The Validity Of Notary's Testamentary Grant Deed To Adopted Children In The Perspective Of Islamic Inheritance Law

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Abstract

In Indonesian legal practice, the granting of assets to adopted children through testamentary grants often causes debate due to differences in views between Islamic law and civil law. Adopted children are not considered as heirs in the perspective of sharia, but positive law allows such granting through a testamentary grant deed made by a notary. This study is conducted with a normative legal research method using statutory and conceptual approaches. The aim is to understand the extent to which a deed of testamentary grant to an adopted child can be considered valid under national law as well as in accordance with sharia principles. The results of the analysis show that the testamentary grant deed made by a notary is formally valid according to the Civil Code and the Notary Office Law because it fulfills the elements of an authentic deed and has perfect evidentiary power. However, in the Islamic inheritance law system formulated in the Compilation of Islamic Law (KHI), gifts to adopted children are limited through the mechanism of compulsory testament, which is a maximum of only one third of the inheritance and must not harm the absolute rights of legal heirs. If the gift exceeds this limit or is made without the consent of the heirs, the religious court has the authority to cancel the deed. This disharmony creates a conflict of norms that results in legal uncertainty. Therefore, normative integration is needed to ensure that the testamentary grant deed is legally, socially and shar'i acceptable.

I. Introduction

In human life, wealth management is a very important aspect, especially in relation to how the wealth will be transferred to the heirs or beneficiaries after someone dies. The transfer of property does not only involve economic aspects, but also has complex legal and social implications, as it concerns the certainty of rights and justice for the beneficiaries. Various forms of legal instruments are used to regulate the inheritance process so that it runs in accordance with the will of the testator while complying with applicable legal provisions. One of the most important instruments in this regard is the testamentary grant, which is a gift of property that takes effect after the testator dies. To ensure the validity and legal certainty of the testamentary grant, the existence of a deed of testamentary grant made officially by an authorized official becomes very crucial as legally binding evidence (Pratama & Silviana, 2024).

The testamentary grant deed made by a notary plays a central role in providing legal certainty for the transfer of assets from the testator to the designated recipient, including adopted children, through the testamentary grant mechanism. As a public official making authentic deeds, the notary is responsible for ensuring that the deed-making process is carried out in accordance with the formal and substantial provisions applicable in positive law, so as to avoid disputes in the future. However, in the perspective of Islamic inheritance law, the validity of testamentary grants to adopted children poses its own challenges, considering that adopted children are explicitly not recognized as legitimate heirs because they do not have blood relations or nasab with the testator. The Compilation of Islamic Law (KHI) in Article 171 letter (h) defines an adopted child as a child whose daily living maintenance, education, and other costs shift responsibility from the original parents to the adoptive parents based on a court decision, which decision also serves as authentic evidence in the event of a dispute in the future. However, the legal status of adopted children remains different from biological children in the Islamic inheritance system, because Islamic inheritance law only gives inheritance rights to those who have a nasab or marriage relationship (Musdalifah et al., 2021). Therefore, adopted children do not get a share of the inheritance automatically, although in social reality they often occupy a very close emotional position with the adoptive family. Under these conditions, the only way opened by Islamic law is through a mandatory will, as confirmed in Article 209 paragraph (a) KHI which states that for adopted children who do not receive a will, a mandatory will can be given as much as one-third of the inheritance of their adoptive parents.

The main source of inheritance law in Islam relies on two sacred texts, namely the Qur'an and Hadith, which comprehensively regulate the mechanisms and principles of inheritance distribution (Adhari et al., 2021). The rules and regulations regarding inheritance in Islam derive primarily from these two sacred texts as a non-negotiable normative foundation. In regulating inheritance relationships, the prohibition of child

adoption in the sense of actually becoming a biological child is emphasized in Surah Al-Ahzab verse 4, which means: "And God has not made your adopted children your own. That is but the words of your mouth. But Allah reveals the truth and shows the right way." This verse confirms that in sharia, adopted children cannot be equated with biological children in terms of inheritance because they do not have a nasab relationship, so the inheritance rights attached to biological children do not automatically apply to adopted children.

Furthermore, the inheritance rights of adopted children in positive Islamic law in Indonesia are regulated in Article 209 paragraph (2) of the Compilation of Islamic Law (KHI), which states: "Adopted children who do not receive a will are given a mandatory will as much as one-third of the inheritance of their adoptive parents." This provision provides legal space for adopted children to receive some of the assets of their adoptive parents through the mechanism of mandatory wills, even though nasab adopted children are not entitled to the inheritance. In Surat Al-Baqarah verse 180, the obligation to make a will for people who leave property when they die is also emphasized, with the words: "It is obligatory upon you, when death comes to one of you, if he leaves behind much wealth, to make a will for his parents and relatives in a manner that is just, an obligation upon the pious."

Etymologically, a will means an agreement or gift from someone to another party, the implementation of which is only carried out after the testator dies (Nurnazli, 2017). Scholars define a will as an act of giving property in the form of objects or their benefits in tabarru' (charity), which is carried out after the death of the testator. In Islamic law, the tradition of inheritance between adoptive parents and adopted children who do not have a nasab relationship is rejected, because it is not in accordance with the principles of sharia which regulates inheritance rights based on lineage (Abror, n.d.). Adopted children remain heirs of their biological parents and do not obtain automatic inheritance rights from adoptive parents. The status of the adopted child also remains attached to his biological name and lineage, not from the adoptive parents. However, the regulation of mandatory wills as stipulated in KHI is a legal instrument that allows recognition of the emotional closeness and social responsibility of adoptive parents towards adopted children, without ignoring the limits of sharia (Muniroh & Nasution, 2021).

In addition, the implementation of testamentary grants must also fulfill the predetermined conditions so that it is not considered void. These conditions include that the bequest grantor must be legally capable and voluntary, the grantee is not an heir unless approved by other heirs, the property given may not exceed one-third of the estate, and the bequest statement must be made in the presence of at least two witnesses. In practice, problems can arise if the bequest is given unilaterally and not through legal procedures, as happened in Decision Number 0214/Pdt.G/2017/PA.Pbr, where the bequest letter does not meet the elements of formal and substantive legality and is valid before the testator dies, so it cannot be categorized as a valid will or bequest according to Islamic law (Annisa

& Yunita Reykasari, 2024).

In the practice of inheritance in Indonesia, especially with regard to the granting of assets to adopted children through testamentary grants, the role of notaries is very important as public officials who have the authority to make authentic deeds (Sunarto & Rizqiyah, 2021). The functions and responsibilities of a notary in making a testamentary grant deed are not only limited to writing down the will of the testator in written form, but also ensuring that the entire process runs in accordance with statutory regulations and does not conflict with the principles of Islamic inheritance law (Widiyanto, 2020). The notary must ensure that the party giving the bequest has legal capacity, that the property given does belong to the testator, and that the gift does not exceed the limit of one-third of the total inheritance, as stipulated in Article 195 paragraph (2) and Article 209 paragraph (2) of the Compilation of Islamic Law (KHI). This is where the role of a notary becomes very important, namely providing legal advice, ensuring the formal validity of the bequest, and recording it in an official deed that has binding legal force.

The testamentary grant deed made by a notary has valid and binding legal force because it is included in the category of authentic deeds as stipulated in Article 1870 of the Civil Code and Article 184 of the HIR. This deed has perfect evidentiary value as long as it is not canceled by a court decision. This is different from bequests made underhand, which often cause legal problems because they do not meet the formal requirements (Kasus et al., 2025). An example can be seen in Religious Court Decision Number 0214/Pdt.G/2017/PA.Pbr, where a will made by the testator to one of his children was not considered valid because it was made without an authentic deed, not through a notary, and took effect before the testator died, thus contradicting the principles of testamentary grants in Islamic law (Jeanne Clarisa Wetik, 2017).

This problem underscores a broader legal issue, namely the contradiction between the provisions of positive law and the principles of Islamic law in terms of granting bequests to adopted children. Although normatively positive law recognizes the evidentiary power of notarial deeds, in practice, the implementation of testamentary grants that are not in accordance with sharia principles can be declared invalid by religious courts. This condition shows a clash between legal norms that apply in parallel, thus raising doubts about the validity of testamentary grants for adopted children and creating legal uncertainty in the settlement of inheritance disputes.

In the national legal system that adheres to legal pluralism, namely the coexistence between positive law and Islamic law (Turmudzi, 2025). In this case, the legal ambiguity that arises can be classified as a form of conflict of norms between the provisions in positive law, especially the Civil Code (KUHPerdata) and the Notary Office Law, with the norms of Islamic inheritance law as contained in the Compilation of Islamic Law (KHI), where conflict of norms refers to a situation when two or more legal norms apply simultaneously but provide conflicting legal orders or consequences.(Michaels & Pauwelyn, 2011) This conflict occurs when positive law recognizes a notarial testamentary grant deed as an

authentic document that has perfect legal force, while Islamic law limits the recipients of inheritance only to heirs who have a valid nasab or marital relationship, and stipulates a maximum limitation of one-third of the assets for granting wills to parties outside the heirs, including adopted children.

In practice, the notary as a public official has the constitutional authority to make a deed of bequest based on the unilateral will of the grantor, without the obligation to verify its compliance with the provisions of Islamic law (Tirta Mutisari Situmorang et al., 2023). This creates a conflict of values between the substance of civil law, which emphasizes individual freedom in transferring property rights, and Islamic law, which prioritizes the principle of distributive justice and balance of rights between heirs. As a result, although the deed of bequest is formally valid and binding in the realm of civil law, its implementation in Islamic inheritance cases is often not recognized by religious courts if its substance violates the principles of Islamic law, such as exceeding the limit of 1/3 of the inheritance or being carried out without the consent of the legal heirs (Sulistyo Irianto, 2016).

This conflict is increasingly complex because there is no explicit harmonization mechanism between the two legal systems in terms of the implementation of testamentary grants to adopted children. On the one hand, Islamic law in Article 209 paragraph (2) KHI provides space for adopted children to obtain mandatory wills, with certain restrictions (Mahbub Junaedi, 2024). But on the other hand, positive law through notarial and civil provisions opens wider space on the basis of freedom of contract and full ownership of property (Sebtyaningsih et al., 2020). This inconsistency not only shows differences in interpretation, but creates a real normative conflict of law, where one norm allows and authorizes (KUHPerdata and UUJN), while another norm limits or even rejects (KHI), depending on the legal basis used in resolving the dispute.

The implications of this conflict of law are very evident in judicial practice, where a deed of bequest made by a notary legally according to the Civil Code can be canceled or declared invalid by a religious court judge if it conflicts with the provisions of Islamic inheritance law. This creates legal uncertainty for the parties involved, especially the adopted child as the recipient of the bequest, where legal uncertainty refers to a condition when legal norms do not provide clear certainty regarding the rights, obligations, or legal consequences of an action, causing doubts in its application (Situmeang et al., 2024). The absence of norms that explicitly regulate the intersection between the power of notarial deeds and the limitations in Islamic inheritance law, especially regarding the position of adopted children, reinforces the urgency to reformulate national legal policies that are able to integrate the principles of Islamic law and civil law harmoniously. Without it, the Indonesian legal system will continue to face normative dilemmas that are detrimental to justice seekers in cross-norm inheritance cases.

2. Research Method

This research uses a qualitative approach with a normative design. This approach was chosen because the subject matter studied is closely related to the analysis of written legal norms, both from national positive law and from Islamic law sources, especially in discussing the validity of notarial testamentary grant deeds addressed to adopted children. Normative research aims to examine and understand how the law should apply (*das sollen*), not how the law is practiced in empirical reality (das sein), so that the entire analysis process relies on textual and conceptual primary and secondary legal materials (Wardhani et al., 2025).

As explained by Peter Mahmud Marzuki, normative legal research is a method that focuses on the study of legal materials as the main object of study, by interpreting and constructing the applicable law to answer certain legal issues (Marzuki, 2011) According to Marzuki, this approach is prescriptive because it aims not only to describe the law, but also to provide normative arguments for the validity of an action or legal act in the legal system adopted (Adriaman et al., 2024). Meanwhile, Soerjono Soekanto and Sri Mamudji stated that normative legal research includes research on legal principles, legal systematics, legal synchronization, legal history, and legal comparisons (Suganda, 2022). In this research, the first three forms of approach are used to examine the validity of notarial testamentary grant deeds to adopted children, by examining the systematics and principles of Islamic inheritance law, as well as their synchronization with positive legal provisions such as those regulated in the Civil Code (KUHPerdata) and the Notary Office Law (UUJN).

The data used in this research is obtained through library research, namely by examining legislation, classical and contemporary fiqh books, jurisprudence or court decisions, academic journals, legal books, and other relevant legal documents (Syahrum, 2022). This research also examines the provisions in the Compilation of Islamic Law (KHI), especially Article 209 paragraph (2) concerning mandatory bequests, as well as articles regulating the role of notaries in making grant deeds according to civil law. Sources of Islamic law such as the Qur'an and Hadith are also the main references, especially verses that explicitly mention the prohibition of equating adopted children with biological children in the aspects of nasab and inheritance, as stated in Surah Al-Ahzab verse 4 and Surah Al-Baqarah verse 180.

Data analysis in this research is conducted using legal interpretation methods that include grammatical, systematic, historical, and teleological approaches. Grammatical interpretation is used to understand the literal meaning of the applicable norms; systematic interpretation is carried out by connecting articles in a legal system so that they do not contradict each other (Zaidah, 2017). Historical interpretation is used to understand the background of the formation of legal norms, both in the context of Islamic law and national positive law (Prasetyo, 2020); and teleological interpretation is used to examine the purpose of the law (Valentine et al., 2023), especially in answering the question whether the deed of bequest to adopted children reflects substantive justice and legal

certainty as intended by the legal system concerned.

This research uses source triangulation techniques, namely by comparing the provisions of Islamic law and the applicable positive law, as well as the opinions of experts in Islamic law and civil law. This triangulation is important to avoid normative bias and to ensure that the conclusions produced have academic legitimacy and can be scientifically accounted for Jazuli et al., 2025). This research seeks to provide an in-depth understanding of the normative conflict that arises between civil law, which provides ample room for freedom of contract and the sovereignty of property owners, and Islamic law, which limits grants and wills to parties other than legal heirs to a maximum portion of one-third of the estate. Thus, the results of this research are expected to be a strong argumentative basis in efforts to harmonize the national inheritance law system that accommodates the plurality of laws in Indonesian society.

3. Results and Discussion

The Validity of Notarial Testamentary Grant Deed in the Perspective of Indonesian Positive Law

In the Indonesian national legal system, which adheres to the principle of legal pluralism, bequests are one of the legal instruments that facilitate the transfer of property rights over a person's inheritance to another party, which takes effect after the testator dies. In Indonesian positive law, bequests are understood as voluntary unilateral legal acts, whose legal effects only arise after the testator dies (Azizah, 2023). This instrument is important because it provides space for individuals to channel their last will and testament over some of their assets to certain parties who may not be included in the scope of heirs according to the Islamic inheritance system, such as adopted children. The validity of bequests in the perspective of positive law requires legal formalities, including the making of official deeds by authorized public officials, namely notaries, to ensure legal certainty, evidentiary power, and legal protection for the parties involved (Wahyuni, 2020)

The existence of a notary as a public official who has the constitutional authority to make authentic deeds places the testamentary grant deed in a very important position in the Indonesian civil law system. The testamentary grant deed made by a notary has valid and binding legal force as stipulated in Article 1870 of the Civil Code and Article 184 of the HIR, because it meets the criteria as perfect evidence as long as it is not canceled by the court. This provides a guarantee of legality and protection against potential disputes that may arise after the death of the testator. In practice, the notary is not only tasked with writing down the will of the testator in the form of a deed, but is also obliged to ensure that the deed is made in accordance with the applicable formal and material requirements, including that the bequest does not violate the maximum limit of one-third of the total assets of the testator as stipulated in Islamic inheritance law (Hafid Arkan, 2020).

The legal force of a notarial grant of testament deed is inseparable from its status as an authentic deed as stipulated in Article 1868 of the Civil Code, which states that: "An authentic deed is a deed made in the form prescribed by law by or before a public official authorized to

do so at the place where it is made." Thus, a deed of bequest made by a notary fulfills the formal elements necessary to obtain a strong legal position, as long as it is made in the form and procedure in accordance with the provisions of laws and regulations. As an authentic document, this testamentary grant deed has perfect evidentiary power in the eyes of the law, namely proving absolutely what is written in it, unless it can be proven otherwise through a judicial process (Mulia & Hernawati, 2024). This makes the notarial deed the main evidence in resolving disputes related to inheritance or bequests, compared to letters made underhand which have a weak legal position.

Furthermore, the legal basis for the notary's authority to make a testamentary grant deed is also confirmed in Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning Notary Position (UUJN). Article 15 paragraph (1) of the UUJN states: "Notaries are authorized to make authentic deeds regarding all deeds, agreements, and provisions required by laws and regulations and/or desired by those concerned to be stated in an authentic deed, guarantee the certainty of the date of making the deed, keep the deed, provide a grosse, copy and quotation of the deed, all insofar as the making of the deed is not also devoted to another official or person." This provision gives full legitimacy to notaries to act as guardians of legality in transactions or legal wills expressed unilaterally by testamentary grantors.

The legal basis underlying the validity of grants and testamentary grants in Indonesia cannot be separated from the relationship between the Civil Code (KUHPerdata), Law Number 2 of 2014 concerning the Notary Office (UUJN), and other laws and regulations such as the HIR (*Herzien Inlandsch Reglement*) and RBG (*Rechtsreglement voor de Buitengewesten*). In the Civil Code, the provisions on grants are regulated in detail in Articles 1666 to 1693. Article 1666 states that a grant is an agreement in which the grantor during his lifetime, freely and irrevocably, gives an object for the benefit of the grantee. Grants are definitive, unconditional, and valid if made by notarial deed as stipulated in Article 1682, which requires that no grant is valid unless it is made by notarial deed, except in certain cases as referred to in Article 1687 regarding grants of tangible movable objects that are sufficiently delivered in real time (Is, 2023). In addition, the acceptance of the grant must also be done expressly and can be stated in a separate deed as long as it is still within the lifetime of the grantor, as stated in Article 1683 of the Civil Code.

Meanwhile, testamentary grants have different characteristics because the grant is made after the grantor dies. This is regulated in Article 957 to Article 972 of the Civil Code, which explains that a testamentary bequest is a unilateral stipulation from the testator to one or several persons on certain objects that will take effect after his death. The validity of the bequest depends on the legal form of the will, which legally must be stated in written and authentic form, namely through a notarial deed, as the provisions of inheritance law require certain formalities for legal certainty and protection of the parties designated in the will (Nyoman & Astiti, 2022). In this context, the role of the notary is very important because the testamentary deed made by him not only proves the will of the testator, but also gives binding legal force to the will.

The authority of a notary to make such deeds is explicitly affirmed in Law Number 2 of 2014 concerning the Notary Position (UUJN). Article 15 paragraph (1) of the UUJN states that notaries are authorized to make authentic deeds regarding all legal acts, agreements, and stipulations required by laws and regulations and/or desired by interested parties to be stated

in the form of an authentic deed. This provision gives legitimacy to the notary to be the guardian of the formal legality of grants and bequests, guaranteeing certainty of date, content, and acceptance of the legal act, as well as keeping the original manuscript (minuta) as a state archive. The notary is also responsible for neutrality and professionalism in preparing and witnessing the deed, so that the deed cannot be challenged for its validity unless proven otherwise in court (M.Afrizal Zulfar, 2024).

In terms of proving the validity of grants or bequests in legal disputes, civil procedural law regulations such as HIR and RBG also have an important role. In HIR Article 165 and RBG Article 285, it is stated that authentic deeds made by public officials within the limits of their authority and in accordance with the provisions of the law have perfect evidentiary power against what is directly stated by the parties in the deed. This means that as long as the deed of grant or bequest is made in accordance with legal procedures by a notary, the deed will serve as the main valid evidence before the court. Thus, the integration between the substantive provisions in the Civil Code, the formal authority of notaries in the UUJN, and the evidentiary power in civil procedural law creates an integrated legal system in ensuring the validity of grants and bequests. This is also a preventive mechanism against potential disputes and provides legal protection for parties who receive rights based on the deed.

The conditions for the validity of bequests are essential aspects of civil inheritance law that cannot be ignored, because they concern the validity of the testator's will and legal certainty for the recipient (Suryadini & Widiyanti, 2020). One of the main requirements is the existence of a clear will from the testator that is conveyed freely, without pressure, and in a state of consciousness and legal capacity. This will must be expressed in written form through an authentic deed before a notary, as stipulated in Article 938 of the Civil Code and similar provisions. It is not enough to have an oral statement or personal writing, because a notarial deed provides formal legality and can be used as perfect evidence in court. However, the will must remain within the corridors of inheritance law, in particular it must not violate the legitime portie or absolute share that is the right of legal heirs, such as biological children, parents, or surviving spouses. If the bequest exceeds the allowable portion and harms the absolute right, then the violating portion of the bequest can be canceled through legal channels (Hasibuan et al., 2024). In addition, the identity of the testamentary grantee must be clearly determined and the recipient must have the capacity as a legal subject, including not being in a condition that according to the law is considered ineligible to receive inheritance, such as the perpetrator of a crime against the testator.

In addition to the formal and substantial validity, the testamentary grant deed also serves as a form of legal protection for all parties involved, especially for the grantee. With an authentic deed prepared and legalized by a notary, the grantee obtains legal certainty over his rights, and avoids accusations of receiving inheritance illegally (Studi et al., 2023). This directly reduces the potential for disputes to arise between heirs, because the will of the testator has been stated formally, in writing, and can be tested for validity. As a continuation of the strategic role of the testamentary grant deed in creating legal certainty, there is also a need to accommodate various family situations that are not directly regulated in conventional inheritance law, one of which is the position of adopted children as testamentary grantees.

In the development of society and the plurality of legal systems in Indonesia, the position

of adopted children as recipients of testamentary grants becomes an important issue that reflects the need for fair and adaptive legal solutions. Although in the Compilation of Islamic Law (KHI), adopted children explicitly do not have the position of legal heirs, the law opens space for them to obtain a share of the estate of the adoptive parents through the bequest mechanism (Maulidya & Rahman, 2025). This is an embodiment of the principle of justice in law, where although there is no valid nasab relationship according to Islamic law, the social and emotional relationship between adoptive parents and adopted children is still legally accommodated. With testamentary grants, the testator can legally and formally give some of his property to adopted children as a form of moral and social responsibility that has been established during their lives (Sahid, 2025). Therefore, bequests become a strategic instrument to ensure the continued welfare of adopted children without having to violate the boundaries of Islamic inheritance law.

Furthermore, the practice of testamentary bequests in Indonesia also shows the connection and meeting point between two coexisting legal systems, namely Western heritage civil law and Islamic law. In practice, a notary as a public official who makes a testamentary grant deed must have a deep understanding of both legal systems so that the deed made is not only formally valid according to national law, but also socially and culturally acceptable by the community. For example, in Muslim societies, the validity of testamentary grants is not only measured in terms of the formality of positive law, but also in terms of conformity with sharia values, including the limitation of the amount of grants to a maximum of one-third of the testator's property (tsulutsul mal) if given to parties who are not heirs. Therefore, the position of the notary is crucial in bridging this pluralistic legal practice by ensuring that the deed of bequest is prepared based on the principles of prudence, justice, and harmony between positive law and social norms. This approach not only ensures legal certainty, but also creates social legitimacy for the existence of adopted children as legitimate and protected grantees.

Restrictions on Wills to Adopted Children in the Perspective of Islamic Inheritance Law

In the perspective of Islamic inheritance law, an adopted child (*mawluud min at-tarbiyah*) is a child who is cared for and raised by someone without a nasab or blood relationship (Sinambela & Sinaga, 2024). Although socially adopted children are often treated like biological children, in the Islamic legal system, this relationship does not give birth to inheritance rights. Adopted children are not automatically included in the group of heirs of the testator according to the provisions of faraidh. In the perspective of Islamic inheritance law, the position of adopted children is not equal to biological children, especially in the right to inherit. This is rooted in the principle of nasab as the main basis for inheritance in Islam. Adopted children, who do not have a blood relationship with their adoptive parents, are normatively ineligible for inheritance. This concept is confirmed through various opinions of classical and modern scholars who agree that inheritance must be based on kinship (qarabah), marriage (nikah), or wala' relationships, not merely social relationships.

The emotional and nurturing relationship between adopted children and adoptive parents often resembles a blood relationship, especially in Indonesian Muslim families. This creates a need for legal protection that remains in line with Shari'ah values. Therefore, Islamic inheritance law, through an ijtihad approach, opens up space for granting rights to adopted children with a mechanism that does not conflict with the principles of nasab, namely through

mandatory wills. This mechanism is a form of reconstruction of inheritance law that maintains theological integrity but responds wisely to social reality. In line with the principles of inheritance fiqh, the Compilation of Islamic Law (KHI) also emphasizes that adopted children do not have the position of heirs (Mahbub Junaedi, 2024). Article 171 KHI defines heirs as individuals who have a blood relationship or legal marriage with the testator, which automatically excludes adopted children from the category. This provision is a form of harmonization between classical inheritance fiqh and the codification of national law, while maintaining the basic principle that inheritance rights are exclusive to those who have a valid biological or legal attachment.

KHI does not completely close the possibility of giving property to adopted children. In an effort to accommodate the interests of justice and humanity, KHI introduces the concept of mandatory will as a legal instrument that allows adopted children to obtain a share of the estate of the adoptive parents. Thus, Islamic law through KHI establishes a balance between theological norms and sociological realities, without damaging the building of nasab-based Islamic inheritance law (Affarudin & Darmawan, 2021). The provision that adopted children do not have direct inheritance rights in Islam is based on clear shar'i arguments. QS. Al-Ahzab verses 4-5 which states that:

ۚ مَا جَعَلَ اللّٰهُ لِرَجُلٍ مِّنْ قَلْبَيْنِ فِيْ جَوْفِهٖ ۚ وَمَا جَعَلَ اَزْوَاجَكُمُ الّٰـِٔيْ تُظٰهِرُوْنَ مِنْهُنَّ اُمَّهٰتِكُمْ
وَمَا جَعَلَ اَدْعِيَاۤءَكُمْ اَبْنَاۤءَكُمْ ۗ ذٰ لِكُمْ قَوْلُكُمْ بِاَ فْوَاهِكُمْ ۗ وَاللّٰهُ يَقُوْلُ الْحَقَّ وَهُوَ يَهْدِى السَّبِيْلَ ٤
اُدْعُوْهُمْ لِاٰبَاۤىِٕهِمْ هُوَ اَقْسَطُ عِنْدَ اللّٰهِ ۚ فَاِنْ لَّمْ تَعْلَمُوْۤا اٰبَاۤءَهُمْ فَاِخْوَانُكُمْ فِى الدِّيْنِ وَمَوَالِيْكُمْ ۗ وَ
لَيْسَ عَلَيْكُمْ جُنَاحٌ فِيْمَاۤ اَخْطَاْتُمْ بِهٖ ۙ وَلٰكِنْ مَّا تَعَمَّدَتْ قُلُوْبُكُمْ ۗ وَكَانَ اللّٰهُ غَفُوْرًا رَّحِيْمًا ٥

Meaning: *"(3) Allah does not make for a man two hearts in his soul; nor does He make your wives whom you have fornicated your mothers, nor does He make your adopted sons your own. These are but the words of your mouth. (4) Call them by their fathers' names; that is what is just in the sight of Allah. And if you do not know their fathers, then call them your brothers in religion and your forefathers. And there is no sin on you if you are mistaken about it, but what your hearts are intentional about. Allah is Forgiving, Merciful."*

QS. Al-Ahzab verses 4-5 explicitly state that adopted children cannot be equated with biological children and are prohibited from being related to adoptive parents. This shows that the relationship of adopting a child does not create legal effects on the nasab, so the adopted child does not qualify as an heir according to Islamic law. This evidence reinforces the principle that inheritance is a right that derives from the relationship of nasab and marriage, not a mere social or emotional relationship.

In addition, there is no textual evidence that regulates inheritance for adopted children, either in the Qur'an or sahih hadith. In this regard, scholarly consensus agrees that adopted children can only obtain a share of property through non-inheritance instruments, such as grants or wills (Supriyadi, 2021). By not including adopted children in the group of heirs, Islamic inheritance law maintains the purity of the principle of nasab, while emphasizing that the mechanism for giving property to adopted children must be subject to the principles of

fiqh and not just social empathy.

To overcome the imbalance between social relations and Shari'ah rules, Islam allows wills to non-heirs, including adopted children, but with strict limits. Based on the Prophet's hadith which states that "The will is one-third and one-third is already a lot", the will to non-heirs is limited to a maximum of one-third of the testator's estate (Hasibuam, 2025). This limitation is referred to as the principle of tsulutsul mal, and becomes a benchmark in inheritance fiqh that one-third is a threshold that cannot be exceeded unless there is permission from the legal heirs (Anugrah Reskiani, Dian Furqani Tenrilawa, 2022). This provision was later adopted by Article 195 KHI as a positive legal norm in the Indonesian Islamic legal system. The application of this limitation is intended to safeguard the rights of legitimate heirs so that they are not undermined by the unilateral will of the testator. Thus, bequests to adopted children are possible according to Shari'ah, but remain within the corridors of proportional justice that are guarded by strict normative restrictions.

This principle not only aims to protect the rights of the legal heirs, but also reflects the balance between the individual's right to manage property and the family's collective right to receive inheritance shares. Therefore, the one-third share is seen as a fair space to fulfill social interests without violating the legal structure of inheritance. In this case, if the testator wants the gift to exceed the one-third limit, then the consent of all heirs is an absolute requirement for the will to be valid. This shows that although Islam makes allowances for wills to adopted children, their implementation still requires consensus and cannot be done unilaterally. In other words, gifts to adopted children are limited exceptions that are carefully regulated in Islamic inheritance law.

Islamic law expressly prohibits the granting of wills to heirs without the consent of other heirs. This prohibition is affirmed in Article 195 paragraph (2) KHI and is in line with the fiqh principle that the heirs already have permanent rights to the inheritance, so that the addition of shares through a will can cause inequality. Consent is needed so that the distribution of inheritance continues in the spirit of justice and without causing conflict in the future. The prohibition is also a form of legal protection against the potential manipulation of inheritance. In practice, there are many cases where the testator has a personal preference for one of the heirs. This provision serves as a normative safeguard so that additional gifts through wills do not disturb the proportions that have been established by sharia. It also reinforces the principle that inheritance is a right, not a gift of mercy from the testator.

The main purpose of limiting the granting of wills in Islamic inheritance law is to maintain justice and harmony between heirs. Islam teaches that the inheritance must be distributed fairly in accordance with the provisions of Shari'i so as not to cause jealousy, conflict, or hostility in the family (Abdullah, 2023). Therefore, any form of gift to non-heirs such as adopted children must be implemented in a measured manner and within an agreed legal framework. In addition, this restriction is also a form of prevention against the possibility of the testator acting arbitrarily in dividing his property. Islam views wealth as a trust that must be distributed with the principle of maslahat, not to fulfill personal desires that can harm other parties.

In the practice of Islamic inheritance law, grants during life are a more flexible alternative for giving property to adopted children. Grants can be given without proportional restrictions

as in a will, as long as they do not substantially harm other heirs (Ahmad, 2024). Thus, hibah is a legal and shar'i solution for adoptive parents who want to give privileges to their adopted children without violating the principle of nasab in inheritance fiqh. However, to ensure legal certainty and moral validity, the best approach is to combine grants and wills. Grants can be given while still alive, while a mandatory will is established as a final form of appreciation. This strategy shows that Islamic law is very adaptive to social dynamics, as long as the values of justice, maslahat, and legality are well maintained.

The application of Islamic inheritance law cannot be separated from the social and cultural context of Indonesian society, which has strong emotional ties with adopted children. In many cases, adopted children are cared for, nurtured and treated like biological children, so a total denial of the rights of adopted children can lead to social injustice. Therefore, Islamic law requires a contextual approach that is able to balance between normative texts and social needs. Wasiat wajibah is a form of ijtihadi response that is able to bridge between these legal values and social practices. By giving limited rights to adopted children, Islamic inheritance law not only upholds justice within the framework of sharia, but also responds to the values of love and devotion in adoptive family relationships. This approach proves that Islamic law is dynamic and contextual. Therefore, caution is needed in the process of planning the distribution of inheritance, especially when it involves parties who do not have direct inheritance rights. This is where the importance of the role of professionals, such as notaries, to bridge between the will of the testator and the applicable legal provisions, both in terms of sharia and positive law.

In drafting a will, the role of the notary is very important to ensure that the deed does not contradict the principles of sharia and the provisions of KHI. Notaries must understand shar'i restrictions such as the prohibition of giving more than one-third to non-heirs and the prohibition of giving to heirs without consent. Thoroughness and understanding of Islamic inheritance law is an absolute requirement for legal professionals who draft wills so as not to create disputes after the death of the testator. In addition, the involvement of ulama or religious leaders is also crucial to ensure that the contents of the will are in accordance with Islamic values. Consultation with ulama helps to bridge the testator's will with the valid legal norms of fiqh. Collaboration between the notary and the ulama will result in a will that is not only valid in positive law, but also in line with maqashid al-syari'ah, namely justice, benefit, and order in inheritance.

Problems of Legal Harmonization in Granting Bequests to Adopted Children in Indonesia

The granting of testamentary grants to adopted children in Indonesia reflects the complexity of the national legal system that adheres to the principle of legal pluralism. When positive law and Islamic law coexist in the same system, serious challenges arise in realizing harmony between civil norms and religious norms, especially in the context of inheritance. Indonesian positive law, through the Civil Code and the Notary Office Law (UUJN), recognizes individual freedom in transferring property rights to anyone through the mechanism of bequests (Hukum Beralihnya et al., 2021). In this system, the testamentary grant deed made by a notary has a very strong legal position, because it is classified as an authentic deed that meets the formality requirements and has perfect evidentiary power in the eyes of

the law. The grantor is free to determine who will receive their inheritance, including adopted children who have been socially treated as equal to biological children.

In the perspective of Islamic inheritance law, which is the reference in the Compilation of Islamic Law (KHI), giving inheritance to adopted children raises its own problems. Islam explicitly rejects the concept of adopted children as legitimate heirs, because inheritance in Islam is only given to those who have a nasab or marital relationship with the heir (Daud, 2022). This is confirmed in QS. Al-Ahzab verses 4-5, which states that adopted children cannot be equated with biological children in the context of lineage and inheritance. Therefore, KHI does not grant direct inheritance rights to adopted children, but only opens up space for granting through the mechanism of mandatory wills, namely wills given a maximum of one third of the inheritance, as long as it does not harm the absolute rights of the legal heirs.

Normative conflict arises when a deed of testamentary bequest that is formally valid according to civil law turns out to be contrary to the principles of Islamic inheritance law (Nur Afni A. et al., 2024). In practice, the religious court as an authorized institution in resolving inheritance disputes based on KHI, can cancel a testamentary grant deed even though it is legally made by a notary. The main reason is that the substance of the will is not in line with the principles of Sharia, for example because the gift exceeds the limit of one-third of the assets or is given to an adopted child without the basis of a mandatory will and without the consent of the legal heirs. Herein lies the problem of legal harmonization: one norm gives full authority to individuals through a notarial mechanism, while another norm limits the right to make such gifts in order to maintain the balance and justice of inheritance in the structure of Islamic law.

This problem is not only technical juridical in nature, but also has significant social and emotional impacts, especially for adopted children who have lived a life in close family ties, but under Islamic law are still not recognized as heirs. This tension between formal norms and moral norms exposes an unsynchronized national legal system, where civil law and Islamic law run in parallel without a clear integrative mechanism. The absence of harmonizing norms that regulate the intersection between the power of notarial deeds and shar'i restrictions in KHI further strengthens the position of adopted children as parties who are vulnerable to legal uncertainty.

The absence of a legal umbrella that can bridge the two systems results in a normative dilemma in inheritance practice. On the one hand, notaries have the constitutional authority to express the will of the testator in the form of a valid deed, on the other hand, the implementation of the deed can be canceled by the religious court because it is considered not in accordance with the principles of Islamic law. As a result, it is not uncommon for deeds of testamentary grants that are administratively strong to be unable to be executed because they contradict theological norms. This condition creates legal uncertainty that is not only detrimental to the adopted child, but also confuses the heirs and law enforcement officials involved in the dispute resolution process.

Theoretically, Indonesia's legal pluralism should be able to create room for compromise between the various existing legal systems (Sahyana, 2020). However, in practice, without explicit normative harmonization efforts, this pluralism has the potential to become a source of conflict. Therefore, a reformulation of national legal policy is needed that is able to unite the principles of Islamic law and positive law in a balanced and fair manner. This can be done by

formulating legislation that explicitly regulates the position of adopted children in the context of testamentary grants, including limited recognition through a legally binding mandatory will mechanism, and clarifying the authority of notaries in the context of Islamic inheritance. Without comprehensive harmonization efforts, the Indonesian legal system will continue to be plagued by norm conflicts that not only hamper substantive justice, but also undermine the legitimacy of the law in the eyes of society.

4. Conclusion

The validity of a notarial testamentary grant deed to an adopted child is at the intersection between the formal legitimacy of positive law and normative limitations in Islamic inheritance law. In the perspective of national civil law, the testamentary grant deed made by a notary meets the qualifications as an authentic deed that has perfect evidentiary power and is formally juridical, as regulated in the Civil Code (KUHPerdata) and the Notary Office Law (UUJN). This instrument guarantees legal protection and certainty of rights for grantees, including adopted children, who sociologically often occupy a position equal to biological children.

In the perspective of Islamic inheritance law as codified in the Compilation of Islamic Law (KHI), adopted children are not recognized as legitimate heirs due to the absence of a nasab relationship, so that the provision of assets to them is only possible through the mechanism of mandatory wills, which are normatively limited to a maximum of one-third of the total inheritance of the testator. This provision confirms that although the testamentary grant deed is administratively valid, its application is still subject to the substantial limitations of sharia which are imperative. This inconsistency between the principle of freedom of contract in civil law and the principle of distributive justice in Islamic inheritance law creates a condition of conflict of norms which in turn has an impact on legal uncertainty for the parties, especially adopted children as recipients of testamentary grants. Therefore, a normative reconstruction and harmonization of regulations between the positive legal system and Islamic law is needed so that the mechanism of bequests to adopted children can run in a balanced, fair manner, and does not conflict with the fundamental principles of each legal system. Reformulation of legal policies that recognize the existence of mandatory wills within the framework of the national civil system and strengthening coordination between notaries and religious courts are strategic steps to realize legal integration that is responsive to social pluralism and substantive justice in society. Thus, the deed of testamentary bequest is not only valid in terms of administrative legality, but also gains full moral and theological legitimacy in Indonesia's pluralistic legal system.

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