



JURIDICAL ANALYSIS OF THE LEGAL PROTECTION OF ADOPTED CHILDREN AGAINST DIVORCE OF ADOPTIVE PARENTS

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Abstract: The purpose of this journal is to find out how the legal consequences of child adoption and the legal protection of an adopted child in Mahkamah Decision 1149 / Pdt. Lmg To answer the problem studied, the author uses a normative type of research and the approach used in this research is a statutory approach. Based on the results of the study that the appointment of a child who is not legalized by a court decision has legal consequences, the legal relationship between the adopted child and his adoptive parents does not occur, which means that if in the future there is a problem or dispute, each party (in this case the adoptive parents and the adopted child) cannot sue each other before the Court, so the rights and obligations of each party cannot be demanded to the Court, and several other legal consequences. For the issue of protection, the adopted child is entitled to legal status and this is evidenced by a court decision that legally states that the appointment of a child has occurred and is valid in the eyes of the law.

Keywords: Legal Consequences; Divorce; Adopted Children; Parents.

INTRODUCTION

Wiljono Projodikoro states that marriage is living together between a man and a woman who fulfill certain conditions, and that marriage is basically a contract of physical and spiritual union on the basis of faith. Marriage has a close relationship with religion/spirituality, as such Marriage not only has a physical/physical element, but an inner/spiritual element also has an important role. (Prodjodikoro, 1981)

Based on the provisions of Article 1 of Law Number 1 of 1974 concerning Marriage, it states that marriage is a physical and spiritual bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family (household) based on the belief in the Almighty God.

It has been explained in Law no. 1 of 1974 article 45;

1. Both parents are obliged to care for and educate their children as best as possible.
2. The parental obligations referred to in paragraph (1) of this article apply until the child marries or is able to stand alone, which obligations continue even if the marriage between the parents breaks down. (Umar, 2015, p. 3)

Then the regulations regarding children's rights in our national law are contained in article 3 of Law no. 23 of 2002 concerning Child Protection which reads: "Child protection aims to guarantee the fulfillment of children's rights so that they can live, grow, develop and participate optimally in accordance with human dignity, as well as receive protection from violence and discrimination, for the

sake of realizing children Indonesia with quality, noble character and prosperity." Apart from that, it is contained in Article 26 Paragraph (1) of Law no. 23 of 2003 concerning Child Protection which states: "Parents are obliged and responsible for:

1. Caring for, nurturing, educating and protecting children;
2. Develop children according to their abilities, talents and interests; And
3. Prevent marriage at the age of children"

In social life, a marriage contract that is about to be entered into or is about to be implemented can apply for annulment by the competent authority stated in the marriage law. Under the marriage law, you can apply for an annulment of your marriage if you do not fulfill the requirements for carrying out the marriage. According to Law Number 1974 in article 38, the reasons for the dissolution of a marriage are due to death, divorce and a court decision. Based on the perspective of the Compilation of Islamic Law (KHI) in article 70, it is also possible for a marriage to be broken because the marriage is null and void, this is different from the meaning of annulment of a marriage, where the annulment of a marriage is caused by a violation of the prohibition on marriage, while the prohibition indicates that it is broken or annulled. something that is prohibited. The yat sakoya law that is set against a person's practice is void, because it does not fulfill the requirements and harmony, as stipulated by the sharia. Children from single-parent families perform better in all areas than children living with both parents, but tend to underachieve socially and

educationally. Married children with cohabiting parents fare better than those who are not married. This means that unstable families enable dangerous developments. Children are more likely to develop problem behavior and delinquent behavior. Building a happy family is not easy. Various quarrels and problems between couples trigger arguments that lead to divorce. Ultimately, parental divorce has many negative consequences for the future development of their children. According to one study, 25% of children who divorced in early adulthood had serious social, emotional, and psychological problems, compared with 10% of children whose parents remained together. Therefore, divorcing couples do their best to minimize the negative effects of their marital dissolution in various ways so as not to cause serious problems for their children. However, parental divorce and separation are factors that have a significant impact on children's behavior and personality development. Family disharmony affects children's personality development and many studies have shown that divorce has many negative consequences for families, especially children. For children, the divorce process is a time when they experience difficulties (the experience of being hurt or treated unfairly by themselves or others). Based on the decision raised by the author in SUPREME COURT DECISION NO. 1149/Pdt., G/2020/PA.

Lmg explained that the Petitioner (Saiful Ahmadi bin Suradji, 44 years old) had married the Respondent (Lenny Lusiana binti Mulud, 45 years old) legally attached on 09 June 2002 which was registered in the records of the Marriage Registry employee at the Religious Affairs office according to the Marriage Certificate Excerpt Number : 339/45/VII/2002 dated 22 July 2002. Their household had been running in disharmony since October 2007 and it was recorded that the respondent left his residence and returned to his parents' house in Banyuwangi Regency. In the statement in the decision letter, the Respondent confirmed before marriage that he had adopted an adopted child before marrying the Petitioner. In the Reconvension Suit, it is stated that the original reconvension plaintiff is the Convention Respondent and the original Reconvension Defendant is the Convention Petitioner. In the lawsuit, the Reconvension Plaintiff in his response verbally filed a counterclaim by punishing the Reconvension Defendant to pay iddah support and help with the educational costs of the Reconvension Plaintiff's adopted child through college.

MAIN PROBLEM

Based on the description and background above, the author is interested in discussing this problem further by focusing on the problem formulation:

1. What are the legal consequences of adopting a child: Court Decision 1149/Pdt.,G/2020/PA. Lmg
2. What is the Legal Protection for Adopted Children in the Divorce of Adoptive Parents Based on Court Decision 1149/Pdt., G/2020/PA. Lmg

METHOD OF RESEARCH

The research method used in this research is normative legal research, namely research that examines document studies, in this case analyzing legal norms. Then this research will be correlated with juridical legal research methods, related to the law on the protection of adopted children against adoptive parents' divorce.

This approach is also known as the library research approach, which is an approach carried out using literature (libraries) in the form of books, notes or reports of research results from previous research. Literary approach, namely with statutory regulations and books related to this research. The statutory approach is used to analyze legal aspects in the Protection of Adopted Children Against Divorce from Adoptive Parents according to Indonesian Laws, while the book used is the Islamic Law Complications Book to gain a correct and in-depth understanding of agreements related to the law of adopted children against their parents lift.

RESEARCH RESULT AND DISCUSSION

A.The Position of Adopted Children in the Family

1.Child Adoption Procedure

The child adoption procedure experienced a shift in the criteria and

completeness of the requirements for prospective adoptive parents. Historical records state that in the era before independence, child adoption regulations in Indonesia were regulated by Dutch law, namely in the 1917 Staatsblad No. 129 with regulations husband and wife are only allowed to adopt male children. However, after independence, the government has regulated regulations by issuing through the Supreme Court decision Jurisprudence No. 1413 K/Pdt/1988 dated 18 May 1990 Jo RI Supreme Court decision No. 53 K/Pdt/1995 dated 18 March 1996, stated that the adoption of a child is not related to in male or female gender.

On the other hand, adoption and adopted children in customary law and Islamic law have differences and similarities. In customary law, there is the customary practice of adopting an adopted child as a biological child, obtaining the rights and obligations as a biological child and erasing the lineage relationship with the biological parents, and there is also the customary practice of adopting an adopted child as a child but not eliminating the lineage relationship with the biological parents. Islamic law, on the other hand, basically does not recognize adopted children and even invalidates the institution of adoption. This is because the Arabs initially considered adopted children as biological children and broke the lineage relationship between adopted children and their biological parents. Furthermore, Article 1 point 2 of Government Regulation Number 54 of 2007 concerning the Implementation of Child Adoption provides an understanding of child adoption, namely: Child adoption is a legal act that transfers a child from the sphere

of authority of parents, legal guardians, or other responsible persons. for the care, education and raising of the child, into the family environment of the adoptive parents.

Adoption of a child must fulfill various requirements, as regulated in Article 12 of Government Regulation Number 54 of 2007 concerning the Implementation of Adoption, namely:

(1) Conditions for a child to be adopted include:

- A. 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;

(2) The age of adopted children as intended in paragraph (1) letter a includes:

- A. children under 6 (six) years old are the main priority;
- B. children aged 6 (six) years up to not yet 12 (twelve) years old as long as there is an urgent reason;
- C. children aged 12 (twelve) years to under 18 (eighteen) years old, as long as the child requires special protection

Children are included in the group of individuals who are still closely dependent on their parents, and still need protection and care. Therefore, apart from the requirements regarding prospective adopted children, the requirements for prospective adoptive parents are also regulated. Article 13 of Government Regulation Number 57 of 2007 concerning Implementation of Child Adoption, regulates that:

Prospective adoptive parents must meet the following requirements

- A. have good mental and physical health; And

- B. aged between 30 and 55 years; And
- C. have the same religion as the prospective adoptive parents; And
- D. have good behavior and have never been convicted of committing a crime; e. have been married for at least five years
- E. have been married for at least five years; f. are a married couple
- F. not a same-sex couple; And
- G. do not have or have ever had children or only have one child; h. have not been married for more than five years; i. have never been married for more than five years
- H. have financial and social capabilities; And
- I. obtain consent from the child and written permission from the parent or guardian; And
- J. a written statement that the adoption of the child is in the best interests of the child and the welfare and protection of the child
- K. social reports from local social workers; And
- L. has cared for an adopted child for at least 6 (six) months since the adoption of the child was granted; m. has cared for a child for at least 6 (six) months since the child was adopted
- M. obtain permission from the Minister and/or head of social agency.

The procedure carried out in adopting a child is that the prospective adoptive parents submit an application to adopt the child addressed to the district/city social agency, by attaching:

- A. written handover letter of the child from the parent/guardian to the social protection institution; And
- B. letter of handover of the child from the district/city social service to the social organization (orsos); And
- C. letter of handover of the child from the social organization to the prospective adoptive parents;
- D. letter of approval for the adoption of a child from the family of the prospective adoptive parents and the husband or wife of the prospective adoptive parents
- E. photocopy of birth certificate of prospective adoptive parents
- F. photocopy of marriage certificate of prospective adoptive parents; g. health certificate from a government doctor
- G. mental health certificate from a mental health specialist; And
- H. proof of income from the adoptive parent's employer;

Next, if the requirements have been fulfilled in accordance with the child adoption procedures in accordance with Government Regulation Number 57 of 2007 concerning the Implementation of Child Adoption, then the application can be submitted to the Court to obtain a Court decision. Then the Court conveys the decision to the relevant agency. Article 20 of Government Regulation Number 57 of 2007 concerning Implementation of Child Adoption, regulates that: (1) Applications for adoption of children who have fulfilled the requirements are submitted to the court to obtain a court decision.

Based on the results of the court examination at the Court Decision 1149/Pdt.G/2020/PA. Lmg that the Petitioner on behalf of Saiful Ahmadi submitted Lesan's answer that before the marriage, the Respondent on behalf of Lenny Lusiana had brought an adopted child and based on the Reply of the Respondent's letter stated that it was true that the adopted child was adopted by the Respondent before the marriage, so the facts of the trial revealed that the adoption of the child not in accordance with the child adoption procedures stipulated by Government Regulation no. 57 of 2007 with one of the conditions being that you have been married for at least 5 (five) years; cannot be fulfilled and is deemed non-existent by Court Determination.

2. Legal consequences of adoption

Child adoption is a mutual agreement and is a legal agreement by taking someone else's child with the specific aim of being raised and cared for in an adoptive family by creating social and biological ties with a child adoption system that continues to be developed towards the child's progress and welfare. Therefore, adopted children do not have mutual inheritance rights between their adoptive parents, only between them and their biological parents on a reciprocal basis, on the basis of kinship and being born from a valid marriage. (Yaswirman, Family Law, 2011) It was also explained according to Yusuf Al-Qardhawi that adoptive parents may gift or bequeath their assets to their adopted children before they die.

When compared with adoption based on customary law, where a child enters a family that will adopt him, the attachment relationship between the

biological family and the adopted child is severed. (Kamil, 2008).

So, legal consequences arise for adopted children whose adoption is not recorded in a court order and this is contrary to the law which stipulates that the adoption of a child must go through a court decision as stated in article 20 of Government Regulation number 54 of 2007. The court's decision has legal force and plays a role in providing full legal certainty for child protection if it is through a court order.

The legal consequences arising from the adoption of a child carried out by the Respondent on behalf of Lenny based on Court Decision 1149/Pdt.G/2020/PA are that it can give rise to misunderstandings about whether it is halal or haram if the adopted child has to marry someone who should be able to marry or by looking at it. Other people's private parts that he should not be able to see. Next, it results in disruption of the relationship between the biological parents and the child if the adopted child marries and in Islamic law the only person who is the guardian of a woman who is about to marry is her biological parents or blood relatives.

So based on the legal consequences arising from the adoption of a child without a court decision, there is no parental relationship, namely the applicant on behalf of Saiful and the respondent on behalf of Lenny because there is no valid evidence that the adoption of this child was carried out according to applicable law. Furthermore, the consequences that can occur if there is a dispute regarding the rights and obligations between the adopted child and the adoptive parents are that they cannot sue each other in court.

3. Rights and Obligations of Adoptive Parents towards Adopted Children

The rights and obligations of adoptive parents have been included in the law based on the provisions and procedures for adopting children that have been validated by the court. Adoptive parents as parents who replace the position of biological parents have the same obligations as parents in general, such as caring for, educating, caring for the child even though the child's status is only an adopted child as stated in article 26 of law number 23 of 2002 Regarding child protection, it is the parents' obligation to care for, care for, educate and protect children, parents are also obliged to supervise the child's growth and development according to their interests and talents. On the other hand, even as a child, even though he is an adopted child, he also has obligations to his adoptive parents, the same as the obligations of other children, one of which is to respect and love parents, guardians, teachers, and also the homeland of the nation and state and also to carry out noble ethics and morals, this is in accordance with in article 19 of law number 23 of 2002 concerning child protection.

Based on Government Regulation Number 54 of 2007 in Article 1 number 2 states that 'Adoption of a child is a legal act that transfers a child from the sphere of authority of parents, legal guardians, or other people who are responsible for the care, education and raising of the child, into the family environment of adoptive parents', it is clearly stated that adoptive parents are obliged to fulfill the needs of adopted children by nurturing education and fulfilling the love needs of adopted children.

Children's rights in Law Number 4 of 1979 concerning Child Welfare are as follows:

- A. Children have the right to welfare, care, upbringing and guidance based on love both within their families and in special care to grow and develop naturally.
- B. Children have the right to services to develop their abilities and social life in accordance with the nation's culture and personality to become good and useful citizens.
- C. Children have the right to protection from the environment which can harm or hinder their normal growth and development.
- D. Children who experience behavioral problems are given services and care aimed at encouraging them to overcome obstacles that occur during their growth and development.
- E. Children have the right to receive assistance and services aimed at making child welfare a right of every child, regardless of gender, religion, education and social position. (Prinst, Indonesian Children's Law, 1997)

Based on Government Regulation Number 54 of 2007 concerning Adoption of Children, it also explains children's rights and Article 6: 1) Adoptive parents are obliged to inform their adopted children about their origins and their biological parents. 2) Notification of the origin and biological parents is carried out taking into account the readiness of the child concerned.

Likewise, the obligations of adoptive parents are the same as biological parents in accordance with the terms and conditions in the procedures for appointing prospective adoptive parents. Responsibility for caring for children is called *haddanah*. In Indonesia, it is regulated by provisions that parents are jointly obliged to care for children, both physically and spiritually, intelligently and religiously. Parents can represent children in all legal actions inside and outside court. (Yaswirman, Traditional and Islamic Family Law, 2006) So based on the definition above, it has been explained that the obligations of parents towards children are:

- A. provide protection.
- B. provide education; And
- C. represent children in all legal proceedings on behalf of children under the age of 18 and without marital status.

Based on Law Number 23 of 2002 concerning Child Protection in Part Four in Article 26 which states that parents have the following duties and responsibilities:

- A. Caring for, nurturing, educating and protecting their children;
- B. If parents are absent, their whereabouts are unknown, or for other reasons are unable to carry out their duties and responsibilities, then the duties and responsibilities can be transferred to the family and must be carried out in accordance with the provisions of the applicable laws and regulations.
- c. Look after the welfare of their children. These duties and responsibilities must be carried out in accordance with applicable legal provisions. (Sudarsono, 1991)

If the adoptive parents are unable to carry out their rights and obligations towards the adopted child, there will be a transfer of obligations to the family which is implemented by the provisions of the applicable laws and regulations. When an adopted child is abandoned because the adoptive parents neglect their obligations, efforts are made by social institutions, families or authorized officials by submitting a request to the court and issuing a determination as an abandoned child so that the adopted child can get his rights back. . The court's decision also determines the shelter, maintenance and care of the neglected child concerned, and the government or authorized institution is obliged to provide the place.

In this case, Court Decision 1149/Pdt., G/2020/PA explained that the Respondent on behalf of Lenny and the Petitioner on behalf of Saiful were in the status of divorce by the court stating that they were still responsible for meeting the living needs of adopted children by providing iddah support for financial assistance. Education up to college, so that both adoptive parents remain fully responsible for the needs of their adopted child.

4. Position of Adopted Children in the Family

Family is an institution intended as a means to achieve a calm, safe, peaceful and prosperous life in an atmosphere full of love and affection between the people in it. Husband and wife must be able to find peace of mind, satisfaction and love in the family. (Muhammad, 2001) In essence, the position of an adopted child in the family is the same as a biological child as a child who has two parents who will educate him and

become a figure or role model in growing up. Court Decision 1149/Pdt.,G/2020/PA. Lmg explained that the two adoptive parents experienced quarrels and discord with each other, so it was very unfortunate that the child's position as a party who had to be protected had to grow with the dispute between the two adoptive parents.

The position of an adopted child in a family is to be the successor in the lineage and inherit the traditions or clan in the family that raised/adopted him and it is hoped that the adopted child in a family can become a support for the two adoptive parents when they reach old age.

5. Protection of Adopted Children in Court Decision

1149/Pdt.,G/2020/PA. Lmg

A. Case Position

In Court Decision 1149/Pdt.,G/2020/PA. Lmg, it was explained that the Petitioner as Saiful Ahmadi had filed a lawsuit against the Respondent as Lenny Lusiana at the Lamongan Religious Court with a petition for divorce basically stating that Saiful Ahmadi had married Lenny Lusiana on July 22 2002, which was recorded by the Marriage Registrar at the Religious Affairs Office. . The two of them were married and lived together for more than 15 years and 3 months (ba'dad dukhul), but had not been blessed with children and the condition of the Petitioner and Respondent's household was running harmoniously. However, since September 2010 there has been a breakdown in relations with disputes and quarrels caused by the Respondent, namely Lenny Lusiana, often being excessively jealous of Saiful Ahmadi, even accusing him of

having an affair with another woman and based on the facts in court that Saiful had never had an affair with any woman.

As a result of these disputes and arguments, Lenny Lusiana left Saiful Ahmadi in October 2017 and returned to his parents' house in BANYUWANGI DISTRICT. The two of them have been separated for 2 years and 8 months and there have been actions to reconcile but the two have not succeeded in reconciling. Based on the facts above, according to the Panel of Judges, Saiful Ahmadi's petition complies with the provisions of Article 19 letter f of Government Regulation no. 9 of 1975 jo. Article 116 letter f Compilation of Islamic Law. So Saiful Ahmadi submitted a request to end the marriage by filing for divorce from Lenny Lusiana in front of the Lamongan Religious Court.

During the trial, Lenny Lusiana did not object to being divorced by Saiful Ahmad, but with a demand for Iddah alimony of Rp. 4,500,000 (four million five hundred thousand rupiah) by Lenny Lusiana with assistance for the adopted child's education costs up to college, Saiful Ahmad submitted an oral statement in front of the Panel of Judges stating that the adopted child was adopted by Lenny Lusiana before the two were married and Saiful Ahmad stated that he had no objection to the iddah maintenance lawsuit and was ready to help with the education costs of his adopted children until they reached college.

The author considers the status of an adopted child before the court based on the facts of the trial that the child was adopted when Lenny Lusiana was not yet married and this is not in accordance with the requirements for adoption with one of the requirements

being that both prospective adoptive parents must have been married for at least 5 years. If this is met, the author concludes that the adopted child was not registered as a legally adopted child by both adoptive parents in a court order.

6. Legal Considerations

In a copy of Court Decision 1149/Pdt.,G/2020/PA. Lmg, the author describes the legal considerations that the Panel of Judges use in deciding a case, namely as follows: The panel of judges has attempted to reconcile the two parties but was unsuccessful so the Panel of Judges continued the trial by carrying out examinations of the applicant and respondent's witnesses before the court and has read in replica and duplicate from both parties so that the judge can make decisions objectively and wisely.

The dispute between the two occurred because they did not have children and there were accusations of infidelity which could not be proven in court based on the testimony of witnesses who stated that the Respondent, namely Lenny Lusiana, was easily jealous. Therefore, the Panel of Judges concluded, based on the facts before the court, that the two families could not be reconciled. In such cases, divorce based on Islamic teachings, which is the halal act most disliked by Allah, can be granted if the family situation is so shaken that it no longer benefits both partners, with the Panel of Judges taking over and considering the opinion of an Islamic legal expert. as stated in the Book of Madaa Hurriyatuz Zaujaini fith Thalaaq Juz I page 83; Islam chooses the institution of thalaaq/divorce when the household is deemed to be in turmoil and is deemed no longer useful

for advice/peace and the husband and wife relationship becomes spiritless (hollow), because continuing the marriage means punishing one husband and wife with prolonged imprisonment. This is contrary to the spirit of justice. So the Panel of Judges gave Saiful Ahmad permission to impose *Roj'i Talaq* on Lenny Lusiana. The respondent/plaintiff Rekovensi on behalf of Lenny Lusiana filed a counterclaim with a lawsuit which contained a lawsuit against the Petitioner/Defendant Rekovensi on behalf of Saiful Ahmad and this was considered by the Panel of Judges by reading out the decision by ordering the defendant Rekovensi to pay Iddah maintenance amounting to Rp. 4,500.00,- (four million five hundred thousand rupiah) and help with the education costs of adopted children until they go to college. Court Decision 1149/Pdt.,G/2020/PA. Lmg states in its legal considerations that the lawsuit submitted by the Respondent/Plaintiff of Rekovensi regarding the cost of education for adopted children up to college is only limited to assistance and the Respondent/Plaintiff of Rekovensi does not include the amount of the assistance and the Petitioner/Defendant of Rekovensi agrees to this because it is helpful in nature, the writer concluded that this cannot be binding. but rather for the benefit of the adopted child, in contrast to obligations which are inherent and binding in nature and determine time limits and nominal values, therefore the Tribunal considers that the Reconvension Defendant's capabilities are sufficient to be stated in the consideration of this decision.

7. Case Analysis

In making a decision, the panel of judges, in making a decision in every civil case they handle, must first go through the process and stages of a trial examination. Without going through this process, the Judge will not be able to make a decision. Through this process, all parties, both Plaintiffs and Defendants (represented by Legal Advisors/Attorneys/Lawyers who work in a law firm as legal representatives), are given the same opportunity to convey everything and express their opinions, as well as assess the case submitted. and conclude the results of the trial examination from their respective points of view.

The panel of judges as Mediator has an obligation to carry out mediation which is generally regulated in Article 130 HIR and regulated in detail in the Republic of Indonesia Supreme Court Regulation (Perma) No. 01 of 2008 concerning Procedures for Mediation in Court. In the mediation process, the parties involved are given 40 days by the Panel of Judges, and if necessary, this time can be extended by 14 days. At this mediation opportunity, the parties will convey their demands fairly to reach an agreement on a resolution that benefits all parties. Based on Court Decision 1149/Pdt.,G/2020/PA. Lmg has explained that mediation has been carried out with both parties, the applicant and the respondent, but these efforts have not resulted in peace. The Petitioner in Court Decision 1149/Pdt.,G/2020/PA is known to be a TNI AD at Kodim 0812 Lamongan who is still active. The Petitioner has obtained a divorce permit and therefore has fulfilled all the regulations of the TNI AD Commander and therefore the trial can continue

with The Petitioner's argument is that the Petitioner and Respondent's marriage has been going on since 2010 because the Respondent alleged that the Petitioner was having an affair and the Respondent stated that he had no objection to this.

divorce application. The Panel of Judges was able to conclude that the main problem in the household of the Petitioner and Respondent was that there were continuous disputes and quarrels which were triggered because the Petitioner was in a love relationship with another woman, so the author agrees with the decision of the Panel of Judges with the emphasis on presenting witnesses to justify his argument at the trial. So, during the trial, the statements of witnesses were heard which had to be proven by the Plaintiff, and their statements were not refuted by the Respondent, therefore they met the material requirements, as regulated in Article 171 HIR

"Every testimony must contain all the causes of knowledge. Special opinions or assumptions, which are formed using reason, not testimony."

Based on the evidence at the trial, the Panel of Judges obtained the legal facts that during the marriage the Petitioner and Respondent had not been blessed with children and the household of the Petitioner and Respondent was truly disharmonious (broken) due to frequent disputes and quarrels which were no longer possible to reunite.

So referring to the Decision of the Supreme Court of the Republic of Indonesia Number 237/K/ AG/1998, with a legal abstract it states that a household is characterized by disputes or quarrels and if one of them is not willing to live together or does not want to continue the household life

with the other party," is a sufficient legal fact as a reason for a divorce in accordance with the meaning of Article 19 letter (f) of the Regulations

Government Number 9 of 1975. So the Panel of Judges based on Article 116 letter (f) of the Compilation of Islamic Law, the Court gave permission to the Petitioner to impose one raj'i divorce on the respondent.

In the Reconvension Lawsuit, the Respondent is explained to have filed a counterclaim against the applicant/defendant Reconvension with a request to the panel of judges to sentence the Reconvension Defendant to pay Iddah maintenance amounting to IDR 4,500,000 (four million five hundred thousand rupiah) and to help with the education costs of the Plaintiff's adopted child. Reconvension until college. The panel of judges is obliged to side with justice (moral justice) and ignore the law or statutory regulations (legal justice). Good law is a law that is in accordance with the laws that live in society (living law), which of course also corresponds to or reflects the values that live in society (social justice). The justice referred to here is not procedural (formal) justice, but substantive (material) justice in accordance with the judge's conscience.

Based on Article 149 letter (b) in conjunction with Article 152 of the Compilation of Islamic Law, in accordance with the syar'i argument in the Book of Al Iqna' juz IV page 46 which was taken over as the opinion of the Assembly, it reads:

"A woman undergoing the iddah talak raj'i period has the right to a place to live, a living and (decent) clothing."

Therefore, the Reconvension Defendant before the panel of judges

has agreed to the amount of the Reconvention Plaintiff's demand for iddah living so that based on these considerations, the Reconvention Plaintiff's claim regarding iddah living should be granted by punishing the Reconvention Defendant to provide iddah living to the Reconvention Plaintiff in the amount of Rp. 4,500,000,- (four million and five hundred thousand rupiah).

The panel of judges as the holder of the highest authority over the law must look at psychological and juridical perspectives in making a decision regarding a child's rights regarding the divorce of adoptive parents. Based on the principal of the lawsuit filed by the Reconvention Plaintiff, namely assisting the adopted child's education costs through college, based on the legal fact that the adopted child was adopted by the Reconvention Plaintiff Before the marriage with Defendant Rekovensi, Defendant Rekovensi did not object to the request and it was still included in the consideration of the court decision.

Based on the divorce case of the two adoptive parents, the author sees that the lack of laws that protect children, regardless of whether the child is an adopted child and is not blood related, is detrimental to the child both psychologically and juridically. The fact can be obtained that since there is a breakdown in the household and disharmony due to husband and wife quarrels, the child as the injured party receives a negative impact on his growth and development as a human being. Family breakdown causes children to be trapped in the midst of strife and results in children lacking the attention and love of the parents who raised them.

The panel of judges must see the impact that divorce will have on creating a child's psychological character that is different from normal children with harmonious and loving families. Children will experience psychological impacts by easily experiencing frustration or losing their social identity when they are in a social group. Regarding Court Decision 1149/Pdt.,G/2020/PA. Lmg the author sees that there is no clear legal protection for adopted children and legal uncertainty for the father's adoptive parents which is binding for the survival of the adopted child in terms of material and psychological protection against the divorce of the adoptive parents.

So the results of the case analysis in Court Decision 1149/Pdt.G/2020/PA are based on the adoption of an adopted child which does not have a legal determination before the court because it was adopted by only one adoptive parent, namely the Respondent/Plaintiff, reconventant in the name of Lenny Lusiana before the marriage with the Petitioner took place. / The Defendant Recovered in the name of Saiful Ahmad so that it was stated that the adoption of the child existed but did not have permanent legal force in court so that Saiful Ahmad had no responsibility for the costs of living for the adopted child and was only based on sincere assistance. If, Saiful Ahmad does not provide assistance with education costs in the future due to certain factors, the adopted child will not have the legal power in court to file a lawsuit against Saiful Ahmad for child neglect in the future.

8. Legal Protection of Adopted Children

Adoption is a legal action to transfer a child from the authority of parents, legal guardians or other people who are responsible for the care, education and upbringing of the child into the family environment of the adoptive parents. (Government Regulation Number 54 of 2007) Adopting a child is not easy, the government has established preventive measures to continue to protect the human rights of an adopted child against attempts to adopt adoptive parents so as to minimize crimes of child neglect. Adoption cannot be equated with handling street children or children who have experienced acts of violence, because there are stages and legal requirements that must be followed in the process of adopting a child. Adoption places the child as a legal subject, so the process and everything related to child adoption is definitely regulated in statutory regulations. (Isnaini, 2017) Adoption of children in Indonesia shows cultural and religious differences in society. Islamic law and the Child Protection Law function as two complementary legal foundations in this context.

To create a safe and supportive environment for adopted children, it is important to combine the principles of humanity, justice and legal certainty. By properly understanding Islamic law and national laws, children's rights are protected and adoption is carried out with care and consideration. Indonesia, based on the Pancasila principle, experiences difficulties in applying Islamic law to civil law within the national framework of child protection law, therefore by involving many people, such as ulama, legal

experts and the general public, Indonesia can create fair policies.

Indonesia as a country upholds human rights as contained in the 1945 Constitution, Article 28B paragraph 2 which reads "Every child has the right to survival, growth and development and the right to protection from violence and discrimination." Each child in question is an adopted child who goes through the stages of legal adoption in the eyes of the law. So, legally speaking, the survival of adopted children is under the protection of the law. According to Article 1 paragraph 2 of Law Number 35 of 2014 concerning Child Protection, child protection guarantees and protects children's rights to be able to live, grow until they develop optimally in the environment and receive protection from crime and discrimination (Article 1 of Law Number 23 2002 Concerning Child Protection) Therefore, child protection concerns all legal rules that have a direct impact on a child's life, in the entire legal order that regulates children's lives.

The law between adopted children and their biological parents will be broken. With this adoption, the adopted child has the same position as the ab intestato heir. Therefore, an adopted child should have the right to inherit from his adoptive parents just like a biological child born in a legal marriage. Through legal adoption, a family relationship is formed between the adopter and the adopted child, which is the same as the relationship between parents and their own biological children. Adopted children will use the name of their adoptive parents and are considered children in their adoptive parents' marriage. With this legal position and relationship, an

adopted child has the right to inherit the inheritance of his adoptive parents in accordance with the legitimate portion, including all forms of inheritance. Adopted children are also considered absolute heirs of their adoptive parents in accordance with Article 852 of the Civil Code. Article 852 of the Civil Code gives adopted children the right to inherit inheritance, even if it is not based on a written will, as long as this application is legally recognized by law.

Under Islamic law, adopted children are not considered heirs and therefore cannot receive inheritance from their deceased adoptive parents. This is to protect the rights of adopted children and adoptive parents, the Compilation of Islamic Law provides legal certainty through mandatory wills as regulated in Article 209 KHI Paragraphs (1 and 2).

1) The inheritance of adopted children is divided in accordance with Articles 176 to Article 193, but a mandatory will is given to adoptive parents who do not receive a will, with a limit of one third of the adopted child's inheritance.

2) For adopted children who do not receive a will, a mandatory will is given to the adoptive parents with a limit of one third of their inheritance.

So in Court Decision 1149/Pdt.,G/2020/PA. Adopted children in divorce are included in the group of people who do not receive inheritance, even mandatory inheritance, namely 1/3 of the inheritance from their adoptive parents because there is no legal determination in court. Furthermore, Lenny Lusiana as the adoptive mother who carried out the adoption before the marriage with Saiful was declared a single adoptive parent and the marriage with Saiful Ahmad had no

descendants from blood, so if Lenny Lusiana died, she would inherit the full inheritance but the adopted child could own the property inheritance in the name of Lenny Lusiana.

CONCLUSION

Based on the decision analysis discussed in the previous chapter, the author can conclude:

- A. Adoption of a child must of course be based on applicable regulations with a process that goes through a court order in accordance with Government Regulation number 54 of 2007. Adoption of a child carried out without a court order can have legal consequences that are detrimental to a child or parents if there is a dispute or misuse of rights and obligations between adopted children and adoptive parents. With a court decision, the child gets the status as a new family member with legal certainty so that it does not cause injustice in terms of inheritance or their respective rights and obligations.
- B. The importance of a legal provision by the adopted child to make it easier for the child to take the rights and obligations that he or she should receive if there is a divorce in the adoptive parent's household with the provisions made by the government to minimize neglect of adopted children which leads to abandoned children, so from The Panel of Judges must be careful in making decisions based on Court Decision 1149/Pdt.,G/2020/PA related to

- giving punishment to the adoptive father/Petitioner/Defendant of Reconvencion.
- C. If the process of adopting a child is based on the adoption procedure and in accordance with the law and is based on the fact that the two adoptive parents do not have blood descendants, then the adopted child has the right to all the assets left by the adoptive parents to be inherited by him referring to the person Leny Lusiana's adoptive parents are divorced and have no blood descendants, their personal inheritance will be passed on to their adopted child.

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