



WASIAT WAJIBAH DALAM PERSPEKTIF HUKUM ISLAM

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Abstract

Wasiat merupakan salah satu cara dalam peralihan harta dari satu orang ke orang lain. Sistem wasiat ini berjalan sejak zaman dulu, bukan hanya agama Islam saja yang mengatur, tetapi setiap komunitas memiliki pemahaman tentang wasiat. Anak angkat ataupun orangtua angkat berhak memperoleh "wasiat wajibah" dengan syarat tidak boleh lebih dari 1/3 harta berdasarkan Pasal 209 ayat 2 Kompilasi Hukum Islam. Syarat-syarat yang harus dipenuhi dalam pembuatan surat wasiat wajibah agar dapat berlaku sah sebagai akta otentik adalah dibuat dihadapan notaris. Anak angkat dapat memperoleh harta dari orang tua angkatnya berdasarkan wasiat yang besarnya tidak boleh melebihi 1/3 (sepertiga) harta orang tua angkatnya yang telah meninggal dunia, bila orang tua angkatnya tidak meninggalkan wasiat maka dapat diberi berdasarkan wasiat wajibah, dan pemberi wasiat wajibah tidak boleh merugikan hak-hak dari ahli waris. Kalau anak angkat mendapatkan bagian wasiat wajibah yang melebihi 1/3 bagian, maka wasiat wajibah tidak batal demi hukum melainkan harus dibatalkan dengan putusan pengadilan.

Kata Kunci: Wasiat, Wajibah, Hukum Islam

MANDATORY WILLS FROM THE PERSPECTIVE OF ISLAMIC LAW

Abstract

will is a way of transferring assets from one person to another. This will system has been running since ancient times, not only the Islamic religion regulates it, but every community has an understanding of wills. Adoptive children or adoptive parents have the right to obtain a "wajibah bequest" with the condition that no more than 1/3 of the assets are based on Article 209 paragraph 2 of the Compilation of Islamic Law. The conditions that must be met in making a mandatory will so that it can be valid as an authentic deed are made before a notary. Adopted children can obtain assets from their adoptive parents based on a will, the amount of which may not exceed 1/3 (one third) of the assets of their adoptive parents who have died. may harm the rights of the heirs. If the adopted child gets a part of the obligatory will that exceeds 1/3 part, then the obligatory will is not null and void but must be canceled by a court decision.

Keywords: Compulsory, Will, Islamic Law.

INTRODUCTION

Islam is a religion that contains rules that bind its adherents to achieve a justified benefit. Islamic law has two meanings: sharia and fiqh. Islamic law, in the sense of sharia, is absolute (unchangeable), while in the sense of fiqh, Islamic law is a further elaboration of sharia, provided it must not conflict with sharia.

Islam regulates the use of wealth, from how it is acquired to how it is used. Muslims





are prohibited from acquiring and using their wealth in ways that violate Islamic law. Even after death, the wealth left behind must be distributed to those entitled to it according to Islamic law.

Before death, the person who has assets has the authority to will a portion of his assets with a limit of not exceeding 1/3 of his assets to an institution or individual deemed necessary for the deceased, which can be implemented when the testator dies. As Hanafiyah scholars define a will, namely giving the right to own something voluntarily (tabarru') whose implementation is suspended, whether the something is in the form of goods or benefits.

A will is important because wealth is one of the things humans cherish, so disputes may arise between heirs regarding the distribution of the inheritance. These disputes can be avoided by providing a final message. "A will can also be a message or promise from one person to another to perform a good deed."

The act of determining someone's last message before they die in Islam is known as a will. The heir with a will can determine who will be the heir. A will can also be intended for a specific person, either in the form of certain objects or a number of objects that can be replaced. "A will takes effect after a person dies and is an obligation that must be fulfilled by the heirs."

A will is a method for transferring property from one person to another. This system of wills has been in place since ancient times; it's not just Islam that regulates it; every community has its own understanding of wills. Broadly speaking, a will is a gift of property from one person to another or several people after the death of the person who made the gift. A will is a form of disposal of inherited property carried out after a person's death. "According to the basic law, a will is an act carried out voluntarily under any circumstances. Therefore, there is no will in Islamic law that must be carried out through a judicial decision."

The provision of a mandatory will for adopted children or adoptive parents with a maximum limit of 1/3 of the inheritance has caused a lot of polemics in the formulation of the KHI itself because it is considered different from what is in the books of fiqh. A mandatory will is usually given to people who are not heirs and a mandatory will is also a will that is required for every Muslim to give a portion of the inheritance to family members who should receive a portion of the inheritance because during his lifetime according to family law it is the responsibility of the heir but for some reason cannot receive the inheritance, either because he is not included in the group of heirs or because he is prevented by other heirs even though he is also an heir, such as adopted children and adoptive parents.

The Indonesian Compilation of Islamic Law has its own provisions regarding the concept of a mandatory will, limiting the right to receive a mandatory will to adopted children and adoptive parents. Adoptive parents who do not receive a will are given a mandatory will of up to one-third of their adopted child's inheritance. Adopted children who do not receive a will are given a mandatory will of up to one-third of their adoptive parents' assets.

The existence of adopted children in inheritance in Indonesia remains a hotly debated





issue, both among politicians, academics, and law enforcement. The confusion surrounding the distribution of assets and the status of adopted children in inheritance, both under Islamic law and civil law, is anticipated by adoptive parents by drafting a mandatory will before a notary, granting their assets to their adopted children.

IMPLEMENTATION METHOD

This type of research is descriptive analytical in nature which leads to empirical juridical research, namely research that starts from problems by looking at the reality that occurs in the field, then connecting it with applicable laws and regulations. The method used is a normative legal approach. The normative legal approach is used to study laws and regulations.

RESULTS AND DISCUSSION

A mandatory will is a policy of the ruler that is mandatory to give a will to a certain person under certain circumstances. A mandatory will is a will intended for heirs or relatives who do not receive a share of the deceased's inheritance, due to a sharia obstacle. A mandatory will is a will whose implementation is not influenced or does not depend on the will or desire of the deceased.

A mandatory will is a will intended for heirs or relatives who do not receive a share of the deceased's inheritance due to Islamic law. Suparman defines a mandatory will as a will whose implementation is not influenced or dependent on the deceased's wishes or desires.

A mandatory will implicitly contains the elements stated in Article 209 of the Compilation of Islamic Law, namely:

1. The legal subject is the adopted child towards the adoptive parents or vice versa, the adoptive parents towards the adopted child.
2. It is not given or declared by the testator to the beneficiary of the will but is carried out by the state.
3. The share of the recipient of the will is as much as possible or may not exceed 1/3 (one third) of the testator's inheritance

The word "wasiat wajibah" comes from two words: "wasiat" and "wajib." In general, "wasiat" means a message. "wajib" means an obligation to be carried out. Based on the above definition, it can be concluded that etymologically, "wasiat" means a message. Terminologically, a will is the act of someone voluntarily granting another person the right to own something, either an object or the benefits of an object, without expecting any reward. The execution of the will is deferred after the death of the person making the will.

Etymologically, a mandatory will means a will that is legally obligatory. Meanwhile, terminologically, a mandatory will is an act of encumbrance by a judge or institution which has the right to have the assets of a person who has died but not made a will voluntarily take part of the assets left behind to be given to certain people and under certain circumstances.





A Wajibah Will according to KHI is a will stipulated by law that is given to adoptive parents or adopted children who do not receive a will from their adopted child or adoptive parents who have died (heirs).

The mandatory will in Indonesia is used as the basis for the KHI to give a share of the heir's inheritance to adopted children who were not given a will by the testator (their adoptive parents), or to adoptive parents who were not given a will by the testator (their adopted children).

The mandatory will in Article 209 of the Indonesian Islamic Law (KHI) arises to resolve disputes between the testator and his adopted child and vice versa, the adopted child as the heir with his adoptive parents. In Islamic countries in Africa such as Egypt, Tunisia, Morocco and Syria, the mandatory will institution is used to resolve inheritance disputes between the testator and the grandchildren/grandchildren of the testator's children/children who died before the testator. The mandatory will institution in these areas is used by the state to accommodate the institution of mawali or change of place.

Regarding the fact that it is not permissible to assign a father to an adopted child, it means that adoption in Islam aims to maintain and preserve the integrity of the family and protect one's origins and can strengthen ties of brotherhood with the adopted parents. Then, if you look at the Compilation of Islamic Law, Article 171 letter (h), it is stated that "an adopted child is a child whose responsibility for daily living, education costs, etc. is transferred from the original parents to the adoptive parents based on a court decision.

The Compilation of Islamic Law (KHI) stipulates that a relationship of mutual will and testament is established between adopted children and adoptive parents. Article 209 paragraph (1) and paragraph (2) states:

- (1) The inheritance of an adopted child is divided based on Articles 176 to 193 above, while adoptive parents who do not receive a mandatory will are given a mandatory will of up to 1/3 of the inheritance of their adopted child.
- (2) Adopted children who do not receive a will are given a mandatory will of up to 1/3 of their adoptive parents' inheritance.

According to the article above, the inheritance of an adopted child or adoptive parent must be divided according to the rules, namely distributed to people who have blood ties (relatives) who are the heirs.

Based on this rule, adoptive parents or adopted children will not receive inheritance rights, because they are not heirs. The Compilation of Islamic Law considers adoptive parents to have left a will (and therefore is called a mandatory will) of a maximum of 1/3 of the assets left to their adopted children, or vice versa, adopted children for their adoptive parents, where the assets in the distribution system are such that before the inheritance is distributed to the heirs, the mandatory will must be fulfilled first.

In practice, adoptions are common in Indonesian Muslim communities, especially for those whose marriages are childless. These adoptions, usually formalized by customary law, often lead to difficulties, dissatisfaction, and even accusations of injustice when one of the parties dies.





Child adoption relationship this often happens adopted children do not receive any property because the adoptive parents did not have time to make a will or did not know that their adopted child is not entitled to inheritance (according to fiqh) but instead some adoptive parents take the way of a gift, which sometimes is not smooth because after the gift is made there are arguments and disagreements between the child and the adoptive parents. Fulfilling the needs and overcoming the difficulties that occur in the community, regulations regarding the law of mandatory wills are enforced because the relationship of child adoption is included in the Compilation of Islamic Law which is the legal basis for Islamic society in Indonesia.

Based on the above description, it is clear that the Compilation of Islamic Law affirms that neither adopted children nor adoptive parents have any inheritance rights. However, in recognition of the merits of the institution of adoption, the relationship between adopted children and their adoptive parents is formalized through a will or *wajibah* will. A will is one way of transferring property from one person to another. This will system has been in place since ancient times, and not just one religion regulates it; each community has its own understanding of wills, with different systems differing in their implementation. Each has its own provisions regarding the validity of the will.

The compilation of Islamic law which is now used as a reference by religious courts states that an adopted child has the right to obtain a mandatory will with the condition that it does not exceed 1/3 (one third) of the assets. According to Article 209 paragraphs (1) and (2) KHI, adopted children or their adoptive parents are entitled to obtain a mandatory will of up to 1/3 (one third), if the adopted child or adoptive parents do not accept the will, then the mandatory will is a way out for the adopted child or adoptive parents to get a share of the inheritance. However, many of the general public do not know about this problem and do not understand the true position of mandatory wills.

According to the provisions of Article 209 paragraph (1) and (2) of the KHI, the inheritance of an adopted child or adoptive parent must be divided according to the rules, namely distributed to people who have blood ties (relatives) who are their heirs. Based on this rule, the child's parents or adopted child will not receive inheritance rights, because they are not heirs. In the KHI, adoptive parents are immediately considered to have left a will (and therefore are given the name of a mandatory will) of a maximum of 1/3 (one third) of the assets left for their adopted child, or vice versa, adopted children for their adoptive parents, where the assets in the distribution system are such that before the inheritance is distributed to the heirs, the mandatory will must be fulfilled first.

This regulation is considered novel when compared to the rules of Islamic jurisprudence and inheritance laws in force around the world. The Quran rejects the equality of relationships due to adoption, which had developed in Arab customs at that time due to blood ties. Meanwhile, in Indonesian Muslim society, adoptions are common, especially for those whose marriages are childless. Adoptions, usually formalized by customary law, often lead to difficulties, dissatisfaction, and even accusations of injustice upon the death of one of the parties.

In this case, the adopted child often does not receive any property because the adoptive parents did not have time to make a will or did not know that their adopted child





was not entitled to inheritance (according to fiqh), but instead some adoptive parents take the form of a gift, which sometimes is not smooth because after the gift is made there are arguments and disagreements between the child and the adoptive parents. To meet the needs and overcome the difficulties that occur in the community, regulations regarding the law of mandatory wills were implemented because the adoption relationship was included in the KHI which is the legal basis for the Muslim community in Indonesia.

According to the provisions of sharia teachings, the existence of adopted children cannot be denied, but is limited to providing welfare and education to the child. Things that are not permitted are severing the blood relationship between the biological child and the biological parents, so that all consequences of inheritance rights are forfeited due to the absence of lineage. However, it is better for adopted children to be given a will, but if there is no will then the adopted child will receive a will of up to 1/3 (one third) of the inheritance of the adoptive parents. Based on this, it is clear that adopted children remain children and do not cause any cause of lineage which is one of the rights of inheritance.

Looking at the background to the drafting of the KHI, several reasons can be obtained regarding the determination of mandatory wills limited to children and adoptive parents, namely:

1. The ulama have not been able to accept the concept of adopted children as heirs as applied in customary law.
2. Second, the institution of substitute heirs for grandchildren whose parents predecease them, is seen as fairer and more humane for society.

The provisions regarding mandatory wills in the KHI are explicitly explained in Article 209. This article shows that the provisions for granting mandatory wills in the KHI are only intended for adopted children whose adoptive parents have died or vice versa, given to the adoptive parents of their adopted children who have died.

The general legal rules for wills that apply to mandatory wills are the provisions for the stages that must be passed before the distribution of the will is carried out as regulated in Article 175 paragraph (1) of the KHI. These provisions stipulate that the testator's inheritance must first be reduced by the costs of managing the testator's body, medical costs, and the testator's debts, then the testator's will is fulfilled if the testator leaves a will or in the form of a mandatory will.

An important point to note regarding the application of general will rules to mandatory wills is the determination of the portion for the beneficiaries. Essentially, according to the provisions regarding wills in the Compilation of Islamic Law (KHI), the maximum permitted portion to be given through a will is one-third of the inheritance, with the exception of a larger portion being granted with the consent of the other heirs.

This one-third maximum provision is highly susceptible to deviation. A judge may decide to grant a mandatory inheritance portion greater than one-third to the recipient of the mandatory inheritance, whether the adopted child or the adoptive parent. This deviation is made based on a sense of justice. Considerations regarding the sense of justice are left to each individual case and the legal facts found in court. One example of a case that can be used is if the adopted child clearly played a significant role in developing the testator's estate during his or her lifetime, so that if only one-third is given, based on a





sense of justice, it is deemed insufficient and disproportionate to all the hard work and efforts the adopted child has put in.

The determination of the portion of the obligatory beneficiary may exceed the maximum provision of one-third as long as certain conditions are met, namely that the decision is made using a correct and accountable decision-making methodology. The judge has the authority to decide on a distribution of more than one-third as stipulated in the KHI, while still being obliged to provide appropriate legal reasons and considerations in accordance with the legal facts found. In the method of *ijtihad*, there is a known deviation from general law, namely the *istihsan* method. *Istihsan* is a way of determining law by deviating from existing provisions for the sake of justice and social interests.

According to the Compilation of Islamic Law in Article 194, it is stated that the person who has the right to make a will is a person who has reached the age of at least 21 years, is of sound mind and is not under coercive pressure, the property being willed must also belong to the testator and the will will be executed when the testator has died. It is also stated in Article 195 KHI that a will can be made orally or in writing in the presence of two witnesses, or before a notary. The maximum amount of assets that can be bequeathed is one third of the inherited assets, unless the heirs agree

CONCLUSION

The law on granting inheritance through a mandatory will according to the Compilation of Islamic Law affirms that neither adopted children nor adoptive parents have any inheritance rights. However, in recognition of the merits of the institution of adoption, the relationship between adopted children and their adoptive parents is formalized through a will or mandatory will. The current compilation of Islamic law, which is used as a reference by Religious Courts, states that adopted children and adoptive parents are entitled to a "mandatory will" with the condition that it cannot exceed 1/3 of the assets, as per Article 209 paragraph 2 of the Compilation of Islamic Law.

The conditions that must be fulfilled in making a mandatory will so that it can be valid as an authentic deed is that it be made before a notary. Adopted children can obtain assets from their adoptive parents based on a will, the amount of which cannot exceed 1/3 (one third) of the assets of their adoptive parents who have died. If the adoptive parents did not leave a will, they can be given based on a mandatory will, and the giver of a mandatory will must not harm the rights of the heirs. If an adopted child gets a portion of the obligatory will that exceeds 1/3 of the portion, then the obligatory will is not null and void but must be canceled by a court decision.

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