



## Adopted Children's Rights to Inheritance According to Gayo Customary Law and Islamic Inheritance

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### ABSTRAK

Pengangkatan anak pada prakteknya yang sering terjadi dan menjadi permasalahan yang patut diperhatikan terutama dalam pembagian harta warisan di antara orangtua angkat dengan anak angkat. Ini telah menjadi kebiasaan yang terjadi dalam masyarakat bahwa anak angkat diberikan hak waris dari ayah angkatnya, bahkan kadang kerabat dari bapak angkat ini selalu diabaikan dalam mendapatkan hak waris. Tujuan dilakukannya penelitian ini, untuk mengetahui hak anak angkat terhadap harta warisan menurut hukum adat Gayo dan waris Islam. Jenis penelitian ini *yuridis empiris* dengan menggunakan sumber data primer dan data sekunder berupa bahan hukum primer, bahan hukum sekunder dan bahan hukum tersier. Cara pengumpulan data dilakukan dengan wawancara dan studi dokumen, selanjutnya data dianalisis secara kualitatif, sehingga ditemukan kenyataan sebagai gejala data primer yang dihubungkan dengan teori-teori dari data sekunder. Data disajikan secara deskriptif, yaitu dengan menjelaskan dan mengumpulkan permasalahan-permasalahan yang terkait dengan penulisan ini. Hasil penelitian penelitian ini menjelaskan bahwa hak anak angkat terhadap harta warisan menurut hukum adat Gayo disejajarkan dengan anak kandung dan berhak mendapatkan harta warisan dari orang tua angkatnya. Sedangkan menurut Hukum Islam anak angkat memperoleh harta warisan melalui wasiat wajibah dan anak angkat bisa mendapat harta warisan lebih dari 1/3 asalkan ahli waris lainnya telah bersepakat sesuai Pasal 183 Kompilasi Hukum Islam.

*Kata Kunci : Anak Angkat; Warisan; Hukum Adat Gayo; Hukum Islam.*

### ABSTRACT

*Child adoption in practice often occurs and is a problem that deserves attention, especially in the distribution of inheritance between adoptive parents and adopted children. This has become a habit that occurs in society that adopted children are given inheritance rights from their adoptive fathers, even sometimes the relatives of these adoptive fathers are always ignored in obtaining inheritance rights. The purpose of this research is to find out the rights of adopted children to inheritance according to Gayo customary law and Islamic inheritance. This type of research is empirical juridical by using primary data sources and secondary data in the form of primary legal materials, secondary legal materials and tertiary legal materials. The data collection method is carried out by interviews and document studies, then it is analyzed qualitatively, so that the reality is found as a symptom of primary data that is linked to theories from secondary data. The data is presented in a descriptive manner, namely by explaining and collecting the problems related to this writing. The results of this research explain that the right of adopted children to inheritance according to Gayo customary law is aligned with biological children and is entitled to inheritance from their adoptive parents. Meanwhile, according to Islamic Law, adopted children obtain inheritance through compulsory wills and adopted children can get more than 1/3 of the inheritance as long as the other heirs have agreed in accordance with Article 183 of the Compilation of Islamic Law.*

*Keywords: Responsibility; Parking Manager; Loss.*



## I. Introduction

The state upholds human rights, including children's human rights, which is marked by the guarantee of protection and fulfillment of children's rights in the 1945 Constitution of the Republic of Indonesia and several provisions of laws and regulations, both national and international. The State, Government, Local Government, Community, Family and Parents are obliged to provide protection and ensure the fulfillment of children's human rights in accordance with their duties and responsibilities. The Government of Aceh and the people of Aceh are an integral part of the nation and the Unitary State of the Republic of Indonesia, have very noble ideals to safeguard the future of the nation, state and religion, therefore are obliged and responsible for efforts to fulfill children's rights and protect children rooted in customs, socio-culture in accordance with Islamic Shari'a.

According to Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection, a child is defined as a person who is not yet 18 (eighteen) years old, including children in the womb. In the consideration of the Law, it is said that children are the mandate and gift of God Almighty, which is inherent in them the dignity and dignity as a whole human being. Furthermore, M. Nasir Djamil said, that children are the sprouts, potentials, and the younger generation of the successors of the ideals of the nation's struggle, have a strategic role and have special characteristics and traits that ensure the continuity of the existence of the nation and state in the future. Therefore, he needs to get the widest possible opportunity to grow and develop optimally, both physically, mentally and socially and have noble character, it is necessary to make efforts to protect and to realize the welfare of children by providing guarantees for their rights and treatment without discrimination (Djamil, 2013).

The protection of children that has been carried out so far has not provided a guarantee for children to get treatment and opportunities in



accordance with their needs in various areas of life, so that in carrying out efforts to protect children's rights by the Government must be based on the principle of human rights, namely respect, fulfillment, and protection of children's rights. As an implementation of Law 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection. The Aceh Government has ratified Qanun Aceh Number 11 of 2008 concerning Child Protection, which aims to build commitment and agreement in realizing the best protection for Acehnese children as the future generation of this nation and has substantively regulated several things, including the issue of children who are facing the law, children from victims of economic and sexual exploitation, respect for children's opinions, the right to life, growth and development, etc.

An adopted child is a child who is not a descendant of a husband and wife but is taken up, raised and treated like his own descendant so that between the child who raises and the person who adopts the child arises a family relationship similar to that that between the parents and their own biological children (Witanto, 2012). Adoption is a legal act that transfers a child from the parental authority of the legal guardian or another person responsible for the care, education, and upbringing of the child into the adoptive child's family environment (Meliala, 2015). Child adoption is regulated by several legal instruments, including the Supreme Court Circular Letter Number 6 of 1983, which states that in essence every child who is adopted must go through the court determination route.

Law Number 35 of 2014 concerning Amendments to Number 23 of 2002 concerning Child Protection recognizes the existence of a child adoption institution, which is followed by regulatory rules in the form of Government Regulation Number 54 of 2007 concerning the Implementation of Child Adoption. In the child protection law, an adopted child must aim for the welfare of the child himself without being accompanied by the termination of



the civil relationship of the adopted child with his parents based on a court determination which is then followed by recording in the birth certificate. In Indonesia, there are three legal systems that apply and that regulate problems and problems regarding child adoption. The three legal systems include Islamic Law, Customary Law, and Western Law.

In Islam, in essence, it does not prohibit the practice of child adoption or adoption, as long as it does not affect and does not change the relationship between the natural child and his biological parents, or the relationship between the child and his or her original parents. However, in Islamic teachings, it will prohibit the adoption of a child when the adoption of the child will cause problems and problems, namely if it results in the breakup of the relationship between the child and his biological parents.

The adoption of children in Gayo society is usually carried out only through the application of Gayo philosophical values which are used as a legal basis, namely *penorep morep penanom mate 4* (can be useful in the world of *akherat*), namely by deliberating and agreeing between the child's biological parents and the parents who will adopt the child, based on the agreement, the responsibility of the child shifts to the parent who raises starting from formal and material needs to the child (married) and is considered to be able to live alone to build a household. Child adoption in practice often occurs and is a problem that deserves attention, especially in the distribution of inheritance between adoptive fathers and adopted children. This has become a habit that occurs in society that adopted children are given inheritance rights from their adoptive fathers, even sometimes the relatives of these adoptive fathers are always ignored in obtaining inheritance rights.

Based on the description above, it can be formulated the problems that will be researched and discussed in this study, how are the rights of adopted children to inheritance according to Gayo customary law and Islamic inheritance?



## II. Methode

This type of research is *empirical juridical*, namely legal research that is initially studied as secondary data, then continued with research on primary data in the field or on the community (Soekanto, 2010). The data source used in this study was a field study obtained through direct interviews with respondents and resource persons. Secondary data is carried out to obtain library data sourced from primary materials, secondary legal materials, and tertiary materials. This research was conducted in East Takengon Village, Lut Tawar District, Central Aceh Regency. The method of data collection is carried out by means of interviews and document studies. The method of data analysis that has been collected from both primary and secondary data will be analyzed qualitatively, so that the reality is found as a symptom of primary data that is linked to theories from secondary data. The data is presented descriptively, namely by explaining and collecting the problems related to this research.

## III. Discussion and Analysis

### Adopted Children's Rights to Inheritance According to Gayo Customary Law and Islamic Inheritance

Man as one of the subjects of law will experience 3 (three) important events in the course of his life in the world, namely the time when he is born, the time when he marries and the time when he dies. Inheritance law has long been known and implemented by the Indonesian people on the basis of their own will based on the awareness of their faith. Therefore, it can be said that Islamic law is used as a source of inheritance law. On the other hand, it can be used as a discourse, where Islamic inheritance law which is embryonic from Islamic law is used as one of the main sources of national inheritance law. This means that the inheritance law in Islam can be used as the main support in making national inheritance law.



Inheritance exists solely as a result of a person's death. According to the provisions of the Islamic Inheritance Law, the transfer of a person's property to another person called inheritance occurs after the person who owns the property dies, meaning that a person's property cannot be transferred to another person called inheritance as long as the person is alive, and all forms of transfer of a person's property that is still alive to another person, either directly or that will be carried out later after his death.

So the property left by the heir can be divided if the heir has been declared dead. The property left by the heir must not be distributed to the heirs, unless the heir is known to have passed away, or is considered dead by law. To determine who is the heir in customary law, a theory called the "lineage theory" is used, which is to determine which group is prioritized over other groups. Therefore, people who have blood relations are divided into the first priority group (heirs' descendants), the second priority group (inherited parents), the third priority group (heirs' brothers and their descendants), and the fourth priority group (grandfathers and heirs) (Soekanto, 2002).

The act of adopting a child contains juridical consequences that the adopted child has legal standing against the person who adopted him, also includes the right to be able to inherit the property left by his adoptive parents at the time of death, but in reality the legitimate adopted child is still considered not to be part of the family which is the smallest social unit consisting of father, mother, and children, so they are considered not entitled to their parents' inheritance because they are not heirs of the parents who adopted them. This is because the influence of the Islamic legal system does not regulate the adoption of a child who is used as a biological child, this is not justified. For areas that recognize the existence of adopted children, basically the adopted children have legal status as their own children, as well as in inheritance (Oemarsalim, 2000).



In general, the heirs in the review of customary inheritance are children, including children in their mother's womb if they are born alive. But not all children become possible heirs of other heirs. Such as stepchildren, adopted children, gods, heirs and other relatives become heirs depending on the kinship system concerned.

According to Ahmad Kamil and Fauzan, in customary inheritance law, adopted children receive rights and obligations as heirs like biological children, both material and immaterial. Suroyo Wingnjodipuro said that the adoption in this case must be clear, meaning that it must be done with traditional ceremonies and with the help of traditional heads. The legal position of a child who is appointed in this way is the same as that of a biological child from the husband and wife who adopted him, while the family relationship with the parents themselves is customarily broken, as in the areas of Gayo, Lampung, Nias Island, and Kalimantan (Kamil dan Fauzan, 2010).

According to Bentara Linge as a Member of the Gayo Traditional Assembly of Central Aceh Regency, for the Gayo people in the adoption of this adopted child is carried out in a Gayo custom with the aim of such a customary process, the validity of the child has been recognized by Raje or the existing community that the adopted child has become part of the family that adopts him, then his position is aligned with his biological child and has the right to receive the inheritance he left behind.

The same thing stated by Muzakir as a Member of the Gayo Traditional Assembly of Central Aceh Regency, the inheritance rights of adopted children and stepchildren in the Gayo custom are grouped as recipients of inheritance that are aligned with biological children, while in the Islamic view adopted children and stepchildren are not a category that is entitled to receive inheritance but for adopted children are only given a mandatory will, while the stepson did not get at all.





The Gayo customary inheritance law has determined that those who are not entitled to receive the inheritance assigned to the daughter of *a kerje menik* (elopement), those who do not want to reconcile with their parents, or a person who leaves his original half, as well as a person who is expelled from the membership of his division due to a mistake. These people, according to the Gayo customary inheritance system, are a category of those who are not entitled to receive inheritance. On the other hand, it is also stipulated that the status of adopted children is aligned with biological children and is entitled to inheritance.

The adoption of children as regulated in the Compilation of Islamic Law (KHI) is to treat them as children in terms of the love of the provider, provide education and provide services for all their needs and not treat them as their own children (*nasab*). So according to the view of Islamic Law, appointing a child is *mubah* or permissible. In Islamic inheritance, the inheritance rights of adopted children affect the inheritance rights from adoptive parents to adopted children.

According to Taufik Ridha as the Judge of the Syar'iyah Court Class I B Takengon said, in the Compilation of Islamic Law, the right of an adopted child to obtain inheritance from his adoptive parents, but there are differences in how to obtain or obtain rights from the property of adoptive parents. The inheritance rights of adopted children from adoptive parents to maintain the family relationship between the adopted child and the adoptive parents, then part of the property owned can be inherited by the adoptive parents by means of a will or a compulsory will as affirmed in Article 209 of the Compilation of Islamic Law.

Taufik Ridha added, adopted children can inherit more than 1/3 of the inheritance from the adoptive parents, as long as all heirs agree, and have received their respective parts according to the agreement or provisions made by the heirs, then the adopted child gets more inheritance from the adoptive





parents in accordance with Article 183 of the Compilation of Islamic Law, namely: the heirs can agree to make peace in the distribution of the inheritance, after each realizes their part.

The same thing stated by Yahya Arias as a Member of the Central Aceh Regency Ulema Consultative Assembly, basically the inheritance system or determination of who has the position as an heir is based on heredity or the existence of blood relations or *ab intestate* and willfully refers to who is in the position of heirs who has absolute rights or a share of the inheritance that will be given to the heirs either in a straight line up and down. Therefore an adopted child has no blood relationship with his adoptive parents. Therefore, adopted children can only be given a will by their adoptive parents for a maximum of one-third (1/3) of the heir's inheritance.

Based on the above description, it can be concluded that, the right of inheritance of adopted children according to the Gayo customary inheritance law, has been determined who is not entitled to receive the inheritance assigned to daughters who *are married* (elopemented), those who do not want to reconcile with their parents, or a person who leaves his or her original half, as well as a person who is expelled from the membership of his division due to a mistake. On the other hand, it is also stipulated that the status of an adopted child is aligned with that of a biological child and is entitled to inheritance from his adoptive parents. Meanwhile, according to Islamic Law, adopted children obtain inheritance through a mandatory will with a maximum provision of 1/3 of the part. But the adopted son can get more than 1/3 of the inheritance as long as the other heirs have agreed, and made peace, after the parties know their respective parts according to Article 183 of the Compilation of Islamic Law.

#### IV. Conclusion

The right of an adopted child to inheritance according to Gayo customary law is aligned with that of a biological child and is entitled to



inheritance from his adoptive parents. Meanwhile, according to Islamic Law, adopted children obtain inheritance through a mandatory will with a maximum provision of 1/3 of the part. But the adopted son can get more than 1/3 of the inheritance as long as the other heirs have agreed, and made peace, after the parties know their respective parts according to Article 183 of the Compilation of Islamic Law.



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