



Urgency of license from social services in the process of appointment of children in court

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Abstract

This study examines the position of the child adoption permit certificate from the head of the provincial social service department in the process of determining child adoption in court in the perspective of legal protection for children. This study aims to see the urgency of the adoption permit by analyzing the procedures for adopting children and the authority of the social service department in implementing child adoption in Indonesia, and analyzing the legal consequences that will occur from the absence of the child adoption permit from the head of the provincial social services department in the process of determining the adoption of children in court. This research is the normative legal research. The results of the study explain that the procedure for adopting children among Indonesian citizens has been explicitly regulated in Government Regulation Number 54 of 2007 concerning the Implementation of Child Adoption and Minister of Social Affairs Regulation Number 110/HUK/2009 concerning Child Adoption Requirements. The social service department has the authority to carry out guidance, permission and supervision of the implementation of child adoption in Indonesia. The absence of the child adoption permit certificate in the process of determining the adoption of a child can cause the application for adoption that is submitted to the court to be rejected by the judge. and the social service department cannot carry out its duties and obligations to supervise the fulfillment of the rights of adopted children during the fostering period of their adoptive parents after a court decision.

Keywords: child adoption permit certificate, legal protection for children, social service department

Introduction

A legal act committed by a legal subject will have legal consequences, whether the act is carried out in accordance with legal provisions or not in accordance with applicable legal provisions. The legal consequences that arise can be in the form of birth, change, or the loss of a legal relationship between two or more legal subjects, namely related to rights and obligations between one party and another (R. Soeroso, 2005) ^[15]. One of the legal acts that have been regulated in such a way in the laws and regulations in Indonesia is the issue of child adoption. Adoption of a child or often known as adoption is defined as a legal act that diverts a child from the sphere of authority of the parents, legal guardian, or other person who is responsible for the care, education, and rearing of the child, into the family environment of the adoptive parents. (Nuansa Aulia, 2016) ^[10].

In Islamic law, adoption is known as tabanni which means taking adopted children (Andi Syamsu & M. Fauzan, 2008) ^[18]. Adoption of a child that is justified in Islamic law is the adoption of a child categorized as "hadhanah" or extended child care (A. Hamid Sarong, 2016) ^[14]. In principle, adoption according to Islamic law is child care with the aim of protecting a child from being neglected or suffering in its growth and development (Iman Jauhari, T. Muhammad Ali Bahar. 2013) ^[6]. Adopted children will only get the fulfillment and protection of their rights as ordinary children in general, but will not cause any changes in legal status (mahram status) in the adoptive family, do not break the lineage relationship with their original parents, and do not cause inheritance relationships with their parents. Pick it up. Broadly speaking, the statutory provisions related to child adoption in Indonesia as a country where the majority of the population is Muslim are in line with and do not conflict with the provisions of Islamic law.

In Government Regulation Number 54 of 2007 concerning Implementation of Child Adoption, it is regulated that in order to adopt a child, prospective adoptive parents (COTA) must go through several procedures and meet certain requirements. One of the requirements that must be met by prospective adoptive parents (COTA) according to the provisions of Article 13 of Government Regulation Number 54 of 2007 Juncto Article 7 of the Regulation of the Minister of Social Affairs Number 110/HUK/2009 concerning Child Adoption Requirements is to obtain a child adoption permit from the minister and/or head of social agency (social service). The adoption permit will then be followed up by submitting a child adoption application to the court to obtain a child adoption determination.

However, in the practice of determining child adoption in the Religious Courts (for justice seekers who are Muslim) in Indonesia, there are still some applications for adoption which are still granted by the judge without considering the existence of a permit for adoption of a child from the local social agency (social service). One written evidence in legal considerations at the court's decision on the application. Court decisions related to adopting children without a social service permit include the Jantho Syar'iyah Court Decision Number 29/Pdt.P/2019/MS.Jth and Jantho Syar'iyah Court Decision Number 397/Pdt.P/2019/MS. jth.

The absence of a permit from the social agency (social service) certainly has the opportunity to cause legal polemics, because permission to adopt a child from the minister and/or head of social agency should be an important requirement for submitting an application for the determination of adoption to the court based on the provisions of Article 13 of Government Regulation Number 54 of 2007 concerning Adoption of children Juncto Article 7 Regulation of the Minister of Social Affairs Number 110/HUK/2009 concerning Requirements for Adoption of Children. Because to obtain this permit, prospective adoptive parents (COTA) must meet several material and administrative requirements, and also have to go through several procedures, one of which is the existence of a temporary care period of 6 (six) months which determines the eligibility of prospective adoptive parents (COTA). to carry out the adoption of prospective adopted children (CAA), whose feasibility assessment is carried out by the Child Adoption Licensing Consideration Team (PIPA Team) formed by the local social service. The requirements and procedures that must be followed are of course very important to be completed to ensure the welfare and legal protection of the rights of adopted children can be fulfilled in the future.

Further studies related to the importance of permission to adopt children from the head of the social service in the process of determining adoption in court in this study will be studied using legal protection theory in the context of legal protection for children. This paper will describe an analysis related to the procedure for adopting children among Indonesian citizens, the authority of the social service in implementing child adoption in Indonesia, and the legal consequences that will arise from the absence of a social service permit in the process of determining a child in court. The purpose of this study is to describe the procedure for adoption of children among Indonesian citizens, to examine and analyze the authority of the social service in implementing child adoption in Indonesia, and to examine and analyze the legal consequences that will arise from the absence of a social service permit in the process of determining a child in court.

Research that examines the procedures for implementing child adoption in Indonesia in general by looking at it from various perspectives has certainly been done quite a lot by previous researchers. Based on the results of a search of some of the literature that has been done, it is found at least some literature that discusses this issue.

First, the research conducted by Nina Mariani Noor and Ro'fah, Postgraduate Program at Sunan Kalijaga State Islamic University, Yogyakarta in 2019, with the title, "Child Adoption Practices and the Role of Social Workers in the Child Adoption Process in the Special Region of Yogyakarta", The research problem formulated in relation to the practice of child adoption that occurs in the Special Region of Yogyakarta, legal issues that occur in adoption practices, and the role of social workers in the child adoption process. The results of the research are that in the practice of adoption there are still many violations that are not in accordance with existing laws and regulations, this is due to the lack of public knowledge, especially prospective adoptive parents (COTA) and biological parents regarding adoption procedures in accordance with statutory regulations. valid invitation and there is still dualism of authority in the process of ratifying adoptions in district courts and religious courts. Social workers play a very important role in the child adoption process, starting from the administrative role, the role of social assistance, to the role of mediator (Nina Mariani (2019) ^[24].

Kedua, penelitian yang dilakukan oleh Fitri Handayani dan Muzakkir Abubakar, Fakultas Hukum Universitas Syiah Kuala, Banda Aceh Tahun 2019, dengan Judul, "Pengangkatan Anak Tanpa Penetapan Pengadilan dan Akibat Hukumnya (Suatu Kajian Berdasarakan Hukum Islam dan Hukum Positif di Kecamatan Dewantara Kabupaten Aceh Utara)". Masalah penelitian yang dikaji terkait dengan pelaksanaan pengangkatan anak tanpa melalui penetapan pengadilan yang dilakukan oleh masyarakat kecamatan Dewantara, faktor yang menyebabkan terjadinya terjadinya pengangkatan anak tanpa penetapan pengadilan, serta akibat hukumnya. Hasil penelitiannya yakni pengangkatan anak yang terjadi dikalangan masyarakat kecamatan Dewantara biasanya hanya dilakukan atas kesepakatan orang tua kandung/ wali dan orang tua angkat.

The factor that causes this is due to the lack of public knowledge of the procedure for adopting children through court decisions and the public's perception of the procedure for determining child adoption in court which is very complicated and takes quite a long time. The legal consequence is the termination of the lineage of the adopted child with his biological parents which is strictly prohibited in Islamic Shari'a (Fitri Handayani, Muzakkir Abubakar, 2019) ^[22].

Third, research conducted by Angga Aidry Ghifari and I Gede Yusa, Faculty of Law, Udayana University, Denpasar in 2020, with the title, "Adoption of Children (Adoption) Based on Legislation in Indonesia". The research problem studied is related to the perspective of Civil Law and Islamic Law regarding child adoption and adoption procedures among Indonesian citizens. The results of his research are in Staatblaad 1917 No. 129 which is a complementary provision of the Civil Code regarding child adoption explains that the status of the child from the adoption process is not an adopted child but a legal child and the civil relationship with his biological parents is severed. Whereas in Islamic law, equating the status of adopted children with biological children and deciding the lineage of adopted children with their biological parents is prohibited as stipulated in the Qur'an Al-Ahzab verses 4 and 5. The procedure for adopting children between Indonesian citizens regulated in detail in PP No. 54 of 2007 concerning the Implementation of Child Adoption and the Minister of Social

Affairs Regulation No. 110/HUK/2009 concerning Requirements for Adoption of Children (Angga Aidry, I Gede Yusa, 2020) ^[21].

Based on a brief description of the three studies, it can be seen that this research has differences with previous studies in terms of the focus of the object of study. This study focuses on the position of the child adoption permit from the head of the social agency or social service in the process of determining child adoption in court and the legal consequences that can arise from the absence of such a permit. The results of the study from this study will show conclusions regarding the importance (urgency) of a child adoption permit from the social service in the process of determining child adoption in court.

Material and Methods

This research is a type of normative juridical research, namely legal research conducted by examining library materials and secondary data (Ishaq 2017). Normative juridical research is also known as doctrinal research, namely research that analyzes the law, both written in the book (law as it is written in the book) and the law decided by the judge through the court process (law as it is decided by the judge through judicial process) (Bismar Nasution, 2003).

The approach used in this research is the Statute approach and the case approach. The statutory approach (case approach) is an approach that examines the laws and regulations related to the problems (legal issues) that are being faced (Bactiar, 2019). In this study, the regulations that will be studied are the laws and regulations relating to the implementation of child adoption in Indonesia. While the case approach is an approach that is carried out by examining cases related to the problems faced which have become court decisions that have permanent legal force (Abdul Kadir Muhammad, 2004). The study of court decisions in this study aims to determine the legal consequences that will arise from the absence of a social service permit in the process of determining adoption in court.

Results and Discussion

A. Procedure for Adoption of Children Between Indonesian Citizens

In the provisions of Article 8 of Government Regulation Number 54 of 2007 in conjunction with Article 10 paragraph (1) of the Regulation of the Minister of Social Affairs Number 110/HUK/2009 stipulates that adoption of children between Indonesian citizens can be carried out based on local customs or based on statutory regulations. Adoption of a child based on local customs will only be considered valid if it is carried out by a community that is clearly still preserving and implementing these customs and habits in social life. The adoption of children based on the laws and regulations includes the adoption of children directly (private adoption) and the adoption of children through childcare institutions (Djaja S. Meliala, 2020)

Direct adoption is the adoption of children among Indonesian citizens, where the prospective adoptive parents make the adoption (adoption) of the prospective adopted child who is in the care of his biological parents or guardian. Direct adoption of children can only be carried out by prospective adoptive parents (COTA), both husband and wife, who are Indonesian citizens.

To carry out direct adoption, prospective adoptive parents (COTA) must meet several material requirements. The material requirements are described in detail in Article 13 of Government Regulation Number 54 of 2007 in conjunction with Article 20 of the Regulation of the Minister of Social Affairs Number 110/HUK/2009, namely:

- a. Physically and mentally healthy both physically and mentally able to care for CAA;
- b. Minimum age of 30 (thirty) years and maximum 55 (fifty five) years;
- c. Religion is the same as the religion of the prospective adopted child;
- d. Be of good character and have never been convicted of a crime;
- e. Legally married status for a minimum of 5 (five) years;
- f. Not a same-sex couple;
- g. No or have not had children or have only one child;
- h. In a state of being economically and socially capable;
- i. Obtaining the consent of the child, for the child who has been able to express his opinion and written permission from the biological parent or guardian of the child;
- j. Make a written statement that the adoption of a child is in the best interests of the child, the welfare and protection of the child;
- k. There is a social report from the local Provincial Social Agency Social Worker;
- l. Obtain recommendations from the Head of Regency/City Social Agencies; and
- m. Obtain permission from the Head of the Provincial Social Agency.

The procedures for direct adoption of children between Indonesian citizens as regulated in Article 22 of the Regulation of the Minister of Social Affairs Number 110/HUK/2009 are as follows:

- a. COTA submits an application for a child care permit to the Head of the Provincial Social Agency on paper with sufficient stamp duty by attaching all the administrative requirements of the prospective adopted child (CAA) and also the prospective adoptive parent (COTA) as referred to in Article 5 and Article 21 paragraph (1) of the Ministerial Regulation Social Number 110/HUK/2009;
- b. The Head of the Provincial/Regency/City Social Agency will assign the Provincial/District/City Social Worker to conduct a COTA feasibility assessment;

- c. Application for adoption shall be submitted to the Head of the Provincial Social Agency through the Regency/Municipal Social Agency;
- d. The Head of Regency/City Social Agencies issues recommendations for further processing to the provinces;
- e. The Head of the Provincial Social Agency issues a Decree concerning the Permit for Adoption of Children to be processed further in court;
- f. After the issuance of the court decision and the completion of the adoption process, COTA reports and submits the copy to the Social Agency and to the Regency/Municipal Population and Civil Registration Office; and
- g. Social agencies record and document and report the adoption of the child to the Ministry of Social Affairs of the Republic of Indonesia.

Meanwhile, the adoption of a child through a childcare institution is the adoption of a child between Indonesian citizens, where the prospective adoptive parents undertake the adoption (adoption) of the prospective adopted child who is in a childcare institution appointed by the relevant minister. To adopt a child through a childcare institution, prospective adoptive parents (COTA) must also meet several material requirements as regulated in Article 13 of Government Regulation Number 54 of 2007 in conjunction with Article 25 of the Regulation of the Minister of Social Affairs Number 110/HUK/2009 (description of the requirements is the same as material requirements for direct child adoption).

The procedures for adopting children between Indonesian citizens through childcare institutions as regulated in Article 27 of the Regulation of the Minister of Social Affairs Number 110/HUK/2009 are as follows:

- a. COTA submits an application for a child care permit to the Head of the Provincial Social Agency on paper with sufficient stamp duty by attaching all the administrative requirements of CAA and COTA as referred to in Article 5 and Article 26 paragraph (1) of the Regulation of the Minister of Social Affairs Number 110/HUK/2009;
- b. The Head of the Provincial Social Agency assigns the Provincial Social Worker and Child Care Institution Social Worker to conduct a feasibility assessment of COTA by conducting home visits to COTA's families;
- c. The Head of the Provincial Social Agency issues a Temporary Care Permit;
- d. Social Workers provide guidance and supervision during temporary care;
- e. COTA submits an application for a child adoption permit to the Head of the Provincial Social Agency on paper with sufficient stamp duty;
- f. Social Workers from Provincial Social Agencies and Child Care Institutions Social Workers made home visits to find out the progress of CAA during COTA's care;
- g. The Head of the Provincial Social Agency discusses the results of the COTA feasibility assessment, and examines and examines the application files/documents for adoption in the Forum for the Consideration of Child Adoption Teams in the Province;
- h. The Head of the Social Agency issues a letter for permission to adopt a child so that it can be processed further in court;
- i. In the event that the application for adoption is rejected, the child will be returned to the Child Care Institution;
- j. after the issuance of the court decision and the completion of the adoption process, COTA reports and submits the copy to the Social Agency; and to the regency/city Population and Civil Registry Office;
- k. The Head of Social Agency records and documents and reports the adoption of the child to the Ministry of Social Affairs of the Republic of Indonesia.

The application for adoption among Indonesian citizens to the court, both for direct adoption or through childcare institutions, is carried out directly by prospective adoptive parents (COTA) or their proxies by registering a child adoption application that has obtained a permit from the provincial social agency to court. Even though they use power of attorney, in principle the adoptive parents must be present in court.

B. The Authority of the Social Service in the Process of Implementing Child Adoption in Indonesia

The procedure for implementing child adoption in Indonesia has been clearly and in detail regulated in several laws and regulations related to child adoption in Indonesia. However, in practice, there are still many cases of adoption (adoption) that are not in accordance with the requirements and procedures for adopting children as regulated in the applicable laws and regulations. This happened because of the lack of socialization and facilitation provided by the government publicly, resulting in many people (especially married couples) not knowing the legal adoption procedures (Yolanda Triana Siregar, Meilanny Budiarti Santoso, 2018) ^[25]. Therefore, the Ministry of Social Affairs/Ministry of Social Affairs is mandated by the Government of the Republic of Indonesia through Government Regulation Number 54 of 2007, which is the implementing regulation of the provisions on adoption of children in Law Number 23 of 2002 concerning Child Protection, as an institution authorized to carry out guidance and supervision of the implementation of child adoption in Indonesia.

To follow up and carry out the authority of the Central Government, the Minister of Social Affairs of the Republic of Indonesia issued implementing regulations related to child adoption, namely the Regulation of the Minister of Social Affairs of the Republic of Indonesia Number 110/HUK/2009 concerning Requirements for

Adoption of Children and Regulation of the Minister of Social Affairs of the Republic of Indonesia Number 3 of 2018 concerning Guidance, Supervision, and Reporting on the Implementation of Child Adoption. Guidance from the Ministry of Social Affairs/Ministry of Social Affairs referred to here is the process of providing information, understanding and strengthening related to the implementation of child adoption to prospective adoptive parents and adoptive parents as well as the community which is carried out on an ongoing basis by professional social workers, social welfare workers, and other related professions. from the Ministry of Social Affairs, Social Service, and/or Child Care Institutions. Guidance on the implementation of adoption is carried out through counseling, consultation, counseling, mentoring, and training activities.

Counseling activities from the Ministry of Social Affairs/Ministry of Social Affairs in the implementation of child adoption are intended so that the public gets information and understands the requirements, procedures, and procedures for implementing child adoption in accordance with the provisions of the applicable laws and regulations. Consultation activities are carried out to guide and prepare biological parents and prospective adoptive parents (COTA) so that they have readiness in implementing child adoption. This consultation activity aims to explore COTA's motivations and provide information regarding the legal, psychological, sociological, and economic impacts of child adoption on prospective adopted children (CAA) and prospective adoptive parents (COTA).

Counseling activities are carried out by the Ministry of Social Affairs/Ministry of Social Affairs to help overcome and resolve problems in the implementation of child adoption. In this activity, apart from involving professional social workers and social welfare workers, the Ministry of Social Affairs also involves the professions of psychologists and psychiatrists. The mentoring activities are intended to help smooth the adoption process to be carried out by COTA, starting from helping direct, researching, and analyzing applications for adoption that will be submitted by COTA to monitoring the development of children during the foster parenting period (OTA). Meanwhile, the training activities are intended to increase the knowledge and skills of COTA and social workers in the process of implementing child adoption.

In the provisions of the Minister of Social Affairs Regulation No. 110/HUK/2009, the Ministry of Social Affairs/Ministry of Social Affairs through the Provincial and Regency/City Social Services also has the authority to grant and issue adoption permits for prospective adoptive parents (COTA) who wish to continue the process of adopting a child to their respective homes. court. The authority of the Ministry of Social Affairs/Ministry of Social Affairs to grant and issue a permit for adoption before being determined in court is confirmed in Articles 12 and 14 of the Regulation of the Minister of Social Affairs Number 110/HUK/2009, which reads: which includes: (a) Adoption of children between Indonesian citizens and foreign nationals; (b) Adoption of a Child by a Single Parent; and (c) Adoption of children by COTA, one of which is a foreign citizen. And the Head of the Provincial Social Agency has the authority to give permission to adopt children among Indonesian citizens to be further determined in court.

In addition to the authority in terms of guidance and licensing in the implementation of child adoption, the Ministry of Social Affairs/Ministry of Social Affairs also has the authority to carry out supervision over the implementation of child adoption in Indonesia. Supervision of the implementation of child adoption is intended to prevent deviations or violations in the adoption of children. Supervision of the implementation of the adoption is carried out by the central government through the ministry of social affairs for the adoption of children between Indonesian citizens and foreigners and by local governments through the provincial social services, district/city social services, and related regional work units for child adoption among Indonesian citizens.

Supervision of the practice of adopting children between Indonesian citizens is under the authority of the provincial social service and/or district/city regional social service which technically carries out the field of social rehabilitation. The supervision is carried out with the following mechanism:

- a. COTA that has received a court decision as OTA is required to report a copy of the determination to the provincial social service office;
- b. The provincial social service and/or district/city social service shall record the OTA and adopted children by including their name, domicile, and regional origin;
- c. The provincial social office and/or district/city social service office make visits to the OTA's house and carry out monitoring and evaluation.

Supervision of the implementation of adoption is aimed at monitoring the development of the child in the care of his adoptive parents until the adopted child is 18 (eighteen) years old. In the supervision process, periodic reports are also carried out at least once every 1 (one) year on the development of the adopted child carried out by adoptive parents (OTA) and professional social workers. The report on the development of the adopted child includes reporting related to the child's biological condition, the child's psychological condition, the child's social condition, the child's spiritual condition, the child's education, the child's attachment relationship (the closeness of the adopted child to the adoptive parents), and reports related to the fulfillment of the child's rights while in adoptive parental care (OTA).

C. Legal consequences arising in the process of determining the adoption of a child without a license for adoption of a child from the head of the Social Service

Legal consequences are consequences caused by law on an action or act committed by a legal subject, whether the act is in accordance with legal provisions or not in accordance with legal provisions. The actions or actions

of the legal subject can cause legal consequences in the form of birth, change, or the loss of a legal relationship, which is related to the rights and obligations between legal subjects. In fact, sometimes certain actions (related to evidence) carried out by legal subjects can affect the final outcome of a decision or court decision.

A permit for adoption from the head of the local provincial social service is one of the requirements as well as important evidence that prospective adoptive parents must prepare before submitting an application for adoption to the court in accordance with the provisions of Article 13 letter h of Government Regulation Number 54 of 2007 Juncto Article 7 letter m Regulation of the Minister of Social Affairs Number 110/HUK/2009. The absence of such a permit in a child adoption application that has been submitted to the court will have certain legal consequences, both in terms of the legal status of the application in determining the adoption of the child and in terms of legal protection for the adopted child after the adoption of the child.

D. Legal Status of the Application in Determining the Adoption of a Child Without a Child Adoption Permit from the Head of the Social Service

In civil procedural law, evidence is part of the case examination process which aims to provide sufficient grounds for judges examining the case in question in order to provide certainty about the truth of the legal events submitted to him (Sudikno Mertokusumo, 2016). Or in other words, evidence aims to convince the judge of the truth of the arguments put forward (in a lawsuit or application) at a trial based on valid evidence according to the provisions of the Act (Subekti, 2001).

According to Yahya Harahap, in the process of examining and resolving civil application cases in court, the principle of proof must really be upheld and fully implemented. Ignoring the enforcement and application of evidence in the examination of civil applications can have very fatal consequences. Because in the process of settling civil cases the judge must be passive, the truth of the argument of the lawsuit (application) that is not supported by sufficient evidence must be rejected by the judge.

In the process of resolving cases of application for adoption in court, a letter of permission for adoption from the head of the provincial social service is one of the important written evidence (letters) to prove and convince the judge of the truth of the arguments of the application relating to the eligibility of the applicant (prospective person). adoptive parents) to take care of the respondent (prospective adoptive child). This statement is in line with the opinion of Heti Kurnaini, one of the judges at the Jantho Syar'iyah Court, who explained that in the process of examining child adoption cases at the syar'iyah court (religious court), it is not enough for judges to just listen to witnesses and consider evidence. available general evidence, but also requires the existence of a child adoption permit from the head of the social service office as one of the evidences that can assist judges in considering the suitability of prospective adoptive parents to adopt and care for prospective adopted children in the best interests of the child.

According to Fadhlia, one of the judges at the Jantho Syar'iyah Court, that the position of the recommendation letter for child adoption from the head of the social service in an application for adoption is part of the material requirements of an application (part of the *petendi* or *posita*). That is part of the burden of proof on the applicant to prove the argument for his application (burden of proof) in accordance with the provisions of Article 1865 of the Civil Code. In the settlement of cases of application for adoption, the existence of a recommendation letter for adoption is to prove the argument for the application regarding the eligibility of prospective adoptive parents. Based on this opinion, the absence of a child adoption permit from the social service as one of the evidences in the settlement and examination of a child adoption application can cause the court (judge) to argue that the plaintiff (applicant) is unable or unable to prove the argument of his claim (his petition), so that the legal consequence that must be borne for the failure of the proof is that the lawsuit (application) must be completely rejected in accordance with Supreme Court Decision No. 570 K/Sip. 1972 and Supreme Court Decision No. 1201 K/Sip. 1973.

The rejection of a child adoption application due to the absence of a child adoption permit from the Minister / Head of the Social Service had occurred in one of the adoption decisions at the Syar'iyah Court of Banda Aceh. In the Judge's Legal Consideration in Determination Number 120/Pdt.P/2019/MS.Bna, the Panel of Judges of the Jantho Syar'iyah Court considered that in order to adopt a child, the applicant must have permission from the Minister/Head of Social Service to be determined in court in accordance with Article 32 letter (k) of the Regulation of the Minister of Social Affairs of the Republic of Indonesia Number 110/HUK/2009 concerning Requirements for Adoption of Children, and until the time this application is decided, the applicant is unable to prove that the applicant has the permit. Therefore, based on all the considerations as mentioned above, the Panel of Judges is of the opinion that the applicant's application for child adoption is unreasonable and must be rejected.

According to Zakki Fikri Khairuna, one of the Legal Aid Post Officers of the Banda Aceh Syar'iyah Court, that a child adoption application to be submitted to the court must be accompanied by a child adoption permit from the local social service. The application for adoption without a permit will be returned to the applicant for completion, because continuing the application for adoption without a social service permit to the trial stage may result in the application being rejected by the judge.

In the perspective of legal protection in Islam, the rejection of a child adoption application that is not accompanied by a child adoption permit from the head of the social service in a court order issued by a judge is an effort to realize the greater benefit of the adopted child, based on one of the principles the rules of *ushuliyah*

or kulliyah, namely: "Avoiding what brings harm takes precedence over an action that brings benefit" (Iman Jauhari, 2019).

In the case in this discussion, refusing an application for adoption that is not accompanied by a permit from the head of the social service department which has the potential to cause greater damage (a violation of the fulfillment of the rights of an adopted child due to factors that are not appropriate for the applicant to adopt a child) must be carried out in the future. Prioritized, rather than continuing to grant the application for adoption without the permission of the head of the social service office which will only bring a small portion of the benefits to the adopted child.

The judge's decision to reject the application for adoption that is not accompanied by a child adoption permit from the social service in a court order, does not necessarily result in the applicants failing to adopt the prospective adopted child, but the applicants can re-submit the same application after obtaining a letter of permission to adopt a child from the social service, because the stipulation does not adhere to the principle of *ne bis in idem*. (M. Yahya Harahap, 2012).

Based on the description of the discussion and explanation above, the absence or omission of a child adoption permit from the social service in an application for adoption, as important evidence to prove the suitability of the applicant (prospective adoptive parents) in adopting a child, can have legal consequences on the status of the child. The application in the stipulation process, namely the application can be declared completely rejected by the judge. The refusal is one of the efforts to realize a greater benefit for the adopted child.

E. Legal Consequences After the Determination of Adoption of a Child Not Accompanied by a Child Adoption Permit from the Head of the Social Service

The main purpose of the establishment of Government Regulation Number 54 of 2007 concerning the Implementation of Child Adoption is to provide protection and guarantee the realization of the rights of adopted children and to improve the welfare of adopted children, by preventing the occurrence of various irregularities in society in the implementation of child adoption, namely child adoption carried out with improper procedures, falsification of data, child abuse, child trafficking, and various other violations.

Obtaining a child adoption permit from the provincial social service is one of the requirements for adoption that must be met by prospective adoptive parents who want to adopt a child before submitting an application for adoption to the court. The requirement for a child adoption permit from the social service agency is a form of preventive legal protection from the Government of Indonesia to prevent violations in the adoption process, both before applying for adoption to court and after a court ruling.

According to Lina Maulidyna Marza, a child protection social worker at the Aceh Besar Social Service, the purpose of having to obtain permission from the head of the social service before submitting an application for adoption to court is to prevent violations that could injure the rights of adopted children in the future, such as the occurrence of falsification of the identity of the prospective adopted child and prospective adoptive parents, the reluctance of the prospective adoptive parents to inform the child's true origins, the economic and environmental conditions of the place of residence of the prospective adoptive parents are inadequate, the absence of approval from the extended family of the prospective adoptive parents lift, and various other violations. According to Layli Fiana, the goal after (post) the court's decision, is for the social service to carry out supervision over the fulfillment of the rights of the adopted child.

Supervision after the adoption of the child can be carried out by social workers from the local social service if the prospective adoptive parents who have previously obtained a recommendation letter for adoption from the head of the provincial social service and have received a court order implement the following mechanisms:

- a. COTA that has received a court decision as OTA is obliged to report a copy of the determination to the regional and/or provincial social service;
- b. The provincial social service and/or district/city social service shall record the OTA and adopted children by including their name, domicile, and regional origin;
- c. The provincial social office and/or district/city social service office make visits to the OTA's house and carry out monitoring and evaluation.

According to Lina Maulidyna Marza, if COTA does not follow the procedures as regulated in existing regulations (obtaining a child adoption permit and reporting a copy of the determination to the local social service), then social workers from the district/city social service cannot carry out their duties and their obligation to carry out supervision and periodic social reports on child adoption in their area due to the absence of data related to the adoption of the child. According to him, data related to adoption is very necessary, not only for administrative data collection, but more importantly to ensure that the rights of adopted children can be fulfilled during the adoption period through periodic field supervision.

Based on the discussion and explanation above, the legal consequences that arise after the adoption of a child that is not accompanied by a child adoption permit from the head of the social service office are the inability to carry out the duties and obligations of the social service, both at the provincial and district/city levels, to monitor and periodic supervision of the fulfillment of the rights of adopted children during the fostering period of their adoptive parents after obtaining a stipulation for adoption from the court. This opens up opportunities for irregularities and violations of the rights of the adopted child.

From the description of the discussion related to the legal consequences of determining the adoption of a child that is not accompanied by a permit to the social service, both on the status of the application in the determination process and on legal protection (supervision) after the determination, which has been described above, it can be seen that the urgency (importance) of the existence of a child adoption permit from the head of the social service in the process of implementing the adoption decision in court is a form of preventive legal protection to prevent violations of the rights of the adopted child (hifdzuhu min janib al-'adam), namely legal protection for the child from things that can endanger themselves, their lives, and their property, which includes the physical, mental, spiritual, and social aspects of the child, both before the application for adoption is granted by the court as a stipulation and during the period of care after the stipulation.

Conclusion

Implementation of child adoption among Indonesian citizens, based on the provisions of Government Regulation Number 54 of 2007 concerning Implementation of Child Adoption and Minister of Social Affairs Regulation Number 110/HUK/2009 concerning Requirements for Child Adoption, can be carried out based on local customs or based on applicable laws and regulations. The adoption of children carried out in accordance with the provisions of the legislation includes direct adoption of children, whose procedures for adopting children are explicitly regulated in Article 22 of the Regulation of the Minister of Social Affairs Number 110/HUK/2009, and adoption of children through childcare institutions, whose procedures are the implementation of the adoption of the child is clearly regulated in Article 27 of the Regulation of the Minister of Social Affairs Number 110/HUK/2009. Both adoption procedures require prospective adoptive parents (COTA) to have a child adoption permit from the head of the provincial social service office before the application for adoption is submitted to the competent court.

Social services, both at the district/city and provincial levels, have the responsibility and authority to carry out guidance and supervision of the implementation of child adoption in Indonesia. Guidance on the implementation of the appointment is carried out through counseling, consultation, counseling, mentoring, and training activities that are carried out on an ongoing basis by professional social workers from the local social service. Provincial and district/city social services also have the authority to grant and issue adoption permits for prospective adoptive parents (COTA) who wish to continue the process of adopting a child to court to obtain a court order. The supervision of the implementation of adoption is carried out through periodic reporting of the conditions and fulfillment of children's rights in the care of adoptive parents, both before and after court decisions, so that there are no deviations or violations in the process of adopting and caring for these children.

The legal consequences that will arise from the absence of permission from the head of the social service in the process of determining the adoption of a child in court, namely: first, in terms of the legal status of the application in the process of determining the adoption of the child, the application can be declared and determined to be completely rejected by the judge. The refusal is one of the efforts to realize greater benefit/benefit for the adopted child. Second, from the point of view of legal protection after the court decision, it is the inability to carry out the duties and obligations of the social service, both at the provincial and district/city levels, to carry out periodic monitoring and supervision of the fulfillment of the rights of adopted children during the care of their adoptive parents. After obtaining a child adoption determination from the court. This of course can open up opportunities for irregularities and violations of the rights of adopted children in the future.

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