



Implementation of child adoption viewed from islamic law and customary law in bener meriah regency

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Abstract

Government Regulation of the Republic of Indonesia Number 54 of 2007 Concerning Implementation of Child Adoption and Compilation of Islamic Law, where these rules really protect the implementation of child adoption before the law. However, in fact in its practice there are still adoptions that do not follow the rule of law. This research is intended to provide an explanation of how the implementation of child adoption is viewed from Islamic law and customary law in Bener Meriah Regency, how legal protection for child adoption is viewed from Islamic law and customary law in Bener Meriah Regency and what the legal implications are for the adoption of children who are adopted through a court decision and those who are adopted without going through a court (custom). The results of the study show that the implementation of child adoption carried out by the community is still not in accordance with the implementation procedures both according to Islamic law and according to local customary law. In terms of legal protection, both children and adoptive parents do not have clear legal protection because there is no determination of the application for adoption and does not involve Village apparatus in accordance with the rule of law. The legal implication of adoption through a court or syar'iyah court is that the rights of adopted children are protected and have clear legal force before the law. If it is done outside the court, the child will not get guaranteed rights before the law.

Keywords: implementation; child adoption; legal implication

Introduction

Marriage is an inner and outer bond between a man and a woman as husband and wife which aims to form a happy and eternal family based on Belief in One Almighty God. This is stated in Article 1 of the Law Number 1 of 1974 Concerning Marriage, marriage is expected to be able to continue the lineage in which in this case is a child, so that a group called a family is complete. Nowadays, child adoption generally has several goals or motivations, including continuing offspring if a marriage does not produce offspring.

This is a strong motivation and a solution that can be taken by couples who do not have children so they can adopt children.

Then, several other motivations such as compassion for the condition of children whose parents are unable to provide a living for them or because the child's biological parents have died, and there are many other motivations for adopting children.

Article 1 of the Government Regulation of the Republic of Indonesia Number 54 of 2007 concerning the Implementation of Child Adoption explains that child adoption is a legal act that transfers a child from the authority of parents, legal guardians, or other persons who are responsible for the care, education and upbringing of the child into the family of adoptive parents. However, the definition of an adopted child is a child whose rights are transferred from the environment of family of the parents, legal guardians, or other people who are responsible for the care, education and upbringing of the child, into the environment of family of the adoptive parents based on a decision or court order.

Implementation of adoption is carried out with the same religion, namely between adopted children and adoptive parents who have the same religion. Moreover, adoption of the child must be carried out through the applicable legal process, namely through a court order.

Implementation of adoption that occurred in one of the families in Bener Meriah regency, where they did child adoption not through a court order or submitted an application for a court order and even the child adoption was only known by the nuclear family and not known by the local customary apparatus as well. As a result, in the population administration law, the names of parents of the adopted child which are listed are the names of the adoptive parents, not the names of child's biological parents so that If the lineage (*nasab*) of the adopted child is cut off, it will have an impact on the marriage guardian and inheritance rights owned by the adopted child from his biological parents.

This violates the provisions of Article 4 of Government Regulation of the Republic of Indonesia Number 54 of 2007 concerning the Implementation of Child Adoption which says "Adoption does not break the blood relationship between the adopted child and his biological parents." In addition, the adoptive parents are obliged to inform the adopted child about his origins and his biological parents by taking into account the mental readiness of the child, this obligation is carried out so that the child knows the origin of his lineage (*nasab*). This is intended for the benefit of the permanent relationship between the child and his biological parents, in which this relationship cannot be broken. However, what happens in reality is deviating from the available legal rules.

Based on this problem, the author tries to conduct research with the title "Implementation of Child Adoption Viewed from Islamic Law and Customary Law in Bener Meriah Regency".

Method

This study uses empirical juridical research methods, namely research in the form of empirical studies to find theories regarding the process of the operation of law in society (Bambang Sunggono, 1996, 42) ^[3]. Empirical legal research is a type of legal research that analyzes and examines the operation of law in society. The operation of the law in society can be studied from the level of effectiveness of the law, compliance with the law, the role of institutions or legal institutions in law enforcement, the implementation of the rule of law, the influence of the rule of law on certain social problems or vice versa, the influence of social problems on the rule of law. (Salim HS dan Erlies Septiana Nurbani, *Penerapan Teori Hukum Pada Penelitian Tesis dan Disertasi*, 2017, 20) ^[23] This study uses a Statute Approach. Research within the scope of customary law, legal research at the legal dogmatic level or research for the purposes of legal practice cannot escape from a statute approach (Peter Mahmud Marzuki, 2011, 133-136) ^[16].

Results and Discussion

The Implementation of Child Adoption Viewed from Islamic Law and Customary Law in Bener Meriah Regency

Islamic law does not recognize the institution of adopted children or adoption in the sense that the kinship of the adopted child is transferred from his/her parents to the adoptive parents. Islam recognizes and advocates adopting other people's children in the sense of taking care. In this case, the child maintains a kinship relationship with his parents and remains outside the circle of the kinship of the adopted parents, in all its legal consequences.

The adoption of children permitted under Islamic law is in line with the Fourth Fatwa of the Aceh Ulema Consultative Council Number 1 of 2020 concerning Adoption based on the Perspective of Islamic Fiqh, namely:

- a. The prospective adoptive parents and adopted children must have the same faith and *aqidah*;
- b. the relationship between adoptive parents and their families with the adopted children follows their respective origin status;
- c. The adoptive parents and adopted children do not inherit from each other and do not have a relationship between *mahram* (a family member with marriage is unlawful) and guardianship;
- d. The original identity of the adopted child must be recorded in the birth certificate and registered with Disdukcapil (Civil registry Service Office);
- e. The process carried out through the decision of *Syar'iyah* Court and other provisions that can be accounted for.

Assigning the lineage (*nasab*) of the adoptive father to the adopted child is not allowed as it confuses the lineages, changing inheritance rights and resulting in providing an inheritance to those not entitled and eliminating inheritance rights for those entitled. It will also justify what is unlawful, *khalwat* (gathering of mahrams with those who are not), and

forbid what is lawful namely marriage. Rasulullah PBUH threatened someone to assign offspring to someone who is not valid, which means: "Whoever deliberately admits (as a father) someone who is not his father while he knows heaven is forbidden for him."

Meanwhile, the adoption of children according to customary law is regulated in Article 8 letter of Government Regulation Number 54 of 2007 concerning the Implementation of Adoption, "adopting children based on local customs." It is confirmed in Article nine, paragraphs (1) and (2), as follows:

1. Adoption of children based on local customs in Article 8 letter a is defined as adoptions carried out in a community that adheres to customs and habits in social life.
2. A child adopted based on local customs can be approved by a court order.

From the point of view of implementing customary adoption in Bener Meriah Regency, based on the information from Mr. Hasanuddin (Head of Education for Gayo Traditional Institutions- *Kepala Bidang Pendidikan Lembaga Adat Gayo*), adoption must be based on the agreement of both parties: the adoptive parents and biological parents, witnessed by Village Officials. This is intended to protect the rights of the adopted child, and the Village Officials are aware of the child adoption in the village so that in the future if problems arise, it will facilitate their resolution.

The interviews were conducted with several respondents concerning the adoption based on Islamic and customary laws. It revealed that many people adopt children not without following the applicable legal regulations; child adoption is done only based on an agreement between two parties: the adoptive parents and the biological parents of the child.

From the Islamic and Gayo customary law, the community does not involve the local Village Officials in implementing child adoption. Four of the five respondents in this study terminated the relationship between the biological parents and the adopted child; only one maintained a relationship with the child's biological parents. In addition, in the case of birth certificates and family cards, the data parents are the adoptive parents instead of the child's biological parents. In addition, the mahram relationship between the adopted children and adoptive families is like a biological family (*mahram*) relationship where one cannot marry another. These can become an issue in the future, both in matters of guardianship in a daughter's marriage and falsifying identity through civil registration.

Legal Protection against Adoption based on Islamic Law and Customary Law in Bener Meriah Regency.

Article 39 Paragraph (1) of Law Number 23 of 2022 concerning Child Protection stipulated that child adoption can only be carried out for the child's best interests and is carried out based on local customs and the provisions of the applicable laws and regulations.

The government guarantees protection for the comfort and safety of the child, primarily when the process of adopting a child occurs.

Based on the *Syar'iyah* Court Judge of the Bener Meriah Regency, the legal protection for an adopted child is guaranteed.

If the adoptive parents apply for a determination of adoption, the bloodline relationship between the child and his/her biological parents remains.

If legal problems arise, the child must have a custody certificate issued by a judge.

Based on the customary law, the protection for an adopted child if the implementation involves the Village Officials is that the adopted child will be protected from unwanted issues that may arise in the future.

Many cases of child adoption in Bener Meriah Regency do not adhere to the rules applied nor the Islamic or local customary laws. When adopting a child, the adoptive parents did not involve either the Village or the Syar'iyah Court Officials. It may harm the child; the child will be disconnected from his biological parents, and the guardianship will be transferred to the adoptive parents. The child will also lose the inheritance rights from his/her biological parents, and the *mahram* relations have changed, where the adopted are considered biological children and obtain all rights as the biological child of adoptive parents. The adoption process does not have clear legal protection for protecting the rights of adopted children and adoptive parents.

Legal Implications of Adoption of Children Adopted through Court Decisions with Those who are Adopted without Going through Court (Custom)

Adoption is a legal act intentionally to obtain legal consequences. Such consequences can lead to new laws and eliminate the previous legal relationship at the same time. All of this with all positions, rights and obligations arising from it.

Adoption which is carried out according to custom or by court decision through Syar'iyah Court will have different legal implications.

Implementation of child adoption which is carried out through the decision of Syar'iyah Court will have legal implications namely

- If it is viewed from the lineage (*nasab*), the lineage of the adopted child is not disconnected from the lineage of the biological parents and their siblings. The responsibility for maintenance, education and other expenses will be transferred from adopted children to their adoptive parents. However Adopted children are still called by *bin/binti* of their biological parents.
- If it is viewed from guardianship, the adoptive parents are only guardians with limitation of adopted children, their assets, their legal actions and adoptive parents cannot be included as marriage guardians if the adopted child is a daughter.
- If it is viewed from the *mahram* relationship, adopted children may be married to their adoptive parents, also may be married to biological children or other adopted children of their adoptive parents.
- If it is seen from the inheritance rights, adopted children may not be the heirs of their adoptive parents, but adopted children will receive inheritance from their biological parents and even if they receive inheritance from their adoptive parents, this is through a obligatory bequest (*wasiat wajibah*).

The legal implications that can occur if the implementation of child adoption is not in accordance with existing procedures or is not in accordance to custom are:

- The lineage (*Nasab*) of the adopted child can be severed from his biological parents and siblings, as well as the lineage of the adopted child is transferred to the adoptive parents with all the general consequences and the name of adopted child are called by using *bin/binti* of the adoptive parents.
- In guardianship, the adoptive parents become the guardians without limitation (full) of the adopted child both assets, legal action on the adopted child so that the status of the child who is an adopted child will not be published or not known by others because this is considered a family secret so it is protected secretly.
- Adopted children are considered as biological children so that adopted children cannot marry their adoptive parents or biological children from their adoptive family and adopted children get the same rights as biological children.
- In inheritance rights, adopted children receive inheritance from their adoptive parents as the position of a biological child. however, this can lead to conflict or hostility between families.
- Abandonment of adopted children when their adoptive parents have died and the adoptive family does not feel obligated to take care of the child. Thus, this can give bad effect to the child's psyche or mentality because during his lifetime the adoptive parents do not explain the child's original status and there is no legal protection that the adopted child gets.
- incestuous marriages, in which adopted children may carry out incestuous marriages with their siblings. this is due to the child has no information about his original status and the result could be breaking up the family relationship between the adopted child and his biological parents.

The above legal implications can occur if during the implementation of child adoption, the adoptive parents do not carry out the implementation of child adoption according to legal regulations or legal procedures that are already in force. This can cause losses, especially for adopted children whose rights are not guaranteed before the law and they are not aware of their true status, so this can also cause their disappointment towards the adoptive parents.

Conclusion

Regarding the implementation of child adoption, there are still many adoptive parents who do not apply for court orders to guarantee the rights of adopted children and adopt children secretly, which does not involve village apparatus or the government. Adoption without going through the Court/Syar'iyah Court will be detrimental to adopted children because they will not receive legal protection from the State.

Legal protection in terms of Islamic law and customary law is very clear, both in terms of unbroken lineage and guaranteeing the rights of the child, if the adoption is carried out by submitting a request for a court order. However, in fact, in its implementation there are many families not proposing application for court decision for reasons of complicated procedures, the child's mentality, or the confidentiality of the child's status. So that adopted children are not legally protected.

The legal implication for adopting a child who is adopted through a court decision is that the child who gets his rights such as the right to know his origin, inheritance rights and other things that the child has. The legal implication of adopting a child that is not through the court decision (*custom*) is the breaking of lineage (*nasab*) between the biological parents and the adopted child in which the lineage will be transferred to the adoptive parents, incestuous marriages can occur between adopted children and their own siblings, adopted children are considered as biological children and can be entangled in criminal cases, namely being entangled in falsifying the identity of the child

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