

Sociological Juridical Review Of Children Appointment Through The Determination Of Judges In The Religion Court Of Semarang

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Abstract. This study aims to determine how the implementation process of adoptions that occurred in the Religious Court of Semarang, and what is the reason for the judge to give authority to the prospective adoptive parents. In answer to this problem the authors conducted a sociological juridical research, namely by conducting direct research and find data related to this study directly in the field, and also based on legislation regarding adoption. This is to obtain primary data and secondary data, using data collection techniques are observation, interview, and literature study. The data obtained in the analysis using qualitative analytical methods and presented descriptively.

Based on the results of research that has been done in the Religious Court of Semarang, we can conclude that 1) the implementation of the adoption of the Religious Court of Semarang is done by people who are Moslem. Filing the petition has been set by the Religious Court of Semarang through 3 stages and was previously submitted to the Department of Social Welfare. 2) Determination of adoption set based on consideration of the judge with reference to the legislation and personal data information provided by the applicant.

Keywords: Implementation; Adoption; Religious Court.

1. Introduction

Son of a mandate once the gift of God Almighty that must be maintained and protected, because in every child's inherent dignity, dignity and human rights that must be upheld existence. As a grace from God Almighty normative child should be kept in the interests of both physical and psychological.⁴ Further it is said that children are budding, the potential and the younger generation successor to the ideals of national struggle, has a strategic role and have special characteristics and properties that guarantee the continued existence of the nation and the state in the future.⁵

Once the importance of the child's existence in human life, then Allah told their marriage. The marriage has a purpose, among others, to have offspring (children good), maintaining *nasab*, avoid disease and create a family *sakinah, mawaddah, warrahmah*. In the provision of marriage Act No.1 of 1974 on Marriage states that marriage is inner and outer bond between a man and a woman as husband and wife in

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⁴ M.Nasir Djamil, 2013, *Anak Bukan Untuk Dihukum*, Jakarta: Sinar Grafika, p.1.

⁵ *Ibid*, p.8.

order to establish a happy and lasting families based on God. One of the purposes of marriage is to get a descent.⁶

Having a child is the pride of the family. But sometimes all it was hampered by the divine destiny which will have a child even after so many years of marriage never blessed with children, while the desire to have children is enormous. If so, the successor pedigree parents and relatives of the family was in danger of dropping or extinct. So important, so that in terms of "the wife can not give birth to offspring" can be an excuse for a husband for more than one wife (polygamy), which is an exception to the principle of monogamy.⁷ In a state so then the members relatives urged her husband to find another woman to adopt a child or nephew of a member of the relatives to be the successor to family life is concerned, by way of adoption.

In Act No. 23 of 2002 on Protection of Children, do not formulate about the meaning of adoption, but only formulate definition adopted children namely in Article 1 point 9 states that⁸ :

"The adopted son is a child of his rights transferred from the corridors of power of families, parents, legal guardian, or other person responsible for the care, education, and raising the child, into a family environment adoptive parents based on the decision or determination of the court"

Adoption herein is intended to continue the descent is the motivation and one way out as a positive and humane alternative to the instincts of the presence of a child in the family, which for many years have not been blessed with a child. Other motivations are considered important for children to help economic families and children become collateral in the old days later. With the adoption is expected to be there on the day of his who maintain and take care of their wealth well as future generations.

In Act No. 23 of 2002 on Child Protection, stated unequivocally that the adoption is basically done is aimed at the best interests of the child in order to realize the welfare and protection of children. This provision is to guarantee its protection for children who are very dependent on their parents. Based on SEMA No. 2 of 1979, namely the interests of the child must be stated or indicated in the petition for determination or decision submitted to the court.⁹ In the Supreme Court Circular No. 6 of 1983, the Supreme Court affirmed the things that must be considered to receive, investigate and adjudicate the petition ratification / adoption.

Adoption should be done with the legal process through a court warrant. If the law serves to maintain order and as social engineering, the adoption should be done through the establishment of such courts is progress toward curbing the practice of law removal of children living in the midst of the people, for the event of adoption in the future have the legal certainty for adopted children as well as adoptive parents.

⁶ Sudarsono, 2005, *Hukum Perkawinan Nasional*, Jakarta, PT.Rineka Cipta, p.9

⁷ Rusli Pandika, 2012, *Hukum Pengangkatan Anak*, Jakarta: Sinar Grafika, p.9.

⁸ Republic of Indonesia, "Act No. 23 of 2002 on Child Protection", Article 1 point 9.

⁹ Rusli Pandika, op.cit, p.106

Based on the background described above, it can be some of the problem in this study are: How the implementation process of adoption that occurred during the Religious Court of Semarang?; What is the reason for the judge authorizes the adopted child custody to the adoptive parents?

Research Methods

The approach taken in this research is a sociological juridical approach. Sociological juridical approach is the approach that uses the rules of law and provisions of the legislation in force related to this research.

This study is a descriptive analysis the intention is to analyze the object of research, by means of exposure situations and problems to get a picture of the situation and the object of research. This research data collection techniques by observation, interview, and literature. Methods of data analysis used in this study is a qualitative method.

2. Results And Discussion

2.1. The Implementation Process Of Adoption That Occurred During The Religious Court Of Semarang

The problem of this research is the implementation of adoption through the fixing of judges Number: 005 / Pdt.P / 2013 / PA.Smg. Based on interviews with Drs. M. Shukri, SH, MH one of Religion Court of Semarang judge said that the implementation of the adoptions that occurred during this time in the Religious Court of Semarang in the beginning should be known in advance about the purpose and motive of the removal of the child. The aim is to avoid bad deeds parents of children such as child neglect, child exploitation, sale of children to violence against children in order that an adopted child is not to suffer in the process of growth and development.¹⁰

Adoptions that occurred in general because of the purpose and motive / reason why the applicant to apply to adopt a child and also an agreement between the prospective adoptive parents with biological parents of children who will be appointed. The agreement was made because the biological parents of the child was no longer able to educate, raise, and finance the economic needs of their children. While prospective adoptive parents are married couples who had been married but have not been blessed with a baby so decided adopt a child. Implementation of the adoptions that occurred in the city of Semarang, starting with the delivery of the child to the biological parents of the prospective adoptive parents, The implementation of the ratification of adoptions that occurred in the Religious Court of Semarang through three stages:

- Adoption application stage,
At this stage first of all to be done by someone, especially prospective adoptive parents is adoption petition addressed to the Chairman of the Religious which

¹⁰Results of interviews with Drs. M. Shukri, SH, MH one of the judges in the Religious Court of Semarang on October 16, 2017

prospective foster child lived. Before the applicant filed a petition Religious Court, the applicant has already received acceptance letter from the biological parents of children with prospective adoptive parents in question are also known by several witnesses. Implementation of the application for adoption is happening can be done alone or represented by a proxy. In the case of accompanied or assisted by attorneys, but the petitioner or respondent should still be present at the hearing. Statement of Claim must be given sufficient duty stamp addressed to the President of the Court.

- The examination at the hearing,
Once a case is registered or filed, the applicant or the defendant or the plaintiff and the defendant and co-defendant or co-defendant awaiting a summons to attend the hearing. At this hearing the applicant must carry written evidence and witnesses to be questioned by the judge. Written evidence in the form of letters needed already stamped and already in the lawful right by the Religious Court of Semarang. The letters include a letter of application, copy of ID card, photocopy of Marriage Certificate, copy of birth certificate, Certificate able to raise the child, the child handover letter, a copy SKCK, a statement adopted children, and certificate of domicile. At this stage the judge to see and test the correctness of the applicant to carry out adoption.
- Determination of judges. When after applicants applying for adoption and is already undergoing trials the judge already knows the whole of what is to be the reason someone does adoption. Then the judge will end the session by reading the stipulation.

2.2. The Reason The Judge Authorizes The Adopted Child Custody To The Adoptive Parents

The judge in giving judgment on custody of the adopted child, the judge very look capability and capacity of the prospective adoptive parents. Especially in terms of feed, and care for children in order not to happen neglect and violence against children. Based on the results of research on children's court petition filed by Setyo Utomo and Sri Mulyani as a married couple with the case number: 0005 / Pd.tP / 2013 / PA.Smg Chief Justice Drs. Wan Ahmad with two judges of that H.Khoirozi, SH and SH Imron Drs.H.Ali and assisted by a substitute clerks Fauziyah, S.AG, MH assign and grant the petition of adoption cases filed by Setyo Utomo. According to information provided by Drs. M. Shukri, SH, MH one judge in the Religious Court of Semarang so far in the implementation of child adoption in Semarang has not encountered a troublesome obstacle. During this time the applicant and the defendant is cooperative in following the steps that have been set by the Religious Court of Semarang.¹¹But occasionally that ever happened was the applicant hard for questioning about her. Because the

¹¹Results of interviews with Drs. M. Shukri, SH, MH one of the judges in the Religious Court of Semarang on October 16, 2017

description of the applicant's vitally important that the judge knew clearly what he does and how the habits of the applicant whether he is a good person or not. So the steps taken by the Religious Court of Semarang is immediately reviewing the field, meaning that the applicant's home directly further questioning. This is in order to prevent child neglect or child trafficking. So, a child who was appointed not by just anyone. However, it is rare in the jurisdiction of the Religious Court of Semarang. Such events can be calculated, which means uncommon.¹² Because people including the applicant and the defendant reasonably orderly in following the implementation of the process of adoption conducted by the Religious Court of Semarang.

3. Closing

3.1. Conclusion

- Implementation of the adoptions that occurred during this time in the Religious Court of Semarang is only done by people who are Moslem. Request that adoption by the prospective adoptive parents is not only submitted to Religion Court of Semarang alone, but must obtain a decision from the Central Java Provincial Social Service beforehand. Phase of the adoption of children through 3 phases: Phase adoption petition, the stage of the proceedings, and a determination by the judge.
- Judge consideration in deciding the case of adoption is to look at the background of the applicant. Applicant absolutely no children during the marriage, and the applicants determined to foster parenting and finance all their needs and not break *nasab* relationship between parents and children. On the other hand because the applicant has a permanent job to support candidates for the adopted child.
- Barriers that occur in the implementation of child adoption that is because the prospective adoptive parents were uncooperative when questioned. However, these obstacles are not frequent meaning is very rarely done by the applicant or prospective adoptive parents.

3.2. Suggestion

- For people who will make the implementation of the removal of the child should adhere to and comply with the rules set by the Religious Courts. And perform such adoptions through a court order ta relationship between the lift and children obtain legal decisions and the future of the children get legal certainty.
- To the Religious Court of Semarang should supervise give strict sanctions for the prospective adoptive parents who do not want to provide information related to the data itself and does not want to abide by the rules that have been made by the

¹²Results of interviews with Drs. M. Shukri, SH, MH one of the judges in the Religious Court of Semarang on October 16, 2017

Islamic Court. As it relates to the future of the child is located to the right person or not to avoid child trafficking and exploitation of children

4. References

Books

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Legislation

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