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Legal Studies on Child Adoption in the Indonesian Family Context: A Juridical Review

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ABSTRACT

Child adoption is a crucial process in family law, involving the legal acceptance of a non-biologically related child into another family. In Indonesia, adoption safeguards children's rights to a stable family environment, making family law's role pivotal. However, adoption in Indonesia faces challenges like complex procedures, limited information, and bureaucratic delays. This study aims to explore adoption's facets in Indonesia: its legal process, common obstacles, family law's role in safeguarding children's and adoptive parents' rights, and Law Number 23 of 2002's effectiveness in handling adoption cases. Using normative juridical research, this study analyzes secondary data from regulations and literature. Findings reveal the adoption process's intricacies, highlighting issues with legal compliance, children's rights protection, and adoptive parents' responsibilities. Courts play a vital role in ensuring legal certainty for adopted children. Adoption not only involves legal aspects but also emotional challenges for the adopted child. This research enhances understanding of Indonesian adoption and informs better family law policies and practices, aiming to improve adopted children's and adopting families' welfare and protection

INTRODUCTION

Adoption is an essential process in family law that involves the legal acceptance of a child who is not of biological descent by another family as their own (Tristiana & Dwikowati, 2023). District Court decisions and agreements between the adopting parents and the child's biological parents can also be used to finalize the adoption (Safiuddin et al., 2023). In Indonesia, the issue of adoption is important because it involves children's rights to a stable and fair family environment (Zuhra, 2021; Sibuea & Ritonga, 2024). In addition, the role of family law in regulating the adoption process in Indonesia is very significant because it relates to protecting children's rights, identity adjustment, and the obligations and responsibilities of adoptive parents (Saraswati, 2009). Legal protection for adopted children is essential to child protection laws and is evolving in society (Zahara et al., 2023). Although Law No. 23 of 2002 on Child Protection has regulated adoption, several challenges still need to be addressed, including complex procedures, lack of information, and slow bureaucratic processes (Juhadi & Hadaris, 2020) (Arifin, 2020).

The literature study on child adoption law in Indonesia covers various aspects, including the protection of child labor rights, the dynamics of child adoption, the law of child adoption through a deed of acknowledgment of child adoption, and the position of adopted children and its legal consequences according to positive Islamic law in Indonesia (Angelia, 2022) (Subeitan et al., 2021). In some cases, court authority is given to religious courts or district courts, which can affect the process of child adoption (Pratiwi, 2022). Child adoption is carried out according to Islamic, customary, and civil laws, each of which will have different legal consequences (Muljohadi, 2018). The status of child adoption contradicts the Child Protection Law, which emphasizes that child adoption must be carried out in the best interests of the child and must not eliminate the origin of the child (Muklisin et al., 2021).

Child adoption must be done in the same religion, which does not break the blood relationship of the adopted child with their biological parents

(Rais, 2016). An Indonesian citizen can adopt a child at most 2 (two) times with a minimum interval of 2 (two) years (Balaati, 2013). Adopted children are Indonesian citizens who can obtain written evidence in the form of population documents that can be obtained for children of parents with stateless person status (Kansil et al., 2022). If the adoptive parent dies, the adopted child has inheritance rights against the adoptive parent (Sihotang et al., 2023). The legality of child adoption in Indonesia is essential to protect and provide a decent life for children. Uncertainty regarding the lawfulness of adopted children can hinder the fulfillment of a person's right to obtain rights as a citizen (Kansil et al., 2022). In Indonesia, there is still a diversity of laws and regulations governing the inheritance rights of adopted children. Islamic inheritance law, Western inheritance law, civil inheritance law, and customary inheritance law have different standards (Pudihang, 2015). Therefore, an in-depth understanding of adoption and the role of family law in regulating it in Indonesia is essential to improve the protection and welfare of adopted children and adopting families.

This research investigates various aspects of adoption in Indonesia through four detailed problem formulations. First, the research will analyze the adoption process as regulated in Indonesian family law. This includes a review of the existing regulations and procedures and comparing adoption practices in other countries. In addition, the study will also pinpoint the problems and obstacles often faced by adopters in Indonesia, as well as the variables that influence them. The third point will center on the function of family law in protecting the rights of adoptive parents and children in adoption situations, particularly regarding dispute resolution and enforcement of rights relating to adoption procedures. Finally, the study will assess how well Law No. 23 of 2002 on Child Protection has been implemented in Indonesia in managing adoption situations. As a result, this research is expected to deepen our understanding of adoption in Indonesia and significantly advance the future development of family law practice and policy.

This research has important significance in the context of family law in Indonesia. First, a better understanding of adoption regulations and procedures can help improve efficiency and fairness in the adoption process so that more children in need of families can be placed in stable and safe family environments. Second, identifying constraints and problems in the adoption process can provide a basis for policymakers to undertake necessary legal reforms to improve the accessibility and sustainability of the adoption system in Indonesia (Lubis et al., 2024). Third, a better understanding of the role of family law in protecting the rights of children and adoptive parents can help improve the protection of both parties involved in the adoption process. Fourth, evaluating the implementation of Law No. 23/2002 on Child Protection in the context of adoption can provide valuable insights to improve the effectiveness of legal policies and practices related to child protection in Indonesia. As such, this research can significantly contribute to Indonesia's literature on family law and child protection.

METHODS

This research utilizes normative legal research methods to investigate the legal protection of adopted children and the regulation of their rights in Indonesia. This descriptive-analytical method utilizes a literature approach focusing on secondary data or literature sources. The technique used in this research is the normative juridical research method, which refers to analyzing secondary materials or literature sources as the basis of research. Normative juridical research methods are often used in legal research to understand the legal basis of a problem, identify matches between existing legal norms and natural conditions, and provide recommendations or solutions based on analysis of these legal norms. This method makes an essential contribution to the development of legal theory and the formation of legal policy.

This research adopts a statutory, conceptual, and comparative approach strategy (Marzuki, 2017). Secondary data sources include primary legal documents and secondary and tertiary law. This research utilizes the literature study methodology to collect information relevant to the research topic. In

addition, an analytical descriptive analysis approach was used in this research. According to Sugiyono (2013), this approach allows researchers to systematically analyze a body of law to understand and describe in detail the legal regulations relating to adopted children and their rights. Overall, this research combines normative legal research methods with statutory, conceptual, and comparative approach strategies and analytical descriptive analysis techniques to investigate the legal protection of adopted children in Indonesia. This method provides a comprehensive framework to reveal and analyze critical aspects of legal regulations relevant to the research topic.

RESULTS

The Adoption Process in Indonesia

The Adoption and Children Act of 2002, which replaced the Adoption Act of 1976, contained the first rules related to adoption (Brammer, 2015). This law is also the basis for several adoption rules in Indonesia. There are procedures that must be fulfilled to adopt a child (Hukumonline.com, 2023) legally. Article 12 paragraph (1) of Government Regulation No. 54/2007 on the Implementation of Child Adoption ("PP 54/2007") describes the requirements for adopted children. These include:

1. Being under eighteen years of age.
2. Being a neglected or abandoned child.
3. Being in the care of a family or child care facility.
4. Requiring special protection.

Then, according to Article 12 paragraph (2) of GR 54/2007, three age groups of children can be adopted: (1) those who have not yet reached the age of six, which is the top priority; (2) those who are between six and twelve years old and have a legitimate emergency reason; and (3) those between twelve and eighteen years old and under eighteen years old, as long as they need special protection. In addition, Article 13 of GR 54/2007 stipulates that prospective adoptive parents must (1) be physically and mentally healthy; (2) be between 30 and 55 years of age; (3) adhere to the same religion as the intended adoptive child; (4) be of good behavior and have never been convicted of a criminal offense; (5) have

been married for at least five years; (6) not be a same-sex couple; (7) have no children or only one child; (8) have a stable social and economic life; (9) obtain written consent and approval from the child and the child's parents or guardians; (10) make a written statement attesting to the best interests, welfare, and protection of the child; and (11) be accompanied by a social report from a local social worker. (12) have at least six months of experience raising the prospective adopted child since the foster care license is issued, (13) obtain a license from the Minister or the head of the social agency.

Here are the procedures for adopting a child in Indonesia once you better understand the prerequisites. Different laws and regulations govern how adoption is carried out (Balaati, 2013). These restrictions include (1) Supreme Court Circular Letter No. 6 of 1983, which regulates the procedures for child adoption. This rule emphasizes that prospective adoptive parents must collect documents and submit an application to the District Court that serves the area of the adopted child. (2) The adopted child must adhere to the same religion as his or her parents, by Law No. 23/2002 on Child Protection. Adopted, and there must be no break in the child's bond with their biological parents. (3) Government Regulation No. 54/2007 on the Implementation of Child Adoption regulates the procedures for child adoption. It limits a person to adopting a child to a maximum of two times with a minimum period of two years. Indonesia has four different child adoption procedures, each based on specific customary laws. Law No. 23/2002 on Child Protection and Government Regulation No. 54/2007 on implementing Child Adoption contain practical guidelines for child adoption in Indonesia. Minister of Social Affairs Regulation Number 110 of 2009 (PERMEN) on Requirements for Child Adoption provides further information on this process. The main prerequisites for child adoption can be summarized by the following three rules: (1) Determining the Best Interest of the Adopted Child, (2) Maintaining the Blood Relationship of the Adopted Child, and (3) The Adoptive Parents Share the Adopted Child's Religion with the Birth Parents.

The adoption implementation process involves several stages, such as (1) Document Preparation, in which prospective adoptive parents must prepare personal documents such as KTP, family card, marriage certificate, work certificate, Certificate of Competent Behavior (SKCK), etc. The application is submitted to the local Social Affairs Office by the domicile of the prospective adopted child. (2) The Adoptive Parent Eligibility Test involves a social worker visiting the prospective adoptive parent's residence to ensure the authenticity and suitability of the application documents. (3) Temporary Foster Care, where prospective adoptive parents are declared eligible, a Temporary Foster Care License is issued, lasting for six months with the supervision of a social worker. (4) Social Service Recommendation: if deemed eligible, the provincial Social Service issues a recommendation to the Ministry of Social Affairs (MoSA). It is received by the Director of Children's Social Services at the MoSA. (5) Consideration by the Ministry of Social Affairs, where the Child Adoption Licensing Consideration Team (TIPPA) discusses the eligibility of prospective adoptive parents. If approved, a Minister of Social Affairs Decree on child adoption is issued; if rejected, the child is returned to the institution. (6) Court Determination: after receiving approval from the Ministry of Social Affairs, prospective adoptive parents can apply for a Determination by the District Court to validate the adoption legally. The court decision also includes the legal status of the adopted child in the adoptive family, inheritance rights, and customary rules from each region. Customary adoption is carried out by local traditions, following the procedures that apply in the local community. Provincial/District/City Social Agencies record and document these adoptions. The customary adoption process can be submitted for a Court Determination by the Laws and Regulations. After that, a copy of the Court Determination is submitted to the Social Agency. Customary child adoption is carried out by the norms prevailing in the relevant community. An application for child adoption that meets the requirements is

submitted to the court to obtain a stipulation (Rofah, 2019).

The prospective adopted child (CAA) must be in the care of a child care institution, among other requirements for adopting a child through a child care institution. This procedure ensures that non-compliant adoptions are more common than compliant adoptions. In other words, since these adoptions are not recorded, it is difficult to determine the exact number that occurs outside the legal boundaries. Several parties are involved in adopting a child: prospective adoptive parents, prospective adopted children, biological parents, social workers, the Adoption Request Consideration Team, and the social service office as the recognized government agency (Rofah, 2019). It is essential for everyone participating in the adoption process and the relevant agencies in Indonesia to understand the different aspects of these laws and regulations. The District Court in the area where the adopted child resides, Institutions/Foundations that the Governor has approved, and the Provincial Social Service are among the organizations that participate in the child adoption process (Indonesia.go.id, 2019). Juridical Analysis: An evaluation of the compliance of the adoption process in Indonesia with the principles of family law

In the context of child adoption, family law refers to the legal standards and procedures governing the procedures for child adoption, the obligations and privileges of prospective adoptive parents, the rights and protection of adopted children, and the functions of related institutions. Law No. 23 of 2002 on Child Protection, Government Regulation No. 54 of 2007 on Child Adoption, and Law No. 4 of 1979 on Child Welfare are just some of the regulations that govern the process of child adoption within the framework of Indonesian family law (Hailaw, id, 2020). The legal adoption of children between Indonesian residents is allowed under Government Regulation of the Republic of Indonesia Number 54 of 2007 concerning the Implementation of Child Adoption. The applicant must undergo three stages of the child adoption process: pre-child adoption preparation, court implementation, and

child adoption registration (Safarianingsih, 2022). Child adoption must be approved by the court and fulfill all relevant legal requirements, including proving that the adoption procedure establishes the child's legal status as the child of the adoptive parents (Budiman, 2017).

Child adoption can raise several legal issues, including compliance with legal protocols. The adoption process must obtain court approval and comply with the protocols outlined in the relevant laws. There will be no legal relationship between the adoptive parents and the adopted child if these procedures are not followed, resulting in the invalidation of the child's adoption (Oktavira, 2018). The problem of adoption in Indonesia is characterized by a need for more reliable and accurate data on the number of adopted children as well as the number of foster children. A clear picture must be obtained from something other than statistical data or other research findings. There are clear signs of no correlation between the number of children adopted and the number of adoptions conducted. Although there are laws and regulations governing adoption in Indonesia, people still need to get complete assistance from the government regarding adoption needs. Many married couples who wish to adopt a child find it difficult to fully understand court-approved adoption procedures due to a lack of socialization and government support (Ramadan et al., 2024).

This is contrary to the provisions of the law, which emphasize that the process of adopting a child must go through a court decision process, as explained in Article 20 of Government Regulation No. 54/2007 on Child Adoption. The article states that "a qualified application for child adoption is submitted to the Court to obtain a Court decision." The role of court decisions is significant in regulating legal aspects because it can provide complete legal certainty regarding the protection of adopted children if adopting children is carried out through a court decision (Safarianingsih, 2022). The following legal issue is the adoption law and verification procedures in Indonesia. Social groups screen and interview prospective adoptive parents as part of the

adoption process to ensure they meet standards. Age, marital status, health, and accuracy of required documentation are among the prerequisites (Aminah, 2018).

In addition, legal issues arise related to protecting children's rights, so adoption procedures must consider the child's best interests, property, family law, and Islamic, civil, and customary law. The goal is to protect the child's rights and ensure the adoption procedure complies with legal requirements (Heylaw. id, 2023). In this case, the obligations of adoptive parents become a matter of concern, especially in carrying out their protective duties towards adopted children, mainly if the process of adopting a child is not carried out by the laws and regulations (Ramadan et al., 2024). Adoption can be emotionally taxing, especially for adopted children who may wonder where they came from and struggle with complicated identity issues. Therefore, government organizations such as the Social Affairs Office must proactively ensure that child adoption processes are carried out accurately and according to applicable regulations at the foundation or orphanage, overseeing the child adoption process (Ramadan et al., 2024).

DISCUSSION

The findings of this research address several issues relating to child adoption in Indonesia. Firstly, there have been changes to the adoption law, which was initially governed by the Adoption and Children Act of 2002, which replaced the Adoption Act of 1976. Indonesia's regulations on this matter also follow comparable legislation. In Indonesia, several prerequisites must be met before a child can be adopted. These include the child's age, legal status, placement in a family or institution, and the need for extra protection.

Furthermore, the prerequisites of prospective adoptive parents are comprehensively explained, including health condition, age, religion, behavior, marital status, number of offspring, financial stability, and documented support and consent from both the child and the child's parents. The process of child adoption includes:

1. The stages of document verification.
2. Testing the eligibility of adoptive parents.
3. Temporary care.
4. Recommendation from the Social Affairs Office.
5. Consideration by the Ministry of Social Affairs.

Determination by the Court

In addition, the research findings highlight that child adoption in Indonesia also involves legal provisions related to religion, the child's relationship with their biological parents, as well as limits on the number of child adoptions a person can make within a certain period. Legal issues arise about compliance with legal procedures, the protection of children's rights, and the responsibility of adoptive parents towards adopted children.

It also emphasizes the importance of the court's role in the adoption process, as court decisions are crucial in establishing legal certainty surrounding the safety of adopted children. The conclusion of this research underscores that adoption is not just a legal process; it also raises awareness of the potential emotional difficulties that adopted children may experience. The results highlight the importance of understanding and complying with the relevant legal regulations governing child adoption and highlight the complexity and diversity of legal factors involved in the adoption process in Indonesia.

While this research still has several issues, it significantly contributes to our knowledge of family law about adoption in Indonesia. The level of investigation may have been affected by time and space constraints, leading to a limited understanding of how adoption patterns evolve. Data restrictions pose another challenge, as the research may need to provide a comprehensive picture due to limited access to adoption or family law records. Even when researchers attempt to maintain objectivity, subjectivity in data interpretation must be recognized as a potential influence on results. In addition, the lack of direct engagement with various community groups or cultural leaders may hinder a thorough understanding of the cultural and social environment. The applicability of the findings may also be affected by prospective future changes in family law policy, which suggests that the findings should be explicitly interpreted according to the situation when the research was conducted and may need to be revised when changes in time or policy occur.

Research into adoption laws and policies, case studies in different locations, and psychological examinations of adopted children could be conducted to increase knowledge about adoption in Indonesia. Research might concentrate on the involvement of adoptive parents in society, the functioning of social institutions, and cultural elements. Studies that compare with other countries are also critical. Developing a deeper understanding of birth parents' perspectives could help create inclusive policies. This research is believed to lead to improved knowledge and policy implementation in Indonesia.

CONCLUSION

The findings of this study show that child adoption in Indonesia is a complex procedure that encompasses several family law-related issues. Government regulations and laws influence the adoption process, defining requirements for prospective adoptive parents and adoptable children. However, the adoption practice has its challenges, including safeguarding the rights of adopted children, complying with legal requirements, and improving public understanding of proper protocols. The role of the courts is crucial to providing legal certainty for child adoption. However, this study offers a clearer understanding of the difficulties faced in implementing family law in Indonesia and the complexities associated with adoption.

Adopting a child entails complex emotional, social, and legal factors in addition to legal ones. Practical difficulties remain despite clear regulations, such as those relating to the prerequisites of prospective adoptive parents and adoption procedures, which must be adhered to. To safeguard the rights of adoptive parents and children and the practice of adoption, a deeper awareness of local customs, religion, and culture is required. This study has significantly impacted family law in Indonesia, including increasing understanding of adoption regulations, identifying current issues, protecting the rights of adoptive parents and children, and assessing how well child protection laws are being implemented. However, the study has limitations

regarding data access and a deeper understanding of the cultural context.

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