

LEGAL PROTECTION OF ADOPTED CHILDREN BETWEEN COUNTRIES IN THE
PERSPECTIVE OF INTERNATIONAL CIVIL LAWCindy Atika Zulaeka¹, Rina Arum Prastyanti²^{1,2}Law Study Program Faculty Of Law And Business,
Duta Bangsa Surakarta University¹cindy.zulaeka3103@gmail.com, ²rina_arum@udb.com

Abstrac

Inter-state child adoption is a complex global phenomenon with various legal and social aspects. This research aims to provide an in-depth analysis of the international civil law framework governing international child adoption, with a focus on the legal protection of adopted children. This research employs a normative legal research method to comprehensively examine various relevant national and international laws, regulations, and legal theories developed in this field and to analyze the legal protection of interstate child adoptions from an international civil law perspective. This review takes a closer look at the legal protection of intercountry child adoptions under international civil law. The focus is on analyzing the vulnerability of children in the context of international adoption and the international community's efforts to protect their rights. The review is conducted through an analysis of relevant national and international laws as well as relevant legal literature.

Keywords: Intercountry child adoption, Child protection, International civil law.

Article History

Received: Oktober 2024
Reviewed: Oktober 2024
Published: Oktober 2024
Plagiarism Checker No 234
Prefix DOI : Prefix DOI :
10.8734/CAUSA.v1i2.365
Copyright : Author
Publish by : CAUSA



This work is licensed under
a [Creative Commons
Attribution-NonCommercial
4.0 International License](https://creativecommons.org/licenses/by-nc/4.0/).

INTRODUCTION

In general, legal protection is a very important concept in social life. It is defined as a state or government's effort to protect the rights and interests of its citizens. This covers various aspects of life, ranging from human rights and civil rights to economic rights.

Legal protection is a fundamental concept in the legal system aimed at guaranteeing safety, order, and justice in society. It is a state's effort, through legal means, to protect human rights, individual and collective interests, and the values inherent in society.

In simpler terms, legal protection can be understood as a legal umbrella that covers all individuals and groups within society. This legal umbrella consists of rules, norms, and legal principles developed and established by the state. Its purpose is to create a condition where everyone can live safely, freely, and prosperously without feeling threatened or harmed by the illegal actions of others.

Legal protection is crucial because it ensures legal certainty ("Clear laws enable people to anticipate the consequences of their actions"), prevents abuse of power ("Laws limit the power of the state and individuals, ensuring no one is above the law"), and allows people to live together peacefully ("Law creates an orderly and harmonious society").

Forms of legal protection include written laws that govern various aspects of life such as the constitution, statutes, government regulations, and so on; court decisions resulting from legal processes; law enforcement agencies entrusted with upholding the law, like the police, prosecutors, and courts; and dispute resolution mechanisms for resolving disagreements or conflicts, such as mediation, arbitration, and litigation.

An adopted child is a child whose rights and custody are legally transferred from biological parents to adoptive parents or legal guardians to other people who are willing to become adoptive parents (Saksono & Widyastuti, 2023). And this process of transferring custody is called child adoption which takes place through a legal process involving the court (Saksono & Widyastuti, 2023). It is concluded that adopted children have the same rights and obligations

as biological children (Saksono & Widyastuti 2023). The process of transferring custody is very important in providing protection and a better future.

International adoption is a legal process whereby a child from one country is legally and permanently placed with parents residing in another country. This process terminates the legal relationship between the child and their birth parents and establishes a new legal parent-child relationship between the child and their adoptive parents.

Legal protection for adopted children refers to a series of efforts made by the state, society, and family to ensure that the rights of adopted children are optimally fulfilled (Aminah, 2018). These rights include the right to life, growth, development, love, education, and protection from violence, exploitation, and discrimination (Sudiono, 2023). The primary goal of this legal protection is to provide legal certainty for adopted children so that they can grow into adults and have a bright future (Ndoen & Ingratubun, 2021).

From an international private law perspective, the protection of adopted children constitutes a complex and dynamic legal framework aimed at regulating and safeguarding the rights of adopted children in all countries. In this context, international private law seeks to harmonize diverse national legal systems to establish uniform and effective standards of protection for children who are adopted into families in other countries (Paradikma & Jaelani, 2024).

International private law, also known as conflict of laws, is a branch of law that governs private legal relationships with a cross-border element. This body of law addresses legal issues involving individuals or legal entities from different countries (Sugeng, 2021).

LITERATURE REVIEW

According to (Chusniatun, 2018) child protection includes various efforts to safeguard the welfare and rights of children. This includes various things such as protection from exploitation, violence, and forms of discrimination. This concept is in line with the Convention on the Rights of the Child (KHA), which was developed by the United Nations in 1989, which emphasizes the importance of the right to be protected from all forms of protection.

(Chusniatun, 2018) identifies the lack of public awareness of children's rights as one of the main challenges. This often leads to actions that harm them. In addition, culture also influences the way people view child protection. Traditional norms often have a major influence.

According to (Chusniatun, 2018) she highlighted several practices in child protection, such as collaboration between the government, NGOs and civil society. Education programs that aim to raise awareness of children's rights are considered successful. Examples given include information and education campaigns in schools to provide children and parents with knowledge about children's rights.

From this literature review, it can be concluded that although there are clear rules to protect children, there are great challenges in implementing them. More overall cooperation is needed to ensure optimal protection of children's rights. The importance of public awareness and education on children's rights must be emphasized in order to create a safe and supportive environment for children's development.

RESULTS & DISCUSSION

The adoption process involves a highly complex legal procedure aimed at providing the best possible protection for the adopted child. Upon completion of the adoption process, the adopted child has the same legal relationship with the adoptive parents as a biological child (Iffan, 2023).

Legal protection for adopted children encompasses a wide range of mechanisms and policies to safeguard the rights and well-being of adopted children at both the national and international levels. This protection includes legal, social, and psychological aspects designed to ensure that adopted children grow up in a safe, stable, and supportive environment (Ramadhan & Jaelani, 2024).

Legal protection for adopted children refers to a set of rules and practices designed to ensure that adopted children enjoy their rights and are protected from abuse and exploitation. This includes regulations governing the adoption process, the rights of children after adoption, and the obligations of adoptive parents.

Adoption laws govern the adoption process itself, including the requirements, procedures, and rights of all parties involved. In many countries, these laws and requirements encompass:

1. Minimum Age Requirements: Setting a minimum age for adoptive parents and the adopted child.
2. Consent Requirements: The requirement to obtain consent from the biological parents (if still alive) and the relevant authorities.
3. Background Checks: A process of verifying that the adoptive parents meet the social and economic requirements.
4. Best Interests of the Child Principle: All decisions regarding adoption must be aimed at maximizing the child's long-term well-being.
5. Competent Authority: Adoption permits can only be issued by a court with jurisdiction over the child's country of origin.
6. Subjective and Objective Requirements: Prospective adoptive parents must meet both subjective requirements (e.g., age, health, financial stability) and objective requirements (e.g., suitability for the child's needs).
7. Post-Adoption Monitoring: There are post-adoption monitoring mechanisms to ensure that children remain in a safe environment and receive appropriate care.

These are the main people involved in adopting a child from another country:

1. Child: The child is typically from a country with low socioeconomic conditions, such as an orphan or a child facing family challenges.
2. Prospective Adoptive Parents: The prospective adoptive parents are usually a couple or an individual from another country who wishes to adopt a child. They must meet the requirements of both countries and undergo a rigorous matching process to ensure a safe and loving home for the child.
3. Adoption Agency: The adoption agency serves as a bridge between prospective adoptive parents and the child. The agency is responsible for handling all administrative requirements, matching, and ensuring that the entire adoption process complies with the laws of both countries.
4. Governments of both countries: The governments of both the child's home country and the prospective adoptive parents' country play a crucial role in regulating and overseeing the international adoption process.

The international adoption process involves several stages, as follows:

1. Submission of Application: Prospective adoptive parents submit an adoption application to the adoption agency in their home country.
2. Qualification Score: Prospective adoptive parents undergo a rigorous evaluation process to ensure they meet the established requirements.
3. Matching: The adoption agency strives to find a child who is a good match for the profile of the prospective adoptive parents.
4. Document Processing: All necessary documents for the adoption process will be prepared, including adoption permits, birth certificates, and health documents.
5. Travel to the Country of Origin: Prospective adoptive parents travel to the child's country of origin to get to know the child and bond with them.
6. Court Proceedings: Court proceedings are held to officially and legally approve the adoption.
7. Return to the Destination Country: Once all requirements have been met, the child will be returned to the destination country by their prospective adoptive parents.
8. Legalization Process: To ensure the legal status of the adopted child, the legalization process of adoption documents is carried out in both countries.

Adopted children are entitled to a range of rights, such as:

1. Right to life, growth, and development: Adopted children have the right to a decent life, including: Access to good health, education, and nutrition (Sudiono, 2023).
2. Right to identity: Adopted children have the right to a name, nationality, and other personal identity (Matuankotta, 2011).
3. Right to non-discrimination: Adopted children have the right to be treated equally with biological children without any discrimination.
4. Right to protection from violence: Adopted children have the right to protection from all forms of physical, sexual, and psychological violence (Sudiono, 2023).
5. Right to participation: Adopted children have the right to participate in decisions that affect them.

Meanwhile, efforts to strengthen protection are as follows:

1. International Cooperation: Strengthening international cooperation to combat child trafficking and ensure that child adoption is conducted in accordance with international standards.
2. Capacity Building: Enhancing the capacity of institutions involved in the adoption process, including courts, child welfare authorities, and immigration authorities.
3. Public Awareness and Education: Raising public awareness of the importance of protecting adopted children and eliminating the stigma associated with adoption.
4. Research and Development: Conducting research to better understand the needs of foster children and developing more effective programs to support them.

International private law governing the legal protection of adopted children addresses legal relationships involving foreign elements, including international adoptions. These cases involve various legal, ethical, and social aspects. In this context, Supreme Court of the Republic of Indonesia Decision Number 1353/K/PDT/2009 serves as an important reference. This decision highlights the challenges and the need for adequate legal protection for adopted children and how the principles of international private law can be applied in the context of international adoptions.

The case under consideration in this judgment pertains to the adoption of a foreign child by an Indonesian citizen. This raises questions regarding the validity of the documents and the recruitment procedures involved. The Supreme Court must then assess whether the adoption meets the requirements of both Indonesian and international law.

One of the most fundamental aspects of this decision is identifying the best interests of the child principle. The Supreme Court noted that every decision concerning a child, including adoption, must consider the best interests of the child. This includes the child's mental stability, safety, and rights after adoption. This principle is aligned with the UN Convention on the Rights of the Child, which is also mentioned in international law.

The decision also underscores the importance of lawful adoption procedures. The Supreme Court emphasized that all documentation and legal requirements must be met to ensure the validity of the adoption. This includes verification by the authorities of the child's country of origin. Clarity and adherence to legal procedures are crucial factors in protecting the child's rights and preventing illegal adoption practices.

In the context of international adoption, inter-country cooperation is crucial. The Supreme Court emphasized the need to involve the child's country of origin in the adoption process to ensure that all steps taken are lawful and compliant with applicable laws. This includes exchanging information regarding the child's background and parental consent to avoid potential legal disputes in the future.

International adoptions often encounter significant legal challenges. Each country has a different legal system, and what is legal in one country may not be legal in another. With this ruling, the Supreme Court will face the challenge of ensuring that the adoption meets all legal requirements, both in Indonesia and in the child's country of origin. This requires a deep understanding of the various legal systems involved.

METHODOLOGY

This research employs a normative legal research method with an emphasis on the analysis of active legal norms pertaining to cross-border child protection from an international private law perspective. Normative legal research is a type of research that focuses on the analysis of documented legal norms. In this context, legal norms refer to the rules or principles contained in legal regulations such as statutes, court decisions, and government regulations.

And the following are the procedures or steps in using the normative legal research method:

1. Problem selection: Decide on the legal issue to be researched.
2. Literature review: Conduct a review of legal literature related to the research problem.
3. Data collection: Collect the necessary secondary data, such as legal regulations and court decisions.
4. Data analysis: Analyze the collected data using qualitative analysis techniques.
5. Drawing conclusions: Draw conclusions based on the data analysis.
6. Report writing: Prepare a research report containing the research findings, analysis, and conclusions.

And the objectives of normative legal research are as follows:

1. Analysis: To assess the validity, clarity, and consistency of a norm.
2. Interpretation: To explain the literal and contextual meaning of a legal rule.
3. Evaluation: To evaluate the effectiveness and relevance of a legal norm in practice.
4. Development: To provide recommendations for the improvement or further development of legal standards deemed ineffective or inappropriate.

Therefore, it can be concluded that this research is descriptive-analytic, focusing on the examination of national and international laws and regulations governing the legal protection of inter-country adoptees. Data collection is conducted through a literature review of various primary legal sources, including statutes, government regulations, international treaties, and court decisions. Additionally, this research also refers to various secondary legal sources, including books, journal articles, and previous research findings. Data analysis is conducted qualitatively through the identification, classification, and interpretation of legal norms governing the legal protection of inter-country adoptees. The findings are then synthesized to draw conclusions regarding the legal protection of inter-country adoptees from an international private law perspective.

CONCLUSION

Overall, the legal protection of intercountry adoptions is a complex issue that requires serious consideration in international civil law. In the absence of common international standards, the protection of children's rights in intercountry adoptions relies heavily on the domestic laws of each country. This can lead to a variety of problems, including different adoption requirements, procedures and legal approvals. As a result, the welfare of the child is often overlooked, increasing the likelihood of unethical practices such as child trafficking.

Therefore, it is important for countries to work together to develop universal child protection principles and effective cooperation mechanisms to ensure that all internationally adopted children receive appropriate legal protection. Protecting adopted children is a shared responsibility both within and between countries. Understanding the applicable laws and procedures and committing to protecting the welfare of children ensures that every child has the opportunity to grow and develop in a safe and loving environment.

BIBLIOGRAPY

- [1] Saksono, I. G., & Widyastuti, T. V. (2023). Kompleksitas Penetapan Hukum Anak Angkat Di Pengadilan. *Pancasakti Law Journal (PLJ)*, 1(2), 287-294.
- [2] Padmavati, A., Nugroho, Y. A., & Rokhim, M. N. (2023). Tinjauan Yuridis Pengangkatan Anak Pekerja Migran Indonesia Di Sabah, Malaysia Dalam Perspektif Hukum Perdata Internasional. *Hakim: Jurnal Ilmu Hukum dan Sosial*, 1(4), 288-301.
- [3] Sudiono, V. (2023). KAJIAN PERLINDUNGAN ANAK DALAM PERSPEKTIF HUKUM PERDATA. *LEX PRIVATUM*, 11(5).
- [4] Iffan, A. (2023). KONSEPSI HUKUM PERDATA INTERNASIONAL DALAM HAK PENGANGKATAN ANAK DI INDONESIA. *El-Sirry: Jurnal Hukum Islam dan Sosial*, 1(2).
- [5] Andiani, F., & Jaelani, E. (2024). ANALISIS KONFLIK HUKUM ADOPSI ANAK ANTAR NEGARA. *Causa: Jurnal Hukum dan Kewarganegaraan*, 2(9), 51-60.
- [6] Matuankotta, J. K. (2011). Perlindungan Hukum Terhadap Anak Angkat Dalam Memperoleh Kejelasan Status Hukum Melalui Pencatatan Pengangkatan Anak (Suatu Tinjauan Dari Perspektif Hak Asasi Manusia). *Sasi*, 17(3), 70-79.
- [7] Himmah, D. R. (2022). Konvensi Putusan Pengadilan Asing Den Haag 2019: Perspektif Hukum Perdata Internasional Indonesia. *Mimbar Hukum*, 34(2), 618-648.
- [8] Paradikma, I. R., & Jaelani, E. (2024). Pengaturan Adopsi Anak Antar Negara Melalui Perspektif Hukum Perdata Internasional. *Causa: Jurnal Hukum dan Kewarganegaraan*, 2(9), 20-30.
- [9] Fahlevi, R. (2015). Aspek hukum perlindungan anak dalam perspektif hukum nasional. *Lex Jurnalica*, 12(3), 147255.
- [10] Aminah, A. (2018). PERBANDINGAN PENGANGKATAN ANAK DALAM SISTIM HUKUM PERDATA YANG BERLAKU DI INDONESIA. *Diponegoro Private Law Review*, 3(1).
- [11] Ndoen, M. R., & Ingratubun, F. M. (2021). TINJAUAN YURIDIS TERHADAP ADOPSI ANAK WARGA NEGARA INDONESIA OLEH WARGA NEGARA ASING. *Paulus Law Journal*, 3(1), 39-49.
- [12] Wahyuni, S. (2014). Hukum Keluarga Islam Dalam Masyarakat Muslim Diaspora Di Barat (Perspektif Hukum Perdata Internasional). *Al Mazahib: Jurnal Perbandingan Hukum*, 2(2), 325-348.
- [13] Ramadhan, M. A. Q. N., & Jaelani, E. (2024). Perlindungan Anak di Indonesia: Analisis Pelaksanaan Konvensi Adopsi 1993 dan Proses Hukum Adopsi. *Causa: Jurnal Hukum dan Kewarganegaraan*, 2(8), 30-43.
- [14] Chusniatun, C. (2018). Sistem Perlindungan Hukum Bagi Anak Di Lembaga Pemasyarakatan Dalam Perspektif Konvensi Internasional Hak-Hak Anak. *Suhuf*, 30(1), 103-132.
- [15] Sugeng, S. P., & SH, M. (2021). Memahami Hukum Perdata International Di Indonesia. *Prenada Media*.
- [16] Winarwati, I. (2020). BUKU AJAR: HUKUM INTERNASIONAL. *SCOPINDO MEDIA PUSTAKA*.