

# KOSIM

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# Adopted Children in Distribution of Inheritance according to Islamic Law in Indonesia

## Abstract

The problem of inheritance distribution is a sensitive matter and can trigger quarrels between family members. The urgency for this research is to provide an understanding of inheritance law and prevent divisions in the family, even though Islam advocates unity and unity. Therefore, this study aims to determine the distribution of inheritance to adopted children based on Islamic law. The method used is qualitative through a library study approach. Data sources are secondary data, namely books, journals, and other scientific writings related to inheritance according to Islamic law. The analysis used is inductive content analysis. This analysis identifies Islamic law themes and adopted child areas in the literature. According to Islamic law, the result showed that an adopted child does not have the right to inherit from his adoptive parents. *Wasiat wajibah* was used as the basis by the Compilation of Islamic Law (KHI) in Indonesia to give a share of the heirs' inheritance to adopted children. *Wasiat wajibah* in the KHI is a bridge to cover the gaps regarding the rights of adopted children and adoptive parents to inheritance. The adopted child has the right to obtain a *wasiat wajibah* on the condition that it cannot be more than 1/3 of the total inheritance.

Keywords: *Islamic Law; Inheritance; Adopted Children*

## Introduction

Indonesia is a large country with various cultures, such as different religions, languages, and others (Sumarna et al., 2021). One of the things known by the world community in Indonesia is a country with a majority Muslim population (Hefner, 2017). As a Muslim-majority country, most of life is regulated based on Islam, one of which is based on Islamic law (Juwana et al., 2007). One part of Islamic law is inheritance-related family law (Powers, 2022).

The tradition that is often carried out by Indonesians is to adopt children from close relatives or other people's children, usually because the child's parents are not financially capable (Rais, 2016). In Islam, the term adoption of children has been known before the Prophet Muhammad's apostleship (Bustamam-Ahmad et al., 2018). Child adoption is the taking of a child by someone with a clear lineage, then the child is assigned to him (Jawad Mughniyah, 2011). Adopted children are children who are not their own descendants, but are cared for like their own descendants, so that a family relationship is created similar to that between parents and their own biological children (Karaluhe, 2016).

The problem of inheritance distribution is a sensitive matter and can trigger quarrels between family members (W. H. Nasution, 2019). The division of inheritance to blood relatives has indeed been regulated in Islamic law (Kasdi & Anwar, 2019). Still, the presence of adopted children in the family becomes a problem in the distribution of family inheritance, the emergence of jealousy from

blood heirs. To avoid divisions between families, Islam also regulates the distribution of inheritance for adopted children in family law through inheritance distribution.

The urgency for this research is to provide an understanding of inheritance law and prevent divisions in the family, even though Islam advocates unity and unity. Therefore, this study aims to determine the distribution of inheritance to adopted children based on Islamic law.

## Method

The method used is qualitative through a library study approach. Data sources are secondary data, namely books, journals, and other scientific writings related to inheritance according to Islamic law. The analysis used is inductive content analysis. This analysis is used to identify Islamic law themes and adopted child areas in the literature (Forman & Damschroder, 2007). This article explores how the distribution of inheritance to adopted children is based on Islamic law.

## Results and discussion

### Pluralism of inheritance law in Indonesia

Legal pluralism in Indonesia has been recognized since the reign of the Dutch East Indies (A. Nasution, 2018). The influence of the *Receptie* theory in the Dutch era in Indonesia is still valid in Indonesia, namely inheritance law is still pluralism. There are three legal systems that exist and develop in Indonesia, namely the *Adat* law system, the Islamic law system and the western law system (Fauzi, 2017; Manan, 2008).

The law that applies in Indonesia, including the issue of inheritance. As a result of diversity in Indonesia, until now there is no legal unity that can be applied to all Indonesian citizens. The diversity of inheritance law is shown by the division of inheritance law as follows. 1) The Civil Code (KUHP/BW) which contains the law of inheritance; 2) The law of inheritance contained in *Adat* law; 3) The law of inheritance contained in Islamic inheritance law is based on the provisions of inheritance law in Islamic Fiqh. BW inheritance law applies to non-indigenous and non-Muslims, *Adat* inheritance law applies to indigenous Indonesians, and Islamic inheritance law applies to indigenous and non-Muslim people (Somawinata, 2009).

Indonesia comprises various ethnic groups and customs and has multiple forms of kinship with multiple forms of descent. The hereditary system has a very big influence on the inheritance system in the *Adat* inheritance law (Poespasari, 2018). According to Irawaty & Diyantari (2017) theoretically, the heredity/inheritance system can be divided into three types in table 1.

Table 1.  
Indonesia of *Adat* inheritance law system

System	Explanation	Areas in Indonesia
Patrilineal	The lineage is drawn according to the lineage of the father. Men	Papua, Bali, Ambon, Batak, and surrounding areas.

Matrilineal	have a more prominent position than women in inheritance. Lineage is drawn according to the lineage of the mother. Women have more prominent positions than men in inheritance.	Minangkabau, Semendo, Kerinci, and surrounding areas.
Parental or Bilateral System	The position of men and women is no difference in inheritance.	Jawa, Aceh, Kalimantan, Sulawesi, and Riau.

*Adat* inheritance law system does not use the technique of division of inheritance with mathematical calculations (Lisma Lumentut, 2019). However, it is always based on consideration of the shape of the object and the needs of the heir concerned (Musafa'ah, 2015). Although *Adat* inheritance law system recognizes the principle of equal rights, it does not mean that each heir will receive the same amount of inheritance, with the same price value or according to a predetermined number of shares (A. Nasution, 2018; Pongoh, 2019).

### The concept of adopted children according to the perspective of Islamic law

The philosophy contained in the concept of Islamic law on the one hand allows the adoption of children, but on the other hand it provides strict conditions and limitations. According to Ramdhani (2015) the conditions are as follows.

1. Maintaining the lineage (genetic) of an adopted child, so that it is clear to whom the adopted child is linked, which has an impact on the relationship, cause and effect of law.
2. Maintaining the lineage for one's own biological children so that the legal relationship and consequences remain clear.

There needs to be an understanding of Islamic law in society, especially those who adopt children, that adopted children in Islamic law are not the same in status as biological children, both in the form of giving a surname or giving inheritance. According to (Syaltut, 1990) distinguish two kinds of adopted children.

1. Adopted children are treated as children in terms of love, provision of livelihood, education, and services in all their needs, not treated as their own biological children.
2. *Tabanni* or absolute adoption of children. Entering other people's children into their families as legitimate children, then having rights and obligations as children

According to Islamic law adopted children are not recognized as the basis and cause of inheritance, because the main principle in inheritance is blood relations (Hilman, 2003). Adoption according to Islam is emphasized in terms of love, providing a living, education and meeting all their needs (Aisyah, 2020).

Islamic law confirms that adopted children and adoptive parents have no inheritance relationship. However, as an acknowledgment from the adoption agency, the relationship between the adopted child and his adoptive parents is confirmed by means of a *wasiat* or *wasiat wajibah* (Latif et al., 2021).

Terminologically, *wasiat* is a voluntary gift of property from one person to another, which is effective after the person dies. (Dian, 2018). *Wasiat* recommendation from *Ijma' ulama* through legal institutions (Anshori, 2018). *Wasiat* 's justification in Islam regarding cases of inheritance distribution has long been unanimous in the religious courts in Indonesia (Qudama, 1983). According to (Alam & Fauzan, 2008), the following table 2 is the result of *wasiat* agreements based on Islamic law.

Table 2.  
*Wasiat* based on Islamic law

According to Islamic law	Condition
<i>Wajib</i>	<i>Wajib</i> when it relates to the fulfillment of Allah's rights, such as <i>zakat</i> , <i>fidyah</i> and <i>kafarat</i> . Likewise, when it comes to the fulfillment of one's personal rights through <i>wasiat</i> , such as returning loan assets, deposits and debts.
<i>Sunnah</i>	<i>Sunnah</i> if it is addressed to close relatives who do not receive the inheritance, or to people in need.
<i>Mubah</i>	<i>Mubah</i> when addressed to rich people on the basis of friendship or remuneration. <i>Mubah</i> if the person's property is small, while the person entitled to receive the inheritance is large.
<i>Haram</i>	<i>Haram</i> if it is aimed at something that is forbidden by Islam and for immoral acts.
<i>Makruh</i>	<i>Makruh</i> if it is used to perform acts that are hated by Islam, for example building a mosque on a grave.

According to Islamic law, the distribution of inheritance to adopted children is not the same as to biological children (Subiyanti et al., 2019; Sumirat & Wahyudin, 2021). The difference in status is in accordance with the surah *Al-Azhab* verse 37 (Hasibuan, 2019; Kementerian Agama, 2012; Misnan, 2020)

In Al-Qur'an, surah *Al-Anfal* verse 75 explains the cause of the adopted child not getting a share of the inheritance, because there is no real blood, marriage or relative relationship. Thus, the part that is contrary to Islamic *shari'ah* is adopting children by giving them the same status as their own biological children in terms of inheritance rights. (Hannifa et al., 2022)

### Adopted children according to Islamic law in Indonesia

Most of the Indonesian population is Muslim (Ulfa et al., 2021). The Indonesian government's attempt to bridge Islamic law with legal pluralism in Indonesia is through the Compilation of Islamic Law (KHI) (Keri, 2019; Sabir, 2020). KHI has become a medium for uniting differences of opinion regarding the inheritance rights of adopted children in Indonesia (Herawati, 2011). Before the existence of KHI in Indonesia, the prevailing Islamic law was unwritten law and spread in various *fiqh* books. This resulted in differences in the understanding of the division of inheritance related to adopted children. At that time, Islamic law in the Indonesian Religious Courts tended to be confusing



due to differences of opinion between the *Ulama* on almost every issue. (Al Amin, 2016; Asril, 2015; Hikmatullah, 2017; Sanjaya, 2017)

Based on the reality of the legal awareness of the Indonesian people who always give wills to adopted children. This legal awareness has become a motivation for legal experts in Indonesia to make a breakthrough through KHI. Constructing KHI by including *wasiat wajibah* as a solution to give rights and positions to adopted children in the distribution of inheritance. *Wasiat wajibah* is a testament (will) to heirs or relatives who do not get a share of the inheritance because of an obstacle (Dahlan, 1996; FAUZI, 2017; Nuzha, 2015).

The Compilation of Islamic Law (KHI) stipulates that between adopted children and adoptive parents a mutual will is established. In KHI, there are two things related to the distribution of inheritance for adopted children and parents. 1) The inheritance of the adopted child is divided based on Articles 176 to 193. Adoptive parents do not have the right to inherit, but receive a *wasiat wajibah* from their adopted child, which is a maximum of 1/3 of the total inheritance; 2) The adopted child does not have the right to receive, but receives a *wasiat wajibah* from his adoptive parents, which is a maximum of 1/3 of the total inheritance. (Akbar, 2018; Jarchosi, 2020; Pahroji & SH, 2016; Setiawan, 2017).

*Wasiat Wajibah* mentioned above, not as an inheritance. However, it is a testament taken from the inheritance of the adoptive parents which in its implementation does not depend on the approval of the adoptive parents. (Akbar, 2018). *Wasiat Wajibah* functions as a transfer of rights to people who are not heirs (adopted children and adoptive parents) and the distribution is adjusted to the provisions of Islamic inheritance law. This *Wasiat Wajibah* has a direct point of contact with Islamic inheritance law, for its implementation is left to the discretion of the judge.

## Conclusion

According to Islamic law, an adopted child does not have the right to inherit from his adoptive parents. *Wasiat wajibah* was used as the basis by the Compilation of Islamic Law (KHI) in Indonesia to give a share of the inheritance of the heirs to adopted children. *Wasiat wajibah* in the KHI is a bridge to cover the gaps that occur regarding the rights of adopted children and adoptive parents to inheritance. The adopted child has the right to obtain a *wasiat wajibah* on the condition that it cannot be more than 1/3 of the total inheritance.

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