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Abstract: The appointment of Indonesian citizens by foreign nationals better known as intercountry adoption has a more difficult and complicated appointment process than child adoption in general. Prospective adopted children must be in a childcare institution, in other words the child who will be appointed by a foreign national may not be handed over directly by the child's biological parents. This study aims to assess and analyze the Appointment of children of Indonesian citizens by foreigners in customary law and Islamic Law Compilation book (KHI), and analyzing the legal consequences of the appointment of Indonesian citizens by foreigners in customary law and KHI as recommendations for legal reform in Indonesia. This research is a normative legal research method, with a type of library research that is descriptive analysis. Data sources used are secondary data consisting of primary legal materials, secondary legal materials and tertiary legal materials. After data collection is done, the data is analyzed qualitatively so that conclusions can be deducted deductively. The process of adopting Indonesian citizens by foreign nationals in Indonesia must meet the requirements stipulated in the Government Regulation No. 54 of 2007 concerning the Implementation of Child Appointment and the Minister of Social Affairs Regulation No. 110 / HUK / 2009 concerning the Requirements for Child Appointment through the establishment of court and appropriate with elements contained in the Circular of the Supreme Court of the Republic of Indonesia Number 6 of 1983 concerning the improvement of SEMA Number 2 of 1979 . Research result this shows that adopted children in customary law are influenced by family or descent systems, the position of adopted children is different from one region to another. The position that arises against the adoption of children depends on the customs that exist in the area. In Islamic law (KHI) , there is no inherited relationship between adopted children and adoptive parents. The adoption of children in Islamic law is limited to prosperity, nurturing adopted children from neglect alone, so that the relationship between adopted children and their biological parents remains. The legal consequences of adopting children according to customary law are varied, meaning that in an area different from customary law in other regions. This study aims to assess and analyze the Appointment of children of Indonesian citizens by foreigners in customary law and KHI, due to the law of the appointment of Indonesian citizens by foreigners in customary law and KHI

Keywords: Appointment of Indonesian Citizens by Foreign Citizens, Customary Law and KHI, Legal Effects.

INTRODUCTION

Civil law in Indonesia is still *pluralism* because customary law, Islamic law and western law still apply. Of the three laws, Islamic law has its own position, although not all Islamic civil law is positive law in Indonesia, but certain fields of Islamic civil law have become positive laws. Specific fields referred to are marriage law, inheritance law and perwakafan law.

The child is a personal person who has a special dimension in his life, where in addition to growth and

development requires the help of parents, environmental factors also have a very important role in influencing the personality of the child when facing the phase of maturity later [1].

Law Number 35 Year 2014 for changes Law Number 23 of 2002 Regarding Child Protection affirms that the responsibility of parents, family, community, government and the state is a series of activities carried out continuously for the protection of children's rights. The series of activities must be sustainable and directed

to ensure the growth and development of children, physically, mentally, spiritually and socially. This action is intended to realize the best life for children who are expected to be successors a nation that is potential, resilient, has nationalism imbued by noble character and the value of Pancasila, and is strong-willed to maintain the unity and unity of the nation and state [2].

Appointment of Indonesian Citizens by Foreign Citizens is a last resort (*ultimum remedium*) but does not discourage foreign nationals from raising children from Indonesia. We know that the adoption of children is carried out according to the prevailing regulations, but not infrequently it is also done *illegally*, namely through child trafficking, as we see in various mass media. Type Child adoption is regulated in Article 7 of Government Regulation No.54 of 2007 which states that the adoption of children consists of the appointment of Indonesian citizens, and the adoption of children between Indonesian citizens and foreign nationals [3].

The appointment of Indonesian citizens by foreign nationals better known as *intercounty adoption* has a more difficult and complicated appointment process than child adoption in general. Prospective adopted children must be in a childcare institution, in other words the child who will be appointed by a foreign national may not be handed over directly by the child's biological parents. This can also be seen in Article 14 PP No. 54/2007 which stipulates that the appointment of Indonesian citizens by foreign nationals as referred to in Article 1 paragraph (1) letter a, must meet the following requirements [4].

- Obtain written permission from the government of the country of origin of the applicant through an embassy or representative of the applicant country in Indonesia.
- Obtain written permission from the Minister; and
- Through childcare institutions.

On the other hand, for a foreign national to be able to adopt a child with Indonesian nationality, he must follow the process and go through a long procedure determined by Indonesian law.

First, what must be known in advance is that the baby's nationality is abandoned and before adoption by adoptive parents. According to Law Number 12 of 2006 concerning citizenship article (4) letter J which reads "Indonesian Citizens are newborn children found in the territory of the Republic of Indonesia as long as their father and mother are unknown" and the principle of *Ius Soli* which determines citizenship based on place birth, it can be concluded that the baby has Indonesian citizenship when it was discovered and before it was adopted.

Secondly, after knowing the clarity of the baby's citizenship, it can be agreed that the baby and

prospective adoptive parents are different citizenship, so there will be a special process for the appointment of children of Indonesian citizens by foreigners.

Government Regulation Number 54 Year 2007 concerning Appointment of Children is held in order to implement Law Number 23 Year 2002 concerning Child Protection, but in the Child Protection Act itself does not formulate the definition of "Child Appointment". The Child Protection Act only formulates the definition of adopted children. Adopted children according to the Child Protection Act are children whose rights are transferred from the environment of the family's authority to the parents, legal guardians, or other people responsible for the care, education and enlargement of the child, to the family of the adoptive parents based on a court decision or determination [5].

Parents, families and the community are responsible for maintaining and maintaining children's rights in accordance with the obligations imposed by law. Similarly, in the context of the implementation of child protection, the state and government are responsible for providing the best facilities for children, especially in ensuring optimal and directed growth and development of children.

Adoption of children can be a manifestation of the implementation of protection for children that is adopted covering various aspects of life by referring to the children's rights inherent in them since the child was born, including: Protection of religion, health, education, social, and special protection [6].

According to article 171 letter h Compilation of Islamic Law. An adopted child is a child who is in maintenance for his or her daily life; the cost of education and so on switches his responsibilities from the parent to his adoptive parents based on a court decision.

Based on the explanation above, it is important to discuss about the appointment of children of Indonesian citizens by foreigners in customary law and compilation of Islamic law. As well as due to the law of adoption of adopted children in customary law and compilation of Islamic law.

Theoretical framework

Theoretical framework in scientific research serves as a guide to organize, explain and predict phenomena and / or objects of the problem under study by constructing the relationship between concepts deductively or inductively. Because the object of the problem examined in this article is within the scope of law, the concepts that will be used as a means of analysis are concepts, principles, and legal norms that are considered most relevant. The theories used in this study are:

- **Legal System Theory (Lawrence M. Friedman)**

To answer the first problem in this paper, which is concerning the arrangement of inheritance for adopted children, the writer will talk about a system. The system referred to here is Civil Law, Customary Law and Islamic Law. The legal system does not only refer to the rules (*Codes of rules*) and regulations (*Regulation*). But it covers a broad field, covering the structure, institutions and processes (*Procedures*) that fill it and are related to the law that lives in the community (*Living Law*) and legal culture (*legal structure*).

Law in fact is often left behind by developments in the community, for that good law is a dynamic law that is able to follow the development of society. This is similar to that expressed by Lawrence M. Friedman who argued that the elements of the legal system consist of legal structure (*legal structure*), legal substance (*legal substance*) and legal culture (*legal culture*) [7]. In relation to legal change, the change can occur in three dominant elements, namely, *first*, the legal structure is a pattern that shows how the law is carried out according to its formal provisions, *second*, the legal substance is the rules used by legal actors, and *thirdly*, is a legal culture that is related to habits in the settlement of legal cases [8]. Because it is impossible for the law to be understood mathematically, it requires the concept of legal sociology to answer it [9].

- **Justice Theory**

Speaking of law, it is not far from the purpose of the law itself, one of which is justice. In this case the author uses the theory of justice to answer the second and third problems. Aiming to find facts and explain why adopted children in Islamic law do not inherit, and also settle disputes over inheritance of adopted children according to Civil law, Customary law and Islamic law. Various theories about justice and a just society. These theories concern rights and freedoms, opportunities for power, income and prosperity. Justice theories according to experts are as follows: [10].

- **Theory of Justice according to Aristotle**

Aristotle's view of justice can be obtained in *Nicomachean's* work *ethical, politics, and rethoric*. Specifically seen in the *Nicomachean Ethics* book, the book is entirely aimed at justice, based on Aristotle's legal philosophy, must be considered as the core of his legal philosophy, "because the law can only be determined in relation to justice".

In essence this view of justice is a gift of equality but not equality. Aristotle distinguishes the equality rights according to proportional rights. Equality of rights is seen by humans as the same unit or container. This is what can be understood that everyone or every citizen before the law is the same. Furthermore, justice in Aristotle's view is divided into two kinds of justice, justice "*distributief*" and justice

"*Commutatief*". Distributief justice is justice that gives everyone a portion according to their achievements. Committee justice provides as much to everyone without discriminating their achievements in this regard with regard to the role of exchanging goods and services [11].

- **John Rawls Justice Theory**

John Rawls is seen as a "*liberal-egalitarian of social justice*" perspective. Opinion that justice is the main virtue of the presence of social institutions (*social institutions*). However, virtue for all people cannot be excluded or sue a sense of justice from everyone who has gained a sense of justice. Especially the weak community of justice seekers [12].

Rawls's view positions the same and equal situation between each individual in society. There is no difference in status, position or having a higher position with each other, so that one party with another can make a balanced agreement. The first principle is stated as *equal liberty principle*, such as *freedom of religion, political of liberty, freedom of expression and expression of freedom. Speech and expression*, which hypothesizes the principle of equal opportunity (*equal opportunity principle*).

- **Justice in Islam**

The justice that is discussed and prosecuted by the Qur'an is very diverse, not only in the process of determining the law or to the disputing parties, but the Qur'an also demands justice for oneself, both when speaking, acting and acting as physically as those in Surat Al-An'am verse 152 and Sura Al-Baqarah verse 282 and Al-Hadid verse 25. From the series of these three verses, it can be seen that justice will lead to devotion, and devotion produces prosperity for humanity.

RESEARCH RESULTS AND DISCUSSION

Appointment of Children of Indonesian Citizens by Foreigners in Customary Law and Compilation of Islamic Law

Hilman Hadi Kusuma defines adopted children as children of other people who are considered by their adoptive parents as their own children according to local customary law, due to the purpose of survival and / or maintenance of household property [12].

Soeroso stated that in general the adoption of children (Adoption) can be divided into two, namely:

- Child adoption (Adoption) in the broadest sense, namely the appointment of another person's child into his own family in such a way that the children raised with adoptive parents arise a relationship between adopted children as their own children and adoptive parents as their own parents.
- Child adoption (Adoption) in a limited sense, namely the appointment of another person's child

into his own family and the relationship between the adopted child and adoptive parents is limited to social relations only [13].

In customary law is influenced by a family or descent system, the position of adopted children is different from one region to another. The position that arises from the adoption of children depends on the customs in the area. In Islam the adoption of children that is justified is that it does not attach nasab to adopted children so that the law does not affect infidelity and inheritance. The adoption of children in Islamic law is limited to prosperity, nurturing adopted children from neglect alone, so that the relationship between adopted children and their biological parents remains. This is understood from the argument of surah al-Ahzab verse 37, where the asbabun nuzul is when the Prophet was commanded by Allah (peace be upon him) married Zainab who was the ex-wife of his adopted son named Zaid bin Harisah.

Adoption of children for Muslims can only be done by parents who are also Muslim, and the adoption of a child requires the approval of the parents, guardian or body that controls the child who will be appointed with the prospective adoptive parents.

Child adoption must essentially be seen as an attempt to imitate nature by creating offspring artificially artificial (*adoptio imitatur naturam*) [13]. Child adoption aims to overcome heredity. Other reasons for adoption (adoption), among others, are as follows: [14].

- Do not have children, and want to have children to maintain the lineage/clan, in order to maintain and maintain it later in old age.
- To maintain family ties / family happiness.
- There is a belief that with children at home, they will be able to have their own children.
- There is compassion for abandoned children or children whose parents are unable to care for them or for humanity.
- To get friends for their existing children.
- To add or obtain labor.

Child adoption is not a new problem in Indonesia, because since ancient time's child adoption has been done in different ways and motivations, in accordance with the legal system that developed in the area concerned. Appointment of Indonesian citizens by foreign nationals can only be done as a last resort [15] this is in accordance with the provisions of the Child Protection Act and the Republic of Indonesia Government Regulation Number 54 of 2007 concerning the Implementation of Child Appointment.

Foreign nationals who wish to raise children of Indonesian citizens because during their marriage they are not blessed with children and there is a sense of

compassion for abandoned children or children whose parents are unable to care for them or for humanity. Many things must be considered about the procedure for adoption. There are several important things that must be considered if you want to adopt a child, including: [16].

- Adoption of a child can only be done for the best interests of the child and is carried out based on local customs and laws and regulations.
- Appointment of children as referred to in Paragraph (1) does not break the blood relationship between the child who is appointed and his biological parents; and the appointment of children as referred to in Paragraph (1) must be recorded in the birth certificate, by not eliminating the child's initial identity.
- Prospective adoptive parents must be religious with the religion adopted by prospective adopted children.
- Appointment of children by foreign nationals can only be done as a last resort; and in the event that the child has no known origin, the person who will appoint the child must include the child's identity as referred to in Article 27 Paragraph (4).
- In the event that the origin of the child is unknown, the child's religion is adjusted to the religion of the majority of the local population.

According to R. Soepomo, the customary law system that applies in Indonesia, in terms of adoption or adoption of children has the following features: [17].

- Having a strong sense of togetherness or communal, meaning that humans according to customary law are beings in close social ties, this sense of togetherness encompasses the entire field of customary law;
- Has a religious-magical style that is related to the view of Indonesia's natural life;
- Customary law is overwhelmed by the thought of concrete arrangements, meaning that customary law is very concerned about the number and repetition of a concrete relationship of life;
- Customary law has a visual trait which means that legal relations are assumed to occur only because they are determined by a bond that can be seen (visible sign).

In terms of the development of national law, the formulation of the definition of child adoption formally and applies to all child adoption in Indonesia without distinguishing the population, also without differentiating *domestic adoption* or *intercountry adoption*, set forth in a Government Regulation Republic of Indonesia Number 54 Year 2007 concerning Implementation of Child Appointment ("PP Appointment of Children"). According to PP Child Appointment that the adoption of a child is a legal act that diverts a child from the environment of the authority of a parent, legal guardian or another person

who is responsible for the care, education and raising the child into the family of the adoptive parents [18].

Child adoption is thus a legal act of transferring a child from an environment (originally) to the family environment of his adoptive parents. From the formulation of the definition of appointment, this is not enough reflected to what extent or how wide the legal consequences of the act of adoption of children.

This type of adoption is regulated in Government Regulation Number 54 of 2007 Article 7 which states that the adoption of children consists of the adoption of children between Indonesian citizens, and the adoption of children between Indonesian citizens by foreign nationals [19]. The process of adopting children by foreign nationals (*Intercountry Adoption*) is not the same as the process of adopting children between Indonesian citizens.

The adoption of children between citizens can be done based on customary law that applies in certain areas, although basically it must still require a legal determination from the court for the status of adopted children in the future. Meanwhile, the adoption of children against Indonesian citizens by foreign nationals must go through a childcare institution or an orphanage foundation appointed by the social department [20].

The appointment of Indonesian citizens by foreign nationals better known as *intercountry adoption* has a more difficult and complicated appointment process than child adoption in general. Prospective adopted child must be in a childcare institution, in other words the child to be appointed by a foreign national may not be handed over directly by the child's biological parents. This can also be seen in Article 14 PP No. 54/2007 which stipulates that the appointment of Indonesian citizens by foreign nationals as referred to in Article 1 paragraph (1) letter a, must meet the following requirements: [21].

- Obtain written permission from the requesting country of origin of the applicant through embassy or representative of the applicant country in Indonesia.
- Obtain written permission from the Minister; and
- Through childcare institutions.

Regulations for the appointment of children are renewed year after year. Today, the provisions governing child adoption (adoption) can be seen from: [22].

- Customary law.
- Islamic law.
- Stb. 1917 Number 129.
- Jurisprudence.
- Child welfare Act Number 4/1979.
- Republic of Indonesia Citizenship Law Number 12/2006.

- Civil Code / BW, initially did not recognize adoption. Since 1956, BW has regulated, but there has been no adjustment to the Civil Code. In the new BW (NBW), the provisions regarding this adoption are regulated in book I
- Law No. 35 of 2014 concerning Amendments to Law No. 23 of 2002 concerning Child Protection, Government Regulation No. 54 of 2007 concerning Implementation of Child Appointment and Regulation of the Minister of Social Affairs of the Republic of Indonesia Number 110/HUK/2009 concerning Requirements for Child Appointment.

Compilation of Islamic Law Article 171 (f) explains that: An adopted child is a child who in terms of maintenance for his daily life, the cost of education and so on shifts his responsibilities from the parent to his adoptive parents based on a court decision [23].

Government Regulation Number 54 of 2007 Article 1 paragraph (1) explains that adopted children are children whose rights are transferred from the environment of the family of parents, legal guardians, or other people responsible for the care, education and raising of the child, into the family environment of the adoptive parents based on a decision or court decision [24].

Article 171 The Compilation of Islamic Law emphasizes the definition of adopted children as children who in terms of maintenance for their daily lives, the cost of education and so on are shifted from their parents to their adoptive parents based on court decisions. The provisions of the article implicitly emphasize that the occurrence of child adoption results in the transfer of responsibility from the parent of origin to his adoptive parents in terms of maintenance for everyday life, tuition fees and so on, while nasab, marriage guardian for adopted children, and rights inherit each other with unbroken biological parents [25]. In Islam the adoption of children that is justified is that it does not attach nasab to the adopted child so that the law does not affect infidelity and inheritance. This is understood from the argument of surah al-Ahzab verse 37, where the *Asbabun Nuzul* is when the Prophet was commanded by Allah (peace be upon him) married Zainab who was the ex-wife of his adopted son named Zaid bin Harisah [26].

Islam does recognize that adopting children is a noble thing because it is the same as helping children who need help especially orphans. Although the raising of a child is a noble act, it must be understood that there are limits that must be obeyed and must not be violated. Like because it doesn't affect the infatuation, it cant be justified if the child has been treated like a child himself because after all he is not *mahram* (in Indonesia is often called *muhrim*) [27].

The definition of adoption of children according to customary law can be found in doctrine and jurisprudence. The definition of adoption in the doctrine is stated, among others, by Surojo Wignjodipuro that the adoption of a child is an act of taking other people's children into their own families in such a way that the same parents pick up the children and children collected old with his own biological child [28].

Judging from the motivation of adoption, customary law is different from the motivation for adoption in the child protection law which emphasizes that legal action for adoption must be motivated solely for the best interests of the child to be appointed. In customary law, more emphasis is placed on concerns (prospective adoptive parents) of extinction, so prospective adoptive parents (families who do not have children) take the child from the environment of kinship which is conducted in a kinship, then the adopted child occupies the entire position of the child the mother and father who picked it up and she was separated from the original family. The adoption of children is carried out with ceremonies with the help of community leaders or leaders who are carried out brightly because they are attended and witnessed by the audience and the public [29].

Adoption of children is done in a manner that varies for each region. Whereas according to Bushar Muhammad, in general the procedure was carried out in a clear and cash manner. [30] As for what is meant by light is a meaningful principle of legality the act was announced and carried out in the presence of many people with the aim that the public could find out that there had been a child adoption. While cash means that the act will be completed right away, it is impossible to withdraw it [31].

The form is carried out brightly, among others by traditional ceremonies with the role of traditional leaders; salvation and prayer witnessed by the lurah, and sometimes adopted children are given a new name by their adoptive parents. However, in certain regions, the procedure for adopting children is not carried out in a clear manner, but it is enough with the surrender of the original family to the family who rises, some even pour it in a letter [32].

The form is done in cash and cash, among others, by providing a number of magical objects to the family of the child giving. Whereas *Ter Haar* described that what is meant by an act of cash is the entry of children from old families into the environment of relatives who take it with replacement or exchange of a magical object [33].

Initial jurisprudence is of the view that the validity of adoption depends on the customary formalities. However, jurisprudence has recently argued that the adoption of children according to adat can also

be inferred from the external appearances regarding the existence of children who continue to live and be cared for by certain families and family treatment in the relationship between the child and the family [34].

The ulema of fiqh agreed to state that Islamic law does not recognize child adoption institutions that have legal consequences as practiced by the jahiliyah community. In the sense of his release from the kinship law of his biological parents and his entry into his adoptive parents' family law. Islamic law only recognizes, even advocates, the adoption of children in the sense of collecting and maintaining children, in the sense that their kinship status remains outside the family environment of their adoptive parents and by itself does not have any legal consequences. He remains a child and his biological parents, along with all the legal consequences.

Prohibition of child adoption in the sense of actually being made a biological child based on the word of Allah SWT. In Sura al-Ahzab (33) verses 4-5 which means

"... He does not make your adopted children your own children, that is only your words in your mouth. And Allah tells the truth and He shows the way (the right). Call upon them (adopted children) by the name of their fathers, that is what is more just with Allah, and if you do not know their fathers, then (call them as) your brothers and sisters in religion and maula- your maul ... [35] "

If there are children whose fathers have died because of wars or other disasters, such as wars that occurred in the early days of Islam, then Islam provides another way out of the adoption of the child. For example, by marrying widows whose husbands died with other men? Thus the widowed children no longer become abandoned. The status of the child is not an adopted child but a stepchild. If the stepchild is a girl, then the stepchild becomes a mahram, in the sense that it is forbidden to marry her if it has already been said by the *dukhul* with her stepson's mother [36].

Jurisprudence scholars agree that Islamic law prohibits the practice of adoption of children which has juridical implications such as adoption of children known by Western law / secular law and the practice of jahiliyah society, namely the adoption of children who make adopted children into biological children, adopted children cut off from legal relations with people his biological parents, adopted children have inheritance rights equal to inheritance of biological children, adoptive parents become absolute guardians of adopted children. Islamic law only recognizes the adoption of children in the sense of the transfer of obligation to provide daily living, educate, maintain, etc., in the context of worshipping Allah SWT [37].

Islamic law has outlined that the legal relationship between adoptive parents and adopted children is limited as a relationship between foster parents and foster children expanded [38] and in no way creates sexual relations. The juridical effect of adopting children in Islam is only the creation of a love and affection relationship and the relationship of responsibility as human beings. Because there is no nasal connection, the other juridical consequences are that between adoptive parents and adopted children must maintain the mahram, and because there is no nasal connection, the two can get married. Rasulullah Muhammad SAW was ordered to marry Zaid Bin Haritsah's widow there was no nasal connection, except only a loving relationship as an adoptive parent with his adopted child [39].

Between adoptive parents and adopted children there must be a minimum age of 25 years and a maximum of 45 years. For that, every adult can raise a child. If the prospective parent is in a marriage, the age of the adoptive parent's marriage must last for at least 5 (five) years. So that there is a difference between the ages of marriage of prospective adoptive parents and the age of prospective adopted children of at least five years [40].

An adopted child also has an obligation to his adoptive parents. As stipulated in article 19 of the Child Protection Act, this article states that every child is obliged to: [41]

- Respect parents, guardians and teachers.
- Love family, community and love friends.
- Love homeland, nation and country.
- Perform worship according to the teachings of his religion, and
- Carry out ethics and be noble.

The rights and obligations above will continue to exist when the adopted child and adoptive parents are still alive. However, when one of them has died, it has the potential to leave problems, such as in the distribution of inheritance. Because relationships inherit each other can only occur when a person has a blood relationship or marriage with the heir [42]. In customary law there is no strict provision regarding anyone who is permitted to adopt a child (adoption) and the age limit, the proper age limit of a child who deserves to be appointed and who is not suitable to be appointed, between different regions. In Banjarmasin for example, the age difference between adopted children and adoptive parents is deemed appropriate if there is a 15 year age difference [43].

Regarding the nature of a child's adoption traditionally seen as having taken place, the Supreme Court's jurisprudence states that "according to customary law in the West Java region, a person is considered an adopted child if he has been taken care

of, addressed, sent to school, married, by his adoptive parent [44]."

Regarding the procedure for adoption of children is regulated in Government Regulation No.54 of 2007 in article 3 to article 6 as follows:

Article 3

- Prospective parents must be of the same religion as the adopted child
- In the event that the origin of the child is unknown, the child's religion is adjusted to the religion of the majority of the local population [45].

Article 4

The adoption of a child does not break the blood relationship between the child who is appointed with his biological parents [47].

Article 5

Appointment of Indonesian Citizens by Foreign Citizens can only be done as a last resort [47].

Article 6:

- Adoptive parents are obliged to inform their adopted child about their origin and biological parents.
- The notification of origin and biological parents as referred to in paragraph (1) shall be carried out by taking into account the readiness of the child concerned [48].

Application for adoption of children is submitted to the National Court in the place of domicile of the child to be appointed.

B. Due to the Law of Appointment of Indonesian Citizens by Foreigners in Customary Law and KHI

The legal consequences of adopting children in the customary law system are various opinions including Betrand Ter Haar stating the definition of adoption in customary law is the process of forwarding and transitioning material and immaterial wealth from derivatives to derivatives. [49] Soepomo also mentioned the definition of child adoption in customary law war containing regulations that regulate the process of forwarding and passing goods of property and objects that are not intangible (*immaterial information*) from a human *generation* (*generatie*) to their offspring.

Soerojo Wignjodipoero [50]. Arrangement for Child Appointment in Customary Law includes legal norms that establish both material and immaterial property of someone who has passed away [51]. The legal consequences of adopting a child in the Islamic law do not recognize adoption in the sense of making other children become children where they break the child's relationship with their parents, even the adoption of such children is prohibited [52]. The path shown by God is Islamic law. Then all the other regulations,

including the rules of the infidels that are carried out in the Islamic world, raising other people's children to become their own children, are not the right way. Islam has established its own rules in maintaining *nasab* and descent, so that if someone dies there is a provision for the distribution of inheritance (*Faraid*). However, raising another person's child to the adopted child is also a violation of the provisions of property rights that have been determined by the Shari'ah [53].

In Islamic law, there is no inherited relationship between adopted children and adoptive parents. So that often the adopted child is in a weak position. Especially if he does not have an authentic deed as proof of the relationship of adoption. Conversely, it is not uncommon for adopted children to control their inheritance entirely. With the pretext that he has contributed a lot to his adoptive parents. The two conditions above gave rise to a dispute over inheritance which became the absolute competence of the Religious Courts [54].

Islam prescribes a system of family relationships on natural principles and according to family characteristics, determines their ties, and makes them clear and not mixed up and there are no defects in them. Then Islam cancels the custom of adoption and returns *nasab* to the essential causes, namely the relationship of blood, parents and children who are true and essential [55].

That relationship is a feeling and adab relationship. He does not have the usual consequences and requirements such as inheriting and paying diyat which are all consequences of blood relations. This is done so that adopted children are not free and ignored without bonding at all in society after the adoption relationship is abolished. *Nash*, "... and if you don't know their fathers ..." , can describe how chaotic the family institution is This ignorance and depravity are what Islam wants to correct and justify by building a family system on the foundation of biological parent relationships. Also by building a community system above the principles of a healthy, safe and correct family [56]

The legal consequences of adopting children according to customary law are varied, meaning that in an area may differ from customary law in other regions. For example, in Minangkabau customary law, although the adoption of a child is a permissible act, it does not cause an inheritance relationship between adoptive parents and adopted children. Meanwhile in regions that embrace a bilateral kinship system (parental, keibubapakan), for example in Java, Sulawesi, and part of Kalimantan, the adoption of children results in inheritance relationships. Javanese customary law recognizes the hope of "*ngangsu well loro*" for inheritance of adopted children. The word "*ngangsu*" means finding or obtaining "*well*" means a place to take

water or "*loro*" *teeth* means two. The principle implies that adopted children inherit from two sources, namely from biological parents and adoptive parents [57].

CONCLUSIONS AND RECOMMENDATIONS

Conclusion

- Each legal system that applies in Indonesia has its own attitude towards the adoption of children of Indonesian citizens by foreigners , both about the existence, form and content of the child adoption institution, so that in the Indonesian legal system the issue of the adoption of Indonesian citizens by foreigners is not the same for all over population class. In the adoption of customary law of children, it is influenced by a family or descent system, the position of adopted children is different from one region to another. The position that arises from the adoption of children depends on the customs in the area. Child adoption may break the relationship of adopted children to parents of origin, or the adoption of children does not break the relationship of adopted children with their biological parents. However, it can be concluded that several customary law provisions state that the portion of adopted children is equal to the portion of biological children (if there are inheritance rights). Or through i mean a will of his adoptive parents.
- In Islamic law, there is no inherited relationship between adopted children and adoptive parents. Islam does not deny the existence of adopted children as far as to provide welfare and education to the child. What is not permitted by Islam is to break the blood relationship between the biological child and his biological parents. God does not make adopted children become biological children, so that all consequences as biological children are not removed by adoption. Appointment of children in law I slam is limited to prosperity, nurturing adopted children from neglect alone, so that the relationship between adopted children and their biological parents remains. The legal consequences of adopting children according to customary law are varied, meaning that in an area different from customary law in other regions. In determination The Compilation of Islamic Law also regulates mandatory Testament, which is a will without a will, a testament determined by legislation even though the person concerned does not inherit it. It is intended for parents and adopted children who in the perspective of Islamic Law are not entitled to inheritance. The mandatory Testament provisions are regulated in Article 209 of the Compilation of Islamic Law which stipulates that for adoptive parents who do not receive a will are given a maximum obligation of a third of the inheritance of adopted children and adopted children. Thus the maximum limit of this obligatory Testament is one third of the inheritance of adopted children or adoptive parents, meaning that it cannot exceed one third of the assets left by adopted children or

adoptive parents, except if it is approved by all heirs.

Suggestions

- Because the law in Indonesia is plural. The Government should in drafting the Act, especially regarding inheritance for adopted children to be able to see from the similarities and differences that exist from the legal systems that exist in Indonesia, so that later the Act or regulations made can be enforced for all Indonesian people.
- It is suggested to law enforcers, especially in making regulations regarding inheritance of adopted children, to be able to pay attention to the importance of rights and obligations for adopted children, so that there are clear rules to determine inheritance rights to adopted children in case of adjudicating and deciding cases or cases against inheritance of children left, so that it must do it as fairly as possible, and of course based on the applicable law. So that the portion for adopted children is in accordance with the rules of law, so that adopted children are not abandoned, nor are they privileged.

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