

The State's Responsibility for the Safeguarding of Inherited Property of Children with Special Needs

1st Fauzan Mas'ar

Islamic Family Law (Akhwal Syakhshiyah)
Universitas Nahdlatul Ulama Sumatera Utara
Medan, Indonesia
fauzanmasar83@gmail.com

2nd Mulkan Nasution

Islamic Family Law (Akhwal Syakhshiyah)
Universitas Nahdlatul Ulama Sumatera Utara
Medan, Indonesia
mulkan.nasution@unusu.ac.id

Abstract—This study explores the state's responsibility in safeguarding the inheritance rights of children with special needs, focusing on both national and international legal frameworks. The protection of children with disabilities, particularly regarding inheritance management, is a crucial issue given their vulnerable status in society. The study examines the role of national legislation, such as the 1945 Constitution, the Child Protection Law, and the Civil Code, in securing the inheritance rights of children with special needs. Additionally, it investigates the implementation of guardianship systems, particularly the curatela system, in Indonesian courts. The challenges that impede effective management and protection of these rights, such as a lack of awareness and institutional barriers, are identified. Furthermore, the study draws upon international legal instruments, including the Convention on the Rights of the Child (CRC) and the Convention on the Rights of Persons with Disabilities (CRPD), which mandate the state's obligation to ensure equal rights and access for children with special needs. The findings suggest that while there is a strong legal foundation, there are gaps in practical implementation that need to be addressed. The paper concludes with recommendations for policy reforms to strengthen the role of the state in guaranteeing the inheritance rights of children with special needs, ensuring their protection in line with inclusive and human rights standards.

Keyword— *Inheritance Rights; Children with Special Needs; Guardianship; Legal Protection; State Responsibility.*

I. INTRODUCTION

The protection of children's rights is one of the fundamental obligations of the state mandated in various national and international legal instruments[1]. Children with special needs have a more vulnerable position in society, especially in terms of the management and protection of their inheritance[2], [3]. When these children lose a parent or guardian responsible for the management of their assets, the state has a constitutional responsibility to ensure the proper protection and management of those assets.[4]

One of the obligations of a sovereign state is to provide legal protection to every citizen[5], including every child who is not under the authority of his or her parents. This shows that the responsibility of the state is not only limited to administrative aspects, but also extends to the substantive protection of the fundamental rights of children, including the right to inheritance. Children with special needs often face additional challenges in accessing and managing their

inheritance due to their cognitive, physical, or mental limitations. In this context, the role of the state becomes crucial to ensure that their rights are not ignored or abused by irresponsible parties.[6][7]

II. PROBLEM FORMULATION

Based on this background, the problems studied in this study are formulated as follows:

1. How do national and international legal frameworks[8] govern inheritance rights for children with disabilities?
2. How is the implementation of the curatela/guardianship system in the practice of inheriting children with disabilities in Indonesian courts?
3. What are the legal and institutional obstacles that hinder the state in guaranteeing the inheritance rights of children with disabilities?
4. How can the state's approach be improved so that the implementation of the inheritance rights of children with disabilities is in accordance with the principles of inclusiveness and full access as a citizen's right?

III. RESEARCH OBJECTIVES

The objectives of this study are:

1. Describe the framework of national legislation and international conventions (especially CRPD) that guarantee the inheritance rights of children with disabilities.
2. Analyze the implementation of the guardianship/curtela system in inheritance cases involving children with disabilities in Indonesia and its implications for their access to inheritance (based on court practice).
3. Identify legal and institutional factors that hinder the protection of inheritance rights of children with disabilities.
4. Provide policy recommendations and legal reforms to strengthen the role of the state in ensuring the inheritance rights of children with disabilities in accordance with inclusive and human rights standards



IV. THEORETICAL FOUNDATIONS

The distribution of inheritance rights for children with special needs (disabilities) in Islamic law is the same as that of normal children in general, namely with a two-to-one (2:1) split between a man and a woman. However, children with special needs in receiving inheritance are accompanied by parents or guardians. With the existence of the guardian, they can receive and manage the assets of children with special needs. As stated in the Qur'an Surah An-Nisa' verse 6, namely:

وَابْتَلُوا الْيَتَامَىٰ حَتَّىٰ إِذَا بَلَغُوا النِّكَاحَ فَإِنْ آنَسْتُمْ مِنْهُمْ رُشْدًا فَادْفَعُوا إِلَيْهِمْ أَمْوَالَهُمْ وَلَا تَأْكُلُوهَا إِسْرَافًا وَبِدَارًا أَنْ يَكْبَرُوا وَمَنْ كَانَ غَنِيًّا فَلْيَسْعَفْ وَمَنْ كَانَ فَقِيرًا فَلْيَأْكُلْ بِالْمَعْرُوفِ فَإِذَا دَفَعْتُمْ إِلَيْهِمْ أَمْوَالَهُمْ فَأَشْهَدُوا عَلَيْهِمْ وَكَفَىٰ بِاللَّهِ حَسِيبًا ﴿٦﴾

"And test the orphans until they are old enough to marry.

Then if in your opinion they are intelligent (good at maintaining wealth), then give them their wealth. And do not eat them (orphans' property) beyond the limits of propriety and (do not haste (give them up) before they are grown. Whoever is able, let him refrain from eating the orphan's property, and whoever is poor, let him eat the treasure in a proper manner. Then, when you hand over the property to them, then you shall have witnesses. And Allah is sufficient as a watcher" (Q.S. An-Nisa' [4]: 6)"

From the description of the above verse, then Children with disabilities continue to receive inheritance. The property is managed by a guardian as the proceeds from the profits are given to the child, so that it does not reduce the inheritance.

In the constitutional system, several theories are obtained that can be related to solving the inheritance problem of children with disabilities in the form of:

A. State Responsibility Theory

The theory of state responsibility in international law and national law explains that states have an obligation to protect the basic rights of their citizens, especially vulnerable groups such as children with special needs. According to Brownlie (2019), state responsibility includes three main dimensions: the obligation to respect, the obligation to protect, and the obligation to fulfill the basic rights of citizens. In the context of the protection of the inheritance of children with special needs, this theory requires the state to not only avoid negative obligation, but also to actively take positive measures to ensure effective protection (positive obligation). This is in line with the principle of *parens patriae*, where the state plays the role of the "father of the nation" who is obliged to protect those who are unable to protect themselves.[9]

B. Children's Rights Theory

The theory of children's rights as developed by Freeman (2020) emphasizes that children are not only objects of protection, but also legal subjects who have fundamental rights that must be respected and protected. This theory recognizes that children have the right to participate in decisions that affect their lives, according to their level of maturity and ability.

In the context of children with special needs, this theory undergoes a special adaptation known as "*supported decision-making*." This concept recognizes that although children with special needs may need help in making decisions, they still have the right to be involved in the process according to their abilities.[10]

C. Guardianship Theory

The theory of guardianship in civil law describes the legal relationship between the guardian and the child under the guardianship, including the obligations and responsibilities of the guardian in managing the child's property. According to Garner (2018), guardianship creates a *fiduciary duty* relationship that requires guardians to act in the best interests of the child. When the state acts as a guardian or guardian of the guardian, this theory requires the state to apply a high standard of care (*duty of care*) and ensure that all decisions made are truly in the best interests of the child. This includes prudent and transparent estate management.

In addition to the theory of Indonesian constitutionality, there is also a legal basis in the form of;

D. Foundations of International Law

a) Convention on the Rights of the Child

The 1989 Convention on the Rights of the Child, which has been ratified by Indonesia through Presidential Decree No. 36 of 1990, provides a strong international legal basis for the protection of children with special needs. Article 27 of the Convention affirms the right of children to an adequate standard of living, while Article 23 specifically regulates the rights of children with disabilities. Article 23 paragraph (1) states that the state recognizes that children with mental or physical disabilities shall enjoy a full and decent life in conditions that ensure dignity, increase independence, and facilitate the active participation of children in community life. This provision creates a positive obligation for the state to take specific measures to ensure that children with special needs can access and enjoy their rights, including the right to inheritance.

2) Convention on the Rights of Persons with Disabilities (CRPD)

Indonesia has ratified the Convention on the Rights of Persons with Disabilities through Law No. 19 of 2011. Article 12 of the CRPD recognizes the right of persons with disabilities to be recognized as equal subjects of law before the law. This includes the right to own and inherit property, control financial affairs, and have equal access to bank credit, mortgages, and other forms of financial credit. Article 28 of the CRPD also guarantees the right of persons with disabilities to a decent standard of living for themselves and their families, including adequate food, clothing and housing, as well as sustainable improvement of living conditions. This provision provides a legal basis for the state to ensure that the inheritance of children with special needs is managed in such a way as to meet their living needs.

V. BASIS OF NATIONAL LAW

A. Constitution 1945

Article 28H paragraph (2) of the 1945 Constitution provides a constitutional guarantee that every child has the right to survival, growth, and development and is entitled to protection from violence and discrimination. This provision creates a constitutional obligation for the state to provide special protection to children, including children with special needs. Article 34 paragraph (1) of the 1945 Constitution also emphasizes that the poor and abandoned children are cared for by the state. In the context of children with special needs who have lost a parent, this provision can be interpreted as the state's obligation to ensure their welfare through proper estate management[11].

B. Law No. 35 of 2014 concerning Child Protection

The Child Protection Law provides a comprehensive legal framework for child protection in Indonesia. Article 59 paragraph (1) letter e specifically states that children with disabilities are entitled to special protection in the form of equal opportunities to participate in community life. Article 67 stipulates that special protection for children with disabilities is carried out through rehabilitation efforts, social assistance, and maintenance of social welfare levels. In the context of inheritance management, this provision can be interpreted as the state's obligation to ensure that inheritance is used to support the rehabilitation and welfare of children with special needs.[12][13]

C. Civil Code (BW)

Article 913 of the Indonesian Civil Code regulates inheritance, establishes *legitime portie* and defines the rights of legal heirs over certain parts of inheritance. This provision provides a legal basis for children, including children with special needs, to acquire a legal share of their parents' estate. Article 331 onwards of the BW regulates guardianship (*voogdij*), which becomes relevant when children with special needs need assistance in managing their estates. This provision provides a legal framework for the appointment of guardians and state supervision of the implementation of guardianships.

D. Law No. 8 of 2016 concerning Persons with Disabilities

This law replaces Law No. 4 of 1997 and provides more comprehensive protection for persons with disabilities. Article 5 letter k guarantees the right of persons with disabilities to own and inherit movable or immovable property. Article 77 paragraph (1) stipulates that the central government and local governments are obliged to ensure that persons with disabilities can own and inherit movable or immovable property fairly in accordance with the provisions of laws and regulations. This provision creates a positive obligation for the state to actively ensure that the inheritance rights of persons with disabilities, including children with special needs, are protected and accessible[14].

Judging from the description above, there are several roles that can be used by the state in resolving the responsibility for the inheritance of children with disabilities in the form of:

1) The Role of the Court as a State Institution

The court has a central role in the protection of the estate of children with special needs through several mechanisms. First, the court is authorized to appoint a guardian for a child who needs guardianship based on the provisions of Article 359 of the BW. In the case of a child with special needs, the court must consider the child's special needs in determining the appropriate guardian. Second, the court has an obligation to supervise the implementation of guardianship duties. This includes ensuring that the child's inheritance is properly managed and used in the best interests of the child. The court may request periodic reports from the guardian regarding the management of the child's assets and may take corrective action if necessary.

2) The Role of the Heritage Center

The Heritage Center as a state institution has a special task in managing and supervising heritage assets, including the inheritance of children with special needs. According to the Staatsblad 1872 No. 166 jo. Staatsblad 1919 No. 613, the Heritage Hall is authorized to act as a trustee or even the principal trustee in certain cases. In the context of children

with special needs, Heritage Centers can play an important role in ensuring that inheritances are managed professionally and are truly used for the welfare of children. The institution has technical expertise in asset management and can provide objective supervision without conflicts of interest.

3) The Role of Social Services and Child Protection Institutions

Social Services at the provincial and district/city levels have an important role in providing social protection for children with special needs. In the context of inheritance management, the Social Service can act as an advocate to ensure that the interests of children are protected and that inheritance is used to support rehabilitation and empowerment programs. The Indonesian Child Protection Commission (KPAI) as an independent state institution also has a mandate to monitor and supervise the implementation of child protection. KPAI can play a role in ensuring that the mechanism for protecting the inheritance of children with special needs runs effectively and in accordance with the principles of children's rights.

VI. CHALLENGES AND RECOMMENDATIONS

A. Challenges in Implementation

The implementation of the protection of the inheritance of children with special needs faces several significant challenges. First, there is a lack of understanding and awareness from various parties, including families, communities, and even law enforcement officials, regarding the special rights of children with special needs. This can result in their inheritance rights being ignored or abused.[15]

Second, the limited infrastructure and resources of state institutions in providing effective protection. Many areas do not have adequate facilities and experts to handle complex cases involving children with special needs.

Third, the complexity of Indonesia's legal system that recognizes legal pluralism (customary law, Islamic law, and Western civil law) can create legal uncertainty in determining the inheritance rights of children with special needs, especially in families subject to different legal systems.

B. Policy Recommendations

To overcome these challenges, several policy reforms are needed. First, the need to harmonize and codify rules regarding the protection of children's inheritances with special needs in one comprehensive regulation. This will provide legal certainty and facilitate implementation in the field.

Second, strengthening the capacity of state institutions through special training for judges, officers of the Heritage Center, and social workers on handling cases of children with special needs. This training should include an understanding of the different types of disabilities and special needs that children may have.

Third, the development of a more effective supervision and monitoring system, including the use of information technology to monitor the management of children's inheritances with special needs. These systems can help prevent abuse and ensure transparency in asset management.

VII. CONCLUSION

The state's responsibility for safeguarding the inheritance of children with special needs is a manifestation of the

constitutional obligation to protect the fundamental rights of vulnerable citizens. The existing legal foundations, both international and national, have provided a fairly solid framework for this protection.

However, the effectiveness of protection depends not only on the existence of legal norms, but also on consistent and sustainable implementation. Strong political commitment, adequate resource allocation, and good coordination between state institutions are needed to ensure that the rights of children with special needs are truly protected.[16]

Going forward, it is important to continue to evaluate and improve this protection system, involving the active participation of children with special needs themselves, their families, and civil society organizations concerned about this issue. Only with a holistic and participatory approach can optimal protection goals be achieved.

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