

Social Welfare for the Adoption of Displaced Children by Foreign Citizens

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Abstract--Children do not have the autonomy to take care of themselves, they must be under the responsibility of adults to have their protection guaranteed. An adult in this case is the parent, when they fail to carry out their functions, it can cause displaced children. An alternative to solving the problem of displaced children is to carry out inter-country adoption through the Child Care Institution and determined by a Court Decision. The court decision that will be analyzed is Decision Number 63/Pdt.P/2005/PN.Mlg, Decision Number 1028/Pdt.P/2007/PN.Sby, Decision Number 62/Pdt.P/2010/PN.Mkd, Decision Number 103/Pdt.P/2010/PN.Jkt Sel and Decision Number 79/Pdt.P/2012/PN.Mks. Legal issue in this study is the harmonization of arrangements for the adoption of displaced children in Indonesia by foreign citizens with court decisions. This type of research is juridical empirical using case approach, statute approach and conceptual approach. The result of this study indicate that the Child Welfare Law and the Child Protection Law are not yet harmonious in regulating the adoption of displaced children in Indonesia by foreign citizens, so that its application through court decisions is not in accordance with the social justice that is intended to be manifest in The 1945 Constitution of the State of the Republic of Indonesia.

Keywords- *Harmonization; Social Welfare; Adoption; Foreign Citizens.*

I. INTRODUCTION

Statistics Indonesia (Badan Pusat Statistik) collected data on person with social welfare problem by regency/municipality in Jawa Timur Province with the last update on October 16th, 2019. There was found 14.508 neglected infant and 118.718 neglected children.[1] From this data, we can know that there are still citizens in Indonesia who do not yet have a decent life.

Article 34 of The 1945 Constitution of the State of the Republic of Indonesia mentions that the state has the responsibility to care for the poor and neglected children while ensuring that their basic needs and rights as citizens are fulfilled. The responsibility of the state can be seen by the drafting Child Welfare Law (No. 4/1979), Child Protection Law (No. 23/2002) which has been twice amended, and Social Welfare Law (No. 11/2009).

A child is not able to take care of himself physically, spiritually and socially, so they need to

be under the responsibility of adults for the needs and protection guaranteed. Adults mean a parent or guardian is appointed to care for children. When these adults do not implement in protecting and fulfilling children's needs, it can cause displaced children.

Article 1 point 7 of the Children Welfare Law provides a definition of displaced children are children who for some reason parents neglect their obligations so that the child's needs cannot be properly fulfilled spiritually, physically and socially. This definition is different from Article 1 point 6 of the Child Protection Law, displaced children are children whose needs are not properly met, whether physically, mentally, spiritually or socially.

One of the solutions to achieve social welfare in displaced children is adoption. Article 12 Paragraph (1) of Government Regulation Number 54 Year 2007 regarding an adopted child are neglected or neglected children. Adoption is the legal act of moving a person an environment of the power of parents, guardians or other people who are responsible to giving care, education, and raising children to the foster parents. There are 2 types of adoption in Indonesia, domestic adoption and inter country adoption.

Article 21 of the Convention of The Rights of Child regulates that inter country adoption is recognized or permitted as an alternative in an effort to care for children by considering the best interests of the child. This effort can only be done if the child cannot be placed in a family that adopted him or is not properly cared for in the country of origin of the child concerned.

Inter country adoption can only be through the Child Care Institution and decided by a Court Decision based on Article 14 of Government Regulation Number 54 Year 2007. Court Decisions to be analyzed,

1. Decision Number 63/Pdt.P/2005/PN.Mlg, foster parents are a married couple with Belgian citizenship, foster child who are Indonesian citizens.
2. Decision Number 1028/Pdt.P/2007/PN.Sby, foster parents are a married couple with Filipino citizenship, foster child who are Indonesian citizens.

3. Decision Number 62/Pdt.P/2010/PN.Mkd, foster parents are a woman with Singapore citizenship, foster child who are Indonesian citizens.
4. Decision Number 103/Pdt.P/2010/PN.Jkt Sel, foster parents are a married couple with United States citizenship, foster child who are Indonesian citizens
5. Decision Number 79/Pdt.P/2012/PN.Mks, foster parents are a married couple. The husband is an Australian citizen, while the wife is an Indonesian citizen. Want to adopt a nephew of wife's younger sibling.

The five decisions have different motivations for adoption. Article 2 of Government Regulation Number 54 Year 2007 regarding the purpose of adoption for the child's best interests in order to realize the child welfare and child protection are implemented based on local customs and provisions of regulations.

From the description above, need a consistency in providing the definition of neglected child, so that application in court can be accordance with social welfare in The 1945 Constitution of the State of the Republic of Indonesia.

II. PROBLEMS

First, Are the regulations for adoption of displaced children in Indonesia by foreign citizens has been harmonized with social welfare in The 1945 Constitution of the State of the Republic of Indonesia?

Second, How are the implementation of court decisions in realizing social welfare for children based on The 1945 Constitution of the State of the Republic of Indonesia?

III. RESEARCH METHOD

This type of research is an empirical juridical research employed case, statute and conceptual approach. The legal materials used consist of primary, secondary and tertiary legal materials. Three of them were obtained by using literature study tracing techniques. To answer legal problems, researchers analyzed legal materials using systematic, teleological and restrictive interpretation.

IV. DISCUSSION

In Indonesia, the principle of the welfare state can be found in the Preamble on the 1945 Constitution of the State of the Republic of Indonesia. Many terms are used and refer to the welfare of the community. For example, the terms fair and prosperous are written in the second paragraph, other terms namely general welfare and social justice, are contained in the fourth paragraph

and the fifth precept. Pancasila. Evidence that the state cares for the welfare of its people is the formulation of several laws and regulations that specifically regulate welfare, namely the Child Welfare Law (No. 4/1979), Elderly Welfare (No. 13/1998), and Social Welfare (No. 11 / 2009).

The problems of welfare, care and protection for children come from themselves, their families, the community, schools, communication technology and globalization. Moreover because the needs and right of children are not fulfilled. Convention on the Rights of the Child in the Preamble mention that children's rights such as: 1) Civil rights and fundamental freedoms, 2) Health, nutrition, water and environmental sanitation, 3) Family environment and alternative care, 4) Education, time relax and play & cultural activities, and 5) Special protection.

Special protection according to the Child Protection Law is protection provided to children in emergency situations, children in conflict with the law, children from minority groups and isolated, children who are economically and/or sexually exploited, children who are trafficked, children who are victims of abuse. narcotics, alcohol, psychotropic substances, and other addictive substances (NAPZA), children victims of kidnapping, sale, child trafficking, victims of violence both physically and/or mentally, children with disabilities, and children victims of abuse and abandoned.

Because a child cannot guarantee that his needs and rights are met, it takes the role of the family or parents to care for and care for them. If for some reason the parents cannot care for them properly, then this child is left and becomes abandoned. Abandoned children can be defined as the failure of a responsible person (such as a parent or guardian) to ensure the welfare of the child and fulfill his basic needs.

So that the interests of children can be guaranteed, it is necessary to carry out direct supervision and guidance from the state. If the parents of the child are absent, their whereabouts are not known, or for some reason the parents do not carry out their obligations to ensure the welfare of the child, the state allows other parties to carry out the role of the parents.

Article 34 of the 1945 Constitution of the State of the Republic of Indonesia regarding that the poor and abandoned children are cared for by the state. The state guarantees social welfare for abandoned children by collecting data through local governments to obtain birth certificates. Birth certificates can help them to obtain protection from the state such as the right to obtain identity on the family card, identity card, education security, health

insurance and other guarantees according to programs organized by the government.[2]

Nurturing, caring for, and social rehabilitation for abandoned children are “mandatory” to be carried out by the central government and local governments. The implementation of these three activities can be carried out by institutions such as government institutions and private institutions as well as outside institutions such as in family or individual care. Articles 57 and 58 of the Child Protection Law provide the possibility for these institutions to organize care for abandoned children or for authorized officials to submit applications to court. The court ruling will designate the child concerned as an abandoned child as well as establish a place for shelter, nurture and care. By determining the child as an abandoned child, the child can be adopted.

Article 7 of the Government Regulation Number 54 Year 2007 divides two types of adoption: domestic adoption and inter-country adoption between Indonesian citizens and foreign citizens. Inter country adoption includes the adoption of Indonesian citizens by foreigners, the adoption of foreign children who are appointed by Indonesian citizens, one of the adoptive parents is a foreigner, and the adoption of Indonesian children born outside the territory of Indonesia.

Inter country adoption must be in a Child Care Institution such as a Foundation or Orphanage and is determined by a court decision. The application for adoption of children is submitted to the District Court in Indonesia and attaches a court order that the adopted child candidate is indeed abandoned as referred Article 42 of the Regulation Minister of Social Affairs of the Republic of Indonesia Number 110/HUK/2009 concerning Requirements for Adoption of Children.

The definition of abandoned children has been written in the Child Welfare Law and the Child Protection Law, which has been amended twice.

Table 1 Definition of Abandoned Children

Child Welfare Law	Child Protection Law
Article 1 number 7 "Children who for some reason have neglected their obligations so that their children's needs cannot be properly fulfilled spiritually, physically, and socially."	Article 1 number 6 "Children whose needs are not properly met, whether physically, mentally and spiritually, or socially." Article 57 "In the event that a child is neglected for some reason, his parents neglect their obligations, then the institution as referred to in Article 55, the family, or the authorized official can submit a request to the court to determine the child as an abandoned child."

Source: Gracia Jasmine Sunaryo Putri, 2020.

From the table above, it can be concluded that abandoned children are those under 18 years old, which for some reason their parents neglect their obligations so that the child's physical, mental, spiritual, and social needs cannot be met properly.

Adoption of a child as a solution to the problem of abandoned children must be carried out by following the terms and objectives in accordance with the applicable laws and regulations. The regulations for adoption in Indonesia that will be discussed in this study are the Child Welfare Law, the Child Protection Law, the Government Regulation on the Implementation of Child Adoption, and the Minister of Social Affairs Regulation on the Requirements for Adoption. These four arrangements provide the following objectives for adoption:

Table 2 The Purpose of Adoption

Child Welfare Law	Child Protection Law	Government Regulation on the Implementation of Child Adoption	Minister of Social Affairs Regulation on the Requirements for Adoption
Article 12 prioritizing the interests of child welfare which is done outside of customs and habits, implemented based on the laws and regulations.	Article 39 can only be done in the best interests of the Child and carried out based on local customs and provisions of laws and regulations.	Article 2 aims for the best interests of the child in order to achieve child welfare and child protection, which is carried out based on local customs and provisions of laws and regulations.	Article 2 the principle of adoption can only be done in the best interests of the child and carried out based on local customs and provisions of laws and regulations.

Source: Gracia Jasmine Sunaryo Putri, 2020.

Based on the four objectives written in several regulations, it can be concluded that the purpose of adoption is in the best interests of the child while still paying attention to child welfare and child protection. Child welfare refers to the fulfillment of the child's basic needs as written in the explanation of Article 1 of the Child Welfare Law, namely the need for food, clothing, housing, education and health. Fulfilling these needs is the same as realizing social welfare for abandoned children.

- Court decisions regarding inter country adoption have various motivations and considerations for judges.
- Legal considerations in the decision Number 63/Pdt.P/2005/PN.Mlg are as follows:

"Considering that the purposes and objectives of the Petitioners' petition are as mentioned above;

Considering, whereas the Petitioners named PUSPITAJANINGTIJAS and JEAN OLIVER HERMAN MICHEL DENISE MORTELMANS are legal husband and wife, married on April 28, 2000 in the City of Autweepen, Berchem region, Belgium and then the marriage was reported to the Malang City Civil Registry Office on March 15 2005;

Considering, whereas the Petitioner intends to appoint a daughter named FREYA OLIVIA PUSPITA MORTELMANS, a child of TRI WAHYU PAMUNGKAS and YULIANA where the adoption of the name has been agreed between the Petitioner and the child's biological parents before the child is born;

Considering, that adoption is carried out solely in the best interests of the child because the biological parents of the child are economically very weak;

Considering, whereas the Petitioner has economic capacity which can guarantee the future life of the child, both in terms of care and education;

Considering, whereas the Petitioner is a Belgian (foreign) citizen, while the child to be adopted is an Indonesian citizen and therefore must meet the requirements for adoption as stipulated in the Circular Letter of the Supreme Court of the Republic of Indonesia 1979 dated 7 April 1979 and other legal regulations;

Considering, whereas based on letters of evidence and statements of witnesses presented in court, the following legal facts are obtained:

The applicant is legally married and has been registered at the Office of Population and Civil Registry of Malang City, and from that marriage does not have children;

The applicant is 46 years and 33 years old, while the age of the child adopted is approximately 3 months;

The Petitioner has a fixed income or it can be said that economically it is relatively strong;

The applicant is declared healthy according to a doctor's letter;

The applicant gets permission for Child Adoption from the Belgian government;

The Petitioner promises to keep in touch with the Government after the adoption of the child takes place;

The Petitioner has been domiciled in Malang for about four years;

The Petitioner received a recommendation from the Regional Government of Malang City regarding Adoption and received approval for permission from the Malang "Bhakti Luhur" Foundation;

The child's education, including fostering the child's spiritual life by the child's biological parents, is fully left to the applicant for the welfare of the child.

Considering whereas based on these facts, the Malang District Court is of the opinion that the Petitioner has adequate requirements to carry out the Adoption of the Child, on the other hand the Petitioner has succeeded in legally proving and convincing all the arguments of the Petitioner's petition are not against the law, not against morality, religion, and order. general so that the said application can be granted;

Bearing in mind, the relevant legal regulations, especially the Circular of the Supreme Court of the Republic of Indonesia dated April, 7th 1979 Number 2 Year 1979. "

- Legal considerations in the decision Number 1028/Pdt.P/2007/PN.Sby are as follows:

"Considering, whereas the purposes and objectives of the Petitioners' petition are as mentioned above;

Considering, whereas based on letters of evidence and testimony of witnesses presented at the trial, the following legal facts are obtained:

Whereas the Petitioners are husband and wife who have been legally married in the Makati Municipality of the Philippines on April 15, 1982;

That until now there has not been any child / offspring in the marriage;

Whereas JUAN MIGUEL's child, who up to now is under the care and care of the Petitioners as adoptive parents, has been treated properly and properly like his own biological child;

Whereas all legal processes and procedures in the context of adoption by the Petitioners against the

child have been fulfilled in accordance with the applicable provisions;

Considering, whereas based on the aforementioned legal facts, the Court is of the opinion and concludes that the material of the Petitioners' petition is considered sufficiently grounded according to law, therefore the said petition can be granted;

Considering, whereas since the Petitioners' Petition was granted, according to law all the costs of this case were borne by the Petitioners;

In view of the Circular of the Supreme Court of the Republic of Indonesia Number 6 of 1983 concerning Completion of SEMA Number 2 of 1979 and other relevant legal provisions. "

- Legal considerations in decision No. 62/Pdt.P/2010/PN.Mkd is written as follows:

"Considering, whereas the aims and objectives of the Petitioner's petition are as mentioned above;

Considering, whereas in its petition the Petitioner basically pleaded that a boy named AYDAN ALLY be born in Magelang on February 9th, 2010, the child of a woman named WINARSIH is the legal adopted child of FATTIMAH BTESHEKH ADIP ALLY (Petitioner);

Considering, that the Mungkid District Court has the authority to examine and adjudicate this petition as long as the Petitioner can prove and fulfill the requirements stipulated in the laws and regulations relating to this case;

Considering, that regarding the adoption of children, especially the adoption of Indonesian citizens by foreign citizens, in accordance with the Government Regulation of the Republic of Indonesia Number 54 of 2007, in addition to being aimed at the best interests of the child in the context of realizing child welfare and child protection, several must also be fulfilled. strict requirements, aiming to prevent irregularities.

Considering, whereas the results of the examination at trial, which were obtained from the evidence of letters and witnesses submitted by the Petitioner, it is known that although the Petitioners have shown evidence of letters and witnesses for the requirements of adoption as attached in the application case file, it is because of the application for appointment. the child by the Petitioner is classified as adoption, which is the last resort that may be taken (*ultimum remedium*), as referred to in Article 11 paragraph 1 letter (a) jo. Article 5 PP No. 54 of 2007, if the application is linked to the provisions of Article 13, Article 14, and Article 16 of Government Regulation No. 54 of 2007, according to the Court, it turns out that the Petitioner has not been able to fulfill the conditions that have

been determined, especially the conditions that absolutely must be met,

Considering whereas as argued by the Petitioner claiming to be a Singaporean citizen with an unmarried status, the provisions of Article 13 letter e jo. Article 16 PP No. 54 of 2007 that the Petitioner does not fulfill is the condition that the Petitioner must have been married for at least 5 years but the fact is that the Petitioner until the application is submitted is unmarried, and exceptions from that provision, according to the Government Regulation, adoption of children by single parents can only be done by The Petitioner is an Indonesian citizen, while the fact is that the Petitioner is a Singapore citizen;

Considering that the conditions for the adoption of Indonesian citizens by foreigners have not been fulfilled as stated in the provisions of Article 13 letter e jo. Article 16 PP No. 54 of 2007 above, then the other requirements that must also be met according to Article 14 PP No. 54 of 2007, there is no urgency to consider;

Considering, whereas based on the aforementioned considerations, because the Petitioner in the event that the adoption of a child of an Indonesian Citizen cannot fulfill the requirements as stipulated in the statutory regulations, the applicant's application must be rejected;

Considering, whereas because the applicant's petition is rejected, the applicant must be punished to pay the case fees incurred in this petition;

Bearing in mind, Government Regulation Number 54 of 2007, as well as other regulations related to this application."

- Legal considerations in decision No. 103/Pdt.P/2010/PN.Jkt Sel is written as follows:

"Considering that the purposes and objectives of the Petitioners' petition are as mentioned above;

Considering that this adoption falls within the scope of international adoption, then the following provisions apply: *Staatblad* 1919 Number 129 (Chapter II Adoption); Declaration on the rights of the child; Child Welfare Law; Supreme Court Circular Letter No. 6/1983 concerning improvements to the Supreme Court Circular No. 2/1979; Decree of the Minister of Social Affairs of the Republic of Indonesia Number 41 / HUK / Kep / 1984 concerning Guidelines for the Implementation of Licensing for Adoption of Children; and other relevant regulations.

Considering, whereas in accordance with the Circular Letter of the Supreme Court of the Republic of Indonesia Number 6 of 1983, regulating the conditions for the adoption of children of Indonesian citizens by foreign nationals as follows:

Requirements for prospective adoptive parents of foreign citizenship (Petitioner): Must have been domiciled and have worked permanently in Indonesia for at least two years; Accompanied by a written permit from the Minister of Social Affairs or an appointed official that the prospective adoptive parents of a Foreign Citizen obtain permission to apply for adoption of children with Indonesian citizenship; Adoption of children of Indonesian citizens must be carried out through a social foundation that has a permit from the Ministry of Social Affairs that the foundation has been permitted to engage in adoption activities so that children of Indonesian citizenship are carried out directly between the biological parents of Indonesian citizens and prospective adoptive parents. Foreign (private adoption) is not allowed; Adoption of an Indonesian citizen by a foreign citizen, who is not bound by a legal / unmarried marriage, is not allowed;

Requirements for the adopted child candidates for Indonesian Citizens who are appointed: The age of the adopted child candidates must have not reached the age of five; Accompanied by a written explanation from the Minister of Social Affairs or the appointed official that the adopted Indonesian citizen candidate is permitted to be adopted as the adopted child of the prospective adoptive parent of a foreign citizen.

Considering, whereas based on the evidence documents, the testimony of the witnesses presented at the trial, the following legal facts will be obtained:

Whereas the Petitioners are husband and wife who have been married in Tennessee, USA on August 14, 1993;

that the Petitioners carried out the adoption of the child because in the gynecological examination it was stated that Mr. JOHN TED and Mrs. SHERRY MILLER were primary infertility for 16 years;

that the adopted child named MILLI TESALONIKA, born in Bogor on April 17, 2009 is the biological child of Mrs. ARIS MAULI SIHOMBING was handed over to the Chairperson of the Sayap Ibu Foundation, Jakarta because he was unable to care for, care for and raise his child because his biological father was not responsible and economically incapable;

that the application for adoption of a child named MILLI TESALONIKA, which has been submitted to the Chairperson of the Sayap Ibu Foundation, Jakarta is known to the Head of the DKI Jakarta Provincial Social Service;

that the Petitioners have stated their ability to treat the child like their own natural child and have known the legal consequences of the adoption of the child;

that the applicants have received approval from each party of the applicant's family and the child is well accepted in the family environment of the applicant;

that the husband applicant has a job which is expected to be sufficiently capable of nurturing and educating the child;

that the State Government of the applicants, namely the United States of America, has no objection to the adoption of the Indonesian child;

that the religion adopted by the biological mother of the adopted child is the same as the religion adopted by the prospective parents of the adopted child, namely Christianity.

Considering, that in the trial the adopted child candidate has been presented and stated that the biological parents do not object to the adoption of this child;

Considering, that the applicants have fulfilled the requirements proposed for adoption of children between Indonesian citizens and foreign citizens, the court is of the opinion that the petitioners' petition material is considered sufficiently grounded according to law, therefore the petition can be granted;

Bearing in mind, Law Number 23 of 2002 concerning Child Protection, Regulation of the Minister of Social Affairs and SEMA of the Republic of Indonesia Number 6 of 1983."

- Legal considerations in decision No. 79/Pdt.P/2012/PN.Mks is written as follows:

"Considering, that the aims and objectives of the petition's petition are as mentioned above;

Considering that adoption is based on Article 1 paragraph (2) of Government Regulation No. 54 of 2007 concerning the Implementation of Adoption is a legal act that transfers a child from the sphere of authority of the parent, legal guardian or other person who is responsible for the care, education, and raising of the child into the family environment of the adoptive parents.

Considering, whereas the objectives of the applicant are in accordance with Article 2 of Government Regulation No. 54 of 2007 concerning the Implementation of Adoption, namely in the best interests of the child in the context of realizing child welfare and child protection.

Considering, that the sincerity, sincerity and willingness of the parents to surrender or release their child SARAH AUDREY LAYRENDS to be appointed by the applicants for the welfare and protection of the child, is in accordance with the attached evidence, namely a statement of surrender of the child made by the biological parents;

Considering, that the child is still in a family / relative relationship with the applicant because his biological mother named SANTI ARUNG RANTE is the younger sibling of the applicant named YUNITA UPA BOROH, the judges are of the opinion that there is seriousness, writing and willingness of the child's parents and the applicants, then the delivery of the adoption of SARAH AUDREY LAYRENDS 'child is reasonable or lawful according to law;

Considering, whereas from an economic point of view, the judge assessed that the applicants have adequate household economic capacity, it can be expected that the life, welfare and protection of the child."

The comparison of the objectives of adoption based on the five decisions includes:

Table 3 Court Decisions Regarding Inter Country Adoption

Number 63/Pdt.P/ 2005/ PN.Mlg	Number 1028/Pdt. P/ 2007/ PN.Sby	Number 62/Pdt. P/ 2010/ PN.Mk d	Number 103/Pdt. P/ 2010/ PN.Jkt Sel	Number 79/Pdt. P/ 2012/ PN.Mk s
the purpose of adopting a child is in the best interest of the foster child because the biological parents do not have the economic capacity to care for this child and the adoptive mother has been declared unable to get pregnant based on a certificate from a doctor.	sincerely to give love to the foster child and for the child's future.	want to care foster children for the welfare and future of their children, as well as for the benefit of foster parents in their old age.	has been caring for foster children for 6 months and received permission to care from the Ministry of Social Affairs because it was declared infertility for 16 years.	For the benefit of foster children because the child's biological parents believe that their sibling's family has sufficient income to be able to support their children's needs and welfare.

Source : Gracia Jasmine Sunaryo Putri, 2020.

Of the five decisions, only one decision was not granted, Decision Number 62 / Pdt.P / 2010 / PN.Mkd. The decision was rejected because it did not comply with the provisions of Articles 13, 14 and 16 of the Government Regulation Number 54

Year 2007 concerning foster parents must be married at least five years and if foster parents are single parents, it can only be done by Indonesian citizens while the applicant is a single parent who is Singaporean.

Judges in deciding cases for adoption of children consider the fulfillment of the conditions for adoption based on the current regulations and assess the ability of foster parents to ensure the best interests of the child.

Conditions for adoption according to Article 12 of Government Regulation Number 54 Year 2007 that foster children must be neglected or neglected. In the five decisions, the judge did not consider whether the adopted child was an abandoned child or not.

Looking at the definition of a abandoned children according to the Child Welfare Law, what is meant by an abandoned child is a child who for some reason has "neglected" his obligations so that the child's needs cannot be properly met spiritually, physically and socially. Meanwhile, the definition of abandoned children according to the Child Protection Law is a child whose needs are not properly fulfilled, whether physically, mentally, spiritually or socially. Both provide different definitions of abandoned child. In the Child Protection Law, the sentence "which for some reason parents neglected their obligations" is not translated into a single definition of abandoned children but is written separately in Article 57 of the Child Protection Law, whereas in the Child Welfare Law it has become an integral part of Article 1 point 7.

The attachment to Regulation of the Minister of Social Affairs of the Republic of Indonesia Number 8 Year 2012 concerning Guidelines for Data Collection and Data Management of Persons with Social Welfare Problems and Potential and Sources of Social Welfare provides criteria for abandoned infant, including: 1) abandoned or without proper care, 2) comes from very poor families / poor, 3) losing custody of parents or family, 4) experiencing mistreatment and abandoned by parents / family, 5) being exploited by parents as beggars on the streets, and 6) suffering from malnutrition.

If it is concluded, according to the researcher, abandoned children are children whose age range is under 18 years old, which for some reason their parents abandoned their obligations so that their physical, mental, spiritual, and social needs cannot be met properly.

There are foreign elements in the legal act of adoption, it is necessary to see the definition of abandoned children based on International Civil Law. But until now it is still in the form of a Draft Law on Private International Law so that there is no

legal protection regarding the complex problems of abandoned children and the implementation of adoption in Indonesia by foreign citizens.

About the best interests of the child, the judge interpreted that what was meant by the best interests of the child was the fulfillment of the child's needs as seen from the economic capacity and goodwill of the foster parents in fulfilling the requirements for adoption. In his consideration, the judge should not only look at the economic capacity and goodwill of the adoptive parents, but also see the requirements of the foster children.

In decision No.79 / Pdt.P / 2012 / PN.Mks, foster parents are the siblings of the child's biological parents. This means that adopted children are not abandoned or abandoned children. The biological parents of the child are like entrusting their children to their siblings to be nurture, cared for, and financed for their needs.

It can be said that the five court decisions do not protect social welfare for the adoption of abandoned children in Indonesia by foreign citizens because they do not pay attention to the provisions that foster children must be abandoned children or not. Based on the various purposes of the five decisions regarding inter country adoption, the researchers concluded that social welfare for the adoption of abandoned children in Indonesia is the fulfillment of children's welfare in accordance with the provisions in the explanation of the Child Welfare Law, namely the need for food, clothing, housing, education and health.

V. CONCLUSION

The regulations for the adoption of abandoned children in Indonesia by foreign citizens are not in accordance with court decisions so that their application causes confusion that comes out of social welfare in the 1945 Constitution of the Republic of Indonesia.

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REFERENCES

[1] "BPS Provinsi Jawa Timur", Jatim.bps.go.id, 2020. [Online]. Available:

<https://jatim.bps.go.id/statictable/2019/10/16/2044/penyandang-masalah-kesejahteraan-sosial-menurut-kabupaten-kota-di-provinsi-jawa-timur-2017.html>. [Accessed: 2019].

- [2] Susianah Affandy, "Perlindungan Anak Terlantar". *Indonesiana*, April 27th 2019, <https://www.indonesiana.id/read/110161/perlindungan-anak-terlantar>, 2019.
- [3] Bridget M Huibing, "International Child Adoptions: Who Should Decide What is in the Best Interests of the Family", *Notre Dame Journal of Law*, Vol. 15, 2014.
- [4] Maharani dan Irit Suseno, "Penggangkatan Anak Warga Negara Indonesia oleh Warga Negara Asing", *Surabaya: Mimbar Keadilan Jurnal Ilmu Hukum, Fakultas Hukum Universitas 17 Agustus 1945*, 2018.
- [5] Rusli Pandika, *Hukum Pengangkatan Anak*, Jakarta: Sinar Grafika, 2012.
- [6] Soeradi, "Perubahan Sosial dan Ketahanan Keluarga", *Pusat Penelitian dan Pengembangan Kesejahteraan Sosial RI*, Vol. 18 No. 02, 2013.
- [7] Sonia Rosha Yolanda, Moch. Najib Imanullah, "Pemantauan Pelaksanaan Hak-Hak Anak di Tempat Tinggal Setelah Pelaksanaan Adopsi Internasional Warga Negara Indonesia oleh Warga Negara Asing (Intercountry Adoption)", *Solo: Jurnal Privat Law*, Vol. VII No. 1, 2009.