

JURIDICAL REVIEW OF ADOPTED CHILD INHERITANCE RIGHTS IN THE PERSPECTIVE OF THE CIVIL CODE

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Abstract

This research examines the legal perspective of the inheritance rights of adopted children based on the Indonesian Civil Code. Inheritance is the transfer of property rights from a deceased person to living heirs, and in many cases, adopted children may be entitled to inherit from their adoptive parents. However, the status of adopted children in inheritance laws can be complex and raises various legal issues. The study explores the concept of adoption and its implications on the inheritance rights of adopted children. It analyzes relevant provisions of the Indonesian Civil Code and other related legal texts to understand the legal status of adopted children as heirs. The research also investigates the challenges and problems that may arise in determining the inheritance rights of adopted children, particularly when there are natural descendants or other adoptive children involved. By adopting a qualitative research approach, the study gathers data through legal document analysis and interviews with legal experts. The findings shed light on the legal intricacies surrounding the inheritance rights of adopted children and provide insights into the recognition and protection of their rights under the prevailing legal framework. The research contributes to the understanding of the legal complexities surrounding adoption and inheritance in Indonesia and highlights the importance of addressing these issues to ensure fair and just treatment of adopted children in matters of inheritance.

Keywords: Adopted Child Status, Civil Law, Inheritance Assets or Estate, Inheritance Rights

1. INTRODUCTION

By human instinct, every parent desire to have children to continue their lineage, inherit their legacy, and bring happiness to their household. For households that are not blessed with children, they seek various ways to have a child, such as adopting or fostering children, whether from their own family or from others, to become their adopted children.

The presence of a child in a household is eagerly anticipated and desired by all families, but not all families can experience having their own child, leading them to consider adoption. In Javanese tradition, the adoption of a child is seen as a way to entice the family to be blessed with their own biological child. However, adoption gives rise to issues related to blood ties and inheritance.

The process of adoption is under the authority of the court. According to Article 7(2) of Law No. 35 of 2014 concerning child protection, the upbringing or adoption of a child shall be carried out in accordance with applicable legal norms, customs, and the child's religion. Article 33(2) of the same law states that, "To become the guardian of a child as referred to in paragraph (1), it shall be done through the court's decision" (Soemitro, 1990)

In general, an adopted child is a child taken in and raised by someone else, and legally recognized as their own child. Similarly, adoption is defined as the lawful act of taking in or adopting someone else's child as one's own (Indonesia, 2005).

Inheritance law is an essential part of family law, as it plays a crucial role in determining and reflecting the family system within a society (Muzakir, 2022). This is because inheritance law is closely related to the scope of human life. Every human will experience significant events in their life that are legal in nature, including death.

When there is a legal event, such as the death of someone, the close family members will experience loss and grief, and this event also has legal consequences concerning the management of the deceased's rights and obligations. The resolution and management of a person's rights and obligations due to their death are governed by inheritance law (Syarifuddin, 2019).

Inheritance law is a set of legal rules that regulate who the rightful heirs are to inherit the deceased's estate, the position of the heirs, and how the inheritance is distributed fairly and equitably. Thus, heirs are a group of people or relatives who have a family relationship with the deceased and have the right to inherit or receive the estate left by the deceased (Ramulyo, 2016).

The obligations that must be fulfilled by heirs include preserving the integrity of the deceased's estate before distribution, finding a suitable way of division according to the provisions, settling the deceased's debts if any, and executing the will if it exists. The reasons for inheritance arise due to marriage, kinship or lineage, the emancipation of slaves, and relations among Muslims.

In general, it can be stated that the status of an adopted child in inheritance remains the same as their original status. They have a lineage relationship with their biological parents even they only have an inheritance relationship with them. Thus, adoption does not alter the existing lineage relationship and inheritance between them (Zaini, 1992). Consequently, the adopted child does not inherit from their adoptive parents, but the adoptive parents can give a will or gift during their lifetime to the adopted child in accordance with their wishes.

The adoption of a child falls under the category of legal acts, which result in rights and obligations for the parties involved. In the Book of Civil Law or *Burgerlijk Wetboek* (BW), in the division of inheritance as stated in the Book of Civil Law, an adopted child inherits the same as a legitimate child (Weni, 2020).

There are two arising issues. First, the legal status of an adopted child in the perspective of the Indonesian Civil Code. Second, the inheritance rights of an adopted child in the perspective of the Indonesian Civil Code.

2. RESEARCH METHODS

The thesis adopts two approaches: the statutory approach and the conceptual approach (Marzuki, 2011). By examining relevant laws and regulations, the roles and responsibilities of parties involved in construction contracts are thoroughly analyzed.

The research methodology employed is normative juridical, focusing on studying the application of principles and norms in positive law. This norm system covers principles, norms, and rules derived from statutory regulations, agreements, and doctrines found in legal literature, research outcomes, expert works, scientific articles, and related websites concerning inheritance for adopted children (Efendi & Ibrahim, 2018). The research also follows a statutory approach, which considers legal norms in statutory regulations related to the research topic (Mahmud, 2006).

The legal sources include primary materials such as the Civil Code (KUHPerdata/B.W), Law No. 16 of 2019 concerning amendments to Law No. 1 of 1974 concerning Marriage, and Law No. 35 of 2014 concerning child protection.

Secondary materials provide explanations for primary legal materials, such as draft regulations, research results, doctrines/theories from legal literature, works from legal experts, scientific articles, and relevant websites. While tertiary materials offer guidance and explanations on primary and secondary laws, utilizing resources like the Kamus Besar Indonesia Indonesian Dictionary and Kamus Hukum Law Dictionary.

3. RESULT AND DISCUSSION

3.1. Overview of Inheritance Law

The term "inheritance law" originates from Dutch (*Erfrecht*). Article 830 of the Civil Code essentially states that Inheritance Law (*Erfrecht*) is the law that regulates the legal position of a person's wealth after their death, particularly the transfer of that wealth to others.

Within the provisions of Inheritance Law in the Civil Code, there are three main elements:

- 1) The person who leaves behind the inheritance (*erflater*);
- 2) The inheritance (*erfennus*);
- 3) The heirs (*erfgeennaam*).

According to the Civil Code, not all heirs automatically inherit everything left by the deceased. The concept of inheritance in the Civil Code can be seen in Article 584, which states that "Ownership of a property can only be obtained through possession, attachment, expiration, or inheritance, whether according to the law or a will."

Inheritance law is a set of regulations governing the transfer of wealth (rights and obligations) from a deceased person to someone else. Another definition of inheritance law encompasses all legal provisions regarding the wealth of a deceased person, including the transfer of that wealth and its consequences for those who receive it, both among themselves and third parties (Meliala, 2018).

From these two definitions, several terms can be distinguished:

- a. The deceased: the person who has passed away and left behind wealth.
- b. The heirs: individuals entitled to the inheritance.
- c. The inheritance: the wealth left behind, comprising assets or liabilities.
- d. Inheritance: the process of transferring a person's wealth (rights and obligations) to their heirs.

3.2. Legal Status of Adopted Children according to the Civil Code

Children are the most important element in a family. Therefore, in cases of inheritance division, children are entitled to inherit the estate before other heirs. There are several legally recognized categories, namely:

- a. Legitimate children.
- b. Stepchildren.
- c. Children from a forbidden union.
- d. Adopted children.

- e. Acknowledged children born out of wedlock.
- f. Unacknowledged children born out of wedlock (illegitimate children).

Legitimate children are those born to legally married couples. They are also referred to as legitimate children. On the other hand, stepchildren are children of a spouse from a previous marriage or children of a husband from his other wives. In terms of inheritance law, stepchildren (half-siblings) are treated differently from legitimate children.

Then, children from a forbidden union are those born from a relationship between close relatives who are prohibited from marrying, such as siblings. These children are not entitled to inherit, be adopted, or be recognized as legal children. However, according to the Civil Code, children from forbidden unions are entitled to support from their parents.

The 2014 Child Protection Law, in Article 1 paragraph (9), defines adopted children as children whose rights are transferred from the family environment of their birth parents, legal guardians, or other responsible parties for their care, education, and upbringing, into the family environment of their adoptive parents based on a court decision or order.

This provision clarifies that adoption only involves a transfer of authority. The subsequent meaning of this transfer will be further elaborated according to the religious beliefs followed during the adoption process. Specifically for Muslims, the transfer of authority does not sever the relationship between the adopted child and their biological parents, nor does it create a relationship between the adopted child and their adoptive parents as if they were legitimate children in Islamic law (Al Amruzi & Sarmadi, 2012).

Conversely, according to non-Muslim customs with their variations and Chinese community traditions, the transfer of authority legally entitles the adopted child to bear the adoptive father's name, be considered as if born from the marriage of the adoptive parents, and become the heirs of the adoptive parents.

In other words, adoption results in the severance of all civil relations based on lineage between the biological parents and the adopted child. This interpretation is no longer applicable due to Article 39 paragraph (2) in the 2014 Child Protection Law, which states that adoption does not sever the blood relationship between the adopted child and their biological parents.

Adoption based on statutory regulations includes direct adoption by prospective adoptive parents of prospective adoptive children who are directly under the care of the adoptive parents, and adoption through child care institutions. Adoption affects the legal status of the adopted child, in which inheritance rights of the adopted child are returned to the inheritance laws of the adoptive parents. Adoption involves taking in another person's child for nurturing, educating, providing full attention and affection, and treating them as one's own child (Bula et al., 2023).

In the Civil Code (BW), adoption is not specifically mentioned, but the institution of adoption is regulated in Staatblad 1917 No. 129, which essentially stipulates that adoption is the act of adopting a male child as a son by a married man or a man who has been married but has no male descendants. Therefore, only male children are allowed to be adopted. However, according to jurisprudence, it has been stated that female children can be adopted as daughters by a woman who has no children. "Regarding the legal relationship between the original parents after the child has been adopted by someone else, it is severed, and the adopted child inherits from the adopting father."

Regarding the requirements for adopting a child, Staatblad 1917 Number 129 in Article 8 lists four requirements, which are:

- 1) Consent of the adoptive parent.
- 2) If the adopted child is the legitimate child of their parents, then permission from the parents is required. If the father is deceased and the mother has remarried, the consent of the legal guardian and the estate authority as the guardian supervisor is required.
- 3) If the adopted child is born out of wedlock, the consent of the acknowledging parent is required. If no one acknowledges the child, then the consent of the guardian and the estate authority is required.
- 4) If the adopted child is 15 years old or older, their own consent is required.
- 5) If the adoptive parent is a widow, the consent of the deceased husband's brothers and father is required, if they are still alive, or if they reside in Indonesia, then the consent of male relatives in the father's line up to the fourth degree is required (Zaini, 1992).

3.3. Inheritance Rights of Adopted Children Based on the Perspective of the Civil Code

The adoption of a child will affect the inheritance rights of the adoptive child towards their adoptive parents. In principle, the inheritance rights of the adopted child are subject to the inheritance laws of the adoptive parents. Based on legal considerations, adoptive parents are obliged to ensure that their adopted child is not left without care after their death. For this purpose, in society, adopted children are usually provided with a portion of the inheritance as a means of sustenance through a will. A testamentary gift is a way for the owner of wealth to express their final wishes regarding the distribution of their estate to the heirs, which will take effect upon the death of the testator.

An adopted child can inherit from their adoptive parents, but it must not prejudice the rights of other existing heirs. An adopted child who is adopted orally cannot inherit from the adoptive parent, but they can be given a testamentary gift that does not deviate from the *Ligitieme Portie* (legitimate share). An adopted child adopted through a court decision can inherit from their adoptive parents, depending on the region, as different regions may have varying practices in giving inheritance to adopted children.

This is further emphasized by the opinion of a Notary, stating that the adoption of Indonesian citizens of Chinese descent still follows Staatblad 1917 No. 129. Due to the use of Staatblad 1917 No. 129, the adopted child has the right to inherit from the adoptive parent.

The adopted child is a first-class heir, therefore they receive inheritance from the adoptive parents. According to Article 13 of Staatblad 1914 No. 129: "A man dies leaving a widow with the authority to adopt a son, so the estate authority must take necessary actions to manage and protect the property that will be given to the person to be adopted" (Subekti & Tjitrosudibio, 1999).

An adopted child from the adoptive parents has inheritance rights according to the given inheritance, and they are absolute heirs as stipulated in Article 852 of the Civil Code. According to Article 830 of the Civil Code: "Inheritance only occurs due to death." The inheritance will be given when the decedent has passed away and the heirs are still alive.

Basically, the process of transferring someone's wealth to their heirs, known as inheritance, occurs only because of death. Therefore, inheritance will only occur if three conditions are met. The conditions for an heir to receive inheritance according to the Civil Code are:

- a. Inheritance is only open upon the occurrence of a death (Article 830 of the Civil Code). This means that if the couple has divorced when the decedent passes away, the ex-husband or ex-wife is not considered an heir.
- b. The heirs must exist at the time of the decedent's death. As stated in Article 836 of the Civil Code, "To act as an heir, a person must already exist at the time the inheritance is opened, as provided in Article 2 of this Civil Code."
- c. An heir must be capable and entitled to inherit, meaning they are not considered by the law as someone unfit to inherit due to death or deemed incapable of being an heir.

This is because the adopted child becomes the biological child of the adopting parent after adoption. According to adoption law, adoption through the court is done through a court order (Wibawa & Hidayantina, 2023). The status of the adopted child is equivalent to that of a biological child. The legal consequence of this in the division of inheritance is the same as for a biological child, as stated in Article 852 of the Civil Code. According to Article 830 of the Civil Code: "Inheritance only occurs due to death." Therefore, the estate or inheritance is only open when the decedent has passed away, and the heir is still alive when the inheritance is opened.

The law recognizes two ways to obtain an inheritance, which are:

- a. *Abintestato* (inheritance according to the law), as stated in Article 832 of the Civil Code. According to this provision, the rightful recipients of the inheritance are blood relatives, both legitimate and illegitimate, and the surviving spouse.
- b. *Testamentary* (inheritance as specified in a will or testament), as stated in Article 899 of the Civil Code. In this case, the owner of the wealth creates a will where the heirs are specified.

An adopted child is a child resulting from an act of someone taking or making someone else their child without severing the family ties of the child from their biological parents, whether they are still minors (underage) or adults (Iskandar et al., 2021). The same obligations apply to this form of adoption as in adoption according to the Civil Code, which includes provisions regarding the absolute share included in the law, such as in Article 913, 914, 916, and so on.

It is essential that the relevant authorities closely supervise issues related to child adoption to ensure that adoption is genuinely based on high humanitarian principles in line with the cultural spirit of the Indonesian nation, and that there are no hidden or ulterior motives behind the adoption. The author also suggests that with various regulations governing child adoption, it may be necessary to establish a national regulation specifically addressing the issues of child adoption and the legal status of adopted children as heirs.

4. CONCLUSION

In conclusion, the process of adopting a child involves submitting an application to the District Court, which provides legal certainty for the adoption according to the prevailing law. The adopted child holds the same status as a biological child under the Civil Code, and the biological parents forfeit their inheritance claims as specified in Staatblad 1917 Number 129, Article 14. This grants the adopted child the right to inherit the estate of their adoptive parents based on the law or through testamentary inheritance if a will is received (*Hibah Wasiat*). It is worth noting that for Indonesian citizens of Chinese descent, the adopted child's status is akin to that of a legitimate child, ensuring their entitlement to inherit their adoptive parents' wealth.

In essence, both the Civil Code and Staatblad 1917 Number 129 affirm that adopted children are on equal footing with biological children in terms of inheritance rights, placing them in the first category of heirs. This means that adopted children have the right to a share of their adoptive parents' estate, establishing them as absolute heirs in accordance with Article 852 of the Civil Code. With these legal provisions in place, adopted children can be assured of their inheritance rights, allowing for a more secure and stable family environment, which aligns with the principles of justice and fairness in inheritance matters.

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