

Research Article

Adoption of Children in the Perspective of National Law and its Relation to Religious Courts

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ORCIDArief Rachman Hakim: <https://orcid.org/0009-0001-5892-464X>**Abstract.**

The constellation of child adoption from the perspective of national law in Indonesia has received serious attention, but there is still a weak point, namely the absence of legal unity regarding child adoption. The adoption of children is one of the authorities of the Religious Court. The competence of religious courts is affirmed in Article 49 of Law Number 3 of 2006 concerning Amendments to Law Number 7 of 1989 concerning Religious Courts. The procedures and requirements for submitting applications for child adoption have been regulated in detail and concretely in various child adoption regulations, including Government Regulation Number 54 of 2007 challenging the Implementation of Child Adoption. There should be legal unity, namely a law-level regulation governing the adoption of Indonesian children. The government should socialize the strengthening of the position and authority of religious courts in the adoption of children for Muslims. Socialization is needed so that the purpose of laws and regulations governing the norms of the adoption of children for Muslims is in accordance and in line with the objectives of applicable law. Muslims who wish to adopt children should be carried out in religious courts as absolute and representative authority for the practice of Islamic law.

Keywords: adoption of children, national law, religious courts

1. Introduction

Adoption has become a societal necessity and part of the family law system because it concerns the interests of individuals in the family. Therefore, adoption of children is a common phenomenon encountered in human life. It happens for reasons of not having children, or because of wanting to help others, or for other reasons.[1] The legal constellation of adoption of children is expected to be in line with religious law. Basically, Indonesian law requires the development of religious life and religious law in national legal life. [2]

However, due to public ignorance about the laws related to adopted children, especially Muslims, the problems that arise and occur are so many and varied that they can

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be categorized as concerning. For example, the first is to give the adopted child to his adoptive parents, the second equates with the biological child so that it does not care about the boundaries of the mahram, the third considers it entitled to inheritance like the biological child, and violations of other provisions as happened in the era of jahiliah. The legal constellation of adoption of children is expected to be in line with religious law. Basically, Indonesian law requires the development of religious life and religious law in national legal life. The State Guidelines in the field of law require the creation of new laws in Indonesia that are in accordance with the ideals of Pancasila law and the 1945 Constitution, and that serve the national interest. The national law desired by the state is a law that accommodates and incorporates religious law, and does not contain legal norms that conflict with religious law.[3]

The purpose of adopting children through the court institution is to obtain legal certainty, legal justice, legal legality, and legal documents. Islamic law as material law in religious courts has explained completely and clearly the laws relating to the issue of adopted children. Adoption of children is permissible among Muslims as long as it does not violate the three things already mentioned. Law Number 3 of 2006 concerning amendments to Law Number 7 of 1989 concerning Religious Courts, authorizes Religious Courts to settle applications for adoption of children for people of Muslim faith. Perhaps the lack of socialization so that the community considers that the Religious Court is not authorized to determine applications for adoption of children for people of Muslim faith, so that if there is a determination issued it has no legal effect and the determination of the Religious Court regarding the adoption of children has no legal force.

Based on the background that has been revealed, the author is interested in researching and studying the problems revealed in this paper. What is the constellation of national and religious laws, what is the position of religious courts at the statutory level, to the authority and procedure of applications in the adoption of children.

2. Research Methods

In order to obtain the necessary data to complete this scientific work, the author uses normative juridical methods and *Library Research*. The author will analyze “**Adoption of Children in the Perspective of National Law and Its Relation to Religious Courts**”, by using applicable laws and regulations, namely using legal procedures, then seeing the law as a norm in society and using secondary data in the form of books, journals, and related legislation.[4]

3. Discussion and Analysis

3.1. The constellation of child adoption in the perspective of national law and Islamic law in Indonesia.

The constellation of child adoption in the perspective of national law in Indonesia has received very serious attention, this can be seen by the many laws and regulations governing child adoption. The weak point of child adoption law in Indonesia is due to the absence of legal unity.[5] The legal unity regarding the adoption of children here is that there is a regulation at the same level of law that regulates the adoption of children in Indonesia.

Child adoption law is included in the field of family law, which is part of civil law. Like Indonesian civil law, the adoption law is pluralistic as a result of the legal politics of the Dutch colonial government which divided the population into three groups, namely the European population group, the Foreign Eastern population group, and the Bumiputra population group with different legal rules for each group.

The laws and regulations governing the adoption of children in Indonesia are spread in various legal regulations, namely:[6]

1. The 1945 Constitution and its Amendments.
2. Law Number 1 of 1974 concerning Marriage.
3. Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection.
4. Law Number 3 of 2006 concerning Amendments to Law Number 7 of 1989 concerning Religious Courts.
5. Law Number 39 of 1999 concerning Human Rights.
6. Law Number 4 of 1979 concerning Child Welfare.
7. Staatsblad 1917 No. 129 Articles 5 to 15 concerning Adoption for the Chinese.
8. Government Regulation Number 54 of 2007 concerning the Implementation of Child Appointment.
9. Presidential Instruction Number 1 of 1991 concerning the Compilation of Islamic Law.
10. Kepmen Sosial RI Bomor 41/HUK/KEP/VII/1984 concerning Guidelines for the Implementation of Child Adoption Permits.

11. Minister of Social Affairs Regulation Number 110 of 2009 concerning Requirements for Adoption of Children.
12. SEMA Number 2 of 1979 was refined by SEMA Number 6 of 1983, SEMA Number 3 of 2005 concerning the Adoption of Children and Jurisprudence of the Supreme Court of the Republic of Indonesia.

3.2. Adoption in the Perspective of Islamic Law.

Adoption of children in Islamic law, is regulated concretely and unequivocally in the main sources of Islamic law, namely the Quran and Hadith. Prophet Muhammad SAW once raised a son named Zaid bin Harithah, who was later changed to Zaid bin Muhammad.[7] However, this practice is corrected by the Qur'an by ordering the blasphemy of adopted children to remain with their biological fathers. Thus, Islamic law stipulates that the adoption of the child must not change the sacrilege of the adopted child from his biological father to his adoptive father.

There are various reasons that can be used as a basis in describing the importance of child adoption based on Islamic law, including because there are many disparities in the law of adoption of children in Islamic law with western law and customary law. The laws stipulated in Islamic sharia with respect to adopted children that differ from other laws are as follows:[8]

Prohibition of attributing adopted children to other than their biological father.

1. Adopted children are not entitled to inheritance from their adoptive parents. Adopted children are not mahrams.
2. Protection of the religion and creed of the child.

There are three legal systems in Indonesia, namely customary law, Islamic law, and western law. However, it is no exaggeration to say that Islamic law in Indonesia is a living law (*The Living Law*), although officially in certain aspects of regulation, it has not been able to make positive legal rules by the state. Actualization of Islamic law can be divided into two forms: first, efforts to enforce Islamic law with the establishment of certain legal regulations that apply specifically to Muslims. Second, efforts to make Islamic law a source of law for the preparation of National Law.[9]

3.3. The position of Religious Courts at the level of Indonesian Legislation.

The position of the Religious Court was already quite strong in Indonesia long before the arrival of the Dutch. Religious courts as a representation of the application of Islamic law already existed in Indonesia along with the arrival of Islam, and simultaneously colored the policies of the Islamic government at that time. So it is not an exaggeration to say that basically since the Dutch colonialism, Islamic sharia is the only legal system that is implemented and has become a legal consciousness that develops in most indigenous peoples in Indonesia.

Conditions as described above, encourage the birth of *Staatsblad* 1882 Number 152 as legislation for the establishment of Religious Courts in Java and Madura. Then came the political change of Dutch Colonial law, spearheaded by Christian Snouck Hurgronje (1857-1936). So gradually Dutch law replaced the existence of Islamic law with Dutch colonial law. Therefore, post-colonial Indonesian law is generally a legacy of Dutch colonialism. After independence, the position of religious courts was legitimized at the highest level of legislation in Indonesia, namely the 1945 Constitution. The affirmation of this law is even more evident when the accommodating of the interests of Islamic law through Law Number 7 of 1989 concerning Religious Courts, as well as placing Religious Courts as State Court institutions regulated in Law Number 14 of 1970 concerning the Principles of Judicial Power.[9]

3.4. Authority of Religious Courts in the Adoption of Children.

The authority of the Religious Court in the adoption of children is affirmed in article 49 of Law Number 3 of 2006 concerning Amendments to Law Number 7 of 1989 concerning Religious Courts. One of the powers of the Religious Court is to receive, examine, and adjudicate, and resolve cases of applications for adoption among Muslims.[10] Article 49 of Law Number 3 of 2006 concerning Amendments to Law Number 7 of 1989 concerning Religious Courts, states that: *“The Religious Court has the duty and authority to examine, decide, and settle cases in the first instance between persons of Muslim faith in the fields of, a. Marriage, b. Waris, c. Will, d. Grant, e. Waqf, f. Zakat, g. infak, h. Almsgiving, and i. Sharia Economics”*

Broadly speaking, laws regarding adoption of children can be grouped into three groups, namely: adoption of children according to Islamic law, adoption of children according to customary law, and adoption of children according to western civil law.

Prior to the birth of Law Number 3 of 2006 concerning Amendments to Law Number 7 of 1989 concerning Religious Courts, the authority to determine the adoption of children in Indonesia was a choice of law, in addition to being the authority of the Religious Court, it was also the authority of the District Court.

3.5. Procedure and Requirements for Submitting an Application for Adoption of Children and Its Legal Effects

In Chapter 11 Article 7 of Government Regulation Number 54 of 2007 concerning the Implementation of Child Binding there are two types of child adoption, namely: adoption of children between Indonesian Citizens, and adoption of children between Indonesian Citizens and Foreign Citizens. The application for adoption by Indonesian citizens who are Muslims against Indonesian children who are Muslims is the authority of the Religious Court / Sharia Court. Meanwhile, the requirements for the adopted child must meet the following conditions:[11]

1. Not yet 18 (eighteen) years old;
2. Is an abandoned or abandoned child;
3. Be in family care or in a childcare institution;
4. Requires special protection.

Furthermore, prospective adoptive parents are determined to meet the following requirements, namely:[12]

1. Physically and spiritually healthy;
2. Be at least 30 years old and at most 55 years old;
3. Bergama is the same as the religion of the prospective adopted child;
4. Be of good conduct and have never been convicted of a crime;
5. Bersetatus married for at least 5 years;
6. Not be a same-sex couple;
7. Not or have no children or have only one child;
8. In a state of economic and social ability;
9. Obtain the child's consent and the written consent of the child's parent or guardian;

10. Make a written statement that the adoption of the child is in the best interest of the child;
11. Social reports from local social workers;
12. Have taken care of prospective adopted children for at least 6 months;
13. Obtain material permission and/or head of social institutions.

The legal consequences arising in the case of adoption of children there is a clear difference, between western law (BW) and Islamic Law. In western law, adopted children are entitled to inheritance as children rather than as foreigners. Whereas in Islamic law, adopted children do not immediately get inheritance. It should be that the adopted child does not inherit or become an heir, thus closing the portion that should be distributed to the heirs who are entitled to receive it.[13]

The rights and obligations of children towards parents, namely in addition to the right to maintenance and education also have obligations as stipulated in article 46 of Law Number 1 of 1974, namely: *First*, children are obliged to respect parents and obey their good will. *Second* If the child is an adult he is obliged to care according to his ability parents and family in a straight line up, if they need his help. Thus, the legal consequences of adoption of children arise that arise civil relations including bread, child maintenance and inheritance between adopted children and adoptive parents.

4. Conclusion

The constellation of child adoption in the perspective of national law in Indonesia has received serious attention, but there is still a weak point, namely the absence of legal unity regarding child adoption. Long before independence, religious courts existed in Indonesia. After independence, religious courts were regulated at the highest level of legislation in Indonesia along with other judicial bodies. The adoption of children is one of the authorities of the Religious Court. The competence of religious courts is affirmed in Article 49 of Law Number 3 of 2006 concerning Amendments to Law Number 7 of 1989 concerning Religious Courts. The procedures and requirements for submitting applications for child adoption have been regulated in detail and concretely in various child adoption regulations, including Government Regulation Number 54 of 2007 challenging the Implementation of Child Adoption. There should be legal unity, namely a law-level regulation governing the adoption of Indonesian children. For the government to socialize the strengthening of the position and authority of

religious courts in the adoption of children for Muslims. Socialization is needed so that the purpose of laws and regulations governing the norms of adoption of children for Muslims is in accordance and in line with the objectives of applicable law. For Muslims who wish to adopt children should be carried out in religious courts as absolute and representative authority for the practice of Islamic law.

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