

# Position of Adopted Children as Heir Based on the Compilation of Islamic Law (Case Study Number 2142/Pdt.G/2017/PA.PLG)

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## ABSTRACT

Article 171 letter h of the Compilation of Islamic Law states that an adopted child is a child who in terms of maintenance for his daily life, education costs and etc, all of the responsibilities shift from their original parents to their adoptive parents based on a court decision. In fact, Islam strongly supports the existence of child protection efforts, one of which is by adopting children. The Compilation of Islamic Law emphasizes that adopted children or adoptive parents have no inherited relationship, but as an acknowledgment of the institution of adoption, the relationship between the adopted child and their adoptive parents is conveyed through the intermediary of a will or testament obligatory. The compilation of Islamic law is a guideline for religious courts in which an adopted child is entitled to a mandatory will on the condition that it cannot be more than 1/3 (one third) of the inheritance of the adoptive parents. The consideration of the judge who gave more than 1/3 of the assets based on the case Number 2142/Pdt.G/2017/PA.PLG is probably because since the baby the child was raised by their adoptive parents and they intended to split 2 land certificates and intends to give one of them to their adopted child during their life, but until they died it was not carried out and inheritance distribution does not reduce the share of the other heirs and there is even a remaining inheritance.

**Keywords:** *Adopted Children, Inheritance Rights, Compilation of Islamic Law, wasiat wajibah*

## 1. INTRODUCTION

Inheritance law is the law that regulates the transfer of all of the assets from the estate of a deceased family member to the rightful heir and the consequences that arise from all of the process during the transfer. The existence of inheritance law is considered very important to create a legal order in social life. [1] According to Pitlo, inheritance law is a series of clauses relating to the death of a person, the consequences caused by the transfer of inheritance from a deceased family member to heirs between the family itself or with third parties. [2] Indonesia has a very diverse inheritance law system. This can be seen with the enactment of various inheritance law systems in Indonesia, such as civil inheritance law regulated in the Civil Code, Islamic law and Adat law. From all of the three types of legal systems that apply in Indonesia, they have different legal styles and characteristics, Islamic inheritance law which is based on the Al-Quran and Hadith, then civil law based on BW (*Burgerlijk Wetboek*) or Indonesian Civil code, and last Adat law originating from local customary inheritance. There are differences in Adat inheritance law because each

region has different laws/customs. The existence of this diversity is because there has been a division of groups in Indonesian society since the colonial era. [3]

The division of the Indonesian population based on article 131 IS (*Indische Staatsregeling*) which states that the Indonesian population is divided into three groups, namely the natives/bumiputeras, foreign Eastern groups and European groups. Wiryono classified Indonesian population into several groups, such as: [4]

1. For Natives Indonesians, Adat laws apply.
2. For Natives Indonesians who are Muslim, Islamic inheritance law applies.
3. For Arabs, Islamic inheritance laws apply.
4. For Chinese and European people, the western inheritance law / BW (*Burgerlijk Wetboek*) applies.

In principle, these three laws have the same thing in common, such as regulating the transfer of all of the assets from the estate of a deceased family member to the rightful heir. Although in practice there are differences, which is Islamic law and western inheritance law (BW) require that there must be death first, while Adat law is based on a hereditary system. The basic difference between these three

legal systems is that in Islamic law and western inheritance law (BW) the distribution of inheritance must be carried out after the heir dies, while in Adat law it can be done while the heir is still alive. [5] Based on the Compilation of Islamic Law Book II Article 171 letter a, the law of inheritance is a law that regulates the transfer of ownership rights from the deceased as a testator, determines who is entitled to be the heirs, and the portion for each heirs. [6] The existing Islamic inheritance law based on Al- Qur'an, in Surah An-Nisa verse 7 which means: *"Just as there is a share for men in what their parents and kinsfolk leave behind, so there is a share for women in what their parents and kinsfolk leave behind, be it little or much, a share ordained"*

In Islamic law, inheritance is not only given to the husband or wife, but also given to the descendants of the husbands and wives, either in a straight line down (their children and descendants), a straight line up (parents), or a side line (relatives), no exception for male nor female.

In accordance with Article 1 of Law Number 1 of 1974 concerning Marriage, marriage is defined as a mental bond between a man and a woman as husband and wife with the aim of forming a happy, eternal, family based on the One Supreme God. One of the purposes of marriage is to produce offspring/children. From the marriage, usually married couples are blessed with children, but sometimes there are also married couples who have not been lucky enough but they have a very big desire to raise children so they choose to adopt a child [7] Instinctively, married couples really want the presence of a child who will later become their offspring, who can be used for outpouring their love and even as a glue for marriage. Inheritance can be distributed to children, so the existence of children in inheritance law has a very significant position. The legal consequence of a testator who does not have children is how the inheritance is divided if there are no direct descendants. More than often since the child's status is only as an adopted child, problems arise in the family. Usually the problems that often arise in religious courts in terms of litigation are about who is entitled to be the heirs, and the portion for each heirs or whether the adopted child has the right to receive the inheritance from the adoptive parents.

Based on Islamic law, the main principle in inheritance is based on blood/ lineage/ hereditary relations, so adopted children do not have the right for inheriting, that means if the child is not a biological child then the child is not entitled to inherit from their adoptive parents. Therefore, there is a possibility that problems may arise in the future. [8] According to Islamic law, adopted children are not entitled to the distribution of inheritance from their adoptive parents, therefore as a form of acknowledgment of the adopted child, a solution is given according to the Compilation of Islamic Law by giving a "wasiat wajibah" which is a maximum of 1/3 (one third) of the inheritance of their adoptive parents. This has been regulated in the Compilation of Islamic Law Article 209 paragraph 2 that states: *" Against adopted child who does not receive will is*

*given a will as much as 1/3 of the inheritance of their adoptive parents "* [9]

## **PROBLEMS**

First, How is the Position of Adopted Children in Positive Law in Indonesia?

Second, How is the Position of Adopted Children as Heirs in the Compilation of Islamic Law?

Third, What factors did the judge consider when making the decision number 2142/Pdt.G/2017/PA.PLG?

## **RESEARCH METHOD**

The research method is used to collect data to get answers to the existing problems, moreover the data obtained from this research can be scientifically justified and not wrong and deviate from the subject matter. This research is one of legal research, which is called normative or doctrinal legal research. The approach used is the statutory approach and the case approach. The sources of legal research are primary legal materials and secondary legal materials. In this case, it uses a statutory approach and a case approach, which collects legal materials by looking for laws and regulations regarding or relating to the issue, in addition collects court decisions regarding the legal, such as decisions that already have steady strength and have permanent power plus conducts interviews. Lastly, The data analysis technique used is deductive logic. [10]

## **2. DISCUSSION**

### *A. Position of Adopted Children in Inheritance*

#### *1. According to the Compilation of Islamic Law*

Basically Islam supports adoption as a form of child protection, but there are stipulation regarding what is permitted in the adoption of a child. Adoption of a child that is allowed in Islam is the adoption of a child with the aim of helping the welfare of the child and providing protection without changing children lineage and became their biological child. In adopting a child according to the compilation of Islamic law, the position of the child Adoption is not equal with the biological children, so they did not change the civil issues such as guardianship and inheritance.

Based on Government Regulation Number 54 of 2007 concerning the implementation of Child Adoption, child adoption is defined as a legal act that diverts a child from the authority of the parents, legal guardians, or other person responsibilities for the care, education, and rearing of the child, into the family of the adoptive parent. [11] In the compilation of Islamic law, the adopted child is not part of the legal heirs furthermore the adopted child is only entitled

to receive a will that is related to the inheritance of his adoptive parents, as regulated in Article 209 paragraph (2) *Adopted children who do not receive a will, shall be given a legacy obligatory maximum of 1/3 of the inheritance of their adoptive parents.*

Islam does not rule out the possibility for adopted children to get a share of the inheritance of their adoptive parents, the distribution of the wasiat wajibah is one of form to give love from parents for the child, and as an expression of gratitude to the adopted child who has accompanied them while they were alive. Distribution of the inheritance from parents to adopted children can be done by a grant or will that is spoken by the adoptive parents and then written in writing through a wasiat wajibah.

However, there are limitations in adopting children according to Islam because adoption does not bring legal consequences in terms of blood/lineage relations, guardianship relationships for girls and inheritance relationships from adoptive parents to adopted children, and basically the adopted child remains an legal heir of their biological parents and must use the name of their biological father.

## 2. According to Civil Law

In fact, the Civil Code adheres to a limited parental or bilateral inheritance system, where this social system group connects adopted children to the descendants of adoptive parents. According to Stb. 1917 No. 129 Article 12 concerning the adoption, an adopted child has the right to use the surname of his adoptive parents and has the same position as the biological child of the adoptive parent in the eyes of the law. Therefore, the adoption of a child based on the Civil Code results in the termination of the adopted child's relationship with their biological parents. The adoption of the child automatically makes the adopted child an ab intestate heir and has the same position as the legal heir and subsequently the adopted child has the right to inherit from his adoptive parents and is considered as a biological child born in a legal marriage. [12] Based on Stb. 1917 No. 129 and according to Law no. 23 of 2002, the status of an adopted child is considered legitimate according to law so that an adopted child has the right to inherit from his adoptive parents, but due to the disconnection of the adopted child's relationship with his biological parents, the adopted child is no longer entitled to inherit from his biological parents in accordance with the stipulations of Stb. 1917 No. 129 concerning adoption.

## 3. According to Adat Law

Adat law is unwritten law in the form of legislation and its existence is born and rooted in the local community and area. To determine the distribution of inheritance for adopted children depends on Adat law and applicable traditions institutions, which relates to the social system adopted by the region. For example, for families that adhere

to a parental social system, such as in Java, where adoption does not break the kinship between the adopted child and their biological parents, furthermore the adopted child is entitled to inherit from both their biological parents and adoptive parents.

This is in contrast with the adoption that happens in Bali which will terminate the relationship between the adopted child and their biological parents, then the child will become the biological child of the adoptive parents and will continue the position of their adoptive father. [13]

## B. Rights of adopted children to inheritance from adoptive parents based on the Compilation of Islamic Law

*In the Compilation of Islamic Law* stated that between adopted children and adoptive parents there is no inherited relationship, but as a form of legalization of the adoption agency, an intermediary will or will is given to the adopted child from the adoptive parents. The Compilation of Islamic Law is a guideline for religious courts, which state Against adopted child who does not receive will is given a will as much as 1/3 of the inheritance of his adoptive parents.

To carry out wasiat wajibah, there is no need for direct written evidence from the testator because there are regulations that clearly regulate the implementation of the mandatory will as stated in Article 209 of the Compilation of Islamic Law (KHI) :

- 1) The inheritance of adopted children is divided according to Article 176 to Article 193 as mentioned above. Meanwhile, for adoptive parents who do not receive a will, will be given a wasiat wajibah of up to 1/3 of the inheritance of their adopted children.
- 2) Adopted children who do not receive a will, shall be given a legacy obligatory maximum of 1/3 of the inheritance of their adoptive parents

Based on Article 209 of the Compilation of Islamic Law (KHI) above, it is stated that adopted children still have inheritance rights to the inheritance of their adoptive parents even though the inheritance obtained indirectly, since in Islamic law the only legitimate heirs are heirs who have kinship or blood relations with the heir. Furthermore, In the KHI, adoptive parents are automatically considered to have left a will which is called a wasiat wajibah of a maximum of 1/3 (one third) of the inheritance left for their adopted child, or vice versa. The distribution of this mandatory will must be done first before the distribution of inheritance to other heirs. [14]

## C. Decision Number 2142/PDT.G/2017/PA.PLG

1. Determine the share of each of the joint assets mentioned above, 1/2 part for the late Mahdi Abdullah bin Abdullah and another 1/2 part for the late Halimah bint Subni.
2. Determine the heirs of the late Halimah bint Subni, one of which is Kiki Wahyuni (adopted child) and determine the

share of each heir Kiki Wahyuni (adopted child) gets 1/6 of the share of Halimah bint Subni.

3. Determine the heirs of the late Halimah bint Subni, one of which is Kiki Wahyuni (adopted child) and Determine the share of each heir Kiki Wahyuni (adopted son) gets 1/3 of the share from Mahdi Abdullah bin Abdullah.

#### *D. Position of Adopted Child based on Positive Law in Indonesia*

Adoption of children in Islamic law is defined as the transfer of responsibilities in the aspect of providing a living, educating, maintaining, or in the context of worshipping Allah SWT. As for Islamic law, it is not recognized to adopt a child as a whole, which is defined by treating the adopted child as a biological child. Adoption of a child that is permitted in Islam is only to help and fulfil all the needs of the child, both material and immaterial, in terms of giving love, livelihood, education so that the child will get a better life. [15] Adoption of a child or known as *tabanny*, is defined as the adoption of another person's child and is considered as one's own child. There are several perspectives that refer to the fatwa issued by the Indonesian Ulema Council (MUI) regarding the meaning of *tabanny* and then divided into two groups of adoption (*tabanny*):

a. The adoption of a child (*tabanny*) which is prohibited is the adoption of a child carried out by the jahiliyah community and western civil law, which makes the adopted child a biological child with all the rights as a biological child and terminate of the civil relationship between the adopted child and their biological parents.

b. Adoption of a child (*tabanny*) which is supported by Islam is as a way of worshipping Allah SWT by providing a living for the adopted child, bearing the costs of daily life, education, but still maintaining good relations between the adopted child and their biological parents and not change the lineage of adopted child to a biological child.

Moreover, it could be concluded that based on Islamic Law adopting a legal child is permissible or called "*mubah*" in Arabic words, if the process of adopted a child did not change or transfer the lineage of an adopted child to their adoptive parents, while the form of adoption that is prohibited and contradicted to Islam is to provide the same legal position and is considered as their own child. [16] Adoption according to the Compilation of Islamic Law is a way to get reward from Allah SWT which is usually done by married couples who have not been blessed with children, Adoption of children is usually considered as a form of worship by taking care of children who are neglected, poor, and underprivileged. Through this effort, a social mission in Islam is also formed to help people in need, which is recommended for Muslims.

The position of adopted children in Indonesian positive law, in this case the compilation of Islamic law, is in accordance with interviews conducted with Ust. Dr. Tholhah Toha Nawawi SH., MH and Prof. Dr. Yaswirman, MA, who said that adopting a child is permissible under Islamic law, but it

has no legal consequences (it is permissible to marry each other and not to inherit each other) and adopted children in the view of Shari'ah (Al Qur'an and Hadith) have no nasab/descendants so that they cannot use the name of their adoptive father and there is no inheritance relationship with their adoptive parents. This statement is reinforced by the opinion of Asrori Amin, SHI., MHI who said that Islamic law views that adoption of children is only for the purpose of maintenance, education, fostering of adopted children and maintain the lineage of adopted children with their biological parents not prohibited by Islam.

Furthermore, this is consistent with the God's word as stated in the Qur'an Surah Al-Ahzab verses 4 and 5 which means: "*Allah has never put two hearts within one person's body; nor has He made your wives, whom you compare to your mothers' backs (to divorce them), your true mothers; nor has He made those whom you adopt as sons your own sons. These are only words that you utter with your mouths. But Allah proclaims the Truth and directs you to the Right Path. Call your adopted sons after their true fathers; that is more equitable in the sight of Allah. But if you do not know their true fathers, then regard them as your brethren in faith and as allies. You will not be taken to task for your mistaken utterances, but you will be taken to task for what you say deliberately. Allah is Most Forgiving, Most Compassionate.*(Surah Al-Ahzab: 4-5)

In general, from Surah Al-Ahzab 4-5 it can be concluded that it is very clear that the adopted child is not a biological child and is ordered to call the adopted child according to the name of their biological parents. Treating adopted children as biological children is prohibited in all its forms. This was once done and practiced by the Prophet Muhammad against Zaid bin Harisa, then Surah Al-Ahzab verses 4 and 5 come out which essentially forbade the prophet to treat Zaid like a biological child and reminded the prophet in terms of adopting children not to change the lineage to him, because of the lineage is still addressed to their biological parents. [17]

#### *E. Analysis of the Position of Adopted Children as Heirs in the Compilation of Islamic Law*

Based on the Compilation of Islamic Law Article 171 letter (h) Adopted children are children who, in terms of maintenance for their daily lives, education costs and so on, shift their responsibility from their original parents to their adoptive parents based on a court decision. Basically based on Islamic law, inheritance can only be transferred by three things, such as blood ties (al-qarabah), marriage (al-musaharah) and liberating slaves (wala').

Adoption of a child does not cause a change in the position of the adopted child, such as their legal status relating to inheritance, kinship and marriage relationships. Islam does not rule out the possibility for adopted children to get a share of the inheritance from their adoptive parents, the distribution of the wasiat wijabah is done because of the

parents' love for the child, and as an expression of gratitude to the adopted child who has accompanied them while they were alive. Distribution of the inheritance from parents to adopted children can be done by a grant or will that is spoken by the adoptive parents and then written in writing through a wasiat wajibah.[18]

Adopted children have the right to get a share of the inheritance of their adoptive parents in accordance with God's word that stated in Surah Al-Baqarah verse 180. Based on the opinion of some experts in the interpretation of the Quran, the definition of relatives is not only limited to people who have blood relations or marriage relations, moreover it can be concluded that the will can be given to people who have a special relationship with the testator, or people in need. The distribution of inheritance can be done by grants or leaving a will when the adoptive parents are still alive.

Even though the adopted child is not a legal heirs based on Islamic law, based on the compilation of Islamic law article 209 KHI, it is explained in detail about how to acquire the inheritance of an adopted child or vice versa through a wasiat wajibah. However, in the distribution of wasiat wajibah, there are limitations that must be adhered to which this for the continuation of their lives. The distribution is a maximum of 1/3 (one third) of the existing inheritance. This is based on the Hadith narrated by Al-Bukhari from Saad bin abi Waqqas which is explained in more detail as follows: *"I was sick then the Prophet, visited and I asked: "Messenger of Allah, pray to Allah, sir, that he will not reject me." He said: "May Allah exalt you, and other people will benefit from you." I asked: "I want to leave half my property, but I have a daughter." He replied: "Half is a lot". I asked (again): "a one third?" He replied: "one third is a lot or big". He said: "Those who have one third will, and that is permissible for them".*

The limitation of distribution is to protect the other heirs. The scholars agree that the limit in the wasiat wajibah is a maximum of 1/3 of the existing inheritance after deducting funeral costs and paying debts during their life. This wasiat wajibah is given to an illegitimate heir, and can be carried out without having to ask permission from other heirs. If the will turns out to be more than one third of the inheritance, it is considered valid, but there are requirements that must be done, such as by asking the permission of other heirs. [19]

If there is a wasiat wajibah that exceeds 1/3 of the inheritance, there are several options according to the answers of the other heirs:

1. If all the heirs agree, the inheritance which is more than 1/3 of the inheritance can be given entirely to the beneficiary of the will.
2. If only a part of the heirs agrees, then what is given is only the right of the heirs who agree.

According to Dhahiriyah scholars, if there is a will more than 1/3 of the inheritance is considered null and void, even though there is permission from the heirs because based on

the hadith of the prophet it has been explained in detail that a will with 1/3 of the inheritance is considered a lot.

The provision of a wasiat wajibah which is sourced from the compilation of Islamic law article 209 is a solution chosen by the scholars of the KHI to solve legal problems if inheritance problems are found involving adopted children and the inheritance of their adoptive parents. This is a form of compromise between very strict fiqh thinking and the reality where we can find married couples who have not been blessed with offspring so they adopt children to pour out their love and affection. [19] According to Ust. Dr. Tholhah Toha Nawawi SH., MH and Prof. Dr. Yaswirman, MA, Adopted children are not entitled to inherit from their adoptive parents but KHI accommodates adopted children through wasiat wajibah (according authority of the judge even though the testator does not have a will before they dies) and adopted children can only be given a inheritance by their adoptive parents while they are still alive by (1) grants, (2) gifts, and (3) wills, provided that a maximum of 1/3 of the total assets of the adoptive parents as regulated in Article 209 KHI.

Then Asrori Amin, SHI., MHI added that Islam does not prohibit adoptive parents or vice versa from giving their inheritance as a form of guarantee for the future life of their adopted children, either in the form of grants or wills for life or from a wasiat wajibah from a court decision with the provisions of no more than 1/3 (one third) of the assets of the adoptive parents.

The opinions of Islamic jurists and religious courts are in line with Article 209 of the KHI which stipulates that:

- 1) The inheritance of adopted children is divided according to Article 176 to Article 193 as mentioned above. Meanwhile, for adoptive parents who do not receive a will, will be given a wasiat wajibah of up to 1/3 of the inheritance of their adopted children.
- 2) Adopted children who do not receive a will, shall be given a legacy obligatory maximum of 1/3 of the inheritance of their adoptive parents

#### *F. Analyst of Judge's decision case study number 2142/Pdt.G/2017/PA.PLG*

Based on Article 209 of the KHI concerning wasiat wajibah, several things are formulated as follows:

1. The party entitled to a wasiat wajibah is not one of the legal heirs, for example adoptive parents and adopted children.
2. The granting of a wasiat wajibah is not given to a legal heir. This mandatory will is not written in writing like most other wills but is determined by the state through a religious court.
3. The amount of share received for both adopted children and adoptive parents is a maximum of 1/3 (one third) of the inheritance of the testator.

Although theoretically the distribution of the inheritance of adoptive parents is based on the provisions of the

compilation of Islamic law, in practice there are some tentative circumstances in its implementation. In fact, the judge's consideration in deciding the amount of the portion given was adjusted to the conditions of the case. The occurrence of distortions which are not in accordance with the compilation of Islamic law has the aim of fulfilling the principle of justice for both adopted children and adoptive parents who certainly have strong emotional ties because from childhood to adulthood they have been cared for and raised with love. Moreover, in order to fulfil the guarantee of justice for the recipient of the wasiat wajibah, the judge has the right to determine with certain considerations and reasons how much wasiat wajibah is given to the recipients of the wasiat wajibah and the amount can vary between cases.

The allocation of a wasiat wajibah is determined by the judges based on the general will rules set out in the KHI. The reason is carried out to fill the legal vacuum. This opinion was expressed based on the fact that the wasiat wajibah is regulated by the state and has a legal source, namely KHI, although KHI does not regulate in detail and clearly about the wasiat wajibah itself. In Addition, the judge has the authority to use the general will rules as the basis for consideration of giving a wasiat wajibah decision. The next reason is to create justice, especially if the adopted child has long been cared for and raised by his adoptive parents which will certainly form a strong emotional bond, and to guarantee the future of the adopted child it will be considered very unfair if the adopted child does not get inheritance owned by the adoptive parents.

The application of general will rules is carried out on the determination of how many parts are obtained by the recipient of the wasiat wajibah. If we use KHI as a source of provisions regarding wills, it is clear that what is allowed to be given through a will is at most one third of the inheritance, with the exception that more can be given through the approval of other heirs. From the results of existing research, this maximum provision is likely to be very easy to deviate because the judge may decide to grant a wasiat wajibah that is greater than one-third of the inheritance for the recipient of the wasiat wajibah, whether it is given to adopted children or adoptive parents. The deviations committed by the judges were mainly carried out to fulfill a sense of justice. For consideration of a sense of justice, it depends on the existing case and the legal facts found in the trial in court. An example of a case that can be used is if the adopted child plays a major role in the development of the inheritance of the heir during their life, so that if the judge only gives a third of the inheritance, this is not in accordance with the sense of justice because all the efforts and efforts that have been made are not balanced with what the adopted child got.

Then with the statement that the distribution of the wasiat wajibah can exceed the maximum provisions of one third as long as it fulfil certain conditions it tends to be considered ambiguous so that as long as the consideration of making

the decision is carried out using the correct and accountable decision-making methodology, it can be approved.

The judge has the authority to determine how much distribution to the recipient of wasiat wajibah, even if it is more than one-third as stated in the KHI, as long as the judge can provide clear and precise reasons and considerations that are aligned with the legal facts found during the trial in court. In finding the right solution, it is known that there are deviations from the general law, which is called the *istihsan* method. *Istihsan* is one way of determining the law by deviating from existing provisions for the sake of justice and social interests.

In the religious court decision number 2142/PDT.G/2017/PA.PLG the judge decided to give Kiki Wahyuni who is the adopted daughter of Mahdi Abdullah bin Abdullah and Halimah binti as heirs. In addition, Kiki Wahyuni also gets more than 1/3 of the inheritance. According to the author, Religious Court Judges decide cases not based on Islamic inheritance law, while the litigants in this case are people who inherit in Islam. However, if we look at Islamic law as described previously, then Kiki Wahyuni should not be a lineage and heir to her adoptive parents. In this case, the heir still has relatives who can be classified as heirs. Seeing this fact, if we relate it to Islamic law, the decision can injure the sense of justice for those who are still classified as heirs according to the provisions of Islamic law. The judge's consideration in deciding this case is not solely because it depends on the formality of adoption, but it can be seen from the fact that Kiki Wahyuni has been cared for, and raised by his adoptive parents, and even revealed from witnesses that the testator during his lifetime intended to split the 2 land certificates and intended to distribute one of them to her adopted daughter but until they died it was not carried out and the judge said that the allocation of the inheritance did not reduce the share of the other heirs and there was even a remnant of the heir's inheritance.

### 3. CONCLUSION

1. The status of adopted children according to positive Indonesian law in this case, the Compilation of Islamic Law, is not to change the *nasab*/blood relationship of the adopted child with his biological parents based on a court decision. This is because the essence of adoption according to the Compilation of Islamic Law is one form of effort to worship Allah SWT by helping to finance the daily life and education costs of a children in need so that they have a better life.

2. Based on the Compilation of Islamic Law, it is expressly stated that the right to inherit can only be granted if there is a kinship/hereditary/blood relationship and through marriage, so that the adopted child is not one of the legal heirs and is not entitled to the inheritance of the adoptive parents. However, the Compilation of Islamic Law accommodates adopted children to get a share of the

inheritance of the adoptive parents by grants or through wills during their lifetime or by means of wasiat wajibah with the provisions that they should not exceed 1/3 of the total assets of the adoptive parents.

3. The judge has the authority to determine how much distribution to the recipient of the wasiat wajibah, even if it is more than one-third as stated in the KHI, as long as the judge can provide clear and precise reasons and considerations that are consistent with the legal facts discovered during the trial in court. The judge's consideration in deciding this case is not solely because it depends on the formality of adoption, but it can be seen from the fact that Kiki Wahyuni has been cared for, and raised by his adoptive parents, and even revealed from witnesses that the testator during his lifetime intended to split the 2 land certificates and intended to distribute one of them to her adopted daughter but until they died it was not carried out and the judge said that the allocation of the inheritance did not reduce the share of the other heirs and there was even a remnant of the heir's inheritance.

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