

THE POSITION OF MALE ADOPTED CHILD IN THE DISTRIBUTION OF HERITAGE IN THE SIMALUNGUN BATAK TRIBE IN PONTIANAK CITY, WEST KALIMANTAN

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ABSTRACT

The adoption of sons that occurred in the Batak Simalungun indigenous people who adhere to the Patrilineal kinship system is carried out to continue the offspring. Male adopted children as successors who carry the clan of their parents. In the traditional Batak Simalungun inheritance law, the position of distribution of the inheritance of male adopted children is the same as that of male biological children so that male adopted children can inherit all of the inheritance of their adoptive parents, while the girls do not get the right to share the inheritance of their parents. However, over time there has been a shift in the distribution of inheritance to male adopted sons in which the girls have begun to get the right to inherit their parents' assets. The distribution of inheritance is carried out before their parents die. The sources or respondents to this study were taken from several Simalungun Batak communities who adopted sons and the traditional leaders of the Simalungun Batak community association in Pontianak, West Kalimantan by using interviews. The results of this study indicate that the position of adopted sons in the distribution of the inheritance of their parents has begun to change. Parents who adopt sons and have daughters in their families have started to give the same inheritance between their adopted sons and daughters. Distribution of inheritance is also mostly done before the parents die in order to avoid disputes or problems when the parents have passed away. Many factors influence changes in the distribution of inheritance to adopted sons, especially social, acculturation, religious, and affection factors that exist in the Batak Simalungun community in Pontianak, West Kalimantan and have provided justice and equal rights between adopted sons and daughters.

Keywords: Position of adopted sons, traditional inheritance, Batak Simalungun

INTRODUCTION

Indonesia is a country with diversity of ethnicities, cultures, customs, and religions. One of the largest tribes in Indonesia is the Batak tribe originating from North Sumatra. Some of the tribes included in the Batak tribe are the Toba Batak, the Simalungun Batak, the Karo Batak, the Mandailing Batak, the Pakpak Batak, and the Angkola Batak. Each part of the tribe has a different culture.

The Batak tribe is a tribe that adheres to a patrilineal kinship system which means following the father's lineage. A patrilineal society is a society based on a unilateral kinship system by drawing bloodlines from the male or the father¹. The male line (father) passed on by male adopted child and becomes annihilated or lost if no son is born². This can be seen from the clan used by the Batak people who descend from their father's clan. It is seen from this that the position of fathers and sons is higher than girls, because male adopted child can pass their clan to their children.

The patrilineal kinship system of the Batak tribe creates a unique and different perception. This uniqueness can be seen through the community's belief in the tradition of adoption as a solution to the absence of a son who is believed to be a family deficiency³. Likewise with the consequences and consequences that occur after adoption related to inheritance, guardianship and clan relations⁴. Adoption of children is common in Indonesian society, including among the Batak Simalungun tribe. Adoption of this child occurs usually due to a long married couple who have not been given offspring. In addition to the national law of adoption, customary law and Islamic law can also be used. Adoption of children in Indonesia can be pursued through legal and customary channels. Legally, that is in accordance with Government Regulation Number 54 of 2007 concerning Implementation of Adoption and is described in more detail in the Regulation of the Minister of Social Affairs Number 110 of 2009 (PERMEN) concerning Requirements for Adoption of Children. Through the customary route, that is, in a non-formal way, only based on an agreement between the parent who adopts the adopted child, which is usually accompanied by certain local traditions regarding the adoption of children⁵.

The adoption of male adopted child in the Batak society can have implications related to the civil sphere. Male adopted child who have been adopted or adopted automatically use the clan of their adoptive parents. The distribution of inheritance in the Batak Simalungun tribal community which adheres to the patrilineal system, where the inheritance goes to male adopted child. This makes male adopted sons have the same rights in inheritance from their adoptive parents while girls do not get the right to inherit other people's assets. his parents.

¹Pandika Rusli, 2012, *Hukum Pengangkatan Anak (Adoption Law)*, PT. Sinar Grafika, Jakarta, First printing, p. 37-38.

²Bushar Muhammad, 2006, *Pokok-Pokok Hukum Adat (Principles of Customary Law)*, PT. Pradnya Paramita, Jakarta, tenth printing, p. 10.

³JC Vergouwen, 2004, *Masyarakat dan Hukum Adat Batak Toba (Batak Toba Community and Customary Law)*, PT. LKis Pelangi Aksara, Yogyakarta, p. 302

⁴M. Budiarto, 1985, *Pengangkatan Anak Ditinjau dari Segi Hukum (Adoption of Children in terms of Law)*, Akademika Pres, Jakarta, p. 21

⁵Muderis Zaini, 1996, *Adopsi Suatu Tinjauan Dari Tiga Sistem Hukum (Adoption; a Review of Three Legal Systems)*, Sinar Grafika, Jakarta, page 25

Along with the development of the times, the customs of the Batak Simalungun tribe have experienced a shift in customs, one of the causes is due to the existence of different ethnic marriages or the influence of the environment in which they live and also religious factors. The majority of the Batak Simalungun people are Christians but not a few are Muslims. Batak Simalungun people who are already Muslim usually use Islamic Inheritance Law in the distribution of their inheritance. Things that have changed are usually the position of male adopted child and girls in the distribution of inheritance. One of them is about the distribution of inheritance for adopted sons in the inheritance of the Batak Simalungun tribe. Over time the Batak tribal people who have adopted sons and daughters began to give equal rights in the distribution of inheritance before their parents died.

This makes the author interested in conducting research as outlined in his thesis about: "*The Position of Adopted Male adopted child in the Distribution of inheritance to the Batak Simalungun Tribe in Pontianak, West Kalimantan*".

PROBLEM FORMULATION

Based on the title and background description above, the problems in this thesis can be formulated as follows:

1. What are the factors that cause or the reasons for the Batak Simalungun tribe in Pontianak for adopting sons?
2. What is the position of adopted sons in the distribution of inheritance to the Batak Simalungun tribe in Pontianak?
3. How is the implementation of inheritance of adopted sons in the Batak Simalungun tribe in Pontianak?

THEORETICAL FRAMEWORK

1. Definition of Adoption

Adoption in Indonesia is known as the word adoption, which comes from the Dutch language, namely *adpotie*, *mupu anak* in Cirebon, *ngukut children* in Sunda West Java, *nyentanayang* in Bali, *playing children* in Batak Toba, *mulang jurai* in Rejang, *sufficient children* in the Manyan Dayak tribe, *pulung children* in Singaraja, *Napuluku* or *Wengga* in Jayapura Beach Regency, *anduhan* in Batak Simalungun. The term used in the laws of the Republic of Indonesia, the legal act of adopting a child is "adoption". The term for adopted children is called "adopted child", while the term for parents who adopt a child is called "adopted parents".

According to article 1 paragraph 2 of Government Regulation Number 54 of 2007 concerning the implementation of adoption, it states that adoption is a legal act which diverts a child from the sphere of authority of parents, legal guardians, or other people who are responsible for the care, education and raising of children. into the foster parent's family environment.

Meanwhile, according to the Compilation of Islamic Law Article 171 Letter (h) Adoption (adoption) in general can be interpreted as a process where the transfer of custody and obligations of parents to their biological children and this authority is delegated to other parents who want to care for the child.

Adoption or adoption in Indonesia is not something new. People who do not or do not have children usually adopt children to continue their offspring. Adoption of children in Indonesia can be pursued through customary channels and laws in force in Indonesia.

2. Conditions for Adoption

Adoption or adoption in Indonesia is something that is common. In adopting a child, there are procedures or conditions that must be fulfilled. PP Number 54 Year 2007 articles 12 and 13 explain the requirements for adoption including:

- a. under 18 (eighteen) years old;
- b. an abandoned or neglected child;
- c. being in family care or in a childcare institution
- d. requiring special protection.

The age of adopted children as referred to above includes:⁶

- a. children under the age of 6 (six) years, which is the main priority;
- b. children aged between 6 (six) years and 12 (twelve) years of age,
- c. as long as there is an urgent reason;
- d. children aged between 12 (twelve) and 18 (eighteen) years old, as long as the child requires special protection.

Prospective adoptive parents must meet the following requirements:⁷

- a. physically and mentally healthy;
- b. a minimum age of 30 (thirty) years and a maximum of 55 (fifty five) years;
- c. in the same religion as the religion of the future adopted child;
- d. having good character and never been convicted of a crime;
- e. married for at least 5 (five) years;

⁶<https://www.hukumonline.com/klinik/detail/ulasan/c1107/bimana-cara-meng> accessed on 18 June 2019, at 23.35 WIB

⁷Rusli Pandika, 2012, *Hukum Pengangkatan Anak (Adoption Law)*, Sinar Grafika, Jakarta, First Edition, pp. 113-114.

- f. not a same sex partner;
- g. do not or do not have children yet or only have one child;
- h. in a state of good economic and social capacity;
- i. obtaining the child's consent and the written consent of the child's parent or guardian;
- j. making a written statement that adoption is in the best interests of the child, the welfare and protection of the child;
- k. the existence of social reports from local social workers;
- l. caring for a prospective adopted child for at least 6 (six) months, since the care permit is granted; and
- m. obtaining permission from the Minister and / or the head of a social agency.

Every parent who adopts a child has several reasons. Ter Haar stated that there are several reasons for adoption in several areas, including: The

- a. motivation for adoption to be carried out is because of the fear of extinction of the family.
- b. Fear of dying without having children and fear of diving childless and so suffering the extinction of the line of descent.

People who follow the patrilineal lineage, in principle, adopt children only to male adopted child with the main aim of continuing the offspring. Whereas in areas that follow the parental lineage, including Java and Sulawesi, adoption of children (male or female) is generally carried out on their own nephews based on the objective:

- a. To strengthen kinship with the parents of the adopted children.
- b. To help a child adopted out of compassion.
- c. Based on the belief that by adopting a child, both adoptive parents will be blessed with their own children.
- d. To help with adoptive parents' work⁸.

3. Legal Consequences of Adoption

Adoption is an act whereby a husband and wife adopt or take children from an orphanage or their biological parents to be cared for or cared for and raised like a biological child in their adopted family. Judging from the existence of the child to be adopted, adoption can be divided into three types, namely adoption of children carried out on prospective adopted children who are in the power of biological parents or parents of origin (private adoption), adoption of children carried out on prospective adopted children who are in social organizations (non-private adoption) and adopted children who are not under the control of the original parents or social organizations, for example, children who are found because their parents dumped them⁹.

The legal consequences arising from confinement of the child can be in the following forms:

a. Guardianship

In the case of guardianship, since the decision is pronounced by the court, the adoptive parents become guardians of the adopted child. Since then, all rights and obligations of the biological parents are transferred to adoptive parents. Except for an adopted daughter who is Muslim, if she is to be married, only her biological parents or blood relatives can become the guardian of her marriage.

b. Inheritance

Our legal treasures, both customary law, Islamic law and civil law, have provisions regarding inheritance rights. All three have the same strength, meaning that a person can choose which law will be used to determine the inheritance of adopted children.¹⁰

4. Inheritance

a. Law

There are three (3) inheritance laws that apply in society, namely Customary Inheritance Law, Civil Inheritance Law, and Islamic Inheritance Law. The law of inheritance is a collection of rules, which regulates the law regarding wealth due to the death of a person, namely regarding the transfer of wealth left by the dead and the consequences of this transfer for people who get it both in the relationship between them and third parties¹¹. Inheritance law in law refers to the provisions stipulated in the Civil Code (KUH Perdata). Regulations regarding the law of inheritance can be found in articles 830 to 1130 of the Civil Code¹².

⁸ Runtung Sitepu, *Pluralisme Hukum mengenai Pengangkatan Anak di Indonesia (Pluralism Law regarding Adoption in Indonesia)*, Qanun, Journal of Legal Studies, Unsyiah Banda Aceh No. 39, August 2004 Edition, p. 374.

⁹ Arif Gosida, 1985, *Masalah Perlindungan Anak (Child Protection Issues)*, Akademika, Jakarta, p. 26.

¹⁰ <http://kanalhukum.id/kanalis/inilah-prosedur-adopsi-anak-dan-akibat-hukum-terhadap-anak-setelah-diangkat/47>, June 30, 2019, 00.21

¹¹ Ali Afandi, 1997, *Hukum Waris, Hukum Keluarga, Hukum Pembuktian (Inheritance, Family Evidence Laws)*, PT. Reineka Cipta, Jakarta, p. 97

¹² https://id.wikipedia.org/wiki/Hukum_waris, 23 June 2019, 23.30 pm

According to Hilman Hadikusuma, customary inheritance law is a customary law which contains the lines of provisions regarding the system and principles of inheritance law, regarding inheritance, heirs and heirs and how the inheritance control and ownership are transferred from heir to heir, in words another law of transferring property from one generation to their descendants.¹³

inheritance is a matter of whether and how various rights and obligations regarding a person's wealth at the time he dies will be transferred to other people who are still alive¹⁴. Whereas in the legal dictionary, the meaning of inheritance is an inheritance in the form of assets or debts from a deceased person, which is wholly or partly abandoned or given to the heirs or people who have been determined according to a will¹⁵.

b. Batak Simalungun Traditional Inheritance Law

The Batak tribe is a tribe that adheres to a patrilineal kinship system. A patrilineal society is a society based on a unilateral kinship system by drawing bloodlines from the male or the father¹⁶. The male line (father) which is passed on by sons becomes annihilated or lost if no son is born¹⁷. Male adopted children in the Batak tribe inherit their clan, property, and cultural heritage from their parents. In Batak tribal society, the inheritance of the parents' inheritance will go directly to the male adopted child, while the girls only get grants from male adopted child, because girls in the Batak marriage system will be bought by the husband's family and the offspring will use the clan of the husband. In the past, the reason for sons to inherit completely was not only because of the clan they carried but also because when their parents died, male adopted child had a greater responsibility to pay for the burial of their parents than girls who only contributed signs of love. (Pangantusion tu tumpak).

The distribution of the inheritance of the Batak Simalungun tribe is carried out when both parents have died. The distribution of assets is carried out when the burial of the last parents who died and in the distribution of the inheritance there must be a King Huta (traditional head), Tulang (uncle), the presence of Tubu (Semarga brothers), along with close families. After the funeral, *tulang* (uncle) will ask about the distribution of the assets that will be agreed upon. If there are more than one son, then the distribution of assets will be given equally to male adopted child and brothers will give to their sisters, for example, parents own land in two places and two houses, then it will be divided equally to male adopted child. If there is a daughter, the brother will agree to give a plot of land. If there is more than one sister, the assets given by the son will be shared equally among the sisters.

However, most of the Batak Simalungun people who have lived overseas do not practice this custom anymore. Most of the time before their parents die, there is distribution of assets, especially immovable assets such as houses and land to their children. Moreover, the Batak Simalungun people who have embraced Islam no longer practice their customs. Most carry out Islamic inheritance law in the distribution of their inheritance.

RESEARCH RESULTS AND DISCUSSION

1. The causes or reasons for the Batak Simalungun tribe in Pontianak forsons.

The adoption factors of the Simalungun Batak indigenous community can be seen with the expression *adoptinganakkhon hi do hamoradi ahu* which shows that the existence of a child is so valuable in the family. In practice, there are several reasons for adoption by the Simalungun Batak indigenous people.

Mrs. D. Saragih is a mother of three children. Her first child was a son whom she adopted from her husband's brother. Mrs. D. Saragih adopted a child at that time because after two years of marriage she had not been blessed with children. She stated that at that time her husband's brother offered to adopt a child as a fisherman to have a child and now Mrs. D. saragih has three children, two sons and one daughter.¹⁸ This is something that often occurs in communities who adopt children as anglers to have children after so many years of marriage and have not been blessed with children. This often occurs in the Batak Simalungun community or other communities. For this reason, it is also often found that children are the first children in the family.

This is based on the experience of a sister from GA Purba who has an adopted brother in her family. According to him, his parents adopted sons because of the absence of sons in the family to continue their business and family clans. The child was adopted from his father's family, more precisely the brother of his deceased father who made the child his son¹⁹.

Mr. J. Saragih stated that he did say the wording of children because there was no male offspring in his family. His family was blessed with two daughters and when the children were older, they adopted a son from a distant family who was unable to support his child²⁰.

¹³ Hilman Hadikusuma, 1999, *Hukum Waris Adat (Adat Inheritance Law)*, PT. Citra Aditya Bakti, Bandung, Pg. 7

¹⁴Wirjono Prodjodikoro, 1974, *Hukum Warisan Di Indonesia (Inheritance Law in Indonesia)*, Sumur, Bandung, p. 68

¹⁵JCT Simorangkir. SH et al, 1983, *Legal Dictionary*, New Script, Jakarta, p. 186

¹⁶Pandika Rusli, Op.Cit, p. 37-38

¹⁷Bushar Muhammad, Op.Cit, p. 10

¹⁸ Ibu D. Saragih, wawancara masyarakat batak simalungun yang melakukan pengangkatan anak laki-laki.

¹⁹ Saudari GA Purba, wawancara salah seorang anak perempuan yang memiliki saudara angkat laki-laki

²⁰ T. Saragih, Wawancara dengan salah satu masyarakat batak simalungun yang melakukan pengangkatan anak laki-laki

There is also the family of Mr. A. Sinaga who adopted a son because he had no children. He stated that he adopted sons because there were no children in his family, but he also added that apart from sons he also had adopted daughters. Apart from the reason for the absence of children in his family, he was also an excuse for someone to take care of him when he was old²¹.

Based on the results of the research, the factors that become the reasons for the Batak Simalungun tribe in Pontianak City to adopt male child include:

- a. they are the urge to have children
- b. they do not have male offspring in the family
- c. they do not have a child

2. the position of adopted male children in Distribution of Inheritance to the Batak Simalungun Tribe in Pontianak City

In traditional inheritance law, the distribution of inheritance is in accordance with applicable customary law. Like the Simalungun Batak tribe, which adheres to a patrilineal family system that prioritizes the position of male adopted child in their inheritance system.

According to J. Purba, the position of adopted sons in the inheritance system of the Batak Simalungun tribe has the same inheritance position as male biological children. In traditional inheritance, male adopted Batak children only have the right to inherit the inheritance of their adoptive parents, while the inheritance relationship with their biological parents is terminated. Male adopted children who have been adopted will receive clans from their adoptive parents. In the traditional Batak Simalungun, a boy who has been adopted will be the same position as a male biological child²².

According to Batak inheritance law, only male descendants are entitled to inheritance. If the male heir does not exist, the inherited property will be inherited to people from the same clan and one descendant with the heir, such as the father of the heir, brother, grandfather and so on from the male and female lineage, only getting a grant from Male adopted child alone all depend on sons in giving inheritance from their parents.

According to Mr. J. Saragih, in the past, the position of male adopted child in the Batak Simalungun tribe was very strong because they were considered the successors of the clan or the descendants of their father. Meanwhile, when a girl grows up and gets married, she will become part of the family of her husband and the children will inherit her husband's clan. For the position of adopted sons, it is the same as that of sons. But now there have been many changes, especially living far from the land of birth. In Pontianak City, parents who adopt both male adopted boys and girls give the same inheritance rights to their children, there is no difference. Moreover, many parents from the Batak Simalungun tribe distributed inheritance to their children while they were still alive so that when their parents died there would be no fuss about the parent's inheritance. For him to have a son or a girl is the same as the advantage of having a son to continue our clan. He said for him in the distribution of inheritance for daughters and adopted sons there was no difference²³.

3. Implementation of inheritance of adopted sons in the Batak Simalungun tribe in Pontianak City

According to J. Purba, according to the traditional Batak Simalungun law, in the distribution of parental inheritance, it is fully inherited by sons or adopted sons. Now, girls also receive a share of the inheritance of their parents. Especially for Simalungun Batak families who have adopted sons and daughters, usually the parents have distributed their assets when they are still alive. If in the past there were two sons and *baea baea parjolo* (the first son of a boy) was an adopted child and also a girl who lived in the village, the house was given to the son, the *youngest* (the youngest), the fields and other assets were divided. to *baea baea Perjolo* (first son) while his daughter does not get anything from his parents' property. Furthermore, people who do not have a son will have their property in the hands of *sanina* (paternal family). In the traditional Batak Simalungun law, it is stipulated that the *sanina* (family from the father's side) who gets the inheritance must provide for all the needs of the daughter from the heir until they have a family. A daughter gets a share from her husband's parents or gets a share given by her brother, in other words, the woman gets an inheritance by means of a grant²⁴.

At this time, customary regulations are no longer a tradition for the Batak Simalungun indigenous people. Many things underlie the change or shift from the Batak Simalungun custom in the Pontianak city. One of them is the influence of the national civil law which is considered more equitable in the distribution of inheritance rights between male adopted child and girls including the distribution of inheritance for adopted children and also Islamic inheritance law for the Batak Simalungun who are Muslim. Also in this day and age there has been equal rights between men and women making the distribution of inheritance in the Batak Simalungun custom to change, namely following the wishes of the person who gave the inheritance. So only the people who live in their hometowns still use customs and traditions in the distribution of the traditional Batak Simalungun heritage.

²¹ Bapak A. Sinaga, wawancara masyarakat batak simalungun yang melakukan pengangkatan anak.

²² J. Purba, Interview with the chief of Batak simalungun community in Pontianak city

²³ J. Saragih, Ibid

²⁴ J. Purba, ibid

CONCLUSION

1. Conclusion

From the results of the research and discussion above, the following conclusions can be drawn:

- a. The factors that influence the adoption of male adopted child in the Batak Simalungun community are:
 - 1) As a stimulant because they have not been blessed with children for a long time
 - 2) Due to the absence of male adopted child in the family to continue their clan and business
 - 3) Due to the absence of child in a family.
- b. In the inheritance of the Batak Simalungun, male adopted child are the main inheritors of the inheritance of their parents as well as the adopted sons. Adopted sons who have the same position as biological sons have the same rights and obligations. They are entitled to receive full rights from the assets of their adoptive parents. However, due to various factors such as social factors, acculturation factors, religious factors, and affection factors, there is a shift in the position of adopted sons in the distribution of inheritance from their adoptive parents. If a family has a daughter, the inheritance will also be distributed by the adoptive parents to the daughter. So there has been a shift in the position of adopted sons in the distribution of inheritance assets where girls have started to get their rights from the distribution of inheritance from their parents.
- c. In ancient times the distribution of inheritance carried out by the Batak Simalungun community occurred when both parents had died. They gather relatives and traditional leaders in distributing their inheritance. But now most parents who adopt children share their inheritance during their lifetime. So that adopted sons and daughters get their respective rights from the assets of their parents. this happens to avoid conflicts between siblings that occur when parents have passed away.

2. Suggestion

- a. The Batak Simalungun community should pay attention to the position of girls, especially biological daughters. Even though the adopted son is considered his own biological child, at least the parents can give the same right to girls to get the right to inherit.
- b. Living in peace is everyone's desire. If there is a dispute over the position of adopted sons in the distribution of inheritance, it can be resolved properly between families.
- c. There should be no longer differentiating between male and female adopted children because after all male and female adopted children are the same. Even though girls in the Batak Simalungun community will follow their husbands and give birth to children to continue their husband's clan, at least girls also have the same rights as male adopted child .

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