

# Adoption of Children in the Civil Law Perspective

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**Abstract.** This study examines the adoption of children from the perspective of civil law. By using a normative juridical approach accompanied by data collection through a literature study, it was found that the Civil Code does not recognize child adoption. In case of adoption, then civilly no legal relationship, whether a matter of inheritance or other conditions that affect the law.

**Keywords:** Children; Civil Law; Child Adoption

## 1 Introduction

The position of the child in a family has a significant position. The presence of the child is eagerly awaited by the parents and also the large family. The husband and wife feel that their lives are complete when they have children in their family. On the other hand, the couple will also feel less when the child is not present, which would even cause anxiety and new problems in their lives. A person with a family hopes to have descendants as the successor of his generation [1]. But sometimes expectations are not always following the wishes, many families who have long lived domestic life that never get children. This condition is one of the reasons a person or family adopts a child.

The adoption of children in Indonesia has been going on for a very long time until now and of course, in the future, it will continue to happen. In the past, adoption occurred according to the customs or traditions of the community with different motives and ways which in some places are still valid today. In positive law, the adoption of children has also been regulated in legislation since the colonial period. At this time there is no specific law governing the adoption of children, but the adoption of children has been regulated in various regulations.

Arrangements for adoption or adoption of various civil law systems in force in Indonesia have different purposes, methods/procedures, and legal consequences depending on the culture, religion, or view of life they hold. Some intend to carry on offspring solely, others aim only for the maintenance and welfare of children or have both goals, namely both to continue child and for the maintenance and welfare of children. A person who adheres to Islam has a goal in continuing the lineage to increase family happiness because the religious commandment is to add religious symbols. In the Tiong Hoa community, having offspring is very important for a family, because having descendants means that someone can pray for their ancestors, while for indigenous peoples descent also has a very important meaning, namely to continue the breed from a family, especially for the community. In the form of a royal custom, descent is very important to continue the royal throne.

The Unitary State of the Republic of Indonesia ensures the welfare of each of its people, including the protection of children's rights, which are human rights, according to the

preamble to the Law of the Republic of Indonesia Number 23 of 2002 concerning Child Protection [2]. For children to develop and grow properly as expected, adequate support is needed for the child's self-development process. Children need good coaching, family conditions, and an environment that supports their development. In reality, not all people or families can carry out their functions properly because until now there are still many children who cannot live their lives properly and they have to bear the heavy enough burden of life, not even a few children have to live alone apart from their parents. For this reason, various supports are needed, both related to institutions and legal instruments that are better suited to carry out development and provide protection for children. This article will present the subject of child adoption from the standpoint of civil law based on this reasoning.

## **2 Methodology**

This study uses normative or doctrinal legal research as its methodology [3]. To collect the data in this study was carried out by collecting (documenting) secondary data in the form of expert opinions, writings in scientific books, documents, archives, literature, papers, and other library materials that are closely related to the problems the authors examine [4]. The data analysis technique used in this legal research is to use deductive logic, namely concluding a general problem to the concrete matter faced.

## **3 Results and Discussion**

Its initial adoption was unknown in the Burgerlijk Wetboek (B.W.) which is a legacy book from the Dutch East Indies government, although the source of the creation of B.W. namely the French Civil Code recognizes the term adoption [5]. The reason is that according to the opinion of the Dutch people, children must be descended from blood, in line with the development of adoption which was legalized by the new Netherlands (since 1956) has known adoption. The consideration for including this adoption is the desire felt among the people to provide care for children who have no parents or whose parents are unable.

The definition of adopted children can be viewed from two views, namely etymologically and terminology. From an etymological standpoint, the term "adopted kid" or "adoption" derives from the Dutch word "adoptie," which meaning "adoption." In Arabic, it is known as Tabanni, which Yunus defines as "taking an adopted kid," while Munjid lexicon defines it as "making him a child," and the Dutch definition, according to the legal dictionary, is "adopting a child to be his biological child" [6].

Adoption of children has been regulated since the colonial period, when there was Staatsblad 1917 No.129, and there are currently a number of regulations related to child adoption, including Law No. 4 of 1979 concerning Child Welfare, Law No. 23 of 2002 concerning Child Protection as amended by Law of the Republic of Indonesia Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection, and Law No. 23 of 2002 concerning Child Protection as amended by Law of the Republic of Indonesia Number 35 of 2014 concerning Amendments to Government Regulation Number 54 of 2007 concerning Implementation of Child Adoption, Regulation of the Minister of Social Affairs Number: 110 /Huk /2009 concerning Requirements of Child Adoption.

Adoption of infants under positive Indonesian legislation can be done as a means of ensuring children's safety. Child Protection is defined as all activities to ensure and protect

kids and their rights in Article 1 number 2 of Act Number 35 of 2014 concerning Amendments to Act Number 23 of 2002 concerning Child Protection, namely all actions to ensure and safeguard and their rights so that they can live, grow, develop, and participate in a manner that is consistent with human decency, and safeguards from violence and discrimination. A child whose rights are transferred from the sphere of authority of the parental family, legal guardian, or other people who are responsible for the child's care, education, and rearing into the family environment of his adoptive parents based on a decision or court ruling is defined as an adopted child in Article 1 point 9.

Article 39 of Law Number 35 of 2014 about Amendments to Law Number 23 of 2002 Concerning Child Protection regulates special arrangements relating to child adoption:

- a. Adoption of a kid may only be done in the best interests of the child and is done in accordance with local traditions and legal rules.
- b. The blood tie between the adopted kid and his biological parents is not broken by the adoption described in paragraph (1). (2a) Without losing the child's original identity, a child adoption as described in paragraph (1) must be recorded on the birth certificate.
- c. The religion of the prospective adoptive parents must be the same as the religion of the prospective adopted kid.
- d. Adoption of children by foreign nationals can only be done as a last resort. (4a) If the origin of the child is unknown, the person who will adopt the child must include the identity of the child as referred to in Article 27 paragraph (4).
- e. If the child's origin is unclear, the child's religion is modified to the local population's predominant religion.

Based on Article 39 of Law Number 35 of 2014 it can be seen that the principle or principal matters in child adoption have been the subject of debate in society. Article 39 paragraph (1) stipulates that child adoption can be carried out based on local customs and statutory regulations. The adoption of a child is carried out based on statutory regulations to protect the rights of the adopted child. If it is only carried out according to customs without going through legal procedures, it is concerned that children's rights will be neglected and cannot be protected. The procedure for obtaining ratification of adoption from the court is according to the Circular Letter of the Supreme Court No. 6 of 1983 concerning Completion of the Circular Letter of the Supreme Court No. 2 of 1979 confirms the procedure:

- a. It starts with an application to the competent head of the court and therefore includes a procedure which in civil procedural law is known as voluntary jurisdiction (jurisdiction voluntaria);
- b. Petition The application must be single, namely asking for the ratification of the adoption of a child, without any other application in the petition of the application;
- c. On the application for ratification of the appointment of Indonesian Citizens (domestic adoption) the court will issue ratification in the form of "Determination," while the application for ratification of the adoption of Indonesian Citizens by Foreign Citizens or vice versa the adoption of Foreign Citizens by Indonesian Citizens (inter-country). adoption) the court will issue a "Decision" Legalizing the Adoption of a Child

The other conditions in the adoption of children of Indonesian citizens that must be met are:

Requirements for adoptive parents:

- a. It is legal to adopt a kid straight from the biological parents to the adoptive parents.
- b. Adoption of a child by a person who is not married or who is single is permitted.

Requirements for prospective adopted children:

- a. It must be attached if the prospective kid is under the care of a social foundation. The foundation in question has received written authorisation from the Minister of Social Affairs to participate in child adoption activities.
- b. Prospective adopted children under the care of the above-mentioned Social Foundation must additionally receive written consent from the Minister of Social Affairs or an appointed official that the child may be offered for adoption.

In Indonesia, the adoption procedure is governed by Law Number 23 of 2002 on Kid Protection, which states that adoption does not end the biological tie between the adopted child and his biological parents. Regarding rights and obligations in general, some rights and obligations exist between children and parents both religiously, morally, and virtuously. Law on Child Protection number 23 of 2002 is regulated in articles 39, 40, and 41 [7]. The Guidelines for the Implementation of Adoption of Children published by the Ministry of Social Affairs of the Republic of Indonesia, Directorate General of Social Services and Rehabilitation, Directorate of Child Social Services, explains the regulations regarding more comprehensive procedures regarding adoption applications based on Government Regulation Number 54 of 2007.

Determination of adopted children in Indonesia is included in the category of Declaratory Decisions, namely decisions that are merely stating or confirming a legal situation.[8] Another example is the decision of the declarator which states that the marriage bond is valid, the sale and purchase agreement is legitimate, the ownership rights to the object in dispute are legal or illegal as the property of the plaintiff; The plaintiff is not a legal successor, or the property in the case is the plaintiff's inheritance from his parents' legacy, or the transfer of shares from the original shareholder to the plaintiff is lawful since it complies with the terms of Article 49 of PT Law No. 1 of 1995. A declaratory or declarative decision (*declaratoir vonnis*) is a judge's declaration contained in the judgment he handed down, as seen in the instances above [5]. The declaration clarifies or determines the existence of a right, title, or status. The judgment has decided with certainty who has the right or who has the position of the contested matter by including the statement in the decree or *dicta* of the decision. A "declaratoir" ruling is one that declares a condition to be a lawful condition under the law.

Adoption of a child can cause legal consequences between the adopted child and the adoptive parents. In customary law, there are differences in the legal consequences of adopting children, such as those related to inheritance, use of names, position in the family, and others. An adopted child has juridical rights within the framework of inheritance law, namely receiving rights and obligations as heirs, both material (houses, fields, gardens, etc.) Social rights such as attending traditional ceremonies, specific ways of dressing in certain places with respect [9]. The main issues in child adoption are regulated in Article 39 of Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection, which includes not being allowed to sever the blood relationship between the adopted child and his biological parents registered in the birth certificate without omitting the child's initial identity and the religious similarity of the prospective adoptive parents and the prospective adopted child [10]. The fact that adoption does not end the blood tie between the adopted kid and his original parents has far-reaching legal implications, including the use of the adopted child's name, the inheritance procedure, the adopted child's status, and so on. This is distinct from the adoption of a kid under customary law, which includes severing the adopted child's blood link with his birth parents. Moreover, in Law Number 35 of 2014, it is stipulated that the adoption of a child must be registered in the birth certificate without eliminating the child's initial identity and religious similarity between the prospective adopted child and the adoptive parents.

#### 4 Conclusion

Adoption of children is primarily motivated by the best interests of children in child protection measures under civil law. In the positive rule, child adoption must not end the biological tie between the adopted kid and his biological parents, it must be documented, and the adopted child and adoptive parents must have the same religion. For the legal adoption of a child in Indonesia, after the application for adoption goes through the procedures of the rules in the existing legislation. The adoption of a child is then ratified through the final step, namely by a court decision issued by the court in the form of a court decision or known as a declaration decision, namely a statement from the panel of judges that the adopted child is legal as an adopted child of the adoptive parents who applied for adoption. Court decisions also cover the legal status of the adopted child in the family that has adopted him, regarding the inheritance rights of adopted children, which are regulated in various ways, both from customary law and legislation, the inheritance rights of children according to customary law follow the traditional rules of each region.

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