

The Notarial Perspective on Child Adoption, Child Acknowledgement, and Child Legitimation in Indonesian Law

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Abstract—This study aims to determine the perspective of the notary about the regulation of child adoption, recognition and legitimacy status in Law No. 1 of 1974 concerning Marriage and Law No. 23 of 2006 concerning Population Administration and know whether there is a Notary authority in the process of adoption, recognition, and legitimacy of a child. Law No. 23 of 2006 on Population Administration contains the terms adoption of a child, Acknowledgement of a child, and Legitimization of Children. As stated in the Elucidation to Article 47 paragraph (1) of Law Number 23 of 2006 concerning Population Administration, the notion ‘adoption of a child’ means the legal act to transfer the rights over a child from his parents, legitimate guardian or another person responsible for the care, education, and raising of the child, to the adopting parents, on the basis of a decision or order of a court. With regard to the definition or restriction, the adoption of a child is a legal act with certain purposes and objectives regulated by law and has certain legal consequences, for example, the person who adopts a child will be fully physically and mentally responsible for the child. As stated in the Elucidation to Article 49 paragraph (1) of Law No. 23 of 2006 on Population Administration, the notion ‘acknowledgment of a child’ means a father’s acknowledgment of a child born out of wedlock, with the approval of the mother of the child. The acknowledgement of a child is intended to make the child have a biological father so legally civil relations will arise. The Elucidation to Article 49 paragraph (1) of Law No 23 of 2006 on Population Administration states that the one who can acknowledge a child is the father, not the mother. In other words, automatically, the child does not need to be proven that he/she is not born to the concerned mother. As stated in the Elucidation to Article 50 paragraph (1) of Law No. 23 of 2006 on Population Administration, the notion ‘legitimization of a child’ means the legitimization of a child born out of wedlock at the time the marriage between the two parents of the child is registered. Article 50 paragraph (1) of Law No. 23 of 2006 on Population Administration stipulates that the legitimization of a child must be reported by the parents to the Implementing Agency within than 30 (thirty) days of the father and mother of the child in question marrying and obtaining a marriage certificate. For a child born out of wedlock, a child acknowledgment or a child legitimization can be done. The acknowledgment of a child is only limited to the acknowledgment by the biological father who was approved by the biological mother, without being followed by the

marriage of the father and mother. Nevertheless, in the legitimization of a child, the father and mother of the child are married and at the time of marriage registration, the child is acknowledged as their biological child. This legitimization of a child is a legal effort (*rechtsmiddel*) to provide the child with a status as a legitimate child through the marriage of the parents.

Keywords: *child adoption, child acknowledgement, child legitimization*

I. INTRODUCTION

On December 29, 2006, Law No. 26 of 2006 was ratified and promulgated concerning Population Administration (State Gazette 2006 No. 124 and Supplement to State Gazette) [1]. Substantially, the law regulates Population Administration protects and acknowledges the determination of personal status and legal status for every Population Registration Event and Vital Event experienced by Indonesian residents who need legal evidence to be administered and registered according to the law provisions [2], or this Law regulates the administration and registration of Population and Vital Event experienced by Indonesian residents who later receive official evidence or documents issued by the Implementing Agency.

To guarantee the implementation of the Population Administration, the Population Administration is intended to [2]:

- provide identity validity and legal certainty for Residents’ documents for each Population Registration Event and Vital Event experienced by Residents.
- protect Residents’ civil rights.
- provide national data and population information about Population Registration and Civil Registration at a number of levels which are accurate, complete, up-to-date and easy to access so that they become references for the formulation of policy and for the development in general.

- Create orderly national and integrated Population Administration, and
- Provide Population data that can be used as a fundamental reference point for related sectors in the implementation of every activity of government, development, and the public.

Law No. 26 of 2006 is intended to eliminate discrimination in the population administration which is previously based on the provisions made in the Dutch colonial era in which the registration and administration of residents are based on certain ethnic, race and religious groups [2]. Therefore, to eliminate such discrimination, some provisions of the Dutch colonial products are revoked. As stipulated in Article 106 of Law No. 26 of 2006, when the law comes into force, the followings are revoked and invalid:

- The First Book Second Chapter Second Part and Third Part of the Criminal Code (*Buku Kesatu Bab Kedua Bagian Kedua dan Bab Ketiga Kitab Undang Undang Hukum Perdata*) (Burgerlijk Wetboek voor Indonesie, Staatsblad 1847:23);
- Civil Registry Regulation for the European Class (*Peraturan Pencatatan Sipil untuk Golongan Eropa*) (Reglement op het Holden der Registers van den Burgerlijken Stand voor Europeanen, Staatsblad 1849:25 as amended most recently by Staatsblad 1946:136);
- Civil Registry Regulation for the Chinese Class (*Peraturan Pencatatan Sipil untuk Golongan Cina*) (Bepalingen voor Geheel Indonesie Betreffende het Burgerlijken Handelsrecht van de Chinezean, Staatsblad 1917:129 jo. Staatsblad 1939:288 as amended most recently by Staatsblad 1946:136) [3];
- Civil Registry Regulation for the Indonesian Class (*Peraturan Pencatatan Sipil untuk Golongan Indonesia*) (Reglement op het Holden van de Registers van den Burgerlijken Stand voor Eenigle Groepen v.d nit tot de Onderhoringer van een Zelfbestuur, behoorende Ind. Bevolking van Java en Madura, Staatsblad 1920:751 jo. Staatsblad 1927:564);
- Civil Registry Regulation for the Christian Class (*Peraturan Pencatatan Sipil untuk Golongan Kristen Indonesia*) (Huwelijksor-donantie voor Christenen Indonesiers Java, Minahasa en Amboiena, Staatsblad 1933:74 jo. Staatsblad 1936:607 as amended most recently by Staatsblad 1939:288) [4]; and
- Law No. 4 of 1961 regarding Changes or Adding Surnames (1961 State Gazette Number 15, Addition to State Gazette Number 2154).
- The substance of Law No. 26 of 2006 and Regulations which are declared revoked and invalid only relates to the registration and making of legal documents for:
 - Birth;
 - Death;

- Marriage;
- Divorce;
- Change or addition to family names.

Article 1 paragraph 17 of Law No 26 of 2006 referred to such events as Vital Event which means on occurrence experienced by a person including birth, death, fetal death, marriage, divorce, acknowledgement of a child, legitimization of a child, adoption of a child, change of name, and change in citizenship status [2]. These events should be considered as civil events, because they are related to one's civil status, which previously was regulated in Book One, Chapter Two and Three of the Civil Code (*Burgerlijke Wetboek voor Indonesie, Staatsblad 1847: 23*). With the revocation of these provisions from the Civil Code, the events or occurrences belong to the regulation or section of Population Administration.

Although the essence of Law No. 26 of 2006 regulates the registration of Vital Event experienced by Indonesian residents in accordance with applicable laws, in the Elucidation section, the law regulates and gives restriction or definition relating to Legal Event regulated and mentioned in the Elucidation, including:

- Adoption of a child (Elucidation to Article 47 paragraph 1).
- Acknowledgment of a child (Article 49 paragraph 1).
- Legitimization of a child (Article 50 paragraph 1).

These three events need to be studied specifically because Law No. 26 of 2006 has provided restriction or definition which can change the existing restriction or definition. These three events are briefly contained in the Elucidation relating to Civil Registration.

II. PROBLEM STATEMENTS

- How is the regulation of the status of adoption, acknowledgment, and legitimization of a child in Law No. 1 of 1974 on Marriage and Law No. 23 of 2006 on Population Administration?
- Is there a Notary's authority in the process of adoption, acknowledgment, and legitimization of a child?

III. RESULTS AND DISCUSSION

A. Adoption, Acknowledgement, and Legitimization of a Child

1) *Adoption of a child*: As stated in the Elucidation to Article 47 paragraph (1) of Law Number 23 of 2006 concerning Population Administration, the term 'adoption of a child' means:

the legal act to transfer the rights over a child from his parents, legitimate guardian or other person responsible for the care, education and raising of the child, to the adopting parents, on the basis of a decision or order of a court [5].

With regard to the definition or restriction, the adoption of a child is a legal act with certain purposes and objectives

regulated by law and has certain legal consequences, for example, the person who adopts a child will be fully physically and mentally responsible for the child.

In Indonesia, there are two terms in relation to the adoption of a child. First is *Pengangkatan Anak* (translated, in this paper, into 'adoption of a child') and *Adopsi* (derived from the Dutch word *adoptie*). This raises the question of whether the two terms have the same legal action. The final purpose of the two terms are the same, i.e. for the inner and outer welfare of the child, but the two have different conditions. The definition of *adoption of a child* in Law No. 23 of 2006 on Population Administration makes all people possible to adopt of a child after fulfilling the specified conditions, while *Adoptie* as stipulated in *Staatsblad* 1917: 129 can only be done by Djaja [6] and Budiarto [7]:

- a husband and wife who have no sons.
- a widower who has no sons.
- a widow who does not have a son as long as her late husband does not leave a will which does not require her to adopt a child.
- a male Chinese who is not married and has no children and has not been adopted by other people [6].

In *Adopsi*, the civil relation originating from the born descendants is broken up of the parents or their blood relatives and the relatives through marriage with the adopted child [8], and to the adopted child because he/she can use the surname of the adopting parent [9].

Thus, *Adopsi* can be done if it fulfills the conditions specified in *Staatsblad* 1917: 129. In other words, according to *Staatsblad* 1917: 129, not everyone can do *adoption*, but *Pengangkatan Anak* (Law No. 23 of 2006) can be done regardless of the same or almost the same provisions as specified in *Adoptie* (*Staatsblad* 1917: 129).

Pengangkatan Anak has a different definition or restriction if it is associated with the that in or according to *Adat* (Customary) Law and Islamic Law. *Pengangkatan Anak* in Customary Law closely relates to the family system that exists in Indonesian society, i.e. Patrilineal, Matrilineal or Parental. Even so, *Pengangkatan Anak* based on the kinship system does not have to be like that, and as time goes by, there have been many jurisprudences that placed a legal relationship in the adoption, for example: according to Customary Law in West Java, someone is considered as an adopted child if he has fulfilled the conditions: taken care of, circumcised, schooled, and mated. The adopted child comes from the family of his adoptive mother so the child has the right to inherit the property of the adoptive parents. (Decision of the Supreme Court No. 1074 K/Pdt/1995 dated March 18, 1996).

In Islamic Law, the conditions of *Pengangkatan Anak* are different from those of *Adopsi*, Customary Law, or other positive legal rules. In Islamic law, the *Pengangkatan Anak* is limited to the childcare only so in Islamic law, an adopted child:

- maintains a harmonious relationship with their biological parents, meaning that the adopted child must

continue to know who his/her biological parents and siblings are to maintain the *nasab* or the lineage of the child.

- is not allowed to use the name or additional name or surname of the adoptive parents.
- remains domiciled as the heir of his/her biological parents.
- still gets an inheritance from his/her biological parents [10].
- will receive inheritance from his/her adoptive parents in the form of a *wasiat wajibah* (mandatory testament) [11] that is not more than 1/3 (one third) of his/her adoptive parents' wealth.

In reality, however, it is found in the public and in legal practice circles that the notions of *Pengangkatan Anak* (according to the provisions of Article 1 paragraph 9 of Law No. 23 of 2002 on Child Protection, Elucidation to Article 47 paragraph (1) of Law No. 23 of 2006 on Population Administration, Customary Law, and Islamic Law) and *Adopsi* are deemed the same. The two are actually different legal acts, even though in the end both are aimed at providing the adopted child with the physical and mental wellbeing by the adoptive parents.

For more practical, it is better to make the conditions of both *Pengangkatan Anak* and *Adopsi* *mutatis-mutandis*, meaning that if there is a condition that does not conform to the values that live within a community, it is not necessary to use. For example, the provisions of Article 14 of *Staatsblad* 1917: 129 confirms the breakup of the civil relation of an adopted child with his/her parents or of the blood relatives and relatives through marriage with the adopted child. It is because if this is proven, it will be subject to the provisions of Article 79 of Law no 23 of 2002 on Child Protection [12], that:

Everyone who conducts child adoption which is against the provisions as meant in Article 39 verse (1) [13], verse (2), and verse (4) is subject to maximum penalty of 5 (five) years of imprisonment and/or fined Rp. 100.000.000 at maximum.

Article 47 of Law No. 23 of 2006 concerning Population Administration regulates Child Appointment, namely:

- The registration of the adoption of a child is to be performed on the basis of an order of a court in the domicile of the applicant.
- The registration of the adoption of a child referred to in Article 47(1) must be reported by the Resident to the Implementing Agency which issued the Copy of the Birth Certificate within 30 days of the Resident receiving a copy of the court order.
- On the basis of the report referred to in Article 47(2), the Civil Registration Official is to make a side note [14] on the Register of Birth Certificates and the copy of the Birth Certificate.

2) *Acknowledgment of a child*: As stated in the Elucidation to Article 49 paragraph (1) of Law No. 23 of 2006 on Population Administration, the notion ‘acknowledgment of a child’ means:

A father’s acknowledgement of a child born out of wedlock, with the approval of the mother of the child.

Through a law, the religion and the government have established a marriage institution to administer legal marriages so all conditions relating to the marriage must be fulfilled [15]. As stated in Article 2 paragraph (1) and (2) of Law No. 1 of 1974 on Marriage, it is affirmed that a marriage is valid if it complies with the religion and belief of those who are to be married and registered with the competent agency [16] so a legitimate child is a child born from a legitimate marriage [17].

In certain circumstances, there is also a term a child born out of wedlock, meaning that the parents do not marry according to the provisions of Article 2 paragraph (1) and (2) of the Marriage Law [18]. As a consequence, the born child has a legal status as an illegal child, i.e. a child born of parents who are not married [19].

The acknowledgment of a child done to make the child have a biological father also creates a legal civil relation. The Elucidation to Article 49 paragraph (1) of Law No. 23 of 2006 on Population Administration stipulates that the acknowledgment of a child can only be done by the father which, in this case, there is no acknowledgment by the mother. In other words, it is automatic that the child does not need to be proven as being born by the mother in question [20].

This essence can be understood because a child born out of wedlock only has a civil relationship with his/her biological mother and his/her biological mother’s family [21]. The acknowledgment of a child must be with the consent of his/her biological mother. If not, then the acknowledgement of the child cannot be done by his father [22].

Article 49 paragraph (1) of Law No. 23 of 2006 concerning Population Administration specify that the acknowledgment of a child must be reported by parents to the Implementing Agency no later than 30 (thirty) days after the date of the Letter of Child Acknowledgement by the father and must be approved by the mother of the child [23].

Concerning the Letter of Child Acknowledgement by the father which was approved by the child’s biological mother, it is better to make it in the form of a notarial deed. In addition to supporting the perfection of the child acknowledgment, the notarial deed can also be strong evidence for the parties. Moreover, before the acknowledgment is presented before a Notary, to obtain accurate evidence, it is better to first conduct a DNA (deoxyribose nucleic acid) test [24] of the father who will acknowledge the child, the biological mother, and the child. If this test is not done, it is worried that, to keep the reputation of a person or family, there is a man or a father who is willing to acknowledge a child who is actually not his own child.

3) *Legitimization of a child*: As stated in the Elucidation to Article 50 paragraph (1) of Law No. 23 of 2006 on Population Administration, the notion ‘legitimization of a child’ means:

the legitimization of a child born out of wedlock at the time the marriage between the two parents of the child is registered.

Article 50 paragraph (1) of Law No. 23 of 2006 on Population Administration stipulates that the legitimization of a child must be reported by the parents to the Implementing Agency within than 30 (thirty) days of the father and mother of the child in question marrying and obtaining a marriage certificate [25].

For a child born out of wedlock, a child acknowledgment or a child legitimization can be done. The acknowledgment of a child is only limited to the acknowledgment by the biological father who was approved by the biological mother, without being followed by the marriage of the father and mother. Nevertheless, in the legitimization of a child, the father and mother of the child are married and at the time of marriage registration, the child is acknowledged as their biological child. This legitimization of a child is a legal effort (*rechtsmiddel*) to provide the child with a status as a legitimate child through the marriage of the parents [15].

IV. THE AUTHORITY OF A NOTARY TO MAKE THE DEED OF TRANSFER OF CHILD ADOPTION, CHILD ACKNOWLEDGMENT, AND CHILD LEGITIMIZATION

The Elucidation to Article 47 paragraph (1) of Law No. 23 of 2006 concerning Population Administration confirms that the adoption of a child must be based on a court decision. Before an application is submitted to the district court, it is better that the child’s biological parents and the prospective adoptive parents make a deed or the minutes of transfer from the child’s biological parents to the adoptive parents as authentic evidence for both parties. After the deed is made, it can be used as a basis by the prospective adoptive parents to submit a stipulation application to the court. This can be done by the biological parents or guardians for those who are known to their biological parents or guardians. But if the biological parents are unknown, for example, a child in an orphanage, a deed or minutes of transfer can also be made.

The Elucidation to Article 49 paragraph (1) of Law No. 23 of 2006 concerning Population Administration affirms that a father can acknowledge a child born out of wedlock with the consent of the child’s biological mother. The child acknowledgment by a father can also be done by the child’ biological father with the consent of the biological mother with a notarial deed. This needs to be done as authentic evidence for the child that he/she has a biological father who is not married to his/her biological mother.

The Elucidation to Article 50 paragraph (1) of Law No. 23 of 2006 concerning Population Administration confirms the legitimization of a child born out of wedlock at the time the marriage between the two parents of the child is registered. Thus, is it permissible that before the biological parents make a registration, they agree to make the legitimization of their child before the marriage is registered? Actually, it is not prohibited that they register their marriage to ratify their biological child before the marriage, and the legitimization is made in the form of a notarial deed. This notarial deed will be the initial

document to prove that the child has become a legitimate child after the marriage of his/her biological parents.

The deeds mentioned above are not imperative (necessity). Nevertheless, if there are parties who request a Notary to make them, according to the provisions of Article 15 paragraph (1) of UUN-P (the Amendment of Law No. 30 of 2004 on Notary), the Notary is obliged to make so at the request and will of the parties [26]. Article 1337 of the Civil Code affirms that a cause is prohibited if that cause is prohibited by law or if it is contrary to morality or with public order.

V. CONCLUSIONS

Concerning the recent development of Family Laws in Indonesia, especially those relating to children, such laws have been simplified. For instance, Law No. 1 of 1974 on Marriage and Law No. 23 of 2006 on Population Administration only recognize [27]:

- A legitimate child, i.e. a child born in or as a result of legal marriage (Article 42 of Law No. 1 of 1974 on Marriage).
- A child born out of legal or illegal wedlock who only has a civil relationship with his/her biological mother and his/her mother's relatives (Article 43 paragraph (1) of Law No. 1 of 1974 on Marriage).
- A child born in a legal marriage can be acknowledged (acknowledgement of a child) by the father (Elucidation to Article 49 paragraph (1) of Law No. 23 of 2006 on Population Administration) or legalized (legitimization of a child) with the marriage of his/her parents (Elucidation to Article 50 paragraph (1) of Law No. 23 of 2006 on Population Administration).

Knowledge of the legal status of a child is very useful for Notaries, e.g. when a Notary is requested by parties (appearers) to make a certificate of heirs and the distribution of inheritance rights to the heirs.

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