

JURIDICAL REVIEW OF REJECTION OF APPLICATIONS FOR ADOPTION OF CHILDRENMuhammad Hamam Firdaus¹, Marisa Kurnianingsih²¹Fakultas Hukum, Universitas Muhammadiyah Surakarta (C100190382@student.ums.ac.id)²Fakultas Hukum, Universitas Muhammadiyah Surakarta (mk122@ums.ac.id)**ABSTRACT**

The research aims to examine the problem regarding the rejection of the application for adoption by examining the judge's considerations in decision Number 0001/Pdt.P/2016/PA.Sbs, Number 404/Pdt.P/2017/Po and find out the legal consequences regarding the rejection of the application for adoption or adoption. child in the decision. This research method uses a normative juridical method, with a statutory approach and a case approach. The results of this research can be explained in the application for the adoption of a child, there are several applications that were rejected by the panel of judges as found in decision Number 0001/Pdt.P/2016/PA.Sbs, Number 404/Pdt.P/2017/Po which was due to the purpose of the adoption The child is proposed by the applicants and the conditions proposed in the adoption of the child are not relevant to the law in force in Indonesia and the legal consequence of refusing to adopt the child is that there is no transfer of responsibility to the child by the prospective adoptive parents, but the child is returned to the responsibility of the child. his biological parents due to the rejection of his application for adoption.

Keywords: Refusal, Application, Adoption**INTRODUCTION**

Humans were created by Allah SWT in various ways, one of which was the creation of men and women because humans are human beings who cannot survive alone and the purpose of creating men and women is to live side by side, complement each other, and establish relationships with each other. which is realized in marriage or matrimony. In a marriage, there are several married couples who have not been blessed with children. The desire to have children or children is a natural human instinct to make children the next generation in the future. However, sometimes in married couples the desire to have children cannot be fulfilled. And the biggest factor preventing this is biological factors¹. Because these factors cause fear or anxiety in husband and wife so they take an unnatural way to have children, namely by taking children from strangers, in legal language it is known as adoption or adoption.²

In the adoption or adoption of children in Indonesia, the government has made it easy for everyone to have children with the adoption or adoption mechanism and in this process the community must fulfill these requirements, the legal regulations relating to adoption or adoption, namely Law Number 35 of 2014 concerning Child Protection, Government Regulation Number 54 of 2007 concerning Implementation of Child Adoption and Minister of Social Affairs Regulation Number 110 of 2009 concerning Requirements for Adoption of Children³.

Law Number 35 of 2014 concerning Child Protection Article 39 which explains that adoption can only be carried out in the best interests of the child and is carried out based on local customs and statutory

¹ Vina Adelina BR Ginting, 'Penyelesaian Pembatalan Pengangkatan Anak Studi Kasus Putusan Pengadilan Negeri Suabaya Nomor 771/PDT.G/2014/PN.SBY', *Repsitory USU-IR*, (2019), hal 5.

² HELEN APRIYANI B R PASARIBU, 'ANALISIS YURIDIS TERHADAP PEMBATALAN PENGANGKATAN ANAK (STUDI PUTUSAN NOMOR: 9/PDT. G/2015/PN. BKT)', *JURNAL CIVIL LAW USU*, 1.3 (2018), hal 4 .

³ Dodi Ahmad Kurtubi, 'PENGANGKATAN ANAK MELALUI PROSEDUR ADOPSI', 18 April 2018, <https://dinsos.riau.go.id/web/index.php?option=com_content&view=article&id=483:pengangkatan-anak-melalui-prosedur-adopsi-oleh-dodi-ahmad-kurtubi&catid=17&Itemid=117>. Diakses Senin, 3 April 2023

provisions.

The purpose of article 39 is that basically adoption can only be done with the aim of the best interests of the child. Adoption is not carried out solely to fulfill the interests or needs of the adoptive parents, but rather prioritizes the interests and needs of the adopted child. Children have the right to guarantee justice and a decent life and adoptive parents are responsible for caring for and meeting the child's needs. This transfer of responsibility requires legal certainty, because adoption provides legal status and responsibility for adoptive parents and adopted children⁴.

In article 4 of PERMENSOS no. 110 of 2009 concerning Requirements for Adoption of Children states that the qualifications of prospective children who can be adopted include:

- a. children who are not yet 18 (eighteen) years old;
- b. is an abandoned or neglected child;
- c. are in the care of a family or in a Child Care Institution; And
- d. requires special protection.

So, in the application for adoption, the judge will consider the requirements contained in the law as well as the evidence presented at trial. This is intended to provide guarantees or protection to potential adopted children. However, in practice it turns out that there are applications that do not guarantee the life of the adopted child and several conditions for adoption that are not fulfilled and therefore must be rejected by the judge.

This is what made the author write an article about Juridical Studies on Rejection of Applications for Adoption or Adoption (in Decision No. 001/Pdt.P/2016/PA.Sbs and No. 404/Pdt.P/2017/Po)

The purpose of this writing is to find out about the basis of the judge's considerations in deciding the application for adoption in decision no. 001/Pdt.P/2016/PA.Sbs, No. 404/Pdt.P/2017/Po, and to find out the legal consequences of the rejection of the application for adoption in decision no. 001/Pdt.P/2016/PA.Sbs, No. 404/Pdt.P/2017/Po.

(PASARIBU, 2018) In this research, the author discusses the cancellation of a child's adoption in a decision [number: 9/PDT.G/2015/PN.BKT](#) The reasons for canceling the decision were due to feelings of disappointment with the actions of the adopted child who did not pay attention to his adoptive parents, did not respect his adoptive parents which caused communication between the two parties to be less harmonious, and the adopted children in the study did not look after their elderly adoptive parents, did not look after their parents when they sick and even until his adoptive mother died, he still did not fulfill his obligations as a child.

The difference between this research and the research above is firstly, that the research object of this research is the rejection of the application for adoption of a child and secondly, the research above discusses canceling the adoption of a child, thirdly, in the above research the child has also been adopted but in this research the child not picked up yet.

Formulation of the problem

1. How did the judge consider in decision no. 0001/Pdt.P/2016/PA.Sbs and No. 404/Pdt.P/2017/Po?
2. What are the legal consequences for children who are denied adoption in decision no. 0001/Pdt.P/2016/PA.Sbs and No. 404/Pdt.P/2017/Po?

RESEARCH METHODS

This research method uses a type of normative juridical research by trying to combine and analyze

⁴ Evie Sompie, 'Kajian Yuridis Pengangkatan Anak Dalam Upaya Perlindungan Anak', *LEX ET SOCIETATIS*, 5.3 (2017), hal 1-2.

legal events with relevant legal norms.⁵ The approach methods applied in this research are the statutory approach and the case approach.⁶ The legislative approach is carried out by examining all legal rules relating to the legal issue to be studied. The type of data studied is secondary data in the form of decision no. 0001/Pdt.P/2016/PA.Sbs, No. 404/Pdt.P/2017/Po So that the results are explained comprehensively and systematically based on the judge's considerations in the decision.

RESULTS AND DISCUSSION

1. The judge's considerations in decision no. 0001/Pdt.P/2016/PA.Sbs, No. 404/Pdt.P/2017/Po

As in the case of child adoption at the Sambas City Religious Court Number 0001/Pdt.P/2016/PA.Sbs, namely the 57 year old Petitioner wanted to apply for child adoption at the Sambas City Religious Court, the Petitioner was married to the applicant's wife and during the marriage the applicant has been blessed with 3 children named M bin SB, aged 33 years (married), I bint SB, aged 32 years (married), N bint SB, aged 29 years, still under the care of the applicant.

The applicant wants to make a child named Faturrahmann an adopted child, the child of husband and wife named Dedi Gunadi and Ismiyanti, between the applicant and the child's biological parents are related as grandchildren. The applicant works as a Civil Servant earning a monthly income of Rp. 3,919,800 and the applicant is a widower because the applicant's wife has died.

In the judge's considerations, there are two points of consideration which are at the heart of the judge's decision on the application for adoption in decision Number 001/Pdt.P/2016/PA.Sbs, namely:

- a. The panel of judges considered that the Petitioner was 57 years old and his wife had died, so the Petitioner was a widower. The Petitioner works as a Civil Servant and does not have time to look after the child because he is busy, moreover the child is the only child of a married couple who is still under the care of his parents, so it is not appropriate for the child to be adopted and the Petitioner does not meet the requirements to serve as adoptive parents
- b. The panel of judges considered, based on his petition with additional information in the form of information in the trial, the Petitioner intended to adopt a child named F bin DG who was the biological child of husband and wife (DG bin H. T and I bint SB), with the sole aim of obtaining alimony. salary of the Applicant as a Civil Servant. Whereas regarding the Petitioner's aim in adopting the child solely to obtain salary support from the Petitioner, there is no legal basis, therefore the Petitioner's petition is declared inadmissible;

In the consideration of the panel of judges, the main reason for rejecting the application for adoption above was due to the Applicant's purpose of adopting the child being inconsistent with the purpose of adopting the child as well as the applicant's role as a prospective adoptive parent.

Article 39 of Law Number 35 of 2014 concerning Child Protection states that adoption can only be carried out in the best interests of the child and is carried out based on local customs and statutory provisions. In realizing the best interests of the child generally refers to the actions taken by the court when deciding who is best suited to care for the child. "Best Interests" determinations are generally made by considering a number of factors related to the circumstances of the child and parents, as well as the parents' capacity to care for the child, with the child's welfare being the primary concern⁷. Adoption of a child is carried out not only to fulfill the interests or desires of the adoptive parents, but

⁵ David Tan, 'METODE PENELITIAN HUKUM: MENGUPAS DAN MENGULAS METODOLOGI DALAM MENYELENGGARAKAN PENELITIAN HUKUM', *Nusantara: Jurnal Ilmu Pengetahuan Sosial*, Nomor 8 (2021), page 5.

⁶ Ika Atikah, SH., M.H., *Metode Penelitian Hukum* (Sukabumi: HAURA UTAMA, 2022) hal 55.

⁷ Child Welfare Information Gateway, 'Determining the Best Interests of the Child', *Child Welfare Information Gateway*, November, 2013, hal 2. <https://www.childwelfare.gov/systemwide/laws_policies/statutes/best_interest.cfm>, diakses pada Kamis, 13 April 2023 pukul 13:35.

the child has the right to guarantee justice and a decent life so that the adoptive parents must be responsible for caring for and fulfilling the child's needs.⁸ The applicant's aim refers more to simply paying for the child's needs and also because the applicant is a single parent and has to work so he does not have time to take care of the child. The role of adoptive parents should be to raise, care for, educate and protect children, and develop children. Parents must also provide protection for their adopted children, even though their status is adopted children, they must be treated like their biological children⁹.

In the case of child adoption at the Ponorogo City Religious Court in determination number 404/Pdt.P/2017/Po, namely that a husband and wife couple named Pinaryo and Dhiyah Hayu Lasminingrum as the applicants wanted to submit a request for child adoption at the Ponorogo City Religious Court. During the marriage of Petitioner I with the status of a widower and Petitioner II with the status of a divorcee, Petitioner I and Petitioner II agreed to adopt a child named Prabu Muhammad Banyubiru from a husband and wife named Wahono and Indah Sukesi.

When the trial was held, the child's biological parents, witness I (applicant II's uncle) and witness II (petitioner II's nephew) gave statements which basically stated that the three people were related to petitioner II, all three people gave the same information, namely the child The person who the petitioners will adopt is actually the biological child of Petitioner II. When the child was just born, the child was named or included as the child of Wahono and Indah Sukesi because Petitioner II was worried that the child would be taken by her former husband. Since she was little, the child has been looked after. by Petitioner II, but the birth certificate is that of the child of Wahono and Indah Sukesi.

The Petitioners also presented two witnesses, namely: Witness I, aged 73 years and Witness II, aged 42 years. They gave their statements, namely that Witness I knew the Petitioners because they were Uncles of Petitioner II, and Witness II was the nephew of Petitioner II, the witnesses knew The applicants wanted to adopt a child named Prabu Muhammad Banyubiru, but the witness knew that the child was the biological child of applicant II from her previous husband and the child had been cared for since childhood by applicant II, the witness did not know that the child had already had a birth certificate made with the child's parents. The names are Wahono and Indah Sukesi.

In the judge's considerations, there are two points that are at the heart of the judge's decision to adopt a child in decision Number 404/Pdt.P/2017/Po, namely:

- a. The panel of judges considered, based on the facts at trial in connection with the considerations mentioned above. that it is not proven that the child to be adopted by Petitioner I and Petitioner II is someone else's child, in this case Wahono and Indah Sukesi's child. with previous husband;
- b. The panel of judges considered that Islam has prohibited everything that contains elements of cheating or falsification in matters of heredity. Falsifying a child's descent (nasab) to someone who is not his father or someone's disobedience to his child is Haram according to Islamic law. Linking one's lineage to someone who is not one's father or associating oneself with a tribe (people) that is not one's own is prohibited in Islamic law. Based on the considerations above, the Panel concluded that the Petitioners' petition was not well founded, the child to be adopted by the Petitioners was Petitioner II's own child who had been born before the marriage of the petitioners (Petitioner one and Petitioner two), therefore the Petitioners' petition was appropriate. to be rejected.

In the consideration of the panel of judges, the main reason for rejecting the application for adoption above was because the child to be adopted was the biological child of Petitioner II. According to PERMENSOS Number 110 of 2009 concerning Requirements for the Adoption of Children, article 4 regarding the material terms or conditions for adopted children:

- a. children who are not yet 18 (eighteen) years old
- b. is an abandoned or neglected child

⁸ Evie Sompie, Ibid

⁹ Devi Marlinda Br Purba, *Pertanggungjawaban Orang Tua Dalam Mengangkat Anak Tidak Melalui Penetapan Pengadilan*, REPOSITORY UMSU, 2022, hal 29.

- c. are in the care of a family or in a Child Care Institution
- d. requires special protection.

That the applicant's adopted child requirements do not fulfill the elements of article 4. And also in the conditions for adopted children it is explained that biological children are not included in these conditions so they do not fulfill the terms and conditions for adoption.

2. Legal consequences for children whose adoption is rejected in decision no. 0001/Pdt.P/2016/PA.Sbs and No. 404/Pdt.P/2017/Po

Adoption is a legal action that is intentionally intended to obtain or obtain legal consequences¹⁰. The definition of child adoption in Minister of Social Affairs number 110 of 2019 concerning Requirements for Adoption of Children is a legal act that transfers a child from the sphere of authority of parents, legal guardians or other people responsible for the care, education and raising of the child into the parental family environment. lift.

One of the legal consequences of adopting a child is guardianship. In the initial guardianship relationship with the biological parents, it changes to the adoptive parents. This changes when the decision is pronounced by the Judge in Court. And all the rights and obligations of biological parents change to adoptive parents¹¹. However, several requests for child adoption were rejected by the panel of judges due to several factors or conditions that did not allow it, such as in decision 0001/Pdt.P/2016/PA.Sbs and decision 404/Pdt.P/2017/Po, so the legal consequences of the child adoption is the transfer of custody of a child back to the child's biological parents. In decision no. 404/Pdt.P/2017/Po rejection of the application was due to the fact that the child to be adopted was in fact the biological child of applicant II and the child was a child from the previous marriage of applicant II and her ex-husband so that the child's custody rights were in accordance with the divorce decision of both parties who has custody of the child.

CONCLUSION AND SUGGESTION

Conclusion :

1. In the judge's consideration in decision 0001/Pdt.P/2016/PA.Sbs, the problem with the rejection of the application in this decision was because the applicant's aim was only to obtain salary support from the applicant and in adopting a child, the role of adoptive parents is also very important in looking after the child. will be appointed in accordance with Article 39 of Law 35 of 2014 concerning Child Protection which states that adoption must prioritize the best interests of the child. Also, the role of adoptive parents is very important in being responsible for caring for and nurturing the adopted child. And decision 404/Pdt.P/2017/Po which was the main element in the rejection of the petition by the panel of judges was because the child to be adopted by the petitioners turned out to be the biological child of petitioner II from a previous marriage so that the requirements for adoption as stated in PERMENSOS No. 110 of 2009 regarding the material requirements for adopted children which are not fulfilled because the regulation does not include biological children.
2. The legal consequences arising from the rejection of the application for adoption in decision no. 0001/Pdt.P/2016/PA.Sbs and decision no. 404/Pdt.P/2017/Po results in what should be the adoption of a child according to Minister of Social Regulation number 110 of 2019 concerning Requirements for the Adoption of a Child is a legal act that diverts a child from the sphere of authority of parents, legal guardians or other people responsible for their care. , education and raising the child in the family environment of adoptive parents. However, due to the rejection of the application, the legal consequence of the rejection is that the transfer of the child's responsibility to the prospective

¹⁰ Rusli Pandika, *Hukum Pengangkatan Anak* (Sinar Grafika, 2022) hal 51.

¹¹ RINDA LUCY MAHARANI, 'PROSES PELAKSANAAN PENGANGKATAN ANAK DAN AKIBAT HUKUM TERHADAP PENGANGKATAN ANAK', 2017, hal 14..

adoptive parents cannot be carried out and the child's responsibility is returned to his biological parents.

Suggestion :

1. When applying for adoption, applicants should know the purpose of adoption and also pay attention to the conditions for adoption as regulated in government regulations
2. Applicants must also know the consequences of adopting a child so that if the application for adoption is rejected, the child should receive guarantees for their needs as well as education and maintenance from the adoptive parents. Because of the rejection, the child will not receive these needs.

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