

Comparative Distribution of Inheritance Assets Against Adopted Children Based on the Compilation of Islamic Law and Civil Law

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Abstract. *This study aims to examine and analyze the legal status of adopted children regarding the distribution of inheritance assets in terms of the Compilation of Islamic Law and Civil Law, as well as to analyze the responsibilities of Notaries in making wills for adopted children. The approach method used in this study is a normative juridical approach. The specifications of this study use descriptive analysis. The type of data used is secondary data consisting of primary legal materials, secondary legal materials, and tertiary legal materials. The data collection method uses literature studies. The data analysis method used in this study uses qualitative analysis methods. The research results show that the distribution of inheritance to adopted children differs. This provision can be seen from the perspective of the Compilation of Islamic Law, as regulated in Article 209 of the Compilation of Islamic Law, which states that "...The granting of inheritance to adopted children through a mandatory will is a maximum of 1/3 of the inheritance assets "based on the decision of the Religious Court, then the mandatory will deed is made by a Notary, while the distribution of inheritance to adopted children referring to Staatsblad 1917 Number 129 considers adopted children to be equal to biological children but according to the Civil Code the child cannot be an heir so that in the inheritance of adopted children can be given the inheritance of adoptive parents through a testament by considering Legitimie Partice. The main difference between these two perspectives is that in the Compilation of Islamic Law the granting of inheritance to adopted children is limited to no more than 1/3 of the portion through a mandatory will, while in Staatsblad 1917 Number 129 adopted children are given the same rights as biological children. However, both have similarities, namely they have the right to receive property from their biological parents but the granting is done in different ways.*

Keywords: *Adopted Children; Civil Law; Comparative Studies; Compilation Of Islamic Law; Inheritance.*

1. Introduction

Indonesia is a state of law formed based on the values of Pancasila which is the basis for the formation of laws and regulations to regulate the interests of Indonesian citizens, one of which is marriage. Law Number 16 of 2019, an amendment to Law Number 1 of 1974 concerning marriage, states that "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 based on the One Almighty God." In a marriage, it is hoped that a child will be blessed to complete the family's happiness. However, in real life, many couples are not blessed with children due to several factors. Because of this, many couples adopt children to have children. Adoption is regulated in Indonesian Government Regulation Number 54 of 2007 concerning the implementation of child adoption. Adopting a child is a major decision that involves various aspects and has legal consequences such as the status of the adopted child and their inheritance rights.

In Indonesia, there are three legal systems that govern adoption issues: Islamic law, customary law, and civil law. Adoption under Islamic law does not alter the legal relationship, lineage, or mahram of the child. The only change is the transfer of responsibility for the child's care, supervision, and education from the biological parents to the adoptive parents.¹The Compilation of Islamic Law regarding adoption aims to ensure that the adoptive parents are able to care for the child wholeheartedly, just like their own child. Adoption in the customary law system is carried out in a community that clearly still practices customs and traditions in community life. Basically, the Civil Code does not recognize adoption. Although Indonesia has achieved its independence, to this day it still uses laws that refer to the Civil Code (BW), a legacy of Dutch colonialism. Because the Civil Code does not regulate adoption, the Dutch East Indies government issued Staatsblad 1917 No. 129 which regulates adoption for the Chinese community.²Over time, the State Gazette has undergone changes and developments since 1963, with the issuance of Jakarta District Court Decision Number 588/1963 G, known as jurisprudence. Under the State Gazette, adoption can be carried out by submitting an application to the District Court for legal certainty. For Chinese descendants in Indonesia, adopted children and biological children have equal status.

¹Muhammad Rais, Kedudukan Anak Angkat dalam Perspektif Hukum Islam, Hukum Adat, dan Hukum Perdata (Analisis Komparatif), *Jurnal Hukum Doktrin*, Vol 14 Nomor 2, December 2016, p. 184

²Jinie Aprilly Montolalu, Akibat Hukum Pengangkatan Anak (Adopsi) Untuk Golongan Tionghoa Menurut Sistem Hukum Perdata, *Lex Privatum* Vol. VI/No. 10/Dec/2018

The legal consequences of adoption include the adopted child's position in inheritance. Inheritance is the act of transferring property rights to heirs, originating from a deceased person, as regulated by inheritance law. Inheritance law is a set of legal principles governing the transfer of rights to inherited property from a deceased person to the living. There are three inheritance law systems in Indonesia: civil inheritance law, Islamic inheritance law, and customary inheritance law. These three legal systems have different provisions regarding the distribution of inheritance to adopted children. The application of these legal systems is due to the absence of a law that comprehensively regulates national inheritance law regarding inheritance issues in Indonesia.

Inheritance law plays a crucial role in the distribution of inheritance to avoid future problems that could divide families. In inheritance matters, a notary also plays a crucial role in the preparation of a Certificate of Heir and a will. Therefore, the notary's responsibility in this regard includes ensuring the material validity of the Certificate of Heir and the will. The notary not only acts as the document preparer but also assumes full responsibility for its validity. In preparing the will, the notary must adhere to Indonesian inheritance law. Although inheritance matters are regulated by law, many people still distribute their inheritance according to their own wishes without considering existing regulations. Therefore, based on the above description, the author wishes to examine and analyze further the status of adopted children in the distribution of inheritance assets in a thesis entitled "Comparative Analysis of the Distribution of Inheritance Assets for Adopted Children Based on the Compilation of Islamic Law and Civil Law."

2. Research Methods

In this research, the author used a normative juridical research type with a qualitative approach. According to Sugiyono, qualitative research is a research method used to conduct research in natural conditions, where the researcher acts as the key instrument. Data collection techniques are carried out in a combined manner, are descriptive in nature, and tend to use analytical methods.³The type of data used is secondary data, consisting of primary legal materials, secondary legal materials, and tertiary legal materials. The data collection method uses a literature study by analyzing legal materials, such as books, journals, and other written sources. The data analysis method used in this study is descriptive data analysis.

³Rizal Safarudin, Penelitian Kualitatif, *INNOVATIVE: Journal Of Social Science Research*, Volume 3 Nomor 2 Tahun 2023

3. Results and Discussion

3.1. The Legal Position of Adopted Children Regarding the Distribution of Inheritance As Perspective of the Compilation of Islamic Law

Islam fundamentally supports child protection, one of which is through adoption. This protection is reflected in the teachings of the Quran, the hadith of the Prophet Muhammad, and the practices of an ideal Muslim society. According to Article 171 letter (h) of the Compilation of Islamic Law, adoption is defined as: "An adopted child is a child whose responsibility for daily living, education costs, and other expenses is transferred from the original parents to the adoptive parents based on a court decision." Islam also prohibits adopted children from having the same inheritance rights as their biological children.⁴ Adoption of a child that is prohibited by Islamic law is by carrying out absolute adoption of the child, by giving the child the same status as an adopted child. The legal basis for adoption is also contained in the Koran, including:
Surah Al-Ahzab verse 4:

مَا جَعَلَ اللَّهُ لِرَجُلٍ مِّن قَلْبَيْنِ فِي جَوْفِهِ وَمَا جَعَلَ أَزْوَاجَكُمْ إِلَيْي تُظْهِرُونَ مِنْهُنَّ أُمَّهَاتِكُمْ وَمَا جَعَلَ أَدْعِيَاءَكُمْ أَبْنَاءَكُمْ ذَٰلِكُمْ قَوْلُكُمْ بِأَفْوَاهِكُمْ وَاللَّهُ يَقُولُ الْحَقَّ وَهُوَ يَهْدِي السَّبِيلَ

Meaning: "Allah has not made for a man two hearts in his bosom; nor has He made your wives whom you have zihar your mothers, nor has He made your adopted sons your sons. These are but words in your mouths. Allah speaks the truth and He shows the (right) way."

Surah Al – Ahzab verse 5:

أَدْعُوهُمْ لِأَبَائِهِمْ هُوَ أَقْسَطُ عِنْدَ اللَّهِ فَإِنْ لَّمْ تَعْلَمُوا آبَاءَهُمْ فَإِخْوَانُكُمْ فِي الدِّينِ وَمَوَالِيكُمْ وَلَيْسَ عَلَيْكُمْ جُنَاحٌ فِيمَا أَخْطَأْتُمْ بِهِ وَلَكِنْ مَا تَعَمَّدَتْ قُلُوبُكُمْ وَكَانَ اللَّهُ غَفُورًا رَّحِيمًا

Meaning: "Call them (adopted children) by (using) the names of their fathers; that is what is fair in the sight of Allah, and if you do not know their fathers, then (call them as) your brothers in your religion and your followers. And there is no sin on

⁴Fithrotin, Lubabah Diyanah, Wakhidatun Nihlah, Adopsi Anak dalam Perspektif Al-Quran Surah Al-Ahzab Ayat 5, *Al-Furqan*, Volume 6 Nomor 1 June 2023

you if you make a mistake about that, but (the sin is) what your heart intends. Allah is Forgiving, Most Merciful."⁵

In Surah Al-Ahzab verses 4 and 5, it is explained that in Islamic law it is forbidden to adopt a child which breaks the blood relationship between the child and his biological parents, his nasab will never be broken at any time, so that the adoptive parents have no right to become marriage guardians and there is no obstacle for the adopted child to marry the biological child of his adoptive parents, so this restriction is intended to maintain the relationship between the biological child and his biological parents and the right to inherit even though he has been adopted by someone else.⁶ Islam encourages Muslims to care for the children of others who are indigent, poor, abandoned, and so on. However, this does not sever the family ties and rights of the adopted child to their biological parents, and care for the adopted child must be based solely on charity, in accordance with the recommendations of Allah SWT.

Adoption laws have consequences for the adopted child's status in inheritance matters. Adoption does not result in mutual inheritance. In principle, Islamic inheritance law stipulates:

1. blood ties (al – qarabah)

Because of having blood relations or lineage relations within the family, a person can receive inheritance from a deceased person, in this case it is categorized into 4 groups.

2. marital relationship (al-musaharah)

Due to the existence of a marital relationship, a person can obtain inheritance due to having a marital relationship between the deceased person and the person who is inherited (heir), which includes in this marital relationship, namely husband and wife.

3. Freeing his servants (wala').

Because freeing a slave means that someone will receive an inheritance from the deceased, because he freed the slave from slavery, in this case only a man and a woman will receive it.⁷

The position of adopted children in Islamic law does not provide a basis for inheriting property from their adoptive parents, their position cannot be equated with that of biological children because the main principle in inheritance law is the

⁵ Muhammad Rafi, *Tafsir Alquran* <https://tafsiralquran.id/surah-al-ahzab-33-ayat-4-5-hukum-mengadopsi-anak-menurut-al-quran/>

⁶La Ode Ismail, Pembagian Waris Terhadap Anak Angkat Menurut Hukum Islam, *Delarev* | Volume 2 No.1 (April 2023)

⁷Abdul Aziz, Pembagian Harta Waris Anak Angkat dalam Perspektif Hukum Islam, Fakultas Agama Islam, *Jurnal Ilmiah Sultan Agung*, 19 September 2023

existence of lineage. Therefore, to protect the rights of adopted children, the Compilation of Islamic Law provides legal certainty by issuing mandatory will provisions as regulated in Article 209 of the KHI Paragraph (1) and Paragraph (2) which reads as follows:

"The inheritance of an adopted child is divided based on Articles 176 to 193 above, while adoptive parents who do not receive a mandatory will are given a mandatory will of up to 1/3 of the adopted child's inheritance."

"Adopted children who do not receive a will are given a mandatory will amounting to 1/3 of the inheritance of their adoptive parents."

Protection for adopted children to obtain their rights as children, because adopted children do not receive inheritance due to obstruction of their lineage, adopted children can obtain assets from their adoptive parents through a mandatory will, the amount of which is not allowed to exceed 1/3 of the portion of the assets left behind.

Malang Regency PA decision Number 56/ Pdt.P/ 2017/ PA.KAB.MLG, a person has died named H. Achmad Fauzi leaving behind a surviving wife named Hj. Umi Kulsum (applicant I), and two adopted children named Ida Nur Sofiati (applicant II), Ummu Fauziyah (applicant III). H. Achmad Fauzi left behind assets including land SHM No. 1319 with an area of 4,351 M2. According to the decision of the Malang Regency Religious Court No. 0973/ Pdt.P/ 2016/ PA. Kab. Mlg that for clarity of each of these rights and also for the benefit of the Applicants, a decision is needed from the Malang Regency Religious Court regarding the determination of the distribution of H. Achmad Fauzi's inheritance. Considering that the evidence P.9 in the form of a photocopy of the determination as recipients of the mandatory will in the name of Petitioner II and Petitioner III, provides evidence that Petitioner II and Petitioner III can be given a mandatory will from H. Achmad Fauzi. Therefore, the Panel of Judges will grant a mandatory will to the two adopted children of the late H. Achmad Fauzi named (PETITIONER II and PETITIONER III) jointly in the amount of 1/3 of the inheritance of the late H. Achmad Fauzi.⁸The decision explains that adopted children can receive inheritance from their adoptive parents through a mandatory will amounting to 1/3 of the inheritance.

The distribution of mandatory wills for adopted children has been regulated in the Religious Court Institution up to the Supreme Court, as recorded in the Decision of the High Religious Court No. 63/Pdt.G/2009/PTA.Bdg and the Decision of the

⁸Direktori Putusan Mahkamah Agung Republik Indonesia, <https://putusan3.mahkamahagung.go.id/search.html-22Wasiat+wajibah22> accessed on 29 July 2025 at 10.14

Supreme Court No. 677/K/AG/2009. The implementation of mandatory wills is determined by the discretion of the judge who examines the inheritance case and the judge will pay special attention to moral and ethical principles in society.

Making a mandatory will deed for an adopted child is a form of deed made before a Notary called a deed *partij* (*party acte*), contained in a party deed, authentically includes information from the people acting as parties in the deed. A party deed consists of deeds containing agreements for gifts, sales, powers of attorney, and so on. The creation of a mandatory will deed for an adopted child must be based on the authenticity of a deed, which must meet the requirements stipulated in the law regarding the validity and completeness of making an authentic deed. The notary is responsible for the creation of a mandatory will deed and also in its implementation.

In this obligatory will, the notary must carry out what the testator wishes and explain all the contents of the deed that the testator has willed to all heirs. This is intended to provide clarity and legal certainty for all heirs regarding the implementation of the will that the testator willed for all his heirs. The role of a notary is very important in helping to create legal certainty and legal protection for the community, because this is one of the powers of a notary related to making deeds.⁹ The making of a mandatory will deed before a notary, the contents of the deed relating to the amount of the portion that the adopted child will receive from the adoptive parents' assets must be based on the decision of the Religious Court.

The legal position of adopted children regarding the distribution of inheritance can be sought in several ways that are in line with the principles of Maqasid Syariah. Maqasid Syariah is a theory in Islamic law that focuses on the aim or maqasid (purpose) of sharia, namely to protect and realize the welfare of humanity by safeguarding five main things, namely to protect religion (*ad - din*), to protect the soul (*an - nafs*), to protect the mind (*al - aql*), to protect property (*al - mal*), to protect descendants (*an - nasl*).¹⁰

⁹Yanuar Dwiyan Putra, Sri Endah Wahyuningsih, Pengaturan Pelaksanaan Pasal 209 Kompilasi Hukum Islam Tentang Wasiat Wajibah Terhadap Anak Angkat Melalui Akta yang Dibuak Notaris dalam Bentuk Notariil, Fakultas Hukum Unissula, *Jurnal Akta*, Vol. 4 No. 2 September 2017

¹⁰Ponpes Al – Hasanah Bengkulu, Mengenal Maqashid Syariah, Pengertian dan Bentuk – Bentuknya <https://ponpes.alhasanah.sch.id/pengetahuan/mengenal-maqashid-syariah-pengertian-dan-bentuk-bentuknya/>

3.2. Legal Position of Adopted Children Regarding the Distribution of Inheritance Assets from the Perspective of Civil Law

The Civil Code (BW) does not contain regulations regarding child adoption, because the Civil Code does not recognize child adoption, this results in the absence of child adoption based on the Civil Code. When Indonesia was still colonized by the Dutch, the Civil Code (Burgerlijk Wetboek/BW) was applied to the foreign Chinese eastern group. However, because the BW only regulates provisions regarding the recognition of children outside of marriage, namely in book 1 Chapter 12, part three of the BW, specifically Articles 280 to 289, and the community's need for child adoption continues to increase and is strengthened by the culture of native Indonesians and people of Chinese descent who have long practiced child adoption, the Dutch colonial government issued Staatsblad 1917 Number 129 Articles 5 to 15 which specifically regulates child adoption to fill the legal gap in the Civil Code.¹¹

According to Staatsblad 1917 No. 129 Article 10, adopting a child of Chinese ethnicity under the Indonesian legal system requires the use of a notarial deed as a standard procedure. However, based on legal changes stated in Supreme Court Circular Letter No. 6 of 1983 which is a modification of SEMA No. 2 of 1979, together with PP No. 54 of 2007, adopting a child must involve the District Court. SEMA Number 6 of 1983 is an update of SEMA No. 2 of 1979 and regulates "Adoption of Children".¹² These legal consequences impact all three parties: the biological parents, the adoptive parents, and the child being adopted. One impact of adoption is that the adoptive parents replace the biological parents. This change in status impacts all of the child's rights and obligations, including inheritance rights.

Adoption of a child referring to Staatsblad 1917 Number 129, makes an adopted child who is legally adopted according to the law have binding legal force, so the adopted child is considered equal to a biological child by his adoptive parents, but in the staatsblad does not regulate the inheritance of adopted children, while in the Civil Code adopted children are not included in the heirs so to obtain inheritance from adoptive parents is given through a testament. A testament according to Article 875 of the Civil Code is a deed containing a person's statement about what he wants will happen after he dies and which can be revoked. With

¹¹Mahesa Arya Pratama, *Komparasi Hak Waris Pada Anak Adopsi Dalam Perspektif Hukum Islam Dan Hukum Perdata*, *KONSENSUS : Jurnal Ilmu Pertahanan, Hukum dan Ilmu Komunikasi*, Volume. 1 No.3 June 2024

¹²Regynald Pudihang, *Kedudukan Hukum Hak Waris Anak Angkat Menurut Kitab Undang-Undang Hukum Perdata*, *Lex Privatum*, Vol III/No 3/Jul-Sep 2015. p. 158

this, adoptive parents can make a will that gives a portion to the adopted child, but the statement must pay attention to the legitime portie of the heirs.

The Pancasila Theory of Justice provides the view that the law must be fair, which in this context is related to the legal status of adopted children regarding the distribution of inheritance according to the Compilation of Islamic Law and Civil Law. The Pancasila Theory of Justice is a legal theory based on the values of Pancasila that can provide justice as a legal reform in the state of Indonesia. The second and fifth principles refer to values that must uphold the dignity and dignity of humans as social beings. One of the goals of Pancasila justice is to maintain justice and the rights received by adopted children even though they are not related by blood to their adoptive parents. In the Pancasila justice approach, the emphasis is placed on justice and the welfare of adopted children.

3.3. Differences and Similarities in the Legal Position of Adopted Children Regarding the Distribution of Inheritance Assets as Reviewed from the Compilation of Islamic Law and Civil Law.

According to the Compilation of Islamic Law and Civil Law, the status of adopted children has similarities and differences, so that adoption greatly affects the adopted child's status vis-à-vis their adoptive parents. The following shows the differences and similarities in the legal status of adopted children regarding the distribution of inheritance as reviewed by the Compilation of Islamic Law and Civil Law:

3.3.1. Table of differences in the legal status of adopted children regarding the distribution of inheritance as reviewed from the Compilation of Islamic Law and Civil Law

Difference The Legal Position of Adopted Children Regarding the Distribution of Inheritance Assets as Reviewed from the Compilation of Islamic Law and Civil Law.		
Difference	Compilation of Islamic Law	Civil Law
How to distribute inheritance	Inheritance assets are given to adopted children through a mandatory will obtained through a decision of the Religious Court	Providing inheritance to adopted children can be done through a testament taking into account Legitimacy Portice
The size of the inheritance given	Inheritance assets given through a mandatory will cannot exceed 1/3 of the testator's assets	The amount of inheritance given is limited by the legitimie portice

Lineage relationship	The relationship between adopted children and their biological parents remains intact.	The adopted child's lineage relationship with his biological parents is severed and his lineage is replaced by the adoptive parents
Legal basis for inheritance	Compilation of Islamic Law Article 209 Paragraph (2)	Article 875 of the Civil Code
Heir status with biological parents	Still the heir of his biological parents	No longer an heir of biological parents
Heir's Debt	Adopted children are not among the heirs of adoptive parents so they are not obliged to pay debts from adoptive parents	Adopted children are heirs of their adoptive parents, so the child is responsible for the debts and loans of the adoptive parents.

3.3.2. *Table of equality of legal status of adopted children regarding the distribution of inheritance assets as reviewed from the Compilation of Islamic Law and Civil Law*

Equality legal position of adopted children regarding the distribution of assets inheritance reviewed from the Compilation of Islamic Law and Civil Law	
Equality	Compilation of Islamic Law and Civil Law
Inheritance	Both received inheritance from their adoptive parents but the method of giving it was different.
Heir	Adopted children do not become heirs of their adoptive parents
Occurrence Inheritance	Inheritance occurs due to blood ties and marriage

4. Conclusion

According to the Compilation of Islamic Law, adopted children are not included as heirs of their adoptive parents, therefore adopted children are not entitled to inheritance from their adoptive parents because there is no blood relationship. To overcome this, adopted children can be given inheritance through a mandatory will based on the provisions of Article 209 paragraph (2) of the Compilation of

Islamic Law, where the amount of the mandatory will does not exceed 1/3 of the inheritance. The implementation of the mandatory will is carried out at a Notary's office based on a decision of the Religious Court. Meanwhile, according to Civil Law, there are no regulations regarding adoption, therefore Staatsblad 1917 Number 129 Articles 5 to 15 were issued. According to Article 12 of Staatsblad 1917 Number 129, adoption changes the status of the child concerned, but according to the Civil Code, they are not included as heirs, therefore adopted children are given inheritance from their adoptive parents through a testament by considering the legitimie partie. Both have similarities, namely both provide inheritance but in different ways and Both recognize the existence of adoption, but Civil Law uses Staatsblad 1917 Number 129.

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