

Analysis of Adopted Children's Rights on Islamic Law and Civil Law

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Abstract

The public's ignorance of the proper procedure for adopting a child has an impact on the position of the adopted child in the family. Moreover, it results in the legal aspects of inheritance, which can lead to problems in the future. Adoption gives birth to a legal relationship between the adopted child and the adoptive parents, and there is a big difference in inheritance regulated between Islamic law and civil law. The data used in this study are the Compilation of Islamic Law and the Civil Code, books, journals, theses, and other documents relevant to the research problem. The analytical technique used is deductive data analysis, which collects general data related to research problems. From the results of the study, it was concluded that in Islamic law an adopted child cannot obtain inheritance but may only receive a mandatory will, which has been determined in the law and must not exceed 1/3 part if you want to exceed 1/3 of the property then must be with the permission of other heirs. In civil law, adopted children become heirs of their adoptive parents, this right as heir is obtained if the appointment is made based on a court decision. However, if the adoption is not based on a court order, the adopted child is not entitled to become an heir but can be given a testamentary grant that does not harm the other heirs.

Keywords: *children's rights, adopted children, inheritance*

Abstrak

Ketidaktahuan masyarakat mengenai prosedur yang tepat dalam pengangkatan anak berakibat pada kedudukan anak angkat dalam keluarga. Terlebih lagi berakibat pada aspek hukum waris yang dapat membawa permasalahan dikemudian hari. Adopsi melahirkan hubungan hukum antara anak angkat dan orang tua angkat, dan ada perbedaan besar dalam warisan yang diatur antara hukum Islam dengan hukum Perdata. Data yang digunakan dalam penelitian ini yaitu Kompilasi Hukum Islam dan Kitab Undang-undang Hukum Perdata, buku, jurnal, skripsi, maupun dokumen lain yang relevan dengan masalah penelitian. Teknik analisis yang digunakan yaitu analisis data deduktif, yang dilakukan dengan mengumpulkan data-data yang bersifat umum terkait dengan masalah penelitian. Dari hasil penelitian, disimpulkan bahwa dalam hukum islam anak angkat tidak bisa memperoleh harta waris, akan tetapi hanya boleh menerima sebatas pemberian wasiat wajib yang telah ditentukan dalam undang-undang dan tidak boleh melebihi 1/3 bagian, apabila ingin melebihi 1/3 harta maka harus dengan izin ahli waris lain. Dalam hukum perdata anak angkat menjadi ahli waris dari orang tua angkatnya, hak sebagai ahli waris ini didapat apabila pengangkatan yang dilakukan berdasarkan putusan pengadilan. Namun, jika adopsi yang dilakukan tidak berdasarkan penetapan pengadilan, maka anak angkat tidak berhak menjadi ahli waris, tetapi dapat diberi hibah wasiat yang tidak merugikan ahli waris lain.

Kata Kunci: Hak Anak, Anak Angkat, Warisan

Introduction

Every newly married couple craves a child's presence so they can continue their offspring and achieve happiness in the household.¹ However, humans can only try without knowing what the results will be. Because the life of every human being is under the supervision of the Almighty, be it sustenance, mate, or death. The human instinct to have a child is in every married couple.² The wish could not be fulfilled because of the destiny of the Almighty, or one of the partners had an illness. There are many ways humans can have a child, such as IVF programs and child adoption³.

Islamic law and civil law have different concepts regarding child adoption. Adoption in Islam is seen as a way for parents who have not been able to have children.⁴ Adoption or adoption brings legal consequences that affect the relationship between adopted children and adoptive parents, such as regarding the inheritance and position of the child. The view of the Shari'a on inheritance will undoubtedly be very different from the rules in the general court⁵.

This difference brings confusion to people who do not understand the law. Without realizing it, they have used the concept of civil law (BW), which is caused by the influence of differences in the legal system in the community, so that the adoption is no longer by Islamic law, which affects many aspects of family life.

The adoption process can have legal certainty with the rules regarding child adoption. However, until now, many adoptive parents still think that when adopting a child, there is no need to go to court. The important thing, there is an agreement between the two parties. This kind of thinking certainly has a significant impact on the position of the child.

The public's ignorance of the proper procedure for adopting a child impacts the part of the adopted child in the family. Moreover, it results in the legal aspects of inheritance which can lead to problems in the future. Adoption creates a legal relationship between the adopted child and the adoptive parents, and there is a big difference in inheritance regulated between Islamic law and civil law.

Research Methods

This type of study is library research, the same as text analysis activities, which are carried out in actions or writing to get the correct facts. The research approach is carried out by reviewing the laws and regulations related to the research problem⁶.

Two sources are used in this study, namely primary and secondary. Primary sources are obtained from the Compilation of Islamic Law and the Civil Code. At the same time,

¹ Siddig Ahmad et al., "Mafhūmu Fiqhi Al-Marātib Wa Fiqhi Al-Awlawiyyāt Fī Maqāṣidi Al-Qur'ān: Dirāsah Taṭbīqiyyah Fī Malaysia" 19, no. 1 (2024): 271–302, <https://doi.org/https://doi.org/10.19105/al-lhkam.v19i1.8917>.

² Edy Setyawan et al., "Legal Age for Marriage: SDGs and Maslahah Perspectives in Legal Policy Change in Indonesia," *Al-Manahij: Jurnal Kajian Hukum Islam*, 2023, <https://doi.org/10.24090/mnh.v17i2.9506>; Muhammad Taufiq, Mohammad Badruddin Amin, Ahmed Salem Ahmed, et al., "Online Marriage in the Perspective of Fiqh Nawazil," *Jurnal Hukum Islam* 21, no. 1 (2023): 29–54, https://doi.org/https://doi.org/10.28918/jhi.v21i1_02; Arifah Millati Agustina and Nor Ismah, "Challenging Traditional Islamic Authority: Indonesian Female Ulama and the Fatwa Against Forced Marriages," *Journal of Islamic Law* 5, no. 1 (2024): 125–46, <https://doi.org/10.24260/jil.v5i1.2319>.

³ Amin, Moh, and A. Hadi. "Tinjauan Hukum Islam Terhadap Pengangkatan Anak (Adopsi) Dan Pembagian Harta Warisnya." *Ummul Qura* 15.1 (2020): 13-34

⁴ Muhammad Taufiq, *Filsafat Hukum Islam; Dari Teori Ke Aplikasi*, ed. Abd. Jalil, I (Pamekasan: Duta Media, 2019).

⁵ Rais, Muhammad. "Kedudukan Anak Angkat Dalam Perspektif Hukum Islam, Hukum Adat Dan Hukum Perdata." *DIKTUM: Jurnal Syariah Dan Hukum* 14.2 (2016): 183-200.

⁶ Hamzah, A.. *Metode Penelitian Kepustakaan Library Research* (1 ed.). (F. R. Akbar, Penyunt.) (Batu: Literasi Nusantara, 2020) h.7

secondary sources are obtained from books, journals, theses, hadith, reports, and documents related to research problems⁷.

The method used in this research is the deductive data analysis method, analyzed by collecting theories and facts regarding child adoption and inheritance rights in general, then read and understood to obtain a specific conclusion⁸.

Study of Inheritance in Islam

In some references to Islamic law, such as the fiqh of Mawaris, the law of inheritance, and the science of inheritance, there are many terms of Islamic inheritance law. Article 171 (a) of the Compilation of Islamic Law explains several provisions regarding inheritance law, such as property rights, who are entitled to become heirs, and how much is received⁹.

One of the books entitled inheritance law, written by Prof. T.M. Hasby Ash-Shiddiqi, explained that the jurisprudence of the Mawaris is a science that allows us to know who the heir is, who is the heir, how to get it and what part to get¹⁰. In some of these understandings, it can be seen that the law governing the transfer of inheritance from the heir to the inheritor and how to obtain it, including the part obtained from the inheritance, is called inheritance law.

Because someone can inherit, there are three kinds, namely:

1. Because of kinship ties, there is a blood relationship between the inheritor and the one inherited from birth.
2. Because of the marital relationship.
3. Because wala', there is inheritance because it has freed an enslaved person¹¹.

Study of Inheritance in Civil Law

According to A. Pitlo, quoted in the book Family Law, a collection of rules governing property due to the death of a person, which is related to people who are heirs or third parties, is called inheritance law¹².

Ali Afandi argues that inheritance is all the heir's inheritance after deducting all his debts¹³. Prof. Subekti, S.H., explained that the inheritance law regulates a person's inheritance due to a family relationship¹⁴.

The Civil Code recognizes two ways of obtaining inheritance, namely:

1. Based on the law (ab intestato), which determines who has the right to inherit, regardless of gender or age, even children outside of marriage are recognized as heirs¹⁵.
2. By Will (testamentair), a statement made at the testator's will can be changed and revoked¹⁶.

⁷ Siyoto, S., & Sodik, M. A. *Dasa Metodologi Penelitian*. (Yogyakarta: Literasi Media, 2015) h.28

⁸ Yaniawati, R. P. *Penelitian Studi Kepustakaan (Library Research)*. (Bandung. 2020) h. 22

⁹ Mahkamah Agung RI. *Himpunan Peraturan Perundang-Undangan Yang Berkaitan Dengan Kompilasi Hukum Islam*. (Jakarta: Perpustakaan Nasional RI, 2011).

¹⁰ Muthiah, A., & Hardani, N. S. *Hukum Waris Islam*. (Yogyakarta: Medpress Digital, 2015) h. 15

¹¹ Haries, A. (2019). *Hukum Kewarisan Islam* (1 ed.). (Z. Ulfa, Ed.) Yogyakarta: Ar-Ruz Media. h. 28-31

¹² Sembiring, R. (2019). *Hukum Keluarga* (1 ed.). Depok: PT Raja Grafindo Persada. h.188

¹³ Fatmawati, I. (2020). *Hukum Waris Perdata* (1 ed.). Yogyakarta: Deepublish. h.5

¹⁴ Simanjutak. (2017). *Hukum Perdata Indonesia* (1 ed.). (Jeffrey, Ed.) Jakarta: Kencana. h.211

¹⁵ Yulia. (2015). *Hukum Perdata*. Aceh: CV. Biena Edukasi. h. 54

¹⁶ Jaya, D. P. (2020). *Hukum Kewarisan Di Indonesia*. Bengkulu: Zara Abadi. h.9

Adopted Child Study

There are several definitions of adoption according to experts, including:

1. Rosnidar Sembiring explained that the general understanding of adoption is the act of transferring power over a child from his original parents to adoptive parents, raising and caring for him to become his child¹⁷.
2. Muhammad Thaha Abul Ela Khalifah defines tabanni as an act that makes other people's children as their children, both male, and female¹⁸.
3. According to Muderis Zaini, adoption is the adoption of a child who does not provide a position similar to that of a biological child¹⁹.

In Article 171 letter h of the Compilation of Islamic Law, the definition of adoption is the transfer of responsibility and maintenance of children based on court decisions, from biological parents to adoptive parents (Mahkamah Agung RI, 2011).

The Right to Inheritance of Adopted Children in Islamic Law

In a book entitled "Halal dan Haram" by DR. Yusuf Qardawi, he forbids parents to deny their children's lineage with excuses that are not the truth.²⁰ Islam also forbids children to attribute themselves to people other than their biological fathers. This behavior is considered a terrible sin that causes the perpetrator to be cursed by the Almighty Creator²¹.

In the General Assembly of Ulama, on December 21, 1983, in Situbondo, East Java, Nahdlatul Ulama (NU) issued a fatwa on child adoption. The fatwa states, "*It is unlawful to adopt another person's child to be treated, used, and recognized as one's own child.*" As a legal basis, NU's ulama quote the hadith of the Prophet as described above.²² The act of adoption cannot make the child like a biological child in terms of lineage, mahram, and inheritance. Therefore, adopted children do not have the right to inherit like biological children.²³

According to most scholars, Professor Wahbah Az-Zuhaili said in his book entitled Islamic Fiqh Wa Adillatuhu that the will for his relatives is sunnah, including four madhhab imams. Based on some opinions of Islamic jurists from the Hambali group, a will is a debt obligation and the fulfillment of parents and relatives who do not inherit. Articles 76-79 of Egyptian law and Articles 257 of Syrian law require a will for those who are prevented from inheriting²⁴.

The relationship between adopted child and adoptive person is limited to the nurturing relationship between the child and the parents. As a result, adopted children and adoptive parents are not entitled to inherit from each other. Based on verses 4 and 5 of Surah Al-Ahzab, which says that adopted children should not be used as biological children, everything related to adopted children, including inheritance, cannot be equated

¹⁷ Sembiring, h. 160

¹⁸ Khalifah, M. T. (2007). *Hukum Waris: Pembagian Warisan Berdasarkan Syariat Islam*. Solo: Tiga Serangkai

¹⁹ Zaini, M. (1995). *Adopsi Suatu Tinjauan Dari Tiga Sistem Hukum*. Jakarta: Sinar Grafika.

²⁰ Siti Musawwamah et al., "Resistance to Child Marriage Prevention in Indonesia and Malaysia," *Ahkam: Jurnal Ilmu Syariah* 23, no. 1 (2023): 259–80, <https://doi.org/10.15408/ajis.v23i1.32014>.

²¹ Qardawi, D. Y. *Halal dan Haram*. (Jakarta: Robbani Press, 1985) h.225

²² Muh. Sholihuddin, "Fiqh Al-Muwatanah: Nahdlatul Ulama's Interpretation About Citizenship," *Millah: Jurnal Studi Agama* 21, no. 1 (October 9, 2021): 149–82, <https://doi.org/10.20885/millah.vol21.iss1.art6>; Muhammad Taufiq, "Nahdlatul Ulama Fatwas on Politic in Indonesia: Evaluative Maqashid Study" (International Islamic University Malaysia, 2022).

²³ Kristiono, C. Position Of Adopted Children In The Distribution Of Heritage Property In Indonesia. *International Journal Of Law Reconstruction*, Volume II, Issue 2 (2018) h.80

²⁴ Az-Zuhaili, P. D. *Fiqh Islam Wa Adillatuhu*. (Jakarta: Gema Insani, 2011). h.245

with biological children. However, Islam provides a solution for adopted children who cannot get an inheritance by way of a will, called a mandatory will.²⁵

A will is obligatory for those who are prevented from inheriting. The adopted child is not the biological child of the adoptive parents. Therefore, he does not have the power to get the assets left by the adoptive parents, but he is entitled to a mandatory will. The provisions of this mandatory will are regulated in the Compilation of Islamic Law Article 209 paragraph 2 with the condition that the mandatory will only apply to people prevented from receiving an inheritance with a policy of not more than one-third of the inheritance. (Mahkamah Agung RI, 2011)

A will that exceeds 1/3 (one-third) of wealth is considered invalid, even with the heirs' permission. This is based on the opinion of the Dhahiriyah ulema. Because the hadith of the prophet states that one-third of the will is believed to be abundant²⁶. (Mubarok & Nugroho, 2022: 21) However, there is one hadith that allows if the will exceeds 1/3 part, namely:

عَنْ عَامِرٍ عَنْ شُرَيْحٍ فِي الرَّجُلِ يُوصِي بِأَكْثَرِ مِنْ ثُلُثِهِ قَالَ إِنْجَازَتْهُ الْوَرَثَةُ أَجْزَاءَهُ وَإِنْ قَالَتْ الْوَرَثَةُ أَجْزَاءَهُ فَهُمْ بِالْخِيَارِ إِذَا نَفَضُوا أَيْدِيَهُمْ مِنَ الْقَبْرِ

From the Amir of Shurayh about a person who wills more than a third of his wealth, he said; If the heirs agree, then we allow it, and if the heirs have said; We agree, then they may choose if they have waved their hands from the grave". (HR. Darimi: 3063)

The only basis for a mandatory will is regulated by Article 209 of the Compilation of Islamic Law as part of Fiqh through *ijtihad istishlah*, *urf*, and *istishan*²⁷. A mandatory will that has been determined by law is a will that must carry out without depending on the approval of anyone, be it the heir or other heirs. Implementing this will does not require the will, speech, or consent of the testator, because it is not something that needs to be proven but is done because of the rights of the person who is entitled to it. This obligatory will is implemented after the payment of the testator's debts and the cost of organizing the corpse. Then, the inheritance is distributed to the rightful heirs.

The granting of inheritance to adopted children is supported by the five objectives of *Maqashid Al-Shari'ah*²⁸, including:

1. The maintenance of religion can be done by obeying every prohibition and command of Allah. One of them is not treating children other than their biological parents. Adopting an adoption that does not break the kinship relationship with his birth parents can be a form of maintaining religion.
2. Maintenance of reason, every human being is ordered by Allah to always keep his mind by digging knowledge starting from the beginning of life until death. This is inseparable from maintaining the soul and property because, to seek knowledge, one must be healthy in mind and physically, free from all things Allah forbids.
3. Maintenance of the soul with the distribution of wills determined in Islam can minimize the potential for disputes between brothers because not a few people can kill others because of inheritance problems.
4. Maintenance of property, comfort and welfare in studying can be carried out by using these assets to maintain the assets obtained, both in the form of inheritance and mandatory wills.

²⁵ Ahmad et al., "Maḥūmu Fiqhi Al-Marātib Wa Fiqhi Al-Awlawiyyāt Fī Maqāṣidi Al-Qur'ān: Dirāsah Taḥqīqiyah Fī Malaysia."

²⁶ Mubarok, Z., & Nugroho, P. D. Kedudukan Anak Angkat Dalam Pembagian Harta Warisan Di Indonesia. *Jurnal Smart Law*, 1(1) (2022), h.14-25.

²⁷ Laily, W. The Right Of The Heirs To The Adopted Child In The Property Of The Adopted Parents Under The Law Of The Heis In Indonesia. *International Journal Of Research and Review*, 7(7), (2020), 212-217

²⁸ Muhammad Taufiq, *Maqāṣid Syariah & Filsafat Hukum Islam* (Pamekasan: IAIN Madura Press, 2023).

5. The offspring can be maintained by adopting a child, which aims to protect and maintain the child's life.

The right way to apply Islamic law is to give mandatory wills to adopted children, as outlined in Article 209 of the Compilation of Islamic Law. This is done to provide justice to people who cannot get an inheritance for specific reasons. The court's decision regarding issuing mandatory wills for adopted children is intended to fill a legal vacuum because the Islamic Law Compilation does not explain this in detail²⁹.

Inheritance Rights of Adopted Children in Civil Law

The legal consequences of adopting a child in civil law are regulated in articles 11, 12, 13, and 14 of the Staatsblad 1917, number 129. Article 11 concerning the adopted family name is also the name for the adopted child. Article 12 equates an adopted child with a legitimate child born from the marriage of the person who adopts it.³⁰ Article 13 obliges the inheritance hall to take necessary action if there is a widow who adopts a child.³¹ Article 14, the adoption of a child results in the severance of the legal relationship between an adopted child and his/her parents³².

As indicated by the Supreme Court Circular No. 6 of 1983 Jus Law no. 23/1992 Jo. PP No. 54/2007 relating to BW interpreting the position of children out of wedlock, then adopted children are children out of the marriage that is legally recognized³³.

The effect of this regulation is that adopted children have the status and position as heirs based on article 852 BW, that regardless of whether a person or descendants are born and various marriages,³⁴ they inherit the inheritance from their parents, grandparents, or close relatives, without anyway of their gender or birth³⁵.

An adopted child is a child out of wedlock which is legalized by law, with the legal consequence that he gets the inheritance according to the legitime portie stipulated in the law. Article 12 BW means a legitimate child if the child is born in a marriage ratified by law³⁶.

So their inheritance rights by Article 863 of the Civil Code with the provisions: legal descendants as indicated by law or husband or wife get a third of the share they originally received; if the heirs only leave blood descendants in the upward line, then they get half of the inheritance; and if there are only distant family members, they get three-quarters.

According to civil law, one of the legal requirements for adoption is that the local court must approve the adoption. This rule applies after the abolition of Article 15, which states that the appointment by means other than a notary deed is invalid. Notaries do not have any authority to make a letter of adoption after the issuance of various regulations by the government regarding the implementation of adoption. The reference to adopting a child is only given by law to the court.

²⁹ Maskuri, E. The Guarantee Of Adopted Children On Thei In Heritance Through Wasiah Wajibah. *Journal Of Indonesian Law*, 1(2), (2020)., 145-160

³⁰ Musawwamah et al., "Resistance to Child Marriage Prevention in Indonesia and Malaysia."

³¹ Muhammad Fauzudin Faiz, Zezen Zainul Ali, and Muhammad Taufiq, "Underage Widows and Widowers before the Law: Problem, Contestation and Legal Certainty in Marriage Dispensation," *Juris: Jurnal Ilmiah Syariah* 22, no. 2 (2023): 223–34, <https://doi.org/10.31958/juris.v22i2.9097>.

³² Zaini, 36.

³³ Farid, M., Khisni, A., & Chalim, M. A. Position Of Adopted Children In Leaving Appointment Parent's Assets According To Islamic Law, Civil Law & Custom Law. *SultanAgung Notary Law Review*, (2021). 953.

³⁴ Musawwamah et al., "Resistance to Child Marriage Prevention in Indonesia and Malaysia."

³⁵ Yustisia, T. V. *Kitab Undang-Undang Hukum Perdata & Kitab Undang-Undang Hukum Acara Perdata*. Jakarta Selatan: Visimedia (2015).

³⁶ Nareswari, I. A., & Priyanto, I. M. Status Anak Adopsi Dalam Pembagian Harta Warisan Perspektif Kitab Undang-Undang Hukum Perdata. *Jurnal Kertha Wicara*, 10 (2), (2021). 163-173

Adopted children adopted by court order have the right to inherit by the *legitieme portie*, which is the absolute right of an heir that has been ratified by law. He gets the same rights as biological children. Other heirs cannot challenge this right to inherit because adopted children are children outside marriage that have been legalized by law.³⁷

Meanwhile, adopted children who are only adopted orally are not entitled to inherit because there is no court ruling stating that the child is legally valid as a descendant of the person who adopted him. However, he can still get an inheritance by way of a will. This will grant the second method of inheritance according to civil law made by the testator in the form of a statement. The will can be changed and revoked. This testamentary grant is given to an adopted child without harming the rights of the permanent heirs.

Legal Implications of Adoption in Islamic Law

The prohibition of imposing a child with a clear lineage against people who are not his biological parents is based on Surah Al-Ahzab verses 4-5. There are several positive sides to this prohibition which have an impact in several ways, including:

1. Terms of lineage. The prohibition or clear rules regarding a child's lineage can bring clarity to the child's status. Adopted children have a clear family regarding who their biological parents are.
2. There are boundaries between adopted children and adoptive parents. This limitation can be seen from the contact behavior between the adopted child and the adoptive parents. It is known that the adopted child and the adoptive parents are not related by blood due to adoption, then it is prohibited or unlawful to touch each other when the child has reached puberty.
3. The adopted child remains the legal child of the biological parents. Adopting a child in Islam does not affect the relationship between the adopted child and the person who adopted it. Adopted children remain the biological children of their biological parents. The existence of rules regarding adopted children in Islamic law brings clarity to the child so that he remains a legitimate child of his birth parents and does not have the status of a biological child of his adoptive parents.
4. Adopted children get the right to inherit by way of a will. There is a prohibition on the probate of adopted children, bringing clarity to adopted children. In the case of inheriting, they are not entitled to inherit from their adoptive parents. Still, they get a mandatory will stipulated by the Compilation of Islamic Law on the condition that it is not more than one-third of the inheritance. So, the status they get from adoption becomes apparent as an adopted child.

The rules regarding adoption are only explained in the Compilation of Islamic Law Article 171 letter h in the form of understanding. Still, they have not defined the prohibitions resulting from the adoption. So that several forms of adoption are contrary to Islamic law because of the lack of firmness regarding the rules of the adopted child, including:

1. Give the adopted child's last name using the adoptive father's name.
This name change has consequences for the unclear lineage of the child, thus confusing others to find out who the child's natural parents are. So that if the adoptive father uses his name behind the adopted child's name, the act is the same as changing the adopted child's lineage into a biological one.
2. The adopted child's name is listed on the adoptive parents' birth certificate and family card as the legal child of their marriage.

³⁷ Musawwamah et al.

This act of identity manipulation is inseparable from a birth certificate issued by a midwife, medical or non-medical. In Islam, changing a child's identity is the same as changing a child's lineage, which affects the child's life, one of which is marriage.³⁸

3. Become a guardian when an adopted child gets married.

In many cases, the biological father's name is different from the name written on the family card when the child wants to marry, thus confusing the Office of Religious Affairs officials about the child's biological father. The adoptive father does not have the right to be a guardian of the marriage of his adopted child because the only person who can become a guardian is the child's biological father.

4. Ending kinship ties with original parents.

Islam strictly prohibits this kind of behavior, primarily if the adoptive parents act as they please by separating the bond between the adopted child and his biological parents. Examples include notifying the child's birth parents, and the adopted child is prohibited from meeting his biological parents.

5. Making adopted children as heirs.

The inheritance rights can be granted if the child has a birth certificate as the biological child of his adoptive parents, as explained in point 2 above. If the adopted child becomes the heir of his adoptive parents, it will trigger a dispute with the other heirs who are the family of his adoptive parents.

Legal Implications of Adoption in Civil Law

Civil law does not regulate adoption, but to fill the legal vacuum, the rules outlined in the *Staatsblad* of 1917 No. 129 Chapter II consist of 11 articles, namely articles 5 to 15. The contents of the *Staatsblad* articles 5 to 15 include:

1. Husband, wife, widower, or widow who can lift (Article 5).
2. Chinese men without wives or children and who have not been adopted can be adopted (Article 6).
3. The adopted child's age must be 18 years younger than the husband and 15 years younger than the adopting wife (Article 7 paragraph (1)).
4. Adopt can only be carried out with a Notary Deed (Article 10, paragraph 1).
5. A legally adopted child must use the name of his adoptive father (Article 11).
6. Adoption results in severing the civil relationship with his biological parents (Article 14).
7. Adopting a child by means other than a Notary Deed is null and void (Article 15)³⁹.

From some of the rules outlined in articles 5-15 of the *Staatsblad* of 1917, it can be seen that there are several benefits or positive sides to this rule, including:

1. Adopted children have a clear lineage.
2. Adopted children can use the names of adoptive parents without any prohibition by law.
3. Implementation of child adoption must be by court decision.
4. Adopted children can still know the family tree of origin.
5. Adopted children get inheritance rights like biological children.

There are several negative impacts arising from the rules of civil law that sever civil relations between adopted children and their biological parents, including:

1. Adopting children can be done quickly or illegally. Due to the severance of civil relations between adopted children and their biological parents during this adoption process, many adoptive parents adopt illegally.

³⁸ Musawwamah et al.

³⁹ Sari, F. T., Mulyadi, & Hendrawati, D. Pengangkatan Anak Yang Dilakukan Warga Negara Indonesia Keturunan Tionghoa. *Diponegoro Law Review*, 5(2) (2016), 1-8.

2. There is the neglect of adopted children. Adoptive parents often abandon their adopted children because the adoption's initial intention was incorrect. For example, adopting only as a formality due to pressure from the surrounding community so that the care and care of the adopted child cannot be adequately achieved, which causes neglect of the child's life.
3. Lack of legal protection and supervision of adopted children. Adopted children adopted by their adoptive parents no longer have a civil relationship with their biological parents. In this case, the adoptive parents have full rights over the child's life. Many adoptive parents commit violence, abuse, and even murder a child. This is due to the lack of legal protection for adopted children, so adoptive parents can arbitrarily commit violence against adopted children, which can occur if the adoption is not based on a court order.

Conclusion

Islamic law regulated in the Compilation of Islamic Law explains that the right to inherit an adopted child is only through a mandatory will. The granting of this mandatory will is required not to exceed one-third of the portion. If you wish to exceed one-third of the share, then there must be the approval of another heir. In contrast to Islamic law, in civil law, an adopted child becomes an heir according to the *legitime portie* if the appointment is made by court order. If the adoption is carried out only verbally, the adopted child is not entitled to become an heir but is given a testamentary grant that does not harm the other heirs. The legal implications of adopting children in Islam have an impact in several ways, including adopted children having a clear lineage, the existence of boundaries between adopted children and adoptive parents, remaining biological children of their original parents, and receiving a mandatory will from their adoptive parents. The Compilation of Islamic Law does not necessarily regulate the prohibition in the adoption process. This causes many adoption acts that violate the rules of Islamic law, including adopted children who use the names of adoptive parents, changes in the identity of a child, and adoptive parents acting as marriage guardians. Adopted children and adopted children become legal heirs of their adoptive parents. In civil law, regulations related to adoption have positive impacts, such as adopted children becoming legal children of adoptive parents, having the right to use the last names of adoptive parents, and becoming legal heirs like biological children. The weakness of the adoption rules in this civil law can be seen in several things, such as the rise of illegal adoptions, the neglect of adopted children, and the lack of legal protection.

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