

Legal Status of Adopted Children on Parents' Inheritance Based on Islamic Law and Civil Law (Case Study of Decision Number: 113/K/PDT/2019)

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ABSTRACT

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The legal consequences of the adoption event are regarding the status of the adopted child as the heir of his adoptive parents, such a status often causes problems in the family. The issues that often arise in the event of a lawsuit are usually related to the legality of the adoption of the child, as well as the position of the adopted child as the heir of his adoptive parents. Adopted children also have the right to guarantee the protection of their rights so that they can live their lives, participate optimally, and get protection from violence and/or different treatments. As for the reality, sometimes adopted children are still considered not part of the family and in the end, the rights of adopted children are ignored. This does not rule out the possibility of problems such as in terms of the distribution of inheritance, because it considers that the adopted child is not the heir of the parent who adopted him. In this study, the author also used Decision Study Number: 113/K/Pdt/2019. The theories used in the research are the theory of legal certainty, the theory of legal justice, and the theory of legal protection. The research method used by the author is normative. SW is not entitled to LTI's inheritance because of his position as only a foster child based on the Deed of Child Handover Number 2. Foster children in terms of inheritance are not entitled to inheritance because their position is different from the position of the adopted child. A foster child is considered a third person who is not included in the class of heirs who are entitled to inheritance according to the law. An adopted child can get property from his adoptive parents through a will. The amount of this will is determined not to exceed 1/3 of the inheritance.



Introduction

The family has an important role in human life as a social being. The process of the human life journey is birth, life, and death (Hantono & Pramitasari, 2018). All of these

stages bring influence and legal consequences to their environment, especially with people who are close to them, both close in the sense of nasab and the sense of the environment (Aisyah, 2020).

The family is the basis for a person to live his or her social life and is the smallest unit of society, usually consisting of a father, mother, and child. (Wulandari, 2018). However, not all families have these three elements, so some married couples who do not have children decide to adopt. Child adoption is a legal process that involves transferring a child from the sphere of control of the biological parents or legal guardians into the family of the adoptive parents. (Rais, 2016). This is often done for emotional reasons, such as the desire to feel the role of a parent, and is regulated by Article 1 number 2 of Government Regulation Number 54 of 2007, which emphasizes that child adoption is the transfer of responsibility for the care and education of a child from one family to the family of the adoptive parents. (Mardotillah, 2016).

In Indonesia, child adoption is carried out for various purposes such as to continue the offspring for couples who do not have children or to ensure the welfare of the child. This process is influenced by the customs, religion, and outlook on life of the local community, and has different procedures and legal consequences. (Listia, 2015). One of the important consequences is the legal status of the adopted child as the heir of the adoptive parent, which often causes conflicts and legal issues related to the legality of the adoption of the child and his position in inheritance. (Wardani et al., 2023).

In Islam, the purpose of passing on offspring is to increase family happiness and carry out religious commandments, such as adding a year. For the Chinese people, having descendants is very important to maintain traditions and pray for ancestors. (Rahmah, 2021). According to Government Regulation Number 54 of 2007, the adoption of children aims to be in the best interests of the child, by paying attention to local customs and laws and regulations. In the inheritance legal system in Indonesia, adopted children have various legal statuses depending on the perspective used. (Pratama et al., 2024). Islamic law allows the adoption of children without severing blood ties with biological parents and does not give inheritance rights to adopted children, but they can receive a will of a maximum of one-third of the inheritance of the adoptive parents. Civil law treats adopted children as equal to biological children in terms of inheritance, although it is not explicitly regulated in the Civil Code, which emphasizes more on the rights of the original heirs through legitimate portie (Putra & Tanawijaya, 2021).

Child adoption involves two main parties, namely the adopted child and the adoptive parent, with the main goal being for the welfare of the child, not solely for the benefit of the adoptive parents (Panjaitan, 2017). Adopted children have the right to a guarantee of protection of their rights so that they can live a decent life, participate optimally, and be protected from violence and discriminatory treatment. However, often adopted children are not considered a full part of the family, so their rights, including inheritance rights, are ignored (Mutohar, 2010). Child adoption in Indonesia varies depending on local laws, often raising disputes regarding the validity of the status of adopted children and their position in inheritance from adoptive parents. In the adoption

of a child, it is necessary to have good faith in protecting the adopted child whose purpose is to ensure the realization of the child's rights so that the child becomes a child of quality, noble character, and prosperity (Mudzakiroh, 2022).

In the context of inheritance in Indonesia, there are three applicable legal systems, namely civil law, Islamic law, and customary law, which give the heirs the freedom to choose which system to use in the distribution of inheritance. These differences in arrangements are influenced by the diverse customs and cultures in each region of Indonesia, which sometimes leads to confusion and uncertainty when resolving inheritance disputes between heirs. One of the issues that often arises is the right of adopted children related to inheritance from their adoptive parents, as happened in the Case Study of Decision Number: 113/K/Pdt/2019, where SW did not get an inheritance after LJT's death, even though it had been considered and cared for like a biological child by LJT and T1.

In practice, the position of an adopted child is often a problem when the adoptive parents die, especially if the adoptive parents leave a lot of property and also leave siblings as heirs. Problems regarding inheritance often occur between one child and another child who are also the same heirs caused by the distribution of inheritance that is considered unfair, as well as between heirs and adopted children. Based on the description of the background above, the author is interested in further analyzing this matter with the aim of this research to understand the position of the child handover deed in terms of inheritance, especially in the context of the Study of Decision Number 113/K/Pdt/2019, as well as the legal position of adopted children in inheritance according to Islamic law and civil law. In addition, this study also aims to identify legal protection for adopted children who do not obtain inheritance from their adoptive parents. The benefits of this study are to improve understanding of the legal implications of the deed of handover of children in the context of inheritance, as well as to clarify the inheritance rights of adopted children based on applicable law, and to provide insight into the legal protection measures available to adopted children who do not receive inheritance.

Method

In legal research, research methods are a crucial element that functions to develop knowledge, and authors use normative research methods. Normative legal research, as explained by Peter Mahmud Marzuki, is a process that aims to find legal rules, legal principles, or legal doctrines to answer existing legal issues. The type of research used is descriptive-analytical, which reveals laws and regulations that are relevant to the legal theory being studied. This study uses secondary data collected through literature studies, which include primary, secondary, and tertiary legal materials. The approach used is a legislative approach with the support of structured interviews to obtain valid data. The applied data analysis techniques are deductive logic and qualitative analysis, which help conclude general data to specific data in the context of legal regulations relevant to the research topic.

Results And Discussion

Overview of Child Adoption

The adoption of children is often called adoption, which comes from the word "adoptive" in Dutch. The term "adoption" developed in Indonesia as a translation of the English "adoption", adopting a child, which means adopting someone else's child to be used as one's child and having the same rights as a biological child. At the time when Islam was conveyed by the Prophet Muhammad SAW, child adoption had become a tradition among the majority of Arab society known as tabanni which means to take an adopted child.

Child adoption is a legal action in Indonesia that refers to the transfer of a child's rights from his or her home family to his adoptive parents' family through a court decision. Terms such as "adopted child" for adopted child and "adoptive parent" for adopted child are used in several regulations in Indonesia, such as the Child Protection Law and the Population Administration Law. Islamic law also has its arrangements regarding child adoption, where responsibility for maintenance and education costs is transferred but the relationship of nasab and inheritance rights with biological parents is not severed. This arrangement aims to provide equal opportunities for each child to grow and develop optimally, regardless of gender or family origin. The importance of meeting formal and material requirements in the adoption of children is also a starting point in affirming the legal status of adopted children, which has an impact on kinship relationships and inheritance issues in society.

An Overview of Inheritance Law

Article 830 of the Civil Code states that inheritance only takes place due to death. Without a deceased person (heir), there is no one to inherit (heirs) and there is no one to leave wealth (inheritance). According to Wirjono Prodjodikoro, inheritance is a matter of whether and how the various rights and obligations regarding a person's wealth at the time of his death will be transferred to another person who is still alive. According to Hilman Hadikusumah, inheritance shows the wealth of the deceased who is then called the heir, whether the property has been divided or is still undivided.

Inheritance law is a law that regulates the transfer of wealth left by a deceased person and the consequences for his heirs. According to the law, those who have the right to become heirs are blood relatives, both legal and extramarital, and the husband or wife who lives the longest, according to the following regulations. If the blood family and the husband or wife who lived the longest do not exist, then all the heritage belongs to the state, which is obliged to pay off the debts of the deceased, as long as the price of the inheritance is sufficient for it.

Islamic Inheritance Law

The law of inheritance in Islam, or known as faraid, regulates the process of dividing inheritance after a person dies. Although faraid is implemented nationwide in some countries with a majority Muslim population such as Saudi Arabia, in Indonesia faraid only applies to citizens of Muslim countries. According to Ahmad Azhar Basyir, inheritance according to Islamic law is the process of transferring the inheritance of a

deceased person, both in the form of tangible objects and in the form of material rights, to his family who is declared entitled according to the law. According to Amir Syarifuddin, the Islamic inheritance law can be interpreted as a set of written rules based on the revelation of Allah and the Sunnah of the Prophet regarding the transfer of property or property in the form of property from the dead to the living, which is recognized and believed to be valid and binding for all Muslims. The Qur'an provides clear details about inheritance rights based on nasab position, marriage, and other family relationships. Terms such as heirs (marries), heirs (heirs), and inheritance (Maurits) are explained in the context of Islamic law, with principles such as sincerity, obligation, and balanced justice being the foundation for their implementation.

Civil Inheritance Law

Civil inheritance law applies to non-Muslim communities in Indonesia, including Chinese and European descent, regulated in the Civil Code. The system adheres to the individual principle where each heir receives a share of the inheritance according to his or her rights. Inheritance law regulates the transfer of a person's wealth after death, involving three main elements: heirs, inheritance, and heirs. According to Wirjono Prodjodikoro, in civil law, heirs are people who die and leave wealth, heirs are those who have the right to wealth, and inheritance is wealth that is transferred to heirs, regulated by existing family relationships.

Civil inheritance law refers to the provisions regulated in the Civil Code. However, the definition of inheritance law itself cannot be found and is not clearly defined in the articles contained in the Civil Code. However, in Article 830 of the Civil Code, it is stated that inheritance only takes place due to death. Inheritance in the Civil Code is contained in Book II concerning material things in Chapter Twelfth concerning inheritance due to death. This provision starts from Article 830 of the Civil Code to Article 1130 of the Civil Code.

In civil inheritance law, inheritance occurs if there is someone who dies, heirs who are still alive, and a certain amount of property or wealth left by the heirs. This system stipulates that when a person dies, all his rights and obligations automatically pass to his heirs.

In the Civil Code (Civil Code), the distribution of inheritance can only be done after the death of a person. This procedure involves absentantio inheritance, where the beneficiaries of the inheritance are determined based on blood relations with the heirs. The receipt of this inheritance is divided into several sequential groups, starting from husbands/wives, children, siblings, to grandparents. In addition, the Civil Code also regulates testamentary inheritance, which is the appointment of heirs through a will that can be changed or revoked while the heirs are still alive. In this context, the Civil Code not only regulates who is entitled to receive an inheritance but also regulates the provisions where an heir can be exempted from receiving an inheritance even though he is legally entitled. Thus, the Civil Code provides a clear legal basis to ensure that the distribution of inheritance is carried out by applicable regulations, to ensure fairness in the inheritance process.

Case Study Decision Number: 113/K/Pdt/2019

Case Chronology of Decision Number: 113/K/Pdt/2019

Based on the verdict, it was said that there had been a handover of a boy named SW who was handed over by his biological father, JKT, to a married couple, namely LJT and T1. The handover of the child is evidenced by the deed of handover of child Number 2 made before the Notary of RR. SW lived with LJT and T1 since he was handed over on June 3, 1969, until he got married, SW was also cared for, educated, and schooled by LJT and T1. SW also called LJT papa and T1 as mama. In the marriage between LJT and T1, they have a legitimate child, namely T2. SW then married LML as stated in the Citation of Marriage Certificate Number 1 of 1987 on January 28, 1987. Then on October 26, 1988, LJT as the father of SW died, and T1 as the wife of LJT made a deed of inheritance right statement as stated in the Deed of Inheritance Rights Number 3/X/1988 made before the T3 Notary. The contents of the deed state that T1 and T2 are the only heirs of LJT and there are no heirs other than T1 and T2.

In 2017 SW passed away, after that, it was known that there was a Deed of Inheritance Rights Number 3/X/1988, where SW was not an heir of LJT. Then LML as the wife of SW filed a lawsuit over the inheritance information that had been made by T1, with the aim that SW was one of the heirs who was entitled to obtain the inheritance from LJT. This was done by LML to get a share of the inheritance from her husband, SW who had passed away for the sake of the sustainability of the lives of the 4 children owned by SW and LML.

Judge's Legal Considerations on Case Study of Decision Number: 113/K/Pdt/2019 Regarding the existence of the deed of child surrender No. 2 dated June 3, 1969 between JKT and LJT, the deed is an authentic deed made by the authorized official, namely the Notary RR, but based on the title and substance of the deed, namely the Statement of Child Handover, the Panel of Judges reached a conclusion if SW was handed over by Mr. JKT to Mr. LJT and T1 just to be taken care of, are maintained, educated and schooled, not in the capacity of being adopted as children.

Stating that based on the Photocopy of Notary Deed Number 1 dated June 3, 1969, concerning Child Recognition made by and before RR, the Deputy Notary in Tasikmalaya, SW has a birth certificate, namely in the form of a Civil Registration Letter for the Chinese group in Surabaya dated May 8, 1962 Number 1183/1962, based on the Provisions of Article 10 paragraph (4) Stbd. 1917 No. 129, SW's birth certificate should have a peripheral record that SW is an adopted child of LJT and T1, however, the fact is that SW's birth certificate has never been submitted in front of the court.

The judge concluded that SW was not an adopted son of LJT and T1 so he was not entitled to be an heir and was not entitled to a part of LJT's legacy.

Rejecting the claim filed by the Plaintiffs regarding the cancellation of the deed of heirs' testimony Number: 3/X/1988, dated October 26, 1988, made before the T3 Notary. The Position of the Deed of Surrender of Children in the Matter of Inheritance Related to Child Adoption Based on a Case Study of Decision Number: 113/K/Pdt/2019. In terms of child adoption before the enactment of Law Number 23 of 2002 concerning Child

Protection, for the Chinese group, it is stated that an authentic deed is needed to carry out child adoption so that it can provide certainty for the position of the child who is appointed before the law. Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Notary Position (UUJN) says that a public official who is authorized to make an authentic deed" is a notary, "A notary is a public official who is authorized to make an authentic deed and has other authority as referred to in this law or based on other laws."

The authority of the Notary regulated in the UUJN includes the following:

The Notary is authorized to make an authentic deed regarding all acts, agreements, and determinations required by laws and regulations and/or required by the interested party to be stated in the authentic deed, ensuring the certainty of the date of making the deed, storing the deed, providing grosses, copies, and excerpts of the deed, all of which are as long as the making of the deed is not also assigned or exempted to other officials stipulated by law.

In addition to the authority as intended in paragraph (1), the Notary is also authorized to:

- a. Certify signatures and establish the certainty of the date of the letter under hand by registering in a special book.
- b. Book a letter under your hand by enrolling in a special book.
- c. Make a copy of the original letter under the hand in the form of a copy containing the description as written and described in the letter concerned.
- d. Verify the compatibility of the photocopy with the original letter.
- e. Providing legal counseling about the making of deeds.
- f. Making deeds related to land.
- g. Create an auction minutes deed

The notary has the authority in terms of making authentic deeds based on legal orders. This authentic deed is also needed in the case of the adoption of a child as required by the Staatsblad 1917 which stipulates that "for the adoption of a child there must be an agreement of the person or persons who perform it". The authentic deed referred to in this case is a deed that contains an agreement between the biological parents and the prospective adoptive parents which states that the biological parents hand over their child to the prospective adoptive parents to be cared for, maintained, educated, provided for and fulfilled their needs and rights as a child. The prospective adoptive parents state that the prospective adoptive parents are willing to treat the child as if they were their biological child so that the adopted child also has the right to inherit from his adoptive parents as well as the right to inherit from a biological child to his parents if they pass away.

In making a deed of child handover, both parties, namely the biological parents and the prospective adoptive parents must be present before the Notary at the time of making the deed, or it can be specially authorized with a Notary deed to represent one of the parties in carrying out the legal act if there is a party who cannot be present. The Notary

must constitute what he sees, what he hears, what he experiences, and what is happening among the parties facing him, then pours all these things into a deed that has been adjusted to the formal requirements as prescribed by law. This authentic deed will then be the strongest proof that a child has been adopted by his adoptive parents. The use of authentic deeds is a provision of *Staatblad* 1917 Number 129 in terms of the adoption of children for the Chinese group. Therefore, the community carrying out legal acts regarding the adoption of a child is carried out using a Notary deed.

The adoption of children using notary deeds is no longer by legal development in society. Because the purpose of child adoption was initially only carried out by the Chinese community with the reason of continuing the family temperature so that the children who can be adopted are only boys, now the adoption of children is also allowed to raise girls. This is because the purpose of adopting a child is not only for the benefit of the adoptive parents but because it is for the benefit of the child. Therefore, the adoption of a child cannot be considered as the result of an agreement between the biological parents and the prospective adoptive parents alone but must be considered as an institution that creates a legal relationship for the adopted child with the adoptive parent's family environment based on a court decision.

In criminal proceedings, the preferred evidence is witness statements, while in civil proceedings, the preferred evidence is letters. This is because what is sought in civil proceedings is the truth about the matter disputed by the parties, where the disputed matter is a matter of civil relations between the parties. In general, evidence is regulated in the HIR which is contained in Article 164, and in the Civil Code it is regulated in Article 1866 which says that evidence consists of:

- a. Proof of writing.
- b. Evidence with witnesses.
- c. Suspicions.
- d. Confession.
- e. Oath.

Written evidence is a tool used by the community in describing acts and legal relationships carried out between them regarding agreements and agreements in writing. The evidence of this writing is categorized into two, namely deeds and deeds. Deeds are categorized into two, namely authentic deeds and deeds underhand. In terms of proof, an authentic deed is a perfect means of evidence for the parties who made it and its heirs without having to be recognized first by the parties to the deed, while the deed under hand will be a perfect means of evidence if it is recognized by the parties who made the deed. If one of the parties to the deed denies it, then the deed has no force as evidence. In Article 15 of the 1917 *Staatblad*, it is determined that the adoption of a child by any means other than by using a Notary deed is null and void. This means that before the issuance of Law Number 23 of 2002, the role of the Notary in terms of making a child adoption certificate was very much needed. The validity of the adoption of the child is seen from the existence

or absence of a Notary deed in carrying out the adoption of the child. The adoption of a child in Staatblad in 1917 had legal consequences, namely:

- a. With the adoption of a child, the adopted child uses the surname (sheh) of the person who adopted him.
- b. If the adoption of a child is carried out by a husband and wife, the adopted child is considered to have been born from the marriage.
- c. If the person who adopts the child is a widow/widower, then the adopted child is considered to have been born from his marriage with his deceased husband/wife.
- d. The civil relationship between the adopted child and his parents and blood relatives is severed.

Based on the legal consequences, it means that "a child who is legally adopted using an authentic deed, has the same status as a legitimate child born from a marriage between a couple who adopted the child, resulting in the end of the legal relationship between the adopted child and his blood family. Regarding the case of the Chinese group in the Case

Study of Decision Number 113/K/PDT/2019, SW has been part of LJT and T1's family since 1969 where SW was cared for, cared for, and schooled by the married couple because SW was handed over by SW's biological father, JKT, to LJT and T1 because they were unable to take care of and finance SW's life. The handover was stated in a Notary Deed Number 2 on June 3, 1969, with the title Deed of Child Handover. In examining the District Court, the judge considered various pieces of evidence submitted by the applicants.

In this case, the main evidence for the Panel of Judges is written evidence in the form of an authentic deed regarding the handover of children carried out between JKT and LTJ and his wife T1. Because this happened in 1969 the provision used by the panel of judges in examining the case was the provision of Staatblad 1917 Number 129 concerning the adoption of a child, which is the main evidence that the adoption of a child has occurred is the deed of adoption made by a Notary. However, the facts at the trial state that the deed submitted by the plaintiffs, namely LML and his children, is a deed of Declaration of Child Surrender whose substance is not in the capacity to be adopted as a child, only to be cared for, educated, and schooled by LJT and T1.

Therefore, it can be concluded based on Staatblad 1917 Number 129 Article 10 which requires that the adoption of a child must be with a deed of Child Adoption whose substance contains a statement that LJT and T1 appoint SW as a child and will give a position to SW as a legitimate child so that SW is also entitled to the inheritance of LJT and T1 as part of the legitimate child, Therefore, the deed of Declaration of Child Surrender cannot be used as evidence that LJT and T1 in 1969 have been adopted as children by the couple.

In the case of the Chinese group, the judge used the theory of positive proof where the panel of judges in examining the case, was bound by the provisions in the Staatsblad 1917 that the adoption of a child must be proven by the existence of a child adoption deed made by a Notary. Because the plaintiffs could not show evidence of the adoption

certificate referred to by the Panel of Judges, LML submitted another piece of evidence, namely an explanation letter that he obtained from the Registrar of the Supreme Court of the Republic of Indonesia regarding the Explanation of Deed Number 2 of 1969. Regarding the letter from the Registrar of the Supreme Court of the Republic of Indonesia Number: 150/PAN/HM.00/12/2017 dated January 19, 2018, regarding the Request for Legal Explanation of Inheritance Rights to the Notary Deed of Child Handover Number 2 made at the Notary of RR on 03-06-1969, attached by LML in the trial as evidence, according to the author, it does not prove that SW has the right to be an heir because the letter clearly says that the Registrar of the Supreme Court only strengthens the statement of LML who said that SW was the adopted son of LTJ and T1, the clerk of the Supreme Court did not say that it was based on the deed of child handover which should be the main basis for making the letter.

The legal rule in the Decision of the Supreme Court of the Republic of Indonesia No. 1413 K/Pdt/1988 states that "Whether a person is an adopted child or not, does not solely depend on the formalities of the adoption of the child but is seen from the existing reality, namely that he has been raised, circumcised and married by his adoptive parents since infancy." The legal rule should be the basis for the consideration of the panel of judges in deciding this case, that SW can be said to be an adopted child because based on the legal rule of the Cassation Decision, SW can be said to be an adopted child. After all, SW has been alive and raised by LJT and T1.

However, the author sees again that the legal rule can be used if the adopted child while living with his adoptive parents does not have any evidence that can say that the child is an adopted child of his adoptive parents apart from the fact that the child from infancy until he gets married, all his rights have been exercised by his adoptive parents, and there is no denial at all from the adoptive parents or other families so that the legal rule can be Used. For SW's case, the legal rule cannot be used because T1 as the foster mother of SW did not admit that she and her husband LJT had appointed SW which she proved by the existence of the Child Handover Deed. So that the judge makes a decision based on the evidence submitted to him. By the provisions of Article 1905 BW which says that the testimony of a witness without other evidence in front of the court should not be believed. This means that the information from T1 is supported by authentic deed evidence which is perfect evidence so that it is enough for the judge to decide that SW is not the adopted son of LJT and T1.

As a result of the inability to prove that SW is a legitimate adopted child so that he has the right to the inheritance left by LJT who is his foster parent, the inheritance certificate made in which the inheritance certificate states that T1 and T2 are the only heirs of LJT is valid and does not contradict the applicable laws or provisions because it does not violate anyone's rights or there are other heirs other than those who stated in the letter.

Based on this explanation, SW is not entitled to LTJ's inheritance because of his position as only a foster child based on the Deed of Child Handover Number 2 dated June 3, 1969, and not as an adopted child. Foster children in terms of inheritance are not

entitled to inheritance because their position is different from the position of the adopted child. A foster child is considered a third person who is not included in the class of heirs who are entitled to inheritance according to the law. If he gets an inheritance, the reason is not because of his position as an heir who is entitled to the inheritance, but because of the existence of a testament (will) from the heir before the heir dies. If there has been an adoption of a child, then the child will be cut off from both biological parents and considered as a child whose position is equal to that of the biological child of his adoptive parents so that they have the same rights, which means that in terms of inheritance, the adopted child will obtain inheritance from his adoptive parents, this is also regulated in Staatblad 1917 Number 129.

Legal Position of Adopted Children in Matters of Inheritance Based on Islamic Law and Civil Law

Legal Position of Adopted Children in Matters of Inheritance Based on Islamic Law
The rules of Islamic inheritance law are gradually derived according to the needs of the community and their legal awareness so that it becomes a perfect inheritance law system. The history of Islamic Inheritance Law is inseparable from the inheritance law of the Jahiliyah era. The basis for being able to inherit each other in the Jahiliyah era is:

- a. There is a relationship of nasab or kinship.
- b. There is a child adoption.
- c. There is a pledge of allegiance to brothers.

In its development, the basis of mutual inheritance due to the adoption of children, pledges of allegiance, and brotherhood because of this hijrah was also removed. Henceforth, the law of inheritance stipulated by the Qur'an and As-Sunnah applies as a provision that must be obeyed by every Muslim. Women and children who were originally unable to inherit, then Islamic Law gave them the right (share) to inherit just like male heirs. They have the same right to inherit, both a little or as much as they are by the part set for them in the Islamic Shari'a. Allah swt, confirms this with His words in Surah an-Nisa verse 7.

In Islamic law, the adoption of a child does not have legal consequences in terms of blood relations, guardian relationships, and inheritance relationships with their biological parents and the child still uses the name of the biological father. Therefore, adopted children do not become the heirs of the adoptive parents. However, an adopted child can get property from his adoptive parents through a will. The amount of this will is determined not to exceed 1/3 of the inheritance.

Legal Position of Adopted Children in Matters of Inheritance Based on Civil Law

In civil law, there is no term regarding adopted children or adopted children, so the adoption of children according to Civil Law refers to the provisions of Staatblaad 1917 Number 129, especially in Articles 5 to 15. This Staatblaad is a complement to the Civil Code to complete the legal vacuum that regulates the issue of child adoption. The rule is a reference for the adoption of children for people who are subject to or subject themselves to the Civil Code. Staatblaad 1917 Number 129 regulates the adoption of

children for Chinese people in addition to allowing the adoption of children by those who are bound by marriage, also for those who have been bound by marriage (widows or widows). Staatblaad 1917 No. 129 stipulates that the adoption of a child is only possible for boys, it can only be done by a Notary deed.

Adoption of a child is an act that equalizes the position of an adopted child with a biological child, both in terms of maintenance and inheritance. In the provisions of Article 12 of the 1917 Staatblaad Number 129, with the adoption of a child, the adopted child or adoption uses the surname of his adoptive parents and has the same legal status as the biological child of his adoptive parents. According to Staatblaad 1917 Number 129, an adopted child will lose his destiny to his biological parents, and there will be a nasab relationship with his adoptive parents. With such an appointment, the adopted son has the same position as the heir of the *ab intestato*. So an adopted child should have the right to inherit from his adoptive parents just like a biological child born in a legal marriage.

However, the concept of child adoption from Staatblaad is also very different from the provisions in Government Regulation Number 54 of 2007 and the Child Protection Law. One of them, in Government Regulation Number 54 of 2007 and the Child Protection Law, expressly states that the adoption of a child does not break the blood relationship between the adopted child and his biological parents. This provision is very clearly different from the Staatblaad which severed the relationship between the adopted child and the biological parents. So, because of these differences, the Staatblad should no longer be a guideline or legal reference in dealing with inheritance issues for adopted children.

There are two types of inheritance in the Civil Code system, namely:

- a. Acquisition of inheritance because of having a blood family bond with the heir or having a marriage bond with the heir or called heir according to law (*ab intestato*).
- b. The acquisition of inheritance is based on a will (testamentary), by the provisions of Article 875 of the Civil Code.

Judging from the above provisions, one of the ways that adopted children can obtain inheritance is through wills. This is because adopted children are not included in the class of heirs according to the law (*ab intestato*) based on the provisions of Article 832 of the Civil Code. The acquisition of inheritance by adopted children carried out by will, according to the author, is the most ideal way, because it is in line with the Islamic legal system and the customary law system in certain tribes. This acquisition by will also according to the Writing will protect the real heirs/heirs of the *ab intestato* because the Civil Code regulates the limitations in making wills, one of which is *legitime portie*.

There is also a limit to the distribution of inheritance based on wills. The heir cannot bequeath all of his property that goes into the *legitime portie*, which is the absolute part that must be given to the heir according to the law. The limitation of a will in a testament is located in Article 913 of the Civil Code, which is about *legitime portie* which states that *legitime portie* or absolute part is all parts of the inheritance that must be given to the heirs in a straight line according to the law, for which part the deceased is not allowed

to stipulate something either as a division between the living and the deceased world, as well as as a will. Legitimate portie is a certain part of a heritage that cannot be erased by the person who leaves the inheritance. The part is not given to others, either by donation or will. People who get this part are called legitimists. Those who are entitled to the absolute share are the heirs straight down (children and their descendants) or straight up (father/mother or grandfather/grandmother and so on) of the heirs. Regarding the magnitude of the absolute part, it can be seen in the provisions of Articles 914 to 916 of the Civil Code.

Legal Protection for Adopted Children Who Do Not Obtain Inherited Property from Adoptive Parents

1. Legal Protection for Adopted Children Against the Inheritance of Adoptive Parents According to Islamic Law

According to Islamic Law, it is explained that "Allah has commanded you to (oblige) to (divide the inheritance for) your children, (i.e., the share of one son is equal to the share of two daughters). (The male share is twice the female share because the male part is heavier than the female one, such as the obligation to pay the mascot and provide for the living (see An Nisa":34) And if the children are all women who are more than two, then their share is two-thirds of the property left behind. If she (the daughter) is alone, then she gets half (the property left behind). And for both parents, each part of one-sixth of the property is left behind, if he has children, if he has no children and he is inherited by both parents, then his mother gets one-third, if he has several brothers, then his mother gets one-sixth after the will he makes or (and after the debt is paid). (About) your parents and your children, you don't. Knowing which of them will benefit you more. This is God's decree. Truly, Allah is All-Knowing, All-Wise." (QS. An- Nisa verse 11)16.

In Islam, inheritance law is defined as a law that explains the stipulations or rules related to the transfer of rights and or obligations to the heirs or the inheritance of the deceased to the heirs, determining or identifying the heirs and their respective shares.¹⁷ Compilation of Islamic Law Article 171 paragraph (1) defines "inheritance law as a law that regulates the transfer of property rights to the inheritance of heirs, determining who is entitled to be the heirs and their respective shares".

Article 174 of the Compilation of Islamic Law explains who has the right to become an heir, namely:

- a. The male group again consists of fathers, sons, brothers, uncles, and grandfathers; The female group consists of mothers, daughters, sisters, and grandmothers.
- b. According to the marital relationship, it consists of widows or widows. If all heirs exist, then only children, fathers, mothers, widows, or widowers are entitled to inheritance.

Based on the group of heirs mentioned based on the compilation of Islamic Law, adopted children are not part of the heirs in the inheritance system based on Islamic Law in Indonesia, because adopted children do not have a blood relationship with the heirs and also do not have a marital relationship with the heirs, so if based on Islamic law, adopted

children are not part of the heirs so they are not entitled to the heirs' inheritance. However, according to Abdul Manan in his book, "adopted children are included in the category of parties other than heirs who can receive the inheritance of the heirs based on the obligatory will". Based on Article 209 paragraph (2) of the Compilation of Islamic Law states that "Adopted children who do not receive a will are given a mandatory will of a maximum of 1/3 of the inheritance of their adoptive parents".

2. Legal Protection for Adopted Children Against the Inheritance of Adoptive Parents According to Civil Law

Arrangements related to the inheritance rights of the adopted children themselves are not regulated in the Civil Code, which only recognizes children out of wedlock, namely Article 863 of the Civil Code states: "If the heir dies by leaving a legitimate child and/or husband and wife, then the recognized illegitimate child inherits 1/3 of the part, of those who should have got, if they are legitimate children" so that illegitimate children can get an inheritance if the illegitimate child is recognized by his father. Inheritance is an inheritance given from the heir who has passed away, to his heirs. According to Abdulkadir Muhammad, "Heirs are every person who has the right to the inheritance of the heirs and is obliged to settle their debts. These rights and obligations arise after the heir dies". However, the regulations related to adopted children are not regulated in the Civil Code. Adopted children are not specifically regulated in the Civil Code, but adopted children are entitled to a share of the inheritance through a testamentary grant. According to Article 957 of the Civil Code, a testamentary grant is "a special determination of a will, with which the person who bequeaths to one or more persons gives some of his goods of a certain type, such as all movable goods, immovable goods or gives the right to use the proceeds of all or part of his inheritance" which means that the grantor of the will explains during his lifetime what will be granted the will and its implementation is only carried out when the giver The will grant has passed away.

Based on Article 875 of the Civil Code, "The so-called will or testament is a deed that contains a statement of what he wants to happen after he dies, and which can be revoked again". Based on the provisions in Staatsblad Number 129 of 1917 "a man who is married and has no male descendants in the male line, while those who can be adopted as children are only unmarried boys and who have not been taken by others as adopted children", based on that, the adoption of such a child is an act that equalizes the position of one's own adopted child with the biological child. There are two ways to obtain inheritance according to civil law, namely:

- a. As legal heirs. According to the provisions of Article 832 of the Civil Code, those who are entitled to the inheritance share are blood relatives, both legal and out-of-wedlock, and the husband or wife who lives the longest.
- b. Because it is appointed based on a will in Article 899 of the Civil Code, the testator makes a will to his heirs appointed in a will.

Conclusion

In inheritance cases involving Chinese citizens, the judge applied the theory of positive proof which requires the existence of a valid adoption certificate according to Staatsblad 1917 to determine inheritance rights. Because SW is only a foster child, he is not entitled to LJT's inheritance, so the inheritance certificate that mentions T1 and T2 as the only heirs of LJT is considered valid. In Islamic law, the adoption of a child does not give inheritance rights from the adoptive parents except through a will which is limited to 1/3 of the inheritance. Adopted children can obtain inheritance through wills, in line with customary and Islamic law, which protects the rights of legal heirs. Article 209 paragraph (2) of the Compilation of Islamic Law stipulates that adopted children who do not receive a will get a mandatory share of a maximum of 1/3 of the inheritance of their adoptive parents. The author suggests that judges be careful in handling cases of adopted children's inheritance and pay attention to applicable customary and religious laws. It is also recommended that the government make a special law for child adoption that regulates the procedures and inheritance rights, to prevent conflicts between biological and adopted children and ensure orderly administration and clear legal rights for adopted children.

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