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Fakultas Hukum Universitas Airlangga, Jalan Dharmawangsa Dalam Selatan Surabaya, 60286 Indonesia, +6231-5023151/5023252

Fax +6231-5020454, E-mail: yuridika@fh.unair.ac.id

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## A Juridical Study of Granting Wills to Heirs in the Perspective of Islamic Inheritance Law

Oemar Moechthar,<sup>1</sup> Agus Sekarmadji<sup>1</sup> and Ave Maria Frisa Katherina<sup>2</sup>

Oemar.m@fh.unair.ac.id

<sup>1</sup>Universitas Airlangga

<sup>2</sup>The University of Melbourne

### Abstract

This paper is intended to criticize the societal practices that occur, especially in Indonesia, where many heirs during their lifetime give wills to heirs who have been given a particular part in the Qur'an, which results in other (experts) heirs not getting a share or obtaining. Less than that specified in the Qur'an. One of the contributing factors is because, according to the heir, the provision of the will is to provide justice for all his heirs; however, fairness according to the heir is different from justice in the distribution of inheritance according to the Al-Qur'an and Hadith. Legal research uses this case approach as the primary analysis juxtaposed with the statutory approach and the conceptual approach as the 'knife' of analysis. The thesis or argument obtained is related to aspects of Islamic law; it is not appropriate for the heir to give a will to someone who is an heir whose part has been assigned in the Al-Quran and Hadith.

**Keywords:** Inheritance Law; Islamic Law; Justice; Will.

### Introduction

The discussion about the relationship between religion and the state, even though it is a classic theme in the Indonesian context, is still important and relevant for at least three reasons. *First*, historically, the people who inhabited the post-colonial area called Indonesia were very attached to a particular religion or belief system. *Second*, philosophically and on a state basis, Indonesia recognizes and makes religion a part of the principles of being a nation and a state. *Third*, in post-colonialist studies, issues of religion and state still often color and even become a

serious problem in socio-political life in Indonesia.<sup>1</sup> Religion plays a central role in everyday life as a behavioral guide and influences the relationship between legal subjects, both to the state and judicial practice.

The phase of human life cannot be separated from its occurrence in humans. In humans as living beings, two instincts are found in other living things: the instinct to maintain life and the instinct to life continually. For the fulfillment of these two instincts, Allah ﷻ created in every human being two passions, namely appetite and lust. Appetite has the potential to fulfill the survival instinct, and therefore every human being needs something to eat. This is where the human tendency to acquire and own property comes from. Lust has the potential to fulfill the instinct to continue life, and for that, every human being needs the opposite sex to channel his desire. Humans need something to maintain and increase their intellectual power as intelligent beings. As religious beings, humans need something to maintain and perfect their religion. Thus, there are five conditions for human life: faith, reason, soul, property, and offspring. In every human being, these five things are called *daruriyat al-khamsa* (five basic needs).<sup>2</sup> In terms of human life arranged by God, ﷻ can be divided into two groups. First, matters relating to the human relationship with God ﷻ as its Creator. This rule is called the law of worship; the purpose is to maintain the relationship or rope between Allah ﷻ with His servant, who is also called *hablun min Allah*. The second relates to the relationship between humans and its natural surroundings. This rule is called the law of *muamalat*; the goal is to maintain the relationship between humans and nature or *hablun min al nas*.

Both relationships must be maintained so that human beings are free from

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<sup>1</sup> Ahmad Sadzali, 'Hubungan Agama dan Negara di Indonesia: Polemik dan Implikasinya dalam Pembentukan dan Perubahan Konstitusi' (2020) 3 Undang: Jurnal Hukum.[341-375].

<sup>2</sup> Amir Syarifuddin, *Hukum Kewarisan Islam* (Kencana Prenada Media Group 2004).[2-3]; see also David Horton, 'Revoking Wills' (2022) 97 Notre Dame Law Review.[563-618]; Umadevi Garimella and Nersin Sahin, 'Inheritance Patterns: Probability Rules & Probability Trees' (2022) 84 American Biology Teacher.

the humiliation, poverty, and wrath of God ﷻ, as revealed by God ﷻ in the Qur'an.<sup>3</sup> surah Ali Imran (3):112, as follows:

ضُرِبَتْ عَلَيْهِمُ الذَّلِيلَةُ أَيْنَ مَا تُفْتَوُوا إِلَّا بِحَبْلِ مِنَ اللَّهِ وَحَبْلِ مِنَ الْنَّاسِ وَبَاءُوا بِغَضَبٍ مِنَ اللَّهِ وَضُرِبَتْ عَلَيْهِمُ الْمَسْكَنَةُ ذَلِكَ بِأَنَّهُمْ كَانُوا يَكْفُرُونَ بِآيَاتِ اللَّهِ وَيَقْتُلُونَ الْأَنْبِيَاءَ بِغَيْرِ حَقِّ ذَلِكَ بِمَا عَصَوْا وَكَانُوا يَعْتَدُونَ

It means: “Ignominy shall be their portion wheresoever they are found save (where they grasp) a rope from Allah and a rope from men. They have incurred anger from their Lord, and wretchedness is laid upon them. That is because they used to disbelieve the revelations of Allah, and slew the prophets wrongfully. That is because they were rebellious and used to transgress”. [QS. Ali Imran (3): 112].

Among the rules governing human relations that Allah ﷻ has established are the laws regarding inheritance, namely property and possessions that arise as a result of a death. Property left by someone who has died requires arrangements about who is entitled to receive it, how much, and how to get it. The death of a person results in the emergence of a branch of law<sup>4</sup> That concerns how to transfer or settle

<sup>3</sup> The Qur'an is a book that includes the greatest Rabbani. Allah ﷻ has guaranteed people who hold fast to the Qur'an to achieve happiness in this world and the hereafter. Allah ﷻ has also threatened those who turn away from the Qur'an and do not take it as a guide that they will undoubtedly be harmed in this world and the hereafter. The Qur'an is also the only book that Allah ﷻ has guaranteed its safety from additions and subtractions as well as substitutions and changes until the end of life. A Muslim believes that the Qur'an is the book of Allah ﷻ which has been revealed to the best of creatures and the most important Prophet, namely the Prophet Muhammad ﷺ as Allah ﷻ has also revealed other books to other apostles before. The Qur'an, with its laws, has abolished all the laws that existed in the previous heavenly books. The content of the Qur'an includes a variety of knowledge, even though the person who is given the Qur'an is an illiterate person, cannot read and write, and has never entered a school or educational institution. The sciences covered in the Qur'an are as follows: natural sciences, historical science, the science of sharia and law, war tactics, and politics. The Qur'an's coverage of various sciences is a strong indication that the Qur'an is the word and revelation of Allah ﷻ because the mind will think that these sciences can't come from illiterate people, cannot read and write; Abu Bakar Jabir Al-Jaza'iri, *Minhajul Muslim, Pedoman Hidup Ideal Seorang Muslim*, Terj. Andi Subarkah (Insan Kamil 2016).[34-37].

<sup>4</sup> Quoting the opinion of Bernard Arief Sidharta, there are legal sciences that have normative and empirical characteristics. It is said to have a normative character because it departs from an internal perspective with the object of legal study as *Sollen-Sein*. Here, practical-nomological legal knowledge will be present, in contact with the interpretation and systematization of legal materials and statutory theory, legal discovery, and legal argumentation. On the other hand, there is empirical law with an external perspective, such as comparative law, sociology of law (object of study is the law as *Sein-Sollen*), history of law (object of study is law in the context of time), legal anthropology (object of study is law in the context of culture), and legal psychology; Sidharta, Bernard Arief Sidharta "Dari Pengembangan Hukum Teoretis ke Pembentukan Ilmu Hukum Nasional Indonesia" (2020) 3 Undang: Jurnal Hukum.[441-476]. From this opinion, inheritance law is considered a legal science with a normative character.

inheritance to his family (heirs), known as *erfrecht*. In Western civil law literature, it is known as *erfrecht*; in Islamic law known as *faraidh*, while in customary law, there is a mention of inheritance and inheritance law.<sup>5</sup>

Since the death of a person, all assets in the form of tangible and intangible objects can be transferred to all his heirs. This transfer of rights occurs automatically without the need for specific legal actions because a person's death is beyond human reason and is a secret from the Creator; when and where, and what circumstances when a person dies, only Allah ﷻ knows. Therefore, from a legal point of view, the death of a person is included in the category of a legal event because a person did not desire the incident. This is different from legal actions such as buying and selling, exchanging, or grants. There is a particular will in transferring assets to other legal subjects (people and/or legal entities).

Based on the science of inheritance law, a person can obtain an inheritance if he has blood relations, marital relations, or wills with the testator. Beyond that, a person can't get an inheritance from the heir. The party prioritized for obtaining inheritance is the biological child, which can be the successor to the lineage of the heir. In addition, it is also possible for the husband or wife who has lived the longest to obtain an inheritance because they have a marital relationship with the testator. It is also possible for parents and siblings to inherit because they are related by blood to the heir. These provisions in Islamic inheritance law are regulated in the Qur'an Surah An Nisa' (4): 11 and 12. For other parties who do not have marital relations or blood relations with the testator, it is possible to obtain inheritance through grants during life, wills, or a testamentary grant.

In its development, it turns out that many heirs during their lifetime have determined the share of inheritance for the heirs according to the will of the heir. The will is then poured into a will that can be made before a notary so that the

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<sup>5</sup> Oemar Moechthar, "Aspek Moralitas dalam Pemberian Hibah, Wasiat dan Hibah Wasiat yang Melebihi *Legitime Portie*," dalam Oemar Moechthar (Ed.), *Hukum Sebagai Pancaran Moral: Dalam Rangka Memperingati 70 Tahun Guru, Sahabat dan Bapak Kami Prof. Dr. Peter Mahmud Marzuki, S.H., M.S., LL.M.* (Kencana-Prenadamedia Group 2019).[325]; See also Oemar Moechthar, "Kedudukan Negara Sebagai Pengelola Warisan Atas Harta Peninggalan Tak Terurus Menurut Sistem Waris Burgerlijk Wetboek" (2017) 32 *Yuridika*. [280-309]

notary will make a will regarding the final will of the testator. This has given rise to a separate polemic. The will later on, when the testator dies, can be implemented or not, considering that it deviates from religious rules, especially in the Islamic religion, namely the prohibition of granting wills to heirs.

Based on the already considered background, the author, in this case, is interested in analyzing the legal aspects of granting wills to heirs according to the perspective of Islamic inheritance law and also comparing the existing provisions in Indonesia.

### **The Legal Aspects of Grants and Wills in Indonesia**

In the Indonesian society, many parents are sentenced to give their children land, rice fields, or houses. The sentence has caused a difference in understanding. Some people interpret it as a will that must be carried out after the parents die, even though the amount of the distribution of wills is unfair. In contrast, other people understand it not as a will but as a form of appointing parents to the inheritance for their children. This is done so that there are no disputes between their children regarding inheritance.<sup>6</sup> The given portion is also uncertain. Some are based on certain legal provisions, for example, Islamic law, but some are based solely on the will of their parents. In Islamic law, the will issue must be distinguished from the issue of inheritance. When parents say something while they are still alive, it means a will that can be given to family or non-family, while inheritance is only for family.<sup>7</sup>

If someone desires something against his property or other things after a person dies, then that person can make a will. A will or testament is a person's gift

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<sup>6</sup> Mashuril Anwar and M. Ridho Wijaya, "Fungsionalisasi Dan Implikasi Asas Kepentingan Terbaik Bagi Anak Yang Berkonflik Dengan Hukum: Studi Putusan Pengadilan Tinggi Tanjung Karang," (2019) 2 *Undang: Jurnal Hukum*. [265-292]. "Although Indonesia ratified the Convention on the Rights of the Child through Presidential Decree no. 36 of 1990, which states that it contains general principles of child protection which include non-discrimination, the best interests of children, survival, and development, as well as respect for children's participation, but the granting of wills to children is also inversely proportional to the nature of the will. the basis of the will which is the last will for the heir which also cannot be ignored".

<sup>7</sup> Samsul Hadi, "Pembatasan Wasiat Sebagai Bentuk Keadilan Hukum Islam," *Jurnal Al-Ahwal*, 9 (2016), pp.169-170. See also Setiyowati, "Inheritance Dispute Resolution Against Substitute Heirs: Analyzing Supreme Courts' Decision Number 185K/Ag/2009," *Croatian International Relations Review*, 28 (2022). [136-149].

to another person in the form of goods, receivables, or benefits to be owned by the person who was given the will after the person who made the will dies. Some Islamic jurists define a will as a voluntary giving of property rights that is carried out after the giver dies.<sup>8</sup> According to terminology, a will is a transfer of ownership that is based on the time after death through a *tabarru'* (donation) contract, both in the form of objects (*ain*) and use values (*manfaat*/benefits).<sup>9</sup> From this definition, it is clear that a will is a transfer of ownership of the property to another party that is effective after the testator dies. In terms of “handing over assets to other parties”, the will is part of the grant, but because the property handed over is only owned after the testator dies, the will is a gift in a special form.<sup>10</sup>

In civil law, wills are divided into four: olographic wills, general wills or open bare acts, made by a notary, secret wills (*superscriptie*), and emergency wills. Article 931 *Burgerlijk Wetboek (BW)* states that there are two types of testaments (wills), namely: (1) general testaments, which must be made with an authentic deed by a notary; (2) testaments under the hand (*bij onderhandse acte*). This second category is divided in: (a) a *holografisch* (or *olografisch*) and (b) a secret testament (*geheim testament*).<sup>11</sup> The authority to make a will by a notary is also stated in the Law on Notary Positions provisions. It should be noted that there are two kinds of wills, namely wills for certain parts or *erfstelling* (*vide* Article 954 *BW*) and wills on certain objects or what is called *legaat* (*vide* Article 957 *BW*).<sup>12</sup>

In *Burgerlijk Wetboek's* inheritance law, wills or testaments are divided into two types, namely *legaat* and *erfstelling*. *Legaat* is the gift of an heir to someone in the form of a certain object, so that object is mentioned in the will. For example, the

<sup>8</sup> Sayyid Sabiq, *Fikih Sunnah* (Al Ma'arif 1988).[215] See also Satria Effendi M Zein, “Analisis Yurisprudensi Tentang Wasiat” (1992) 7 *Mimbar Hukum*. [47].

<sup>9</sup> Wahbah Zuhaili, *Al-Fiqh Al-Islam Wa Adillatuhu* (Dar al-Fikr 1998) [pp. 7439-7440] in Saifuddin Arief, *Notariat Syariah Dalam Praktik, Jilid Ke I Hukum Keluarga Islam* (Darunnajah Publishing 2011).[233]. See also Hamdi Podvorica, “Legal Inheritance in the Republic of Kosovo” (2011) 1 *Iliria International Review*. [143-156].

<sup>10</sup> Arief (n 9).[233].

<sup>11</sup> Oe Siang Djie, “Soal Testament Rahasia” (1992) 22 *Majalah Media Notariat*. [5].

<sup>12</sup> Oemar Moechthar, *Dasar-Dasar Teknik Pembuatan Akta* (Airlangga University Press 2017).[159].

testator gives a house, car, motorbike, cash, gold, and others as long as the object is mentioned in the will; it is called *legaat* or receiving a will for certain things (*vide* Article 957 BW). In Subekti's translation of the BW, it is stated that *legaat* is what is meant by a will grant. Meanwhile, *erfstelling* is the appointment as an heir, which the testator also carries out in a testament. For *erfstelling*, it is not like a *legaat* that must be stated what object is in the will, but in *erfstelling* only the part is mentioned; for example, the maker of the will gives assets of 100 per cent, 50%, 25%, 3/8, 1/8, 1/2 and so on, the details of the object are not provided. The person who receives the *erfstelling* is referred to as receiving a will for a certain part (*vide* Article 954 BW).<sup>13</sup> In the Compilation of Islamic Law, it is stated that a will is a gift of an object from the testator to another person or institution, which will take effect after the testator dies.

In addition to wills and will grants, there is another one known as *wasiat wajibah*, namely a will whose implementation is not influenced or does not depend on the will or will of the deceased. Whether spoken or not, this will must still be carried out, whether desired or not desired by the deceased. So, the execution of the will does not require evidence that the will is spoken or written or willed, but its implementation is based on legal reasons that justify that the will must be carried out.<sup>14</sup> This will is only known in Islamic inheritance law. In general, this *wasiat wajibah* is issued by the judge of the Religious Courts in Indonesia; when the testator dies, the heir forgets to give a will to the adopted child or adoptive parents, which is based on Islamic inheritance law; the adopted child and adoptive parents do not receive a will inheritance part. This is one of the judicial powers, especially in the Religious Courts. Judicial power is one of the duties of the state to determine whether there has been a violation of rights or there has been negligence

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<sup>13</sup> Oemar Moechthar, *Perkembangan Hukum Waris: Praktik Penyelesaian Sengketa Kewarisan Di Indonesia* (Prenadamedia Group 2019).[110-111].

<sup>14</sup> Suparman Usman, in BW, *Wasiat Wajibah, Uraian Singkat Wasiat Wajibah Dan Hubungannya Dengan Plaatsvervulling* (Fakultas Syaria'ah IAIN Sunan Gunung Djati Serang 1988).[89]. See also Suhaili Alma'amun and others, "Legislative Provisions for Waṣiyyah Wājibah in Malaysia and Indonesia: To What Extent Do They Differ in Practice?" *ISRA International Journal of Islamic Finance*, ahead-of-print (2022), See also Duman Bahrami-Rad, "Keeping It in the Family: Female Inheritance, Inmarriage, and the Status of Women" (2021) 153 *Journal of Development Economics*. [102714].

in carrying out obligations and which orders that the disturbance be returned and the obligations carried out. Judicial power has been regulated in the Indonesian Constitution, especially Article 24 paragraph (1), which states that judicial power is an independent power to administer justice to uphold law and justice.<sup>15</sup> Considering that justice, according to Grotius, is a derivative of wisdom.<sup>16</sup> In addition to adopted children and adoptive parents who can obtain a mandatory will, through jurisprudence, children who leave the religion of Islam (*murtad/apostasy*) may also receive a *wasiat wajibah*. In Presidential Instruction Number 1 of 1991 concerning the Compilation of Islamic Law, it is stated that the amount of the mandatory will is not more than one third of the inheritance.

In contrast to the concept of a will and a *wasiat wajibah*, there is another legal act, called a grant. A grant is a practice of free giving or transfer of property that occurs during the grantor's lifetime.<sup>17</sup> Grants in Western civil law are known as *scheking*, a one-way act from the grantor to the grantee for an object, whether movable or immovable, tangible or intangible, and registered or unregistered objects.

The pillars of a will are the existence of *mushi* (provider of wills), *ijab* (statement of the testator), *musho lahu* (people who receive a will), and *musho bihi* (objects that are willed). As for the *qabul* (statement of acceptance from the beneficiary), it is not a pillar but a condition for the validity of the will, and the *qabul* does not have to be pronounced at the same time as the *ijab*, but maybe at any time after the death of the testator.

### The Legal Aspects of Giving Wills to Heirs

The aforementioned development will often cause problems in everyday life. This problem usually arises because one of the heirs is dissatisfied with the distribution

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<sup>15</sup> Meidiana, "Integrasi Pengujian Peraturan Perundang-Undangan Oleh Mahkamah Konstitusi" (2019) 2 Undang: Jurnal Hukum.[381-408].

<sup>16</sup> Aulia Rahmat, "Rasionalisasi Hukum Alam Oleh Hugo Grotius: Dari Humanisasi Menuju Sekularisasi" (2020) 2 Undang: Jurnal Hukum.[433-470].

<sup>17</sup> Satria Effendi M Zein, *Problematika Hukum Keluarga Islam Kontemporer* (Kencana 2004).[47].



of the inheritance he has received. This arises from the greedy nature of humans who always desire to get more than what they have obtained. Likewise, with wills, although in Islamic law, the will has an important position and its implementation always takes precedence, it does not rule out the possibility of problems or disputes, both from the beneficiary of the will itself and the heirs of the heir.<sup>18</sup> As mentioned before, the legal event of inheritance occurs automatically, without the need for certain legal actions. However, in society, there are many practices in which an heir wants to 'distribute' the inheritance to his heirs according to the version or will of the heir himself. The heir carries out this method by making a will or testament during his life to a notary, and a notary makes a will. This will takes effect after the testator dies. The contents contained in the will generally regulate the desired assets of the heir at the time of his death. Not infrequently, the will was given to some of their biological children (heirs in a straight line), and some even abolished the inheritance rights of biological children because their biological children had disobeyed the heir. As a result of what is done by the heir, shortly after the testator dies, inheritance disputes in religious courts and district courts cannot be avoided.

For example, in the case of Islamic inheritance through the Sidoarjo Religious Court Decision No. 1251/Pdt.G/2018/PA.Sda dated June 07, 2019 (22 Ramadan 1439 Hijriyah), in which this case began when the heir during his lifetime made a will that did not give inheritance rights to his three heirs. It is known that the heir has ten biological children, but the contents of his will do not provide an inheritance to his three heirs; thus, the heirs who are not given this share are the plaintiffs in this case. The heirs who did not receive this share of the inheritance submitted a subpoena to other heirs to discuss the distribution of the inheritance according to the *faraidh*. Still, the subpoena was ignored by the other heirs. Therefore, in this case, the petition is to cancel the will that has been made by the testator so that all heirs get a share of the inheritance according to Islamic inheritance law.

Another case is the Medan Religious Court Decision No. 1924/Pdt.G/2013/

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<sup>18</sup> Nani Tunjiha, *Pemberian Wasiat Kepada Ahli Waris Perspektif Sunni Dan Syi'ah* (Institut Agama Islam Negeri Purwokerto 2018).[4].

PA.Mdn dated August 19, 2014 (23 Shawwal 1435 Hijriyah), in which, in this case, there are two children (a boy and a girl) of the heir living in Medan. During his lifetime, the heir gives a will to a son whose contents are to give inheritance which, in total, takes the inheritance rights of his daughter. Therefore, the lawsuit in this decision annuls the will ever be made by the testator so that the inheritance is divided according to Islamic inheritance law. The same case is also the Kendari Religious Court Decision No. Register 378/Pdt.G/2010/PA.Kdi dated November 15, 2010, which is the main point of the lawsuit, states that the heir, during his lifetime, had made a verbal will to one of his heirs to give all of the inheritance from the heir, while the other biological children of the heir did not get a share of the inheritance.

The three examples aforementioned are some of the factual cases in which a will to one of the heirs made by the heir does not give peace to all heirs; in fact, it causes more disputes between heirs in the future. Therefore, a notary, as one of the public officials who can assist in making a will can provide advice and deeper explanations regarding the impact of a will made by a prospective heir, hoping that inheritance disputes do not occur in the future.

Notaries and Land Deed Maker Officials (hereinafter referred to as PPAT), based on the provisions of the legislation by attribution, are given the authority to do authentic deeds, including grant deeds, will deeds (and will grant deeds). The authentic deed essentially contains the formal truth following what the parties have notified the Notary and PPAT. However, the Notary and PPAT should convey that what is contained in the authentic deed has truly been understood and following the wishes of the parties, namely by reading it so that the contents of the authentic deed become apparent, as well as providing access to information, including access to relevant laws and regulations for the parties to the deed. Thus, the parties can freely determine whether to agree or disagree with the contents of the deed to be signed.<sup>19</sup>

The deed has two functions: the formal function (*formalitas causa*) and the function of evidence (*probationis causa*). *Formalitas causa* means that the deed

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<sup>19</sup> Moechthar (n 12).[4].

serves to complete or complete a legal act, so it is not a legal act. So the existence of a deed is a formal requirement for the existence of legal action. *Probationis causa* means that the deed has a function as evidence because, from the start, the deed was made intentionally for later proof. The written nature of an agreement in the form of a deed does not make the agreement valid but only so that it can be used as evidence in the future.<sup>20</sup>

The appearers or clients who wish to make a deed appear before a notary and/or PPAT to then authenticate the information they provide to the Notary-PPAT in an authentic deed, with the intent and purpose that the deed becomes strong evidence against him/her and/or between the parties in the deed regarding the civil law relationship between them.

The contents of the deed are the responsibility of the parties (the appearers) because the notary only confirms the will of the appearers. However, in carrying out his professional duties, if the notary understands and knows that what is desired by the appeared is contrary to the norms of law, religion, morality, and/or decency, then the notary should remind the appeared who is the legal service of the notary so that the notary does not fall into the trap of law case.<sup>21</sup> If this is related to this paper, then the Notary-PPAT, at the time of doing an authentic deed related to a will, grant, or testamentary grant, is expected to provide advice to clients who come to his office so that the will of the client (appearing) to abolish the right heirs for potential heirs by giving all their property to other people is not allowed. As long as the prospective heir does not violate the provisions of the Qur'an, Hadith, and statutory regulations that can eliminate the status as an heir (in the sense that it can cause the loss of inheritance rights), then the effectiveness of the deed he made will not be fully implemented if the heir later dies.

Islamic law stipulates inheritance rules in a very orderly and fair form. It stipulates the right of ownership of property for every human being, both men

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<sup>20</sup> Sudikno Mertokusumo, *Hukum Acara Perdata Indonesia* (Liberty 1993).[121].

<sup>21</sup> Moechthar (n 12).[50].

and women, legally. Islamic law also stipulates the right to transfer a person's ownership after death to his heirs, from all his relatives and lineages, without distinguishing between men and women, big or small. The Qur'an explains and details in detail the laws relating to inheritance rights without ignoring the rights of anyone. The parts that must be accepted are explained according to the *nasab* position of the heir, whether he is a child, father, wife, husband, grandfather, mother, uncle, grandson, or even just a brother or sister. Therefore, the Qur'an is the primary reference for law and the determination of inheritance distribution, while the provisions regarding inheritance taken from the Hadith of the Prophet ﷺ and the consensus of the scholars (*ijma'*) are very few. It can be said that in Islamic law and the Sharia, there are very few verses of the Qur'an that detail a law in detail and detail, except for the inheritance law. This is because inheritance is a form of legal ownership justified by Allah ﷻ. In addition, the property is a pillar of life for both individuals and community groups.<sup>22</sup>

The will to heirs is not discussed in classic Fiqh books.<sup>23</sup> Still, in the Hadith of the Prophet, it is stated that "there is no will for heirs" has experienced a horizontal change, as evidenced by the Tunisian state, which gives limited wills to heirs at the first generation level, as well as Syria giving a will to heirs. The will is limited to the sons or grandsons of the male line (increasingly diagonal).<sup>24</sup> In the Hadith History of Ahmad Abu Dawud and Tidmidzji, it is stated that wills for heirs are not allowed because Islam forbids wills for heirs. After all, it will violate the provisions made by Allah, which has established the laws for the distribution

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<sup>22</sup> Sofyan Adhi Styawan, 'Tinjauan Yuridis Terhadap Pembagian Harta Waris Kepada Ahli Waris Yang Beda Agama Melalui Wasiat Wajibah' (Universitas Muhammadiyah 2016),[4-5] In Eka Apriyudi, "Pembagian Harta Waris Kepada Anak Kandung Non Muslim Melalui Wasiat Wajibah," (2018) 40 Kertha Patrika.[54].

<sup>23</sup> "About the science of *fiqh* is named after discussing *sharia*; *fiqh* term according to language or etymology means smart, intelligent, know and understand according to the doctrine of the origins against the goal of a speaker and his talk. From one aspect, the science of *fiqh*, as with other Islamic science, can be said to have grown since the time of the Prophet himself", Prawitra Thalib, "Distinction of Characteristics Sharia and Fiqh on Islamic Law" (2018) 33 Yuridika.[439-452].

<sup>24</sup> Fatum Abubakar (2018) 8 Hunafa: Jurnal Studia Islamika.[234-235].

of heirs. The scholars also agreed that wills are not allowed for heirs, as was conveyed through the words of the Prophet. In another Hadith narrated by Ibn Abbas and ditakhrijkan by Imam Daruquthny it is stated that it is not permissible for a will for heirs unless other heirs wish. The Compilation of Islamic Law, especially in Article 195 paragraph (3), states that the will to the heirs is valid if all the heirs approve it. Thus, in Indonesia itself, it is permissible for a will to be addressed to heirs on the condition that all heirs agree to approve the existence of a will made by the heir. Therefore, if all the heirs do not approve of the will, the will cannot be executed.

In Islamic inheritance law, a person can be excluded or, in other words, not allowed to obtain the inheritance. In inheritance law, this person is referred to as a person who is not entitled to inherit or is prevented from being an heir. People who are declared ineligible to inherit are: (a) the killer of the heir, based on the Hadith narrated by Ap-Tirmidhi, Ibn Majah, Abu Dawud, Am-Masaai; (b) a *murtad* (apostate), that is, leaving the religion of Islam, based on the Hadith narrated by Abu Bardah; (c) people who have different religions with the heirs, namely people who do not follow Islam or *Kafir*; based on the Hadith narrated by Bukhari, Abu Dawud, Ibn Majah, At-Tirmidhi; (d) adultery children, namely children born due to relationships outside of legal marriage, based on the Hadith narrated by At-Tirmidhi.

In addition, there is another opinion that states that the factors that can cause a person not to get an inheritance are due to the following:<sup>25</sup>

1. Being exposed to *mawani'ul irtsu*, such as slavery, murder, and religious differences, is called *mahrum* or *mamnu'*.
2. Affected by *a hijab*, namely because there are other heirs, he does not receive an

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<sup>25</sup> “Suparman Usman argues that *walidain* and *aqrabin*, who are ‘affected’ by *mawani'ul irtsu* because of infidels (people who leave Islam) and enslaved people, can still receive an inheritance through *wasiat wajibah*. In contrast, those who are ‘affected’ by *mawani'ul irtsu* due to murder are not entitled to receive it”, Supartman Usman in BW (n 14).[143].

inheritance called mahjub.

3. Including the *dzawil arham*, namely every relative who is not included as *ashabul furudh* or *ashabah*.

When compared with the provisions in Indonesia regulated in the Compilation of Islamic Law, especially in Article 173, it is stated that a person is prevented from becoming an heir if a judge's decision that has permanent legal force (*inkracht van gewijsde*) is punished because: kill or attempt to kill or severely maltreat the heirs; (b) is found guilty of slanderously filing a complaint that the testator has committed a crime punishable by five years imprisonment or a heavier sentence. The above provisions are not cumulative provisions but the alternative (facultative). Only one condition is violated; it can be categorized as an obstructed heir, resulting in not obtaining inheritance from the heir.

Based on the explanation above, in principle, if the heirs do not perform the acts mentioned above, which can cause the loss of inheritance rights, no one can prevent the acquisition of inheritance, including parents for their children.

In the provisions of the Hadith, it is also stated that Islam teaches that inheritance is better given to heirs who make them in a state of well-being rather than abandoning heirs so that they live begging or as beggars. From 'Amir bin Sa'ad, his father, Sa'ad said:

عَنْ عَامِرِ بْنِ سَعْدٍ عَنْ أَبِيهِ قَالَ قَالَ عَادَنِي النَّبِيُّ – صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ – فِي حَجَّةِ الْوُدَاعِ مِنْ وَجَعٍ ، أَشْفَيْتُ مِنْهُ عَلَى الْمَوْتِ ، فَقُلْتُ يَا رَسُولَ اللَّهِ بَلِّغْ بِي مِنَ الْوَجَعِ مَا تَرَى ، وَأَنَا ذُو مَالٍ وَلَا يَرِثُنِي إِلَّا ابْنَةٌ لِي وَاجِدَةٌ أَفَاتَصَدَّقُ بِئُلْتَى مَالِي قَالَ « لَا » . قُلْتُ أَفَاتَصَدَّقُ بِشَطْرِهِ قَالَ « لَا » . قُلْتُ فَالْتُلْتُ قَالَ « وَالْتُلْتُ كَثِيرًا ، إِنَّكَ أَنْ تَذَرَ وَرَثَتَكَ أَغْنِيَاءَ خَيْرٌ مِنْ أَنْ تَذَرَهُمْ عَالَةً يَتَكَفَّرُونَ النَّاسَ ، وَلَسْتَ تُنْفِقُ نَفَقَةً تَبْتَغِي بِهَا وَجْهَ اللَّهِ إِلَّا أَجْرْتَ بِهَا ، حَتَّى اللَّقْمَةَ تَجْعَلُهَا فِي فِي امْرَأَتِكَ » . قُلْتُ يَا رَسُولَ اللَّهِ أَخْلَفْتُ بَعْدَ أَصْحَابِي قَالَ « إِنَّكَ لَنْ تُخْلَفَ فَتَعْمَلْ عَمَلًا تَبْتَغِي بِهِ وَجْهَ اللَّهِ إِلَّا أزدَدْتَ بِهِ دَرَجَةً وَرَفَعَةً ، وَلَعَلَّكَ تُخْلَفُ حَتَّى يَنْتَفِعَ بِكَ أَقْوَامٌ وَيُضَرَّ بِكَ آخَرُونَ ، اللَّهُمَّ أَمْضِ لِأَصْحَابِي هِجْرَتَهُمْ ، وَلَا تَرُدَّهُمْ عَلَى أَعْقَابِهِمْ . لَكِنَّ الْبَائِسُ سَعْدُ ابْنُ خَوْلَةَ رَثَى لَهُ رَسُولُ اللَّهِ – صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ – أَنْ تُوفِّيَ بِمَكَّةَ

It Means: “The Rasulullah (Messenger of Allah), *sallallaahu ‘alayhi wa sallam*, visited me during the pilgrimage because he was seriously ill. I said, “O Messenger of Allah, my pain is very severe, as you can see. Whereas I

have quite a lot of property, the only one inheriting is a daughter. May I donate 2/3 of the treasure?" he replied, "no." I asked again, "how about half of it?" he replied, "no." I asked again, "how about a third?" he replied, "a third is a lot (or big enough). Indeed, if you leave your heirs rich, it is better than for you to leave them poor so that they are forced to beg from other people. Indeed, whatever you spend to seek Allah's pleasure, you will be rewarded, including what your wife eats".

In the Qur'an, the provisions regarding the inheritance are regulated in several verses, including An-Nisa' (4) verses 11 and 12 as follows:

يُوصِيكُمُ اللَّهُ فِي أَوْلَادِكُمْ لِلذَّكَرِ مِثْلُ حَظِّ الْأُنثَيَيْنِ فَإِن كُنَّ نِسَاءً فَوْقَ اثْنَتَيْنِ فَلَهُنَّ ثُلُثَا مَا تَرَكَ وَإِن كَانَتْ وَاحِدَةً فَلَهَا النِّصْفُ وَلِأَبَوَيْهِ لِكُلِّ وَاحِدٍ مِّنْهُمَا السُّدُسُ مِمَّا تَرَكَ إِن كَانَ لَهُ وَلَدٌ فَإِن لَّمْ يَكُن لَّهُ وَلَدٌ وَوَرِثَتُهُ آبَاؤُهُ فَلِأُمَّهِ الثُّلُثُ فَإِن كَانَ لَهُ إِخْوَةٌ فَلِأُمَّهِ السُّدُسُ مِن بَعْدِ وَصِيَّةٍ يُوصِي بِهَا أَوْ دَيْنٍ وَأَبَاؤُكُمْ وَأَبْنَاؤُكُمْ لَا تَدْرُونَ أَيُّهُمْ أَقْرَبُ لَكُمْ نَفَعًا فَرِيضَةٌ مِنَ اللَّهِ إِنَّ اللَّهَ كَانَ عَلِيمًا حَكِيمًا ﴿١١﴾ وَلِكُم نَصِيبٌ مِّمَّا تَرَكَ آؤُكُمُ إِن لَّمْ يَكُن لَّهُنَّ وَلَدٌ فَإِن كَانَ لَهُنَّ وَلَدٌ فَلِكُم الرُّبُعُ مِمَّا تَرَكَ مِن بَعْدِ وَصِيَّةٍ يُوصِي بِهَا أَوْ دَيْنٍ وَلَهُنَّ الرُّبُعُ مِمَّا تَرَكَتُمْ إِن لَّمْ يَكُن لَّكُمْ وَلَدٌ فَإِن كَانَ لَكُمْ وَلَدٌ فَلَهُنَّ الثُّلُثُ مِمَّا تَرَكَتُمْ مِن بَعْدِ وَصِيَّةٍ تُوصُونَ بِهَا أَوْ دَيْنٍ ﴿١٢﴾ وَإِن كَانَ رَجُلٌ يُورِثُ كَلَّةً أَوْ امْرَأَةٌ وَهِيَ كَلَّةٌ أَوْ أُخٌ أَوْ أُخْتٌ فَلِكُلِّ وَاحِدٍ مِّنْهُمَا السُّدُسُ فَإِن كَانُوا أَكْثَرَ مِن ذَلِكَ فَهُمْ شُرَكَاءُ فِي الثُّلُثِ مِن بَعْدِ وَصِيَّةٍ يُوصَى بِهَا أَوْ دَيْنٍ غَيْرِ مُضَارٍّ وَصِيَّةً مِنَ اللَّهِ وَاللَّهُ عَلِيمٌ حَلِيمٌ

It means:

"11. Allah chargeth you concerning (the provision for) your children: to the male the equivalent of the portion of two females, and if there be women more than two, then theirs is two-thirds of the inheritance, and if there be one (only) then the half. And to each of his parents a sixth of the inheritance, if he have a son; and if he has no son and his parents are his heirs, then to his mother appertaineth the third; and if he has brethren, then to his mother appertaineth the sixth, after any legacy he may have bequeathed, or debt (hath been paid). Your parents and your children: Ye know not which of them is nearer unto you in usefulness. It is an injunction from Allah. Lo! Allah is Knower, Wise. 12. And unto you belongeth a half of that which your wives leave if they have no child; but if they have a child then unto you the fourth of that which leave, after any legacy they may have bequeathed, or debt (they may have contracted, hath been paid). And unto them belongeth the fourth of that which ye leave if ye have no child, but if ye have a child then the eighth of that which ye leave, after any legacy ye may have bequeathed, or debt (ye may have contracted, hath been paid). And if a man or a woman has a distant heir (having left neither parent nor child), and he (or she) has a brother or a sister (only on the mother's side), then to each of them twain (the brother and the sister) the sixth, and if they are more than two, then they shall be sharers in the

third, after any legacy that may have been bequeathed or debt (contracted)<sup>26</sup> Not injuring (the heirs by willing away more than a third of the heritage) hath been paid. A commandment from Allah, and Allah is Knower, Indulgent”.

If studied scientifically, the science of inheritance is a slice of personal law (*personen recht*) and property law (*vermogen recht*) which can be categorized as family law (*familie recht*). The will is the final will of the desired heir when he dies. A person's consideration for making a will is related to the abolition of the heir's inheritance rights (*ontorf*), namely if the heir is considered to have disobeyed the testator. It is indeed difficult to measure when someone can be categorized as ungodly. Restrictions on a person obtaining an inheritance when referring to the above provisions include killing or trying to kill the heir, slandering the heir, and forcing him to change and eliminate wills made by the testator. However, if these provisions can be interpreted extensively, actually judging from the several court decisions mentioned above, actions that can be categorized as disobedient may be due to trivial things. In the provisions of Law no. 1 of 1974 concerning Marriage, it is stated that there is an obligation of alimentionation from parents to children and vice versa. This is as stated in Articles 45 and 46 as follows:

#### Article 45

- (1) Both parents are obliged to maintain and educate their children as well as possible.
- (2) The obligations of parents, as referred to in paragraph (1) of this article, are valid until the child marries or can stand alone, which obligations continue

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<sup>26</sup>“This provision indirectly states that *mudharat* (troublesome to the heirs) are actions such as making a will of more than one-third of the inheritance; will to reduce the inheritance. Surah an-Nisa verse 12 is related to the provisions of Surah An-Nisa verse 8, where the translation states: “And if there are some relatives of the orphans, and the poor, then give them of their wealth. (merely) and speak to them good words.” The interpretation of the Qur’an regarding the provisions of this verse states that the modest gift, as mentioned above, should not be more than a third of the inheritance. It is not allowed if it is connected with actions that can be difficult for the heirs, as discussed above, such as making a will to reduce or even eliminate inheritance rights. Even if it is less than a third, it is also not allowed if there is an intention to reduce inheritance rights. This will also in the Qur’an explicitly stipulates the prohibition of giving wills to heirs as mentioned in Surah An-Nisa verses 11, 12, and 176. People who may receive a will are relatives who do not have inheritance rights from the inheritance” Al - Qur’an Surah An- Nisa”.



even though the marriage between the two parents breaks up.

#### Article 46

- (1) Children must respect their parents and obey their goodwill.
- (2) If the child is an adult, he is obliged to maintain according to his ability, parents, and family in a straight line up if they need their help.

The obligation to respect both people in the Qur'an has also been mentioned in Surah Al-Isra '(17) verse 23 which reads:

﴿وَقَضَىٰ رَبُّكَ أَلَّا تَعْبُدُوا إِلَّا إِيَّاهُ وَبِالْوَالِدَيْنِ إِحْسَانًا ۖ إِمَّا يَبُلُغَنَّ عِنْدَكَ الْكِبَرَ أَحَدُهُمَا أَوْ كِلَاهُمَا فَلَا تَقُلْ لَهُمَا  
أُفٌ وَلَا تَنْهَرْهُمَا وَقُلْ لَهُمَا قَوْلًا كَرِيمًا

It means: “And your Lord has commanded that you should not worship other than Him and that you should do good to your parents as well as possible. If one of them or both reach old age in your care, don't ever say the word “*ah*” and don't yell at them and say a noble word” [QS. Al-Isra' (17): 23].

Searching for literature on this ungodly category is not easy because every society has its version of qualifications. The author finds opinions on Lia's website.<sup>27</sup> Which gives several indications of children who can be categorized as disobedient to their parents, namely as follows: (a) always doing things that actually cause trouble for both parents on purpose; (b) rebuke or say '*ah*' or '*uh*' when talking to both parents; (c) not respecting parents and rejecting orders immediately; (d) doing actions that hurt parents' hearts, such as insulting food, mocking and even saying stupid things to parents; (e) not meeting the needs of parents when a child is well-off; (f) not paying attention to all words, especially advice from parents; (g) refusing to acknowledge both his parents for various unreasonable reasons; (h) being rude or flirting with parents; (i) feeling sorry for being born to his parents; (j) too many demands on things that actually burden parents; (k) expecting the death of parents in order to speed up the change of hands of the inheritance; (l) disconnect by never visiting or staying in touch; (m) never pray for the good of his parents; (n) does not want to serve or care for parents and even give orders to parents to become servants for themselves; (o) public disclosure of parental shortcomings; (p) rebuke,

<sup>27</sup> Maya Tita Sari, “23 Ciri Anak Durhaka Terhadap Orang Tuanya – Penyebab Dan Akibat” (*CintaLia.com*, 2016) <<https://cintalia.com/kehidupan/keluarga/anak-durhaka-terhadap-orang-tuanya>> accessed 14 February 2021.

berate and even curse parents; (q) when emotional because of something, looking at parents with sharp eyes full of anger; (r) hurt and make parents feel sad because of certain things the child has done; (s) refusing to acknowledge their parents for several reasons, one of which is being ashamed of their parents' condition; (t) raise your voice when you disagree with your parents; (u) not respecting parents by never kissing hands even just asking permission for something; (v) always surly in front of parents because they do not like the presence of parents; (w) prioritizing the interests and needs of others even though parents also really need the same thing.

### Conclusion

According to the Shari'a, granting a will by an heir to an heir due to blood or marital relations is not justified. The heirs already have a particular share in the Qur'an and Hadith, so the portion received is certain because it is a decree from Allah. The granting of wills to heirs according to Islamic law is prohibited, but the implementation of the will can still occur when all heirs accept (*rida*) the will that the testator has made. The heir should not stipulate granting a will to the heirs whose share has been determined because it can cause disputes between the heirs.

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