

A Normative Analysis of the Inheritance Rights of Adopted Children from the Perspective of Indonesian Positive Law

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ABSTRACT

This study examines the inconsistencies in the regulation of inheritance rights for adopted children within Indonesia's positive legal system, which is influenced by legal pluralism namely, civil law, Islamic law, and customary law. The primary issue lies in the inconsistency of legal norms, which creates legal uncertainty and the potential for injustice toward adopted children who, sociologically speaking, have become part of the family. This study aims to analyze the normative status of adopted children in inheritance matters and to identify the conflicts of norms that arise. The method used is normative legal research employing legislative, conceptual, and comparative approaches, analyzed qualitatively through legal interpretation and argumentation. The results of the study indicate that adopted children have not been consistently recognized as heirs, with limited solutions such as mandatory wills that do not fully guarantee substantive justice. Furthermore, differences in judicial interpretation reinforce legal uncertainty in practice. This study underscores the importance of harmonizing and reforming inheritance law to create legal certainty and justice that is more responsive to social realities.

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1. INTRODUCTION

Regulations regarding inheritance rights in the Indonesian legal system constitute one of the most complex areas of civil law, as they are influenced by legal pluralism encompassing customary law, Islamic law, and Western civil law. In practice, inheritance issues are not limited to blood relations (nasab) but also involve social aspects such as adoption. The phenomenon of adoption in Indonesia continues to rise in tandem with the social, economic, and cultural dynamics of society [1]. However,

the presence of adopted children within the inheritance system raises normative issues, particularly regarding whether adopted children hold legal standing equivalent to biological children in terms of inheriting rights.

Normatively, Indonesian positive law has not yet provided uniform regulations regarding the inheritance rights of adopted children. In the Civil Code (KUHPerdata), adopted children are not explicitly recognized as heirs based on blood relations. Meanwhile, in the Compilation of

Islamic Law (KHI), adopted children are not entitled to inherit, but may receive a share through a mandatory bequest. On the other hand, in certain customary laws, adopted children may be treated as biological children and are entitled to an inheritance. These differences indicate a lack of harmonization in legal norms, which has the potential to create legal uncertainty and conflicts in the practice of inheritance distribution [2].

This issue becomes increasingly relevant when linked to the principles of justice and legal protection for children. Adopted children, who sociologically have become part of the family, often face legal uncertainty regarding their status in the context of inheritance. This creates a tension between social reality and the normative construction of positive law. Therefore, a comprehensive analysis is needed to understand how Indonesian positive law regulates and interprets the inheritance rights of adopted children and its implications for legal certainty and justice [3].

Previous research indicates that studies on the inheritance rights of adopted children generally focus on a comparative approach between Islamic law and customary law, or highlight the implementation of the wasiat wajibah as a normative solution. Some studies also emphasize the importance of legal harmonization within Indonesia's pluralistic legal system. However, most of these studies remain descriptive and have not yet deeply examined normative conflicts between existing positive legal regimes, particularly from the perspective of vertical and horizontal synchronization of legislation [4].

In recent developments, there has been a trend toward examining the inheritance rights of adopted children through a more critical and interdisciplinary approach, including by considering human rights principles and the best interests of the child. This approach positions the child as a legal subject who must be optimally protected, regardless of their biological status. However, the integration of this approach into the framework of Indonesian positive law still faces various obstacles, both

from a normative and an implementational perspective.

The state-of-the-art in this study lies in the effort to normatively analyze the legal constructs governing the inheritance rights of adopted children within Indonesia's positive legal system, with a focus on normative conflicts and efforts to harmonize them. Unlike previous studies, this research not only compares various applicable legal systems but also examines the consistency and coherence among the laws and regulations governing this issue. Thus, this study aims to provide a theoretical contribution to the development of inheritance law that is more adaptive to social realities.

The objective of this study is to examine and analyze, from a normative perspective, the legal status of adopted children in inheritance law under Indonesian positive law, as well as to identify forms of normative disharmony that occur. Additionally, this study aims to formulate a more systematic and equitable regulatory framework to accommodate the inheritance rights of adopted children. In this context, this study also seeks to explain the differences in approaches among various legal regimes and their implications for legal certainty.

The gap phenomenon that is the focus of this study is the discrepancy between social reality—where adopted children are treated as an integral part of the family—and positive legal norms that have not yet fully accommodated these rights in the context of inheritance. This gap reflects an urgent need to reformulate legal norms that are more responsive and inclusive. Therefore, this study is expected to provide a critical perspective as well as normative recommendations for the reform of inheritance law in Indonesia.

2. LITERATURE REVIEW

2.1 *The Concept of Inheritance in Indonesian Positive Law*

Inheritance under Indonesian positive law is a system that governs the transfer of rights and obligations

regarding a person's assets after their death to their heirs. From the perspective of Western civil law, as stipulated in the Civil Code, inheritance is based on blood relations and valid legal relationships, such that only parties with specific biological or legal ties may be recognized as heirs [5]. This concept emphasizes that the legitimacy of inheritance is heavily dependent on the biological structure of the nuclear family.

In contrast, in Islamic law, inheritance is governed by the principles of lineage (*nasab*), marriage, and *wala'*, with specific shares clearly defined in the Qur'an and Hadith [6]. In this context, adopted children do not fall under the category of heirs because they lack a blood relationship with their adoptive parents. However, Islamic law provides room through the concept of a will as a means of bequeathing assets to parties outside the circle of heirs [7]. This indicates a limited flexibility within the Islamic legal system to accommodate the interests of adopted children.

Meanwhile, customary law in Indonesia has more flexible and contextual characteristics, where recognition of adopted children depends heavily on the kinship system followed. In some customary systems, such as Balinese and Javanese customs, adopted children may be treated as biological children in matters of inheritance [8]. This indicates that customary law prioritizes social aspects and family continuity over biological ties alone. Thus, the pluralism of inheritance law in Indonesia creates diversity in the recognition of adopted children's inheritance rights.

2.2 *The Status of Adopted Children in the Indonesian Legal System*

Adoption in Indonesian law is governed by various regulations, including legislation and evolving legal practices within society. Legally, adoption does not automatically sever the legal relationship with biological parents; thus, the status of an adopted

child remains outside the adoptive parents' inheritance structure from a civil law perspective [9]. This is the primary reason why adopted children do not automatically acquire inheritance rights.

In the Compilation of Islamic Law, the status of adopted children is accommodated through the mechanism of *wasiat wajibah*, which grants adopted children the right to receive a share of the estate amounting to a maximum of one-third of the total inheritance [10]. This provision constitutes a form of legal protection that represents a compromise between Sharia principles and the social needs of society [11]. However, the implementation of the *wasiat wajibah* remains dependent on judicial interpretation, thereby potentially leading to inconsistencies in practice.

Furthermore, developments in modern law indicate a trend toward strengthening protection for children, including adopted children, as legal subjects whose rights must be guaranteed by the state. The Child Protection Law affirms that every child has the right to protection without discrimination [12]. In this context, restrictions on the inheritance rights of adopted children can be viewed as inconsistent with the principle of non-discrimination. Therefore, a reinterpretation of existing legal norms is necessary to better align them with the principle of child protection.

2.3 *Normative Disharmony and Efforts at Legal Harmonization*

The disharmony of norms in the regulation of adopted children's inheritance rights is a consequence of Indonesia's pluralistic legal system. The lack of synchronization among various sources of law leads to normative conflicts that result in legal uncertainty [13]. In this context, the legal system is understood not only as a collection of norms but also as an interrelated structure and legal culture. Therefore, resolving normative conflicts requires a comprehensive approach.

Efforts to harmonize the law are essential to creating consistency and certainty within the inheritance legal system. Harmonization can be achieved through vertical and horizontal synchronization of existing laws and regulations [14]. Additionally, the development of consistent jurisprudence can also serve as a key instrument in addressing normative disharmony. However, the harmonization process cannot be separated from the evolving social and cultural dynamics within society.

In recent developments, a human rights-based approach has begun to be used in analyzing inheritance issues, including the inheritance rights of adopted children. This approach emphasizes the importance of substantive justice and the protection of vulnerable groups [15]. Thus, inheritance law reform must consider the integration of local values, national legal principles, and international standards. This is essential for creating a legal system that is more inclusive and adaptable to social change.

3. METHODS

This study employs a normative legal research (doctrinal legal research) methodology using a statutory approach, a conceptual approach, and a comparative approach. The research design was formulated to systematically examine the legal norms governing the inheritance rights of adopted children under Indonesian positive law, including the Civil Code, the Compilation of Islamic Law, and relevant customary law provisions. The research framework was constructed through an examination of the principles of inheritance law, the concept of adoption, and the principle of child protection from a national legal perspective. Thus, this study treats law as a system of norms analyzed logically, consistently, and structurally.

The legal materials used consist of primary, secondary, and tertiary sources.

Primary legal materials include legislation and court decisions related to inheritance and adoption. Secondary legal materials consist of scholarly literature, reputable journals, and previous research relevant to the research topic, while tertiary legal materials include legal dictionaries and encyclopedias that support conceptual understanding. The legal materials were collected through library research using the documentation method, which involves systematically inventorying, classifying, and reviewing relevant legal documents. The analytical framework was then directed toward identifying relationships, consistency, and potential conflicts among applicable legal norms.

The data analysis technique in this study employs a qualitative analysis method with a prescriptive-analytical approach. The analysis is conducted through the processes of legal interpretation, legal construction, and legal reasoning to assess the consistency and coherence of the norms governing the inheritance rights of adopted children. Additionally, vertical and horizontal legal harmonization techniques were employed to test the alignment among legal regulations within a single legal system. The results of the analysis were then formulated into normative arguments aimed at providing recommendations for the development of inheritance law that is more adaptive, equitable, and provides legal certainty for adopted children within Indonesia's positive legal system.

4. RESULTS AND DISCUSSION

The research results indicate that Indonesia's positive legal framework lacks uniformity in regulating the status of adopted children within the inheritance system. An analysis of various legal sources reveals fundamental differences between Western civil law, Islamic law, and customary law. Under the Civil Code, adopted children lack legitimacy as heirs due to the absence of a blood relationship. Meanwhile, in the Compilation of Islamic Law, the position of adopted children is

accommodated only to a limited extent through the mechanism of wasiat wajibah. On the other hand, customary law in some regions actually grants full recognition to adopted children as heirs. This situation reflects a legal pluralism that has not yet been systematically integrated.

Based on the results of the identification of legal norms, it was found that this lack of regulatory harmony has direct implications for legal certainty. When inheritance disputes arise, judges often face a dilemma in determining the applicable legal basis. The choice of a particular legal system can result in different rulings for similar cases. This indicates that the Indonesian legal system lacks standardized criteria for determining the status of adopted children. Consequently, court rulings tend to be case-specific and inconsistent. This situation has the potential to lead to injustice for the parties involved [16].

An analysis of court rulings reveals variations in judges' considerations when adjudicating inheritance cases involving adopted children. Some rulings prioritize sociological aspects by acknowledging the emotional bond between the adopted child and the adoptive parents. However, there are also rulings that adhere to a formal normative approach by denying the adopted child's inheritance rights. This difference in approach highlights the tension between law as a norm and law as a social practice. It also underscores the importance of clearer harmonization of legal norms. Without harmonization, disparities in rulings will continue to occur [17].

In the context of Islamic law, the concept of the mandatory bequest serves as the most commonly used normative solution to provide protection for adopted children. Through this mechanism, adopted children can receive a share of the inheritance even though they are not legal heirs. However, the implementation of the wasiat wajibah is not without various challenges. One of these is the limitation on the amount that can be allocated, which is capped at one-third of the estate. Additionally, the application of the wasiat wajibah is highly dependent on

judicial interpretation. This indicates that this solution has not yet fully provided legal certainty [18].

Unlike Islamic law, customary law in some regions grants full recognition to adopted children as heirs. Within certain kinship systems, adopted children are considered to have the same status as biological children. This is based on social and cultural principles that emphasize the importance of the continuity of the lineage. However, the application of customary law is not uniform across all regions of Indonesia. This variation adds to the complexity in determining the applicable law. Consequently, legal certainty becomes increasingly difficult to achieve [19].

Research findings also indicate that the absence of specific regulations comprehensively governing the inheritance rights of adopted children is one of the primary causes of legal disharmony. Current regulations remain fragmented and scattered across various statutes. This situation hinders the development of an integrated legal system. Furthermore, the lack of clear guidelines also leads to inconsistencies in judicial practice. Therefore, a more systematic effort at legal codification or harmonization is necessary. This is crucial to ensuring legal certainty and justice.

From the perspective of justice theory, this situation indicates a disparity between formal justice and substantive justice. Formally, positive law does not recognize adopted children as heirs in some legal systems. However, substantively, adopted children often have relationships just as strong as those of biological children. This discrepancy leads to injustice in practice. Therefore, a legal approach that is more responsive to social realities is needed [20]. This approach must be able to bridge the gap between norms and practice.

In relation to the research objectives, these results indicate that the legal status of adopted children in inheritance law remains uncertain. This aligns with the initial hypothesis stating the existence of normative disharmony within Indonesian positive law. The analysis also indicates that differences in

legal approaches across legal systems are the primary cause of this uncertainty. Therefore, efforts are needed to harmonize the various existing legal systems. This harmonization must be carried out while considering the values of justice and legal certainty [21].

This study also found that the approach to vertical and horizontal legal synchronization has not been optimally implemented. Many regulations are contradictory or lack clear interconnections. This indicates weak coordination in the formulation of legislation. Consequently, there is an overlapping of norms that creates confusion in practice. This situation also impacts the effectiveness of law enforcement. Therefore, reforms are needed within the national legislative system.

Compared to previous studies, this research offers a more comprehensive perspective in analyzing normative conflicts. Previous studies generally only examined a single legal system in isolation. Meanwhile, this study examines the interactions among various applicable legal systems. Thus, this research is able to identify the sources of conflict more deeply. This constitutes an important contribution to the development of legal science. This approach also provides a stronger foundation for legal reform.

Furthermore, this study integrates a human rights approach into its analysis. Adopted children are viewed as legal subjects entitled to equal protection. This approach emphasizes the importance of the principle of the best interests of the child. In this context, the law must provide optimal protection for adopted children. However, the implementation of this principle still faces various obstacles. This highlights the need for more progressive legal reform.

The analysis also reveals that adoption practices in society are often not accompanied by adequate legal understanding. Many adoptive parents are unaware of the legal consequences of adoption. This has the potential to lead to conflicts in the future, particularly regarding inheritance distribution. Therefore, broader legal education for the public is necessary. Such education is crucial for enhancing legal

awareness. Consequently, conflicts can be minimized.

In the context of implementation, the role of judges is crucial in interpreting applicable laws. Judges are expected to be able to accommodate various existing interests. However, without clear guidelines, judges often have to exercise broad discretion. This has the potential to lead to inconsistent rulings. Therefore, clearer jurisprudential guidelines are needed [22]. These guidelines can serve as a reference in adjudicating similar cases.

This study also found that the concept of restorative justice can serve as an alternative in resolving inheritance disputes involving adopted children. This approach emphasizes a fair resolution for all parties. In this context, family relationships are the primary consideration. However, the application of this concept remains limited in practice. This highlights the need for innovation in resolving legal disputes [23]. This approach could offer a more humane solution.

From a philosophical perspective, the law should reflect the values of justice that exist within society. However, in cases regarding the inheritance rights of adopted children, positive law has not yet fully reflected these values. This indicates a gap between the law and social reality. Therefore, a more responsive legal reform is needed. This reform must be able to accommodate societal developments. Thus, the law can function optimally [13].

This study also identifies the need to revise existing regulations. This revision must be comprehensive and integrated. The goal is to create a more consistent legal system. Furthermore, the revision must also consider various aspects, including social and cultural factors. Thus, the resulting law can be more adaptive. This is crucial for ensuring the sustainability of the legal system.

From a policy perspective, the government plays a crucial role in promoting legal harmonization. The policies adopted must be able to resolve existing normative conflicts. Furthermore, the government must

ensure that applicable laws can be effectively implemented. This requires coordination among institutions. Without coordination, harmonization efforts will be difficult to achieve [24]. Therefore, a strong commitment from all parties is necessary.

The results of this study also indicate that protection for adopted children remains suboptimal. Many adopted children do not receive the rights they are entitled to. This highlights weaknesses in the existing legal system. Therefore, efforts are needed to strengthen legal protection. These efforts must be carried out systematically and sustainably. Thus, the rights of adopted children can be fulfilled.

This study emphasizes that inheritance law reform is an urgent necessity. This reform must be carried out using a comprehensive approach. Furthermore, the reform must involve various stakeholders. This is crucial to ensure that the resulting laws are accepted by society. Consequently, the reform can proceed effectively. This will also enhance public trust in the law.

In a global context, many countries have fully recognized the inheritance rights of adopted children. This indicates developments in international law. Indonesia needs to consider these developments when undertaking legal reform. However, adaptation must be done while considering local values. This is important to maintain a balance between globalization and local culture. Thus, the law can develop harmoniously [4].

This study also indicates that an interdisciplinary approach can provide a more comprehensive understanding. This approach integrates legal, social, and cultural aspects. Consequently, the resulting analysis becomes more in-depth. This is essential for grasping the complexity of the issue. Therefore, this approach warrants further development. It can also be applied in another research.

Overall, the results of this study indicate that the inheritance rights of adopted children remain a complex issue in Indonesian law. This complexity stems from various factors, including legal pluralism.

Therefore, a comprehensive approach is required to resolve this issue. This approach must encompass various aspects. Consequently, the resulting solutions can be more effective. This is crucial for achieving legal justice.

Thus, this discussion confirms that the research objectives have been achieved. This study successfully identified various existing problems. Additionally, this study also provides recommendations for legal improvements. These recommendations are expected to serve as a foundation for legal reform. Consequently, inheritance law in Indonesia can be improved. This is important to ensure justice for all parties.

5. CONCLUSION

Based on the research findings, it can be concluded that the status of adopted children in the inheritance system under Indonesian positive law remains inconsistent and tends to create normative disharmony. Differences in regulations between civil law, Islamic law, and customary law indicate that there is no single legal system that comprehensively and consistently recognizes the inheritance rights of adopted children as heirs. In practice, adopted children receive only limited recognition through mechanisms such as the wasiat wajibah in Islamic law or social recognition in certain customary laws, the implementation of which is highly dependent on judicial interpretation and social context. This situation leads to legal uncertainty and has the potential to cause injustice, especially when social reality shows that adopted children have become an integral part of the family structure. Thus, the research objectives of analyzing the normative status of adopted children in inheritance law and identifying normative conflicts have been achieved, while also underscoring the urgent need for more systematic and equitable legal harmonization.

Based on the research findings, it is recommended that inheritance law reform be carried out in Indonesia through efforts to harmonize and synchronize laws and

regulations governing the status of adopted children. Lawmakers need to formulate more comprehensive and explicit regulations regarding the inheritance rights of adopted children by considering normative, sociological, and philosophical aspects, including the principle of the best interests of the child. Additionally, the role of jurisprudence must be strengthened as a guide for judges in adjudicating inheritance cases involving adopted children, to

minimize disparities in rulings. Legal education for the public also needs to be improved so that understanding of the legal consequences of adoption can be optimized. Moving forward, further empirical research is essential to examine the implementation of legal norms in greater depth and to formulate regulatory models that are more adaptive and responsive to societal developments.

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