


Rights and Position of Home Children In The Sanahu Community of West Part of Seram District

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Abstract

Introduction: The offspring of a husband and wife being taken as children for another family, whether close relatives or distant relatives based on an agreement which of course gives rise to the rights and position of the adopted child, for this reason it is necessary to establish the rights and position of the child. so it won't cause problems in the future.

Purposes of the Research: To find out and analyze the rights and position of returning children in the Sanahu Community, West Seram Regency.

Methods of the Research: This research was conducted using an empirical juridical approach which is a descriptive qualitative analysis study. The research attempts to describe the rights and position of returning children in the Sanahu Community, West Seram Regency. The workings of the empirical juridical or sociological juridical method in this research proposal, namely from the results of collecting and discovering data and information through literature study of the basic assumptions or presumptions used in answering the problems in this research, then inductive-verification testing is carried out on the latest facts existing in society.

Results of the Research: The results of the research show that the rights and position of children returning home in the Sanahu Community of West Seram Regency are regulated based on customary rules that developed in Sanahu Village where adopted children will be classified as legitimate children of the parents who adopted them and have the position of biological children so that they have the right to the inheritance of that person. The parents adopted him, but the assets he inherited were only the joint assets of his adoptive parents. The child's inherited assets did not have the right to inherit them.

Keywords: Position and Rights; Children Returning Home; Indigenous Peoples.

Submitted: 2023-10-20

Revised: 2023-11-10

Accepted: 2023-11-14

Published: 2023-11-14

How To Cite: Latupono, Barzah, Adonia Ivonne Laturette, and Pieter Radjawane. "Rights and Position of Home Children In The Sanahu Community of West Part of Seram District." *Batulis Civil Law Review* 4 no. 2 (2023): 113-118. <https://doi.org/10.47268/ballrev.v4i2.1840>

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INTRODUCTION

In customary law, marriage is not a personal matter of the person carrying out the marriage, but is also a matter of family, tribe, community and caste. Marriage means separation from their parents and henceforth continuing their parents' life line. Traditional marriage is a bond of living together between a man and a woman, which is communal in nature with the aim of obtaining the next generation so that the life of the association or clan does not become extinct, which is preceded by a series of traditional ceremonies. Van Gennep calls all marriage ceremonies "Rites De Passage" (ceremonies transition) which symbolizes the change in status of each bride and groom from living separately after going through the required ceremony to living together as husband and wife, becoming their own somah, a new family that was founded and built by them selves.

After the marriage bond is established, husband and wife have the position of parents, as father and mother in one household/family, both for biological and non-biological children. Because there

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are times when before the marriage bond occurs, the husband or wife already has inherited children consisting of stepchildren, adopted children, adopted children or perhaps also children born from an invalid marriage, as can be the case among indigenous communities in Indonesia, one of which is in Maluku.

In West Seram Regency, the custom of taking other people's children applies to families who are not blessed with children or families who already have children but also want to take children. This is what happened in Sanahu, West Seram Regency, where there is a tradition of taking other people's children to be their children, families who adopt children from both close and distant relatives, even from those who are not related, can be considered biological children. Taking someone's child to become a biological child is known as adoption, but in the Central Maluku area it is known as returning home. The returned child is adopted or taken as a child without going through the court adoption procedure, but the strong relationship between the returned child and the person who adopted him as a child means that this child has a strong position in the family like a biological child so that he has the same rights as a biological child to obtain property from his adoptive parents. What happened in the research village was that returning children who were adopted as biological children according to customary law demanded their rights from their adoptive parents beyond what they had to receive.

METHOD

The data collection techniques used in this research are: (1) unstructured interviews, namely interviews that only contain an outline of what will be asked¹. In carrying out the interview method the researcher used an interview guide that had been previously formulated in the form of broad questions to obtain information about the process of adopting a child home according to Sanahu customary law in Kairatu District, West Seram Regency and what the legal position of a child returning home is in their family, (2) Observation is data collection that uses observations of research objects. The observation method in this research is used to determine the immediate condition of children returning home to their families. The data obtained was then analyzed using qualitative methods.

RESULTS AND DISCUSSION

A. Adoption Of Children as Home Children in The Sanahu Traditional Community In West Seram Regency

In a marriage between husband and wife, offspring or children are always needed, because children are the successors of their descendants, although there are also couples who are not given the gift from God to give birth to children as their offspring, so they take other people's children, where the parents do not there is a blood relationship. Likewise, children who are adopted are not related by blood to either parent. Taking someone else's child to be your own child has regulations governing it. Implementation of child adoption based on custom or customary law is still carried out in the life of the traditional community in Sanahu, West Seram Regency, because custom is an expression of beliefs that have been ingrained for a long time, from generation to generation, giving rise to obedience to Sanahu customary law in every citizen. Adoption of children carried out based on the Sanahu Customary Law is also regulated in Government Regulation Number 54 of 2007. There are several articles that regulate the adoption of adopted children according to customary law,

¹ Arikunto, Suharsimi. 2006. *Research Procedures A Practice Approach*. Jakarta: Rineka Cipta page 231

contained in Article 1 number 1, it is emphasized that adopted children are recognized if this is done based on a court decision or determination. However, in Article 8, there is recognition of the customary method of adopting a child. Furthermore, the adoption of children between Indonesian citizens as intended in Article 7 letter a, includes: a.) adoption of children based on local customs; and b) adoption of children based on statutory regulations.

Based on the provisions regulated in Article 9 paragraph. Still contains provisions related to the recognition of child adoption institutions based on customs: Adoption of children is based on local customs as intended in Article 8 letter a, namely: 1) the adoption of a child is carried out in a community that clearly still adheres to customs and customs in social life; 2) The adoption of a child based on local customs may be requested for a court order. The legality of the position of adopted children according to customs and customs is recognized in the Republic of Indonesia's statutory regulations Number 4 of 1979 article 12 concerning Child Welfare which reads "Adoption of children according to customary law is carried out by prioritizing the interests of the child's welfare". The provisions of this article emphasize that when adopting a child, the best interests regarding the child's welfare must be prioritized. Adoption according to customary law is an attempt to take a child who is not one's own offspring with the intention of caring for it and treating it as one's own child.

Adoption is an act of taking another person's child into one's own family in such a way that between the person adopting the child and the child being adopted, the same family law arises, as exists between parents and their own biological children² adoption of children according to Indonesian customary law is based more on blood ties and procedures according to customary law and local community habits, for example in Sanahu, people prefer to adopt children from within their own family. In order for the adoption of a child according to Sanahu customary law to be considered valid, it must be carried out with certain ceremonies and be attended by the local village head and witnessed by the local community so that the status becomes clear and clear to family members.

Adoption according to customary law is often known as an attempt to take a child that is not one's own offspring with the intention of caring for and treating it as one's own child. The act of adopting a child has been known for a long time in the life of Indonesian society, including traditional law communities. In terms of terminology, adoption or adopting a child comes from Dutch, namely *adoptie* or *adoption* (English) which means the adoption of a child as one's own biological child. Arabic calls it *Tabbani* which means taking an adopted child. Meanwhile, in the *Munjid* dictionary it is defined as *ittikhadzahu ibnan*, namely to make³. Meanwhile, in *Munjid's* dictionary, it is defined as *ittikhadzahu ibnan*, namely making. Adoption, by R. Soepomo, is formulated as an act of taking someone else's child to care for and treat it as one's own biological child⁴. Furthermore, Sharty Dellyana stated that adoption can be interpreted as an act of taking someone else's child to be cared for and treated as one's own biological child based on mutually agreed provisions and is valid according to the law in force in the community concerned⁵. Hilman Hadikusuma, defines that "an adopted child is someone else's child who is considered their own child by

² Zaini, Mudernis. 2002. *Adoption of a Goal of Three Legal Systems*. Jakarta: Sinar Graphics, h. 6

³ *Ibid*, p. 4.

⁴ Surojo Wignjodipoero, *Introduction and Principles of Customary Law*, Gunung Agung, Jakarta, 1983, p. 118.

⁵ Sharty Dellyana, *Women and Children in the Eyes of the Law*, Liberty, Yogyakarta, 1988, p. 8

the adoptive parents officially according to local customary law, for the purpose of continuity of offspring and/or maintenance of household assets⁶. In general, the Sanahu community prefers to adopt children from their own family⁷. The child adoption procedure in the Sanahu community is carried out by parents who do not have children or those who have children, they adopt children with certain goals such as⁸: 1) Adopting children to look after them as their children because they are not blessed with children; 2) Adopting a child to be a son in a family that does not have sons; 3) Adopting children with the aim of nurturing them to become friends because the children have grown up and gone abroad. Adoption of children in Sanahu is carried out in the wider community, known or witnessed by the King, traditional or community leaders, and written in the village administration book so that it has more legal certainty in writing. Based on customary law, every legal action must be carried out in cash and clearly so that the process of adopting a child or taking a child home is carried out simultaneously with the giving or handing over of goods that have a religious magical meaning which results in breaking the child's relationship with his biological parents, and then entering and being accepted as a child into adoptive parents. However, in traditional communities, items that have magical meaning are rare so that what is usually given is only money.

The adoption of a child in Sanahu is carried out based on agreement and consent of both parties, then a joint prayer is held by the family who adopted it together with the child's family of origin at the church. Adoption of a child or in the traditional term sanahu for a child to go home is carried out without going through court procedures. Adoption of children carried out in Indonesia as a customary legal institution is not yet uniform both in its motivation and procedures for adoption. There is no unified way to implement it, so the legal position of child adoption varies according to the customary laws of each applicable region. There are various methods used by the community, some are through the courts and also based on the provisions of Islamic law, but most of them are carried out according to custom, therefore, the issue of adoption is a problem for the Indonesian community and government. Different provisions, it is appropriate if there is a way to bridge it, so that adopted children can be looked after well and their future can be guaranteed, especially with regard to the legal position of adoption.

According to positive law, child adoption is regulated in government regulation Number 54 of 2007 concerning the implementation of child adoption and Law Number 23 of 2002 concerning child protection. What is meant by adoption based on local customs is the adoption of a child carried out in a real community still carrying out customs and customs in social life, this is in accordance with the provisions of article 9 paragraph (1) of Government Regulation no. 54 of 2007 Adoption of children according to customary practices is carried out in accordance with the procedures applicable in the society concerned, this is stated in Article 19 of Government Regulation no. 54 of 2007. Adoption of a child based on local customs can be requested by the court based on Article 9 paragraph (2) of Government Regulation no. 54 of 2007. Furthermore, according to Article 17 paragraph (2) of the Regulation of the Minister of Social Affairs of the Republic of Indonesia

⁶ Hilman Hadikusuma, *Customary Marriage Law*, Alumni, Bandung, 1990, p. 49.

⁷ Interview with Mr Raja Sanahu.

⁸ Interview with Mr Berty Tayane

Number No. 110 of 2009 concerning Requirements for Child Adoption, Heads of Provincial and Regency/City Social Agencies are obliged to record and document Child Adoption.

Basically, there is no requirement that adoption of a child must be by court order. It could also be based on local customs. However, a court order is recommended, because basically adoption is done in the interests of the child. This is as stated in Article 17 paragraph (3) of the Minister of Social Affairs Regulation of the Minister of Social Affairs No. 110 of 2009, that the adoption of a child based on customary customs can be requested for a court order to obtain the child's legal status and legal certainty in accordance with the provisions of statutory regulations. And in paragraph (4) it is said that the Court shall submit a copy of the decision to adopt a child to the Department of Social Affairs, social agencies and related agencies.

B. Rights and Position of Homecoming Children in the Sanahu Indigenous Community

Rights are something that must be given to someone as a result of someone's position and status. According to Mochtar Kusumaatmadja and B. Arief Sidharta, rights are a person's freedom to do or not do something. This freedom concerns anything and any subject, whoever the individual is. However, this freedom must still be based on law and therefore also protected by law.⁹ Adoption is an act of taking another person's child into one's own family in such a way that between the person adopting the child and the child being adopted, a legal relationship within the same family arises, as exists between parents and their own biological children¹⁰.

Taking a child in Sanahu or a child home is done with the knowledge of the wider community, known or witnessed by the King, traditional or community leaders, and written in the village administration book so that there is more legal certainty in writing. Based on customary law, every legal action must be carried out in cash and clearly so that the process of adopting a child or taking a child home is carried out simultaneously with the giving or handing over of goods that have a religious magical meaning which results in breaking the child's relationship with his biological parents, and then entering and being accepted as a child into adoptive parents. Children who are adopted home in the Sanahu community have a relationship with their adoptive parents and have the legal status of being the child of the parents who adopted them or adopted them as home children. After the child returns home, he is adopted according to custom, the child returns home of course having the position of a biological child for the family who takes him in, so the legal status of the child will be required, one of which is related to inheritance rights. As a rule of inheritance, basically the child goes home and gets a share of the inheritance from the parents who adopted him. The share is the same as that of the legal children of their adoptive parents for the joint property left behind, whereas for the original property or inherited property of each party in the Sanahu Indigenous Community, it is only owned by the biological children.

CONCLUSION

Based on what is described, it can be concluded that children who are adopted into the Sanahu community are carried out based on customary law without going to court, it is only

⁹ Mochtar Kusumaatmadja et al, *Introduction to Legal Studies: A First Introduction to the Scope of Law Application Book I Alumni Bandung* 2000, p. 90

¹⁰ Zaini, Mudernis, *Op Cit*, p. 6

done according to custom after there is an agreement between those who adopted the child and their biological parents, then a joint prayer is held in the church witnessed by the king and elders. custom

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Conflict of Interest Statement: The author(s) declares that research was conducted in the absence of any commercial or financial relationship that could be construed as a potential conflict of interest,

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