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THE GUARANTEE OF ADOPTED CHILDREN ON THEIR INHERITANCE THROUGH *WASIAH WAJIBAH*

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Abstract

This research examines the rules of law as a system-building related to a legal event which aims to give legal arguments as the basis for determining the right or wrong of a case according to a law perspective by referring to books of Fiqh and the compilation of Islamic law which contains regulation prevailing in Indonesia. This study discusses about the implementation of wasiah wajibah in Indonesia and the role of judges in deciding a case related to wasiah wajibah. This study uses the concepts of normative law approach with three criteria of law such as primary, secondary, and comparative laws by combining Wasiah Wajibah law in an Islamic perspective with the Islamic Law Compilation. The method of collecting the data used in this study is through library research and looking for law materials that are related and relevant to qualitative analysis. All collected data from various sources are arranged properly and then analysed using qualitative method so that it easily solve the problems. Research finding shows that wasiah wajibah is a solution for adopted children to obtain their rights to inheritance with certain provision and limit so that the judges

have a way in deciding the case.

Keywords: *Adopted Children, Wasiah Wajibah, Compilation of Islamic Law*

Abstrak

Penelitian ini mengkaji kaidah atau peraturan hukum sebagai suatu bangun sistem yang terkait dengan suatu peristiwa hukum yang bertujuan untuk memberikan argumentasi hukum sebagai dasar penentu benar atau salahnya suatu peristiwa itu menurut pandangan hukum dengan merujuk pada kitab-kitab Fiqh dan Kompilasi hukum Islam yang memuat peraturan-peraturan yang berlaku di Indonesia. Penelitian ini menganalisis sifat pengaturan wasiah wajibah dalam penerapanya di Indonesia dan peran hakim melalui pertimbangan-pertimbangan dalam memutuskan suatu kasus yang berkaitan dengan harta waris. Penelitian ini menggunakan pendekatan terhadap konsep hukum-hukum normatif dengan metode tiga kriteria hukum seperti bahan hukum primer, sekunder dan perbandingan, yaitu dengan mengkombinasikan hukum Wasiah Wajibah dalam perspektif Islam dengan Kompilasi Hukum Islam (KHI). Pengumpulan data pada penelitian ini dengan cara library reseacrh dan penelusuran bahan bahan-hukum yang terkait dan relevan dengan analisis kualitatif, yaitu seluruh bahan yang didapatkan dari berbagai sumber di susun dengan baik kemudian setelah itu dianalisis dengan metode kualitatif sehingga memunculkan masalah yang jelas untuk diselesaikan. Hasil penelitian mendapati bahwa Wasiah wajibah merupakan solusi bagi anak angkat untuk mendapatkan haknya terhadap harta waris dengan ketentuan dan dalam batas-batas tertentu sehingga hakim juga memiliki pijakan dalam memutuskan perkaranya.

Kata Kunci: *Anak Angkat, Wasiah Wajibah, Kompilasi Hukum Islam*

INTRODUCTION

A. Background

Wealth is world decoration, so that almost everyone will compete to get it and own it, either in a way that is justified by *Shara'* or in a way that is contrary to *Shara'*. Therefore, wealth has become the main trigger for conflict between humans, including among family members. Even so in the distribution of inheritance rights, disputes and conflicts often occur between heirs. That is why it is necessary to have provisions or legal

rules governing problems between the heirs. This law is commonly referred to as *Ahkam Mu'amalat* or *Ahkwal Syakhsiyyah*, which regulates problems about family and one of them is the science of inheritance which discusses the procedures for distributing inheritance according to the part of each heir. In addition, to avoid unwanted things in the future, sometimes parents have given a message regarding the distribution of the inheritance later when they pass away. This message was then called *wasiah.*

In fact, wills have been known since pre-Islamic period, although they are often misused to sanctify a relative who should have inherited the wealth. The will used by the Greek people was to give permission to anyone who will pass away to make a will only to someone they like, while the Roman community made a will to legitimize the reduction or transfer of rights of inheritance to others. In the *Jahiliyyah* era, the will can be given to foreigners who are close to them or agreement beyond close relatives who actually still have a family relationship (Syalabi, 1982: 10). In Islamic law, will is justified and even ordered to be given to relatives who are obstructed by certain provisions to obtain inheritance. This is as stated in Q.S Al-Baqarah: 180:

كُتِبَ عَلَيْكُمْ اِذَا حَضَرَ اَحَدَكُمُ الْمَوْتُ اِنْ تَرَكَ خَيْرًا الْوَصِيَّةُ لِلْوَالِدَيْنِ وَالْاَقْرَبِيْنَ بِالْمَعْرُوْفِۚ حَقًّا عَلَى الْمُتَّقِيْنَ

> “Prescribed for you when death approaches [any] one of you if he leaves wealth [is that he should make] a bequest for the parents and near relatives according to what is acceptable – a duty upon the righteous.”

Islamic inheritance law is one of the main points of concern among legal scientists, both Islamic law and general law, because in the concept of Islamic inheritance, the inheritance of the deceased is only given to certain heirs and with a different amount between them. In Islamic inheritance law, it has been discussed in detail about who is entitled to inheritance and how much they will get and who is prevented from obtaining inheritance and the reasons of it (Syalabi, 1982: 9). Meanwhile, *wasiah wajibah*, whether in the form of assets, benefits for property, debt, etc. can actually be given to other people who have absolutely no lineage or relative, marital relationship and *wala*' (Rofiq,

2000: 462). This is in accordance with a statement that Islam is a religion of *rahmatan lil 'alamin*, which also means that Islam always provide solutions to the problems of social life within society as well as an orientation to create benefits for them and avoid *kemudharatan* as applicable in the rules of *Dar'u al- Mafasid Muqaddamun 'Ala Jalb al-Mashalih* (al-Suyuthi, 1987: 179).

In Indonesia, the concept of will is regulated in KHI articles 194-209 through the Presidential Instruction of the Republic of Indonesia Number 1 in 1991, although the KHI is still limited to giving wills to adopted children and adopted fathers. Of course this is different from other Middle Eastern countries such as Morocco, Egypt and Syria which also regulate wills for grandchildren whose parents die first rather than grandfather or grandmother (Al-Amruzi, 2014: 77). In Indonesian society, there is a difference in practice regarding the implementation of *wasiah wajibah*, whether the practice must be adapted to the concept of Islamic law or in accordance with the concept of KHI, especially that will is one of the legal actions and brings certain legal consequences, besides also to adoptive parents or children lift. For example, in Java, Sulawesi and Kalimantan, adopted children or adoptive parents can even inherit if they are considered of good behaviour. Meanwhile in Minangkabau, adopting children or parents does not result in mutual inheritance, but it can only be done through *wasiah wajibah* (Hadikusuma, 1991: 117).

B. Research Problem

Indonesia is a country where the majority of its population is Muslim. In the perspective of Islamic *Fiqh*, it is stated that the mandatory wills can only be given to people who are not heirs, but it is not explained in detail how to distribute the will. In the Islamic Law Compilation it is stated that adopted children are given a *wasiah wajibah* provided that they do not exceed one third (1/3) of the inheritance of their adoptive parents.

From the above statement, the authors are interested in examining the law of granting *wasiah wajibah* to adopted children in the

perspective of Islamic Fiqh before examining the law of it to adopted children in the perspective of KHI in Indonesia.

C. Research Methods

The research method used by the author is through an approach to the concept of normative laws with the method of three legal criteria such as primary, secondary and comparative legal materials. Thus the authors combine *Wasiah Wajibah* law in an Islamic perspective with the Indonesian Islamic Law Compilation (KHI). In this study the authors collected data through library research (literature review) and tracing legal materials from related and relevant literature related to the purpose of study. The data is then analysed using qualitative approach, that is, all the materials obtained from various sources are arranged properly and then analysed by qualitative methods so that it can solve the research problem.

D. Previous studies

From previous research, the author did not find the same research title as of this study, but the authors found several studies as references in order to enrich the study material of this research, including: First, Ria Ramdhani who wrote about *Pengaturan Wasiat Wajibah Terhadap Anak Angkat Menurut Hukum Islam*. The method used in writing this research is a normative juridical approach. The type of data used is secondary data consisting of primary, secondary and tertiary legal materials. This research only examines the *wasiah wajibah* in the perspective of Islamic law by concluding that Islamic law allows adoption within a certain limit, as long as it does not bring legal consequences in terms of blood relations, guardian relationships and inheritance relationships. Second, Risdianto who wrote about *Kedudukan Wasiat Wajibah Menurut Hukum Keluarga Islam di Indonesia*. This study describes *wasiah wajibah* in the view of Islamic family law with the conclusion that wills are a solution given to parties who do not inherit rights. Third, Syafi'I who wrote a study about *Wasiat Wajibah Dalam Kewarisan Islam Di Indonesia*. This research describes the existence of *wasiah wajibah* in the perspective of Islamic

inheritance law which is often applied in Indonesia. At the conclusion of this research it is stated that a wills is a will that is intended for heirs or relatives who do not get part of the inheritance from the person who pass away because of a legal barrier.

What is the difference between this research and the three studies above is that the authors in this study describe and compare the *wajiab wasiah* from the point of view of Islamic law with the compilation of Islamic law. This is considered very important because the majority of Indonesian people are Muslims who adhere to the Islamic law, on the other hand, they live in a country with different cultures and customs, so it is necessary that the meaning of Islamic Sharia be adjusted to the conditions of the Muslim community in Indonesia.

DISCUSSION

A. *Wasiah Wajibah* Law in the Perspective of Islamic Fiqh

The term *wasiah* is derived from the Arabic *Wasshaitu al-Syaia ushituhu*: I am giving a will (Sabiq, 1995: 295). *Wasiah* means messages, orders and advice for transferring property rights to another (Dhaif, 2011: 1038). According to the definition of *syar'i, wasiah* is the giving of objects, debts and a certain benefit to another party, provided that he will have the right to the gift after the death of the person who give the will (Sabiq, 1995: 295). Whereas a *wasiah wajibah* is a mandatory gift from a deceased person to an heir who is prevented from obtaining inheritance rights such as a grandchild who is prevented from obtaining inheritance rights because his parents passed away before the grandfather who gave *wasiah wajibah* or passed away at the same time, or other people who have certain relationships such as children and adoptive parents (Syalabi, 1982: 21). According to this explanation, the will in principle still has to be fulfilled, even though it is not spoken by the deceased and not on his own will, the implementation of this will is based on legal reasons which make the implementation of the will compulsory (Somawinata, 2002: 163).

Basically, Islam allows a person to adopt a child (*tabanni*) as long as it does not bring legal consequences in terms of blood relations, guardian relations and inheritance relations. This is in accordance with QS. Al-Ahzab: 4

مَا جَعَلَ اللّٰهُ لِرَجُلٍ مِّنْ قَلْبَيْنِ فِيْ جَوْفِهٖ وَمَا جَعَلَ اَزْوَاجَكُمُ الّٰـِٔيْ تُظٰهِرُوْنَ مِنْهُنَّ اُمَّهٰتِكُمْ وَمَا جَعَلَ اَدْعِيَاۤءَكُمْ اَبْنَاۤءَكُمْ

> “Allah has not made for any man two hearts in his (one) body: nor has He made your wives whom ye divorce by Zihar your mothers: nor has He made your adopted sons your sons. Such is (only) your (manner of) speech by your mouths. But Allah tells (you) the Truth, and He shows the (right) Way.”

The *Asbabun Nuzul* of this verse is a warning from Allah SWT to the Prophet Muhammad SAW when he appointed Zaid bin Harithah to be his adopted son and made him his biological child. Based on this verse, the Islamic concept is certainly on the contrary to the pre-Islamic Arabic tradition. In the Arabic Pre-Islamic tradition, it applies that adoption results in a change in the status of an adopted child to become like his own biological child, so that he will be able to mutually inherit between the adopted child and his adoptive parents (Al Amruzi, 2014: 83), because in Islam adoption does not change the status lineage, so that adopted children and adoptive parents do not inherit each other, they may even marry. Thus in Islam adoption is only limited to the transfer of responsibilities for maintenance, care, education and so on from the biological parents to the adoptive parents.

The distribution of inheritance is one of the obligations that must be fulfilled by the Muslim community, because the distribution of assets in accordance with the science of inheritance is a *tasharruf* of the inheritance of the inheritance after the death of the person who owns the inheritance (*al-Tasharrufu fi ma ba'da al-mauti*), so that the distribution of inheritance is a must. In Islamic inheritance law, there are four causes of inheritance; namely Islam, the existence of kinship or essential lineage (*al-Qarabah*), the existence of a legal marital relationship between husband and wife (*Mushaharah)* and the existence of a bondage relationship or the freedom of slaves (*Wala'*). Based on this, adopted children do not have the right to become heirs,

even though it may be that the relationship between adopted children and adoptive parents is closer to that of other heirs. The problem arises when the deceased leaves a special message (*wasiah*) so that some of his assets are given to certain people who actually have no relative or lineage at all like adopted children, or there are distant relatives such as grandchildren and others. So the giving of inheritance to the person who is given a special message is called the mandatory will (Lathief, 2006: 134). In the study of Islamic Fiqh, actually the scholars of fiqh have different opinions regarding the law of the mandatory use of the will. Imam Az-Zuhri, Abu Mujlaz and Ibn Hazm argue that this testament is Fardhu Ain's law on everyone who has property even if a little at the time of death. They held to the opinions of Friends of Talha, Zubair, Abdullah ibn Ubay and others (Sabiq: 297). This opinion is based on Al-Quran Surah Al-Baqarah verses 180 and An-Nisa verses 11 and 12 which in general states that when the signs of death arrive, it is obligatory for anyone to testify to his parents and close relatives properly (Rahman: 78). Besides that also based on the hadith from the friend of Ibn Umar Ra, he said: The Messenger of Allah SAW had said:

مَا حَقُّ امْرِئٍ مُسْلِمٍ لَهُ شَيْءٌ يُوصِي فِيهِ، يَبِيتُ لَيْلَتَيْنِ إِلاَّ وَوَصِيَّتُهُ مَكْتُوبَةٌ عِنْدَهُ

> *Narrated `Abdullah bin `Umar: Allah's Apostle said, "It is not permissible for any Muslim who has something to will to stay for two nights without having his last will and testament written and kept ready with him."* (Al-Bukhari, 2005: 2738)

Meanwhile, the majority of scholars of Fiqh Expert of the four schools of *Ahlus Sunnah* are of the opinion that wills may change according to certain conditions. A will can be mandatory if it is related to the payment of *zakat*, *kafarat* and *fidyah*, sunnah if it is given to a relative who is prevented from obtaining inheritance rights, sometimes even a will becomes haram if it results in harm and irregularities (Ramadhani, 2015: 56-57). This is based on a hadith narrated by Abu Hurairah, that the Messenger of Allah SAW said: "actually there is someone who does good deeds for seventy years, then commits deviation in his will, then he is put in hell, and in fact there is someone who Doing charity with ugly deeds for seventy years, then doing justice in his will, then he is entered into heaven ", then Abu Hurairah said:"

Read the Hadith if you want, because that is the provisions of Allah, then do not exceed the limit "(Abu Dawud, 2007: 2867). Thus, according to the majority, the 'ulama of wills law is not a fardhu' ain, either a testament to parents or other relatives who do not get inheritance rights to the inheritance. In fact, according to some of them, the obligation to testify to parents and heirs applies before the verse about *mawaris* (Ibn Katsir, 2006: 221) and the verse that explains the will has been removed (*mansukh*) by the words of the Prophet Muhammad SAW:

لا وَصِيَّةَ لِوَارِثٍ إِلاَّ أَنْ يُجِيزَ الْوَرَثَةُ

> *there must be no will for the heirs except for the family members with the permission of other heirs* (Al- Tirmidzi, 2008: 2120).

In addition, jumhur fuqaha 'also requires a mandatory will provided that it does not exceed one third of the assets left behind. This is based on a hadith of the Prophet Muhammad SAW, when the Prophet Muhammad SAW visited Sahabat Sa'ad Ibn Abi Waqs who was seriously ill. He was a very wealthy companion of the Prophet Muhammad, he only had one heir when he fell ill before his death, his good intention to donate two thirds of all his assets was not approved by the Prophet Muhammad SAW until only one third was approved for charity.

إِنِّي قَدْ بَلَغَ بِي مِنَ الوَجَعِ مَا تَرَى، وَأَنَا ذُو مَالٍ وَلَا يَرِثُنِي إِلَّا ابْنَةٌ لِي، أَفَأَتَصَدَّقُ بِثُلُثَيْ مَالِي؟ قَالَ: لا، قُلْتُ: فَالشَّطْرُ يَا رَسُولَ اللهِ؟، قَالَ: لا، قُلْتُ: فَالثُّلُثُ يَا رَسُولَ اللهِ؟ قَال الثُّلُثُ، وَالثُّلُثُ كَثِيرٌ أَوْ كَبِيرٌ إِنَّكَ أَنْ تَذَرَ وَرَثَتَكَ أَغْنِيَاءَ، خَيْرٌ مِنْ أَنْ تَذَرَهُمْ عَالَةً يَتَكَفَّفُونَ النَّاسَ.

> O Messenger of Allah, You have seen what I have experienced, I am sick, my wealth is abundant and no one but my daughter alone, am I allowed to give two thirds of my property? Rasulullah replied: No, he replied, What if only one third? Rasulullah replied: "yes, one third is already a lot and big, in fact if you leave your heirs in sufficiency it is better than leaving them in shortages so you have to beg people" (Al-Bukhari, 2005: 1396).

One of the wisdoms of the Prophet Muhammad (PBUH) that only giving permission to testify should not exceed one-third is that there will be no mistreatment and harm to other heirs, because if they

are allowed to have more than a third of the testament, it could be that the heirs will not get a share of the inheritance, especially the will according to the majority Ulama 'is only a recommendation, while fulfilling the right of the heir is an obligation, so of course cases that are sunnah (recommendation) must not exceed the obligatory cases. However, according to the majority of 'ulama, if another heir gives permission for a will that exceeds a third or if the person who has an inheritance does not have an heir at all, then this is allowed (Lathief, 2006: 121).

B. *Wasiah Wajibah* of Adopted Children in KHI Perspective

The development of Islamic law in Indonesia cannot be separated from the influence of Islamic Fiqh law in general. In addition, the awareness of practicing religion also encourages the Islamic community to evaluate and ground Islamic Sharia to suit the conditions of the time and place, so that the mobilization of reason and mind (*ra'yu*) is very important so that all problems that are not mentioned in the Koran get answers. and solutions (Amrullah, 1996: 54-55). This is what then underlies the birth of KHI (Compilation of Islamic Law) in Indonesia. KHI is a systematic and complete collection of Islamic principles which exist as a source of law for the Islamic ummah in Indonesia. The presence of KHI provides fiqh thoughts that are characterized and in accordance with the personality of the Indonesian Muslim community. Thus, KHI is a solution for the application of Islamic law by guaranteeing adopted children to continue to receive the inheritance of the deceased through the compulsory will (Umam, 1999: 237). Actually, KHI is still in line with Islamic law, where the status of adopted children remains outside the heirs, but KHI also adopts customary law related to the transfer of the obligations of adoptive parents to their adopted children. Thus the mandatory testament regarding the inheritance must be deemed to have existed, whether written or unwritten, spoken or unspoken, on the will of the person who died (deceased) or not at his will, even the execution of the distribution must take precedence over the distribution of inheritance or ordinary will. (Dahlan, 2000: 30).

The presence of KHI is important to accommodate or legitimize the interests and benefits of the Muslim community in Indonesia in

adopting children (*tabanni*) and fulfilling their rights. This is as stated in Law Number 3 of 2006 which states that adoption is the right and authority of the religious court based on Islamic law (Ramadhani, 2015: 59). Thus it can be understood that according to KHI, the status of an adopted child is declared a legitimate child based on a court decision provided that it does not cut off blood relations (*nasab*), guardianship and inheritance with parents or real relatives. In other words, adoption has no effect on his original status. Because adoption is nothing but the manifestation of one's faith values, in the sense of carrying out a humanitarian mission in the form of nurturing, guarding, nurturing, caring for and caring for other people's children.

Although adoption according to KHI does not change the child's status, it does not reduce its value and meaning, as contained in Article 209: (1) The inheritance of adopted children is divided according to Article 176 to Article 193 as mentioned above. Meanwhile, for adoptive parents who do not receive a will, will be given a mandatory will of up to 1/3 of the inheritance of their adopted children. (2) Adopted children who do not receive a will, shall be given a legacy obligatory maximum of 1/3 of the inheritance of their adoptive parents which clearly states that the legacy must be given to the adoptive parents or adopted children who do not receive as much inheritance as -the amount is one third (1/3) of the inheritance (Suparman, 1997: 266). Thus it can be concluded that a will, according to KHI, is a will that must be reserved for adopted children or adoptive parents based on the provisions of the law who do not receive an inheritance or a previous will as much as one third of the inheritance (Ismail, 1998: 60). The basis for this is to realize the concept of benefit for adopted children as parents get custody of the adopted child. The concept of kemashlatan (al-mashlahah al-Mursalah) was first introduced by Imam al-Syatibi in his work, al-muwâfaqat. This concept aims to create general mashlahah (al-mashlahah al-'ammah) by providing Shari'a signs which include Dharuriyat, Hajiyat and Tahsiniyat which contain five principles, namely: maintaining religion, soul, descent, property and reason. What is meant by *kemashlahatan* in this case is for the fulfilment of the values of justice for adopted children or adoptive parents, where they are emotionally closer to the deceased than the other heirs

C. Guarantee of *Wasiah Wajibah* for Adopted Children in Indonesia

From the above explanation, it can be understood that there is an understanding of the meaning between KHI and Islamic Fiqh in placing the status of an adopted child, that is, the position of the adopted child remains outside the heir. However, if you look at the transfer of responsibility from the original parent to the adoptive parents such as in the care, care, education and so on, then the mandatory *wasiah* is *muthlak* considered to exist even though it is not spoken and not written as a substitute for inheritance rights.

Wasiah wajibah is the absolute right of property voters (adoptive parents) who will inherit his assets to whomever he wants, and in this case Islam guarantees the freedom of every Muslim to take legal action against his property. Islam with its Fiqh law only helps the rights of biological children so that it limits the provision of wills, not to exceed one-third of the inheritance of the deceased, because of this, the provision of wills is always prioritized over inheritance.

The provision of a compulsory will for adopted children as stated in article 209 KHI is a perfect way (*wasilah*) in applying Islamic law (Figh) which is characterized and in accordance with the personality of the Indonesian nation. In Law Number 3 of 2006 concerning Religious Courts (article 2) it is stated: The Religious Courts are one of the actors of judicial power for the people who seek justice who are Muslim regarding certain cases as referred to in this Law. Thus Judges who serve as executing officials of the Religious Courts are obliged to guarantee justice to the Muslim community in Indonesia in certain civil cases such as guaranteeing the provision of mandatory wills. In this case, a judge through the judiciary can be interpreted as having the right or authority to decide and even forcing someone to give a will to a certain person.

The decision as mentioned above cannot be interpreted as deviating from the teachings of the Al-Qur'an and Al-Sunnah as the main sources of Islamic Fiqh law, but instead the decision was issued in order to provide justice to the heirs, especially those with certain

emotional relationships. The decision to grant a compulsory will by a judge like this is actually guided by the general rules of *wasiah* as stipulated in KHI articles 194-209 with the aim of filling in the legal vacuum, because KHI does not explain the rules of wills in detail. The granting of mandatory inheritance is also supported by the theory of Al-Mashlahah Al-'Ammah and Maqashid Al-Syari'ah which contain five principles, namely: maintaining religion (hifzh al-din), preserving the soul (hifzh alnafs), maintaining descendants (hifzh al -nasl), maintains reason (hifzh al-aql) and preserves the reconstructed property (hifzh al-mal): that adoption is only limited to transferring responsibility from the original parent to the adoptive parents, it does not mean a change in hereditary status (nasab), the provision of mandatory wills must not exceed one third (1/3) of the assets left behind so as not to harm other heirs and provision of compulsory wills must also be based on equality, so it is understood that the legacy received by the adopted child should be equal to the share of inheritance received by the child. biological.

The presence of KHI is very important in order to contextualize Islamic Fiqh into Indonesian society and can accommodate the rights of adopted children so that their existence becomes legal. Thus, after an adopted child has entered his adoptive family, he will get a definite legal even though in terms of position in the inheritance there must still be a difference with the biological child.

The contextualization of Islamic Fiqh is deemed necessary so that the values of Islamic teachings can be applied to people's lives in Indonesia. The provision of *wasiah wajibah* as implemented by KHI is one of the results of this contextualization by compromising the law from the perspective of Islamic Fiqh with customary law that has long been in effect among Indonesian society with the understanding that the intended customary law also carries the values of goodness and benefit for life of Indonesian society. In this contextualization, customary law functions to complement the legal system of Islamic Fiqh, especially in matters surrounding marriage, inheritance, wills, gifts and so on. This statement is not an exaggeration if you see the fact that before Islam came, Indonesians had carried out their own lives by

carrying out customary laws that maintained human values, justice, balance, order, harmony and wholeness (Mahfud, 1993: 92).

With the provision of *wasiah wajibah* to adopted children, in fact it is also an effort to reveal the identity of the law in the perspective of Islamic Fiqh which still looks attractive to be applied in the midst of the life of the Indonesian people, as well as to provide a positive picture that law in an Islamic perspective is not rigid and non-discriminatory. though differentiating the rights of biological children from adopted children. Thus, law in the perspective of Islamic Fiqh can be interpreted as being adaptive, that is, being able to accept values that develop according to the demands of change and the needs of the times. In addition, the guarantee of giving mandatory wills for adopted children makes the existence of inheritance law in the perspective of Islamic Fiqh increasingly coexist with other legal systems in the midst of a pluralistic Indonesian society, both in the social, legal, customary, cultural and religious fields.

CONCLUSION

Based on the description above, it can be concluded that adoption is allowed within certain limits and does not harm the original heirs of the adoptive parents. KHI (Compilation of Islamic Law) is a product of Islamic law characterized by Indonesia due to the contextualization of law in the perspective of Islamic Fiqh in the life of the Muslim community in Indonesia. The presence of KHI makes the existence of adopted children legal and their rights are legally protected, *Wasiah wajibah* is a mandatory gift in the form of objects, account payable and a certain benefit to other parties, provided he will having the right to the gift from the deceased to the heirs who are prevented from obtaining inheritance rights. It is a solution given by KHI to adopted children to obtain their rights to the inheritance of their adoptive parents provided that and within certain limits. *Wasiah wajibah* as stated in the KHI is a compromise of Islamic Fiqh law and customary law that has been exist for a long time in Indonesia.

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