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**THE POSITION OF ADOPTED CHILDREN AS THE HEIR OF DZAWIL ARHAM IN  
ISLAMIC INHERITANCE LAW SYSTEM**

**(Study on Religious Court Verdict Number: 0002 / Pdt.P / 2013 / Pa.Kp)**

Moh Ali<sup>1</sup>, M Hendarto <sup>2</sup>

<sup>1,2</sup> Akademi Farmasi Yannas Husada Bangkalan, Indonesia

email: alit@gmail.com, dartoae13@gmail.com

**ABSTRACT**

This research aims to obtain clarity on the appropriate basis of the jury's consideration to set the different classifications of adopted children in the acquisition of the property of the heirs from their adoptive parents as well as the right of an heir dzawil arham in receiving a rest distribution of inheritance as contained in the Decree of the Religious Court Number 0002 / Pdt.P / 2013 / PA.KP based on the perspective of Islamic Law. This research uses a type of Normative Law research by using legislative and an analytical approach. The results show that the determination of classification is different for Applicant I and Petitioner II adopted children in the acquisition of property inherited by their parents as contained in the Determination of Religious Court Number: 0002 / Pdt.P / 2013 / Pa.Kp is not appropriate because both applicants are not included in 10 (ten) group of heirs dzawil arham which agreed upon by the four imams of the sect and not included in group of heirs that arranged in Article 174 paragraph (1) which used as a basis by the judges.

**Keywords : adopted child; dzawil arham; family; heir.**

**Introduction**

Adoption is basically the granting of rights and responsibilities from biological parents to adoptive parent. It is regulated in the first Article number 9 Law of Republic Indonesia Number 23 of 2003 concerning Child Protection, which has undergone amendments based on Law of Republic Indonesia Number 35 of 2014 concerning Amendments to Law of the Republic Indonesia Number 23 of 2003 concerning Child Protection, that "Adopted children are children whose rights are transferred from their biological parents' power to their adoptive parents." This power of transition is aimed to the adopted children for getting the same position and behavior.

There are several ways that parents are able to do in adopting a child. The first way is direct adoption. It means that direct adoption is able to come from relatives or from the family. The reason for adopting children from relatives is to strengthen

brotherhood. In other words, adoption is carried out based on the principle of mutual trust. The second way is adoption through a court order. This method must submit an application to the local court. It is stipulated in the Article 171 letter h, Presidential Instruction of the Republic Indonesia Number 1 of 1991 concerning Compilation of Islamic Law.

The position of adopted children is not regulated strictly in Islamic law because basically they do not recognize the term adopted child. However, Islamic law encourages people to help each other. One of them is by caring for and helping orphans and the poor people (Syarifuddin, 2004). Besides, Islamic law prohibits the act of adopting a child that results in a lineage (blood relationship) with the adoptive family. In other words, Islamic Law forbids the assumption that the position of an adopted child is the same as the position of a biological child. As stated in the Word of Allah SWT, in the Qur'an surah Al Ahzab Verses 4-5, asserts that the position of the adopted child is not able to result in lineage relationship with the adoptive parents (Muthiah, 2016). Therefore, when someone adopts a child, there is only a civil relationship.

In another case, if the adoption of children who are cared for in batches, it means that the relationship between adopted children who are breastfed by their adoptive parents together with their biological children is referred to as a sisterhood. Siblings are one form of marriage prohibition. The state of breastfeeding makes the woman who is breastfeeding, has a position as their mother (Purbasari, 2016). It is different between the relationship between the adopted child and the family of the adoptive parents, which cannot change the family tree of the adopted child's parents and does not create a kinship (prohibition of marriage). Therefore, the position of the foster children should not create an inheritance relationship. One of instance is a resolution of the Religious Court Number: 0002 / Pdt.P / 2013 / Pa.Kp which filed on 5 February 2013. The applicant filed an application to the Kupang Religious Court regarding the determination of adoption and division of property. Under these provisions the Applicants are placed as adopted children. The filing of the application is begun when both adoptive parents of the Applicant (heirs) are died. During their life, the adoptive parents of the Petitioner (heirs) adopted the child for three times, Syamsiah, Petitioner II and Petitioner I.

The three adopted children come from the relatives of the adoptive parents themselves, both from the father's and mother's relatives. As time went on, one of the adopted children, Syamsiah (the first adopted child) was died first. Accordingly, the applicant I and Petitioner II were left alive, after both their adoptive parents died without any heirs. Thus, the applicants apply to the Religious Court to be designated as the foster children and as the beneficiaries of inheritance. The existence of a court order is expected to make the adopted child has a status of the recipient of the property left by the adoptive parents. With this application, the council of Judges of Kupang Religious Court granted some of application by stating that, the Petitioner I are in the position of heir dzawil arham while the Petitioner II are the recipient of the obligatory will. Thus, indirectly the judges give the position of the adopted child as the heir of Dzawil Arham, making it an interesting legal issue to be studied in this research.

### **Research Methods**

This study uses a type of legal research. According to Peter Mahmud Marzuki, Legal Research or it mentions as Doctrinal Research is legal research that "finds the truth of coherence, that is, are there legal rules in accordance with legal norms and are there norms in form of orders or prohibitions in accordance with legal principles, as well as someone's action appropriate with legal norms or legal principles" (Marzuki. 2016). According to Jhony Ibrahim, the truth of coherence is "a clear flow of thought that is seen in the consistency of an argument, so the conclusions that have drawn are correct, otherwise the conclusion was wrong" (Ibrahim, 2007). Moreover, the approach that is used in this research is a legislative approach and an analytical approach.

### **Result And Discussion**

#### **Basic Concepts Of Inheritance According To Islamic Law**

Inheritance Law is a provision which sets the transfer of property from an inheritor to an heir. There are several types in the terminology of Islamic Inheritance Law such as: *Faraid Science*, *Fiqh Mawaris*, and generally Islamic Inheritance Law is called *faraid*. An-Nawawi states that the word of "*faraid*" is a plural form of *faridhah* which means something that is clearly defined in the Qur'an (Saebani, 2015). It is as

found in Hadith's translation of Prophet SAW, which Narrated by H.R Ahmad, Abu Dawud, Tirmidhi, and Ibn Majah, that "Indeed, Allah SWT, has given to those who are entitled to their rights. Find out! There is no testament for the heirs." (Amin, 2004). It means that Allah SWT has assigned each part to each heir. The determined part is the decree of Allah SWT which is in accordance with the size of each heir. Furthermore, the basis of law in the arrangement of Islamic inheritance as found in the Qur'an Surat An-Nisa 'verse 9 explains that, "And fear (Allah) if they leave a weak offspring behind them the children who are weak, which they are concerned about (their well-being). Therefore, let them fear Allah and let them speak the truth" (Syarifudin, 2004). This provision gives a message to every Muslim to pay attention to his family and those around him, for their welfare after death. In addition, when a person is nearing death, it is obligatory to give a testament to the family that they left.

The transfer of inheritance in Islamic Law takes place on its own without any coercion or influence from others . The occurrence of such an event, when there is a transfer of property from an inheritor to an heir, which has been prescribed in Islamic Law. This is in line with the opinion of Ibn Hazm, "Indeed, Allah has obligated inheritance in the property left by human after their death, not in another property." (Saebani, 2015).

So that it has the consequence that each heir is entitled to the inheritance without relying on the others heir (Wahyuni, 2018). An heir has the right to accept or reject any part of his inheritance rights. However, it does not take away the basic right of an heir to obtain property from the inheritor. Thus, the heirs' property can be divided among the heirs to be owned individually. The study of *ushul fiqh* calls it as *ahliyat al-wujub*, that each heir has the right to claim individually as well as the right to the inheritance they get. (Sabiq, 2013)

### **The Postion Of Adopted Children The System Of Islamic Legal Inheritance.**

Basically, the adopted children cannot be related by blood to their adoptive parents relationship between an adopted child with adoptive parents is just a civil relationship. Apart from that, the act of adoption which causes lineage is strictly prohibited in Islam, which is contained in Surat Al Ahzab verse 5 which explains that "Call them (adopted children) by (using) the names of their fathers; That is what is fairer to Allah, and if you do not know their fathers, Then (call them) your brother or you sister in your religion and in your first place, and there is no sin in you what you

err on it, but (which has sin) what your heart intends. and Allah is Most Forgiving, Most Merciful."

So that in the blood-related system, adopted children do not have the right to inherit the inheritance from their adoptive parents. However, based on the scholar's perspective the adopted children can be one of the parties who can receive the inheritance from their adoptive parents. This is a form of special treatment given by Allah SWT to adopted children. But on the other hand, Allah SWT forbids adoption which causes blood ties. The behavior of society in adopting children gives a position to adopted children as biological children. It gives a perspective that adopted children have the right to receive inheritance from their adoptive parents. This perspective is very contrary to the provisions of Allah SWT in Al-Qur'an surah Al-Ahzab verse 4 it explains that "... and Allah does not make your adopted children to be your (own) biological children. That is only your words in your mouth, Allah is telling the truth and He shows the (correct) way. "

Based on this verse, it can be understood that Allah SWT prohibits adoption of children who assume as their own biological children. In fact, the act of adoption is a form of mutual help among human beings, which is highly recommended in Islam. However, it does not justify adoption which causes a blood relation. So that one way that can be used in order to the adopted children can receive an inheritance of their adoptive parents by means of a mandatory testament. Basically, a testament is an act of giving a will to someone who is not an heir. The appearance of the mandatory will is begun with the formation of Qanun Al-Wasiyyah Al-Wajibah Number 71 of 1941. This rules was made by Egypt, the regulation of wills in the *qonun* is a form of response to the debate on the provision of mandatory wills among scholars'. The rules regulates that the amount of wills or testament shall be as large as what parents should receive if they are still alive and may not exceed 1/3 of the inheritance, as contained in the article with the two provision those are:

- a. The grandchild is not one of those who have right to receive an inheritance; and
- b. The heir does not give them in any other way as much as has been appointed to them.

By the issuance of these regulations, then followed by countries based on the Islamic Law System and another country which has majority Islam population, one of them is Indonesia, which includes mandatory wills in the Compilation of Islamic Law.

The issue of wills has created many perceptions among scholars. According to Ibn Hazm, "if there is no testament for a close relative who has not received an inheritance, the judge must act as the heir to give part of the inheritance to the relatives who do not inherit as an obligatory testament for them."

The four Imam agreed that the giving of a will for other except the heirs is allowed and do not require the consent of the heir. Based on this opinion, the granting of a compulsory testament to another except the heir heirs is allowed in the amount of one third of the portion that allowed. It is also supported by the opinion by Az Zuhri and Ulama Ahlu Zahir, that a testament to a relative who does not get inheritance from inheritor, so that the law is obligate (Ad Dimasqi, 2016). The giving of a will to a relative who is one of the parties has a right to receive the part of the inheritance, both the *ashobah* group and the *dzawil arham* is highly recommended.

The application of testament in the Compilation of Islamic Law is only for adopted children and adoptive parents, as in Article 209 with the following sound:

- a. Adopted children's inheritance is divided based on articles 176 through article 193 mentioned above, while adoptive parents who do not receive a testament are given a mandatory will up to 1/3 (one third) of the inherited assets of their adopted children.
- b. Adopted children who do not receive a testament will be given a testament as much as 1/3 (one third) of the inheritance assets of their adoptive parents.

Based on this Article, a will is only intended for adopted children and adoptive parents, apart from that classification cannot accept obligatory testaments. It is different than in Islamic law, adopted children occupy a special position in inheriting the inheritance left by their adoptive parents. But in the compilation arrangement of Islamic law they are positioned as a successor heir. This particularity causes adopted children to inherit the assets of their adoptive parents. However, and they do not have right as an heir.

### **Legal Review Of Adopted Children Position As The Heir Of Dzawil Arham In The Religion Of The Religious Court Number: 0002 / Pdt.P / 2013 / Pa.Kp**

The council of Judges at the Kupang Religious Court give different positions to the petitioners. Petitioner I is the heir of dzawil arham while Petitioner II is the recipient of a mandatory testament as stipulated in the Decision of Religious Court Number: 0002 / PDT.P / 2013 / PA.KP. Based on this position, Petitioner I received 2/3 (two thirds) of the inheritance, while the Petitioner II received 1/3 (one third) of

the inheritance.<sup>26</sup> It gives a different perspective between Petitioner I and Petitioner II who are both adopted children of the heir, who come from relatives of their own adoptive parents. Thus, the position of the petitioners except from being adopted children as well as relatives of the petitioner's parents, submitted an application to the Kupang Religious Court.

It is proven based on the statements of first Witness and the second Witness which were submitted by the petitioners providing the argument that the two adoptive persons of the applicant (adoptive father or adoptive mother) during their lifetime were not blessed with a child. As a result, the both of petitioner adoptive parents adopted the first foster child who had died earlier, then Petitioner I and Petitioner II came from relatives of their own families. The first foster child who was adopted by the late adoptive father and adoptive mother had died beforehand. In the end, both of the applicant's adoptive parents had passed away.

However, until the death of the two adoptive parents, the applicant does not have heirs either from his family or from his relatives. Previously the applicant's adopted mother have a biological sister namely is Tarotji (Christian) who died earlier and left behind 2 (two) children: 1. The late Syamsiah is Mosleem, 2. Bernama, Petitioner I (Christian). Petitioner I (Christianity) has 7 (seven) children they are 1. Mikael, 2. Endra, 3. Efendi, 4. Gamalia, 5. Yuniatus, 6. Libsepden (all Christians), 7. Petitioner I is Mosleem.

Petitioner I is the grandson of the heir's adoptive mother. The parents of Petitioner of (biological mother) are the siblings of the Petitioner's adoptive mother, while Petitioner II is the cousin of the Petitioner adoptive mother's uncle who comes from the distant relatives, it means that the grandfather of Petitioner II is the sibling of the adoptive mother's biological father. While the brothers from the foster father's whereabouts are not known, it is because there is no family has come since the deceased was in Kupang until now. Therefore, the parties left by the applicant's two adoptive parents were Petitioner I and Petitioner II.

Petitioner I and Petitioner II are the only heirs of adoptive father and adoptive mother. Apart from the two petitioners, there is also one child who has died before the heir. Both of the applicant's adoptive parents died at the different time. The adoptive mother died on December 31, 2006 while the adoptive father died on

October 24, 1998. Meanwhile, Brother or sister from petitioner I was unable to inherit the assets of the applicant's adoptive parents due to different religions from the heirs.

The inheritor does not have heirs, either from their family or from their own relatives. It means that Petitioner I and Petitioner II are the only family parties left by their two adoptive parents. As for Syamsiah (the first adopted child) had died beforehand from the heir. After the death of the two adoptive parents, the applicants submitted a request to the Kupang Religious Court to determine the status of adoption along with the determination of the heir of adopted child and the distribution of rights.

Based on that request, the council of Judges at the Kupang Religious Court granted the following petitioners: 1 ) determining the validity of adoption, 2) determining the heirs of adoptive parents and 3) determining the parts of each heir. Adoption of children carried out by the applicant's adoptive parents is long before the establishment of the Regulation on Child Protection and in the Compilation of Islamic Law. Thus, the process of adoption is not based on the provisions stipulated in Article 2 of Government Regulation Number 54 of 2007 concerning Adoption, which reads as follows, "Adoption is aimed at the best interests of the child in the context of realizing child welfare and child protection, which is implemented based on local customs, laws and regulations. " the action of adoption must reflect the protection of an adopted child's right and the obligations of the adoptive parents to the adopted child.

Adoption of children carried out by adoptive parents at that time was based on local customary law by directly adopting children who came from relatives of the adoptive parents. It is based on witness testimony submitted by the applicants. That the late adoptive parents have adopted the adopted child (deceased) and the petitioners since they are childhood.<sup>30</sup> Therefore, the adoption made by the adoptive parents was prior to the adoption of the Law and the Compilation of Islamic Laws. Even so, the parties are still bound by Islamic law as the religion of the petitioner's adoptive parents and the petitioners as well as the rules of Islamic law when it is promulgated.

But on the other hand, Allah SWT prohibits adoption which causes a blood (*nasab*) relationship between adoptive parents and their adopted children. This is as explained in the Al-Qur'an Surat Al-Ahzab verse 4, explaining that "Allah does not make your adopted children your (own) biological children. That is only your words



in your mouth, Allah is telling the truth and He shows the (correct) way." The act of adopting a child that causes a family relationship is only a false act for Allah SWT. Therefore, Allah SWT has not given the position of adopted children as heirs.

The adopted children in Islamic inheritance law do not have a position as heirs. It is because adopted children and adoptive parents do not have a relationship in inheritance as one of the conditions for becoming an heir. Therefore, adopted children cannot be said to be heirs. As made clearly in the holy Qur'an Surat Al-Ahzab verse 5 it explains that, "Call them (adopted children) by (using) the names of their fathers; Those are what is fairer with Allah, and if you do not know their fathers, Then (call them) your brother or sister in your religion and in your first place, and there is no sin against you for what you do accidentally, but (which has sin) what your heart intends, and Allah Most Forgiving, Most Merciful." Allah SWT ordered to his ummah to call the adopted children by the name of their biological father, not the name of their adoptive parents.

The regulation in the holy Qur'an is basically followed by the regulation of Article 39 paragraph (2) of the Child Protection Law, that "Adoption of a child as referred to in paragraph (1) does not break the blood relationship between the adopted child and his biological parents. " Therefore, the relationship that exists between adoptive parents and their adopted children is only a civil relationship. This is also clarified in Article 4 of Government Regulation Number 54 of 2007 concerning the Implementation of Adoption, "Adoption does not break the blood relationship between the adopted child and their biological parents." This is as exemplified by Rasulullah SAW himself, when he got a slave as gift for him, namely is Zaid. He was given to him, so that Rasulluah SAW adopted him as his own biological child. Finally, the local people called him Zaid Ibn Muhammad by adding a name of Muhammad after Zaid name.

Adoption of children as exemplified by the Prophet Muhammad SAW when he got a slave named Zaid Bin Harisat and adopted him as his adopted son by changing the name of his father became the basis for the revelation of the Al-Qur'an Surah Al-Ahzab verse 40 which prohibits adoption which causes broken line relationships. In connection with the relationship between adoptive parents and adopted children in the decision, the relationship of adopted children certainly does not have kinship with the adoptive parents because they do not have a family relationship. However,

adoptive parents do not have heirs from their families or relatives. This is what motivates the petitioners to ask for the distribution of the inheritance of their adoptive parents (Amin, 2010)

It is because the inheritance of the adoptive parents has not yet distributed the inheritance. The distribution of inheritance should be carried out by the petitioners after the death of the petitioner's adoptive father. His adoptive father passed away on 24 October 1998 in Kupang. He left one heir, namely the widow (adoptive mother), two adopted children, and Syamsiah who passed away. The transfer of inheritance in Islamic Inheritance Law takes place automatically without coercion or influence from other parties. The distribution of assets will automatically take place after the death of the heir. However, the position of the parties as adopted children and adoptive parents (the deceased) does not apply the principle of *ijbari* because the parties are not heirs according to Islamic law as previously stated (Ahmad, 2007).

The relationship between the petitioners and the adoptive parents is not only adopted children but also as relatives. This encourages the applicants to apply to be appointed as heirs of the adoptive parents, as submitted by the petitioner. Adjuration for inheritance is made by the petitioner without interference or pressure from other parties. According to Article 171 letter C of the Islamic Law Compilation that was mentioned earlier, an heir is a person who has a relationship with the heir. The inheritance relationship in Islamic law is kinship relationship, marital relationship, *wala'* relationship, and relationship among Muslims. These four relationships must be owned by an heir. As previously mentioned, the petitioner's relationship apart from being an adopted child is also a relative, so that the petition submitted by the petitioner is in accordance with Islamic Law.

Based on the request, the panel of judges gave the petitioners a share based on the Islamic inheritance law. In this case, the panel of judges gave a decision to Petitioner II "that the share of an adopted child named Petitioner II according to Islamic law is a maximum of 1/3 (one third) of his adoptive parents' inheritance." Whereas for Petitioner I, the Panel of Judges determined that "the share of the heirs according to Islamic law is all assets reduced by 1/3 (one third) of the share". However, the distribution of the inheritance of the petitioner's parents is carried out after both of the petitioner's adoptive parents died. This is contrary to what is

regulated in the Al-Qur'an Surah An-Nisa' verse 11 which explains that "Allah obliges (requires) to you about (the distribution of inheritance for) your children ..." Based on the above verse, Allah SWT commands to every Muslim to be obliged to immediately distribute the inheritance after the inheritor dies. In addition, an inheritor is obliged to have a testament to his heirs, as explained in the Qur'an, Surah Al-Baqarah verse 180, "It is obligatory on you before your death, if one of you leaves the property, please have will for your mothers and relatives well, (as) an obligation for pious people". Allah SWT obliges each of His followers who are about to meet his death to immediately give a will to the family they have left behind. In this case, Allah SWT gave orders to immediately handle the distribution of inheritance that has been determined.

The petitioners have a status of adopted children who come from the relatives of the petitioner's adoptive parents. However, the panel of judges determined that it was different between Petitioner I and Petitioner II in obtaining the inheritance of their adoptive parents. This provides a different perspective viewed from Islamic law. The Panel of Judges provides legal considerations based on Evidence P.8 (proof of adoptive parents' family tree) on the position and acquisition of inheritance for the petitioners. The consideration of the Panel of Judges towards Petitioner I, "Based on authentic evidence P.8, it must be declared that it is proven according to law that the adoptive mother / inheritor has a grandson from a natural sister named Petitioner I as the heir of *dzawil arham*, namely -people who have a kinship / blood relationship with the inheritor (adoptive mother) from the second line of descent, as meant in Article 174 paragraph (1) letter A of the Islamic Law Compilation, which states "The groups of heirs consist of women, consisting of mothers, daughters, sisters, and grandmothers". The panel of judges gave legal considerations to the position of Petitioner I based on evidence of the Hadiah Luitnan Family Tree that was known by the headman of the Bonipoi Village, which was evidence P.8 submitted by the petitioners. Petitioner I is the grandson of the adoptive mother, who is the biological sister of the adoptive mother. Based on this evidence, the Panel of Judges determined him into the position as heir of *dzawil arham*.

For Petitioner II, the Panel of Judges provided legal considerations based on evidence P.10 (the limit of the adoptive parents' inheritance), "Considering that the adoptive mother / inheritor does not have *Dzawil Furudl's* heirs (namely the heirs

whose share has been determined in Al- Qur'an and / or Hadith of the Prophet. They received inheritance in the first order). Therefore, based on evidence P.10, authentic evidence, it must be declared as legally proven that Petitioner II does not include *Dzawil Furudl's* heirs or *Dzawil Arham's* heirs because the kinship / blood relationship is far away, namely Abdullah as his grandfather, the biological father's sibling of' adoptive Mother / inheritor". The position of Petitioner II in the inheritance incident was not as the heir of both *dzawil furudl* and *dzawil arham*, but as the recipient of the obligatory testament. In this case, the position of Petitioner II by the Panel of Judges is determined as the recipient of a mandatory testament, not as an heir. This is based on evidence P.10 which is the upper limit of the assets left by the inheritor.

The determination of an heir position is very important in inheritance. The difference in positions considered by the Panel of Judges against the applicants in receiving the inheritance gives a different view in the study of Islamic Law. As with the three elements that must be fulfilled in inheritance as regulated in Article 171 letter A of the Islamic Law Compilation, one of them is the heir. The various groups of heirs and their acquisition can be seen in the table as follows:

Table 1 The Classifications of Heirs and Their Acquisition

No.	Heir Class	Heirs	Requirement	Share
1	<i>Dzawil furud</i>	- Daughter	Alone	1/3
			More than a person	2/3
		- Widower	Alone	1/2
			Has Child	1/4
		- Widow	Alone	1/4
			Has Child	1/8
2	<i>Ashobah</i>	- Son	Get the inheritance after <i>dzawil furud</i> takes the share	Get the remainder, with a ratio of male 2 and female 1
		- Father		
		- Mother		
		- Siblings		

3	<i>Mawali</i>	- - successor to the heir of <i>dzawil furud</i> and <i>ashobah</i>	Heirs pass away before inheritor	No more than the other heirs
4	<i>Dzawil arham</i>	- Inheritor's relatives	There is neither <i>dzawil furud</i> heirs, <i>ashobah</i> , nor <i>mawali</i>	No consideration

Theoretically, there are two kinds of heirs as regulated in Islamic Inheritance Law. The first is the *dzawil arham* heir group, and the second is the *ashobah* heir group. Furthermore, an explanation is only to expand the reach of the heirs, like one of them, the heir group of *dzawil arham*.

This is in accordance with one of the petitioners' positions, namely Petitioner II as the heir of *dzawil arham*. Etymologically, heir of *dzawil arham* means the heir in a relative relationship. The heirs of *dzawil arham* will get a share if there is no heirs, either *dzawil furud* heirs or *ashobah* heirs. The heirs of *dzawil arham* are heirs who have a kinship with the inheritor which their position does not get the portion specified in the Al-Qur'an. Therefore, it is not entitled to receive the distribution of inheritance (Limbanadi, 2015). There are various theologian opinions who provide views on the position of *dzawil arham* heirs. One of them is the four Fiqh Imam, namely Imam Syafi'i, Imam Hanafi, Imam Hambali, and Imam Maliki who give views on *dzawil arham* heirs. The views of the four priests of the *mazhab* regarding *dzawil arham* heirs which are presented in tabular form to facilitate understanding are as follows:

Table 2 Four *Madzhab* Views on *Dzawil Arham* Heirs

No	Mazhab	View	Explanation
1	Syafi'i <i>Mazhab</i>	That the <i>dzawil arham</i> group cannot receive inheritance	Cannot inherit

2	Hanafi <i>Mazhab</i>	<i>Dzawil arham</i> entitled to receive inheritance when not available <i>ashabul furudh</i> and <i>ashobah</i>	The right to inherit
3	Hambali <i>Mazhab</i>	No views	No views
4	Maliki <i>Mazhab</i>	The opinion of Imam Maliki is the same as the opinion of Imam Syafi'i, <i>dzawil arham</i> has the right to inherit the inheritor's things.	Cannot inherit

Imam Syafi'i and Imam Maliki give the view that *dzawil arham* heirs are not entitled to receive an inheritance. Meanwhile, according to Imam Hanafi and Imam Hambali, *dzawil arham* heirs have the right to receive inheritance. This depends on the followers of the *mazhab* in giving consideration to *dzawil arham* heirs. Of the four *mazhabs*, Imam Hambali did not give its opinion on the position of *dzawil arham* heirs in inheritance (Ad Dimasqi, 2016).

The status of *dzawil arham* heirs is not regulated in the Al-Qur'an or in the Compilation of Islamic Laws. According to Abu Hanifah, the heirs of *dzawil arham* are more important than Muslims, because there are two things, namely as intimates and Islam (Rusyd, 2007). This is based on the Al-Qur'an surah Al-Anfal verse 75 that "... people who have family relations are partly more entitled to each other (than those who are not relatives) in Allah's Book..." Someone who is related is more entitled to the property left by the heir than those who are not related. Therefore, in the event of relative inheritance is more important after the heirs of *dzawil furud* and *ashobah* compared to other parties.

However, not all relatives can get the inheritance from their relatives. There are several provisions that need to be considered and to be understood in positioning relatives as heirs. Inheritance in Islamic law is based on the father's lineage. It is not based on the mother's lineage or mixture as regulated in the *Burgerlijk Wetbook* or in Customary Law. The position of the heir as regulated in the Al-Qur'an, not the text of the line, cannot be the heir. Thus, Petitioner I and Petitioner II receive the inheritance

of the adoptive parents in the decision, as considered by the panel of judges previously mentioned. Therefore, Petitioner I has a position as *dzawil arham* heir, and Petitioner II has a position as the recipient of the compulsory testament.

There are various views of theologian on the adopted children position in the inheritance of their adoptive parents. Then, the *ulama's* *ijtihad*, theologians' interpretation, emerged regarding the mandatory will as a solution to this problem. Therefore, the granting of *wajibah testament*, a mandatory testament, is as one of the ways for Petitioner II to obtain the inheritance of his adoptive parents. Theoretically, a mandatory testament is an act of giving a will to someone who is not a class of the heirs. (Mustika, 2011). The first of the mandatory testament begins with the formation of *Qanun Al-Wasiyyah Wajibah* Number 71 of 1946. This regulation was made in Egypt. The arrangement of testaments is a form of response to the debate on the provision of testaments among the theologian for non-heir groups. (Asni, 2016). This provision regulates the provision of a compulsory testament as large as what parents should receive if they are still alive and cannot exceed 1/3 (one third) of the inheritance. This is as contained in the article with the provisions of two conditions. The first is that the grandchild is not among those who are entitled to inherit. The second is that inheritor did not give it him by another way as big as had been appointed to him.

According to Ibn Hazm's opinion, "if a testament is not made for a close relative who has not received an inheritance, the judge must act as the inheritor to give part of the inheritance to the relatives who did not inherit as an obligatory testament for them." Based on this opinion, the provision of a compulsory testament is an act of a judge to give a share of the inheritance to a non-heir group. Therefore, *dzawil arham* heirs can get a share of the inheritance of a person who does not have an heir and does not leave a testament by acting as a recipient of a mandatory testament. The giving of this part is a form of applying the principle of justice to parties who do not receive an inheritance but still have a relationship with the heir (Nasution, 2012).

In the arrangement for the Compilation of Islamic Laws, it applies a compulsory testament only to adopted children and adoptive parents, as in Article 209 Compilation of Islamic Law, with the following sound:

- a. Adopted children's inheritance is divided according to Article 176 to Article 193 above while adoptive parents who do not receive a testament are given a mandatory testament up to 1/3 of the inherited assets of their adopted children.
- b. Adopted children who do not receive a testament will be given a mandatory testament, as much as 1/3 of the inheritance assets of their adoptive parents.

Based on the above provisions, the mandatory testament is only intended for adopted children or for adoptive parents. Apart from the two groups, they cannot receive the mandatory testament to obtain inheritance. Meanwhile, the division is in accordance with the regulation of Islamic inheritance law in general.

Furthermore, according to the four Imam Schools that giving a testament to other than the heir as much as 1/3 (one third) is highly recommended either with or without the approval of other heirs.<sup>53</sup> Therefore, the provision of a mandatory testament apart from the heirs as much as 1/3 (one third) is allowed. However, this provision regulates the provision of compulsory testaments to two parties, namely adopted children and adoptive parents. This difference is not much from the opinion of the Four Imam Schools regarding the law of testaments, in which the provision of testaments is for non-heirs. The panel of judges gave legal considerations to Petitioner II as the recipient of a compulsory testament based on the provisions of Article 195 verse 2 and Article 209 verse 2 of Islamic Law Compilation. Adopted children who do not receive the inheritance of their adoptive parents are given a mandatory testament of 1/3 (one third) of the share. But it is also possible to be the *dzawil arham* heir because there is a kinship relationship between Petitioner II and his adoptive parents even though he is far away, compared to Petitioner I who is *dzawil arham* heir.

*Dzawil arham* heirs are entitled to share after the absence of *dzawil furud* heirs and *ashobah* (Nasution, 2012). However, according to one of the views of the four Imam Schools, Imam Syafi'i as one of the schools widely adhered to by the majority of Muslims in Indonesia that *dzawil arham* heirs are not entitled to receive inheritance from the heir. The position of *dzawil arham* heirs do not have a part in Islamic Inheritance Law, either as regulated in the Al-Qur'an and Hadith, or as regulated in the Islamic Law Compilation. In addition, according to the four priests of the mazhab, there are 10 (ten) groups which are *dzawil arham* heirs. The ten groups including *dzawil arham* heirs are as follows: maternal grandfather, all grandfather



and grandfather who died (from receiving inheritance), all grandchildren from daughters, sons from siblings, uncles of the mother's side, the daughter of the uncle, the father's sisters, and the mother's siblings and their daughters.

The position between Petitioner I and Petitioner II begins with the adopted children who come from the relatives of the adoptive parents. The panel of judges should determine Petitioner I as *dzawil arham* heir. Petitioner II also has the position as *dzawil arham* heir. This happens viewed from the Al-Qur'an Surah An-Nisa verse 7 and Surat Al-Anfal verse 75 which were previously mentioned. A relative has the right to inheritance from a relative, both male and female relatives. This means that it is not only limited to the *dzawil furud* heir and *ashobah*. (Sabaeni, 2015). However, the petitioners' kinship relationship with the two adoptive parents is not included in the ten categories of *dzawil arham* heirs mentioned above. Petitioner I's relationship with his adoptive parents is the grandson of the adoptive mother's sibling. This position does not include the class of *dzawil arham* heirs. The kinship relationship between Petitioner II and adoptive parents is the nephew of the adoptive mother's uncle (the son of the adoptive mother's cousin). Even this group is not included in the ten groups of *dzawil arham* heirs as previously mentioned.

The difference in the determination of the position of Petitioner I and Petitioner II in receiving the inheritance by the panel of judges which is basically inaccurate becomes the reason of the condition, because both of them are not included in the ten classes of *dzawil arham* heirs agreed by the priest of the mazhab (Pahroji, 2016). In its consideration, the panel of judges used the basis of Al-Qur'an Surat Al-Anfal verse 75, that people who have relatives are more entitled than those who are not relatives. If the judges are consistent in these considerations, both Petitioner I and Petitioner II have the right to be *dzawil arham* heirs. Apart from the absence of any provisions regarding the share, each *dzawil arham* heir gets the same portion. This difference in position shows the inconsistency of the judges in considering them. Besides, the judges also did not properly use the basis of Article 174 verse 1 of Islamic Law Compilation because both Petitioner I and Petitioner II were not included in the groups that are not mentioned in the article.

Therefore, both legal considerations and the rules of the Kupang Religious Court's ruling on the petitioners' position were incorrect. This is because the legal considerations of the panel of judges in determining the position of Petitioner I as

*dzawil arham* heir do not follow the *dzawil arham* heir class according to the four mazhab imams and it is also not included in the category of heirs in Article 174 verse 1 of Islamic Law Compilation. If the panel of judges is consistent with the provisions of Article 209 verse 2 of Islamic Law Compilation concerning the legacy of an adopted child, Petitioner I should have an equal position with Petitioner II as the recipient of the obligatory testament, not as the heir of *dzawil arham*. In other words, the panel of judges assigns a position to the applicant as the recipient of the mandatory testament, not as the petitioner's heir.

### **CONCLUSION AND SUGGESTION**

The consideration of the Kupang Religious Court Judges which regulates different classifications of Petitioner I and Petitioner II adopted children in the acquisition of the inheritance of their adoptive parents as stated in the Decision of the Religious Court Number: 0002 / Pdt.P / 2013 / Pa.Kp, is not correct because according to The Islamic law, both petitioners are not included into the ten groups of *dzawil arham* heirs agreed upon by the four imams of the mazhab and they are not included in the class of heirs regulated in Article 174 verse 1 of KHI which is used as a basis by the judge. There should be no difference in assigning positions to Petitioner I and Petitioner II. Therefore, the panel of judges should be consistent in considering their position. If the panel of judges considers kinship relations, the two applicants should have the same right to become the heirs of *dzawil arham*. However, if the panel of judges is consistent with the arrangements for the Compilation of Islamic Law, then the two petitioners are included in the recipient of the mandatory testament under Article 209 verse 2 of Islamic Law Compilation. The judge should also consider that the position of the two petitioners is not included in the 10 (ten) groups of *dzawil arham* heirs that the mazhab priest agrees with so that it is sufficient to be given the obligatory testament.

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