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Legal Position Of Adopted Children Regarding Inheritance Rights	
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<p style="text-align: center;">ABSTRACT :</p> <p><i>Adoption is a legal act that transfers a child from the sphere of authority of parents, legal guardians, or other persons responsible for the care, education and raising of the child, into the family environment of the adoptive parents. Inheritance is an integral part of family law which plays an important role in a social system. Research Objectives: To determine the process of the mechanism of adoption. To determine the rights of adopted children to inheritance with adoptive parents and to determine inheritance rights in Islamic law. Research method, The research used is legal research or Normative Juridical (Legal Research), research conducted to find the truth of coherence, namely examining the application of legal rules, legal norms and applicable legal principles which are then connected to problems that become legal issues. Conducting legal research has various approaches that can be chosen. For this thesis, the approach chosen by the author is the Case Approach carried out by conducting a review of cases related to the legal issues faced. Primary data sources are taken from court decisions, Secondary Data refers to literature and other documents. In Discussion: 1. Adoption is permitted by prioritizing the welfare of the child and the adoption of the child without changing the status of the lineage and religion, carried out out of a sense of social responsibility to care for, nurture and educate with love like one's own child. Adoption can only be done for the best interests of the child and is done based on local customs and applicable statutory provisions. 2. The status or position of an adopted child is said to be equal to a biological child, so the adopted child has the right to inherit from his adoptive parents so that the adopted child is included in the class of legitimate children in the Civil Code. Adopted children do not create a lineage/inheritance relationship with the parents of the adopted child, so that adoptive parents who do not receive a will are given a mandatory will of up to 1/3 of the inheritance of their adopted child, likewise adopted children who do not receive a will are given a mandatory will of up to 1/3 of the inheritance of their adoptive parents (Compilation of Islamic Law). 3. Regarding inheritance rights, Islamic law regulates this through gifts or grants from the foster father, or through a mandatory will if the foster father did not provide a gift to the foster child during his lifetime. Therefore, it is clear that adopted children, under Islamic law, cannot inherit the same rights as biological children. This is in accordance with the guidance in the Qur'an and the Hadith of the Prophet Muhammad SAW.</i></p>	
<p>Keywords: <i>Adopted children, inheritance, Islamic law, civil law.</i></p>	

INTRODUCTION

In marriage, of course, one hopes for the presence of offspring, namely biological children as the next generation. However, in reality, there are still many marriages that do not have children. For couples who do not have biological children, it is possible to adopt a child. Adoption, often also termed adoption. The general definition of adoption is an act of transferring a child from the authority of his biological parents to the authority of his adoptive parents, to be

cared for and treated as his own biological child, so that the adopted child automatically has the same rights and status as a biological child¹. According to Wirjono Prodjodikoro, an adopted child is a person who is not a descendant of two husbands and wives, who is taken and cared for and treated as his own descendant and the legal consequence of the adoption is that the child has a legal status towards the adopter, which is not at all different from the legal status of his own descendant.²

Meanwhile, according to Hilman Hadikusuma, an adopted child is another person's child who is considered their own child by the adoptive parents officially according to local customary law, due to the purpose of continuing the lineage and/or maintaining household assets.³ Government Regulation Number 54 of 2007 concerning the Implementation of Child Adoption provides an understanding of child adoption, namely: Child adoption is a legal act that transfers a child from the sphere of authority of parents, legal guardians, or other people responsible for the care, education and raising of the child, into the family environment of the adoptive parents. Child adoption aims to be in 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. Inheritance is an integral part of family law which plays an important role in a social system. This is because inheritance law itself is the law that regulates the order of family and community life. Children are a trust and gift from God Almighty, endowed with the inherent dignity and worth of a complete human being, thus possessing the same basic rights as other individuals. Children are among the group of individuals who remain closely dependent on their parents and require protection and care, including protection of their rights and interests. In reality, many adopted children are unprotected. Adoptions are not carried out in accordance with procedures and are not in the best interests of the adopted child. It is also not uncommon for adoptive parents to neglect their adopted children.

METHODS

Research methods play an important role in the creation of a scientific work, namely to examine the object so that it can be analyzed correctly. The research method will be applied by the author with the aim of providing scientific research results on the object of study that can be

¹Zaini Muderis, *Adopsi Suatu Tinjauan dari Tiga Sistem Hukum*, Jakarta : Bina Aksara, 2001, 4

²Soerjono Soekanto, *Intisari Hukum Keluarga*, Bandung : PT. Citra Aditya Bakti, 1989, 52

³Hilman Hadikusumah, *Hukum Perkawinan Indonesia Menurut Perundangan Hukum Adat dan Hukum Agama*, Bandung : Alumni, 149

scientifically accounted for. The methods used in writing this thesis are as follows: 1. Research Type. The type of research used is legal research or Normative Juridical (Legal Research), research conducted to find the truth of coherence, namely studying the application of legal rules, legal norms and applicable legal principles which are then connected to problems that become legal issues. 2. Research Approach. The problem approach in a legal research is used to obtain information from various aspects regarding the issue being tried to find an answer.⁴ Conducting legal research has various approaches that can be chosen. For this thesis, the approach chosen by the author is the Case Approach, carried out by conducting a review of cases related to the legal issue at hand. The cases reviewed are cases that have obtained a court decision with permanent legal force. The main thing that is examined in each decision is the judge's considerations in arriving at a decision so that it can be used as an argument in solving the legal issue at hand.⁵

Discussion

A. Mechanism Appointment Child

A married couple adopts a child to continue their lineage if they are unable to produce children in their marriage. Adoption is intended to provide care in old age, manage inheritances, and provide the next generation. Adoptions by a married couple will naturally comply with established procedures and regulations.

That before promulgation Constitution No. 3 Year 2006 Religious Courts in handling child adoption cases are based on the interpretation of Article 49 paragraph (1) letter b of Law N0. 7 Year 1989, Chapter 171 letter (h) And Chapter 209 Compilation Law Islam (KHI), Article 7 paragraph (1) of the Minister of Religion Regulation No. 2 of 1987 as well as the opinion of fiqh experts and MUI fatwas, however, after the birth of Law of the Republic of Indonesia No. 3 of 2006, adoption for religious children Islam become authority Court Religion. A A married couple who wish to adopt a child must submit an application for adoption as in a *voluntary case* (application).

Applications for adoption are regulated in Article 49 letter a number

⁴Peter Mahmud Marzuki, *Penelitian Hukum*, Jakarta: Kencana Prenanda Media Group, 47.

⁵H.B Sutopo, *Metodologi Penelitian Kualitatif*, Surakarta, Sebelas Maret University press, 2002. 78

(20) Explanation of Law No. 3 of 2006 concerning Amendments On Constitution No. 7 Year 1989 About Justice Religion and Article 171 letter h Compilation of Islamic Law. In the right to adopt a child must pay attention to what adoptive parents may and may not do. To avoid undesirable things, Islamic law regulates the conditions as follows :

- a. No decide connection blood between the child who raised with his biological parents and family.
- b. Adopted children do not act as heirs of their adoptive parents but rather as heirs of their biological parents. Likewise with adoptive parents.
- c. The property relationship between adopted children and their adoptive parents is only permitted in the form of wills and gifts.
- d. Child lift no may use Name person old lift it directly except as a means of identification or address.
- e. Parents cannot act as guardians in the marriage of their adopted children.
- f. Between adopted children and parents Adoptive parents should both be Muslims, so that the child remains true to the religion he adheres to.⁶

That child adoption is permitted by prioritizing the welfare of the child and the adoption of the child without changing the status of the child's lineage and religion, is carried out out of a sense of social responsibility to care for, raise and educate the child with love like one's own child. In the provisions of Article 39 paragraphs 1,2 and 3 of the Law Number 23 Year 2002 About Protection Child main

In essence, adoption can only be carried out in the best interests of the child and is based on local customs and applicable laws. Adoption does not sever the blood relationship between the adopted child and their biological parents, and prospective adoptive parents must be of the same religion as the prospective adopted child.

That based on the legal considerations of the application for the determination of child adoption in case number: 0111/ Pdt.P/2019/PA. Ngj in

⁶Jurnal Departemen Sosial Republik Indonesia, *Pedoman Pelaksanaan Pengangkatan Anak*, Jakarta, 2005.

the Copy of the Decision Dated August 27, 2019, the main legal considerations of which explain that the application for child adoption has been regulated in UURI No. 3 of 2006 concerning Amendments to Law No. 7 of 1989 concerning Religious Courts, the Application is a married couple who have not been blessed with children and are responsible for caring for, raising and educating a child with full affection like their own child, Child adoption is permitted by prioritizing the interests of the child's welfare.⁷

In Law No. 23 of 2002, specific regulations regarding child adoption are included in the second part regarding child adoption in Articles 39, 40 and 41. Meanwhile, in Government Regulation No. 54 of 2007 concerning the Implementation of Child Adoption, the provisions regarding the requirements for children to be adopted are: regulated in Chapter Article 12:

- 1) Condition child Which will fostered covering :
 - a. Not yet aged 18 (eight) twelve) years;
 - b. It is child displaced or abandoned;
 - c. Is at in parenting family or Institution childcare and;
 - d. Need protection special.
- 2) Age child lift as intended on paragraph (1) letter a includes:
 - a. Child Not yet aged 6 (six) year is priority main;
 - b. Children aged 6 (six) years up to under 12 years old (twelve) years as long as there is an urgent reason;
 - c. Child aged 12 (two twelve) year until Not yet 18 (eighteen) years as long as the child requires special protection.

Whereas in the process appointment child candidate person old must fulfill the requirements specified in Article 13, namely:

- a. Healthy physical And spiritual;
- b. The minimum age is 30 (thirty) years and the highest 55 (fifty five) years;
- c. Religious The same with religion prospective child lift;
- d. Be well-behaved and never been convicted of a crime;

⁷Putusan Penetapan Nomor Perkara : 0111/Pdt.P/ PA.Ngj Tertanggal 27 Agustus 2019.

- e. Status Marry most short 5 (five) year;
- f. No is partner similar;
- g. No or Not yet have child or only own one child;
- h. In condition capable economy and social;
- i. Obtain the child's consent and written permission from the child's parents or guardian;
- j. Make a written statement that the adoption of the child is in the best interests of the child, the welfare and protection of the child;
- k. The existence of report social from worker social local;
- l. have cared for prospective adopted children for at least 6 (six) months, since the care permit was granted; and
- m. Get permission Minister and/or head agency social.⁸

Child adoption is of course not only carried out by prospective adoptive parents who are Indonesian citizens, but there are also adoptions carried out by foreigners or foreign citizens, where if the prospective adoptive parents are foreign citizens, they must pay attention to the provisions in Article 14 and Article 15 of Government Regulation No. 54 of 2007 concerning the Implementation of Child Adoption.

B. Right Adopted children To Inheritance of People Old Lift.

Adoption is not regulated in the Civil Code. The only regulation in Book I, Chapter XII, Part 3, Articles 280 to 289 concerns children born out of wedlock. Therefore, the Civil Code does not actually regulate adoption as it is currently known. The Civil Code does not contain the terms adopted or foster child.

The implementation of child adoption is a legal act such as Which stated in Chapter 1 Number 1 PP No. 54 Year 2007 Regarding the Implementation of Child Adoption, which then has an impact on legal consequences that can give rise to rights and obligations, one of which is the legal consequences in inheritance. In Indonesia itself, there are two types of applicable law, one example is the positive legal system or also known as "ius

⁸Musthofa, *Pengangkatan Anak Kewenangan Pengadilan Agama*, Media Grafika, Jakarta, 2008. 98.

consitutum," which means the law that is currently in force or the law that has been established. Of course, in terms of inheritance, it is closely related to the positive law that applies in Indonesia because there are several legal systems adopted by the Indonesian people, in this case such as: the Civil Code, Islamic law, and customary law. These three legal systems have different characteristics and characteristics, as is the case in inheritance matters. and adopted children, thus giving rise to various differences between one legal system and another.

Regarding the rights of adopted children within a family, as stipulated in Staatsblad Number 129 of 1917 concerning Adoption, Article 12 equates a child with a legitimate child from the marriage of the adopting parent. Therefore, adopted children within a family have the same rights as biological children or children born to their adoptive parents. This has the following consequences: on similarities right and obligations that owned by child lift, including the distribution of inheritance of the adoptive parents' property when they die world. In Staatsblad Number 129 of 1917 concerning the Appointment Children who are a complement to the Civil Code, because in the Civil Code No There is rule Which arrange about child lift.

Regarding the distribution of inheritance obtained by adopted children who are listed as class I heirs is a class I heir consisting of children or descendants. The method of inheritance for heirs in the Civil Code system is divided into two types, namely:

1. Heirs according to the law (*Ab Intestato*) Heirs based on this law based on their position are divided into two parts, namely, heirs based on their own position (*Uit Eigen Hoofde*) and heirs based on replacement (Bij Plaatsvervulling).
2. Heirs based on a will (*Testimonial*) Who are the heirs here is person Which appointed or lifted by heir with will as his heir. A will in the Civil Code is a person's statement about what they want after they die. In principle, a statement of last will comes from only one party and can be withdrawn at any time by the testator either expressly or secretly.

Because the status or position of an adopted child is said to be equal to that of a biological child, the adopted child has the right to inherit from his adoptive parents so that the adopted child also participates. in the section on legitimate children's inheritance groups in the Civil Code. These groups are divided as follows: a. Group I: Husband/Wife and children along with his descendants, b. Group II : Person old And you heir,⁹ c. Group III : Grandparents And lineal descent up, d. Group IV: Uncle, aunt And line descendants until degrees sixth. Position child, The adopted child is in the first group, where the inheritance portion is given priority over the portion in the subsequent groups because the adopted child is legitimate and is considered to be a biological child so that he receives the same portion as other biological children and also his obligations as an adopted child to his adoptive parents.

Legal Consequences of Adoption in Inheritance Rights According to the Islamic Legal System. The reasons why someone can obtain inheritance (heir) from someone who has died (heir), namely: a. Kinship (nasab), c. Marital relationship, d. Relationship due to Al-Wala ' , e. Relationship between Muslims. Because there is no blood or marital relationship between the adopted child and his adoptive parents, the adopted child and his adoptive parents do not have the right to inherit from each other. A mandatory will is a will intended for heirs or relatives who do not receive a share of the inheritance from the deceased person, due to a *sharia obstacle* .¹⁰ While the purpose of the mandatory will is to make a will to parents who are non-Muslim, because different religions are an obstacle for someone to accept will, Grandchild Yan No get treasure inheritance Because hindered by the presence of his uncle and adopted son who are not included as heirs but whose services and presence are very important for the testator.

In this case, the heir can only give 1/3 of his inheritance to his adopted child as stated in Article 209 Paragraph (2) of the KHI, which states that: "For

⁹PP No. 54 Tahun 2007 tentang Pelaksanaan Pengangkatan Anak. Tanggal (10 Agustus 2022).

¹⁰Ahmad Kamil dan M. Fauzan, *Hukum Perlindungan dan Pengangkatan Anak di Indonesia*, Cet. 2, Ed. 1, Jakarta : Rajawali Pers, 2010, 145.

adopted children who do not receive a will, a mandatory will is given of a maximum of 1/3 of the inheritance of their adoptive parents." Then in Article 195 Paragraph (2) it states that: "A will is only permitted of a maximum of a third of the inheritance unless all heirs agree." That in the case of the distribution of adopted children, it may not exceed 1/3 of the inheritance unless all heirs agree.¹¹

That based on the legal considerations of the application for the determination of child adoption in case number: 0111/ Pdt.P/2019/PA. Ngj in the Copy of the Decision Dated August 27, 2019, the main legal considerations of which explain that the application for child adoption has been regulated in UURI No. 3 of 2006 concerning Amendments to Law No. 7 of 1989 concerning Religious Courts, "The application is a married couple who have not been blessed with children and are responsible for caring for, raising and educating a child with full affection like their own child, Child adoption is permitted by prioritizing the interests of the child's welfare."¹²That in addition, in the considerations of the panel of judges on child adoption at the Nganjuk Religious Court, inheritance was also considered, namely "that adopted children do not create a lineage/inheritance relationship with person old child lift, so that person old lift the No accept will given will mandatory as much as possible 1/3 of the adopted child's inheritance, and adopted children who do not receive a will are given a mandatory will of up to 1/3 of the adoptive parents' inheritance (Article 209 of the Compilation of Islamic Law). This makes it clear that the process of adopting a child basically has inheritance rights to the adoptive parents' inheritance.

C. Inheritance Rights of Adopted Children in Islamic Law.

According to the Compilation of Islamic Law in inheritance law, Indonesia is an independent and sovereign country as well as a state of law, the majority of whose population is Muslim, even there is a religious court institution based on Islamic personality whose existence is the same as other issues that culminate in the Supreme

¹¹Jurnal analisis hukum vol No.2 (2021) 48-53, Perlindungan Hukum Terhadap Anak Angkat Berdasarkan Undang-Undang Nomor 23 Tahun 2002 Tentang Perlindungan Anak (Zahara, Eri Arianto)

¹²Putusan Penetapan Nomor Perkara 0111/Pdt.P/ 2019/PA. Ngj, Tertanggal 27 Agustus 2019.

Court as the highest judicial institution in Indonesia. One of the material laws of Religious Courts in Indonesia that is used as a reference by judges is the Compilation of Islamic Law. Although it is only valid through Presidential Instruction of the Republic of Indonesia Number 1 of 1991. Meanwhile, one of the materials of the Compilation of Islamic Law is the granting of a mandatory will to adopted children, Article 209 of the Compilation of Islamic Law (KHI). This is a new breakthrough in Islamic law that is not found in the study of classical books, even Egyptian and Syrian Laws do not state a mandatory will to adopted children. Article 209 of the KHI is impossible without a legal basis either through *istinbat* or *istidhal*. This is because both are methods of *ijtihad* that should not be abandoned in the discovery of Islamic law, especially matters that are not regulated clearly and textually in the Islamic texts. In this way, the author will examine article 209 of the KHI through an approach of understanding the instructions in the Al-Qur'an, surah al-Baqarah verse 180, so that the movement of the article remains based on the *syara'* text, although it does not deny the methods of other texts. The inheritance rights of adopted children regarding inheritance as stated in article 209 of the KHI are as follows: "Adopted children who do not receive a will are given a mandatory will of up to 1/3 of the inheritance of their adoptive parents." Meanwhile, in the Qur'an, in Surah Al-Baqarah verse 180, it is stated: "It is obligatory upon you, when one of you dies, if he leaves behind a large amount of wealth, to make a will for his parents and close relatives in a wise manner, an obligation upon those who are pious." The word will in language means a form of agreement made by someone to carry out an act, whether the person is still alive or after death. Meanwhile, in terms of terminology, scholars interpret that a will is an act in the form of giving property from one person to another which is implemented after the death of the testator, either in the form of objects or in the form of benefits from objects, by way of *tabarru'* (alms). Islamic law has canceled the tradition of inheritance that occurs between adoptive parents and adopted children who have no lineage relationship at all, but they, the adopted child, have a guardian-guardian relationship, and an heir-inheritance relationship with the

adoptive parents. He remains the heir of his biological parents, and the child continues to use the name of his biological parents.¹³

Meanwhile, in customary law, the determination of inheritance for adopted children depends on the applicable customary law. In parental families, for example, Javanese, adoption does not automatically sever the family ties between the child and their biological parents. Therefore, in addition to receiving inheritance rights from the adoptive parents, the child also receives inheritance rights from their biological parents. Unlike in Bali, adoption is a legal obligation that releases the adopted child from their original family to their adoptive family. The child becomes the biological child of the adopter and sever the status of their adoptive father.

Conclusion

1. Adoption is permitted by prioritizing the welfare of the child and the adoption of the child without changing the status of the lineage and religion, carried out out of a sense of social responsibility to care for, nurture and educate with love like one's own child. Adoption can only be done for the best interests of the child and is done based on local customs and applicable statutory provisions. 2. The status or position of an adopted child is said to be equal to that of a biological child, so the adopted child has the right to inherit from his adoptive parents so that the adopted child is included in the class of legitimate children in the Civil Code. Adopted children do not create a lineage/inheritance relationship with the parents of the adopted child, so that adoptive parents who do not receive a will are given a mandatory will of up to 1/3 of the inheritance of their adopted child, likewise adopted children who do not receive a will are given a mandatory will of up to 1/3 of the inheritance of their adoptive parents (Compilation of Islamic Law). 3. Regarding inheritance rights, Islamic law regulates this through gifts or grants from the foster father, or through a mandatory will if the foster father did not provide a gift to the foster child during his lifetime. Therefore, it is clear that adopted children, under Islamic law, cannot inherit the same rights as biological children. This is in accordance with the guidance in the Qur'an and the Hadith of the Prophet Muhammad SAW.

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