



## LEGAL REGULATIONS OF CHILD ADOPTION BY FOREIGN CITIZENS

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### ABSTRACT

Adoption is a legal process that transfers the custody of a child from the biological parents to other parents, following legal procedures in accordance with applicable regulations. The adoption of an Indonesian child by a foreign citizen falls under international private law because it involves individuals of different nationalities and legal systems. Therefore, it is important to understand the regulations related to the adoption of children with different nationalities, as well as the international private law approach in the adoption process. This research uses a normative juridical method, focusing on the analysis of legal documents, regulations, legal principles, and relevant legal doctrines.

## INTRODUCTION

As the biological descendants and trust from Almighty God, a child's life must be protected and nurtured. Children are a gift from Almighty God that must be loved, cared for, and educated optimally. As a valuable asset in household life, children play an important role as the nation's future generation, future leaders, protectors, and a resource for the development and growth of a nation. Men and women who love each other and are united by Almighty God form the most basic social structure for human life, namely family. The purpose of the marriage between a man and a woman is to form a harmonious, loving, and compassionate family, which is based on faith in Almighty God.

Adoption is a legal act that transfers the custody of a child from the biological parents to other parents. Foster parents step in when biological parents are unable to meet their child's needs. Similar to the bond between biological parents and their own children, the bond between foster parents and their adopted children is inseparable. Adoption also has humanitarian and social components. Married couples may adopt children from their own family or from other sources, such as orphanages.

There are three possibilities for adoptive parents in Indonesia: first, other Indonesian citizens; second, Indonesian citizens living outside Indonesia; and third, Indonesian citizens living in Indonesia who apply for international adoption. Foreign nationals sometimes consider adoption as a last resort when they are unable to have their own children and are concerned about the welfare of abandoned children. However, on the other hand, baby trafficking is another way in which adoption occurs behind the scenes.

International child adoption is becoming an increasingly complex issue in the realm of international law. This adoption process involves transferring a child from their country of origin to the adopting country, where the child will become part of the new family that has adopted them. However, there are several legal issues that need to be thoroughly examined in relation to the adoption procedures. The laws and regulations in the adopting country differ from those in the child's country of origin, leading to legal problems. This analysis will examine legal issues related to legal disputes that arise in the context of international child adoption. To help reduce the potential legal conflicts arising from international child adoption, this research aims to provide an overview of issues related to child adoption.

### Problem Formulation



- Based on the background described above, 2 (two) problem formulations can be drawn, namely:
1. How are the regulations for child adoption by adoptive parents who have foreign citizenship?
  2. How is the approach of International Civil Law elements in the adoption of children with different nationalities?

## Research Objectives

1. To understand the regulations for child adoption by adoptive parents who have foreign citizenship.
2. To understand the approach of International Civil Law elements in the adoption of children with different nationalities.

## METHODS

This research utilizes a normative juridical method, which focuses on the analysis of legal documents, regulations, legal principles, and related doctrines. This method aims to understand and analyze the legal regulations related to child adoption by foreign citizens from both national and international law perspectives. The normative juridical approach emphasizes legal analysis based on applicable standards and provisions. Data sources include primary, secondary, and tertiary legal materials such as laws, official gazettes, journals, and literature. Data are collected through document studies to review legal documents and literature relevant to the research topic. Qualitative analysis is conducted to understand and interpret the legal principles and concepts being studied, with the aim of producing comprehensive conclusions about child adoption.

## RESULT AND DISCUSSION

### Regulations for Child Adoption by Adoptive Parents with Foreign Citizenship

The regulations for child adoption by adoptive parents with foreign citizenship are strictly governed by international civil law and applicable national regulations. This process involves several important steps, including document verification and approval from various government agencies to ensure that the child adoption is carried out legally and in the best interest of the child. At the initial stage, prospective foreign adoptive parents must apply to a social organization recognized by the country and obtain approval from the Ministry of Social Affairs. After that, the application is sent to the District Court for final approval. In certain cases, if there are exceptions to the child adoption rules, the process must go through the Supreme Court and the Ministry of Social Affairs before being forwarded back to the District Court. Additionally, all these processes must comply with the applicable international and national legal principles, as stated in various laws and international conventions, to ensure the legal protection and welfare of the adopted child.

The 1965 Hague Convention and the 1993 Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption are two international agreements governing intercountry adoption, each known as the "Hague Convention" and the "1965 Hague Convention." Until now, Indonesia has not participated in either of these conventions. Additionally, there are several regional conventions that regulate international adoption, including the European Convention on Adoption of Children (1967) and the Inter-American Convention on Conflict of Laws Concerning Adoption of Minors (1984), which has been in effect since 1988. The purpose of these conventions is to ensure legal consistency among participating countries and reduce potential legal conflicts.

The Minister of Social Affairs Regulation No. 110/HUK/2009 on Child Adoption Requirements, Law No. 35 of 2014 on Child Protection, and Government Regulation No. 54 of 2007 on Child Adoption provide details on the requirements and procedures for the transfer of Indonesian children to foreign nationals. These regulations allow research on how foreign nationals adopt Indonesian children, the legal consequences for the child, and how the government provides protection. The local court in Indonesia must decide on the adoption request based on the best interests of the child. Parental consent



or the approval of the child's legal guardian is required for adoption. Below are some conditions that must be met when adopting a child.

a. Eligibility of Age and Marital Status

For eligibility of age and marital status, foreign nationals who wish to adopt a child must be at least thirty years old. In addition, prospective adoptive parents must have a legally recognized marriage that has lasted for at least five years and must agree to adopt a child.

b. Stable Economic and Social Conditions

Prospective adoptive parents must have stable financial resources to meet the child's needs, such as education, medical care, and daily living expenses. In addition, prospective adoptive parents must have a good social status and a clean reputation.

c. Process and Recommendation from Social Institutions

To ensure the legality of the adoption status and the eligibility of the prospective adoptive parents, the adoption process must go through an assessment by a social institution recognized by the government.

d. Compliance with Child's Citizenship Provisions

The adopted child retains the right to maintain Indonesian citizenship until a certain age. The adoptive parents must support this right to the child's identity and provide the child with the opportunity to choose their nationality when they reach adulthood.

e. Reporting and Periodic Supervision

After the adoption process, foreign adoptive parents are required to report the child's development to the Indonesian government representatives (e.g., the embassy) if the child resides abroad. Additionally, the Ministry of Social Affairs and related social institutions in Indonesia will conduct periodic supervision to ensure the child's well-being.

The implementation of the adoption of Indonesian children by foreign nationals must be based on Supreme Court Circular (SEMA) No. 6 of 1983 on Child Adoption, followed by Law No. 23 of 2002 on Child Protection, which serves as the basis for the establishment of Government Regulation No. 54 of 2007 on the Implementation of Child Adoption and Minister of Social Affairs Regulation No. 110/HUK/2009 on Child Adoption Requirements. The requirements for adoptive parents and adopted children, as well as the adoption procedures, are outlined in Articles 5, 38, 39, and 41 of Minister of Social Affairs Regulation No. 110/HUK/2009 and Articles 12, 14, and 17 of Government Regulation No. 54 of 2007. The implementation of these regulations has not been optimal, as many cases related to adoption do not proceed as intended. For example, the cases of Angelica and Lingga Pradipta did not comply with SEMA No. 6 of 1983, which states that the adoption application must be based on the child's domicile, yet their adoptive parents did not follow this rule.

## **The Approach of Elements of International Private Law in the Adoption of Children with Different Nationalities**

Ius Constitutum, also known as "Positive Law," refers to the law that has been established and is in force. Indonesia's positive law on international child adoption, which refers to the Civil Code (Kitab Undang-Undang Hukum Perdata), particularly Articles 16, 17, and 18, provides the legal basis regarding an individual's personal status, authority, and the application of law at the place where the legal act is carried out. Article 16 of the Civil Code establishes that a person's personal status remains valid even if they are abroad, although this article does not explicitly regulate international child adoption. This indicates that, in the context of international adoption, the legal status of the adopted child is still governed by the law of the child's country of origin, even if the adoption takes place in another country.

Furthermore, Article 17 of the Civil Code states that a person's legal status remains recognized even if they reside abroad, providing a basis for the home country's law to recognize the status of a child adopted abroad. However, this article does not explicitly regulate international child adoption cases, which require further regulations on how the legal status is accepted by the countries involved in



the adoption process. Additionally, Article 18 of the Civil Code regulates the applicable law in legal acts based on the place where they are performed. Although adoption may take place in another country, the law that applies is the law of the country where the adoption occurs. Therefore, international child adoption in Indonesia, even if conducted by foreign parties, must comply with the applicable Indonesian laws, as well as relevant international legal provisions.

The primary source of International Private Law is legislation; however, although the Civil Code provides the legal foundation, existing regulations are still very limited and do not specifically regulate the international child adoption process in detail. This leaves a gap that must be filled with specific regulations, both in the form of domestic law and international cooperation. As a result, it is crucial to examine how Indonesia utilizes international legal sources to fill this legal void. Resources for resolving child adoption include jurisprudence and the principles of international agreements. Countries engaged in international adoption, including Indonesia, have utilized certain international conventions, such as the 1993 Hague Convention on Intercountry Adoption and the 1989 Convention on the Rights of the Child. These two conventions provide a stronger foundation in terms of child protection and the regulation of transparent and fair adoption mechanisms.

Strict international guidelines for child adoption are established by the 1993 Hague Convention. The main goal of this convention is to protect children from exploitation practices and ensure that international adoption is carried out in a way that prioritizes the best interests of the child. The principle of "the best interests of the child" forms the basis of every legal decision concerning children, including decisions related to international adoption. The convention also sets requirements for international child adoption, such as thorough screening of prospective adoptive parents, and the need for a central authority responsible for overseeing and assisting the intercountry adoption process. Although there are still challenges in effective implementation at the national level, as part of Indonesia's ratification of this convention, its principles must be applied within the country's legal system.

The 1989 Convention on the Rights of the Child establishes an important foundation for protecting children's rights in the adoption process, both domestically and internationally. The convention emphasizes that every child has the right to be recognized, to have a family, and to be protected from all forms of abuse or exploitation. In international adoption, the convention directs that the process be carried out with transparency and with full consideration of the child's well-being and rights. By applying these principles, it is hoped that Indonesia can enhance protection for children adopted internationally, although domestic regulations on international adoption are still in the process of development.

To enhance the protection of children in international adoption, Indonesia has taken several important steps. This includes the development and improvement of child protection policies. Additionally, Indonesia has signed the 1993 and 1965 Hague Conventions, which provide guidance in child protection measures. Since 2009, Indonesia has also adopted a systematic approach to child protection, investing in structures, services, and partnerships aimed at protecting children from violence, exploitation, and abuse. The government has also launched a national campaign to end violence against children, reaching over 2 million children, parents, and community leaders. However, there are still gaps in legislation and policies that need to be addressed. The Indonesian government continues to work on this by developing medium-term strategies and an ambitious agenda for child protection.

Indonesia still faces significant challenges in implementing international principles related to child adoption. One of the main challenges is the lack of optimal coordination between agencies and cooperation between countries. Therefore, concrete steps need to be taken to ensure that Indonesia meets its international obligations and applies fair, transparent laws that prioritize the well-being of children. One important issue in international child adoption is the authority of the court to decide adoption cases. The principle of habitual residence becomes crucial here. The country where the child habitually resides has the authority to regulate the adoption process and ensure that the process complies with international law, while prioritizing the best interests of the child. Furthermore, it is also important to consider the principle of recognition and enforcement of adoption decisions among countries. Countries involved in international adoption must mutually recognize valid court decisions.





This requires respect for each country's national regulations and a commitment to implementing international law.

## CONCLUSIONS

The first step to apply for the adoption of an Indonesian child by a foreign national to the Ministry of Social Affairs of the Republic of Indonesia is through a social organization in Indonesia. The Director General of Social Rehabilitation Services will send the application to the Ministry of Social Affairs. After that, the application must be submitted to the District Court for final approval. However, if there are exceptions to the adoption rules, the process must go through the Supreme Court and the Ministry of Social Affairs before being submitted to the District Court.

International private law provides two types of protection in international child adoption. Several laws, such as Presidential Decree No. 36 of 1990 on the Convention on the Rights of the Child, Law No. 23 of 2002 on Child Protection, Law No. 23 of 2006 on Population Administration, and Government Regulation No. 54 of 2007 on the Implementation of Child Adoption, regulate preventive measures to avoid disputes. Meanwhile, Law No. 12 of 2006 on Citizenship, Law No. 23 of 2002 on Child Protection, and Law No. 39 of 1999 on Human Rights govern the implementation of protection after a dispute occurs. These regulations are effective in facilitating the adoption of Indonesian children by foreign nationals and preventing various issues that may arise.

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