



MAKING A MANDATORY WILL FOR AN ADOPTED CHILD BEFORE A NOTARY PUBLIC ACCORDING TO ISLAMIC LEGAL PROVISIONS

Briansyah Siregar¹, Halimatul Maryani²

^{1,2}Fakultas Hukum Universitas Muslim Nusantara Al Washliyah Medan

Email : barry658bryan@gmail.com¹, halimatul.maryani@umnaw.ac.id²

ARTICLE INFO

History of the article:

Received: 02/04/2024

Corrected: 11/04/2024

Accepted : 30/04/2024

Published: 30/04/2024

Keywords:

Adopted Child, Notary,
Mandatory Will

ABSTRACT

A will is one way of transferring property from one person to another. This will system has been running since ancient times, not only Islam regulates it, but every community has an understanding of wills. The requirements that must be met in making a wajibah will in order to be valid as an authentic deed are made before a notary. Adopted children can obtain assets from their adoptive parents based on a will which cannot exceed 1/3 (one third) of the assets of their deceased adoptive parents, if the adoptive parents do not leave a will then it can be given based on a wajibah will, and the giver of the wajibah will must not harm the rights of the heirs. If the adopted child receives a mandatory will that exceeds 1/3 of the portion, then the mandatory will is not null and void by law but must be canceled by a court decision.

1. Introduction

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 a manner contrary to Islamic law. Even after death, the assets left behind must be distributed to those entitled to them in accordance with Islamic law.

A will is one method for transferring assets from one person to another. This system of wills has existed since ancient times; not only Islam regulates it, but 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 beneficiary. A will is a tasharruf (release) of inherited assets carried out after a person's death. A mandatory will is usually given to someone who is not an heir. A mandatory will is also a will required of every Muslim to distribute a portion of the inheritance to family members who should have received a portion of the inheritance. According to family law, they were the testator's responsibility during their lifetime, but for some reason were unable to receive the inheritance. This could be because they were not included in the heirs' group or because they were prevented from receiving it by other heirs, even if they were also heirs, such as adopted children and adoptive parents.





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

The role of adopted children in inheritance in Indonesia remains a controversial topic, frequently discussed among politicians, academics, and law enforcement. The confusion regarding the division of assets and the position of adopted children in terms of inheritance, both according to Islamic law and according to civil law provisions, is anticipated by adoptive parents by making a mandatory will before a notary to give their assets to their adopted children.

2. Research Method

This research is normative in nature because it only describes the object of study, investigated by describing applicable laws and regulations in relation to legal theories and the practice of implementing laws and regulations related to the above issues.

This type of research is descriptive and analytical, leading to empirical legal research, namely research that starts from problems by observing the reality on the ground, then connecting it to applicable laws and regulations.

Data analysis in this study was conducted qualitatively, namely, the obtained data was systematically organized and then analyzed qualitatively to achieve clarity on the issues to be discussed. Qualitative data analysis is a research method that produces descriptive analytical data, namely what respondents state in writing or verbally, as well as their actual behavior, which is thoroughly researched and studied.

The definition of analysis here is intended as a logical and systematic explanation and interpretation. Systematic logic indicates a deductive-inductive way of thinking and follows the rules in writing scientific research reports. After the data analysis is complete, the results will be presented descriptively, namely by telling and describing what is in accordance with the problem being researched.

3. Results And Discussion

Results

A will is important because wealth is one of the things humans cherish, so disputes may arise between heirs regarding the distribution of inheritance. These disputes can be avoided by having a final will.





A will can also mean a message or promise from one person to another to perform a good deed. The provisions in a will have two characteristics: they are valid after the testator's death and can always be revoked while the testator is still alive. The act of determining a person's final will before death in Islam is known as a will. With a will, the testator can determine who will be the heirs. With a will, the inheritance can also be allocated to a specific person, either in the form of specific objects or a number of replaceable objects. A will takes effect after a person's death and is an obligation that must be fulfilled by the heirs.

This will system has been in place since ancient times; not only Islam regulates it, but every community has its own understanding of wills. These will systems differ in their implementation. Everyone has their own provisions on how to validly carry out the will. In Indonesia, there are rules regarding this will. These are regulated in the Civil Code (KUHPerdara) for non-Muslims or indigenous people, while for Muslims they are regulated in the Compilation of Islamic Law (KHI).

Islamic Sharia in the implementation of inheritance law, gifts and wills prioritizes the balance between rights and obligations so that no rights are reduced or increased without considering the benefit of all parties in the family of the person who died.

A mandatory will is a policy of the authorities that is coercive to grant a will to certain people under certain circumstances. A mandatory will is a will intended for heirs or relatives who do not receive a share of the inheritance of the person who died, due to a sharia obstacle. A mandatory will is a will whose implementation is not influenced or does not depend on the wishes or wishes of the deceased.

A mandatory will is a will made to heirs or relatives who are not entitled to a share of the deceased's inheritance due to a religious impediment. Suparman defines a mandatory will as one whose implementation is not influenced by, or dependent on, the will of the deceased.

In Indonesia, a mandatory will is used as the basis for the Indonesian Islamic Law (KHI) to distribute a portion of the testator'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).

A mandatory will, as defined in Article 209 of the KHI, is intended to resolve disputes between the testator and their adopted children, and vice versa, between the adopted children, as heirs, and their adoptive parents. In Islamic countries in Africa such as Egypt, Tunisia, Morocco, and Syria, the mandatory will is used to resolve inheritance disputes between the testator and the grandchildren of the testator's children who predeceased the testator. In these

regions, the mandatory will is used by the state to accommodate the institution of mawali, or change of residence.

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.

4. Discussion

In practice, adoption is common in Indonesian Muslim communities, especially for those whose marriages are childless. This adoption, usually formalized by customary law, often creates difficulties, dissatisfaction, and even accusations of injustice when one party dies.

In this adoption, adopted children often receive no property because their adoptive parents failed to make a will or were unaware that their adopted child was not entitled to inheritance (according to Islamic law). Instead, some adoptive parents resort to the method of granting a gift, which can sometimes be challenging, leading to disputes and disagreements between the child and the adoptive parents. To address these needs and address these difficulties, regulations regarding mandatory wills were enacted. Adoption is included in the Compilation of Islamic Law, the legal basis for Islamic society in Indonesia.

Based on the above discussion, it is clear that the Compilation of Islamic Law stipulates that neither an adopted child 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 method for transferring assets 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 such wills.

In this case, adoption often results in the adopted child not receiving any assets because the adoptive parents failed to make a will or were unaware that their adopted child was not entitled to an inheritance (according to Islamic jurisprudence). Instead, some adoptive parents resort to the method of a gift (*kahasakah*), which can sometimes be challenging, leading to disputes and disagreements between the child and the adoptive parents. To meet these needs and address the difficulties encountered in society, regulations regarding *wajibah* wills were enacted, as adoption is included in the Compilation of Islamic Law (KHI), the legal basis for Muslim communities in Indonesia. According to Sharia law, the existence of adopted children is undeniable, but is limited to providing welfare and education for the child. Severing the blood



relationship between the biological child and their biological parents is prohibited, as all inheritance rights are forfeited due to the lack of lineage. However, it is recommended that adopted children be given a will. However, if no will exists, the adopted child will receive a will (wasibah) amounting to a maximum of 1/3 (one-third) of the adoptive parents' inheritance. Based on this, it is clear that an adopted child remains a child and does not constitute a cause of lineage, which is a prerequisite for inheritance rights.

The determination of the share of the recipient of a wajibah will may exceed the maximum of one-third provided that 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 exceeding one-third as stipulated in the Compilation of Islamic Law (KHI), but remains obligated to provide appropriate legal reasons and considerations in accordance with the legal facts. The method of *ijtihad* (jurisprudence) recognizes deviations from general law, namely the *istihsan* method. *Istihsan* is a method of determining law by deviating from existing provisions for the sake of justice and social interests.

After a person marries, even if they are under 21 years of age, they are considered adults, meaning they are competent to perform legal acts, including making a will. For a person to express their will, they must be of sound mind. This requirement is logical and must be included, as otherwise it would be difficult to determine whether a person truly wants to bequeath their assets. The most difficult thing is actually finding a measure that can be considered sound mind.

Article 194-196 KHI, also states that every person who is 21 years old, of sound mind and without any coercion can easily will a portion of his assets to another person or to an institution, or to other heirs. The statement of the heirs agreeing to this must be made orally or in writing in the presence of two witnesses, or made before a notary. In the letter, whether written or verbally, it must be clearly and emphatically stated who, or what institution, is appointed to receive the assets bequeathed.

A will is an obligation that must be carried out by a person to give a will or receive a will. Therefore, the person who gave the will may withdraw the stated will, whether the will relates to power or territory. If a will is revoked, a piece of land can be given to another person, then the person who made the will sells the land to another party without notifying the person who received the will.

In carrying out their professional services to the public, notaries should act in accordance with applicable regulations. This is crucial because notaries carry out their duties not solely for personal gain but also for the benefit of the public. They are obligated to guarantee the authenticity of the deeds they draft.

Therefore, a notary is required to be sensitive, honest, fair, and transparent in drafting a deed to ensure all parties directly involved in the deed's authenticity. In carrying out their duties, notaries must adhere strictly to the notarial code of ethics. Without it, they will lose their professional dignity and lose public trust. Notaries are also required to possess high moral values. This ensures they will not abuse their authority. This ensures they maintain their dignity as public officials, providing services in accordance with applicable regulations and without damaging their own image.

According to Andreas Ng Meliala, every notary possesses extensive and in-depth knowledge and skills, making them a reliable source for drafting, compiling, and executing various authentic deeds. This ensures that the language and legal structure are neat, sound, and correct. Besides this expertise, honesty, sincerity, and an objective perspective are also required.

The preparation of a mandatory will before a notary provides legal certainty. It's also important to understand that, according to the Compilation of Islamic Law (KHI), even without a mandatory will, an adopted child automatically receives one-third of the estate, but cannot exceed that one-third. Unless the other heirs grant permission and do not dispute the portion, this permission is then documented in a notarial deed. This demonstrates the benefits of having a written mandatory will. In exercising their authority as public officials, notaries have prepared authentic deeds that are good and correct and in accordance with applicable laws and regulations. However, it is undeniable that in carrying out their duties, notaries can make errors in drafting deeds that will have legal consequences for the parties. If a notary makes errors that could be detrimental to the parties, they can be held accountable for those errors. Mistakes made by a notary constitute an unlawful act, as there are laws and regulations governing the position of a notary.

A notary is an official authorized to draft wills. In practice, there is no standardized format for wills; some notaries prepare them in minutes (authentic), while most customarily prepare them in private deeds. Therefore, a notary must possess extensive knowledge in drafting wills and must adhere to the necessary requirements to avoid future errors that could harm the heirs and the notary.

Based on the provisions above, it can be concluded that a statement of inheritance rights need not contain information other than that mentioned above. The statement of inheritance rights mentions events concerning the testator that are not relevant to determining the heirs, heirs, and distribution of the inheritance.

According to Syafrida Yanti, the authority of a notary to issue a Will is not specified in Law Number 2 of 2014 concerning the Office of Notaries. This is because the UUJN only regulates the authority of notaries to issue authentic



deeds. A Will is not an authentic deed, but rather a private deed, so the notary's authority to issue one does not need to be regulated by law.

The notary's authority to issue a Will is not clearly stated in the UUJN because, in addition to the fact that a Will is not an authentic deed, it is also because, since ancient times, Wills have always been issued by notaries, not other authorized officials, such as judges. Therefore, the basis for notaries' issuance of Wills is customary law.

The current practice of notaries issuing Wills has been recognized as valid, and for many years, notaries have used their services to issue Wills, even though Wills do not actually fall within the scope of a notary's authority as an official issuing authentic deeds.

Apart from being responsible for making the mandatory will deed, the notary is also responsible for its implementation. In carrying out this obligatory will, the notary must carry out what the testator or testator wishes and explain everything that the testator wills to all heirs. This is intended to provide clarity and legal certainty for all heirs regarding the implementation of the will that the testator left for all his heirs.

5. Conclusion

According to the Compilation of Islamic Law, the law regarding inheritance through a mandatory will (*wasiat wajibah*) stipulates 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 Compilation of Islamic Law, currently used as a reference by Religious Courts, stipulates that adopted children and adoptive parents are entitled to a "*wasiat wajibah*" (obligatory will), provided that it does not exceed 1/3 of the assets, as stipulated in Article 209 paragraph 2 of the Compilation of Islamic Law.

The requirements for a mandatory will to be valid as an authentic deed are that it be drawn up before a notary. Adopted children may receive assets from their adoptive parents based on a will, but the amount may not exceed 1/3 (one-third) of their deceased adoptive parents' assets. If the adoptive parents did not leave a will, the inheritance may be granted based on a mandatory will, and the obligatory will must not prejudice the rights of the heirs. If an adopted child receives a portion of the obligatory will that exceeds 1/3, then the obligatory will is not void by law but must be cancelled by a court decision.

References

Ilhami Nugraheni, *Pengaturan Dan Implementasi Wasiat Wajibah*, Alumni, Bandung, 2011





- Irma Setyowati Soemitro, *Aspek Hukum Perlindungan Anak*, Bumi Aksara, Jakarta, 1999.
- M. Idris Ramulyo, *Perbandingan Pelaksanaan Hukum Kewarisan Islam dengan Kewarisan Menurut Hukum Perdata (BW)*, Sinar Grafika, Jakarta, 2010.
- Muderis Zaini, *Adopsi Suatu Tiinjauan Dari Tiga Sistem Hukum*, Sinar Grafika, Jakarta, 2012
- Muhammad Jawwad Mughniyah, *Fiqh Lima Madzab*, Center Basitama, Jakarta, 2010.
- Rachmad Budiono, *Pembaruan Hukum Kewarisan Islam di Indonesia*, Sinar Grafika, Jakarta, 2010.
- Ronny Hanitijo Soemitro, *Metodologi Penelitian Hukum dan Jurimetri: Ghalia Indonesia*, Jakarta, 2010.
- R. Soegondo Notodisoerjo. *Hukum Notaris di Indonesia: Suatu Penjelasan*. Rajawali. Jakarta.2018.
- Akhyaruddin, A., Marzuki, M., & Mukidi, M. (2023). ANALISIS YURIDIS TINDAK PIDANA PENCUCIAN UANG DARI HASIL TINDAK PIDANA NARKOTIKA (Studi Putusan Mahkamah Agung RI Nomor 250 K/Pid.Sus/2018). *Jurnal Meta Hukum*, 2(2), 27-38. <https://doi.org/10.47652/jmh.v2i2.420>
- Akhyar, A., Danialsyah, D., & Bukhari, B. (2023). ANALISIS YURIDIS TINDAK PIDANA PEMBUNUHAN DISERTAI PEMERKOSAAN (Analisis Putusan Nomor 271/Pid.B/2019/PN Mrb). *Jurnal Meta Hukum*, 2(2), 39-50. <https://doi.org/10.47652/jmh.v2i2.421>
- Simalango, D. ., Marzuki, M., & Mukidi, M. (2023). PERTANGGUNGJAWABAN PIDANA OLEH KURATOR ATAS TINDAKANNYA YANG MERUGIKAN BUNDEL PAILIT (Studi Kasus Putusan Pengadilan Negeri Jakarta Pusat Nomor 2081/Pid.B/2011/PN.Jkt.Pst). *Jurnal Meta Hukum*, 2(2), 51-62. <https://doi.org/10.47652/jmh.v2i2.422>
- Sianipar, E. P. U. ., Lubis, M. Y. ., & Akhyar, A. . (2023). ANALISIS YURIDIS PERTANGGUNGJAWABAN PIDANA PERMUFAKATAN JAHAT (SAMENSPANNING) DALAM KEJAHATAN NARKOTIKA YANG DILAKUKAN OLEH ANAK (Studi Putusan Nomor 57/Pid.Sus-Anak/2022/PN Lbp). *Jurnal Meta Hukum*, 2(2), 63-76. <https://doi.org/10.47652/jmh.v2i2.423>



- Marzuki, M., Faisal, F., & Akhyar, A. . (2023). PENEGAKAN HUKUM TERHADAP TINDAK PIDANA PEMALSUAN SURAT PERSETUJUAN BERLAYAR (Studi Putusan Nomor 249/Pid.B/2021/PN Ktp). *Jurnal Meta Hukum*, 2(2), 77-88. <https://doi.org/10.47652/jmh.v2i2.424>
- Mustamam, M., Bachri, H. ., & Mukidi, M. (2023). IMPLEMENTASI UNDANG-UNDANG NOMOR 35 TAHUN 2009 TENTANG NARKOTIKA MELALUI FUNGSI ASESMEN DALAM UPAYA PENYELESAIAN TINDAK PIDANA PENYALAHGUNAAN NARKOTIKA (Studi Di Kepolisian Sektor Aceh Selatan). *Jurnal Meta Hukum*, 2(2), 89-104. <https://doi.org/10.47652/jmh.v2i2.425>
- Gulo, I. E. ., Mukidi, M., & Mustamam, M. (2023). ANALISIS YURIDIS PENERAPAN DIVERSI DALAM PERADILAN PIDANA ANAK ATAS TINDAK KEJAHATAN PIDANA PENGANIAYAAN DI INDONESIA (Studi Kasus Pengadilan Negeri Gunung Sitoli). *Jurnal Meta Hukum*, 2(2), 105-115. <https://doi.org/10.47652/jmh.v2i2.426>
- Affan, I., Jonizar, J., & Mukidi, M. (2023). ANALISIS YURIDIS TINDAK PIDANA MENGGUNAKAN SURAT PALSU DALAM PELEPASAN HAK PENGUASAAN DENGAN GANTI RUGI DALAM JUAL BELI TANAH (Studi Putusan Nomor 1722/Pid.B/2021/PN Lbp). *Jurnal Meta Hukum*, 2(2), 116-128. <https://doi.org/10.47652/jmh.v2i2.427>
- Triyunda, R. ., Mustamam, M., & Danialsyah, D. (2023). PERTANGGUNGJAWABAN PIDANA AHLI WARIS YANG MENJADIKAN HARTA WARISAN SEBAGAI JAMINAN KREDIT TANPA PERSETUJUAN AHLI WARIS (Studi Putusan Pengadilan Negeri Metro Nomor 121/Pid.B/2021/PN. Met). *Jurnal Meta Hukum*, 2(2), 142-154. <https://doi.org/10.47652/jmh.v2i2.429>
- Montana, V. ., Lubis, M. Y. ., & Affan, I. . (2023). PENEGAKAN HUKUM TERHADAP PRAJURIT TNI YANG MELAKUKAN TINDAK PIDANA PENYALAHGUNAAN NARKOTIKA (Studi Putusan Pengadilan Militer I-02 Nomor 109-K/PM.I-02/AL/XI/2022). *Jurnal Meta Hukum*, 2(2), 168-181. <https://doi.org/10.47652/jmh.v2i2.431>