



Birth Certificate as Evidence Against A Child of Unknown Origin

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ABSTRACT

The origin of a person is something that must be clear and true, since it is a clue to the identity of a person that must be fulfilled according to the legislation. One of the proofs of guaranteeing nasab that is accommodated by the national legal system is a birth certificate. A birth certificate can serve as a means of recognition submitted by parents. . This study discusses the proof of birth certificates of children whose origin is unknown through birth certificates.

INTRODUCTION

Nowadays we see news about babies who are thrown in hospitals, in orphanages and even some are thrown in the bushes or trash. But on the other hand there are also many parents who do not have children on the other hand there are also babies who are found in a place of unknown origin or the whereabouts of their parents due to natural disasters. It is unfortunate the fate of the child especially if the child is found alive, then it is an obligation for us who find the child to be able to save him from the calamity that will befall him as the mandate contained in surah Al Ma'idah verse 32 namely: "and whoever maintains the life of a human being, it is as if he has maintained the life of all humans".

Among other legal protection that must be given to children of unknown origin who will be adopted by a family is about the clarity of the child's identity. The fate of a child of unknown origin must be based on a court ruling which is then written in the child's birth certificate. So clear nasab / identity because the clarity of one's identity is a human right.

The child of unknown origin in Islam is known as al-laqith / the son of temuan. Al-laqith in fiqh terminology is defined by a small child who is lost or discarded by his parents to avoid responsibility or to cover up an act of adultery, so that his parents are not known. The substance of al-laqith 2 can be

defined also with children who are unknown and cannot be traced to their parents, which is caused by adultery or lost and scattered outside the parents' consciousness, or due to the sale of children and due to natural disasters.

Al-laqith (son of findings) can be interpreted also with a small child who has not baliqh, who was found on the road or lost and unknown to his family. Picking it up is fardhu kifayah, the same law as picking up lost items. A child found in an Islamic State is declared a muslim

METHOD

The research method used in writing this law is a normative juridical approach. Normative juridical approach is a study that uses secondary sources obtained through library materials. This normative legal research usually includes: research on legal principles, research on legal Systematics, research on vertical and horizontal synchronization levels, Comparative Law and legal history. The method of this approach is carried out by studying the legal norms in legislation.

RESULTS AND DISCUSSION

A. Adoption of children of unknown origin based on the compilation of Islamic law and legislation.

The scholars differ in establishing the law of adopting a child whose parents are not known.

There are those who argue that the law is sunnah, because this attitude preserves a person's life but there are also those who argue that the law can be fardu kifayah (collective obligation) when it is feared that the child will perish if it is not picked up and saved. And there are also those who argue that if it is feared that the child will perish, then the law becomes fardu 'ain for the discoverer. In the books of fiqh there are several verses that are used as a basis by the fuqaha for this problem, among others, in surat Al - Ma'idah verse 32 it is stated that : "and whoever maintains the life of a human being, it is as if he has maintained the life of all human beings."

From surat Al-Ma'idah verse 32 as mentioned above shows that Islam teaches that Muslims care about fellow human beings. Even if the discarded child is believed to be a child of adultery, Islam still recommends that he save his life because the child of adultery is born fitrah / holy and needs to be saved especially if a child whose parents are not known because of natural disasters and disasters, of course it is very commendable to save them. In the KUHP in the third book on offenses in Chapter V, namely on offenses against people who need help article 531 explained that whoever when witnessing that there is a person who is facing death does not provide assistance that can be given to him without properly causing danger to himself or others, threatened, if then that person dies, with a maximum fine of four thousand five hundred dollars.

The implementation of child adoption registration has been regulated in Law No. 23 of 2006 concerning Population Administration Article 47 as follows :

(1) the registration of the adoption shall be carried out based on the determination of the court at the applicant's place of residence;

(2) The registration of the adoption as meant in Paragraph (1) shall be reported by the resident to the Implementing Agency issuing the birth certificate extract no later than 30 (thirty) days after receipt of the copy of the court determination by The Resident.

Meanwhile, based on Law Number 3 of 2006 concerning amendments to Law Number 7 of 1989 concerning religious courts, in Article 49 and explanation of adoption 37 letter a number 20, it is regulated that the Religious Court is in charge and has the authority to examine, decide and resolve cases at the first level between people who are Muslims in the field of marriage, which includes the determination of the origin of a child and the determination of adoption based on Islamic law. Taking into account the provisions of Law No. 23 of

2006 concerning Population Administration and Law No. 3 of 2006 concerning amendments to Law No. 7 of 1989 concerning religious courts, it is hereby explained that the registration of child adoption can be carried out for the adoption of children who have received the determination of the District Court or religious court for the population

There are 5 (five) requirements for a person who finds al-laqith to be a holder of hadhanah, as quoted by H.M.Tarsi Hawi from the book Raudhat Ath Talibin wa ' Umdat al Muftin²⁸, namely :

1. Mukallaf, can act legally
2. Free, not a child
3. Muslims for al-laqith found in muslim lands
4. Fair and trustworthy, not a wicked man
5. Not a person who lives in waste and waste or is declared to be under guardianship by the court (mahjur ' alaih)

In addition to the aforementioned conditions when finding it, for al-laqith (the found child) or multaqith (the one who found the child) there is an obligation that must be fulfilled, as expressed by Al-Mawardi and several other scholars cited by H.M.Tarsi Hawi namely: for a person who finds al-laqith it is required to present a witness on the finding of the child and a witness on the accompanying property, if there is property with him. If there is no witness present, he is not entitled to the hadhanah. This is, when the person finds it himself. In the other case, if the child is handed over to him by determination of the court, the presence of witnesses is only Sunnah. (Hasyiyah Al Bujairimi `ala Al Manhaj).

In the government regulation of the Republic of Indonesia number 54 of 2007 concerning the implementation of adoption, in Article 1 Number 1 and also in Article 171 of the compilation of Islamic law, it is explained that what is said to be an adopted child is a child whose rights are transferred from the family power environment of parents, legal guardians, or other persons responsible for the care, education and raising of the child into the family environment of the adoptive parents based on a decision or determination of the court. In Article 1, as well as in point 2, it is explained that the adoption of a child is a legal act that transfers a child from the sphere of power of parents, legal guardians, or other persons responsible for the care, education and upbringing of the child, into the sphere of the adoptive parent's family.

In Article 2 of this government regulation, the purpose of adoption is explained is for the best interest of the child in order to realize the welfare of children and Child Protection, which is carried out based on local customs and the provisions of laws

and regulations, where in Article 3 it is explained that :

(1) prospective adoptive parents must be of the same religion as the religion adopted by the prospective adoptive child.

(2) in the event that the origin of the child is unknown, the religion of the child is adapted to the religion of the majority of the local population.

In Article 4 of this government regulation, it is also explained that the adoption of a child does not break the blood relationship between the adopted child and his biological parents, and in Article 6 it is explained that:

(1) the adoptive parent shall inform the adopted child of his or her origin and biological parents.

(2) notification of the origin and biological parents as meant in Paragraph (1) shall be made with due regard to the readiness of the child concerned.

As for the conditions of adoption, in Article 12 explained that:

(1) the requirements for the child to be adopted include :

- a. Not yet 18 (eighteen) years old;
- b. An abandoned or abandoned child;
- c. Being in the care of a family or in a childcare institution; and
- d. Requires special protection.

(2) the age of the adopted child as meant in Paragraph (1) letter A includes :

- a. Children not yet 6 (six) years old, is a top priority;
- b. Children aged 6 (six) years until not yet 12 (twelve) years old, as long as there is an urgent reason; and
- c. Children aged 12 (twelve) years old until not yet 18 (eighteen) years old, as long as the child requires special protection.

For prospective adoptive parents must meet the following requirements contained in Article 13 of this government regulation as follows:

- a. Good communication and interpersonal skills;
- b. At least 30 (thirty) years old and at most 55 (fifty five) years old;
- c. Religion similar to the religion of the prospective adoptive child;
- d. Good conduct and never been convicted of a crime;
- e. Married for at least five (5) years;
- f. Not a same-sex couple;
- g. Have no children or have only one child;
- h. In economically and socially capable conditions;
- i. Obtaining the child's consent and written consent of the child's parent or guardian;

j. Make a written statement that the adoption of the child is in the best interest of the child, the child's welfare and protection;

k. The existence of social reports and local social workers;

l. Has been caring for the prospective adopted child for at least 6 (six) months, since the permission for care was given; and

m. Obtaining the permission of the minister and / or the head of the social institution.

Procedures for the adoption of children under Article 20 of Government Regulation No. 54 of 2007 on the implementation of the adoption of children are as follows:

(1) an application for the adoption of a child who has met the requirements shall be submitted to the court to obtain a court determination.

(2) the court submits a copy of the determination of the adoption of the child to the relevant agency.

According to Islamic law, adoption can only be justified if it meets the provisions as quoted by Evy Khristiana³¹ from Muderis Zaini, which are as follows:

a. Does not break the blood relationship between the adopted child with biological parents and the family.

b. The adopted child is not the heir of the adoptive parent, but remains the heir of the adoptive parent, but remains the heir of the biological parent, as well as the adoptive parent is not the heir of the adoptive child.

c. The adopted child may not use the name of the adoptive parent directly except as an identifier / address.

d. Adoptive parents cannot act as guardians in a marriage against their adopted child.

If the child findings / adopted child was nurtured properly by a foster family, then if one day when the child will know his identity as an adopted child/child findings, it is not a psychological burden for the child even the child can express his gratitude to the parents who have raised him with good behavior and right.

B. Procedure For Making A Birth Certificate Of A Child Of Unknown Origin

The application for the determination of guardianship for a child of unknown origin is a very expensive matter for the management of this determination of guardianship, so that people who find a child of unknown origin do not want to manage the determination of guardianship for the child of the findings, it is found that many people who find a child of unknown origin immediately

make it the biological child of the family who found it, this is contrary to Islam as described in the previous description.

Basically litigants in court charged (Article 121 paragraph (4) HIR/Article 145 paragraph (4) R.Bg. but if the party is unable to pay the costs of the case, then he can apply for litigation free of charge (prodeo) as stipulated in Article 237-241 HIR/article 273-277 R.Bg, article 242-243 HIR/article 278-281 R.Bg and articles 12-14 of Law No. 20 of 1947 on retrial. For this reason, the application for guardianship for a child of unknown origin who is in fact hindered by the issue of litigation costs can be done through the litigation process prodeo (free of charge).

After the establishment of guardianship, it can be used as a basis for the management of birth certificates for children whose origins are unknown. In Law No. 23 of 2006 on Population Administration, especially Article 28 explained that :

(1) the registration of births in the Register of birth certificates and the issuance of extracts of birth certificates on the occasion of the birth of a person of unknown origin or the whereabouts of his parents, is based on the report of the person who finds the completed minutes of examination from the police.

(2) an extract of the birth certificate as meant in Paragraph (1) shall be issued by the Civil Registration Officer and kept by the Implementing Agency.

The procedures and requirements as described in Article 31 of Law No. 23 of 2006 and Law No. 24 of 2013 concerning amendments to Law No. 23 of 2006 concerning Population Administration are as follows : further provisions regarding the requirements and procedures for birth registration as referred to in Article 27, Article 28, Article 29, and Article 30 are regulated in a Presidential Regulation.

In accordance with Article 54 of the Presidential Regulation of the Republic of Indonesia number 25 of 2008 on the requirements and procedures for Population Registration and civil registration birth registration for children of unknown origin and whereabouts of their parents who belong to the Indonesian citizen population as follows:

a. The complainant / applicant fills out the birth certificate form by including the minutes of Police Examination as referred to in Article 52 paragraph

(4) to the Implementing Agency.

b. Civil Registration officials in implementing agencies record in the Register of birth certificates and issue extracts of Birth Certificates.

The requirements for registration of Birth events/maintenance of birth certificates for children of unknown origin are as follows:

1. Certificate Of Lurah.
2. Court decision on the determination of guardianship for the child to be registered at birth.
3. Copy of Family Card & ID card that has been legalized (or bring the original).
4. Photocopy of parents ' marriage certificate that has been legalized (or bring the original).
5. Copy Of Diploma.
6. Photocopy of ID cards from 2 (two) witnesses who have been legalized (or bring the original).

While the procedures are as follows :

1. The complainant / applicant takes care of a certificate from the local village based on the place of residence, as an introduction to the maintenance of birth certificates to the Department of Population and Civil Registration.

2. The complainant / applicant fills out the birth certificate application form by including the requirements as mentioned above.

3. The complainant / applicant and the witnesses go to the head of the Department of Population and civil registration to request birth registration and sign the birth certificate register book.

4. After being registered in the Register of birth certificates, the head of the Department of Population and civil registration issues an extract of the birth certificate.

It can also be concluded that for a child whose origin is not known/nasabnya then for parents who will appoint him only as a Guardian, where to determine this guardianship must be based on court decisions, so that the birth certificate will also not as a child of husband and wife but the child of the guardianship of parents who adopted him. Children who do not know its origin in the teachings of Islam should not be used as an excuse to look down, because it is also experienced by the main friend of the Prophet Muhammad, Abu Bakr Shiddiq which Abu Bakr said : I am one of those who do not know who his parents. Therefore I am your brother's co-religionist. The narrator said, by Allah, if he had known that his father was Himar, he would have advised himself to him. While the Hadith experts argue that Abu Bakr's father r.A is Nufai bin Al-Harith.

From the words of Abu Bakr r.a above shows that not knowing one's origin does not in any way diminish one's quality. The position and position of Abu Bakr in front of the Prophet, the companions and Muslims is not in doubt, while his parents are

not known for certain. Rasulullah SAW never questioned, this shows that a person is judged in-person, not by looking at who his parents are, this is like the Hukama' Bersa'ir: not the stigma of an ideal youth who can only boast of his parents, but the ideal youth is the one who dares to say : "This Is Me".

Guardianship / adoption / recognition of a child for a child of unknown origin by the person who found the child is a limited recognition of the child, as a special law, which is enforced more on consideration of the benefit of the child of unknown origin, where although ascribed to the person who adopted / recognized the child but has no legal consequences both in the field.

Finally, hopefully children whose origins are unknown in Indonesia, especially Muslims, can be legally protected by their identity after a court ruling on the care and guardianship of the child and the birth recorded in the birth certificate which is ultimately expected to have the same position in the law as other Indonesian children.

CONCLUSION

Proof of birth certificate in the origin of the child is very important in order for the benefit of later life and is regulated in national law and Islamic law by karena for those who do not have children and plan to adopt a child or raise a child or for those who get a child who is not in the know

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