

Juridical Review Regarding the Division of Inheritance to Only Children Who Have Adopted Brothers in The Perspective of Islamic Law

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ABSTRACT

The problem in this paper is a Juridical Review Regarding the Distribution of Inheritance to an Only Child who has an Adopted Sibling in the perspective of Islamic law. This type of research is classified as normative research using the principles and problems studied. Research results show that 1. The main factor causing the adopted child not to obtain inheritance rights is because they do not have blood relations or in another sense, there are family members of the adoptive parents who are more close or blood related than the child, 2. An only child who has an adopted sibling still gets Inheritance according to what is specified in the Qur'an, and adopted children in Islamic inheritance law are not allowed to inherit property from their adoptive parents but are encouraged to provide grants or wills for the welfare of their adopted children. The granting or will is as much as 1/3 part as a mandatory will, based on article 209 paragraph (2) of the Compilation of Islamic Law. Adopted children are not included in the 2 categories mentioned above, because adopted children are not the same relative or descendant of their adoptive parents, therefore, between adopted children and their adoptive parents are not entitled to inherit from each other.

Keywords: *Adopted Siblings, Inheritance, Islamic Law, Only Child.*

INTRODUCTION

The existence of children in the family is something that is very meaningful and is the hope of everyone who builds a family. Children have different meanings for everyone. Children are the continuation of offspring as an investment for the future and children are the hope to be relied upon when old age.

Children are the successors of an ideal family, consisting of father, mother and children, but sometimes there are families who are not satisfied with having one child so they try to adopt children to fulfill their satisfaction. (Amir Syarifuddin, 2008).

Adoption of children is not a new thing in Indonesia because this is commonly practiced by Indonesian people, it's just that the methods and motivations differ according to the legal system adopted in the area concerned. The diversity of laws governing the issue of adoption in Indonesia will be seen if we examine carefully the provisions regarding this adoption

institution from various applicable legal sources, both western law from (Burgerlijk wetboek), customary law and Islamic law that apply in Indonesian society. The existence of adoption in Indonesia as a legal institution is still not synchronous so that the issue of adoption is still a problem of the community, especially regarding the issue of legal provisions.(Muderis Zaini, 2007).

Based on Article 39 paragraph (1) of Law Number 23 of 2002 concerning Child Protection that adoption can only be carried out for the best interests of the child and carried out based on local customs and provisions of the applicable laws and regulations. (Article 39 Paragraph 1 Law No. 23 of 2002 Concerning Child Protection).

There are various reasons and purposes for adopting children, the most important of which are:

1. Compassion for abandoned children or children whose parents are unable to care for them
2. Do not have children, and want to have children to look after and care for them later in old age.
3. There is a belief that if you have children at home, you will be able to have your own children.
4. To find friends for his existing children.
5. To add/get manpower
6. To maintain marital ties / family happiness

In Indonesia there are three civil law systems that apply in regulating issues regarding child adoption, one of which is Islamic law. Where Islamic law as a social institution has two functions: first, as social control and second as a community value, therefore in this context Islamic law is required to be accommodating to the problems of the people without losing its basic principles.

METHOD

Research Type

Data collection is carried out by conducting normative legal research. Normative research is research that uses principles and materials related to the problem under study.

Data analysis

This study uses a qualitative descriptive analysis. Qualitative descriptive analysis is used to analyze data by describing or describing the data that has been collected as it is without intending to make general conclusions or generalizations in detail and compiled in a scientific setting.

DISCUSSION

Position of Adopted Children Against Inheritance According to Islamic Law

Islam encourages a Muslim to take care of other people's children who are unable, poor, neglected, and others. But it is not permissible to sever those relations and rights with their biological parents. This maintenance must be based solely on charity, in accordance

with Allah's advice, as stated in the Compilation of Islamic Law (KHI) namely to treat other people's children as their own in terms of love, provision of living, education and service in all their needs such as own child without breaking his lineage (offspring) to his biological or biological parents. (Benyamin Asri dan Thabrani, 1988)

1. In the Jahiliyah era, before the advent of Islam, the issue of tabani (adoption) was common among the Arabs. In fact, according to history, the Prophet Muhammad himself before receiving the Apostles had an adopted son named Zaid Putra Haritsah in slave status (shaya) who was gifted by Khadijah bin Khuwailid to Muhammad bin Abdullah. Then he was freed and adopted as a foster child and he exchanged the child's name with Zaid bin Muhammad.
2. In front of the Quraysh once Muhammad said, witness it you, that Zaid I adopted as my adopted son, and inherit me and I inherit him.
3. Sometime after Muhammad was sent as an Apostle, a revelation came down which confirmed this matter, as mentioned above. After that, a revelation also came down which stipulated the rules of inheritance which were determined only for people who had blood, heredity and marriage ties. From then on Zaid bin Muhammad was changed to Zaid bin Haritsah. As is known, this Zaid was a person who stood in the front row to help the struggle of Rasulullah SAW and he died on the battlefield as a hero (martyr) in the Muktah war in 8 Hijriyah.
4. Thus, adopted children are only domiciled as foster children and do not obtain inheritance rights from their adoptive parents. The adopted child only has inheritance rights against his biological parents.
5. The main factor causing the adopted child to not obtain inheritance rights is because they are not related by blood or in another sense, there are family members of the adoptive parents who are more close or related by blood than the child.

It is different if the adoption of the child is from a relative, for example a nephew from a biological brother or from a father's brother, then the adopted child can become an asabah heir as long as it is not hindered by heirs who are closer in rank with the heir. (Inpers No. 1 of 1991 Concerning Complications of Islamic Law). As in (QS An-nisa 11 & 12):

It means:

"Allah prescribes for you regarding (the distribution of inheritance for) your children. Namely: the share of one son is equal to the share of two daughters; and if the children are all girls more than two, then for them two-thirds of the assets left behind; if there is only one daughter, then she gets half the property. And for two parents, for each one is one-sixth of the property left behind, if the deceased has children; If the person who dies does not have children and he is inherited by his parents (only), then his mother gets a third; if the deceased had several siblings, the mother gets one-sixth. (the distributions mentioned above) after being fulfilled the will he made or (and) after being paid his debts. (about) your parents and your children, you do not know which of them is closer (many) of benefit to you. This is a decree from Allah SWT. Surely Allah is All-Knowing, All-Wise."

Distribution of Inheritance to Only Children Who Have Adoptive Siblings According to Islamic Law

Inheritance problems will definitely be experienced by everyone. When someone dies, the assets left behind will be distributed among the heirs left behind. According to Article 171 Letter (a), inheritance law is the law that regulates the transfer of ownership rights and inheritance (tirkah) to the heir, determines who has the right to become the heir and how much of each share. According to Muhammad Amin Summa, Islamic inheritance law is the law that regulates everything related to the transfer of rights and or obligations over a person's assets after he dies to his heirs. (Ahmad Rofiq, 2017).

In Islamic law, the procedure for dividing inheritance has been regulated as well as possible. The Al-Quran explains and details in detail the laws relating to inheritance rights. In Indonesia, the legal basis that is used as a guideline in terms of inheritance and determination of heirs for people who are Muslim is the Compilation of Islamic Law (KHI).

Inheritance or inheritance is the property left by the heir, whether in the form of objects that belong to him or rights acquired during his lifetime, either with a will or without a will. According to fiqh scholars, the basis of inheritance in Islam is blood ties (al-qarabah), inheritance on the basis of freeing slaves no longer exists today.

The basis of inheritance according to the KHI is stated in Article 174 paragraph (1) namely because of blood relations and because of marriage. Adopted children are not included in the 2 categories mentioned above, because adopted children are not a relative or a descendant of their adoptive parents, therefore, between adopted children and their adoptive parents are not entitled to inherit from each other. (Muhammad Ali Ash-Shabuni, 1995).

So that an only child who has an adopted sibling still gets the portion specified in the Qur'an, namely if the only child is a girl she gets 1/2 of the inheritance (Ashab Furudh), as stated in article 176 KHI:

"If there is only one daughter, she gets half of the share, if two or more people together they get two-thirds of the share, and if the girl is together with a son they receive the remaining share, provided that the son gets the share twice the share of the daughter."

If the only child is a boy he gets all the inheritance ('Ashabah).

In order to provide guarantees for adopted children in obtaining the assets of their adoptive parents, the adoptive parents can provide property grants to adopted children during their lifetime. In addition, it can also be given through a mandatory will. In Islam it is determined that a mandatory will can be given as much as 1/3 of the property of the person making the will. If the will is more than 1/3 of the assets, then the will only applies to 1/3 of the assets without the need for someone's approval. However, if the will is more than 1/3 of the assets, it will require the approval of the heirs. (Mardani, 2017).

If the adoptive parents do not give grants during their lifetime and also do not leave a will for their adopted children, then Islamic law still provides guarantees for adopted children to obtain rights to the assets left by their adoptive parents. This can be seen in Article 209 KHI which stipulates that: (Muderis Zaini, 2007)

- 1) The inheritance of adopted children is divided based on Articles 176 to 193 KHI, while adoptive parents who do not receive a will are given a mandatory will of up to 1/3 of the adopted child's inheritance.
- 2) Adoptive children who do not receive a will are given a mandatory will of up to 1/3 of the inheritance of their adoptive parents.

KHI emphasized that between adopted children and adoptive parents there is no inheritance relationship, but as recognition from the adoption agency, the relationship between adopted children and adoptive parents is confirmed through the mediation of a mandatory will.

Obligatory wills are actions taken by rulers or judges as state apparatus to force or issue obligatory wills for people who have died, which are given to certain people in certain circumstances. (Muhibbin Mohammad, 2009).

KHI determines the obligation of adoptive parents to provide a mandatory will to their adopted children for the benefit of their adopted children, because adoptive parents have been burdened with the responsibility of taking care of all the needs of their adopted children.

CONCLUSION

The position of adopted children according to the Compilation of Islamic Law is to treat other people's children as their own children in terms of love, provision of living, education and service in all their needs like their own children without breaking their bloodline relationship (offspring) to their biological or biological parents. However, in adopting the adopted child, the adopted child remains the lineage of the biological parents and the adoptive parents cannot name the adopted child with his own name but still use the name of the child's biological father.

An only child who has an adopted sibling still gets the inheritance according to what is specified in the Qur'an, and an adopted child in Islamic inheritance law is not allowed to inherit from his adoptive parents but is encouraged to give a grant or will for welfare. his adopted son. The grant or testament is a maximum of 1/3 part as a mandatory testament, based on article 209 paragraph (2) of the Compilation of Islamic Law.

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