THE IMPLEMENTATION OF ADOPTION AT THE DEPARTMENT OF SOCIAL OF BENGKULU CITY AS A PROTECTION EFFORT TOWARD THE ADOPTED CHILDREN

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ABSTRACT

Adoption is an effort for someone to continue the lineage primarily for the couple who are not endowed with offspring. Adoption is a form of protection for children, especially for the neglected children who are no longer possible to be well treated by their family. But even so, the effort of adoption is the last method/ultimum remedium since children should not be separated from their biological parents. Therefore, to avoid deviations in the practice of adoption which would be detrimental to the future of the child, it is necessary to supervise the implementation of adoption with great caution, especially in the process of issuance of the recommendation by the related parties. Referring to Article 41 of Law No. 35 of 2014 which stated that the Government and local government and the community should do the guidance and supervision of the implementation of adoption, supervision in this case carried out by the Department of Social as the party involved in the process of adoption and to issue permits adoption. License granting issued by the Department of Social is one thing that is vital in determining the eligibility of prospective adoptive parents who want to adopt children, the government has to know whether the criteria for adoptive eligible parents to adopt children has been met as specified in the regulations on the implementation of the adoption, besides it should also be known whether supervision as well as home visits before the permit is issued is well implemented. The identification of the problem is how the implementation of the children adoption carried out by the Department of Social of Bengkulu City. The type of research used is empirical juridical. The data used are primary data and secondary data analyzed descriptively-qualitative. Results and Discussion showed that the implementation of the adoption has not been done and has not been well run by the Department of Social of Bengkulu City. In terms of fulfilling the criteria of the prospective adoptive parents there are still many prospective adoptive parents who have had more than one child, besides in the process of issuing permits on adoption and home visits there are often not done due to constrained of operating costs, so the social reports which is one of the urgent matters in the process of adoption is not in accordance with the facts on the field.

Keywords: Implementation, Adoption, Department of Social
A. Introduction

1. Background

Child is a mandate as well as a gift of God Almighty, which must be taken care of because in his/her inherent dignity, values and rights as a human being which must be upheld. In order to ensure the development of the child, guidance and protection toward the children are necessary, to sustain the nation's future in the later time. Adoption is one way to do protection toward children. Especially for children who are being neglected. Adoption is a legal act, which transfer a child from the environment of its parents, legal guardian, or other person responsible for the care, education and raising children into the family environment of the adoptive parents.¹

In the practice, adoptions is not always will provide better welfare to the adopted children. The expectations and views on the adoption can overcome the difficulties of the children’s life and welfare were not always be realized. What is really happening is the children have difficulty surviving in the future.

One of the causes is the adopted children suffering from mental, physical, and social issues and because of differences in the physical characteristics at birth, they were not fully accepted by the family members of the adoptive parents and the community in which they lives. In addition, they have also experienced discrimination, which are a form of victimization due to differences in heredity, race, nationality, origin, and so on; Foster children are being neglected because the adoptive parents already have / give birth to biological children who have been desirable.²

In the case of a deviation or violation, one interesting point to study is in terms of supervision. Supervision is basically geared entirely to avoid the possibility of fraud or irregularities so that supervision is correlated with the incidence of irregularities. Good supervision can minimize the occurrence of irregularities and when there has been a deviation/violation, good supervision must be able to detect the extent of the irregularities occurred and the causes of such deviations.

Government Regulation No. 54 of 2007 on the Implementation of Child Adoption regulate how the procedure for the adoption of children not only in terms of the implementation of the adoption but also at the stage of

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¹Article 1, point 2 of Government Regulation No. 54 Year 2007 on the Implementation of Child Adoption

²Lulik Djatikumoro, Hukum Pengangkatan Anak di Indonesia, Citra Aditya Bakti, Bandung, 2011, pp. 8
supervision as Chapter VI of the Implementation Adoption Article 32 states that "Supervision is implemented to prevent irregularities or violations in adoption", Article 33 "Supervision is conducted to (a) prevent the adoption of children who are not in accordance with the provisions of the legislation, (b) reduce the cases of irregularities or violations of adoption, and (c) monitor the implementation of child adoption.” In this case, supervision is done by the Government and Society, supervision by the Government itself is done by the Ministry of Social Affairs as stipulated in Article 41 of Law No. 35 of 2014 in conjunction with Article 35 and 36 of Government Regulation No. 54 of 2007.

As the wording of Article 14 of the Regulation of Minister of Social Affairs No. 110/HUK/2009 on Adoption Requirements stating that social institutions/social Department has the authority to grant permission/recommendations for adoptions for further assigned to the court. Granting a license issued by the social services is one thing that is vital in determining the eligibility of prospective adoptive parents who want to adopt children, whether the prospective adoptive parents is really worthy and capable in terms of materially and morally to adopt a child so that the objectives to be achieved in an effort of adoption for the welfare of children can be truly realized.

The social service as an agency to issue permits and recommendations regarding the adoption of children is suspected of simply issuing permits adoption to prospective adoptive parents, this writer knew it through initial research to one of the prospective adoptive parents who wished to apply for approval of adoption through the courts that declared by simply submitting a copy of ID card, Family Card, quotation of birth certificate of prospective foster child, and an affidavit from the biological parents and the adoptive parents. The license can be already issued, but should be in terms of implementation of the issuance of licenses in accordance with Article 22 of Regulation of the Minister of Social Affairs No. 110/HUK/2009 on Requirements Adoption Social Office to assess the feasibility of the prospective adoptive parents to make home visits to the families of the prospective adoptive parents.

There are several criteria or requirements to be met by the prospective adoptive parents, in the process of adoption. As contained in the Regulation of the Minister of Social (Permensos) No. 110 of 2009 Article 7
includes the prospective adoptive parents must be healthy physically and mentally, in a state capable of economically and socially, obtain written permission from a parent or guardian, having or not had children or only one child.

These procedures above are the reason to the author that need to be investigated, because allegedly some procedures, requirements or criteria in the process of adoption have not been fully executed by the Department of Social Welfare. As the adopted child is not a waif, or the parents who raise the child already has two children. In fact, looking at the principle of adoption which is *ultimumremedium* action, it is proper implementation of adoptions carried out with great caution in order to achieve the welfare of the foster child's own in the future.

2. Identification of Problems

How was the implementation of adoptions conducted by Department of Social of Bengkulu city?

B. Research Methodology

The type of research used in this study was juridical empirical research, which is a method that sees something legal reality in society. This research required the researcher, aside from knowing the social sciences, and having knowledge in social science research (social science research). This study was a descriptive analysis, which revealed the legislation relating to the legal theories that became the object of research. Likewise, the law in its implementation within the community regarding the object of research. The population was the whole object of study as the target to obtain and collect data. The population in this study was the staff who were in charge of recommendations regarding requests for adoptions in Department of Social of Bengkulu City and the adoptive parents who do adoptions in Bengkulu City.

C. Results and Discussion

Regulation on adoptions has clearly provided provisions regarding the procedure of adoption in accordance with recommendations and proposed the establishment of Department of Social to the Courts and Religious Courts for Moslems. It is done in order to obtain certainty about the status and position of adopted children and adoptive parents in the future. As if the removal or determination in the District Court will

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3Based on the preliminary data done. Thursday, November 17\textsuperscript{th} 2016

4Zainuddin, Ali, Metode Penelitian Hukum, Jakarta, 2014 page 23

5*Ibid*, page 105-106

6P. Joko Subagyo, Metode Penelitian dalam Teori dan Praktik, Rineka Cipta, Jakarta, 2011, page 23
be different from its commencement to the Religious Court. District Court equates biological children with adopted children and their rights until nasab of the child, the foster child will also get inheritance rights as biological children. While in the Religious Court, adopted children are not equated with biological children of their rights, nasab of the child is needed to keep nasab by his biological father, while for his own inheritance rights of children is only entitled to a grant from the adoptive parents. Inheritance rights is still to come from his biological parents.

Department of Social of Bengkulu city which is the government agency responsible for monitoring the implementation of adoptions in Bengkulu City. Vision of Department of Social of Bengkulu city is the realization of a humane social welfare services, with a mission of improving social rehabilitation services for people experiencing social dysfunction.

Handling in the case of adoption at the Department of Social of Bengkulu City is carried out by the Section Head of Social Rehabilitation for Children and the Elderly under the coordination of the Head of Social Rehabilitation of Department of Social of Bengkulu City.

From the interview on January 26th, 2017 with the Head of Social Rehabilitation Children and the Elderly, Dra. Tati Yogawanti⁷ that both the adoption of children through the institution of parenting and adoption directly (Private Adoption) have to go through the application procedure permits the adoption through Department of Social. In this case the Department of Social issues a recommendation for the next submitted to the Department of Social of Provincial to obtain a recommendation / Certificate about adoptions in order to then get a stipulation in the District Court and Religious Courts.

Seeing the child adoption is the last effort (ultimum remedium) as a form of protection for the child, so that it is necessary prudence in the procedure of adoption, in this case the role of government through the Department of Social is something that is vital in providing surveillance both at the time before the adoption of children and after the appointment is done, even until the child is an adult.

Department of Social of Bengkulu city has a very urgent role in the practice of adoption, because of the recommendations issued by the Department of Social will be ratified in

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⁷ Interview result on January 26th 2017 with Section Head of Social Rehabilitation of Children and Elderly of Bengkulu City, Dra. Tati Yogawanti
the District Court and Religious Courts. As an explanation of Article 41 of Law No. 35 of 2014 which states "the Government and the community do the guidance and supervision of the implementation of the removal of the child", in view of adoption is one way to protect a child's life. The government in this case is the Department of Social is obliged to perform the guidance and supervision of the implementation of child adoption laws mandate as mentioned above, the guidance should be done by the adoptive parents, and the supervision was done by social agencies involved in adoption practice.

Based on interviews conducted by the researcher with Mrs. Reni Destiana, A.KS as the Head of Social Rehabilitation for Children and the Elderly Department of Social Affairs of Bengkulu province, that guidance or direction made by the social services is during a home visit (home visit) before issuing recommendation / SK about adopted child.

It should indeed, the supervision carried out at the time before the adopted child, during the process of adoption, even after the removal of the child or has been issued a General Court decision until the child is an adult, but in doing oversight over both adoptive parents, as well as charities, need a budget or operational funds, during the home visit sometime in conducting operational funds usually obtained from the parents who will adopt the child. It is not reasonable, considering a bill on adopted child is not regulated in any conditions.

The supervision and guidance made to charities or social organizations that do care for child as long as it has been done and a regular agenda section of Social Rehabilitation for Children and the Elderly, only the guidance and supervision do not focus directed at implementing such adoptions were carried out by social organizations or charity.

There are several criteria in mandated by protecting children laws who have not been met by the Department of Social Affairs as stakeholders authorized to issue recommendations permit adoptions, among them is that the criteria for a parent to adopt a child as stipulated in Government Regulation Article 13 letter g that parents to adopt a child is one who has not had children, or only have one child, but the fact that the researcher encountered in the field, from 15 respondents who researcher interviewed only two people who adopt a child

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8The interview results on February 5th, 2017 with the Head Section of Social Rehabilitation for Children of Bengkulu Provinceby Reni Destiana, A.KS
because they do not have a child. The rest of adoption do because they want to help the abandoned child of his parents and wants to add descent because it has a boy or a girl.

As Department of Social Affairs reasoned that granting the petition of adoption by foster parents who have had children even more than one is because the reason that because the adoptive parents has been very pleased with the child, so that it may be granted by the Department of Social Affairs to be issued on permission appointment child. However it can not just issued its recommendation simply by making a statement that the adoptive parents are willing to not discriminate or apply the discrimination against adoptive childitself. In these conditions the supervision of the Department of Social Affairs is very important to do on a regular basis to monitor the condition of the adopted child until he was an adult, it recognized by the Department of Social Affairs that monitoring is not only done by the Department of Social Affairs directly meet the adoptive parents, but it can also be done by the adoptive parents to report the adoptive child's progress periodically to the Department of Social Affairs. But this was not done or even coordination between the provincial with the city Department of Social Affairs against the adoptive parents are not run well.

Another example is, at the time after the release of the adoption determination from the District Court and religion Court, so the adoptive parents should submit a copy of the determination to the Department of Social Affairs, but this is not done by the adoptive parents. It also escaped from the observation of the city and provincial Department of Social Affairs, so with so noticeable that the administration was done in adoptions both at the city and provincial Department of Social Affairs are not going well. It is also acknowledged by the city and provincial Department of Social Affairs that currently is being conducted as well as improvements in the procedure or administration for child adoption service or this adoption.9

If its look at from the issues surrounding the child's life, it should be a major concern for the people and the government, that this adoption is a form of child protection, therefore various kinds of policies should be done in order

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9The interview results on January 27th, 2017 with the Head Section of Social Rehabilitation for Children and Elderly Department of Social Affairs of Bengkulu city Dra. Tati Yogawanti, and the interview on February 5th, 2017 with a staff of Head Section of Social Rehabilitation for Children and Elderly Department of Social Affairs of Bengkulu Province Tri Nani Apriyani, S.Sos
to support the implementation of such protection.

In the Bengkulu City itself there has been no Mayor Regulation (Perwal) or Governor Regulation or similar such as implementation of the policy on the practice of adopted child/adoption, though the condition of the development as well as community needs adoptions are appropriately concerned the city government and even the Bengkulu province to a local budget revenues in order to implement the children protection, one of them through the adopted child itself.

The public budget-based on child rights should be a public budget allocation policy based on the aim to ensure the protection and fulfillment of child rights. The implementation practice of adopted child is also a safeguard against a child. In the adopted child, the child is a passive party cannot avoid that case, whether it is beneficial or even detrimental to child. Furthermore the role of government in this case the Department of Social Affairs, so it is necessary to control to avoid deviations in the implementation of adoption this can be detrimental to the rights of the adopted child.

Protection for children has long been a concern of the international community, through the Convention on The Rights of The Child of involved Countries include Indonesia is required to make regulations related to efforts to protect children's rights. This effort has been carried out in the national stage in the form of legislation and government regulations and ministerial regulations that govern the implementation of this children adoption.

However, it seems not yet done at the local level in this case Bengkulu city, it can be seen through the interview results of writer with the Department of Social either at city or province that declared no local regulations or policies regarding the implementation of the children's rights fulfillment, especially in the practice of adoption, so it has been always constrained on oversight and guidance that should be carried out by the social services in operational funds.

Based on Article 4 of Convention on The Rights of The Child states that the State shall take legislative and administrative and measures for the implementation of recognized rights in the Convention on the Rights of the Child. As long as the fulfillment of children's rights. It is stipulated in Article 4 of the Convention on the

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Rights of the Child which states that the State undertake the following steps:
1. Ensure that all legislation regulations are in full compliance with the principles and provisions of the Convention on Rights of the Child
2. Creating a comprehensive national strategy to fulfill and protect the rights of the child;
3. Allocate and analyze the public budget based on the best interests of the child.

The steps mentioned above that should be conducted by the government was articulated in more detail as to take steps to ensure the presence of coordination between economic policy and the policy of social services, the division of public budget proportionally to spending social services both at the level of central government and local authorities for interests of the child, including health, welfare, and education.  

As a State based on law, Indonesia must uphold to Human Rights value. Like as adult children also have the same rights as human beings who have to uphold their human rights because he/she is a human being worth protecting for the achievement of the future generation of dignity. Child protection which means protection of the rights of children is an effort to put the rights of children into the social status in the society, as a form of protection of the interests of children who have social problems. Through the good procedure of adoption and in accordance with the provisions already stipulated in the regulations on children adoption, with the fulfillment of the requirements stricter criteria for adoptive parents, children eligible adopted, will lead to guarantee the fulfillment of children's rights as a party that will sense whether the adoption is benefits or contrary to the life of her/his future.

D. Closing

1. Conclusion

Child’s adoption implementation has not been conducted and implemented by Social Services of Bengkulu City. It seems in the criterion prospective of adoptive parents as stated in the legislation regulations of article 13 PP 54 of 2007 Jo. Article 7 Permensos No. 110 of 2009 by Social Service of Bengkulu city have not been fully met by the Social service as the licensor recommendation of children adoption, as evidenced by the facts in the field that the adoptive parents

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11 Ibid, p.145
who do adoptions are those who already have children, and more than one child. Besides the supervision of the Social Service to the adoptive parents such as visits (home visit) has not been fully carried out due to the constrained of operating funds so that social reports are made sometimes does not correspond to the facts that occurred in the field.

2. Suggestion

Government in this case social services both of city and province have responsibility to obtain the procedure order of children adoption as stated in the legislation regulations. By fullfillment the criteria of adoptive parents candidate and child eligible adoptive criteria to minimize the digression motivation to child adoption that raise problems for child in the future. The local government of Bengkulu City should formulated the special policy regarding to child adoption implementation by budgeting in the procedural of child adoption. So, child rights on having supervision is fully completed by adoptive family.

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