



Legal Analysis of the Position of Adopted Children in the Distribution of Joint Property as Viewed from Civil Law

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ABSTRACT

This study examines the legal status of adopted children in the distribution of marital property under Indonesian civil law. Using a qualitative field approach supported by statutory review and interviews, the research analyzes how civil law positions adopted children in relation to biological heirs. Findings show that although adoption is legally recognized through Staatsblad 1917 No.129, the inheritance rights of adopted children are limited to joint marital property and do not extend to ancestral assets. The study also identifies major obstacles, including weak legal documentation, low public awareness, and frequent disputes among heirs. The research highlights the need for legal harmonization to strengthen protection and ensure certainty in inheritance cases involving adopted children.

INTRODUCTION

Adoption is a longstanding social practice in Indonesia, often driven by emotional, cultural, and economic motivations (Rofiq, 2000). Despite its prevalence, the legal implications of adoption remain unclear, particularly in matters of inheritance and property distribution. Many Indonesian families perceive adopted children as equal to biological children, yet legal norms do not fully support this social understanding (Azhar, 2013). As a result, disputes frequently arise after the death of adoptive parents, especially when the adoption was performed informally without court validation (Kurtubi, 2018).

The principal statutory instrument historically governing adoption for civil-law subjects is *Staatsblad* 1917 No.129, a colonial-era regulation which grants certain legal effects to adoption but is widely considered outdated (Susilawati et al., 2021). Modern domestic statutes such as Law No. 23/2002 on Child Protection and its implementing regulations seek to protect the child's best interest but do not comprehensively resolve inheritance ambiguities (UNICEF, 2018).

Practical problems arise when adoptions are informal (customary or family-based) and not ratified by court, yielding weak documentary evidence and frequent litigation upon the death of adoptive parents (Gosita, 2019). Courts consequently rely on a mixture of statute, *Staatsblad* provisions, and precedent creating unpredictability for adopted children seeking inheritance rights.

This paper addresses three interrelated questions: (1) What is the legal status of adopted children under Indonesian civil law? (2) How are adopted children treated in the distribution of marital property (*harta bersama*)? (3) What socio-legal obstacles impede clear protection of adopted children's inheritance rights? To answer these, the study combines doctrinal review with qualitative field data drawn from interviews and case analyses (Miles & Huberman, 1994).

The contribution of this study is twofold: empirically mapping how adoption law operates in practice in Indonesia, and proposing targeted reforms to harmonise adoption, family and inheritance law in favour of the child's best interest. The literature reveals tensions between legal doctrine and social practice. While some commentators treat legal adoption as creating equal status between adopted and biological children for most legal effects (*Staatsblad* interpretation), other scholars emphasise that legal instruments and judicial decisions limit such equality in inheritance claims, particularly regarding ancestral or lineage-based property (Subekti, 2019). Empirical studies show that inadequate formal registration and low public legal awareness often provoke disputes (Djunuarti, 2019).

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THEORETICAL REVIEW

Concept of Adoption in Indonesian Civil Law

Adoption in Indonesia represents a legal act that transfers a child from the authority of biological parents or lawful guardians to the adoptive parents. Although the *Burgerlijk Wetboek* (BW/Civil Code) does not explicitly regulate

adoption, the *Staatsblad* 1917 No. 129 provides the earliest legal basis for adoption for groups under Western civil law. Under this regulation, an adopted child is treated as if born to the adoptive parents, creating legal consequences in inheritance, family status, and social identity. Further, Law No. 23/2002 on Child Protection provides the modern framework, emphasizing the “best interest of the child,” non-removal of lineage identity, and court authorization as mandatory requirements. Adoption conducted outside this legal process (informal/illegal adoption) results in ambiguous legal status and weak inheritance rights.

Shared Marital Property (Harta Bersama) in Civil Law

The Civil Code recognizes community property as assets acquired during marriage (BW Pasal 119–128). Law No. 1/1974 strengthens this by stating that all income generated during marriage constitutes joint marital property unless explicitly separated by a prenuptial agreement. Inheritance over shared marital property becomes complex when adoptive parents die, and adopted children claim rights—especially when the adoption is informal or when biological children contest the adopted child’s legal status.

Legal Position of Adopted Children in Inheritance

Under jurisprudence and *Staatsblad* 1917 No.129, the adopted child obtains: The right to inherit *only* from the adoptive parents’ joint marital property, no right to inherit the ancestral property of the adoptive lineage. The capacity to *block* (menutup) the inheritance rights of heirs in the same class. Mahkamah Agung Decision No. 102 K/Sip/1972 confirms these principles, forming strong jurisprudence in civil inheritance cases.

METHODOLOGY

This research uses a qualitative field-research design combined with doctrinal legal analysis. The approach is appropriate for investigating socio-legal phenomena where statutory rules intersect with cultural practice (Moleong, 2013). Primary data comprise semi-structured interviews with legal practitioners, notaries, religious- and civil-court judges, and families involved in adoption-related inheritance disputes. Secondary data include statutes (Civil Code/BW, *Staatsblad* 1917 No.129, Law No. 23/2002), court decisions (e.g., MA Decision No. 102 K/Sip/1972) and academic literature.

Data analysis followed an interactive model: data reduction, display, and conclusion drawing (Miles & Huberman, 1994). Documents were coded for legal issue, documentary evidence, and judicial outcome; interviews were coded thematically for perceptions of adoption, documentation practices, and dispute drivers. Ethical consent was obtained for interviews; anonymity was preserved. The paper synthesises doctrinal findings with empirical patterns to propose reform measures consistent with child-protection norms (UNICEF, 2018).

RESEARCH RESULTS

The findings of this research reveal that the practice of adoption within the studied community is predominantly informal, carried out through family agreements, traditional ceremonies, or verbal arrangements without any legal

ratification by the court. As a result, a significant number of adopted children do not possess valid legal documentation establishing their status within the adoptive family. This condition generates administrative inconsistencies, particularly in birth certificates and family registration documents, many of which incorrectly list the adoptive parents as biological parents. These inconsistencies create dual identity problems, legal uncertainty, and potential future rejection of inheritance claims due to the absence of formal legal standing. Field interviews with civil registration officers also reveal that adults who were informally adopted often struggle to correct identity documents because the original adoption was never processed through a judicial mechanism, thus leaving them in an administratively vulnerable position.

In relation to inheritance of shared marital property, the study demonstrates a clear divide between families who formalized adoption through court decrees and those who did not. Adopted children with formal legal status are generally recognized as legitimate heirs of joint marital property in accordance with Staatsblad 1917 No.129 and relevant civil law principles. Conversely, those adopted informally encounter significant resistance from biological children and extended family members, who frequently argue that the absence of blood relations invalidates any claim to inheritance. This opposition is intensified by cultural norms that prioritize lineage purity and often deny adopted children the right to inherit, even when the child has been raised since infancy and assumed the social role of a family member. Such cultural resistance often overshadows written civil law provisions, highlighting the dominance of local customs over legal rules in practical family disputes.

The research further identifies that conflicts commonly arise after the death of adoptive parents. Adopted children are frequently excluded from family discussions about inheritance and may even be pressured to leave the family home despite having been cared for and raised as part of the household. Emotional ties developed during the adoptive relationship lose their practical significance during property disputes, and biological children often insist that inheritance must remain strictly within the bloodline. Several cases documented during fieldwork show that disputes escalate into formal litigation, which often favors biological heirs when the adopted child lacks official adoption documents.

At the judicial level, the findings also indicate inconsistencies in legal interpretation. Some judges strictly require a court decree to validate adoption, while others are more flexible and consider evidence of long-term caregiving relationships, household integration, and community recognition as indicators of *de facto* adoption. However, such flexibility is not uniform across courts, resulting in unpredictable legal outcomes. Administrative and procedural barriers further complicate the situation. Many families avoid formal adoption processes due to lack of awareness, perceived complexity, financial cost, or reliance on traditional practices. This contributes to the persistence of informal adoption and perpetuates legal vulnerabilities for adopted children across generations.

Overall, the research highlights several crucial constraints faced by adopted children in claiming shared marital property. The absence of formal

legal status deprives them of legal standing to initiate or defend inheritance claims. Social discrimination from biological children, emotional pressures, and exclusion from family decision-making exacerbate their marginalization. Moreover, widespread misinterpretation of inheritance rules—particularly the distinction between joint marital property and ancestral property—further disadvantages adopted children, as many families assume that adopted children are entirely excluded from inheritance despite civil law provisions granting them rights. These findings underscore the urgent need for stronger legal harmonization, public awareness, and a unified national framework on adoption to ensure that adopted children receive full legal recognition and protection in matters concerning identity, status, and inheritance.

DISCUSSION

Legal status of adopted children under civil law

The findings of this study reinforce the ongoing complexities surrounding the legal status of adopted children within Indonesia's civil-law system. Although *Staatsblad 1917 No.129* continues to serve as the foundational legal instrument equating adopted children with biological ones, its colonial-era origins and limited child-protection orientation create interpretive gaps. Judicial practice consistently demonstrates that courts privilege formal proof—court ratification, authenticated deeds, and official civil-registration documents—over de facto caregiving or long-term social integration. This trend aligns with Rofiq (2000), who argues that Indonesian judicial reasoning prioritizes documentary legality as tangible evidence of parental intent. Informants similarly observed that judges tend to apply a strict evidentiary threshold, especially in contentious inheritance disputes, where informal adoption is treated as insufficient for establishing legal standing. The position is strengthened by post-reform child welfare instruments, such as Law No. 23/2002, UNICEF (2018) recommendations, and later jurisprudence, which collectively emphasize best interest of the child as a guiding principle. Yet, despite these normative developments, the reliance on colonial adoption rules indicates a persistent structural lag in aligning civil-law adoption with contemporary child-protection frameworks. (Susilawati et al., 2021; UNICEF, 2018)

Rights in the distribution of marital property

Analysis shows adopted children commonly can claim shares of joint marital property (*harta bersama*) when adoption is legally recognised (Subekti, 2019). Marital property derives from acquisitions during marriage under Law No.1/1974 and is normally split between spouses or their heirs upon death or divorce. However, ancestral assets (*harta pusaka asal*) remain contested; courts often exclude adopted children from such lineage-dependent assets unless the decedent executed a will or used testamentary instruments (*wasiat*) to confer rights (Prakoso, 2017). Field data reveal litigation patterns: where adoptive parents neglected to create wills, adopted children faced uphill legal battles against biological heirs, especially in families with limited formal adoption records (Kurtubi, 2018).

Ambiguity in Adoption Law

Indonesia does not yet have a unified national adoption law. The intersection of Staatsblad 1917, the Civil Code (BW), the Child Protection Law, Islamic family norms, and customary provisions creates a multilayered legal landscape characterized by overlaps and contradictions. Such pluralism undermines legal certainty (*lex certa*) and obstructs the enforcement of consistent inheritance practices. This tension is particularly problematic for vulnerable groups such as informally adopted children who rely on clear regulatory mechanisms for identity security, social legitimacy, and economic protection. The absence of a unified national adoption law intensifies administrative inconsistencies, fosters judicial diversity in interpretation, and perpetuates unequal outcomes among children within similar familial contexts.

Implications for Inheritance Rights

While jurisprudence acknowledges adopted children's entitlement to *harta bersama*, the lack of formal legal recognition frequently impedes the practical realization of these rights. Informally adopted children suffer disproportionately due to the absence of documentary proof, which inhibits their ability to assert legal standing in court. This disparity violates the constitutional mandate to protect all children without discrimination and contradicts global child-protection standards emphasizing the right to identity, family, and economic security. The research thus demonstrates that adoption in Indonesia continues to operate at the intersection of legal formalism, socio-cultural norms, and unequal power relations among family members, resulting in structural vulnerability for adopted children.

Justice and Child Protection Framework

The research findings reinforce that adoption is not merely a familial practice but a human rights issue. Failure to secure a child's legal status places them at risk of: loss of identity, potential exploitation, inheritance deprivation, social discrimination. Thus, adoption must be understood within the framework of child protection, not solely inheritance.

Even when adopted children enjoy strong emotional bonds and social acceptance within the household, these factors hold little weight in judicial processes that prioritize statutory proof. This discrepancy reinforces a duality in Indonesian family law: social parenthood is acknowledged culturally but marginalized legally. Bridging this gap requires harmonizing civil, religious, and customary norms into a unified adoption framework that upholds child rights while respecting cultural practices. Without such reform, inconsistencies in judicial outcomes will persist and adopted children will remain exposed to identity insecurity and inheritance exclusion.

CONCLUSIONS AND RECOMMENDATIONS

This paper finds that adopted children in Indonesia occupy a legally recognised but practically vulnerable position concerning inheritance. While formal adoption confers many rights, absence of formal documentation limits claims – particularly to ancestral property unless wills or testamentary devices are

used (MA Decision No.102 K/Sip/1972). Harmonisation of adoption statutes, mandatory registration, and judicial guidance are recommended to protect adopted children's rights and to reduce disputes. Ensuring that adopted children can secure marital property entitlements and clarifying access to ancestral assets through testamentary instruments would enhance legal certainty and align Indonesia with international child-protection standards. Future research should quantitatively assess the prevalence of informal adoptions and litigated inheritance disputes to guide targeted reforms.

The recommendations: First, enact a modern adoption statute harmonising Staatsblad 1917 with Law No.23/2002, emphasising mandatory registration, identity preservation, and inheritance clarity. Second, require notarial recording and public registration of adoptions and testamentary dispositions affecting adopted children; strengthen civil registry capacity. Third, judicial guidelines (SEMA) should be updated to prioritise the child's best interests and to offer uniform rules for inheritance claims by adopted children. Fourth, public legal education campaigns should raise awareness of formal adoption steps and the inheritance consequences of informal adoptions. These reforms align with international child-protection norms and reduce litigation, protecting children's welfare (UNICEF, 2018; Diener, 2000).

ADVANCED RESEARCH

Future research should expand on: Comparative analysis of Islamic law, civil law, and customary law to form a unified national adoption framework. Impact of digital civil registration systems (Dukcapil/Digital ID) in strengthening legal identity for adopted children. Empirical studies on court decisions related to adoption and inheritance over the last decade to map consistency of legal interpretation. Socio-legal research on societal perceptions affecting informal adoption practices.

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