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Settlement of Will in Inheritance Dispute Case against the Decision of the Supreme Court of the Republic of Indonesia Number: 485 K/AG/2013

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Abstract

Legal events, one of which is the death of a person, will cause legal consequences on how to follow up the management of the rights and obligations of someone who has died. Islam teaches a set of *shari'ah* laws regarding inheritance and will. The Medan Religious Court had determined the compulsory heir but it was sued by another heir. On the other hand, based on the Decision of the Supreme Court Number: 485K/Ag/2013, the plaintiff was declared as the compulsory heir and decided that the defendants were not. This certainly can lead to legal uncertainty. Regarding to this case, the author discusses the settlement of will in inheritance dispute because it raises several problems regarding the factor of inheritance dispute, settlement of inheritance dispute, and implementation of the will. The research in this thesis applies a normative juridical method which is an approach through legal research by examining the principles of law and law comparison. Based on the research results, the conclusion that can be drawn is that the factor causing inheritance dispute is the determination of inheritance to adopted child. Settlement of inheritance dispute, against the Decision of the Supreme Court of the Republic of Indonesia Number: 485K/Ag/2013, invalidates the determination of heirs and states that the Decision of the Religious Courts has no legal force. In addition, related to the settlement of the testament to the inheritance dispute against the Decision of the Supreme Court of the Republic of Indonesia Number: 485K/Ag/2013, the judge has determined to give a *wasiyah waajibah (binding will)* to the adopted child a maximum of 1/3 of the testator's inheritance.

Keywords: Wasiyah Waajibah; Inheritance; Adopted Child

Introduction

According to Islamic teachings, one's ownership of property is inseparable from his/her relationship with social interests. Therefore, with regard to wealth, Islam teaches a set of *shari'ah* laws; including the *shari'ah* concerning inheritance, *zakat*, *infaq*, *shadaqah*, *hibah*, *waqaf* and will. The *Islamic shari'ah*, on inheritance, *zakat*, *infaq*, *shadaqah*, *hibah*, *waqaf* and will, is inseparable from faith and morals. It shows that Islam is ready with its concept to deal with problems in society; especially those related to problems of poverty, ignorance and backwardness.[1]

[1]Muhammad Jawab Mughniyah, *Five-School Fiqh*, (Jakarta: Basric Press, 1994), page 237

The problem that obtains serious attention in *fiqh* law is the study of will. Will is one of the forms of handover or release of property in the *Islamic shari'ah*. Will has a very strong legal basis in the *Islamic shari'ah*.

The implementation of this will only takes place after the testator has passed away. Practically, the will must fulfill certain conditions so that it does not conflict with the provisions of the inheritance law and does not harm other heirs who do not obtain the distribution of property through a will. In this case also, the law limits one's power to determine his/her final wish through a will so that he/she does not exclude the child as heir through his/her will. Presidential Instruction No. 1 of 1991 concerning Compilation of Islamic Law in Indonesia states that what is meant by will is the giving of an object from the testator to another person or institution that will take effect after the testator dies (Article 171 letter f). Provisions regarding this will are found in Article 194 to Article 209 which regulates the whole procedure of the will.

According to the Compilation of Islamic Law, adopted child has the right to obtain *wasiyah waajibah* (binding will) on the condition it must not exceed 1/3 of the inheritance; based on Article 209 Paragraph 2 Compilation of Islamic Law. For this reason, it is recommended that judges in the Religious Courts have the courage to apply applicable laws in the community in accordance with Article 5 Paragraph 1 of Law No. 48 of 2008 concerning the Principles of Judicial Power which read: judges and constitutional judges must find out, follow, and understand the legal values and sense of justice prevailing in society.[2]

Based on the above explanation, a will is inseparable from inheritance law that has been regulated in Islamic law. Furthermore, the terms of reference will be made to analyze cases that have been tried and decided by the Supreme Court. The case occurred between the plaintiffs: 1 Hasanuddin Bangun, 2. Radiah Bangun, 3. Sabariah Bangun, 4. Nurdin Bangun, 5. Rusli Bangun, 6. Bujur Muli Sebayang, and 7. Dani Sebayang, who fought the defendants: 1. Edy Meliala, 2 Dewi Sari Meliala, with the case as follows:

The plaintiffs had filed a claim for the cancellation of the inheritance against the defendants based on a letter of application dated January 30, 1990 concerning the application for the Determination of the Heir of the late Ngerajai Meliala through the Medan Religious Court. In this case, the defendants' relationship with the testator was adopted children which was not entitled to receive inheritance from the testator. Meanwhile, the plaintiffs and testator had kinship relations which inherit from each other in accordance with the provisions of Allah SWT in the Al-Quran from the male/ father lineage as well as from the female/ mother lineage.

Based on Determination Number: 66/PEN/1990/Pa.Mdn, the order granted the request and determined the compulsory heirs that consistede of a wife named Bangku Mulu Bangun, and 2 (two) biological children, Edy Meliala (son) and Dewi Sari Meliala (daughter). The plaintiffs wanted the decision to be canceled because, according to the plaintiffs, the two defendants were not biological children of Ngerajai Meliala. In accordance with the actual facts, the marriage between Ngerajai Meliala and Bangki Muli Bangun did not produce legitimate offspring/ they did not have biological children as compulsory heirs. However, the Medan Religious Court did not accept the claim on the grounds that the plaintiffs did not have a legal relationship with the testator in the determination of the heirs.

Based on the Compilation of Islamic Law in Article 171 letter c, heirs are people who have blood relations or marital relations with the testator, are Muslim, and are not hindered by the law to become heirs. However, the court stipulated that the defendants are the compulsory heirs, which was certainly not in accordance with the applicable provisions. Then the plaintiffs submitted legal resistance at the appeal level to the Medan Religious High Court. The appeal submitted by the plaintiffs could not be accepted because the Religion Court was absolutely not authorized to cancel the stipulation that had been

[2]Ria Ramdhani, "Wasiyah Waajibah Arrangement for Adopted Children According to Islamic law", *Lex et Societatis*, Vol. 3, No.1, 2015, page 55

determined by himself (the testator). This ultimately did not comply with the applicable provisions, because the stipulation was voluntary; therefore, it could be canceled.[3]

The Decision of the Supreme Court Number: 485K/Ag/2013 declared that the plaintiffs were compulsory heirs and decided that the defendants were heirs, but they only obtained *wasiyah waajibah*. After knowing the different legal rules in deciding the case, it certainly can lead to legal uncertainty.

Research Method

This study applies a normative juridical approach which is an approach through legal research by examining legal principles, legal systematics, legal synchronization, legal history, and legal comparisons.[4] The research design used in this study is descriptive research that aims to describe the object or problem that is happening in the study. In other words, this is a research whose main purpose is to describe social realities that are really complex so that social relevance can be achieved;[5] in this case, it concerns the settlement of will cases in inheritance disputes. For research material, the data relating to the problem of this research is collected as much as possible. This study utilizes the following data:

1. *Primary Legal Material*

It includes binding legal materials which are statutory regulations. The primary legal material that is used is certainly legislation that has relevance to the research title that the author chooses.[6] This legal material is used and has legal force that supports the completeness of this paper, which consists of:

a. Al-Quran and Hadith
b. 1945 Constitution of the Republic of Indonesia
c. Compilation of Islamic Law
d. Civil Code

2. Secondary Legal Material

It includes legal material that supports primary legal material consisting of books that have a close connection with this paper, which consists of:

a. Books relating to will and inheritance
b. Previous studies relating to will and inheritance
c. Articles relating to the topic of the research problem

3. Tertiary Legal Material

It is collected to provide guideline and explanation for primary and secondary legal materials that consists of:

a. Dictionary
b. Encyclopedia

[3] Yahya Harahap, *Civil Procedure Code*, (Jakarta: Sinar Grafika, 2004), page 44
[4] Bambang Sunggono, *Legal Research Methodology*, (Jakarta: PT. Raja Grafindo Persada, 2010), page 10
[5] *Ibid*, page 11
[6] *Ibid*, page 13

After the data is obtained or collected from the implementation of the research, the author analyzes the data qualitatively; i.e. by collecting the data, qualifying the data, then connecting theories related to the problem and finally drawing conclusions to determine the results.[7]

Results and Discussion

The Process of Inheritance Case Settlement in Medan Religious Court

Regarding the role of the Medan Religious Court in settling the inheritance case, the judges are always guided by the material law and formal law applicable in Indonesia, as stated in the Law of the Republic of Indonesia No. 48 of 2009 concerning Judicial Power. It states that the main task of the Court (including the Medan Religious Court) is to accept, examine, hear and settle every case submitted to it. Since the enactment of Law No. 50 of 2009 concerning the Religious Court, the issue of inheritance among Muslims has truly become the absolute competence of the Religious Court. It means that the settlement of inheritance case for Muslims throughout Indonesia is the authority of the Religious Court. It is because the inheritance option rights stated in the explanation of Law No. 7 of 1989 have been declared to be deleted.[8]

Absolute competence, which is also called power attribution, is all provisions regarding everything included in the power or competence or authority of a judicial institution.[9] This competency is usually regulated in a law that regulates the structure and power of the judiciary.[10] If option rights are still in place, the litigant parties can choose the Religious Court or District Court to file a claim. Thus, this has caused the competence of the Religious Court to handle inheritance case to be vague/ unclear.

Regarding this absolute competency (power), every judicial institution is required to examine the case submitted to it whether it or not includes absolute power.[11] If it clearly does not include its absolute power, the judiciary is prohibited from accepting the case.[12] This is based on Article 134 HIR/16R.Bg. With regard to the process of examining inheritance case in the Religious Court, the judge only waits for the initiative of the community to file a claim in advance for accepting and helping to settling the civil cases including adopting the principle that the judge tends to wait (*iudex ne procedat ex officio*) and the principle that the judge is passive. After the ratification of the Compilation of Islamic Law, although many parties did not recognize it as a statutory law, however, practically religious courts agreed to make it a guideline in litigation in court. The Compilation of Islamic Law governing inheritance is contained in book II which consists of 23 Articles, namely from Article 171 to Article 193. However, it does not mean that inheritance law from *fiqh mawaris* has been replaced by Compilation of Islamic Law, because Islamic inheritance law contained in *fiqh mawaris* is the main source of Compilation of Islamic Law.

[7] *Ibid*, page 18

[8] When option rights are still applicable, the litigant parties can choose the Religious Court or District Court to file a claim. Thus, it causes the competence of the Religious Courts to be vague/ unclear in handling inheritance cases. Bambang Waluyo, Implementation of the Judicial Power of the Republic of Indonesia (Jakarta: Sinar Grafika, 1992), page 46. Cik Hasan Bisri, Religious Courts in Indonesia (Jakarta: Raja Grafindo Persada, 1998), page 211. Abdurrahman Wahid et al, Islamic Law in Indonesia: Thought and Practice, (Bandung: Remaja Rosdakarya, 1994), page 81. M. Yahya Harahap. Position, Authority and Events of the Religious Courts, (Jakarta: Pustaka Kartini, 1997), page 162

[9] Abdul Rahmat Budiono, *Judicial Religion and Islamic Law in Indonesia,* (Malang: Bayumedia, 2003), page 14

[10] Taufiq Hamami, *Getting to Know More About the Position and Existence of Religious Justice in the System of Legal Governance in Indonesia,* (Bandung: Alumni, 2003), page 97

[11] Abdul Manan, *Application of Civil Procedure in the Religious Courts,* (Jakarta: Prenada Media, 2005), page 196

[12] Musthofa, *Registrar of the Religious Court,* (Jakarta: Prenada Media, 2005), page 9

Another source is the law on inheritance contained in the Civil Code that is still valid and the prevailing reality in the community contained in the jurisprudence of the Religious Courts.[13]

The Medan Religious Court is always open to anyone who wants to file a lawsuit or request for the determination of heirs. The judges will try as hard and best as possible to help and decide cases in accordance with Islamic law.

The following is one example of the settlement of inheritance dispute process that occurred in the Medan Religious Court. The claim was filed by 1. Hasanuddun Bangun, 2. Radiah Bangun, 3. Sabariah Bangun, 4. Nurdin Bangun, 5. Rusli Bangun, 6. Bujur Muli Sebayang, and 7. Dani Sebayang who stated that they were compulsory heirs.

They fought the defendants on behalf of: 1. Edy Meliala and 2. Dewi Sari Meliala who argued that they were biological children of the late Ngerajai Meliala and Bangku Muli Bangun and were the real legal heirs.

Regarding the case, it was clear that the plaintiffs actually wanted the property inherited by their sibling to his adopted children to be returned to the plaintiffs as a whole because that was not in accordance with the applicable provisions in receiving inheritance in which adopted children could not inherit according to Islamic law between adopted children (Defendants I and II) and adoptive parents are not entitled to inherit each other. In accordance with the applicable inheritance system, Defendants I and II had no right to replace the position of adoptive parents (the late Ngerajai Meliala). Therefore, it is sufficient for the Panel of Judges to declare the Determination of Medan Religious Court No. 66/PEN/1990/PA-MDN dated February 20, 1990 as null and void and has no legal force.

Based on the evidence, the Panel of Judges determined that the compulsory heirs from the late Ngerajai Meliala were a wife named Bangku Mulu Br. Bangun, 2 (two) biological children named Edy Meliala (son), and Dewi Sari Br. Meliala (daughter).

Legal Consideration

Judicial power is independent power; in this provision, it means that the judicial power is free from any interference from the judicial authorities except the matters referred to in the 1945 Constitution.[14] Freedom in carrying out judicial authority is not absolute because the duty of the judge is to uphold the law and justice based on Pancasila, so that the decision reflects justice for the people of Indonesia. Then Article 24 paragraph (2) affirms that: judicial power is carried out by a Supreme Court and a judicial institution under it in the General Court environment, the Religious Courts environment, the Military Courts environment, the State Administrative Court environment, and a Constitutional Court.[15]

Judge's consideration is one of the most important aspects in determining the realization of the value of a judge's decision that contains justice (Ex Aequo Et Bono) and contains legal certainty. Besides that, it also contains benefits for the parties concerned so that judges' consideration must be addressed appropriately, well, and carefully. If the judge's judgment is not thorough, good, and accurate, then the judge's decision originating from the consideration will be canceled by the High Court/ Supreme Court.[16] Based on the above case, the judge gives the following considerations:

The decision of the Medan Religious Court could not invalidate the appointment of heirs to the defendant because the plaintiffs had been deterred from becoming heirs because of religious differences. So, legally, the descendants of the two female siblings of Ngerajai Meliala are not included in the group entitled to become heirs. The plaintiffs have no right to file a revocation because, on the straight lineage in Islamic law, the heirs replaced by the plaintiffs have lost their inheritance rights because they embrace

[13] *Ibid*, page 151

[14] Law No. 48 of 2009 concerning Judicial Power, Article 3

[15] Law No. 48 of 2009 concerning Judicial Power, Article 24 Ayat (2)

[16] Mukti, *Practice of Civil Cases at the Religious Courts*, (Yogyakarta: Pustaka Pelajar, 2004), page 140

different religions. In this case, the grandmother of the plaintiffs I to the plaintiff V adheres to pelbegu religion, so does the parents of the plaintiff VI and plaintiff VII.

Related to Article 174 Compilation of Islamic Law, plaintiffs are not included as heirs and the existence of plaintiffs in this case is not as a capacity and quality party in canceling the inheritance of the late Ngerajai Meliala. Since the plaintiffs' claim was not being accepted, the plaintiffs filed an objection at the stage of the appeal to the Medan Religious Court. Based on all the descriptions in the considerations stated in the Religion Court Decision, the panel of judges at the Medan Religious Court stated that they disagreed on the grounds that the plaintiffs' claim essentially requested that the Medan Religious Court cancel and declare that the Determination of Medan Religious Court No.66/PEN/1990/PA dated February 20 did not have legal force. Moreover, the problem of this case is, among other things, whether the Religious Court has the authority to cancel and declare that their self-determined stipulation has no legal force; since this is the absolute authority of the Religious Court. Based on Article 3 of Law No. 7 of 1989 concerning the Religious Courts, basically the settlement of cases is aware of the existence of an institutional system. The Appellate Judge argued that based on institutional factors, the Religion Court was absolutely not authorized to cancel the self-determined stipulation that had been determined by itself. Therefore, the Medan Religious Court overturned the Verdict of the Medan Religious Court.

The plaintiffs remained unsatisfied with the decision issued by the Medan Religion High Court because the Plaintiffs' objectives have not yet been reached. For them, the Determination of Medan Religious Court Number: 66/PEN/1990/PA.Mdn on February 20 must be canceled because it was made and submitted based on deception, false information, false facts and incorrect reasons. The proof is that during the marriage of the late Ngerajai Meliala and the late Bangku Muli Br. Bangun did not have offspring but adopted children namely Edy Meliala Bin Sulaiman Sitepu (son)/ Defendant I and Dewi Sari Br. Melilala (daughter)/ Defendant II. Edy Meliala's biological parents are Sulaiman Sitepu and Mende Br. Bangun while Dewi Sari Meliala's biological parents are Saniah and her father is unknown. This was confirmed by witnesses under oath namely Pulung Bangun and Rostina Sembiring.

Finally, the plaintiff suffered a loss and again filed a lawsuit to the level of appeal to the Supreme Court of the Republic of Indonesia. After that, all formal and material evidence at the beginning of the determination until the decision of the Religious High Court was re-investigated. According to Islamic Law, adopted children are not entitled to inherit the property of their adoptive parents. Therefore, it is appropriate and very reasonable for the Chief Justice to cancel the Determination of the Medan Religious Court No.66/PEN/1990/PA.Mdn on February 20 and stipulate that the Plaintiffs I to VII as compulsory heirs according to the law and based on family lineage to the side direction. In this case the Medan Religious Court has wrongly applied the law. Basically, a good court should use the legal logic when examining A Quo case about how the A Quo case arose. In this case, it began with the defendants' request to obtain a determination as compulsory heirs from the Medan Religious Court. It means that the Medan Religious Court, in absolute terms, states the authority to issue determination and to cancel them.

The Religious Court checks, decides, and resolves the case at the first level between a person who is a Muslim in the field of inheritance and must be responsible for the determinations and decisions it makes. Based on the facts and reasons mentioned above, it is in accordance with the provisions of Article 49 of Law No. 3 of 2006 as the first amendment to Law No. 7 of 1989; i.e. a lawsuit to cancel the Determination of Medan Religious Court No.66/PEN/1990/PA.Mdn dated February 20 submitted by plaintiffs who are all Muslim. The plaintiffs are compulsory heirs in the bloodline to the side direction. In the lawsuit concerning the cancellation of the determination of the heirs, the plaintiffs have the right and authority to file the claim and that is the absolute authority of the Religious Court to examine and try it.

The Medan Religious Court has wrongly applied the law where legal considerations are too formal and rigid. Thus, it creates legal uncertainty and it should be canceled at the appeal level. The legal considerations of the first-level judge caused legal uncertainty. Commonly, the court must look at and ensure a legal situation that it is impossible for a person who has died not to have an heir even though in fact there are still families who are still alive even though they are in the side bloodline of descent who are also Muslim.

The Medan Religious Court has the authority to adjudicate cases and has the authority to cancel its own determination because the determination is voluntary. Court decisions on petition cases (volunteers) for example are stipulations in cases of marriage dispensation, marriage permits, *wali adhal*, polygamy, guardianship, marriage rights, and so on. Determination is a voluntary jurisdiction (not a real trial) because there is only a request without legal opposition. In the determination, the judge does not use the word "try", but it is enough to use the word "determine". The law does not regulate any restrictions and does not violate authority.

Inheritance dispute in the Religious Courts occurred because of doubts whether the compulsory heirs are plaintiffs or defendants. Compilation of Islamic Law Article 174 paragraph (1) states that the group of heirs includes: having blood relations (male group consisting of father, son, brother, uncle, grandfather) and (female group consisting of: mother, daughter, sister, and grandmother). Then, based on marital relations, it consists of widow or widower.

The parties have a legal standing for litigation, because the Plaintiff I until V belongs to the *sababiyah ashabah* group (heirs who receive inheritance with unspecified shares because they get the remaining portion after being given to the *ashab al-furud* heirs), the Plaintiff VI s / d VII represents their mother named Jendam.

Then the Supreme Court of the Republic of Indonesia stated that the Determination of the Medan Religious Court Number: 66/PEN1990/PA-Mdn dated February 20, 1990 was null and void and gave a maximum of 1/3 of the inheritance of the late Ngerajai Meliala to Plaintiffs VI and VII and to Defendant I and Defendant II each got 1/12 part. Thus, the Supreme Court reassigns compulsory heirs to inheritance as *sababiyah asabah*.

Wasiyah Waajibah for Adopted Children

In the criteria for religious court judges and Islamic legal experts in determining the *wasiyah waajibah* part for adopted children in Indonesia, violations of law in the field of inheritance between adopted children and foster parents appear to have occurred. Through the *wasiyah waajibah* scheme, adopted children who are not given a will have the right to receive the *wasiyah waajibah* as stipulated in Article 209 Compilation of Islamic Law. However, the amount of assets that can be given is no more than 1/3 (one third) of the inheritance of the adoptive parents as desired by the *khazanah fiqh*; although there is not much information about the reasons for the stipulation of Article 209 Compilation of Islamic Law.

According to Kasuwi Saiban, the giving of *wasiyah waajibah* is inseparable from the concept of *maslahah* in Islamic law. By paying attention to the close relationship and contribution of adopted children to adoptive parents, if a will is not given, then it is may lead to slander and hostility between families.[17] Suparman Usman and Yusuf Somawinata stated that *wasiyah waajibah* is a testament whose implementation is not influenced or does not depend on the will of the testator. *Wasiyah waajibah* must still be implemented even though the testator does not give an oral or written will.[18] In other words, *wasiyah waajibah* eliminates the element of effort for the giver and recipient of the will.

The following presents the views of the research informants regarding the criteria for giving *wasiyah waajibah* for adopted children:

1. Views of Judges of the Religious Court

a) Drs. H. Paskinar Said Mangkuto Kayo

Regarding the basis or consideration of the provision of *wasiyah waajibah*, Paskinar Said stated:

[17] Ismail Muhammad Syah, *Philosophy of Islamic Law*, (Jakarta: Bumi Aksara, 1992), page 234
[18] *Ibid*, page 235

> *"In terms of civilization, the status of adopted children is another person's child who is cared for by someone like his/her own child. So, there is no inheritance relationship between adopted children and adoptive parents. However, if the adopted child is still a relative, we should find out first how close the relationship is and what obstacles it has for him to inherit."*[19] *Being asked about the possibility of adding to the inheritance of adopted children, Paskinar Said considered that this could be done as long as there is willingness from other heirs. He further said: "Foster children may not get more than 1/3 of the inheritance, because it is the maximum. However, if the heirs of the adoptive parents provide additions, such as health or education fees, the adopted children may receive the addition."*[20]

b) Drs. H. Pelmizar, M.Hi

In addition, according to Drs. Pelmizar, the maximum legal rights of *wasiyah waajibah* for adopted children are 1/3 part of the testator's inheritance. The portion is taken after the community property of the adoptive parents is divided.

> "*In giving a determination on the wasiyah waajibah for the adopted child, the judge does not necessarily give a maximum limit, there are factors to be considered; for example, contributions to adoptive parents. Psychologically, there must be a desired motive in adopting a child. The motive is for example a shelter when adoptive parents are old. If the adopted child does not make a contribution, then he/she does not have to be given a third of the inheritance, it could be below that limit. If he/she does not make a contribution, the inheritance should be given to legal heirs even though they are already rich."* [21]

Furthermore, the active judge in the Religious Court stated that the maximum limit should not be exceeded. He stated:

> *"1/3 part is the maximum limit and it should not be more than that. It is like the maximum limit of five daily prayers. What is the result if we increase the portion? Logically, just being appointed as an adapted child is luck. So, he/she did not immediately get all what his/her adoptive parents had. Theologically, adopted children cannot raise the degree and dignity of parents in the hereafter. There is no verse of the Qur'an and hadith support it though. Therefore, that the contribution of adopted children to afterlife orientation is different from biological children. Apart from contributions, I often see the number of inheritances of adoptive parents with the number of heirs. If the heirs are mostly in a state of need, then I will tend to give heirs because it is a religious order. Meanwhile, for adopted children, by considering aspects of benefit, I give them a maximum portion of 1/3."*

2. Views of Islamic Law Experts

a) Dr. Busyro, M.Ag

According to Dr. Busyro, M.Ag, *wasiyah waajibah* initially is not intended for adopted children, but for replacement testators. However, considering aspects of benefit, adopted children and adoptive parents who cannot inherit each other in Islamic law are then strived to receive inheritance through *wasiyah waajibah*. He further stated:

> *"I realized that the adopted child could have contributed a lot to his/her adoptive parents. Therefore, it is normal for the Compilation of Islamic Law to give wasiyah waajibah. However, giving wasiyah waajibah must be carried out with the approval of his/her adopted sibling because in the view of the classical jurisprudence, all decisions depend on the heirs.*

[19] Paskinar Said, *Interview*, (Padang: February 15, 2019)
[20] Paskinar Said, *Interview*, (Padang: February 15, 2019)
[21] Pelmizar, *Interview*, (Bengkulu: February 18, 2019)

Meanwhile, the amount of assets given to adopted children is no more than 1/3 of the total inheritance. For safer decision, it is better to take the path of the hibah before parents die."[22]

Being asked about whether or not to add part of the adopted child more than 1/3 part, he stated:

"It is allowed to give the addition as long as there is agreement with other heirs. If there is an adopted child who contributes a lot in developing his/her parents' assets, he/she can be given an appreciation according to the contract he/she has implemented from the beginning. In muamalah fiqh, we know various contracts to develop assets such as syirkah or mudharabah. Running these contracts must have various consequences, such as clear profit sharing."

"In my opinion, the existence or absence of a contract that has legal force will reduce the risk of future disputes since the adopted child is still someone else in a family, even though he/she has been cared for since childhood. In addition, muamalah contract does not affect the distribution of inheritance."[23]

b) Dr. Aidil Akbar, M.Hi.

Regarding the basis and part of the adopted child from the inheritance of his/her adoptive parents, Aidil Akbar gave the following statement:

"In my opinion, 1/3 part of adopted children in the wasiyah waajibah is the maximum point. Although this part is still problematic, Article 209 Compilation of Islamic Law at least gives a signal that the parents before death can give a will to their adopted child. If they do not have the chance to state their last will, it is carried out using the provisions of the wasiyah waajibah. Enforcement must be accompanied by conditions; i.e., if the adoptive parents do not have direct nasabiyah heirs, for example father and mother. In addition, if the adopted child has received a grant from a adoptive parent, then the gift can be calculated as part of the wasiyah waajibah."[24]

Amount of Assets that May Be Inherited

For the sake of the heirs, someone has the right to justify a small portion of his/her wealth. This is intended so that the will does not lead to a disaster for the heirs who have died. The amount that can be inherited is only one third of the property and that is the right for someone who will meet his/her death. So, he may add provisions for hereafter life with that. In a hadith of the Prophet Muhammad, it was told that one day the Prophet Muhammad went to visit Sa'ad bin Abi Waqqash who was suffering from illness.[25]

Sa'ad bin Abi Waqqash asked for instructions, whether he could inherit all his property or at least half of it. The Prophet Muhammad then replied: "you may not". Next the he asked again: "what if I inherit one-third?" The Messenger of Allah answered: "(you may) one third, and that is already a lot." Indeed, the Messenger of Allah continued, "instead of leaving your heir expert in a state of abundant wealth, it will be better than you leave them in poor condition, begging. Indeed, however you spend your treasure until a mouthful of food for your wife, they include in shodaqoh too." (Bukhari/Muslim)[26]

[22] Busyro, *Interview*, (Bukittinggi: February 22, 2019)
[23] Busyro, *Interview*, (Bukittinggi: February 22, 2019)
[24] Aidil Akbar, *Interview*, (Bukittinggi: February 23, 2019)
[25] Sajuti Thalib, *Islamic Heritage Law in Indonesia*, (Jakarta: Sinar Grafika, 1981), page 21
[26] H. Satria Effendi, *Analysis of Jurisprudence: Will (Will Cancellation Claim)*, (Jakarta: Al-Hikmah Foundation & Directorate of Islamic Religious Courts, Ministry of Religion, 1995), page 67

The hadith explicitly prohibits the will of more than one third of the assets which one third of it has been considered a lot. It means that under certain conditions, giving inheritance of less than one third of property is considered better. So, it reduces the spaciousness of the heirs. This conclusion is in line with the opinion of Abi Ishaq Ash-Shirazi in his book al-Muhazzab. According to him, if the heirs lived without spaciousness and someone would give inheritance, he/she should give less than a third of his/her wealth.[27] This opinion, besides being inferred from the aforementioned hadith, is also inferred from the *fiqh* of Ali bin Abi Talib which states that the inheritance of one-fifth of the assets is better than one third. Likewise, Ibn Abbas once said: "It would be nice if we inherit less than a third of the assets to a quarter. Didn't the Messenger of Allah (SAS) remind you that the inheritance of one-third of the assets was considered a lot." (Bukhari).[28] Thus, it is clear that considering the needs of heirs before a person decides to give them inheritance is necessary.

The prohibition on giving inheritance of more than one third of the assets, as stated above, is intended to prevent the practice of wills not to result in narrowness for the heirs. Someone who gets signs close to death, the dominant thing in his/her mind can be about how to multiply good deeds, which will ease the burden of his/her sin in the hereafter. It is not good to inherit all or most of property, without considering the fate of the family. That is why restriction on inheritance is carried out. Since the limitation is intended to safeguard the interests of the heirs, the inheritance of more than one third of the property can be recognized if the heir approves it.

Different opinions occur when someone does not have an heir.[29] According to Abu Hanifah, referring to the opinion of Ali bin Abi Talib and Ibn Mas'ud, as quoted by Satria Effendi, in such conditions, a person may inherit more than one third or even all of them to *baitul maal*.[30] On the other hand, there is an opinion that the provisions of having inheritance no more than one third of the property still valid when a person does not have an heir, as stated by Said Sabiq in As-Sunnah Fiqh. This conclusion is the opinion of the majority of Islamic scholars. According to this view, the assets of two thirds more are absolute *baitul maal* rights to be channeled to the public interest.[31]

Implications of Inheritance Law in the Compilation of Islamic Law

The distribution of inheritance for Muslims is a must because it is a legal action against the inheritance that will be carried out after the death of a person who give his/her last will and applies after the person has died.[32] For Muslims who obey and implement the provisions of distribution in accordance with what Allah SWT commands, they will undoubtedly be put into heaven forever. On the contrary, those who do not heed it will be put in hellfire forever. Islamic law dictates that adoption is permissible but the legal consequences of the status and whereabouts of adopted children are as follows: the status of adopted children is not associated with the adoptive parents and remains as is always the case that his/her *nasab* remains connected with their biological parents.[33]

Under these conditions, there is no consequence of mutual inheritance between adopted children and adoptive parents. However, in the Compilation of Islamic Law, the legal consequences of these assets are the emergence of *wasiyah waajibah*; i.e. the mandatory law on the provisions of the will. Mandatory, in this case, is something that is a must and has to be done. Therefore, even though adoptive parents and adopted children do not have an inheritance to adopted children or adoptive parents, but they have been

[27] *Ibid*, page 68
[28] *Ibid*, page 70
[29] *Ibid*, page 72
[30] *Ibid*, page 73
[31] *Ibid*, page 75
[32] Fauzan, "Fundamental Differences on Legal Effects in Determining Child Adoption", Varia Peradilan, Vol. 6, No. 256, March 2007, page 32
[33] Haedah Faradz, "Child Adoption According to Islamic Law", Dinamika Hukum Journal, Vol. 9, No. 2, May 2009, page 154

considered to do so. Before the distribution of inheritance is carried out, the initial action that must be taken is to issue inheritance for *wasiyah waajibah*.

One legal implication of child adoption is regarding the status (position) of the adopted children as the heirs of their adoptive parents. However, according to Islamic law, adopted children cannot be recognized as the basis and cause of inheritance, because the main principle in Islamic inheritance law is the relationship of blood or bloodline. In other words, child adoption according to inheritance law has no legal effect on the status of adopted children; i.e. if it is not a child of their own, the person who has adopted the child cannot inherit anything to him/her.[34] So, as a solution, according to the Compilation of Islamic Law, it is carried out by way of the provision of *wasiyah waajibah* under conditions not to be more than 1/3 (one third) of the assets.

The status of adopted children according to the Compilation of Islamic Law is to remain as a legitimate child based on a court decision by not severing blood relations with their biological parents, because the principle of adoption according to Compilation of Islamic Law is a manifestation of faith that carries a humanitarian mission manifested in the form of nurturing other people as children and nurturing children in their growth and development by fulfilling all their needs.[35]

Conclusion

Based on the discussion that has been described above, with regard to the problems raised earlier, the author concludes the following:

1. Factors causing inheritance dispute in the determination of the Supreme Court of the Republic of Indonesia Number: 485K/Ag/2013 is the determination of heirs given to adopted children who are not compulsory heirs which is not in accordance with Compilation of Islamic Law in Article 171 letter c which states that heirs are people who have blood relations or marital relations with the testator, are Muslim, and are not deterred by the law to become heirs.
2. The settlement of inheritance dispute process based on the Decision of the Supreme Court of the Republic of Indonesia Number: 485K/Ag/2013 is that the Panel of Judges stipulates that the determination of the Religious Court is null and void so that the legal heirs are re-established which do not conflict with applicable law.
3. Implementation of last will in cases of inheritance dispute in the decision of the Supreme Court of the Republic of Indonesia Number: 485K/Ag/2013 is when adopted children are present and the adopted child does not receive inheritance, the judge is obliged to determine the *wasiyah waajibah* to the adopted child a maximum of 1/3 of the testator's assets.

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[34] Maulina, Achmad Khisni, "Legal Consequences of Will Grant Deed Violating the Absolute Rights of Heirs (Legitime Portie)", Akta Journal, Vol. 4, No. 4, December 2017, page 743
[35] *Ibid*, page 745

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