



The practice of child adoption without court determination

Mahlil Ridwan*[✉]

**Faculty of Law, Universitas Padjadjaran, Bandung, Indonesia
Email: mahlil23001@mail.unpad.ac.id*

ABSTRACT

The problem analyzed is the implementation of child adoption without a court order. Child adoption is usually carried out by people whose marriage does not produce offspring. The process of child adoption in Indonesia has been regulated in Government Regulation No. 54/2007 on the Implementation of Child Adoption and Minister of Social Affairs Regulation No. 110/HUK/2009 on Requirements for Child Adoption. However, in practice there are still implementations of child adoption that are not in accordance with the regulations. This research aims to explain how the practice of child adoption is carried out by the people of Tadu Raya Subdistrict and how the Indonesian legal system reviews the implementation of child adoption. This research uses juridical-empirical method. The results of this study show that the implementation of child adoption in Tadu Raya Subdistrict is only through an oral agreement process between the adoptive parents and the child's biological parents with the factor of not having children in the family, as well as the economic factors of the biological family causing compassion to adopt the child, the adopted child is also positioned as a biological child even though the relationship with his biological parents is not disconnected. In the Indonesian legal system, the practice of child adoption is not in accordance with positive law and Islamic law. The conclusion of this research is that the practice of child adoption in Tadu Raya Sub-district is not in accordance with the court decision process.

Keywords: Child Adoption; Court Determination; Tadu Raya Subdistrict.

ABSTRAK

Permasalahan yang diteliti adalah mengenai pelaksanaan pengangkatan anak tanpa penetapan pengadilan. Pengangkatan anak biasanya dilakukan oleh orang yang dalam perkawinannya tidak menghasilkan keturunan. Proses pengangkatan anak di Indonesia telah diatur dalam PP No. 54 Tahun 2007 tentang Pelaksanaan Pengangkatan Anak serta Permensos No. 110/HUK/2009 tentang Persyaratan Pengangkatan Anak. Namun, pada praktiknya masih banyak pengangkatan anak yang dilakukan oleh masyarakat belum sesuai dengan peraturan. Penelitian ini bertujuan untuk menjelaskan bagaimana praktik pengangkatan yang dilakukan oleh masyarakat Kecamatan Tadu Raya dan bagaimana tinjauan sistem hukum Indonesia terkait pelaksanaan pengangkatan anak tersebut. Penelitian menggunakan metode yuridis-empiris. Hasil penelitian ini menunjukkan bahwa pelaksanaan pengangkatan anak di Kecamatan Tadu Raya hanya melalui proses kesepakatan secara lisan antara orang tua angkat dengan orang tua kandung anak dengan faktor belum memiliki anak di dalam keluarga tersebut, juga faktor ekonomi keluarga kandung menimbulkan rasa iba untuk mengangkat anak tersebut, anak angkat juga diposisikan sebagai anak kandung walaupun tidak diputuskan hubungan dengan orang tua kandungnya. Secara sistem hukum Indonesia, praktik pengangkatan anak tersebut belum sesuai dengan hukum positif dan hukum Islam. Kesimpulan penelitian ini adalah belum sesuainya praktik pengangkatan anak di Kecamatan Tadu Raya yakni tidak melalui proses penetapan pengadilan.

Kata Kunci: Pengangkatan Anak; Penetapan Pengadilan; Kecamatan Tadu Raya.

1. INTRODUCTION

This research originated from the experience of researchers who directly felt the situation of the community in Tadu Raya sub-district. So far, related to the implementation of child adoption, which is very familiar there, no data has been found regarding adoptive parents who carry out child adoption through the court decision process first. This is what drives researchers to examine the problems described above more deeply. The fact that occurs in the field today is that adopted children are still not adopted in accordance with the procedures for adopting children mentioned in the regulations that have been established. Researchers found legal problems in the community of Tadu Raya Subdistrict, Nagan Raya Regency, precisely in the areas of Kuala Tadu Village, Cot Me Village, and Alue Siron Village.

The practice of child adoption has also occurred in other areas such as in Banjaragung village (Serang district), in Pandeglang city, in Menes village (Pandeglang district), in Jakarta, Jatinegara, and Cianjur, in Cibinong and Jasinga villages (Bogor district), Cipanas village (Cianjur district), Panjalu village (Ciamis district), Tuk and Luwuk villages (Cirebon regency), where adoption is carried out by handing over the child by the parents to the adopter, without being witnessed by people specifically called for that purpose, without ceremony, without letters, in short, without a certain form. But the child's adoption is quickly known among neighbors (Anwar, 2020).

One of the consequences of a legal marriage is having children. The presence of children also has various other legal consequences, namely the establishment of a legal relationship between parents and children in accordance with the provisions of Law No. 1/1974 concerning Marriage (Rahmatillah & Bustamam, 2023). In this legal relationship, parents have rights and obligations toward their children. In order for kids to grow and develop as best they can, parents are their children's primary source of instruction and guidance. (Muthmainnah, 2021). On the other hand, children have rights and obligations to their parents (Abdulkadir, 2014). Children or offspring in a marriage bond can come from their own blood and are referred to as legitimate children in the Law on Marriage. However, if the marriage does not have children, then they can also continue their descendants so that the tribe does not become extinct, namely by adopting children, commonly called adoption.

Adopting a child in Indonesia is not new, as it is common in Indonesian society. Adoption is another option for family happiness because one of the purposes of marriage is to have offspring, namely children (Zaini, 1995). Adoption is the act of bringing another person's biological child into one's own family so that a kinship relationship is established between the adopter and the adopted child, such as the kinship relationship between biological parents and biological children (Wignjodipuro, 1973).

According to the positive law contained in the provisions of Article 1 paragraph (2) of Government Regulation Number 54/2007 concerning Adoption, what is meant by adoption is the transfer of children from biological parents to adoptive parents as a whole and is effective in accordance with applicable regulations. So the biological parents give up the child, and the responsibility is transferred to the person who adopts it. Here, the biological parents will not immediately let go, but they will maintain a relationship with the child.

In principle, Islamic law recognizes such adoptions based on provisions that cannot make legal changes in the fields of clan (*nasab*), guardianship, and inheritance. Islamic adoption law allows adoption as long as it does not break the blood relationship with biological parents; therefore, the principle in Islamic adoption law is only nurturing, providing affection, and providing education (Samsiar, 2011).

Adoption has become part of the customs of Indonesian society and has been implemented through the Religious Court, or Syar'iyah Court (for Muslims) and the State Court (for non-Muslims). In the Government Regulation on the Implementation of Child Adoption, the author mentions the procedure for adopting children as referred to in Article 20 paragraph (1), which reads, "An application for adoption of a child who meets the requirements will be submitted to the court. E.E.A. Lujiten's view also confirms this: that the appointment of a child or adoption must be carried out before a judge, and as a result, the legal relationship between the child and his biological family is broken (Subekti, 2004).

In reality, in the field, many child adoptions are still not in accordance with the procedures mentioned in the regulations that have been established. In this case, researchers found legal problems in the community of Nagan Raya Regency, precisely in the Tadu Raya area, Gampong Kuala Tadu, and Gampong Alue Siroen. For example, the case of Mrs. Nurjasmani, a resident of Gampong Alue Siroen, who was interviewed by the researcher, said that the adoption of children was carried out through direct registration at the Disdukcapil Nagan Raya without any prior Court Determination from the Nagan Raya Syar'iyah Court. Thus, the Disdukcapil is not informed that the child is an adopted child, so that the name of

the adopted child will be directly printed on the Family Card (KK) as a biological child. This is due to their ignorance of the correct procedures for child adoption according to the regulations and the lack of legal education where they live. In fact, based on the provisions on the procedures for implementing child adoption, it is clear that child adoptions must apply for a Child Adoption Stipulation and be submitted to the court to obtain a stipulation.

This study aims to find out more about the procedures for adopting children carried out by the community of Tadu Raya Subdistrict, Nagan Raya Regency, according to the review of the Indonesian legal system and other matters related to the process of adopting children that, at first glance, are not in accordance with the applicable provisions, namely PP No. 54 of 2007, namely that the provisions need to be submitted to the court first to obtain a court order. Thus, this behavior will have a legal impact on the legality of adoption, especially in terms of taking legal action in the future, which will have a significant impact on adopted children because adopted children are not legally registered in accordance with the country or region of their family.

2. LITERATURE REVIEW

2.1. Definition and Legal Basic of Child Adoption

2.1.1. Definition of child adoption

Etymologically, child adoption is also known as adoption, derived from the word "*adoptie*" (Dutch), which means the appointment of a child to be used as one's own child. In English, adoption is referred to as "*adoption*" which means the appointment of children or raising children (Puspa: 1977). Terminology in the Legislation of the Republic of Indonesia is an act of a person who transfers a child from the environment of the power of parents, legal guardians, or other people who are responsible for the care, education and raising of the child, into the environment of the adoptive parents. Adoptive parents are people who are given the power to care for, educate, and raise children based on laws, regulations, and customs. An adopted child is a child whose rights are transferred from the biological family environment to the family or parents who adopt them in accordance with a court decision.

According to Soekanto, child adoption is the adoption of another person's child to be used as one's own child or generally appointing someone in a certain position that causes a relationship to arise as if it were based on blood relations (Soekanto, 1980). Djaja S. Meliala said that child adoption is a legal action that gives an adopted child the same position as a legitimate child (Meliala, 1982).

Child adoption is basically done by agreement between the prospective biological parents of the child to be adopted and the prospective adoptive parents who will adopt the child. In general, the biological parents of the adopted child feel that they are not economically able to raise, educate, and provide for the child properly, so this situation is the reason for child adoption. Another reason that motivates someone to adopt a child is a sense of compassion for neglected children or children whose biological parents are unable to care for them. Family circumstances that do not allow for biological children are also strong reasons why a family takes the action of adoption (Nurhadi, 2018).

2.1.2. Legal basic for child adoption

The legal basis for the implementation of child adoption in Indonesia can be described in three perspectives, namely:

1. According to Indonesian legislation

- a. Supreme Court Circular Letter No. 6 of 1983 concerning the improvement of Supreme Court Circular Letter No. 2 of 1979 concerning the Improvement of Examination of Applications for Child Endorsement/Adoption.
- b. Law No. 35/2014 on the amendment of Law No. 23/2002 on Child Protection. In Chapter VIII Part Two on Child Adoption, Article 39 to Article 41 of the Law contains several provisions on child adoption.
- c. Government Regulation No. 54/2007 on the Implementation of Child Adoption. This Government Regulation was issued to implement the provisions on child adoption contained in Law Number 35 of 2014 amending Law Number 23 of 2002 on Child Protection.
- d. Circular Letter of the Supreme Court of the Republic of Indonesia (SEMA) No. 3/2005 on Child Adoption, which came into effect on February 8, 2005. This Circular Letter is a warning or notification to all District Court Judges in the implementation of child adoption must pay careful and serious attention to the provisions in Article 39 of Law Number 35 of 2014 concerning Child Protection (Bondan Akhidapura Nurhadi, 2018: 36).
- e. Law Number 3 of 2006 concerning Amendments to Law Number 7 of 1989 concerning Religious Courts. This regulation is the legal basis for the authority of the Religious Court to determine an adopted child or issue a child appointment determination and also based on Islamic law, child appointment is the authority of the Religious Court.
- f. Minister of Social Affairs Regulation No. 110/HUK/2009 on Requirements for Child Adoption, which came into effect on October 9, 2009. This Permensos clearly regulates child adoption and is a complementary regulation to PP No. 54/2007 on the Implementation of Child Adoption.

2. According to islamic law

In Islam, child adoption has become a tradition in Arab society known as *tabanni*, which means taking an adopted child. The term *tabanni*, according to Wahbah Al-Zuhaili, is the taking of a child by someone against a child whose lineage is clear, and then the child is attributed to him. This definition contains the element of attributing a child to another person who is not his *nasab*, and this must be canceled because it is contrary to Islamic law (Kamil & Fauzan, 2010).

Basically, Islam orders the protection of children, and one way to do this is by adopting a child. Of course, the appointment of children that is allowed in Islam means adopting children solely because they want to help in terms of the welfare of the child and also provide protection without making the adopted child a biological child. As contained in the words of Allah contained in the Qur'an Surah al-Ahzab (33): verses 4-5.

In this passage, Allah emphasizes and provides an understanding that children who have been adopted should not be equated with their position as biological children of the adoptive family. It is not allowed and not justified for adoptive parents to make adopted children biological children who can inherit between children and adoptive parents. Allah also requires Muslims not to call the adopted child by the name of his adoptive father but to call

the adopted child by the name of his biological father because it is more fair for the adopted child and his biological father (Muhammad, 2006). Amir Syarifuddin states that Islamic law does not recognize the adoption of children in the sense that the adopted child is detached from the kinship of his original parents and switches to the kinship of his adoptive parents (Sari, 2016). Islam guarantees the livelihood of the adoptive parents to their adopted children, among others, in the form of granting grants to the adopted children for their future livelihood and granting wills to the adopted children provided that no more than 1/3 (one-third) of the assets of the adoptive parents (Dewata, 2017). Islamic law strongly opposes and prohibits such child adoptions, as is the practice of child adoptions known by Western law or the practice of the *Jahiliyah* community (Budi, 2020).

3. According to customary law

Child adoption in customary law is a legal act in the context of customary family law (descent). Namely, the adopted child in biological and social terms is equalized with biological children, for example, in terms of customary inheritance (Kamil & Fauzan, 2010). In customary law itself, if the term child adoption or adoption is juxtaposed with Islamic law, then there are differences in definitions and principles that contradict each other. One of these differences is that customary law recognizes more adoption, which can give rise to *mawaris* rights for adopted children, while Islamic law does not recognize this (Tafal, 1989).

The principles of customary law in a customary legal act are clear and simple. Bright is a principle of legality, which means that a legal action is carried out in front of and announced in front of the public, formally, and it is considered that everyone knows about it. Meanwhile, the word cash means that the action will be completed immediately; at that time, it is impossible to withdraw (Muhammad, 1981).

The many ethnic groups and cultures in Indonesia influence the differences in the procedures for adopting children from one region to another. Child adoptions in indigenous societies are either written or unwritten, according to the mutual agreement between the two parties. This means that the practice of child adoption occurs only with the agreement between the adoptive parents and the child's biological parents with the aim of benefiting the child's future without breaking the lineage of the biological parents (Srimuryadi, 2018).

2.2. Requirements and Procedures for Child Adoption

The requirements for child adoption are regulated in the implementing regulation, PP No. 54/2007 on the Implementation of Child Adoption:

1. Eligibility of adopted children
 - a. Not yet 18 (eighteen) years old
 - b. Is an abandoned or neglected child
 - c. Being in the care of a family or in a childcare institution
 - d. Requires special protection

2. Eligibility of prospective adoptive parents

Adoptive parents must be physically and mentally healthy, at least 30 years old or a maximum of 55 years old, must also be of the same religion as the prospective adopted child, have good behavior and have never been convicted of a crime, be married for at least 5 years and not be a same-sex couple, do not or have not had children or only have one child, be

economically and socially capable, obtain the child's consent and written permission stating that the adoption is in the best interests of the child, the child's welfare and protection, a social report from the local social worker, have cared for the prospective adopted child for at least 6 months since the parenting license was granted and obtain a license from the Minister or head of the social agency.

The complete procedure regarding child adoption can be seen in the Minister of Social Affairs Decree No. 110/HUK/2009 on Requirements for Child Adoption, as follows:

- a. The application for child adoption is submitted to the Regency/City Social Agency by attaching:
 - 1) A letter of surrender of the child from his/her parents/guardians to the social agency;
 - 2) A letter of handover of the child from the Provincial/City/City Social Agency to the Social Organization;
 - 3) Letter of handover of the child from the social organization to the prospective adoptive parents;
 - 4) A certificate of consent to the adoption of the child from the spouse's family of the prospective adoptive parents;
 - 5) A copy of the birth certificate of the prospective adoptive parents;
 - 6) Copy of the marriage certificate of the prospective adoptive parents;
 - 7) A certificate of physical health based on a certificate from a Government Doctor;
 - 8) A certificate of mental health based on a psychiatric doctor's certificate;
 - 9) Income certificate from the place where the prospective adoptive parents work.
- b. An application for a child adoption license is submitted by the applicant to the Head of the Provincial/City Social Service/Social Agency with the following provisions:
 - 1) Handwritten by the applicant on a paper with a sufficient seal;
 - 2) Signed by the applicant (husband and wife);
 - 3) Include the name of the child and the origin of the child to be adopted.
- c. In the event that the prospective adopted child is already in the care of the prospective adoptive parents' family and is not in the care of a social organization, then the prospective adoptive parents must be able to prove the completeness of the documents regarding the handover of the child and his/her parents/legal guardians to the prospective adoptive parents authorized by the local District/City level social agency, including a police certificate in the event of doubtful background and data of the child (domicile of the child).
- d. Feasibility Research Process.
- e. Regional Child Adoption Permit Advisory Team (PIPA) Session.
- f. Decree of the Head of the Social Service/Provincial/City Social Agency that the prospective adoptive parents can be submitted to the District Court to obtain a decree as adoptive parents.
- g. Court Stipulation.
- h. Submission of Court Determination Letter.

2.3. Court Determination

Determination, called *al-isbat* (Arabic) or *beschiking* (Dutch), is a product of the District Court or Religious Court in the sense that it is not a real court and is called *jurisdictio*

voluntaria (Rasyid, 2003). A determination is a court decision on a petitioned case that aims to establish a condition or status for the petitioner. The ruling of the determination is *declaratory in nature*, namely determining or explaining only, and this determination does not have executorial power (Wahyudi, 2004).

The determination of child adoption in the District Court and Religious Court has different legal consequences in several aspects. Therefore, prospective adoptive parents must pay more attention in applying for child adoption, especially for applicants who are Muslims. If the purpose of adopting a child is to make the child a biological child and as an heir, then the application should be submitted at the District Court. However, if the purpose of child adoption is to channel affection and care for the adopted child, the application is submitted to the Religious Court (Gerhastuti, 2017).

The form and content of the stipulation (in this case, the Stipulation of Child Adoption) are almost the same as the form and content of the decision, but there are some fundamental differences as follows (Wahyudi, 2004):

- a. The identity of the parties in the petition and in the determination is only the identity of the applicant.
- b. There are no words "Contrary to".
- c. There are no words "About the case", but the applicant's petition is immediately described.
- d. The ruling is only *declaratoire* or *constitutive*.
- e. It is preceded by the word "Establish" while the ruling is preceded by the word "Decide".
- f. The costs of the determination case are borne by the applicant, in contrast to the decision, the costs are borne by the losing party or are borne jointly.
- g. There can be no *reconventie*, *interventie* or *vrijwaring* in the determination.

3. METHOD

In general, research methods are defined as scientific methods for obtaining data for specific purposes and uses (Sugiono, 2017). The research method used is a juridical-empirical legal approach, namely legal research that examines the implementation of positive legal provisions (legislation) and contracts factually on each specific legal event that occurs in society in order to achieve predetermined goals (Yusuf, 2014). Thus, if juridical legal research seeks to see the law from the perspective of written norms or rules, then empirical legal research seeks to see how the law is carried out (Ahmadi & Aripin, 2010).

The subjects in this study are the people who practice child adoption in Kuala Tadu, Cot Mee, and Alue Siroen Gampong in Tadu Raya Sub-district, Nagan Raya Regency; the Geuchik of each of the mentioned gampong; the Population and Civil Registration Office of Nagan Raya Regency; the Syar'iyah Court of Nagan Raya Regency; and the Religious Affairs Office of Tadu Raya Sub-district. Data collection is done through direct observation and interviews with related parties.

This type of research uses qualitative research methods. Qualitative research is a deep and time-consuming effort related to the field and real situations (Guna, 2008). In qualitative research, data analysis is carried out by looking at the validity of the data, the possibility that

the research results can be used in other areas, the reliability, and whether the research results can be reviewed (Yusuf, 2014).

4. FINDINGS AND DISCUSSION

4.1. *Child Adoption Practices in Tadu Raya Subdistrict*

4.1.1. *Profile of Tadu Raya Subdistrict*

Tadu Raya is one of the sub-districts located in Nagan Raya Regency and has a sub-district capital in Alue Bata and has a sub-district area of 347.19 Km². The percentage of the sub-district area to the district area is 9.79 percent with 2 settlements and 22 Gampong. Tadu Raya sub-district has the following administrative boundaries:

- a. North : Beutong Subdistrict
- b. East : Tripa Makmur sub-district and sub-district Darul Makmur
- c. South : Indian Ocean
- d. West : Kuala sub-district and Kuala sub-district

Based on data from BPS Nagan Raya Regency, the population of Tadu Raya Sub-district in 2019 was 13,398 with 6,921 males and 6,477 females. Households totaled 3,296 with an average of 4 people per household. Furthermore, the kecamatan is dominated by people aged 0-14 years and there are only 382 people aged around 60-64 years. The number of people born in 2019 totaled 238 and was followed by the number of people who died, which was 63. The research on child adoption without a court decision was conducted in three villages in Tadu Raya Sub-District, Nagan Raya Regency, namely Gampong Cot me, Alue Siron and Kuala Tadu. These four villages have the largest population of all the villages in Tadu Raya Sub-district (BPS Nagan Raya: 2020).

4.1.2. *Forms of child adoption practices in tadu raya sub-district*

Regarding the practice of child adoption by the people of Tadu Raya Sub-district, Nagan Raya Regency, the author conducted research in three villages located in this sub-district, namely Gampong Cot Me, Gampong Kuala Tadu, and Gampong Alue Siron, with each village having one family who adopted children as follows:

1. Mrs. Nurjasmani aged 39 and Mr. M. Yunus aged 44, farmer, name of adopted child Yusmanijal (male), aged 5 years and 5 months, address Gunong Tapa Hamlet, Alue Siron Sub-district, Tadu Raya District. They adopted the child in 2016 and the child was 44 days old after birth. The biological parents came from Gampong Cot, East Seunagan Subdistrict. The background of this child adoption is because they are married but have not been blessed with offspring.
2. The couple Mrs. Rismalawati age 49 and Mr. Nasruddin age 57, occupation farmer, name of adopted child Luthfi Ramadhan (male), age 2 years 1 month, address Ingin Jaya Hamlet Cot Me Sub-district Tadu Raya. They adopted the child in 2018 and the age of the child was in a newborn state. The biological parents also came from the same address only about 200 meters from the adoptive parents' house. The background factor of this child adoption is because they have been married for a long time but have not been given offspring.
3. The couple Mrs. Asmariani age 49 and Mr. Raja India age 51, farmer and self-employed, the name of the adopted child Rahma Maulida (female), age 3 years 7

months, address Hijrah Hamlet Kuala Tadu Gampong Tadu Raya Subdistrict, they adopted the child in 2018 at the age of newborn. The address of the biological parents is unknown. The reason for adopting a child is because they have been married for a long time and have not been blessed with a daughter and they feel compassion for the child.

In practice, the implementation of child adoption in Tadu Raya Sub-district is only carried out in a familial manner between biological parents and adoptive parents, witnessed by several witnesses, and carried out verbally. The process of child adoption is carried out without going through a Court Determination at the Syar'iyah Court.

From the three respondents who have been interviewed by the author, in terms of the procedures for adopting children as narrated by Mrs. Rismalawati, the adoption of children carried out by Mrs. Rismalawati is a family process, which is only limited to a meeting between the adoptive child's biological family and Mrs. Rismalawati's family. When the adopted child was born at the Tadu Raya Health Center, the child's biological parents informed Mrs. Rismalawati's family to immediately go to the Health Center because previously they had heard the news that Mrs. Rismalawati wanted to adopt a child who was born if approved by her biological family. So when the child was born, the biological parents immediately agreed and handed over the child to be taken care of by Mrs. Rismalawati's family, starting from doing the azan in the baby's ear to taking care of other administrative files such as birth certificates and family cards (KK).

Similarly, the process of child adoption carried out by Mrs. Nurjasmani's family is by way of family (oral), even if the child's biological family is a relative of Mrs. Nurjasmani. In the process, when the child was 44 days old, the child's mother passed away. In a state of grief, the biological father of the adopted child contacted Mrs. Nurjasmani as well as his brother to take and care for the child like his own child. At the biological parents' house, Mrs. Nurjasmani verbally expressed to the child's family that she would care for and keep the child as her own; this statement was witnessed by the village officials who were there. They then immediately registered the adopted child's name with Disdukcapil as their own biological child.

Mrs. Rismalawati and Mrs. Nurjasmani's families adopted a child with the child's biological parents, who were previously known to them and were still related. In contrast to Mr. Raja India's family, he and his wife adopted a child without knowing the child's biological parents. Thus, the process that Mr. Raja India's family went through was slightly different from the two families above. In the process, the child was born in the vicinity of a community-owned palm oil plantation while the mother was working to clean the palm oil plantation. In a state of bleeding, she was immediately rushed to the Tadu Raya Health Center. Seeing the condition of the mother, who was bleeding heavily and was only accompanied by a husband, the child had to be referred to Cut Nyak Dhien Hospital, Nagan Raya Regency, because he needed more care. So his biological father told the Kuala Tadu Health Center nurse that anyone was allowed to adopt his child. Immediately, the nurse told Mr. Raja India's family to come to the Puskesmas to see the child's condition. Because of compassion and also not having a daughter, Mr. Raja India's family decided to adopt the child and asked permission from his biological parents for the child to become his adopted child.

Furthermore, on the 5th day of the child's age, they registered the child's identity with Disdukcapil Nagan Raya as their own biological child.

There are two fundamental factors behind the family's decision to adopt a child, namely:

1. Biological factors, namely a person's condition based on a gynecologist's statement is not or difficult to get children (offspring), so the human desire to channel affection both in the form of educating, caring for, and protecting children, therefore a child or even more is appointed.
2. Compassion factor, which is a factor based on a sense of humanity, considering that the biological parents are economically incapable or have died, so a child is appointed to be cared for and educated.

These two factors outline the reasons why the people of Tadu Raya Sub-district have adopted children. In addition to these two factors, of course, the main purpose of child adoption is to protect the child's best interests. According to the author, based on the results of interviews conducted with the three respondents, although some of them are from lower middle-class families (pre-prosperous), they try to meet the needs of the child as well as their own biological children.

4.2. A Positive Law Review of the Practice of Child Adoption by the People of Tadu Raya Subdistrict

From the results of interviews conducted with the three respondents, it can be concluded that child adoption practiced by the people of Tadu Raya Subdistrict is carried out in the local customary procedure, namely by agreement between biological parents and adoptive parents with different purposes. The practice or procedure of child adoption carried out by the people of Tadu Raya Subdistrict does not contradict Article 2 of Government Regulation No. 54 of 2007 concerning the Implementation of Child Adoption which explains that the implementation of child adoption can be carried out based on local customs. The problem is that the appointment of a child contradicts Article 20 of Government Regulation No. 54/2007 on the Implementation of Child Adoption, which states that the appointment of a child must obtain a Court Determination. Thus, awareness of the law in the community of Tadu Raya Sub-district is still relatively weak, whereas with legal awareness, people are motivated to obey the laws and regulations set by the state. The adoption of a child will cause new legal consequences because of the change in the new legal status of the child. The situation of the adopted child who enters into his new family, causes new legal consequences, namely the rights and obligations that must be fulfilled between the adopted child and his adoptive family and parents.

The adoption practice that occurs is indeed through an agreement between the original parents (biological parents) and the adoptive parents. However, the adoptive parents attribute the child as their biological child either verbally or administratively, even though the adoptive parents do not break the *nasab* of the biological parents, namely still telling the child who his biological parents are. In Islamic Law theory, the adoption or appointment of children carried out like this does not eliminate the *nasab* or legal consequences between biological parents and adopted children, even though adopted children and adoptive parents have a *washiah*-

wajibah civil relationship. But it is still not allowed to impute the name of the adopted child as a biological child of the family who adopted the child (Zaini, 1995). Because Islamic law is a universal and fundamental legal system as an application of the treatise of Allah and the messenger that is kept true (Roslaili, 2022).

Therefore, the appointment carried out by the people of Tadu Raya Sub-district has contradicted the provisions of Islamic law by attributing the name of the adoptive parents as biological parents to the adopted child. As done by Mr. Raja India, moreover, he has considered that the adopted child is the same as his biological child. In terms of inheritance, it was conveyed by Mrs. Nurjasmani that she would give inheritance to her adopted child with the consideration that the adopted child was her only descendant, but this action was not in accordance with the norms of Islamic law, namely contained in KHI Article 171 paragraph (1) that adopted children only get mandatory wills as much as one third of the property of their adoptive parents.

Furthermore, child adoption carried out by the people of Tadu Raya Subdistrict is only in accordance with the provisions of local customs, namely the process carried out through the family and carried out orally. This is in accordance with the principles of customary law, namely light and cash, so the implementation of child adoption in Tadu Raya Sub-district has fulfilled the principles of customary law (Bushar, 1981). The inconsistency of the implementation of child adoption with the norms of positive law and Islamic law occurs due to the factor of their ignorance of the provisions governing child adoption so that they do not / have not taken the process of child adoption according to the applicable laws and regulations.

In line with the legal facts that occur in the community of Tadu Raya Subdistrict regarding the implementation of child adoption that is not in accordance with applicable laws and regulations, Therefore, the government must immediately issue a more progressive policy towards the parties related to the practice of child adoption, starting with the people who carry out child adoption, the disdukcapil, Courts, Religious Affairs offices, and others. It is necessary to conduct counseling in all corners of the village in Tadu Raya Subdistrict because, according to the results of the research, the reason why people do not go through the court determination process is because of their ignorance about the process and the lack of communication between the Disdukcapil and the child adopter.

5. CONCLUSION

Based on the explanation and research previously described, the author concludes that the practice of child adoption carried out by the community of Tadu Raya Subdistrict, Nagan Raya Regency, is not in accordance with the procedures mentioned in the applicable regulations and that the appointment of children there is not through making a report to the Provincial Social Service until there is no process to obtain a Court Determination. Thus, the practice of child adoption carried out by the community of Tadu Raya Subdistrict is carried out by means of prevailing customs, namely by means of family, spoken orally, and presented by several witnesses.

According to Government Regulation No. 54/2007 on the Implementation of Child Adoption and Minister of Social Affairs Regulation No. 110/HUK/2009 on Requirements for Child Adoption, the positive law review of child adoption conducted by the community of Tadu Raya Sub-district emphasizes that child adoption must have a Court Determination as a

form of legality and so that the child's appointment is valid before the law. However, none of the three respondents interviewed by the author had processed a Court Stipulation for the appointment of their child. The practice of child adoption carried out by the people of Tadu Raya Subdistrict only fulfills the principles of customary law, namely that customary law essentially has the principles of light and cash. Thus, from the child adoption practices carried out by the three respondents interviewed by the author, all of the child adoption processes were carried out in front of witnesses (bright) and completed at that time (cash).

References

- Abdulkadir, M. (2014). *Hukum perdata Indonesia*. (cet 5). Bandar Lampung: Citra Aditya Bakti.
- Ahmadi, F., & Aripin, J. (2010). *Metode penelitian hukum*, (cet 1). Jakarta: Lembaga Penelitian UIN Syarif Hidayatullah.
- BPS Kabupaten Nagan Raya. (2020). *Kecamatan Tadu Raya dalam angka 2020*. Rilis pada tanggal 8 September 2020 di Suka Makmue.
- Budi, M.K.A. (2020). *Pengangkatan anak tanpa penetapan pengadilan (Implementasi PP Nomor 54 Tahun 2007 tentang Pelaksanaan Pengangkatan Anak)*. Skripsi. Jakarta: Universitas Islam Negeri Syarif Hidayatullah.
- Bushar, M. (1981). *Pokok-pokok hukum adat*. Jakarta: Pradnya Paramita.
- Dewata, F. E. (2017). Pengangkatan anak dalam kompilasi hukum Islam. *VOICE JUSTISIA: Jurnal Hukum Dan Keadilan*, 1(2), 187-209.
- Gerhastuti K.G., dkk. (2017). Kewenangan pengadilan negeri dan pengadilan agama dalam pengangkatan anak yang dilakukan oleh orang-orang yang beragama Islam, *Jurnal Diponegoro Law Jurnal*, 6(2), 1-12.
- Kamil, A., & Fauzan, M. (2010). *Hukum perlindungan dan pengangkatan anak di Indonesia*. Jakarta: Raja Grafindo.
- Meliala, D.S. (1982). *Pengangkatan anak di Indonesia*. Bandung: Tarsito.
- Muhammad, A.A. (2006). *Al-Bukhari*, (juz III). Beirut: Dar al Fikr.
- Muthmainnah. (2021). Pola asuh orangtua pada anak usia dini di TK Tiga Serangkai Desa Meureubo Kabupaten Aceh Barat. *Gender Equality: International Journal of Child and Gender Studies*, 7(1).
- Nurhadi, B.A. (2018). *Pelaksanaan pengangkatan anak di Kabupaten Gunungkidul menurut hukum di Indonesia*, Skripsi. Jogjakarta: Universitas Islam Indonesia.
- Rahmatilah, S., & Bustamam, A. (2023). Government's legal policy on the protection of women and children pre and post-illegal marriages. *Gender Equality: Internasional Journal of Child and Gender Studies*, 9(1).
- Rasyid, R.A. (2003). *Hukum acara peradilan agama*. Jakarta: Raja Grafindo Persada.
- Roslaili, Y., Idris, A., & Suhemi, E. (2021). Family law reform in Indonesia according to the Maqashid al-Shari'a perspeive (A case study of Law No. 16 of 2019). *Gender Equality, International Journal of Child and Gender Studies*, 7(2).

- Sabar Guna, B.S. (2008). *Analisis data pada penelitian kualitatif*. Jakarta: UI-Press.
- Sari, Y. (2016). *Perlindungan hukum terhadap pengangkatan anak secara illegal menurut hukum Islam*, Skripsi, Makassar: UIN Alauddin Makassar.
- Sasmiar. "Pengangkatan anak ditinjau dari hukum Islam dan Peraturan Pemerintah No.54 Tahun 2007 Tentang Pengangkatan Anak." *Jurnal Ilmu Hukum Jambi*, Vol. 2, No. 3, 2011.
- Soekanto, S. (1980). *Intisari hukum keluarga*. Bandung: Alumni.
- Soepomo. (1982). *Hukum Perdata Adat Jawa Barat*. Jakarta: Djaya Pirusa.
- Srimuryadi, T.W. (2018). Tinjauan hukum Islam terhadap praktik adopsi anak di Gampong Tanoh Anou Kecamatan Idi Rayeuk Kabupaten Aceh Timur, *Jurnal Al-Qadha*, 5(2)
- Subekti, R. (2004). *Perbandingan hukum perdata*. Jakarta: Pradnya Paramita.
- Sugiono. (2017). *Metode penelitian pendidikan (Pendekatan kuantitatif, kualitatif dan R&D)*. Bandung: Alfabeta.
- Tafal, B. (1989). *Pengangkatan anak menurut hukum adat: Serta akibat hukumnya di kemudian hari*, (cet 2). Jakarta: Rajawali.
- Wignjodipuro, S. (1973). *Pengantar dan azas-azas hukum adat*. Bandung: ttp.
- Yusuf, M. (2014). *Metode penelitian: Kuantitatif, kualitatif, dan penelitian gabungan*. Jakarta: Kencana.
- Zaini, M. (1995). *Adopsi suatu tinjauan dari tiga sistem hukum*. Jakarta, Sinar Grafika.