

ABSTRACT

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Key words: adoptive child, compulsory testament, deed of donation

The process of adoption in Islam is set in the section 49, letter a, numeral 20 in the law number 3, 2006 about Religion Court in adoption for moslem issue. This adoption creates heritance effect as it is set in section 209 Islamic Law Compilation (ILC/KHI). ILC uses term compulsory testament which takes account 1/3 of inheritance from adoptive parent. But, in reality there are a lot of problem appears when the inheritance is distributed. For example, if the asses or compulsory testament are prevented by an authentic deed of donation (section 1870 civil code). The aim of this research is to find out the implication of legality of deed of donation to the distribution of heritance, and to find out certain law of the right of compulsory testament of an adoptive child to the heritance set in deed of donation.

The research method used is the type of library research with the aid of legislation and the concept of the approach. Materials used are legal KHI Article 209, Article 1870 Civil Code as the primary legal materials and supported by the literature or writings in accordance with the themes discussed. Furthermore, the data were processed and analyzed using descriptive analytical method.

The findings show that the distribution of heritance trough donation is stated legally and has power of law if there is no other heir in the deed of donation. if there is other heir in the deed of donation; so, according to Supreme Court Yurisprudence of RI No. 391. K/Sip/1969, No. 2002. K/Pdt/1986, 11th June, 1990, and No. 1182. K/Pdt/1988 , 22nd December 1994, the deed of donation is considered canceled for the law. An adoptive child can achieve the right of compulsory testament if the process of adoption is through Religion court, which inside it there are compulsory testament promise and settlement. Besides, there is another factor influencing, for example social factor, which is interchange duty of the adoptive child to his parents who has already grown and taught him since his early age until he grows older. And love has already exist deeply between them. if some of the factors above have already been fulfill; so, the right of the compulsory testament cannot be rejected by the deed of donation.