

INHERITANCE DISPUTE RESOLUTION RELATED TO THE POSITION OF ADOPTED SON BASED ON BATAK TOBA INDIGENOUS LAW

Ginora Roma Ida Sinaga, Bambang Daru Nugroho, Fatmi Utarie Nasution
Universitas Padjadjaran

*Correspondence Email: ginorasinaga@gmail.com

Submission: April 7, 2022

Publication: April 17, 2022

Abstrak. *This study aims to examine and analyze inheritance dispute resolution related to the position of adopted son based on Batak Toba indigenous law. This research was conducted using a normative juridical approach with analytical descriptive specifications. The data obtained were then analyzed using qualitative juridical methods. The results show that the indigenous inheritance law positions the adopted son on par with the biological son. Suppose there is an inheritance dispute between the adopted son and the biological child. In that case, the inheritance dispute resolution based on the Batak Toba indigenous law can go through three stages: family deliberation, indigenous institutions, and the courts are the final stage or step that must be chosen. Most of the Batak Toba indigenous people choose dispute resolution through indigenous institutions. In this case, the chance of failure of agreement in dispute resolution through indigenous institutions is tiny because indigenous institutions involve indigenous leaders who understand and control the Batak Toba indigenous law. Therefore, it is recommended to all Batak Toba indigenous people who are in dispute to carry out a resolution through three stages based on the Batak Toba indigenous law. In addition, it is hoped that all Batak Toba indigenous community elements will supervise the implementation of dispute resolution decisions, considering that Batak Toba indigenous people prioritize and uphold the values of kinship and peace in dispute resolution.*

Keywords:
*Adopted Son;
Dispute Resolution;
Indigenous Inheritance;
Inheritor.*

This work is licensed under a CC BY-4.0 License



INTRODUCTION

Humans as social beings live interdependently between humans with one another. A community is formed from humans who unite to form certain groups starting from the family. Then the family interacts with each other and unites into certain large groups, which are then called the community.¹

¹Nugraha, G. C. P., *et al.* (2020). Kedudukan Anak sebagai Ahli Waris yang Beralih-Alih Agama Menurut Hukum Waris Adat Bali. *Jurnal Konstruksi Hukum*, 1(1), p. 228.

The family is formed starting from the marriage process between a man and a woman who then in the marriage bond produces offspring called children. Based on Article 1 of Law of the Republic of Indonesia Number 16 of 2019 on Amendment to Law Number 1 of 1974 on Marriage (hereinafter referred to as Law No. 16 of 2019), explains that:

“Marriage is a physical and spiritual bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family (household) based on God Almighty.”

The phrase happy family in the above provisions can also be interpreted as a complete family consisting of a father, mother, and child. Every married couple commonly expects the presence of a child in a family to achieve happiness as the goal of their marriage. The desire to have children has different reasons and the driving factors for each family. In Indonesia, this difference is also influenced by the multicultural nature of the ethnic group. The views of each tribe in Indonesia regarding the presence of a child must be different. Some parents view children of a specific gender as special, and some do not. Therefore, these views certainly have a significant role in influencing the reasons for a family to have children only or the reasons for wanting to have children of a specific gender.

Not a few married couples are hampered by circumstances to have children. In addition, the destiny that God Almighty has set for them is also a factor in having children. However, some married couples do several alternatives to fulfill the desire to have children, for example, through medical sophistication or an adopted child.

In Indonesia, a kinship system or indigenous law plays a role in influencing married couples to adopt an adopted child. Indigenous law in multicultural Indonesia includes patrilineal, matrilineal, and parental. The Indigenous law also regulates the procedures for adopting an adopted child.

Several indigenous communities in Indonesia adhere to a patrilineal system. In this case, to determine the lineage. One of them is the Batak Toba indigenous community. The son's presence in the Batak Toba indigenous community family is significant. Child values in the Batak Toba indigenous community include *hamoraon*, *hagabeon*, and *hasangapon*.² In the Batak Toba indigenous community, there is an expression that *“anakkon hi do hamoraon di ahu* (my children are my wealth).” In the Batak Toba language, ‘child’ refers to a son. At the same time, the daughter is called *‘boru*³. From this expression, it can be seen that son is significant in his presence in a family because he is the successor of the lineage or clan in the family tree.⁴ Therefore,

²Silaen, R., et al. (2018). Analisis Pengangkatan Anak dalam Tradisi Adat Batak Toba di Kelurahan Tambusai tengah Kecamatan Tambusai Kabupaten Rokan Hulu Riau. *Jurnal Online Mahasiswa Fakultas Keguruan dan Ilmu Pendidikan, Universitas Riau*, 5(1), p. 3.

³Boru is a daughter who is very loved, but does not become the inheritor of her parents.

⁴Aritonang, P. C. S. (2008). "Kedudukan Anak Angkat dalam Hukum Adat Batak Toba setelah Berlakunya Undang-Undang Nomor 23 Tahun 2002 tentang Perlindungan Anak (Studi di Kecamatan Tarutung, Kabupaten Tapanuli Utara)". *Thesis*. Postgraduate School, Universitas Sumatera Utara, p. 34.

the adopted child carried out by a married couple of the Batak Toba indigenous community is only adopting an adopted son.

Based on the Batak Toba indigenous law, the adopted son is a son (*dongan tubu*/ biological brother) from the adoptive family. *Dongan tubu* in Batak Toba indigenous law is one clan family, so the presence of an adopted son is considered the same as a biological brother or biological child.⁵ The Batak Toba indigenous community's adopted son is carried out cash and concrete. Cash means that parents are obliged to give something valuable to the child's biological parent.⁶ At the same time, concrete means that the adopted son is carried out in front of the indigenous leaders and is known by the witnesses.⁷ The legal consequences of adopting this son are breaking up the son's relationship with the biological parent and only becoming the inheritor from his adoptive parents.⁸

According to Soepomo, the indigenous inheritance law contains regulations governing the process of giving property and intangible objects (*immaterial goederen*) from one generation to their descendants.⁹ The inheritance process does not take place after the death of the testator. So the process of distributing inheritance to each inheritor has taken place while the testator is still alive.

The Batak Toba indigenous law positions the adopted son as the inheritor from his adoptive parents. The distribution of inheritance that the testator does during his lifetime must include the adopted son as the recipient of inheritance under the inheritance law system in the Batak Toba indigenous community.¹⁰ As for the discussion of this research, adoptive parents are families who submit to and uphold their indigenous law system. This condition is known from the adoptive parents' attitude, who announce the distribution of inheritance to the adopted son before he dies. In this case, the parents give inheritance to the adopted son as it should be based on Batak Toba indigenous law.

Inheritance dispute is often present when the testator has died. In this case, when inheritance is supposed to be shared, the biological child then disputes the status of the adopted son who inherits from his parents. Biological children tend to behave to resist the inheritance of their parents, which should be part of the inheritance of the adopted son. Biological children feel more entitled to receive an inheritance from their parents because they are flesh and blood of their parents. When the researcher

⁵Simatupang, D. E. (2017). Kearifan Lokal Dalihan Na Tolu sebagai Bingkai Tiga Pilar Pembangunan Berkelanjutan Kawasan Danau Toba. *Jurnal Kebudayaan*, 12(2), p. 102.

⁶Adiasih, N. (2018). Penemuan Hukum oleh Hakim dalam Perkara Waris sesuai Asas Keadilan. *Adhaper: Jurnal Hukum Acara Perdata*, 4(1), p. 47.

⁷Nugroho, B. D. (2019). *Dinamika Hukum Adat*. Bandung: Yayasan Pendidikan Nasional Bandung, p. 42. See also, Suryani, A. L. & Prianto, Y. (2019). Pengaruh Emosi Keagamaan terhadap Kedudukan Anak Angkat pada Masyarakat Baduy Migran (Kasus Desa Cisimeut Lebak Banten). *Jurnal Hukum Adigama*, 2(1), p. 22.

⁸Nasution, A. (2019). Akibat Hukum Pengangkatan Anak menurut Undang-Undang Nomor 23 Tahun 2002 tentang Perlindungan Anak. *Jurnal Ilmiah Penegakan Hukum*, 6(1), p. 15.

⁹Soekanto, S. (2021). *Hukum Adat Indonesia*. Jakarta: Rajawali Pers, p.260.

¹⁰Interview Result with Leaders of Batak Toba Indigenous Community. T. Sinaga. October 15, 2021.

did the field practice, a biological daughter retained her parent's inheritance because it was entirely given to the only adopted son. In other cases, a biological son defies inheritance to an adopted son. This condition is a problem in the community because it contradicts the indigenous inheritance law system.

Research on inheritance disputes related to the adopted son's position based on Batak Toba indigenous law has been carried out several times. In their research, S. B. Hariandja, *et al.*, discussed the position of the adopted son in inheritance based on Batak Toba indigenous law.¹¹ S. Banjarnahor, *et al.*, discussed the distribution of inheritance to the adopted son of Batak Toba in Humbang Hasundutan Regency.¹² V. R. Naibaho & M. S. U. B. Sihombing discussed the position of the adopted son in inheritance based on Batak Toba indigenous law in the Samosir Regency.¹³ D. Ramdania discussed the position of the adopted son according to the indigenous inheritance law system in the Batak Toba indigenous community.¹⁴ M. E. Aritonang discusses the distribution of inheritance to adopted sons who have gone through the indigenous law of the Manuhor clan based on Batak Toba indigenous law.¹⁵

Previous research, as mentioned above, focuses on the adopted son's position based on indigenous inheritance law in the Batak Toba indigenous community in certain areas. This study will also discuss the adopted son's position based on indigenous inheritance law in the Batak Toba indigenous community. However, the discussion focuses more on inheritance dispute resolution related to the position of the adopted son based on Batak Toba indigenous law. Therefore, this research is considered to have novelty value.

Based on the description above, this study aims to examine and analyze inheritance dispute resolution related to the position of adopted son based on Batak Toba indigenous law. Therefore, this research is expected to be helpful as a source of knowledge related to resolving that dispute.

METHOD

This research was conducted using a normative juridical approach with analytical descriptive specifications. The normative juridical approach examines the law from an internal perspective, with the object of research being legal norms.¹⁶

¹¹Hariandja, S. B., *et al.* (2019). Kedudukan Anak Angkat dalam Pembagian Warisan Menurut Hukum Adat Batak Toba. *Jurnal Hukum Kaidah: Media Komunikasi dan Informasi Hukum dan Masyarakat*, 18(2), 45-57.

¹²Banjarnahor, S., *et al.* (2020). Pembagian Harta Warisan terhadap Anak Angkat Menurut Hukum Adat Batak Toba di Daerah Kabupaten Humbang Hasundutan. *Jurnal Hukum Patik*, 9(2), 90-101.

¹³Naibaho, V. R. & Sihombing, M. S. U. B. (2021). Kedudukan Anak Angkat dalam Pewarisan Menurut Hukum Adat Batak Toba di Desa Siogung-Ogung Kecamatan Pangururan Kabupaten Samosir. *Widya Yuridika: Jurnal Hukum*, 4(2), 435-444.

¹⁴Ramdania, D. (2016). Kajian terhadap Waris Anak Angkat Adat Batak Toba. *Wacana Paramarta: Jurnal Ilmu Hukum*, 15(2), 1-17.

¹⁵Aritonang, M. E. (2019). "Pembagian Warisan Anak Laki-Laki Manuhor Marga Ditinjau Berdasarkan Hukum Adat Batak Toba". *Thesis*. Postgraduate School, Universitas Sumatera Utara.

¹⁶Diantha, I. M. P. (2017). *Metodologi Penelitian Hukum Normatif dalam Justifikasi Teori Hukum*. Jakarta: Kencana Prenada Media Group, p. 12.

Analytical descriptive research specifications are carried out systematically, factually, and accurately by providing a description or descriptive explanation of the researcher's events about the existing facts to be adapted to the theory/doctrine and applicable regulations.¹⁷ The stages of research carried out in this research are library research to obtain secondary data from primary, secondary, and tertiary legal materials. The field research was conducted using interview techniques to obtain primary data from indigenous people. The data obtained were then analyzed using qualitative juridical methods, namely by examining the applicable laws and regulations to compare them with field practice in indigenous communities.

RESULTS AND DISCUSSION

A. Adopted Son's Position Based on Indigenous Inheritance Law in the Batak Toba Indigenous Community

The Batak Toba indigenous community does not view wealth or honor as not being judged by its assets. Because the most valuable and valuable assets, according to the perspective of the Batak Toba indigenous community, are their children.¹⁸ Every family in the Batak Toba community always tries to have a biological son. The absence of a son in a family will threaten to stop the process of continuing the family lineage. This condition is also considered the family lineage's extinction because it cannot pass the clan on to its descendants. Furthermore, families who do not have sons are seen as disgraceful or do not have honor in the Batak Toba indigenous community because they cannot pass the clan on to their descendants.

The significant desire of every family in the Batak Toba indigenous community to have a son encourages every family to try to get a son. One way that is usually done is by adopting an adopted son. The adopted son in the Batak Toba indigenous community is called '*mangain*'. In this case, the legal consequences of adopting this son are breaking up the son's relationship with the biological parent and only becoming the clan's successor inheritor from his adoptive parents. According to the Batak Toba indigenous law, the adopted son, which has legal consequences in the Batak Toba indigenous community, must be carried out in legal ways. A validly adopted son based on the Batak Toba indigenous law is the adopted son, which is carried out through an indigenous ceremony. The adopted son in the indigenous ceremony must be attended by indigenous leaders, parties in '*dalihan na tolu*', and indigenous people around the adoptive parents' residence.¹⁹ The indigenous ceremony adopted son in the Batak Toba indigenous community is called the '*dirajahon*'.²⁰

¹⁷Qamar, N. & Rezah, F. S. (2020). *Metode Penelitian Hukum: Doktrinal dan Non-Doktrinal*. Makassar: CV. Social Politic Genius (SIGn), p. 99.

¹⁸Interview Result with Leaders of Batak Toba Indigenous Community. T. Sinaga. October 15, 2021.

¹⁹Interview Result with Leaders of Batak Toba Indigenous Community. T. Sinaga. October 15, 2021.

²⁰Hariandja, S. B., et al. (2019). *Op. Cit.*, p. 50.

The Batak Toba indigenous community places the position of every indigenous people for sure from birth to death into three positions. In the Batak Toba language, it is referred to in the '*dalihan na tolu*' principle. *Dalihan na tolu* is a cultural value or main idea from God Almighty, which is the source or orientation of the attitudes and behavior of the Batak Toba indigenous people in their lives in socio-cultural relations.²¹ In addition, *dalihan na tolu* also functions as a guideline that regulates, controls, and gives direction to the behavior and actions of the Batak Toba indigenous people.²² *Dalihan na tolu* is symbolized by a three-legged stove, where the three legs of the stove are pillars or pillars to create stability in the life of the Batak Toba indigenous community. The three legs of the stove must be maintained so that nothing is damaged and must be intact and of the same height so that they can firmly support the stove above it.²³

The three legs of the stove in the principle of *dalihan na tolu* include *somba marhula-hula*, *manat mardongan tubu*, and *elek marboru*. Each man in the Batak Toba indigenous community acts as the three legs of the stove and depends on the ongoing indigenous ceremony, namely:²⁴

1. Men act as *hula-hula* (the giving of the wife) in an indigenous ceremony held by women who are in the same clan as him;
2. Men act as *dongan tubu* (brothers of the clan) in an indigenous ceremony held by men who are in the same clan as him;
3. Men act as *boru* (the recipient of the wife) in an indigenous ceremony held by their wife's clan.

Dalihan na tolu is also a democratic value in the Batak Toba indigenous community. Every indigenous ceremony carried out by the Batak Toba indigenous community must be attended by each party based on the *dalihan na tolu*. According to Humala Simanjuntak, *dalihan na tolu* functions as a binder or glue based on a loving relationship that prioritizes obligations and puts rights second.²⁵ Of course, this value is based on the values of kinship and peace that are highly prioritized in the Batak Toba indigenous law. Therefore, the principle of *dalihan na tolu* must be applied to all indigenous ceremonies, including the adopted son ceremony.

In this research, the author witnessed firsthand that most Batak Toba indigenous communities uphold their indigenous values. Every family that adopts an adopted son is under the Batak Toba indigenous law. In this case, the adopted

²¹Harahap, D. (2016). Implikasi Sistem Kekerabatan Dalihan Na Tolu (Studi Pada Keluarga Muslim Batak Angkola di Yogyakarta). *Religi: Jurnal Studi Agama-Agama*, 12(1), p. 121.

²²Armawi, A. (2008). Kearifan Lokal Batak Toba Dalihan Na Tolu dan Good Governance dalam Birokrasi Publik. *Jurnal Filsafat*, 18(2), p. 158.

²³Firmando, H. B. (2021). Kearifan Lokal Sistem Kekerabatan Dalihan Na Tolu dalam Merajut Harmoni Sosial di Kawasan Danau Toba. *Aceh Anthropological Journal*, 5(1), p. 20.

²⁴*Ibid.*

²⁵Simanjuntak, H. (2005). *Dalihan Na Tolu Nilai-Nilai Budaya yang Hidup: Sebuah Warisan bagi Generasi Muda*. Jakarta: OC Kaligis & Associates, p. 11.

son has been *dirajahon* in front of the *dalihan na tolu*, indigenous leaders, and the surrounding indigenous people.

Adopted son based on Batak Toba indigenous law can be justified and considered valid based on laws and regulations that apply in Indonesia, especially those that regulate the adopted son. Based on Article 39 section (1) of Law of the Republic of Indonesia Number 17 of 2016 on the Enactment of Government Regulation in Lieu of Law Number 1 of 2016 on the Second Amendment to Law Number 23 of 2002 on Child Protection Into Law, which regulates that:

“Adopting a child can only be carried out in the best interest of the child and is carried out based on local indigenous customs and the provisions of laws and regulations.”

Article 12 section (1) of Law of the Republic of Indonesia Number 4 of 1979 on Child Welfare regulates that *“adopting a child based on indigenous and customs is carried out by prioritizing the interests of child welfare.”*

Article 19 of Government Regulation of the Republic of Indonesia Number 54 of 2007 on Implementation of Adopting a Child regulates that *“adopting a child based on indigenous customs is carried out in accordance with the procedures applicable in the community concerned.”*

The acknowledgment of the adopted son made based on the local indigenous community customs, which is also based on the above provisions, is a reflection of values, as based on Article 28I section (3) of the 1945 Constitution of the Republic of Indonesia, which regulates that *“cultural identities and rights of indigenous people are respected in accordance with the development of times/age and civilizations.”*

The above provisions can be understood that the values of the culture or indigenous communities in Indonesia must be respected for their existence and validity within the community concerned.

Furthermore, the indigenous ceremony of the adopted son is considered sacred in the indigenous community and cannot be denied by anyone. However, without filing a court decision regarding this adopted son, the legitimacy of the adopted son according to indigenous law is still recognized and guaranteed. The decision of the Supreme Court of the Republic of Indonesia Number 210 K/SIP/1973 explains that:

“The legitimacy of an adopted child depends on the indigenous ceremony, without objectively assessing the reality of the child’s existence in family life from his adoptive parents.”

The Decision of the Supreme Court of the Republic of Indonesia Number 912 K/SIP/1975 explains that *“without indigenous ceremonies, adopted children are not valid even though they have been raised since childhood.”*

A legal adopted son results in the emergence of the rights of the adopted son in juridical and social terms, including inheritance law rights, children's rights and obligations, child protection, and rights and obligations in the surrounding community. The adopted son in indigenous law creates a legal relationship between the adopted son and adoptive parents and the relationship between a biological parent and a biological child. Each adoptive parent is obliged to ensure the welfare of the adopted son as required by laws and regulations. Adoptive parents are obligated to educate and guide and care for the adopted son with the same affection as the biological child. On the other hand, adopted sons are also obliged to respect and love adoptive parents as they should respect biological parents.

An adopted son, based on Batak Toba indigenous law, establishes the rights of the adopted son as an inheritor from his adoptive parents. In addition, the adopted son is obliged to attend and be respected in the Batak Toba indigenous ceremony as a descendant of adoptive parents. The adopted son's right to inheritance from adoptive parents covers material and immaterial assets. Material assets can be in the form of money, houses, land, livestock, and fields. Immaterial assets can be clans, indigenous titles, power, and the dignity of adoptive parents in indigenous. Therefore, the adopted son has the right and position as a biological child based on indigenous inheritance law in the Batak Toba indigenous community. Meanwhile, the proportion of inheritance is not regulated in the Batak Toba indigenous law. In this case, parents have the right to determine the amount of inheritance received by the inheritor and override the status between biological child and adopted son.²⁶

B. Inheritance Dispute Resolution Related to the Position of Adopted Son in the Batak Toba Indigenous Community

The development of the times at this time influences the mindset of the Batak Toba indigenous community. This condition can be seen from the graph of the dispute in the Batak Toba indigenous community, especially the issue of inheritance. Batak Toba indigenous people who are still subject to the Batak Toba indigenous law tend not to question the inheritance problem in their families. The inheritance is distributed based on the Batak Toba indigenous law. Only the son can be the inheritor, while the daughter is only given gifts by her parents in jewellery or household utensils.

On the other hand, Batak Toba indigenous people who have settled in overseas lands have experienced a shift in mindset. They have started to equalize the position of men and women. Therefore, not a few of the Batak Toba indigenous people demand inheritance for the daughter. Furthermore, the shift in mindset also affects how the Batak Toba indigenous people position themselves as adopted

²⁶Naibaho, V. R. & Sihombing, M. S. U. B. (2021). *Op. Cit.*, p. 442.

sons. Batak Toba indigenous people who have experienced a shift in mindset are slowly refusing to be positioned the same as the adopted son, especially regarding rights in inheritance law.

In this study, there are two inheritance dispute cases where biological children do not accept that adopted sons receive an inheritance from their parents. The first case begins with parents' actions who are still subject to the Batak Toba indigenous law. In this case, the testator distributes inheritance to three inheritors, namely two biological sons and one adopted son. A biological son is given more inheritance because he is the eldest child, while the other two are given the same amount. Meanwhile, daughters are only given jewellery left by their mother, considered a gift and not an inheritance. The division of inheritance is carried out in the presence of indigenous leaders, elders of the neighbourhood, and *dongan tubu* of inheritance. The biological son and his two daughters rejected their parents' decision to inherit the adopted son in the form of a plot of land and a residential building. The attitude of rejecting biological children was never shown while their parents were still alive. However, after their parents died, the biological child immediately showed an attitude of rejection by withholding inheritance which should be the right of the adopted brother as the legally adopted son of the testator.

The second case begins with the testator's condition, who has two biological daughters and does not have a biological son, so he is adopting an adopted son. He is the only adopted son of adoptive parents. On the other hand, the testator is an indigenous people who still obey and upholds the Batak Toba indigenous law so that he gives all inheritance to the adopted son. In addition, the two biological daughters of the testator still occupy the house that has become the inheritance for the adopted son. Therefore, the biological daughter rejects the parent's decision to pass all inheritance to the adopted son. Biological daughters demand justice, where they are also entitled to inheritance from biological parents.

As described above, there have been many cases in such a way in the Batak Toba indigenous community that most of the Batak Toba indigenous people choose inheritance dispute resolution. The problems above are the domain of family law, especially inheritance law.

According to T. Sinaga, inheritance dispute resolution in the Batak Toba indigenous community is carried out through family consultations and or indigenous institution. In the Batak Toba indigenous community, Indigenous inheritance law also recognizes dispute resolution through the courts. However, until now, there are still very few Batak Toba indigenous people who carry out inheritance dispute resolution through the courts. Batak Toba indigenous people consider that resolving inheritance disputes through the courts is the final stage

or step that must be chosen.²⁷ As for the explanation of the stages or steps of inheritance dispute resolution in the Batak Toba indigenous community, namely:

1. Resolution through Family Deliberation

Resolution through family deliberation in the Batak Toba language is called '*marhata*'. *Marhata* is one of the methods most chosen by the Batak Toba indigenous people in any dispute resolution in the Batak Toba indigenous community, especially when it comes to matters related to the family.²⁸ The dispute in the Batak Toba indigenous community can usually still be addressed with *marhata*. Even though it seems simple, the dispute resolution using the *marhata* method has very formal rules and procedures. This way of *marhata* has formal rules, including:

- a. the grammar used must be polite and subtle;
- b. anyone who has the right to speak in deliberation;
- c. who should speak first; and
- d. who should be the spokesperson to lead this *marhata* activity.

Marhata must be attended to and witnessed by the three elements of *dalihan na tolu*. The *marhata* method of dispute resolution in the Batak Toba indigenous community is carried out by upholding the Batak Toba indigenous law. Although it looks simple and very familial, each party to the dispute must submit to the agreement decided in the deliberation. Meanwhile, indigenous people who were present but were not part of the disputing party played a role in supervising the implementation of the *marhata*.

2. Resolution through Indigenous Institution

The indigenous institution of dispute resolution in the Batak Toba indigenous community is the *dalihan na tolu* indigenous institution. Besides being a value principle, *Dalihan na tolu* is also a democratic institution for dispute resolution in the Batak Toba indigenous community. Indigenous institutions are chosen as a dispute resolution if the Batak Toba indigenous people do not reach an agreement in a *marhata* method. The *dalihan na tolu* indigenous institution involves indigenous leaders who understand and control the Batak Toba indigenous law. Therefore, the chance of failure of agreement in dispute resolution through indigenous institutions is tiny. The deliberation situation also influences this condition because it is held amid the Batak Toba indigenous community. Like resolution through *marhata*, agreements made through indigenous institutions also involve and are supervised by all Batak Toba indigenous community elements.

²⁷Interview Result with Leaders of Batak Toba Indigenous Community. T. Sinaga. October 15, 2021.

²⁸Interview Result with Leaders of Batak Toba Indigenous Community. T. Sinaga. October 15, 2021.

3. Resolution through the Courts

Batak Toba indigenous people consider that dispute resolution through the courts is the final stage or step that must be chosen. Dispute resolution through the courts is relatively small because most of the disputes in the Batak Toba indigenous community, especially inheritance disputes, end up in indigenous institutions.

The second case mentioned above has been resolved through the Indigenous Institution. In this case, the agreement reached through the Indigenous Institution is that all inheritance remains the right of the adopted son of the adoptive parents. Testator's two biological daughters still received gifts of jewellery and household utensils from their mother. This decision is based on the Batak Toba indigenous law, where the daughter is deemed inappropriate to claim and obtain the inheritance. On the other hand, for the daughter's benefit within the scope of her husband's family, the daughter can ask for help from her adopted brother or the father's family. In addition, daughters who are not the inheritors can also get a share of the inheritance or '*pauseang*'.²⁹ In the Batak Toba language, *pauseang* is a form of affection (*holong ate*) from his parents.³⁰ In this case, the parents give an inheritance when the daughter gets married.

Unlike the second case, the first case mentioned above has not yet entered the inheritance dispute resolution stage. At the same time, an adopted son can sue his adopted brother because they have the same position as an inheritance. Based on the indigenous inheritance law in the Batak Toba indigenous community, the testator has upheld the Batak Toba indigenous law by giving the inheritance to the adopted son. However, the biological child of the testator prevents the adopted son from gaining his rights.

In the Batak Toba indigenous community, Indigenous inheritance law only positions the son as the inheritor. On the other hand, after the testator's parents pass away, all debts matter and the costs of the indigenous funeral ceremony must first be resolved. After that, then the inheritors can control their inheritance. However, the inheritance that is the right of the adopted son is controlled by the adopted brother. Therefore, the adopted son cannot rule over his inheritance, namely a plot of land and a house. The actions carried out by the biological child of the testator are contrary to the values adopted and desired based on the indigenous inheritance law in the Batak Toba indigenous community.

The adopted son in the second case should be able to carry out inheritance dispute resolution based on the Batak Toba indigenous law. The adopted son can inherit dispute resolution through three dispute resolution methods. The Batak

²⁹Banjarnahor, S., et al. (2020). *Op. Cit.*, p. 100.

³⁰Dewi, D. K. (2020). Hak Waris Perempuan Menurut Hukum Adat Batak Toba Sebelum dan Sesudah Keluarnya Keputusan MA. No. 179 K/SIP/1961. *Majalah Ilmiah Warta Dharmawangsa*, 14(4), p. 591.

Toba indigenous law prioritizes and upholds the values of kinship and peace in dispute resolution.

CONCLUSIONS AND SUGGESTIONS

Based on the description above, it can be concluded that the indigenous inheritance law positions the adopted son on par with the biological son. Suppose there is an inheritance dispute between the adopted son and the biological child. In that case, the inheritance dispute resolution based on the Batak Toba indigenous law can go through three stages: family deliberation, indigenous institutions, and the courts are the final stage or step that must be chosen. Most of the Batak Toba indigenous people choose dispute resolution through indigenous institutions. In this case, the chance of failure of agreement in dispute resolution through indigenous institutions is tiny because indigenous institutions involve indigenous leaders who understand and control the Batak Toba indigenous law. Based on the description of these conclusions, it is recommended to all Batak Toba indigenous people who are in dispute to carry out a resolution through three stages based on the Batak Toba indigenous law. In addition, it is hoped that all Batak Toba indigenous community elements will supervise the implementation of dispute resolution decisions, considering that Batak Toba indigenous people prioritize and uphold the values of kinship and peace in dispute resolution.

REFERENCES

- Adiasih, N. (2018). Penemuan Hukum oleh Hakim dalam Perkara Waris sesuai Asas Keadilan. *Adhaper: Jurnal Hukum Acara Perdata*, 4(1), 35-56. doi: <https://doi.org/10.36913/jhaper.v4i1.63>
- Aritonang, M. E. (2019). "Pembagian Warisan Anak Laki-Laki Manuhor Marga Ditinjau Berdasarkan Hukum Adat Batak Toba". *Thesis*. Postgraduate School, Universitas Sumatera Utara.
- Aritonang, P. C. S. (2008). "Kedudukan Anak Angkat dalam Hukum Adat Batak Toba setelah Berlakunya Undang-Undang Nomor 23 Tahun 2002 tentang Perlindungan Anak (Studi di Kecamatan Tarutung, Kabupaten Tapanuli Utara)". *Thesis*. Postgraduate School, Universitas Sumatera Utara.
- Armawi, A. (2008). Kearifan Lokal Batak Toba Dalihan Na Tolu dan Good Governance dalam Birokrasi Publik. *Jurnal Filsafat*, 18(2), 157-166.
- Banjarnahor, S., et al. (2020). Pembagian Harta Warisan terhadap Anak Angkat Menurut Hukum Adat Batak Toba di Daerah Kabupaten Humbang Hasundutan. *Jurnal Hukum Patik*, 9(2), 90-101. doi: <https://doi.org/10.51622/patik.v9i2.235>
- Decision of the Supreme Court of the Republic of Indonesia Number 210 K/SIP/1973.
- Decision of the Supreme Court of the Republic of Indonesia Number 912 K/SIP/1975.

- Dewi, D. K. (2020). Hak Waris Perempuan Menurut Hukum Adat Batak Toba Sebelum dan Sesudah Keluarnya Keputusan MA. No. 179 K/SIP/1961. *Majalah Ilmiah Warta Dharmawangsa*, 14(4), 585-601. doi: <https://doi.org/10.46576/wdw.v14i4.911>
- Diantha, I. M. P. (2017). *Metodologi Penelitian Hukum Normatif dalam Justifikasi Teori Hukum*. Jakarta: Kencana Prenada Media Group.
- Firmando, H. B. (2021). Kearifan Lokal Sistem Keperabatan Dalihan Na Tolu dalam Merajut Harmoni Sosial di Kawasan Danau Toba. *Aceh Anthropological Journal*, 5(1), 16-36. doi: <https://doi.org/10.29103/aaj.v5i1.4613>
- Government Regulation in Lieu of Law of the Republic of Indonesia Number 1 of 2016 on the Second Amendment to Law Number 23 of 2002 on Child Protection (State Gazette of the Republic of Indonesia of 2016 Number 99, Supplement to State Gazette of the Republic of Indonesia Number 5882).
- Government Regulation of the Republic of Indonesia Number 54 of 2007 on Implementation of Adopting a Child (State Gazette of the Republic of Indonesia of 2007 Number 123, Supplement to State Gazette of the Republic of Indonesia Number 4768).
- Harahap, D. (2016). Implikasi Sistem Keperabatan Dalihan Na Tolu (Studi Pada Keluarga Muslim Batak Angkola di Yogyakarta). *Religi: Jurnal Studi Agama-Agama*, 12(1), 121-134.
- Hariandja, S. B., et al. (2019). Kedudukan Anak Angkat dalam Pembagian Warisan Menurut Hukum Adat Batak Toba. *Jurnal Hukum Kaidah: Media Komunikasi dan Informasi Hukum dan Masyarakat*, 18(2), 45-57.
- Law of the Republic of Indonesia Number 1 of 1974 on Marriage (State Gazette of the Republic of Indonesia of 1974 Number 1, Supplement to State Gazette of the Republic of Indonesia Number 3019).
- Law of the Republic of Indonesia Number 4 of 1979 on Child Welfare (State Gazette of the Republic of Indonesia of 1979 Number 32, Supplement to State Gazette of the Republic of Indonesia Number 3143).
- Law of the Republic of Indonesia Number 23 of 2002 on Child Protection (State Gazette of the Republic of Indonesia of 2002 Number 109, Supplement to State Gazette of the Republic of Indonesia Number 4235).
- Law of the Republic of Indonesia Number 35 of 2014 on Amendment to Law Number 23 of 2002 on Child Protection (State Gazette of the Republic of Indonesia of 2014 Number 297, Supplement to State Gazette of the Republic of Indonesia Number 5606).
- Law of the Republic of Indonesia Number 17 of 2016 on the Enactment of Government Regulation in Lieu of Law Number 1 of 2016 on the Second Amendment to Law Number 23 of 2002 on Child Protection Into Law (State Gazette of the Republic of Indonesia of 2016 Number 237, Supplement to State Gazette of the Republic of Indonesia Number 5946).

Law of the Republic of Indonesia Number 16 of 2019 on Amendment to Law Number 1 of 1974 on Marriage (State Gazette of the Republic of Indonesia of 2019 Number 186, Supplement to State Gazette of the Republic of Indonesia Number 6401).

Naibaho, V. R. & Sihombing, M. S. U. B. (2021). Kedudukan Anak Angkat dalam Pewarisan Menurut Hukum Adat Batak Toba di Desa Siogung-Ogung Kecamatan Pangururan Kabupaten Samosir. *Widya Yuridika: Jurnal Hukum*, 4(2), 435-444. doi: <https://doi.org/10.31328/wy.v4i2.2418>

Nasution, A. (2019). Akibat Hukum Pengangkatan Anak menurut Undang-Undang Nomor 23 Tahun 2002 tentang Perlindungan Anak. *Jurnal Ilmiah Penegakan Hukum*, 6(1), 14-26. doi: <https://doi.org/10.31289/jiph.v6i1.2473>

Nugraha, G. C. P., et al. (2020). Kedudukan Anak sebagai Ahli Waris yang Beralih-Alih Agama Menurut Hukum Waris Adat Bali. *Jurnal Konstruksi Hukum*, 1(1), 227-231. doi: <https://doi.org/10.22225/jkh.1.1.2139.227-231>

Nugroho, B. D. (2019). *Dinamika Hukum Adat*. Bandung: Yayasan Pendidikan Nasional Bandung.

Qamar, N. & Rezah, F. S. (2020). *Metode Penelitian Hukum: Doktrinal dan Non-Doktrinal*. Makassar: CV. Social Politic Genius (SIGn).

Ramdania, D. (2016). Kajian terhadap Waris Anak Angkat Adat Batak Toba. *Wacana Paramarta: Jurnal Ilmu Hukum*, 15(2), 1-17.

Silaen, R., et al. (2018). Analisis Pengangkatan Anak dalam Tradisi Adat Batak Toba di Kelurahan Tambusai tengah Kecamatan Tambusai Kabupaten Rokan Hulu Riau. *Jurnal Online Mahasiswa Fakultas Keguruan dan Ilmu Pendidikan, Universitas Riau*, 5(1), 1-12.

Simanjuntak, H. (2005). *Dalihan Na Tolu Nilai-Nilai Budaya yang Hidup: Sebuah Warisan bagi Generasi Muda*. Jakarta: OC Kaligis & Associates.

Simatupang, D. E. (2017). Kearifan Lokal Dalihan Na Tolu sebagai Bingkai Tiga Pilar Pembangunan Berkelanjutan Kawasan Danau Toba. *Jurnal Kebudayaan*, 12(2), 95-110. doi: <https://doi.org/10.24832/jk.v12i2.246>

Soekanto, S. (2021). *Hukum Adat Indonesia*. Jakarta: Rajawali Pers.

Suryani, A. L. & Prianto, Y. (2019). Pengaruh Emosi Keagamaan terhadap Kedudukan Anak Angkat pada Masyarakat Baduy Migran (Kasus Desa Cisimeut Lebak Banten). *Jurnal Hukum Adigama*, 2(1), 1-25. doi: <http://dx.doi.org/10.24912/adigama.v2i1.4717>

| Sinaga, G. R. I., et al. (2022). Inheritance Dispute Resolution Related to the Position |
| of Adopted Son Based on Batak Toba Indigenous Law. *SIGn Jurnal Hukum*, 4(1), 1-14. |
| doi: <https://doi.org/10.37276/sjh.v4i1.128> |
