

The Urgency of Reconstructing the National Inheritance Law System for the Protection of Adopted Children

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Abstract. *The main issue in Indonesia's national inheritance law system lies in the lack of recognition of adopted children as legitimate heirs in the absence of a will, as stipulated in Article 832 of the Indonesian Civil Code (KUHPerdata), which limits inheritance rights exclusively to blood relatives. This provision creates significant inequality and discrimination against adopted children, as they are legally excluded from inheritance rights unless granted through a testamentary gift a mechanism that is limited in amount and not automatically applied. This study aims to examine the urgency of reconstructing the national inheritance law system to ensure equal legal protection for adopted children. The research employs a normative legal method, using both normative juridical and conceptual approaches. The findings reveal a legal vacuum (rechtsvacuum) and a juridical gap between existing positive legal norms and the principles of human rights and child protection. The current national inheritance system fails to provide adequate legal recognition of adopted children as part of the family in the context of inheritance. Therefore, a reconstruction of the national inheritance law is necessary one that incorporates the principles of caregiving and child welfare as the basis for recognizing family relationships, rather than relying solely on biological ties. Strategic approaches may include the addition of new norms to the Civil Code or the enactment of a National Inheritance Law that explicitly acknowledges the inheritance rights of adopted children. In addition, such inheritance law reform must be supported by strengthening protective mechanisms through the judicial system and social institutions, ensuring that adopted children can obtain legal certainty, substantive justice, and equal treatment before the law.*

Keywords: *Adopted; Children; Inheritance; Justice; Reconstruction.*

1. INTRODUCTION

In Indonesia's national inheritance law system, there is still a significant imbalance between biological children and adopted children, especially in terms of their position as

heirs (Sitorus & Sadat, 2025). Natural children automatically have the status of legitime portie or legal heirs based on intestate succession (inheritance without a will) in the civil law system (Mendrofa, 2024). Conversely, adopted children do not automatically have the same position in obtaining inheritance rights from their adoptive parents (Sihombing et al., 2025). This creates a justice gap in the structure of Indonesian inheritance law, where adoption, which should be comprehensive, including civil relationships such as inheritance, has not been fully accommodated.

Normatively, the Civil Code (KUHPerdata) as the basis of civil inheritance law does not explicitly regulate the position of adopted children as heirs. Article 832 of the Civil Code states that those entitled to inherit are blood relatives, including biological children (Atikah Rahmi, 2024; Dwi Putra Jaya, 2020). Because adopted children are not legally related by blood, they are not included in the list of statutory heirs. The only way an adopted child can obtain a share of his or her adoptive parents' estate is through testamentaire beschikking or a will, which is limited to one-third of the entire estate if there are still other legal heirs (Article 913 of the Civil Code on legitime portie).

This situation indicates that the position of an adopted child in inheritance law is only secondary and does not have a *rechtspositie* (legal standing) equal to that of a biological child (Andri et al., 2024). In practice, this can lead to family conflict, marginalization, and even potential inheritance dispute lawsuits that lead to legal uncertainty. In fact, sociologically, many adopted children have carried out the roles and functions of biological children in everyday life, but do not get equal recognition from the juridical aspect. This disharmony between social reality and normative regulation is the root of the problem that requires legal review and improvement.

Protection of the rights of adopted children should be an integral part of the national legal system, including in the aspect of inheritance (Listyowati et al., 2024; Ramadhania et al., 2024; Sitorus & Sadat, 2025). In this context, Law No. 35 of 2014 on Child Protection, which amends Law No. 23 of 2002, states that adopted children have equal rights in terms of protection, care, and welfare (Articles 39 and 40). However, these provisions are not strong enough to guarantee inheritance rights for adopted children, as they do not specifically regulate the inheritance mechanism. This indicates the need for synchronization between child protection law and inheritance law within the framework of legal coherence and harmonization of laws.

On the other hand, Government Regulation of the Republic of Indonesia Number 54 of 2007 concerning the Implementation of Child Adoption stipulates that the purpose of adoption is to serve the best interest of the child, as stated in Article 3. However, once again, this regulation does not contain provisions that explicitly grant adopted children inheritance rights equal to those of biological children. This represents a normative gap that results in a *rechtsvacuum* (legal void) in the protection of adopted children's rights in the area of inheritance. In fact, the principle of the best interest of the child requires equal recognition and protection, including in matters of family inheritance.

The human rights perspective also encourages the urgency of reconstructing the national inheritance law system (Mufid, 2020). Article 28B paragraph (2) of the 1945 Constitution of Indonesia states that every child has the right to survival, growth, and development, as well as the right to protection from violence and discrimination. This provision also applies to adopted children, who are constitutionally entitled to equal treatment without

any form of legal discrimination, including discrimination in access to inheritance. Therefore, an inheritance law system that does not provide equal protection for adopted children can be considered contrary to the principle of non-discrimination in constitutional law and international human rights law.

Globally, the principles enshrined in the Convention on the Rights of the Child (CRC), which was ratified by Indonesia through Presidential Decree No. 36 of 1990, emphasize that states must guarantee equal rights for all children without exception (Article 2 of the CRC). In this regard, the state has a responsibility to review legal systems that substantively still allow discrimination against adopted children. Therefore, reform or legal renewal of the national inheritance law system is essential to fulfill this international commitment and to ensure that national laws do not contradict the applicable convention.

Furthermore, judicial practice shows that inheritance disputes involving adopted children often result in decisions that disadvantage the adopted child, due to the weak legal foundation for inheritance from adoptive parents. This highlights the importance of legal certainty and legal protection that are more concrete and explicit. Reconstruction of inheritance law, either through the creation of a new law or by amending the Civil Code (KUHPerdata), is one viable path to establishing a fair and non-discriminatory legal system.

Thus, the reconstruction of the national inheritance law system is a necessity to achieve substantive justice for adopted children. It is not sufficient to rely solely on the will or intention of adoptive parents through a testament; there must be systemic legal recognition that adopted children are also entitled to inherit as part of a legally recognized family. The concept of inheritance can no longer be narrowly defined through blood relations alone, but must reflect social realities and the development of an inclusive modern legal system. In this regard, the state has a strategic role as a law maker to reconstruct laws that are responsive to social needs and uphold values of justice and humanity.

2. RESEARCH METHODS

The research method used in this writing is normative legal research with a normative and conceptual juridical approach (Suteki, 2018). This type of research relies on the study of applicable positive legal norms and analysis of legal concepts relevant to the position of adopted children in the national inheritance law system. The normative juridical approach is carried out by examining various laws and regulations such as the Civil Code (KUHPerdata), Law No. 35 of 2014 concerning Child Protection, Government Regulation Number 54 of 2007 concerning Implementation of Child Adoption, and other laws and regulations that intersect with the substance of inheritance and child protection. While the conceptual approach is carried out by analyzing legal ideas about justice, discrimination, and reconstruction of the legal system. The specification of this research is descriptive-analytical with the aim of providing a comprehensive and in-depth picture of the urgency of reconstructing the inheritance legal system for the protection of adopted children. The data collection method is done through library research on primary, secondary, and tertiary legal materials. The data analysis technique used is qualitative analysis which is systematically arranged to draw conclusions based on principles, principles, and legal logic.

3. RESULTS AND DISCUSSION

3.1. The Position of Adopted Children in Current Inheritance Law

In Indonesia's national inheritance law system, there is still a significant imbalance between biological children and adopted children, especially in terms of their position as heirs. Natural children automatically have the status of legitime portie or legal heirs based on intestate succession (inheritance without a will) in the civil law system (Lino, 2021). Conversely, adopted children do not automatically have the same position in obtaining inheritance rights from their adoptive parents (Winda & Firdausiyah, 2023). This creates a justice gap in the structure of Indonesian inheritance law, where adoption, which should be comprehensive, including civil relationships such as inheritance, has not been fully accommodated.

Normatively, the Civil Code (KUHPerdota) as the basis of civil inheritance law does not explicitly regulate the position of adopted children as heirs (Rahman, 2024; Sahid et al., 2025). Article 832 of the Indonesian Civil Code (KUHPerdota) states that those entitled to inherit are blood relatives, including biological children. Since adopted children do not have a legal blood relationship, they are not included in the list of heirs according to statutory law. The only way an adopted child can receive a portion of the adoptive parents' estate is through a *testamentaire beschikking* or will, which is also limited to one-third of the total estate if there are other legitimate heirs, as regulated in Article 913 of the Civil Code concerning the *legitieme portie* (reserved portion).

This situation illustrates that the position of adopted children in inheritance law remains secondary and does not carry a *rechtspositie* (legal status) equal to that of biological children. In practice, this can trigger family conflicts, marginalization, and even potential inheritance disputes that lead to legal uncertainty. Sociologically, many adopted children fulfill the roles and responsibilities of biological children in daily life, yet they do not receive equal recognition from a legal perspective. The disharmony between social reality and normative regulation lies at the heart of the issue and calls for legal review and reform.

Protection of the rights of adopted children should be an integral part of the national legal system, including in the aspect of inheritance (Haryadmo et al., 2025). In this context, Law No. 35 of 2014 on Child Protection as an amendment to Law No. 23 of 2002 states that adopted children have equal rights to protection, care and welfare (Article 39 and Article 40) (Ibrahim, 2018; Tang, 2020). However, these provisions are not strong enough to guarantee inheritance rights for adopted children, as they do not specifically regulate the inheritance mechanism. This indicates the need for synchronization between child protection law and inheritance law within the framework of legal coherence and harmonization of laws.

On the other hand, Government Regulation of the Republic of Indonesia Number 54 of 2007 concerning the Implementation of Child Adoption stipulates that adoption is intended to serve the *best interest of the child*, as regulated in Article 3. However, once again, this regulation does not contain provisions that explicitly grant adopted children inheritance rights equivalent to those of biological children. This represents a normative gap that results in a *rechtsvacuum* (legal void) in the protection of adopted children's

rights in the field of inheritance. In fact, the *best interest* principle requires equal recognition and protection, including in matters of family inheritance.

From a human rights perspective, the urgency to reconstruct the national inheritance law system is further underscored. Article 28B paragraph (2) of the 1945 Constitution of Indonesia states that every child has the right to life, growth, and development, as well as the right to protection from violence and discrimination. This provision applies equally to adopted children, who constitutionally have the right to equal treatment without any form of legal discrimination, including discrimination in access to inheritance. Therefore, an inheritance law system that fails to provide equal protection to adopted children can be considered inconsistent with the principle of non-discrimination in constitutional law and international human rights law.

Globally, the principles set out in the *Convention on the Rights of the Child (CRC)*—ratified by Indonesia through Presidential Decree No. 36 of 1990—emphasize that the state must ensure equal rights for all children without exception (Article 2 of the CRC). In this regard, the state has a responsibility to review legal systems that still substantively allow discrimination against adopted children. Therefore, reform or legal renewal of the national inheritance law system is crucial to fulfill these international commitments and ensure that national laws do not contradict the applicable conventions.

Furthermore, judicial practice shows that inheritance disputes involving adopted children often end in rulings that are disadvantageous to them, due to the weak legal foundation for inheritance from adoptive parents. This highlights the importance of establishing more concrete and explicit legal certainty and legal protection. Legal reconstruction in the form of new legislation or amendments to the Civil Code (*KUHPerdata*) is one potential solution to create a fair and non-discriminatory system.

The most striking gap in the national inheritance law system lies in the difference in legal status between biological and adopted children. Biological children, under Article 832 of the Civil Code, automatically qualify as legal heirs and are entitled to an inheritance share based on lineage (*legitime portie*). In contrast, adopted children are not included among legal heirs under statutory law and can only inherit if the testator explicitly names them in a will (*testamentaire beschikking*). Even then, inheritance granted through a will is limited to a maximum of one-third of the total estate if the testator has other lawful heirs. This restriction directly limits the economic rights of adopted children, even though they may have been treated as biological children both socially and emotionally.

This disparity affects the legal protection of adopted children after the death of their adoptive parents. It is not uncommon for adoptive parents to pass away without leaving a will, leaving adopted children without legal grounds to claim any part of the inheritance. In such situations, adopted children effectively become "legal strangers" whose existence is unrecognized by the inheritance system. This stands in stark contrast to the *best interest of the child* principle, which should serve as the foundation for policymaking and legal protection for children in all circumstances. To clearly illustrate the disparity in treatment between biological and adopted children in Indonesia's inheritance law, the following presents a normative comparison table:

Table 1. Normative Comparison Between Biological And Adopted Children in Indonesia's Inheritance Law

Inheritance Law Aspects	Biological Child	Adopted Child
Heir status under the Civil Code	Recognized as an automatic heir (Article 832 BW)	Not recognized as an heir without a will
Inheritance rights without a will	Still entitled to an inheritance share	Receives no inheritance at all
Limitation on inheritance share	No limitation on the amount	Maximum of 1/3 of the estate if through a will (Article 913 BW)
Need for a will	Not required	Highly required
Legal protection after the testator's death	Guaranteed by the system	Depends on the will of the testator

The above inequality of treatment is the source of many social and legal problems. An adopted child who has interacted since childhood with the adoptive family can suddenly be considered an "outsider" by the biological heirs when the testator dies. This creates the potential for acute family conflict, especially if the estate is large enough. Inheritance disputes often occur in court, where adopted children are in a very weak juridical position (Fachrurrazi et al., 2024; Huda, 2025). In many cases, even when there is clear evidence of strong emotional bonds and caregiving relationships, judges remain bound by the provisions of positive law, which do not explicitly recognize adopted children as legal heirs. These legal provisions create a legal reality that is unresponsive to the dynamics of modern families.

This potential for conflict also impacts social order and worsens the perception of justice within the national civil law system. Adopted children who are denied access to justice may feel marginalized, and this condition gives rise to legal disparity, which contradicts the principle of substantive justice. In fact, Article 28D paragraphs (1) and (3) of the 1945 Constitution guarantees every person the right to legal protection and equal treatment before the law. When the law fails to provide justice for adopted children, it fails in its primary function as an instrument of social protection.

Therefore, this legal gap must not only be acknowledged but urgently addressed through the reconstruction of a national inheritance law that is just, progressive, and grounded in the values of equality and human dignity.

Thus, the reconstruction of the national inheritance law system is imperative to deliver substantive justice for adopted children. It is not sufficient to rely solely on the will of adoptive parents through a testament; there must be systemic legal recognition that adopted children also have the right to inherit as members of a legally recognized family. The concept of inheritance must no longer be narrowly defined by blood relations, but instead reflect social realities and the inclusive development of modern law. In this regard, the state has a strategic role as a law maker to reconstruct laws that are responsive to social needs and uphold the values of justice and humanity.

3.2. The Need for Reconstruction of National Inheritance Law

The current national inheritance law system is still based on colonial heritage, namely the Civil Code (*Kitab Undang-Undang Hukum Perdata* or *Burgerlijk Wetboek*), which is

no longer fully aligned with the evolving values of human rights and the principles of child protection (Salas et al., 2025). Inheritance law under the Civil Code (*KUHPerdata*) still prioritizes bloodline (*linea recta consanguinitatis*) as the basis for the legal relationship between the decedent and the heirs (Afrizal & Fauzan, 2024). By not granting automatic recognition of adopted children as legitimate heirs, the current system clearly violates the principles of justice and non-discrimination as stipulated in Article 28D paragraphs (1) and (3) of the 1945 Constitution, as well as the provisions of the Convention on the Rights of the Child (CRC), which was ratified by Presidential Decree No. 36 of 1990.

This condition indicates that the reconstruction of the national inheritance law is an urgent necessity. Legal reconstruction is required to adapt inheritance norms to the social reality of modern families, where legal relationships are no longer solely determined by biological ties but also by caregiving relationships and social roles. In this context, adopted children should be given a legal position as heirs under specific protective provisions. According to Prof. Satjipto Rahardjo, the law must not lag behind social realities. In his concept of progressive law, he asserts that "law must always be shaped and developed to serve humanity and social justice, not merely as rigid written norms."

The current regulations are still insufficient to provide equal legal protection for adopted children. Law No. 35 of 2014 on Child Protection acknowledges that adopted children have the right to care and welfare equal to biological children (Articles 39 and 40). However, this is not followed by operational inheritance norms. On the other hand, Government Regulation No. 54 of 2007 concerning the Implementation of Child Adoption only regulates the adoption procedures and does not address civil aspects such as inheritance. This absence of norms creates a regulatory vacuum that directly affects adopted children's access to justice after the death of their adoptive parents.

In Indonesia's pluralistic legal system, inheritance law reconstruction must also consider harmonization among legal systems: civil law (BW), Islamic law, and customary law. Each system views adopted children differently. In Islamic law, adopted children do not have ipso jure inheritance rights but may receive up to one-third of the estate through a will (*wasiat wajibah*). In customary law, the position of adopted children varies by community; in some regions such as Bali or Batak, legally adopted children are considered to have equal inheritance rights. Therefore, national inheritance law reform must accommodate local, religious, and universal values through a legal unification or legal harmonization approach.

One possible approach is the addition of specific provisions in the Civil Code to recognize adopted children as heirs under certain conditions and procedures. For instance, legally adopted children through court rulings may be included in Group I heirs, equivalent to biological children, as referred to in Article 852 of the Civil Code. A more comprehensive alternative would be the establishment of a National Inheritance Law that could replace or complement the colonial inheritance system and bridge the gaps between civil, customary, and Islamic laws in an inclusive manner.

This reconstruction should include formal recognition of adopted children as statutory heirs, not merely through testamentary mechanisms. This is essential to establish legal certainty and legal justice that is non-discriminatory. In this regard, a recognition

approach based on caregiving relationships and child welfare (child-centered approach) should be applied, rather than one based solely on blood relations. Aristotle's theory of distributive justice also emphasizes that just law is law that provides treatment aligned with the needs and contributions of each individual in society, including adopted children who have fulfilled the social role of a child.

Furthermore, legal protection mechanisms for adopted children must be strengthened through the roles of the courts and social institutions. Judicial institutions could be given the authority to determine the legal standing of adopted children in inheritance distribution through constitutive rulings. Similarly, institutions such as the Ministry of Social Affairs, the Indonesian Child Protection Commission (KPAI), and the Witness and Victim Protection Agency (LPSK) should have a coordinating function in ensuring the inheritance rights of adopted children in families without strong legal structures. This aligns with the principle of positive obligations of the state in human rights, meaning the state has a duty to actively guarantee the rights of all citizens, including adopted children.

The implementation of a reconstructed national inheritance law must not be merely normative, but also practical. This means that beyond legislative changes, public legal education, training for law enforcement officers, and digitalization of adoption and inheritance data are needed to prevent conflicts. In the long run, the establishment of a national inheritance law that formally recognizes adopted children will enhance social integration and strengthen family institutions in all their forms. This will create legal resilience in the face of the dynamics of modern society.

By adopting a responsive and just legal approach, Indonesia can move beyond the shadow of colonial legal legacies that no longer align with contemporary values. As Hans Kelsen stated in his *Pure Theory of Law*, law must not be trapped in a static form but must respond to the ever-changing needs of social life. Therefore, the reconstruction of national inheritance law is imperative to provide genuine legal guarantees for all children biological or adopted within the framework of a democratic state that upholds human rights.

4. CONCLUSION

Based on the explanation above, it can be concluded that the current Indonesian national inheritance law system still reflects unequal treatment between biological and adopted children. This is because only biological children are automatically recognized as legitimate heirs under the Civil Code (*Burgerlijk Wetboek*), while adopted children may only receive inheritance through a will, which is subject to limitations. The lack of alignment between inheritance law and the principles of child protection and human rights—as enshrined in the 1945 Constitution, the Child Protection Law, and the Convention on the Rights of the Child (CRC)—creates a legal vacuum (*rechtsvacuum*) and a juridical gap that disadvantages adopted children. Therefore, a reconstruction of the national inheritance law is necessary—one that recognizes adopted children as legitimate heirs based on caregiving relationships and child welfare, rather than merely biological ties. This reconstruction should also involve the harmonization of civil law, Islamic law, and customary law. The establishment of a National Inheritance Law or the inclusion of specific provisions in the Civil Code could serve as strategic steps, supported by the strengthening of the roles of courts and social institutions as protectors of adopted

children's rights. These efforts aim to achieve substantive justice, legal certainty, and adherence to the principle of non-discrimination within a democratic rule of law.

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