



Legal Status and Inheritance Rights for Adapted Children That Are Not Applied by a Court Decision

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ABSTRACT - The purpose of a marriage is to form a family and continue offspring. But not all families are lucky to have a child. One way to overcome this is by adopting a child. Adoption of a child can be carried out based on national law or customary law. Adoption of children based on customs in Government Regulation No. 54 of 2007 is not required to obtain a court decision. This will cause problems related to inheritance rights for adopted children who are not requested for a court decision. On the one hand, this provides legal certainty for customary law because it is recognized by national law, but on the other hand, without written evidence, if there is a dispute over inheritance rights in court, the position of the adopted child is not strong enough if he does not have written evidence.

Keywords: Child Adoption, Court Decision, Inheritance Right

I. INTRODUCTION

Humans are social creatures (zoon politicon). In life, humans always need other people. Although there are often expressions of the existence of independent humans, it cannot be denied that in some cases humans need each other to complement each other. The instinct of humans who always need other people indirectly creates a bond. From this bond then formed a group, community, or associations consisting of people with the same goal but still need other people outside the community to fulfill things that are not owned by the community. One of the smallest communities is the family. The family is the smallest community unit consisting of husband, wife and children who live in one place of residence. There is also the possibility that in a place of residence other parties also reside as a result of the marriage bond, so that a group of family members is formed consisting of humans who are related by marriage and blood relations. The group of family members in question may consist of husband, wife, children, parents, in-laws, brother or sister, and brother or sister-in-law.

According to Article 1 of Law no. 1 of 1974 concerning Marriage (hereinafter referred to as the Marriage Law) Marriage is an inner and outer bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family (household) based on the One Godhead. From the definition of marriage, it can be said that as a social being, to carry out a marriage, a woman needs a man and a man also needs a woman. Marriage when viewed based on customary law has different forms and procedures in each region. Even in an area there can be various forms and ways of marriage carried out by the people in the area. In indigenous peoples, especially those that are kinship, the purpose of marriage is to maintain and pass on offspring according to the patrilineal line in patrilineal kinship, the maternal line in

matrilineal kinship, or the maternal-father line in parental kinship for the happiness of the family household, to acquire cultural and customary values. peace and to maintain inheritance. Therefore, the kinship system between one ethnic group and another is different, one region is different from another, and the consequences of different laws and marriage ceremonies are different. Although marriage is carried out according to customary law which differs in each region and national law, in general the purpose of marriage is one of them to continue offspring in a happy family.

The presence of a child in a family in society is considered important, because in some groups of society the presence of a child affects the social status of a family in continuing its generation so that it does not become extinct. However, not all families are lucky to be blessed with a child. There are some families who are less fortunate because they do not have children. Even though the presence of children in a family is expected. One thing that can be done is by adopting a child or adoption. Adoption of a child has legal consequences for both the adoptive family and the adopted child. This relates to the rights and obligations, social status, to the issue of assets that are the rights of the child. Adopted children must be cared for and cared for as biological children as a form of the purpose of adoption, namely for the welfare of the child.

Adoption of children in Indonesia between Indonesian citizens and Indonesian citizens can be carried out in two ways, namely based on customary law and based on statutory regulations. According to Bushar Muhammad, in general, the procedures for adopting children in accordance to custom are carried out clearly and in cash. What is meant by light is a principle of legality which means that the act is announced and carried out in front of many people with the aim that the general public can know that there has been an adoption. While cash is an action that is immediately completed at that time and cannot be withdrawn (Muhammad, B., 2006).

According to customary law, adoption of a child from family or close relatives is legal because it has been carried out according to customary traditions, but under national law there is still a question about the legal status of an adopted child based on customary law without a court order being requested. Referring to Article 9 of Government Regulation no. 54 of 2007 concerning the Implementation of Child Adoption states that:

- (1) Adoption of children based on local customs as referred to in Article 8 letter a, namely the adoption of children carried out in a community that actually still carries out customs and habits in social life.
- (2) The adoption of a child based on local customs may be requested by a court decision.

The problem is the word "can" which is in Article 9 paragraph (2) of Government Regulation no. 54 of 2007 concerning the Implementation of Child Adoption (hereinafter referred to as PP on the Implementation of Child Adoption). According to the Indonesian Dictionary, the word "can" means capable, able (Badan Pengembangan dan Pembinaan Bahasa, 2016). From this understanding, it can be said that Article 9 paragraph (2) of the Government Regulation concerning the Implementation of Child Adoption contains ambiguity of meaning so that legal certainty has not been achieved. This Government Regulation also does not mention the legal consequences that will arise if a child who is adopted based on customary law is not requested for a court order. So here appears a vagueness of norms. This can lead to confusion, especially since most of the indigenous people in rural areas are not familiar with the procedure for applying for an adopted child in court because according to custom, the child has been legally adopted into their family. The ambiguous sound of the article can have an effect in the future when fulfilling the rights of an adopted child, one of which is the right to inherit from an adopted family.

II. METHODS

The type of research applied is normative legal research. Normative legal research is researching the law with the object of research being legal norms. Normative legal research serves to provide juridical arguments when there is a norm vacuum, norm ambiguity, and/or norm conflict (Diantha, 2017). This study uses a normative research method because in this

study it analyzes the meaning of the word "can a court order be applied for" in Article 9 paragraph (2) of Government Regulation Number 54 of 2007 concerning the Implementation of Child Adoption regarding the inheritance rights of an adopted child who is not requested for a court order against adoptive parents

III. RESULT AND DISCUSSION

The implementation of a marriage with the aim of forming a happy and eternal family based on God Almighty. The family consists of husband, wife and children. In a family the presence of a child is certainly very much awaited. However, not all lucky families can be blessed with offspring. To overcome these problems, in Indonesia, which recognizes child adoption and adopts children with the reason to continue the descent.

A child is a descendant of a family so that the lineage of the family does not break or become extinct. Adoption of children in Indonesia can be carried out under national law or under customary law. Although the adoption of children under national law already has a legal umbrella, namely Law no. 35 of 2014 concerning Amendments to Law No. 23 of 2002 concerning Child Protection jo. Government Regulation No. 54 of 2007 concerning the Implementation of Child Adoption, but because Indonesia still recognizes the existence of customary law as mandated in Article 18B of the 1945 Constitution of the Republic of Indonesia which reads "The state recognizes and respects customary law community units and their traditional rights as long as are still alive and in accordance with the development of society and the principles of the Unitary State of the Republic of Indonesia, which are regulated by law", the adoption of a child carried out by means of a customary procession in accordance with the customary law of each region is still recognized.

In a society that still adheres to customary laws and traditions, the gender of a child is also a consideration in order to continue the lineage. For example, in indigenous peoples who hold the principle of patrilineal kinship, the sex of the boy is prioritized because the lineage in a family in that society is continued by boys, as well as indigenous peoples who hold the principle of a matrilineal kinship system that prioritizes children. with the female sex as the successor of the lineage. To overcome this problem, several regions in Indonesia are familiar with adopting children with the reason to continue their descendants.

According to customary law, adoption is an act of taking other people's children into their own family in such a way that between the person who picks up the child and the child who was adopted there arises a similar familial relationship, as exists between parents and their own biological child (Meiliala, 2016). As for the purpose of adopting a child when viewed from the side of customary law, it is more emphasized on the concern (prospective adoptive parents) will be extinct, then the prospective adoptive parent takes the child from his or her family environment, and is domiciled as the biological child of the mother and father who adopted him, regardless of class. relatives again (Bakri et al., 2017).

The procedure for adopting children based on customary law according to Article 9 paragraph (2) of the PP on the Implementation of Child Adoption states that "Adoption of children based on local customs can be applied for a court order". If it is interpreted, a child who is adopted based on local customary law may be requested for a court order or not requested by the court. According to Article 9 paragraph (2) of PP on the Implementation of Child Adoption, there is no obligation and obligation for a child who is adopted based on customary law to apply for a court order.

The word "can" itself according to the Indonesian Dictionary has the meaning of being able, capable. Reported from CNN Indonesia news, DR. Yayah Basariah, a legal linguist, explains that the meaning of the word "can" is "can" or "may". The word "can" is classified as an auxiliary so that thirst is read with the verb that follows it. He also interprets the word "may" as a synonym for the word "can". The word "permissible" is also in line with its meaning and is synonymous with "permitted" or equivalent to "not prohibited". So that the word "can" in Article 9 paragraph (2) of the PP on the Implementation of Child Adoption can be interpreted that the adoption of a child based on customary law may apply for a court order or not apply for a court order.

The phrase can request a court order means that it can/may be done or may/may not be done. Whatever is chosen, it is legally justified. So that implicitly the word "can be applied for a court decision" can be interpreted that the adoption of a child according to customs may or may not apply for a court order. The PP on the Implementation of Child Adoption does not determine the legal consequences if the adoption is carried out based on custom without going through a court order

Children Adoption based on local customary law means complying with the customary law norms that apply in the area. Customary law has a different form from the form of law made by the state. The written word in customary law is replaced with the word recorded because there are several parts of customary law in Indonesia that are recorded on palm leaves or king's books. Customary law is the values that live and develop in the community of an area. Although most of the customary law is unwritten, it has a strong binding power in society (Saleh, 2013).

Adoption of children based on local customs in each region is different. There are some areas that do not go through any events, then there are those who just report to the customary head, some are only with a salvation ceremony attended by neighbors, relatives and even in many areas the appointment ceremony must be witnessed and attended by traditional leaders and other leaders. custom. However, in general, the adoption of children based on customary law is carried out openly and in cash. Adoption in an open and cash manner, meaning that the adoption of a child is carried out openly attended by the whole family, traditional leaders/customary officials (bright understanding) and immediately paid customary money (cash understanding) (Ardiyati et al., 2014).

Adoption of children based on customs is also closely related to inheritance rights and the kinship system adopted by these indigenous peoples. In a society that still adheres to customary laws and traditions, the gender of a child is also a consideration in order to continue the lineage. For example, in indigenous peoples who hold the principle of patrilineal kinship, the sex of the boy is prioritized because the lineage in a family in that society is continued by boys, as well as indigenous peoples who hold the principle of a matrilineal kinship system that prioritizes children. with the female sex as the successor of the lineage. This kinship system also determines who has the right to inherit in a family, depending on the preferred lineage.

Children adoption based on customary law often does not have written evidence, except for witnesses from close relatives, neighbors, or from traditional leaders who witnessed the adoption procession. In customary law, the adoption of a child that has been witnessed by the customary leader is considered valid, but from a national legal perspective, this does not have legal certainty because there is no written evidence stating that it is true that an adoption has taken place. Especially if it is related to the strength of the evidence in the trial, according to Article 1866 of the Civil Code, it is stated that the first order of evidence is written evidence. It is clear that this written evidence is the main and most important evidence at the trial stage of evidence. In civil procedural law, the mention of written evidence is the main evidence, because a letter is made to prove a condition, or an event that has occurred, or a legal action that must be carried out by someone later. Due to the absence of written evidence this makes it more vulnerable to the opportunity for a problem to occur. Especially when it comes to inheritance issues. Children who are adopted and are legally legal under customary law are indeed entitled to receive inheritance from their adoptive parents, but it will be a problem if close relatives of the adoptive parents deny the adoption of a child. The absence of written evidence causes the position of the adopted child to be weak.

According to the Circular Letter of the Supreme Court of the Republic of Indonesia Number 6 of 1983 concerning Completion of Circular Letter Number 2 of 1979, because the need for adoption in society is increasing and it is felt that to obtain legal certainty, it is only obtained after obtaining a court decision. Likewise, with the enactment of Law no. 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection, this law stipulates that the adoption of children is carried out based on a decision or decision of a district court. However, the adoption of a child based on customs which is carried out in accordance with the applicable procedures in the community concerned is considered valid, without a decision or decision by a district court.

At SEMA No. 2 of 1979 states that the adoption of a child is only legal in nature, if given by the judiciary, the determination or court decision is an essential condition for the legal adoption of a child. It was also explained that the act of adopting a child is not a legal act that can occur at one time as is the case with the delivery of an item, but is a series of events in a family relationship that shows the sincerity, love, willingness and full awareness of all subsequent consequences of the adoption. for all parties, which has been going on for some time, therefore the Court's decision in this case should not only constitute a constellation of a series of actual familial relations, constitute a legal act of adoption. *Constatering* means to make a match regarding the actual state of family relations. This can be interpreted that court decisions are actually required in the adoption procedure, this is to avoid legal smuggling and manipulation of population data.

It is important to have a court order in child adoption because a court order is considered an authentic deed. An authentic deed is a deed made by or in the presence of a public official who is authorized for it, as complete (perfect) evidence for the parties and their heirs as well as the person who has rights from him about everything written in the deed and even about what is stated in the certificate. in it as a notification only, as long as it is directly related to the subject in the deed. Public officials who are authorized by law to make authentic deeds, include notaries, civil registry employees, court clerks, and bailiffs (Muhammad, 2012). The court's stipulation with its position as an authentic deed is made by a public official who is authorized to explain in an authentic deed that is made, done, seen, and experienced so that what is stated in the authentic deed is considered to have happened before him according to the actual reality.

The Determination of adopted children in Indonesia is included in the category of Declaratory Decisions, namely decisions that are merely stating or confirming a legal situation. a declaratory or declarative decision (*declaratoir vonnis*) is a judge's statement contained in the decision he handed down. The statement is an explanation or determination of a right or title or status. And the statement is included in the order or dictum of the decision, with the statement, the decision has determined with certainty who has the right or who has the position of the disputed issue. "Declaratoir" decisions, which are those whose *amar* (the decision) states a condition as a legal condition according to law (Balaati, 2013).

The request for a court decision on the adoption of a child is a form of legal protection for the rights of an adopted child. According to Sudikno Merto Kusumo, legal protection is a protection given to legal subjects in accordance with the rule of law, whether it is preventive (prevention) or in a repressive (coercive) form. A court order is requested as a form of preventive legal protection. Because adoption is closely related to the issue of inheritance rights, the existence of a court order provides legal certainty for the adopted child that he is legitimate to obtain inheritance rights from his adoptive parents.

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The word "can apply for a court order" in Article 9 paragraph (2) of the PP on the Implementation of Child Adoption, if examined more deeply, reflects a legal certainty. Associated with the theory of legal certainty that the value to be achieved by the existence of a legal certainty is justice and happiness. Emphasizing on the realization of justice, the meaning of the word "can" which means it may or may not be carried out provides justice for indigenous peoples that the traditions and customary law that they have believed in and lived through for many years are still recognized by the state. It is proven that the adoption of a child that is not requested for a court order is still considered valid. This is also in line with the state's recognition of customary law community units. Legal certainty is a guarantee that the

applicable law contains justice. Gustav Radbruch argues that justice and legal certainty are a permanent part of the law. Positive law must always be obeyed for the security and order of a nation. According to the theory of legal certainty and the value to be achieved, namely the value of justice and happiness (Ali, 2002).

But on the one hand, adoption based on customary law that does not have written evidence will have the opportunity to cause disputes and will encounter obstacles in terms of proving that adoption has taken place. In the PP on the Implementation of the Adoption of Children, in the event that the word "can a court order be applied for" is implemented, the court order will provide legal certainty to the adoptive parents and adopted children as strong evidence that it is true that there has been adoption of a child and on the basis of the court's determination to strengthen the right - the right of an adopted child in terms of receiving an inheritance if one or both of his adoptive parents dies.

The court's decision on child adoption is an affirmation and as a reinforcement of the traditional processions carried out in the adoption procedure. If in the procession of adoption, a certificate has been obtained from the local adat leader or sub-district head, then this court order will strengthen the statement. Because court decisions can be equated with court decisions at the first and last instances and in accordance with the prevailing doctrine and practice that decisions handed down in cases in the form of an application can generally be equated with decisions at the first and last instances, the function of the court order being applied for is adoption of children based on customs is to give binding force to the event of adoption based on customs so as to minimize the opportunity for disputes regarding the rights of adopted children.

The word "can apply for a court order" in Article 9 paragraph (2) of the PP on the Implementation of Adoption of Children as a law provides legal certainty for the application of customary law in the midst of society, but in the future it can pose a risk regarding the legal status of adopted children who are only adopted based on custom. habit because there is no written evidence of the adoption ceremony. So that the effectiveness of the enactment of Article 9 paragraph (2) of the PP on the Implementation of Child Adoption is less than perfect, because in fact, even though the adoption of children based on customary law is recognized by the state, on the other hand, there must still be written evidence as reinforcement that it is true that there has been an adoption. The laws and regulations do not require that there must be written evidence regarding the adoption of children, and at the end it will become a problem if there is a dispute between adopted children regarding who has the right to inherit in the family.

In this case, Article 9 paragraph (2) of the PP on the Implementation of Child Adoption does not oblige if an adopted child who is adopted based on customary law must request a court order or not, he is also required to obtain written evidence from the local customary leader explaining that it is true that the adoption has taken place. In the absence of an obligation from the PP on the Implementation of Child Adoption, it will form a mindset in the community that if you adopt a child according to customary law, it is only enough to carry out a traditional ceremony without having written evidence from the local customary leader. Even though the written evidence strengthens the position of the adopted child.

Although and Article 9 paragraph (2) of the PP on the Implementation of Adoption of Children does not require a court order, in practice a court order is a basic requirement in managing documents related to adopted children. So that in Article 9 paragraph (2) of the PP on the Implementation of Child Adoption, it should be followed by further action in the form of a court order, or at least oblige the adoptive parents to have a statement letter from the local regional head as written evidence that can be used as evidence in court.

IV. CONCLUSION

The meaning of the phrase "can a court order be applied for" in Article 9 paragraph (2) of the PP on the Implementation of Child Adoption is that in carrying out the adoption of children according to customary law, it is not required to apply for a court order. The phrase can request a court order means that it can/may be done or may/may not be done. Whatever is chosen, it is legally justified. So that implicitly the word "can be applied for a court decision" can be

interpreted that the adoption of a child according to customs may or may not apply for a court order. This is a legal certainty for customary law that applies in the community that the procedures for adopting children carried out by customary law procedures are also legal. On the other hand, the phrase "can a court order be applied for" also has a purpose. By asking for a court order, the adopted child and the parents who adopt the child have more certainty and legal force when compared to an adopted child who is only based on custom.

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