



LEGAL STATUS OF ADOPTED CHILDREN IN THE CIVIL INHERITANCE LAW BASED ON ARTICLE 832 OF THE CIVIL LAW BOOK

Wulan Agustini¹, Gunawan Djajaputra²

^{1,2}Faculty of Law, Universitas Tarumanagara

Corresponding E-mail: ¹wulanagustinihukum@gmail.com, ²gunawandjayaputra@gmail.com

Abstract

Adoption of children based on Article 1 number 2 of Government Regulation Number 54 of 2007 concerning the Implementation of Adoption states that: "A legal act that diverts a child from the environment of power of parents, legal guardians, or other people who are responsible for the care, education and upbringing of children the child, into the adoptive parent's family environment. The rights of adopted children regarding property left by adoptive parents is an inheritance problem that occurs in many communities. Regarding inheritance rights that arise after a parent dies, there is a difference in the amount of inheritance obtained by adopted children and biological children. In fact, sometimes adopted children are still considered not part of the family, which in the end, the rights of adopted children are ignored. This does not rule out the possibility of problems such as the distribution of inheritance. The formulation of the problem in this study: (1) What is the legal position of adopted children in civil inheritance law based on Article 832 of the Civil Code? (2) What is the legal protection for adopted children in the distribution of inheritance? The research method used is normative legal research method. The primary legal materials used in this writing are the 1945 Constitution of the Republic of Indonesia and the Civil Code. The secondary legal materials are in the form of all legal publications which are not official documents. The tertiary legal materials used in this study are the Big Indonesian Dictionary and the Legal Dictionary. The results of the study show that the legal position of adopted children in civil inheritance law based on Article 832 of the Civil Code, namely the Civil Code does not specifically regulate the inheritance rights of adopted children, but they are entitled to a share through a will grant. The Civil Code only regulates the recognition of children out of wedlock. The Netherlands once regulated it in Staatsblad No. 129 of 1917 which applies to the Chinese group. Based on the Civil Code there are restrictions in terms of making a will, namely regarding the size of the inheritance to be distributed to heirs which is called legitime portie which is regulated in Articles 913-929 of the Civil Code. Legal protection for adopted children in the distribution of inheritance according to Philipus M. Hadjon is divided into two, namely preventive legal protection and repressive legal protection. Preventive legal protection provides an opportunity for the child to submit objections or opinions before a government decision violates children's rights, the aim is to prevent violations of children's rights. Repressive legal protection is a legal protection for prosecution by the government whose purpose is to resolve disputes.

Keywords: **Position, Inheritance Rights, Adopted Children, and the Civil Code.**

1. INTRODUCTION

Adoption of children based on Article 1 number 2 of Government Regulation Number 54 of 2007 concerning the Implementation of Adoption states that: "A legal act that diverts a child from the environment of power of parents, legal guardians, or other people who are responsible for the care, education and upbringing of children the child, into the adoptive parent's family environment. The meaning of adopted child can be interpreted by adopting or adopting a child as a legal action that arises as a result of the transfer of a child from the power of parents, legal guardians or people who are responsible for the care, education and guarantee that the child must live with the adoptive parents. Muderis Zaini stated that the desire to have children is human nature, this is in line with the natural nature of humans who feel that children are part of the parents' flesh and blood which

then inherit the special characteristics of both parents. Having children is the goal of having a marriage to continue the lineage and preservation of wealth. Having children is a pride in the family. However, sometimes these goals cannot be achieved as expected. Some life partners, not a few of them have difficulty in obtaining offspring. The desire to have children seems so great. so that some of them adopted children.

According to Government Regulation Number 54 of 2007 concerning Implementation of Child Adoption Article 2 which says that child adoption is aimed at the best interests of the child in order to realize child welfare and child protection, which is carried out based on local customs and provisions of laws and regulations. In Indonesia, adopting or caring for other people's children has different objectives, procedures and legal consequences depending on the customs, religion or outlook on life adopted by the community itself. There are those that aim solely to continue offspring, there are those that aim to care for and welfare of children or have both goals, namely to continue offspring and for the maintenance and welfare of children. The rights of adopted children regarding property left by adoptive parents is an inheritance problem that occurs in many societies. Regarding inheritance rights that arise after a parent dies, there is a difference in the amount of inheritance obtained by adopted children and biological children. In Indonesia itself, in various regions, adopted children have the same legal position as their own children, also related to the right to receive inheritance from the property of adoptive parents when they have died, but in fact adopted children, even though the adoption process has legally gone through the procedure the existing laws are still not considered to be a family, so they are often seen as having no rights to the property left by the parents who adopted them.

The position of adopted children in the legal system of inheritance in Indonesia is divided into 3 (three) systems, namely:

1. In the legal system of Islamic inheritance, adoption does not have much influence on the child's blood relationship with his adoptive parents. Adopted children do not inherit the property of their adoptive parents. However, in order to protect the rights of the adopted child, the adoptive parents can give a will as long as it does not exceed 1/3 (one third) of the inheritance.
2. In customary inheritance law, when a husband and wife have no children and adopt a child, the couple can adopt a child. Adopted children have the right to inherit from the inheritance of their adoptive parents to the extent of joint property and are not entitled to inherit the inherited property of their adoptive parents with the same portion as that of their biological child. However, this also depends on customary rules in various regions such as patrilineal, matrilineal and parental societies.
3. In civil inheritance law, the position of an adopted child regarding the right to inherit the inheritance of his adoptive parents is not contained in the Civil Code at all. But the Civil Code regulates the parts obtained by the heirs which are often referred to as *legitieme portie*.

In adoption, there are two interested subjects, namely the adopted child and the adopting parents. Adoption is not intended only for the benefit of the adoptive parents, but the purpose of adoption is more aimed at the welfare of the child. Adopted children also have the right to guarantee the protection of their rights so that they are able to live their lives, participate optimally, and get protection from violence and/or different treatment. Laws related to inheritance based on inheritance law based on the Civil Code, customary law, inheritance law based on Islamic law are 3 (three) systems of legal rules currently owned by Indonesia in terms of inheritance. These different



inheritance laws in Indonesia result in confusion and/or confusion over which law is used when resolving inheritance cases when conflicts arise between heirs.

In fact, sometimes adopted children are still considered not part of the family, which in the end, the rights of adopted children are ignored. This does not rule out the possibility of problems such as the distribution of inheritance, because they assume that adopted children are not the heirs of the parents who adopt them. Implementation of child adoption in each region in Indonesia is different according to the law in force in the area concerned. The problem that often occurs in litigation is whether the adoption of the child is legal or not and the position of the adopted child as the heir of the adoptive parents. In the application of different inheritance laws in Indonesia, the author is interested in analyzing more deeply about the legal position of adopted children according to civil inheritance law. Based on the description above, the author will discuss further, with the title Legal Position of Adopted Children in Civil Inheritance Law Based on Article 832 of the Civil Code.

2. RESEARCH METHODS

The research method used by the author in this is normative legal research. Normative legal research or library law research methods are methods or methods used in legal research conducted by examining existing literature. This research is descriptive analytical. Descriptive, namely research aimed at describing a certain thing and at a certain time. The primary legal materials used in this writing are the 1945 Constitution of the Republic of Indonesia and Code of Civil law. The secondary legal materials are in the form of all legal publications which are not official documents. Publications on law include textbooks, legal dictionaries, law journals, and commentaries on court decisions. Tertiary legal materials used in this study are Big Indonesian Dictionary and Legal Dictionary.

3. RESULTS AND DISCUSSION

3.1 Legal Position of Adopted Children in Civil Inheritance Law Based on Article 832 of the Indonesian Civil Code

Basically, those who are entitled to become heirs are people who have blood relations with the heir and the wife/husband of the heir who is still alive when the heir dies, this is regulated in Article 832 of the Civil Code which reads: According to the law, those who are entitled to become heirs are blood relatives, both legal according to law and those outside of marriage, and the husband or wife who has lived the longest, according to the following regulations. If the blood relatives and the husband or wife who have lived the longest are not present, then all the inherited assets become the property of the state, which is obliged to pay off the debts of the deceased, as long as the price of the inherited assets is sufficient for that.

Based on the provisions of the article, if it is included in a category, there are four major groups who are entitled to inherit, namely:

1. Group I: husband/wife who has lived the longest and their children/offspring
2. Group II: heir's parents and siblings
3. Group III: family in a straight line up after the heir's father and mother, for example the inheritor's grandparents from both the mother's and father's sides
4. Group IV: inheritors' uncles and aunts from both the father's and mother's sides, descendants of uncles and aunts up to the sixth degree are counted from the heir, relatives of grandparents and their descendants, up to the sixth degree are counted from the heir.

This class of heirs shows who is the heir who takes precedence based on the order. That is, class II heirs cannot inherit the inheritance of the heir in the event that class I heirs are still there. Adoption of a child will affect the position of the adopted child's inheritance rights to his adoptive parents. In principle, the inheritance of this adopted child is returned to the inheritance law of the adoptive parents. Based on legal ideas, adoptive parents are obliged to make sure that after he dies, his adopted child will not be abandoned. Based on with That is in social life, adopted children can be given something from the inheritance to provide for life by means of a will. According to Abdulkadir Muhammad, heirs are everyone who has the right to the heir's inheritance and is obliged to settle his debts. Right and the obligation arises after the testator dies.

Based on the provisions in Staatsblad Number 129 of 1917 that men who are married and do not have male offspring in the male line, while those who can be adopted as children are only sons who are not married and who have not been adopted by another person. as a foster child. Basically, adoption of such a child is an act that equates the position of adopted children with biological children, both in terms of maintenance and up to inheritance. Whereas based on Article 12 Staatsblad Number 19 of 1917 the family relationship of the adopted child with the parents themselves is broken, so is the relationship with civil relations between parents and their relatives on the one hand also completely broken, with the exception mentioned in Article 14 if the adopted child it has the surname of Father who adopted/raised it. Adopted children can inherit from parents who have adopted them, but what is important is that they do not harm other existing heirs. An adopted child who is adopted verbally cannot inherit from the person who adopted him. However, a testamentary grant may be granted which does not deviate from the *Ligitime Portie* (absolute part).

If an adopted child is adopted by the District Court, he can inherit from the parents who adopted him with conditions depending on the region. According to the law of adoption through a court order, the status of the adopted child is the same as the biological child. The legal consequences in the distribution of inheritance are the same as for biological children as stated in Article 852 of the Civil Code. According to Article 830 of the Civil Code, namely, inheritance only takes place because of death, in this way the inheritance will only be opened if the heir has died. There are two ways to obtain inheritance according to civil law, namely as follows:

1. As heir according to law or *ab intestato*, According to the provisions of the law in Article 832 of the Civil Code, those who are entitled to receive a share of the inheritance are blood relatives, both legal and illegitimate and the husband or wife who has lived the longest.
2. Because they are appointed in a will (testament), in Article 899 of the Civil Code the owner of the property makes a will where his heirs are appointed in a will/testament.

In social life, adopted children can be given something from an inheritance for provisions to live by means of a will. A testamentary grant is a way for the owner of assets during his lifetime to state his final wish regarding the distribution of his inheritance to heirs which will only take effect after the heir dies. The definition of a will according to Article 857 of the Civil Code, namely a will or testament is a deed that contains a person's statement about what he wants to happen after he dies and can be revoked. With a testamentary grant, someone who is not entitled to inherit or who will not receive certain inherited assets, there is a possibility of getting it due to a message or *umanat*, a bequest grant from the heir while still alive.

According to the Civil Code there are restrictions in terms of making a will, namely regarding the size of the inheritance to be distributed to heirs which is called *ligitime portie* which is regulated in Articles 913-929 of the Civil Code. The purpose of making laws in determining



the legitimacy of this portie is to avoid and protect the child of the deceased from the tendency of the deceased to benefit other people. Legitimate portie (absolute part) is part of the inheritance or inheritance that must be given to the heirs in a straight line, regarding how the heir is prohibited from stipulating something whether in the form of a gift (grant) or a will, this is based on Article 913 of the Civil Code.

3.2 Legal Protection for Adopted Children in the Distribution of Inheritance

The adoption of a child that is carried out will certainly give rise to legal protection for the adopted child. Legal protection according to Philipus M. Hadjon is divided into two, namely preventive legal protection and repressive legal protection. Preventive legal protection provides an opportunity for the child to submit objections or opinions before a government decision violates children's rights, the aim is to prevent violations of children's rights. Repressive legal protection is a legal protection for prosecution by the government whose purpose is to resolve disputes. The purpose of protecting adopted children is to provide protection for adopted children so that the rights of these children can be fulfilled.

Adopted children themselves need to be protected because at this time there are many modes of crime of adoption carried out by adoptive parents for various reasons wanting to have offspring as successors in the family but in reality these children are not treated properly and are not considered like their own biological children . The form of legal protection for the inheritance of adopted children is shown in the following laws and regulations:

- a. Child adoption is not regulated in the Civil Code so that the Law on Child Adoption was born, namely Staatsblad Number 129 of 1917 which states that adopted children have civil relations legally and are equated in position as children born to adoptive parents, so that they are made as children born from adoptive parents' marriage and become the adoptive parents' heirs. Such a position and legal relationship, of course, that an adopted child has the right to inherit the inheritance of his adoptive parents by having inheritance rights in accordance with the legitime portie for all forms of inheritance and as the absolute heir of his adoptive parents as stipulated in Article 852 of the Civil Code. Staatsblad Number 129 of 1917 regarding child adoption resulted in the breaking of the relationship between the adopted child and his biological parents. Staatsblad provides restrictions on the right to inherit adopted children, namely adopted children only become heirs of the part that is not bequeathed. Adopted children can inherit their adoptive parents, but most importantly it does not harm other existing heirs. Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 in conjunction with Article 4 Government Regulation Number 54 of 2007, adoption does not result in the breaking of the blood relationship between the adopted child and his biological parents. Adopted children continue to inherit their biological parents with the position of inheritance rights according to the provisions of Article 852 of the Indonesian Civil Code. The inheritance system adopted by the Civil Code is a parental or bilateral system but there is also an inheritance system according to a will (testament) as stipulated in Article 875 of the Civil Code. An adopted child has the right to inherit from his adoptive parents as does a biological child who is born in a legal marriage. The legal consequences in the distribution of inherited assets apply the same as biological children as stated in Article 852 of the Civil Code. According to Article 830 of the Civil Code: Inheritance only takes place because of death. The law recognizes two ways to obtain an

inheritance, namely: ab intestato (heirs according to the law), in Article 832 of the Civil Code and testamentarily (heirs because they are appointed in a will/testament) in Article 899 of the Civil Code. The owner of the property makes a will in which the heirs are appointed in a testament.

- b. The position of adopted children is reviewed according to the Compilation of Islamic Law (KHI) in the distribution of inheritance. In the Islamic Law Compilation (KHI) the grouping of heirs is regulated in Article 174. The position of an adopted child according to the Islamic Law Compilation (KHI) is still considered a legitimate child based on a court decision by not severing the bloodline relationship with his biological parents. Adopted children according to Islamic law are not entitled to inherit the legacy of their adoptive parents, because inheritance in Islamic law is the basis of inheritance caused by 2 things, namely blood relations and marriage relations. Guarantees for adopted children in terms of obtaining the assets of their adoptive parents, the adoptive parents can provide grants or can also be given through a will to their adopted children. Article 209 paragraph (1) and (2) of the Compilation of Islamic Law (KHI) explains that adoptive parents who do not receive a mandatory will are given a mandatory will of up to 1/3 of the adopted child's inheritance, for adopted children who do not receive a bequest, a will is given. is obligatory, as much as 1/3 of the inheritance of the adoptive parents. Second opinion of Nasution, generally between adopted children and adoptive parents creates legal consequences. Thus, in the above case there is or does not have a will, the grandchild (adopted child) is given as many as 1/3 of the inheritance of the adoptive parents (grandparents). and adoptive parents cause legal consequences. In the case above whether or not there is a will,
- c. But this needs to consider the feelings of other children or grandchildren of the adoptive parents.
- d. The position of an adopted child is reviewed according to Government Regulation Number 54 of 2007 where the regulation includes guidelines for implementing adoption as well as the rights possessed by adopted children to prevent irregularities which in the end can protect and improve the child's welfare for the future and in the best interests of the child. child.
- e. The position of adopted children is reviewed according to Customary Law where the Customary Law system is a living system and is not written in the form of legislation. The division of inheritance for adopted children when viewed from customary law depends on customary law that applies to local customs that apply to the family nature and inheritance system, for example Javanese custom of adoption does not break the relationship between the adopted child and biological parents so that the adopted child gets inheritance from adoptive parents and biological parents, while the Minahasa Customary appointment results in a break with the biological parents so that they only get inheritance from their adoptive parents by carrying the new family name.
- f. Adoption through the Court is a form of protection against the legal position of adopted children, because with the court's decision the adopted child has the same status as biological children in the aspects of education, inheritance and so on.



4. CONCLUSION

The legal position of adopted children in civil inheritance law is based on Article 832 of the Civil Code, namely based on Article 832 of the Civil Code those who are entitled to become heirs are blood relatives, both legal according to law and those outside of marriage, and the husband or wife who has lived the longest. Based on this, the Civil Code does not specifically regulate the inheritance rights of adopted children, but they are entitled to a share through a will grant. The Civil Code only regulates the recognition of children out of wedlock. The Netherlands once regulated it in Staatsblad No. 129 of 1917 which applies to the Chinese group. Based on the Civil Code there are restrictions in terms of making a will, namely regarding the size of the inheritance to be distributed to heirs which is called legitime portie which is regulated in Articles 913-929 of the Civil Code. The purpose of making laws in determining the legitimacy of this portie is to avoid and protect the child of the deceased from the tendency of the deceased to benefit other people. Legal protection for adopted children in the distribution of inheritance is regulated in laws and regulations, namely in the Civil Code, Staatsblaad Number 129 of 1917, SEMA No.6 of 1983, Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 regarding Child Protection, Government Regulation Number 54 of 2007 concerning Implementation of Child Adoption.

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