



Determination of Adoption of Children in Judicial Settings in Religious Courts and District Courts Batusangkar

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ABSTRACT

The main problem in this study is how to Determine Child Adoption in the Judicial Environment in the Religious Court and the Batusangkar District Court. The problem studied is about the factors and allusions of child adoption between Indonesian citizens who are Muslims and the positive and negative impacts of child adoption at the Religious Court and the Batusangkar District Court. The purpose of this study is to explain the factors affecting the adoption of children in the Religious Court and the Batusangkar District Court and explain the positive and negative impacts of the adoption of the child. Based on the research conducted by the author, the author concludes that the factors that influence the adoption of children both in the Religious Court and in the Batusangkar District Court include helping the education and future of the adopted child, because the adoptive parents do not have children, as one of the ways or solutions for husband and wife who have been married for a long time but have not been blessed with children, to help his underprivileged brother, in addition, income allowance.

Keywords: Adoption, Children, Religious

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INTRODUCTION

According to the provisions of article 1 of Law No. 1 of 1974, the purpose of marriage is to form a happy and eternal family (household) based on the One True Godhead (Law No. 1 of 1974) (Davis & Gao, 2020). This can be interpreted to mean that the purpose of marriage between plans is to form a peaceful, prosperous, and happy family, as well as to obtain legal offspring in accordance with the provisions of religion (Fenty et al., 2014). The purpose of marriage as contained in the positive law is also in

line with the Compilation of Islamic Law (KHI) and the teachings of the Islamic religion itself which among other things confirms that the purpose of marriage is to form a family of *sakinah*, *mawaddah*, and *rahmah* as contained in the letter Ar-Ruum verse 21 which means: “And among the dominions of God, he created for you to be the spouse of yourself, that you may be with him, made love and affection in your home. Indeed, in such a case it becomes a description for the thinking”.

With a valid marriage, the rights and responsibilities of the husband and wife will be realized, fulfill all household financing, and maintain the welfare of life for the sake of their future (Barnes, 2019). Everyone in the household wants to get offspring or children, but these wishes are not all realized because they are caused by several internal factors of the husband and wife couple themselves (Farr et al., 2019). Basically, children are one of the elements of the nuclear family that are complete to realize a *sakinah*, *mawaddah*, and *rahmah* domestic life which is the essence of the purpose of marriage. (Article 1 of Law No.1 of 1974)

Married couples who have been married for a long time but have not yet been blessed with a child, cause their household to feel lonely and less happy in the household (McPhillips, 2020). To complete the happiness in the household various endeavors and efforts they make, for example through doctors or through traditional medicine. For married couples who fail to obtain these offspring, there are those who consider other people's children to be their own children, or what is more popularly known as child adoption (Mallette et al., 2020).

There are two ways the practice of adopting a child, namely:

1. Taking someone else's child to be nurtured and educated with care and affection and being treated by his adoptive parents like his own child without giving him the status of a biological child. In Islam, this adoption of the child is known as *Tabanni Naqish* (Adoption non-plena). This method is in accordance with the guidance of the Islamic religion so it is known as “The adoption of children according to the Islamic Legal system”.
2. Taking someone else's child into his own family, so that thus between the parent who adopts the child and the adopted child arises a legal relationship. The legal relationship between the original parents after the child is adopted by another person becomes broken, and the adopted child bequeaths to the adoptive father. In Islam this kind of appointment is known as *Tabanni Kamil* (Adoption Plena). Such a practice is prohibited in Islam in accordance with the word of Allah in sura al-Ahzab verses 4-5 which means: “And He did not make your adopted children your biological children (himself); such are merely your words mouthed. And God tells the truth and He shows the right way. Call them (adopted sons) by using the names of their fathers, then (call them as) your brothers as alike and *Maula-Maula* (freed servants of *sahaya*)”.

Adoption is a legal institution that causes a person to switch relationships with other heavens so that a relationship arises that is equal or as happy as the relationship between the legal child and his parents (Stone, 2019). The issue of child adoption is very vulnerable to the implementation of child protection, so it needs to be closely monitored by the government to avoid exploitation of the child by the adoptive parents

and the main goal is the protection and welfare of the child (McEwan-Strand & Skivenes, 2020). For that, it is necessary the existence of certain criteria in the implementation of the adoption of the child (Squicciarini, 2020).

For this reason, legalization or strict laws are needed against the practice of adopting children that have been carried out by a person and must go through court dealings (Edge, 2021). Legalization through the Negeri Court is based on the customary law system, while legalization through the Religious Court is based on the Islamic legal system (Marsman, 2021).

The current practice of the issue of child adoption is decided or resolved through the Courts, both district courts and religious courts in the area where the adoption occurred (Kolb, 2021). Article 1 of the Judicial Power Law reads: "Judicial Power is the power of an independent state to administer the judiciary to uphold law and justice based on Pancasila for the implementation of the Indonesian Republic state of law" (Law No. 4 and 5 of 2004).

In batusangkar's jurisdiction, the implementation of child adoption is carried out by two judicial environments, namely the District Court (PN) and the Religious Court (PA) (Tate et al., 2019). According to the Chairman of the Batusangkar Religious Court, the issue of adoption was decided in the Religious Court based on the applicable legal rules (Gupta et al., 2020). The same thing was also expressed by the Chief Justice of the District Court that the adoption of children was also decided in the District Court in accordance with the applicable Law (Daud & Azahari, 2019).

The focus of the problem in this study is how are the factors and tangents of child adoption among Indonesian citizens who are Islamic and the positive and negative impacts of child adoption in the District Court and the Batusangkar Religious Court (Verkuyten et al., 2019).

RESEARCH METHODOLOGY

This research is field research with normative juridical and empirical juridical research methods through case studies on child adoption within the Religious Court and batusangkar district court because the problems studied are closely related to juridical factors regarding the law on the adoption of children and hukum regulations others that are relevant as well as their implementation in practice. The method of data collection in this study is through, documentation studies, questionnaires, and interviews. The population in this study was all cases of child adoption determinations that went to the District Court and Religious Courts which amounted to (15) fifteen cases in the Religious Court and (18) eighteen cases in the Batusangkar District Court.

The samples in this study were taken by purposive sampling, which is a sample selected based on cases that have been entered and have been issued determinations by the Religious Court and the Batusangkar District Court, and the cases sampled are as many as 8 (eight) cases in the Religious Court and 10 (ten) cases in the Batusangkar District Court. The data obtained are analyzed descriptively qualitatively, that is, the interpretation of the data obtained to get a general idea of the problems posed so that conclusions are reached (Wells, 2021).

RESULT AND DISCUSSION

1. Factors Affecting the Adoption of Children in Religious Courts and Batusangkar District Courts.

The driving factor for them to carry out the adoption of children is for the future of children who are appointed at the Religious Court as many as 2 (two) people and in the District Court as many as 1 (one) person. As a way for them to have children in the Religious Court there are now and in the District Court as many as 1 (one) person, to help the economy of their underprivileged relatives in the Religious Court as many as 2 (two) people and in the District Court as many as 2 (two) people. To obtain additional allowances/income at the Religious Court as many as 1 (one) person and in the District Court as many as 2 (two) people. Because they did not have children in the Religious Court as many as 3 (three) people and in the District Court as many as 4 (four) people.

The main factor of child adoption is for the benefit of the future and welfare of the child in terms of health, education, other necessities of life and also to continue the offspring. In such a case an initiative arises on the basis of an agreement to bond the child with the hope that raising the child will be a fishing rod for the birth of the biological child of the husband and wife concerned, also because they want to help the family or underprivileged relatives. In addition, the factors that cause them to adopt children are for the benefit of their adoptive parents, including obtaining additional benefits/income from the salary they receive, also because compassion for the child who lacks proper care and treatment from his parents, so that by making them as adopted children, they will be able to help their future because their education and future can be more assured.

The reason they lift a child from their own family or sibling environment is in addition to helping the economy of the underprivileged or relatives also because they know clearly the origin or nasab of the child. The family's response to the adopted child is well received because the adopted child is still from their family environment or relatives as well.

2. The Allusion Point for The Adoption of Children Between Indonesian Citizens Who Are Muslims in The Religious Court and The Batusangkar District Court.

Based on the judge's decision on the child adoption application that occurred in the Religious Court and at the Batusangkar District Court, there was a tangent for the adoption of children between Indonesian citizens who were Muslims in the Religious Court and the Batusangkar District Court where these two judicial bodies felt that they had the same authority to examine and decide cases regarding child adoption cases.

The Religious Court examines and decides the case for the adoption of this child based on the provisions of Article 171 point (h) of the Compilation of Islamic Law (KHI) which contains the meaning of adopted children, Law No. 1 of 1974 Article 51 paragraphs (1) and (2), Article 63 paragraph 1 point (a) which contains guardianship, and Law No. 7 of 1989 Article 49 paragraph 1 point (b) concerning the competence of Religious Courts. Meanwhile, the District Court in this case of

the adoption of children is based on civil rules that have been in force since the colonial era such as the rules on self-subduction for the Bumi Putra people against the rule of law for Europeans and Foreign Easterners, namely Article 121 and Article 163 IS, the Law on child welfare, the Law on child protection, the Supreme Court Circular (SEMA) dated April 1, 1979 No. 2 of 1979 concerning the adoption of children, This SEMA is said *inter alia*, that according to the observations of the Supreme Court the application for the endorsement of the child filed with the District Court which was later decided was part of the civil suit, and was a special application for ratification of the adoption of the child, and the Regulation of the Minister of Social Affairs.

Based on this, there will be a dualism in the judicial environment, where the Religious Court feels that the case of child adoption is the authority or competence of the Religious Court, and so the District Court feels that the case of the adoption of a child is the authority or competence of the District Court. This can be detrimental to society or seekers of justice, because it will face dualism in the judicial environment, so it can obscure legal certainty and will also have a negative impact.

From the results of the research that the author conducted at the Religious Court and the Batusangkar District Court, the community can apply for the adoption of children to the Religious Court and the Batusangkar District Court, this can be seen from the reasons they applied to the Religious Court or to the District Court, namely:

1. To the Batusangkar Religious Court on the grounds of obtaining legal certainty about the adopted child and also those who applied for the adoption of the child were all Muslims, which they knew the issues concerning Muslims could be resolved in the Religious Court.
2. To the Batusangkar District Court on the grounds of obtaining legal certainty about the adopted child, to obtain certainty of the rights and obligations of living both in terms of the power of the adoptive parents over the adopted child and vice versa.

The relationship between the adopted child and the original parents after being made an adopted child was not broken either in the Religious Court or in the Batusangkar District Court because the original parents could still be the marriage guardians for their children. The one who applied to the Religious Court was one of the adoptive parents, by the husband or wife but in the *posita*, it was explained that the husband and wife had agreed to the adoption of the child, then in the *optimum*, it was explained that the application of the husband or wife was designated as the adoptive parent of the child, while in the District Court who applied for the adoption of the child was the spouse of the husband and wife who performed adoption of the child.

3. Positive Impact and Negative Impact of Child Adoption in Religious Court and Batusangkar District Court.

1. Positive Impact of Child Rapture

The positive impact of adopting a child is for the benefit of the child's life and future, because together with his adoptive parents the child will be more assured of his education, health, and other life needs, besides that adoptive parents can also add happiness to the adoptive parent's home life.

2. Negative Impacts of Child Rapture

Directly, the negative impact of the adoption of children occurred in the Religious Court and the Batusangkar District Court was not felt by the community in the Batusangkar legal area, but the existence of two judicial environments that tried and decided the child adoption case caused a legal dualism about the authority to try child adoption cases, thus juridically obscuring legal certainty and certainty. Another impact on society is that those seekers of justice become confused and disadvantaged. For this reason, the government needs to revise the Law relating to the issue of the adoption of children, and emphasize which judicial institutions have competence in the case of this child adoption application so that there is no longer a dualism in law enforcement regarding the case of the child adoption application.

CONCLUSION

The case of the application for the adoption of a child apply for the adoption of a child is filed by the applicant who wants to raise a child within the Batusangkar area either to the Religious Court or to the Batusangkar District Court. The driving factor for a person to apply for the adoption of a child either to the Religious Court or to the Batusangkar District Court is because they do not have children. The case of the application for the adoption of a child that occurred at the Religious Court and the Batusangkar District Court had a tangent in view of the purpose, authority, positive impact, and negative impact of the adoption of the child itself. The positive impact of this request for the adoption of the child is for the future education, health and the needs of the child's life to be guaranteed, and also to cause happiness in the adoptive parent's household. The negative impact of this child adoption application case is directly absent, but the existence of two judicial institutions that handle child adoption cases can give rise to a legal dualism about the authority to adjudicate child adoption cases, thus juridically obscuring legal certainty and certainty. Another impact on society is that those seekers of justice become confused and disadvantaged.

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