

INHERITANCE RIGHTS OF ADOPTED CHILDREN IN SAME-SEX MARRIAGE (LGBT) IN INDONESIAN LEGAL STUDIES

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Abstract

Today there are groups that appear to bring controversial issues and become the object of debate for a number of parties. That is the emergence of sexual orientation groups (LGBT) Lesbian, Gay, Bisexual, and Transgender. These sexual orientation groups not only demand that their existence be respected in the community, but they also fight for same-sex marriage to be legalised by the marriage law. Not a few have adopted children, which of course will have an impact on the inheritance rights of the adopted child.

The author only focuses on the inheritance rights of adopted children in same-sex marriages. This research method uses normative juridical research, while this research approach uses a statutory approach, in this research the nature of the research is descriptive, as the data source taken from data sourced from secondary data obtained by library research. Then, the data is processed and carried out using qualitative analysis.

Based on the results of the research that the appointment of children who are not legalised by the determination of the panel of judges, their status is not valid in the eyes of the law because it can lead to adverse legal consequences for both the adopted child and his adoptive parents if one day there is a problem or dispute between each party. In addition, the rights of adopted children in LGBT couples are definitely under the status of inheritance that will still be obtained through unwritten law with the conditions decided and determined by the judge in accordance with Article 50 paragraph (1) of the Judicial Power Act. However, there is no customary law in Indonesia that recognises the existence of LGBT because it is an act of moral violation for society.

Keywords: LGBT, Inheritance Rights, Adopted Children

A. Introduction

As a social person, having a family—a father, a mother, and a child—in life, especially in society, is an obsession for the future. These three requirements are not always met in practice. The goal of marriage is to have children in order to preserve riches and carry on a line. However, there are a number of life partners, many of

whom have trouble having children, leading some of them to decide to adopt. Adopting a kid is a legal act, and as such, it has obvious legal repercussions.

But what if individuals who wish to start this family are members of the LGBT community, who tend to have atypical sexual orientations? There would undoubtedly be a lot of friction in society, especially among Indonesians who have strong religious and cultural beliefs.

Legally, Indonesia does not acknowledge the presence of LGBT organizations. In addition, opponents argue that Indonesian culture is becoming more homophobic due to its strict religious beliefs and customs, which makes it harder for them to associate freely. Communities are becoming more suspicious of one another and the presence of LGBT organizations. Most people view homosexuality as a social deviance. It is believed that homosexuality is a disease, a vice, and an immoral act.¹

Homosexuality is viewed as being at odds with the ideals that society has internalized, and it is this divergence that has severe implications for both the LGBT perpetrators themselves as well as the community in which they live. This is due to the fact that males tend to be more attracted to women, while women tend to be more attracted to men.

It is obvious that the community views this behavior as abnormal when there is a guy who has a sexual attraction towards other men (homosexual) and a woman who has a sexual orientation towards other women (lesbian).² The Law of the Republic of Indonesia Number 1 of 1974 concerning Marriage, Chapter I Article 1, states that "Marriage is an inner and outer bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family (household) based on Belief in One Almighty God," which is very contrary to the rules that have been stipulated in the Islamic religious law.³ The law's text makes it clear that same-

¹ Hassan Hathout, *Panduan Seks Islami* (Jakarta: Zahra, 2009). 28.

² Galink, *Seksualitas Rasa Rainbow Cake* (Placeholder1)(Yogyakarta: PKBI DIY, 2013). 45.

³ Undang-undang Nomor 1 tahun 1974 tentang dasar perkawinan, pasal 1 ayat (1)

sex unions are illegal in Indonesia. In fact, though, a lot of things take place independently of both religion and the government.

In many parts of Indonesia, same-sex marriage is a common practice. Due to the fact that same-sex marriage is widespread and has become endemic in Indonesian society, it has become one of the occurrences that upset and inconvenience the general population. One of the Indonesian same-sex or homosexual marriages that has taken place is between Joe Tully and Tiko Mulya, a same-sex couple.⁴

The majority of Indonesians find the aforementioned phenomenon troubling, however it is consistent with the fact that it happens in society even if it is against the law. It's probable that LGBT organizations will take another move when same-sex marriage takes place, notably calling for children to be adopted. The LGBT community nowadays is more concerned with fighting for their rights in society, such as the right to adopt children and the right to have a family and marry someone of the same sex, than it is with simply wanting to be acknowledged as existing. Every person in the world has the right to adopt a child, whether they are married or not. There are even numerous of LGBT (lesbian, gay, bisexual, transgender) couples who adopt children.

Few articles address the inheritance rights of children adopted by LGBT couples, despite the fact that one of the legal repercussions of child adoption is the adopted child's expert status. Instead, many articles discuss the conflict between same-sex marriages and the procedures for same-sex couples to adopt children. The adopted parents' heir. This status is what frequently sparks disputes or family disputes. Cases that frequently come up in court cases typically have an impact on whether or not the adoption of the child is legitimate, as well as the status or role of the adopted child as the heir of the adoptive parents, particularly when the adoptive parents have a deviant orientation (LGBT).

⁴ <http://www.rappler.com/indonesia/pernikahan-sesama-jenis-bali>, diakses pada tanggal 25 Juni pada pukul 10:50 wita.

LGBT people's adoption of children has also generated a lot of discussion. Adi Partogi Singal Simbolon, an attorney from the Indonesian Advocates Organization (IAO), stated that same-sex couples are not permitted to adopt children. The Republic of Indonesia Minister of Social Affairs Regulation No. 110/HUK/2009, which specifies that adoptive parents must meet a number of conditions, declares as much in article 7 regarding adoption requirements. For example, being in good physical and mental health, acting appropriately, having never received a criminal conviction, being lawfully wed for at least five years, and not being a same-sex pair.⁵

The adopted child's status as the heir of the adoptive parents is one of the legal repercussions of the adoption incident. This status is what frequently sparks disputes or disputes inside the family. The legality of the adoption of the kid and the adopted child's status as the adoptive parents' heir are two issues that frequently come up in court cases. Meanwhile, it is prohibited for LGBT couples to adopt children in Indonesia.

B. Research Method

Since normative legal research is conducted by reviewing library materials or secondary data, this research falls within the category of normative juridical research, which is defined as library law research.⁶ Finding the truth through normative legal study is a method of scientific inquiry.⁷

Both a case approach and a concept approach are used in this research methodology. In order to implement the case approach, a study of relevant cases that have resulted in court rulings with conclusive legal effects is conducted.⁸

Additionally, the conceptual approach (conceptual approach) is a style of approach in legal research that offers a viewpoint of problem solving analysis from

⁵<https://www.merdeka.com/peristiwa/tanpa-harus-menikah-bisakah-pasangan-lgbt-adopsi-anak-di-indonesia.html> diakses tgl 30 Juni 2023.

⁶ Soerjono Soekanto dan Sri Maudji, *Penelitian Hukum Normatif; Suatu Tinjauan Singkat* (8th ed) (Jakarta Rajawali Pers, 2011), 142.

⁷ Ibid

⁸ Bachtiar. *Metode Penelitian Hukum* (Pamulang: Unpam Press, 2018). 83.

the angles of the underlying legal concepts, or even from the values contained in the normalization of a regulation in relation to the concepts concept used.⁹

C. Findings and Discussion

1. Adopted Children's Inheriting Under Indonesian Law.

According to BW (Burgelijk Wetboek), the adoption issue is not addressed by the legislation; instead, BW regulates out-of-wedlock adoption and other forms of adoption. Since the Civil Code does not recognize adoption, it can be stated that this article has nothing whatever to do with adoption. As a result, Dutch citizens have not been able to adopt children lawfully until today. However, the adoption agency will continue to move in that direction and follow societal developments.

In 1917, the Dutch authorities published Staatblad No. 129, which contains articles 5 to 15 that expressly address adoption-related issues. for the Chinese neighbourhoods. Since Staatblad 1917 No. 129 is the only addition to the current Civil Code/BW, any discussion of adoption-related concerns in the Western version must begin with the Staatblad. As a result, it can be seen from the Staatsblad that adoption is permitted by law and even has the right to inheritance distribution.

According to the Civil Code, there are two ways to inherit, namely: a. Heirs according to the provisions of the law, and b. Because it was appointed in a will (testament). The first method is called inheritance by law or "ab intestate" while the second method is called "feramenair" inheritance. Furthermore, it is stated in article 832,833,834 of the Civil Code (BW) that: Article 832: "Even if the heirs by themselves because of the law obtain ownership rights to all goods, all rights and all receivables of the deceased" Article 833: "Basically everyone, even if a newborn baby who is capable of appearing as an heir inherits the inheritance of the deceased's parents, wife and husband and wife and relatives of the deceased. Article 834: "Each heir has the right to file a lawsuit to fight for inheritance rights for all of them... he

⁹ S. Nasution. *Metode Research (Penelitian Ilmiah) usulan Tesis, Desain Penelitian, Hipotesis, Validitas, Sampling, Populasi, Observasi, Wawancara, Angket* (Jakarta: PT. Bumi Aksara, 2017). 16.

may advance the entire inheritance... or only a part of it..." inheritance is a must while still guided by the Civil Code (BW).

The legal ownership of the adopted child's inheritance rights to his adoptive parents will change as a result of the adoption. In theory, adopted children's inheritances are restored to their adoptive parents' inheritance laws. According to legal theory, adoptive parents have a duty to ensure that their adopted kid is not left alone after they pass away. For this reason, adopted children are frequently granted an inheritance to live on through a will in social situations. A testamentary grant is a mechanism for a person who owned property during their lifetime to make their final wishes known.

After the heir passes away, his inheritance will be distributed to the future heirs. This final request is typically made when the heir is gravely ill and is unlikely to survive, and in some cases, even before the heir passes away. The heir generally trusts him to make this last will in front of his closest family members. This last utterance concerning his wish is known as *wekason* or *welingan* in West Java, *umanat* in Minangkabau, *peuneusan* in Aceh, and *ngeudeskan* in Tapanuli. Adopted children can inherit from their adoptive parents, but it's crucial to avoid hurting any other heirs who already exist. Children who are adopted may take possession from their adoptive parents, but it's crucial to avoid hurting any other heirs who already exist. An adopted child who is given a will that does not depart from the *Ligitieme Portie* (absolute part) can be given to the child who was adopted orally but cannot inherit from the person who adopted him. Depending on the location, adopted children who are adopted by the District Court may be able to inherit from their adoptive parents with certain restrictions. This is because each region may have its own laws regarding the inheritance of adopted children.

According to Article 832 of the Civil Code, there are two ways to inherit: a. *Abintestato* (statutory heirs). This law's regulations provide that only blood relatives—both legitimate and illegitimate—and the spouse who has lived the longest are eligible to receive an inheritance share. A testament (testament)'s heirs are

referred to as testament heirs under Article 899 of the Civil Code. In this situation, the property owner makes a will in which the heirs are named.

An adoptive child, whether still a child (not yet an adult) or an adult, has the same obligations as this adoption. An adopted child is a result of someone taking/making another person as his child without relinquishing the child's family ties from his original parents. The section on inheritance rights by will (testamentairerfrecht) of the Civil Code (Burgerlijk Wetboek), which is comprised of the articles governing the absolute part of the law, is included in Articles 913, 914, 916, and so forth.

2. Eligibility of Children Adoption by LGBT Couples to Inheritance

Because humans are born with a fitrah nature, religious teachings refer to human nature. A youngster is never given the option of choosing his family of origin. The same is true for children who do not know if they were adopted by an LGBT couple, which is not recognized by Indonesian positive law.

Thamrin Nasution defined parents as someone who is in charge of a family or household responsibilities, often known as father and mother in common parlance. If Hurlock is right and parents are the ones who raise their kids to be adults, especially throughout development.¹⁰ Jelas that families in Indonesia are those where a father and mother are present, not those where an LGBT couple fulfills the role of father and mother. Parents must make an attempt to meet their children's needs in a variety of areas as part of their duty to them. Parents are expected to teach their children beginning at a young age in addition to supplying their children's bodily necessities, such as ensuring a living or daily meals. Even if LGBT couples have provided for all of the children's needs in terms of clothes, food, and shelter, it goes without saying that they are still regarded as outside of Indonesian society's norm.

Parents have duties which involve safeguarding, educating, and nurturing their children. Develop kids based on their skills, passions, and capabilities. Stop young marriage among your children. Parents are the children's primary and first educators

¹⁰ Fauzan, *Hukum Pengangkatan Anak*, (Jakarta: Kencana, 2008). 44.

because it is through them that they obtain their initial education. In Indonesia, child insurance, which covers foster children as well, is intended to ensure that these kids have the freedom they deserve so that their worth, decency, and prosperity can be acknowledged.

The motivation for caring for a kid must be for both the child's welfare and the obligation of the person closest to the child, according to Article 39, paragraph 1, of Law Number 23 of 2002 concerning kid Protection. Traditions and rules pertaining to this arrangement really guarantee insurance for kids who are extremely submissive to their parents. Kids then need security so that they generally feel secure and comfortable, especially as kids who have just finished the cycle of acceptance.

Particularly, the duplication of an authority of attorney from the regional court, particularly the preferred court (only for non-Muslims) and the choice of rigorous courts (only for Muslims), must be used to verify the registration of acceptance of children. In order to add a postscript to the opening quotation, I will use the example of how young people accepted global authentication.

In terms of motivation for adopting a kid, conventional law acceptance places greater stress on the worry of the new parents' arrival about removal; at that time, the new parents' arrival (childless families) will remove the child away from the strength of the bond. climate that is concerned with family ties. The infant would be subjected to the entire situation of organic descent from the mother and father who welcomed him, and he would be separated from the special group of family members.¹¹

The article explores the legal repercussions for kids whose acceptance is not upheld by a court decision and whose life is given to an LGBT couple. It is obvious that the perception has undergone a number of unsatisfactory cycles, notably taking the reception rather than going via the courts. As stated in Article 20 of legislation No. 54 of 2007 governing child adoption, "Applications for adoption that meet the requirements are submitted to the court to obtain a court order," this becomes

¹¹ Ahmad Kamil, *Hukum Perlindungan Dan Pengangkatan Anak Di Indonesia* (Jakarta: Rajawali Pers, 2008). 34.

problematic because the legislation mandates that acceptance of children must be through a court application. Couples who identify as LGBT will never be able to file a lawsuit because the state does not recognize their status.

The stance of the court's decision in this case is crucial for controlling legal concerns; if adopting a child is done by a court order and not by hand, as LGBT couples are allowed to do, the court can offer complete legal certainty for the protection of adopted children. Through the registration of appropriations, public authorities are also responsible for guaranteeing the freedom of adoption of children. The acceptance of the child, for which a court order has been obtained, is registered by the new parents by writing very minor notes in the Birth Authentication Quotation, which is subsequently included in the general registration size.

The legal ramifications of an undetermined adoption of a child include the absence of a legal relationship between the adopted child and his adoptive parents, which precludes future litigation between the parties (in this case, the new parents and the adopted children) should problems or questions arise.

Each party's freedom and obligations cannot be subject to the Court's control, along with a number of other legal outcomes. A court ruling saying that the acceptance has occurred and is legal serves as proof that adopted children enjoy the advantage of legal status in terms of insurance.

As an outcome, it could promote erroneous beliefs about what is permissible and what isn't. For instance, when an adopted child passes away, the woman becomes a mahram and is forbidden from marrying anyone she should or might marry. When this happens, she is able to see the other person's nakedness. It ought to be uncool to look at. Then, at that time, there can also be a disruption in the freedom and relationships inside the family. This considers the disruption of family obligations and benefits that have been governed in Islam from a religious standpoint.

Legal repercussions lead to in the dissolution of the child's legal partnership with his biological guardian and the emergence of other legal relationships with new parents, such as guardianship. For instance, for a girl who adheres to the Muslim

faith, if she is about to marry, only her biological father can be her marriage guardian or a member of her immediate family (siblings), and new parents are not allowed to be their guardians. The adoption of children without following the proper procedure, which is typically done by LGBT couples who don't want to deal with the bureaucracy in our nation, might have legal repercussions:¹²

- a. It can cause confusion about what is legal and what isn't. She cannot marry someone she should or should be able to marry, for instance, because she has an adopted child, yet she is also permitted to view other people's private parts, which is against the law;
- b. Interference with family relationships and rights. This makes it possible to violate Islamically outlined family obligations and rights. Those who identify as LGBT will naturally not consider religious beliefs because they are aware that the same-sex relationship they are participating in is wrong due to the law that results in the legal relationship between the child and the biological parents being completely broken and a new legal relationship with the adoptive parents. Guardianship issues can occur, such as the fact that an adopted Muslim woman cannot have her adoptive parents serve as her marriage guardian if she plans to wed; only her biological parents or blood relatives are permitted to do so.
- c. The adoption of a child who has been adopted into a family of adoptive parents may cause hostility among the family's offspring. For instance, in the case of an inheritance, the adopted child shouldn't receive an inheritance; instead, he becomes an heir who can pay for the amount that should go to other heirs who are legally entitled to it.

These legal repercussions may arise because the intended adoptive parents are unaware of the adoption procedures and because the LGBT couple is trying to create a Sakinah family by going against the natural laws that God Almighty has

¹² M. Budiarti, *Pengangkatan Anak Ditinjau Dari Segi Hukum* (Jakarta: Aka Press, 1991). 46.

established. Legal protection is essential since it is a component that every nation must have. every arrangement.

According to Article 1 of the 1945 Constitution, which states that Indonesia is a constitutional state, Indonesia has established itself as such. As a result, Indonesia is a nation founded on the rule of law. By itself, legal protection turns into a necessary component and a result of a legal system.

The Republic of Indonesia Law of the Republic of Indonesia Number 35 of 2014 concerning Child Protection, as regulated in Chapter IV from Article 20 to Article 26, concerning various efforts made in the context of protecting, fulfilling children's rights, increasing children's welfare, and protecting children from negative impacts, has been implemented as a result of the government's commitment to provide protection for children. However, LGBT will undoubtedly have a negative impact on children.

However, the subject of adopted children is primarily addressed in this law in terms of the definition of adopted children, the adoption process, and the penalties for breaking the adoption process; the issue of registering adopted children is not specifically addressed. Since the State of Indonesia gained independence in 1945, it has only been possible to address the needs and rights of adopted children and act as a legal safety net with the passage of Law No. 23 of 2006 concerning Population Administration, as detailed in the technical provisions of its implementation through Government Regulation of the Republic of Indonesia Number 54 of 2007.

Article 39, paragraph 1, of Law Number 35 of 2014 Concerning Child Protection expressly states that adopting a child can only be done in the child's best interests and in accordance with regional customs and applicable legal requirements. For kids who are heavily dependent on their parents, this clause effectively assures protection. Children must therefore be protected in order for them to constantly feel secure and at ease, especially if they are adopted children who have recently undergone the adoption procedure.

Thamrin Nasution defined parents as someone who is in charge of a family or household responsibilities, often known as father and mother in common parlance. If Hurlock is right and parents are the ones who raise their kids to be adults, especially throughout development.¹³

The goal of Indonesian child protection, which includes protecting adopted children, is to guarantee that these children's rights are upheld so that there would be excellent, honorable, and prosperous Indonesian children. The government's hard work does not only stop at producing legislation and implementing regulations, but also at the level of implementation in the field, in order to protect the rights of adopted children to be registered and to lessen the possibility of child trafficking (trafficking of children).

Adoption is one of the significant events that must be noted in the civil registration register in this regard. According to article 1 number 17 of Republic of Indonesia Law Number 23 of 2006 regulating population administration, "Important Events" as events such as birth, death, stillbirth, divorce, recognition, validation, and adoption of children as well as name changes and changes in citizenship status. Article 1 paragraph 7 clarifies that the term "Implementing Agencies" refers to district/city apparatus that are in charge of and authorized to handle Population Administration matters.

In terms of article 1 number 15, the concept of civil registration is as follows: the work unit that oversees population registration and civil registration must record significant events experienced by a person in the civil registration register. In particular, the registration of child adoption must be supported by a copy of the district court's approval, or a court order. provides a foundation for writing notes in the margins of the birth certificate excerpt of the adopted child.

In this instance, the adoptive parents are required to document the adoption of the child that has been granted by a court order. This documentation is done by placing comments in the margins of the Birth Certificate Excerpt and is then included

¹³ Fauzan, *Hukum Pengangkatan Anak*. 44.

in the civil registration component. in the notes. A birth certificate's border remarks serve as official documentation of an adopted child's citizenship. In order to address the needs of adopted children and adoptive parents in Java, it is hoped that the government will be able to implement Law Number 23 of 2006 concerning Population Administration and Government Regulation of the Republic of Indonesia Number 54 of 2007 concerning Adoption of Children through the Draft Regional Regulation. In particular, the Government through implementing agencies such as The Department of Population and Civil Registry possesses.

Therefore, it can be argued that legal protection for adopted children who are in foster care or who are not registered cannot be provided if there is no official court ruling that establishes the adoption's legal basis and provides legal justification. However, unregistered adopted children can still receive legal protection if they adopt children through judicial institutions in order to gain legal security, justice, legitimacy, and documentation. It will be noted in this document that an adoption has taken place legally.

In order for the adopted child to receive a valid report in the form of a document as a court decision that will reinforce and get legal, the adoptive parent must truly pay attention to the significance of obtaining a legal determination from the court.

The best way to give the children included in this review a sense of security is to take them via the legal system to get legal protections, equality, validity, and documented archives. To ensure that the rights of adoption are upheld by the court system in this case, the public authorities play a significant role in law enforcement in connection to adoption.

Because there are no laws governing them and the adoption procedure is obviously problematic, children who are adopted by an LGBT couple do not have inheritance rights, according to Indonesia's constitution, where the rule of law prevails. And the state has accepted the existence of these rights if it acknowledges and accommodates the inheritance rights of LGBT adopted children.

D. Conclusion

Because Indonesia is a constitutional state with no laws regulating LGBT people's existence, LGBT couples' legal rights and obligations are completely unregulated under Indonesian law. In this instance, neither same-sex marriage nor the adoption of a child or the implementation of adoption that confers inheritance rights are made lawful. This is due to the fact that it is strongly against Indonesian religious beliefs, norms, and practices, as well as the Law on Adoption of Children, the Law on Child Protection, and the Terms and Procedures for Implementing Child Adoption. Therefore, under current law in the country, children adopted by LGBT couples have no constitutionally protected inheritance rights.

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