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Juridical Analysis of the Rights of Adopted Children to the Inheritance of a Husband and Wife Couple who Have no Descendants Based on Islamic Inheritance Law and Ruling in Case Number 233/Pdt.P/2021/Pa.Msa

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Abstract: The family has the most important role in human life as a social creature and is a small community group, consisting of a father, mother and children. However, not all wishes are fulfilled, because sometimes there are families who do not have family members, whether due to health reasons or because it has not been granted by the Almighty, so that an adopted child is adopted (adoption). This research has 2 (two) problem formulations, namely (1) What can be classified as inheritance and who gets inheritance from married couples who have no children? (2) How is inheritance distributed to adopted children whose adoptive parents do not abandon the child according to Islamic inheritance and the decision in case Number 233/Pdt.P/2021/PA.Msa? The type of research used in this research is normative research. This research uses a statutory approach and a conceptual approach. The results of research on the rights of adopted children to inherit from a husband and wife who have no offspring based on Islamic inheritance law and Decision Number 233/Pdt.P/2021/PA.Msa. As for inheritance issues, adopted children do not inherit but are only entitled to receive 1/3 of their adoptive parents' assets.

Keyword: Inheritance, Adopted Children, Court Decisions.

INTRODUCTION

Children are the dream of every married couple. However, not all couples are lucky to be blessed with children in their marriage. Therefore, adoption (adopted child) is often carried out. Usually adoption is carried out to obtain an heir or to obtain children for childless parents. The result of adoption is that the adopted child then has the status of a legitimate biological child with all rights and obligations.

Adoption of a child by a husband and wife has legal consequences for both parties. The emergence of legal consequences for the adoption of a child must of course be accepted, including if the consequences are detrimental. Inheritance rights, maintenance rights, giving a family name and other matters that may arise in the future are the legal consequences that will arise from the process of adopting a child.

Even though a child is legally adopted in accordance with the law, the legal status of the adopted child often lacks protection, especially when the adoptive parent dies, where an adopted child who should have a legal position as a child in the marriage of his adoptive parents is denied rights including inheritance rights.

The aim of providing child protection in Indonesia, including adopted children, is to ensure that children's rights are fulfilled so that they continue to live, grow, develop and participate optimally in accordance with human dignity and dignity, as well as receive protection from violence and discrimination, in order to create high-quality, moral Indonesian children. noble and prosperous.

There are two types of child adoption, namely:

- a. Adoption of children between Indonesian citizens
 - Adoption of children is based on custom. Adoption of children is carried out based on local community customs. Adoption of a child in this way can be requested for a court order for validation.
 - Adoption of children is based on statutory regulations. Adoption of children based on these laws and regulations is divided into direct and indirect child adoption. What is meant by direct adoption is adoption without going through a social institution, while indirect adoption is adoption through a social institution.
- b. Adoption of children between Indonesian citizens and foreign citizens. Adoption of children between Indonesian citizens and foreign citizens is only carried out through a court decision. The child adoption that can be done is:
 - Adoption of Indonesian citizens' children by foreigners
 - Adoption of foreign children in Indonesia by Indonesian citizens.

In the Qur'an there are also many verses that have been used as the legal basis for adoption, including:

Adoption of Children in Three Legal Systems From Abu Bakrah said, both my ears heard and my heart memorized the Prophet Muhammad SAW saying: "Whoever commits himself to a man other than his father, heaven is forbidden to him." (HR. Ibn Majah)

Adoption of a child according to Islamic law does not result in the severing of a child's lineage or blood relationship with the parents who gave birth to him. Islam strictly places restrictions on adopted children within their families. This is certainly different from the position of adopted children in the Civil Code. In terms of inheritance, adoptive parents may not inherit from each other with their adopted children, this is based on the fact that inheritance is based on a lineage relationship or legal descent. The rights of adopted children remain a concern in Islam, where inheritance of adopted children can be carried out through a mandatory will (Article 209 KHI).

In terms of KHI contained in Article 171, inheritance law has been explained, with general provisions referred to as:

- a. Inheritance law is the law that regulates the transfer of ownership rights to inheritance (tirkah) of heirs, determining who has the right to be an heir and how much each person shares.
- b. An heir is a person who at the time of his death was a Muslim or who was declared dead based on a court decision, leaving heirs and inheritance.
- c. An heir is a person who at the time of death is related by blood or marriage to the testator, is Muslim and is not prevented by law from becoming an heir.

- d. Inherited assets are assets left behind by the heir, both in the form of property that belongs to him and his rights.
- e. Inherited assets are inherited assets plus part of the joint assets after being used for the heir's needs during illness until death, expenses for handling the body, payment of debts and gifts to relatives.
- f. A gift is a gift of an object voluntarily and without compensation from someone to another person who is still alive to own.
- g. An adopted child is a child whose responsibility for daily maintenance, education costs and so on is transferred from their original parents to their adoptive parents based on a court decision.

Inheritance issues have existed since the Jahiliyyah period until now, so there are several laws that explain inheritance. The legal basis for inheritance is also found in the verses of the Koran and hadith. Al-Qur'an verses related to inheritance law include Surah an-Nisa' verse 11:

Meaning: Allah has prescribed for you regarding (distribution of inheritance to) your children. Namely: the share of one son is the same as that of two daughters; and if the children are all more than two daughters, then to them two-thirds of the property left behind; if there is only one daughter, then she gets half the property. And for two parents, for each one sixth of the property left behind, if the deceased has children; if the person who dies has no children and he is inherited by his parents (only), then the mother gets one third; if the deceased has several siblings, then the mother gets one sixth. (The distributions mentioned above) after fulfilling the will he made or (and) after paying his debts. (Regarding) your parents and your children, you do not know which of them is closer (of much) benefit to you. This is a decree from Allah. Indeed, Allah is All-Knowing, All-Wise. (An-Nisa' 4:11).

Then regarding adopted children, it is also hoped that in accordance with the provisions of Islamic law, adopted children will not inherit from their adoptive parents. However, adopted children are entitled to a share of their adoptive parents' assets through other procedures.

Indonesia has inheritance laws that are still plural in nature, where each region has different inheritance arrangements due to customs and culture which are also different in each region in Indonesia. Laws related to inheritance based on inheritance law based on the Civil Code, Customary Law, Inheritance Law based on Islamic law are the 3 (three) systems of legal rules that Indonesia currently has regarding inheritance. These different inheritance laws in Indonesia result in confusion and/or chaos regarding which law to use when resolving inheritance cases if a conflict arises between heirs. The rights of adopted children regarding property left by adoptive parents is an inheritance problem that often occurs among society.

In principle, a mandatory will is a will given to certain people in certain circumstances by the state through judicial channels. Bismar Siregar revealed that 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, because of a sharia obstacle.

As for Indonesian Muslims, the regulation of mandatory wills is narrowly regulated in article 209 of the Compilation of Islamic Law, namely only for adopted children and adoptive parents and judges have the authority of *ijtihad* to expand mandatory wills. Judges' *ijtihad* is generally extended by relying on the principles of justice and balance. Decisions regarding mandatory wills can provide benefits for the lives of the entire community.

Islamic inheritance law determines that adopted children can only inherit and be inherited from their biological parents, biological fathers can also still inherit and inherit from biological children. His rights and obligations with his parents have been stipulated in a mandatory will.

Namely a will given to non-heirs, the will is only 1/3 of the assets concerned, whether they are adopted children or adoptive parents. Inheritance law is the law that regulates the transfer of property ownership rights (*tirkah*) of heirs, determining who has the right to be an heir and how much each share will be (Article 171 letter a Compilation of Islamic Law). Before the inheritance becomes the right of the heir, the rights relating to the inheritance must first be taken into account, because the heir during his lifetime has unpaid debts, leaves a message (*will*) regarding the inheritance and so on.

According to Sayid Sabiq, there are several reasons that give rise to inheritance in Islam, a person can inherit inheritance because of 3 (three) things, namely because of kin/ *lineage relationships*, marriage, and *wala'* (liberation of slaves). In other Islamic legal literature, it is stated that there are 4 (four) reasons why a person can receive inheritance from someone who has died, namely:

- Marriage ;

Apart from inheritance rights which apply on the basis of kinship relations, they also apply on the basis of marriage relations (*permendaan*) meaning that the husband becomes the heir for his wife who dies and the wife becomes the heir for her husband who dies.

Marriage which is the cause of the emergence of an inheritance relationship between husband and wife is based on two conditions, namely that the marriage is valid according to Islamic law, and the marriage is still intact.

- Kinship/ *lineage* ;

One of the reasons for the transfer of assets of someone who has died to someone who is still alive is the existence of a relationship of friendship or kinship between the two, namely a lineage relationship caused by birth.

Judging from the line connecting the lineage of those who inherit with those who inherit, they can be classified into three groups, namely, *Furu'* (i.e. descendant children (branches) of the heir), *Ushul* (i.e. ancestors (principal or origin) who cause the existence of heirs), and *Hawasyi* (namely the family connected to the deceased through a lateral line, such as brothers, uncles, aunts, and their descendant children without distinguishing between male or female).

- *Wala'* (liberation of slaves) and;

causal relationship is a relationship between heirs and heirs due to kinship according to law that arises from freeing slaves, even though there is no blood relationship between them.

Currently, the *wala' relationship* only exists at the level of discourse. The *wala'* relationship occurred due to the efforts of a slave owner who voluntarily freed his slave. In this way, the slave owner changed the status of a person who was previously incompetent to act, to become capable of acting in managing, owning and carrying out transactions with his own property.

Apart from that, being able to take legal action in return for the pleasure that had been given to his slaves as an incentive for people (at that time) to free their slaves, Rasulullah SAW gave the right of *wala'* to those who freed them in accordance with his hadith which means:

"The right of wala' is only given to people who have freed (their) slaves." (HR. Bukhari and Muslim).

Therefore, Rasulullah SAW considered *wala'* as a kinship relationship based on legal lineage (*nasab hukmy*), he said:

"Wala' is a relative as a blood relative who cannot be sold or given away." (HR. Al-Hakim)

Thus, a person who has *wala' rights* has the right to inherit the inheritance of his slave if the slave dies.

- Relations between Muslims

The Islamic relationship referred to here occurs if a person who dies has no heirs, then his inheritance is handed over to the public treasury or what is called *Baitul Maal* which will be used by Muslims. Thus, the property of Muslims who do not have heirs is inherited by Muslims.

Starting from the description above, the author wants to research more about the problem and compile it in a thesis entitled:

"Judicial Analysis of the Rights of Adopted Children to Inheritance from Married Couples Who Have No Children Based on Islamic Inheritance Law and Case Decision Number 233/Pdt.P/2021/PA.Msa".

METHOD

This type of research is normative juridical in nature. The approaches taken in this research are, the statutory approach and the conceptual approach.

The sources of legal materials used in this research consist of primary legal materials, secondary legal materials and tertiary legal materials, which are described as follows:

- a. Primary legal materials, namely binding legal materials, in the form of statutory regulations relating to the issues being studied, consist of:
 - Law Number 16 of 2019 concerning amendments to Law Number 1 of 1074 concerning marriage.
 - Presidential Instruction Number 1 of 1991 concerning the Compilation of Islamic Law.
 - Civil Code (KUHPerdata).
- b. Secondary legal materials are legal materials obtained from books, texts, scientific journals, opinions of scholars, symposiums conducted by experts related to the object of this legal research study. Newspapers, weekly magazines, *bulletins* and the internet can also be material for this research as long as they contain information that is relevant to the object of this research study.
- c. Tertiary legal materials, namely supporting legal materials that provide instructions and explanations for primary legal materials and secondary legal materials, such as dictionaries.

RESULTS AND DISCUSSION

What can be classified as inheritance and who gets inheritance from a husband and wife who have no children

The Prophet Muhammad SAW said: "Give certain portions to those who are entitled to them. And the rest goes to men who are more important (closer in kinship), (Al-Bukhari and Muslim)."

According to the Civil Code, there are four groups of heirs, namely:

- a. Inheritance assets only become open (can be inherited to another party) if a death occurs. (Article 830 Civil Code);
- b. There is a blood relationship between the heir and heirs, except for the husband or wife of the heir. (Article 832 of the Civil Code), provided that they are still bound by marriage when the testator dies. This means that if they are divorced when the testator dies, then the husband/wife is not the testator's heir.

Based on this principle, those who have the right to inherit are only people who are related by blood to the testator. Whether in the form of direct descendants or parents, siblings, grandmothers/grandfathers or descendants of their siblings. So, if put into categories, there are four large groups who have the right to inherit, namely:

- 1) Group I: husband/wife who lives the longest and their children/descendants (Article 852 of the Civil Code).
- 2) Group II: parents and siblings of the Heir
- 3) Group III: Families in a straight line upwards after the heir's father and mother
- 4) Group IV: Uncles and aunts of heirs from both the father's and mother's sides, descendants of uncles and aunts up to the sixth degree are counted from the heir, siblings of grandparents and their descendants, up to the sixth degree are counted from the heir.

This class of heirs shows which heirs have priority based on their order. This means that class II heirs cannot inherit the heir's inheritance if there are still class I heirs (Irma Devita Purnamasari, SH. M.Kn, 2023).

There are three people who inherit from a husband and wife who have no children, namely according to Ashabul Furudl is a group of heirs whose share has been determined in the Qur'an and hadith, the second according to Ashobah is the heir who has the right but whose share is not explained in the Al -Qur'an and Hadith, and the third according to Dzawil Arham are people who are not related to the heir, but their part is not explained in the Al-Qur'an and hadith.

In the decision of case number 233/Pdt.P/2021.PA.Msa, the person who inherited the inheritance was:

- Wife;
- The robber's brother/mother's brother;
- Father's brothers/sisters;
- Surrogate brother
- Adopted child through a mandatory will institution (Case Decision Number 233/Pdt.P/2021/PA.Msa).

In Islamic inheritance, adopted children do not receive an inheritance but instead receive a mandatory will.

How is inheritance distributed to adopted children whose adoptive parents do not abandon the child according to Islamic inheritance and the decision in case Number 233/Pdt.P/2021/PA.Msa?

a. Distribution of inheritance of adopted children according to Islamic inheritance

Adoption of children according to Islam emphasizes love, providing a living, education and meeting all their needs (R. Soeroso, 1992). according to Dr. Mahmud Syaltut, quoted briefly by Drs. Fachtur Rahman in his book The Science of Inheritance, he differentiates between two types of meaning of adopted children, namely: First, the integration of a person with a child whom he knows is someone else's child into his family. He is treated as a child in terms of love, provision of living, education and services for all his needs, not treated as a child of his own lineage. Second, it is understood from the words "tabanni" (absolutely adopting a child) according to the customary law that applies to humans.

In the will there are different provisions, where the assets bequeathed cannot exceed one third, if the testator has heirs. This is based on the consensus of the ulama and the hadith narrated by

Abi Waqqash, where when he wanted to make a will, he asked the Prophet first whether he would bequeath 1/3 (one third) of his wealth, then the Messenger of Allah. said:

“ Just a third and a third is a lot. Indeed, leaving your heirs rich is better than leaving them poor and begging from others .” (Al-Syaukani: 7).

If the testator with heirs gives more than 1/3 (one third), then defer the excess with the consent of the heirs. If they agree, then the excess assets remain in the will. This heir agreement can be carried out if two conditions are met, namely: the agreement is carried out after the death of the testator and the agreement is carried out by the heirs who have reached puberty and know the amount of assets bequeathed. If only some of the heirs agree, while others do not, then what happens is that it is limited to the objects that are part of those who agree. Meanwhile, the part that does not agree is void.

In contrast to the above, if the giver of the will has no heirs, then, according to Abu Hanifah, the excess of 1/3 (one third) of the assets is valid and must be carried out even if the entire assets are used up. The obstacles to implementing a will of more than 1/3 are: Regarding heirs, if there are no heirs, then no one has rights in this matter. In contrast to this opinion, the Malikiyah, Hanabilah and Syafi'iyah scholars are of the opinion that if the will is more than 1/3 and there are no heirs, then the will is invalid, because the excess assets belong to Muslims, and because that no one can carry out the will of the testator (An-Nawawi: 450).

From this description, it can be said that the transfer of property rights from a person to another person who is not his heir can be used using a testamentary method with the provisions above. Apart from that, this can also be done by means of a gift, namely a direct gift to the adopted child while the adoptive parents are still alive. Another method regulated by Islam is through a mandatory will, namely a provision that states that prospective heirs are obliged to make a will regarding their share of the inheritance. In the provisions of the Compilation of Islamic Law (KHI), mandatory wills are given to adopted children.

According to the Compilation of Islamic Law, Article 171 letter h regarding adoption states that "an adopted child is a child whose responsibility for daily maintenance, education costs and so on is transferred from their original parents to their adoptive parents based on a court decision.

The Islamic legal system regulates that adopted children and adoptive parents cannot inherit from each other, inherited assets can only be given through a will, but the will must not exceed the provisions that must be obtained by the heirs .

The Prophet's hadith explains clearly that a will is not permitted to exceed 1/3 of the inheritance, so in the case of an adopted child's inheritance it is clearly not permissible for an adopted child to receive a share that exceeds that of a biological child or exceeds 1/3 of the inheritance of his or her adoptive parents.

Differences in Inheritance Law Systems for Adopted Children

In terms of inheritance, both customary law, Islamic law and western law, have provisions regarding inheritance rights, namely:

a. Customary law

When using customary institutions, determining inheritance for adopted children depends on the applicable customary law. For parental families, for example in Java, adoption of a child does not automatically sever the family ties between the child and his biological parents. Therefore, apart from receiving inheritance rights from his adoptive parents, he also remains entitled to inheritance from his biological parents. However, the inheritance obtained by adopted children from their adoptive parents is limited to inherited assets other than heirlooms. In contrast to Bali, adoption is a legal obligation that releases the child from their

family of origin to their adoptive family. The child becomes the biological child of the person who adopted him, so that in inheritance he inherits property only from his adoptive parents. It is also different in South Sulawesi, where an adopted child still has an inheritance relationship with his biological parents and family, and he has no right to be an heir from his adoptive parents and family, but he can be given a gift or will.

b. Islamic law

In Islamic law, adoption of a child does not have legal consequences in terms of blood relations, guardianship relations and inheritance relations with the biological parents and the child still bears the name of the biological father. Therefore, adopted children do not become heirs of adoptive parents. However, adopted children may receive assets from their adoptive parents through a will. The size of this will is also determined not to exceed 1/3 of the inheritance.

c. Western Law

The Civil Code does not contain terms regarding adopted children or adopted children, so regarding child adoption according to the Civil Law, it refers to the provisions of the 1917 Staatblaad Number 129, specifically Article 5 - Article 15. This Staatblaad is a complement to the Civil Code to fill in the legal gaps that regulate the issue of child adoption. . These regulations become a reference for adoption of children for people who are subject to or subject themselves to the Civil Code (BW).

Concerning the legal consequences of adopting a child, it is regulated in Articles 11, 12, 13 and 14 Stb. 1917 No. 129, which states that adoption is an act that equalizes the position of adopted children with biological children, both in terms of maintenance and inheritance. In the provisions of Article 12 Stb. 1917 No. 129, with the adoption of a child, the adopted or adopted child then uses the surname of his adoptive parents and has the same legal status as the biological child of his adoptive parents. According to Stb. 1917 No. 129, adopted children will lose their lineage to their biological parents, and there will be a lineage relationship with their adoptive parents. With such an appointment, the adopted child has the same position as the ab intestato heir. So an adopted child should have the right to inherit from his adoptive parents just like a biological child born in a legal marriage.

Staatblaad is currently no longer relevant because national law regulates child adoption, namely in Government Regulation Number 54 of 2007 concerning the implementation of child adoption. The Staatblaad's concept of adopting a child is very different from the provisions of PP 54/2007 and the Child Protection Law. PP 54/2007 and the Child Protection Law state that adoption does not sever the blood relationship between the adopted child and his biological parents. This provision is very different from the statute which terminates the blood/native relationship of adopted children with their biological parents (Naomi Renata Manihuruk). In principle, inheritance of adopted children returns to the inheritance law of their adoptive parents. Based on legal thinking, adoptive parents are obliged to ensure that after they die, their adopted child is not neglected. For this reason, usually in social life, adopted children can be given something from their inheritance to support them by making a will. Probate is a way for the owner of assets during his lifetime to express his final wishes regarding the distribution of his inheritance to heirs which will only come into effect after the heir dies. This last wish is usually spoken or written down. Usually this is done in the presence of family members who are closest or can be trusted by the heir (Regynald Pudihang, 2015).

As previously explained, adopted children do not have the right to inherit the assets inherited from their adoptive parents, because according to Islam the basis for inheritance is only due to 2 (two) things, namely blood relationship and marriage relationship. Adopted

children are not related by blood to their adoptive parents, so adopted children are not heirs of their adoptive parents, but remain heirs of their biological parents. To provide guarantees for adopted children in acquiring their adoptive parents' assets, adoptive parents can make a gift of assets to adopted children during their lifetime. Apart from that, it can also be given through a will. In Islam it is determined that a will can give as much as 1/3 of the assets of the person giving the will. If the will is for more than 1/3 of the assets, then the will only applies to 1/3 of the assets without needing approval from someone. However, if the will is more than 1/3 of the assets, the heirs' approval will be required. There are 3 (three) forms of wills in this situation:

- 1) All heirs confirm the will made by the testator, even though they know the law of what they are doing. In this situation, the inheritance is given by will and the remainder is divided among the heirs.
- 2) The heirs do not allow more than 1/3. In this case, a will applies where 1/3 is given to the person who receives the will, while 2/3 is divided between the heirs.
- 3) Some heirs agree to more than 1/3 of the will while others do not. In this case, the inheritance is divided twice (Arpani,2001).

b. Distribution of inheritance of adopted children according to decision No 233/Pdt.P/2021/PA.Msa

In case decision number 233/Pdt.P/2021/PA.Msa. Considering, based on the testimony of witnesses, during his lifetime AM adopted a child named FM, he had cared for him since he was a baby and continued to care for AM's adoptive parents until he died.

In this decision, the heir was proven before the court to have adopted children during his lifetime. The child has been under the care and maintenance of the testator since he was a baby. The child takes care of the heir until the heir dies. So in accordance with the provisions of Article 205 paragraph (2) of the Compilation of Islamic Law, the panel of judges considers that the testator's adopted child has the right to the testator's inheritance through the obligatory testamentary institution; that the petitioners before the court did not deny and acknowledged the presence of the heir's adopted child, then for the sake of justice, expediency, and to avoid loss of a person's rights to the heir's inheritance, the panel of judges determined the child to be the recipient of the heir's obligatory will (Case Decision Number 233/Pdt.P/2021/PA.Msa).

The Compilation of Islamic Law provides a mandatory will for adopted children as stated in Article 209:

- a) The inherited assets of adopted children are divided based on Articles 176 to Article 193, while adoptive parents who do not receive a will are given a mandatory will of a maximum of 1/3 of their adopted child's inherited assets.
- b) Adopted children who do not receive a mandatory will are given a mandatory will of 1/3 of the adoptive parents' assets (Abdurrahman).

According to Article 209 KHI, it is known that there is no relationship between adopted children and their adoptive parents. However, to maintain the familial relationship between the adopted child and the adoptive parents, some of the assets owned by the adoptive parents can be inherited by the adopted child by making a will or by giving a compulsory will. According to the Compilation of Islamic Law, a will is the gift of an object from an heir to another person, an institution that takes effect after the heir dies. The meaning of a mandatory will is a will intended for heirs or family who do not receive a share of the inheritance of the person who died due to sharia obstacles (Muhammad Amin Suma,2013).

From the explanation above, it is clear that the rights of adopted children in the assets inherited from their adoptive parents were originally not entitled to inheritance, but with a mandatory will, they are entitled to 1/3 of the assets inherited from their adoptive parents.

Mandatory testamentary obligations apply to someone who dies and leaves assets but does not have a will, so his assets must be given to fulfill the obligations of a testament. Therefore, the adopted child is determined to be entitled to a portion of the inherited assets in the provisions of the obligatory will.

In determining mandatory wills, formally, religious court judges use the provisions of the Compilation of Islamic Law as stated in Presidential Instruction Number 1 of 1991. Formally, legally, the provisions in the Compilation of Islamic Law, especially article 209, understand that mandatory wills are only intended for adopted children and other people. adoptive parents.

The complexity of Indonesian society means that judges have to leave the existing formal jurisdiction, namely by using the *rechtsvinding* function which is justified by positive law if there is no law that regulates it. This authority is given in article 5 of Law Number 48 of 2009 concerning judicial power. Apart from that, the Compilation of Islamic Law in article 229 also gives judges the authority to resolve cases by paying close attention to the legal values that exist in society so as to provide decisions that are in accordance with a sense of justice.

In principle, judges have the authority to use their function as *rechtsvinding* or in Islamic law called *ijtihad* as an alternative. In the case of a narrow mandatory will for adopted children and adoptive parents, the judge is obliged to use the authority of his *rechtsvinding* or *ijtihad* function.

Although each judge's considerations may vary regarding the amount of the mandatory will in each case, there is a principle which is the basis for determining the amount of the mandatory will, namely the principle of balance. Mandatory wills are given without disturbing the position of other heirs. Based on the principles of justice and balance, the position of adopted children does not always receive a maximum of 1/3 (one third) of the testator's inheritance. With the judge's authority, adopted children can also receive more than stated in article 209 of the Compilation of Islamic Law.

Adopted children can get a will or gift if their adoptive parents distribute the will or gift before a notary and do not cause losses to other heirs.

CONCLUSION

Based on the results of the above materialization, there are several conclusions as follows :

1. According to the Civil Code, there is a blood relationship between the heir and heirs, except for the husband or wife of the heir. (Article 832 of the Civil Code), provided that they are still bound by marriage when the testator dies. This means that if they are divorced when the testator dies, then the husband/wife is not the testator's heir.

According to Islam, there are three heirs who inherit from a husband and wife who have no children, namely according to Ashabul Furudl, it is a group of heirs whose share has been determined in the Al-Qur'an and hadith, the second according to Ashobah is heirs who are entitled but not explained. its part is in the Al-Qur'an and Hadith, and the third according to Dzawil Arham are people who are not related to the heir, but their part is not explained in the Al-Qur'an and hadith.

2. In this research, adopted children do not receive an inheritance from their adoptive parents but instead receive a mandatory will of 1/3 of the testator's inheritance and no more than 1/3 of the testator's inheritance. And if the heir wants to make a will or gift, this is done before a notary so as not to cause legal problems in the future.

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