

WASHIAH WAJIBAHIN KHI:

The Placement of an adopted child Acquisition Outside Of Legacy systems

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ABSTRACT: This article examines the *washiat wajibah* in the KHI. This study is a literature study, and the data source comes from document study activities. This study proposes that with a *washiat wajibah*, a foster child or an adoptive parent is entitled to a portion of their inheritance.

KEYWORDS: Islamic law, child, KHI, Indonesia

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I. Introduction

There is a rather large difference between obligations that regulated the fiqh then developed in different regions of the Islamic world with the noted in KHI. The Principal difference looks at the receiver of the obligatory. In the opinion of fiqh the recipients of obligatory wills are people who have a blood relationship with the righteous (the heir) whereas in legislation that are made in a variety of Islamic world, confined to a granddaughter (a lower descendant) that the death of the father. In Indonesia the recipient of the will is adopted children who do not necessarily a blood relationship with the righteous. It is said not necessarily because it could just be someone taking his nephew as an adopted child, or take someone who have no connection whatsoever to him as a foster child.

A foundation that can be used to make the rule on wills of adopted children as set by this KHI as part of fiqh is merely through consideration *al-masalih al-mursalah*. That is say, with the benefit of the consideration and the Customs portion of our society (for example reluctance did polygamy although it has for many years had no descendants), then the obligatory wills for people who considered it an adopted child may be given. The adopted child here can be formulated as a person worthy of being a child of the family, which brought up, educated and rose in hopes of nurturing and caring for him in his old age. The differences regarding the presence of kinship last perhaps could be closed by the fact that KHI was made after various considerations, deliberations and discussions are relatively long and thorough.

The following will be discussed further in the mandatory wills (*washiat wajibah*) issue in KHI on the placements of adopted children gain outside of the legacy systems that include content of Compile Islamic law, the meaning of mandatory wills, adopted child and the status in the inheritance on KHI.

II. The Content Of The Compilation Of Islamic Law (Khi)

The compilation of Islamic law consists of three books, namely, book I about the law of marriage, book II about the law of Inheritance, and book III about endowments, the third book contains 228 articles who gathered in 30 chapters, with details as follows:

Book I about Marriage Law contains 19 chapters, which consists of 170 articles (the article from article 1 until 170).

Book II about the law of Inheritance includes 6 chapters, which includes 43 articles (the article from 171 until 214).

Book III about the law of endowments consists of 5 chapters, which consists of 12 articles (the article from 215 until 228)

In more detailed form can be described that the KHI content are as follows: the content of book I about marriage law:

1. The Affirmation and the elaboration of the Law No. 1 in 1974 and PP No. 9 in 1975
2. The expresses about the philosophical foundation of marriage
3. The expresses about the Foundation of base marriage
4. The juridical foundation of marriage Affirmation
5. The description of the proposal
6. Decomposition of the enumerative terms and pillars of marriage

7. The Setting of dowry
8. The expansion and refinement of the ban on marrying
9. The expand the mating conditions of the marriage agreement
10. The identifying of capacity marries pregnant
11. The Legitimize of polygamy
12. The rules of nullity of marriage
13. The rules of prevention of marriage
14. The passage of tube baby
15. The rules of nullity of marriage
16. The deflection of the Al-Rizal Qawainuna ' ala al-Nisa meaning
17. The development of a shared treasure
18. The certainty of maintenance in a divorce
19. The expanding of the guardianship
20. The issues of divorce

The content of book II about the Inheritance law

1. It is generally similar to the classical law of fara'idfuqaha
2. It keeps putting the status of adopted child outside of the beneficiary
3. The share of girls do not experience the implementation
4. The curbing child obtained her immature
5. The develops of Plaatsvervuling in mods
6. The adopted Father has the right to acquire 1/3 as "the obligatory wills and Testament"
7. The Reform and the made of grants

The Content of Book III Bout the Waqf system

1. Align the regulatory system with the ruling material endowments in the field of land
2. Regulate the Waqf system administration
3. Create the insurer a clear answer about the management of the property of the Waqf and the result
4. Organizing and management of endowments in accordance with its goal of holding with the provisions of the Minister of religious affairs.
5. Provisions making reports at regular intervals
6. Aging and waqf objects about changes location
7. The purpose of the Waqf with aging and make changes
8. The provisions of the existing procedures on any changes.

If the articles of the compilation of this Islamic law we read carefully feels that the contents in addition to contain norms or parts of Islamic law that has already seeped into the consciousness of the law society of Islam, also contains new things are arriving in Indonesia. For example, for example, about the treasures together in a legal marriage and heirs of probate and surrogate obligatory in the laws of inheritance

III. Definition Of wasiat Wajibah

The obligatory wills is a compound word (idafah) which consists of two words of the obligatory wills. Especially the word of wills in terms of language, according to Ibn Manzural-Afriqi means someone has talked, had promised.

Furthermore, the obligatory word is a fiqh term is derived from the mandatory word which has got the addition of ta ta'nis. Zakiyuddin Sha'ban gives the mandatory definition as follows:

"Something that the syari'ah makes in the certainty, either it retrieved from sighatamar or qarinahthat was initiated."

The obligation Law according to a compilation of Islamic law (KHI) as listed in article 209 paragraphs (1) and (2) as follows: the awarding a number of propertyto adopted children who did not receive a will from an adopted parents, and the awarding of a number possessions to the adoptive parents who did not receive the testament of his adoptive son. "

IV. Definition Of Adopted Child

In legal terms is called the adopted children termed as adoption, which comes from the *adoptie* word, in another term called *angenomen* kind called adoption means the adoption of child ", and in the Arabic termed *astabanni* that makes a person as their own children. "

In the general definition, the adopted child is the child of another person being taken (maintained), as well as authorized by law as the own child.

In another definition also stated that the adoption is taking (Rapture) of other people's children legally become a child of his own. Adopting the meaning is taking (raised) to another person legally becomes a child of

his own. In this case adoption is a way to organize the relationship between the adoptive parent and child, which is set in the legislation. As a result, the child who was appointed has the status of as a legitimate child with all rights and obligations.

Peter Salim and Yenni Salim said that the adoption is taking people's child to be own child with legal process. Adopted children are raised children of other people become own children with legal proceedings, for example they intend to adopt a son.

Mahmud Syaltut explains that the adopted child is taking someone child to be care for, trained with care and affection, as well as treated by the adoptive parents as the own child, without giving the status of the children of him. "

According to Hadi Kusuma Hilman, the adopted child is someone child that are considered to be own children by the parents who raised formally with local customs, for the purpose of continuity of lineage and to maintenance the wealth of households. Furthermore, the compilation of the Islamic law (KHI) in book II on Chapter I article 171 about inheritance stated, that the adopted child is the child maintenance for daily life. Tuition fees and so forth switch responsibility from the parents to the adoptive parents of origin based on the Court ruling.

From the definitions above, the adopted child definition can be inferred is the son of another person who is appointed to be a child of its own in terms of maintenance, education, and other responsibilities based on a legitimate legal process by not disturbing the status of their lineage.

V. The Status Of The Adopted Child In Inheritance In The Compilation Of The Indonesian Islamic Law

Compilation of Islamic law (KHI) stipulates that between the adopted child and the adoptive parents are interwoven relationship. It can be found in article 209 paragraph (1) and paragraph (2) as follows:

1) The treasure of adopted child are divided based on the articles 176 until 193, while the adoptive parents who did not receive a wills and Testament was given as much as 1/3 of inheritance the adopted child.

2) The adopted children who did not receive a wills is given as much as 1/3 of the inheritance from adoptive parents.

In general it can be said that the status of the adopted child in inheritance remains in its original status. He has forbidden relationship with her biological parents, so she only has a relationship with their inheritance. Thus it can be realized that adoption does not change the relationship that had long been forbidden as well as inheritance among them.

Although the adoption did not change the structure of the forbidden and inheritance, but it is not fully reduce the value and adoption. This is especially seen on:

First; Adoption creates the legal existence of a transitional maintenance of everyday life which was originally under the control of the biological parents to the adoptive parents.

Second; the responsibilities of education fees at first is on biological parents then moving to the adoptive parents.

The third; Adoption is not adequate if only with the consent of both parties, although it has been established through rituals and religion, but must be obtained via the Statute of the Court. Thus the child's status will be valid.

Fourth; the existence of a legitimate child status as expressed above will create legal consequences in inheritance, where the child will acquire as many 1/3 treasures. Likewise, the the contrary when the child who dies then the adoptive parents would also be able to obtain as many 1/3 from treasures of the adopted child.

Thus it can be affirmed that the status of the adopted child in the compilation of Indonesia Islamic law still isn't as heirs (his status is outside the heirs) but gain treasure of adoptive parents are relatively balanced with the presence of children, by the way of mandatory wills. In this case, the presence of visible desire for the Compilation of Islamic law in Indonesia to maintain Al-Qur'an text on one hand, but trying to keep the interests of the adopted child on the other side.

This is same with Mohammad Daud Ali's saying that the position of adopted children remained stationed outside the heir, similar with inside inheritance jurisprudence during this, but by adapting the custom Legal value which limited into the value? Islamic law because of parental responsibility changed the origin of the adoptive parents as regards the maintenance of everyday life, and the cost of education based on the verdict of the Court, as mentioned in the articles 173.

A general provision of KHI says, then the adopted children who did not receive a wills is given as much as 1/3 from inheritance of adoptive parents who died. This is in line with the intent of article 209 paragraph (2) KHI.

In line with this, M. Yahya Harahap said the following: when the interviews held among scholars in Indonesia while gathering KHI materials, it was not scholars that can receive the application the adopted child

status becomes the beneficiary. Perhaps the event of Zayd ibn Harisah was very impressed in the memory and comprehension of the scholars.

Starting from the reactions of the ulama referred to the author of KHI conscious, and feels no need to go to further step to overshadow consensus of scholars. Therefore, although customary law equates the rights and position of adopted children with the biological status, but KHI is not compromised into value and adapts to Islamic law.

The attitude of Indonesia scholars which puts the status of the adopted child outside the Islamic inheritance system, but still obtain the treasure relics with the mandatory wills, on the one hand it understood as a wise attitude. It is said so because considerations:

1. The Status of the adopted child in inheritance law of KHI fixed in accordance with the provisions on the Q.S Al-Ahzab: 4-5 The Meaning as follows:

God certainly does not make for a man two hearts in his Sockets; and he does not make your wives whom you zihar as your mother, and she does not make the adopted children as a biological children (alone) that is merely your word in your mouth only. And God is telling the truth and she shows the way (the] oer.ar). Call them (adopted children) by (wear) their fathers name, that's a more just on the side of God, and if you do not know their fathers then (call them) your brothers same faith and at maulamu. And there is no blame upon you toward what you momentarily led astray to her, but (his sins) what is intentional by your heart. And it is God most forgiving again Most Merciful.

Next Qs. al-Ahzab: 40, the following meaning:

It certainly was not the father of Muhammad from a son among you, but he is the Messenger and concluding the prophets. And Allah knows of all things. "

These verses clearly were not incompatible, with KHI because the adopted child still not placed as heirs.

2. The adopted child remains a relic treasures gained by another route, namely through mandatory wills, provided no more than a third of the treasure relics. Thus the purpose of the existence of a permanent adoption achieved with maintains the interests of the child.

When searched the Foundation and legal basis for the existence of a mandatory will then through a variety of literature throughout the authors found, the authors can conclude that the Prophet never did this, nor has never been done by a companions, Likewise with the tabi'in and tabiit al-tabi'in, even those who afterward until recently.

Thus this case really has got its own settlement of scholars of the modern era in Indonesia is, in accordance with the legal dynamics that goes with fixed refers to the value of the Islamic law.

From the above descriptions, about the legal status of adopted children in the inheritance, the presence of KHI as a manifestation of one of the Islamic Law Reform of Indonesia has given something new. The provision of a must-have for the adopted child is different from what is in Egypt. Because the matter of wills in Egypt is not a matter of adopting children, and also different from the adopted child's status in the customary law, because there is a adopted child with a biological child in all respects, while in KHI which is considered it as the reform of Indonesian Islamic law determines that the problem adoption does not alter the status of the nasab, and still be punished by not inheriting, but by modification of the acquisition of property through a shall do.

VI. Conclusion

The obligation wills in the KHI is giving a number of property to the adoptive parents who do not receive the wills of their adopted child and the giving some property to the adopted child who does not receive the wills from his adoptive parents. The provisions of the division of property relics of both adopted and foster parents are arranged in accordance with the provisions set forth in articles 171 to 193 in the Compilation of Islamic Law.

The obligation wills depicted in Article 209 paragraph 1 and 2 KHI is a gift of inheritance in the form of a will, given to a adopted child or adoptive parents, because although there is no inheritance relation between the two, but through the will is the obligation of adopted children or parents lift is entitled to get some of the treasures. Between you, but he is the Messenger of Allah and the seal of the prophets. And Allah is all-Knowing all things. "These verses are clearly not contradictory, with the KHI, because the adopted son is not placed as the heir.

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