

Mandatory Wills, Adopted Children, and Disparity in Court Decisions: A Case Study at Pekanbaru Religious Court

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Abstract: Adopted children are not part of the group of heirs who are entitled to inherit from the testator's estate. However, in an effort to create justice, the Compilation of Islamic Law (KHI) stipulates that adopted children are entitled to receive inheritance from the testator through the mandatory will (*wasiat wajibah*) mechanism with the condition that it cannot exceed 1/3 (one-third). This article examines the disparity in the decision of the Pekanbaru Religious Court No. 1266/Pdt. G/2018/ PA. Pbr which determines the adopted child's share of 1/8 (one - eighth) and decision No. 1869 /Pdt.G./ 2018/ PA. Pbr which determines that adopted children get 1/3 (one - third) of the heir's estate. Using a juridical-normative approach, this article finds that the difference in the amount of inheritance obtained by adopted children in the two decisions is at least caused by two things, namely (1) the absence of a definite amount stipulated in the law (KHI only mentions "cannot exceed the amount of 1/3 of the inheritance), and (2) the use of *al-furudh al-muqaddarah* as a standard in determining the amount of inheritance for adopted children. In this case, the judges actually do not have to rely on the provisions of *al-furudh al-muqaddarah* in determining the share of the adopted child. They can decide the case using the maximum standard by examining the case, considering the contribution of the adopted child to his adoptive parents, and the purpose of granting the mandatory will itself.

Keywords: *mandatory will; adopted child; disparity in court decisions; al-furudh al-muqaddarah*

Abstrak: Anak angkat bukanlah bagian dari kelompok ahli waris yang berhak mendapatkan warisan dari harta peninggalan pewaris. Akan tetapi dalam upaya menciptakan keadilan, Kompilasi Hukum Islam (KHI) menetapkan bahwa anak angkat berhak mendapatkan harta peninggalan dari pewaris melalui mekanisme wasiat wajibah dengan syarat tidak boleh melebihi 1/3 (one-third). Artikel ini mengkaji disparitas putusan Pengadilan Agama Pekanbaru No. 1266/Pdt. G/2018/ PA. Pbr yang menetapkan bagian anak angkat sebesar 1/8 (seperdelapan) dan putusan No. 1869. /Pdt.G./ 2018/ PA. Pbr yang menetapkan anak angkat mendapatkan 1/3 (sepertiga) dari harta

peninggalan pewaris. Menggunakan pendekatan yuridis-normatif, artikel ini menemukan bahwa perbedaan jumlah harta peninggalan yang didapatkan oleh anak angkat dalam kedua putusan tersebut paling tidak disebabkan oleh dua hal, yakni (1) tidak adanya jumlah pasti yang ditetapkan dalam undang-undang (KHI hanya menyebutkan “tidak boleh melebihi jumlah $\frac{1}{3}$ dari harta peninggalan), dan (2) dijadikannya *al-furūdh al-muqaddarah* sebagai standar dalam menetapkan jumlah harta peninggalan untuk anak angkat. Dalam hal ini, majelis hakim sebenarnya tidak harus berpatokan pada ketentuan bagian *al-furūdh al-muqaddarah* dalam menetapkan bagian anak angkat. Mereka dapat memutus perkara tersebut menggunakan standar maksimal dengan mencermati duduk perkaranya, mempertimbangkan kontribusi anak angkat terhadap orang tua angkatnya, dan tujuan pemberian wasiat wajibah itu sendiri.

Kata kunci: *wasiat wajibah; anak angkat; disparitas putusan pengadilan; al-furūdh al-muqaddarah*

Introduction

In a family, a lineage is a genealogy or succession of generations from one set of parents to the next. The existence of a legal marriage tie causes blood relations to influence a person's destiny. Thus, blood links between parents and following generations that give rise to unique rights like inheritance and heirs can be defined as lineage relationships. We refer to this process of distributing inherited property to heirs as inheritance law.

The science of *fara'id*, or the science of inheritance in Islam, governs how Muslims divide their inheritances and covers topics such as heirs' assets, inheritable inheritance (*al-tirkah*), heirs who are entitled to inheritance, heirs' level of inheritance, heirs wearing hijabs, and individuals who are not allowed to inherit.¹

Islamic inheritance law governs the rights of heirs in specific quantities or segments with specific quantities as a religious doctrine. Islam requires heirs to give a portion of their possessions through a will or gift if they do not receive the full distribution (*al-qarabat*). If the heir is unable to accomplish this, the inheritance may be transferred to *al-qarabat* as a gift prior to the heir's passing. *Al-qarabat* refers to an heir

¹ Ismail, “Wills of ‘Wajibah’ and Renewal Thoughts of Islamic Inheritance Law in Indonesia,” *Innovatio: Journal for Religious-Innovation Studies*, no. 2 (2021).

who practices a different religion than the heir.² In the event that none of these has been completed or is not possible, Indonesian Islamic law provides a way to provide inheritance to those who are hidden or otherwise unable to inherit through a required will process. This statutory will is required for those who lack clear inheritance rights or whose rights are restricted, such as adopted children, orphaned grandkids, and heirs of various faiths. In the beginning, the concept of the obligatory will—which aimed to improve Islamic family law only granted rights to heirs who were connected by blood, such as orphaned grandchildren. Mandatory wills were first used in the Egyptian Inheritance Law Number 71 of 1946 to assist the bereaved grandchildren of the heir's deceased children, specifically for the surviving sons or children of the deceased (*ibn al-ibn*). Men keep moving downhill. The female line, however, solely pertains to daughters' offspring.³

In Indonesia, however, the idea of required wills has broadened and now offers heirs who are unrelated to the heir the chance to inherit a portion of the heir's possessions. The idea of required wills, as a legal development, aims to address inheritance issues in a way that respects Indonesian culture.⁴

Islamic inheritance law does not consider adopted children or adoptive parents as the foundation or source of inheritance because the primary tenet of Islamic inheritance is blood tie, lineage, or descent.⁵ Therefore, an adopted child's legal status is unaffected by the adoption event in accordance with Islamic inheritance law. He is still not eligible to inherit. The Civil Code likewise has the same clauses. "In Article 832 of the Civil Code, it is stated that those entitled to be heirs are blood relatives, whether legal according to law or outside marriage, the husband or wife who lives the longest." Consequently, adoptive parents

² Maimun, "Pembagian Hak Waris Terhadap Ahli Waris Beda Agama Melalui Wasiat Wajibah Dalam Perspektif Hukum Kewarisan Islam," *Jurnal Asas*, no. 1 (2017).

³ M. Atho Mudzar, *Membaca Gelombang Ijtihad: Antara Tradisi Dan Liberasi* (Yogyakarta: Titian Ilahi Press, 2000).

⁴ Ahmad Jarchosi, "Pelaksanaan Wasiat Wajibah," *Jurnal ADHKI: Jurnal Hukum Keluarga Islam* 2, no. 1 (2020).

⁵ Fahmi Al Amruzi, *Rekonstruksi Wasiat Wajibah Dalam Kompilasi Hukum Islam* (Yogyakarta: Aswaja Prassindo, 2012), 27.

and children are not heirs. Naturally, this could perhaps lead to issues in the future. Through the requirement of a will, the Compilation of Islamic Law offers a means of ensuring adopted children's rights. As per the Compilation of Islamic Law, a will is an heir's gift of an item to another individual or an organization, and it becomes enforceable upon the testator's death.⁶ Articles 194 through 209 of Chapter 5 of the Compilation of Islamic Law govern the determination of wills. Ordinary wills are governed by Article 194 through Article 208. Article 209, on the other hand, governs mandatory wills (*wasiat wajibah*) that are presented to adoptive parents or children. If an adopted child or adoptive parents do not have a will, they are entitled to a required will of 1/3 according to the Compilation of Islamic Law. It turns out, nonetheless, that the judges who make decisions in cases involving compelled will have a different interpretation of these clauses.⁷ While some courts interpret this item as the maximum amount that adopted children are eligible to receive, others view this sum as flexible and negotiable.⁸ The two rulings of the Pekanbaru Religious Court, which granted adopted children different compulsory wills, reflect the justices' divergent understandings. The adopted child's part is determined by Pekanbaru Religious Court Decision No. 1266/Rev. G/2018 PA. Pbr. sets the adopted child's share at 1/8 or 3/24.⁹ In the meantime, the judges' panel in Pekanbaru Religious Court judgment no. 1869. Rev. G. 2018 PA.Pbr decided that 1/3 was the required will for adopted children.¹⁰ It's fascinating to research and examine the variations in the Pekanbaru Religious Court's rulings.

⁶ Presidential Instruction of the Republic of Indonesia Number 1 of 1991 Regarding the Compilation of Islamic Law (KHI), (1991).

⁷ Compilation of Islamic Law Article 209, there are 2 parts which read: (1) The inherited assets of adopted children are divided based on Articles 176 to Article 193, while adoptive parents who do not accept a will are given a mandatory will of up to 1/3 of their adopted child's inherited assets; (2) Adopted children who do not receive a will are given a mandatory will of up to 1/3 of the inheritance of their adoptive parents."

⁸ Nur Syamsiah, "Interview" (Pekanbaru, May 15, 2022).

⁹ Copy of the Decision of the Religious Court Pekanbaru Number 1869/Pdt.G/2018/PA.Pbr" (2022), 44.

¹⁰ Copy of the Decision of the Religious Court Pekanbaru Number 1266/Pdt.G/2018 PA.Pbr" (2022), 32.

There is no recent research on required wills in general or required wills for adopted children. The question of mandatory wills for adopted children in situations brought before Religious Courts has been the subject of numerous research. For example, Robiatus Siddiqiyah examined, from a Maslahah perspective, the Religious Court judge's decision no. 1672/Pdt.G/2011/PA.Jr. concerning gifts, inheritance to heirs, and mandatory wills.¹¹ Mila Yuniarsih et al., on the other hand, reviewed and analyzed the Palembang Religious Court's decision no. 35/Pdt.G/2018/PTA concerning mandatory wills for minors.¹² In the meantime, Sarah Qosim and colleagues investigated the discrepancy between rulings from the Religious Court and the High Religious Court concerning the allocation of inheritance and the requirement for adopted children to have wills.¹³ However, Khotifatul Defi Nofitasari observed that there were differences in the percentage of required wills for adopted children based on his analysis of Religious Court jurisprudence.¹⁴

This paper, in contrast to earlier research, looks at the differences in Pekanbaru Religious Court rulings. This study is significant because there are undoubtedly legal reasons in every decision made by a judge. Yet, when court rulings are not supported by sufficient legal justifications and arguments, the public frequently responds negatively to them.¹⁵ Thus, by examining the cases involving these two issues, the reasons behind the disparity in decisions, the legal considerations made by the panel of judges when making decisions in cases involving mandatory wills for adopted children, and the value of

¹¹ Robiatus Siddiqiyah, "Tinjauan Hukum Islam Terhadap Putusan Nomor 1672/Pdt.G/2011/PA.Jr Tentang Pembagian Harta Waris Terhadap Ahli Waris, Pemberian Hibah Dan Wasiat Wajibah Terhadap Anak Angkat Perspektif Maslahah," *El-Bait: Jurnal Hukum Keluarga Islam*, no. 1 (2022).

¹² Mila Yuniarsih, "Wasiat Wajibah Bagi Anak Adopsi Untuk Mendapat Harta Waris," *Ma'mal: Jurnal Laboratorium Syariah Dan Hukum*, no. 01 (2022): 34.

¹³ Sarah Qosim, "Disparitas Putusan Pengadilan Agama Terhadap Wasiat Wajibah Anak Angkat," *Salam: Jurnal Sosial Dan Budaya Syar-i*, no. 5 (2022): 1407.

¹⁴ Khotifatul Defi Nofitasari, "Wasiat Wajibah Kepada Anak Angkat Non Muslim Dan Anak Tiri (Formulasi Hukum Wasiat Wajibah Dalam Pasal 209 Kompilasi Hukum Islam Di Indonesia Dan Perkembangannya)," *Al-Syakhshiyah: Journal of Law and Family Studies*, no. 2 (2021): 39.

¹⁵ Bimar Siregar, *Berbagai Segi Hukum Dan Perkembangan Dalam Masyarakat* (Bandung: Alumni, 1983), 217.

justice contained therein, this article investigates the discrepancy in the rulings of the Pekanbaru Religious Court.

This study uses a normative juridical approach and is qualitative¹⁶ in nature. The information used in this study is based on two court rulings from the Pekanbaru Religious Court: Pekanbaru Religious Court Decision No. 1266/Rev. G/2018 PA. Pbr, which established the share of adopted children at 1/3 and the Pekanbaru Religious Court Decision No. 1869. Rev. G. 2018 PA. Pbr, which determined the share of adopted children to be 1/8 or 3/24 share. The Supreme Court's Directory of Decisions can be used to track down these data. In addition, the author spoke with judges at the Pekanbaru Religious Court in interviews. The interview took place in a semi-structured format with a focus on the topic of differences in the rulings made by the Pekanbaru Religious Court about mandatory wills for adopted children as well as the panel of judges' legal considerations.¹⁷ The author has interviewed several judges from the Pekanbaru Religious Court in Riau regarding this issue. Abdul Aziz Hakim, Nur Al Friday, Nursyamsiah, and Nurhaida are their names. In order to arrive at meaningful results, the gathered data is carefully examined, categorized in accordance with the study topic, and then further examined utilizing the legal justice principle and the Maslahah theory.

The Concept of Mandatory Wills (*Wasiat Wajibah*)

A required will, according to Ahmad Rafiq, is a policy that is implemented by a ruler or court in their capacity as law enforcement officials to compel or supply a mandatory will decision for a deceased person, which is provided to specific individuals and under specific circumstances.¹⁸ Ansari claims that a *wājibah* will indicates that, in the absence of a true will, a person is legally deemed to have received one.¹⁹ In a different interpretation offered by Amran and Candra, a *wājibah*

¹⁶According to Moleong, qualitative research is a research procedure that produces descriptive data in the form of written or spoken words from people and observable behavior (Bandung: PT Remaja Rosdakarya, 2002), p. 3.

¹⁷ Mukti Fajar and Achmad Yulianto, *Dualisme Penelitian Hukum: Normatif & Empiris*, ed. 4th Printing (Yogyakarta: Pustaka Pelajar, 2023), 45.

¹⁸ Ahmad Rofiq, *Hukum Islam Di Indonesia*, ed. 3th Printing (Jakarta: PT Raja Grafindo Persada, 1998), 462.

¹⁹ Anshori Ghofur, *Filsafat Hukum Hibah Dan Wasiat Di Indonesia* (Yogyakarta: Gadjah Mada University Press, 2018), 103.

will is understood to be a person who, despite the absence of a true will, is recognized by the law as having received one. This legal presumption stems from the idea that if the law has decided that a will must be produced in a certain circumstance, the will is deemed to exist on its own whether or not it is made.²⁰

As per the Compilation of Islamic Law, a will is an heir's gift of an item to another individual or an organization, and it becomes enforceable upon the testator's death.²¹ Articles 194 through 209 of Chapter 5 of the Compilation of Islamic Law contain provisions pertaining to wills. Ordinary wills are governed by Article 194 through Article 208. Article 209, on the other hand, governs mandatory wills that are presented to adoptive parents or children. Article 171 letter (h) of the Compilation of Islamic Law states that adopting children is required. It states that an adopted child is one whose care for daily needs, educational expenses, and other expenses is transferred from the biological parents to the adoptive parents based on a court decision.

The phrase required First used in Egyptian Inheritance Law Law Number 71 of 1946, the will provided assistance to the orphaned grandchildren of the heir's children who had passed away earlier, specifically to the surviving sons or children of the deceased (*ibn al-ibn*), boy from boy to boy at every level. The female line, however, solely pertains to the offspring of daughters.²²

According to Daud Ali, the Compilation of Islamic Law combines the principles of Islamic law and customary law in identifying the rights that exist between adoptive parents and adopted children based on the obligatory will. This conclusion is typical in Indonesian Muslim society because adopting children is a common activity, either because of a love connection or because the husband and wife are in need of one another because they are childless. All that is happening

²⁰ Amran Suadi and Mardi Chandra, *Politik Hukum Perspektif Hukum Perdata Dan Pidana Islam Serta Ekonomi Syariah*, ed. First Edition and 2th Printing (Jakarta: Kencana Prenada Media Group, 2016), 103.

²¹ Book II Chapter 1 Article 171 letter (f) Compilation of Islamic Law. In this case, the composer based the formulation of the Compilation on the QS. al-Baqarah [2]: 180 which means: "It is obligatory upon you, if someone among you comes (signs of) death, if he leaves behind a lot of wealth, to make a will to parents and relatives in a good manner."

²² Mudzar, *Membaca Gelombang Ijtihad: Antara Tradisi Dan Liberasi*, 163–64.

here is an accountability shift from the biological parents to the adoptive parents.²³

Yahya Harahap affirmed that the determination of this mandatory will was predicated on a compromise (*al-jam'u*) between customary law and Islamic law, which in actuality accords adopted children the same status and rights as biological children in a number of areas, including the ability to inherit their parents' property raise.²⁴ Based on this assertion, according to Abdullah Kelib,²⁵ Indonesian ulama made modifications to state the balance of rights between adoptive parents and children through a mandatory will when compiling the Compilation of Islamic Law in relation to this issue. The goal of these modifications was to ensure that Indonesia's inheritance law adhered to the country's established sense of justice. In conformity with the laws that are in place in society.

Article 209 of the Compilation of Islamic Law mandates wills in order to settle disputes between the adoptive parent and their adopted child and, conversely, between the adoptive child and his adoptive parents. If Uli al-Amr's regulations are not followed, the reality of child adoption in Indonesia may have negative legal repercussions that hinder the development of the principles of justice, order, comfort, and sustainability. The Compilation of Islamic Law's authors believed that a required will was the best way to address the adoption issue.²⁶

The Qur'an and the Sunnah do not give authority to a child or an adult to take another person's heart or soul in order to gain their own. This is because the parties that are entitled to get the warisan have already been informed in full, and the warisan bearer, whether a child or an adult, is not the only group that is entitled to receive the warisan. However, the Compilation of Islamic Law (KHI), which is a product

²³ Mohammad Daud Ali, *Hukum Islam Dan Peradilan Agama (Kumpulan Tulisan)*, ed. Second (Jakarta: Rajawali Press, 1999), 137.

²⁴ M. Yahya Harahap, *Materi Kompilasi Hukum Islam*, ed. Second Edition (Yogyakarta: UII Press, 1999), 113.

²⁵ Ramlan Yusuf Rangkuti, "Pembaharuan Hukum Islam Indonesia" (Jakarta, Pascasarjana UIN Syarif Hidayatullah, 2007), 248.

²⁶ Zulfahmi Bustami, "Kajian Kritis Terhadap Aplikasi Istislah Dalam Kompilasi Hukum Islam Indonesia" (Malaysia, Universitas Sains Malaysia, 2017), 283.

of Indonesian law experts and is one of the main legal reference materials in the Indonesian government, affirms that children have the right to inherit the family's inheritance as stated in Article 209 Paragraphs (1) and (2) of the KHI. The passage in question states:²⁷

- (1) Articles 176 through 193 specify how an adopted child's inheritance is split. Adoptive parents who do not obtain a will, however, are entitled to an obligatory will that may include up to 1/3 (one third) of the adopted child's estate.
- (2) Adopted children who do not have a will are required to have one, with the maximum amount being 1/3 (one third) of their adoptive parents' estate.

The mandatory will mentioned in the Compilation of Islamic Law (KHI) is one that is required based on statutory provisions intended for adopted children or adoptive parents who are not given a will by their adopted parents or children, as can be understood by looking at the contents of Article 209 of the KHI's Paragraphs (1) and (2) above. A mandatory will can contain up to 1/3 (one third) of the inherited property.²⁸

According to Law Number 7 of 1989 concerning Religious Courts, which has been updated by Law Number 3 of 2006 and Law No. 50 of 2009, wills are one of the absolute authorities of the Religious Courts. In actuality, nevertheless, it is governed by no material law in the form of a statute. The Compilation of Islamic Law (KHI), which is incorporated in a legal document in the form of Presidential Instruction Number 1 of 1991, is the only rule that governs wills. The Compilation of Islamic Law, which governs wills in Articles 194 through 209, is regarded as material law and is upheld by judges in judicial settings faith.²⁹

The Compilation of Islamic Law states that an adopted child's position (status) is to continue to be recognized as a legitimate child based on a court ruling, without breaking the lineage tie with his birth parents. This is so because, in accordance with the Compilation of Islamic Law, the adoption principle is an expression of faith that carries

²⁷ Abdurrahman, *KHI Di Indonesia* (Jakarta: Akademi Presindo, 1995), 164.

²⁸ Abdurrahman, 165.

²⁹ M. Yahya Harahap, *Kedudukan Kewenangan Dan Acara Peradilan Agama* (Jakarta: Sinar Grafika, 2001), 148.

a humanitarian mission—that is, the caring of others as children. A child is adopted when his needs are met in a way that promotes, protects, and advances his growth and development. The Compilation of Islamic Law states that an heir's inheritance may only be given to adopted children or adoptive parents by a gift or required will. This cannot be more than 1/3 (one third) of the assets that were inherited. The heirs' interests are meant to be safeguarded by this cap on the amount of assets that can be granted to adopted children or adoptive parents.³⁰

Disparity in Pekanbaru Court Decisions regarding Mandatory Wills for Adopted Child

Two Pekanbaru Religious Court decisions regarding mandatory wills for adopted children are worth studying. Class 1a Court Decision Number. 1266/, Pdt.G/, 2018 PA.Pbr gave a mandatory will to an adopted child in the amount of 1/8, and Court Decision Number. 1869/Pdt.G/2018 PA. Pbr gave a mandatory will to the adopted child in the amount of 1/3 of the inheritance. These decisions significantly give different rights to the heir's inheritance to their adopted children. The following explanation applies to these two choices:

1. Pekanbaru Religious Court Decision Case Sitting Number 1266 of 2018

The decision of the Pekanbaru Religious Court No. 1266/Pdt.G/2018 PA.Pbr., regarding the determination of the 1/8 mandatory will portion stems from the dissatisfaction of Andika Satrio (adopted son) who was not included as a party entitled to inheritance and then he filed a lawsuit. On August 11, 2018, the plaintiff, who is being referred to as the convention plaintiff/reconvention defendant in this case, turned over his legal counsel to an advocate from the Nirzam Makarau & Partnes law office.³¹

The incident started on October 2, 2017, when Eko Priyono, a Muslim, passed away. In this instance, referred to as the heir from now on. This heir was married twice in his lifetime. Rahardian, the plaintiff

³⁰ Abdul Rashid Haji Abdul Latif, *Wasiat Dalam Islam* (Malaysia: Universitas Kebangsaan Indonesia, 1986), 38.

³¹ A copy of Pekanbaru Religious Court Decision No. 1266/Pdt.G/2018 PA.Pbr (n.d.).

in this case, was the son of the first marriage, which took place in 1989 with a woman named Rosilawati. However, on June 20, 2000, the heir and Rosilawati got a divorce, as decided by PA Cibinong. In the meantime, a woman by the name of Wiani—referred to as defendant 1 in this instance—married again in 2003; the second marriage failed to produce any children.

In this case, defendant II is Eko Priyono, the heir, whose biological mother was still living at the time of the testator's death, while his father had already passed away. The heir left behind an inheritance in the form of: A +102 m2 block of land on Jalan Taman Permata No. 06, where a permanent residence is located and is registered in Eko Priyono's name. Eko Priyono is the registered owner of a sizable +200 m2 block of property on Jalan Damai Langgang Blok D that is used for a permanent residence. One Toyota Kijang model vehicle registered under the name Eko Priyono. One Honda Supra and one Honda Vario motorcycle, both registered in Defendant I's name at BCA Bank, CIMB. CIMB Bank and Panin Bank amounting to IDR 450,637,000. In addition, there is cash of Rp.1,120,120,000 as a consequence of pension fund disbursements and Rp.282,337,208.2 from payments made by PT. Jamsostek Persero to BPJS Employment Heirs. The Panel of Judges then looks into this matter and renders a decision.³²

Based on the above description in order to identify the legitimate heirs and the share of the deceased's assets that the heirs will have under applicable Islamic law.

The position and percentage of adopted children, who are not regarded as individuals entitled to the deceased's inheritance (*at-tirkah*), are the main topic of discussion in this decision case. This is demonstrated in the exception case pertaining to *exceptio plurium litis consortium* point (b), wherein the plaintiff is aware that another party, a child who has cohabitated with the plaintiff and defendant 1 since the latter was a baby, is entitled to the heir's assets and should be considered the a quo party in the lawsuit. The birth certificate Number 245/2005, which lists Sandika Satrio Priyono as the son of the heir and defendant I, and the statement made by the biological parents both

³² Copy of Pekanbaru Religious Court Decision Number 1266/Pdt.G/2018 PA.Pbr at 3–4.

support this. Because Andika Satrio is not listed as the heir to the assets, the defendants in this exception asked the panel of judges in the a quo case to reject or at the very least find the plaintiff's claim to be unsatisfactory (*Niet Onvankelijke Verklaard*).³³

2. Pekanbaru Religious Court Decision Case Sitting Number 1869 of 2018

The heir's adopted daughter, 45-year-old Eva Nur'aini Binti Ismail, was not happy with the situation and filed a case with the Pekanbaru Religious Court. Additionally, on October 12, 2018, he granted power of attorney to an advocate from the law firm of H. Hasan Basri and Associates, who will henceforth be referred to as the Plaintiff. In contrast, the defendant in this case is Poppy Ismayanti Bin Syaiful Bahri, a 34-year-old who holds parental authority as *Arga Brahmanda*. Additionally, he granted power of attorney to an advocate from Herry and Partnes.

According to Supreme Court ruling No. 358 K/Ag/2017 dictums 3 and 5, the plaintiff (Eva Nur'aini) is the adopted child of a husband and woman named H. Abdul Kadir Bin Muhammad Yasin. This is the main topic of the plaintiff's claim. At two days old, the plaintiff was adopted as an adoptive kid and was subsequently recognized as his biological child. It was claimed that "Eva Nur'aini Binti H. Abdul Kadir" was written in every one of the plaintiff's private documents, including her birth certificate and academic records.³⁴

The plaintiffs in this action are his adopted female kid, Eva Nur'aini, a male biological child named Syukran Ilham, and his wife, Hj. Dahniar, who survived him. Shortly afterward, Hj. Dahniar also passed away, leaving behind an adopted daughter, Eva Nur'aini, and a son, Syukran Ilham. But Syukran Ilham too passed away, leaving a wife and two kids in his wake.

Consequently, inheritance occurs at three levels; First: Heir H. Abdul Kadir, who left behind an adopted daughter named Deva Nur'aini, a biological son named Syukran Ilham, and an heir to his wife named Hj. Dahniar. Second: Syukran Ilham, Hj. Dahniar's biological

³³ Copy of Pekanbaru Religious Court Decision No. 1266/Pdt.G/2018 PA.Pbr at 14.

³⁴ Copy of Pekanbaru Religious Court Decision No. 1869/Pdt.G/2018 PA.Pbr (n.d.).

son, and Deva Nur'aini, his adoptive daughter, are his successors. Third: Two biological children and Syukran Ilham's wife Poppy, the defendant in this case, were left as heirs upon his death.

Regarding the plaintiff's claim, he filed a lawsuit in the Pekanbaru Class 1a Religious Court. He claimed that after the death of both of his adoptive parents and their biological child, he asked the religious court to grant a part of the mandatory will before the inheritance was divided. In light of the Supreme Court's decision No. 358 K/Ag/2017, June 20, 2017, dictum 3 and 5, the panel of judges reviewing the a quo case concluded that this decision could be put into effect right away, even in the event of a *verzet* or appeal, because it was in compliance with the provisions, because the phrase "Because previously there was a decision that had definite legal force" appears in Article 191 Paragraph 1 RGb and because SEMA No. 3 of 2000 contains instructions for executing decisions promptly number 4 letter (f).

The plaintiff asked the panel of judges to identify Eva Nur'ani as the adopted daughter and Syukran Ilham as the biological son of the late Hj. Dahniar, based on the reasons and arguments presented. The plaintiff then asked that the Panel of Judges ascertain the plaintiff's rights and distribution from the obligatory will of one-third of the assets, in accordance with the portions specified in Islamic law in dictums 8.1 and 8.2.³⁵

Nevertheless, the defendant refuted the plaintiff's assertion that his adopted parents thought of him as their own biological kid. The defendant claimed that the plaintiff had received excellent parenting and education from his adoptive parents, who had also obtained the plaintiff's birth certificate by listing the plaintiff's name as his biological kid in order to satisfy academic requirements. The adoptive parents had expressed deep regret for raising and teaching the plaintiff well, the defendant added, and they had been let down by the plaintiff. The plaintiff, who had already completed college, interrupted his studies when he married without telling his adoptive parents, which was the reason for this disappointment. The defendant claimed that this contributed to his adoptive father's deteriorating health and eventual

³⁵ Copy of Pekanbaru Religious Court Decision No. 1869/Pdt.G/2018 PA.Pbr at 10–11.

demise. Before passing away in front of his son Syukran Ilham, the deceased expressed his disappointment and said that Eva Nur'aini, the plaintiff, would not receive any inheritance from the possessions of her adoptive parents.³⁶

Not only that, but the defendant went on to say that the plaintiff had been granted a piece of his adoptive parents' assets, and that the plaintiff's 1/3 share came from a specific portion of the assets that were left behind in the Duri area rather than the adoptive parents' full inheritance. As a result, the plaintiff was able to legally get a will for the two land lots.

The Amount of an Adopted Child's Rights from Inheritance: Variations in the Pekanbaru Religious Court decision

In the decision of case No. 1266/Pdt.G/2018 PA.Pbr, the Panel of Judges determined that the late Eko Priyono (aka Eko Priyono) bin Abdul Muin had died on October 02, 2017 and determined Andika Satria Priyono as the adopted son of the late Eko Priyono and Wiani Pinanti Pujiastuti who was entitled to receive compulsory will. In addition, the Panel of Judges also determined the joint property to be divided to the heirs and the entitled parties. The joint property in question is as follows.³⁷

1. A roughly 200 M2 plot of land registered in Engineer Eko Priyono's name, situated on the property of a permanent house at Perumah Damai Langgeng Blok D1/17 Rt.003, Rw.007, West Sidomulyo Village, Tampan District, Pekanbaru City, Riau Province. The property's boundaries are as follows: Jalan Perum Damai Langgeng's northern front. South/back of Shaleh's residence. To the left/west of Alredo's residence and to the right/east of Dince's.
2. One (1) Toyota Innova Brand vehicle, white, with registration number BM. 4210 WE, registered under Eko Priyono's name;
3. One motorbike (a Honda Vario) registered in Wiani Pinanti Pujiastuti's (Defendant I) name;
4. One motor bike (a Honda Supra);

³⁶ Copy of Pekanbaru Religious Court Decision No. 1869/Pdt.G/2018 PA.Pbr at 15.

³⁷ Copy of Pekanbaru Religious Court Decision No. 1266/Pdt.G/2018 PA.Pbr at 47.

5. Rp.1. 571. 039. 337. 208,- (One billion five hundred seventy one million thirty nine thousand three hundred thirty seven thousand two hundred eight rupiah) is the quantity of money.

In case No. 1266/Pdt.G/2018 PA.Pbr, the Panel of Judges also determined the heirs and persons entitled to the testator's property and the amount of their respective shares. They are: (1) Wife (Defendant 1) received joint property amounting to $\frac{1}{2}$ of the inheritance; (2) Siti Lestari (Birth Mother), received $\frac{1}{6}$ part or $\frac{4}{24}$ part of the inheritance; (3) received $\frac{1}{8}$ part or $\frac{3}{24}$ part of the inheritance, (4) Rahardian (biological son) as ashabah received $\frac{14}{24}$ part of the inheritance, and (5) Andika Satrio (adopted son) received $\frac{1}{8}$ part or $\frac{3}{24}$ part of the inheritance.³⁸ The parties who get the right to inheritance and the amount of shares obtained by each party can be seen more clearly in the following table.

Table: 1
The division of the heir's inheritance in the Decision of the Pekanbaru Religious Court Number 1266/Pdt.G/2018 PA.Pbr

No	Name	Status	Portion
1	Defendant I (wife)	Joint Property	Determining joint assets in dictum 5 (five) $\frac{1}{2}$ (half) of the rights of Defendant I and $\frac{1}{2}$ (half) of the other part as inheritance
2	Siti Lestari (biological mother)	Heir	$\frac{1}{6}$ part or $\frac{4}{24}$ part of the inheritance.
3	Wiani P. Pujiastuti (wife)	Heir	$\frac{1}{8}$ share or $\frac{3}{24}$ share of the inheritance
4	Rahardian (biological children)	Heir	ashabah $\frac{14}{24}$ part of the inheritance
5	Andika Satria (adopted child)	Wajibah's Will	$\frac{1}{8}$ share or $\frac{3}{24}$ share of the Heir's inheritance

According to the provisions of Law Number 1 of 1974 and the Compilation of Islamic Law. Article 35 Paragraph (1) of Law No. 1 of

³⁸ Copy of Pekanbaru Religious Court Decision No. 1266/Pdt.G/2018 PA.Pbr at 47–48.

1974 states that joint property is property acquired during marriage that becomes joint property. This can be seen based on the table above, which shows the identities of the judges on the panel at the Pekanbaru Religious Court who examined and tried case No. 1266/Pdt.G/2018 PA.Pbr. In the meantime, half of the joint assets become the entitlement of the spouse who survives longer in the event of a divorce, according to Article 96 of the KHI. Consequently, the Judge Panel concluded that Defendant I, the widow of the Heir, owned $\frac{1}{2}$ of the assets, while the remaining $\frac{1}{2}$ went to the heir.³⁹

The Compilation of Islamic Law's Articles 176, 178, and 180 control how much inheritance is distributed. Article 209 paragraph (2) of the Compilation of Islamic Law specifies how adopted children's assets are divided from their adoptive parents. Adopted children who do not have a will are required to leave a will that leaves them with up to $\frac{1}{3}$ (one third) of their adoptive parents' estate.⁴⁰

The judges of the Pekanbaru Religious Court utilized the *furūdh al-muqaddarah*⁴¹ share as a benchmark, which is why they arrived at the decision that the adopted child would receive $\frac{1}{8}$ of the share. The panel of judges decided that the adopted child's share was $\frac{1}{8}$ (one eighth) or $\frac{3}{24}$ of the testator's inheritance as a mandatory will in this case because Defendant I, the heir's wife, received a share of $\frac{1}{8}$ (one-eighth) and Defendant II, the heir's mother, received a share of $\frac{1}{6}$ (one-sixth) of the entire inheritance of Eko Priyono's heir.⁴²

The Pekanbaru Religious Court's panel of judges, who reviewed case No. 1869/Pdt.G/2018/ PA.Pbr, concluded that the late H. Abdul Kadir bin Muhammad Yasin and Hj. Dahniar binti Yahya Khahd left behind an inheritance in the following form: 1 (one) plot of land measuring 18.90 m x 67.10 m with an area of 1,133.99 M², on which is situated a permanent house bearing the name of H. Abdul Kadir bin Muhammad Yasin, situated on Jl. Source Sari No. 88, RT. 03 RW 6. Ex. Tanjung Rhu, District Fifty, Pekanbaru City. The Pekanbaru

³⁹ Nur Ali Jum'at, "Interview" (Pekanbaru, May 15, 2022).

⁴⁰ Nur Haida, "Interview" (Pekanbaru, May 15, 2022).

⁴¹ *Furūdh al-muqaddarah* are the portions that have been determined by the *syara'* for certain heirs, the distribution of inheritance is what the heirs will receive according to the closeness of their kinship relationship.

⁴² Copy of Pekanbaru Religious Court Decision No. 1266/Pdt.G/2018 PA.Pbr at 44.

Religious Court's panel of judges concluded as a result of the death of the late H. Abdul Kadir and the late Hj. Dahniar, who left behind an adopted daughter and an heir named Syukran Ilham, who passed away without having had his inheritance divided. The Panel of Judges decided that Syukran Ilham's wife and his two biological children would each receive a share of his estate.⁴³

First, Syukran Ilham bin Abdul Kadir, the son, was declared the heir by the Religious Court Panel of Judges, and his heirs were given *ashabab* totaling $\frac{2}{3}$ (two thirds) of » 66.66., and the property falls to his heirs. While Eva Nur'aini as the adopted daughter of the heir gets $\frac{1}{3}$ (one-third) of the inheritance. The table below shows the specifics of each section:⁴⁴

Table 2
The division of the heir's inheritance in the Decision of the Pekanbaru Religious Court Number 1869/Pdt.G/2018/ PA.Pbr

No	Name	Status	Portion
1	Eva Nur'aini (Plaintiff)	Adopted child of the late H. Abdul Kadir and the late Hj. Dahniar	Obtained a mandatory will in the amount of $\frac{1}{3}$ (one third) part « 33.33 & from the inheritance of the late H. AK and the late Hj. D.N
2	Poppy (Biological mother)	Heir (Wife of the Late Syukran Ilham)	Obtained $\frac{1}{8} \times \frac{7}{8} \times 66.66 \times 4 - 8.33$ 4 from the inheritance of the late Syukrun
4	Agra Brahmandha	Heir (Biological Son of the Late Syukran Ilham)	$\frac{1}{8}$ part or $\frac{3}{24}$ part of the late Syukrun's inheritance
5	Fero Zha	Heir (biological daughter of the late Syukrun)	Obtained $\frac{1}{3} \times \frac{7}{8} \times 66.66 \times 2 - 19.89$ Y from the inheritance of the late Syukrun

⁴³ Copy of Pekanbaru Religious Court Decision No. 1869/Pdt.G/2018 PA.Pbr at 51.

⁴⁴ Copy of Pekanbaru Religious Court Decision No. 1869/Pdt.G/2018 PA.Pbr at 52.

Standards for Determining the Amount of the Obligatory will Portion for Adopted Children

From the standpoint of sharia aims (*maqāṣid al-sharī'a*), the implementation of this mandatory will is to ensure adopted children's rights from the assets left by their parents (*hiḡz al-māl*). As heirs usually do, the adopted child in this instance takes part in enjoying the possessions left by his adoptive parents.⁴⁵

Adopted children now have the legal right, via a required will, to inherit from their adoptive parents thanks to the ruling of the Pekanbaru Religious Court. Of course, this complies with legal requirements pertaining to adopted children's property rights from their adoptive parents possessions.

Article 208 of Presidential Instruction No. 1 of 1991 concerning the Compilation of Islamic Law regulates the distribution of mandatory wills. This is an attempt to instill and nurture a feeling of fairness and compassion in society.⁴⁶ This is also consistent with the assertion made by Ramlan Yusuf that the Compilation of Islamic Law's need of wills provides a solution to the issue of adopted children's lack of inheritance rights.⁴⁷

The ruling of the Pekanbaru Religious Court allocates adopted children uneven portions. The judges awarded adopted children 1/8 in decision number 1266/Pdt. G/2018 PA. Pbr, while the adopted child received 1/3 of the inheritance in decision number 1869. Pdt. G. 2018 PA. Pbr. The Religious Court Judge determined the heir's share amount based on the size of the adopted child's required will portion, which is why there is a variation in the level or amount of assets acquired by adopted children in the two Pekanbaru Court Decisions mentioned above. Decision No. 1266/Rev. G/2018 PA illustrates this. The Religious Court Judges fixed the adopted child's portion at 1/6⁴⁸ with

⁴⁵ Yusuf Hamid Alim, *Maqāṣid Al-Ammah Li al-Syar'at al-Islāmīyat* (Riyadh: Ma'had 'Aliy al-Fikr al-Islamiy, 1994), 140.

⁴⁶ Sularno, "Siyasah Syar'iyah Dalam Kompilasi Hukum Islam (Telaah Terhadap Hukum Kewarisan)," *Jurnal Hukum Islam Al-Mawardi*, 1997, 73.

⁴⁷ Rangkuti, "Pembaharuan Hukum Islam Indonesia," 369.

⁴⁸ Copy of Pekanbaru Religious Court Decision No. 1266/Pdt.G/2018 PA.Pbr at 44.

the intention of avoiding going above the heir's portion, since the heir's portion is the largest at 1/6. Similarly, in judgment no. 1869. Rev. G. 2018 PA. Pbr, the adopted child's part may be subject to a mandatory testamentary portion of 1/2, since the heir's biggest share is 1/3.⁴⁹

Since the provisions of the obligatory part of the will regulated in the Compilation of Islamic Law are intended to realize benefits in order to create justice, the author believes that judges applying the obligatory part of the will to adopted children need not rely solely on the *furūdh al-muqaddarah* part. This is due to the fact that adopted children frequently provide greater support to their adoptive parents, both in terms of watching out for family requirements and tending to their medical needs. As to the decision number 1266/Pdt. G/2018 PA, the judge's guidelines for determining the obligatory component of the will should not beyond the *furūdh al-muqaddarah* section for the purpose of this examination. Then the anticipated value of justice may suffer as a result.⁵⁰

The legal circumstances at the core of the two Pekanbaru Court rulings previously mentioned indicated that in addition to the individual who was qualified to receive the heir's property, the court also discovered an adopted kid who was qualified to receive the deceased's inheritance. This is demonstrated in the exception case pertaining to exceptio plurium litis consortium point (b), wherein the plaintiff is aware that another party, a child who has cohabitated with the plaintiff and defendant 1 since the latter was a baby, is entitled to the heir's assets and should be considered the a quo party in the lawsuit. This is consistent with both the biological parents' declaration and the information found in Birth Certificate Number 245/2005, which declares that Sandika Satrio Priyono is the heir and defendant I's kid. As a result, Andika Satrio is not listed as the heir's legal representative. Consequently, in this particular instance, the defendants asked the judges in the a quo case to reject the plaintiff's claim or at the very least find it to be unsatisfactory (*Niet Ontvankelijk Verklaard*).

When viewed from the perspective of sharia, the application of this mandatory will serves to ensure that adopted children have the

⁴⁹ Abdul Aziz Hakim, "Interview" (Riau, May 15, 2022).

⁵⁰ Muhammad Hafis, "Pertimbangan Hukum Hakim Dalam Putusan Contra Legem Di Pengadilan Agama Pekanbaru Perspektif Masalah Mursalah" (Yogyakarta, UIN Sunan Kalijaga, 2022), 117.

right to their share of the assets left by their adoptive parents (*hifẓ al-māl*) and that they have the opportunity to enjoy these assets as heirs in general, in situations where there is a balance in establishing affectionate relationships within families.⁵¹

Judges should consider all relevant facts while evaluating a case, as demonstrated by the rulings in Case No. 1266/Pdt. G/2018 PA. Pbr and Case No. 1869. Rev. G. 2018 PA. Pbr. The judges' calculations in these two rulings were limited to considering the fairness of the requirement that the obligatory will's value not surpass the heirs' portion of *furūd al-muqaddarah*.⁵² The judge might, in the author's view, award the adopted child's part in excess of the heir's or at least on par with the heir's share. This is due to the fact that the regulations found in the required will part of the Compilation of Islamic Law are intended to achieve justice in order to achieve the common good. Consequently, the desired value of justice may not be achieved if the judge, when examining the case regarding the determination of the obligatory part of the will, is only guided by the provision "must not exceed the *furudhul muqaddarah* part" as in decision number 1266/Pdt. G/2018 PA. Pbr and no. 1869. Rev. G. 2018 PA. Pbr.⁵³ In the pursuit of justice, one jurisprudential principle that must be taken into account is *al-adl wājib fi kulli syai' wa al-fadhl masnūn*,⁵⁴ which states that doing what is right requires acting in a fair manner and observing it in practice is a recommendation (*sunah*). Therefore, establishing and implementing justice—including the mandatory will distribution for adopted children basically involves attempting to actualize goodness and benefit for family members.

Conclusions

The position (status) of adopted children according to the Compilation of Islamic Law is a legitimate child based on a court decision by not breaking the blood relationship with his biological parents. However, adopted children are not part of the group of heirs who can get inheritance from their adoptive parents. To provide a

⁵¹ Alim, *Maqāsid Al-Ammah Li al-Syari'at al-Islāmiyyat*, 140.

⁵² Nur Haida, "Interview," May 15, 2022.

⁵³ Nur Syamsiah, "Interview," May 15, 2022.

⁵⁴ 'Abd ibn Abdullah al-Zamil Al-Muhsin, *Syarh Al-Qawā'id al-Sa'diyyat*, ed. 1st Printing (Riyadh: Dar Atlas, 2001), 149.

sense of justice for adopted children, the Compilation of Islamic Law provides a mechanism for giving the inheritance of adoptive parents to their adopted children through mandatory wills, provided that the share of adopted children cannot exceed 1/3 of the inheritance, as stated in Article 209 of the Compilation of Islamic Law. This provision has become the basis and reference for judges in the Religious Courts when resolving cases of mandatory wills for adopted children. However, in practice, there are various decisions in the Religious Courts regarding the amount of inheritance received by adopted children, as seen in the Decision of the Pekanbaru Religious Court in case no. no. 1869/Pdt. G/2018/ PA. Pbr which stipulates 1/8 part for the adopted child and the Pekanbaru Religious Court Decision No. 1869. Pdt. G. 2018 PA. Pbr, which stipulates that the adopted child's share is 1/3 of the inheritance. The difference in the amount or amount of inheritance determined by the court is caused or based on the consideration of making *furūdh al-muqaddarah* as a barometer for applying the share for adopted children. In this case, the judge understands the meaning of justice for the heirs and adopted children is when the amount of the mandatory will does not exceed the amount of the heir's share.

In this case, the panel of judges in deciding the case of the distribution of mandatory wills for adopted children actually does not have to rely or rely on the provisions of the *furūd al-muqaddarah* section. The panel of judges may decide the case using the maximum standard by considering the case/issue submitted, the contribution of the adopted child in the family, and also the purpose of granting the mandatory will itself.

Conflicts of Interest

The authors have no conflict of interest with any party in writing this article.

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