

The Child Adoption in the Inheritance System of the Sentani Indigenous Community

Onesimus Sahuleka
Faculty of Law, University of Cenderawasih, Papua

Abstract

Adoption of child is the act of taking another's child into one's own family in such a way, so that between the person who adopted the child and the adopted child arises a family relationship as between a parent and their biological child. Adoption according to customary law is valid if it is done for the sake of child's welfare and in the best interests of the child. The adoption according to Sentani customary law is limited among families/relatives and is not registered as required by the Law Number 23 Year 2002 in which the adoption in the Sentani customary law is done based on local customs and laws in force.

Keywords: Adoption of child, inheritance, Sentani Indigenous Community.

1. Introduction

The existence of society is inseparable and human freedom to form families through legal marriages as defined in Article 28 B of the Constitution of the Republic of Indonesia Year 1945 and also in Article 10 the Law Number 39 Year 1999 on Human Rights. Those regulation state that every valid marriage does not only lead to legal consequences to the status of the human beings but also to the status of its assets and wealth. Therefore, every child born not only acquires the right to have their status recognized but also to the recognition of their rights to the wealth of their parents.

The Law Number 1 Year 1974 on Marriage states that the purpose of marriage is to form a family/household that is happy and everlasting based on God and in the explanation it is also stated to obtain offspring. According to Article 1 (1) the Law Number 1 Year 1974 on Marriage states that marriage is a physical and mental bond between a man and a woman as husband and wife with the intention to form a happy and everlasting family and household. It is also said that a marriage is valid if it is done according to the law of each religion and belief. Furthermore, every marriage is registered according to the legislation in force.

The Sentani Indeginous Community is a community inhabiting the area in the 5 districts in the Regency of Jayapura. Those five districts are the districts of Waibu, East Sentani, Central Sentani, West Sentani and Ebunfow. These five districts have the same customary laws commonly known as the Sentani Customary Law. Therefore, the Sentani Customary Law applies for the Sentani Indigenous Community in the Regency of Jayapura. It also recognizes a customary law body called the legal institution of adoption. The Sentani Indigenous Community embraces a patrilineal descent community which means that the line of descent is drawn and the father's/male's line carries the consequence that the men are the successors. If in a family in the Sentani Indigenous Community does not have any children or have children but they do not have any sons which means they only have daughters, the only solution is through adoption.

In the Law Number 1 Year 1974 on Marriage as well as its implementing regulations only mention legitimate and illegitimate children. In Article 42 of the Marriage Law, it is mentioned that legitimate children are children born in or as a result of a legal marriage. Furthermore in Article 43, it is said that children born outside of a marriage only has a civil relationship with their mother and their mother's family. Children like this are commonly referred to as illegitimate children.

Indonesian family law as stipulated in the Marriage Law does not clearly set out the status of adopted child whether they are legitimate children or not. However, the provisions of Article 12 dari the Law Number 4 Year 1979 on Child Welfare states that the adoption according to the local customary law is done by giving priority to the welfare of the child, while the adoption is done outside of the local customary law that is done based on legislation. Furthermore, in article 39 of the Law Number 23 Year 2002 on Child Protection states that the adoption is only done for the best interests of the child and done based on local customs and the legislation in force.

When both rules are examined then, the adoption under the customary law is valid if it is for the child's welfare and for the best interest of the child. As previously described that the adoption according to Sentany customary law is limited to family/relatives and is not registered as required by the Law Number 23 Year 2002 which mentioned that the adoption is based on local custom and the legislation in force. According to these provisions, the adoption must be registered to ensure legal certainty in the future.

It should be recognized that efforts to provide legal protection for the inheritance rights of the adopted are still far from expected. In Indonesia at this time, those provisions regarding inheritance law are still pluralist. As indicated by Mochtar Kusumaatmadja, those rules on inheritance in Indoneisa is something of a sensitive

topic.¹ The sensitivity inheritance issues are due to the fact that they are related to life religious values, culture, and customs adopted by the pluralistic Indonesian society.

Mochtar Kusumaatmadja had also argued that a society that is building generally faces problems that must be regulated by law and those problems can be broadly divided into two major categories, namely; *Firstly*; problems that are directly related to one's personal and is closely connected with the cultural and spiritual life of society. *Secondly*; issues relating to the advancement of society demands and in general are 'neutral' especially when viewed from the angle of culture. In general, it can be said that the renewal of the law in such fields (fields "neutral") is easier to do.² As mentioned by Mochtar Kusumaatmadja, it can be understood that the field of inheritance law is not "neutral". Therefore, it can be concluded that this field is sensitively live of the human beings, including the value of culture, religious, and the customary law.

Inheritance law in Indonesia can be categorized into 3 (three) legal systems, namely Western Inheritance Law stipulated in the Civil Code, Customary Law, dan Islamic Law. The basic regulations of the inheritance law uses these 3 (three) legal systems as mentioned earlier, it is inseparable from the history of the Indonesian legal system in the colonial era, where the Dutch colonial government at the time issued a regulation *Indische Staatsregeling* (IS) and lists the law politics in Article 131 to Article 163, which divides the population into 3 (three) categories; Dutch East Indies residents (European group), Indonesian (indigenous), and Far Eastern/Oriental (China and other countries belonging to the Orient); and the laws that apply to each of these categories.³

Indonesian family law is plural and is comprised of Customary Law, the codified Civil Law and Oriental Civil Law. Especially in the Customary Law, there occurs legal pluralism where in Indonesian customary law between one region and another are different. The reality of the diversity of the customary inheritance law in various regions and ethnic communities results in difficulty in unifying national inheritance law. Every marriage brings consequences to regulations of inheritance. Aside from those done based on legislations in force (the Law No. 1 Year 1974 on Marriage and Government Decree No. 9 Year 1975 as the implementation regulations) are also done according to local customs and religious beliefs and rules held by those who solemnize marriages. The existing difference between the procedure of marriage and the differences based on religion creates conditions in which the unifying of the inheritance law is to be difficult.

Customary law⁴ with regards to inheritance generally adheres to the principle that the transfer of the estate left by the person who has passed away. The inheritance can only be received or inherited by those with blood ties (offspring)⁵, namely children who were left behind or those with marital bonds with the recently departed. Tamakiran classifies heirs based on the nature of each respective family. However, the child is certainly going to be heir. Thus, the arrangement based on the order of relatives (kinship priorities) can be divided to:

1. Parental inheritance (by parents), where those entitled to the inheritance are the sons and daughters with equal shares.
2. Patrilineal inheritance (father), where those entitled to inherit are only the sons.
3. Matrilineal inheritance (mother), where those entitled to inherit are all are all the children and the mother's lineage.⁶

Furthermore, in terms of possession or wealth left by the testator, inheritance under the customary law can be broadly divided into: 1). Inheritance system where the estate can be distributed among the heirs. 2). Inheritance system where the wealth may not be distributed among the heirs but is instead owned collectively as inheritance. This system can be distinguished based on the aspects of inheritance which are collective and based on mayorat.⁷

¹ Mochtar Kusumaatmadja, *Legal Development in the Context of Development of National Law (Pembinaan Hukum Dalam Rangka Pembangunan Hukum Nasional)*, Bina Cipta, Bandung, 1973, p. 4.

² Mochtar Kusumaatmadja, *Concepts of Law in Development (Konsep-Konsep Hukum Dalam Pembangunan)*, Alumni, Bandung, 1st. ed, 2002, p. 90.

³ According to Otje Salman, that through Article 134 ayat (2) IS., customary law has been recognized as being applicable to the 'bumi-putra' group in the Dutch East Indies. Thus, Islamic law and jurisprudence issued by the enactment of the Dutch East Indies. This change is the peak of victory for Snouk Horgoreny's reception theory in Otje Salman, *the Implementation of Inheritance Law in Cirebon seen from the Inheritance Law and the Islamic Inheritance Law (Pelaksanaan Hukum Waris Di Daerah Cirebon Dilihat Dari Hukum Waris Adat dan Hukum Waris Islam)*, Dissertation Doctorate in the field of Law, Graduate School, University of Padjadjaran, Bandung, 1992, p.14.

⁴ According to Soepomo, Customary Inheritance law contains rules that regulate the process of forwarding and the passing of goods, possessions, and intangible objects (*immateral goederen*) and a generation of humans suatu (*generatie*) to their offspring. Cited by Bushar Muhammad, *The Principle of Adat Law (Asas-Asas Hukum Adat)*, PT. Pradnya Paramita, Jakarta, 11th ed., 2002, p. 46-47.

⁵ According to Soerjo Wignjodipoero, in his book "*an Introduction and Principle of Adat Law (Pengantar dan Asas-Asas Hukum Adat)*", CV. Haji Masagung, Jakarta, 9th. ed, 1990, p. 108, that "*offspring*" is the singular ancestor, which means there is a blood relationship between a person and another person. Two or more people who have blood relations. So that single ancestor is an offspring of the other.

⁶ Tamakiran S, *the Principle of Inheritance According to Three Legal System (Asas-Asas Hukum Waris Menurut Tiga Sistem Hukum)*, Pionir Jaya, Bandung, 2002, p. 62-63. Mayorat of men; the inheritance falls into the hand of the son. While in the mayorat of women; the inheritance falls into the hand of the daughter.

⁷ Djaren Saragih, *Pengantar Hukum Adat Indonesia*, Publisher: Tarsito, Bandung, 1984, p. 148-149. Also cited by: Maria Fransisca, *Aspek Hukum Pewarisan Pada Perkawinan Antar Agama Di Indonesia*, Thesis for Notarial Master Program, University of Padjadjaran, Bandung,

Such is the importance of the presence of a child in a family. The presence of a child is not only as an adhesive for a family, but also as a successor and the heir to the estate left behind by their parents in the event of their death. Even in tribal communities or certain clans, the presence of children as the family's successor is an essential element in avoiding the extinction of a tribe or clan. Therefore, if a tribe or a clan or relative are concerned about facing the reality of not having offspring, the tribe, clan or the relative generally adopts to avoid extinction.¹ The adoption is the act of taking another's child into one's own family in such a way, so that between the person who adopted the child and the adopted child arises a family relationship as between a parent and their biological child.²

Aside from reasons to continue their lineage, there are also adoptions done with the intent of giving legal standing to that adopted child so that it becomes better and more profitable than the previous condition. In the Sentani Indigenous Community in the Regency of Jayapura (Province of Papua), adoption besides done with a special ceremony involving cultural leaders or the heads of local tribes, can also be done simply in a family environment. The adoption is generally derived from one's own family environment.

The prompts factor of some families who do not have children to adopt the child in the Sentani Indigenous community is aside from the element of being and adhesive and as an expression of one's social concern in lifting the socio-economic status of adopted children in the midst of local indigenous community life, it meant also to preserve and maintain the household's assets and other possessions outside of the home. Through the adoption, there is a shift of responsibility for the child, namely from the biological parents to the adoptive parents. The responsibility to meet the needs of life and education of the children exists solely with the adoptive parents. In relation to how adoption done is solely based on local habits and customary law, then after the death of the adoptive parents, the rights of the adopted child over possessions or wealth left by the adoptive parents do not obtain clarity nor legal certainty. Similarly, the legal relationship between the adopted child and his biological parents are also not clear if the adopted child still remains the heir to the estate left behind by their biological parents.

2. Context of Inheritance System in Indonesia Sistem Pewarisan di Indonesia

Family law which lives in one community and another is not always the same. It can be generally known from the make up of the community. One way to look at it is considering the composition of the community based on genealogical ties.³ Indonesian society is composed of various tribes and customs and has different forms of kinship with different forms of descent. The descent system has a very large influence on the system of inheritance in customary inheritance law.

Theoretically, descent/inheritance systems can be divided into three types as followings:

1. Patrilineal System

According to this system, the line of descent is drawn according to the father's lineage, where men hold more prominent positions than women in inheritance. A family member will feel themselves as the descendant of a man and that assumption causes them to feel as if men are the link. This affinity to the male line is present in the following communities : Batak, Bali, Ambon, Papua, and so forth.

2. Matrilineal System

According to this system, the line of descent is drawn according to the mother's lineage, where women hold more prominent positions than men in inheritance. A family member will feel themselves as the descendant of a woman and that assumption causes them to feel as if women are the link. This affinity to the female line is present in the following communities: Minangkabau, Kerinci, Semendo, and so forth.

3. Parental or Bilateral System

According to this system, the line of descent is drawn according to the parents' lineage or according to the line of both sides (mother-father). The position of both men and women are equal, without there be in any distinction in inheritance. Therefore, every family member draws their line of descent and connects themselves through their father and mother. This is done by father and mother, wherein both lineages are assessed and given the same credit. Such legal linkage is contained in the following communities: Jawa, Sulawesi, Kalimantan, Aceh, and Riau.⁴

2003, p. 36.

¹ Soerojo Wignjodipoero, *Op Cit*, p. 161. Also cited by Juli Cristie, *Sistem Hukum Kewarisan Adat Batak Toba Dalam Kaitannya Dengan Pengangkatan Anak*, Thesis for Notarial Master Program, University of Padjadjaran, Bandung, 2004, p. 13.

² Under the terms of Article 5 *Staatsblad* 1917 Nomor 129, that if a man marries or has married, has no legitimate male descendants in the male line either by birth or by adoption then he may adopt a son. Soedharyo Soimin, *The Setting of the Legal Basis for the Child Adoption (Himpunan Dasar Hukum Pengangkatan Anak)*, Sinar Grafika, Jakarta, 2000, p. 4. Then compare the definition of adoption according to Muderis Zaini, *The Adoption in the Angle of Legal System (Adopsi Suatu Tinjauan Hukum Dari Segi Sistem Hukum)*, Sinar Grafika, Jakarta, 1999, p. 4, and Soerjono Soekanto, *The Core of the Family Law (Ikhtisar Hukum Keluarga)*, Raja Grafindo Persada, Jakarta, 1995, p. 53, and Human Hadikusuma, *Hukum Waris Adat*, Publisher: Citra Aditya Bakti, Bandung, 1990, p. 111.

³ Otje Salman. *Public Awareness to Inheritance Law (Kesadaran Masyarakat Terhadap Hukum Waris)*, Alumni, Bandung, 1993, p. 48.

⁴ Bushar Mohammad, *Hierarchy of Family Law in Indonesia (Susunan Hukum Kekeluargaan Indonesia)*, PT. Pradnya Paramita, Jakarta, 1985,

After discussing the system of descent, we will now discuss briefly regarding the system of inheritance. In Indonesia we have encountered three systems of inheritance under customary law, as follows:

1. Individual Inheritance System

The characteristics of this system is that the inheritance can be divided amongst each individual heir. Individual inheritance can be said that each heir obtains the right to control and own inheritance in accordance to their own shares. After that inheritance has been divided, each heir can use parts of that inheritance to be cultivated, consumed or to be sold to a fellow heir or other individuals.

Another factor that causes the need to hold the inheritance individually is that there is no desire to lead ownership of inheritance together. It is because the heirs are no longer bound to a relative or a parent and the life of each heir have been scattered throughout various new settlements.¹ This system can be found in the bilateral Java community.

2. Collective Inheritance System

The characteristics of this system is that the property is inherited collectively by a group of heirs who together form a kind of legal entity where such a property is referred to as inheritance. Treasure of this kind is not to be distributed amongst heirs in terms of ownership but only in use. Thus, the heirs are only given rights to use but not to own. Therefore, the forwarding and the transferring of ownership from the testator to the heirs as an entity is not divided in ownership however each heir has the right to cultivate, use or to reap benefits from the inheritance.

3. Mayorat Inheritance System

The characteristics of this system is that the treasure is inherited as a whole or in part to an heir only. Generally the inheritance is passed along to the oldest child.²

The Mayorat system consist of 2 (two) kinds, namely :

1. Mayorat of son, where the inheritance is passed on to the oldest son.

2. Mayorat of daughter, where the inheritance is passed on to the oldest daughter.³

Thus, the mayorat system is actually a system of collective inheritance in which it is just that the transferring and forwarding of tenure rights over the inheritance are not divided, but is instead delegated to the eldest child who serves as the head of the household in their father and mother's stead. The oldest child in their capacity as successor is responsible for the inheritance left behind by his parents is obliged to administer and maintain his other siblings who are still little until they are able to settle down and stand on their own. This system can be found in the community in the Gulf of Yos Soedarso, Irian Jaya,⁴ and the District of Sentani.

If a family's first child is female and the second child is male, then the male child acts as the person who will lead the family in regulating and dividing the inheritance. Therefore, it can be said that the boy will act as the oldest son, though he must listen to the advice of his older sister in taking care of his family's inheritance. So, those who are entitled to receive parental inheritance is every male especially the oldest son.

If a family does not have any sons, then they will try to adopt one their relative's sons to inherit their estate and to continue their lineage. However, it does not mean that the family's daughters have no part in inheritance. The daughters are usually given special treasures whose value is not the same as the son's. If the oldest child is a girl, then the boy born after is the one entitled to administer and to control the inheritance.

3. Sentani Indigenous Community Family Law

3.1 Kinship System

The Sentani indigenous people are related to a person if the person has blood relationship (genetic relation) with an individual either through the mother or the father. The principle of descent is also function to determine membership in group.⁵ Based on the previous explanation, it can be said that the Sentani indigenous community embrace lineages that take account of kinship through the lineage of the father/male (patrilineal lineage). Thus all maternal relatives are not kin, but in reality they still participate in everyday life. The Patrilineal principle is embraced by the Sentani indigenous peoples where birth to adulthood is done through the father's kin group.

3.2 Marriage System

Marriage is an important time of transition in the life cycle and for all human beings it is a time of transition from being a juvenile to married life. Viewed from the standpoint of human culture, then marriage is the regulator of human behavior, which has to do with their sex life, sex acts especially intercourse. The marriage

p. 3.

¹ Hilman Hadikusuma, *Op Cit*, p. 24.

² Soerojo Wignjodipoero, *Op, Cit*, p. 165.

³ Saragih Djaren, *Op, Cit*, p. 194.

⁴ Natty Kaiway, *Review on Indigenous Inheritance Law in Yos Sudarso Gulf, District Jayapura (Suatu Tinjauan Mengenai Hukum Waris Adat di Teluk Yos Sudarso Kabupaten Jayapura)*, Law Faculty, University of Cenderawasih, Jayapura, 1978, p. 26.

⁵ Koentjaraningrat, *The Basic Social Anthropology (Pokok-Pokok Antropologi Sosial)*, Dian Rakyat, Jakarta, 1997, p. 177.

causes a man in the sense of community/society to become unable to have intercourse with any other woman, but only one or some women in his community. Except as a regulator for sexual behavior, the marriage also serves various other functions in the cultural and societal life of mankind. Firstly, the marriage also leaves provisions and protections for rights and obligations as well as for the result of the marriage - children. The marriage also addresses the human need for a life partner and the need for wealth, prestige and social mobility. While, the maintenance of good relations between certain groups is often used as a reason for marriages. Notwithstanding this, regardless of the reasoning for that marriage, sex acts are always involved in them.

As we understand, the functions of the marriage are to:

- 1) Regulate the age behavior that has to do with their sex life, namely sexual behavior.
- 2) State that marriage leaves provisions and protections for rights and obligations as well as for the result of intercourse - children.
- 3) Address the human need for a life partner.
- 4) Meet the need for wealth, prestige and social mobility.
- 5) Maintain the good of relations between certain groups

4. Adoption Child in Inheritance System at the Sentani Indigenous Community

4.1. Adopted Child in the Sentani Indigenous Community

The Sentani indigenous community is a part of the Indonesian indigenous communities which cause the application of the principles of family law in the Indonesian society. The formation of a family as the smallest unit of a society is inseparable from the legal institution of marriage. In relation to it, every marriage held by the Sentani indigenous community applies the basic provision formulated in the Law Number 1 Year 1974 on marriage.

Based on Article 1 para (1) the Law No 1 Year 1974 where the purpose of marriage is to form a family/household that is happy and everlasting based on the Almighty God. In its explanatory, it is also stated to obtain offspring. Thus, the child is the offspring of the parents and the consequence of the marriage is that blood relation. If a family obtains no offspring then generally the Indonesian people adopt a child from his or her family with whom he or she still shares blood relations with.

The child's adoption in the Sentani indigenous community can be done for various reasons. Some reasons are it is because of good relations and kinship; a sense of family and humanity called adoption for maintenance only; and the adoption for the sake of continuing the line of descent. The adoption with only recognition from their adoptive parents is apparent in the social reality of everyday life such as in providing livelihood and education. The child's adoption for the purpose of continuing the family line must fulfill certain procedure according to the Sentani customary law:

1. There must be an agreement between the biological parents and the adoptive parents. The agreement is very important where the biological parents earnestly and wholeheartedly release the child into the custody of the adoptive parents. The adoptive parents happily accept the child as their own child and promise to treat that child as if he were their own. This mutual recognition is very important and must be witnessed by the traditional leaders.
2. The approval of the family members and relatives of both the biological parents and the adoptive parents. This agreement is very important for the family members or the relatives of the biological parents because the child will no longer be of the family name or the family of their biological parents. As for the family of the adoptive parents this agreement is very important as the child will be part and use the family name or the family of the adoptive parent.
3. Approval from cultural leaders. This approval is required so that the legal act of adoption becomes clear to the public where and the cultural leaders represent to the people there.
4. The special ceremony conducted by the adopted parents, which will be attended by the biological parents, family and relatives and the adoptive parents as well as cultural figures. The ceremony done to announce to all attendance people that there are the child's adoption. The announcement then is valid to adopt the child.

The child's adoption for maintenance only can be done towards anyone including family and relatives with blood ties to the adoptive parents or any family or relative outside of the Sentani indigenous community. On the other hand, the adoption for the successor to the family's lineage must be sought from within the family either from the mother's side or from the father's side. However, this can also be done for children not belonging to the family but who are still within the Sentani indigenous community.

The adoption for the successor to one's lineage as well as for maintenance does not require gifts from the adoptive parents to the biological parents. However, everything expended for the adoption of that child is the responsibility of the adoptive parents. The relationship between the biological parents of that child and the child itself is severed even though there is no reward/feedback from the adoptive parents to the biological parents.

4.2 Object of Inheritance in the Sentani Indigenous Community

Wealth of the family is a tool to maintain unity of the family. It is therefore in the process of inheritance, it is not done or the inheritance is not divided amongst the heirs. According to the common definition, the inheritance is all possessions left behind by someone who has passed away,¹ either the treasures has already been divided, undivided, or cannot be divided. Based on the definition as stated, then, if we talk about inheritance, we are talking about the treasures of the recently departed : whether the wealth of the person has already been divided, undivided, or cannot be divided.

The definition of divide in general means that the inheritance is to be divided by its owner to the heirs and the ownership of that inheritance does not mean that the absolute owner as individuals has no social function. Due to the customary law which governs the ownership of inheritance is still affected by the properties and characteristics of harmony and togetherness, then it is still affected by a sense of family unity as well as a sense of kinship. This is the most essential Indonesian identity.

In general, the suspension of the passing on of inheritance is due to the inheritance still being with the widow or widower and their children. If he wishes to sell or to alienate the inheritance to another party, then he must first deliberate with his children. The deliberation is done because they are entitled to the assets in the use of such property.² In addition to that, there are treasures that is not divided by its owner amongst the heirs in terms of mastery and ownership due to the nature of the object, usage and the circumstances which are indivisible.

A heritage treasure itself is a treasure owned by certain people within a tribe, namely people who wield influence over the life of a tribe, such as the chief, Ondofolo, the cultural heads or leaders, warlords or keret heads. The heritage treasures in the Sentani local language is called "*Rung Kangge*" or "*Hokdu*". The term *Rung Kangge* or *Hokdu* can also be interpreted as a place to keep a person's inheritance such as beads, stone axes or stone bracelets.

The Sentani indigenous community also know what is called innate property. This innate property is usually given to daughters who will be leaving her kin. Aside from that, the Sentani indigenous community also recognize joint property which is called "*Khani Khela*". Joint property is property acquired by spouses during their marital bond. Although only the husband or wife within the bonds of marriage work to acquire it, the property or wealth remains the property of both husband and wife. In the event of a divorce, that property is divided amongst husband and wife; however if there are any offspring, that property becomes theirs.

4.3 Rights of Adopted Children to their Adoptive Parents' Wealth

The legal standing of adopted children in Indonesia according to the customary law is not always the same. This is due to the fact that Indonesia is composed of various tribes with their own culture. This condition then causes the customary law that governing adopted children in relation to the wealth of their parents also varies. In some areas it has been found that the legal act of child adoption is the act of releasing that child and the familial bonds with his parents and to incorporate that child into the family of his adoptive parents. So that the child will subsequently serve as the biological children of their adoptive parents to continue their lineage.

Conversely, in some areas it has been found that the child adoption is merely incorporating that child into household life so that he/she becomes a part of their adoptive parents' household without terminating his bond with his parents. So they are not adopted to succeed the family's lineage. Thus, it can be said that the status of that child in relation to their parents' wealth is dependent on the background of the child adoption as explained in the previous chapter.

In the Sentani indigenous community, the child is adopted to succeed the family's lineage and is entitled to all of their adoptive parent's wealth without exception. If the adoptive parents have biological children, then the adopted child has the same status as the biological children in the case of inheriting the property left behind by his adoptive parents. The adopted children may also be appointed to customary positions such as Ondofolo, koselo-kosela, and so on. Even if the adopted child is a boy, where the child of his adoptive parents is a girl, then the adoptive child has the position of male mayorat who will lead, maintain and take care of his adoptive female siblings and to master the inheritance of his adoptive parents. The daughters of those adoptive parents only get certain parts of the inheritance that are not the same with the inheritance rights of the adopted children who receive higher priority.

If the adopted child is still small or immature, then for a while all the possessions of his adoptive parents are taken care of by a brother and foster father, unless both of the adoptive parents are still alive. Once the child becomes an adult and has married, the inheritance will by itself be transferred to the adopted child. Furthermore, the legal relationship between the adopted child and his biological parents is terminated. The adopted child is no longer heir to his biological parents' wealth. The adopted child is entitled to the

¹ Anonim, *Encyclopedia of The Customary Law and Cultural Customary in Indonesia (Ensiklopedia Hukum Adat dan Adat Budaya Indonesia)*, Alumni, Bandung, 1977, p. 14-19.

² Soedarso, *The Customary Inheritance Law (Hukum Waris Adat)*, Majalah Hukum Adat, Tahun II, No. 1-2, Yogyakarta, 1961, p. 73.

possessions/wealth of the adoptive parents.

If the adopted child is only known by close family and relatives and have the approval of the family and relatives, both adoptive parents and biological parents with the aim of continuing the adoptive parent's family's lineage, then the adopted child becomes their heir and is entitled to the property of his/her the adoptive parents. The position of the child is the same as the biological children if that family has any.

This is pursuant to Supreme Court Decision Number 281/K/SIP/1973, which in its consideration affirms that for an adoption to be valid, it must go through the process of appointment in the form of a Traditional Ceremony and followed by an announcement.¹The same thing is confirmed in the Supreme Court Decision Number 210/K/SIP/1973, which said that in addition to obtain the approval and agreement of the child's family and of the family wishing to adopt the child, it must be done with a traditional ceremony attended and witnessed by the cultural elders and the village head.²

As mentioned earlier, the child adoption has certain formal requirements, which has to be through a traditional ceremony. It was not only in a decision from the seventeenth, but also in the eighteenth with the Supreme Court Decision No. 2153 K/Pdt/1983 which stated that despite facts proving that a person has been taken care of and adopted as an adopted child that is insufficient to become the basis of the validity of an adoption, since it must also be prove that a traditional ceremony has been held in honor of the adoption.³

This decision as mentioned above is the same as the Supreme Court Decision Number 912K/31P,/ 1975 which was decided in 1981. It confirms that without a traditional ceremony, the child adoption is not valid even if he had been taken care of and has lived in someones house and is married to the person involved. Those facts are insufficient to support the validity of the adopted child, because it does not prove them having held a traditional ceremony.⁴ Furthermore, if the child had been adopted only for maintenance purposes, then his position is not as heir because he is adopted not to become successor to the famly's lineage. So that he has no right over his adoptive parents' inheritance. He will get part of the inheritance but not in his capacity as heir, but because he has brought advantage of his adoptive parents. Thus, he has been given a portion of the inheritance left behind by his adoptive parents.

The adopted child obtains or receives a different inheritance when compared to the descendants of the deceased. If his standing is the same as the family's biological children, then those children have the same right with as biological children in terms of inheritance. If the adopted child from a judicial standpoint is not really like a biological child where the relation between that child and his parents has been severed, then he gets two sources, namely from his biological parents and adoptive parents.⁵

From his adoptive parents, he is entitled to their household wealth called joint property and he is excluded from the possessions of origin which belong to his adoptive parents. As a consequence of the domestic relationship between adopted child and adoptive parents, rights and obligations between the two parties over the household's wolph arise.⁶ This is reflected in several jurisprudence, as mentioned below:

- a. *Landraad Purworejo* Decision dated 25 Agustus 1937 which decided that the joint property felt to the widow and the adopted children, while goods of origin return back to the siblings and relatives of the testator, if the deceased had no biological children.
- b. *RaadvanJustitie* Decision, Jakarta dated 25 Mei 1940, which stated that under West Java customary law, the adopted children were entitled to joint property of deceased adoptive parents if the deceased had not biological children.

If we examine the two jurisprudence mentioned above, it can be said that the adopted child is only entitled to inherit his adoptive parents' joint property and only if there are no biological children. However, if there are biological children, then those children are also entitled to the joint property alongside the adopted child, while the adopted child is not entitled to inherit goods of origin. Thus, it can be said that adopted children are merely part of the household but are not heirs. Furthermore, adopted children have the right to make a living from the inheritance left behind by the adoptive parents.⁷

Berthing said that the status of the adopted children is not heirs to the adoptive parents' goods of origin but he does profit from being part of the household, as well as after his adoptive parents have passed away.⁸ It is further confirmed that if joint property is insufficient in the division of inheritance, the adopted child may ask for portions of property from his adoptive parents' goods of origin who do not have biological children. Berthing's opinion is in line with the *Raad van Justitie* Decision Jakarta dated 6 Mei 1939 which stated that if the joint

¹Decision 29 December 1975, *Summary of Jurisprudence of Indonesian Supreme Court (Rangkuman Yurisprudensi Mahkamah Agung II)*, p. 74.

² Decision 2 November 1975, *Ibid.* p. 72.

³ Supreme Court Decision, dated 29 Januari 1995, not published.

⁴Decision dated 31 Maret 1981, *Jurisprudensi Mahkamah Agung*, 1981, p. 156.

⁵ Djaeren Saragih, *Op, Cit.*, p. 155.

⁶ Supomo, *Op Cit.*, p. 84.

⁷*Ibid.*, p. 79.

⁸ Soerojo Wignodipoero, *Op, Cit.*, p. 186.

property is insufficient in the division of inheritance left by the adoptive parents, the adopted child may ask for portions of the goods of origins, up to the amount considered fair.

Djojodigoeno and Tirtawinata further say that the standing of the adopted child is entirely the same also in accordance to members of other relatives as heirs. It is merely an application of the consequences on the basis of the principle the adoption is the adopting of a child as one's own.¹

According to Soerojo Wignjodipoero, the standing of an adopted child as contemplated by Djojodigoeno and Tirtawinata only recently acquires if the adopted parents or the person who adopted them views and treats the child as their own progeny both physically and mentally.² If we look at the jurisprudence before our independence, as a comparison we should also see the supreme court decision on the position of adopted child after our independence as well.

The Supreme Court Decision dated 15 Juli 1959 Reg. Nomor 182/K/SIP/ 1959 basically states that the adopted child is entitled to inherit the estate and wealth left behind by their adoptive parents that is not in the form of wealth their adoptive parents inherited.³ This decision essentially affirms the previous of the Supreme Court Decisions which state that the adopted child is not entitled to inherit heirlooms, and that those heirlooms should return to the heirs of consanguinity (Decision dated tertanggal 24 Mei 1958 Reg. Number 82/K/SIP/ 1958).⁴ The decision of the Supreme Court, furthermore, dated 18 March 1959. Reg. 37/K/SIP/ 1959 stated that according to Central Javan customary law the adopted child is only entitled to inherit the adopted parents' joint property, and that they are not entitled to the inherit heirlooms.⁵

If we are to pay attention to the jurisprudence both before and after independence, the jurisprudence of both periods are one and the same. The adopted child only has the right to inherit the possessions of their adoptive parents with respect to joint property and with the exception that if the joint property is insufficient, then a portion of the adoptive parents' goods of origin may be given to the adopted child. Those jurisprudence also do not distinguish whether the child was adopted to succeed the family's lineage or for maintenance purposes only. As for the goods of origin, the adopted child is generally not entitled to it, and those goods return where they came from, namely to the husband and wife's family.

Regarding goods of origin, if there are any biological children, then the ones entitled to inherit those goods are the biological children. Whereas, if there are no biological children, then the goods of origin return to the heirs of consanguinity.⁶ The Supreme Court Decision No. 1002/K/SIP/ 1976 also states that the widow and the adopted child inherit the joint property while the goods of origin return to when they came.⁷ The right and status to inherit joint property further is the same as the right and status of biological children. Similarly, the Supreme Court Decision Number 3832/K/PDT/ 1985 explains that the adopted child has the same right and status to the inheritance left behind by their adoptive parents as their biological children.⁸

4.4 The Rights of the Adopted Child to the Biological Parents' Wealth

As previously explained, the right of the adopted child to inherit depends on the motivations of the adoption. The motivation may be divided into the objective:

- 1) to continue descent;
- 2) to maintain or to raise children solely.

If the purpose is to continue the descent, then the child will enter into the family's and adopted parents' environment on his own. In other words, the child becomes heir and is entitled to inherit the wealth of his adoptive parents. His position will be the same as a biological child if by coincidence his adoptive parents have children. Thus, the legal relationship between the child and his biological parents is terminated, and the adopted child can obtain part of his biological parents if allowed to do so by his parents.

On the other hand, if the child is adopted merely for the purpose of maintenance, then the legal relationship between the child and his biological parents is not terminated nor interrupted. Thus, the child remains the heir to his biological parents and is entitled to inherit the wealth of his biological parents. In other words, the child does not have the same status as the heir to the adoptive parents, but instead the child is heir and is entitled to inherit the wealth of his biological parents and sibling, both in the form of joint property as well as in the form of goods of origin. While the rights of the adopted child to the adoptive parents is only in the form

¹ Djojodigoeno dan Titawinata, *Adat Privaat recht van Middle Java*, cited by Herlian Sumampouw, with Paper Panel Discussion : *Research on the Child Adoption (Penelitian Tentang Anak Angkat)*, Bandung 31 Oktober 1981, p. 11.

² Soerojo Wignjodipoero, *Op Cit*, p. 187.

³ Subekti, R, *Indonesia Customary Law in Jurisprudence of the Indonesian Supreme Court (Hukum Adat Indonesia dalam Yurisprudensi Mahkamah Agung)*, Alumni, Bandung, 1991, p. 26.

⁴ *Ibid*, p. 24.

⁵ *Ibid*, hlm, 22.

⁶ Yahya M. Harahap, *The Legal Standing of Widow, Widower, and the Adopted Child in Customary Law (Kedudukan Janda, Duda dan Anak Angkat Dalam Hukum Adat)*, PT. Citra Aditya Bakti, Bandung, 1993, p. 153.

⁷ Putusan 13 April 1978, *Yurisprudensi Indonesia Mahkamah Agung 1980 III*, p. 160.

⁸ Putusan 16 Februari 1987, *Varia Peradilan Tahun II Nomor 23 Agustus 1987*, p. 48.

of gifts and wealth given by the adoptive parents to the child. These gifts are not the same as the share obtained by the heir of these adoptive parents. Usually, this kind of adopted child only obtains maintenance fees, such as fees for education and so on. After the child has achieved his dreams, then the child may return to his biological parents. The adoption of this sort stops when the child has grown up and has married or has a household of his own.

4.5 The Adopted child as the Successor to the family's lineage in the Sentani Indigenous Community

The Sentani indigenous community is a community that embraces the patrilineal descent system where the line of descent is drawn from the male's line thus the role of sons are more prominent than daughters. However, as already noted earlier, not all families formed through a valid marriage obtains children or has sons to succeed their lineage. Although the families have children but they are all daughters and they have no sons or the family has no children then the way in which families who do not have children or sons is through adoption.

In principle, the adoption in the Sentani indigenous community is for sons. The purpose of the adoption is to continue the lineage of the adoptive parents. If the adopted child has fulfilled the requirements for the adoption, then the child becomes successor to the family's lineage and will use the name of the family and the adoptive parents.

The adopted child as successor to the lineage has the function to:

- 1) Protect their adoptive parents in their old days;
- 2) Protect their adoptive parents' estate;
- 3) Recognize and respect their adoptive parents as their biological parents;
- 4) Recognize and respect the family and the adoptive parents.

Furthermore, the adoptive parents function to take care of the future of said adopted child therefore the function of adoptive parents are to :

- 1) Be responsible and are obliged to maintain, educate and to protect their adopted child.
- 2) Develop a child to the best of their ability.
- 3) Leave their estate to their adopted child.

5. Conclusion

The child's adoption according to customary law is legitimate if it is done for the child's welfare and the child's best interests. The adoption according to Sentani customary law is limited to family/relatives and is not registered. Surely, the adoption referred to here has implications in the emerging of legal consequences of the rights of the rights of adopted children as the successor to the inheritance of their adoptive parents which are :

- 1) The position of the adopted child as heir to his adoptive parents and entitled to inherit the estate of his adoptive parents, either property of origin or joint property. The position of that adopted child is as a child of the adoptive parents notwithstanding the fact that his adoptive parents may already have biological children, furthermore the adopted child and the biological child have the same right to inherit.
- 2) The position of the adopted child to his parents' wealth is not as the heir of their biological parents and do not have the right to inherit the estate of their biological parent. The exception is if said adopted child obtains that inheritance if given by their biological parents. However, if their biological parents do not give give that inheritance to said child then he is not entitled to claim part of the inheritance. Based on the Supreme Court jurisprudence where the principle states that adopted children only inherit the joint property of their adopted parents while the inheritance returns to blood relations.

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