

# THE AUTHORITY AND THE POSITION OF THE CIVIL REGISTRATION OFFICE ON THE REQUEST FOR ADOPTION RECORDING OF CHILDREN

( A Case Study : Decision No.379 / Pdt.P / 2020 / PA.Tgrs)

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## ABSTRACT

Adoption of children has become part of the habits of the Muslim community in Indonesia and It has penetrated into practice through religious courts. Court rulings provide legal certainty for adopted children and for the child's parents, furthermore, it is necessary to record them at the civil registry office. This research was conducted to understand the authority of the Civil Registry Office for the determination of adoption of children based on the ruling of the religious court and the legal position of the Civil Registry Office regarding the rejection of the adoption of a child based on the decision of the religious court. The research applies empirical normative research methods, using literature to analyze the Tigaraksa Religious Court Decision No.379 / Pdt.P / 2020 / PA.Tgrs which granted the Petitioners' petition to adopt a child plus data from the Tangsel Disdukcapil and strengthened by interviews with applicant for adoption of children. The results showed that the TangSel Disdukcapil had the authority to register child adoptions and make marginal notes on the birth certificate register, but according to the domicile principle in Law No.24 of 2013, South Jakarta Disdukcapil had to have the applicant's population database and refusal of adoption by the Registry Office Civil because the Population Administration Law adheres to the principle of domicile according to the applicant's e-KTP

**Keywords: Child, Adoption. Registration, Civil Officer.**

## ABSTRAK

Adopsi anak telah menjadi bagian dari kebiasaan masyarakat muslim di Indonesia dan telah merambah dalam praktik melalui lembaga peradilan agama. Penetapan pengadilan memberi kepastian hukum bagi anak angkat maupun bagi orang tua anak selanjutnya perlu dilakukan pencatatan pada dinas catatan sipil. Penelitian ini dilakukan untuk memahami kewenangan Dinas Catatan Sipil atas penetapan adopsi anak yang berdasarkan putusan pengadilan agama dan kedudukan hukum Dinas Catatan Sipil terkait penolakan penetapan adopsi anak berdasarkan putusan pengadilan agama. Penelitian menerapkan metode penelitian normatif empiris, menggunakan bahan-bahan kepustakaan untuk menganalisa Penetapan Pengadilan Agama Tigaraksa No.379/Pdt.P/2020/PA.Tgrs yang mengabulkan permohonan dari Para Pemohon untuk mengadopsi anak ditambah data dari Disdukcapil Tangsel dan diperkuat dengan wawancara kepada pemohon adopsi anak. Hasil penelitian menunjukkan Disdukcapil Tangsel memiliki kewenangan untuk melakukan pencatatan adopsi anak dan membuat catatan pinggir pada register akta kelahiran namun sesuai asas domisili dalam Undang-Undang No.24 Tahun 2013 harus dilakukan Disdukcapil Jakarta Selatan yang memiliki database kependudukan Pemohon dan penolakan penetapan adopsi oleh Dinas Catatan Sipil karena Undang-Undang Administrasi Kependudukan menganut asas domisili sesuai e-KTP pemohon. **Keywords : Anak, Adopsi. Pendaftaran, Catatan Sipil.**

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## **A. Introduction.**

The family has a very important role in human life as a social being, the family is a small community group consisting of a father, a mother and a child. However, the three wishes are not always fulfilled, because sometimes there is a family that does not have children so that adoption is held.<sup>54</sup> Adoption of children and adopted children is a substantial part of the law on child protection which is part of the law that lives and develops in the community according to different customs and motivations in each region. In Indonesia, the issue of adoption has not been specifically regulated in a separate law.<sup>55</sup>

In fact, adoption has become part of the customs of the Muslim community in Indonesia and has penetrated into practice through the religious judiciary, so before the formation of a specifically regulating law, the government issued Presidential Instruction No. 1 of 1991 concerning the dissemination of the Compilation of Islamic Law. In article 171 letter h, it is definitively stated that "Adopted children are children who, in terms of maintenance for their daily lives, education costs and so on, shift their responsibility from their original parents to their adoptive parents based on a court decision."<sup>56</sup>

The definition of adopted child in the Islamic Law Compilation, when compared with the definition of adopted child in Law no. 23 of 2002 concerning Child Protection, has similar substance. Article 1 point 9 states that "Adopted children are children whose rights are transferred from the sphere of authority of the family of the parents, legal guardians, or other people who are responsible for the care, education and raising of the child, into the family environment of their adoptive parents based on a decision. or court order."<sup>57</sup>

It is important to underline that adoption must be carried out through a legal process with a court order product. If the law functions as a guardian of order and as social engineering, then

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<sup>54</sup> Arliman, L. *Reformasi Penegakan Hukum Kekerasan Seksual Terhadap Anak Sebagai Bentuk Perlindungan Anak Berkelanjutan*. Kanun Jurnal Ilmu Hukum, vol.19, No.2, 2017, hlm 305-326

<sup>55</sup> Krisna, L. A. *Hukum Perlindungan Anak : Panduan Memahami Anak yang Berkonflik dengan Hukum*, Yogyakarta, Deepublish, 2018

<sup>56</sup> Sinaga, S. M., & Lubis, E. Z. *Perlindungan Hukum terhadap Anak Yang Melakukan Kejahatan dalam Persidangan Anak*. Jurnal Mercatoria, Vol 3 No.1, 2010, hlm. 52-57

<sup>57</sup> Fahlevi, R. *Aspek Hukum Perlindungan Anak Dalam Perspektif Hukum Nasional*. Lex Jurnalica, Vol 12, No. 3, 2015, hlm 147-255

the adoption of children that must be carried out through the court ruling is progress towards curbing the practice of adoption of children living in society, so that the incident has legal certainty for adopted children and for people. parents of children. The practice of adopting children through courts has developed both in the District Court and in the Religious Courts for those who are Muslim.

In Indonesia, there have been regulations regarding the poor and neglected children. The regulation regarding the poor and neglected children is contained in Article 34 paragraph (1) of the Amendment to the 1945 Constitution, namely: "The poor and neglected children are cared for by the state". The definition of being maintained by the state in the explanation of the 1945 Constitution is the same as the state's responsibility to protect and care for the poor and neglected children, as stated in paragraph (2) and paragraph (3), namely as follows: "The state develops a social security system for all the people and empowering the weak and incapable of society according to human dignity, and the state is responsible for the provision of proper health service facilities and public service facilities.

By adopting children, it is hoped that neglected children will get the fulfillment of the rights as contained in Article 52 paragraph (1) of Law Number 39 of 1999 concerning Human Rights, which states that every child has the right to protection by parents, family, and society. and country. <sup>58</sup>The decision to adopt a child is now the choice of parents' partners. The considerations vary, from the desire to raise children to reduce dropout rates, to health reasons, such as difficulty having children. The regulations on adoption of children in Indonesia are regulated in Government Regulation Number 54 of 2007 concerning the Implementation of Adoption of Children. According to Government Regulation Number 54 of 2007 article 7, adoption can be divided into two, namely adoption of children between Indonesian citizens and adoption of children between Indonesian citizens and foreign citizens.

The problem examined in this study is the Tigaraksa Religious Court Decision No.379 / Pdt.P / 2020 / PA.Tgrs which granted the request for adoption of children from ABS and ASP against a child named AGR aged 3.6 years who comes from ASP's cousin. The Tigaraksa Religious Court in its decision has granted the request for adoption of a child and then ordered

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<sup>58</sup> Fitriani, R. *Peranan Penyelenggara Perlindungan Anak Dalam Melindungi dan Memenuhi Hak-Hak Anak*, Jurnal Hukum Samudra Keadilan, Vol. 11, No.2, 2016, hlm 250-358

the Petitioners to register the adoption at the South Tangerang City Civil Registry Office. However, what happened was that the South Tangerang City Population and Civil Registry Office refused on the grounds that the applicant is domiciled in South Jakarta.

## **B. Focus of Problems**

Based on the description above, The formulation of the Problems :

1. How is the authority of the Population service office and Civil Registry Office for the determination of adoption of children based on decisions from religious courts?
2. How is the legal position of the Population and Civil Registry Office regarding the refusal to determine the adoption of a child based on a religious court decision?

## **C. Research Methodology.**

Researcher apply empirical normative research methods. This is because the writer uses library materials as data to analyze cases in this study. Researchers analyzed the Stipulation of the Tigaraksa Religious Court No.379 / Pdt.P / 2020 / PA.Tgrs which granted the Petitioners' petition to adopt a child. The first stage in this research is to conduct research at the Tigaraksa Religious Court by submitting a copy of the decision for research. The decisions that have been obtained are then analyzed. The final step is to conduct research with additional data to the Department of Population and Civil Registry of South Tangerang City. This research was also supplemented and strengthened by interviews with applicants for adoption of children.

## **D. Finding and Discussions.**

### **1. The authority of the Population and Civil Registry Office for the registration of adoptions of children based on decisions of religious courts**

Under public law, The authority is related to power. Power has the same meaning as authority because the power possessed by the Executive, Legislative and Judiciary is formal power. Power is an essential element of a country in the process of governance in addition to other elements, namely: a) law; b) authority c) justice; d) honesty; e) the policies; and f) virtue<sup>59</sup>.

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<sup>59</sup> Suwoto Mulyo Sudarmo, *Kekuasaan dan Tanggung Jawab Presiden Republik Indonesia, Suatu Penelitian Segi-Segi Teoritik dan Yuridis Pertanggungjawaban Kekuasaan*, Surabaya, Universitas Airlangga, 1990, hlm. 30.

In a broader context within the Indonesian state, a President has power in the administration of the government and the state. The President selects and determines his cabinet as an official who helps run the government and the state. However, it must be remembered that the existence of the President with his power originates from the existence of people rights.<sup>60</sup>

The government, through the Minister, has the authority to carry out national administration. Furthermore, the government together with the provincial government and district / city governments are responsible and authorized in population administration affairs carried out by the Implementing Agency. The Department of Population and Civil Registration is led by the Head of the Service and is accountable to the regent / mayor through the Regional Secretary. The main task of the Office of Population and Civil Registration is to carry out household affairs and assistance tasks in the field of population and civil registration. For this reason, the office carries out the function of formulating, implementing and evaluating policies in the field of population registration, civil registration and management of population administration information systems, and utilization of the results for public services and other sectors. As stipulated in the provisions of Law Number 23 Year 2006 concerning Population Administration Article 7 paragraph (1), Article 8 paragraph (1), Article 9 paragraph (1), Article 11 paragraph (1), and Article 47.

Population events are events that must be reported because they result in the issuance or change of Family Cards, Identity card (KTP) or other identity card. While the important events are events experienced by a person including birth, death, stillbirth, marriage, divorce, child recognition, child legalization, adoption, name change and change of citizenship status. All important events experienced by a person are events that must be reported because they have implications for changing identity data or residence certificates. For this reason, every population event and important event requires valid evidence for administration and recording in accordance with the provisions of law.

The current social conditions and population administration system have been regulated by a coordinated and mutually integrated population database system. One of them is by regulating the use of a National Identity Number to verify and validate data in the administrative field.

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<sup>60</sup> Dedi Ismatullah dan Beni Ahmad Saebani, *Hukum Tata Negara Refleksi Kehidupan Ketatanegaraan di Negara Republik Indonesia*, Bandung, Pustaka Setia, 2009, hlm. 53.

Identity Number (NIK) is a resident identity number that is unique, single and attached to a person who is registered as a resident of Indonesia.

The technical arrangements for the administration of population administration affairs are regulated in Government Regulation Number 40 of 2019 concerning Implementation of Law Number 23 of 2006 concerning Population Administration as Amended by Law Number 24 of 2013 concerning Population Administration and Regional Regulation of the City of South Tangerang Number 3 Years 2015 concerning Amendments to the Regional Regulation of the City of South Tangerang Number 9 of 2011 concerning the Implementation of Population Administration. In this regulation what is meant by:

- a. Significant events are events experienced by a person including birth, death, stillbirth, marriage, divorce, child recognition, child legalization, adoption, name change and change of citizenship status.
- b. Adoption is a legal act to transfer the child's rights from the family environment of the parent, legal guardian, or other person responsible for the care, education and raising of the child to the family of the adoptive parent based on a court decision or decision.
- c. Data base is a collection of various types of demographic data that are stored in a systematic, structured and interconnected manner using software, hardware and data communication networks.
- d. Population data is structured individual data and or aggregate data resulting from population registration and civil registration activities.
- e. An excerpt from the deed is the main note that is included from the civil registration deed given to the person concerned as a means of proving civil registration.
- f. Marginal notes are notes that are published in deeds or excerpts of deeds due to changes, corrections or additions to the contents of the deed. "

Article 34 Regional Regulation of South Tangerang City Number 3 of 2015 "Every important event experienced by the population, is recorded based on the principle of domicile."

Article 65 paragraph (4)

"Population data as referred to in paragraph (1) to paragraph (3) is used for all population data purposes for the following purposes:

- a). Public service;

- b). Development Planning;
- c). Budget allocation;
- d). Democracy development; and
- e). Law enforcement and crime prevention. "

Based on this, the Population and Civil Registry Service includes executive power under the Ministry of Home Affairs and culminates in the President. Judging from the essential elements of a country in the process of governance, there are elements inherent in the South Tangerang City Population and Civil Registry Service (Disdukcapil Tangsel) which are the objects of this research, namely elements of law, authority, justice, and honesty.

The legal elements in which the Tangsel Disdukcapil have the authority:

- a) obtain information and data on important events reported by residents;
- b) obtain data regarding important events experienced by residents on the basis of court decisions or rulings;
- c) Record important events of adoption by making marginal notes on the birth certificate register and quotation of birth certificates.

There are special regulations that guide the Tangsel Disdukcapil in carrying out its duties, namely Law No.24 of 2013, Government Regulation Number 25 of 2008 concerning Requirements and Procedures for Population Registration and Civil Registration, Government Regulation Number 40 of 2019 and Regional Regulations of South Tangerang City Number 3 of 2015 to run population administration public services, especially registration of adoption of children.

The object of this research is the Determination of the Tigaraksa Religious Court Case Number 379 / Pdt.P / 2020 / PA.Tgrs. September 1, 2020. The determination of the Tigaraksa Religious Court in the ruling No. 4 states "Ordered the applicants to register the adoption of the child to the Department of Population and Civil Registry, Kota Tangerang Selatan". Regarding this, the applicant (adoptive parents) immediately went to the Tangsel Disdukcapil to record their adoption. However, when he arrived at the Tangsel Disdukcapil, the registration officer for the registration of the adoption of the child was rejected on the grounds that it should have been registered with the South Jakarta Disdukcapil in accordance with the applicant's KTP and KK.<sup>61</sup>

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<sup>61</sup> Wawancara dengan ABS (orang tua angkat), tanggal 15 November 2020.

The Petitioner said that his arrival was in accordance with the order of the Tigaraksa Religious Court Decree Number 379 / Pdt.P / 2020 / PA.Tgrs. September 1, 2020. The Tangsel Disdukcapil officer continued to refuse and then stated that he would provide a cover letter to the South Jakarta Disdukcapil so that registration was carried out there.<sup>62</sup>

As stipulated in Government Regulation Number 25 of 2008 concerning Requirements and Procedures for Population Registration and Civil Registration Article 87 paragraph (3) "The recording of adoption as referred to in paragraph (1) shall be carried out by means of:

- a. the applicant completes and submits the adoption report form by attaching the requirements as referred to in paragraph (2) to the Implementing Agency or Implementing Agency UPTD;
- b. Implementing Agency or Implementing Agency UPTD records and records to the population database;
- c. The Civil Registration Officer at the Implementing Agency or UPTD of the Implementing Agency provides a marginal note on the Birth Certificate Register and the Child Birth Certificate Quote. "

What is meant by margin note is a note regarding a change in status or identity of an important event in the form of a note placed on the edge of the deed or part of the deed which is possible (on the page / front or back of the deed) by the civil registration official. Making marginal notes on birth certificates is intended for residents who record important events of adoption.

Stipulation of the Religious Court No.379 / Pdt.P / 2020 / PA.Tgrs in the order of decision no. 4 (four) adheres to the principle of the place where the incident occurred, namely that the implementation of civil registration is based on the place and time of the important event which was experienced by him and / or his family. As it is known above, the place and time of adoption of children is in the city of South Tangerang, so the registration of child adoptions is ordered to the Tangsel Disdukcapil. The principle of the place where the events took place which is adhered to by the Religious Courts contradicts the principle of domicile adhered to by Law Number 24 of 2013. The principle of domicile in question is the right of citizens to service

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<sup>62</sup> *Ibid.*



population documents provided in accordance with the population data base on the Identity Number on the Identity Card. registered. This has been regulated in Government Regulation Number 25 of 2008 concerning Requirements and Procedures for Population Registration and Civil Registration, Article 87.

The applicant's attitude if connected with the Tigaraksa Religious Court Decision Case Number 379 / Pdt.P / 2020 / PA.Tgrs. September 1, 2020 indicates that the applicant voluntarily implements the contents of the decision which has permanent legal force. This is in accordance with the theory of execution. Determination of the Tigaraksa Religious Court Case Number 379 / Pdt.P / 2020 / PA.Tgrs. September 01, 2020 is the final decision that has fulfilled the formalities as a verdict. The decision can also be implemented / executed. As for the execution in the civil case of M. Yahya H., execution is a legal action taken by the court against the party that loses in a case, it is a rule of procedure for the continuation of the continuous examination process of the entire civil procedural law process..<sup>63</sup>

Determination of the Tigaraksa Religious Court Case Number 379 / Pdt.P / 2020 / PA.Tgrs. September 1, 2020 was a condemnatory decision, namely punishing the applicant to carry out a court order. In addition, the court's decision came from a voluntary case where there was no dispute and the applicant had implemented the decision voluntarily.

Execution regulated in article 225 HIR, where a person is punished for carrying out an act. Article 225 HIR<sup>64</sup> arranges for some things to try special cases. If a person is sentenced to do a certain job but he does not want to do it, the judge cannot force the convicted person to do that work, but the judge can judge the defendant's actions in the amount of money, then the defendant is punished to pay an amount of money to replace the work he has to do based on the decision. the former judge. To assess the amount of this replacement is the authority of the Head of the District Court concerned.

Thus, it can be considered that the judge's original decision no longer applies, or in other words the original decision was withdrawn, and the Head of the District Court replaces the

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<sup>63</sup> M. Yahya Harahap, *Ruang Lingkup Permasalahan Eksekusi Bidang Perdata*, cet.3, Jakarta, PT. Gramedia, 1991, hlm. 1

<sup>64</sup> R. Soesilo, *RIB/HIR dengan Penjelasan*, Bogor, Politeia, 1985.

decision with another decision. This change in decision was made by the Chairman of the District Court who presided over the execution, so it was not in an open court.

Based on the description above, it can be seen that the Population and Civil Registry Office has the authority to record child adoptions based on a religious court decision, but the registration must be in accordance with the identity of the applicant in the form of an Identity Card (KTP) and a Family Card (KK), this is referring to Law No.24 of 2013 concerning Amendments to Law Number 23 of 2006 concerning Population Administration which adheres to the principle of domicile. Article 102 (b): "Must be reported by residents to the Implementing Agency at the place where the incident occurred" must be interpreted as "Must be reported by residents of the Implementing Agency where the resident is domiciled." Laws and derivative regulations adhere to the principle of domicile, not the principle at which the incident occurs.

Article 102 of Law no. 24 of 2013 above regulates that all important events experienced by a person including birth, death, stillbirth, marriage, divorce, child recognition, child validation, adoption, name change and changes to other important events must be reported to Disdukcapil in areas where the population is domiciled. not where significant events occur.

According to Law No. 24 of 2013 concerning Amendments to Law Number 23 of 2006 concerning Population Administration, citizens will only get public services in the form of population documents services according to their domicile in the registered population database, namely data according to the Population Identification Number (KTP). If a person enters the population database in an area, the right to public services in the form of population administration documents will be attached to that area.

1. The legal position of the Population and Civil Registry Office regarding the refusal to determine the adoption of a child based on a religious court decision

Before describing the position of the Population and Civil Registry Office regarding the rejection of child adoption based on a religious court decision, it is necessary to first describe the authority of the religious court in adjudicating cases of application for adoption of children (according to the research object for Muslim citizens)

One of the goals of a marriage is to get offspring who will become future generations in the future, however, not all married couples have children even though this is an instinctive human need. This situation causes husband and wife to make various efforts to have children. One of

the efforts that is often made is by adopting a child or what is more commonly called adoption which is an alternative to achieve happiness in the household for families who do not have children, whether they have no sons or daughters in the family.

The goals and / or motivations of adoption agencies are varied, but the core motive for adoption or adoption in Indonesia is:<sup>65</sup>

- a) Do not have children
- b) Pity for the child because the child's parents are unable to provide for him or because the child does not have parents
- c) With the intention of the adopted child getting a proper education
- d) The element of trust
- e) To continue the offspring and get regeneration for those who do not have biological children

Adoption of children is not something new in Indonesia because it is often done by Indonesians. Adoption of children is part of the legal system that lives and develops in society. The diversity of laws results in different views on discussing adoption. There are three legal systems that must be considered regarding the condition of the adoption institution, namely those that are sourced from the provisions contained in Staatsblad 1917 Number 129, Customary Law, and Islamic Law.

The provisions for adoption in Staatsblad 1917 Number 129 are regulated in Article 5 to Article 15 and only apply to groups of the Chinese community and can only adopt boys. The provisions in the Staatsblad do not apply to indigenous Indonesians. The indigenous Indonesian people use customary law which includes the provisions of Islamic law.

Customary law has a variety of laws that are different from one region to another. This causes differences in the status of adopted children in each region. Islamic law does not allow the adoption of a child to be made a biological child, this means that the position of adopted children is different from that of biological children.

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<sup>65</sup> Muderis Zaini, *Adopsi Suatu Tinjauan dari Tiga Sistem Hukum*, Jakarta: Sinar Grafika, Jakarta, 1992, hlm. 15.

Adoption of children provides legal status and responsibility for adoptive parents and adopted children, therefore the transfer of responsibility from biological parents to adoptive parents requires legal certainty. The important thing that must be underlined is that adoption must be carried out through a legal process with a court order product so that the adoption event has legal certainty for both the adopted child and for the adoptive parents. The practice of adopting children through these courts has developed both in the District Court and in the Religious Courts for those who are Muslim.<sup>66</sup>

Article 50 of Law No. 8 of 2004 concerning Amendments to Law No. 2 of 1986 concerning General Courts states that the District Court has the duty and authority to examine, decide and resolve criminal cases and civil cases at the first level. This definition explains that basically, all criminal and civil cases fall under the authority of the General Court. Initially, the only court that had the authority to issue adoption decisions was the District Court. Then RI Law No. 3 of 2006 Amendments to Law No. 7 of 1989 concerning the Religious Courts in article 49 have given the authority to the Religious Courts to determine the adoption of children based on Islamic Law.

The promulgation of Law No. 3 of 2006 means that the authority to adjudicate applications for adoption of children for Muslim applicants has shifted from the District Court to the Religious Court. In fact, in practice there are still Muslims applying for adoption at the District Court, which in fact has become the absolute authority of the Religious Courts after the enactment of Law Number 3 of 2006 Amendments to Law No. 7 of 1989 concerning the Religious Courts. This needs to be further reviewed because it raises problems regarding the authority of the District Court against requests for adoption of children submitted by Muslim applicants. The authority of the District Courts and Religious Courts to issue a determination of adoption of children for Muslims may give rise to options for the applicant to apply for adoption or there may be a dispute over authority.<sup>67</sup>

Article 49 of Law No. 3 of 2006 on Amendments to Law No. 7 of 1989 on Religious Justice states: "The Religious Court has the duty and authority to inspect, decide, and resolve matters at the first level among Muslims in the field of marriage, heirs, wills, grants,

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<sup>66</sup> Ahmad Kamil dan H.M. Fauzan, *Hukum Perlindungan dan Pengangkatan Anak di Indonesia*, Jakarta, Rajawali Pers, 2008, hlm. xii

<sup>67</sup> Musthofa Sy., *Pengangkatan Anak Kewenangan Pengadilan Agama*, Jakarta, Kencana Prenada Media Group, 2008, hlm. 4

endowments, zakat, infaq, shadaqah, sharia economy. The matter of child adoption application by Muslims based on Islamic Law has been regulated in Law No. 3 of 2006 Amendments to Law No. 7 of 1989 on Religious Justice, so that it should be the absolute authority of the Religious Court.<sup>68</sup>

District Courts and Religious Courts have the authority to legalize adoption. The Religious Courts only have the authority to take care of adoption of children among people who are Muslim, while adoption for people who are not Muslim, including inter-state adoption, is the authority of the District Court. The author sees that in practice there are still people who are Muslims who want to adopt children who still submit applications at the District Court. This raises the duality of the judiciary that adjudicates cases for adoption of children, namely between the Religious Courts and the District Courts. The duality of justice in the child's petition should not have occurred

From a litigation point of view, the institution that authorizes adoption is included in the jurisdiction of volunteers. In this jurisdiction the court is completely prohibited from accepting it as a case if there are no statutory provisions that explicitly allow it. There are no clear rules allowing the Religious Courts to handle adoption before the enactment of Law Number 3 of 2006. Elucidation of Law Number 7 of 1989 which explicitly states that the authority of the Religious Courts in the field of marriage is not found in a single item that mentions adoption institutions. However, in the Islamic Law Compilation, the term adopted child is explicitly stated. The climax was with the promulgation of Law Number 3 of 2006 concerning amendments to Law Number 7 of 1989 concerning the Religious Courts. Together with a number of other additional powers imposed by the Religious Courts, the institution for legalizing the adoption of the child is explicitly mentioned in the law. In the explanation of the provisions of Article 49 letter a point 20 which previously only read: Determination of the origin of a child now reads: "determination of the origin of the child and the determination of adoption based on Islamic law". The Religious Courts have the authority to legalize the adoption of children between people who are Muslim as mentioned in Law Number 3 of 2006

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<sup>68</sup> *Ibid*, hlm. 59

concerning Amendments to Law Number 7 of 1989 concerning the Religious Courts.

The absolute authority of the Religious Courts after being amended as stated in article 49 of Law no. 3 of 2006 is as follows: "The Religious Court has the duty and authority to examine, decide and resolve cases at the first level between Muslims in the fields of: marriage, inheritance, will and grants based on Islamic law, waqf, zakat, infaq, shadaqah. , and Islamic economics.

A Religious Court is a court that is given the authority to resolve civil law problems for Muslims. Adoption of children is still a part of Islamic marriage law materially regulated in article 171 letter h jo article 209 KHI. Adoption in Islamic law has different legal consequences from adoption according to customary law depending on the respective region. Adoption of children for people who are Muslims who apply for adoption at the District Court has the consequence that the adopted child can inherit, this is not appropriate because as a person who is Muslim, he should carry out something based on the provisions of Islamic law including in the case of adoption. The government should be more responsive in matters of adoption so that there is no confusion for those Muslims who will apply for adoption because at this time there is still dualism in the judiciary in matters of adoption of children, namely the Religious Courts are given the authority regarding adoption of children after the enactment of Law No. 3 of 2006 in the explanation of Article 49 letter a number 20 which states that the determination of the origin of a child and the stipulation of adoption based on Islamic law, because Muslims should comply with the teachings and rules of Islamic law.

The Religious Courts have principles that must be upheld in relation to their authority to adjudicate adoption as in the District Court. The Religious Courts are inseparable from Islamic norms, so these principles must be derived from Islamic provisions relating to adoption, namely:

1) Adoption must not make adopted children a biological child where the child has the same rights as a biological child.

2) Adoption of children is aimed at the best interests of the child in the context of realizing child welfare and child protection.

3) Adoption according to Islamic law is only a transfer of responsibility from the biological parents to the adoptive parents in terms of maintenance for daily living expenses, education costs, and so on.

4) Appointment is carried out on the basis of helping to help, especially neglected, poor and orphaned children. Islam recommends paying attention to abandoned, poor and orphaned children. In Islamic teachings, neglected, poor and orphaned children all receive special attention more than normal children who still have both parents. Islam commands the Muslims to always pay attention to their fate, do good to them, take care of them and nurture them until adulthood. Islam also assigns a very special value to those who truly observe this commandment.

5) Prospective adoptive parents must share the same religion as the adopted child candidate.

6) Adoption of a child must not break the lineage with his biological parents or cut the blood relationship between the adopted child and his biological parents.

7) Adopted children and adoptive parents do not inherit each other, they only have a legacy legacy of their adoptive parents, because the position of adopted children cannot be biological children, adopted children whose parents are not clear are considered like their own siblings.

8) Whereas between adopted children and their adoptive parents are not muhrim, so they still have to maintain their genitals.

The principles of adoption in the Religious Courts as stated earlier have several differences from the principles of adoption in the District Courts that have been previously described. The position of adopted children cannot be biological children so that they do not inherit from the parents but obtain a mandatory will from the inheritance of the adoptive parents. Adoption of a child submitted by an applicant who is Muslim with the intention of caring for the child, then the application can be made at the Religious Court, because the adoption of a child carried out through the Religious Court uses the provisions of Islamic Law where adopted children cannot be adopted as biological children, but are only allowed for maintenance. . The measure of adoption in Islamic provisions is the treatment in terms of the child in terms of love, provision of income, education and services for all his needs, not being treated as his own biological child.

Legal certainty is obtained after a ruling from both the District Court and the Religious Court. Determination of adoption in the Religious Court on the determination of the origin of a child and the determination of adoption based on Islamic law are the reasons for the author to think so.

Adoption based on Islamic law is the transfer of responsibility for caring for the child from the original parent to the adoptive parent in the provision of livelihoods, education and services for all needs, thus adopting a child according to Islamic law does not cause a break in the legal relationship and or the lineage relationship between the adopted child and the parents origin and not to continue the lineage so that if the adopted child is a woman then the legal guardian is the biological father.

From the description above, the ratification of adoption of children for Muslims becomes the absolute authority of the Religious Courts after the promulgation of Law Number 3 of 2006 concerning Amendments to Law Number 7 of 1989 concerning the Religious Courts. There are still Muslim applicants who apply for adoption at the District Court, indicating that the concept of the regulation itself has not been thoroughly socialized.

After knowing about the authority of the religious court to adjudicate cases of adoption of a child with the religion of Islam, then it will be analyzed regarding the legal position of the Office of Population and Civil Registry regarding the rejection of the decision to adopt a child based on a religious court decision.

To analyze the legal position of the Population and Civil Registry Office, the researcher obtained data that the Population and Civil Registration Service, hereinafter referred to as the Service, is the Regional Apparatus in charge of Population Administration and Civil Registration affairs.<sup>69</sup> The Civil Registration Service is tasked with providing administrative services for births, marriages and divorces as well as changes in the status of children, citizenship and death.<sup>70</sup> Furthermore, regarding services for changing the status of children, it is the duty of the Section Head for Changing the Status of Children, Citizenship and Death.<sup>71</sup>

After analyzing there are three Population and Civil Registration Offices in this study. First, the Tangsel Disdukcapil which was given an order by the Religious Court Decision to record adoptions based on a court order at the applicant's residence in case Number 379 / Pdt.P / 2020 / PA.Tgrs. Second, the South Jakarta Disdukcapil which received reports of important events of adoption to further make marginal notes on the birth certificate registers and quotations of the birth certificate of the child AGR No. 3401-LU-17012017-0012 is stated in

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<sup>69</sup> Pasal 3 ayat (1) Peraturan Walikota Tangerang Selatan Nomor 57 Tahun 2016 Tentang Kedudukan, Susunan Organisasi, Tugas, Fungsi, Dan Tata Kerja Dinas Kependudukan Dan Pencatatan Sipil

<sup>70</sup> *Ibid*, Pasal 25

<sup>71</sup> *Ibid*, Pasal 29



the register of adoption number: 3174-PGKI-05112020-0001. Third, Disdukcapil of Kulon Progo Regency which issues birth certificate quotations to further archive the marginal notes of adoption register Number: 3174-PGKI-05112020-0001 in the Birth Certificate Register book No. 3401-LU-17012017-0012.<sup>72</sup>

Stipulation of the Religious Court No.379 / Pdt.P / 2020 / PA.Tgrs in the order of decision no. 4 (four) adheres to the principle of the place where the incident occurred, namely that the implementation of civil registration is based on the place and time of the important event which was experienced by him and / or his family. As it is known above, the place and time of adoption of children is in the city of South Tangerang, so the registration of child adoptions is ordered to the Tangsel Disdukcapil.

The principle of the place where the incident took place states that an application for registration determination can be submitted to a court whose jurisdiction is the residence of the applicant or the place where the incident of adoption occurred. To prevent the possibility of further errors, the local civil registry office sends and notifies the court order regarding the registration to the Population and Civil Registry Office of the child's birthplace.

The principle of the place where the events took place which is adhered to by the Religious Courts contradicts the principle of domicile adopted by Law Number 24 of 2013. The principle of domicile in Law Number 24 of 2013 does not emphasize the place of ordinary daily residence (domicile, residence principle). but has a slightly different principle than that.

The principle of domicile in Law Number 24 of 2013 must be linked to the obligation to have a Population Identification Number (NIK). NIK is the identity of the population and is the key to access verification and validation of a person's identity data to get public services in the field of population administration. Starting with recording biodata, then NIK is issued by the implementing agency through an Electronic Identity Card equipped with a chip for each resident as official identity. All population data will be stored systematically in the population database. So it can be stated that the NIK is directly related to all population documents.

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<sup>72</sup> Surat Suku Dinas Kependudukan dan Pencatatan Sipil Kota Administrasi Jakarta Selatan, Nomor : 312U/-1.755, Hal : Pemberitahuan Pencatatan Pengangkatan Anak, tanggal 19 November 2020.

Based on the explanation above, the authors conclude that the principle of domicile referred to by law is the right of citizens to service population documents provided in accordance with the population database on the registered Identity Number on the KTP-el registered, as a Single Identity Number, not based on their daily residence. So this is the basis for the Tangsel Disdukcapil Office to issue Letter Number: 472.11 / 2662 / KELAHIRAN.

After knowing the existence of normative contradictions that lead to dualism in terms of recording the adoption of children principles. Then then legal principles can be used in the event of a normative contradiction, namely:

1. General laws and specific laws, solutions can be sought on the basis of the *lex specialis derogat legi generali* principle;
2. The old laws and new laws can be resolved on the principle of *lex posterior derogat legi priori*;
3. The higher and lower laws, a solution can be sought based on the principle of *lex superior derogat legi inferiori*;
4. Laws and judges' decisions, solutions can be sought on the principle of *res judicata pro veritate habetur*;
5. Regulating laws and customs, solutions can be sought on the principle of *die normatieve kraft des factischen*;
6. Forcing laws and customs, solutions can be sought on the principle of *lex dura sed tamen scripta*.

In accordance with the focus of this research, the legal principle that will be used as the basic principle is the principle of *res judicata pro veritate habetur* which is used if there is a normative contradiction between the law and the judge's decision. According to Mertokusumo, the principle of *res judicata pro veritate habetur* means that what a judge decides must be considered correct. This provision is intended to guarantee legal certainty, it does not mean that the truth of the incident in question has been completely reached and completely resolved. In line with that, Utrecht argues that there is a tendency for judges to follow the previous judge's decision for several reasons, namely: (1) psychological reasons, the higher power of judges has power (*gezag*) and must be obeyed; (2) practical reasons, namely that the judgment of an inferior judge can be overturned by a judge at a higher court; (3) reasons for the agreement of opinions regarding the fairness and accuracy of the previous judge's decision.

The principle of law *res judicata pro veritate habetur* has two functions both in law and in legal science. From the legal aspect, it has a normative effect and binds the parties as well as legalizing. Whereas in the aspect of legal science it only has the character of regulating and explaining, not including positive or normative law.<sup>73</sup>

If the value of justice applied in the verdict of the Tigaraksa Religious Court is contrary to the national interests of population administration, then legal principles regarding normative contradictions can be used. The principle of contradiction *res judicata pro veritate habetur* allows deviations from the law but needs to be limited only to laws that are complementary (*aanvulen*). High population mobility allows movement of domicile or residence. The contradiction in the principle of where the incident occurred and the principle of domicile can be resolved by a mechanism that strengthens the value of public justice which is contrary to written regulations through judicial practice (*jurisprudence*) by judges.

Judges' decisions that reflect legal certainty have a role in finding the right law. When making a decision, a judge does not only refer to the law, because the law may not clearly regulate. As Law Number 24 of 2013 concerning Amendments to Law Number 23 of 2006 concerning Population Administration which adheres to the principle of domicile which according to the author creates confusion of meaning because domicile should not be interpreted as an everyday residential address but the address of residence in accordance with KTP. A precise explanation of the principle of domicile in accordance with the new population administration law will be clearly found in Government Regulation Number 40 of 2019 concerning Implementation of Law Number 23 of 2006 Population Administration as amended by Law Number 24 of 2013 and Regional Regulation of the City of Tangerang Selatan Number 3 of 2015 concerning Amendments to Regional Regulation of South Tangerang City Number 9 of 20011 concerning Amendments to Changes in Administration.

From the results of this study, it can be concluded that recording the adoption of AGR children according to the domicile principle requires a longer procedure when compared to the

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<sup>73</sup> Joko Widodo, *Penerapan Asas Putusan Hakim Harus Dianggap Benar*, Lex Jurnalica, Vol. 13 No. 1, Edisi April 2016, Hlm 78-79 (diakses tanggal 21 Desember 2020)

principle where the incident occurred. Because it is not just a side note making on a child's birth certificate. The administrative process begins by transferring the child's population data from the family card of the biological parents to the family card of the adoptive parents. By submitting a letter of moving out of Kulon Progo Regency and a letter of transfer coming to the Administrative City of South Jakarta. Furthermore, the population data of adopted children are inputted into the Family Card of the adoptive parents. After it is listed on the Family Card of the new adoptive parents, an application for registration of adoption can be submitted. The letter to move out of Kulon Progo Regency itself was completed on September 15, 2020, while the final process of issuing a marginal note of the birth certificate of the Sub-Department of Population Office could only be issued on November 23, 2020. This occurred because the administrative process experienced technical problems that prevented the issuance of several documents. demography. The adoption registration process should not exceed 30 (thirty) days after receipt of a copy of the court order by the population, as regulated in Article 39 of Law Number 23 Year 2006 concerning Population Administration.

#### **E. Conclusions.**

Based on the research results above, the researcher can conclude as follows:

1. The South Tangerang Disdukcapil office has the authority to obtain data regarding important events experienced by residents on the basis of court rulings and to record children's adoptions by making marginal notes on birth certificate registers and birth certificate quotations, but according to the domicile principle, the implementation must be carried out by the Implementing Agency that has The population database of the applicant for recording the adoption, namely Disdukcapil of the City Administration of South Jakarta as stipulated in Law No.24 of 2013.
2. The legal position of the Population and Civil Registry Office regarding the rejection of the decision on adoption of a child based on the decision of the religious court because the Population Administration Law adheres to the principle of domicile according to the population database (KTP-el) of the applicant for registration of adoption, while the determination of the Tigaraksa Religious Court adheres to the principle where the incident occurred adoption of a child. Normative contradictions that occur between the Decision of the Religious Courts and the Population and Civil Registry Service Offices

can be resolved according to the principle of *res judicata pro veritate habetur* or commonly called as the principle that the judge's decision must be considered correct.

#### **F. Recommendations.**

Based on the conclusions above , the researcher provides the following suggestions:

1. The Department of civil service and Civil Registry record needs to be more active in coordination and sosialisasi the implementation of population administration affairs regarding the registration of child adoptions, so that citizens who want to take care of adoption of a Muslim child apply to the Religious Court and the registration is based on the Petitioner's Identity Card so that there is no rejection from the Service. Population and civil registration.
2. If there is a normative contradiction between Civil Service Department and Civil Registry record and the Court Decision, then Civil Service Department and Civil Registry record Service needs to consider the settlement according to the principle of *res judicata pro veritate habetur* or so-called principle that the judge's decision must be considered correct, so that the registration of adoption of a child is still based on orders from Court Order.

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