

Inheritance Rights for Only Adopted Children Who Are Not Legally Competent Case Study of Tangerang Court Decision

Moh. Sharif Hidayatullah

Universitas Islam Sultan Agung, Semarang, Indonesia, E-mail:
mohsyarifh6@gmail.com

Abstract. *This research aims to determine and analyze the implementation of granting inheritance rights to single adopted children who are not legally competent based on the Judge's decision in Decision Number 640/Pdt.P/2021/PN Tng and to analyze the Judge's considerations in determining single adopted children who are not legally competent as individuals. in forgiveness. The approach method used in this research is the normative juridical method, namely the approach carried out by examining approaches to theories, concepts, and reviewing statutory regulations. The specifications of this research use analytical descriptive. The data used in this research is primary data which includes the 1945 Constitution; Law Number 2 of 2014; Law Number 35 of 2014; Government Regulation Number 54 of 2007; Civil Code, as well as secondary data containing books and other supporting documents. The data collection method in this research uses library study techniques. The data analysis method is qualitative and data is obtained descriptively. The research results show that the process of adopting a child must be carried out in accordance with certain procedures, conditions and must go through a court decision. An adopted child can inherit property from his parents through a testamentary or will. An adopted child who has limitations that make it difficult for him to take legal action or is not legally competent requires that he be appointed a guardian and designated as a person under guardianship.*

Keywords: *Adopted; Children; Forgiveness; Inheritance; Rights.*

1. Introduction

Humans as creatures created by God have various kinds of needs for life both as individuals and as part of society. Humans actually always have the desire to form a family to fulfill and support their life needs. As according to

Maslow¹Humans will always be motivated to fulfill their life needs, one of which is the need for sex (the psychological needs) which is carried out through marriage. However, not only to channel sexual needs, through marriage offspring can also be obtained to fulfill the need for a sense of belonging and affection (the belongingness and lovely needs).

Marriage is a physical and spiritual bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family (household) based on God Almighty.²Marriage is a contract whose entire aspect is contained in the word *nikah* or *tazwij* and is a sacred ceremonial greeting.³After going through the marriage stage, it is natural for a husband and wife to have children who are expected to elevate the status and dignity of their parents and perpetuate the family lineage.

The fact is that not all married couples can have children. This can happen due to several possibilities, such as one or both husband and wife being infertile, sick, disabled, etc. Because of this, there are several married couples who choose to adopt children. Adoption is a legal act that transfers a child from the family environment of the legal parents/legal guardian/other person who is responsible for the care, education and raising of the child to the family environment of the adoptive parents based on a court decision/determination.⁴Adoption is one of the efforts to protect children. Child protection is all activities to guarantee and protect children and their rights so that they are able to live and grow and develop, can participate optimally in accordance with human dignity, and receive protection from violence and discrimination.

Regulations regarding child adoption have been regulated in Government Regulation Number 54 of 2007, especially in Article 1 Number 2 which requires that adoption must be carried out through a court decision or determination. Previously the PP was in force, adoption of children could occur with a notarial deed. However, after the enactment of PP Number 54 of 2007, it is still possible to make a child adoption deed through a notary but it must still be ratified by the court. In the sense that the notary has actually lost his authority to make a child adoption deed because there is already an agency that has more authority over this, namely the court as stated in article 15 of the Law on the Position of Notaries.

¹Abraham H. Maslow, 1970, *Motivation and Personality*, Harper & Row Publishers, New York, Pg. 35-47.

²Article 1 Law Number 1 of 1974 concerning Marriage.

³MA Tihami and Sohari Sahrani, 2014, *Fikih Munakahat (Complete Study of the Jurisprudence of Marriage)*, PT. Raja Grafindo Persada, Jakarta, Pg. 8.

⁴Erna Sofwan Sjukrie, 1992, *Child Adoption Institution*, Supreme Court of the Republic of Indonesia, Page. 17.

The act of adopting an adopted child can give rise to legal consequences in that an adopted child also has a juridical position towards those who adopted him, including having the right to inherit the wealth left by his adoptive parents. Inheritance Law is the law that regulates the transfer of assets left behind by someone who dies and the consequences for the heirs.⁵Inheritance law in National Law is regulated in Articles 830 to 1130 of the Civil Code (KUHPerdata). This law applies to non-Muslim communities, including Indonesian citizens of both Chinese and European descent. This civil inheritance law adheres to an individual system where each heir receives inheritance according to their respective shares.

Civil Law through the Civil Code does not directly regulate inheritance rights for adopted children. Adopted children are not biological children or illegitimate children so they are not entitled to receive inheritance from their adoptive parents. In civil law, there are two paths to obtaining an inheritance, namely through absentee inheritance and testamentary. It is impossible for an adopted child to obtain inheritance rights through absenteeism because he is not related by blood and is not considered a biological child or illegitimate child. Granting inheritance rights to adopted children is only possible through a testamentary or will from their adoptive parents. However, as time goes by and legal developments in Indonesia, problems regarding inheritance rights for adopted children also continue to occur. As the author will examine in this research. If an adopted child is the only child in a family, is he entitled to inheritance from his parents?

As in the Tangerang District Court decision Number 640/Pdt.P/2021/PN.TNg. applicant Arry Agus Setiawan, as the cousin of an adopted child named Thomas Santoso, submitted an application to become guardian because Thomas Santoso's brother has a mental disorder (schizophrenia) so he cannot be categorized as legally competent and cannot act legally. Brother Thomsa Santoso is the adopted son of husband and wife couple Sugeng Santoso and Rachel Triani Santoso based on Deed of Adoption Number 46 dated January 26 1977 which was issued by JN Siregar, SH, a Notary in Jakarta and ratified by the North-East Jakarta District Court on August 11 1977. That Sugeng Santoso and Rachel Triani Santoso later died and left an inheritance based on inheritance deed Number 24 dated October 2009 issued by Notary Hardi Widjaja, SH for their adopted son, namely Thomas Santoso. However, due to Thomas Santoso's mental disorders, he was required to be treated at the rehabilitation center for chronic mental disorders "Panti Sahabat Kita" which is located at Jl. Prof. Dr. N. Driakara 02 Purworejo Central Java. So the applicant feels the need to sell the inherited

⁵Elviana Sagala, 2018 "Inheritance Rights According to the Provisions of Civil Inheritance Law", Advocacy Scientific Journal, Vol 06 No. 01, March, p. 116, <https://media.neliti.com/media/publications/323443-hak-mewaris-menrut-besar-Hukum-wari-bd1253e6.pdf> accessed on 20 August 2023 at 21.35 WIB

property in the form of SHM house Number 00423 with an area of 120 m² in the name of Rachel Triani Santoso located at GRBJ Anggrek Loka Blok A4 Number 49 RT 001/RW 007, Paku Jaya Village, North Serpong District, South Tangerang City to meet the respondent's living needs. .

Thomas Santoso's problem as an adopted child with mental disorders is one of the many problems regarding inheritance rights for adopted children in Indonesia. Previously, inheritance rights for only adopted children had been discussed by Hikmatul Mahfiyyah and what differentiated previous research from this research was the inheritance rights for only adopted children who were not legally competent.

2. Research Methods

The research method used in this research is Normative Juridical, namely using an approach based on the main legal material by examining theories, concepts, legal principles and statutory regulations related to this research. Normative juridical research is legal research that places law as a building system of norms. The data source used is a literature study where data collection techniques are obtained from books, documents, notes, reports and laws and regulations related to this research. This research uses analytical descriptive legal research specifications with a case approach, namely the Tangerang District Court Decision Number 640/Pdt.P/2021/PN.TNg, with secondary data sources such as written laws and regulations in force in Indonesia, especially relating to child adoption, inheritance rights, and child protection.

3. Result and Discussion

Adoption is the process of transferring a child from biological parents to adoptive parents through several processes. The process is adjusted to the provisions that apply in the environment of the child and adoptive parents. Previously in the *Burgelijk Wetboek (BW)* there was no provision found that specifically regulated the child adoption process. BW only regulates the provisions for recognition of illegitimate children as regulated in Articles 280-289 Book 1 Chapter 12 which in substance regulates the recognition of illegitimate children. Apart from that, *Staatsblad* Number 129 of 1917 is a written legal provision that regulates adoption of children for Chinese people, and does not apply to native Indonesian people. So, for native Indonesian people, customary law applies which includes the provisions of Islamic law.⁶

The Civil Code (KUHPer) emphasizes that distribution of inheritance can only be carried out if death occurs. There are two ways to obtain an inheritance fairly,

⁶Ahmad Kamil and HM Fauzan, *Child Protection and Adoption Law in Indonesia*, 2020, Cet. 2nd, PT Raja Grafindo Persada, Jakarta, p. 23.

namely through absentee inheritance and testamentary inheritance. Absentantio inheritance is an inheritance obtained based on law. In this case, the heir's relatives (the deceased who left an inheritance) are the parties entitled to receive the inheritance. Those who are entitled to receive are divided into four groups, namely children, wives or husbands, younger siblings or older siblings, and grandparents. Meanwhile, inheritance by testamentary/will is the appointment of heirs based on a will. In this way, there is a person's statement about what he wants after he dies someday which the maker can change or revoke as long as he is still alive in accordance with Article 992 of the Civil Code. The method of cancellation must be with a new will or carried out by a Notary. This requirement for making a will applies to those who are 18 years of age or older and are married even though they are not yet 18 years old. Included in the group of heirs based on a will are all people appointed by the testator through a will to be his heirs.⁷

In decision Number 640/Pdt.P/2021/PN. Tng explained that a husband and wife named Sugeng Santoso and Rachel Triani Santoso married and after 14 years had not had any children. Then they adopted a child from the Sayap Ibu Foundation who was named Thomas Santoso in accordance with Adoption Deed Number 46 dated January 26 1977 issued by JN SIREGAR., SH glr Mangaraja Namora, a Notary in Jakarta. Subsequently, birth certificate Number 119 of 1977 was issued by the Jakarta Civil Registry and it was ratified by the North-East Jakarta District Court on August 11 1977. From this information it can be concluded that the process of adopting a child in the name of Thomas Santoso was carried out according to the procedure, even though it was through a certificate that made by a Notary but then determined by a court decision. Thus, the adoption of the child is valid and gives Thomas Santoso the rights and obligations as an adopted child.

On October 19 2009 Sugeng Santoso died and left behind his wife and adopted child. In accordance with the Deed of Information on Inheritance Rights Number 1/XII/KHM/HW/2009 dated 19 December 2009 issued by Notary HARDI WIDJAJA, SH that Sugeng Santoso (deceased) left 2 (two) heirs, namely Rachel Triani Santoso (wife) and Thomas Santoso (adopted son). Both of them have the same legal rights as the legal heirs of Sugeng Santoso (late). Furthermore, Rachel Triani Santoso, Thomas Santoso's adoptive mother, died on July 27 2017 and all of Thomas Santoso's living expenses were borne by applicant Arry Agus Setiawan.

As we know, adoption of a child has different legal consequences from one region to another. Especially in terms of the rights of adopted children to the

⁷Zena Wahyu Sugiyanto and Winaryo Budyatmojo, 2022 "Provisions for Settlement of Inheritance Rights Cases within the Scope of Religious Courts", Journal of Democracy and National Resilience Vol 1 No. 2, p. 251, <https://journal.uns.ac.id/Sovereignty/article/view/198> accessed on October 24 2023 at 00.38 WIB.

assets inherited from their adoptive parents and vice versa. When someone dies, the assets they own will automatically be handed over to the heirs they left behind. Inheritance law is the law that regulates the transfer of ownership rights to inherited property and determines who can have the right to be an heir and how much share each will get.

As an adopted child, even though the responsibility for caring for him, such as educating, nurturing, financing and so on, has become the responsibility of the adoptive parents and is no longer the responsibility of the biological parents, the child is still entitled to the inheritance from his biological parents. As we know, adopting a child does not necessarily sever the adopted child's blood relationship with his biological parents. The law does not sever blood relations but rather regulates responsibilities. However, the question is how an adopted child inherits from his adoptive parents in terms of property or inheritance.

In the event that an adopted child is adopted without any other siblings or in other words the biological child of his adoptive parents, he can become the sole heir who is entitled to the inheritance of his adoptive parents. As the Supreme Court Jurisprudence Number 663 K/SIP/1970 dated 22 March 1972 contains the legal rule that if an heir leaves an adopted/adopted child not with his biological child, then the adopted child can be made the sole heir because he has the same legal position as biological children.

The inheritance inherited from Thomas Santoso's adoptive parents is a house with an area of 120 m². The house will be sold and the proceeds will be used for the needs of heirs who have mental disorders and are considered legally incompetent. So in this case it is necessary to have someone who is the guardian or guardian of the adopted child. A competent person is an adult who is 21 years old and of sound mind. Meanwhile, people who are incompetent are people who are not yet adults and people who are placed under guardianship can be people who have mental disorders, drunkards, and people who are wasteful.

Forgiveness or curatele is a situation where a person, because of their personal characteristics, is considered incompetent in all legal actions. People who are under guardianship are called curandus and as a result they are declared legally incompetent. Meanwhile, the person who handles it is called a curator. The determination of pardon can be requested by the husband or wife, the blood family, the prosecutor's office, and in cases of weakness, it can only be done at the request of the person concerned.⁸In the Civil Code, the rules regarding pardon are located in the first book on Persons, Chapter

⁸Rization 1, p. 68, <https://jurnal.umpwr.ac.id/index.php/eksamination/article/download/3216/1618>/accessed on 02 November 2023 at 21.29 WIB.

“Every adult, who is always in a state of imbecility, madness, or darkness, must be placed under guardianship, even if he is sometimes capable of using his mind. An adult may also be placed under custodial care for extravagance.”

Schizophrenia is one of the most serious mental disorders and is most commonly found in Indonesia. Schizophrenia is a persistent and serious brain disease that results in psychotic behavior, concrete thinking and difficulties in processing information, interpersonal relationships and solving problems.⁹ Schizophrenia can be characterized by confusion in thought content (delusions and hallucinations) as well as in a mood that is inconsistent with one's sense of self and relationship with the outside world. Simply put, schizophrenia sufferers find it difficult to differentiate the real world from the imaginary world, this can be based on delusions. A delusion is a person's belief that is not in accordance with reality, but is maintained and cannot be changed logically. This belief comes from the thoughts of people who have lost control or control over themselves.

In the case that occurred in decision Number 640/Pdt.P/2021/PN. Tng did not have any objections from the judge to giving the entire inheritance of the adopted child from the deceased adoptive parents. This is because the adoption of a child is legally recognized and determined by the local court so that its validity cannot be doubted. The adopted son is the only remaining heir because he has no siblings. However, because the sole heir suffers from a mental disorder (schizophrenia), the heir needs medical and care costs for him, so his cousin needs to sell the inherited assets for the good and future of the adopted child. A person can be said to be legally incompetent or unable to carry out legal actions under several conditions, one of which is that he is a person who has limited thinking due to mental disorders. So it is necessary for him to be appointed as guardian so that there is someone who can represent him to carry out legal actions such as buying and selling.

As long as the legal action is carried out for the good and with the approval of the family, it may be carried out supported by no indication or desire on the part of the Petitioner to control or use the proceeds from the sale of inherited assets for personal gain and is given authority only to carry out legal actions on behalf of Thomas Santoso in the sale. inheritance of adoptive parents and record and manage these assets.

The Civil Code does not clearly explain whether people with mental disorders such as schizophrenia can be requested/placed under guardianship. In general,

⁹Istichomah and Fatihatur R, 2019 "The Effectiveness of Family Knowledge About Schizophrenia Towards Frequency of Recurrence of Schizophrenic Family Members at Poly Mental Ghrasia Mental Hospital DI Yogyakarta", Health Journal "Samodra Ilmu" Vol 10 No. 2, p. 1, <https://stikes-yogyakarta.e-journal.id/JKSI/article/download/48/43>/accessed on 02 November 2023 at 21.47 WIB.

people with schizophrenia experience disturbances in perception, cannot differentiate between reality and their imagination, driven by delusions and delusions. Meanwhile, the Civil Code does not explain whether people with schizophrenia can be requested/placed under guardianship. However, considering the condition of the Respondent who is no longer able to think properly, for the sake of his humanity, as well as for the interests of the Petitioner, it is appropriate. Because there will be people who monitor and fulfill their daily needs.

In terms of becoming a guardian, there are conditions that must be met and there is also authority that must be exercised. The rights and obligations of a guardian are limited by law. This is done so that there is no arbitrariness and to be careful in its implementation. Therefore, the teacher must be observant that there are obligations and the rights of the teacher must still be fulfilled. The guardian's authority regarding civil matters is based on the judge's determination. If necessary, the guardian is obliged to carry out the actions necessary for the interests of the guardian for the actions of other people which are detrimental to that person, and to fight for the interests of the person under his or her guardianship.¹⁰Article 3 of the Civil Code states that civil rights are the same as the rights of citizens. People under guardianship still have the same rights and obligations as the rights and obligations of citizens in general, which only disappear when the person dies. Because of his position, a Terampu can still get his rights, but cannot carry out his obligations properly.

4. Conclusion

Adopted children do not have a relationship with their adoptive parents and do not have the right to inherit property from their adoptive parents. However, in this case, Thomas Santoso is the legal heir of Sugeng Santoso (adoptive father) and Rachel Triani Santoso (adoptive mother) in accordance with the Deed of Inheritance Statement issued by Notary Hardi Widjaja, SH. So he is entitled to receive the full inheritance of the inheritance in the form of a house. along with land located in South Tangerang City. Thomas Santoso received inheritance rights through the testamentary route or testamentary route. Because Thomas Santoso, as the sole heir, has schizophrenia, he requires a lot of money to care for him. People with mental disorders cannot be categorized as legally competent even though they are adults. Therefore, a guardian is needed for him to take legal action. The Judge's appointment of Thomas Santoso as a guardian and Arry Agus Setiawan as guardian is something that should happen and is a solution to the problem of lack of maintenance costs and has a positive impact on Thomas Santoso's life in the future.

¹⁰Rizal Dawwas and Agus Budi Santoso, Op. Cit., p. 72-73.

To become a guardian there are conditions that must be met and there is also authority that must be exercised. The rights and obligations of a guardian are limited by law. This is done so that there is no arbitrariness and to be careful in its implementation. Therefore, the teacher must be observant that there are obligations and the rights of the teacher must still be fulfilled.

5. References

Journals:

Elviana Sagala. "Hak Mewaris Menurut Ketentuan Hukum Waris Perdata". dalam *Jurnal Ilmiah Advokasi* Vol 06 No. 01 (2018) url:

<https://media.neliti.com/media/publications/323443-hak-mewaris-menurut-ketentuanhukum-wari-bd1253e6.pdf>

Istichomah dan Fatihatur R. "The Effectiveness of Family Knowledge About Schizophrenia Toward Frequency of Recurrence Of Schizophrenic Family Members at poly Mental Ghrasia Mental Hospital D. I. Yogyakarta". dalam *Jurnal Kesehatan "Samodra Ilmu"* (2019) url:

<https://stikes-yogyakarta.e-journal.id/JKSI/article/download/48/43/>

Rizal Dawwas dan Agus Budi Santoso. "Tinjauan Yuridis Penetapan Pengadilan terhadap Permohonan Pengampunan Orang Pengidap Gangguan Mental (Skizofrenia Paranoid) (Penetapan Perkara Nomor 50/Pdt.P/2021/PN.Pwr)". dalam *Jurnal Hukum* Vol 3 No. 1 (2023) url:

<https://jurnal.umpwr.ac.id/index.php/eksaminasi/article/download/3216/1618/>

Zena Wahyu Sugiyanto dan Winaryo Budyatmojo. "Ketentuan Penyelesaian Perkara Hak Waris Dalam Lingkup Pengadilan Agama". dalam *Jurnal Demokrasi dan Ketahanan Nasional* Vol 1 No. 2 (2022) url:

<https://journal.uns.ac.id/Sovereignty/article/view/198>

Books:

Kamil, Ahmad dan H.M Fauzan. (2020). *Hukum Perlindungan dan Pengangkatan Anak di Indonesia*. Jakarta: PT Raja Grafindo Persada.

Maslow, Abraham H. (1970). *Motivation and Personality*. New York: Harper & Row Publishers.

Sjukrie, Erna Sofwan. (1992). *Lembaga Pengangkatan Anak*. Jakarta: Mahkamah Agung RI.

Tihami, M.A & Sohari Sahrani. (2014). *Fikih Munakahat (Kajian Fikih Nikah Lengkap)*. Jakarta: PT. Raja Grafindo Persada.