

IMPLEMENTATION OF CHILD ADOPTION (ADOPTION) OUTSIDE OF MARRIAGE BY A WOMAN'S FAMILY JUDGING FROM LAMBOYA CUSTOMARY LAW IN WEST SUMBA REGENCY (NTT) BASED ON LAW NUMBER 35 OF 2014 ABOUT CHILD PROTECTION

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ABSTRACT

Adoption is not a new thing for people in Indonesia, as is done by the Lamboya community in the adoption custom. Adoption according to Lamboya customary law is the transfer of child custody to adoptive parents from their biological parents and is carried out according to applicable laws and regulations. The legal basis for child adoption is contained in Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection. The formulation of the problem is how the implementation of adoption of children out of wedlock by women's families for these children according to custom in Lamboya-West Sumba and Law Number 35 of 2014 and what are the obstacles to adoption of children out of wedlock when viewed from the law there is Lamboya.

The type of research used in this research is a kind of empirical juridical research. The nature of this research is descriptive, the type of data is primary data and secondary data. Data collection techniques are document study techniques, interviews and observations, qualitative data management and analysis techniques. In this study using the theory of legal certainty, theory of legal protection and law enforcement theory.

The results of this study found that law enforcement on child protection in cases of adoption is guided by Law Number 35 of 2014 concerning amendments to Law Number 23 of 2002 concerning Child Protection according to custom, so it is not mandatory for prospective adopted children. parents to give Buffaloes, Pigs, Dogs, Cows and others to the child's biological parents. Adopted children are also given the same rights as biological children of adoptive parents such as being given a name in the parents' family and also having a birth certificate made to record their nationality. Adopted children must also be guaranteed the health, growth and education of the child.

Keyword: adoption of a child out of wedlock by a woman's family according to Lamboya custom

1. INTRODUCTION

Adoption of children out of wedlock in the Lamboya area is no longer something strange because adoption refers to a child who was born out of wedlock and has been abandoned by his biological mother. The child's father is irresponsible. The discussion about Ana Junga in Lamboya is the adoption of a child, whether male or female, whose biological father's status is unknown. The child still receives

guarantees from the mother and the mother's family, especially the woman's parents and relatives.

The purpose of granting the status of an adopted child to a biological child is to equalize the position with the woman's family in order to maintain the good name and honor of both the woman and her family. The granting of this status is also intended to be based on the woman's family's sense of responsibility towards her child even though the woman wants it, but because there are things that must be looked after in a family, the child must be with her biological family even though this is not guaranteed. The recognition process is carried out by the head of the family, namely the father and mother, and is followed by his siblings and extended family in one tribe or one big house.

There is implementation *Junga's son* This will also be attended by witnesses regarding the granting of these rights, namely from the extended family and traditional leaders in the environment where the woman's child will become a junga child or legal adopted child for her family and no longer part of her mother.

The things that are given are based on the status of recognition as siblings, namely providing and fulfilling daily needs such as clothing, food, shelter and even empty land because the child has become a family member on a par with the legitimate female sibling in the family. With this as their brothers, with one heart, all their souls, and all their bodies they remain united and protect each other from each other.

Adoption of children in Lamboya, West Sumba-East Nusa Tenggara in particular is carried out according to custom where adoption according to law is an attempt to take a child who is not one's own offspring with the intention of taking care of him and treating him as one's own child. The law governing customary adoption of children is outlined in Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection which explicitly states that the purpose of adoption child, the motivation for adoption can only be carried out in the best interests of the child and is carried out in accordance with local customs and applicable statutory provisions.

Based on the background above, the author raises two problem formulations, namely: How is the implementation of the adoption of a child outside of marriage by the woman's family for the child according to custom in Lamboya-West Sumba and Law Number 35 of 2014? And what are the obstacles regarding adoption of children outside of marriage if viewed from the Lamboya law?

2. METHODS

The type of research used in this research is empirical juridical research. The nature of this research is descriptive. Types of data are primary data, secondary data, data collection techniques, namely document study techniques, interviews and observations, qualitative data management and analysis techniques.

3. RESULTS AND DISCUSSION

Implementation of Lamboya Customary Adoption of Children Outside of Marriage

Adoption is a legal act based on a mutual agreement to take another person's child with the specific aim of being cared for and raised in an adoptive family which can create a social relationship as well as a biological bond. Adoption of children is included in civil actions which are part of family law, thus it will involve issues

related to human relations, and the institution of child adoption will follow developments in society itself and continue to move towards progress.

Chapter III of Law Number 4 of 1979 regulates the responsibilities of parents for the welfare of children. Where it is said, the first person responsible for the welfare of the child is the parents (article 9). Parents who neglect their responsibilities, which results in obstacles in the growth and development of children. Article 26 of Law Number 23 of 2002 regulates the obligations of parents, namely:

1. Caring for, nurturing, educating and protecting children
2. Develop children according to their abilities, talents and interests, and prevent marriage at a young age.

In principle, adoption of a child must be carried out through the applicable legal process, namely through a court order. The main aim of adopting a child must go through a legal process, namely to provide legal certainty and welfare for the child and the parents who adopt him, thereby avoiding the emergence of problems that will arise in the future, for this reason it must be determined based on the court and applicable laws and regulations.

Explanation of Adoption of Children Outside of Marriage by Traditional Heads

The traditional head explained that in adopting a child to become part of a family, the adoption of a child is not only based on local community customs that must be carried out by the family and the child who will be adopted.

Adopting a child must also ensure that the child's rights and obligations are in accordance with local customs and also the laws that apply to the government

- 1) Among the rights and obligations of adoptive parents towards their adopted child are;
- 2) Children who are adopted from parents who are not married according to custom are not required for the prospective adoptive parents to give buffalo, pigs or dogs to the biological parents.
- 3) Children who are adopted from parents who have entered into a traditional marriage are required for the prospective adoptive parents to give animals, buffalo, pigs, dogs to the biological parents.
- 4) Adopted children are also given the same rights as the adoptive parents' biological children, such as being given a name in the parent's family and a birth certificate is also made to record their citizenship.
- 5) Adopted children must also be guaranteed the child's health, growth and education.

The birth of a child into the world is an important and precious event for every family. Newborn babies must be immediately reported to the civil registration office so that their residence status is recorded even if the baby was born without a father (a child out of wedlock) because residence status is very important for their future life. A child who is born out of wedlock does not have familial ties according to the law with the person who marries him, so the child inherits from his mother and his mother's family. According to Islamic law, a child born out of wedlock cannot be recognized or separated by his father. The child only has a legal relationship with the mother. But the child still has a mother, namely the woman who brought him into the world, with the understanding that there is a legal relationship between a child and the mother. It is the same as a legitimate child who has a father (Poespasari, 2006: Surya & Hajati, 2016).

Civil Law, a child born outside of marriage according to civil law terms is called a natural child. A child born out of wedlock can be recognized by the father or mother. According to a system that has been implemented in the BW (Civil Code) book, the existence of offspring or what can be called the birth of a child outside of marriage does not yet have a family relationship between the child and his parents before the issuance of recognition of a family relationship with all the risks,

especially regarding expert rights. inheritance between the child and the parents who have acknowledged it. So a child born out of wedlock has the status of a legitimate child.

The condition for a child born out of wedlock to be able to receive an inheritance is that the biological parents must legally recognize the child as their own. The Civil Code states the principle that only people who have a legal relationship with the heir have the right to receive an inheritance. A child born out of wedlock is declared to have a legal relationship if the mother's father has given legal recognition. This legal relationship is limited in nature, which means that the legal relationship only occurs between a child who was born outside of marriage and is recognized by the father and mother who only recognize it (Article 873 of the Civil Code).

A child outside of marriage can receive an inheritance only if he has a legal relationship with the heir. This legal relationship exists if the child's parents make a confession. Studies on inheritance rights related to children have appeared in many studies even in the last two decades, such as research conducted by Purwanto (2008); Hendrako (2017); Loho (2017); Deviyanti & Salain (2017). However, regarding legal regulations regarding the position and inheritance rights of children born out of wedlock but adopted by their grandfathers have never been studied, especially in the Bali area. Therefore, this research examines the process of adopting an illegitimate child by his grandfather in Batukaang Village, Kintamani District, Bangli Regency and what the inheritance system is for the child with his grandfather.

Obstacles faced by women's families in adopting children outside of marriage

1) Consent from the adopted child's parents

This adoption is carried out because it is very important in adopting a child to have clarity about everything between the two parties, between the mother of the child being adopted and the party adopting the child. The adoption of this child was also accompanied by several people as desired by both camps because at least it had to be treated with witnesses and a joint prayer event to indicate as proof that the child no longer belonged to the biological mother but to the parents who adopted him. Even though the biological parents of the adopted child give up, their responsibility is still very close, both spiritually and materially, for their child's happiness. This is what strengthens the child when he breaks away from his biological parents because of a promise that he was adopted when he was still a baby.

Adopting a child is not an ordinary thing, but if you have the desire and full responsibility, this can be done, although there are still many things that must be followed in adopting a child, such as treating an adopted child like your own biological child and giving him equal rights and obligations with his siblings.

During the process of adopting a child, you must also be full of patience and not get emotional easily, let alone committing violence against the adopted child because when you commit violence against the adopted child, everything will fade and be in vain with what was promised when you adopted him as an adopted child. When they commit violence and do not fulfill their promises, the adopted child can return to his biological parents, but if he apologizes or asks for forgiveness, the adopted child will stay and carry out his duties and responsibilities.

One day, the adopted child will grow up and want to return to his biological parents. So this is not a compulsion for him even though it is hard to let go, but this is his decision so that both parties, the biological parents and the person adopting the child, will have a closed or open meeting to discuss the child wanting to return to his biological parents so that this does not happen. misunderstandings and for the sake of smoothing the future of the adopted child.

An adopted child returns to his biological parents, maybe the child already knows his biological parents or there are things that make him have to separate from the parents who adopted him.

2) Differences in lifestyle and mindset

The first obstacle to adapting to adopted children is differences in lifestyle and thinking patterns. Adopted children who have grown up under the care of other institutions or families usually have lifestyles and thought patterns that are less in line with or even the opposite of those of the new family. That is why in the adaptation of adopted children, misunderstandings are prone to arise due to small differences such as how to eat and maintain cleanliness, to those related to manners, ways of communicating, or attitudes towards education.

With this process, don't relax the rules so that adopted children feel at home more quickly, Moms. Executive Director of Adoption Choice Inc. Angie Flannery actually suggests that parents start implementing discipline with explanations from the start so that their little ones can adjust quickly.

3) Conflict with adoptive siblings

The next obstacle to adaptation for adopted children is conflict with adopted siblings. Difficulty in establishing closeness with adopted siblings or parents' biological children is also one of the obstacles often encountered by adopted children. Especially if previously the parents did not provide enough understanding. Misunderstandings and small rivalries between siblings are normal, but solutions need to be found immediately if they don't resolve and cause family dynamics to change drastically.

4) Reactive attachment is ordered

Even though it is quite rare, Moms also need to know about the obstacles to adapting adopted children due to trauma in establishing this closeness. According to child and adolescent psychiatrist Sean Paul, MD. Reactive attachment disorder (RAD) is a pattern of behavior that withdraws and closes off emotionally when given affection by parents or caregivers.

In other words, RAD is a social emotional problem where children act cold, stiff, or even react negatively when parents hug them and express their affection. Explained by psychologist Kate Miller, Ph.D. This condition occurs because children are traumatized due to frequent failures in establishing close relationships in the past. For example, because they are often transferred to different families or orphanages.

To overcome the obstacles to adapting your adopted child, Moms must consult a psychiatrist. The good news is that most of the obstacles faced by adopted children when adapting can be overcome with the support, empathy, love and patience of all family members.

Efforts Made to Overcome/Resolve Obstacles in Customary Law Communities Outside of Marriage

- 1) Providing the appropriateness of life for adopted children, such as the need for adequate food and clothing and providing positive directions for a better survival in the future.
- 2) Equalizing rights towards siblings without bias or limited affection because if this is done only to biological children it will become a big question or problem in the family because when adopting a child it has been made clear with several promises that must be proven to the adopted child . If this is not done, it is very likely to be detrimental to the physical health of the adopted child because it seems as if he is being pushed into a corner or even not appreciated, even though at first it goes smoothly and well, in the end it is like that.

- 3) Teach adopted children not to carry out actions that can harm the family and society in the environment or outside the environment, such as killing, stealing or depriving other people of their rights, gambling, drinking, free sex and so on.
- 4) The sense of socialization in society must be high and without distinction between race, religion and ethnicity. This refers to a sense of solidarity that is not towards fellow human beings and the way of getting along does not have to be partial or consider who you are and want to harm someone's good name and can be detrimental to the unity of diversity, where we are different but still one.
- 5) Always live side by side with others in a community environment because this can provide comfort and happiness within yourself both physically and spiritually because in this life we must be people who always love and easily forgive others. This can also facilitate all our prayers and work.
- 6) Being educated means providing support for adopted children to go to school to gain high levels of knowledge so that they will become successful people in the future.

Legal Protection for Families of Women and Children According to Lamboya Customary Law Based on Law Number 35 of 2014 concerning Child Protection

Every person who adopts a child and follows the Lamboya custom will be guaranteed protection for the child and the child's mother in the form of love with all their heart, soul and body to protect both mother and child even if the woman remarries or goes to work outside her hometown. . The promise and protection to them remains strong and not fragile because the party who adopts the child really wants and promises to give them equal rights and obligations with other siblings in everyday life and for the sake of their personal welfare in the future. Therefore, mothers and children are still given the right to freedom in life because they are not perfect humans and they are social creatures who need each other.

The government has created and enforced Law Number 35 of 2014 concerning child protection in which children are obliged to receive legal treatment because these children are members of the nation's generation who uphold cultural values and traditions in society and the country. Here, on the other hand, parents who adopt a child will guarantee the health and education of the adopted child so that the child gets an education in broad and meaningful knowledge and will later be useful in society as in article 1 point 2 of government regulation number 54 of 2007 concerning implementation Adoption is a legal act that transfers a child from the authority of parents, legal guardians or other people responsible for their care and education. This article states that every person who adopts a child does not violate the law because it is for the sake of happiness and for the proper life of a child who has been adopted or becomes the basis for legal protection.

4. CONCLUSION

From the discussion that the author has presented above, the following conclusions can then be drawn:

1. Implementation of Lamboya customary child adoption based on Law Number 35 of 2014 concerning customary child protection means that prospective adoptive parents are not required to give buffalo, pigs or dogs to the biological parents. Adopted children are also given the same rights as the adoptive parents' biological children, such as being given a name in the parent's family and a birth certificate is also made to record their citizenship. Adopted children must also be guaranteed the child's health, growth and education.
2. Obstacles regarding the Lamboya customary adoption of children who are adopted will be given rights and obligations equal to those of their family without any partiality or limited affection because if this is done only to biological children it will be a big question or problem in the family because when adopting a child, several promises have been made clear to the adopted child. If this is not done, it is very likely to be detrimental to the physical health

of the adopted child because it seems as if he is being pushed into a corner or even not appreciated, even though at first it goes smoothly and well, in the end it is like that. Teach adopted children not to carry out actions that can harm the family and society in the environment or outside the environment, such as killing, stealing or depriving other people of their rights, gambling, drinking, free sex and so on.

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