Implementation of the adoption process child result in provision law new , where if happen a the

disaster that resulted in a death from parents lift said , [3] so will happen a change social about distribution treasure legacy left by parents lift / child lift That itself . Islamic Inheritance Law is the law that governs all something concerning with transition rights and or obligation on treasure riches somebody after He passed away to expert his heirs . With thus , in law inheritance There is three element mutually exclusive subject related that is heir , property relics , and experts inheritance . [4]One of the draft update law Islamic heritage in Compilation of Islamic Law (KHI) is given to him right a child lift that gets part from treasure parental inheritance his lift that has been passed away. [5] Rule This listed in Article 209 paragraph (1) and paragraph (2) of the Compilation of Islamic Law which explains that:Property legacy child lift shared based on Article 176 to with the 193 above , while towards parents lift that does not accept will mandatory given will mandatory as much as 1/3 of treasure inheritance child lift it. Against child lift that does not accept will given will mandatory as much as 1/3 of treasure parental inheritance pick it up .

What is meant is Will mandatory is a action imposition by a judge or institutions that have right to property someone who has died , but No do will in a way voluntary , to be taken right on treasure object his legacy For given to a particular person in condition certain ones too. [6] Appointment children in Indonesia as a institution the law that is still is problem for society , especially provision law his inheritance . Adopted child based on Islamic law is not including expert inheritance , therefore That child lift No entitled accept distribution inheritance from parents lift it. Formulation problem study This that is How position law will mandatory to child lift reviewed from Islamic law and how consequence law will mandatory to child lift according to Islamic law the goal that is desired achieved researcher that is For For know and analyze position law will mandatory to child lift reviewed from law Islam and knowing as well as analyze consequence law will mandatory child lift according to law Islam . Theoretical Benefits study This can add good knowledge knowledge about Mandatory Will for Adopted Children in frame development knowledge law , in particular law Islamic Heritage . Practical Benefits as study This can give related information with Mandatory Will for Adopted Children , so that you can useful for community and agencies related .

## **METHOD**

Type from study This is descriptive the intended analysis in study This For to obtain description in a way detailed and systematic about laws in Indonesia related Mandatory Will for Adopted Children . Research This use law with method approach legal normative [7] [7] which emphasizes sources Good primary secondary materials and also in the form of regulations . Research This using two types source primary data material obtained from material law that has strength tie as runway main used in frame research consisting of from the Al-Quran and Hadith , Law of the Republic of Indonesia No. 23 of 2002 concerning Child Protection , Republic of Indonesia Law No. 54 of 2007 concerning Child Protection Implementation Child Adoption , Law of the Republic of Indonesia No. 3 of 2006 concerning Religious Courts and Presidential Instruction No. 1 of 1991 concerning Compilation of Islamic Law and secondary data obtained from closely related materials the relationship with primary legal data and can help analyze and understand material primary law , such as results - results research , results work from circles law , and other related documents with Mandatory Wills for Adopted Children . Collection technique material law that is carried out writer in writing is through studies literature with method reading , taking notes , studying and reviewing results research , literature , journal as well as regulation tight laws the relation with the main points problem used For compile writing law This . Analysis techniques material the law used in study This is a legal material that reveals regulation legislation with theories the law that becomes object research . While data analysis used is approach qualitative on primary data and secondary data . Analysis qualitative This shown against data of a nature based on real quality and nature applicable in public .

## **DISCUSSION**

### **Legal Position of Mandatory Wills for Adopted Children**

Based on the context of Islamic Law, the existence of prohibition appointment child with to attribute his name to child pick it up , no There is connection kinship inheritance even still applicable mahram law or No mahram . [8] Compilation of Islamic Law Article 171 letter h states that child lift is the child in maintenance For his life daily , costs education , and so on switch not quite enough the answer from parent origin to parent pick it up based on decision court . And the Compilation of Islamic Law Article 171 letter f states that will is giving a object from heir to others or the institution that will applicable after heir passed away. [9]

Rule about will set up in the Compilation of Islamic Law begins from Article 194 to with Article 209. Article 194 to with Article 208, regulating a will in general which is of a nature common as it is in jurisprudence classic as legacy of Islamic jurists . The Compilation of Islamic Law provides will mandatory to child lift as poured out in Article 209 paragraph (2) namely to child lift that doesn't accept will given will mandatory as much as 1/3 of treasure parental inheritance lift it . There are provisions will mandatory in Compilation of Islamic Law is bridge that covers inequality that has existed for This happen between child adoptive parents lift that doesn't happen each other inherit , because of course No There is provision each other inherit between both of them . The Compilation of Islamic Law provides will mandatory to child lift Because fact relationship that is not can denied in a way law , then Article 209 modifies a balance rights and position between child adopt and parent lift in connection inheritance inherit . Modify This tangible that child lift entitled get 1/3 of assets left by parents lift it , based on construction law will obligatory . Vice versa , parents lift entitled get 1/3 of abandoned property child pick it up based on construction law will mandatory .

Based on nash - texts and associated interpretations with provisions of Article 209 of the KHI, in accordance with with theory the welfare of the people, then child lift can to obtain part as will mandatory from treasure inheritance with reconstruction thinking as following :

That in Islam, children lift " allowed " to the extent maintenance , protection and education ; and ' prohibited ' from giving status as as if child womb . Sentence This should loaded in consideration law , every decision / ruling children by the Religious Court . That child lift can to obtain treasure from parent pick it up based on a large will No may more from 1/3 of the assets parent his lift that has been died , if parent pick it up No leave will He can given based on will mandatory . That giving will mandatory No may harm rights from expert inheritance . [10] The size will mandatory the No may exceed part expert inheritance . If the property parent lift only a little , not yet adequate For prosper expert his heirs , then No There is will mandatory For child lift ; force will or will mandatory to child lift that has been prohibited by Allah SWT treat as child alone , same just with against God's law . In Islamic jurisprudence , testament mandatory generally more based on to thinking reason , the one side intended For give a sense of justice to people who are close with heir , but in a way sharia No allow part from track faraidh . But on the other hand , the four imams of the sect forbid it If matter That will give harm for expert inheritance .

## **Legal Effects of Mandatory Wills on Adopted Children**

testamentary institution mandatory known in Islamic Inheritance Law System in Indonesia through terms and conditions existing law in Compilation of Islamic Law (KHI). KHI is one of the form regulation law written in field regulations , and at the same time become legal formal with characteristics alone Because formalized in instrument Instructions President . Presidential Instruction Alone If traced in order legislation in system the law in Indonesia is not is part from types and hierarchy regulation legislation - legislation . Firmness law child lift in Islam above base verses of the Al-Quran, in the form of prohibition treat child lift like child womb seen from corner view sovereignty The theory of God is contained in the Al-Quran a number of verse that commands Muslims to obedient to Allah and His Messenger. Not allowed take another option if apparently Allah and His Messenger have set definite and clear law , taking choice other laws that Allah and His Messenger have established give provision law considered oppressive , infidel, or wicked . [11] Provision will mandatory for child lift 1/3 of treasure legacy at the beginning Lots opposed by experts heirs who feel harmed , which is the right they become replaced with existence confession

position child lift become expert inheritance substitute . Even though prohibition all type actions that can be harm expert inheritance absolute has confirmed in The words of the Prophet Muhammad said : "It is not allowed bring in harm for expert inheritance . It is forbidden to make a waqf property that can cause loss for expert inheritance , as Hadith of Rasulullah SAW: Not harmful or not harmed " .

According to Compilation of Islamic Law in Indonesia testament mandatory given No For grandchildren who are mahjub ( hindered ) by children men , but will mandatory given to child lift . This is as written in Article 209 of the Compilation of Islamic Law. According to Islamic Law, children lift No can acknowledged For Can made into basis and cause inherit , because principle main in the inheritance of Islam is connection blood / lineage / descent . [12] Added by Ibn Hazm, that if No done testament by testator to relatives who are not get treasure heirloom , then the judge must act as the testator who gives part from treasure legacy heir to relatives who are not get treasure heirloom , in form mandatory will . In the system law in Indonesia, institutions will including will mandatory become competence absolute from religious court based on Constitution Number 7 of 1989 concerning Religious Courts are related with Constitution Number 3 of 2006 concerning Change Constitution Number 7 of 1989 concerning Religious Court . The judge referred to by Ibn Hazm in Islamic heritage in Indonesia , namely carried out by internal judges scope religious court in level First in accordance with competence absolute as ordered Constitution . In determining will mandatory , in legal formally , religious court judges use provision Compilation of Islamic Law as stated in the Presidential Instruction Number 1 of 1991. In general legal formal provision in Compilation of Islamic Law in particular Article 209 understands that will mandatory only intended for for child adopt and parent lift . [9]

Complexity Indonesian society makes judges have to go out from legal existing formalities that is with use function rechtsvinding that is justified by law positive if No There is the law that regulates . Authority the given in Article 5 of the Law Number 48 of 2009 concerning power judiciary . In addition Compilation of Islamic Law in Article 229 also provides the judge's authority to finish case with notice with Really values living law in public so that give appropriate decision with a sense of justice . In principle, judges have authority use its function as legal protection or in Islamic law is called ijtihad as alternative . [13]In case will narrow obligation on children adoptive parents lift then the judge is obliged use authority function legal protection or his ijtihad . Will be difficult For operate legal formal in Compilation of Islamic Law regarding close people heir outside child adoptive parents lift . There is a number of legal protection or ijtihad regarding will mandatory in jurisprudence that has powerful law remain . For example in decision No. 368 K /AG/1995 and decision 51K/AG/1999. In the case decided with decision 368 K/AG/1995, the Supreme Court decided dispute inheritance from partner husband wife who has 6 ( six ) children . One of child Woman they has changed religion when his parents died . Dispute expert inheritance requested one child man from heir on property owned by the heir . In the level first , one of the child Woman the hijab For get treasure legacy heir . The Appellate Court dismissed decision level First with give will mandatory as much as 1/3 ( one third ) of the part child Woman to child women who convert . The cassation level added right children who change religions with will mandatory as big as child Woman other or position children who change religions The same with child Woman others . In the decision Supreme Court No. 51K/AG/1999 dated 29 September 1999 stated that expert heirs who are not remain a Muslim can inherit from treasure legacy Muslim heir . Inheritance done use institution will mandatory , where part child a woman who is not Muslims get the same part with part child Woman as expert inheritance . [14]

Besides that there is also a decision Supreme Court No. 16 K/AG/2010 provides position wife who is not are Muslim in treasure legacy Muslim heir . The wife who is n't Muslims get inheritance from heir through institution will the big obligation The same with equal position with Muslim wives added with treasure together . Decisions the published because of happen friction interest between expert heirs . heirs will enjoy part in a way more qualitative A little with existence institution will wajibah . The section of the experts the heirs who have determined , diverted to recipient will wajibah because of the ijtihad of the competent judge . The demands of the experts inheritance is

put aside institution will wajibah . At a glance decisions - decisions mentioned above No based on pure Islamic law originating from from the Qur'an and the Sunnah. The decisions the seen like do deviation from the Qur'an and the Sunnah. The decisions the published For fulfil principle justice for the experts heirs who have connection emotional real with heir . The judge guarantees justice for people who have connection emotional with heir the through institution will mandatory .

A child or children of different religions and have life side by side with peaceful and serene as well as level high tolerance with Muslim heirs do not may damaged by inheritance . Deviations made will give more Lots welfare than harm . Although consideration every judge can different about magnitude will mandatory in every case , but there is a the basis that becomes base in to drop magnitude will mandatory , namely principle balance . [15] Will mandatory given No bother position expert inheritance others . Share of property heritage intended for For will mandatory given from same degree . Girls No Muslims get the same part as big as its part with his position as child Woman . As well as position wife who doesn't are Muslim, will get the same part big his part with his position as wife . On the basis of principle justice and balance are also positions child adopt and parent lift No forever maximum get 1/3 ( one third ) part from treasure legacy heir . Under the authority of the judge, the child is also adopt and parent lift can get more from what is stated in Article 209 of the Compilation of Islamic Law. The nature of the ijthihad carried out by judges is not nature imperative will but optional . Use decisions - decisions the if happen dispute and vice versa if No happen dispute so still apply Islamic law .

## CONCLUSION

In the Compilation of Islamic Law (KHI) children lift No become expert inheritance from parents lift it , just to obtain testament . In case inheritance child lift in Compilation of Islamic Law (KHI) is No let go lineage from parents his/her womb , then child lift No inherit from parents lift it and vice versa . But child lift get will mandatory that is a will whose execution No influenced or No depends to heir . The size of No may more from 1/3 part from treasure parental inheritance pick it up in accordance Article 209 paragraph (2) of the Compilation of Islamic Law and its consequences the law that Still there is disparity part will mandatory for child lift . Some judges of the Religious Court do not want to bother as well as immediately give right inheritance for child lift based on will mandatory as much as 1/3 of treasure parental inheritance lift it , without consider whether giving maximum the has to seize rights expert inheritance or has fair and wise . Regarding appointment child recommended to society to do in a way recorded with decision Court . With he did matter This will avoid dispute later day , and also to The court so that in dictum his decision that child lift That requested to Notes Civil For registered has lifted and to government must quick realize Constitution Complete and consistent adoption of children with interest Indonesian society in connection with inheritance for child lift . This is meant For give protection to child , so that rights child will protected and well-being child will guaranteed .

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