

LEGAL POSITION OF CHILD ADOPTION WITHOUT A JUDGE'S DECISION

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Abstract

This research focuses on adoption cases where prospective adoptive parents carry out the adoption process without obtaining a court decision, which contradicts the stipulations of Article 20 paragraph (1) PP Number 54 of 2007. According to this provision, child adoption must be formally conducted through a court order. The main objectives of this study are to determine the legal status of adoptions conducted without a court order and to examine the legal protection available to adopted children whose adoptions have not undergone a court process, particularly in terms of their rights and obligations within the adoptive family. The research employs the normative legal method, utilizing the statute approach and the case approach to address the problem at hand. A literature study is conducted to collect relevant data, and qualitative methods are employed to analyze the legal materials. The findings of the research highlight that adoptions carried out without a court order lack legal standing, leaving adopted children without adequate legal protection, especially concerning their rights and obligations in the adoptive family. The court's involvement in the adoption process is crucial to establish a proper legal status for the adopted child and to ensure their legal protection, particularly regarding their rights and obligations within the adoptive family.

Keywords: Adoption, Court Determination, Legal Standing

1. INTRODUCTION

Humans are considered God's most perfect creation, but it cannot be denied that behind that perfection, there are still deficiencies. As God's unique and special creation, humans are instinctively inclined to form pairs, and this is realized through marriage. Human life begins when humans are born, and marriage is one of the most common ways this happens.

Broadly speaking, every average human being desires to marry and form a household. However, "forming a household" doesn't necessarily mean that a marriage consists of only a man and a woman; it must also have a purpose. The purpose of marriage and having a household is to complement each other and build a shared commitment to married life, both in joy and sorrow. Furthermore, the purpose of marriage is to form an ideal and harmonious family. (Sanjaya, 2017)

As time has progressed, there are now various ways for married couples without children to have children, one of which is through adoption. Although self-adoption is generally carried out by married couples, it doesn't rule out the possibility of single parents, whether widows, widowers, or unmarried individuals, later choosing to adopt children. However, the majority of adoptions are still carried out by married couples.

According to Article 1 point 2 of Government Regulation Number 54 of 2007 concerning Adoption of a Child (hereinafter referred to as PP Number 54 of 2007), adoption is defined as a legal act that diverts a child from the environment of parental authority, legal

guardian, or another person who is responsible for the care, education, and upbringing of the child to the adoptive parents' family environment. Adoption, or the act of adopting children, is no longer an uncommon practice in Indonesia, as it has been a part of society for a long time with different motives and goals. Despite these different motives and objectives, Article 2 of PP Number 54 of 2007 and Article 3 paragraph 1 of the Minister of Social Affairs Regulation Number: 110/HUK/2009 (hereinafter referred to as *Permensos* Number: 110/HUK/2009) explicitly regulate the purpose of adopting a child, which is for the best interests of the child and to provide welfare and protection for the child to be adopted.

Considering the importance of ensuring that adoption serves the best interests of the prospective adopted child, this can be seen in the application to obtain a court order for adoption. In the past, Supreme Court Circular Letter (SEMA) No. 6 of 1983: Section IV.A.2.2.2 stated that the child's interests must be stated or indicated in a letter of application for a court determination. Now, this indication is manifested in the form of a written statement from the prospective adoptive parents, declaring that the adoption is done in the best interest of the child and for the child's welfare and protection, as stated in Article 13 letter j of PP Number 54 of 2007. This statement will be attached to the application for a court order. (Rusli, 2012)

In general, adoption, as defined by Article 1 number 2 of the Minister of Social Affairs Number: 110/HUK/2009, is the transfer of a child from the power of their biological parents to the hands of adoptive parents as a whole, carried out based on the rules that apply to the child's environment. This means that the biological parents no longer have custody of the child, and the responsibility is transferred to the adoptive parents. However, it should be noted that adoption does not sever the blood relationship between the child who has been adopted and their biological parents.

The process of adopting a child involves specific procedures dictated by applicable laws and regulations. According to Government Regulation Number 54 of 2007 and *Permensos* Number 110/HUK/2009, one of the conditions for adopting a child and applying for a court determination is that the prospective adoptive parents must obtain permission from the Minister of Social Affairs and/or the head of a social agency. To obtain this permit, prospective adoptive parents must submit an application for parental permission for child care to the Minister of Social Affairs and/or the head of a social agency. Subsequently, a feasibility assessment will be conducted to determine whether the prospective adoptive parents can meet the physical and spiritual needs of the adopted child, thereby ensuring that the purpose of adopting a child, namely the child's best interests, can be achieved.

Once the stages of coaching, guidance, and supervision are completed, the Minister and/or heads of social agencies assess whether the prospective adoptive parents meet the requirements specified in PP Number 54 of 2007, which are more clearly regulated in *Permensos* Number: 110/HUK/2009. If they fulfill these requirements, a Decree on Permits for Child Adoption will be issued, which will then be further processed in court to obtain a court order. After receiving the court's approval, the adoption is legally valid and holds legal consequences. This means that adoptive parents have an obligation to fulfill their responsibilities towards their adopted children, providing welfare and protection, as well as meeting the physical and spiritual needs of the child.

In adopting a child, specific procedures designated by law must be followed. The minimum process required by prospective adoptive parents is a statement when handing over

the child. However, in the case where the prospective adopted child comes from an orphanage, the foundation must possess a written permit from the Minister of Social Affairs, indicating that the foundation is allowed to engage in child adoption activities.

Legal problems within orphanages have arisen due to caretakers and owners of the orphanages adopting children without obtaining a court order, but only through the Department of Population and Civil Registry. Such practices are not in accordance with the provisions of Article 20 paragraph (1) of Government Regulation Number 54 of 2007. Regarding the procedure for adoption, once the requirements are met, an application for a court determination must be submitted. Based on the description provided above, the researcher will describe the Adoption Law from an Indonesian Civil Law Perspective.

2. THEORETICAL BASIS

2.1. Child Adoption

The term "child adoption", which has developed in Indonesia today, is actually a translation of the English "adoption" which means adopting another person's child as one's own and giving them the same rights as biological children. (Djatikumoro, 2011)

According to customary law, adoption is an act of taking another person's child into one's own family, so that between the person who picks up the child and the child who is picked up there is the same family relationship as between parents and biological children. (Wignjodipuro, 1982)

According to Soerjono Soekanto, child adoption means adopting a child to be one's own child, or it can be interpreted in general to mean adopting a person in a certain position which results in a relationship that seems to be based on blood relations (Soekanto, 1980).

The definition of child adoption according to laws and regulations, among others, according to Article 1 point 2 of Government Regulation No. 54/2007 and Article 1 point 2 of Minister of Social Affairs Regulation No. 110/ HUK/2009, defines child adoption as a legal action that transfers a child from the sphere of authority of parents, legal guardians, or other people who are responsible for the care, education and raising of the child into the family environment of the adoptive parents.

Article 171 letter (h) of the Compilation of Islamic Law (KHI) also states that an adopted child is a child whose responsibility in terms of maintenance for daily life, education costs and so on shifts from the original parents to the adoptive parents based on a court decision.

Based on this description, it can be concluded that child adoption is an act of transferring responsibility for caring for, maintaining, raising, and financing the maintenance of the child's daily life from parents, legal guardians to adoptive parents carried out based on the provisions of applicable laws and regulations.

2.2. Procedure for Child Adoption in Indonesia

The implementation of child adoption regulated in the Minister of Social Affairs Regulation Number: 110/HUK/2009 on Requirements for Child Adoption. Article 22 paragraph (1) of the Minister of Social Affairs Regulation states that direct child adoption is carried out in the following manner: prospective foster parents apply for a childcare license to the Head of the Provincial Social Agency on sufficient stamped paper by including all administrative requirements for prospective foster children and prospective foster parents as

referred to in Article 5 and Article 21 paragraph (1), then the Head of the Provincial / District / City Social Agency assigns a Provincial / District / City Social Worker to conduct an eligibility assessment of prospective foster parents, After passing the eligibility assessment, the prospective foster parents submit an application for child adoption to the Head of the Provincial Social Agency through the District/City Social Agency and then the Head of the District/City Social Agency issues a recommendation for further processing to the province. After that, the Head of the Provincial Social Agency issues a Decree on Child Adoption Permit to be processed further in court. After the issuance of the court decision and the completion of the child adoption process, the prospective foster parents report and submit a copy to the Social Agency and to the District/City Population and Civil Registration Office and the Social Agency records and documents and reports the child adoption to the Indonesian Ministry of Social Affairs.

Article 27 of the Minister of Social Affairs Regulation Number: 110/HUK/2009 also regulates the procedure for adopting a child through a Foster Care Institution. The appointment of a child through a Foster Care Institution is carried out in the following manner: prospective foster parents apply for a childcare license to the Head of the Provincial Social Agency on sufficient stamped paper by attaching all the administrative requirements for prospective foster children and prospective foster parents as referred to in Article 5 and Article 26 paragraph (1), then the Head of the Provincial Social Service Agency assigns the Provincial Social Worker and Social Worker of the Child Care Institution to conduct an assessment of the eligibility of prospective foster parents by conducting a home visit to the prospective foster parents' family, after conducting an eligibility assessment the Head of the Provincial Social Service Agency issues a Temporary Foster Care Permit and after that the Social Worker provides guidance and supervision during temporary foster care to prospective foster parents.

The next process is the submission of an application for a child adoption permit by the prospective foster parents to the Head of the Provincial Social Agency on sufficient stamped paper and then after submitting an application for child adoption to the Head of the Provincial Social Agency, Social Workers from the Provincial Social Agency and Social Workers of the Child Care Institution conduct a home visit to find out the development of prospective foster children while being cared for by prospective foster parents, after the home visit the Head of the Provincial Social Agency discusses the results of the assessment of the eligibility of prospective foster parents, and examines and examines the files/documents of the application for child adoption in the forum of the Child Adoption Advisory Team in the Province. After going through the process of assessing the eligibility of the prospective foster parents and if the prospective foster parents are deemed eligible, the Head of the Social Affairs Agency issues a letter for permission to adopt a child so that it can be processed further in court. If the application for child adoption is rejected, the child will be returned to the Childcare Centre. After the issuance of the court decision and the completion of the child adoption process, the prospective foster parents report and submit a copy to the Social Agency; and to the district/city Civil Registry Population Office and then the Head of the Social Agency records and documents and reports the child adoption to the Indonesian Ministry of Social Affairs.

Permensos Number 110/HUK/2009 also regulates the procedure for adopting a child by a single parent, which is more clearly regulated in Article 34, the procedure for adopting a

child by a single parent is carried out in the following manner: prospective foster parents apply for a childcare licence to the Minister of Social Affairs on sufficient stamped paper by attaching all administrative requirements for prospective foster children and prospective foster parents as referred to in Article 5 and Article 33 paragraph (1), after which the Minister of Social Affairs c.q. Director of Children's Social Services assigns Social Agency Social Workers to assess the eligibility of prospective foster parents by conducting home visits to the families of prospective foster parents. After conducting an assessment of eligibility through the home visit, the Minister of Social Affairs c.q. Director of Children's Social Services issues a Decree on Temporary Childcare Permit given to prospective foster parents through the Ana Foster Care Institution and then the child is handed over from the Childcare Institution to prospective foster parents. After the child is handed over to prospective foster parents Social Workers will provide guidance and supervision during temporary foster care. After passing the guidance and supervision, prospective foster parents apply for a child adoption permit along with a statement regarding the motivation for child adoption to the Minister of Social Affairs on sufficient stamped paper, then after submitting an application for a child adoption permit, a home visit will be carried out again by the Social Worker of the Ministry of Social Affairs and the Child care Institution to find out the development of prospective foster children while being cared for by prospective foster parents.

After the home visit, the Minister of Social Affairs c.q. Director of Children's Social Services discusses the results of the assessment of the eligibility of prospective foster parents, and examines and examines the files/documents of the application for child adoption in the PIPA Team, and after conducting an eligibility assessment with the PIPA Team and if the prospective foster parents are considered eligible, a recommendation letter from the PIPA Team will be issued regarding the licensing of consideration for child adoption. After receiving the recommendation letter, the Minister of Social Affairs c.q. Director General of Social Services and Rehabilitation will issue a child adoption license to be determined by the court.

If the application for child adoption is rejected, the child will be returned to the biological parents/legal guardians/relatives or determine other alternative care in accordance with the best interests of the child. After the issuance of the court order and the completion of the child adoption process, the prospective foster parents report and submit a copy to the Department of Social Affairs; and the Department of Social Affairs records and documents the child adoption.

Article 22 paragraph 2, Article 27 paragraph 2 and Article 34 paragraph 2 of the Minister of Social Affairs Regulation Number: 110/HUK/2009 states that the application for child adoption to the court is made by the prospective foster parents or their proxies by registering the application for child adoption with the court.

From the description of the appointment procedure that has been described, it can be concluded that in essence every application for the appointment of a child will be carried out in accordance with the procedures that have been determined and after fulfilling the specified requirements, a court decision must be requested by registering an application for the appointment of a child with the court. This has also been outlined in Article 20 paragraph (1) of Government Regulation No. 54/2007 on the Implementation of Child Adoption which states that applications for child adoption that have fulfilled the requirements are submitted to the court to obtain a court order

3. RESEARCH METHOD

This research utilizes normative legal research, which involves reviewing laws, regulations, and library materials. Normative legal research is often referred to as doctrinal legal research.

In this study, the law is conceptualized as what is written in laws and regulations (law in the book) or as norms that serve as benchmarks for people's behavior in accordance with what is considered appropriate. (Jonaedi Efendi et al., 2018)

The problem approach method used is the statute approach. The statutory approach is implemented by understanding and reviewing all laws and regulations relevant to the legal issues under investigation.

For this case, the author will utilize laws relating to child adoption, child protection, and other regulations concerning children. The second approach employed is the case approach. This approach involves conducting a case study related to the issues in question, focusing on court decisions that have permanent legal force. The case approach in normative research aims to study how norms or rules of law are applied in legal practice. (Jonaedi Efendi et al., 2018)

4. RESULT AND DISCUSSION

4.2. Result

Child adoption is a method that must be carried out by prospective adoptive parents to be able to adopt a child and in its implementation is carried out based on procedures determined by laws and regulations. To be able to obtain legality and legal certainty from child adoption, after fulfilling the requirements, prospective adoptive parents must submit a child adoption application to the court to obtain a court order. This is stated in Article 20 paragraph (1) of Government Regulation No. 54/2007 on the Implementation of Child Adoption.

The purpose of adopting a child through a court order is to obtain legal certainty, legal legality, legal justice and legal documents (Juniarti, 2021). This legal document has a very important role in proving that the adoption of a child is legal and legally valid. The court's decision letter regarding child adoption has a very important role in providing legal standing for the adoption of children.

Legal position is a situation where a party is in the law. A party that has a legal position can carry out actions and authorities as appropriate to its status but still must not conflict with existing laws and regulations. Legal standing is a condition in which a person is deemed to have fulfilled the requirements to apply for dispute resolution in court (Soeroso, 1993).

Child adoptions are generally carried out in accordance with the procedures outlined in Government Regulation No. 54/2007. The important thing that should not be forgotten in the appointment of the child is the determination letter from the court. The determination letter from the court in this case is important to provide legality and legal certainty in order to provide legal status for the child adoption that has been carried out. Unlike the case with the appointment of a child through a court order, if the appointment of a child is carried out without a court order, the appointment of the child does not have legal standing. This is

because to be able to obtain legal standing in child adoption, after carrying out the procedures regulated by the Law, an application for a court order must be made and then submitted to the court to obtain a court order or decision.

In the case of the appointment of a child through customary law, it is indeed valid in customary law, but in the law, the appointment of a child through customary law does not have legal certainty, meaning that it does not have a legal position. So to obtain legal certainty of the appointment, a court order must be requested. This is regulated in Article 17 paragraph (3) of Permensos Number: 110/HUK/2009, which states that "Child adoptions based on customary law can be requested for a court order to obtain the child's legal status and legal certainty in accordance with statutory provisions". Although there is some ambiguity in this article, the word "may" is used in the article, which means that it is optional, meaning that a court decision can be requested or not. However, if we look at the whole article, we can conclude that the appointment of a child through customary law must still be requested for a court decision in order to obtain legal certainty over the appointment of the child. Therefore, although the appointment of a child through customary law is different from the appointment of a child through legislation, it is also very important to apply for a court order.

This is in line with Supreme Court Circular Letter (SEMA) No. 6 of 1983 on the Improvement of SEMA No. 2 of 1979, that because the need for child adoption in society is increasing day by day and it is felt that the guarantee of legal certainty of child adoption can only be obtained after obtaining a court decision. Not only in SEMA No. 6 of 1983, child adoption is further regulated in Law Number 23 of 2002 concerning Child Protection which has been amended into Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection, which stipulates that child adoption is carried out based on a court decision or determination. (Meliala, 2016)

Not much different from other laws and regulations, Islamic law also permits the adoption of children as long as the child is not adopted as a biological child. In Islamic law itself provides limitations in terms of child adoption, the meaning of the word limited means that the appointment of children is limited to providing maintenance, education, and fulfilling all their needs. This is further regulated in Article 171 letter h of the Compilation of Islamic Law (KHI) which stipulates that an adopted child is a child whose maintenance for daily life, education costs and so on switches its responsibility from the original parents to the adoptive parents based on a court decision. This means that the appointment of the child must be done based on a court decision.

From the descriptions above, it can be concluded that to obtain legal certainty and legality in order to obtain legal position in child adoption, it can only be obtained through a court decision or stipulation. Therefore, if the child's adoption is not carried out through a court decision, the child's adoption has no legal standing.

4.2. Discussion

4.2.1. Legal Protection of Adopted Children Whose Adoptions Are Made Without A Judge's Decision

Child adoption is a legal action that transfers a child from the sphere of authority of parents, legal guardians, or other responsible individuals, into the family environment of the adoptive parents. The purpose of child adoption, as stated in Article 2 of Government Regulation No. 54/2007 on the Implementation of Child Adoption, is to serve the best interests of the child and ensure child welfare and protection. Child protection is crucial to ensure that children remain safe and thrive.

According to Article 3 of the Child Protection Law, the purpose of child protection, including foster children, is to guarantee that children's rights are fulfilled. This includes the right to live, grow, develop, and participate optimally in accordance with human dignity, as well as to receive protection from violence and discrimination. The aim is to realize quality, noble, and prosperous Indonesian children.

Adopted children, like all children in general, are a gift and responsibility from God Almighty. It cannot be denied that they possess inherent rights as children, which need to be upheld and respected by their adoptive parents and society as a whole. The rights of adopted children encompass, among others:

1. The right to live, grow, develop, and participate reasonably in accordance with the dignity of humanity, and to receive protection from violence and discrimination.
2. The right to have a name as a personal identity and citizenship status.
3. The right to worship according to their religion, to think, and to express themselves according to their level of intelligence and age, under the guidance of parents or guardians.
4. The right to know their parents, to be raised, and to be cared for by their biological parents. In cases where the parents are unable to ensure the child's growth and development, or if the child is neglected, the child has the right to be cared for or appointed as a foster child or adopted child by other individuals in accordance with applicable laws and regulations.
5. The right to access health services and social security according to their physical, mental, spiritual, and social needs.
6. The right to receive education and guidance to develop their personality and level of intelligence in alignment with their interests and talents.
7. The right to express themselves, be heard, seek, and provide information in accordance with their level of intelligence and age, promoting their development in line with values of decency and propriety.
8. Every child with a disability is entitled to rehabilitation, social assistance, and maintenance of social welfare.
9. Every child in the care of parents, guardians, or any other responsible party is entitled to protection from discrimination, exploitation (both economic and sexual), neglect, cruelty, violence, abuse, injustice, and other forms of mistreatment.
10. The right to be cared for by their biological parents, unless valid reasons and/or legal rules indicate that separation is in the best interest of the child and is the last consideration.

11. The right to protection from abuse in political activities, involvement in armed disputes, participation in social unrest, involvement in events containing elements of violence, and involvement in war.
12. Furthermore, children are entitled to protection from abuse, torture, or inhumane punishment.
13. Every child has the right to freedom in accordance with the law. If deprived of liberty, every child has the right to receive humane treatment and placement separate from adults, the right to obtain effective legal or other assistance at every stage of applicable legal remedies, and the right to defend themselves and obtain justice before an objective and impartial children's court in a closed hearing.
14. Finally, every child who is a victim or perpetrator of a criminal offense is entitled to legal and other assistance. (Kamil & Fauzan, 2008).

5. CONCLUSION

Child adoption must be carried out through a court order to ensure legal certainty and legality. Prospective adoptive parents must fulfill the requirements and then submit a child adoption application to the court in order to obtain a court order. This requirement is stated in Article 20, paragraph (1) of Government Regulation No. 54/2007 on the Implementation of Child Adoption. The court determination is crucial to provide certainty and legal status for child adoption, granting legal standing to the child. When child adoption does not go through a court decision, the adoption lacks legal standing.

To offer legal protection to the adopted child, especially concerning the fulfillment of the child's rights and obligations by the adoptive parents, the adoption process must be carried out through a court decision. Without a court order, there is no legal protection provided to the adopted child. This is because child adoptions without a court order lack legal certainty and legal standing.

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