

**DISTRIBUTION OF INHERITANCE TO ADOPTED  
CHILDREN ACCORDING TO BATAK TOBA CUSTOMARY  
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**ABSTRACT**

Adoption of children has become a societal need and is part of the family law system, because it concerns the interests of each person in the family. One of the legal consequences of adoption is regarding the status of the adopted child as the heir of his adoptive parents. This status regarding adopted children often causes problems in the family. Problems that can arise are regarding whether or not the adoption of a child is valid, as well as the position of the adopted child as the heir of the adoptive parents. The research method used is Normative Legal Research (Normative Jurisdiction), namely a legal research method that uses secondary data sources, by examining related library materials. The adoption of a child in the Batak Toba traditional community is carried out by means of a traditional ceremony (eating together) which is attended by the dalihan natolu, traditional king, dongan sahuta and other families. So the position of the adopted child regarding the division of the adoptive parents' inheritance is valid according to customary law, and there are also some communities who continue to ratify and determine the child's adoption with a court decision, after a traditional ceremony. Then it is registered at the local civil registration office, so that the adopted child's name is listed as a family member on his parents' family card. And in terms of inheritance distribution, adopted children have the same position as biological children.

**Keywords: Adopted Children, Inheritance, Toba Batak;****Journal History**

Received	: May 26, 2025;
Reviewed	: May 27, 2025;
Accepted	: May 30, 2025;
Published	: May 31, 2025.

*Copyright ©2022 NLR. All right reserved.***INTRODUCTION**

A child is someone who has not reached the age of 21 (twenty one) years and has never been married. With the gift of a child from God Almighty, to

entertain, encourage parents in earning a living and are expected to be able to continue the ideals of their parents and the mainstay of life for their parents as the successor to the family, while later having the obligation to care for and take care of their parents. Because based on Article 1 of Law Number 1 of 1974 concerning Marriage, the purpose of marriage is to form a happy and eternal family (household) based on the Almighty God.

In the life of an adult, of course, when married, they want to have children, because children are something that is very desirable. This is because there is a view of life that children or descendants are the mainstay of parents in the future. A person's hope to have children is sometimes not always achieved, there are many people who do not have children who then adopt other people's children to be the successors to their family.

According to Government Regulation Number 54 of 2007 concerning the Implementation of Child Adoption, Article 1 states that Child Adoption is a legal act that transfers a child from the sphere of authority of the parents, legal guardian, or other person responsible for the care, education and raising of the child, into the environment of the adoptive parents' family.

Adoption and foster children are part of the substance of child protection law which has become part of the law that lives and develops in society according to different customs and motivations as well as the legal feelings that live and develop in each region.

Adoption has become a community need and part of the family law system, because it concerns the interests of individuals in the family. Therefore, the institution of adoption, which has become part of the community's culture, will follow the development of the situation and conditions along with the level of intelligence and development of the community itself. Because adopting a child is a legal act, so that the act has legal consequences. One of the legal consequences of the adoption event is regarding the status of the adopted child as the heir of his adoptive parents. This status of the adopted child is what often causes problems in the family. The problems that can occur are about the validity or otherwise of the adoption, as well as the position of the adopted child as the heir of the adoptive parents.

In Indonesia, many communities are familiar with adoption, one of which is the Batak Toba indigenous community that uses its own customary law (custom). Customary inheritance law on its position in the Indonesian National legal system is an unwritten or uncodified law, some interpret customary law as customary law. In customary law, adoption is a cash act, the child is released from the old environment simultaneously with the giving of compensation in the form of

magical objects, and after payment the child enters the family environment as a child.

If seen, from an Islamic perspective, the distribution of inheritance for adopted children is determined by the amount. The inheritance rights of adopted children to inheritance assets as stated in Article 209 of the KHI are as follows: "Adopted children who do not receive a will are given a mandatory will of up to 1/3 of the inheritance of their adoptive parents". While in customary law, the determination of inheritance for adopted children depends on the applicable customary law. For parental families, for example Java, adoption does not automatically sever the family ties between the child and their biological parents. Therefore, in addition to receiving inheritance rights from adoptive parents, they also receive inheritance rights from their biological parents. Unlike in Bali, adoption is a legal obligation that releases the adopted child from their original family to their adopted family, the child becomes the biological child of the adopter and terminates the position of their adoptive father.<sup>1</sup>

If you look at North Sumatra Province, especially in the Toba Batak people have an inheritance system in customary law in terms of the distribution of customary inheritance based on the patrilineal kinship system which means that the lineage is only drawn from the male line. Therefore, the Toba Batak tribe adopts children mostly from male children who come from the same clan as their adoptive parents, and not infrequently they are taken from biological nephews. This is intended so that in the genealogy of their adopted family, their adoptive parents' lineage is not cut off in the family tree.

Adoption in Batak Toba customary law, severing the legal relationship between the child and his biological parents. So that adopted children must receive the same rights as biological children if there is a connection with the distribution of inheritance, in reality the status of adopted children is what often causes problems in the family. The problems that can occur are about the legality or otherwise of the adoption, as well as the position of adopted children as heirs of the adoptive parents.

## **METHOD**

The type of research used is Normative Legal Research (*Normative Jurisprudence*), namely a method of legal research that uses secondary data sources, by examining related library materials. The type of research used is Normative Legal Research (*Normative Jurisprudence*), namely a method of legal research that uses secondary data sources, by examining related library materials. Normative legal research or library research is a research that examines document

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<sup>1</sup> M. Budiarto, *Pengangkatan Anak Ditinjau dari Segi Hukum*, (Jakarta: Akademia Pressindo, 1991),p. 21

studies, namely using various secondary data such as laws and regulations, court decisions, legal theories and opinions of scholars.<sup>2</sup>

The nature of this research is to use descriptive research. Descriptive research is a form of research that is intended to describe existing phenomena, both natural phenomena and man-made phenomena. For example, existing conditions or relationships, developing opinions, ongoing processes, consequences or effects that occur, or ongoing trends are then analyzed and conclusions are drawn.<sup>3</sup>

The approach method applied in legal research to be carried out by researchers is to use a normative approach method which is deductive, starting with an analysis of the articles that regulate the matters that are the problems above.

In research, there are generally three types of data collection tools, namely document studies, observations and interview guidelines. The three data collection techniques can be used simultaneously or individually.<sup>4</sup> To obtain secondary data in the form of primary, secondary and tertiary legal materials, researchers will use data collection techniques in the form of document/library studies or library research.

Literature research is conducted to collect secondary data through a review of laws and regulations, literature, writings of legal experts, lecture materials related to this research.<sup>5</sup> As data in this study, secondary data is used as data that can support the existence of primary data, both of which include primary legal materials, secondary legal materials and tertiary legal materials.<sup>6</sup>

Data analysis is the process of organizing and breaking down data into patterns, categories and basic units of description so that themes can be determined and working hypotheses can be formulated as suggested by the data.<sup>7</sup> This study uses qualitative data analysis, which means that the data is described descriptively, as in the forms of social science research, when conducting research on that science. Furthermore, conclusions are drawn using the method of deductive thinking, namely a way of thinking that starts from general things to then draw specific things using provisions based on general knowledge such as theories, postulates or principles in the form of propositions to draw conclusions about specific facts.<sup>8</sup>

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<sup>2</sup> Bambang Waluyo, *Penelitian Hukum Dalam Praktik*, (Jakarta: Siinar Grafika, 1996), p. 13

<sup>3</sup> Peter Mahmud Marzuki, *Penelitian Hukum*, (Jakarta: Prenada Media, 2005), p. 35

<sup>4</sup> Soejono Soekanto, *Pengantar Penelitian Hukum* (Jakarta: Universitas Indonesia, 2014) p. 21

<sup>5</sup> Riduan, *Metode & Teknik Menyusun Tesis* (Bandung: Bina Cipta, 2004), p. 97

<sup>6</sup> Soejono Soekanto dan Sri Manudji, *Penelitian Hukum Normatif Suatu Tingkatan Singkat*, (Jakarta: Raja Grafindo Indonesia, 1995), p. 38

<sup>7</sup> Lexi J Maleonf, *Metodologi Penelitian Kualitatif*, (Bandung: Remaja Rosdakarya, 1993), p. 103.

<sup>8</sup> Mukti Fajar ND and Yulianto Achmad, *"Dualisme Penelitian Hukum: Normatif: & Empiris"*, (Yogyakarta: Pustaka Pelajar, 2010), p. 109

## DISCUSSION

### **The Position of Adopted Children in the Distribution of Inheritance According to Batak Toba Customary Law**

Customary Law is a law that applies and develops in the community environment in a region. There are several definitions of Customary Law. According to Hardjito Notopuro, Customary Law is an unwritten law, customary law with characteristics that are guidelines for people's lives in organizing social justice and welfare and are familial in nature. Soepomo, Customary Law is a synonym for unwritten law in legislative regulations, laws that live as conventions in state bodies (parliament, provincial council, and so on), laws that live as customary regulations that are maintained in social life, both in cities and in villages. According to Cornelis van Vollenhoven, Customary Law is a collection of regulations on behavior for indigenous people and Eastern Foreigners on one side have sanctions (because they are legal), and on the other side are in an uncodified state (because of customs).<sup>9</sup>

Customary Law is generally not or is not written, namely a complex of norms that are based on the people's sense of justice that is always developing including regulations on human behavior in everyday life, always obeyed and respected because they have legal consequences or sanctions. From the four definitions above, it can be concluded that Customary Law is an unwritten and uncodified rule, but is still obeyed in society because it has certain sanctions if it is not obeyed. From the definition of Customary Law expressed above, the form of Customary Law is mostly unwritten. On the basis of the recognition of the position of customary law, customary law is still often used for customary areas.<sup>10</sup>

In customary law, many things are the scope of customary law regulations, one of which is customary inheritance. In customary areas, customary inheritance for children with adopted child status varies. Even the position of adopted children in some areas is not the same, this depends on the nature of the family structure, namely patrilineal, matrilineal, and parental/bilateral. So that the Batak Toba community is classified as having a patrilineal kinship structure.

In the Batak Toba area, it is determined that a “*naniain*” child is different from an adopted child according to the everyday understanding, namely that a child (male) cannot be adopted from anyone except from a close family to become a *naniain child* and becomes the heir of the father who adopts *him* and loses the right

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<sup>9</sup> Dewi C Wulansari, *Hukum Adat Indonesia Suatu Pengantar*, (Bandung: PT Refika Aditama, 2010), p. 3-4.

<sup>10</sup> A. Suryaman Mustari Pide, *Hukum Adat, Dahulu, Kini dan Akan Datang*, (Jakarta: Kencana, 2014), p 1-2.

to inherit from his biological parents. However, according to Mr. Patar Simamora, “*nanian*” is the same as an adopted child who does not have to adopt a child from a close relative but from anyone can be called mangain.

In the patrilineal kinship system (Batak Toba) which prioritizes male descendants, if a marriage does not have male descendants, it means that the family is considered to be extinct, then a male child can be adopted as the successor to the lineage. The adoption of a child must be done with the mutual consent of the biological parents and the adoptive parents. The adoption of a child will be valid if it is carried out with a traditional ceremony, witnessed and is a notification to the traditional head, relatives, *dalihan na tolu*, and the Batak Toba community.

*Dalihan Na Tolu* ( Tungku Nan Tiga) is a framework that includes blood relations and marriage relations that link a kinship group among the Batak Toba people. In *Dalihan Na Tolu* there are 3 (three) elements of family relations, namely:

- a. *Dongan Tubu* (Community groups in one tribe)
- b. *Hulahula* (Wife's male family)
- c. *Boru* (Family from the son-in-law's side)

Based on the interview results, according to Mr. Linson Banjarnahor, the reasons why the Batak Toba community in Humbang Hasundutan Regency adopt children are:

1. Because they do not have children or in order to have children.
2. As the heir of the heir.

According to Mr. Patar Simamora, the reason the Batak Toba community in Humbang Hasundutan district adopts children is also because:

1. Have no male or female offspring.
2. To continue the father's lineage, because if there are no descendants then the lineage or clan lineage will be broken.
3. Desire to have more offspring or add to existing offspring.

In addition, there are several types of reasons for adopting a child according to customary law, including:

1. Because I don't have children.
2. Because of compassion for the children, because the child's parents are unable to provide for them.
3. Because of compassion, where the child has no parents.
4. Because they only have sons.
5. As an angler for those who don't have children, to have biological children.
6. To increase the number of families. This is because the adoptive parents have biological children.
7. With the intention that the adopted child will receive a good education.
8. Because of the wealth factor.

9. To continue the lineage and obtain heirs for those who do not have biological children.
10. There is a family relationship.
11. It is hoped that children can help in old age and continue the lineage for those who do not have children.
12. There is a feeling of pity for the fate of children who are not cared for.
13. Because a biological child is sick or dies, in order to save the child, the child is given to a family or other person who does not yet have children, in the hope that the child in question will always be healthy and live a long life.

The Toba Batak indigenous community that adheres to the patrilineal system, prioritizes male children to continue the father's lineage or clan so that it does not become extinct or lost. However, with the development of the current era, according to the sources, not only male children can be adopted but female children can also be adopted depending on the wishes and agreement of the parents who will adopt the child with their family or relatives.

According to Mr. Langkas Lumbangaol, the procedure for adopting a child or mangain a child based on Batak Toba customary law in Humbang Hasundutan Regency is that the adoption of a child is carried out through a Batak Toba customary ceremony, but there are some communities who make the determination in court to validate that the child is officially the child of the person who adopted the child.

The adoption of children that is usually carried out by the Toba Batak tradition according to Mr. Patar Simamora and Mr. Langkas Lumbangaol is in the following manner :

1. Planning and asking for approval from family or relatives for the traditional ceremony “ *Marhesek hesek*”.
2. Inviting *the hula-hula* or Tulang, *dongan Sabutuha*, *boru*, *traditional king* and *dongan sahuta* or friends from the same village.
3. Bringing the adopted child to church for *tardidi* / baptism (naming ) with water and dressing the adopted child in white clothes.
4. A meal together attended by the family and invited guests, where the food is a form of respect for the family and invited guests.
5. Hula-hula or Tulang give *Ulos Parompa* as a sign that they have had *a bere* from *ibotona* (older/younger sister). *Ulos* is a type of clothing in the form of a piece of cloth. Where the cloth can be considered something that is blessed with sacred power.
6. Adoptive parents give *napuran tiar* / awards in the form of *Hepeng* (Money) to *the hula-hula*, *dongan sabutuha*, *boru*. *Traditional king* and *dongan*

*sahuta* or village friends, whose aim is to act as *Hoppon Baba* (shut up), so that they don't tell the child that the child is an *ain* or an adopted child.

7. Registered at the local civil registry office, so that the adopted child's name is listed as a family member on his/her parents' family card.

The position of adopted children, both male and female, regarding the inheritance of their adoptive parents. Based on the results of the study, it can be said that adopted children are entitled to be heirs of their adoptive parents' property because children who have been adopted or adopted have the right to receive inheritance from their adoptive parents. So that adopted children no longer have the right to inherit from their biological parents because the family relationship has been broken off.

The severance of family ties between the child and his biological parents, as a result the child has no obligations to his parents and ancestors. In the sense that the child has entered the family of his adoptive parents so that by carrying out the traditional ceremony the child has the status of a legitimate biological child and will become an heir based on his rights and obligations as a child.

#### **How to Divide the Inheritance of Adoptive Parents to Adopted Children If They Inherit Jointly with Biological Children Based on Batak Toba Customary Law in Humbang Hasundutan Regency**

In terms of inheritance distribution, each heir generally has the same status and is also required equally. However, there are one or two prerogatives. In addition, there are also various factors that influence the distribution of inheritance. Inheritance is not considered a whole circle that can be divided into exactly the same number of parts. And in reality, this is almost impossible to implement because the parts are never valued according to the amount of money, and are never cashed.

Based on the interview according to Mr. Manaek Siburian in terms of inheritance distribution that each heir has the same status, but it depends on the parents or testator who bequeaths the inheritance. There are also several types of inheritance that cannot be inherited to adopted children, namely inheritance which is a family heirloom from the testator's ancestors, because those who are entitled to receive family heirlooms are the original descendants of the testator.

Based on the research results according to Mr. Laguni Sihombing, heirlooms in the Batak Toba community can be in the form of *tagading* or traditional musical instruments, houses, and land. Where those who are entitled to receive the heirlooms are the biological children of the heir.

The results of the interview with Mr. Patar Simamora on the Toba Batak community who have the right to receive their parents' inheritance are as follows:

1. Biological children

Biological children are legitimate children as heirs, children born from a legitimate marriage. Legitimate children have priority as heirs. Biological children in inheritance have different inheritances between male and female children. The differences are as follows:

a. Son's inheritance

Boys as heirs can be known in the Batak Toba community, a patrilineal kinship system applies, which mostly applies to honest marriages. Basically, those who have the right to inherit inheritance are adult sons and/or have families who can be called "*panjaean*" in the form of land and houses.

b. Daughter's inheritance

Daughters are not heirs but can be recipients of a portion of the inheritance or "*pauseang*" to be brought as property into the marriage following the husband. In the Batak Toba community there is a custom of giving *pauseang*, given traditionally by *the hula-hula* (female parents) to their *boru* (daughter) during the marriage ceremony of the *borunya*. The giving of *pauseang* is an expression of parental affection for *the boru* or daughter, also called the giving of "*ulos na so ra buruk*" (a typical Batak woven shawl) that never gets old/rotten, as provisions for living a new life. And can also obtain a plot of land from their parents.

2. Adopted children

Adopted children are heirs of their biological parents. In Batak Toba society, adopted children have the right to inherit joint property from their adoptive parents, and do not receive inheritance from their biological parents.

Based on the interview results, the method of inheritance distribution that occurs in the Toba Batak traditional community is:

- a. If the adoptive parents have 2 (two) children, 1 (one) biological male child and 1 (one) adopted male child, then the parents' inheritance is given to both adopted children in equal shares. In this case, the adopted child does not receive inheritance.
- b. If the adoptive parents only have 1 (one) adopted child, male or female, then the inheritance or legacy is entirely given to the adopted child. Or depending on the adoptive parents, where the adoptive parents can give some to their older/younger siblings.
- c. If the adoptive parents have 2 (two) children, 1 (one) biological son and 1 (one) adopted daughter, then the inheritance is given to both of them with the son's share being the larger, the daughter only receiving a small amount, which can be in the form of land, gold and also money as a gift.

- d. If adoptive parents have 3 (three) children, 2 (two) biological male children and 1 (one) adopted female child, then the inheritance or legacy is given to the three children, with the note that the male child receives a larger share.

It can be seen from the statement above that there is no difference between boys and girls in the division of inheritance or parental property, although girls only get a small or unequal share. The division of inheritance that applies according to Batak Toba customary law is based on deliberation or family agreement, boys and girls both receive inheritance even though the division is not the same. Because in the Batak Toba customary society, men are the lineage of their parents as a substitute for their parents or father, so in this case men get a larger share than girls.

### CONCLUSION

Adoption in the Toba Batak traditional community is generally done with the motivation because the adoptive parents do not have children, because of compassion, and for the sake of the adoptive parents. The implementation of adoption in the Toba Batak traditional community is carried out through a traditional ceremony (eating together) attended by *the dalihan natolu*, *the traditional king*, *dongan sahuta* and other families. So that the position of the adopted child regarding the division of the inheritance of the adoptive parents is valid according to customary law, and there are also some communities that continue the ratification and determination of the adoption of the child with a court decision, after the customary ceremony. Then registered at the local civil registry office, so that the adopted child's name is listed as a family member on his parents' family card.

In terms of inheritance, adopted children have the same position as biological children. Only in large amounts the portion depends on the parents who give it. Sometimes there are parents who give the same portion to biological children and adopted children, there are also those who give a little to adopted children and there are also adoptive parents who give everything to adopted children if the adoptive parents do not have any children at all. It's just that adopted children do not have the right to inherit inheritance from their adoptive parents. Those who have the right to inherit the inheritance are only their biological children.

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ISSN (Print) 2723-3413 - ISSN (Online) 2722-3663

DOI: <https://doi.org/10.30596/nomoi.v6i1.24691>

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