

Implementation of Fulfilling The Rights of Adopted Children in The Inheritance Law System According to A Compilation of Islamic Law and Civil Law

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ABSTRACT

Adoption of children in Indonesia has been around for a long time; until now, adoption is regulated in the Compilation of Islamic Law and also in Staatsblad 1917 No. 129. In the KHI and the Civil Code, the position of adopted children is differentiated, whereas in the KHI, adopted children cannot be equated with biological children. Whereas in the Civil Code, Adopted children have the same position as biological children. These differences certainly have legal consequences for the inheritance rights of adopted children, where whether or not the adoption of a child is valid according to the KHI and the Civil Code will impact the adopted child's rights to the inheritance of his or her adoptive parents. The aim of writing this thesis is to see the implementation of fulfilling the inheritance rights of adopted children according to the KHI and the Civil Code by looking at what the Law is like in Indonesia. The research method used is normative legal research by reviewing library materials. The results of the research found differences in the definition of child adoption in the KHI and the Civil Code. This is one of the factors in not fulfilling the inheritance rights of adopted children. The importance of harmony between KHI and the Civil Code, as well as other statutory provisions in defining child adoption, is because it will impact the rights of adopted children and adoptive parents if the child's adoption is deemed invalid. Therefore, the definition of child adoption must refocus on the purpose of child adoption itself, namely to improve the welfare of the child and take care of and maintain it so that they can live a good life, which, if this has happened and can be proven then the adoption should be legal as follows: legal consequences.

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1. INTRODUCTION

A marriage is considered less than perfect without the presence of a child. The desire to have children is a human and natural instinct. Children are the next generation whose right to life must be guaranteed so that they can grow and develop following their nature. Instinctively, every married couple wants to

have children to continue their offspring. However, in some conditions, there are married couples who cannot have children through a husband and wife relationship in general, so some couples choose to adopt or adopt children as adopted children, either from their family or from other people.

The habit of adopting children or adopting other people's children as their children in Arabic is called "Tabbani," which means to take, adopt a child, or adopt. At the same time, the term adoption comes from the Dutch "Adoptie" or "Adoption" in English, which is in the Big Language Dictionary. In Indonesia, it is stated that adoption is the legal taking (appointment) of another person's child to become one's child (Rais, 2016).

The habit of nurturing or caring for relatives or other people's children has often been carried out by Indonesian and foreign people since immemorial (Rosalina, 2022). Many factors influence the adoption process. Apart from the desire of a husband and wife to have offspring, another factor is the desire to lighten the burden on the birth parents of adopted children who are in need or because they have many children.

Economic factors are one of the reasons for the lack of attention to health, education, care, teaching, and love for their children. Every child born requires care, maintenance, and nurturing to lead him to maturity. A child's soul formation is greatly influenced by how the child is cared for and cared for from birth. The child's growth and development require serious attention, especially during the child's sensitive periods, for example, the toddler years (five-year-old babies). Likewise, children's psychological development also experiences phases with different characteristics according to their level of mental development (Suprayudi, 2014).

In principle, adoption or adoption is a legal act. In Indonesia, three legal systems apply to issues regarding child adoption. These three laws are Islamic, customary, and civil (Sidek et al., 2018).

In Islamic Law, there is no absolute adoption of a child as a biological child, but it is permitted or recommended only to maintain and care for it to treat the child in terms of affection, providing a living, education, or service for all needs that are not treated as a biological child (Sidek et al., 2018).

Adoption in Islamic Law is an expanded law of Hadhanah and does not change the legal, nasab, and mahram relationship between the adopted child and his parents and family of origin. The only change that occurs is the transfer of responsibility for care, supervision, and education from original parents to adoptive parents (Rais, 2016).

Adoption of children is regulated in Articles 39 to 41 of Law No. 23 of 2020 concerning Child Protection, Article 12 of Law No. 4 of 2002 concerning Child Welfare, and in Government Regulation No. 54 of 2007 concerning Implementation of Child Adoption. The most essential thing in adopting a child is for the child's best interests. Adoption always prioritizes the child's interests rather than the parents. Adoption of a child prohibits use for the benefit of others. Adopting a child includes efforts to gain love and understanding from adoptive parents and enjoy their rights without questioning race, color, gender, nationality, and social status (Suprayudi, 2014).

Adoption aims to provide children rights and protection so they can grow and develop well in the future. The issue of child adoption or child adoption, which is often carried out by the community in general, is done by deliberately not informing them that they adopted the child and were not born to the adoptive mother. This results in the unclear legal status of adopted children in the family, which often gives rise to problems in the family, such as the position of adopted children in inheritance.

Article 209 of the Compilation of Islamic Law explains that the existence of an adopted child has a mandatory testamentary right of 1/3 of the inheritance of the adoptive parents. In contrast, according to the Civil Code, adopting a child can be made by applying to the District Court to obtain legal certainty. However, the position of adopted children for inheritance rights is not regulated in the Civil Code. Especially for Indonesian citizens of Chinese descent, the position of adopted children is the same as biological children; therefore, adopted children have the right to inherit the inheritance of their adoptive parents according to the Law based on testamentary inheritance law (testamentary gift) if the child receives a testamentary (will grant).

Based on the background explanation above, researchers are interested in conducting research titled

"Implementation of the Fulfillment of the Rights of Adopted Children in the Inheritance Law System According to the Compilation of Islamic Law and the Civil Code." In this research, the author focuses on the formulation of the problem, namely whether adopted children have an inheritance position in the inheritance law system according to the Compilation of Islamic Law and the Civil Code, as well as whether the fulfillment of the rights of adopted children has been implemented in the inheritance law system according to the Compilation of Islamic Law and the Book. Civil Law Act?

The aim and benefits of this research are to be able to find out the legal view regarding the position of adopted children in inheritance rights according to Islamic Law and Civil Law in Indonesia, as well as to find out whether the fulfillment of adopted children's rights has been implemented in the inheritance law system according to the Compilation of Islamic Law and the Code of Laws. Civil Law. The benefits of this research are divided into theoretical benefits that can contribute to the development of legal science and society in terms of legal protection for parents and adopted children in understanding the position and distribution of inheritance in the family. As well as practical benefits, namely to increase general insight and input for writers and readers, including input for researchers, government, and society.

2. METHOD

Research methods are a way to solve problems or develop knowledge using research methods (Soekanto & Mamudji, 2015). The research method used in this research is normative legal research or library research. Normative legal research is a process for researching and studying Law as norms, rules, legal principles, legal principles, legal doctrine, legal theory and other literature to answer the legal problems being studied. In conducting this research, the author used a research approach where the approaches used in this research were the Legal Approach, Conceptual Approach, and Case Approach. The Legal Approach is an approach based on statutory regulations and favorable legal norms/rules in Indonesia relating to the position of adopted children in the family, and the Conceptual Approach is an approach that originates from views or doctrines that have developed in legal science.

The type and source of legal materials in this research is library research, namely collecting data and materials related to the problem being discussed by conducting document studies, namely using sources of legal materials in the form of statutory regulations, court decisions/decrees, contracts/agreements/agreements, legal principles and principles, legal theories and doctrines/opinions of legal experts. The data in this research relates to the problems discussed in the literature. This means that all data is collected and obtained from research on reading materials from data sources related to the problem. The data sources are classified into three parts. That is :

- a. Primary data sources, namely legal materials, have binding force by reading and quoting direct data about the position of adopted children according to Islamic Law and Civil Law.
- b. Secondary Data Sources are legal materials with no power and whose nature only functions as an explanation of primary legal materials, namely books written by several groups related to the research topic.
- c. Tertiary Data Sources, namely legal materials, provide additional information related to primary and secondary legal materials such as encyclopedias, dictionaries, and several books supporting the studied problem.

This research is also carried out using the method of collecting legal materials, where the collection method is one of the factors to determine the success of a research study in the field of Law. The method for collecting legal materials in this research uses a data collection method for normative legal materials, namely the documentation method, namely looking for primary legal materials in the form of court decisions that have permanent legal force as well as laws relating to research and secondary legal materials in the form of textbooks and relating to research.

3. FINDINGS AND DISCUSSION

3.1. The position of adopted children's inheritance in the inheritance law system according to the Compilation of Islamic Law and the Civil Code

The presence of children in a family is the desire of every married person, where the presence of children is one way to continue the descendants of their parents. Apart from being able to continue the offspring, sometimes adopting a child has the aim of maintaining the marriage to avoid divorce, which is because, in a married couple who have children, it is certainly not easy to decide to divorce, considering that the interests of marriage are not only for both parties, between husband and wife but also the interests of the children bound by the marriage.

Having offspring is not the only reason someone forms a household, but with children's presence, the household can be perfect. Not all families are blessed with children by the Almighty God, but this does not rule out the possibility that if a husband and wife want children, that is by adopting the child. Having a child in a family cannot only be had biologically but there is a way, namely by adopting the child. According to Soerjono Soekanto, adoption is an act of adopting a child in a position, in the sense that someone else's child is adopted to become one's child, resulting in a blood relationship (Soekanto, 1980). An adopted child is someone whose parents do not come from the offspring of a married couple but from a legal adoption according to government regulations who will then be cared for like their own offspring (Oemarsalim, 2013). Adoption of children in Indonesia is an essential part of the family law system because there has long been a culture of adoption recognized in Indonesia, both under customary Law Islamic Law and inseparable from civil Law.

The Compilation of Islamic Law (KHI) is one of the favorable laws that regulate the adoption of children, where in Article 171 letter h KHI, it is stated that adopted children, as children are cared for in everyday life, bear all burdens in the field of education. Other obligations are transferred through a court decision. from biological parents to adoptive parents. In principle, the Islamic religion encourages a Muslim to care for other people's children who are incapable, poor, abandoned, etc., but they are not allowed to sever the relationship and rights with their biological parents. This maintenance must be based solely on charity, following God's recommendations.

Adoption or adoption, according to Islamic terms, is called *tabbani*; before Islam came, adoption in the Arab nation itself had been a culture that had been passed down from generation to generation which eventually became known as *tabanni*, which means taking an adopted child (Zaini, 1985). For example, according to historical records, the Prophet Muhammad SAW. Before accepting the Apostleship, he had an adopted son named Zaid bin Haritsah in the status of a slave (*sahaya*) whom Khadijah bint Khuwailid gifted to the Prophet Muhammad SAW. Who was then adopted as an adopted son and was no longer called Zaid based on his father's name (Hasirah) but replaced with the name Zaid bin Muhammad. The Prophet Muhammad SAW announced to the Quraysh, saying, "Behold, I have made Zaid my adopted son, where he inherited me, and I also inherited him."

Adoption of children, according to the Compilation of the Islamic Law version, is a good deed done for capable people whom Allah SWT has not given children; they equate it in a form of worship, which is an approach to Allah, by educating neglected children, children the poor, and children who cannot afford it, there is no doubt that such efforts are a charity that is favored and praised by the Islamic religion. Adoption of children according to Islamic Law is limited to treating them as children, such as loving, nurturing, providing a living, providing education, and fulfilling all their needs so that they are not treated like their own biological children, where one of the principles in adopting a child is that the child is not hampered in life. Its growth.

Islamic Law regulates that the adoption of a child can only be justified if it meets the conditions: namely, it does not break the biological relationship with the biological parents, the adopted child does not inherit from the adoptive parents, the child does not have the right to use the name of the adoptive parents because it does not according to his lineage. The things that are prohibited in adoption are that if the parents are still alive, they cannot sever the relationship with the biological parents, adoptive parents

do not have the right to become the heirs of their adopted child, adoptive parents cannot become guardians in their adopted child's marriage (Rais, 2016).

It is stated in the Word of Allah SWT in Surah Al-Ahzab verses 4 and 5, that these two verses state that the relationship between an adoptive father or mother and their adopted child is no more than a relationship of love and affection so that the relationship between the father and mother and their adopted child does not provide legal consequences related to birthrights, inheritance rights and not prohibiting mutual marriage, in this case if the adoptive father or mother dies, the adopted child will not be included as an heir who can receive an inheritance from his adoptive parents.

مَا جَعَلَ اللَّهُ لِرَجُلٍ مِّن قُلُوبَيْنِ فِي جَوْفَةٍ وَمَا جَعَلَ أَزْوَاجَكُمُ اللَّائِي تُظَاهَرُونَ مِنْهُنَّ أُمَّهَاتِكُمْ وَمَا جَعَلَ أَدْعِيَاءَكُمْ أَبْنَاءَكُمْ ذَلِكَ قَوْلُكُمْ بِأَفْوَاهِكُمْ وَاللَّهُ يَقُولُ الْحَقَّ وَهُوَ يَهْدِي السَّبِيلَ

Meaning: Allah never creates for a person two hearts in his cavity, and He did not make your wives whom you zihar your mothers, and He did not make your adopted children your (own) biological children. That is just what you say in your mouth. Allah tells the truth, and He shows the (right) path.

ادْعُوهُمْ لِآبَائِهِمْ هُوَ أَقْسَطُ عِنْدَ اللَّهِ فَإِن لَّمْ تَعْلَمُوا آبَاءَهُمْ فَإِخْوَانُكُمْ فِي الدِّينِ وَمَوَالِيكُمْ وَلَيْسَ عَلَيْكُمْ جُنَاحٌ فِيمَا أَخْطَأْتُمْ بِهِ وَلَكِن مَّا تَعَمَّدَتْ قُلُوبُكُمْ وَكَانَ اللَّهُ غَفُورًا رَّحِيمًا

Meaning: Call them (the adopted children) by (using) the names of their fathers; that is fairer in the sight of Allah, and if you do not know their fathers, then (call them as) your brothers in religion and your maula-maula. Moreover, there is no sin against you in what you make a mistake about, but (there is sin) what your heart intends. Moreover, Allah is the Most Forgiving, Most Merciful.

Surah Al-Ahzab verses 4-5 above clearly state that in Islamic Law, the position of an adopted child cannot be equated with that of a biological child, so there is a prohibition on adopting a child to be like a biological child. Islamic Law only recognizes, even recommends, the adoption of children to take care of the adopted child so that he or she can have a better life, but their kinship status remains outside the family environment of the adoptive parents; therefore, adoption has no legal consequences. Nothing, in the sense that the status of adopted children remains children and relatives of their biological parents, along with all the legal consequences.

The difference in status between adopted children and biological children cannot be separated from inheritance rights, whereas in Islamic Law, adopted children do not have inheritance rights like parents and biological children. In this case, the adoption of a child does not result in the child getting inheritance rights from his adoptive parents. According to the provisions of Islamic Law, adopted children cannot inherit, nor can their adoptive parents inherit from their adopted children; thus, adopted children are not included in the class of heirs, so automatically, the adopted child will not receive the inheritance from his adoptive parents who have died first.

There are no inheritance rights between a child and his adoptive parents does not mean that the child has no right to receive property from his adoptive parents. Therefore, to protect the rights of adopted children and adoptive parents, the Compilation of Islamic Law provides legal certainty by regulating the provision of obligatory wills. According to Hasbi Ash-Shiddiqy, a will means tasharruf (disposal) of inherited assets carried out after the Testator dies. Legally, a will is carried out based on the heart's wishes. Therefore, nothing in Islamic Law requires a will to be carried out by a judge's decision (Ash-Shiddiqy, 2001). Abdul Aziz Dahlan expressed his opinion that a mandatory will is intended for heirs or relatives who do not receive a share of the inheritance of the person who died because of a conditional obstacle (Dahlan, 2000). According to Ahmad Rofiq, a mandatory will is a legal step taken by a state official (judge) who has the authority to compel or make a decision to make a mandatory will for a person who has died to certain heirs and under certain circumstances (Rofiq, 2017).

The Compilation of Islamic Law regulates the obligatory Will in Article 209, paragraphs 1 and 2 that

the inherited assets from adopted children are divided based on Articles 176 to 193. At the same time, adoptive parents who do not accept the will are given a mandatory will, up to 1/3 of the inherited assets of their adopted children. For adopted children who do not receive a will, they are given a mandatory will of up to 1/3 of their adoptive parents' inheritance. The Compilation of Islamic Law regulates that adoptive parents are immediately deemed to have left a will of a maximum of 1/3 of the assets left to their adopted children, or vice versa adopted children to their adoptive parents, where the assets are in the distribution system before the inheritance is distributed to the parents. Heirs, then, the obligatory will must be fulfilled first. A mandatory will is a will whose implementation is not influenced or does not depend on the will or wishes of the deceased. The article that regulates the issue of mandatory wills in article 209 KHI only regulates provisions regarding the issue of dividing inheritance between the heir and his adopted children or vice versa (Baihaki, 2021).

The concept of obligatory distribution of wills cannot be separated from Islamic law based on the Word of Allah SWT contained in the Al-Qur'an Surah Al-Baqarah verse 180:

كُتِبَ عَلَيْكُمْ إِذَا حَضَرَ أَحَدَكُمُ الْمَوْتُ إِن تَرَكَ خَيْرًا الْوَصِيَّةُ لِلْوَلَدَيْنِ وَالْأَقْرَبِينَ بِالْمَعْرُوفِ ۚ حَقًّا عَلَى الْمُتَّقِينَ

Meaning: It is obligatory upon you, if someone among you is visited by (signs of) death, if he leaves behind good things (much wealth), let him make a will for his parents and close relatives in a ma'ruf (just and following religious guidance) (this is) an obligation upon those who are pious.

The word of Allah SWT in QS Al-Baqarah verse 180 above is a verse relating to wills, where wills are given to relatives who do not inherit because the Sharia, such as non-Muslim heirs and enslaved people, prevent them. Meanwhile, regarding the portion of bequeathed assets, the scholars agree that people who leave theirs should not bequeath more than 1/3 of their assets.

The provision of a mandatory will is an alternative to be able to solve problems regarding the distribution of inheritance to adopted children; this is because if the adopted child is not given a share of the assets inherited from his adoptive parents, then there is a possibility that this will cause problems between the sibling or kinship relationship between the adopted child and his adoptive parents, so this will undoubtedly lead to misery. At the same time, Islam itself does not want hardship and misery for its adherents.

The explanation above regarding the position of inheritance rights of adopted children in the KHI shows that Islamic Law does not provide inheritance rights between children and their biological parents because the relationship between adopted children and adoptive parents does not give rise to a lineage and other legal consequences like that of children and biological parents. However, the KHI requires the distribution of assets from adoptive parents to adopted children, as well as adopted children to their adoptive parents, employing a mandatory will with a value of no more than 1/3 of the assets left behind by the Testator. This mandatory will must be carried out before the inheritance is given to other heirs.

The regulations regarding inheritance rights for adopted children in the KHI are different from those regulated in the Civil Code; as explained above, the KHI regulates the position of adopted children differently from biological children towards their parents so that there will be no inheritance rights from adoptive parents to their adopted children. However, regarding inherited assets, adopted children have the right to obtain rights to the assets from their adoptive parents through a mandatory will. The Civil Code does not regulate the adoption of children but does regulate illegitimate children. Therefore, the Dutch government tried to make its regulations, namely Articles 5 to 15 of the 1917 Staatsblad Number 129, as written provisions governing the adoption of children for foreign Eastern groups, especially the Chinese community. So since then, Staatsblad 1917 Number 129 has become a written regulation that regulates the adoption of children (adoption) in the Chinese community. The rules in the Staatsblad 1917, among others, regulate that a man who is married or has previously been married does not have legitimate male offspring. In the male line, whether hereditary by birth or adoption, it is permissible for him to adopt a male child as his son.

In contrast to KHI, the Civil Code does not differentiate the status of adopted children from biological children, where if a husband and wife adopt a child, then the status of the adopted child is like a biological child; this is stated in Article 12 of the 1917 Staatsblad Number 129 which regulates that if husband and wife adopt a son, then the child is considered to have been born from their marriage. Of course, if the status of an adopted child is equated with that of a biological child, then there will be legal consequences such as lineage and inheritance rights.

The relationship between a child whom a husband and wife adopt will sever the child's legal relationship with his biological parents, and this is as regulated in Article 14 of the 1917 Staatsblad, which states that an adoption results in the severing of the legal relationship between the adopted child and his parents. The termination of the legal relationship between a child and his biological parents when adoptive parents adopt the child; there are several exceptions to the termination of the legal relationship between a child and his biological parents, namely regarding the prohibition of marriage based on family ties, criminal law regulations based on family ties, calculating case costs before a judge and taking hostages, providing evidence with a witness, and acting as a witness.

The severing of the legal relationship between adopted children and their biological parents certainly gives rise to other legal consequences, one of which is regarding inheritance rights, as stated in Article 12 of the 1917 Staatsblad that adopted children have the same status as biological children, so there is no difference in inheritance rights between children. Adopt with biological children born to their parents. As a result, adopted children are obliged to obtain their rights, similar to the rights possessed by biological children of adoptive parents. Therefore, adopted children have inheritance rights such as full inheritance rights of biological children, which can cover the inheritance rights of siblings and also the biological parents of adoptive parents. Civil Law regulates in Article 382 of the Civil Code that those entitled to receive inheritance are blood relatives and those with a marital relationship (husband and wife) with the Testator. They are like children or descendants, fathers, mothers, grandfathers, grandmothers and their ancestors and above, siblings or descendants as well as husbands or wives.

The Civil Code divides heirs into 4 (four) groups, where the first group is regulated in Article 852, namely their children or descendants. Therefore, by not distinguishing between the status of adopted children and biological children, adopted children are considered legal heirs and become their adoptive parents' first class of heirs. Referring to the Civil Code, Article 1066 also regulates that if the heir does not receive a distribution of inheritance, the heir has the right to claim a share of the inheritance left by his parents.

The Civil Code stipulates that there are two ways to inherit, namely *ab intestato* and testamentary. *Ab intestato* is regulated in Article 832 of the Civil Code, where this method determines heirs based on blood relations so that those entitled to receive an inheritance are blood relatives, whether legal or illegitimate and the husband or wife who has lived the longest. Meanwhile, testamentary is regulated in Article 899 of the Civil Code, where the heirs are determined in the will, so the heir only gives his inheritance to the heirs appointed in the will (Parangin, 2005).

Article 832 of the Civil Code firmly grants absolute rights to heirs in blood relations. Therefore, with no difference in status between biological and adopted children, *ab intestato* adopted children, even though they are not blood relatives, have the same position in terms of inheriting. Apart from the position of adopted children to inherit, adopted children are also bound by Article 838 of the Civil Code, which regulates the loss of rights as heirs. This article regulates people who are deemed unfit to be heirs and thus are unlikely to inherit, namely:

- a. He who has been sentenced for killing or attempting to kill the deceased person;
- b. He who, by a judge's decision, has been accused of having slanderously filed an accusation against the heir that the heir has committed a crime which is punishable by a prison sentence of five years or a more severe punishment;
- c. He who has prevented the deceased person by force or actual action from making or withdrawing his will;
- d. He who has embezzled, destroyed, or falsified the deceased person's will.

Staatsblad 1917 Number 129 only regulates the rights of adopted children towards the inheritance of their adoptive parents. However, the 1917 Staatsblad does not regulate the rights of adoptive parents towards their adopted children, for example, as maintenance if the adoptive parents later become less capable, while the adopted child is capable; apart from that also inheritance rights if the adopted child dies before the adoptive parents. However, to answer this problem, it is based on legal theory through a counterpart interpretation, namely by interpreting or explaining the Law based on the conflict of understanding between the concrete events encountered and those regulated in the Law (Munawaroh, 2023). In this way, adoptive parents can obtain rights from their adopted children, similar to the rights that adopted children obtain from their adoptive parents.

In the discussion regarding the status of adopted children's inheritance in the KHI and the Civil Code above, several differences can be seen from the status of adopted children to their adoptive parents to their adopted children's inheritance rights. The Compilation of Islamic Law strictly stipulates that a person who is adopted as a child does not make the child and his adoptive parents blood-related, and adopted children are also not permitted to use the name of their adoptive father so that there is no lineage between the child and his adoptive father.

Adoption of a child in Islamic Law is only limited to treating the adopted child well in the same way as one would treat one's biological children, namely by loving, nurturing, providing a living, providing education and all their needs, but they cannot still be considered like one's own biological children. Adoption of an adopted child according to Islamic Law can only be justified if it fulfills provisions such as not breaking the blood/biological relationship with the biological parents, so in Islam, it is prohibited when adopting a child, that is, if the biological parents are still alive, the child cannot break the relationship with them.

In contrast to the Compilation of Islamic Law, the Civil Code, which adopts the provisions of Staatsblad 1917 Number 129, regulates that the status of adopted children is the same as biological children, such as children born to their parents in marriage. Of course, with no difference between adopted children and biological children, this essentially results in all familial relationships with their families of origin being abolished based on Article 14 of the 1917 Staatsblad, and now familial relationships with the adoptive parent's family arise, which previously might have been nothing based on Article 12 Staatsblad 1917, the most apparent legal consequences are related to inheritance law. An adopted child no longer inherits from his original blood family; instead, he now inherits from the family of the father and mother who adopted him.

In the Civil Code, it is explained that there are two ways to obtain an inheritance, namely the first by ab intestate method, namely inheritance through a relationship between the heir and the heir, while the second method is called inheriting fermenter, namely through a will, where only someone who is in the will has the right to receive inheritance. Inheritance.

The inheritance system for adopted children in the Civil Code differs from the KHI, where in the KHI, adopted children do not have the right to inherit from their adoptive parents, nor do adoptive parents have the right to become the heirs of their children. Children do not have the right to use the name of their adoptive parents because it does not follow their lineage. Adopted children only have the right to inherit, namely through a mandatory will given by their adoptive parents. This is based on Article 209 paragraph (2) KHI, the amount is no more than 1/3 of the inheritance of their adoptive parents, even if they are someone. If the adoptive parents want to give more, they have to get the approval of the other heirs.

3.2. The position of adopted children's inheritance in the inheritance law system according to the Compilation of Islamic Law and the Civil Code

The history of the practice of child adoption in Indonesia has been going on for a very long time, with various kinds of rules being followed to adopt children. The Compilation of Islamic Law and the Civil Code through the 1917 Staatsblad also regulates the adoption of children along with the position of inheritance towards their adoptive parents. Since the era of independence, several regulations related to

child adoption have continued to be formed in order to provide legal protection to adopted children. For example, in 1978, a Circular Letter from the Director General of Law and Legislation at the Department of Justice was issued, number JHA 1/1/2, which regulated the procedures for adopting Indonesian citizen children by foreigners. This regulation was formed to realize the welfare of children, especially adopted children. So in 1979 Law No. 4 of 1979 concerning Child Welfare was issued, where in this Law it is regulated in Article 12 concerning the purpose of adopting a child, namely for the benefit of the welfare of the adopted child.

In 1983, the Supreme Court issued a Circular Letter of the Supreme Court of the Republic of Indonesia, Number 6 of 1983. where issuance of this Circular Letter was to provide instructions and guidelines to judges who decide cases regarding applications for the adoption of children. Until 2002, the government issued Law Number 23 of 2002 concerning Child Protection (Child Protection Law), which has been amended through Law Number 35 of 2014. The passing of this Child Protection Law is a commitment from the government to protect children, including adopted children.

Some of the provisions above, which also regulate the adoption of children, are, of course, intended to protect adopted children so that adoption aims to ensure a decent life can be carried out well and does not eliminate the child's rights. We know that when adopting a child, of course, the child will become part of a family so that the child and his adoptive parents are obliged to have a good family relationship. Even though the KHI and the Civil Code have differences in the status of adopted children, both have an understanding of the purpose of adopting a child, namely so that the child is looked after and the welfare of the adopted child can be guaranteed.

When a husband and wife adopt a child, it is not always because the husband and wife do not have children, so it does not rule out the possibility that there are biological children in addition to the presence of adopted children in a family. It cannot be denied that disputes can involve parents, biological children, and adopted children in a family. Of course, many factors cause disputes between families, one of which is often encountered regarding inheritance. Regarding inheritance, both the KHI and the Civil Code regulate inheritance law, which essentially regulates the distribution of the assets of someone who has died. The Compilation of Islamic Law regulates that those entitled to heirs are: (Naskur, 2016)

- a. Male heirs are fathers, sons, brothers, uncles, grandfathers, and husbands.
- b. Female heirs, namely mothers, daughters, sisters, grandmothers and wives.
- c. Possible heirs as replacement heirs include the grandson or granddaughter of a son or daughter.

The Civil Code also regulates provisions regarding heirs, namely blood relatives, whether legal or extramarital, and the husband and wife who live the longest. The inheritance provisions in the KHI and KUHPer both provide inheritance rights to the heir's parents, children, and siblings. However, in practice, the broad inheritance rights of someone who has died means that it is not uncommon for disputes to occur regarding who has the right to inherit the inheritance rights of someone who has died.

The position of adopted children in inheritance law is still fragile, considering that in the KHI, adopted children do not have inheritance rights from their adoptive parents and only get the right to 1/3 of their adoptive parents' assets through a mandatory will. Even if they want to get more, they must have their consent. The legal heir of his adoptive parents. Apart from that, in the Civil Code, the position of adopted children in the inheritance rights of their adoptive parents is also not regulated in one unified way. It only refers to the provisions regulated in the 1917 Stattsblad, where these regulations are specific to people of Chinese descent.

Weaknesses in the rules regarding the position of adopted children regarding the inheritance rights of their adoptive parents can cause problems for other heirs who do not understand the position of inheritance rights in adopted children, so this affects the application of the inheritance rights of adopted children to their adoptive parents. Apart from that, other issues in applying inheritance rights to adopted children are also inseparable from the definition of adoption in statutory regulations, such as in the KHI, where, according to the KHI, the position of adopted children as legitimate children is based on court decisions. Apart from that, the Child Protection Law also defines an adopted child as a child whose rights are transferred from the authority of the family of parents, legal guardians, or other people who are

responsible for the care, education, and raising of the child to the family environment of their adoptive parents. Based on a court decision or determination. There is the phrase "based on a decision or court order." this can, of course, give rise to legal consequences that in adopting a child a court decision is required so that the child's adoption is legal according to Law.

The existence of the phrase "based on decisions and court decisions" in the definition of adopted children in the KHI and the Child Protection Law can undoubtedly be a problem in granting inheritance rights to adopted children that are not implemented through court decisions and decisions, so what will happen is that disputes arise from the heirs appointed to an adopted child if the heir adopts the child without a court decision and determination.

For example, in the Jakarta High Religious Court case with case number 56/Pdt.G/2015/PTA.JK, the case is an inheritance dispute between Dian Puspasari Binti H. Nandang Rusdana as Plaintiff/Appellant and Yulianti Puspita Binti Edy Djaja Miharja (Defendant /Appellee I), H. Didi Kusumahardy bin HM Dahlan (Defendant/Appellee II), H. Nandang Rusdana bin HM Dahlan (Defendant/Appellee III), Eka Tjahja Pernama bin H. M Dahlan (Defendant/Appellee IV), H. Tista Hukama Adzan bin HM Dahlan (Defendant/Appellee V), Hj. Titien Ambari bint H. M Dahlan (Defendant/Appellee VI).

The Plaintiff/Appellant, Dian Puspasari Binti H. Nandang Rusdana, is the adopted child of husband and wife couple Eddy Djaja Mihardja bin Sambas and Hj. Inna Darsinah Binti HM Dahlan. Defendant/Appellee I is the biological child of the marriage between Eddy Djaja Mihardja bin Sambas and a woman named Pursita, where his marriage to Pursita took place before Hj. Inna Darsinah Binti HM Dahlan. Meanwhile, Defendant/Appellee II to Defendant/Appellee VI are brothers or sisters of Hj. Inna Darsinah Binti HM Dahlan (2nd wife of Eddy Djaja Mihardja bin Sambas).

The lawsuit in this case filed by the Plaintiff, in essence, the Plaintiff is asking for inheritance rights from his adoptive parents, namely Eddy Djaja Mihardja bin Sambas and Hj. Inna Darsinah Binti HM Dahlan. During his life, the Plaintiff was cared for and cared for by living with his adoptive parents, namely Eddy Djaja Mihardja and Inna Darsinah; it is known that before the Plaintiff was still in the womb, his adoptive parents wanted him to be cared for. So, when the Plaintiff was born, his adoptive parents treated the Plaintiff as a biological child. This is also proven by population administration documents such as the Birth Certificate, Dian Puspasari's diploma, and Family Card, in which Dian Puspasari is referred to as the child of Eddy Djaja Mihardja.

The Plaintiff filed a lawsuit to obtain his rights as the adopted child of Eddy Djaja Mihardja and Inna Darsinah, namely to obtain a mandatory will from the inheritance of his adoptive parents in the form of a plot of land measuring 1331 M2, 200 grams of jewelry and 1 unit of Xenia car No. Pol. B 1708 BK. On October 31, 2013, the Defendants made peace by determining the heirs of the late Eddy Djaja Mihardja and Inna Darsinah. However, the Defendants ignored the Plaintiff as an adopted child by not taking into account the Plaintiff's share. This underlies the Plaintiff's request for his rights through the Court.

Consideration of the Panel of Judges in the first instance court number 2810/Pdt.G/2013/PA.JS, based on the copy of the decision, it can be seen that the Panel of Judges considered the legal facts that occurred, taking into account the adoption of the child by Eddy Djaja Mihardja and Inna Darsinah to Plaintiff Dian Puspasari Binti H. Nandang Rusdana, is valid, this is based on the facts of the trial and the evidence and witnesses obtained from the Plaintiff. So the Panel of Judges, in this case, handed down a decision which stated that Plaintiff Dian Puspasari bint H. Nandang Rusdana was the adopted child of the late Eddy Djaja Mihardja and the late Hj. Inna Darsinah also determined that Plaintiff was entitled to receive a mandatory will of 18/132 from the inheritance of the Testator.

In contrast to the decision of the Panel of Judges at first instance in decision number 2810/Pdt.G/2013/PA.JS, which stated that the Plaintiff/Appellant was the legally adopted child of the married couple Eddy Djaja Mihardja and Hj. Inna Darsinah received a mandatory will of 18/132 from the assets inherited from her adoptive parents. In the appeal level decision number 56/Pdt.G/2015/PTA.JK, the panel of judges disagreed with the decision and canceled the first level decision, which declared the Plaintiff to be a legitimate adopted child, namely by renewing the decision which stated that the Plaintiff's claim was unacceptable.

Several points from the considerations of the Panel of Judges at the appellate level which made the Panel of Judges at the appellate level disagree with the decision at the first level, namely:

- a. According to the Panel of Judges at the appellate level, the Plaintiff only claimed to be an adopted child, the defendants denied his confession, and the Plaintiff was unable to provide formal evidence;
- b. Whereas the Panel of Judges referring to article 171 letter h of the Compilation of Islamic Law emphasized that adopted children are those whose responsibility for their daily living, education costs, and so on, shifts from their original parents to their adoptive parents based on a court decision.
- c. Legally, the Plaintiff's position as an adopted child cannot be accounted for. Therefore, the claim for rights to Court has no legal connection or relationship.
- d. Because the Plaintiff's status and position has nothing to do with the inheritance left by the Testator, he automatically has no right to apply for determination of heirs, claim for inheritance, or claim for distribution of inheritance.

Seeing the difference of opinion between the Panel of Judges at the first level and the Panel of Judges at the second level illustrates that the legality of child adoption in Indonesia still contains multiple interpretations. This cannot be separated from the phrase "adoption of a child based on a decision and court order" in the KHI and UU Child Protection, so some judges consider that if the adoption of a child is not carried out through a decision and court order, then the adoption will be invalid. Of course, this will affect the inheritance rights of adopted children, where if the process of adopting a child is invalid because it is not based on a court decision, the legal result is that the adopted child is not entitled to inheritance rights from his adoptive parents.

As happened in the case above, where at the appeal level, the panel of judges considered that the adoption of a child between the Plaintiff and his adoptive parents was invalid and had no legality because it was not based on a court decision, this made the child an adopted child who had been cared for and raised by the parents. The adopted child has no rights to the assets inherited from his adoptive parents, which has legal consequences for the adopted child losing his rights.

"There is nothing wrong with the appellate judge's decision because the principle is that the judge's decision must be considered correct." *Res Judicata Pro Veritate Habetur*" (Mertokusumo, 2006). If analyzed from the considerations of the Panel of Judges at the appeal level, which stated that the Plaintiff was not the adopted child of the heirs, so he was not entitled to inheritance because he was deemed to have no relationship with the heir, either by blood or marriage, and the judge's reasons also referred to the absence of evidence. Court decision determining the Plaintiff as an adopted child. The judge's considerations prioritize the juridical aspect, the first aspect based on the applicable Law. The Supreme Court of the Republic of Indonesia has regulated that the judge's decision must consider all juridical, philosophical, and sociological aspects (Mahkamah Agung RI, 2006).

The judge's consideration refers to Article 171 letter b KHI, which defines an adopted child as a child whose responsibility for daily living, education costs, and so on is transferred from the original parents to the adoptive parents based on the Court's decision. This provision makes the judge believe that the adoption of a child must be based on the Court's decision, in the sense that according to the Panel of Judges, it prioritizes the written provisions that have been regulated.

There is another case regarding an inheritance dispute between someone with the status of an adopted child and other heirs of his adoptive parents, namely in the case at the Atambua District Court Number 39/Pdt.G/2016/PN.ATB, where in this case the parties are Damianus Maximus Mela as Plaintiffs against Mateus Nahak, Martina Motu, Robertus Mali, Yanwarius Asa, Yohana Anastasia Mali, Mina Mali, Fransiskus Mali, Rofinus Damianus Nahak, Kristianus Tes, Agustina Lika, Ermina Mali, Ayub Hae, Gabriel Leto, Yosep Bone, Wati Mau, Maria Elisabet Mali, Lambertus Bere, as Defendant I to Defendant XVII.

The Plaintiff filed this lawsuit; in essence, the Plaintiff, on behalf of Damianus Mela, was adopted as a child by a married couple, namely Camilus Mau and Maria Magdalena Rusmina, through a custom known as Golgalika, where the husband and wife do not have biological children. During his lifetime, the Plaintiff's adoptive parents cared for and cared for the Plaintiff like their own biological child. The

Plaintiff's parents owned several assets in the form of land, which in the Plaintiff's lawsuit stated that there were 4 (four) plots of land which at that time were controlled by the Defendants, where the Defendants, through their answer to the Plaintiff's lawsuit did not admit that the Plaintiff was the adopted child of the married couple Camilus Mau and Maria Magdalena Rusmina, because according to the Defendant, the Plaintiff did not have a single document related to the adoption of the child by the Plaintiff's adoptive parents.

The case proceeded as it should through a trial, where the Panel of Judges considered the Plaintiff's claim, the Defendant's answer, and the evidence submitted by the Plaintiff and Defendant. In its considerations, the Panel of Judges thought that the dispute between the parties was regarding the inheritance of the late Camilus Mau and his wife, the late Maria Magdalena Rusminah, in the form of 4 (four) plots of land. Initially, the panel of judges conducted considerations through statements from witnesses presented by Plaintiff and Defendant regarding the child adoption process, which was carried out through a custom called Golgalika.

Based on witness statements regarding the adoption of children by the late Camilus Mau and his wife, the late Maria Magdalena Rusminah, for the Plaintiff, the Panel of Judges thought that the process of adopting children through a custom called Golgalika was legal so that the Plaintiff was entitled to the inheritance left by his adoptive parents, namely in the form of 4 (four) plot of land which the Defendants then controlled. Based on the considerations of the panel of judges, a decision was made, one of the rulings of which was to declare the Law that the adoption of Damianus Mela's child, which was carried out according to the Lamaknen custom by Maria Magdalena Rusmina for the Plaintiff, known as Golgalika, was valid, and stated that the Plaintiff was an expert—legal heir of Maria Magdalena Rusmina and the late Camilus Mau.

The two cases, namely case number 39/Pdt.G/2016/PN.ATB and case number 56/Pdt.G/2015/PTA.JK has different competencies because of case number 56/Pdt.G/2015/PTA. JK was carried out at the Religious Court, while case number 39/Pdt.G/2016/PN.ATB was carried out at the District Court. However, the author's focus is not on the distribution of inheritance between adopted children and other heirs from their adoptive parents because the distribution of inheritance between Islamic Law and Civil Law has differences. However, the author focuses on the fundamental issue regarding whether the adoption of a child is valid or not based on Islamic Law and Civil Law, where the main gate for dividing inheritance from adoptive parents to their adopted child is whether or not the adoption process that has been carried out is valid because there will be no inheritance rights if the child's adoption is not valid.

Looking at the judge's considerations in case number 39/Pdt.G/2016/PN.ATB, in his considerations, thought that the adoption of the child by the Plaintiff's adoptive parents was valid even though it was not based on a court decision. This is different from case number 56/Pdt.G/2015/PTA.JK, in which the Panel of Judges considered that a court decision was necessary for the adoption of a child to be legal. The difference between the two decisions can also be seen in the legal consequences in case number 39/Pdt.G/2016/PN.ATB, adopted children have the right to the assets inherited from their adoptive parents.

Meanwhile, in case number 56/Pdt.G/2015/PTA.JK, an adopted child, is not entitled to an inheritance from his adoptive parents because the adoption was invalid. After all, it was not based on a court decision.

The two decisions above illustrate that when judging a case, the panel of judges, apart from paying attention to juridical, philosophical, and sociological aspects, must also pay attention to three integrative legal objectives in its legal considerations, namely considerations based on legal certainty, considerations based on legal benefits, and considerations based on legal justice (Mappiasse, 2015). The connection with the author's research is that the application of inheritance rights to adopted children in the event of a dispute must be viewed from various aspects, both philosophical, juridical, and sociological so that adopted children do not lose their rights as a result of non-recognition of the child's adoption which was not carried out based on a court decision.

Learning from what happened in the two cases above, the implementation of fulfilling the inheritance rights of adopted children in Indonesia, based on the KHI and the Civil Code, is still

experiencing obstacles in its implementation. One of these obstacles is related to the definition of child adoption, which is still not in harmony between the Civil Code and the KHI, where the KHI itself defines adopted children as having to be based on a court decision. So, in its implementation, there are still judges who legally believe that legal adoption is adoption based on a court decision.

In essence, before talking about the inheritance rights of adopted children from their adoptive parents, of course, the first primary issue is whether the adoption of the child was carried out legally or not, which, of course, will give rise to legal consequences, one of which is regarding inheritance rights. If the adoption of a child is deemed invalid, there will be no inheritance rights for the adopted child. Therefore, it is essential that if the definition of legal child adoption is harmonized, where it refers to the history of child adoption and the purpose of adoption is to provide a decent life for the child, then there should be no need for a court decision considering that not all people understand the litigation procedures. In the Court.

The explanation above concerns the implementation of fulfilling the inheritance rights of adopted children according to the KHI and the Civil Code as described in case number 56/Pdt.G/2015/PTA.JK at the Jakarta High Religious Court and 39/Pdt.G/2016/PN.ATB at the Atambua District Court, it appears that up to now, there are still adopted children who have lost their inheritance rights because the adoption that occurred to them was invalid because it was deemed not to have been carried out based on a court decision, which was based on a juridical aspect. On the other hand, there are cases where the Panel of Judges believes that adopting a child does not require a court decision. It is only enough to prove that the child and his adoptive parents throughout their life have been running as a family that takes care of and looks after each other so that the child has the right to the inheritance of his adoptive parents.

The importance of harmony between the KHI and the Civil Code, as well as other statutory provisions in defining child adoption, is because it will have an impact on the rights of adopted children and adoptive parents if the child's adoption is deemed invalid, which can eliminate the rights of both. Therefore, the definition of child adoption must refocus on the purpose of adoption itself, namely to improve the welfare of the child and take care of and maintain it so that they can live a good life, which, if this has happened and can be proven then the adoption should be legal as follows: legal consequences.

4. CONCLUSION

Based on the explanation of the research that has been described, it can be concluded that the position of the inheritance rights of adopted children according to the KHI and the Civil Code is different, first regarding the position that the Compilation of Islamic Law strictly regulates that a person who is adopted as a child does not make the child and his adoptive parents have a relationship. Blood, so that there is no line between the child and his adoptive father. Adoption of a child in Islamic Law is only limited to treating the adopted child well in the same way as one would treat one's biological children, namely by loving, nurturing, providing a living, providing education and all their needs, but they cannot still be considered like one's own biological children. In contrast to the Compilation of Islamic Law, the Civil Code, which adopts the provisions of Staatsblad 1917 Number 129, regulates that the status of adopted children is the same as biological children, such as children born to their parents in marriage. Second, regarding inheritance rights, in Islamic Law, adopted children do not have inheritance rights from their adoptive parents, but the KHI gives adopted children the right to receive an inheritance from their adoptive parents through a mandatory will, but the inheritance received is not more than 1/3. In contrast to Islamic Law, in the Civil Code, the inheritance status of adopted children is the same as that of biological children. This is because there is no distinction between biological children and adopted children in the Civil Code.

The implementation of fulfilling the inheritance rights of adopted children in Indonesia, based on the KHI and the Civil Code, still experiences obstacles. One of these obstacles is related to the definition of child adoption, which is still not in harmony between the Civil Code and the KHI, where the KHI itself defines an adopted child as having to be based on a court decision so that in its implementation there are still judges who are juridically based on the legal adoption of a child. Adoption of a child based on a court

decision. The importance of harmony between KHI and the Civil Code, as well as other statutory provisions in defining adoption, is because it will impact the rights of adopted children, especially inheritance rights if the child's adoption is deemed invalid. Therefore, the definition of child adoption must refocus on the purpose of adoption itself, namely to improve the welfare of the child and take care of and maintain it so that they can live a good life, which, if this has happened and can be proven then the adoption should be legal, along with the right to inheritance.

REFERENCES

- Angkasa, Nitria, et al. (2019). *Metode Penelitian Hukum sebagai Suatu Pengantar* (1st ed.). Lampung: Penerbit Laduny.
- Ash-Shiddiqy, Hasbi. (2001). *Fiqh Mawaris*. Jakarta: Pustaka Rizki Putra.
- Baihaki, Ahmad. (2021). Penerapan Wasiat Wajibah Dalam Putusan Penyelesaian Sengketa Waris Beda Agama Ditinjau Dari Perspektif Hukum Islam. *Jurnal KRTHA BHAYANGKARA*, 15(1).
- Dahlan, Abdul Aziz. (2000). *Ensiklopedi Hukum Islam*. Jakarta: PT Ikhtiar Baru Van Hoeve.
- Mahkamah Agung RI. (2006). *Pedoman Perilaku Hakim (Code Of Conduct), Kode Etik Hakim dan Makalah berkaitan*. Jakarta: Pusdiklat MA RI.
- Mappiasse, Syarif. (2015). *Logika Hukum Pertimbangan Putusan Hakim*. Jakarta: Prenadamedia Group.
- Mertokusumo, Sudikno. (2006). *Penemuan Hukum Sebuah Pengantar*. Yogyakarta: Liberty.
- Nafiatul Munawaroh. (s.d.). Arti Penafsiran Hukum Argumentum A Contrario. Diakses pada 14 Oktober 2023, dari <https://www.hukumonline.com/klinik/a/arti-penafsiran-hukum-argumentum-a-contrario-lt58b4df16aec3d/>
- Naskur. (s.d.). Ahli Waris Dalam Kompilasi Hukum Islam. *Jurnal Ilmiah Al-Syir'ah*, 6(2).
- Oemarsalim. (2013). *Dasar-Dasar Hukum Waris di Indonesia*. Jakarta: Rajawali Pers.
- Parangin, Effendi. (2005). *Hukum Waris*. Jakarta: PT. Raja Grafindo Persada.
- Rais, Muhammad. (2016). Kedudukan Anak Angkat Dalam Perspektif Hukum Islam, Hukum Adat Dan Hukum Perdata (Analisis Komparatif). *Jurnal Syariah dan Hukum*, 14(2).
- Rofiq, Ahmad. (2017). *Hukum Perdata Islam Indonesia*. Depok: Rajawali Pers.
- Rosalina, Adelia. (2022). Kedudukan Anak Angkat dalam Hak Waris Menurut Kitab Undang-Undang Hukum Perdata. *Jurnal of Law*, 8(1).
- Sidek, Alang. Azhar & M. Habib. (2018). Analisis Anak Angkat dalam Perspektif Hukum Islam, Status dan Kedudukannya. *Jurnal Hukum Islam*, 1(2).
- Soekanto, Soerjono & Sri Mamudji. (2015). *Penelitian Hukum Normatif*. Jakarta: Rajawali Pers.
- Soekanto, Soerjono. (1980). *Intisari Hukum Keluarga*. Bandung: Alumnus.
- Suprayudi, Mitra. (2014). Analisis Hukum Terhadap Tabbani (pengangkatan Anak) Menurut Fiqih Islam dan Undang-Undang Nomor 23 Tahun 2002 Tentang Perlindungan Anak. *Premise Law Jurnal*, 2(4).
- Zaini, Muderiz. (1985). *Adopsi Suatu Tinjauan dari Tugas Sistem Hukum*. Jakarta: Bina Aksara.