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The Settlement of Adopted Children Status Regarding the Inheritance of Adoption Parents in Toraja

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ABSTRACT

The child adoption in Toraja ethnic is valid when it is conducted with traditional ceremony. However, the adoption of children that declared with traditional ceremonies still does not fully meet the requirements in written law which can lead to the legitimacy of adopted child position as the heir of his adoptive parents. The settlement of disputes over the inheritance distribution of adopted children can be resolved through the deliberations of relatives and customary heads. However, in its development, the Toraja ethnic began to resolve these disputes through the courts, because it was considered more capable of providing justice and legal certainty. This legal research is empirical research (socio-legal research) that can be classified into analytical descriptive research. The data used is primary data, which is obtained from interviews with respondents and informants while secondary data is in the form of judge's decisions and related legal theories. From the research result, it found that the settlement of disputes over the inheritance distribution of adopted children in Toraja can be resolved amicably through the deliberation for consensus within the family, customary elders or the local customary head, or resolved by the court.

Keywords: *Adopted Children, Dispute Resolution, Heirs, Toraja Ethnic*

INTRODUCTION

The customary law has a traditional and communal style passed down from ancient times and is still enforced and maintained by the ethnic. In Indonesia, one ethnic group that still has these characteristics is the Toraja ethnic who live in the mountains of the northern part of South Sulawesi, Tana Toraja Regency, North Toraja Regency, and Mamasa Regency. Therefore, Toraja people prioritize shared (communal) interests rather than individual interests, and then the relationship between ethnic members with one is based on togetherness, kinship, mutual help and cooperation. Toraja people recognize the division of castes or classes, which are divided into four castes, such as:¹

- a) *Kasta Tana' Bulaan* is high ethnic or high nobility class that serves as the heir and is given authority over religion and life's rules;
- b) *Kasta Tana' Bassi*, is a stratum of middle nobility who is eligible to inherit a *maluangan* stem (traditional government assistant) who has the authority of leadership and education;
- c) *Kasta Tana' Karurung*, is a social stratum that is never directly managed and is largely autonomous. This group is the recipient of *pande*, or carpentry abilities, and is appointed *Aluk Todolo* for purposes of *Aluk Petuoan*, also known as *Toindoq Padang* (the head of fertility cult rites); and
- d) *Kasta Tana' Kua-kua*, is a group that originates from servant who has the duty of serving *Tana' Bulaan* and *Tana' Bassi*. Another name for this group is *Tana' Matuqtu inaa* (workers). Since the independence of Indonesia, Indonesian government abolish this ethnic of *tana' kua-kua* because it did not accordance with human dignity. But in reality, this group is still audible and frequently presented throughout Toraja traditional ceremonies.

Toraja people adhere to a unique kinship system, called parental or bilateral kinship system, drawn from two lines of descent through father and mother lines. It is divided into a nuclear family, the father is the main role holder in the family, a person in charge and the head of the family. When the parents (father) pass away, his son will replace him, while his mother only educates and takes care of his children and maintains the family image. Toraja ethnic kinship system is unique since it is not limiting the rules regarding blood relations within a family, but as an infrastructure to strengthen the social and political groups in various aspects of life. The family is the main social and political group in Toraja ethnic. Therefore, every village is a big family. Each large family or *Tongkonan* has a family name used as the village name, and every individual is required to maintain the village unity.

In principle, humans cannot develop without marriage that resulting in affinity and creates a family that constructs into kinship and ethnic. Maslow stated that marriage is not only to facilitate the human sexual needs, but it has a broader

¹ Ansaar, "Rapasan: Upacara Pemakaman Bagi Kasta Tana' Bulaan Di Tana Toraja," *Walasuji* 5, no. 2 (2014): 225–238.

meaning that the individual will create a family and will be included in a group that needs a sense of belonging and affection.² On the contrary, from the Indonesian ethnic group, marriage is a sacred bond and is one of the gifts of God Almighty that cannot be avoided by mankind. Marriage is not just a bond between two different people from a man and a woman but is also a process of uniting two families.³

The ethnic perspective regarding the purpose of marriage is to form an eternal family and maintain harmonious and peaceful kinship relations. Then, marriage, according to customary law, is related to family, ethnic and relative affairs. The indigenous peoples who are still relatively strong have their principle of kinship based on heredity (genealogical). Marriage is a living value for continuing the generation and maintaining the genealogy and social position. Marriage also becomes the way to improve kinship relations. Another aspect of marriage relates to the individual position of assets and the inheritance of assets. In Toraja ethnic, marriage with distant cousins (cousins from the fourth lineage onwards) is a way to strengthen their kinship relations, and Toraja ethnic prohibits marriage with closest cousins (up to third lineage cousins), except for nobles, to prevent the assets or inheritance distribution.

The children adoption in Toraja ethnic is conducted by husband-and-wife even though they already have their children. Because Toraja people believe that the more children they have, the more *toding* (buffaloes) will be buried with them when they die as a symbol of prestige. The children's adoption process in Toraja ethnic can be taken from the family itself, sometimes even not from their family. The children adoption in Toraja ethnic does not differentiate between gender; both boys and girls can be taken as adopted children.

The legal act of adoption cannot be considered merely as the result of an agreement between the parties themselves but as an institution that creates a legal relationship for the adopted child with their adoptive parents' family environment based on a court order. Then, it must be interpreted that adopting a child is not a legal act that can occur at one time such as in goods delivery, but rather is a series of family relationship events that signify sincerity, love, faith and guarantee all the consequences in adopting a child. In Tana Toraja, children can be adopted from non-relatives as well as from family members, including young children who were adopted (*dianak bitti*) and adults who were adopted as children (*dianak kapua*).

The adoption of a legitimate child according to customary law of Toraja ethnic when it fulfills several conditions, such as there must be an agreement from both parents, both adoptive and biological parents, the child adoption must be conducted with a traditional ceremony called *dika'i* (a given bracelet on the hand of

² Tengku Erwinsyahbana Tengku Rizq Frisky Syahbana, *Aspek Hukum Perkawinan Di Indonesia* (Medan: UMSU press, 2022).

³ Lois Banne Noling, A. Purwanto, and Juliana Lumintang, "Perubahan Hukum Adat Pada Tradisi Perkawinan Masyarakat Suku Toraja Di Lembang Dende' Kabupaten Toraja Utara," *HOLISTIK, Journal of Social and Culture* 12, no. 3 (2019).

adopted child usually using thread or *diku'ku*/shaving his hair) by biological parents with adoptive parents and a traditional adoption ceremony must be witnessed by traditional leaders (customary head). After the traditional ceremony of adoption is completed, the adopted child becomes legal and has the position as the heir of his adoptive parents and has the same position as biological child.⁴

Related to child adoption in Toraja ethnic, it has legal consequences for the inheritance distribution from their adoptive parents since the adopted child often gets the inheritance through grants, such as land, rice fields and houses from their adoptive parents. In this case, the position of adopted child as the heir of his adoptive parents often causes disputes in inheritance distribution. The method used in resolving the inheritance disputes of adopted children in Toraja ethnic is through deliberations of close relatives and traditional leaders (traditional heads). However, in its development, the Toraja people began to resolve disputes over the inheritance rights of adopted children through the courts, because it considered more capable of providing justice and legal certainty. Meanwhile, based on the research conducted by Salurante,⁵ the children adoption from Toraja customary law community is not in accordance with the requirements for adoption according to Government Regulation Number 54 of 2007 concerning Implementation of Child Adoption. Then, the function of law as social engineering is not implemented since the existence of kinship and the values of justice according to local customary law in Toraja ethnic.

According to Ratnawati,⁶ the children adoption in Toraja ethnic divided into adoption at a young age, adults and children of *barani*, whose inheritance distribution is determined as the adoption is still in a kinship relationship, the inheritance received includes all assets owned by adoptive parents. If the adoption child does not have kinship, the inheritance given is limited to livelihood assets. For brave adopted children, the given property is in the form of grants since the adopted child has protected his adoptive parents and their property.

The inheritance distribution in Toraja ethnic is conducted through a deliberation among fellow heirs regarding the legacy left behind. Each party receiving the inheritance according to their respective rights. The distribution of inheritance received by an heir is not the same as one another, but is adjusted to the sacrifice to *Tongkonan* and their parents when they are still alive or dead at traditional death ceremony of their parents.⁷

⁴ Ellyne Dwi Poespasari Trisadini Prasastinah Usanti, *Tradisi Pengangkatan Anak: Menurut Hukum Adat Suku Toraja* (Surabaya: Jakad Media Publishing, 2020).

⁵ Putri Mani' Salurante, "Status Dan Batas Usia Anak Angkat Dalam Pewarisan Menurut Hukum Adat Toraja (Ma' Tallang) Setelah Berlakunya Peraturan Pemerintah Republik Indonesia Nomor 54 Tahun 2007 Tentang Pelaksanaan Pengangkatan Anak" (Universitas Atma Jaya, 2016).

⁶ Elfrida Ratnawati and Devika Anindya Sari, "Hak Mewaris Anak Angkat Perempuan Di Tana Toraja," *Jurnal USM Law Review* 4, no. 2 (2021): 879–892.

⁷ Resty Gloria Pasomba, Andi Suriyaman Mustari Pide, and Kahar Lahae, "Implikasi Hukum Terhadap Pranata Pangngiuran Menurut Hukum Adat Toraja," *Supremasi: Jurnal Pemikiran dan Penelitian Ilmu-ilmu Sosial, Hukum, & Pengajarannya* 16, no. 2 (2021): 192–2020.

Based on the previous research above, they only focused on the requirement or process in adopting children in Toraja ethnic without investigate the cases of legacy distribution for adopted child from their adoptive parents. This research is examining the cases regarding the inheritance distribution to adopted child in Toraja ethnic based on legal justice through court and judges' decision. The settlement cases of legal disputes regarding the inheritance of adopted children in Toraja ethnic which were resolved through the courts as happened in case in Saluputti District, Tana Toraja Regency. The case with decision Number 59/ Pdt. G/ 2009/ PN and the Decision of Supreme Court of Republic Indonesia Number 36/Pdt.G/2012/PN.MKL regarding the claim of adopted children in inheritance distribution of Toraja ethnic. With the claim of adopted child, the Court judge can resolve and decide on a case in a fair manner and it will be the duty of District Court judge, High Court judge and Supreme Court to find the right solution for the customary inheritance dispute. Based on the description above, the problems that will be analyzed are related to right position of adopted children to the inheritance of adoptive parents in Toraja ethnic and the settlement of disputes over the inheritance distribution of adopted children in Toraja ethnic.

RESEARCH METHODOLOGY

This article is empirical legal research (socio-legal research) and can be classified into descriptive analytical research. Socio-legal legal research is legal research that attempts to examine the law both internally and externally. Internally, socio-legal legal research is a type of legal research that examines doctrine and attempts to analyze norms. Externally, socio-legal legal research attempts to investigate the non-legal aspects of a legal issue.⁸ Although socio-legal research does not examine the law itself, it examines how people behave in society and in relation to the law.⁹

This research describes the behavior of ethnic members with the position of adopted children in Toraja ethnic as heirs to the inheritance of their adoptive parents. The distribution of inherited assets of the adoptive parents often causes disputes with other heirs. This settlement can be resolved according to the tradition, deliberation and its development in completing the distribution of adopted child's inheritance in the District Court. The data was collected through interviews with respondents and informants who know the condition of Toraja ethnic in parental kinship system which places men and women in the same position. While the secondary data is in the form of judge's decisions and related legal theories.

⁸ Kriswanto Kriswanto, "The Urgency of Socio-Legal Studies on the Political Configuration of the Job Creation Act's Formation," *Al-Adalah: Jurnal Hukum dan Politik Islam* 7, no. 2 (July 1, 2022): 107–123, <https://jurnal.iain-bone.ac.id/index.php/aladalah/article/view/2595>.

⁹ Adnan Hamid and Adilla Meytiara Intan, "The Existence of Identity Value and Image Protection on Legal Frameworks of United States of America (US) And United Kingdom (UK)," *IUS POSITUM (Journal of Law Theory and Law Enforcement)* 1, no. 2 (2022).

RESULT AND DISCUSSION

RESULT

The right of adoptive children to adoptive parents' inheritance in Toraja

According to customary law, adopting a child is taking that person's child into one's own family in a way that later results in a family bond between that person and the child adopted that is identical to that which exists between the parent and the biological child himself.¹⁰ Children who have been adopted are protected in many ways. Child protection refers to any actions taken to ensure that children and their rights are upheld, allowing them to live, develop, and participate in society in the best possible ways while also being safe from harm and discrimination.¹¹

Based on Article 1 point 1 of Law Number 23, 2002 concerning Child Protection as amended by Law Number 35 of 2014 regarding Amendments to Law Number 23 of 2002 about Child Protection (Child Protection Law) provides an understanding of children is someone who is not 18 (eighteen) years old yet including a child who is still in the womb. In the provisions of Article 12 of Government Regulation Number 54 of 2007 concerning the Implementation of Child Adoption, it is stated that one of the conditions for adopting a child is when their age is not 18 years old yet. Whereas the customary law of Toraja ethnic does not limit the age of adopted children and most adopted children are aged 21 and over. For Toraja ethnic, the most important thing for adopting a child is not the children age, but the ability or skill of the adopted child to conduct his obligations to their adoptive parents in accordance with Toraja customary law.

According to Article 1 point 9 of Child Protection Law, an adopted child is a child whose rights are transferred from parental family environment, legal guardian, or other person who is responsible for the care, education, and raising the children into their adoptive parents' family environment based on a court decision. Then, legal certainty is very important because without legal certainty, it will create chaos in ethnic. Therefore, a court decision is one way to obtain the legal certainty. It is clear that the function of law is to create order, justice and certainty in ethnic for the purpose of adopting a child is to improve the welfare of the adopted child themselves.¹² The provisions for children adoption in Toraja ethnic, such as:

- a) The person who will adopt the child must have an agreement between the biological parents of the child who wants to be adopted;

¹⁰ Bambang Daru Nugroho, Hazar Kusmayanti, and Dede Mulyanto, "The Division of Inheritance of Adopted Children in the Indigenous People of Kampung Naga Associated With Islamic Law," *Jurnal Bina Mulia Hukum* 7, no. 1 (September 12, 2022): 102–113, <https://jurnal.fh.unpad.ac.id/index.php/jbmh/article/view/985>.

¹¹ Hikmatul Mahfiyyah and Jawade Hafidz, "Juridical Analysis of Court Decisions Regarding Adopted Children in Their Position as Sole Heirs," *Sultan Agung Notary Law Review* 3, no. 4 (2021): 1193.

¹² Putu Novita Darmayanti and I Made Dedy Priyanto, "Hak Anak Angkat Terhadap Pembagian Warisan," *Kertha Semaya* 4, no. 2 (2016).

- b) The adoption for adult does not need approval from his biological parents, only agreement between the person who will be adopted and the person who will adopt;
- c) The child adoption must be conducted with a traditional ceremony, when the adopted child is still young, *diku'ku'* (bald), but when the adopted person is an adult, then there is no need for *duku'ku'*. However, traditional ceremonies are still conducted according to the stratification of adopted children;
- d) The traditional ceremony must be performed by *tobara'* (aluk todolo priest);
- e) The traditional ceremony must be witnessed by Toraja people, traditional elders, family and Toraja ethnic leaders; and
- f) When the child adoption is accompanied by promised gifts to the adopted child, there must be approval from adoptive parent's family and other heirs.

The position of legally adopted child must get the inheritance from his adoptive parents. Therefore, the relationship between adopted children and adoptive parents is similar to that between parents and their biological children, which has the rights and obligations of both adopted children and adoptive parents. In addition, customary law bases state that the adopted child has the right to inherit property from his biological parents. According to the customary law of Toraja ethnic, adopted children still inherit from their adoptive parents and also their biological parents since they have two springs. The inheritance of Toraja people is divided into three, such as:

1. *Mana'* (inheritance), heritage that has religious magical value that consists of two kinds, called:
 - 1) *Mana' disiosoi'* (high inheritance) means property that cannot be divided over control and ownership that comes from the ancestors and divided into two kinds:
 - a) *Mana' kano'koran* (non-physical inheritance) means legacy in the form of customary positions in ethnic that may only be passed on to their descendants, for example to *parengge'* (tribal council) in lembang government area to oversee the *aluk* prevailing in the ethnic during worship ceremony (*rambu tuka'*). The children of *to patalo* (tribal council) are the decision makers when *to parengge'* cannot decide a problem in ethnic.
 - b) *Mana' barang apa* (physical inheritance) means legacy in the form of property, for example *banua tongkonan layuk* (traditional house), *padang rante* (place where nobles doing their traditional ceremonies), *doke* (spears), *gayang* (keris), *kendaure* (beads), *ma'a* (cloth) and others. The relationship with all of these high inheritances cannot be divided among the heirs, but their integrity is maintained in the interest of family dignity.
 - 2) *Mana' ba'gi'* (lower inheritance), is the assets originating from the family above the father and mother, as well as the income assets of the parents

which can be divided over control and ownership according to the rights and interests of the heirs, such as rice fields, gold, and others. There are also lower inheritances which cannot be divided based on their function and the agreement of the heirs, for example, *banua tongkonan* as a place to unite the family, *kandaure* that can be used during *Ramto Solo'* and *Buka Tuka'* ceremonies.

2. *Daga' tang dicibali* or *ba'gi* (original property/innate property), is the legacy brought by the wife or husband into the marriage or property that is not obtained from the hard work of marriage, but is a gift or legacy received from parents before or after marriage.
3. *Torakna rampanan kapa'* or *daga' disibali* (joint property), is the property acquired by husband and wife in marriage, also an object of legacy from the heirs both as biological children and as adopted children. In Toraja ethnic, the joint property is an inheritance that must be obtained by adopted children.

The adopted children, biological children and children born out of marriage will be determine based on consensus deliberation between family and biological children to inherit the family properties. However, when the heir does not have biological children, it will be determined by close family or other heirs based on the obligations and responsibilities that have been conducted by adopted child towards his adoptive parents and *tongkonan* (traditional house) of his adoptive parents.

The requirements for adopted children who have the right to inherit the assets of their adoptive parents are they need to take care and pay attention to the adoptive parents in their old age, arranged the funeral ceremony for his adoptive parents, maintain the *tongkonan* (traditional house) of his adoptive parents by repairing, maintenance or construction of the *tongkonan*, both *tongkonan tang merambu* (liang) and *tongkonan merambu* (traditional houses), also conducting the *rambu solo* or *rambu tuka'* ceremony. Therefore, adopted children who receive inheritance from adoptive parents are adjusted to their sacrifices for their adoptive parents, then the inheritance or grants received by the adopted child cannot be taken back by other heirs, except for the adopted child or his descendants have been *ma'salian rinding* (deliberately leaving the adoptive parents' family) in conducting a ceremony for *rambus solo'* (death ceremony) and *ruka tuka'* (Thanksgiving Ceremony) as well as for *tongkonan* (traditional house).

Tongkonan as the center of life association for Toraja people in achieving happiness and wealth that especially associated with *tallu lolona* (*tallu* = three, *lolona* = rod, group. Tallu lolona means three sticks or three friends). *Tallu lolona* or the three friends are *lolo tau* (humans), *lolo patuan* (domestic animals or livestock), and *lolo tananan* (plants).¹³ The legacy for adoptive child when the adoptive parents have biological children is only joint property (*torakna rampanan kapa'*). However, when the adoptive parents do not have biological children and the

¹³ Diks Sasmanto Pasande, "Budaya Longko' Toraja Dalam Perspektif Etika Lawrence Kohlberg" *Jurnal Filsafat* 23, no. 2 (2013).

adopted children is a close family of the adoptive parents, then the adopted child has the right to all legacy of his adoptive parents, such as original assets, joint assets, low inheritance and the right to keep the high legacy that cannot be divided into ownership. However, when the adopted child is not the close family of adoptive parents, then the adopted child is only has the right to the joint property of their adoptive parents, while the original assets of the adoptive parents return to their close family.

DISCUSSION

The settlement of disputes against the position of adopted children in inheritance distribution in Toraja

Inheritance law has an important relationship with human life since every human will experience a legal event when they or their family dies. When a person dies, this will create legal consequences regarding managing and maintaining the rights and obligations of a person who has died. The settlement of a person's rights and obligations is regulated by law; then the inheritance is a provision that regulates the method of forwarding and transferring tangible and intangible assets from the heir to his heirs.

The issue appears when someone inherits in customary law when their death does not affect the inheritance distribution. The person can inherit something from their heirs when they are still alive. The inheritance is different from grants and wills, that a grant is a free gift to someone while the owner is still alive, while a will is a gift to someone that happens after the giver dies.¹⁴ The Toraja ethnic's traditional inheritance system is distinct from those of other tribal groups. When a member of Toraja ethnic passes away, the funeral procession takes on a greater significance since the Toraja will sacrifice a lot of things, such as buffalo that will be buried with the corpse in order to honor the deceased party. The size and the quantity of buffaloes that have been slaughtered serve become the parameter for inheritance distribution, which is also established by funeral ceremony.

The adoptive child is expected to get the protection from their adoptive parents, keep the generation, take care of his adoptive parents in their old age and keep on the dharma from his adoptive parents. The adoptive child obligation for his parents in ethnic is to conduct the filial piety when the adoptive parents was passed away in terms of organizing and conducting both burial and death ceremony.¹⁵ The position of adopted child in Toraja ethnic as the heir of their adoptive parents often creates disputes related to inheritance distribution, because in general, the adopted children are given the assets in the form of rice fields, fields, houses and buffaloes as the most valuable treasure of the family.

¹⁴ Sri Hajati et al., *Buku Ajar Hukum Adat* (Jakarta: Prenadamedia Group, 2018).

¹⁵ Ellyne Dwi Poespasari, *Pemahaman Seputar Hukum Waris Adat Di Indonesia* (Jakarta: Prenadamedia Group, 2018).

In reality, giving the assets from adoptive parents frequently leads to issues or conflicts. The dividing of inheritance between adopted children who are heirs and other heirs (the biological children of the heir) is a frequent source of conflict. The adopted kid's inheritance that should be divided is influenced by several factors, including the adopted child's legal status, his or her status as the heir of their adoptive parents', and the legal standing of assets entitled to adopted child from his or her adoptive parents.

According to Toraja traditional inheritance law, the existence of persons who passed away that left the legacy causes the inheritance conflicts. As a result, there is disagreement over how Toraja ethnic should divide the inheritance of adopted children, as the heirs frequently wonder when the adoption was legitimate or not. In regards to incidents involving disagreements over the inheritance distribution to adopted children among Toraja ethnic, there are numerous procedures to settle disagreements over the distribution of inheritance, such as:

- 1) Resolved through relatives and family through the deliberation to reach a consensus;
- 2) Resolved through traditional elders or customary heads; and
- 3) Resolved through the District Court.

Toraja people are strongly respect the values of their customary law; as a result, any disagreements pertaining to inheritance law will be settled amicably. Even though it occasionally does not result in a decision that is highly desired by the parties to dispute, the family discussions are still used to divide inheritance and can be resolved with traditional elders or customary heads. Therefore, the parties involved eventually take the inheritance case to court, and it does not rule out that the adopted child is entitled to all the inherited assets of his adoptive parents.

Regarding the inheritance of law disputes in Toraja ethnic that require a settlement in a deliberative, harmonious, peaceful and not only limited to disputing parties, but also includes all members of the deceased heir. When all the attempt to take the deliberation for consensus and peace in front of family, relatives and the ethnic are not found the answer, then the case will solve by customary elders or the traditional head. However, when the customary head is still unable to resolve the inheritance law dispute, the inheritance of law dispute is brought to District Court. It will be the duty of district court judges, high court judges and the Supreme Court to find the right solution for the customary inheritance dispute that resulting in jurisprudence or a judge's decision. This also cannot be separated from the fact that the judiciary is one of the accesses to obtain justice, as stated by Duygu Hatipoğlu-Aydın¹⁶ that access to justice as a practical and process-based concept may be defined as the capacity of people to access judicial institutions which shall bring solution to common judicial problems of the people. While the burdens before

¹⁶ Duygu Hatipoğlu-Aydın and Mustafa Berkay Aydın, "The Gender of Justice System: Women's Access to Justice in Turkey," *International Journal of Law, Crime and Justice* 47 (December 2016): 71–84, <https://linkinghub.elsevier.com/retrieve/pii/S1756061616301069>.

access to justice are common for various groups, women may suffer more frequently accessing these institutions and have difficult time to overcome the burdens due to other structures which produce inequality.

The basis for judge's decision-making in a case or disagreement is the law; when the law is deficient or unclear, the judge must discover and create his own law. The judges must research the law (*rechtsvinding*). The legal discovery is the process of determining the law by judges or other law enforcement officials who are tasked with applying broad legal rules to specific legal events or establish the best solution based on the needs and ethnic expectation.¹⁷

The existence of legal discoveries is encouraged by judges difficulties when understanding the intent of legislators as a basis for adjudicating, because the substance of laws is never complete in the midst of social dynamics; judges have difficulty in understanding the intent and purpose of legislators; in terms of language, sentence, terminology in the law is general, broad, abstract, normative and ideal technical; filling legal voids and giving meaning and soul to laws; and the problems faced are real, concrete and contextual. Then the judge may not refuse to examine a case that has been submitted to court on the pretext that the legal basis does not exist or unclear, but the judge is obliged to examine since the judge is considered to know about the law (*Ius Curia Novit*). This is in accordance with Article 10 paragraph (1) of Law Number 48 of 2009 concerning Judicial Power which states that a court is prohibited from refusing to examine, judge and decide on a case filed with the reason of non-existent or unclear legal basis, but it is mandatory for judge to examine and solve it.

Article 5 paragraph (1) of Law Number 48 of 2009 concerning Judicial Power states that judges and judges of the constitution are obliged to explore, observe and understand the legal values and sense of justice that live in ethnic through the application of customary law in deciding or solving the case in order to explore and understanding about the new positive laws. Also, the judges must have high intellectual acuity regarding the existence of unwritten laws that obeyed and respected in ethnic. Furthermore, in Article 50 paragraph (1) of Law Number 48 of 2009 Concerning Judicial Powers, it is emphasized that a court decision must not only contain the reasons and basis for the decision, it also contains certain articles of the relevant statutory regulations or unwritten sources of law as a basis for adjudication. Based on the article above, the judge or court must be accompanied by the existence of existing reasons in making a decision, in this case unwritten law which is an alternative source of law besides the written law.

The settlement of cases on the inheritance of adopted children in Toraja ethnic which were resolved through the courts as happened in Saluputti District, Tana Toraja Regency, with decision Number 59/Pdt.G/2009/PN.MKL and Decision Number 36/Pdt.G /2012/PN.MKL regarding the claim of adopted children in the

¹⁷ Sudikno Mertokusumo, *Penemuan Hukum: Sebuah Pengantar* (Yogyakarta: Cahaya Atma Pustaka, 2014).

inheritance distribution to Toraja people. In this decision, the judge stated that the adopted child is legitimate as one of the heirs of his adoptive parents. With the existence of adopted child's lawsuit, the Court judge can resolve and decide on a case in a fair manner and it will be the duty of District Court judge, High Court judge and Supreme Court to find the right solution for the customary inheritance dispute. In solving legal problems, judges can be sourced from written legal rules and unwritten legal rules. There are two things that must be considered when judges resolving the case originated from unwritten law (customary law) as below:

- 1) In sentencing the court decisions, it is guided by a rule of substantive legal provisions of customary law as an empirical rule which is stated as a habit. The substantive rule of law is referred to by the court as a rule or provision which has been clearly specified in its form, as is the case with substantive rules in codified law.
- 2) The decisions that reflect the general principles and used to explore cases related to customary law expressed by "a sense of justice", adjudicating according to "wisdom" (in *goede justitie*) or "according to the conditions of the time and place", and "proper". The principles used by the courts as a guide in rendering decisions regarding different adat cases. The terms that are widely used are appropriate, justice, proper, the best plot, in accordance with the conditions of the times and places. Therefore, judges have different methods in resolving the cases based on written law (statutory regulations) in deciding disputes over customary inheritance law.

CONCLUSION

The settlement of disputes over the inheritance distribution of adopted children in Toraja ethnic can be resolved amicably through the deliberation for consensus within the family. However, when the settlement of inheritance distribution has not reached an agreement among the heirs, then it can be resolved with the customary elders or the local customary head, although sometimes the customary head's decision does not solve the cases based on the parties' need and expectation. Then, the cases were examined and investigated by the court. So, it is possible that the judge's decision on adopted child is entitled to the inheritance of his adoptive parents and it is considered that the settlement of inheritance distribution for adopted child in court is more capable of providing justice and legal certainty.

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