
Appointment of Children Based on Government Regulation Number 54 Year 2007 in Human Rights Perspective

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Abstract

Adoption in general is an act of taking someone else's child based on legal provisions that apply to the community concerned. Based on the determination number: 597/Pdt.P/2020/PN Dps and number: 924/Pdt.P/2019/PN Jkt Sel. It is known that there are adoptive parents who already have two biological children, this of course is not in accordance with Government Regulation Number 54 of 2007 concerning the Implementation of Adoption. The problem in this research is that the cause of adoption is not in accordance with Government Regulation No. 54 of 2007 and adoption from the perspective of Human Rights. The theory used in the analysis is the theory of justice, distributive justice, which is the balance between what a person gets and what he deserves. This type of research used in this paper is a type of normative legal approach. The cause of adoption in this case is because the biological parents cannot fulfill the child's rights, so that the adoption of the child is carried out so that the fulfillment of the child's rights is fulfilled by the adoptive parents. Children's rights have a relationship with human rights and are regulated by the state. Therefore, there needs to be good cooperation between the government and the community through outreach, counseling and assistance activities in order to increase understanding of the requirements, procedures and fulfillment of children's rights in the implementation of adoption. The implementation of adoption explains that one of the requirements for prospective adoptive parents is not having children or only having one child. However, in its implementation, there was a judge's decision that allowed prospective adoptive parents who had biological children before adopting a child. So, There needs to be an update or amendment to the regulations regarding the requirements for adoption, which should prioritize the fulfillment of children's rights.

Keywords: Adoption, Perspective Human Rights

I. Introduction

So far, there are no laws and regulations that specifically regulate the adoption of children, except for Indonesian Citizens (WNI) of Chinese descent, namely Staatsblad 1917 Number 129. In the Legal Dictionary the words adoption or adoption come from Latin *adoptio* is given the meaning of adoption as one's own child. Adoption of a child or illegal adoption is adoption or adoption that is carried out only

based on an agreement between the adopting parents and the adopted child's biological parents. The definition of adoption in general is an act of taking someone else's child based on legal provisions that apply to the community concerned. Article 229 Nieuw Burgerlijk Wetboek (NBW), states (Djaja.S. Meliala, 2016, p.19):

- (1) By adopting a child, the adopted child has the position of being the legal child of the adoptive parent.
- (2) Adoption of a child breaks the family law relationship between the child in question and his blood family.

Based on Article 1 of the Government Regulation of the Republic of Indonesia Number 54 of 2007 concerning the Implementation of Adoption, it is explained that adoption is as follows:

"A legal act that transfers a child from the sphere of authority of the parent, legal guardian, or other person responsible for the care, education and raising of the child into the family environment of the adoptive parents".

Indonesia highly upholds the human rights of its citizens, so the State of Indonesia has mentioned in the Preamble to the 1945 Constitution, especially in the fourth paragraph which is outlined in articles, among others: Articles 27 to 31, Article 33 and Article 34 of the Law. 1945 foundation. Human rights are related to children's rights, so the adoption system in Indonesia must go through several mechanisms. The problem in this writing is that the cause of adoption is not in accordance with Government Regulation Number 54 of 2007 and adoption from a human rights perspective.

Even though the People's Consultative Assembly (MPR) has mandated that state administrators be more aggressive in eradicating corruption, corrupt practices have not subsided, instead they are increasingly rampant and greedy. The virus of corruption that attacks all levels of our society, must be prevented and eradicated, so that in the future it will not be infected again on Indonesia, which we love. The severity of the disease of corruption that afflicts our nation cannot be left alone, we must find a way out, no matter how hard and difficult the terrain is. At least this downturn still leaves a blessing, giving us the opportunity to reflect, think clearly about the corruption problem we are facing.

One way to develop the value of anti-corruption values is; honesty, discipline, and responsibility are with; 1) explore, study, and understand the potential for anti-corruption values contained in local wisdom and 2) actualize these anti-corruption values in people's lives. These two issues will be described in this paper.

II. Methods

The type of research method that has been used is normative legal research, normative research is legal research which is carried out by examining library materials or mere secondary data. The data collection techniques used were documentation and interviews as supporting materials for this research. This study the authors used a qualitative data analysis technique. In this study, using qualitative juridical descriptive analysis, namely in the form of describing, describing, describing and explaining the problems raised, then analyzed with a theory that has been prepared, has been analyzed and given legal arguments, and conclusions are drawn.

III. RESULT AND DISCUSSION

A. The cause of adoption is not in accordance with Government Regulation Number 54 of 2007

Adoption is a legal act of transferring a child from an environment (original) to the family environment of his adoptive parents (Rusli Pandika, 2001: p.105). Adoption of children between Indonesian citizens includes adoption based on local customs and laws and regulations in Indonesia. Adoption of children based on statutory regulations includes direct adoption of children carried out by prospective adoptive parents of prospective adopted children who are directly in the care of parents and adoption of children through childcare institutions carried out by prospective adoptive parents against prospective adopted children who are in a childcare institution appointed by the Minister. Adoption of children based on statutory regulations can be carried out through a court order. Adoption is usually done because adoptive parents cannot have children, but now there are changes where adoption is prioritized in the best interests of the adopted child.

The requirements for adopting adopted children are contained in Law Number 35 of 2014 in conjunction with Law Number 23 of 2002 concerning Child Protection, and more specifically regulated in Government Regulation Number 54 of 2007 concerning Implementation of Adoption of Children. A person may adopt a child for the best interest of the child in accordance with local customs and the prevailing laws and regulations. Article 13 of the Government Number 54 of 2007 concerning the Implementation of Adoption of Children states that adoptive parents must also be of the same religion as the adopted child.

The factors of the cause of adoption are as follows:

1. The implementation of adoption based on Government Regulation Number 54 of 2007 is caused by the inadequate national economic conditions which greatly affect the economic condition of the family and have an impact on the level of welfare of Indonesian children. The reality that we encounter everyday in society is still a lot of children who live in unfavorable conditions, where there are many street children, neglected children, orphans and children with special needs with their various complex problems that require handling and guidance, and protection, both from the government and the community.
2. Causes of adoption according to Ida Ayu Sadnyini (Vol XII No 1.2012:p.78):
 - 1) Adopt children because they do not have children (to carry on offspring)
Adopting a child because it does not have children so that the child has a position or position, the position in question carries two possibilities, namely as follows:
 - a) As a child, namely as a family member whose aim is to continue the offspring, in this case as an heir (juridical)
 - b) As a member of society in social life and based on customary procedures, adoption must be carried out in cash or light, which means that it is legal, in this case it is carried out in public, while cash means that the act has been completed at a predetermined time and cannot take it back.
 - 2) Adopting a child as a bait
Adopting a child as a guide for the birth of a biological child, such adoption often occurs without the ratification of the pep Violence ceremony, let alone the legal stipulation.
 - 3) Adoption of a child out of compassion
Adopting a child out of compassion is adopting a child because the parent has passed away or not to support the child's life.
 - 4) Adopting children outside of marriage
To adopt a child born from an extramarital act is to raise a child born from an extramarital act. In this study the adoption of the child was due to a factor that the adoption of the child was carried out out of compassion because the child's biological parents were unable to fulfill the rights of the child.
3. The cause of adoption based on the number assignment: 597 / Pdt.P / 2020 / Pn Dps. Legal considerations of the application that was registered on July 23, 2020, which basically brings up the following:
 - 1) Considering, that the petitioner wishes to adopt a child who has been cared for by them, because the child's biological mother does not have the costs to care for, care for, and pay for the child's life and has voluntarily submitted her child to the applicant who has been reared in a statement of surrender. the child to be cared for and made adopted by the applicant.
 - 2) Considering that the said petition of the applicant is linked by evidence, letters and statements of witnesses.
 - 3) Considering that the judge examines and examines the evidence, letters and statements of witnesses presented in the trial, the court shall obtain the following facts:
 - A. That it is true that the applicant has married according to the excerpt of marriage certificate No. 1001 / K / 2003 dated 24 July 2003.
 - B. The applicant has been blessed with 2 (two) children.
 - C. Whereas it is true that the biological parents of the prospective adopted child do not have the

money to care for, care for, finance the child's life, so the biological parents of the prospective adopted child voluntarily surrender their child to the applicants to be adopted as adopted children.

- D. That when handing over the child the applicant had carried out a Hindu adoption ceremony on December 6, 2016 and it was broadcast (announced) by Banjar Sumuh and no one objected.
- E. Whereas in the adoption of children, a recommendation for adoption of children among Indonesian citizens has also been issued, No 463.1 / 2772 / Permit B / DISPMPT.

- 4) Considering that the essence and purpose of adoption of this child is for the benefit of the child's legal status, future population administration and other interests in society.
- 5) Considering, whereas since childhood the child has been well cared for by the applicant as his own biological child.

Based on the results of interviews from the applicant's lawyer as supporting material for this writing, Mrs. Desi Purnani, S.H., M.H. said that "The adoption of this child can be accepted by the court because of good faith. Before submitting the application, the child has been treated since the womb, such as fees for a gynecologist and after the child is born there is already appointed and a traditional ceremony is made. Juridically too, that there is already a recommendation letter from the social service for the adoption of the child." (Interview with Mrs. Desi Purnani, as the lawyer for the adoption of children on February 1, 2021).

Based on the determination number: 597 / Pdt.P / 2020 / Pn Dps, the adopted child candidate has become the adopted child of the prospective adoptive parents on October 7, 2020 determined by the court, Article 1 Paragraph 9 of Law No. 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection, namely: "Adopted child is a child whose rights are transferred from the sphere of authority of the family of the parents, legal guardian, or other person who is responsible for the care, education and raising of the child into the family of the adoptive parents based on a court decision or decision."

At *Staatblaad* 1917 No. 129, the legal consequence of adoption is that the child legally acquires the name of the adoptive father, becomes the child born from the marriage of the adoptive parents and becomes the heir of the adoptive parents. That is, as a result of the appointment, all civil relations are cut off, which originates from the offspring due to birth, namely between the biological parents and the child. Therefore, children who are legally adopted through a court decision have the same position as biological children. So that the person concerned has the right to inherit the inheritance of his parents.

4. The cause of adoption is based on the stipulation number: 924 / Pdt.P / 2019 / PN Jkt.Sel Legal consideration of the application that was registered on September 9, 2019, which basically raised the things that Mr. Ruben Onsu wanted to appoint Alfonsius Toribio Tengkudi Alias Bertrand Peto as his adopted son was due to the factors of compassion and affection as his biological child should be, but in determining the number: 924 / Pdt.P / 2019 / PN Jkt.Sel (<http://sipp.pn-jakartaselatan.go.id> dated 11 May 2021):

- 1. accept and grant the Petitioner's Application in its entirety;
- 2. To stipulate legally Pemphpn as guardian of Alfonsius Toribio Tengkudi's son, Alias Bertrand Peto;
- 3. To revoke the custody of the parents and family of Alfonsius Toribio Tengkudi Alias Bertrand Peto and submit it to the Petitioner;
- 4. Requiring the Petitioner to register the registration of the appointment of the Guardian at the Office of Population and Civil Registration of the City Administration of South Jakarta;
- 5. Instructing the Petitioner to report to the Social Service of the City of South Jakarta Administration regarding the appointment of a Guardian;
- 6. To charge an application fee of Rp. 276,000.00 (two hundred seventy-six thousand rupiah)

At the stipulation number: 924 / Pdt.P / 2019 / PN Jkt.Sel, the judge accepted all the petitioners' requests but provided that at the age of 17 Alfonsius Toribio Tengkudi Alias Bertrand Peto could choose

to return to his biological parents or remain in your care. Ruben Onsu, because on 15 October 2019 the court determined that Mr. Ruben Onsu received custody of Alfonsius Toribio Tengkudi Alias Bentrand. At the age of 17, Alfonsius Toribio Tengkudi Alias Bentrand Peto could be directly involved in the next trial in the adoption trial to make Mr. Ruben Onsu's adopted son.

Determination number: 924 / Pdt.P / 2019 / PN Jkt.Sel, it can be seen that Alfonsius Toribio Tengkudi Alias Bentrand Peto became the foster child of Mr. Ruben Onsu. Article 1 Paragraph 10 of Law No. 35 of 2014 concerning Amendments to Law No. 23 of 2002 concerning Child Protection, namely: "Foster children are children who are cared for by a person or institution to be given guidance, care, care, education and health because the parent or one of the parents is unable to guarantee the child's normal growth and development".

The status of the foster child remains the legal child of their parents. It is the only responsibility of the foster parents to ensure that the foster children receive proper care in accordance with their rights.

The determination of 597 / Pdt.P / 2020 / Pn Dps and 924 / Pdt.P / 2019 / PN Jkt.Sel is known to have two biological children, this is of course not in accordance with the requirements for doption ofxchildren contained in Government Regulation Number 54 ofx2007 concerning the Implem entation of Adoption of children.

Government Regulation Number 54 of 2007 concerning the Implementation ofxAdopti on explains that one of the requirements for prospective adoptive parents is not having children or only having one child, meanwhile the stipulation number: 597 /Pdt.P/2020/Pn Dps is not appropriate. However, in its implementation, there was a judge's decision that allowed prospective adoptive parents to have biological children before adopting a child, so the judge still considered this because the judge saw the good faith of the prospective adoptive parents who had cared for the prospective adopted child since childhood and was able to fulfill the rights. -the rights of the child which is owned by each child, including the prospective adopted child properly, as appropriate, such as treating biological children and being responsible for the prospective adopted child with other considerations in the form of documentary evidence and witness statements.

As for the responsibility, which is the same as the right to health, the right to identity, the right to play and without any discrimination between the biological child and the adopted child candidate, the judge can accept all applications for adoption even though it is not in accordance with Government Regulation Number. 54 of 2007.

In the theory of legal certainty according to Bachsan Mustafa, legal certainty has 3 (three) meanings as follows ([Bachsan Mustafa, 2001; p.53](#)) :

1. Certainly regarding the legal regulations governing certain abstract government matters.
2. Certainly regarding the legal position of the subject and its legal object in the implementation of the regulations of State Administrative Law.
3. Prevent the possibility of arbitrary actions (*eigenrichting*) from any party, also not from the government.

With legal certainty such as adoption of children, will the rights of adopted children be more secure in the future as explained in the theory above.) from any party, not from the government. Adoption of a child obtaining a court order is very necessary to provide legal certainty for adopted children as well as in efforts to prevent abuse against adopted children.

B. Adoption from a human rights perspective

Adoption of children in a human rights perspective is the best way to overcome underprivileged people because children are an asset of the nation as the next generation and a potential human resource for short-term and long-term national development. For this reason, it is necessary to developand provide opportunities for the nation's children who do not have parents or parents do not have the cost of living, in education they do not get the right to education as they should at learning age.

Basically, these 4 principles are non discrimination, prioritizing the best interests of the child, the right to life or survival and development of children and respect for children's opinions. This condition is very important in fulfilling the adopted children's rights to be fulfilled as they should.

Adoption is increasingly being viewed from the point of view of the best interests of the child as a means to improve the welfare of the child, to improve the life and future of the child to be adopted. This legal action is carried out to provide legal rights and position for children as explained by Aristotle (Greek philosopher) in his theory, namely distributive justice, which is the balance between what a person gets and what he deserves (Munir Fuady, 2016; p.91). The problem that often occurs in children, namely children from underprivileged families that causes a decrease in the level of children's welfare. Children's rights are inherent in every child without any discrimination because every child throughout Indonesia has the same rights, even children's rights are part of human rights. Based on Aristotle's theory of justice, a child does not get his rights from his biological parents, so the adoption of the child causes the child to get justice in accordance with children's rights such as:

1. The right to play
2. The right to education
3. The right to protection
4. Right to get a name (identity)
5. The right to obtain national status
6. The right to food
7. The right to get access to health
8. Right to recreation
9. Right to equality
10. The right to have a role in development

This is in accordance with the rights of children in article 52 to article 56 of Law Number 39 Year 1999. The cause of adoption is that the national economic condition is not very supportive, which greatly affects the economic condition of the family and has an impact on the level of welfare of Indonesian children as described in Government Regulation Number 54 of 2007. The aim is to ensure the existence of children's rights to live peacefully in theory. not only realizes certainty but also guarantees about anticipatory welfare. With the context of adoption, the child does not get justice from his biological parents because the child's rights are not fulfilled, one of which is the right to education, if the fulfillment of children's rights cannot be fulfilled by the biological parents is a condition that is not in accordance with justice, then with the adoption of the child, this makes the child fulfilled the fulfillment of his rights given by the adoptive parents of the child. When this can be fulfilled, it can be said to be fair and prosperous. In connection with the fulfillment of children's rights, various laws and regulations supporting the Law of the Republic of Indonesia Number 39 of 1999 concerning Human Rights have been made (specifically in articles 52 to 66 which regulate children's rights).

Article 52 of the Law of the Republic of Indonesia Number 39 of 1999 states in paragraph:

- 1) Every child has the right to protection by parents, family, society and the State.
- 2) Children's rights are human rights and for the sake of their interests, children's rights are recognized and protected by law even from the time they are in the womb.

Article 53 Law of the Republic of Indonesia Number 39 of 1999 in paragraph:

- 3) Every child from the womb has the right to live, sustain life and improve their life.
- 4) Since birth, every child has the right to a name and citizenship status.

Children can be said to get justice if children's rights have been fulfilled as stipulated in law 35 of 2014 concerning child protection. The human rights perspective on children, as stated in Article 5 paragraph 3 of Law 39 of 1999 concerning human rights, stipulates that everyone, including vulnerable groups of people, has the right to receive more favorable treatment and protection. The impact when the fulfillment of children's rights is not optimal will also have an impact on the fulfillment of human rights. Every person has various kinds of human rights as regulated in Law Number 39 Year 1999 concerning

Human Rights. Various regulations have been issued starting from the Convention to the Human Rights Law. Thus, all countries in the world are morally required to respect, uphold and protect children's rights on the basis of human rights.

IV. Closing

Conslusion

Based on the results of research and discussion, the following conclusions can be drawn:

1. Causes of Child Adoption Not In Accordance with Government Regulation Number. 54 of 2007

Adoption is a legal act of transferring a child from an environment (original) to the family environment of his adoptive parents. The implementation of adoption based on Government Regulation Number 54 of 2007 is due to the inadequate national economic conditions which greatly affect the economic condition of the family and have an impact on the level of welfare of Indonesian children, not only that adoption is also caused by several factors, namely:

- 1) The implementation of adoption based on Government Regulation Number 54 of 2007 is caused by the unsupportive national economic conditions which greatly affect the economic condition of the family and have an impact on the level of welfare of Indonesian children.
- 2) Adoption of children because they do not have children, adopting children as fishing rods, adopting children because of compassion, adopting children outside of marriage.

The implementation of adoption explains that one of the requirements for prospective adoptive parents is not having children or only having one child, meanwhile in stipulation number: 597 / Pdt.P/ 2020 / Pn Dps and Penetapan 924 / Pdt.P / 2019 / PN Jkt.Sel not suitable. However, in its implementation, there was a judge's decision that allowed prospective adoptive parents who had biological children before adopting a child, so the judge still considered this because the judge saw the good faith of the prospective adoptive parents who had taken care of the prospective adopted child to fulfill the child's rights. Which is owned by every child, including the prospective adopted child properly, as appropriate, such as treating the biological child and being responsible for the prospective adopted child with other considerations in the form of documentary evidence and testimony of witnesses.

2. Adoption of children from a human rights perspective

Children are national assets for future generations and children have the ability to develop their potential. Adoption of children in a human rights perspective is the best way to overcome disadvantaged communities for short and long term national development. Adoption of children is used as a means to improve the welfare of the child itself which can be useful in the child's life and future. This legal action is carried out in order to achieve the best interests of the child. In addition to achieving the best interests of the child, this act is carried out to provide rights and legal position for children such as distributive justice, which is the balance between what a person gets and what he deserves. The problem that often arises in children, namely children from underprivileged families which causes a decrease in the level of children's welfare. Children's rights are inherent in every child without any discrimination because every child throughout Indonesia has the same rights, even children's rights are part of human rights.

Suggestions

1. There needs to be an update or amendment to the regulations regarding the requirements for adoption, which should prioritize the fulfillment of children's rights.
2. There is a need for good cooperation between the government and the community through outreach, counseling and assistance activities in order to increase understanding of the requirements, procedures and fulfillment of children's rights in the implementation of adoption.

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