



The Inheritance Rights of Indonesian Citizens Adopted by Foreign Citizens Reviewed from Indonesian Inheritance Law

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<http://dx.doi.org/10.18415/ijmmu.v6i6.1299>

Abstract

In Indonesian adoption of children has become a necessity of the community and is part of the family legal system because it involves the interests of individuals in the family. In the case of adoption children must pay attention to the best interests of the child and be carried out based on local customs and the prevailing laws and regulations, this has been stipulated in Article 39 of the Child Protection Act. Generally, adoption of children is divided into two types, namely adoption of children between Indonesian citizens (domestic adoption) and adoption of Indonesian citizens by foreign citizens (intercountry adoption). Appointment of children must be done by legal process, namely through the establishment or decision of the Court. The research method in this research is normative juridical research. Based on the results of the study. The inheritance rights of Indonesian citizens adopted by foreign nationals in terms of Indonesian inheritance law are that based on Islamic law, adopted children do not inherit from adoptive parents and remain the heir of biological parents. Based on customary law the inheritance of adopted children depends on the customary law in the area. Based on legislation adopted children do not inherit from adoptive parents, and adopted children remain the heirs of their biological parents.

Keywords: *Inheritance Rights; Adopted Children; Indonesian Inheritance Law*

Introduction

In Staatsblad 1917 number 129 this is only as a guideline that only boys can be appointed while for girls it is explicitly stated in article 15 paragraph 2 that "the appointment of girls and adoption by other means than by making an authentic deed are null and void because of the law ". In 1978 a Circular of the Director General of Law and Legislation of the Ministry of Justice Number JHA.1 / 1/2 was issued. February 24, 1978 which regulates the procedure for adoption of Indonesian children by foreigners.¹

In general, every child has rights and obligations as a child in a family, but children's rights are often neglected due to family conditions that are not possible. Based on this, maintaining the poor and neglected children is one of the tasks of the government. This has been written in the 1945 Constitution

¹ Diah Triani Puspita Sari, 2010, *Implementation of Adoption Arrangements After the Enactment the Government of Republic of Indonesia Number 54 of 2007 concerning Implementation of Child Appointment*, Indonesia University. Page. 19.

Article 34 paragraph (1), which reads "the poor and neglected children are looked after by the State". One effort to create child welfare is regulated in Article 12 paragraph (1) and (3) of Law Number 4 of 1979 concerning Child Welfare, namely through the adoption of children. In Article 12 paragraph (1) the law stipulates that the adoption of a child for the benefit of the child's welfare which is carried out outside the customs, is carried out based on statutory regulations.²

In Law Number 23 Year 2002 concerning Child Protection, it does not formulate an understanding of adoption. But it only formulates the meaning of adopted children, namely Article 1 number 9 states that:

"An adopted child is a child whose rights are transferred from the environment of the family of a parent, legal guardian, or other person who is responsible for the care, education, and raising of the child, into the family environment of the adoptive parent based on a court decision or decision".³

While for the definition of adoption of children is formulated in Government Regulation Number 54 of 2007 concerning Implementation of Child Appointment in Article 1 number 2 stated that is:

"Appointment of a child is a legal act that transfers a child from the environment of the authority of a parent, legal guardian, or other person responsible for the care, education, and raising of the child, into the family environment of adoptive parents".⁴

Research Method

This type of research used by the author in this legal research is normative legal research or library legal research, namely legal research conducted by examining library materials or secondary research sources consisting of primary legal materials, secondary legal materials, and tertiary legal materials. These materials are arranged systematically, reviewed, then drawn a conclusion in relation to the problem under study. A legal study has several approaches. With this approach, researchers will get information from various aspects of the issue being tried to find the answer. The approaches used in legal research are the statute approach (statute approach).⁵ Related to the legal approach that the author uses, carried out by examining all laws and regulations relating to the legal issues being studied, where this study is carried out in order to determine the suitability and comparison between the laws used, the results of the study will later be used as arguments to solve legal issues or problems faced. The nature of this research is in line with the nature of the science of law itself. Legal science has the nature of being a prescriptive science, meaning that it is a prescriptive science, law studies the purpose of law, the values of justice, the validity of the rule of law, legal concepts and norms law.⁶

² Fransiska Hildawati Tambunan, 2013, *Juridical Review in Appointment the Children of Indonesian Citizens By Foreign Citizens (Intercountry Adoption)*, Semarang State University, page. 3-4.

³ Ahmad Kamil and M. Fauzan, 2010, *Law on the Protection and Appointment of Children in Indonesia*, Jakarta, PT Raja Grafindo Persada, page. 55.

⁴ Rusli Pandika, 2012, *Law on Appointment of Children*, Jakarta, Sinar Grafika, page. 105.

⁵ Peter Mahmud Marzuki, 2007, *Legal Research*, Jakarta, Kencana Prenada Media Group, page. 93.

⁶ *Ibid*, page. 22.

Result and Discussion

A. Adopted Child Inheritance System in Indonesia

According to the 1917 No.129 Staatblad, adoption was carried out on the grounds that a man who was married or had already married, did not have male descendants who were legal according to the male line, either because of blood ties or because of appointment. According to this Staatblad, adoption of children is done because in a marriage does not get offspring / boys.

Law Number 23 of 2002 concerning child protection, expressly states that the purpose of adoption, the motivation for adoption of children can only be done in the best interests of the child and is carried out based on local customs and the provisions of the applicable laws and regulations. This provision is very giving guarantee of protection for children whose nature is very dependent on their parents.

The legal consequences of the adoption of a child based on a court decision are in the case of guardianship and inheritance, as follows:

1. Trusteeship

After the verdict is issued by the court, the adoptive parent becomes the guardian of the adopted child. All the rights and obligations of biological parents are transferred to adoptive parents, except for the adopted daughter of a Muslim, when she gets married, the marriage guardians are biological parents or blood relatives.⁷

2. Inheritance

Indonesia adheres to three legal systems concerning inheritance, namely Islamic law, customary law and national law, all of which have the same power in the eyes of the law, for the following description:

a) Inheritance of adopted children according to Islamic law

In Islamic law, adoption of a child does not bring legal consequences in terms of blood relations, guardianship relationships and inheritance relationships with adoptive parents. He remains an heir of his biological parents and the child continues to use the name of his biological father.⁸

If seen in the Compilation of Islamic Law Article 171 letter (h) stated that "adopted children are children who are in the care for their daily lives, education costs, and so on shifting their responsibilities from the original parents to their adoptive parents based on court decisions".⁹

Islam allows adoption of children but within certain limits as long as it does not bring legal consequences in terms of blood relations, guardian relationship and inheritance from adoptive parents, where adopted children remain the heirs of their biological parents and the child continues to use the

⁷ Andi Syamsu Alam, M. Fauzan, 2008, *Law on the Appointment of Children with Islamic Perspective*, Jakarta: Kencana, page. 223.

⁸ *Ibid*, page. 225.

⁹ Mustofa, 2008, *Appointment of Children Authority of the Religious Court*, Jakarta: Kencana Prenada Media Group, page. 21.

name from his biological father. The Compilation of Islamic Law asserts that adopted children have no inheritance relationship with adoptive parents, but as an acknowledgment of the good adoption of the child institution, the relationship between adopted children and adoptive parents is confirmed by the intermediaries of the will or compulsory will.

A will is one of the ways in transferring assets from one person to another. This testament system runs since ancient times, not just one religion that regulates, but each community has an understanding of the will, wherein the testamentary systems have differences in their implementation, all have their own provisions for how legitimate the will is to be carried out.

The compilation of Islamic law becomes a reference by the religious court if the adopted child does not receive a will from his adoptive parents or his adoptive parents do not leave a will during his lifetime, then the adopted child is entitled to an obligatory testament on condition that no more than 1/3 (one third) of the total assets This has been explained in Article 209 paragraph (1) and (2) Compilation of Islamic Law which states, if the adopted child or adoptive parents do not receive a will, the adopted child or adoptive parents are entitled to a mandatory will of 1/3 (one third) of inheritance.¹⁰

According to the provisions of the article above, adoptive parents are automatically deemed to have left a maximum of 1/3 (one third) of their assets left for their adopted children, or conversely adopted children for adoptive parents, where the assets are in the distribution system that before the distribution of inheritance is carried out to his heirs, the mandate must be fulfilled first. Then the mandatory will is a way out of adopted children or adoptive parents to get part of the inheritance.

b) Inheritance of Adopted Children According to Customary Law

Indonesian society adheres to a variety of religions and beliefs that have various forms of kinship with different hereditary systems. This descent system has been in effect for a long time before the entry of the teachings of Islam, Hinduism and Christianity. Theoretically the descent system can be divided into three types, namely as follows :¹¹

- 1) Patrilineal system, which is a descendant system that is drawn according to the father line, where the position of men is higher than the position of women in inheritance.
- 2) Matrilineal system, which is a descendant system drawn according to the mother's line, where the position of women is higher than the position of men in terms of inheritance.
- 3) Parental or Bilateral System, which is a descendant system that is drawn according to the line of parents, or according to the line of mothers and fathers, where the position of men and women is not distinguished in inheritance.

Dalam hukum adat penentuan waris bagi anak angkat tergantung kepada hukum adat yang berlaku pada daerah tersebut. Bagi keluarga yang Parental, Jawa misalnya, pengangkatan anak tidak memutuskan hubungan darah antara anak dengan orangtua kandungnya. Oleh karena itu, selain mendapatkan hak waris dari orangtua angkatnya, anak angkat juga tetap berhak atas waris dari orang tua kandungnya. Berbeda dengan di Bali yang menganut sistem Patrilineal, pengangkatan anak merupakan kewajiban hukum yang melepaskan anak tersebut dari keluarga asalnya ke dalam keluarga angkatnya. Anak tersebut menjadi anak kandung dari orang yang mengangkatnya dan meneruskan kedudukan dari bapak angkatnya.¹²

¹⁰ Article 209 Compilation of Islamic Law.

¹¹ Hilman Hadikusuma. 2015, *Customary Inheritance Law*, Bandung: PT.Citra Aditya Bakti. Page. 23.

¹² M. Budiarto, 1991, *Appointment of Children In Terms of Law*, Akapress, page. 15.

Whereas the Matrilineal kinship system in Minang Kabau is not known for adoption of children in their customary law, only taking children to care for and care for as their own children. But the child in question usually still has a family relationship with the person who picked him up, the relationship of the adopted child is uninterrupted with his biological parents, the child remains an heir to his biological parents, and the child is not the heir of his adoptive parents.¹³

c) Inheritance of adopted children according to statutory regulations

In the 1917 Staatblaad No. 129, the legal consequence of adoption is that the child legally obtains the name of an adoptive father, becomes a child born from the marriage of adoptive parents and heirs to adoptive parents. That is, due to the appointment, all civil relations, which stem from offspring due to birth, are broken between the biological parents and the child,¹⁴

According to the Staatblad of 1917 the problems due to the adoption law are stipulated in Articles 11, 12, 13, and 14. In Article 11 it states that adoption of a child carries a legal consequence that the person who is appointed, if he has another descendant's name, changes to the offspring name of the person who appoint him instead of the name of the offspring of the person who is adopted immediately becomes the biological child of the person who adopts him or his adopted mother, and automatically disconnects the nasab relationship with the biological parents, except :¹⁵

- 1) Regarding the prohibition of marriage based on kinship;
- 2) Regarding civil law regulations based on family ties;
- 3) Regarding the calculation of court fees before a judge and hostage taking;
- 4) Regarding proof with a witness;
- 5) Regarding acting as a witness;
- 6) If the adoptive parent is a married man, the adopted child is automatically considered to be the child born from their marriage;
- 7) If the adoptive father is a married husband and the marriage has broken up, then the adopted child must be considered a child born to those who are due to break up due to death;
- 8) If a widow adopts a child, then he is considered born from his marriage to a deceased husband, provided that he can be included as an heir in the inheritance of the person who has died, as long as there is no will. As a result of the severing of the adopted child's nasab relationship with his biological parents and entering the family of his adoptive parents, the adopted child is placed on a legal position with the biological child of his adopted parents.

Since the enactment of Law Number 35 Year 2014 Amendment to Law Number 23 Year 2002 concerning Child Protection which also regulates the adoption of children based on *Azaz Lex Posteriori derogat lex priori*; the provisions of the existing Law then set aside the provisions of the existing law, then for the sake of the current law is the Child Protection Act and its implementation.

In Article 39 the Child Protection Act is summarized as follows:

- 1) Appointment of children can only be done in the best interests of the child and is based on local customs and the provisions of the legislation in force;
- 2) Adoption of a child does not break the blood relationship between the adopted child and his biological parents;

¹³ Lulik Djatikumoro, 2011, *Law on Appointment of Children in Indonesia*, Bandung: PT. Citra Aditya Bakti, page. 76.

¹⁴ Djaja S Meliala, 1996, *Adoption (Appointment of Children) in Jurisprudence*, Tarsito, Bandung. page. 5.

¹⁵ *Op.Cit.* Mustofa. page. 44.

- 3) Prospective adoptive parents must be of the same religion as the religion adopted by the prospective adopted child;
- 4) Appointment of children by foreign citizens can only be done as an effort to compile Islamic Law;
- 5) In the event that the origin of the child is unknown, the child's religion is adjusted to the religion of the majority of the local population;
- 6) Adoptive parents must notify the origin and biological parents carried out with due regard to the readiness of the child concerned.

From the explanation of the article above it clearly states that adoption of a child is not allowed to break the nasab relationship between the adopted child and his biological parents. This is explained in Article 40 Paragraph (1) of Law Number 23 Year 2002 concerning Child Protection.¹⁶

Thus it can be concluded that the adoption of a child based on a court decision, does not result in the connection of blood relations between adoptive parents with their adopted children, and vice versa, adopted children and adoptive parents do not inherit each other, the main conditions of inheritance are not fulfilled, Article 832 of the Law The Civil Code states "those who are entitled to become heirs are, blood relatives, both legal and outside marriage and the husband or wife who lives the longest, all according to the rules listed below.

In the event that both the blood relatives and the longest living among the husband or wife do not exist, all the inheritance of the deceased belongs to the state, which is obliged to pay off all its debts, only the inheritance assets are sufficient for that ". Whereas Article 852 of the Civil Code states that the heirs are "children or all their descendants, even if they are born from other marriages, although they are inherited from their parents, grandparents, grandparents or all other blood relatives in a straight line, with no difference between men or women and no difference based on first birth ".

Based on the explanation of the Article above it can be concluded that the heir is a person who has a blood or blood relationship with the deceased heir, this is the legal basis which confirms that adopted children do not have inheritance rights or become heirs to the inheritance of their adopted parents.

B. Indonesian Children's Inheritance Rights Adopted by Foreign Citizens Judging from Indonesian Inheritance Law

Not only are the terms of adoption different in adoption, but also due to the different legal consequences, basically the adoption of a child through a court decision is the transfer of the power of caring for children from biological parents to adoptive parents with all their rights and obligations, but this does not result in termination nasab relationship between biological parents and adopted children, this has been explained in Article 39 of the Child Protection Act that the adoption of a child may not break the blood relationship between the child and his biological parents. Therefore, adopted children still have inheritance rights to inheritance from their biological parents, but they cannot inherit their adopted parents' inheritance like biological children, but to fulfill the adoption rights of their adopted children, their adoptive parents can give a grant or a will.

Appointment of children of Indonesian citizens by foreign nationals will cause adopted children to have dual citizenship. The age of adopted children according to Government Regulation Number 54 Year 2007 Article 12 states that children who are allowed to be adopted are "children who are not yet 18 (eighteen) years of age and children who are not yet 6 (six) years old are the main priority". From the

¹⁶ Law Number 23 of 2002, *Op.Cit.* Article 40.

explanation of the Article above it can be concluded that the age of the child has not reached 6 (six) years which is the main priority or goal to be appointed.

In Law Number 12 of 2006 Concerning Citizenship Article 5 paragraph (2) states "Indonesian children who are not yet 5 (five) years of age are legally adopted as children by foreign nationals based on the decision of the court to remain recognized as Indonesian citizens", in this case the adopted child has 2 (two) citizenship, because the adoption of an Indonesian citizen adopted by a foreign national based on a court decision, the child follows the adoption of the adoptive parent's nationality but does not lose Indonesian citizenship until the child is 18 (eighteen) years or has been married. However, after an adopted child is 18 (eighteen) years old or has married the child must declare choosing one of his citizenship, this is explained in Article 6 of the Citizenship Law.¹⁷

From the explanation of the Article above it can be concluded that in the case of inheritance of a child adopted by a foreign national, if the adopted child is 18 (eighteen) years old or has been married and the child chooses to follow the citizenship of his adoptive parents, the inheritance system used for the distribution of the inheritance of the adoptive parents is the law in the country where the adoptive parents are. However, if the adopted child still chooses Indonesian citizenship, in the case of the distribution of the inheritance of the adoptive parents based on inheritance law in Indonesia.

If the child of an Indonesian citizen has been adopted by a foreign national, then if the biological parent wishes to grant inheritance rights to the inheritance, he must pay attention to the provisions of Article 21 of Law Number 5 of 1960 concerning Basic Agrarian Principles, which states that "persons foreigners who after the entry into force of this Law obtain property rights due to inheritance without will or mixing of assets due to marriage, so do Indonesian citizens who have ownership rights and after the entry into force of this Law loses their citizenship, are obliged to relinquish that right within a period of 1 (one) years from the acquisition of that right or loss of citizenship. If after that period the right of ownership is not released, then the right is void because the law and the land fall on the state, provided that the rights of the other party that encumber him / her continue".¹⁸ Relinquishment of rights is by selling or granting the rights to the land.

So, as long as a person is a foreign national, he / she may not have ownership rights to the land either by sale, exchange, gift, giving with will, inheritance and other deeds, if done then the act is null and void and the land falls to the state, this is explained in Article 26 Paragraph (2) of Law Number 5 of 1960 Concerning Basic Agrarian Principles.¹⁹

Based on the theory of justice put forward by several experts, namely, according to Aristotle, justice is divided into two kinds, namely Distributive justice and commanding justice. Distributive justice is justice that gives to everyone according to their achievements. Commutational justice gives as much to each person without distinguishing his achievements in this regard with the exchange of goods and services. While according to John Rawls justice is the main virtue of the presence of social institutions.

In the Indonesian dictionary the term justice comes from the word fair, meaning that it is impartial, rightly, and not arbitrary. So justice can be interpreted as an attitude or just action. In English literature the term justice is called "justice" the basic word is "jus" which means law or rights.²⁰ This definition illustrates that the values of justice are inherent in the aims of the law.

¹⁷ Law Number 12 of 2006 concerning Citizenship of the Republic of Indonesia, Articles 5-6.

¹⁸ Law Number 5 of 1960 Concerning Basic Agrarian Principles, Article 21.

¹⁹ *Ibid*, Article 26.

²⁰ Bahder Johan Nasution, *Philosophical Study of Law and Justice from Classical Thinking to Modern Thinking*, Lecturer in the Faculty of Law, Jambi University, page. 14.

So according to the author, justice can be applied if it has been through a legal process or legal procedure, so that justice within the scope of a person's rights can be protected by law. If it is related to the problem above, it can be concluded that, due to the legal consequences of the adoption of a child which is legally carried out and received a court decision, the rights attached to adopted children, namely from inheritance can be fully protected by law, so the rights attached to adopted children can be fulfilled fairly and fully in accordance with the provisions in the applicable legislation.

Conclusion

Based on the description that has been stated in the previous chapters, the writer can draw conclusions as follows:

1. The process of adopting Indonesian children adopted by foreign nationals in terms of positive Indonesian law is a prospective adoptive parent submitting an application to the Minister of Social Affairs of the Republic of Indonesia by completing all administrative requirements of a prospective adopted child and adoptive parent and then the Social Minister assigns social workers / agencies social policy to conduct a feasibility assessment of prospective adoptive parents, if the application for adoption of children has met the requirements set by the Law and approved, the Director General of Social Services and Rehabilitation through the Minister of Social Affairs issues a permit for adoption of children to be determined in the state court. If the application for adoption is rejected, the child will be returned to the biological parents / legal guardians, childcare institutions, or other alternative care according to the best interests of the child. After the issuance of the court's decision and the completion of the appointment process of the child, the prospective adoptive parents report and deliver the copy to the social department and the social department records and documents the adoption of the child.
2. In the case of the inheritance of adopted children according to Indonesian inheritance law are :
 - a) Inheritance based on Islamic law adopted children do not bring legal consequences in blood relations, guardians and inheritance-inheritance relationships with adoptive parents, children continue to inherit from the biological parents.
 - b) Inheritance based on customary law is the determination of inheritance of adopted children depending on customary law in force in the area.
 - c) Inheritance based on legislation is the appointment of Indonesian children by foreign citizens based on a court decision, does not result in the connection of blood relations between adoptive parents and adopted children, and vice versa, they do not inherit each other, this is because the adoption of children does not break the blood relationship between the adopted child and his biological parents, the main conditions of inheritance in Article 832 and Article 852 of the Civil Code are not fulfilled. But there are still ways for adoptive parents to provide fulfillment of adopted children 's rights regarding inheritance, that way is by giving a will and or a will. And adopted children still have inheritance rights from their biological parents.

References

1. Books

Ahmad Kamil and M. Fauzan, 2010, *Law on the Protection and Appointment of Children in Indonesia*, Jakarta, PT Raja Grafindo Persada.

- Andi Syamsu Alam, M. Fauzan, 2008, *Islamic Perspective Appointment Law*, Jakarta: Kencana.
- Bahder Johan Nasution, *Philosophical Study of Law and Justice from Classical to Modern Thinking*, Lecturer in the Faculty of Law, Jambi University.
- Diah Triani Puspita Sari, 2010, *Implementation of Adoption Arrangements After the Enactment of the Government of the Republic of Indonesia Number 54 of 2007 concerning Implementation of Child Appointment*, University of Indonesia.
- Djaja S Meliala, 1996, *Adoption (Appointment of Children) in Jurisprudence*, Bandung, Tarsito.
- Djaja S.Meliala, 2016, *Appointment of Adopted Children Based on Local Customary Laws and Regulations in Indonesia*, Bandung, CV Nuansa Aulia.
- Fransiska Hildawati Tambunan, 2013, *Juridical Review of Appointment of Children of Indonesian Citizens By Foreign Citizens (Intercountry Adoption)*, Semarang State University.
- Hilman Hadikusuma. 2015, *Customary Inheritance Law*, Bandung, PT.Citra Aditya Bakti.
- Lulik Djatikumoro, 2011, *Law on Appointment of Children in Indonesia*, Bandung: PT Citra Aditya Bakti.
- M. Budiarto, 1991, *Appointment of Children In Terms of Law*, Akapress.
- Mustofa, 2008, *Appointment of Children Authority of the Religious Court*, Jakarta: Kencana Prenada Media Group.
- Peter Mahmud Marzuki, 2007, *Legal Research*, Jakarta, Kencana Prenada Media Group.
- Rusli Pandika, 2012, *Law on Appointment of Children*, Jakarta: Sinar Grafika.
- Tria Juniati, 2011, *Implementation of the Appointment of Children of Indonesian Citizens by Foreign Citizens in Efforts to Protect Children's Rights*, Jakarta: University of Indonesia.

2. Statutory Regulations

Compilation of Islamic Law.

Law Number 12 of 2006 concerning Citizenship of the Republic of Indonesia.

Law Number 35 of 2014 concerning Amendment to Law Number 23 of 2002 concerning Child Protection.

Law Number 5 of 1960 concerning Basic Agrarian Principles.

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