

Legal Certainty of the Position of an Adopted Child in the Inheritance of the Property of Their Adopted Parents According to Samin Traditional Law in Blora District

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Abstract. *The background of the research is that the position of adopted children in inheriting their adoptive parents' assets still does not have concrete legal certainty because there are no national laws or regulations that specifically regulate it, so there are still many adopted children using local customary procedures that still apply as in the Samin indigenous community in Reg. Blora. The aim of this research is to examine and analyze the legal certainty of adopted children. The research method that the author uses in this research is Empirical Research with a qualitative approach, using primary data and secondary data, data collection methods are carried out by interviews and observations, the data collected will be analyzed using descriptive methods. The results of the research are that adopted children are basically not heirs, so they are not entitled to the original assets of their adoptive parents, but adopted children have the right to receive joint assets from their adoptive parents and Legal certainty of inheritance for adopted children in the Samin District Community. Blora, adopted children obtain legal certainty to obtain inheritance rights from both their adoptive parents and their biological parents. Meanwhile, the relationship between adopted children does not break with their biological parents.*

Keywords: *Adopted; Children; Heirs.*

1. Introduction

The existence of a child in a family is a happiness that is inherent in the instincts of every human being. But not everyone is given this process easily, there are quite a few people in this world who wait and hope for the presence of a child, where someone's wait to have a child requires a long process, so it is very

important for the family, society and of course the state to uphold it children's rights and legal protection for the child.¹

Children also have a role, namely as the next generation of the nation, therefore by expressing that the rights of children in Indonesia have been expressly recognized in a constitution. The rights of the child in question are the hopes that the child has which in this case have been complemented by the authority given to the child by the legal system. Children's rights are part of the human rights stated in the 1989 United Nations Convention on the Rights of the Child, which explains that: Children are all people under 18 years of age, unless otherwise determined by the law of a country. All children have all the rights mentioned in this Convention.

These rights are protected in the UN Convention on the Rights of the Child which states that: Children's rights apply to all children without exception. Children must be protected from all types of discrimination against themselves or discrimination resulting from the beliefs or actions of their parents or other family members.

The 1945 Constitution of the Republic of Indonesia, the Fourth Amendment as a constitutional basis, clearly regulates the need for protection of human rights, which includes regulating children's rights, namely those mentioned in Article 28 B paragraph (2) that : Every child has the right to survive, grow and develop and has the right to protection from violence and discrimination.

Based on Law Number 35 of 2014, amendments to Law Number 23 of 2002 concerning Child Protection in Article 1 paragraph (12) state that: Children's rights are part of human rights which must be guaranteed, protected and fulfilled by parents, family, community, state, government and local government.

The existence of adoption in Indonesia as a legal institution is still not in sync, so the issue of adoption is still a problem for society, especially in matters involving legal provisions. This insynchronization is very clear to see, if we study the provisions regarding the existence of the adoption agency itself in the sources that apply in Indonesia, both western law which originates from the provisions contained in the Burgerlijk Wetboek (BW); customary law which is "The living law" that applies in Indonesian society, as well as Islamic Law which is a logical consequence of Indonesian society, the absolute majority of which are Muslim.²

¹ Maulana Hassan wadong, 2000, Child Protection Advocacy and Law, PT Gramedia Widiasarana Indonesia, Jakarta, p. 29

²Muderis Zaini, 1995, Adoption of a Review of Three Legal Systems, Sinar Graphics, Jakarta, p. 1.

According to customary law itself, there is a diversity of different laws, from one region to another, in accordance with the differences in customary law circles, as stated by Prof. Van Vollenhoven. Because according to customary law and the customs of people or customary law communities, adopting a child can be an inducement to quickly have children of their own. In customary law, adoption is not a foreign institution because it is widely known throughout almost all of Indonesia.

Adoption of a child according to customary law can be obtained from someone else's child or from family or closest relatives/families using traditional traditional ceremonies which are not the same in each region, depending on the customary laws that apply and live in the local community. However, the custom is that adoption of children comes from the closest relatives. In general, the adoption of an adopted child is actually someone else's child who is adopted by the family (husband and wife) to act as if they were their own biological child. This appointment is in accordance with local customary law and the purpose of the appointment is generally to continue the lineage or maintain the assets of the adoptive parents. The problem of lawsuits in court that often occurs due to the presence of adopted children in a family, usually concerns the position of the adopted child, namely regarding the legality of the adopted child's adoption, because whether the adoption of the child is legal or not will influence whether or not the adopted child is valid in his or her position as a child. adopted within the adoptive parents' family or in terms of getting a share of their inheritance. It is possible that other problems will arise in most Indonesian people, including in Blora Regency.³

However, it turns out that the adoption of a child, even though it is legal according to custom, has not been requested for a decision in court, resulting in a weak legal position for the adopted child in inheriting the assets of his adoptive parents, especially in the Samin Blora community, with regard to who has control over inherited assets, namely the offspring (biological children).) from people who leave an inheritance (parents), because in reality they are the only heirs, and relatives do not become heirs. If the parents who left the inheritance have no descendants, this shows that apart from the heir's children as heirs, there are still other heirs, only if there are children of the heir, the other heirs do not receive a share of the inheritance.

³ Rais, M. 2016. "The Position of Adopted Children in the Perspective of Islamic Law, Customary Law and Civil Law." *DICTUM: Journal of Sharia and Law*, 14(2), 183-200. url :<https://ejurnal.iainpare.ac.id/index.php/diktum/article/download/232/156> accessed on August 15, 2023

2. Research Methods

The research methodology used in this writing is the empirical legal research method, with a qualitative method. In this research, the author uses primary data. Primary data in legal research is data obtained mainly from the results of empirical research, namely research carried out directly in society. , a. Data collection was carried out by means of interviews, namely conducting direct interviews with a number of respondents regarding the problem being studied. b. Observation, To obtain this data the author conducted library research, namely by reviewing literature books, documents, laws, brochures or writings that are related to the problem being studied. The method used is descriptive. Data analysis is an activity in research that in the form of conducting a study of the results of data processing.⁴

3. Result and Discussion

3.1. The Position of Adopted Children in Samin Customary Inheritance Law in Blora Regency

The Samin Blora community is a community that still maintains its traditional traditions that have been passed down from generation to generation. The Samin community is a form of community grouping that is based on the teachings of distinctive living traditions in interacting with other communities in the Tuas community and with its communities. Exploration and development of Samin traditions or customs is very rarely carried out even though Customary Law as unwritten law still has the opportunity to be developed and is expected to contribute to the development and structuring of national law, especially in the formation of National Inheritance Law.

The results of research from interviews with Mbah Lasiyo, a Samin dukuh Karangpace figure, Klopoduwur village, Banjarejo sub-district, show that the family structure in the Samin Blora community is bilateral parental, this in principle also applies in Javanese society in general.⁵

Based on interviews, in the Samin Blora community, who has control over inherited property is the descendants (biological children) of the person who left the inheritance (parents), because in reality they are the only heirs, and relatives are not heirs. If the parents who left the inheritance have no descendants, this shows that apart from the heir's children as heirs, there are still other heirs, only

⁴Mukti Fajar and Yulianto Achmad, 2010, Dualism of Empirical & Normative Legal Research, Student Library, Jakarta, Page 280

⁵Interview with Mbah Lasiyo, Samin dukuh Karangpace figure, Klopoduwur village, Banjarejo subdistrict on September 10 2023.

if there are children of the heir, the other heirs do not receive a share of the inheritance.⁶

The pattern of distribution of inheritance in the Samin Blora community is like that of Javanese society in general. The distribution of assets is carried out in harmony, that all (biological) children, both male and female, basically have the same rights to the assets inherited from their parents. Religious differences are not an issue, nor is it a matter of who was born first. In Samin society, widows are not heirs, but widows can control inherited property until they die or remarry. Adopted children have the right to inherit limited assets. Stepchildren do not inherit their stepparent's assets, but inherit from their parents' original assets. Illegitimate children inherit their mother's property.

An adopted child is an act of taking another person's child into one's own family in such a way that between the person who adopts the child and the adopted child a family relationship arises that is the same as that which exists between parents and their own biological child.⁷

Based on interviews, in general adoption of children within the Samin Blora community does not have to be done through traditional ceremonies or certain forms, or the number of adopted children is not limited. In the Samin area, taking a child (adopted child) is usually done or taken from the biological parents when the child is still a baby, and kept with the adoptive parents in a household until the adopted child is an adult and then until the adopted child is married off.⁸

The handing over of an adopted child to the Samin community does not go through a traditional ceremonial process or procedure as in the traditional book. However, according to the Samin traditional book, even if a child is adopted without a traditional ceremony, the child's adoption is considered valid and occurs, as long as the birth parents are willing to hand it over, agree and there is an agreement from the respective families. However, there is also a ceremony to hand over the adopted child to the parents who adopted him through a "ruwatan" event or just a celebration of market snacks, red and white porridge and so on.⁹

Regarding Inheritance Status, in the Samin area, the status of adopted children has two sources, namely obtaining inheritance from both their adoptive parents

⁶interview with Mbah Lasiyo, a figure from Samin Hamlet, Karangpace Village, Klopoduwur Village, Banjarejo District, on September 10 2023.

⁷Wirjono Pradjodikoro, 1984, Marriage Law in Indonesia, Wells Bandung, Jakarta, p.96

⁸interview with Mbah Lasiyo, a figure from Samin Hamlet, Karangpace Village, Klopoduwur Village, Banjarejo District, on September 10 2023.

⁹interview with Mbah Lasiyo, a figure from Samin Hamlet, Karangpace Village, Klopoduwur Village, Banjarejo District, on September 10 2023.

and their biological parents. Meanwhile, the relationship between adopted children does not break with their biological parents. Provided that the parents are capable or have a lot of inheritance. However, if the biological parents are incapable, the adopted child does not get anything. So whether or not to receive inheritance from one's biological parents is not absolute. Meanwhile, for adoptive parents, adopted children are basically not heirs, so they are not entitled to the property of their adoptive parents, but adopted children are entitled to receive harlagono-gini or shared assets from their adoptive parents. The original assets are still given or inherited to the biological children, and if there are no biological children, the original assets return to the family of origin (pedigree and above).

3.2. Legal Certainty of Adopted Children in Inheriting the Assets of Their Adoptive Parents According to Samin Customary Law in Blora Regency

Indonesia as a legal country, in the case of adoption of children, of course there are regulations regarding matters which include the occurrence of inheritance which is regulated in inheritance law. Inheritance law in Indonesia has 3 (three) legal systems in force, namely, Western Civil Law, Islamic Law and Customary Law. Apart from that, inheritance law is related to the scope of human life because it is certain that humans will die. According to the Compilation of Islamic Law, giving a mandatory will to adopted children is as stated in article 209 paragraph (2), namely that adopted children who do not receive a will are given a mandatory will of up to 1/3 of the inheritance of their adoptive parents. Adopted children in the Compilation of Islamic Law do not give up their lineage as in the meaning of civil law. The state recognizes customary law, including in child adoption. This acknowledgment can be read from the formulation of Article 39 paragraph (1) of Law no. 35 of 2014, which states that adoption can only be carried out in the best interests of the child and is carried out based on local customs and statutory provisions.

Inheritance assets according to customary law are all assets owned by a husband and wife while they are bound by marriage, both relatives' assets and assets owned by individuals which were originally from assets, gifted assets, their own income assets, income assets shared by husband and wife, as well as some objects. gift-giving. In customary law, the position of marital assets is greatly influenced by the kinship principles followed locally as well as the existence of a legal form of marriage for the husband and wife concerned.¹⁰

According to customary law, inherited assets can be in the form of goods or non-tangible assets, such as nobility titles. Inheritance assets in the form of property according to customary inheritance law are livelihood assets, namely assets

¹⁰Muhammad, B. 2000. Basics of Customary Law. Pradnya Paramita, Jakarta. Matter. 40.

acquired during the marriage period as well as inherited assets. The definition of inherited assets is assets acquired before marriage or assets derived from inheritance. In customary law, as long as the husband and wife do not have generations together, livelihood assets can be separated. However, if the husband and wife's companions have generations, their income becomes mixed.¹¹

In the customary inheritance law of Indonesian citizens, there is pluralism (a variety of) laws, this is why customary inheritance law is still influenced by the kinship and kinship systems found in Indonesian citizens.¹²The systems used to determine traditional heirs in Indonesia vary. The implementation of the system is closely related to the customs found in each traditional region, therefore the implementation of the customs of each region cannot be the same from one region to another.

According to customary inheritance rules in Indonesia, there are three distribution inheritance systems, namely:

1. The individual inheritance system is an inheritance system in which each heir receives a division to be able to understand and/or own the inheritance of their respective shares after the inheritance is distributed, so that each heir can understand and own individually the inheritance to be managed and used.
2. The collective inheritance system is the transfer of ownership of assets from the heir to the heirs as a unit whose abilities and owners are not divided, but each heir has the right to optimize, use or obtain results from the assets. On the other hand, the method of use is regulated jointly based on deliberation and consensus of the entire family who have rights regarding the assets under the guidance of the heads of the brothers.
3. The majorat inheritance system is actually a collective inheritance system, only as a distribution of assets that are not shared and delegated to the first child who is tasked with leading the family, taking over the role of father or mother as head of the family. In general, the implementation of customary inheritance law in Indonesia is also influenced by the principles of kinship and descent, the following are the family systems that exist in Indonesian society, namely:
4. The patrilineal system (from the father's line) is a generational system that is seen according to the father's line, where the role of men is more visible than the role of women in inheritance.

¹¹Wicaksono, S. 2011. Inheritance Law. Visimedia, Jakarta, Page. 39.

¹²Sulistiani, SL 2021. Customary Law in Indonesia. Sinar Graphics, Bandung, Hal. 62.

5. The matrilineal system (from the maternal line) is a generational system that is seen according to the maternal line, where the impact of women's role is more visible than men's role in inheritance.

6. The parental or bilateral system (from the mother-father's line) is a system that is seen according to the parent's line, or according to the two-sided line of the mother and father, where the position of men and women is not differentiated in inheritance.

In this case, customary law contains customary inheritance law which contains legal rules and norms that regulate or determine how inheritance or inherited assets are passed on or distributed to heirs from generation to generation, whether in the form of assets wealth through the transition process. According to R. Soepomo, what is meant by customary inheritance law is customary inheritance law which contains regulations governing the process of passing on and passing on property and intangible items (immaterial geoderen) from a generation of people (generation) to its descendants.¹³

In a decision the Supreme Court once decided that according to the applicable customary law, an adopted child has the right to inherit his parents' property so that he closes the inheritance rights of his adoptive parents' siblings (MA decision No. 102 K/Sip/1972 dated 23 July 1973). In a decision regarding Pasundan customs, the Supreme Court once decided that hooped children or adopted children do not have the right to inherit heirloom items, these items revert to blood descendants (MA decision No. 82 K/Sip/1953 dated 24 May 1958). Also with the Supreme Court's decision regarding adopted children, Central Javanese customs adhere to the legal rule that adopted children are only allowed to inherit property from their adoptive parents, while adopted children have no right to inherit heirlooms (No. 37 K/Sip/1959 dated 18 March 1959) .

Basically, according to Article 55 of Law Number 1 of 1974 concerning Marriage, adopted children only have an inheritance and civil relationship with their blood parents. The existence of a relationship with blood parents is proven by an authentic and authorized birth certificate.

Legal certainty regarding the position of adopted children in inheritance law in Indonesia is only regulated in customary inheritance law. Because Islamic inheritance law and civil inheritance law (BW) do not recognize adopted children as heirs. However, this is different from customary inheritance law. Customary inheritance law includes adopted children as heirs to inherit. According to Article

¹³Adeani, NKY, Suwitra, IM, & Sudibya, DG 2023. "The Rights and Position of Adopted Children in Receiving Inheritance Assets According to Balinese Customary Law in Pinggan Bangli Village." *Journal of Legal Interpretation*, 4(1), 56-61.

174 paragraph (1) of the Compilation of Islamic Law, the heirs are: 1. According to blood relationship: father, mother, son, daughter, brother, sister, grandfather, grandmother. 2. According to marital relationship: widower and widow.

This article does not state the position of adopted children as heirs according to Islamic law. Meanwhile, according to the Civil Inheritance Law (BW), the principle of inheritance is: Inheritance assets are only open (can be inherited to another party) if a death occurs. (Article 830 of the Civil Code) and the existence of a blood relationship between the heir and heirs, except for the husband or wife of the heir (Article 832 of the Civil Code), provided that they are still married when the heir dies. This means that if they are divorced when the testator dies, then the husband/wife is not the testator's heir.

The inheritance system according to customary law can vary from one region to another. Inheritance issues are sensitive issues. This is related to the worldly nature of inheritance, where if the distribution is deemed unfair it will result in disputes between parties who feel they have more rights or receive more inheritance. Basically, the distribution of inheritance can be done in an atmosphere of deliberation and agreement between family members, but sometimes it can cause divisions between family members. If an agreement cannot be reached in an atmosphere of deliberation, certain parties in the family will usually sue the other party in a judicial institution. These three legal systems have their own characteristics and characteristics, resulting in differences between one another. However, when talking about inheritance law issues, it cannot be separated from 3 (three) main elements, namely; the existence of inherited assets or assets of the heir which is called inheritance, the existence of an heir, namely the person who controls or owns the inherited assets and the existence of heirs, namely the person who receives the transfer or succession or distribution of the inherited assets.¹⁴

In Indonesia, there are three types of inheritance law systems in customary law. In Hazairin's opinion, there are individual, collective and major systems. From the three comparisons above, the Blora Samin Indigenous Community uses a bilateral parental system, this in principle also applies to Javanese society in general.

For the Samin Community, there is no difference between biological children and adopted children, because they are all children. This inheritance by succession is carried out because of the heir's concern that the adopted child will be eliminated by his biological children if the distribution is carried out after his death. As with the equality of shares between sons and daughters, similar considerations are also used as a basis by the Samin Muslim community in

¹⁴In Abdul Azizi, 1992, Indonesian Encyclopedia, Van Hoeve, Bandung, p. 87.

determining inheritance shares. adopted children. In terms of dividing inheritance, the Samin Muslim community does not differentiate between adopted and biological children. Both are seen as children who both have the right to inherit their parents' inheritance, for all the services they have performed regarding their responsibilities towards their parents. The concept of legal objectives in the Samin community is based more on the value of suitability between the roles and services performed and the part to be obtained, regardless of gender and heir status. Regarding legal certainty regarding the existence of the Samin Traditional Law Community, Reg. Blora received recognition in Article 18 of the Constitution which states the division of Indonesia into large and small areas, with the form of government structure determined by law, taking into account and remembering the basis of deliberation in the State government system,¹⁵ and in the rights of origin in special areas. Recognition of the Constitution is not immediately followed by strengthening the existence of the Samin District Traditional Law Community. Blora, on the other hand, there are laws and regulations that actually weaken the position of the Samin District Traditional Law Community. Blora, for example, Emergency Law Number 1 of 1951 concerning temporary measures to organize a unified structure of power and civil court procedures. Article 1 paragraph (2) letter b states "At a time which will be determined gradually by the Minister of Justice, all Customary Courts (Inheemse rechtspraak in rechtstreeksbestuurd gebied) will be abolished, except for Religious courts if the courts according to living law are a separate part of Customary courts. The existence of the Samin Traditional Law Community, Reg. Blora was strengthened by the birth of the Basic Agrarian Law (UUPA).¹⁶

Based on the description above, regarding the legal certainty of inheritance of adopted children in the Samin Regency Community. Blora, adopted children obtain legal certainty to obtain inheritance rights from both their adoptive parents and their biological parents. Meanwhile, the relationship between adopted children does not break with their biological parents.

4. Conclusion

The position of adopted children in Samin Regency society. Blora received two sources of water, namely obtaining inheritance from both his adoptive parents and his biological parents. Meanwhile, the relationship between adopted children does not break with their biological parents. Provided that the parents are capable or have a lot of inheritance. However, if the biological parents are

¹⁵Soelistyowati and Ellyne Dwi Poespasari, Model of Distribution of Inheritance Assets in the Samin Community, Institute for Research and Community Service, Airlangga University, 2006.

¹⁶Achmad Sodiki, 2008, The Urgency of Strengthening the UUPA and its Implementing Regulations to support the implementation of agrarian reform, in Formation of the 2006-2007 Agrarian Reform Policy, STPN Press, Yogyakarta, p. 144

incapable, the adopted child does not get anything. So whether or not to receive inheritance from one's biological parents is not absolute. Meanwhile, for adoptive parents, adopted children are basically not heirs, so they are not entitled to the property of their adoptive parents, but adopted children are entitled to receive harlagono-gini or shared assets from their adoptive parents. The original assets are still given or inherited to the biological children, and if there are no biological children, the original assets return to the family of origin (pedigree and above). Legal certainty regarding the existence of adopted children of the Samin Traditional Law Community, Reg. Blora received recognition in Article 18 of the Constitution which states the division of Indonesia into large and small regions, with the form of government structure determined by law, taking into account and remembering the basis of deliberation in the State government system, and in the rights of origin in the regions. of a special nature. Recognition of the Constitution is not immediately followed by strengthening the existence of Adopted Children of the Samin Traditional Law Community, District. Blora, on the other hand, there are laws and regulations that actually weaken the position of the Samin District Traditional Law Community. Blora, for example, Emergency Law Number 1 of 1951 concerning temporary measures to organize a unified structure of power and civil court procedures. Article 1 paragraph (2) letter b states "At a time which will be determined gradually by the Minister of Justice, all Customary Courts (Inheemse rechtspraak in rechtstreeksbestuurd gebied) will be abolished, except for Religious courts if the courts according to living law are a separate part of Customary courts. Customary law becomes powerless when the judicial institution whose function is to enforce it is abolished.

5. References

- Achmad Sodiki, 2008, Urgensi Peneguhan UUPA dan Peraturan Pelaksanaannya untuk mendukung pelaksanaan pembaruan agraria, dalam Pembentukan Kebijakan Reforma Agraria 2006-2007, STPN Press, Yogyakarta.
- Adeani, N. K. Y., Suwitra, I. M., & Sudibya, D. G. 2023. "Hak Dan Kedudukan Anak Angkat Dalam Penerimaan Harta Warisan Menurut Hukum Adat Bali Di Desa Pinggan Bangli." *Jurnal Interpretasi Hukum*, 4(1).
- Dalam Abdul Azizi, 1992, *Ensiklopedia Indonesia*, Van Hoeve, Bandung.
- Maulana Hassan wadong, 2000, *Advokasi Dan Hukum Perlindungan Anak*, PT Gramedia Widiasarana Indonesia, Jakarta.
- Muderis Zaini, 1995, *Adopsi Suatu Tinjauan Dari Tiga Sistem Hukum*, Sinar Grafika, Jakarta.

- Muhammad, B. 2000. Pokok-Pokok Hukum Adat. Pradnya Paramita, Jakarta.
- Rais, M. 2016. "Kedudukan Anak Angkat Dalam Perspektif Hukum Islam, Hukum Adat Dan Hukum Perdata." *DIKTUM: Jurnal Syariah Dan Hukum*, 14(2), 183-200. url : <https://ejurnal.iainpare.ac.id/index.php/diktum/article/download/232/156> accessed on 15 August 2023
- Soelistyowati dan Ellyne Dwi Poespasari, Model Pembagian Harta Waris Pada Masyarakat Samin, Lembaga Penelitian Dan Pengabdian Kepada Masyarakat Universitas Airlangga, 2006.
- Sulistiani, S. L. 2021. Hukum Adat Di Indonesia. Sinar Grafika, Bandung.
- Wicaksono, S. 2011. Hukum Waris. Visimedia, Jakarta.