

Research Paper

Protection of Appointed Children's Rights According to Law Number 35 of 2014 Concerning Child Protection

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Abstract: Adoption in Indonesia is still a problem for the community, especially in matters concerning the regulations that govern it. In Indonesia, adoption has become a community need and is part of the family law system, because it involves the interests of people per person in the family. Bushar Muhammad, divides adoption into two types, namely: direct adoption (adopting children), and indirect adoption (through marriage). Law Number 35 of 2014 concerning Child Protection explicitly states that the purpose of child adoption, the motivation for adoption can only be done for the best interests of the child and carried out based on local customs and provisions of applicable laws and regulations.

Keywords: Adoption, Adopting Children, Protection.



1. Introduction

Adopted children are children of others who have been considered as their own children by their adoptive parents officially according to local laws and customs with the aim of continuity of descent and or maintenance of inheritance over the household. 2 In Article 1 Paragraph (9) Of Law Number 35year 2014 on Child Protection determines that:

"... The adopted child is a child whose rights are transferred from the family power environment of the parents, legal guardians, or other persons responsible for the care, education and upbringing of the child, into the environment of the adoptive parents based on the decision and determination of the court".

Article 1 Paragraph (1) of Government Regulation No. 54 of 2007 determines that the adoption of a child is a process of legal action that transfers a child from the power environment of parents, legal guardians or other persons responsible for the care, education, and raising the child into the family environment of adoptive parents [1]. Adoption is a community need and a part of the family law system, because it involves the interests of individuals in the family [2]. Adoption is done so that it can be a hope and happiness for a child who has lost a parent or legal guardian and give happiness also to married couples who cannot have children.

2. Literature Review

Adoption of a child must be carried out with the correct legal process so that the existence and position of the adopted child can be recognized legally, it is in accordance with the provisions of the government regulation of the Republic of Indonesia number 54 of 2007 concerning the implementation of Child Adoption. The adoption of the child is established by the judge in court. The main purpose in the adoption of the child is to continue offspring when a marriage has no offspring. In addition, the purpose of adoption is for the welfare of the adopted child, the interests of life and the future of the adopted child.

The motivation to adopt a child is very strong when a married couple has been convicted of not being able to have offspring or not being able to give birth to an offspring or in other words that is barren. In addition to the interests of continuing offspring, adoption also aims to maintain the marriage bond and avoid a divorce. Based on existing sources, in this case there are several alternative reasons that are used as the basis for the adoption of a child. Judging from the side of the adoption of the child, for the following reasons [3] [4]:

1. The desire to have children or offspring.
2. The desire to make friends for himself or his child.
3. The desire to channel compassion towards other people's children in need.
4. The existence of legal provisions that provide for the opportunity to carry out an adoption.
5. The existence of parties who advocate the implementation of the adoption of children for the benefit of certain parties.

Adoption of children according to Article 39 of Law No. 23 of 2002 on child protection, namely:

1. Adoption can only be done for the benefit of the best interests of the child and carried out based on local customs and regulations that have been in force.
2. The adoption of a child as meant in Paragraph (1), does not terminate the blood relationship between the adopted child and his biological parents.
3. Prospective adoptive parents must be of the same religion, with the religion professed by the adopted child.
4. Adoption of a child by a foreign citizen can only be carried out as a last resort.
5. In the event that the origin of the child is unknown, then the religion of the child is adapted to the religion of the majority of the local population.

In addition to having the purpose adoption of children there are also several procedures in the adoption of children. For the adoption procedure will be more clearly regulated in the circular of the Supreme Court No. 6 of 1983 on the adoption described in the implementation of the adoption of the child confirms the procedure as follows [5] [6]:

1. Commencing from an application to the chairman of the competent court and because it is included in the civil procedure law known as volunteer jurisdiction (jurisdiction voluntaria)
2. The petition petitum must be single, that is, request the endorsement of the adoption of the child, without any other application in the petition petitum.
3. On the application for ratification of adoption between Indonesian citizens, the court will issue a ratification in the form of a "determination", while on the application for ratification of the application for adoption of an Indonesian citizen by a foreign citizen or otherwise the court will issue a "decision" on the ratification of adoption.

If the procedures and conditions of child adoption are met, the child adoption process will be easier to carry out. However, in the adoption of children is not just a guardian, but there are some that must be considered. One of them is the rights that exist in the child [7].

3. Methodology

The research method the author uses is normative juridical, namely research that begins deductively analyzing the articles in the laws and regulations governing the problems. It is conduct an analysis of the legal rules and then enter the articles into categories on the basis of the understandings of the legal system.

4. Finding and Discussion

Article 4 of Law number 35 of 2014 stipulates that: "every child has the right to be able to live, grow, develop, and participate properly in accordance with human dignity and protection, and to receive protection from violence and discrimination".

From the provisions of the article above, it is clear that it has not provided protection for adopted children. In fact, there are several cases of adopted children being neglected or discriminated against and even experiencing violence in Indonesia. One of them is the case of Engeline Megawe, an 8-year-old girl who experienced violence until she finally died at the hands of her adoptive mother, which occurred in Bali. This news became popular on social media in Indonesia, starting with the announcement of the loss of a child named Engeline on Facebook made by her adoptive family [8]. The amount of attention from various parties has led to the revelation of the fact that Engeline has been living in a house that is unfit for habitation and has not received good care from her adoptive parents and has even been subjected to physical or mental torture. Engline is the adopted son of Margareta Megawe who was adopted since the age of three days from the couple Hamidah and Achmad Rosyidi [9].

Engeline's biological parents due to their inability to pay the cost of childbirth, they were introduced by a third party to Margareta Megawe and Douglas Scarborough who were able to pay off their debt and Margareta also intended to adopt Engeline as her child. However, Douglas did not interfere in the adoption process. So that the only parties listed in the agreement are Engeline's and Margareta's birth parents [10] [11]. Initially, Engeline's adoptive parents really loved Engeline, but Engeline's adoptive father died in 2008 and made Margareta very sad and she became Engeline's single parent. Since Margareta's husband died, there are many allegations that Margareta did not take good care of Engline. The allegation arose because several years after Engeline's adoptive father died, Engeline had lost weight and was always shabby when she went to school. This happened because Engeline had a duty to clean the house and take care of Margareta's pet chickens and dogs.

When he heard the news, the chairman of the National Commission for Child Protection, Arist Merdeka Sirait, went straight to his house on tube 26 Denpasar, Bali. Arist said that Engeline's living conditions were very bad and unfit for habitation by anyone, even the yard seemed to be filled with chicken coops with about a hundred chickens and several dogs unfit for habitation [12]. Arist Merdeka Sirait as Chairman of the National Commission for Child Protection will take over temporary custody of the children. Engeline if Engeline was found not to be in good care and was traumatized, but before that happened, it turned out that Engeline was found dead in her adoptive mother's chicken coop in a pathetic condition, Engeline's body was found to have violent wounds in the form of bruises on her face, neck and scars, cigarette burner [13].

Based on the case above, legal protection plays a very important role in the lives of children today. Child protection concerns various aspects of life and livelihood, so that children can really grow and develop properly in accordance with their human rights. The existence of a legal protection to help

state that a child deserves the rights that are in accordance with adults. Protection of children in Indonesia, including adopted children, aims to guarantee and fulfill children's rights so that they are realized and have quality, noble character and welfare. The protection of children's rights is more focused on children's rights which are legally regulated (juridically) the child has not even been burdened by obligations.

Child Adoption Terms and Procedures Article 39 of Law Number 35 of 2014 amendments to Law Number 23 of 2002 concerning Child Protection [9] [14].

- (1) Child adoption can only be carried out in the best interest of the child and is carried out based on local customs and provisions of laws and regulations.
- (2) The adoption of a child as referred to in paragraph (1) does not break the blood relationship between the adopted child and his biological parents.
 - (2a) the adoption of the child as referred to in paragraph (1) must be recorded in the birth certificate, without losing the child's initial identity.
- (3) Prospective adoptive parents must be of the same religion as the religion adopted by the prospective adopted child.
- (4) Adoption of children by foreign nationals can only be done as a last resort.
 - (4a) in the event that 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).
- (5) In the event that the origin of the child is unknown, the religion of the child shall be adjusted to the religion of the majority of the local population.

The following are the requirements for child adoption based on the provisions contained in Article 12 of Government Regulation Number 54 of 2007 concerning the implementation of child adoption:

- (1) Conditions for the child to be adopted include: a. not yet 18 (eighteen) years old b. is an abandoned or neglected child c. being in family care or in an institution child care and d. require special protection.
- (2) The age of the adopted child as referred to above includes: a. Children under the age of 6 are the top priority b. Children aged 6 years up to the age of 12 (two) twelve) years as long as there is an urgent reason and c. Children aged 12 years up to not yet 18 years old, as long as they need special protection.

Article 13 Government Regulation Number 54 of 2007 concerning the implementation of child adoption Prospective adoptive parents must meet the following requirements [15]:

1. Physically and mentally healthy
2. Minimum age is 30 (thirty) years and maximum is 55 (fifty five) years
3. Religion is the same as the religion of the prospective adopted child
4. Be well behaved and have never been punished for committing a crime
5. Married status for a minimum of 5 (five) years
6. Not a same-sex couple
7. No or have not had children or have only one child;
8. In a state of economic and social ability
9. Obtain the child's consent and parental written consent or guardian
10. Make a written statement that adoption is in the best interests of the child, welfare and child protection
11. There are social reports from local social workers
12. has taken care of the prospective adopted child for a minimum of 6 (six) months, since the parenting permit was given; and
13. Obtaining permission from the Minister and/or the head of the social agency.

5. Conclusion

Based on the results of the research above, legal protection plays a very important role in the lives of children today. Child protection concerns various aspects of life and livelihood, so that children can really grow and develop properly in accordance with their human rights. The existence of a legal protection to help state that a child deserves the rights that are in accordance with adults. Protection of children in Indonesia, including adopted children, aims to guarantee and fulfill children's rights so that they are realized and have quality, noble character and welfare. The protection of children's rights is

more focused on children's rights which are legally regulated (juridically) the child has not even been burdened by obligations.

The main objectives of the Child Protection Act are to protect children and their rights so that they can live, grow, develop, and participate optimally in accordance with human dignity and dignity, and receive protection from violence and discrimination. The problem of legal protection for children is one of the one way to protect the nation's buds in the future, legal protection for children involves all applicable rules. This protection is necessary because children are part of a society that has physical and mental limitations. Therefore, it requires special protection and care.

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