



INTERFAITH CHILD ADOPTION BASED ON DECISION NUMBER 9/PDT.P/2018/PN.BMS: A HUMAN RIGHTS PERSPECTIVE

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Absktrak: Artikel ini bertujuan menganalisis fenomena pengangkatan anak beda agama melalui putusan Nomor 9/Pdt.P/2018/PN.Bms dengan perspektif kritis terhadap pemenuhan prinsip-prinsip Hak Asasi Manusia (HAM) dan Deklarasi Universal Hak Asasi Manusia (UDHR). Penelitian menggunakan metode yuridis normatif yang fokus pada studi dokumen, seperti peraturan perundang-undangan, keputusan hakim, dan dokumen hukum terkait, untuk mengevaluasi aspek keadilan dalam kasus pengangkatan anak lintas agama. Melalui komparasi mendalam antara putusan pengadilan, Undang-Undang Nomor 39 Tahun 1999 tentang HAM, dan UDHR, penelitian ini mengungkap kerumitan permasalahan hukum dan kemanusiaan. Temuan utama menunjukkan bahwa regulasi yang mengharuskan pengangkatan anak dalam satu agama berpotensi menggugurkan hak-hak dasar yang dijamin oleh instrumen HAM. Akibat dari pembatasan itu bukan cuma soal administrasi belaka, tapi sampai menyentuh hak-hak dasar kemanusiaan yang paling mendasar, seperti hak untuk hidup, hak melangsungkan keturunan, hak keadilan, dan hak kesejahteraan. Penelitian ini mempertanyakan sejauhmana regulasi mampu menyelaraskan kepentingan hukum positif dengan prinsip-prinsip kemanusiaan universal yang menjunjung tinggi martabat setiap individu tanpa diskriminasi. Penelitian ini menyimpulkan bahwa kita perlu meninjau ulang secara menyeluruh aturan soal pengangkatan anak yang sering bertolak belakang dengan prinsip perlindungan hak asasi manusia. Aturan ini harus diubah agar lebih manusiawi dan bisa merangkul semua pihak tanpa membeda-bedakan.

Kata-kata Kunci: Agama, HAM, Keadilan, Pengangkatan Anak.

Abstract: This article aims to analyze the phenomenon of interfaith child adoption through Case Number 9/Pdt.P/2018/PN.Bms with a critical perspective on fulfilling the principles of Human Rights (HR) and the Universal Declaration of Human Rights (UDHR). The research employs a normative juridical method focusing on document studies, including legislation, judicial decisions, and related legal documents, to evaluate the justice aspects in cross-religious child adoption cases. Through an in-depth comparison between court decisions, Law Number 39 of 1999 on Human Rights, and UDHR, the research reveals the complexities of legal and humanitarian issues. The primary finding indicates that regulations requiring child adoption within the same religion potentially nullify fundamental rights guaranteed by human rights instruments. The implications of these restrictions are not merely administrative, but deeply touch the most fundamental human rights, including the right to life, the right to have offspring, the right to justice, and the right to welfare. The research questions the extent to which legal regulations can harmonize positive

legal interests with universal humanitarian principles that uphold the dignity of every individual without discrimination. The study concludes that there is a need for a comprehensive review of child adoption regulations that often conflict with human rights protection principles. These rules must be modified to become more humane and inclusive, embracing all parties without discrimination.

Keyword: *Religion, Human Right, Justice, Child Adoption.*

Introduction

Child adoption is a process where a child who is not born to a couple is then fully cared for and nurtured by a new family. The main purpose is to provide a better life for the child, especially if the original parents are unable or incapable of caring for the child for various reasons. (Sirait, 2024) In the adoption process, the child will get new parents who will fulfill their needs and provide love just like their own biological child. Child adoption is the process of transferring the care of a child from their original parents or guardians to adoptive parents. In this process, the responsibility of caring for, educating, and raising the child officially transfers to the adopting family. Adoptive parents will have the same rights and obligations as biological parents in caring for and raising the child. (Prajasa & Hayatudin, 2024) In essence, child adoption is a way to provide protection, love, and better life opportunities for a child who cannot be cared for by their biological parents. Child adoption is a process that is officially regulated by law. This means that the state has established clear rules about how to adopt children, so the process is not arbitrary and protects the interests of the child. This process, besides physically transferring the child, also transfers responsibility and custody. Therefore, proper legislation is needed to ensure that the child's interests are met. (Ramadan et al., 2023)

Child adoption in Indonesia is a process regulated by law, and becomes more complicated when prospective adoptive parents and children have different religions. Indonesian law considers this difference in beliefs as one of the important aspects in the adoption process. (Ramadan et al., 2023) The phenomenon of rejection of interfaith child adoption still frequently occurs in Indonesia, and this phenomenon often creates conflicts between what's best for the child (the best interest of the child) and religious considerations held by society. Various existing rules and jurisprudence have not yet fully provided legal certainty in addressing this problem. This is reflected in several cases where adoption applications were rejected by courts on the basis of religious differences. (Prajasa & Hayatudin, 2024)

Child adoption is a process that requires the transfer of responsibility for the care of a child from his or her biological parents or guardians to a new family willing to adopt him or her. (Sukardi, 2019). This process is often taken when the original parents are unable or unwilling to care for their child for various reasons, such as economic issues, health, or difficult social situations. (Mardani, 2019). In this context, child adoption is a solution that provides new hope for children in need of love and care. When a child is adopted, they not only get new parents, but also an environment that can fulfil their physical, emotional and educational needs. Adoptive parents are expected to provide the same love and care that biological parents provide. It is important to ensure that the

child feels loved and accepted in their new family, so that they can grow and develop well. (Arifin & Jaelani, 2024).

The process of child adoption also involves significant legal aspects. Child adoptions must be conducted through a procedure governed by law, which aims to protect the interests of the child and ensure that all parties involved understand their rights and obligations. (Ramadan et al., 2023). In child adoption, the responsibilities of adoptive parents cover all aspects of parenting, including the education, health and welfare of the child. They must be prepared to take on this new role with full commitment and responsibility, as parenting is no small task. Adoptive parents must be able to provide a safe and supportive environment where children can learn, grow and develop well. This is written in Government Regulation No. 54/2007 on the process of adopting a child. (Peraturan Pemerintah Nomor 54 Tahun 2007, 2007). Overall, child adoption is a complex and incredibly meaningful process. It is not just about moving a child from one family to another, but also about providing a better chance at life for children who cannot be cared for by their original parents. Through adoption, children can find love, support, and the opportunity to reach their full potential in a loving and caring environment.

Indonesia is a country that highly upholds religious diversity, so it can be said that its people are free to choose their religion, as stated in Law Number 39 of 1999 concerning Human Rights, which affirms that humans are free to embrace their chosen religion. (Undang-Undang Republik Indonesia Nomor 39 Tahun 1999 Tentang Hak Asasi Manusia, n.d.) In implementing child adoption, it is necessary to pay attention to the procedures that must be fulfilled. Child adoption is carried out through a court decision or determination, as explained in Article 1 of Government Regulation Number 54 of 2007. (Peraturan Pemerintah Nomor 54 Tahun 2007, 2007) Thus, there is state involvement in legalizing the act of child adoption. This is none other than to provide legal certainty for all those involved in this child adoption, especially for the child. Because if the adoptive parents deny what has been promised, they can be legally sued. This is because Government Regulation Number 54 of 2007 has stipulated that there is supervision aimed at monitoring any deviations or violations by the adoptive parents. (Nasution, 2019)

The legal regulation of child adoption in Indonesia is governed by various laws and regulations, including Law No. 23/2002 on Child Protection and Government Regulation No. 54/2007 on the Implementation of Child Adoption. The process of child adoption must fulfil the terms and conditions set out in these regulations, which aim to protect children's rights and ensure that the appointment is carried out legally and accountable. (Listyowati et al., 2024). In the context of interfaith child adoption, there are significant legal challenges, as regulations are often not in line with human rights principles that uphold individual dignity without discrimination. The research shows that there is a need to review the existing regulations to create a more inclusive and humane system that accommodates the interests of all parties involved in the child adoption process. (Ramadhan & Jaelani, 2024).

The legal environment for interfaith child adoptions in Indonesia includes the uncertainty of the regulations governing the process, with the law often not allowing for the practice of interfaith adoptions. Rejection of a child adoption application by the court

may occur if the prospective adoptive parents and the adopted child have different religions, arguing that this is contrary to existing legal provisions, which aim to protect the religious beliefs of each party. (Ramadan et al., 2023). In another case, there is a risk that the adopted child may return to his or her biological parents if the adoption process does not fulfil the legal requirements, which may cause a disadvantage to all parties involved. As such, the strict regulations and lack of clarity in the law regarding interfaith child adoptions create significant challenges in implementation. (Ramadhan & Jaelani, 2024).

The purpose of this article is to analyze and describe religious freedom in interfaith child adoption based on the Banyumas District Court decision number 9/Pdt.P/2018/PN.Bms from a human rights perspective. This discussion will cover several aspects in the future, namely juridical and sociological aspects in describing this problem and analyzing its impacts related to children's rights and pluralism in Indonesia. Furthermore, this article attempts to provide solutions or recommendations in resolving existing problems in the context of interfaith child adoption. The importance of this discussion lies in the urgency of finding a middle ground between the interests of children and religious plurality in Indonesia, which has various cultural backgrounds. Given the rise of interfaith adoption cases in modern times, understanding its legal implications and challenges becomes very important for legal practitioners, policymakers, and the general public.

Method

The research discuss about child adoption based on Banyumas district court decision number 9/Pdt.P/2018/PN.Bms, Article 35 of Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection and Article 3 of Government Regulation Number 54 of 2007 concerning Implementation of Child Adoption. This research uses a normative legal research method based on applicable laws and regulations. This means that the researcher will examine the problem using existing legal rules, without directly going to the field, but focusing on studying official documents and regulations. (Zainuddin Ali, 2016, p. 24). Meanwhile, according to Peter Mahmud Marzuki, it means answering a legal problem by using the process of determining legal schools of thought, legal principles, and legal doctrines. (P. M. Marzuki, 2024, p. 47). Legal research can also be defined as research that only uses document studies such as legislation, judge decisions or court determinations, and others. (Muhaimin, 2020, p. 45). Therefore, the conclusion is that this article discusses and addresses an issue by analyzing and describing existing legal materials, namely court decisions and legislation.

The sources used in the research include relevant legal books, legislation, and judge decisions. These data sources have a purpose, which is to resolve legal issues and simultaneously provide appropriate insights, so that the existence of data sources helps researchers to gain inspiration. (P. M. Marzuki, 2024). This article uses official and primary legal materials, such as the Constitution and Human Rights Law. This means that the author takes information directly from important legal documents created by

the government. And the UN Convention on the Rights of the Child Decisions, secondary legal sources Constitutional Court Number 83/PUU-XX/2022 concerning Judicial Review of the Child Protection Law. The reason legislation becomes a primary legal source is because it has a binding nature, considering that Indonesia has a legal system where written regulations become the main source of law. This means that laws and official government regulations become the main reference in resolving various legal issues. (P. M. Marzuki, 2024).

When the author has determined the data sources, the author does not directly analyze them, but rather determines research approaches so that researchers can easily obtain information for which answers will be sought. (P. M. Marzuki, 2024, p. 133). The researcher uses two types of approaches, namely the statute approach and the comparative approach. The statutory approach is defined as using regulations to examine the material contained within. (P. M. Marzuki, 2024). The laws used in this article are the 1945 Constitution, Law Number 39 of 1999 concerning Human Rights, and the UN Convention on the Rights of the Child. The comparative approach is a technique that compares the laws of one country with those of another country or compares one piece of legislation with another. This method can be carried out by comparing legal rules between countries, or studying how laws change over time. Additionally, we can examine how courts decide similar cases as part of this comparative study. (P. M. Marzuki, 2024). This article, in fact, compares the United Nations Convention on the Rights of the Child (UNCRC) with Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 on Child Protection and Government Regulation Number 54 of 2007 on the Implementation of Child Adoption.

After the author has identified data sources relevant to the article and conceptualized several approaches, the next crucial step is to organize and arrange the information effectively. This process helps researchers systematically structure all materials and legal data in a logical manner, making it easier to study and analyze further. Well-organized data allows researchers to identify connections between parts more easily and produce better analysis. (Muhaimin, 2020). The stages of data management include editing, classifying, verifying, analyzing, and concluding. Editing involves reviewing the collected data to ensure it aligns with and is relevant to the research. Classifying entails grouping and examining all collected data in depth and then dividing it based on similarities. Verifying refers to the process of checking the validity of the collected data and information to ensure it is reliable for research use, followed by reconfirmation. Analyzing involves connecting the data to the research problems to provide the desired answers. Concluding is the final step, where the results of the data processing are summarized. (Amruddin, H. Muhammad Bahrul Ilmie, Gemala Dewi, Misno, Kamaruddin Arsyad, Hasbi Ash Shiddieqy, Efrita Norman, Jamaludin, Bayu Purnama Putra, Syafruddin, U. Buchari Muslim, Nurfiyah Anwar, 2020).

Result

A. Review of Child Adoption.

Child adoption is a familiar concept for families who have not yet had children. When a family has not been blessed with a child but wishes to have one, adoption is often the chosen method. In Indonesia, the legal framework for child adoption is regulated by two main instruments: first, Law Number 35 of 2014, which is an amendment to Law Number 23 of 2002 on Child Protection, and second, Government Regulation Number 54 of 2007, which details the procedures for implementing child adoption. Both of these legal regulations share the same purpose: ensuring the fulfillment of children's rights and prioritizing their best interests. These regulations provide legal certainty for the children who are the future of the nation. However, adopting a child is not a straightforward process; it requires specific procedures, including involvement with social institutions. After obtaining a decision from the social institution, further steps must be taken as specifically regulated in Article 20 of Government Regulation Number 54 of 2007 on the Implementation of Child Adoption. This article states that child adoption under customary law follows procedural guidelines that align with the provisions outlined in the legislation. Similarly, child adoption under customary law is not significantly different from the adoption process outlined in statutory regulations. Child adoption in customary law has specific requirements that vary by region. These requirements ensure the legality of the adoption process, as this legality serves as a benchmark for affirming the child's legal status. (Pandika, 2012, p. 43). Living law refers to the traditions and practices of a community residing in a specific area, which are followed as part of their daily routines. As a result, customary law becomes firmly established and must be observed as long as one remains within that region. (Nugroho & Sarjiyati, 2021).

Child adoption can be viewed from various perspectives, such as positive law, religion, customary practices, state regulations, and others. For instance, in Islam, adoption is permitted as long as it does not sever the child's lineage to their biological parents. When the child marries, the biological father remains the legal guardian (*wali*), and there is no mutual inheritance between the adoptive parents and the child. (Mardani, 2019). In contrast, customary law follows the lifestyle patterns of the community, as it is the result of the societal development process based on the collective awareness of that community. (Nugroho & Sarjiyati, 2021), Each region with customary traditions may have different practices for child adoption. Meanwhile, under positive law as regulated in Law Number 35 and Government Regulation Number 54, the physical and mental well-being of the adoptive parents must be considered, including the requirement of religious alignment as stipulated in one of the rules for child adoption.

From a religious perspective, particularly according to the Fatwa of the Indonesian Ulema Council (MUI), it is emphasized that the process of child adoption must not and cannot sever the biological bond with the child's original parents. Thus, when adoption occurs, the new family must not break the lineage or connection with the biological parents, even though responsibility for the child has been legally transferred to the adoptive parents by the court. Furthermore, the MUI Fatwa states that child adoption

does not alter the child's lineage or religion and should be carried out by providing care, education, and love as one would for a biological child.

Although there are judges' decisions that reject the adoption of different religions, for example in the Banyumas District Court Decision Number 9/Pdt.P/2018/PN.Bms, the judge rejected the consideration stating that the biological parents did not object to their children being adopted by adoptive parents of different religions. This rejection was based on the argument that the practice was contrary to the applicable legal provisions, so it should be ignored. Furthermore, in Semarang District Court Decision Number 292/Pdt.P/2016/PN.Smg, it is emphasized that the similarity of religion between prospective adoptive parents and prospective adopted children is intended to protect children from potential coercion or attempts to change their religious beliefs. Meanwhile, the Constitutional Court Decision Number 83/PUU-XX/2022 states that the same religion is to protect the religious interests of each party.

So from the description of the sentence and data above, child adoption has indeed been regulated in the law which aims to facilitate both parties so that it is mutually beneficial, so that after the decision is made and applies in the future there are no deviations and realize a better life. The regulation of child adoption varies in various legal systems. In Indonesian positive law, child adoption is regulated through Law Number 35 on Child Protection. While in Islamic law, this concept is known as *tabbany*, and at the level of customary law, the mechanism of child adoption is carried out in accordance with the traditions and customs that apply in each region or area. So that the three views above have a diversity of views and implementation in child adoption, but there may be differences in practice.

The court rejected the application because it did not meet the requirements set out in the legal regulations, so the adoption process could not be continued or resubmitted. The rejection of the petition results in a loss of time, money and energy for the parties concerned. (Zahara et al., 2023). It is also possible that the status and responsibility of the child will be returned to his or her biological parents because the applicant failed to obtain legal legality. Government Regulation No. 54 on the Implementation of Child Adoption focuses on outlining the requirements and conditions that must be met in the child adoption procedure.

Although the further details of Banyumas District Court Decision No. 9/Pdt.P/2018/PN.Bms are not comprehensively described, the reasons for filing the adoption petition are known. The applicants, who had been married for a long time but had not yet been blessed with children, intended to adopt a daughter from legal parents. They were committed to providing care, treatment and financial support to the child as parents would to their own biological children. In order to realize the legal certainty guaranteed in Article 28D Paragraph 1 of the 1945 Constitution, the petitioners filed an application for child adoption with the court. This application is a formal step to obtain legal status for the adoption of the child. Through this court approval, the rights and obligations between the adopted child and the adoptive parents will receive strong legal protection. This process also ensures that the adoption is officially recognized by the state, thus providing legal security for the future of the child and the adoptive parents. Considering Lawrence M. Friedman's theory of the legal system, judges must be fair in adjudicating cases by considering the legal implications and impacts that occur in

society. So that in dealing with a case, juridical reasons and justice must be seen. (Sulistiyono, 2024).

The legal consequences for prospective parents or legal consequences when someone violates the positive law, then there are sanctions for those who continue to adopt children of different religions. Legal provisions related to sanctions in child adoption are expressly regulated in Law No. 23/2002 on Child Protection. Article 79 of the law stipulates that any individual who performs child adoption in violation of the provisions listed in Article 39 paragraphs (1), (2) and (4) will be faced with serious legal consequences. Violation of this provision may result in the offender being sentenced to imprisonment with a maximum detention period of 5 years. As an alternative to imprisonment, violators may be subject to sanctions in the form of a fine with a maximum amount of Rp 100,000,000.00 (one hundred million rupiah). This provision shows the seriousness of the government in regulating and supervising the process of child adoption in order to comply with applicable regulations to protect the best interests of the child. Furthermore, after obtaining authorization from the court, social workers have the responsibility to conduct regular monitoring and evaluation, they are tasked with compiling and submitting reports covering two important aspects, namely, assessing the level of eligibility of adoptive parents in carrying out their parenting role, and observing the child's development while in the care of the adoptive family. Through this ongoing monitoring, social workers can ensure that the adopted child receives optimal care in his or her new family environment. This report includes a thorough evaluation of the adoptive parents' ability to meet the child's physical, emotional and psychological needs, as well as monitoring the child's development while in their care. Social workers carry out their supervisory duties by conducting in-depth observation and analysis of the foster care environment. This activity refers to the provisions listed in Article 39 of Government Regulation No. 23/2007. Through these observations, they can ensure that adopted children live in an environment that meets welfare standards in accordance with applicable regulations. This evaluation process is important to ensure that the adoptive family has provided conditions of care that are in accordance with established policies and legal provisions, so that the rights and best interests of the child are maintained in the new family.

The government has established various requirements that must be met in the adoption process, ranging from the completeness of documents to the assessment of the ability of prospective adoptive parents. All of these provisions are made with one main objective in mind, which is to guarantee that the adopted child will have a decent life in a supportive family environment. This strict regulation shows the government's seriousness in protecting the interests of children who will be adopted, so that they can grow and develop optimally in their new families. Through this comprehensive regulatory system, the state seeks to ensure that every child adoption process prioritizes the welfare and future of the child. With this strict regulation, the process of child adoption can be carried out transparently and responsibly, prioritizing the best interests of the child and protecting their rights. The law regulating interfaith child adoption is absolute and there is no double meaning like the interfaith marriage law which results in multiple interpretations, so the regulations are clear. This ensures that every citizen, regardless of background or social status, receives equal and fair treatment before the

law. With legal certainty, people feel protected because they are confident that their rights will be guaranteed and any obligations will be enforced in a transparent manner. This principle creates a sense of security in society as they can rely on the legal system to protect their interests fairly and equitably. (Fani, 2021).

B. Religious Child Adoption According to Human Rights.

Duham Deklarasi Universal Hak-Hak Asasi Manusia, also known as the UDHR Universal Declaration Human Right, is a statement that outlines the principles of human rights that must be upheld by all participating nations and documented in the general PBB in 1945. Eleanor Roosevelt wrote this statement to explain the declaration of human rights, which aims to protect human rights, kebebasan, and penghormatan. (Nurdin & Athahira, 2022, p. 13). The Universal Declaration of Human Rights is an important document that contains 30 points about human rights. It states that all people have the same rights and freedoms, regardless of background. The first point in the declaration asserts that everyone has basic rules that are the foundation for creating peace, harmony and stability in the world. (Putra, 2023, p. 2). The human rights listed in the UDHR are found in paragraph 2, which discusses rights and freedoms such as race, color, sex, language, religion, political views, and other matters.

The position of duham in Indonesia is included in the MPR Tap and the Law. (Sinombor, 2022). Through the MPR Decree and various laws, Indonesia directly refers to and implements the principles of the UDHR, affirming the state's commitment to respect, protect and fulfill the rights of its people. This reflects Indonesia's seriousness in guaranteeing the protection of human rights as part of its constitution.

In Indonesian law, especially as stipulated in Law No. 39/1999, human rights are basic rights that cannot be separated from humans as creatures of God. These rights not only need to be recognized, but also require guarantees of protection, an applicable legal system, and a government apparatus that serves the community. John Locke gave an idea about the concept of Human Rights as a natural gift that comes directly from God Almighty. In his view, human rights are not a gift from any human being or institution, but a natural right that is inherent from birth as an integral part. As a right that already exists in humans and cannot be revoked or contested by anyone. So that every individual has the same rights as other humans in general, getting rid of the view that there are differences in religion, background, race, social status or ethnicity. In this context, human rights are understood as the embodiment of basic justice, protection, and respect for the dignity of every person. (S. Marzuki, 2017, p. 3).

The UDHR, passed in 1945, is an important benchmark for basic human rights at the global level. This document contains 30 articles affirming the principles of equality, non-discrimination, and human dignity, with the main purpose of defending rights, freedoms, and ensuring universal recognition and respect. Therefore, this view agrees with the definition of human rights in Law No. 39/1999, which is in line with human rights as the inherent basis of every human being, given directly by God. Internationally and nationally, human rights are understood as basic rights that are patent, equally applicable regardless of background, and a fundamental instrument to realize justice, protection, and respect for the dignity of every individual as a dignified being.

In the 1945 Constitution more precisely in articles 29, 31, 33 and 34 (Aprita & Hasyim, 2020, p. 47). Every Indonesian citizen has the right to legal protection. Prof. Dr. Van Kan states that the law is a rule that is compelling in nature but has the aim of protecting the interests of interests in society. (Miharja, Marjan., Yudianto., 2021). So, the establishment of this Law must be able to provide justice and legal protection for people who are bound by it. Legal protection itself means protection, protection here can be understood as the most comprehensive system to ensure safety and human rights. By using multiple legal instruments, this is designed to create a sense of security and protection for each individual from potential violations or threats that may arise from various parties, both psychologically and physically. (Miharja, Marjan., Yudianto., 2021).

Justice is a basic right for all people to feel equal legal treatment and integrity. According to Article 17 of Law No. 39/1999 on Human Rights, to obtain justice there are two important things, first, an impartial or fair court process, which uses the principle of due process of law and second, the right to obtain a truly fair legal decision. In the end, everyone can access the law easily without distinction. (Riyanti et al., 2023, p. 86). Justice is the most basic human right. Article 17 of Law No. 39/1999 on Human Rights confirms that every person has the right to equal treatment before the law regardless of the person's background. In effect, it aims to create a fair legal environment, where every citizen has equal access to justice, without discrimination, and guarantees the protection and recognition of the human rights of every individual in the legal concept.

Such is the right that should be obtained for adoptive parents mentioned in Article 28B paragraph 1 of the 1945 Constitution that everyone has the right to form a family, so there is nothing wrong with someone who has not had a child for a long time wanting to adopt a child who is not of the same religion, after all the adoptive parents in the end still give freedom of religion when the child grows up. The rights of children that need to be fulfilled in the Children's Rights Conference are freedom of thought, conscience, religion, health, care, protection, education, rest and leisure, play and participation in appropriate recreational activities, exploitation. However, when a child is not in a good situation or under the care of poor parents, the above rights are not fully realised. Consequently, the impact of the abandonment of the child is likely to greatly affect the development of the child, who should be able to get on better.

The challenges in adopting children of different religions include the conflict between prioritising the best interests of the child and religious considerations and laws and regulations. As explained above, the purpose of child adoption is to realise the protection, welfare and best interests of the child. The same thing applies to a family that has been married for a long time but has not yet been given a child who is anxious to have a child by adopting or raising a child either from an orphanage or family, closest relatives.

Indonesia also recognises legal pluralism because within the Indonesian state there are various regions that have various religions, races, ethnicities which may be incompatible with customary customs that have been legislated by the government. (Arman & Agus Riyanto, 2023). So that in Indonesia, the establishment of the position between customary law and the state legal system has the same level, but what distinguishes it is that when making laws that accommodate customary law, there is a difference. (Syahbandir, 2010).

With the above considerations ranging from positive law to legal pluralism, the social impact of a refusal to adopt a child through a court order may be that after the refusal the child loses the opportunity to fulfil the child's interests. By returning the child to the family of origin who is physically or mentally incapable of caring for the child, there is a risk of neglect, lack of attention and material welfare. Meanwhile, families wishing to apply for a refusal must feel that they do not get legal certainty, are disappointed, waste time and worse internal tensions. This conflict also involves religion and humanity, which weakens the sense of humanity and tolerance in society.

Meanwhile, in the psychological realm, there is a theory, namely Abraham Maslow's theory of needs. This theory contains 5 levels, namely physiological needs, security needs, affection needs, appreciation needs and self-actualisation. (Bari & Hidayat, 2022). Physiological needs are basic needs covering daily needs such as food, housing, rest and so on. The second need is security, after physiological needs are met, it comes to this need, namely what is needed is a sense of security, comfort, legal protection and so on related to personal security. The third is the need for affection of family, friends, social environment partners. The fourth need for appreciation is the fulfilment of self-confidence, worth and so on. And the last is the need for self-actualisation, namely the desire to realise all of one's abilities to achieve self-satisfaction. (Alwisol, 2017, p. 216).

If a child's physiological needs (basic needs) are not met, it inhibits basic needs such as inadequate nutrition, food, shelter and ultimately inhibits the foundation of future life. The absence of an adequate family to improve their lives means that children lose the support system to fulfil their needs. In the long-term, this condition may even damage the physical, cognitive and social growth of children. Therefore, the act of refusing to adopt a child of a different religion indirectly deprives the child of their rights to better care. If the first need is already fulfilled, how can a child proceed to the next needs. In fact, according to Maslow, if you want to continue to the next need, you must fulfil the previous needs. When children do not fulfil their basic needs, the needs for security, social appreciation and self-actualisation will never be achieved.

The government is responsible for protecting children by prioritising what is best for them, as outlined in the Convention on the Rights of the Child. The government must ensure that all children are treated equally without discrimination, live in prosperity and safety, can grow and develop healthily, and are free to express their own opinions. So with the protection of children's interests, the state is obliged to guarantee it and uphold the rights and dignity of children. (Anwar & Wijaya, 2020).

Discussion

This article explores the important issue of interfaith child adoption in Indonesia, which is a complex and sensitive topic given the diverse social and cultural backgrounds of the society. In this context, there are several key points that need to be discussed more deeply

1. The Best Interest of the Child and Religious Considerations: One of the main challenges faced in interfaith child adoptions is the conflict between the best interests of the child and religious considerations.

2. **Regulations and Legal Uncertainty:** The author notes that although there are various regulations governing child adoption, such as the Child Protection Law and the Government Regulation on the Implementation of Child Adoption, there is still significant legal uncertainty. Cases of rejection of child adoption applications by the courts are often based on religious differences, which suggests that existing regulations do not fully provide legal certainty. This raises questions about the effectiveness of the regulations in protecting children's rights and ensuring a fair process.
3. **Human Rights and Pluralism:** This article also highlights the importance of respecting human rights in the context of child adoption. Indonesia as a country that upholds religious diversity must be able to find a middle ground between the interests of positive law and universal humanitarian principles.
4. **Social and Psychological Impacts:** Interfaith child adoptions not only impact the legal aspects, but also have significant social and psychological implications. Children adopted from different religious backgrounds may face stigma or challenges in adapting to their social environment. Therefore, it is important to consider the psychological and social support needed to help these children integrate well in the family and society.
5. **Recommendations for Improvement:** This article suggested several steps to improve the situation, including regulatory reform, increased legal education for the public, and support from government agencies. By making these changes, it is hoped that the process of child adoption can be conducted in a fairer and more transparent manner, and provide better protection for children.

This discussion illustrates that interfaith child adoption is an issue that requires serious attention from various parties, including legal practitioners, policy makers and the general public. By understanding the complexity of this issue and working towards a just solution, we can ensure that children's rights are protected and their best interests are always prioritised. This article serves as a call to action, encouraging all parties to collaborate in creating a better system for children in Indonesia, especially in the context of existing religious diversity. As such, this article not only provides insight into existing legal challenges, but also invites us to think more deeply about human values and justice in a plural society.

Conclusion

The conclusion of the articles discussed above is that human rights are universal and inherent in every individual from birth. Human rights main purpose is to maintain the dignity and honour of every human being This law affirms that human rights apply to all people without discrimination, whether based on ethnicity, religion, race, class, gender, or other social status. Duham also includes the right to life, the right to procreate, the right to self-development, the right to justice, the right to liberty, and the right to be happy. So that when comparing the appointment of children with different religions, the prospective adopted children and adoptive parents do not have legal certainty by Law

Number 39 of 1999 concerning human rights, their rights that have been guaranteed by the Human Rights Law have been cancelled because of the regulation on the appointment of children who must be of the same religion. So that the failure of the child's adoption does not create the non-fulfilment of the right to life, the right to continue offspring, the right to justice, the right will be happy.

Bibliography

Statue

Peraturan Pemerintah Nomor 54 Tahun 2007, (2007).

Undang-Undang Republik Indonesia Nomor 39 Tahun 1999 tentang Hak Asasi Manusia.

Journal Article

Anwar, M. & Wijaya, M. R. (2020). Fungsionalisasi dan Implikasi Asas Kepentingan Terbaik Bagi Anak yang Berkonflik dengan Hukum: Studi Putusan Pengadilan Tinggi Tanjung Karang. *Undang: Jurnal Hukum*, 2(2), 265–292. <https://doi.org/10.22437/ujh.2.2.265-292>

Arman, Z. & Agus Riyanto. (2023). Mengembangkan Pluralisme Hukum Sebagai Pondasi Hukum Masa Depan Indonesia. *Fundamental: Jurnal Ilmiah Hukum*, 12(2), 403–415. <https://doi.org/10.34304/jf.v12i2.117>

Bari, A. & Hidayat, R. (2022). Teori Hierarki Kebutuhan Maslow Terhadap Keputusan Pembelian Merek Gadget. *Jurnal Psikologi Sosial*, 20(2), iii–iv. <https://doi.org/10.7454/jps.2022.11>

Fani, K. (2021). Pengaturan Perkawinan Beda Agama dalam Perspektif Kepastian Hukum. *Jurnal Intelektualita: Keislaman, Sosial Dan Sains*, 10(1), 43–49. <https://doi.org/10.19109/intelektualita.v10i1.8022>

Listyowati, M. Y. E., Wahyudi, I. & Subarno, M. (2024). Kedudukan Anak Angkat Dalam Mewaris Menurut Hukum Perdata. *Lex Privatum*, IV(6), 1–23.

Miharja, Marjan., Yudianto., & R. (2021). Studi Putusan Hakim : Perlindungan Hukum Tenaga Kerja Yang Di Phk Sepihak Oleh Rumah Sakit. *Fundamental Jurnal Ilmiah Hukum*, 10, 46–66.

Nasution, A. (2019). Akibat Hukum Pengangkatan Anak menurut Undang-Undang Nomor 23 Tahun 2002 tentang Perlindungan Anak. *Jurnal Ilmiah Penegakan Hukum*, 6(1), 14. <https://doi.org/10.31289/jiph.v6i1.2473>

Nugroho, S. S. & Sarjiyati. (2021). Masyarakat Hukum Adat (MHA): Studi Penguatan Kapasitas Lembaga Adat Desa Melalui Pembentukan Peraturan Desa. *Fundamental: Jurnal Ilmiah Hukum*, 10(2), 108–130. <https://doi.org/10.34304/jf.v10i2.50>

Prajasa, A. & Hayatudin, A. (2024). *Pendapat Madzhab Syafi'i tentang Pengangkatan Anak oleh Orang Tua Beda Agama*. 81–88.

Ramadan, S., Agustiani, R., Adnus, E., Lampung, U. B. & Kunci, K. (2023). *Prosedur Pengangkatan Anak dalam Hukum*. 01(4), 337–344. <https://doi.org/10.32884/jih.v1i4.1633>

Ramadhan, M. A.-Q. N. & Jaelani, E. (2024). *Perlindungan Anak di Indonesia: Analisis*

- Pelaksanaan Konvensi Adopsi 1993 dan Proses Hukum Adopsi.* 2(12), 25–35.
- Sinombor, S. H. (2022). Kedudukan Deklarasi Universal Hak Asasi Manusia (UDHR) dalam Sistem Hukum di Indonesia. *AL WASATH Jurnal Ilmu Hukum*, 3(1), 13–26. <https://doi.org/10.47776/alwasath.v3i1.330>
- Sirait, R. D. E. (2024). Pengangkatan Anak (Adopsi) Dan Akibat Hukumnya Menurut Sistem Hukum Di Indonesia. *Jurnal Profile Hukum*, 2, 94–107.
- Sulistiyono, A. (2024). *Independensi Hakim Dalam Berbagai Disparitas Putusan Perkara Korupsi Di Mahkamah Agung Judge Independence in Various Disparities in Corruption Case Decisions at the Supreme Court.* 13, 47–70.
- Syahbandir, M. (2010). Kedudukan Hukum Adat dalam Sistem Hukum (The Structure of Customary Law In Indonesia's Legal System). *Jurnal Kanun*, 4(50), 4.
- Zahara, Z., Mirwati, Y. & Hijriya, S. (2023). Perlindungan Hukum Bagi Anak Angkat Berdasarkan Undang-Undang No 23 Tahun 2002 Tentang Perlindungan Anak di Propinsi Sumatera Barat. *UNES Journal of Swara Justisia*, 7(3), 1004–1016. <https://doi.org/10.31933/ujsj.v7i3.421>

Buku

- Alwisol. (2017). *Psikologi Kepribadian*. UMM Press.
- Amruddin, H. Muhammad Bahrul Ilmie, Gemala Dewi, Misno, Kamaruddin Arsyad, Hasbi Ash Shiddieqy, Efrita Norman, Jamaludin, Bayu Purnama Putra, Syafruddin, U. Buchari Muslim, Nurfiyah Anwar, H. (2020). *Metodologi Penelitian Ekonomi Islam*. Publica Indonesia Utama.
- Aprita, S. & Hasyim, Y. (2020). *Hukum dan Hak Asasi Manusia*. Penerbit Mitra Wacana Media.
- Mardani. (2019). *Pengangkatan Anak Dalam Perspektif Hukum Islam.* 8(2), 117–134.
- Marzuki, P. M. (2024). *Penelitian Hukum (Edisi Revisi)* (19th ed.). Kencana.
- Marzuki, S. (2017). *Hukum Hak Asasi Manusia*. Pusat Studi Hak Asasi Manusia Universitas Islam Indonesia (PUSHAM UII) Yogyakarta.
- Muhaimin. (2020). *Metode Penelitian Hukum*. Mataram University Press.
- Nurdin, N. & Athahira, A. U. (2022). *HAM, Gender dan Demokrasi (sebuah Tinjauan Teoritis Dan Praktis)*. CV Sketsa Media.
- Pandika, R. (2012). *Hukum Pengangkatan Anak*. Sinar Grafika.
- Putra, R. K. (2023). *Hak Asasi Manusia (HAM)*. Yayasan Prima Agus Teknik dan Universitas STEKOM.
- Riyanti, A., Muharam, R. S., Subandi, Y., Bagenda, C., Jannah, S., Heryani, Rizkia, N. D., Farhan, E. K., Suanto, Putri, M. F. J. L., Sopacua, M. G., Sagala, M. J. P., Usman, R. & Purwoto, A. (2023). *Hukum dan Ham*. Penerbit Widina Bhakti Persada.
- Zainuddin Ali. (2016). *Metode Penelitian Hukum*. Sinar Grafika.



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