

ABSTRAK

Penelitian ini bertujuan untuk: Mengetahui dan menganalisis keabsahan pemberian wasiat wajibat pada anak angkat berdasarkan Kompilasi Hukum Islam (KHI); dan Mengetahui dan menganalisis *ratiodecidendi* penentuan hak wasiat wajibah anak angkat yang pengangkatannya tanpa melalui penetapan pengadilan. Metode penelitian yang digunakan dalam penelitian ini adalah penelitian hukum normatif. Pendekatan masalah yang dipergunakan dalam penelitian ini adalah pendekatan peraturan perundang-undangan (*statute approach*), pendekatan kasus (*case approach*) dan pendekatan konseptual (*conceptual approach*).

Hasil penelitian menunjukkan bahwa wasiat wajibah adalah suatu wasiat yang diperuntukan kepada ahli waris atau kerabat yang tidak memperoleh bagian harta warisan dari orang yang wafat, karena adanya suatu halangan syara. Sebagaimana diatur dalam pasal 209 KHI disebutkan bahwa harta peninggalan anak angkat dibagi berdasarkan pasal 176 sampai dengan pasal 193 KHI, terhadap orang tua angkat yang tidak menerima wasiat diberikan wasiat wajibah sebanyak sepertiga dari harta warisan anak angkatnya. Pasal 209 KHI tentang wasiat wajibah dengan tegas mengatur tentang orang tua angkat mewajibkan untuk melakukan wasiat wajibah sebagaimana orang tua angkat telah menerima pembebanan tanggung jawab untuk mengurus dari segala kebutuhan anak angkatnya.

Ratio decidendi yang digunakan majelis hakim kasasi dalam menangani kasus gugatan waris anak angkat ini adalah asas non-retroaktif, yaitu peraturan perundang-undangan tidak boleh berlaku secara surut. Disebutkan dalam salah satu pertimbangan hukumnya bahwa implementasi akan proses penyelesaian perkara waris yang peristiwa dan perbuatan hukumnya jauh lebih dahulu ada dan nyata terbentuk sebelum kelahiran Kompilasi Hukum Islam adalah mengacu pada ketentuan yang terdapat dalam KUHPerdata, hukum adat juga hukum waris Islam yang berpedoman pada al-Qur'an dan al-Hadits. Apabila penyelesaian akan permasalahan waris tersebut hanya berpijak pada Kompilasi Hukum semata tanpa mempertimbangkan keberadaan peraturan hukum perdata yang lain, tentu akan menjadi masalah, yaitu terbentuknya ketidakpastian hukum dalam penyelesaiannya, dan tentu akan bertentangan dengan prinsip tujuan hukum itu sendiri, dimana tujuan hukum adalah untuk menciptakan kepastian dan keadilan dalam masyarakat.

Kata Kunci: Keabsahan, wasiat wajibat, ratio decidendi

ABSTRACT

The research aims to: know and analyze the validity of the grant of the face to the adopted child based on the compilation of Islamic Law (KHI); and to know and analyze ratiodecidenin the determination of the right to the adoption of the adopted child without going through a court order. The research methods used in this study are normative legal research. The approach to the problems used in this research is the approach of legislation (of approach), case approach (case Apporach) and conceptual approach. The source of the legal material used is the primary and secondary source of law. Primary legal materials and secondary legal materials that have been collected and processed will be analyzed using interpretation methods.

The results showed that the will of the face is a testament that is intended for heirs or relatives who do not acquire a part of the inheritance of the deceased person, because of a barrier to Syara. Indonesia has its own provisions on this will be the concept of this face only to adopted children and adoptive parents. As stipulated in section 209 KHI is mentioned that the inheritance of adopted children is divided according to article 176 up to article 193 KHI, the adopted parents who do not accept wills are given a testament of one third of the estate of inheritance. His adoptive son. To fulfill the needs and overcome the difficulties that occur in the midst of society, the regulation of the law will be applied because the child's adoption relationship is incorporated into KHI which is the legal basis for Muslims in Indonesia. Section 209 KHI of the will of the face expressly regulates about the adoptive parents obliged to make a testament of the face for the benefit of his adoptive son as the adoptive parents have received the burden of responsibility to take care of all The needs of his adoptive son.

The Decidendi Ratio used by the Council of the casted judges in addressing the case of heirs by adopted children is a non-retroactive principle, which is that legislation may not occur retroactively. Mentioned in one of his legal considerations that the implementation of the settlement process of the birthcase that the event and its legal deeds far advance exist and real formed before the birth of the compilation of Islamic law is referring to the provisions In the Civil Code, customary law is also the inheritance law of Islam which is guided by the Qur'an and al-Hadith. If the settlement of the inheritance issue is only based on the compilation of the law alone without considering the existence of other civil law rules, it will certainly be a problem, namely the formation of legal uncertainty in Its completion, and certainly will contradict the principle of the law itself, where the purpose of the law is to create certainty and fairness in society.

Keywords: validity, Testament will, Decidendi ratio