

THE STATUS OF ADOPTED CHILDREN IN INHERITANCE ACCORDING TO THE CUSTOMARY LAW OF KAILI TRIBE IN CENTRAL SULAWESI**Aifan¹, Marini Citra Dewi²**¹Tadulako UniversityJL. Soekarno Hatta Km. 9, Tondo, Palu, Central Sulawesi, 94148, Indonesia
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Telp./Fax: +62-451-45446 Email: marinicitradewi11@gmail.com*Submitted: Dec 02, 2020; Reviewed: Dec 02, 2020; Accepted: Dec 23, 2020***Abstract**

One of the goals of marriage is to achieve happiness and continue offspring. As stated in the provisions of Article 1 of Law Number 1 of 1974, that the purpose of marriage is to form a happy family and to have a close relationship with offspring. But in reality, it is not uncommon in a marriage or a family not to get offspring for various reasons, therefore it is done by taking over someone else's child which is then put into a family member as a substitute for children that cannot be obtained naturally. In this research, the juridical empirical approach method is used, while the research specification is descriptive analysis with data obtained through literature and field results. The position of adopted children as heirs of their adoptive parents and the distribution of inheritance to adopted children based on the Kaili customary law in Central Sulawesi are very important. Adopted children are often in a difficult position. Adoptive parents are always careful in the implementation of the distribution of inheritance to adopted children, the goal is to avoid inheritance disputes between their heirs, but must always adhere to the customary law adopted in the community. As for the problems that the author raises regarding 1, How is the inheritance system for adopted children in customary law? 2, What is the position of adopted children in inheriting the inheritance according to the Kaili customary law in Central Sulawesi? Although the position of adopted children is the same as that of biological children as family members of adoptive parents, in certain cases, for example, in obtaining the assets of their adoptive parents according to customary inheritance law in each region in Indonesia is not the same.

Keywords: *Adopted Children; Customary Law; Heirs; Kaili Tribe***INTRODUCTION**

In today's development, the benchmark for individual happiness is not only based on material, there are things that are quite important besides material, for ex-

ample, children. Children can be used as benchmarks for a husband and wife in life. Children are considered to be descendants of the offspring, however, not all individuals can be gifted with offspring. There

are some people who cannot have children, for this reason, there are some parties who wish to adopt children so that they can have descendants, not only as descendants but also as heirs in a family. Adopting children in the current era is not taboo anymore and has even become the solution most often taken by married couples.

In everyday life, humans are destined to live in pairs in order to form a family consisting of a husband, wife, and generally a child or offspring resulting from their marriage. In Indonesia, especially in the life of indigenous peoples, the purpose of the birth of a child who is the result of marriage is to continue and connect the relay of descendants and preserve the family's assets. In indigenous people's life, having a child is a gift in a family.

But not all families can enjoy the feeling of raising a child like other families. In some families, it is the power of God, where the desire to have children even though they have been married for years is never blessed, while the desire to have children is very strong. So as a consequence, the descendants of the family will be threatened with extinction and break up if no one continues the family tree and family relatives.

Adoption, in general, is an act of taking someone else's child based on the prevailing legal provisions in the community concerned¹. Meanwhile, according to Soepomo, the act of adopting a child is a legal act that releases the child from kinship with the parents themselves who enter the child into the family of the adoptive father so that the child is like a biological child. The opinion of Soepomo above suggests that an adopted child has the same position as a biological child in certain matters.²

Adoption is common throughout Indonesia, but the method varies according to local customary law. This, in turn, has an impact on the consequences of adopting the child, namely breaking the kinship between the adopted child and their biological parents and there are those who do not break the kinship relationship between the adopted child and their biological parents.

In each region there are different ways of adopting children, for example in Central Sulawesi, adoption of children is almost always within the clan or large kinship and close family members, although in recent times it is also permissible to adopt children who come from outside

¹ Arif Gosita, *Masalah Perlindungan Anak*, Akademi Pressindo, Jakarta, 1998, hal. 44.

² R. Soepomo, *Bab-bab Tentang Hukum Adat*, Pradnya Paramita, Jakarta, 2000, hal. 103.

their relatives with the consideration that they will die without leaving children and losing children and will lose their own offspring.

According to Article 1 point 2 of Government Regulation No.54 of 2007 concerning the Implementation of Adoption, an adoption is a legal act which diverts a child from the sphere of authority of parents, legal guardians or other people who are responsible for the care, education and raising of children. into the family environment of the adoptive parents.

In the Kaili customary law community, the family ties are patrilineal, which is based on the father's lineage. This has the consequence of a very important role for boys as the successor of the offspring for their families, whereas this is not the case for girls. As the son's successor, he has an obligation to be responsible for the worship of his ancestors, therefore he has the right to inheritance from his parents. Furthermore, those who do not have sons will often commit the act of adopting children as successors to their family descendants. A boy becomes the hope of his parents.

The family has an important role in human life as a social being and is the smallest group of people consisting of a father, mother and child. In reality, these

three elements are not always fulfilled. So that sometimes there is a family that doesn't have children. Thus, seen from the existence of the family as a group of social life, it causes fewer people who want children, for emotional reasons, so that there is a movement of children from one family group to another. The act of taking someone else's child to be cared for and treated as one's own biological child based on mutually agreed terms and is legal according to the applicable law in the community concerned with adoption.

As for adoption, it will also result in inheritance for the adopted child itself. This development certainly raises its own problems, both regarding the adoption of the child and his inheritance. Based on the division of customary law areas in Indonesia regarding adoption, there is no uniformity. This is directly related to the applicable family law in each region. Based on the background of the problem, the author summarizes the problem to be examined as follows:

1. What is the system of inheritance that applies to adopted children in customary law?
2. What is the status of an adopted child in inheritance according to the Kaili customary law in Central Sulawesi?

Method

This study uses the following research methods :³

1. Approach Method

The author uses the Juridical Normative approach, which is a study that focuses on the examination of positive laws which are the legal basis for the existence of research objects, as well as data collection by collecting, researching and reviewing various library materials (secondary data) in the form of primary legal materials. , secondary, or tertiary.

2. Research Specifications

The specifications of this research are descriptive-analytical, namely analyzing the object of research, by describing situations and problems to obtain an overview of the situation and the existence of the object of research, by presenting the data obtained as they are, which is then carried out an analysis which results in several conclusions.⁴

Research Stages / Materials

Library research, which is a data collection technique obtained by using

secondary data sources, which consist of :⁵

- 1) Primary legal materials, namely binding legal materials.
- 2) Secondary legal material, namely secondary legal material in the form of writings of experts in the field of national law such as treaty matters, legal journals on the law of traditional inheritance of Kaili in Central Sulawesi
- 3) Tertiary legal materials in the form of a legal dictionary, language dictionary, encyclopedia, and other related sciences.
- 4) Field Research, which is a study conducted to collect, research, reflect on primary data obtained directly in the field to support secondary data.

Data Analysis

Legal material is analyzed based on the principles of legal science interpretation of the legal regulation text. Then, a conclusion is drawn using the deductive logic of literature research to be analyzed qualitatively by referring to the existing norms, principles, and laws and regulations as positive legal norms, to achieve

³ Abdullah Sulaiman,2008.*Metode Penulisan Ilmu Hukum*,(Pascasarjana Universitas Islam Jakarta,cetakan kedua,Jakarta .h 2

⁴1986.Pengantar Penelitian Hukum.Universitas Indonesia, UI Press.Jakarta. h.9-10

⁵ . Soerjono Sukanto,1995. Penelitian Hukum Normatif,Suatu Tinjauan Singkat.raja Grafindo Persada.Jakarta, h.13

clarity on issues discussed by not using formulas. Then primary data and secondary data obtained from research are arranged in an orderly and systematic manner, then analyzed to draw a conclusion.

DISCUSSION

Adopted Child Inheritance System In Customary Law

Inheritance in the customary heirs' system consists of the original property of each husband and wife as well as marital property. Customary inheritance law is a set of rules governing the succession and disposal of property or inheritance from one generation to another, both relating to property and relating to material rights (material and non-material)⁶. Adopted children in the sense of customary law can we take from various opinions of scholars of customary law, including Imam Sudiyat in his book *Hukum Adat Sketsa Asas*, it is written that adoption of children throughout the archipelago is the act of adopting/adopting children from outside into relatives so that there is a social bond which is the same as that of biological nationality⁷. According to Imam Sudiyat,

the act of adopting a child in child law occurs when the creation of a social bond between the adopted child and his adopted family.

According to Hilman Hadi Kusuma's view, he defines adopted children as children of other people who are considered their own children by adoptive parents legally according to local customary law, because the purpose is for the continuation of offspring or the maintenance of household assets⁸. Hilman Hadi Kusuma's opinion defines that a legitimate adopted child is someone else's child who has been recognized by the adoptive family and local customary law.

According to Djojodigono, heredity is ancestral unity, meaning there is a blood relationship between one person and another. Two or more people who have blood relations. So the only ancestor is the offspring that one becomes another person⁹. This opinion concludes that descent is an essential element for a family, clan, tribe, and relatives if they want the successor generation of their previous ancestors.

⁶ Dr St, Laksanto Utomo, *Hukum Adat Raja Grafindo Persada*, Jakarta hlm. 97

⁷ Imam Sudiyat, *Hukum Adat Sketsa Asas*, cet.ke-4 (Yogyakarta: Liberty, 2000), hlm.102.

⁸ Hilman Hadi Kusuma, *Hukum Perkawinan Adat*, (Bandung: tnp, 1977). Hlmn :45

⁹ Soerojo Wignodipero, *Pengantar dan Asas-Asas Hukum Adat*, (Bandung: Alumni, 1973), hlm.125.

In general, in Indonesia, the motivation for adoption according to customary law, among others :

1. Having no children. This is a general motivation because it is the only way for those who do not or do not have children, whereby adopting children as a complement to happiness and completeness and to enliven the household;
2. Out of compassion for the children, it is because the child's parents are unable to provide for him. This is a very positive motivation because in addition to helping the child it also helps the burden of the child's biological parents as long as it is based on a sincere agreement between the adoptive parents and the biological parents;¹⁰

The adopted child has the right to inherit the property left by his adoptive parents which is not the property inherited by the adoptive parents. In carrying out the division of inheritance property based on applicable customary law (Sossora Customary Law), inheritance property without dispute shared by the heirs through deliberation between them, and inheritance property disputed by the heirs

through the deliberations of the Local Customs Council.

Broadly speaking, the legal consequences of adoption are very clear because it is regulated in Indonesian legislation. The legal consequences will always arise when a family decides to adopt a child because this action will create rights and obligations to the adopted child.

This hereditary system can be distinguished in three shades:

- a. The Patrilineal system, which is a system of descent drawn according to the line of the father, where the position of men is more prominent than the position of women in inheritance.¹¹
- b. A matrilineal system, which is a hereditary system drawn according to the maternal line, where the position of women is more prominent than the position of men in inheritance.
- c. Parental or Bilateral System, namely a hereditary system drawn according to the line of parents, or according to the two-sided line (father-mother), where the position of men and women is not differentiated in inheritance.

¹⁰ Zaini Mudaris, *Adopsi Suatu Tinjauan Dari Tiga Sistem Hukum*, (Sinar Grafika, Jakarta. 1992), hal.61.

¹¹

<https://adityoariwibowo.wordpress.com/2013/03/18/sistem-pewarisan-masyarakat-adat-di-indonesia/>.html downloaded at 16 February 2020

The customary inheritance law of the people in Indonesia has five principles of customary inheritance law, namely; 1. The basis of divinity and self-control; 2. Fundamentals of equality and common rights; 3. Fundamentals of Harmony and family; 4. Basis of Deliberation and consensus; 5. The principle of justice.¹²

Customary law is generally based on a concrete mindset, so the matter of distribution of inheritance is usually the handover of certain inheritance items to a certain heir. Apart from that, there is also a system of transferring inheritance assets that are not divided or not divided and the transfer of inheritance assets whose utilization is divided.

Adopted Child Status In Inheriting Inheritance Property According To The Kaili Customary Law Existing In Central Sulawesi

One of the wisdom of marriage is to create a balance of offspring, outwardly husbands and wives generally crave offspring, namely children who are the result of marriage as the successor of the family, children are the outpouring of love from parents who will later become heirs. In reality, many married couples who are already established and in excess econo-

mies have not succeeded in obtaining offspring, while on the one hand, husband and wife couples who are not yet economically ready have not yet fulfilled a lot of offspring.

The act of adopting a child is not an act that occurs at one time, as is the case with the delivery of goods, but is a series of incidents of kinship that shows love, full awareness and all the consequences resulting from the adoption of the child. The legal position of his adopted children in the Compilation of Islamic Law, based on Presidential Instruction Number I of 1991 explains that adopted children are children who, in terms of maintenance for their daily life, education costs and so on, shift responsibility from their original or biological parents to their adoptive parents based on the Court's decision.

When the adoptive parents are divorced, the adoptive rights remain the same as the unborn child whose rules are clear. the break or fall of the hadhanah period until the child is an adult, or is married or is able to stand on his own, and before that happens then the child is still under the care of the parents, even if only the adoptive parents. The right of heirs of adopted children from adoptive parents who have divorced according to Islamic law.

¹² . Prof. Dr Zaenudin Ali, *dkk. Hukum Waris di Indonesia*; YAYASAN Masyarakat Indonesia Baru

Adopted children cannot be recognized as the basis and cause of inheritance, because the basic principle in Islamic inheritance law is the existence of blood/lineage/descent. In other words, the adoption of a child according to the law of inheritance does not bring legal effect on the status of the adopted child, that is, if it is not the child himself, can not inherit from the person who has adopted the child. So as the solution according to the compilation of Islamic law is by way of giving "obligatory will" provided that it should not be more than 1/3 (third). The position (status) of the adopted child according to the Compilation of Islamic Law is still a legitimate child based on the court's decision by not severing the lineage/blood relationship with the biological parents because the principle of adoption according to the Compilation of Islamic Law is a manifestation of faith that carries a humanitarian mission form of caring for others as a child and the nature of child-rearing by nurturing in its growth and development with adequate all needs.

Adopted children are another person child legally certified as his own child. Adoption is a way of establishing a relationship between parents and children regulated by law.

Inheritance Of Adopted Children In The Perspective Of Islamic Compilation Law

Adoption does not bring legal consequences in terms of blood relationship, guardian relationship, and inheritance of heirs and adoptive parents. He remains the heir of his biological parents and the child still bears the name of his biological father.

Adopted children do not have the right to receive a share of the tirkah based on the obligatory will of the adoptive parents. But if the adoptive parents bequeathed, then the adopted child has the right to receive a share of the property according to his will as long as it does not exceed one-third of his parents' property. If it exceeds one-third of the property of his parents, then he must obtain the consent of the heirs.

To protect the rights of the adopted child, the adoptive parents can give a will as long as it does not exceed 1/3 of the estate, this is regulated in Article 209 Compilation of Islamic Law. In Islamic law, in principle, the main thing in Islamic inheritance is the existence of blood relations. Article 171 letter c Compilation of Islamic Law, heirs are people who at the time of death have a blood relationship or marital relationship with the heirs, are

Muslims and are not prevented by law to become heirs.

Inheritance Of Adopted Children In The Perspective Of Civil Law

The legal consequence of adoption is that the child legally acquires the name of the adoptive father, is used as a child born to adoptive parents and becomes the heir of the adoptive parents. This means that due to the appointment, all civil relations are cut off, namely between the biological parents and the child. Children who are legally adopted through a court decision have the same position as biological children. So that the person concerned has the right to inherit the inheritance of his parents, provided that the adoption of the child is carried out legally through the court.

Pursuant to the provisions of Article 957 of the Civil Code, it is stated that: A will grant is a specific determination of a will by which the heir to one or more gives some of his goods of a certain type such as for example all his goods move or do not move or grant the right to use over all or part of his estate.

In this definition, it is found that the rights of the adopted children who are transferred from the original parents to the adoptive parents only get maintenance for

their daily life, education costs, and so on. Meanwhile, self-care in accordance with Article 1 letter g is stated as follows: Child care or hadhonah is an activity to raise, care for, and educate children to adulthood or be able to stand on their own.

Inheritance Of Adopted Children In The Perspective Of Kaili Tribe Customary Law

The legal position of the adopted child means that the recognition of the existence of the adopted child in the community can be considered as the child of the adoptive parent or the child of the biological parent, whether the adoptive parent differentiates from their biological child or not, which in this case can be seen from various sides line of descent. Adoption is basically an act of taking someone else's child into his own family so that between the person who adopts the child and the adopted child, there is a family relationship similar to that between parents and biological children Based on customary law: Adopted children are children of other people who are considered as a child by the adopted parents legally in accordance with local customary law. The determination of inheritance for adopted

children depends on the applicable customary law.

Adat Kaili Ledo & rumpun kaili doi¹³

- a. The position of the adopted child is considered as a biological child by the adoptive parents. Regarding the position of the adopted child against the rights of the heirs, most people state that the adopted child is the heir. Second, the process of division of property to an adopted child is automatically divided when the heir dies in a position aligned with the biological child.
- b. Inheritance property from the adoptive parents are given as a whole both palimony property and personal property with portions according to the wishes of the adoptive parents. The inheritance law that is applied is the Islamic law¹⁴

Adat Kaili to Ray & Kaili Unde¹⁵

- a. The position of the adopted child in inheritance if it is together with the biological child is the right to inherit the assets of the adoptive parents, but only to the extent of the palimony assets of the child.

- b. If no biological children are entitled to inherit the assets of their adoptive parents. In this case, the adopted child has the role of a biological child. Adopted children have the right to the palimony property of the adoptive parents and the original property is the right of the relatives of the adoptive parents.¹⁶
- c. Can be revoked and cancelled

Adat Kaili Da'a, & Rumpun Kaili Inde,¹⁷

- a. The distribution of inheritance can be done while the heir is still alive or after the heir has passed away. Most of the adoptive parents make an appointment or distribution of the inheritance to their children while the inheritor (parent) is still alive. However, the official handover of inheritance can only be done when the heir (parent) has passed away¹⁸

Adat Rumpun Kaili Moma & Rumpun Kaili Ija¹⁹

- a. The position of the adopted child is that some are not heirs and some are heirs of his adopted family. Meanwhile, in

¹³ . Hambali, S.Sos, M.Ap. (Chairman of Donggala Customs Council). *Interview at, 4 Agustus 2020*

¹⁴ Tayeb (Public Figure Banawa Selatan) *interview at 21 Juli 2020*

¹⁵ Subhan, SH, (Headmen of Towale), *interview at, 23 Juli 2020*

¹⁶ Arlin (Public Figure of Tawaili), *interview at 28 Agustus 2020*

¹⁷ Wahyu Safaat (Chairman of Palu Customs Council) *interview at 21 Agustus 2020*

¹⁸ Wahid Mardani (Member of Customs Council) *interview at 14 Agustus 2020*

¹⁹ Ajuz L. Tanara (Headmen of Loly Salura). *interview at, 23 Juni 2020.*

the implementation of the division of inheritance for the adopted child is not entitled to inherit the inheritance from the adoptive parents, but for the distribution to the adopted child through a grant.²⁰

CONCLUSION

Based on the results of the discussion that has been previously described, the following conclusions can be drawn:

1. The legacy of the heirs in the customary heirs' system consists of the original property of each husband and wife as well as marital property. Customary law of inheritance has two systems, namely inheritance property which is divided into heirs and inheritance property which is not divided into heirs, in other words, it is a property that is shared by all heirs. Transfer of property rights other than in the form of inheritance (customary law *soссора*) is also known as *pompedekei* (will) and the giver (grant)
2. The position of the adopted child inherits from the deceased adoptive father and leaves the inheritance if he is one of the heirs. The implementation of the division of inheritance in society, whether the distribution of inheritance

through the deliberations of heirs, deliberations of the Customary Council, through state courts and through religious courts, found dualism of inheritance law that some choose Islamic inheritance law and others prefer through customary law inheritance in society. The distribution of inheritance property is not yet known in the implementation of the customary law of inheritance. Inheritance for adopted children both western civil law (BW), Islamic Law, Customary Law have the same power, meaning one can choose which law to use to determine the inheritance of adopted children.

Suggestion

1. The mechanism for adoption of children should not only be through customary law but be complemented by a court decision and registered with the Civil Registry Service that the child has been adopted from the adoptive parents so as not to cause problems in the future and have permanent legal force for the adopted child.
2. The government should make a national inheritance law on inheritance issues given that there are often disputes between heirs specifically for adopted children because there are no definite

²⁰Moh. Yamin (Member of Customs Council of Kulawi) *interview at 12 Agustus 2020*

rules, and in the making is an opinion and reference on the collection of inheritance systems in each area to be codified as law.

BIBLIOGRAPHY

Books;

Abdullah Sulaiman, 2008. *Metode Penulisan Ilmu Hukum*, (Pascasarjana Universitas Islam Jakarta, cetakan kedua, Jakarta .

Dr. St, Laksanto Utomo, *Hukum Adat Raja Grafindo Persada*, Jakarta .

Soerjono Sukanto, 1995. *Penelitian Hukum Normatif, Suatu Tinjauan Singkat*. Raja Grafindo Persada. Jakarta

....., 1986. *Pengantar Penelitian Hukum*. Universitas Indonesia, UI Press. Jakarta.

Soerojo Wignjodipero, *Pengantar dan Asas-Asas Hukum Adat*, (Bandung: Alumni, 1973).

Zaini Mudaris, *Adopsi Suatu Tinjauan Dari Tiga Sistem Hukum*, (Sinar Grafika, Jakarta. 1992).

Ter Haar, *Asas-asas dan Susunan Hukum Adat*, (Pradnya Paramita, Jakarta), 1994.

Amir Mertosedono, *Tanya Jawab Pengangkatan Anak dan Masa-*

lahnya, Dahara : Prize, Semarang, 1987.

Soepomo, *Bab-bab tentang Hukum Adat*, (Pradnya Paramita, Jakarta), 1994.

Bastian Tafal, *Pengangkatan Anak Menurut Hukum Adat Serta Akibat-Akibat Hukumnya di Kemudian Hari*, Rajawali Pers, Jakarta, 1989

Gosita, Arif, *Masalah Perlindungan Anak*, Akademi Pressindo, Jakarta, 1998.

Haar, Ter, 1986, *Asas-asas dan Susunan Hukum Adat*, Diterjemahkan oleh K. Ng.

Soebekti Proesponoto, Pradnya Paramita, Jakarta, 1986.

Hadi Kusuma, Hilman, *Hukum Waris Adat*, Citra Aditya Bakti, Bandung, 1990.

Harahap, M. Yahya, *Kedudukan Janda, Duda dan Anak Angkat dalam Hukum Adat*, Citra Aditya Bakti, Bandung 1993.

Prof. Dr. Zaenudin Ali, dkk. *Hukum Waris di Indonesia*; YAYASAN Masyarakat Indonesia Baru

Internet;

<https://adityoariwibowo.wordpress.com/2013/03/18/sistem-pewarisan-masyarakat-adat-di-indonesia/>.html accessed on 16 July 2020

<https://forumadopsianak.wordpress.com/2012/04/11/pengangkatan-anak/html>
accessed on August 1, 2020

Legislation;

Central Sulawesi Governor Regulation
No. 42 of 2013 concerning Guide-
lines for Customary Courts in Cen-
tral Sulawesi
