

The Right of the Heirs to the Adopted Child in the Property of the Adopted Parents under the Law of the Heirs in Indonesia

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ABSTRACT

The adopting of a child in Indonesia until now does not have a national adoption law. There is only a provision that is a circular letter of the Supreme Court which contains guidelines and instructions for the judges to make decisions. The position of adopted children in the inheritance that will be given by adoptive parents there is a difference according to the Civil Code and the Compilation of Islamic Law. The Civil Code does not regulate the adoption of children. That has the effect that there is no adoption based on the Civil Code. Adopted children according to KHI remain as legitimate children based on court decisions by not severing blood relations with biological parents. In the Islamic Law system, the adoption of a child does not bring legal consequences in terms of blood relations and inheritance relationships with adoptive parents, the basis for using inheritance law in Islam.

Keywords: Adopted Child, Heirs, Inherence Law, Civil Code, Islamic Law

INTRODUCTION

Children are the priceless gift of God to a family. Some couples are blessed with children, but there are a few families who are believed to care for the blood of other people as their hearts. Inheritance problems become increasingly complex if the legacy family has adopted children. This is because an adopted child is not a blood relative. While the main requirement of inheritance is the existence of blood relations. Then, how does the adopted child's position in the issue of inheritance?

The adopted child is a child who is not descended from a husband or wife but is taken care of and treated as his/her offspring so that between the child who raised and the person who raised the child arose a common family relationship as existed between his/her parents and his/her son. It will certainly be unfortunate by the concerned so that it can understand that when in Indonesia there is a habit of lifting children. Since the adoption of a child is a legal act, it is governed by the provisions of the civil law applicable to the person concerned.

An adopted child does not have a blood relationship with his or her adoptive parents but he or she is entitled to love as a child, to support himself or herself, to receive a decent education and the right to the necessities of life. Due to the lack of blood relationship between the adopted child and his/her adoptive parents, the adopted child can not be the heir of the property of his/her adopted parents following article 174 Compilation of Islamic Law. Although the adopted child is not an heir, the adopted child is entitled to a portion of the property inherited by his/her adoptive parents by obtaining a portion of the basis of the obligatory will as per article 209 paragraph (2) Compilation of Islamic Law amounting to not more than (one third) of all property his/herparents.

The definition of appointment of a child in government Regulation No. 54 the year 2007 on the implementation of child adoption, the adoption or appointment of children formulated as follows the child's appointment is a legal act that diverts a child

from the authority of a legal guardian parent or another person responsible for the care, education, and raising of the child into an adopted child's family environment (Meliala, 2015). The problem of lifting this child often occurs and is a noteworthy problem especially in the division of inheritance. After the study in Law No. 1 of the year, 1974 does not include the position of an adopted child in obtaining inheritance asset but only governs the "position of the child" in article 42 which reads the legitimate child is a child who is born in or as a result of a legitimate marriage.

Regarding the adoption or the appointment of children in Indonesia until now does not have a national adoption law. There is only a provision that is a circular letter of the Supreme Court which contains guidelines and instructions for the judges to make decisions or to create a decree if there is an application for the appointment of the child, namely SEMA No. 2 of 1979, which has been refined by SEMA No. 6 the year 1983, as well as the law of the Republic of Indonesia No. 4 the year 1979 2002 on Child Protection. With this enhancement, there may be a legal certainty over the process of adoption and that child adoption is usually customary and that only a few adoptive parents will come to the State Court to ask for confirmation of the adoption they have made to have legal certainty.

Adopting a child is essentially an act of taking or adopting another person's child which is included in his/her own family so that in this case between the adopted child and the adoptive parent will arise a family relationship that is just like the parent with his or her biological child. This further affects the consequences of the child's appointment, which is to break the family relationship between adopted children and the parents and others who do not break the family relationship of adopted children with their biological parents. Child lifting problems or more often called by adoption are not new problems. The term in the adoption of children has been done in a

different way and motivation in line with the legal system that lives and develops in indigenous peoples. Of course, the adoption of good children made by Islamic law and customary law is attributed as legal action, so that between the adoptive parents and adopted children will give rise to a legal relationship.

The position of the adopted child in the inheritance that will be given by the adoptive parents is a difference according to the Civil Code and the compilation of Islamic law. The Civil Code does not govern the appointment of a child this carries the consequences of No child's appointment based on the civil law. However, World War II in the Netherlands was born the Law on the adoption of children, namely: the Staatsblad number 129 the year 1917 stating: that the child adoption has a legal relationship and is likened his/her position as a child born to his/her adoptive parents, so as a child who was born from the marriage of foster parents and the heir of his/her adoptive parents.

Arrangements regarding heirs and related heirs in writing are governed by the compilation of Islamic law and the Civil Code of Laws (BW) and in the form of customary law for those who use the customary system of law. From this, it will be dug about the birthright of adopted children based on both systems.

Academically, this research is expected to be beneficial for the development of educational science in the field of law, especially related to inheritance law. This current research is also expected as a reference in the system of inheritance for adopted children and to know the legal relationships and legal consequences of the adoption process.

Formulation of problems

Based on the aforementioned matters linked to the background, the problems raised in this study are as follows:

- 1) How is the right of the heirs to the adopted child of the property of the

adoptive parents according to the Civil Law and the Compilation of Islamic Law?

- 2) How is the system of inheritance distribution to adopted children?

LITERATURE REVIEW

The right to inherit adopted child under the Civil Code of law

Understanding adoption, in general, is an act of taking someone else's child under the provisions of the laws of the community concerned. Meanwhile, according to Soepomo (2000), the deed to raise the child is the act of law that releases the child from the kinship with the parents themselves who put the child into his/her adoptive parent's family that the child is like their child themselves.

The definition of child adoption is in government Regulation No. 54 the year 2007 on the implementation of child adoption, the understanding or adoption of children is formulated as follows. The child's adoption is a legal act that diverts a child from the authority of the legal guardian's parent or another person responsible for the care, education and raising of the child into an adopted child's family environment. In the Staatsblad number 129 the Year 1917 article 5 to article 15, the position of the adopted child is in article 12 which equates a foster child with a valid child from the marriage of the lifting person. Thus, the adopted child in the family has an equal position as the child born of his/her adoptive parents. It also resulted in the similarity of rights and obligations by the adopted child including the Division of the inheritance of its adoptive parents when passed away.

The position of the adopted child who receives the inheritance is equal to the legal child as stated in Act No. 1 the year 1974 article 42 states that: a legitimate child is a child who is born in or as a result of a legitimate marriage. Also, adopted children although not children legitimate but have an equal position in the law, especially in the distribution of inheritance. But the position

of the adopted child in the inheritance that will be given by his/her adoptive parents is a difference according to the Civil Code and the compilation of Islamic law. The civil code does not regulate the lifting of the child, it carries the consequences which are not a child's appointment based on civil law. However, World War II in the Netherlands was born the Law on the adoption of children, namely: the Staatsblad number 129 the year 1917 which note that the child adoption has a legal relationship and that is likened his/her position as a child born to his/her adoptive parents, as a child who is deprived of the marriage of parents adopted and the heir of his/her adoptive parents.

The rules relating to the Act are governed in various legal products, among others in the Staatsblad No. 129 the year 1917 on the appointment of special Anak⁹ for the Chinese group, Law No. 4 the year 2002 on the welfare of Children, 10 Act No. 23 (c) year 2002 on Child protection, government regulation No. 54 Year 2007 on the implementation SEMA No. 6 of 1983 on the adoption of children. 13 SEMA No. 3 the year 2005 of child adoption. As for the purpose and motive to appoint a child is because it does not have children, there is hope or belief will get a child after lifting the child or as a companion, still want to add a child with another child type of child who has been owned, to be used as a friend to the existing child, because of compassion for the abandoned child, poor, or orphans, etc.

The inheritance system or heredity adopted by BW is a limited parental and bilateral system, where each family member links him/herself to his/her father and mother's offspring. Because the relationship between inheritance law is very close to family law, then in discussing this inheritance is a discussion that includes marriage law (Hadikusumo, H, 2003). There are two ways foster parents can take to provide the fulfillment of adopted children's rights regarding inheritance. The way is by giving grants according to the Civil Code or KHI, or the will of grants. Grants are a

common practice to give certain objects or assets from donors to grant recipients. Meanwhile, grants made between adoptive parents and adopted children are commonly referred to as testaments. According to Article 957 of the Civil Code, a testamentary testament is a determination of a special will with which the person who inherits to one or more gives some of his/her goods of a certain type such as all his or her movable or immovable property or give usufructuary rights over all or some of the inheritance.

Giving a will as a fulfillment of the right of adopted children to inheritance must be done fairly. That is, if the granting of the grant has a value that is too large so that it reduces the rights of the legal heirs, then the nominal must be reduced. On the other hand, if adoptive parents who are donors have inherited other provisions, then the provision of large amounts of property can be done. If the inheritance is not wholly or partly received, or if the inheritance is received with the privilege of registering inheritance, and this one is not sufficient to fulfill all the wills, then the grant is in balance with the amount, must be reduced, except that which bequeaths the matter this, has stipulated other provisions in his/her will.

As a result, the child retains the right of his/her parents, and he/she also reserves the right to justify his/her adoptive parents. Also, it has the legal basis of the great jurisprudence of the Supreme No. 1361K/SIP/1975 dated 25 April 1977, namely that a foster child is entitled to a treasure of his/her adoptive parents.

The Right to Inherit adopted Children according to the Compilation of Islamic Law

The right to inherit according to the compilation of Islamic Law (KHI) in the division of inheritance, in which the Islamic law of heirs can be grouped into three sections: (1) *Ashabul Furudh*; (2) *Ashabah*; (3) *Dzawil Arham*

In KHI there are arrangements in the grouping of heirs stipulated in article 174 KHI. The group of heirs consisted of;(1) Blood relations, the male group consists of father, son, brother, uncle, and grandfather. Female consisting of mothers, daughters, sisters, and grandmothers. (2) The marriage relationship consists of a widower or a widow. If all heirs exist, then the one who deserves inheritance only: son, father, mother, widow/widower.

The position of the adopted child according to KHI (Islamic Law) is determined as a valid child based on the court's decision which is not disconnecting the lineage with his/her biological parents due to the principle of adoption of children according to KHI is a manifestation of the faith manifested in the form of nurturing other children as a child in the form of parenting by providing all the necessities of his/her life. Inheritance rights for adopted children which carried out through compulsory testaments must first be exercised compared to the distribution of inheritance to biological children or their heirs. The rule which becomes the legal basis is contained in Article 175 KHI, concerning the obligations of heirs to the testator where one of the obligations is to fulfill all the wills of the testator. The will is carried out, whether spoken or desired or not by the person who dies (Usman, S, 2006).

Mandatory bequests are testaments whose implementation is not influenced or dependent on the will of the person who dies. The will is still carried out, pronounced, or desired or not, by the person who passed away. Therefore, the implementation of the will does not require proof that the will is not spoken, written, or intended but its implementation is based on legal reasons that justify that the will is executed.

The foundation that can be used to become a rule regarding mandatory wills for adopted children as regulated in Article 209 KHI as part of *Fiqh* is only through the method of *Ijtihad istishlah, urf, and istihan*.

It's the same as the mandatory wills of orphans. That is, with consideration of the benefit and custom of some of the Indonesian people, their intentions (reluctance to carry out polygamy even though they have not been blessed for many years by descendants), an obligatory will for someone considered an adopted child may be given (Usman, S, 2006).

In the KHI, the provisions concerning the mandatory testament are mentioned in Article 209 paragraphs (1) and (2), which read as follows: (1) The inheritance of adopted children is divided according to Article 176 through Article 193 above, while for adoptive parents who do not receive mandate inheritance is a mandatory testament as much as 1/3 of the inheritance of adopted children. (2) As much as 1/3 of the adopted parents' inheritance will not be given to the adopted child. The regulation on the provision of a will to an adopted child through the obligatory will is considered new when it is linked to traditional fiqh, even legislation regarding an inheritance that applies in various Muslim worlds. The Qur'an expressly rejects the equality of relations because of the adoption of children who had developed in the customs of the Madinah, Arab community at that time with relationships due to blood ties (Hadikusumo, H, 2003).

CONCLUSION AND SUGGESTION

The adopted child still has the right to inherit from his/her parents, and besides that, he/she has the right to inherit from his/her adopted parents like drinking water from two sources. It also has a legal basis, namely Supreme Court Jurisprudence No. 1361K / SIP / 1975, April 25, 1977, that an adopted child has the right to inherit the inheritance of his/her adopted parents. The position of adopted children according to KHI remains a legitimate child based on a court decision by which is not severing the blood relationship with their biological parents. The government must make national legislation regarding the position of

an adopted child, and it must also include how the distribution of inheritance to adopted children. The codification and unification of law in the case of inheritance is the time to think about the formation to create legal certainty in the field of inheritance law in the future regarding inheritance issues, there is a unity of understanding and it is unnecessary for a resolution to the court.

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