



Legal consequences of adopting children of Indonesian citizens by foreign nationals

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Abstract

This study aims to analyze the legal regulations regarding the adoption of children of Indonesian citizens by foreign nationals through a court decision process because in this case, the adoption is not a dispute which is then made into a decision, in accordance with the HIR stating that the decision was taken because of a lawsuit. This means that there must be a dispute between the disputing parties. Government Regulation 54 of 2007 concerning the Adoption of Children, contradicts article 184 HIR and needs to be reviewed because this regulation conflicts with the Criminal Procedure Code. Civil evidence is determined by very restrictive evidence, namely the judge in considering his decision is very fixated on the existing evidence. In this case, formal evidence is an authentic letter, namely a letter issued by an authorized agency made by an official who has been sworn in for an act. However, the letter may become inauthentic if a court decision overturns it; as long as there is no cancellation, the judge is bound by an authentic letter because the evidence is perfect evidence, so if the decision to adopt a child becomes void if there is a court decision that cancels it.

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1. Introduction

The role of a family is very important for the upholding of the welfare of society and the State; therefore, the State requires rules and regulations governing the family, so the term family law appears and is defined as all provisions regarding a legal relationship related to blood and family relations. Kinship due to marriage, including marriage, parental authority, guardianship, guardianship, and circumstances of absence. (Afandi, 1986)

An adoption is raising other people's children in their own family; thus, a legal relationship arises between a person who adopts a child and someone who is adopted (Soedharyo, 2013). Adopted Child is based on Article 1 number 9 Law Number 23 of 2002 jo. Article 1 paragraph (1) of Government Regulation Number 54 of 2007 concerning Adoption, namely: "Adoptive children are children whose rights are transferred from the environment of family power of parents, legal guardians, or other persons who are responsible for the care, education, and upbringing of children. The child into the family environment of his adoptive parents based on a decision or court order".

The Civil Code for Adoption is not contained; it is just that the institution for adopting a child is regulated in Staatsblad 1917 No.129, which in essence the regulation stipulates, Adoption is the Adoption of a boy as a child by a man who is already married or has been having a wife who does not have a male child. The definition of Adoption in Article 1 paragraph (2) of Government Regulation Number 54 of 2007, namely: "An adoption is a legal act that diverts a child from the authority of legal guardian parents or other people who are responsible for his care, education or raising the child into the adoptive parents' family environment. The Adoption of a child is carried out

by adoptive parents and the understanding of adoptive parents, according to Article 1 paragraph (4) of Government Regulation Number 54 of 2007, namely: "Adoptive parents are people who are given the power to care for, educate and raise children based on statutory regulations. invitations and customs".

There are 2 (two) types of adoption mentioned in article 7 of Government Regulation 54 of 2007 concerning Implementation of Adoption, where adoption consists of a). "Adoption of children between Indonesian Citizens"; and b). "Adoption of children between Indonesian Citizens and Foreign Citizens." Furthermore, Article 7 is explained again in Article 11 of Government Regulation Number 54 of 2007 concerning the Implementation of Child Adoption, namely: (1). "Appointment of children between Indonesian Citizens and Foreign Citizens as referred to in Article 7 (seven) letter b, which includes: a). "appointment of children of Indonesian Citizens by Foreign Citizens," and b). "adoption of children of foreign nationals in Indonesia by Indonesian citizens" (2) "The adoption of children referred to in paragraph (1) is carried out through a court decision".

Prior to Circular No. JHA.1/1/2 dated 24 February 1978, made by the justice department, this adoption was carried out using a notarial deed. If a foreigner wants to adopt a child of an Indonesian citizen after he reaches an agreement with those who hold power (the parents) over the child to be adopted, they go together before the notary to make a deed of adoption; this practice is the same as the model for adopting Chinese children according to Stbl. 1917-1929. (Rusli, 2012)

Article 11, paragraph (2) of Government Regulation 54 of 2007 concerning the Adoption of Children states that "adopting children of Indo-

nesian Citizens by Foreign Citizens” through a decision is not through determination alone. In that article, there is also no clear explanation where the explanation only states “quite clear.” The meaning of the decision is a judge’s statement which, as a state official, is to carry out a judicial power task that is given authority for that which is pronounced in Court and aims to resolve a case (Soeparmono, 2005). There are two opposing parties in the case: the plaintiff and the defendant (Mardani, 2009). The judge’s decision is: “a statement made by the judge, as an authorized official, uttered at the time of trial and to end or settle a case or a dispute between the parties” (Sudikno, 1993). The explanation contained in article 184 H.I.R reads: (1) “Decisions must contain a brief statement, but clear claims and answers, as well as the basis for the reasons for the decision: as well as the information, referred to in paragraph four of article seven of the Regulation regarding the judge’s rules and the Court and judicial policies in Indonesia and finally the decision of the district court regarding the principal case and regarding the number of costs, not to mention notification of whether or not the two parties were present when announcing the decision, “(2). “In decisions based on definite statutory rules, those rules must be stated” (3). “The chairperson and clerk sign the decisions.”

The explanation is that in this article, the judge’s decision letter must contain: a). a brief but clear statement originating from the contents of the lawsuit; b). The defendant’s response to the lawsuit; c). The reasons used as the basis for the judge’s decision; d). The judge’s decision regarding the principal case and the cost of the case; e). What information from the parties to the case was present when the decision was made; f). the decision is based on law, which must be stated; h) – signatures of judges and clerks.

Concerning HIR, where the guidelines for Civil Procedure Law become ceremonial law for civil law, a civil procedure which is often also called formal civil law, is a rule that determines how a person acts before a court, how can parties whose interests are attacked defend themselves, and how do judges acting while deciding a case fairly, how to implement the judge’s decision aims to ensure that the rights and obligations regulated in the material civil law can run properly so that the upholding of law and justice is realized. Civil procedural law is a path that must be followed by a person so that a court can examine the case he is facing. Civil procedural law also shows how the examination is carried out, how the court makes a decision on the case being examined, and how the court decision can be carried out so that the intention of the person who submitted the case to the court can be achieved, namely the implementation of rights and obligations according to Civil law also applies to that person.

Decisions are required for justice, and the most important thing to determine is the facts or events. Legal regulations are a tool, so the judge’s decision that needs to be considered is the legal considerations so that it has an objective reason and has legal force; it can be seen that a decision must there is a dispute between the two parties, in the process of adopting a child it is not a dispute, or there needs to be a problem first so that the decision cannot be changed anymore (Nur Rasaid, 1996).

The decision contains several principles, namely as follows: 1). There must be clear and detailed reasons, legal reasons which must be the basis for consideration starting from the provisions (Vide Article 50 of Law Number 48 of 2009 and Article 178 paragraph (1) HIR: a). there are certain articles, laws, and regulations; b). customary law; c). jurisprudence; d). legal doctrine. (2).

Compulsory to try all or part of the lawsuit (In trying a case, the judge must be obliged to try all parts of the lawsuit, may not only examine part of it, and ignore the rest of the lawsuit (Soeroso, 1996). "This principle is contained in Article 178 paragraph (2) HIR and Article 189 paragraph (2) RBG. According to this provision, the decision handed down by the court must totally and thoroughly examine and adjudicate every lawsuit that has been filed. "The judge may not only examine and decide on the part of it, and ignore the rest of the lawsuit.). 2). It is not permissible to grant more than the demands (Verdicts may not grant more than what is demanded. This prohibition is also known as *ultra petitem partium*. The judge who commits it is deemed to have exceeded the authority to adjudicate; if the decision contains *ultra petitem partium*, then the decision is declared to be flawed, although, for whatever reason, this principle contains Article 178 paragraph (3) HIR and Article 189 paragraph (3) RBG). In this provision, a decision handed down by a court may only grant the demands put forward in a lawsuit. A judge who decides to exceed a claim is an act that exceeds the limits of his authority or is also called beyond the powers of this authority so that his decision is legally flawed. The prohibition of judges who pass decisions beyond the limits of authority is also emphasized in the Supreme Court Decision No. 1001 K/Sipp/1972. The decision stated that the judge was not allowed to grant something that was not asked for or more than what was asked). 3). Pronounced in public (according to Article 13 of Law Number 48 of 2009, a court decision is only valid and has legal force if it is pronounced in an open court for the public. The purpose of this provision is to avoid an "unfair trial" court decision). Therefore, according to SEMA No. 04 of 1974, examination and pronouncement of decisions are only legal and have legal force if they are carried out through a court session).

The regulation of the procedures for adopting children is contained in the Regulation of the Minister of Social Affairs of the Republic of Indonesia Number: 110/HUK/2009 concerning Requirements for Adoption of Children. The regulation of the Minister of Social Affairs regulates the procedures for applying for adoption by foreign nationals, in which foreign nationals must meet certain material requirements and administrative requirements; article 41 states: 1). Implementation of child adoption by Prospective Foster Parents where one of them is a Foreign Citizen is carried out in the following manner: a). Prospective Foster Parents apply for permission to care for children to the Head of the Provincial Social Agency on stamped paper and attach all the administrative requirements of the Prospective Adoptive Child and Prospective Adoptive Parents as stipulated in Article 5 and Article 39 paragraph (1) and paragraph (2); b). The Head of the Provincial Social Agency gives the task to the Social Worker of the Provincial Social Agency and the Child Care Institution to evaluate the eligibility of the Prospective Adoptive Parents by visiting the home of the Prospective Adoptive Parents' family; c). The Head of the Provincial Social Agency issues a Temporary Parenting Permit; d). Social Workers carry out guidance and supervision during temporary care; e). Prospective Adoptive Parents apply for permission to adopt a child to the Head of the Provincial Social Agency on paper with sufficient stamps; f). Social Workers from Provincial Social Agencies and Child Care Institutions will conduct home visits to learn about the development of the Prospective Adoptive Child while being cared for by the Prospective Adoptive Parents; g). The Head of the Provincial Social Agency discusses the results of the prospective adoptive parents' eligibility assessment and examines the application for adoption in the forum of the Adoption Consider-

ation Team in the (Province; h). The Head of the Social Agency issues a letter of recommendation for a Permit to adopt a child so that it can be processed further at the Ministry of Social Affairs; i). The Minister of Social Affairs c.q the Director of Child Social Services, discusses the results of the feasibility assessment of Prospective Adoptive Parents, as well as examines, examines the application for adoption in the Child Adoption Consideration Team forum in the Ministry of Social Affairs; j). the PIPA TIM forum issues a decision letter regarding the consideration of the adoption of the child; k). The Minister of Social Affairs issues a Decree regarding Permits for the Adoption of Children to be determined in court; l). if the adoption application is rejected, then the child will be returned to the Child Care Institution; m). after the existence/issuance of a court order and the completion of the process of adoption, the Prospective Adoptive Parents report and submit the copy to the Ministry of Social Affairs and the district or city population office; as well as n). The social department records and documents the adoption of the child. 2). Submission of adoption to the court as referred to in paragraph (1) letter l, which must be carried out by the Prospective Adoptive Parents or their proxies by registering the application for adoption to the court.

Article 22, paragraph (1) of Government Regulation Number 54 of 2007 concerning the Implementation of Child Adoption, reads: "Application for the adoption of a child of an Indonesian Citizen by a Foreign Citizen which has fulfilled the requirements submitted to the court to obtain a court decision" It is also stated that "appointment children of Indonesian Citizens by Foreign Citizens" is carried out through a prior application. There is no dispute in the case referred to as a request (Retnowulan, 2009). In contrast, lawsuits are the existence of a dispute or a conflict

that must be resolved and decided by a court. In a lawsuit, a person or more feels that their rights or rights have been violated, but the person who violates their rights does not want or voluntarily carry out the requested thing. In order to determine who is right or entitled, a judge's decision is needed; here, the judge functions to determine who is right or wrong. In a lawsuit, there is a dispute between two or more parties. The problem proposed or asked to be resolved in a lawsuit is a dispute or dispute between the parties.

Settlement of a dispute in this court through a process of refutation or refutation in the form of replies and dupli (Yahya, 2005). In legislation, the parable used is a civil lawsuit or lawsuit only. The difference with the application is based on its characteristics: 1). The problems raised are for unilateral interests only; 2). In principle, the problem being requested for adjustment to the court is without disputes with other parties; 3). No other person or third party is drawn as an opponent, but it is free for one party; 4). The judge issues a determination. While the characteristics of the lawsuit, namely: 1). Legal issues submitted to the court, contain a dispute: 2). There has been a dispute between the parties, between 2 or more parties; 3). Which party is the plaintiff and the other party is the defendant; 4). The judge issues a decision to be handed down to the other party in the case.

The "adoption of children between Indonesian citizens by foreign nationals" is not due to a dispute or a lawsuit filed by the plaintiff. The adoption is only due to a request from someone to the court, which is very contrary to the principles of procedural law. Civil law, for example, found in decision No: No. 62 / Rev. P/2010/PN. Mkd; in that decision, there was no dispute between several parties; it is just that there was an applicant, in the explanation contained in article 118 HIR contained in the explanation it stated, that: "accord-

ing to article 118 HIR the preliminary examination of a civil case by the PN is the submission of an application letter must be signed by the plaintiff or his representative. This article does not contain any provisions regarding the form and content of the request letter, that is usually the application letter is called "introductory recess," which usually contains the names and residences of the two parties to the dispute (plaintiff and defendant), what is being sued for and the reasons - the reason for the lawsuit," in this case it is related because it was mentioned above that the case that resulted in a decision was a dispute, even though in the above decision there was only the applicant.

In this case, a regulatory issue regarding the adoption of children by foreign nationals is carried out through a court decision. There is an inconsistency of statutory regulation; the meaning of the word inconsistency, according to the Big Indonesian Dictionary, is disobedience or contradictory, where the regulations of The government are contrary to the existing regulations on H.I.R where H.I.R is a source of civil procedural law which is the guideline, which should be "adopting children of Indonesian citizens by foreign nationals" when viewed from civil procedural law it should not be through a court decision but should be through a stipulation only. Because there was no lawsuit or dispute, were also in the adoption of the child, there was only one applicant who applied; in this case, also Government Regulation Number 54 of 2007 contradicts article 184 HIR, where HIR is an Act for procedural law data, and there has been a norm conflict between the two.

Based on the description above, this study is important considering the previous study entitled "Juridical Review of Adoption of Indonesian Citizen Children by Foreign Citizens (Inter-country Adoption)" Tambunan, F. H. (2013). Ju-

ridical Review Adoption of Indonesian Citizen Children by Foreign Citizens (Inter-country Adoption). Unnes Law Journal: Journal of Law, Semarang State University, 2(2), 96-104, needs to comprehensively and concretely examine the legal consequences of adopting Indonesian citizens by foreign nationals through decisions.

2. Methods

This research is juridical-normative law research. Data collection techniques in this study used literature and document or archive studies, namely by collecting data related to the research that needs to be studied, in addition to various books and other supporting legal materials. The analysis technique used was descriptive qualitative data.

3. Result and Discussion

The legal consequences of adopting children of Indonesian citizens by foreign citizens are carried out through a decision

Legal consequences result from an action taken to obtain an effect desired by the perpetrator and regulated by law. He takes legal action, namely an action taken to obtain a result desired by law (Soeroso, 2012). It is more clear that legal consequences are all consequences that arise from legal actions due to legal subjects against legal objects or other consequences caused by certain events by the relevant law which have been determined or considered as such legal consequences.

The adoption of Indonesian citizens' children by foreign nationals, in this case, if examined from the civil procedural law, is contrary, especially to article 184 HIR. The inconsistency between Article 11 paragraph (2) of Government Regulation Number 54 of 2007 concerning the Implementation of Adoption of Children is very evident in its inconsis-

tency, inconsistency itself is disobedience to norms or not by existing norms, but on the other hand, where is the court's decision of adoption of this child cannot be canceled or null and void because the judge has already carried out the procedure he did. The judge has carried out the mandate from article 11 paragraph (2) of Government Regulation Number 54 of 2007 concerning the Implementation of Child Adoption.

The existing laws and regulations regarding child adoption, in addition to the circulars of the Supreme Court of the Republic of Indonesia, have provided a clearer sequence and guidelines for adoption and have spawned much unification of requirements and methods of adoption in Indonesia. In practice, the purpose of applying to court is only one of the conditions for changing a birth certificate to provide a side note that the child has been adopted. Hence, an application submitted in a public court is solely to obtain a determination or decision to fulfill population administration requirements as a condition for granting it. Marginal notes on birth certificates or the issuance of family cards can later be used for the child's administrative requirements (Luluk, 2012).

In the provisions of child adoption according to the Supreme Court Circular No. 6 of 1983 concerning Completion of the Supreme Court Circular No. 2 of 1979 and Decree of the Minister of Social Affairs No. 41/HUR/NEP/VII/1984 and its revision, namely the Decree of the Minister of Social Affairs No. 13 of 1993 concerning the instructions for implementing child adoption, there is no mention of the legal consequences of child adoption. However, in Article 39, paragraph (2) of Law No. 23 of 2003 concerning Child Protection jo. Article 4 of Government Regulation No. 54 of 2007 states, "A child's adoption does not break the blood relationship between the child and his biological parents based on the law that applies to the child concerned."

From these provisions, it can be concluded that adoption does not break the blood relationship between the adopted child and his biological parents. Meanwhile, the adoption of children, according to Staatsblad 1917 No. 129, creates a legal consequence that a child whom a husband and wife adopt as their child is considered a child born from the marriage of the husband and wife. The civil relationship between the parents and their relatives, on the one hand, and the child, on the other hand, is broken, with the exception mentioned in Article 14 if the adopted child has another surname because the law will allow the adopting father's family name. If a husband adopts a child after the marriage is dissolved, then the child is considered born from the man's marriage which has been dissolved due to the death of his wife. The purpose of this provision is that the child must be deemed to have been born from a fictitious marriage, namely a marriage between the father and a woman who does not exist, which has been dissolved because the wife has died.

Some experts argue that this provision intends that adoption by a husband after the marriage is dissolved only has legal consequences for himself and his relatives, but not for his ex-wife or relatives. It is different if a widow adopts a child after her husband dies. The adopted child can only be considered the husband's heir from the adoptive mother if the husband does not provide the provisions or inheritance in his will. This means that the adopted child cannot contest the provisions in the will of the husband who has died.

Thus, the adopted child does not have a fair share of the husband's inheritance from the adoptive mother. In addition, Article 13 paragraph (1) orders that if a husband dies, leaving a wife who has the authority to adopt, the Probate Court is obliged to take necessary and urgent measures to save and manage his inheritance which will fall on

the adopted child. Meanwhile, the rights of third parties affected by this adoption remain suspended until the adoption is carried out. The grace period for the suspension is at least what is meant by Article 12 paragraph (3), namely one month. Adoption has been carried out within six months after the death of the husband or widow within that grace period has requested permission from the judge as referred to in Article 9. then, within one month after the permit or power of attorney has been obtained, he has just exercised his rights.

If a widow does the adoption, then the child is considered as a child born to the widow and her deceased husband. From this understanding, the adopted child will receive a share of the inheritance of his deceased adoptive father as long as it is not specified otherwise in the will of the deceased during his lifetime and as long as the adoption is carried out within six months starting from the time of the deceased's death.

Then Article 14 Staatsblad 1917 No. 129 explains that adoption breaks the legal relationship between the adopted child and his parents, except 1). Regarding the prohibition of marriage based on a family line; 2). Concerning criminal law regulations based on kinship; 3). Regarding compensation for court costs and hostages; 4). Regarding evidence with a witness; 5). Regarding acting as a witness.

Judging from customary law, child adoption does not always result in the termination of civil relations with biological parents. Although, in general, with the adoption of a child, the adoptive parents will replace the position of the biological parents. So that the responsibility of the biological parents will shift to the adoptive parents (Isti, 2012), the legal consequences arising from child adoption are inseparable from the procedure for adopting a child that has been carried out.

Adoption of children carried out without being accompanied by special ceremonies, and without letters, such adoption does not break the family ties between the adopted child and his biological parents. Even though outwardly, the child's relationship with his biological parents is cut off because he is put into the family of the person who adopted him, inwardly, the relationship between the child and his biological parents still exists. Then with adoptive siblings arises a relationship like siblings, and with the family or relatives of the adoptive parents are considered as their relatives. Furthermore, in marriage ceremonies for adopted daughters, the marriage guardians are the biological parents or the biological brothers of the adopted child (Bastian, 2000).

Suppose the relationship with the biological parents is not severed. In that case, the rights and obligations of the adopted child are still bifurcated, namely towards the adoptive and biological parents. This has a further consequence: adopted children who are not disconnected from their biological parents will receive an inheritance from their biological parents and their adoptive parents; a situation like this usually occurs in parental societies.

However, by the diversity of legal systems for adoption in various regions in Indonesia, the community's views about the position of adopted children also vary. Sometimes the adopted child inherits from the adoptive parents in the form of the original property and joint property, but sometimes only joint property. Whereas adoption, according to Islamic Law, is basically permissible but solely based on the aim of helping neglected children, and it does not bring any legal consequences.

This is because, in Islamic law, there is a prohibition on adoption in the sense of adoption, namely giving status to a child the same as the

status of a biological child; Adoption of children according to Islam does not bring legal consequences in the rights of blood relations, guardianship, and inheritance with their biological parents. Adopted children still use the names of their biological parents and are still the heirs of their biological parents (Budiarto, 2012).

Civil evidence is determined by very restrictive evidence, namely that a judge is very fixated on the available evidence when considering his decision. Formal evidence, in this case, is authentic letters, namely letters issued by authorized institutions made by officials who have been sworn in for the act; however, such letters can become inauthentic if there is a court decision canceling them, as long as there is no the cancellation of the judge will be bound by the authentic letter because such evidence has perfect proof.

4. Conclusion

The legal consequences of adopting a child through a court decision are that adoption does not break the blood relationship between the adopted child and his biological parents. However, the decision to adopt the child becomes void if a court decision cancels it. At the same time, according to Staatsblad 1917 No. 129, adoption creates a legal consequence that a child whom a husband and wife adopt as their child is considered a child born from the marriage of the husband and wife.

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